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Australian Government
Australian Customs and
Border Protection Service

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FOLIO No. <u>17</u>

INTERNATIONAL TRADE REMEDIES BRANCH

CONSIDERATION REPORT NO. 185

**APPLICATION FOR THE REVIEW OF
ANTI-DUMPING MEASURES**

POLYVINYL CHLORIDE HOMOPOLYMER RESIN

EXPORTED FROM

JAPAN AND THE UNITED STATES OF AMERICA

24 February 2012

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1 Summary and recommendations

This consideration report is in response to an application by Chemiplas Australia Pty Ltd (Chemiplas) for the review of anti-dumping measures that apply to polyvinyl chloride homopolymer resin (PVC) exported to Australia from Japan and the United States of America (USA). Chemiplas is an importer of PVC from Japan and the USA and has applied for a review of the normal values and non-injurious free on board prices (NIFOBs).

This report provides the results of the consideration by the Australian Customs and Border Protection Service (Customs and Border Protection) to the Chief Executive Officer of Customs and Border Protection (CEO) as to whether or not to reject the application.

1.1 Recommendations

We recommend that the delegate of the CEO decide not to reject the application.

If the delegate accepts this recommendation, to give effect to that decision, the delegate must publish the attached notice at **Appendix A** indicating that it is proposed to review the measures covered by the application.

1.2 Application of law to facts

The anti-dumping measures applicable to PVC exported from the USA were imposed in January 1992 and Japan in October 1992 following separate investigations and are subject to separate dumping duty notices.

Measures imposed before 1 January 1993 ('old measures') are reviewed using the provisions of section 269TAD of the *Customs Act 1901* (the Act¹) which were repealed in 1992 but remain in force under transitional arrangements.

Section 269TAD of the Act provided that the Minister for Home Affairs (the Minister), if satisfied that any factor relevant to the ascertainment of normal values had altered, may re-ascertain normal values.

NIFOBs may be varied according to subsection 8(5) of the *Customs Tariff (Anti-Dumping Act) 1975*, by virtue of section 33(3) of the *Acts Interpretation Act 1901* which provides that where an Act confers a power to issue an instrument the power shall be construed as including a power to vary the instrument.

There are no legislative timeframes for the completion of reviews under section 269TAD of the Act however the practice is to follow the same manner and time frame as reviews of the post 1 January 1993 measures.

Division 5 of Part XVB of the Act sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the review of measures imposed from 1 January 1993.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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The Division empowers the CEO to reject or not reject an application for review of anti-dumping measures.

Depending on the CEO's decision, it may be necessary for the CEO to publish a notice indicating that it is proposed to review the measures covered by the application.

The CEO's powers have been delegated to certain officers of Customs and Border Protection.

1.3 Findings and conclusions

We have examined Chemiplas' application for a review of the anti-dumping measures applying to PVC exported to Australia from USA and Japan.

We are satisfied that the application lodged by Chemiplas provides the required information to initiate a review.

We are also satisfied, having regard to the applicant's claims and other relevant information, that there appears to be reasonable grounds for asserting that there have been changes in the normal values and NIFOBs.

Our reasons for being satisfied are based on the applicant's demonstration of changes in the normal values and NIFOBs since the measures were last revised in 2006.

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2 Background

On 2 February 2012, Chemiplas, an importer of PVC from Japan and the USA, lodged an application requesting a review of the variable factors of the anti-dumping measures applying to PVC exported to Australia from USA and Japan. The variable factors for 'old measures' are the normal values and NIFOBs. The measures were last reviewed in 2005, Trade Measures Report 100 (REP 100) refers.

2.1 Existing measures

Anti-dumping measures were imposed on PVC from the USA and Japan in 1992 and have been the subject of continuation inquiries every five years since then. The measures on imports from the USA were recently continued for another five years; International Trade Remedies Report No. 174 (REP 174) refers, and will apply to 23 January 2017 unless revoked earlier. The measures on imports from Japan are due to expire on 22 October 2012 subject to a continuation inquiry that commenced on 24 February 2012 as discussed in Section 5 of this report.

The measures applying to the USA and Japan were last reviewed in 2005 when different normal values and NIFOBs were fixed for all exporters generally.

The measures are in the form of anti-dumping duties that apply where the export price of the goods exported is lower than the ascertained normal value and the non-injurious free on board price.

2.2 The goods subject to the measures

The goods subject to measures (the goods) are PVC.

The goods subject to the measures do not include PVC compounds, pastes or emulsion grades.

PVC is a white free flowing powder that is used in combination with other chemicals to produce a variety of products.

The main input into the production of PVC is vinyl chloride monomer (VCM). VCM is manufactured by combining ethylene and chlorine to form ethylene dichloride that is 'cracked' in a furnace. PVC is made in a batch process in which VCM droplets are polymerised, while suspended in water, in the presence of an initiator and other additives.

PVC is sold to a range of processors who either extrude, inject, mould or blow mould the PVC to make a wide variety of goods. The major end-use of PVC based products is in the building and construction sector (e.g. pipes and fittings, cables, house cladding, gutters, down pipes, flooring and window frames). PVC based products are also used in packaging, upholstery and domestic appliances.

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2.2.1 Imports

Since the last revision of measures in 2005, exporters from Japan have continued to supply the Australian market with PVC up to December 2011. Customs and Border Protection's import database indicates that there has not been imports of PVC from the USA in 2011.

Details of the imports for the period 1 January 2011 to 20 December 2011 are at **confidential attachment 1**.

Chemiplas provided names and addresses of exporters and manufacturers from USA and Japan and end users of like goods who are likely to have an interest in the current review.

2.3 Tariff classification of the goods

The goods are classified under sub-heading 3904.10.00, statistical code 18, in Schedule 3 to the *Customs Tariff Act 1995*.

There is currently no general duty imposed on the goods exported from the USA in accordance with the USA-Australia free trade agreement, the rate of general duty on the goods exported from Japan is 5%.

2.4 Australian industry producing like goods

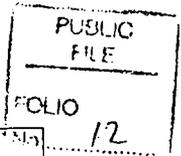
REP 174 found that there is an Australian industry producing like goods and that Australian Vinyls Corporation Pty Ltd (AVC) is the sole manufacturer of PVC in Australia.

AVCs production facility is located in Laverton North, Victoria. The company manufactures PVC and wood-plastic compounds, as well as supplying a range of imported chemicals including caustic soda, PVC processing additives, synthetic rubbers and speciality elastomers.

REP 174 noted that AVC imports PVC from Taiwan to supplement domestic production.

Information will be sought from AVC during the review to assist in calculating an unsuppressed selling price from which NIFOBS will be determined.

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3 Required information

3.1 Finding

We are satisfied that the application lodged by Chemiplas provides the required information to initiate a review.

3.2 Legislative framework

As noted at section 1.2 measures imposed before 1 January 1993 are reviewed using the provisions of section 269TAD of the Act which were repealed in 1992 but remain in force under transitional arrangements.

Normal values can be re-ascertained by the Minister under section 269TAD 'at any time, and from time to time, if the Minister is of the opinion that any factor relevant to the ascertainment of the normal value of goods... has altered'. Similarly, the application of subsection 33(1) of the *Acts Interpretation Act 1901* means that export prices and NIFOBs may be re-ascertained under section 269TAB and subsections 8(5) and s.8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975* (as they were under the transitional provisions) 'from time to time as the occasion requires'.

For the 'old measures' no application form requirements exist within the legislation - in these cases Customs and Border Protection requires a letter to the CEO containing the same type of information as the Division 5 application requirements.

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Subsection 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount.

The applicant has not applied for and did not provide information for revocation of the measures.

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3.3 Our assessment

The application lodged by Chemiplas:

- was in writing;
- provided a description of the goods subject to the measures;
- provided a description of the measures the subject of the application; and
- provided statements of the factors that had changed and information to support those statements.

The applicant also provided non-confidential versions of the application for distribution to interested parties. The non-confidential version of the application adequately reflects the reasons for seeking a review of the anti-dumping measures.

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4 Consideration of reasonable grounds

4.1 Finding

We are satisfied, having regard to the applicant's claims and other relevant information, that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.

4.2 Grounds for asserting variable factors have changed

The variable factors are the normal values and the NIFOBS.

Applicant's Claims

In the application Chemiplas claimed that changes in the rate of exchange of the Australian dollar (AUD) to the United States dollar (USD) and changes in the pricing of VCM were major factors in determining the price of PVC.

Chemiplas provided information on changes in the VCM price from January 2005 to September 2011 and comparisons in the exchange rates of the AUD and USD in 2005 and 2011. Chemiplas referenced prices from Harriman Chemsult Ltd, a publication that references PVC and VCM prices.

Chemiplas says that the information demonstrates the PVC price fluctuations that occur in the market.

Our assessment

Previous investigations by Customs and Border Protection have noted the link between the price of VCM and the price of PVC. The measures applying to the USA and Japan were last reviewed in 2005, REP 100 refers.

In REP 100 Customs and Border Protection considered the construction of an unsuppressed selling price (USP) having regard to AVCs VCM cost in the review period plus the difference between the VCM cost per tonne of PVC and PVC selling prices, as verified for financial year 1998/99, provided a reasonable USP². A NIFOB was then calculated by deducting from the USP the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

Normal values for Japan were calculated under section 269TAC(6), using the existing ascertained normal value for Japan indexed in accordance with the movements in non-injurious price³. Normal values were calculated for the USA using the existing ascertained normal value at the time for the USA indexed in accordance with movements in the prices provided in an independent market research publication (Harriman Chemsult Ltd)⁴.

REP 100 also noted that PVC is a cyclical commodity market with considerable volatility in prices and costs and the prevalence of USD PVC and VCM import contracts mean that prices are sensitive to exchange rate fluctuations⁵.

² REP 100, page 14

³ REP 100, page 7

⁴ REP 100, page 9

⁵ Rep 100, page 14

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The most recent investigation into PVC, the 2011 inquiry into the continuation of the measures applying to the USA (REP 174 refers) notes the link between VCM and PVC pricing and also referenced data from Harriman Chemsult.

In REP 174 Customs and Border Protection found that the PVC-VCM spread (the difference between the VCM price and PVC price) is at the bottom of the cycle⁶.

REP 174 also notes that the price in Australia was particularly influenced by the price of PVC in Asia, as listed in industry publications such as Harriman Chemsult. The publications ensured that prices in the market were quite transparent⁷.

The applicant has provided evidence to demonstrate that VCM prices have changed since the last review of the measures. Previous investigations have noted the link between VCM and PVC prices.

The current NIFOBs are calculated from a USP based on a VCM cost, it would be likely that a change in the cost of VCM would lead to a change in the NIFOBs.

The current normal value for Japan is based indexed changes in the non-injurious price, these indexed changes were effected by the costs of VCM as it affected the NIFOBs. It would be likely that a change in the cost of VCM would lead to a change in the normal values for Japan. It is also likely that the normal value calculated for the USA has changed due to changes in the cost of VCM.

We consider that the applicant has demonstrated that the normal values and NIFOBs have changed since the last review.

4.3 Conclusion on "reasonable grounds"

We are satisfied that there appears to be reasonable grounds for asserting the normal values and non-injurious free on board prices have changed.

Accordingly we recommend that the delegate of the CEO decide not to reject the application.

A notice for publication indicating that it is proposed to review the measures covered by the application is at **Appendix A**.

4.4 Review Period

For the purposes of this review, the period to examine normal values and non-injurious free on board prices is from 1 January 2011 to 31 December 2011.

4.5 Revocation

The applicant did not apply for and the application did not contain any information in regards to the revocation of the measures, accordingly revocation of the measures will not be examined during this review.

⁶ REP 174, page 15

⁷ REP 174, page 17

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5 Continuation inquiry - Japan

The CEO will commence an inquiry into the continuation of anti-dumping measures applying to PVC exported from Japan following consideration of an application by AVC. AVC is the sole manufacturer of PVC in Australia.

The inquiry will commence on 24 February 2012 and will examine whether the anti-dumping measures should continue for a further five years or be allowed to expire.

Particulars of the reasons for the decision to commence the inquiry are shown in Consideration Report No. 184 held on the public record.

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6 List of Attachments

Appendix A	Public notice of initiation of review
Confidential Attachment 1	Details of imports from Customs and Border Protection database (1 Jan 2011 to 20 December 2011)
Confidential Attachment 2	Analysis of normal values
Confidential Attachment 3	Analysis of NIFOBS

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Appendix A

Customs Act 1901 – Part XVb

Polyvinyl Chloride Homopolymer Resin (PVC) exported from the United States of America and Japan

Initiation of a review of normal values and non-injurious free on board prices

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) will undertake a review of the normal values and non-injurious free on board prices (NIFOBs) applying to polyvinyl chloride homopolymer resin (PVC), exported from the United States of America (USA) and Japan.

Measures imposed before 1 January 1993 ('old measures') are reviewed using the provisions of section 269TAD of the Customs Act 1901 (the Act) which were repealed in 1992 but remain in force under transitional arrangements.

The review will commence on 24 February 2012. Customs and Border Protection will not be examining revocation of the measures during this review.

The goods subject to anti-dumping measures, in the form of dumping duty notices, are PVC. The measures apply to all exporters from the USA and Japan. The goods subject to the measures do not include PVC compounds, pastes or emulsion grades.

PVC is classified under sub-heading 3904.10.00, statistical code 18, in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty from Japan is 5% whilst the rate from the USA is free.

Interested parties are invited to lodge written submissions concerning the review of normal values and NIFOBs not later than **4 April 2012** with:

The Director
Operations 1, International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra ACT 2601

or by email tmops1@customs.gov.au, or fax number 02 6275 6990.

Confidential submissions must be clearly marked "In-Confidence" and be accompanied by two non-confidential versions suitable for placement on the public record. All non-confidential submissions will be placed on the public record for this inquiry together with a copy of all relevant correspondence between Customs and Border Protection and other persons.

A statement of the essential facts on which the CEO proposes to base a recommendation to the Minister for Home Affairs (the Minister) will be placed on the public record by 13 June 2012, or such longer period as the Minister allows. Interested parties are invited to lodge submissions in response to the statement of essential facts within 20 days of that statement being placed on the public record. These submissions should also be lodged with Customs and Border Protection at the above mail, fax or email addresses. A report and recommendation to the Minister will be made on or before 30 July 2012 (or such longer period as the Minister allows).

Particulars of the reasons for the decision to initiate this review are shown in Consideration Report No. 185 (CON 185) held on the public record. Interested parties wishing to examine the public record may do so on the internet at adpr.customs.gov.au/Customs or at Customs House, 5 Constitution Avenue, Canberra ACT during business hours by contacting International Trade Remedies office management on telephone number 02 6275 6547. CON 185 and all Australian Customs Dumping Notices are also available on the Customs and Border Protection website at www.customs.gov.au.

Enquiries about this notice may be directed to the case team on telephone number 02 6245 5434 or email tmops1@customs.gov.au.

Justin Wickes
Delegate of the Chief Executive Officer
24 February 2012