

PUBLIC RECORD

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FOLIO No: 102



Australian Government
**Australian Customs and
Border Protection Service**

R E P O R T

INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NO.185

**REVIEW OF
ANTI-DUMPING MEASURES**

**POLYVINYL CHLORIDE HOMOPOLYMER RESIN
EXPORTED FROM
JAPAN AND THE UNITED STATES OF AMERICA**

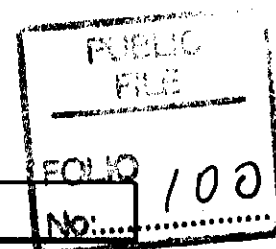
13 August 2012

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1. SUMMARY AND RECOMMENDATIONS

This review 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).

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.

This statement of essential facts (SEF) sets out the facts on which the delegate of the Chief Executive Officer (the delegate) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation to the Minister for Home Affairs (Minister) for measures applicable to PVC from Japan and the USA.

1.1 Proposed recommendation

The delegate proposes to recommend to the Minister that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained.

The result of the review would be that for all exporters ascertained normal values would increase and the NIFOBs would decrease.

1.2 Preliminary findings and conclusions

Based on all available information Customs and Border Protection's preliminary findings are:

- the normal value for PVC exported from Japan can be determined having regard to all relevant information;
- the normal value for PVC exported from the USA can be determined having regard to all relevant information;
- the NIFOB for PVC can be established by referencing import parity pricing during the review period.

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the delegate proposes to recommend to the Minister that the measures be varied for all exporters of PVC from Japan and the USA.

1.3 Final report

The delegate's final report and recommendation in relation to measures applicable to PVC from Japan and the USA must be provided to the Minister by **25 September 2012**.

2. INTRODUCTION**2.1 Review process**

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.

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.

Section 269TAD of the Act provided that 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.

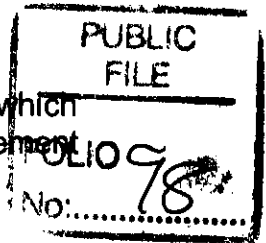
If an application for a review of anti-dumping measures is received and not rejected, Customs and Border Protection has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures. Within 110 days of the initiation, or such longer time as the Minister may allow, Customs and Border Protection must place on the public record a statement of essential facts on which it proposes to base its recommendation to the Minister concerning the review of the measures.

In making recommendations in its final report to the Minister, Customs and Border Protection must have regard to:

- the application for a review of the anti-dumping measures;

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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- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the statement of essential facts;
- this statement of essential facts; and
- any submission made in response to this statement of essential facts that is received by Customs and Border Protection within 20 days of being placed on the public record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the review.

In respect of a dumping duty notice, the delegate must provide a proposed recommendation to the Minister that the dumping duty notice:

- remain unaltered; or
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained.

Following the Minister's decision, a notice will be published advising interested parties of the decision.

2.2 Notification and participation

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.

Following consideration of the application the review of the measures commenced on 24 February 2012. The period of 1 January 2011 to 31 December 2011 was set as the review period in which to examine normal values and NIFOBs.

Public notification of initiation of the review was made on 24 February 2012 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2012/08 was also published.

Customs and Border Protection visited Chemiplas and verified data relating to costs and sales for the review. A non-confidential report of the visit was placed on the public record.

Customs and Border Protection visited Australian Vinyls Corporation Pty Ltd (Australian Vinyls), the sole manufacturer of PVC in Australia and verified data relating to costs and sales for the review. A non-confidential report of the visit was placed on the public record.

No exporter provided requested information on domestic sales and costs for the review.

Australian Vinyls and Chemiplas provided submissions to the review as did an end user of PVC, Polvin Compounds Pty Ltd (Polvin).

2.3 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this statement of essential facts. However Customs and Border Protection is not obliged to have regard to any submissions received after **3 September 2012** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

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

Submissions can also be faxed to (02) 6275 6990 or emailed to tmops1@customs.gov.au.

Interested parties intending to respond to the statement of essential facts must include a non-confidential version of their submission for placement on the public record². Submissions provided in confidence must be clearly marked "IN-CONFIDENCE".

The public record contains non-confidential submissions already received from interested parties, this statement of essential facts, non-confidential versions of Customs and Border Protection's visit reports and other publicly available documents such as Customs and Border Protection's initiation report, notices and other information. These documents should be read in conjunction with this statement of essential facts.

All documents on the public record are available on Customs and Border Protection's electronic public record which may be accessed on the internet at www.customs.gov.au by following the prompts for "anti-dumping".

The public record may also be viewed at Customs House Canberra by contacting the case team for this review on (02) 6245 5434.

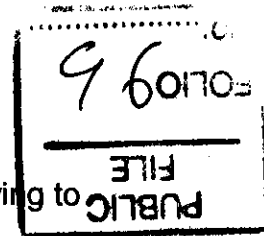
2.4 History of anti-dumping measures

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. 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.

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, REP 100 refers.

² In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2008/54.

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2.5 Continuation of the measures

The CEO commenced an inquiry into the continuation of measures applying to PVC exported from Japan following consideration of an application by Australian Vinyls, the sole manufacturer of PVC in Australia.

The inquiry commenced on 24 February 2012.

A separate SEF, SEF 184 has been issued for the inquiry and was published on 13 August 2012.

2.6 Investigation of PVC from Korea

On 23 April 2012 the CEO initiated an investigation into the alleged dumping of PVC exported from the Republic of Korea (Korea) following consideration of an application lodged by Australian Vinyls.

The SEF, SEF 187, for the investigation of PVC from Korea was published on 13 August 2012.

3. GOODS SUBJECT TO THE REVIEW

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3.1 Preliminary finding

The Australian industry produces PVC that has characteristics closely resembling those of PVC manufactured in Japan and the United States of America and exported to Australia. Therefore PVC manufactured by the Australian industry is like goods.

3.2 The goods

The goods covered by the dumping duty notice are polyvinyl chloride homopolymer resin (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.

PVC is 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 and the rate of general duty on the goods exported from Japan is 5%.

3.3 Like goods

In previous investigations, inquiries and reviews in respect of PVC, Customs and Border Protection determined that Australian Vinyls was the Australian industry producing like goods. On the basis of information provided by Australian Vinyls during this inquiry and previous investigations, Customs and Border Protection considers Australian Vinyls is a producer of like goods.

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4. THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

There is an Australian industry that is producing like goods, consisting of Australian Vinyls.

4.2 Australian production

Australian Vinyls is the sole manufacturer of PVC in Australia. Its production facility is 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.

4.3 PVC production process

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.

5. MARKET

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5.1 Preliminary finding

The size of the Australian market for PVC was around 200,000 tonnes in 2011.

5.2 Market size and demand

The Australian market for PVC is supplied through local production and imports from a number of sources. Australian Vinyls imports PVC from Taiwan to supplement its domestic production.

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 (such as 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.

In its application Australian Vinyls estimated the size of the market in the calendar year 2011 at approximately 180,000 tonnes. Australian Vinyls estimated the current market was at 190,000 to 200,000 tonnes per annum.

Australian Vinyls said that it relies on monthly forecasts from its larger customers to estimate demand for the next three months, however these forecasts can be unreliable.

Australian Vinyls said the market is weaker due to the effects of the global financial crisis and the breaking of the drought and subsequent floods. During the drought there was demand for large water projects requiring irrigation pipe, however the floods reduced demand as there was no longer a need for those projects. In addition it also became impossible to lay pipes in the flooded areas. The global financial crisis had an effect due to the slowdown in the construction industry which uses PVC for pipes, cables flooring, profiles, ducting, window profiles and siding. Technology improvements, such as using thinner walled pipes, can also affect demand as less material is required, however this may make PVC more competitive as it lessens the cost.

Australian Vinyls was also affected in the first half of 2008 by a prolonged plant shutdown that meant its larger customers could not get PVC at a time when the economy was still booming.

Chemiplas noted that imports account for approximately one third of the total market and this is most likely to increase as Australian Vinyls loses their competitiveness with an inefficient plant and lack of integration.

Chemiplas saw South East Asian suppliers as likely to become key to the Australian market due to locality, feedstock, competitiveness and increases in capacity.

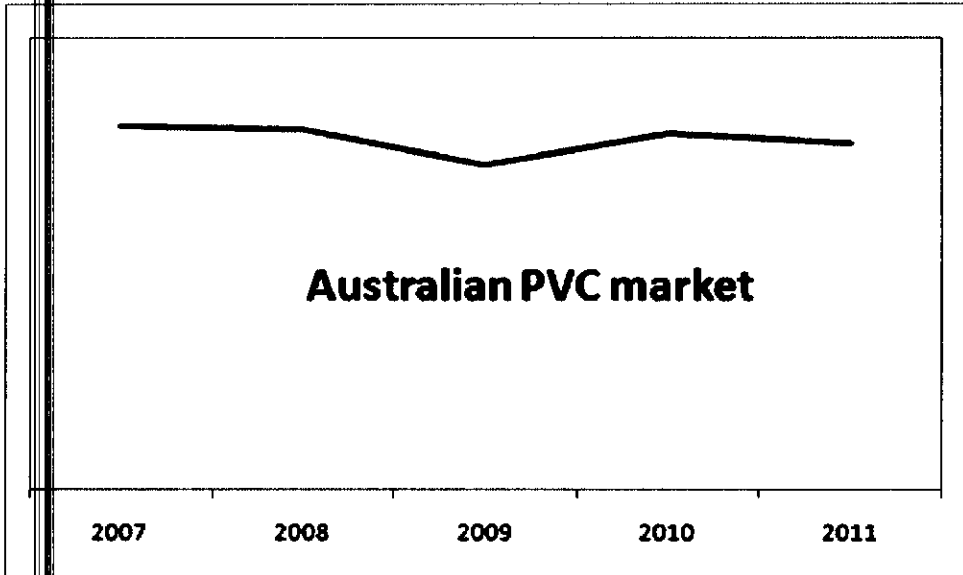
Customs and Border Protection estimated the size of the Australian market for the calendar years 2007-2011 using information from its import database, information supplied by Australian Vinyls and information from importers.

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The market declined from calendar year 2007 to 2009 before increasing in 2010 and then declining in 2011.

Movements in the size of the Australian market are illustrated in the following chart.

EXHIBIT
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6. NORMAL VALUES

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6.1 Preliminary findings

- The normal value for PVC exported by all other exporters from Japan can be determined having regard to all relevant information; and
- The normal value for PVC exported by all other exporters from the USA can be determined having regard to all relevant information.

6.2 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 a chemical industry publication that references PVC and VCM prices.

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

6.3 Importers

Customs and Border Protection examined data from its import database and identified only one importer of PVC from Japan during the review period, being the applicant Chemiplas. Chemiplas fully co-operated with the review providing verified information on imports and sales.

Customs and Border Protection did not identify any imports of PVC from the USA during the review period.

6.4 Exporters

Exporter questionnaires were sent to companies who were identified as suppliers of PVC during the review period and from previous years.

Customs and Border Protection did not receive responses to the questionnaire.

Shintech Incorporated (Shintech), a producer and exporter of PVC in the USA advised that it declined to file a formal response to the questionnaire as it had not exported PVC to Australia during the review period.

Shintech submitted that as it had not exported to Australia during the review period there existed no proof of dumping and Australia should therefore not discriminate against its future exports.

Shintech further submitted that as imports from Asia to Australia were required to meet demand in the Australian market, those imports were not subject to anti-dumping duties and exports from Japan and the USA should also not be subject to anti-dumping duties.

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Revocation of the measures will not be examined during this review as noted at section 1 of this SEF. Customs and Border Protection informed Shintech that the current review would only be examining normal values and NIFOBs and that an assessment of export prices and whether dumping has occurred is not a part of this review and no statement would be made in this regard.

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The current continuation inquiry into PVC exported from Japan will assess whether measures on PVC from Japan should be allowed to expire or should be continued.

6.5 Normal values

Customs and Border Protection did not receive information from any exporter in regards to domestic selling prices for PVC in Japan or the USA, therefore normal values have been determined having regard to the best available information.

Customs and Border Protection relied on information provided by Australian Vinyls in its application for the continuation of the measures applying to PVC from Japan. This information included monthly data on domestic PVC prices for Japan and the USA for the calendar year 2011 published by a chemical industry newsletter.

Customs and Border Protection has calculated normal values using a simple average of the monthly data on domestic PVC prices.

No adjustments were made to the normal values as there was no information that any adjustments were warranted.

7. NON-INJURIOUS FREE ON BOARD PRICE

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7.1 Preliminary findings

The non-injurious free on board price (NIFOB) can be established for PVC by referencing import parity pricing during the review period.

7.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the NIFOB provides the mechanism whereby this lesser duty provision is given effect. The NIFOB is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping³.

Anti-dumping duties are usually based on free on board (FOB) prices in the country of export. Therefore a NIFOB is calculated in FOB terms for the country of export.

7.3 Methods of calculating non-injurious price

The method of calculating a NIFOB is not given in the legislation, but it is generally derived from Australian industry's unsuppressed selling price (USP). The unsuppressed selling price is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports.

Customs and Border Protection's preferred approach to establishing the unsuppressed selling price observes the following hierarchy:

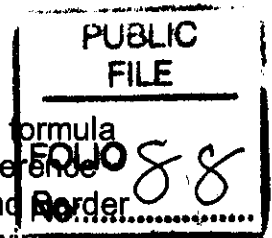
1. Industry selling prices at a time unaffected by dumping (known as an unsuppressed selling price).
2. Constructed industry prices – industry cost to make and sell plus an appropriate profit.
3. Selling prices of undumped imports

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting 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.

The current USP is based on Australian Vinyl's VCM cost in the review period for the last review in 2005 plus the difference between the VCM cost per tonne of PVC and PVC selling prices, as verified for financial year 1998/99.

³ The non-injurious price is defined in s.269TACA.

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Customs and Border Protection considers that the current formula for establishing the unsuppressed selling price is no longer relevant. The formula uses Australian Vinyl's VCM cost plus an amount representing the difference between VCM cost and PVC prices achieved in 1998-99. Customs and Border Protection considers that this formula should be reviewed for the following reasons:

- it is based on a PVC-VCM gap achieved over ten years ago;
- prices are not set by reference to Australian Vinyls costs, but to Asian market prices;
- Australian Vinyls has undergone structural changes following the closure of its Altona plant; and
- Australian Vinyls is now a major importer of PVC.

7.4 Applicants claims

Chemiplas proposed using the marked based approach using selling prices in Australia based on the price of goods imported from Formosa Plastics Group, Taiwan; LG Corp, South Korea and Thailand.

Chemiplas said that Australian Vinyls was setting the price in the market with its imports from Taiwan and proposed that the selling prices of goods imported from Taiwan, Korea and Thailand could be used as the basis for a USP.

7.5 Australian industry's claims

Australian Vinyls proposed a USP based on its cost to make sell PVC for the calendar year 2011 plus the average level of profit achieved on the PVC it produced and sold in the financial years 2005-06 and 2006-07.

Australian Vinyls submitted that its level of profit following the global financial crisis had been negative and would not be appropriate to use.

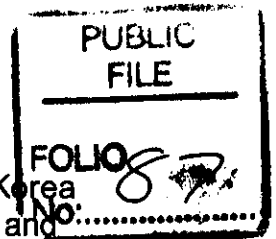
7.6 End user claims

Polvin submitted that the Australian PVC processing industry (downstream from Australian Vinyls) employs thousands more people and has capital invested thousands of times more than Australian Vinyls.

Polvin submitted that the end users needed access to well priced and quality PVC resins from the USA and Japan and that these resins should not be blocked. Polvin further submitted that Australia must have either a free market economy or a protected economy and cannot have both at the same time.

Polvin concluded that the Australian Vinyls business model cannot survive because it is out of date, and that end users who have updated their factories should not be penalised by crippling their raw material supplies. Polvin said it needed to be able to source competitively priced resins in order to survive and that the end user industry is 1000 times bigger than Australian Vinyls business, and therefore more important.

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7.7 Customs and Border Protection's assessment

There is a current investigation into the alleged dumping of PVC from Korea being conducted by Customs and Border Protection in which Customs and Border Protection has preliminary found that the PVC exported from Korea are at dumped prices and have caused material injury to the Australian industry.

Customs and Border Protection does not consider that industry selling prices in 2011 are suitable to be used as a basis for a USP as they appear to have been affected by the dumped exports from Korea.

Customs and Border Protection does not consider that prices of imports from other countries in the Australian market are a suitable basis for a USP as it is unclear whether they are equally impacted by the dumped exports from Korea.

Customs and Border Protection noted in SEF 187 for the consideration of a USP that a closer examination of Australian Vinyls sales shows that the basis for PVC selling prices in the Australian market was import parity pricing referenced to South East Asia PVC prices.

Customs and Border Protection considers that an average import parity price for the investigation period would be representative of a selling price that the industry could be expected to achieve in the absence of dumping. The import parity price has been calculated using monthly regional South East Asia PVC prices, converted to Australian dollars and adjusted to reflect an into-store selling price.

To determine the NIFOB at the FOB level, deductions have been made from the unsuppressed selling price for:

- overseas freight and marine insurance;
- Australian landing and port charges;
- Customs and quarantine clearances;
- delivery charges from the port to the warehouse and to the customer; and
- sales and administration expenses.

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8 EFFECT OF THE REVIEW

As a result of this variable factors review, Customs and Border Protection has found that normal values for all exporters of PVC from Japan and the USA have increased. The non-injurious free on board prices have decreased.

The measures are in the form of anti-dumping duties that apply where the actual export price of the goods exported is less than the lower of the ascertained normal value or the non-injurious free on board price. In this review, the non-injurious free on board prices were less than the ascertained normal values for both Japan and the USA.