

Canberra  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
ACT 2609 Australia

Telephone +61 2 6163 1000  
Facsimile +61 2 6162 0606  
Email: info@moulislegal.com  
www.moulislegal.com

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Mr J Bracic  
Director Operations 1  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
Canberra  
Australian Capital Territory 2601



commercial+international

By email

Dear John

## Alleged dumping of PVC resin from Korea Response to applicant's further injury submissions

We refer to our previous submissions to Australian Customs and Border Protection Service ("Customs") of 3 July 2012 ("the Injury Submission"), and of 24 July 2012 ("the PAD Submission") on behalf of LG Chem., Ltd ("LG Chem").

By now it should be clear that the injury allegations made by AVC were levelled against Korean exports of polyvinyl chloride homopolymer resin ("PVC") without the support of positive evidence or logic, and that there is no causal nexus between the claimed injury and those exports.

LG Chem notes that a submission lodged on behalf of Australian Vinyls Corporation ("AVC") and dated 13 July 2012 has been placed on the public record in this matter. With respect, it would appear that AVC has not fully appreciated LG Chem's arguments in this regard, or has distorted some of them in making that submission.

For the sake of clarity, we will now address some of the specific allegations made in AVC's submission.

### 1 AVC's allegation regarding exports at dumped prices

AVC's submission states:

*Interestingly the submission does not deny that exports of LG Chem have been at dumped prices. It would be expected that once an exporter that has previously been released from those measures, the exporter would seek to ensure that its exporting activities did not again cause material injury to an industry in the export destination country. However, LG Chem has not only significantly increased its exports volumes in Australia from negligible levels in 2009 to approximately 22,000 tonnes in 2011, the exports have also been at dumped prices.*

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The purpose of the Injury Submission was to address the many and varied injury allegations made by AVC in the application for the current investigation. These allegations formed the basis for the finding in Consideration Report 187, that the application showed "reasonable grounds" for the publication of a dumping notice, and thus went to the decision of the Chief Executive Officer of Customs ("CEO") to initiate the investigation.

Given the purpose of the Injury Submission, it is submitted that there is no reason why LG Chem would be required to deny dumping as part of its content. The venue for that is in the much more detailed Exporter Questionnaire response and subsequent verification.

Having said that, we would draw Customs' attention to the Introduction in the Injury Submission, which notes:

*Without detracting from the primary submission of our client LG Chem, Ltd... - that it has not imported PVC into Australia at dumped prices – this submission will establish that its imports have not caused any injury, material or otherwise, to the Australian industry. [emphasis added]*

This is a clear and unequivocal denial on LG Chem's part that it has engaged in dumping. AVC's criticism and any adverse inference it intended to make with such a criticism cannot be supported. LG Chem's opinion in that regard is not altered by any findings that Customs might publish to the contrary, given the fact that LG Chem and Customs might have valid disagreements about the methodologies used to arrive at such a contrary finding.

Furthermore, the PAD Submission made it quite clear that LG Chem is mindful of the fact that longstanding dumping measures have been in place against imports from various sources over very many years, and that it does not intend to export to Australia in an injurious manner.

For the record, it should be noted that any finding of dumping does not automatically lead to the finding that such dumping has caused material injury. It is a requirement of Article 3.1 of the WTO Anti-Dumping Agreement that a material injury determination be based on positive evidence. The applicant has been operating unprofitably for almost half a decade. It should not be assumed that the presence of a new source of imports has caused a continuation of that injury. There needs to be a clear causal link – substantiated by better evidence than mere coincidence - between the imports and the injury complained of.

## 2 AVC's allegations regarding volume of imports

AVC notes:

*It is suggested on behalf of LG Chem that there has not been an increase in imports of PVC during 2011. The arguments presented do not take full consideration of the demand for PVC across the different periods over which extracts from Trade Measures Report No 151 have been cited. Demand for PVC prior to the global financial crisis of 2008 was buoyant. Following the economic downturn, the market for PVC (not only in Australia, but also globally) declined. The volume of injurious imports in a contracted market is likely to be of greater impact than in an expansive market (pre-GFC).*

*The LG assertions are premised on its exports displacing imported PVC from other source countries – however, this concept fails to recognise the pricing impact across*



*the whole PVC market – a market that is both price sensitive and transparent. The substantial volume of dumped exports of PVC from LG Chem in 2011 has had a market-wide pervasive effect on prices, resulting in the Australian Industry selling locally-produced PVC at less than its fully absorbed cost to make and sell.*

*It is therefore incorrect to rely upon the assertion that the overall level of imports into the Australian market have not increased during the period of investigation without taking account the market demand and pricing impacts.*

LG Chem is unclear how to interpret this argument.

As shown in the Injury Submission – and based on AVC's own information - AVC produced to its full capacity during 2011. Its sales were about 1% less than 2010 levels. LG Chem suspects this decrease may have been a result of AVC's decision not to import PVC from Taiwan at some point during 2011. This cannot be described as a material variation in sales levels. The levels of sales in 2010 and 2011 were marginally higher than in 2009. It is assumed that AVC supplies to the level demanded.

Similarly, total supply to the Australian market had decreased between 2010 and 2011. This was due to a decrease in the level of imports of PVC into Australia. It is however clear that the level of total imports into the Australian market has increased between 2009 and 2011. This indicates that demand has generally been trending upwards.

It is considered that, under these circumstances, the demand in the market outstrips AVC's ability to supply the market. Otherwise, why would AVC (a) produce near full capacity (b) continue to sell at a level comparable to its 2009 level, while (c) the total level of imports increased?

It is clear that the level of demand in 2011 was greater than in 2009. It is clear that AVC could not satisfy this level of demand with its production capacity. It is also clear that to satisfy demand in the Australian market, there *needs* to be a level of imports. In 2011, LG Chem was one of those importers.

In terms of *pricing impacts*, LG Chem has already demonstrated that AVC's price follows the trend set by the Asian spot price (albeit in a delayed manner). LG Chem has further demonstrated that other exporters tracked the Asian spot price downwards, but that LG Chem's exports were not the lowest priced in the Australian market during the period of investigation, nor were they lower than the Asian spot price. This is important for two reasons.

Firstly, there were large quantities of imports at lower prices than those of LG Chem in the market. Even if LG Chem had dumped PVC into the Australian market during the injury period at the margin calculated by Customs – a margin that LG Chem does not agree with, but nonetheless still only a very slight margin - there still would have been lower priced imports in the market. Therefore, the price effects complained of by AVC (price suppression *et al*) could not have been caused by imports of LG Chem's PVC, because AVC would have still been required to compete with the other, lower priced imports. PVC is a highly fungible product so LG Chem's absence from the market would lead those purchasers to seek to satisfy their demand from other overseas sources. The only way AVC could service these customers would be to import additional PVC. Because – as has been established – import prices were lower than LG Chem's price, AVC would still be in the same situation as that in which it finds itself.



Secondly, because AVC sets its price to parity with the Asian spot price, it would have lowered its price anyway. AVC has to adopt this pricing strategy because, as established in the Injury Submission, historically the price of imported AVC has closely tracked the Asian spot price. Therefore, AVC responds to customer demands by naturally and automatically competing against the Asian spot price. So again, if LG Chem had not been present in the Australian market during 2011, AVC would have lowered its price regardless, to follow the Asian spot price - and by extension the price of the lowest priced imports of PVC.

These analyses only encompass the period when LG Chem was importing PVC into Australia. As shown in the Injury Submission, the price effects complained of by AVC were a continuance of the same price effects complained of in previous years and previous anti-dumping investigations, which - due to LG Chem's absence from the market in those previous years - could not possibly have been caused by Korean PVC. It is therefore submitted that the price effects were not originally caused by LG Chem's PVC, nor were they continued by LG Chem's PVC.

Lastly, we reiterate that even if it is accepted that LG Chem "dumped" at the margin indicated in the visit report - which is not accepted by LG Chem, but which at least reflects that if LG Chem has been dumping it can only have been at a very slight margin - a "non-dumped" price *still would not have been the lowest import price into Australia*.

### 3 AVC's allegations about assessment of Australian industry's production

AVC's submission notes:

*The assertion on behalf of LG Chem in relation to the injury analysis also including imports by the Australian industry is unfounded.*

LG Chem stands by its submissions in this regard.

The Injury Submission was drafted in response to AVC's allegations in its application which, according to the analysis in Consideration Report No. 187, established reasonable grounds to initiate the investigation. The Consideration Report relied on all of the material injury allegations made in AVC's application to establish there were "reasonable grounds" to initiate this investigation.

The Injury Submission - which was drafted without the PAD in mind - shows that the material injury claims made by AVC to initiate the investigation were themselves unfounded. The majority of those allegations related to AVC's importation of PVC, or were at least materially impacted by AVC's decisions not to import PVC (whether at all or in decreased quantities). An applicant should not in its application invoke every form of injury as being caused by the allegedly dumped imports where there are clear and obvious reasons to indicate that no causal relationship can be shown between the imports and its own production.

It was entirely appropriate for LG Chem to address those allegations in its Injury Submission.

### 4 AVC's allegations concerning injury analysis

AVC's submission notes:

*The substantial increase in exports at dumped prices from negligible levels to capture 12 per cent of the Australian market (in less than two years) and, having caused material injury to the Australian industry would appear "reasonable grounds" for the initiation of a dumping enquiry.*

LG Chem stands by its submission in relation to the relevance of Customs' findings in *Trade Measures Branch Report to Minister No. 151*.

We submit that the application for the initiation of this dumping investigation – lodged so soon after measures had been lifted, and on the basis of unfounded and contradictory dumping and injury allegations – was an effort to secure blanket protection without regard to the actual market situation. Quite simply, AVC seems to believe that it is entitled to put its hand up to stop any imports of PVC that enter Australia in substantial quantities. That is not enough to prevail in an anti-dumping context.

It is clear that a higher level of certainty is required for the Minister to lift measures, than for Customs to decide to initiate an investigation. Our point is that the grounds included in AVC's application were insufficient to upset the "satisfaction" that the Minister already had that the expiration of measures would not lead to a continuation of material injury to the Australian industry.

## 5 AVC's other allegations

LG Chem has addressed these issues at length in its previous submissions. It is clear that AVC's complained injury is not as a result of PVC exported to Australia by LG Chem.

\*\*\*\*

Once again, LG Chem submits that there are no positive evidentiary grounds on which it could be said that LG Chem's exports have caused the gaggles of material injuries claimed to have been suffered by AVC.

We now enclose a non-confidential version of the presentation made by LG Chem and Samjong KPMG during the exporter verification in Korea. This presentation reiterates the points that were made in the Injury Submission and the PAD submission in the context of the disciplines of the WTO Anti-Dumping Agreement.

We again respectfully submit that there is no legal basis under either Australian law or at the WTO level for a finding that the material injury complained of was a result of LG Chem's imports.

It is requested that Customs terminate this investigation at its soonest possible convenience.

Yours sincerely



Alistair Bridges  
Solicitor

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*cutting through complexity™*



# LG Chem, Ltd.

LG Chem's exports to Australia  
have not caused material injury  
to the Australian industry

05 July 2012

Samjong KPMG Accounting Corp.  
International Trade Consulting

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# 1. Australian Industry has not suffered any injury.

## WTO Anti-dumping Agreements (“ADA”)

### Art. 3 Note 9)

- Under this Agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a “domestic” industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

### Art. 4.1

- For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, .....

- According to ADA, “injury” means material injury to a domestic industry or threat of material injury to a domestic industry. If domestic industry is not injured, the investigation should be terminated.
- Any material injury alleged to have been suffered by the Applicant has incurred to the applicant as an importer of PVC, not as a domestic producer.
- Therefore, this investigation should be terminated immediately .



## 2. Australian PVC Market analysis

**It is necessary to import PVC to satisfy the total demand in the Australian market.**

**Table 1 – Indexed table of sales quantities**

	2010	2011
AVC sales	100	98.98
Total imports	100	94.47
Total market	100	97.40

Source: the Application

- Based on the information in the Application, it is apparent that the Applicant produced and sold its full 140,000 tonne capacity in 2011. The Applicant does not export PVC, so in 2011 it supplied approximately 70% of the Australian market for PVC.
- As this 140,000 tonne capacity is the absolute maximum of the Applicant's production capacity, it is necessary to import PVC to satisfy the excess demand in the Australian market.
- It is clear that total imports have decreased in 2011.
- If the increase in imports from Korea did have any effect on sales, it has been on the sales of "other imports", not on the sales of the Applicant's Australian-produced PVC. In other words, imports from Korea have replaced "other imports".
- The Applicant has not suffered from Korean imports, this investigation should be terminated.



### 3. Quantities analysis

#### ADA Art. 3.4

##### Art. 3.4

- The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, .....



### 3. Quantities analysis (continued)

#### Quantities analysis

Table 2 – Indexed table of sales quantities

	Index (Application)		Market Share Estimate (*)	
	2010	2011	2010	2011
AVC sales	100	98.98	70.0%	71.14%
Total imports	100	94.47	30.0%	28.86%
Total market	100	97.40	100.0%	100.0%

Source: the Application

(\*) Assumption: AVC sales volume and total market in 2011 are 140,000 and 200,000 tonne respectively.

- The Applicant's sales volume has decreased slightly, but less so than the entire market did in the same period. It means that the Applicant's market share has relatively increased compared to the entire market in 2011, when there was the 'dramatic' increase in imports of PVC from Korea.
- Therefore, based on ADA Art. 3.4, imports of PVC from Korea have not caused material injury through sales volume or market share.

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## 4. Prices analysis

### ADA Art. 3.2

#### Art. 3.2

- ..... With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. ....

## 4. Prices analysis (continued)

### Prices analysis

Table 3 – Index of price variations

Period	2006	2007	2008	2009	2010	2011
Index	100	103.9	107.0	90.3	93.6	89.4

Source: the Application

- Prices were depressed before imports from Korea. (Korean imports have increased in 2011.)
- It is clear that the Applicant's prices have been suppressed by competitive conditions since at least 2008 and 2009. This suppression cannot be a function of the more recent imports from Korea – dumped or otherwise.



## 4. Prices analysis (continued)

### Prices analysis (continued)

Table 4 – Weighted average import prices per MT vs average Asian spot price per MT

2011	All imports	Thai imports	LG/LGI imports	Asian spot price
Q1	[confidential]	1,054.55	[confidential]	1,056.60
Q2	[confidential]	1,122.58	[confidential]	1,226.70
Q3	[confidential]	1,079.73	[confidential]	1,074.30

Source: ABS, LG/LGI's EQ, ICIS.com

- The reason of price suppression or depression of the Applicant is its policy of pricing its product at parity with the Asian spot-price.
- According to Trade Measures Branch Report No. 151, the Australian PVC market is integrated into the Asian regional market, i.e. the prices of the Australian PVC market follow Asian prices. Australian selling prices are typically set with reference to the Asia prices published by ICIS.com.
- The trend of decline in Asian spot prices is the important underlying cause of its complained price depression or suppression in 2011.
- As observed in the table 4, it is also evident that the prices of LG imports were well above the average import prices, Thai import prices and Asian spot prices.
- Therefore, based on ADA Art. 3.2, imports of PVC from Korea have not caused material injury through price suppression, depression or undercutting or reduction in revenue.

## 5. Profit analysis

### ADA Art. 3.4

#### Art. 3.4

- The examination of the impact of the dumped imports on the domestic industry concerned shall include an valuation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments, .....

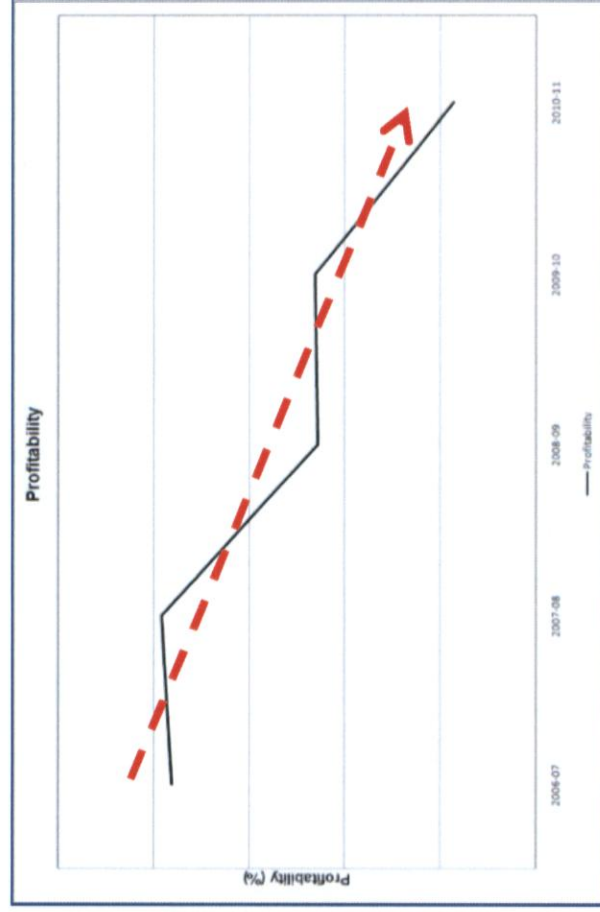


## 5. Profit analysis (continued)

### Profit analysis

- The Applicant has traded unprofitably over the analysis period. (Korean imports have increased in 2011.)
- The mere presence of Korean imports in the Australian market for PVC is not a sufficient justification for the opinion that they have caused a fall in the Applicant's profitability or its return on investment.
- Further, to the degree that any fall in profits is a result of the Applicant's choice not to import PVC from Taiwan, this cannot be included as "material injury to an Australian industry producing like goods".

- Therefore, considering ADA Art. 3.5 there can be no causal link between the imports under investigation and the claimed fall in profits.



Source: International Trade Remedies Report No. 174

## 5. Profit analysis (continued)

### Self-induced injury by the importation of Taiwan goods

- The prices of PVC imported from Taiwan have almost always been lower than the prices of PVC imported from Korea. The main importer of PVC from Taiwan has been the Australian industry.
- This practice must mean that the Applicant's buy price of PVC from Taiwan is a driver of its sell price of both that PVC and of the PVC it produces.
- Therefore, even if the Applicant has suffered some level of injury because of the lower price of imported goods, such injury would have been self-induced by the importation of low priced Taiwan goods by the Applicant itself.

### Less competitiveness by the import of VCM

- Unlike many of its competitors, the Applicant does not have the ability to produce its own VCM, the primary raw material of PVC.
- Naturally, purchased price of VCM should include the margin of VCM's producer, therefore the cost of Applicant's PVC must be higher than other competitors like LG, who produces VCM by itself.

**Therefore, there are no causal link between imports from Korea and any material injury alleged by the Applicant.**



## 6. Production analysis

### ADA Art. 3.4

#### Art. 3.4

- The examination of the impact of the dumped imports on the domestic industry concerned shall include an valuation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. ....

### Production analysis

- It is noted in the application that the Applicant's facility has been operating "at close to full rates".
- Therefore, based on ADA Art. 3.4, imports of PVC from Korea have not caused material injury through reduced production.



## 7. A no-injury conclusion has already been made.

### Section 269ZHF(2) and 269TB(1) of the Act

#### 269ZHF(2)

- The Chief Executive Officer of Customs ("CEO") can recommend that measures be continued. Specifically:
- The CEO must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the CEO is satisfied that the expiration of 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 anti-dumping measure is intended to prevent.

#### 269TB(1)

- the CEO must reject an application for an anti-dumping investigation unless he makes a finding:
- (c) that there appear to be reasonable grounds:
  - (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or

- It is clear from the language used that a finding that there "appear" to be "reasonable grounds" that material injury is being caused requires a lower evidentiary threshold than that required to obtain satisfaction that the expiration of measures would not lead or be likely to lead to "the recurrence ... or continuation" of material injury.



## 7. A no-injury conclusion has already been made. (continued)

**There does not appear to be reasonable grounds on which a finding of material injury may be based.**

- In 2010, Australian Customs revoked dumping measures and found that it was not likely that exports of PVC from Korea at dumped prices would lead to the recurrence of material injury in the Review . This finding was supported by the following factor:

*AVC was operating at full capacity and was itself a significant importer of PVC from Taiwan. It was also noted that, if the measures were allowed to expire, AVC would be likely to lose some sales volume to Korean product, but it was likely that the lost sales volume would be from AVC's imported product rather than the local product.*

- The circumstances referred to by Customs above have come about. The Review predicted exactly what would happen after the expiration of the measures.
- Further, based on the section 269ZHF(2) and 269TB(1), the decision not to continue measures requires greater consideration and the application of tougher tests, than the test for initiation of an investigation.
- The allegations on material injury came too soon after a decision had already been made by Customs that the circumstances the Applicant now faces could not lead to a recurrence of injury.

## 9. Conclusion

### Summary of the injury to an Australian industry producing like goods

Factors		The Applicant	Causation
Quantities	<ul style="list-style-type: none"><li>The applicant's sales volume and market share relatively increased in 2011.</li></ul>		No
Prices	<ul style="list-style-type: none"><li>Prices were depressed before imports from Korea.</li></ul>		No
Profits	<ul style="list-style-type: none"><li>The Applicant has traded unprofitably since 2008.</li></ul>		No
Production	<ul style="list-style-type: none"><li>The Applicant's facility has been operating at close to full rates.</li></ul>		No

### This investigation should be immediately terminated.

- The injury alleged to have been suffered by the Australian industry is not as a result of Korean exports of PVC to the Australian market – dumped or otherwise.
- We submit that there are no grounds on which a dumping notice against PVC exported by LG can be published, and request that Australian Customs terminate this investigation.





# Thank you

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Sungbaek Jin      82-2-2112-3109      sungbaekjin@kr.kpmg.com

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