



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

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**R E P O R T**

*CUSTOMS ACT 1901 - PART XVB*

**INTERNATIONAL TRADE REMEDIES BRANCH  
REPORT TO THE MINISTER**

**REP 185**

**REVIEW OF  
ANTI-DUMPING MEASURES**

**POLYVINYL CHLORIDE HOMOPOLYMER RESIN**

**EXPORTED FROM**

**JAPAN AND THE UNITED STATES OF AMERICA**

25 September 2012

# PUBLIC RECORD

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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 the variable factors of the anti-dumping measures that apply to polyvinyl chloride homopolymer resin (PVC) exported to Australia from Japan and the United States of America (USA). The variable factors are 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 was not examined during this review.

The Australian Customs and Border Protection Service (Customs and Border Protection) examined information relating to the normal values and NIFOBS during the period 1 January 2011 to 31 December 2011 (the review period) to determine if the variable factors relevant to the taking of the anti-dumping measures had changed.

This report sets out the facts on which the delegate of the Chief Executive Officer (CEO) of Customs and Border Protection (the delegate) is basing his recommendations to the Minister for Home Affairs (the Minister) for the measures applicable to PVC from Japan and the USA.

### 1.1 Applicable law

The anti-dumping measures applicable to PVC exported from the USA were imposed in January 1992 and for 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 Act<sup>1</sup>) which were repealed in 1992 but remain in force under transitional arrangements.

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.

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 NIFOBS may be re-ascertained under subsections 8(5) and 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'.

NIFOBS may be varied according to subsection 8(5) of the Anti-Dumping Act, by virtue of subsection 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.

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<sup>1</sup> 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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## 1.2 Recommendation

The delegate recommends to the Minister that he re-ascertains the normal values and NIFOBs for all exporters of PVC exported from Japan and the USA.

The delegate recommends that the Minister sign the attached public notice (**Attachment 1**) to declare that the dumping duty notices in respect of PVC exported from Japan and the USA have effect in relation to all exporters generally as if different variable factors had been ascertained and sign the attached schedule (**Confidential attachment 1**).

## 1.2 Findings and conclusions

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

- the normal value for PVC exported from Japan has been determined having regard to all relevant information<sup>2</sup>;
- the normal value for PVC exported from the USA has been determined having regard to all relevant information<sup>3</sup>;
- the NIFOBs for PVC exported from Japan and the USA have been established by referencing Australian industry cost to make and sell for the review period.

Based on these findings, the delegate recommends to the Minister that normal values and NIFOBs be re-ascertained for all exporters of PVC exported from Japan and the USA.

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<sup>2</sup> subsection 269TAC(6)

<sup>3</sup> subsection 269TAC(6)

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## 2. INTRODUCTION

### 2.1 Review process

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

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 or the non-injurious free on board price, whichever is the lesser.

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;
- 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;
- the statement of essential facts; and
- any submission made in response to the 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.

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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.

Following an extension of time from the Minister, Customs and Border Protection placed the statement of essential facts (SEF 185) on the public record on 13 August 2012. Interested parties were notified of the extension and ACDN 2012/23 was published advising of the extension.

The extension to the SEF extended the due date for the final report to the Minister. This final report (REP 185) to the Minister which outlines Customs and Border Protection's findings and recommendations is due on or before 25 September 2012.

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.

Submissions were received from Australian Vinyls, Chemiplas, Polvin Compounds Pty Ltd (Polvin) an end user of PVC, and Shintech Incorporated (Shintech) an exporter and producer of PVC from the USA.

### 2.3 Responses to the statement of essential facts

Australian Vinyls provided the only response to the SEF, a copy of the submission was placed on the public record.

### 2.4 History of anti-dumping measures

Anti-dumping measures were imposed on PVC from the USA and from Japan in 1992 and have been the subject of continuation inquiries every five years since.

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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 re-ascertained for all exporters, REP 100 refers.

### **2.5 Continuation inquiry**

The CEO commenced an inquiry on 24 February 2012 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.

A separate report, REP 184 was provided to the Minister on 25 September 2012 for the inquiry.

### **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.

A separate report, REP 187, was provided to the Minister on 25 September 2012 for the investigation of PVC from Korea.

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## 3. GOODS SUBJECT TO THE REVIEW

### 3.1 Finding

The Australian industry produces PVC that has characteristics closely resembling those of PVC manufactured in Japan and the USA 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 notices 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, 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 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.

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## 5. MARKET

### 5.1 Finding

The market for PVC in Australia is supplied by the Australian industry, comprising Australian Vinyls, and imports from a number of countries. The size of Australian market for PVC in 2011 was approximately 200,000 tonnes.

### 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.

Chemiplas estimated that the market was at around 200,000 tonnes in 2011 based on Australian Vinyls plant capacity of 140,000 tonnes per year and the import statistics showing 64,442 metric tonnes in 2011.

Chemiplas noted that imports account for approximately one third of the total market and this was most likely to increase as Australian Vinyls lost its competitiveness due to an inefficient plant and lack of integration.

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

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 the market is weaker due to the effects of the global financial crisis and the breaking of the drought and subsequent floods. 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. The floods led to reduced demand for irrigation piping and delays in building projects. 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.

Polvin submitted that Australian Vinyls operated an outdated inefficient non integrated PVC resin plant, that the PVC resin from Japan was of better quality and that if the Japanese PVC resin was available in Australia then no-one would use the Australian Vinyls resin.

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

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## 6. NORMAL VALUES

### 6.1 Findings

- The normal value for PVC exported by all exporters from Japan can be determined having regard to all relevant information<sup>4</sup>; and
- The normal value for PVC exported by all exporters from the USA can be determined having regard to all relevant information<sup>5</sup>.

### 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 provided 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 questionnaires.

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.

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<sup>4</sup> ss 269TAC(6)

<sup>5</sup> ss 269TAC(6)

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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.

Revocation of the measures was not examined during this review as noted at section 1 of this report. 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 was not a part of the review and no statement would be made in this regard.

The current continuation inquiry into PVC (REP 184) 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.

Normal value calculations are at **Confidential Appendix 1**.

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## 7. NON-INJURIOUS FREE ON BOARD PRICES

### 7.1 Finding

Non-injurious free on board prices (NIFOB) can be established for PVC exported from Japan and the USA by referencing Australian Vinyls cost to make and sell 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 dumping<sup>6</sup>.

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:

- Industry selling prices at a time unaffected by dumping (known as an unsuppressed selling price).
- Constructed industry prices – industry cost to make and sell plus an appropriate profit.
- 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.

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<sup>6</sup> 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 exported from Formosa Plastics Group in Taiwan; LG Corp in South Korea and exports from 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**

In its submission to the SEF, Australian Vinyls disagreed with a USP referenced to South East Asia PVC prices. Australian Vinyls submitted that its selling prices are not determined by reference to South East Asia prices only; that the reference price is not used broadly in its price negotiations and that during the second half of 2011 the reference price became less relevant.

It also submitted that the referenced South East Asia prices reflected regional export PVC prices that were dumped prices that suppliers reference for the supply of excess tonnes that are not consumed in the domestic markets. Australian Vinyls did not consider the proposed NIFOB based on South East Asia prices to be non-injurious as it reflected regional export PVC prices that are marginally costed.

Australian Vinyls said it was "forced" to accept a regional competitive price for its locally produced sales to maximise production, the alternative was that it will not supply from local production as it is uncompetitive against a price that reflects less than full cost recovery.

Australian Vinyls submitted that a true non-injurious price was one based on full cost recovery using its cost to make and sell for 2011.

### **7.6 End user claims**

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

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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 1,000 times bigger than Australian Vinyls business, and therefore more important.

### 7.7 Customs and Border Protection's assessment

As noted at section 7.3 a NIFOB is generally derived from Australian industry's unsuppressed selling price which 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 has reviewed Australian Vinyls' sales data and identified Australian Vinyls' prices to customers that were not referenced to South East Asia prices. A relatively small volume of Japanese PVC exports during the review period were also examined and showed that local customers of Japanese imported PVC were paying prices above the average prices in the market.

Therefore, it is not unreasonable to expect that Australian Vinyls could achieve prices that recover its fully absorbed cost to make and sell.

Customs and Border Protection finds that the unsuppressed selling price for this review should be Australian Vinyls' weighted average cost to make and sell for the review period.

USP calculations are at **Confidential Appendix 2**.

As noted at section 7.2 the NIFOB is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping.

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.

NIFOB calculations for Japan and the USA are at **Confidential Appendix 3**.

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## 8 EFFECT OF THE REVIEW

As a result of this review, Customs and Border Protection has found that normal values for all exporters of PVC from Japan and from the USA have increased. The non-injurious free on board prices for all exporters from Japan and from the USA 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 ascertained normal value or the non-injurious free on board price, whichever is the lesser. In this review, the non-injurious free on board prices were less than the ascertained normal values for both Japan and the USA.



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## 9 RECOMMENDATIONS

The delegate of the CEO recommends that the Minister considers this report, and if agreed:

- re-ascertain the normal values relevant to exports of certain PVC from Japan, and the USA under section 269TAD<sup>7</sup>; and
- re-ascertain the non-injurious free-on-board prices relevant to exports of certain PVC from Japan and the USA under subsections 8(5) and 8(5A) of the Dumping Duty Act<sup>8</sup>.

The delegate of the CEO also recommends that the Minister decide not to publish the tables attached to the notices because publication would adversely affect the business or commercial interest of interested parties.

Customs and Border Protection recommends that the Minister **be satisfied** that:

- in accordance with subsection 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable normal values for PVC exported to Australia from Japan to be ascertained under the preceding subsections of section 269TAC of the Act; and
- in accordance with subsection 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable normal values for PVC exported to Australia from the USA to be ascertained under the preceding subsections of section 269TAC of the Act.

Customs and Border Protection recommends that the Minister **determine**:

- in accordance with subsection 269TAC(6) of the Act, the normal value for PVC exported to Australia from Japan is the amount having regard to all relevant information; and
- in accordance with subsection 269TAC(6) of the Act, the normal value for PVC exported to Australia from the USA is the amount having regard to all relevant information.

To give effect to these recommendations, the delegate of the CEO recommends that the Minister sign the attached schedules (**Confidential attachment 1**) and sign the attached public notice (**Attachment 1**).

<sup>7</sup> Repealed by Act No. 207 – but remains in force under transitional arrangements for measures imposed pre 1/1/93.

<sup>8</sup> NIFOBs may be varied according to subsection 8(5) of the Anti-Dumping Act, by virtue of section 33(3) of the Acts Interpretation Act 1901.

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## 10 ATTACHMENTS AND APPENDICES

<b>Attachment 1</b>	Public notice review
<b>Confidential attachment 1</b>	Schedules
<b>Appendix 1</b>	Normal values
<b>Appendix 2</b>	Unsuppressed selling price
<b>Appendix 3</b>	Non-injurious free on board prices