



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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH
REPORT TO THE MINISTER
REP 187
INVESTIGATION
INTO THE DUMPING OF
POLYVINYL CHLORIDE HOMOPOLYMER RESIN
EXPORTED FROM
THE REPUBLIC OF KOREA

25 September 2012

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1. SUMMARY AND RECOMMENDATIONS

This dumping investigation is in response to an application by Australian Vinyls Corporation Pty Ltd (Australian Vinyls) into the alleged dumping of polyvinyl chloride homopolymer resin (PVC) exported to Australia from the Republic of Korea (Korea).

This statement of essential facts (SEF) sets out the facts on which the delegate of the Chief Executive Officer (the delegate) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation to the Minister for Home Affairs (Minister) in relation to the application.

1.1 Recommendation

The delegate recommends to the Minister that dumping duty notices be published in respect of PVC exported to Australia from Korea.

The delegate recommends that the Minister sign the attached schedule (**Confidential attachment 1**) and sign the relevant notices (**Attachment 1**), being notices under sections 269TG(1) and 269TG (2) of the *Customs Act 1901*¹ (the Act), and section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Chief Executive Officer (CEO) in conducting investigations in relation to the goods covered by an application. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

1.2.2 Application

On 16 March 2012, Australian Vinyls Corporation lodged an application requesting that the Minister publish a dumping duty notice in respect of PVC exported to Australia from Korea.

1.2.3 Initiation of investigation

After examining the application, the delegate was satisfied that:

- the application complied with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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- there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

Following consideration of the application an investigation was initiated with public notification made on 23 April 2012 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2012/14 was also published.

1.2.4 Preliminary affirmative determination

The CEO, after having regard to the application, submissions and other matters the CEO considered relevant was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of PVC exported to Australia from Korea and made a preliminary affirmative determination (PAD)² to that effect on 28 June 2012.

Customs and Border Protection decided to require and take securities³ in respect of any interim dumping duty that may become payable in respect of the goods from Korea that were entered into home consumption on or after 28 June 2012.

PAD report No 187 was placed on the public record on 28 June 2012. ACDN No. 2012/32 advised of the PAD and decision to impose securities and a notice was published in *The Australian* newspaper on 28 June 2012.

The level of securities was revised on 24 August 2012, ACDN 2012/41 and a notice in *The Australian* were published advising of the revision to securities.

1.2.5 Statement of essential facts

On 13 August 2012, Statement of Essential Facts No. 187 (SEF 187) was placed on the public record. SEF 187 proposed that a dumping duty notice be published for PVC exported from Korea.

Interested parties were invited to lodge submissions in response to SEF 187 by 3 September 2012. Submissions were received from Australian Vinyls and LG Chemicals (LG Chem) an exporter of the goods from Korea. Copies of the submissions were placed on the public record.

1.2.6 Final report

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows, the CEO must give the Minister a report in respect of the goods the subject of the application.

In formulating the final report the delegate must have regard to the application concerned, any submissions concerning publication of the notice to which the delegate has had regard for the purpose of formulating SEF 187, SEF 187, any submission in response to SEF 187 that is received by Customs and Border Protection within 20 days after the that statement was placed on the public record, and any other matters considered relevant⁴.

² Section 269TD

³ Section 42

⁴ Subsection 269TEA(3)

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1.3 Findings

The following findings have been made based on all available information:

1.3.1 The goods and like goods (chapter 3 of this report)

Locally produced PVC are like goods to the goods the subject of the application.

1.3.2 Australian industry (chapter 3 of this report)

There is an Australian industry producing like goods, comprising one Australian producer, Australian Vinyls.

1.3.3 Market (chapter 4 of this report)

The size of Australian market for PVC was approximately 200,000 tonnes in 2011. 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.

1.3.4 Dumping (chapter 5 of this report)

The available information shows that LG Chem was the only exporter of PVC from Korea during the investigation period.

Customs and Border Protection has calculated a dumping margin for PVC exported to Australia from Korea of 3.26%, which is not negligible.

The volume of dumped goods was not negligible.

1.3.5 Economic condition of the industry (chapter 6 of this report)

The Australian industry suffered injury in the form of:

- lost sales volumes;
- lost market share;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- increased inventories;
- reduced production; and
- reduced capacity utilisation.

1.3.6 Has dumping caused material injury (chapter 7 of this report)

Material injury to the industry has been caused by exports of PVC from Korea at prices that were dumped.

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1.3.7 Will dumping and material injury continue (chapter 8 of this report)

Exports of PVC from Korea in the future may be at dumped prices and this continued dumping may cause further material injury to the Australian industry.

1.3.8 Non-injurious price

The non-injurious price (NIP) can be established for PVC by reference to import parity pricing.

Based on these findings the delegate recommends to the Minister that dumping duty notices be published in respect of PVC exported to Australia from Korea by all exporters.

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2. BACKGROUND

2.1 Previous investigations

Anti-dumping measures previously applied to PVC exported from Korea to Australia for the period 2000 to 2010.

The measures were imposed in 2000 following consideration of Trade Measures Report No 10 (REP 10) by the Minister and were continued for five years in 2005 (REP 91 refers). Measures on PVC from Korea expired in March 2010 (REP 151 refers).

Anti-dumping measures currently apply to exports of PVC from Japan and the United States of America (USA). The measures for Japan are due to expire on 21 October 2012 and are currently subject to a continuation inquiry. The measures for the USA apply to 23 January 2017 unless revoked earlier. The measures for Japan and the USA are currently subject to a review of the normal values and non-injurious free on board prices.

REP 184 for the current continuation inquiry and REP 185 for the current review were provided to the Minister on 25 September 2012.

2.2 This investigation

On 16 March 2012, Australian Vinyls, the sole manufacturer of PVC in Australia, lodged an application for the publication of a dumping duty notice in respect of PVC exported to Australia from Korea.

Following consideration of the application an investigation was initiated with public notification made on 23 April 2012 in *The Australian* newspaper. ACDN No. 2012/14 was also published.

An investigation period of 1 January to 31 December 2011 was advised for the investigation. Customs and Border Protection examined exports to Australia of the goods during that period to determine whether dumping had occurred. Customs and Border Protection examined details of the Australian market from 1 January 2009 for injury analysis.

Customs and Border Protection visited Australian Vinyls for the review and continuation into PVC advised above. At that visit data relating to costs and sales was verified, a report of the visit was placed on the public record. Following initiation of the investigation into PVC from Korea, Australian Vinyls provided further information in relation to its claim. A report was compiled and placed on the public record drawing on information verified at the visit to Australian Vinyls and other information supplied for this investigation.

Customs and Border Protection used the data verified from the visit for this investigation.

2.3 Statement of essential facts

A statement of the facts on which the delegate proposed to base his recommendation to the Minister regarding the publication of a dumping duty

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notice, was placed on the public record on 13 August 2012. Interested parties were invited to make submissions to SEF 187 within 20 days, by 3 September 2012.

Submissions in response to SEF 187 were received from Australian Vinyls and LG Chem, copies of the submissions were placed on the public record.

Australian Vinyls lodged a late submission received on the 24 September 2012, a copy of the submission was placed on the public record. However regard was not had to this submission due to the late lodgement, one day before the report was provided to the Minister.

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3 GOODS SUBJECT TO THE INVESTIGATION

3.1 Findings

The Australian industry produces PVC that has characteristics closely resembling PVC manufactured in Korea and exported to Australia. Therefore PVC manufactured by the Australian industry are like goods⁵.

3.2 The goods and like goods

The goods the subject of the application are described as follows:

Polyvinyl chloride homopolymer resin (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.

The application excludes paste (or emulsion), compound grades and recycled PVC.

3.2.1 Tariff classification

The goods are classified under sub-heading 3904.10.00, statistical code 18, in Schedule 3 to the *Customs Tariff Act 1995*. The duty rate for PVC from Korea is currently 5%.

3.2.2 Like goods

Sub Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'.

In its application Australian Vinyls stated that previous PVC inquiries conducted by Customs and Border Protection have found and concluded that PVC produced by Australian Vinyls had the same physical characteristics, end-use as and are substitutable for PVC exported from Korea. Australian Vinyls said that therefore Customs and Border Protection has satisfied itself that an Australian industry producing like goods exists.

Customs and Border Protection verified costs and sales information relating to PVC during its verification visit and obtained copies of technical data sheets of the grades of PVC produced by Australian Vinyls.

Customs and Border Protection visited end-users and importers of PVC from Korea during the investigation. At those visits the grades of PVC imported from Korea and the grades produced by Australian Vinyls were discussed and compared.

⁵ In terms of s.269T.

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In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

Customs and Border Protection has considered the following matters in assessing whether goods produced by the Australian industry are like to the goods:

- i. Physical likeness:
 - Australian industry products have similar chemical composition and generally possess similar physical characteristics to the imported PVC.
- ii. Commercial likeness:
 - Australian industry products compete directly with the imported goods in the Australian market.
- iii. Functional likeness:
 - Both imported and Australian produced goods have comparable or identical end-uses.
- iv. Production likeness:
 - Australian industry products are manufactured in a similar manner to the imported goods.

Customs and Border Protection has made a finding that the PVC produced by the Australian industry are like goods to the goods exported from Korea.

3.3 Australian Industry

3.3.1 Findings

There is an Australian industry that is producing like goods, consisting of Australian Vinyls.

3.3.2 Manufacturing process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia⁶.

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.

⁶ Ss 269T(2) and 269T(3).

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Australian Vinyls production facility is located 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.

Customs and Border Protection visited Australian Vinyls production facility for the current continuation inquiry into PVC from Japan and the current review into PVC from Japan and the USA. At the visit data relating to the cost and production of PVC was verified. This included information on the purchase of VCM. A non-confidential version of the industry visit report is available on the public record.

Customs and Border Protection considers that at least one substantial process in the manufacture of PVC is carried out in Australia, and therefore PVC is manufactured in Australia.

Australian Vinyls is the sole manufacturer of PVC in Australia. No other interested party has claimed during this investigation to be an Australian producer of PVC.

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4 AUSTRALIAN MARKET

4.1 Finding

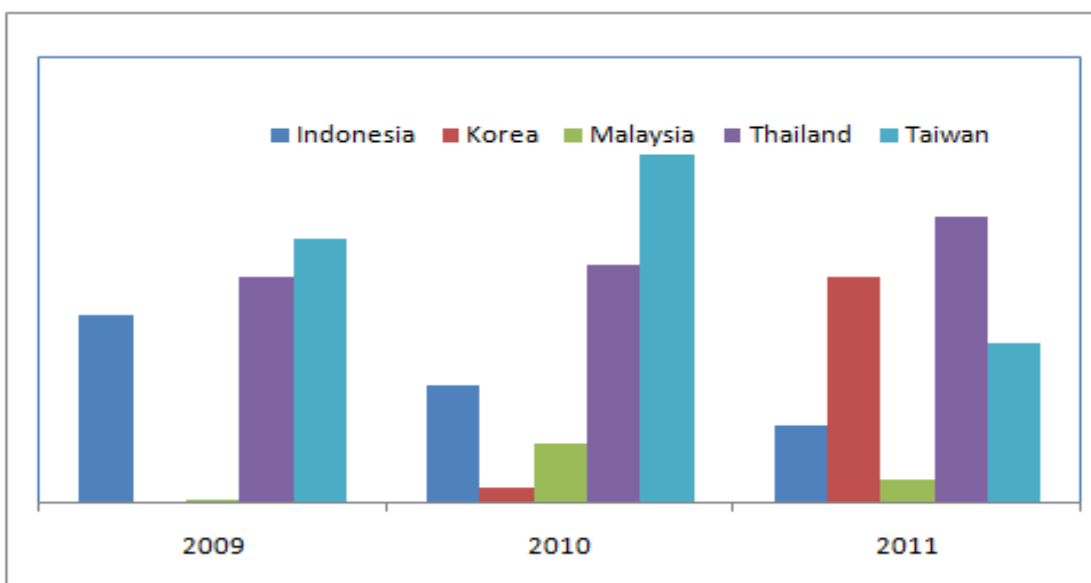
The market for PVC in Australia is supplied by the Australian industry, comprising Australian Vinyls, and imports from a number of countries. The size of Australian market for PVC in 2011 was approximately 200,000 tonnes.

4.2 Market size

Customs and Border Protection used information from past investigations and information collected during the investigation in its examination of the Australian market for PVC.

In its application Australian Vinyls estimated the size of the market in the calendar year 2011 at approximately 180,000 tonnes. Australian Vinyls estimated the current market at 190,000 to 200,000 tonnes per annum. Importers and end users estimated the market varied between 180,000 - 210,000 tonnes depending on the building and construction demand.

Market shares of imports from the five main countries that exported PVC to Australia over the period 2009 to 2011 are shown below.



Customs and Border Protection estimated the size of the Australian market for the calendar years 2009 - 2011 using information from its import database, Australian Vinyls, importers, end-users and other available information. The information shows that the market for PVC increased in 2010 before decreasing in 2011.

Details on the Australian market for PVC are at **Confidential Appendix 1**.

4.3 Market supply and structure

Customs and Border Protection established that the Australian market for PVC is supplied through local production and imports from a number of source

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countries (including Korea, Taiwan and Thailand). Australian Vinyls does not have the capacity to supply the whole Australian market and imports are required to meet market demand.

Imports of PVC are from a range of countries with five countries accounting for the majority of exports each year to Australia in the period 2009 to 2011. Smaller volumes were exported by a number of other countries.

Australian Vinyls imports PVC from Taiwan through a subsidiary to supplement domestic production. Those imports are sold by Australian Vinyls to its customers at the same prices and terms and conditions of its manufactured PVC. Australian Vinyls sells all of its production and imports directly to end-users.

PVC is imported by end-users for their own use and by distributors who on sell it to end-users or processors who either extrude, inject, mould or blow mould the PVC to make a wide variety of goods.

The end-use Australian market consists of the following market segments:

- plumbing and electrical fittings;
- pressure pipe; and
- general purpose.

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 water supply piping, packaging, upholstery and domestic appliances.

PVC is the preferred product in pressure pipe, plumbing and electrical fittings, and other general purpose applications. There exists limited substitutability at the margin with polyethylene in certain applications. The annual demand for PVC, however, is not impacted by any minor substitutability.

4.4 Importers and end users

Customs and Border Protection identified a number of importers of PVC from Korea from its import database and sent requests for information and cooperation.

From the responses it was established that there were three channels of importation and distribution of the goods from Korea to end-users in Australia;

- sold by the exporter on costs and freight (CNF) terms to the end-user in Australia;
- sold by the exporter on costs and freight (CNF) terms to a distributor in Australia, who then sells the goods to the end-users; and
- sold by the exporter on delivered duty paid (DDP) terms to the end-user.

The majority of the parties identified provided information to Customs and Border Protection on imports of PVC from Korea. Verification visits were undertaken to the largest importer and end-users. Copies of visit reports were placed on the public record, except for two parties who had not provided versions for the public record at the time of the SEF. Parties contacted by Customs and Border Protection declined to provide details, including pricing, of imports from other countries to Australia.

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5 DUMPING INVESTIGATION

5.1 Findings

- The export price for direct export sales of PVC exported from Korea by LG Chem has been established using the invoiced price less amounts for post exportation expenses;
- The export price for export sales of PVC exported from Korea by LG Chem via an affiliated trader has been established using the invoiced price of the affiliated trader less amounts for post exportation expenses;
- The export price for export sales of PVC exported from Korea by LG Chem via unaffiliated traders has been established using the invoiced price of LG Chem to the unaffiliated traders less amounts for post exportation expenses;
- The normal value for PVC exported by LG Chem has been determined using domestic sales in the ordinary course of trade;
- Adjustments have been made to the normal value for LG Chem to properly compare it with the export price⁷;
- PVC exported by LG Chem during the investigation period was dumped with a dumping margin of 3.26%; and
- The volume of dumped goods was not negligible.

5.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

This chapter explains the results of investigations by Customs and Border Protection into whether PVC was exported from Korea at dumped prices during the investigation period.

5.3 Exporters

During the course of the investigation Customs and Border Protection established that there was only one exporter of PVC from Korea, LG Chem, during the investigation period.

LG Chem is a manufacturer of PVC in Korea and exported the goods directly to Australia as well as through related and unrelated trading parties. Customs and Border Protection considers LG Chem to be the exporter of the goods, whether exported directly or through the traders.

Customs and Border Protection visited LG Chem and verified information relating to costs, domestic sales and exports to Australia during the investigation period. A copy of the visit report was placed on the public record.

⁷ Ss 269TAC(8)

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Customs and Border Protection identified another exporter of PVC from Korea who exported PVC to Australia after the investigation period. This exporter was not contacted.

5.4 Export price

Customs and Border Protection identified during the verification visit that LG Chem exported the goods directly to Australia as well as via an affiliated trader, LG International Corp. (LGI), and unaffiliated traders.

Export prices were established at a free on board (FOB) point.

The export price for direct export sales from LG Chem has been established under section 269TAB(1)(a) using the invoiced price less amounts for:

- ocean freight as appropriate;
- marine insurance as appropriate;
- bank charges;
- customs agents fees; and
- customs duty.

The export price for export sales made through LGI has been established under section 269TAB(1)(c) using LGI's invoiced price less amounts for:

- marine insurance incurred by LGI (where amounts for marine insurance were allocated to LGI sales rather than LG Chem sales);
- LGI's selling, general and administrative expenses;
- commissions incurred by LGI;
- bank charges incurred by LGI; and
- the cost of credit offered by LGI.

These deductions give a price equivalent to LG Chem's invoice price, with further deductions for specific post-exportation expenses incurred by LG Chem outlined above in order to determine the FOB export price for LG Chem.

The export price for export sales made through unaffiliated traders has been established under section 269TAB(1)(c) using LG Chem's invoiced price to the unaffiliated traders less amounts for:

- ocean freight as appropriate;
- marine insurance as appropriate;
- bank charges;
- customs agents fees; and
- customs duty.

Export price calculations are at **Confidential Appendix 2**.

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5.5 Normal value

On 26 July 2012, Customs and Border Protection placed the non-confidential visit report of its verification visit to LG Chem on the public record. The report identified the dumping margin for LG Chem's exports during the investigation period at 2.35%.

Subsequent to the finalisation of that report and following a review of the visit team's findings and recommendations, Customs and Border Protection amended its dumping margin calculations which resulted in a revised dumping margin of 3.43% for the investigation period.

The changes that led to the revised dumping margin related to a change in approach to undertaking the ordinary course of trade test for domestic sales. The original calculations involved comparing weighted average monthly costs for each product category (which included numerous individual products) to monthly net selling prices for each individual product that falls within the corresponding product category. Also the monthly costs did not include any financing expenses whilst the selling prices included domestic credit terms.

The revision to the calculations involved firstly calculating net selling prices adjusted to reflect zero credit terms to ensure they can be properly compared to the corresponding monthly costs. Secondly, the monthly costs for individual products were used to compare to each corresponding domestic transaction.

Where the volume of domestic sales that were found to be sold at a loss and non-recoverable, exceeded 20% of the total volume of each individual product, those sales were treated as not being in the ordinary course of trade and excluded from normal value calculations.

Under the original methodology, all domestic sales within the broader product categories were deemed to be in the ordinary course of trade. Whilst under the revised approach, 24% of all domestic sales were found to not be in the ordinary course of trade.

Customs and Border Protection found that the remaining sales of PVC by LG Chem in the domestic market were transactions that were arms length, and at prices that were in the ordinary course of trade.

The price paid for the goods in those domestic sales was established satisfactorily and are considered suitable for assessing normal value under s. 269TAC(1).

Domestic selling prices have been adjusted in terms of s. 269TAC(8), to ensure fair comparison to the export prices, for the following:

- packing;
- inland freight;
- charges to FOB;
- credit terms, and
- duty drawback.

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5.5.1 Submissions by interested parties

Australian Vinyls

Australian Vinyls questioned the downward adjustment to the normal value for duty drawback, being for an amount “that can be properly linked to the production of domestic PVC is the residual amount of non-refundable duties.”

Australian Vinyls submitted it was not clear what was meant by the ‘residual amount’ in relation to the allowance of duty drawback as an adjustment and was concerned that only duty drawback relevant to domestic sales during the investigation period should be apportioned.

Australian Vinyls submitted to the SEF that LG Chem should be able to demonstrate that the imported material, on which duty drawback was claimed as an adjustment, was consumed in the manufacture of PVC, otherwise the claim should be disallowed.

LG Chem

LG Chem in its submission to the SEF:

- disputed the amount of duty drawback sought as an adjustment and requested the full amount sought be allowed;
- disputed the profit margin used based on all activities by LGI and requested that a profit margin based on subject merchandise be used; and
- disputed the ordinary course of trade test, in particular as it related to packing and said that packing type does not determine the price of the goods.

LG Chem submitted that if its opinions in regards to duty drawback, profit and packaging were accepted then the resulting calculation would show that LG Chem had not exported at dumped prices to Australia.

5.5.2 Customs and Border Protections assessment

LG Chem’s submits that the duty drawback adjustment should reflect the full amount of the theoretical difference between the import duties incurred on both export and domestic production. This is based on the assumption that when setting domestic selling prices, domestic salespersons are unaware of the actual remaining amount of duties reflected in domestic production.

Customs and Border Protection is not swayed by this argument. LG Chem is fully aware in the course of producing and selling both domestic and exported goods, that under the Korean drawback system, they are entitled to substitute domestic materials for like imported materials when claiming drawback on its PVC exports. Whilst the domestic salesperson is unlikely to be aware of the actual final amount of residual import duty when negotiating prices with domestic customers, it is reasonable to expect that they would be mindful of the company’s drawback policy.

Therefore, adjusting the normal value to reflect the difference between the actual final amount of residual import duties incurred in domestic production of PVC compared to the amounts incurred in export production is reasonable.

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Customs and Border Protection has examined the information submitted by LG Chem to show that the rate of profit attributed to LGI's involvement in the export transactions is overstated. The evidence presented revealed that the trading intermediary's profit performance over the investigation period was largely driven by the activities stemming from one of four business divisions. That particular division did not relate to the sales of PVC.

LG Chem submits that the appropriate rate of profit to be used in the export price calculations should be either:

- a negative profit amount;
- a zero profit amount; or
- a marginal rate.

Customs and Border Protection does not accept that any of these options are appropriate given that the relevant division within LGI relating to PVC achieved a profit. However, the information does highlight that the rate of profit achieved by the relevant division was less than the company's total profit rate. Therefore, Customs and Border Protection has amended its calculations to reflect the rate of profit from the relevant division relating to PVC.

LG Chem also submitted that it was not appropriate to undertake the ordinary course of trade test at the detailed model level which simply reflects different packaging types, as the packaging does not influence the negotiated price. Customs and Border Protection does not agree. The ordinary course of trade test is important to establish whether an exporter's domestic sales are profitable and/or recoverable taking into account the company's relevant cost to make and sell.

In its questionnaire response, LG Chem provided individual costing for each different model sold on the domestic market. Whilst each model fell within a broader group of PVC products, the sole difference in the costs reflected the different packaging associated with the sale. Packaging and the associated costs are sufficiently significant to impact on a sale's profitability. In this case, it was found that certain models did not recover their fully absorbed cost and were therefore deemed to not be sold in the ordinary course of trade.

Normal value calculations are at **Confidential Appendix 2**.

5.6 Dumping margin

A dumping margin for PVC exported from Korea by LG Chem has been established in accordance with section 269TACB(2)(a), by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The calculations showed that the goods were dumped. The margin calculated was 3.26%, this margin is less than the 3.43% calculated following the verification visit due to the change of profit used for LGI as noted above.

Dumping margin calculations are at **Confidential Appendix 2**.

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5.7 Volume of dumped goods

Customs and Border Protection calculated that the volume of goods exported to Australia by LG Chem that are dumped over the investigation period is greater than 3% of the total import volume of PVC over the investigation period and is therefore not a negligible volume⁸.

Assessment of the volume of dumped exports is at **Confidential Appendix 2**.

⁸ As defined in ss 269TDA(4)

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6 ECONOMIC CONDITION OF THE INDUSTRY

6.1 Finding

Customs and Border Protection has made the following finding that Australian Vinyls has experienced injury in the form of:

- lost sales volume.
- lost market share;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- increased inventories;
- reduced production; and
- reduced utilisation of production capacity

6.2 Applicant's claims

Australian Vinyls claimed that material injury from exports of PVC from Korea commenced in mid-2010 following the expiration of anti-dumping measures on PVC exports from Korea and that the industry had been injured through:

- loss of sales volumes;
- reduced market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability,
- reduced production volumes; and
- reduced return on investment.

Customs and Border Protection examined data for the period from 1 January 2009 for injury analysis purposes.

As noted at section 4.3 Australian Vinyls imports PVC from Taiwan via a subsidiary. These imports are sold by Australian Vinyls to its customers at the same prices and terms as sales of its locally produced product.

The following analysis examines trends in respect of sales of local production; sales of imports by Australian Vinyls are included only in the analysis on sales volumes as noted. The analysis is on a calendar year basis from 2009 to 2011 except where noted.

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6.3 Price effects

6.3.1 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented.

Australian Vinyls stated in its application that it has operated its plant at close to optimal rates and has been able to maintain production costs at relatively stable levels in 2011, but that it has experienced price depression in that same period.

Australian Vinyls claimed it was able to recover a proportion of cost increases in 2010 through slightly higher selling prices (when contrasted with 2009 selling prices), however in 2011 its selling prices declined, whereas costs slightly increased, further widening the gap between costs and selling prices to its disadvantage.

Customs and Border Protection visited Australian Vinyls and verified data relating to costs and sales. Customs and Border Protection found that on an annual basis, Australian Vinyl's costs have exceeded selling prices over the period of analysis. However whilst costs remained unchanged in 2011, prices fell slightly in that same period.

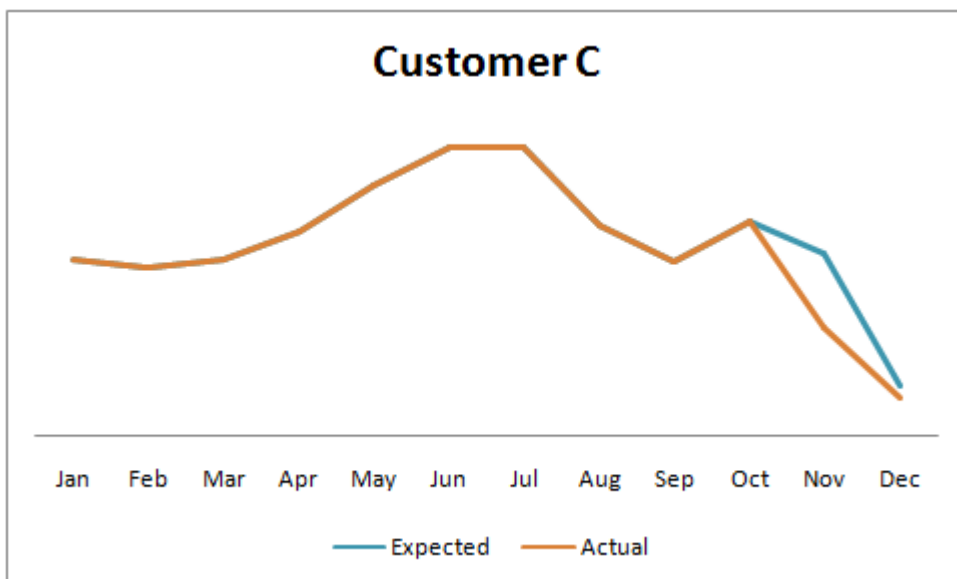
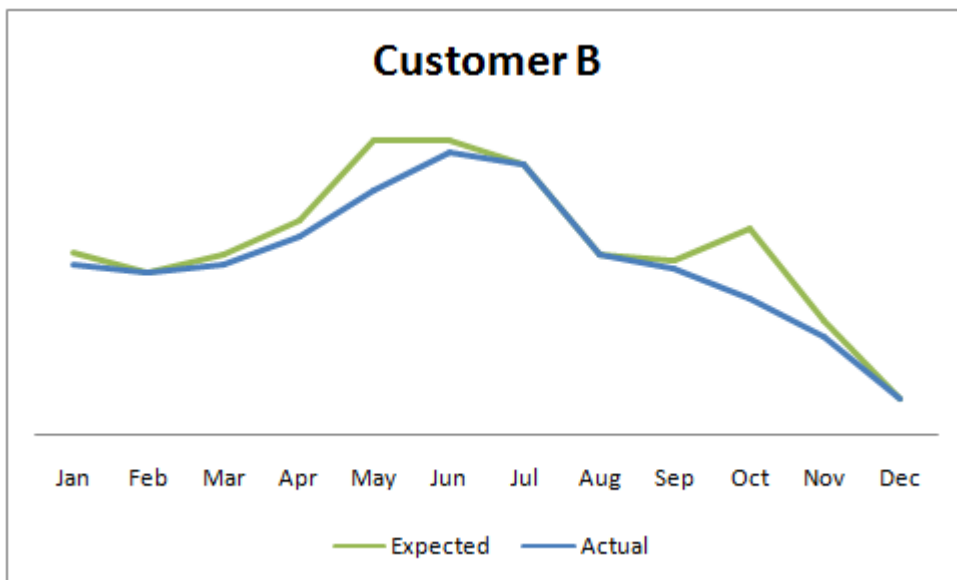
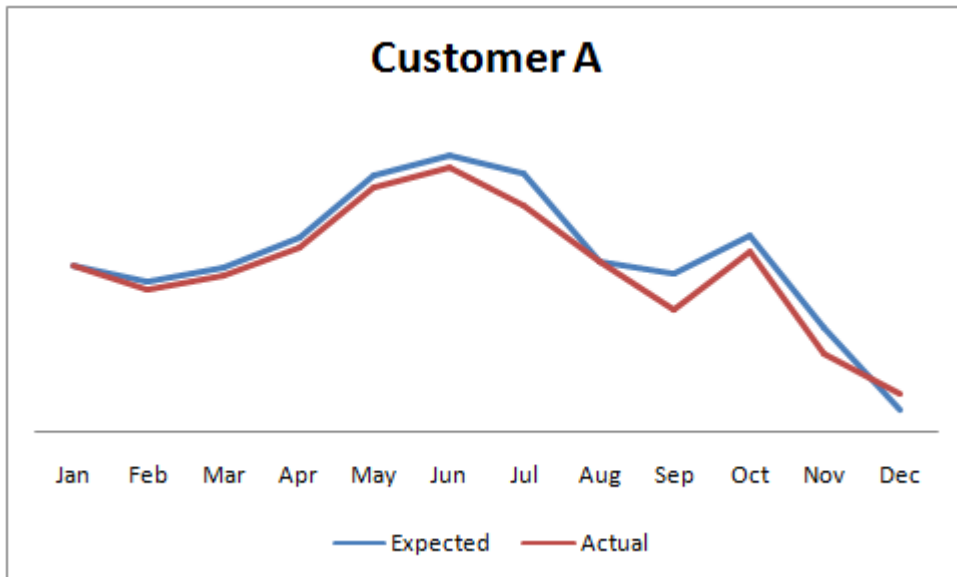
The trend analysis on an annual basis for total PVC sales by Australian Vinyls was inconclusive in showing evidence of price depression and/or suppression. This is largely due to the volatile nature of regional VCM and PVC prices and the corresponding impact on Australian Vinyl's costs and selling prices.

Therefore, Customs and Border Protection has undertaken a more detailed analysis of Australian Vinyl's PVC sales during the investigation period to better understand its economic performance. Australian Vinyls provided price details during 2011 of its major customers in support of its price depression and price suppression claims.

Customs and Border Protection notes that Australian Vinyls establishes its selling prices into the market based on equivalent import parity prices referenced to benchmark prices in the South East Asia region. Using the available sales information, Customs and Border Protection is able to compare Australian Vinyl's expected import parity prices, to actual monthly selling prices for key customers that represented almost 70% of industry's sales revenue. This import parity price is considered to be representative of an unsuppressed selling price that Australian Vinyls could reasonably expect to achieve.

The graphs below show that actual prices were invariably lower than the corresponding import parity price. In the case of Customer A, prices began to deviate from import parity prices in July 2011 and accord with claims that this customer sought to amend the purchasing terms at around this time. The graphs also support the claim made by Australian Vinyls that those price reductions to Customer A had a flow-on effect to selling prices to Customers B and C.

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Customs and Border Protection finds that Australian Vinyls has experienced price depression during the investigation period. It has also been found that industry's selling prices were regularly lower than estimated import parity pricing. Therefore Customs and Border Protection also finds that the industry has experienced price suppression during the investigation period.

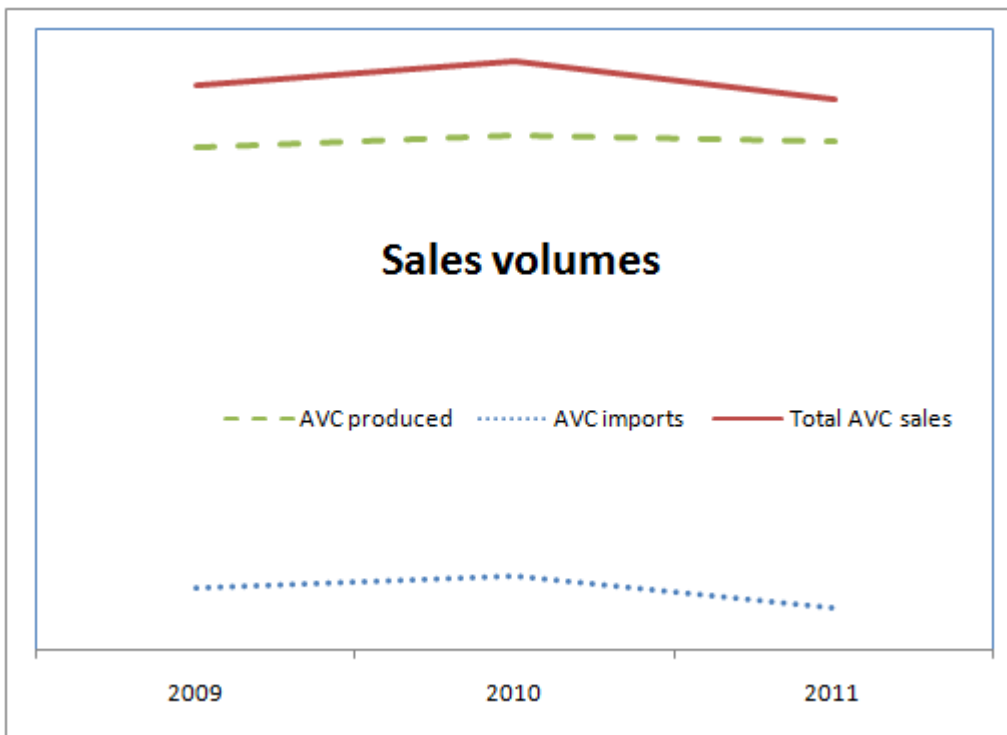
6.3.2 Revenue, profit and profitability

Australian Vinyls claimed that the decline in its selling prices had contributed to a reduction in its domestic sales revenue and that in 2011 revenue was lower than achieved in 2010.

Focussing again on those key customers that source locally and from Korea, the difference between the unsuppressed or import parity price and actual prices reflects the amount of lost revenue and reduced profits. Given that these three customers represent almost 70% of industry's total sales revenue, Customs and Border Protection finds that Australian Vinyls has experienced injury in the form of reduced revenue and profit.

6.4 Volume effects

Movements in sales volumes are illustrated in the following chart.



The data shows that Australian Vinyls sales of PVC fell in 2011, largely reflecting the fall in imports of PVC. The data verified at Australian Vinyls showed it has been producing close to optimum capacity and has also managed to sell nearly all of its production over the period 2009 to 2011.

This suggests that loss of market share and loss of sales volumes would not appear to be injury factors relevant to this investigation. Changes in the Australian market and Australian Vinyls sales of produced PVC indexed to 2009 are shown below.

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Indexed Change yearly	2009	2010	2011
Market	100	110	107
Australian Vinyls Sales own production	100	103	102
Australian Vinyls import sales	100	119	66

Australian Vinyls submitted that it had maintained market share in the first half of 2011 however its share dropped dramatically in the second half of the year. Australian Vinyls provided data on sales and graphs depicting market share by month and by quarter from January 2010 to March 2012.

Australian Vinyls stated that the loss of sales volumes and market share necessitated drastic alterations to the VCM shipping schedule and production. A shipment in October was delayed by seven days with the plant shut for seven days and the VCM shipment that was contracted to load in November was cancelled. The annual maintenance shutdown over the December to January period was brought forward and extended. Australian Vinyls provided daily production schedules in support of its claim.

Customs and Border Protection notes that stock levels have risen in 2011 and that industry data shows that production for December 2011 and January 2012 is approximately 50% below that for previous years which supports Australian Vinyls statement on loss of production.

Customs and Border Protection analysed the sales data provided by Australian Vinyls and noted that sales of produced PVC in the December half year are below sales for previous December half years.

Customs and Border Protection then compared sales and import data for the December half years of 2009, 2010, 2011 and 2012 to see whether the fall in sales was related to a fall in the overall market for PVC.

This data is presented below as an index referenced to the December half year to 2009 as the base year.

Indexed Change 6 months	2009	2010	2011
Market	100	106	111
AV	100	99	98
AV imports	100	156	73
Imports ex AV	100	111	167

The market increased in the six months to December 2011 whilst sales of PVC produced and sold by Australian Vinyls declined. Customs and Border Protection notes that sales of PVC imported by Australian Vinyls show a greater decline, indicating that lost sales volumes of produced PVC were not replaced by sales volumes of PVC imported by Australian Vinyls. Imports of PVC other than by Australian Vinyls show an increase greater than that of the market.

Given the increase in stock holdings by Australian Vinyls Customs and Border Protection considers that Australian Vinyls had stock of PVC to sell and has lost sales volumes and market share.

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Customs and Border Protection also analysed the sales data provided by Australian Vinyls and noted that sales of produced PVC in the March 2012 quarter are significantly below sales for previous March quarters.

Customs and Border Protection then compared sales and import data for the March quarters of 2009, 2010, 2011 and 2012 to see whether the fall in sales was related to a fall in the overall market for PVC.

This data is presented below as an index referenced to the March quarter 2009 as the base year.

Indexed Change Jan - Mar	2009	2010	2011	2012
Market	100	104	93	86
AV Sales	100	106	92	69
AV import sales	100	29	75	47
Imports ex AV	100	137	107	191

The analysis indicates that whilst the market has declined in the March 2012 quarter there has been a greater decline in sales of PVC produced and sold by Australian Vinyls. Customs and Border Protection notes that sales of PVC imported by Australian Vinyls show a greater decline, indicating that lost sales volumes of produced PVC were not replaced by sales volumes of PVC imported by Australian Vinyls. Imports of PVC other than by Australian Vinyls show an increase greater than that of the market.

Customs and Border Protection finds that the decline in production in December 2011 and January 2012 meant that this loss in production effectively meant a loss of potential sales volumes.

Taking into account the increase in inventories, the loss of production and the decline in sales and available information on the market size Customs and Border Protection finds that the industry has suffered injury in the form of lost sales volumes, loss of market share, lost production and increased inventories.

6.5 Other economic factors

Section 269TAE(3) of the Act provides a reference to other relevant economic factors to have regard to in determining whether material injury to an Australian industry has been caused.

Customs and Border Protection examined data relating to other economic factors to see whether they supported or detracted from the volume, price and profitability indicators.

Australian Vinyls noted that reduced revenues and lower profits and profitability had contributed to a reduction in its return on investment. Return on investment shows a decline from 2009 to 2011 and capital investment also declined from 2009 to 2011.

There was no change in available capacity during the injury period, however the drop in production at the end of 2011 and into 2012 noted in section 6.4 meant that there was an underutilisation of production capacity.

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6.6 Conclusion of the economic performance of the industry

Based on the data submitted by Australian Vinyls and verified by Customs and Border Protection, Customs and Border Protection considers that Australian Vinyls has experienced injury in the form of:

- lost sales volume.
- lost market share;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment and investment;
- increased inventories;
- reduced production; and
- reduced capacity utilisation.

Assessment of the condition of the Australian industry is at **Confidential Appendix 3.**

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7 HAS DUMPING CAUSED MATERIAL INJURY

7.1 Findings

Customs and Border Protection finds that there is a causal link between the material injury experienced by Australian Vinyls and the dumped goods imported from Korea.

7.2 Introduction

This section examines whether dumped imports of PVC from Korea have caused material injury to the Australian industry.

The Minister may publish a dumping duty notice, and impose anti-dumping measures on future exports of like goods, where the Minister is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
- because of that, material injury to the Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered⁹.

Customs and Border Protection sent questionnaires to importers and end-users of PVC from Korea.

The majority of the parties identified provided information to Customs and Border Protection on imports of PVC from Korea, verification visits were undertaken to the largest importer and end-users. Parties contacted by Customs and Border Protection declined to provide details, including pricing, of imports from other countries to Australia.

7.3 Views presented to the investigation by interested parties

Australian Vinyls

The volume of imports from Korea has had a market wide effect on prices and has changed the market conditions in which Australian Vinyls operates.

The dramatic growth in LG Chem's exports to Australia has only been achievable by exporting at dumped prices and undercutting Australian industry selling prices and that it has responded to selling prices offered by LG Chem across its customer range and reduced its own prices to retain volumes.

⁹ S 269TG

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Imports by Australian Vinyls from Taiwan have decreased, the import volumes from Korea are far greater and it is wrong to say imports from Korea cannot harm Australian Vinyls whilst it imports from Taiwan.

Australian Vinyls has demonstrated it has suffered loss of profits, profitability, production down time and volume related injury and provided evidence of price undercutting.

Australian Vinyls submitted to the SEF that the assessment of price related injury had been understated and that in addition to lost revenue the effects of price reductions and price suppression should also be factored in.

LG Chem

A no injury conclusion was made in the continuation of measures from Korea inquiry (REP 151) which saw measures on PVC from Korea expire, this is a higher test than that required for the initiation of an investigation.

There are no grounds on which a dumping duty notice against PVC exported from Korea can be published and the investigation should be terminated, LG Chem exports did not cause material injury whether or not they were dumped.

Korean imports had no price effect, LG Chem export prices were the highest of major import sources and were above, average import prices, Thai prices and the Asian spot price. Imports from all sources have not increased in the market therefore imports could not have caused injury.

The injured industry must be identified and should exclude Australian Vinyls imports, the price of PVC imported from Taiwan by Australian Vinyls drives its produced PVC price.

Price suppression/ depression began three years prior to the recent commercial entry of LG Chem into the market. Australian Vinyls has lowered its prices in response to changes in Asian spot pricing not the higher priced LG exports.

The cost of Australian Vinyls PVC must be higher than the cost of other competitors like LG Chem as Australian Vinyls cannot produce its own VCM. Australian Vinyls purchased VCM incurs a margin that other PVC producers do not incur as they produce their own VCM.

There is no volume market share injury and no injury through reduced production.

LG Chem submitted to the SEF that lower prices in the Asia region had caused the decrease in Australian Vinyls prices, LG Chem disputed that its exports had caused injury to Australian Vinyls.

Australian Plastic Profiles

Australian Plastic Profiles Pty Ltd (APP) purchases imported PVC and locally produced PVC, purchases from Australian Vinyls are only for its locally produced PVC.

APP said that the PVC market is very transparent, Formosa Plastics (Taiwan) publishes its prices between the 18-23rd of each month and other manufactures set their prices accordingly.

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APP imports as a means to maintain a second supply chain and to ensure that prices from Australian Vinyls are reasonably comparable to the world market prices.

The inability for Australian Vinyls to operate a VCM plant and thus its requirement to import VCM was considered by APP to be a competitive disadvantage to Australian Vinyls.

Speciality Polymers and Chemicals

Speciality Polymers and Chemicals Pty Ltd (SP&C) is an Australian trading company that buys and sells raw materials including PVC resin.

SP&C submitted that Australian Vinyls cannot meet demand, has a limited range of grades and the quality of some of the grades falls short of customer's requirements as such, imported PVC resins form a significant part of the supply chain for customers across the country.

Armstrong World Industries

Armstrong World Industries (Australia) Pty Ltd is Australia's only vinyl flooring manufacturer, and part of the Armstrong group of flooring and ceilings manufacturing companies worldwide.

Armstrong said it needs to import from other manufacturers of PVC to keep operations in Australia, whether from China, Thailand, Taiwan, Korea, Malaysia, Europe, USA, or South America which meet its manufacturing needs.

7.4 Dumping

Customs and Border Protection has found that exports of PVC from Korea were dumped with a margin of 3.26%. The volume of dumped exports was not negligible.

Dumped exports of PVC from Korea have been examined in this section as to whether they caused material injury to the Australian industry.

7.5 Price effects

Australian Vinyls has described PVC in previous investigations as a fungible product meaning that the imported product can easily be substituted for domestically produced product. Australian Vinyls claimed that the fungible nature of PVC was demonstrated by:

- the range of import sources in recent years;
- the low level of brand identification or distinguishing features between the sources; and
- the propensity demonstrated by importers and traders to switch sources of supply.

Customs and Border Protection considered in previous investigations that there is a high level of substitutability between PVC from various sources and that, therefore, price is a critical factor in consumers' purchasing decisions. Price continues to be a key factor in the purchasing of PVC. This is evidenced by the range of import sources from 2009 to 2011 with five countries exporting

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volumes of around 4,500 tonnes or greater in a year to Australia, with smaller volumes being exported by a number of other countries.

Australian Vinyls claimed that the dramatic growth in LG Chem's exports to Australia has only been achievable by exporting at dumped prices and undercutting Australian industry selling prices. Australian Vinyls said it has responded to selling prices offered by LG Chem across its customer range and reduced its own prices to retain volumes.

Australian Vinyls included in its application confidential customer information detailing discussions with a number of individual customers. Australian Vinyls claimed that the documents demonstrated that its PVC selling price has commonly been undercut by up to eight per cent in most instances. These documents also indicate that LG Chem's selling prices are the lowest price available in the marketplace and that where Australian Vinyls had reduced its price to remain competitive, LG Chem would respond with a further price reduction.

This information has been corroborated by statements made by interested parties that import prices have been used to leverage competitive prices from Australian Vinyls, and that prices offered by LG Chem would have had an impact on Australian Vinyls pricing strategy.

Customs and Border Protection compared prices from LG Chem and Australian Vinyls for each month of the investigation period using verified data from importers, end-users, Australian Vinyls and other available information.

A comparison of weighted average monthly unit prices of imported PVC from Korea to Australian Vinyls' weighted average monthly unit prices shows that Korean imports consistently undercut local prices to the three key customers of PVC. The undercutting margin on a monthly basis ranged from between 3% to 12% over the investigation period.

The price analysis also supports a claim made by Australian Vinyls that LG Chem's pricing became increasingly aggressive in the second half of 2011, with the data showing the level of undercutting gradually increasing over the year. Customs and Border Protection also notes that approximately 80% of imports from Korea in the investigation period arrived in the second half of the year, July to December 2011.

Therefore, Customs and Border Protection finds that:

- price is a critical factor in the purchasing decisions of PVC consumers;
- actual dumped prices for PVC exported from Korea by LG Chem consistently undercut Australian Vinyls' prices during the investigation period;
- dumped prices offers for PVC exported from Korea by LG Chem were used to extract lower prices from Australian Vinyls, and
- reduced prices by Australian Vinyls in response to dumped price offers for PVC from LG Chem contributed to the price depression and suppression evidenced at section 6.3.1 of this report.

The undercutting analysis of PVC from Korea is at **Confidential Appendix 4**.

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7.5 Profit effects

Australian Vinyls reduced profit and profitability in 2011 is a result of costs increases and reduced selling prices in 2011.

In section 7.6 Customs and Border Protection considered that dumped exports of PVC from Korea contributed to suppressing Australian Vinyls prices during the investigation period.

The suppression of prices evidenced to Australian Vinyls major customers resulted in reduced revenues. As profits and profitability are a function of a company's revenue and costs, Customs and Border Protection considers that the price depressing and price suppressing effect of the dumped goods contributed to a loss of profits and the decline in profitability.

Customs and Border Protection therefore finds that Australian Vinyls loss of profits and profitability can be linked to the dumped exports from Korea.

7.7 Volume effects

Customs and Border Protection analysed individual sales data from Australian Vinyls, importers and end-users and considers that the data shows that lost sales volumes by Australian Vinyls of its produced PVC have been replaced by dumped imports of PVC from Korea during the investigation period.

Customs and Border Protection compared sales by Australian Vinyls and import data over the injury period, the comparison shows that the total market volumes have remained relatively stable however the source of supply has changed from Australian Vinyls to imports from Korea.

This comparison shows that sales of PVC produced by industry have been replaced by PVC imported from Korea and not by PVC imported from other sources. This is most evident in the second half of the investigation period when approximately 80% of the imports from Korea arrived.

Customs and Border Protection finds that dumped exports of PVC from Korea caused injury to the Australian industry through lost sales volumes and loss of market share.

7.8 Other economic factors

The other relevant economic factors were examined in determining whether injury to an Australian industry has been caused.

Sales revenue

Australian Vinyls data shows sales revenue for PVC declined in 2011.

Customs and Border Protection has found that dumped exports of PVC from Korea suppressed Australian Vinyls prices. This price suppression led to reduced revenues that Customs and Border Protection considers are caused by the dumped PVC from Korea.

Customs and Border Protection has found that dumped exports of PVC from Korea caused injury through lost sales volumes. These lost sales volumes led

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to a further loss of revenue that Customs and Border Protection finds are caused by the dumped PVC from Korea.

Reduced return on investment (ROI)

Customs and Border Protection finds that the reduced revenues and lower profits and profitability resulting from the dumped PVC from Korea have contributed to a decline in Australian Vinyls return on investment.

Capacity and production

Customs and Border Protection finds that the dumped exports from Korea have contributed to a reduction in production and underutilisation in capacity.

7.9 Other possible causes of injury

Customs and Border Protection is required to consider whether injury to an industry is being caused or threatened by a factor other than the dumped imports¹⁰.

Prices in the Asia region

Interested parties submitted that Australian Vinyls priced according to PVC pricing in the Asia region and that as prices in the Asia region were depressed and suppressed it was to be expected that Australian Vinyls prices would also be depressed and suppressed.

The available information indicates that prices in the Asia region have an effect on Australian Vinyls prices. In analysing price depression and price suppression Customs and Border Protection took account of information on PVC pricing in the Asia region. As noted above Customs and Border Protection finds that industry reduced its prices below what it could have expected and has not been able to obtain price increases which would have otherwise occurred.

Industry imports are cause of injury

Interested parties submitted that imports by the industry were a cause of injury with Australian Vinyls imports driving the pricing of its produced PVC and any analysis of injury to the industry should exclude injury from industry imports.

Customs and Border Protection verified information relating to PVC produced and sold by Australian Vinyls and PVC imported and sold by Australian Vinyls. This information is recorded in separate cost centres in Australian Vinyls accounts and Customs and Border Protection was satisfied that the data was complete, accurate and reliable.

Customs and Border Protection has also noted in the industry report, the PAD and this SEF that in assessing injury to the industry Customs and Border Protection has analysed only those factors relating to PVC produced by Australian Vinyls. Imports of PVC by Australian Vinyls are excluded from the analysis unless otherwise noted.

No evidence was provided to support the claim that imports by the industry were driving the price of its produced PVC. Australian Vinyls stated produced PVC is the prime driver of price and that some customers will not buy imported

¹⁰ Subsection 269TAE(2A)

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PVC from Australian Vinyls. Customs and Border Protection verified that PVC imported by AVC is sold at the same price and terms and conditions as its produced PVC.

Imports from other sources

Interested parties submitted that prices of imports from other countries were driving prices in the market and that LG Chems prices were higher than other major import sources in the Australian market.

Customs and Border Protection invited interested parties to provided details on the pricing of imports from sources other than Korea in the market, no information was provided.

Information on imports of PVC is available from Customs and Border Protections database, however this information provides only general details on quantities, the declared value and delivery terms.

Verified information on what terms and conditions the other imports were sold at, for example delivered duty paid into store or delivered into port, 90 day payment terms or payment on sight and whether sold direct to the customer or through an agent or distributor for which an extra margin would need to be added are not available.

Available information indicates that price is the main driver of purchasing decisions. As such, Customs and Border Protection finds that the imports from Korea would have to been competitively priced to other imports and the Australian industry to have been sold in Australia.

Efficiency of the Australian industry

Interested parties submitted that industry cannot compete with imported PVC as it has to purchase its main raw material, VCM, whilst its competitors manufacture their own VCM giving them a cost and price advantage.

No evidence or data was provided to support this assertion.

Previous findings

The test for continuing measures is a positive test in that the CEO must be satisfied that the expiration of the anti-dumping measures would lead or be likely to lead to a continuation or recurrence of dumping and material injury that the anti-dumping measures are intended to prevent before the CEO can recommend that the Minister take steps to continue the measures.

The measures against Korea were allowed to expire in 2010 as the CEO was not so satisfied at that time in making his recommendation to the Minister. Customs and Border Protection does not see any findings from that report detracting from the findings in this investigation. Since that report imports from Korea have increased from a very small base to a significant share and impact in the Australian market.

Other factors

As the Australian industry has not exported PVC during the injury analysis period the export performance of the industry is not a relevant factor.

Parties submitted that changes in technology leading to the use of less PVC in end products would lead to less demand for PVC. Contracts in demand or

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changes in patterns of consumption have been taken into account in the analysis of the market as noted in assessing injury to the industry in terms of sales volumes and market share.

Customs and Border Protection is not aware of any restrictive trade practises that have affected the market for PVC.

7.10 Is the injury caused by dumping material?

In assessing whether the injury caused by dumping is material, Customs and Border Protection has calculated the effect of the price depression and price suppression on industry profits in 2011.

Customs and Border Protection has calculated the potential total revenue that would have been achieved by Australian Vinyls on the basis of unsuppressed selling prices or import parity prices.

The data shows that the dumped exports of PVC from Korea contributed to lost revenues from price suppression, price depression and lost volumes representing approximately 6% of Australian Vinyls' total revenue during the investigation period. Customs and Border Protection considers the lost revenues to be material.

Therefore, Customs and Border Protection finds that dumped exports of PVC from Korea during the investigation period caused material injury to the Australian industry producing like goods.

Customs and Border Protection's assessment of the materiality of the injury caused by the dumped exports from Korea is at **Confidential Appendix 5**.

7.11 Summary – Causal link

Customs and Border Protection considers that the evidence set out in this section provides sufficient grounds to conclude that the Australian industry has suffered price depression, price suppression, loss of profits and profitability, loss of revenue, loss of sales volumes and loss of market share which has led to material injury.

Customs and Border Protection considers that other possible causes of injury do not detract from the assessment that dumping has caused material injury.

Customs and Border Protection finds that dumped imports of PVC exported to Australia from Korea can be linked to the material injury experienced by the Australian industry during the investigation period.

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8 WILL DUMPING AND MATERIAL INJURY CONTINUE?

8.1 Findings

Customs and Border Protection finds that exports of PVC from Korea in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

8.2 Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping, anti-dumping measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping and material injury may continue.

8.3 Customs and Border Protection's assessment

8.3.1 Will dumping continue?

Customs and Border Protection's dumping analysis found that PVC exported from Korea during the investigation period was found to be at dumped prices, with a dumping margin of 3.26%.

Customs and Border Protection notes that forward orders exist for exports from Korea and that the PVC exported from Korea has a significant share and influence in the Australian market. Customs and Border Protection analysed import data for exports of PVC to Australia from the end of the investigation period (31 December 2011) to 20 days past the SEF date (3 September 2012). The analysis shows imports of PVC from Korea continuing into Australia to shortly after the PAD.

Customs and Border Protection considers that dumping will continue if anti-dumping measures are not imposed.

8.3.2 Will material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a finding that PVC exported at dumped prices from Korea has caused material injury to the Australian industry.

Customs and Border Protection considers that the continuation of price competition from dumped imports from Korea is likely to have a continuing adverse impact on the Australian industry. Customs and Border Protection considers that this impact may be particularly evident in price depression and price suppression, reduced profits and profitability, and reduced revenues.

Based on the available evidence, Customs and Border Protection finds that exports of PVC from Korea in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

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9 ANTI-DUMPING MEASURES

9.1 Findings

The non-injurious price (NIP) can be established for PVC by reference to import parity pricing.

9.2 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. This lesser duty provision is contained in the World Trade Organisation Anti-Dumping Agreement and the Tariff Act¹¹.

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping¹².

Anti-dumping duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

9.3 Unsuppressed selling price

Customs and Border Protection generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, Customs and Border Protection then calculates a NIP 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 deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

Australian industry's claims

Australian Vinyls proposed an unsuppressed selling price (USP) based on Australian Vinyls' CTMS for 2011 plus a level of profit it achieved across the 2005-06 and 2006-07 financial years. Australian Vinyls submitted that the profit

¹¹ Subsection 8(5A) of the Tariff Act

¹² The NIP is defined in section 269TACA

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for 2006-07 should be adjusted to exclude the June quarter due to a large one off write down. Australian Vinyls submitted that its level of profit following the global financial crisis had been negative and would not be appropriate to use. The USP proposed by Australian Vinyls is the same USP that it proposed for the current review of the measures of PVC from Japan and the USA.

Other parties claims

Chemiplas Australia Pty Ltd (Chemiplas), an importer of PVC from Japan, proposed a USP for the review of the measures from Japan and the USA based on the price of goods imported from Formosa Plastics Group, Taiwan; LG Chem, Korea and 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.

Other suppliers and end-users of PVC have said that end-users needed access to well-priced and quality PVC resins as Australian Vinyls cannot supply the whole Australian market. A USP based on prices in the South East Asia region was suggested.

9.4 Customs and Border Protection's assessment

Preliminary finding in PAD 187

In PAD 187 published on 28 June 2012 Customs and Border Protection considered that industry selling prices in 2011 were unsuitable to be used as a basis for a USP as they were affected by the dumped exports from Korea. Prices of imports from other countries in the Australian market were not considered as a suitable basis for a USP as they may have also been impacted by the dumped export prices from Korea.

Customs and Border Protection considered the most appropriate basis for the USP, for the purpose of PAD 187, was to use Australian Vinyls cost to make and sell (CTMS) for 2011.

Preliminary finding in SEF 187

Customs and Border Protection noted in SEF 187 that a closer examination of Australian Vinyls sales showed that the basis for PVC selling prices in the Australian market was import parity pricing referenced to South East Asia PVC prices. Customs and Border Protection considered that an average import parity price for the investigation period would be representative of a selling price that the industry could be expected to achieve in the absence of dumping. The import parity price was calculated using monthly regional South East Asia PVC prices, converted to Australian dollars and adjusted to reflect an into-store selling price.

Australian Vinyls submission to SEF 187

Australian Vinyls in its submission to the SEF disagreed with a USP referenced to South East Asia PVC prices.

Australian Vinyls 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.

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Australian Vinyls did not consider the proposed NIP 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 to SEF 185, the review of measures for PVC from Japan and the USA, 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.

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 as used in PAD 187.

Finding for REP 187

As noted at section 9.3 a NIP 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 reviewed sales data relating to 2011 and adjusted the USP to take into account Australian Vinyls prices to customers that were not referenced to South East Asia prices.

Customs and Border Protection considers that the USP based on import parity pricing referenced to South East Asia PVC prices and taking into account those prices of Australian Vinyls that were not referenced reflects the price that Australian Vinyls might reasonably be able to sell the goods in a market unaffected by dumped imports.

USP calculations are at **Confidential Appendix 6**.

As noted at section 9.2 the NIP 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 NIP 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.

NIP calculations are at **Confidential Appendix 7**.

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9.5 Comparison of the NIP to the export prices

The non-injurious price was compared with the weighted average export prices of PVC exported from Korea during the investigation period.

The non-injurious price was higher than the weighted average export prices of PVC exported from Korea. This analysis supports the conclusion that dumped PVC exported to Australia from Korea caused material injury to the Australian industry.

9.6 Interim dumping duties

An interim dumping duty may be ascertained:

- as a proportion of the export price; or
- by reference to a measure of the quantity; or
- by a combination of these methods.

The delegate recommends that the interim dumping duty be expressed as a proportion of the export price.

In determining the amount of interim dumping duty payable, the Minister must ascertain an export price, a normal value and a non-injurious price for the goods. The interim duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained non-injurious price.

The calculation of export prices is at **confidential appendix 2**.

The calculation of the normal values is at **confidential appendix 2**.

The calculation of the non-injurious price is at **confidential appendix 7**.

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10 RECOMMENDATIONS

The delegate is satisfied that the dumping of imports of PVC exported to Australia from Korea caused material injury to the Australian industry producing like goods. The delegate recommends that the Minister impose anti-dumping measures on PVC exported to Australia from Korea.

The delegate recommends the Minister be satisfied:

- in accordance with s.269TG(1) the amount of the export price of PVC that has been exported to Australia from Korea is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused;
- in accordance with s.269TG(2) the amount of the export price of PVC already exported to Australia from Korea, is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from Korea in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused.

The delegate recommends the Minister determine:

- in accordance with s.269TAB(1)(c) the export prices for PVC exported by LG Chem through affiliated and unaffiliated traders be calculated having regard to all the circumstances of the exportation;
- in accordance with s.269TACB(1) by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of PVC from Korea were dumped.

The delegate recommends the Minister direct:

- in accordance with s.269TAC(8), the price paid or payable for like goods sold by LG Chem be taken to be such a price adjusted for differences between domestic and export sales to ensure a fair comparison;
- that the element of interim dumping duty payable on PVC the subject of the dumping notices be ascertained as a proportion of the export price.

The delegate recommends the Minister compare:

- in accordance with s.269TACB(2)(a), the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The delegate recommends the Minister declare:

- in accordance with s.269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to:

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- the goods exported by all exporters from Korea to the extent permitted by s.269TN; and
 - like goods that were exported to Australia by all exporters from Korea after the CEO made a PAD under s.269TD on 28 June 2012 but before publication of the notice, to the extent permitted by s.269TN.
- in accordance with s.269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from Korea after the date of publication of the notice.

PUBLIC RECORD**11 ATTACHMENTS AND APPENDICES**

Attachment 1	Notices
Confidential attachment 1	Schedule
Confidential appendix 1	Market
Confidential appendix 2	Export price, Normal Value, Dumping Margin, volume of exports.
Confidential appendix 3	Economic condition of the industry.
Confidential appendix 4	Price undercutting.
Confidential appendix 5	Materiality of injury.
Confidential appendix 6	Unsuppressed selling price.
Confidential appendix 7	Non-injurious price.