

14 August 2009

Customs, Trade and Transport Law e-alert

Australian Customs initiate investigation into alleged dumping of Silicone Emulsion Concrete Admixtures exported from the United States of America

Today (14 August 2009), the Australian Customs and Border Protection Service ("Customs") has published a notice confirming that it had resolved to initiate an investigation into alleged dumping of silicone emulsion concrete admixtures products ("SECA") produced in the USA. The initiation application was lodged by Tech-Dry Building Protection Systems Pty Ltd ("Tech-Dry") which claims to be the sole manufacturer of the products in Australia.

The products have been identified as classified to subheading 3824.40.00 of Schedule 3 of the *Customs Tariff Act 1995* and are currently imported duty free. It is claimed that SECA is a higher value product than traditional concrete admixtures such as fatty acid types of concrete admixtures. SECA is used for water repellency and efflorescence control application for concrete or similar products including concrete block, concrete paving, retaining wall units, concrete roof tiles and pre-cast or pre-stressed concrete. The product also helps increase the strength and improve the colour vibrancy of concrete.

Customs notes that while the application is taken to cover any goods meeting the description provided in the initiation notice, Tech-Dry makes particular reference to goods exported from the USA manufactured by BASF Construction Chemicals USA ("BASF") which is currently marketed under the name 'Rheopel Plus'. Tech-Dry states that SECA was developed in Australia by the company and introduced into Germany for the purposes of sale to concrete manufacturers. Tech-Dry claims that a German chemical company instead began manufacturing SECA and was subsequently bought out by another company what was in turn bought out by BASF which is now manufacturing the product in the USA.

Tech-Dry alleges that the products exported from the USA to Australia at prices below their normal values and have caused material injury to the Australian industry through:

- (a) lost market sales volume;
- (b) lost market share;
- (c) price undercutting;
- (d) price suppression;
- (e) price depressions; and
- (f) reduced profits and profitability.

In its Consideration Report, Customs notes that the data stored in the Customs import database does not permit accurate identification of the products because of the broad nature of the tariff classification and the descriptions indeed in that classification. Therefore, Customs has relied on Tech-Dry's estimates of market size and market share for the purpose of market analysis.

The notice released by Customs invites interested parties to provide submissions concerning the application before close of business on 23 September 2009.

As many of you will be aware, we have extensive experience in acting in anti-dumping measures whether for Australian industry in the initiation of measures or acting for overseas exporters and Australian importers of goods the subject of such anti-dumping or countervailing action. As always, we will be pleased to assist parties in relation to this important investigation.

For further information please contact Andrew Hudson

Disclaimer: The information contained in this e-alert is not advice and should not be relied upon as legal advice. Hunt & Hunt recommends that if you have a matter that is legal, or has legal implications, you consult with your legal adviser. If you no longer wish to receive this e-alert or any other publication from Hunt & Hunt, please email us at unsubscribe@hunthunt.com.au.