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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 317

**REVOCATION REVIEW OF ANTI-DUMPING MEASURES
POLYVINYL CHLORIDE HOMOPOLYMER RESIN**

**EXPORTED FROM
JAPAN, THE REPUBLIC OF KOREA AND
THE UNITED STATES OF AMERICA**

16 March 2016

Report No. 317 - Review of PVC from Japan, Korea and USA

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ABBREVIATIONS

ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Chemiplas Australia Pty Ltd (also referred to as Chemiplas)
Australian Vinyls	Australian Vinyls Corporation Pty Ltd
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
Korea	the Republic of Korea
PVC	Polyvinyl Chloride Homopolymer Resin
SEF	Statement of essential facts
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 report sets out the recommendations of the Commissioner of the Anti-Dumping Commission (the Commissioner) 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.

Pursuant to paragraph 269ZDA(1A)(b), the Commissioner must make a revocation recommendation to the Parliamentary Secretary in relation to the measures, unless he is satisfied that revoking the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

1.3 Findings and conclusions

The Commissioner finds 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 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 review.

² Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

1.4 Recommendation

Based on the application, submissions from interested parties, findings of the Statement of Essential Facts No. 317 (SEF) and other relevant information, the Commissioner recommends 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 further recommended that the Parliamentary Secretary's decision 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 recommendation is that interim or final dumping duty will not apply to the goods entered for home consumption on and after 1 January 2016, and that importers who paid such duties will be eligible for a refund.

2 BACKGROUND

2.1 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:

- the application complied with the requirements of section 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.

2.2 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.

2.1.1 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.

2.1.2 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.

2.1.3 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.

2.2 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 he considers to be relevant to the review.⁷

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

³ Subsection 269ZDA(1)

⁴ Subsection 269ZD(1)

⁵ Subsection 269ZDA(1A)

⁶ Paragraph 269ZDA(3)(a)

⁷ Paragraph 269ZDA(3)(b)

⁸ Subparagraph 269ZDB(1)(a)(ii)

2.3 Statement of essential facts no. 317

The public notice outlining initiation of this review advised that the SEF would be placed on the public record by 24 February 2016. SEF 317 was published on 25 January 2016. Interested parties were invited to lodge submissions in response to SEF 317 within 20 days, being 14 February 2016.¹⁰ 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.¹¹ No submissions were received in response to the SEF either before or after the due date.

2.4 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.

⁹ Subsection 269ZDB(1)

¹⁰ 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 due date was a Sunday, the effective due date was the following business day, 15 February 2016

¹¹ Subsection 269ZDA(4)

3 GOODS SUBJECT TO THE REVIEW AND AUSTRALIAN INDUSTRY

3.1 Findings

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.

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 2.1), the Commission, or the then Australian Customs and Border Protection Service (ACBPS)¹², found there to be an Australian industry producing like goods.

In a submission dated 26 November 2015,¹³ 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
- 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.

¹² 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>

¹³ Document no. 6 on the public record

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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.

The Commission's inquiries and other submissions from interested parties have confirmed there are no other producers of PVC in Australia.

3.5 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 finds 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 review.

4.2 Application

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 made before the statement of essential facts

The Commission received six submissions before publication of SEF 317 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 2.3 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 or subsidisation and the material injury that the measures are intended to prevent. Accordingly, concerns about supply and the impact on importers and end users were 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 2015¹⁴, 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 Commissioner's assessment

4.4.1 Grounds for revocation

As outlined in section 3.4, evidence before the Commissioner 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.

Inquiries by the Commission and submissions from interested parties have confirmed that 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 Commissioner must make a revocation recommendation in relation to the measures.¹⁵

4.4.2 Date of revocation

The Act provides for the Parliamentary Secretary to specify a date in the declaration that a

¹⁴ Refer to file note no. 10 on the public record

¹⁵ Paragraph 269ZDA(1A)(b)

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dumping duty notice is effectively revoked from.¹⁶ 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 2015.¹⁷

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 stopped accepting orders for locally produced PVC.

On the basis of information received during the review 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.

¹⁶ Subparagraph 269ZDB(1)(a)(ii)

¹⁷ Paragraph 269ZDB(6)(a)

5 EFFECT OF THE REVIEW

The Commissioner recommends 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 any interim or final dumping duties will not apply to the goods entered for home consumption on and after this date.