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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