



CUSTOMS ACT 1901 - PART XV B

**STATEMENT OF ESSENTIAL
FACTS NO. 317**

**REVOCAION REVIEW OF ANTI-DUMPING
MEASURES**

POLYVINYL CHLORIDE HOMOPOLYMER RESIN

EXPORTED FROM

JAPAN, THE REPUBLIC OF KOREA AND

THE UNITED STATES OF AMERICA

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ABBREVIATIONS

ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
Australian Vinyls	Australian Vinyls Corporation Pty Ltd
Chemiplas	Chemiplas Australia Pty Ltd
Korea	the Republic Of Korea
PVC	Polyvinyl Chloride Homopolymer Resin
SEF	Statement of Essential Facts
the Act	<i>Customs Act 1901</i>
the Commission	the Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
USA	the United States of America

1. SUMMARY AND RECOMMENDATIONS

1.1 Summary

This review is in response to an application by Chemiplas Australia Pty Ltd (Chemiplas) seeking the revocation of anti-dumping measures applying to polyvinyl chloride homopolymer resin (PVC) exported to Australia from Japan, the Republic of Korea (Korea) and the United States of America (USA).

This Statement of Essential Facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary).¹

1.2 Application of law to facts

Division 5 of Part XVB of *Customs Act 1901* (the Act)², sets out, among other things, the procedures to be followed by the Commissioner in conducting a review. This Division:

- outlines the procedures to be followed by the Commissioner in considering an application and preparing a report for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of that report, to decide whether the measures be revoked, remain unaltered or have effect as if different variable factors had been fixed.

1.3 Findings and conclusions

Based on information currently available, the Commissioner's finding is that:

- there will no longer be an Australian industry producing like goods once, as intended, Australian Vinyls, the sole producer of PVC in Australia ceases production of PVC in early 2016; and
- revoking the measures would not lead, or would not be likely to lead to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent, because there is no longer an Australian industry producing like goods.

1 January 2016 is an appropriate date for the measures to be revoked from.

1.4 Proposed recommendation

Based on the above findings and subject to any submissions received in response to this SEF, the Commissioner considers that the anti-dumping

¹ On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science. The Minister for Industry, Innovation and Science has delegated his powers and functions under Part XVB of the Customs Act 1901 to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation.

² All legislative references in this report are to the Customs Act 1901 unless otherwise specified.

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measures applying to the goods are no longer warranted and proposes to recommend to the Parliamentary Secretary that the dumping duty notices be revoked in relation to PVC exported to Australia from Japan, Korea and the USA by all exporters generally.

It is proposed that any decision by the Parliamentary Secretary in this matter take effect from 1 January 2016, a retrospective date allowed under paragraph 269ZDB(6)(a), being a date after the publication of the notice under section 269ZC indicating the Commissioner's proposal to undertake the review.

The effect of this proposed recommendation would be that interim dumping duties will not apply to the goods entered for home consumption on and after 1 January 2016, and that importers who had paid such duties would be eligible for a refund.

2. BACKGROUND

2.1 Review process

An affected party may apply for a review of anti-dumping measures if there are reasonable grounds to assert that the anti-dumping measures are no longer warranted.

If an application for a review of anti-dumping measures is received, and not rejected, the Commissioner has up to 155 days, or such longer period as the Parliamentary Secretary allows, to report to the Parliamentary Secretary with his recommendations regarding the review.³

Within 110 days of the initiation notice, or such longer period as the Parliamentary Secretary allows, the Commissioner must place on the public record a SEF on which he proposes to base his recommendation to the Parliamentary Secretary.⁴

After conducting a review of anti-dumping measures, the Commissioner:

- must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
- otherwise must make a revocation recommendation in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.⁵

In making recommendations in the final report to the Parliamentary Secretary, the Commissioner must have regard to:⁶

- the application for the revocation of the anti-dumping measures;
- any submission relating generally to the revocation of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of the SEF being placed on the public record.

The Commissioner may also have regard to any other matter that the Commissioner considers to be relevant to the review.⁷

Where the Parliamentary Secretary decides to revoke the anti-dumping measures, the Parliamentary Secretary can declare that the dumping duty

³ Subsection 269ZDA(1)

⁴ Subsection 269ZD(1)

⁵ Subsection 269ZDA(1A)

⁶ Paragraph 269ZDA(3)(a)

⁷ Paragraph 269ZDA(3)(b)

notices be revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods.⁸

Following the Parliamentary Secretary's decision, a notice will be published advising of the decision.⁹

2.2 History of anti-dumping measures

A history of the anti-dumping measures applying to PVC exported to Australia from Japan, Korea and the USA is summarised below.

2.2.1 Japan

Measures applying to all exporters of PVC from Japan were initially imposed on 22 October 1992 and were continued for a further 5 years in 1997, 2002, 2007 and 2012. The measures were revised on 19 October 2012 as part of a review of the anti-dumping measures. The measures are due to expire on 21 October 2017.

2.2.2 Korea

Measures applying to all exporters of PVC from Korea were initially imposed in 2000 and were continued for a further five years in 2005. These measures expired in March 2010.

A subsequent application from Australian Vinyls resulted in the initiation of a new investigation in relation to exports of PVC from Korea on 23 April 2012. Measures were subsequently imposed on all exporters of PVC from Korea on 19 October 2012. The measures are due to expire on 18 October 2017.

2.2.3 USA

Measures applying to all exporters of PVC from the USA were initially imposed on 23 January 1992 and were continued for a further 5 years in 1997, 2002, 2007 and 2012. The measures were last revised on 19 October 2012 as part of a review of the anti-dumping measures. The measures are due to expire on 22 January 2017.

2.3 Notification and participation in the review

On 19 October 2015, Chemiplas Australia Pty Ltd (Chemiplas), an importer of PVC, lodged an application requesting a review of the anti-dumping measures applying to PVC exported to Australia from Japan, Korea and the USA in relation to exporters generally.

After examining the application and other relevant information the Commissioner was satisfied that:

⁸ Subparagraph 269ZDB(1)(a)(ii)

⁹ Subsection 269ZDB(1)

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- the application complied with the requirements of 269ZB; and
- there appeared to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

Following consideration of the application, the review was initiated on 6 November 2015. Public notification of initiation of the review was made in *The Australian* newspaper on 6 November 2015. Anti-Dumping Notice (ADN) No. 2015/128 provides further details of the initiation and is available at www.adcommission.gov.au.

2.4 Responding to this Statement of Essential Facts

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary in relation to the review.

This SEF represents an important stage in the review. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

The Commissioner must have regard to submissions received in relation to this SEF within 20 days of the SEF being placed on the public record, in making his final report to the Parliamentary Secretary.¹⁰ Responses to this SEF should be received by the Commissioner no later than **14 February 2016**.¹¹ The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the final report to the Parliamentary Secretary.¹²

Submissions should preferably be emailed to operations3@adcommission.gov.au.

Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 3
Anti-Dumping Commission
GPO Box 1632
MELBOURNE VIC 3001

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

¹⁰ Subparagraph 269ZDA(3)(a)(iv)

¹¹ If a due date falls on a weekend or public holiday in Victoria, the effective due date will be the following business day. As this is a Sunday, the effective due date for submissions will be the following business day, **15 February 2016**.

¹² Subsection 269ZDA(4)

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A guide for making submissions is available on the Commission's website at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's reports and other publicly available documents. It is available online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

2.5 Final report

The Commissioner must provide a final report and recommendations to the Parliamentary Secretary on or before **11 April 2016** in relation to whether the anti-dumping measures applicable to PVC exported to Australia from Japan, Korea and the USA should be revoked.

3. GOODS SUBJECT TO THE REVIEW AND AUSTRALIAN INDUSTRY

3.1 Findings

There will no longer be an Australian industry producing like goods¹³ once, as intended, Australian Vinyls, the sole producer of PVC in Australia ceases production of PVC in early 2016.

3.2 The goods

The goods subject to anti-dumping measures (the goods), in the form of dumping duty notices, are:

Polyvinyl chloride homopolymer resin (PVC). PVC is a white powder produced by the polymerisation of vinyl chloride monomer ("VCM"). PVC can be manufactured through a suspension process or a mass process, and the final goods are considered to be similar and interchangeable.

Paste (or emulsion), compound grades and recycled PVC are excluded from the measures.

3.3 Tariff classification

The goods are currently classified to the tariff subheading 3904.10.00 (statistical code 18) of Schedule 3 to the *Customs Tariff Act 1995* and are subject to 5 per cent customs duty.

3.4 Australian industry producing 'like goods'

In the original investigations, subsequent inquiries and reviews in respect of PVC (as detailed in Section 2.2), the Commission, or the then Australian Customs and Border Protection Service (ACBPS)¹⁴, found there to be an Australian industry producing like goods.

In a submission dated 26 November 2015,¹⁵ Australian Vinyls expressed support for the review. Australian Vinyls also advised that:

- due to supply constraints on inputs of PVC production, it intended to cease the manufacture of PVC, which was carried out at its only PVC plant in Laverton, in February 2016;
- it will cease to accept orders for locally produced PVC from 31 December 2015; and

¹³ For the purposes of subsection 269T(1)

¹⁴ As of 1 July 2015, the former Australian Customs and Border Protection Service is now known as the Australian Border Force - see <https://www.border.gov.au/>

¹⁵ Document no. 6 on the public record

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- the relatively short turnaround from acceptance of order to local delivery of approximately one week will see it sell down its locally produced stock holdings in early 2016.

In a subsequent teleconference dated 17 December 2015, Australian Vinyls advised that one other local manufacturer of PVC ceased production in 2002 and it was not aware of any other manufacturers or other businesses seeking to commence manufacturing of PVC in Australia.

Other submissions from interested parties have confirmed there are no other producers of PVC in Australia (see section 4.3).

3.5 The Commissioner's assessment

Based on the information available and in the absence of any other information to the contrary, the Commissioner is satisfied that there will no longer be an Australian industry producing like goods to the goods which are the subject of the measures once, as intended, Australian Vinyls ceases manufacturing PVC in Australia.

4. REVOCATION OF THE ANTI-DUMPING MEASURES

4.1 Findings

The Commissioner has found that:

- the anti-dumping measures applying to PVC are no longer warranted; and
- revoking the measures would not lead, or would not be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent because there is no longer an Australian industry producing like goods.

Further, the Commissioner considers that the dumping duty notices should be revoked with effect from 1 January 2016, a date after the publication of the notice under section 269ZC indicating the Commissioner's proposal to undertake the revocation review.

4.2 Application for review

Chemiplas claimed in its application for this review that the measures were no longer warranted for PVC exported to Australia from Japan, Korea and the USA. The application requested the Parliamentary Secretary to revoke the current measures on the basis that Australian Vinyls would cease the manufacturing of PVC in Australia and, therefore, there was no longer an Australian industry producing like goods.

Chemiplas provided a copy of a webpage, dated September 2015, taken from Australian Vinyls' website and a copy of an email, dated 30 September 2015, from Australian Vinyls advising its customers that it would cease manufacturing PVC at its plant in Laverton, in early 2016. In addition, letters were provided by Chemiplas from two end users of PVC supporting the application.

4.3 Submissions by interested parties

To date, in conducting the review, the Commission has received six submissions from:

- IMCD Australia Limited (Importer);
- Polymer Direct Ltd (Importer);
- Australian Vinyls (Australian Industry);
- Polvin Compounds (End user);
- Polychem Pty Ltd (Importer); and
- Chemiplas (Importer).

Copies of the non-confidential versions of the submissions and the application are available on the public record at www.adcommission.gov.au.

4.3.1 Importers and end users

Submissions from importers and end users supported revocation of the measures. Importers and end users highlighted concerns over the continuity of supply of PVC and the impact of the decision by Australian Vinyls to cease production given that Australian Vinyls supply a substantial proportion of the market. Submissions outlined that the measures will impact importers and end users in seeking new sources of supply.

The Commission notes that the above issues are outside the scope of the review. As highlighted in section 2.1 the Commissioner must recommend revocation of the measures unless satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent. Accordingly, concerns about supply and the impact on importers and end users are not relevant considerations for the Commissioner in making a recommendation to the Parliamentary Secretary.

4.3.2 Australian industry

As discussed earlier in section 3.4, in its submission dated 26 November 2016, Australian Vinyls advised that it will continue to accept orders for locally produced PVC until 31 December 2015 and confirmed that it will cease production of PVC at its Laverton plant in February 2016, due to diminishing margins and lack of a competitive input supply contract for 2016.

The Commission held a teleconference with Australian Vinyl's on 17 December 2015¹⁶, where Australian Vinyls stated that deliveries of PVC will continue into 2016; however it considered 1 January 2016 was a reasonable date for the measures to be revoked.

4.4 The Commissioner's assessment

4.4.1 Grounds for revocation

As outlined in section 3.4, evidence before the Commission suggests that the last remaining manufacturer of PVC in Australia is Australian Vinyls, however this company has indicated it will cease production in early 2016.

Submissions have confirmed there are no other producers of PVC in Australia.

On the basis that there is to be no Australian industry manufacturing like goods, the Commissioner finds that the anti-dumping measures currently applying to PVC exported from Japan, Korea and the USA are no longer warranted.

The Commissioner considers that, pursuant to paragraph 269ZDA(1A)(b), there are no grounds to be satisfied that revoking the measures would lead, or would likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent. Accordingly, the

¹⁶ Refer to file note no. 10 on the public record

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Commissioner must make a revocation recommendation in relation to the measures.¹⁷

4.4.2 Date of revocation

The Act provides for the Parliamentary Secretary to specify a date in the declaration that a dumping duty notice is effectively revoked from.¹⁸ The date specified cannot be earlier than the date of publication of a notice under section 269ZC indicating the proposal to undertake the review concerned, in this case 6 November 2015.¹⁹

While the earliest date the measures can be revoked from is 6 November 2015, the Commissioner considers that the measures should be revoked from 1 January 2016. As outlined previously, this date occurs after Australian Vinyls stop accepting orders for locally produced PVC.

On the basis of information received to date and in the absence of any other information to the contrary, the Commissioner is of the view that the dumping and material injury that the measures are intended to prevent will not continue if the measures are revoked from 1 January 2016.

¹⁷ Paragraph 269ZDA(1A)(b)

¹⁸ Subparagraph 269ZDB(1)(a)(ii)

¹⁹ Paragraph 269ZDB(6)(a)

5. EFFECT OF THE REVOCATION

The Commissioner is recommending that the dumping duty notices in relation to PVC exported from Japan, Korea, and the USA should be revoked in relation to all exporters generally. The Commissioner considers that the revocation should have effect from 1 January 2016.

The effect of the above will be that the anti-dumping measures applying to PVC will cease to apply from 1 January 2016 and interim dumping duties will not apply to the goods entered for home consumption on and after this date.