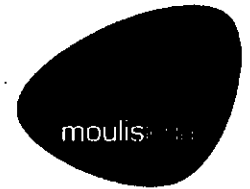


3 July 2012



LG Chem, Ltd.

**Alleged dumping of polyvinyl chloride
homopolymer resin exported from the
Republic of Korea**

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

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NON-CONFIDENTIAL

A Introduction

On 19 April 2012, Australian Customs and Border Protection Service ("Australian Customs") published Australian Customs Dumping Notice No. 2012/14 ("ACDN 2012/14"), which officially initiated a dumping investigation into polyvinyl chloride homopolymer resin ("PVC") exported to Australia from the Republic of Korea ("Korea").

ACDN 2012/14 explained that the Australian industry, Australian Vinyls Corporation Pty Limited ("AVC"), had alleged in its application that PVC from Korea had been imported at dumped prices, and that this had caused the Australian industry material injury through:

- lost sales volume;
- lost market share;
- price undercutting;
- price depression;
- price suppression;
- reduced profits and profitability;
- reduced production volumes;
- reduced revenue; and
- deteriorating returns on investment.

Without detracting from the primary submission of our client LG Chem, Ltd ("LG") - 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.

B Relevant law

It is a precondition to the publication of a dumping duty notice under Section 269TG of the *Customs Act 1901* ("the Act") that imports of the goods under consideration are found to have been dumped and, because of that:

material injury to an Australia industry producing like goods has been caused, or is being caused or threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered

Section 269TAE of the Act elaborates the concept of material injury. Section 269TAE(1) essentially requires the Minister to determine whether material injury has occurred on the basis of the effect or likely effect of the importation of those goods. However, this must be done subject to Subsections 269TAE(2A) and (2B). Relevantly, these provide:

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

- (a) the volume and prices of imported like goods that are not dumped; or*
- (b) the volume and prices of importations of like goods that are not subsidised; or*
- (c) contractions in demand or changes in patterns of consumption; or*
- (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
- (e) developments in technology; or*
- (f) the export performance and productivity of the Australian industry;*

and any such injury or hindrance must not be attributed to the exportation of those goods.

(2B) In determining:

- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry*

*...
because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.*

We also note the recent publication of the *Ministerial Direction on Material Injury 2012*. The Direction itself correctly indicates that it must be read subject to the law. The Direction also provides:

- *that "identification of material injury must be based on facts and not on assertions unsupported by facts";*

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- that material injury must be "*greater than that likely to occur in the normal ebb and flow of business*";
- that material injury is injury that "*is not immaterial, insubstantial or insignificant*";
- that "*dumping and subsidisation need not be the sole cause of injury to the Australian industry*" however, "*injury caused by dumping... must be material in degree*";
- that in considering whether material injury exists "*an industry that was at one point healthy and could shrug off the effects of the presence of dumped... products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping*";
- that in "*cases where the Australian industry would have been more prosperous if not for the presence of dumped... imports... the decline in the industry's rate of growth may be just as relevant as the movement of an industry from growth to decline*"; and
- that it is "*possible to find material injury where an industry suffers a loss of market share in a growing market without a decline in profits*".

These individual dot points must not be read separately or out of context to the law pursuant to which they have been issued.

Thus, for a decline in the rate of growth in the Australian industry or a loss of market share to be considered material injury, the injury actually must be "*material*" – being "*not immaterial, insubstantial or insignificant*". The injury must be greater than would otherwise have occurred in "*the normal ebb and flow of business*". Furthermore, there must be evidence to establish that the injury has been caused by the existence of the dumped goods in the market.

Given that these factors require some degree of prognostication it is clear that the facts relied upon to establish this causation, as well as the materiality of the alleged injury, must be both accurate and adequate for the task.

C Imports of PVC have not increased

Imports of Korean PVC were first subject to dumping duties in 1999. These measures were not lifted until March 2010. During this period, the volume of imported Korean PVC was negligible.¹

Since the measures were lifted, it is clear that imports of PVC from Korea have increased. According to LG's own information, its import volume in 2011 was [CONFIDENTIAL TEXT DELETED] tonnes.

However – and this is important to recognise – imports overall have not increased. In fact, it would appear that they have decreased. According to data from the Australian Bureau of Statistics (“ABS”) in 2010 a total of 68,173.65 tonnes of PVC were imported into Australia. In 2011, total imports of PVC decreased by 6% to 64,402.47 tonnes.

At the same time, and as noted in Australian Customs' Consideration Report No. 187 (“the Consideration Report”), the market for PVC in Australia increased to be about 200,000 tonnes² in 2011. Our review of previous Australian Customs reports indicates that 200,000 tonnes is a normal level of demand for this market. For example, Trade Measures Branch Report Number 151 notes:

In the 2005 continuation inquiry [Australian Customs] found that the Australian market for PVC was approximately 200,000 tonnes per year. AVC claimed in this enquiry that the Australian market declined in 2008-09 to about 185,000 tonnes and is continuing to decline in 2009-10. AVC stated that this decline is due to the global economic downturn brought about by the GFC which began affecting the Australian market in 2008, compounded by the decreasing requirement for PVC by end-users in their product.

and:

The market size in 2006-07 and 2007-08 was in excess of 200,000 tonnes for each year, and this reduced to a market size of less than 200,000 tonnes in 2008-09.

In comparison, 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.

¹ Trade Measures Branch Report to Minister No. 151, page 16.

² Trade Measures Branch Report to Minister No. 187, page 8.

It is clear that the Applicant is the major player in the market. It sells its total output into the Australian market. However, it is important to note that this 140,000 tonne capacity is the absolute maximum of AVC's production capacity. Beyond that, it is necessary to import PVC to satisfy the excess demand in the Australian market. When there is an apparent change in demand, it is the volume of exports which is affected, not Australian industry sales.

Our research indicates that, the Australian market for PVC in 2011 is accurately described by the following table:

Table 1 – Supply of PVC in Australia (tonnes)

2011	LG imports ³	Thai imports ⁴	Other imports ⁵	Total imports ⁶	AVC production ⁷	Australian demand
1Q	[CONFIDENTIAL]	4,186.33	7,084.33	[CONFIDENTIAL]	35,000	[CONFIDENTIAL]
2Q	[CONFIDENTIAL]	3,757.80	4008.07	[CONFIDENTIAL]	35,000	[CONFIDENTIAL]
3Q	[CONFIDENTIAL]	8,137.76	5,441.19	[CONFIDENTIAL]	35,000	[CONFIDENTIAL]
4Q	[CONFIDENTIAL]	6,004.79	3743.19	[CONFIDENTIAL]	35,000	[CONFIDENTIAL]
Total	[CONFIDENTIAL]	22,086.68	20,276.78	[CONFIDENTIAL]	140,000	[CONFIDENTIAL]

A close examination of the surrounding facts will show that any material injury alleged to have been suffered by the Applicant cannot be attributed to an increase in imports of PVC from

³ Source – LG/LGI's Exporter Questionnaire.

⁴ Source - ABS. A large proportion of the data reported no country of origin, so it is considered likely that imports from Thailand had a larger overall presence in the Australian market.

⁵ This is an estimate calculated by using the ABS total import data and deducting LG's imports and Thai imports.

⁶ Source - ABS

⁷ Source - the Application.

Korea. Based on its own figures it is apparent that Korean imports have made no difference to the factors causing injury which the Applicant alleges to have suffered. The factors causing any injury to the Australian industry are pre-existing and continuing.

Without a change in circumstances caused by Korean imports, Korean imports cannot be blamed for any injurious situation in which the Applicant finds itself.

D The “injured” Australian industry must be properly identified

Section 269TG of the Act provides that for a dumping notice to be published the *Australian industry producing like goods* must be materially injured or otherwise threatened with material injury.

According to the Consideration Report, AVC is the Australian industry which produces like goods. This is not disputed. However it is incorrect to identify all of AVC's functions as that of the Australian industry producing like goods. AVC is also an importer and therefore a reseller of like goods from third countries. Our inquiries indicate – and previous Australian Customs' reports confirm - that the most likely source of these imports is Taiwan. The activities it undertakes in this role cannot be considered to be the activities of the Australian industry producing like goods, any more than can the importation of LG's PVC. A distinction between these two functions must be drawn for the purpose of the injury analysis.

The decrease in sales volume - as identified by the Applicant itself - "*largely reflect[s] the fall in imports by the Applicant*".⁸ The decrease in the Applicant's market share is similarly described as "*reflecting a fall in imports by the applicants [sic] compared to increase of Korean imports over the same period*".⁹ None of these can be correctly identified as material injury to an Australian industry for the purposes of Section 269TG. The imported goods are not produced in Australia.

⁸ Consideration Report Number 187 page 14
⁹ Consideration Report Number 187 page 15

Australian Customs needs to take care in this regard. AVC's reduced imports of PVC into Australia cannot contribute towards a determination of material injury to the Australian industry producing like goods.

This is particularly relevant to the alleged loss of sales volume and loss of market share. None of the information provided by the Applicant indicates that there was a loss of sales of its Australian-produced PVC. This will be discussed in greater detail below. However, as the loss of sales of imports cannot rightly be said to be relevant material injury for a dumping investigation, neither can its flow-on effects, such as the related reduction in revenue, profitability and returns on investment.

This is a crucial matter, which Australian Customs should deal with carefully. However, it is submitted that in view of this distinction, the Applicant – in its capacity as the Australian industry producing like goods - has not suffered any volume-related material injury as a result of the importation of Korean PVC.

E A no-injury conclusion has already been made

The circumstances identified by the Applicant as causing the alleged material injury have already been assessed by Australian Customs as being non-injurious.

As has been mentioned above, until March 2010 dumping measures were in place against imports of PVC from Korea. These measures were revoked on the basis of the findings arrived at by Australian Customs in *Trade Measures Branch Report to Minister No. 151* ("the Review").

The Review found that:

- it was likely that exports of PVC from Korea to Australia would recur in small volumes;
- it was likely that exports of PVC from Korea would be at dumped prices; and
- it was not likely that exports of PVC from Korea at dumped prices would lead to the recurrence of material injury.

This latter finding was supported by the following factors:

- 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.*
- Any future Korean exports, even at dumped prices, would need to compete in Australia with a wide range of other, well established import sources, and with the Australian PVC industry. Korean PVC would not necessarily become a favourable supply option for Australian importers if anti-dumping measures expired.

The Consideration Report indicates that exports of PVC from Korea did recur, and AVC's imported products lost sales volume, rather than the locally produced product. As well as that, other well-established import sources remain in the market (and – as we point out below – these have been at lower prices than those of LG Chem). This is exactly what the Review predicted would happen after the expiration of the measures. Proportions of PVC began to be imported from Korea and the amount of PVC imported by AVC – as opposed to PVC produced by AVC – decreased. At the same time, AVC has continued to produce and sell its product in Australia at maximum capacity.

The circumstances referred to by Customs in the Review have come about. These were the circumstances relied upon to discontinue the measures against Korea. In that the test of discontinuation is a higher test than the test for initiation of an investigation, LG is concerned about the validity of the initiation and calls upon Australian Customs to recognise this in its continued investigation. LG submits that the investigation should be terminated, if not now than at the soonest point that termination becomes the evident outcome. We now wish to explain this submission in more detail.

The legal test for determining whether pre-existing measures should be continued is significantly opposed to the legal test applicable to the initiation of a dumping investigation. The decision not to continue measures requires greater consideration, and the application of tougher tests, than the test for initiation of an investigation.

Section 269ZHF(2) explains the circumstances in which 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.

The CEO must be satisfied that the expiration of the measures will not lead, or will not be likely to lead, to the continuation or recurrence of material injury. In the Review the CEO was satisfied that no such injury was likely to continue or to recur following the expiration of dumping measures on PVC from Korea. (This finding was made even on the basis that Korean PVC would be - or might be - dumped in the Australian market.)

On the other hand, Section 269TB(1) of the Act provides that 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*

Deciding whether there appear to be "reasonable grounds" for the publication of a dumping duty notice requires a consideration of whether there are reasonable grounds for the publication of such a notice under Section 269TG. The publication of a dumping notice under this section requires a finding that "*material injury to an Australian industry producing like goods... is being caused*" because of the importation of dumped product. Therefore, in order to initiate an investigation, the CEO must be of the opinion that there appear to be reasonable grounds on which a finding of such material injury may be based.

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.

We submit that the CEO cannot be satisfied that material injury was not likely to recur (as was the case in the Review) and also consider that there appear to be reasonable grounds on which to find material injury exists (in the case of the initiation of this investigation) *where the facts assumed for the purposes of being satisfied that material injury was not likely to recur are the same facts as were in existence at the time of the decision to initiate.*

It is considered that one possible factor that might have swayed the CEO to initiate this investigation was the "dramatic" (to use the theatrical term adopted by the Applicant) increase in imports of PVC from Korea following the expiration of the measures. However, this increase is only "dramatic" relatively speaking, when compared to the "negligible" volume of imports from the same country in 2009. However imports overall have not "dramatically" increased – in fact they have decreased.

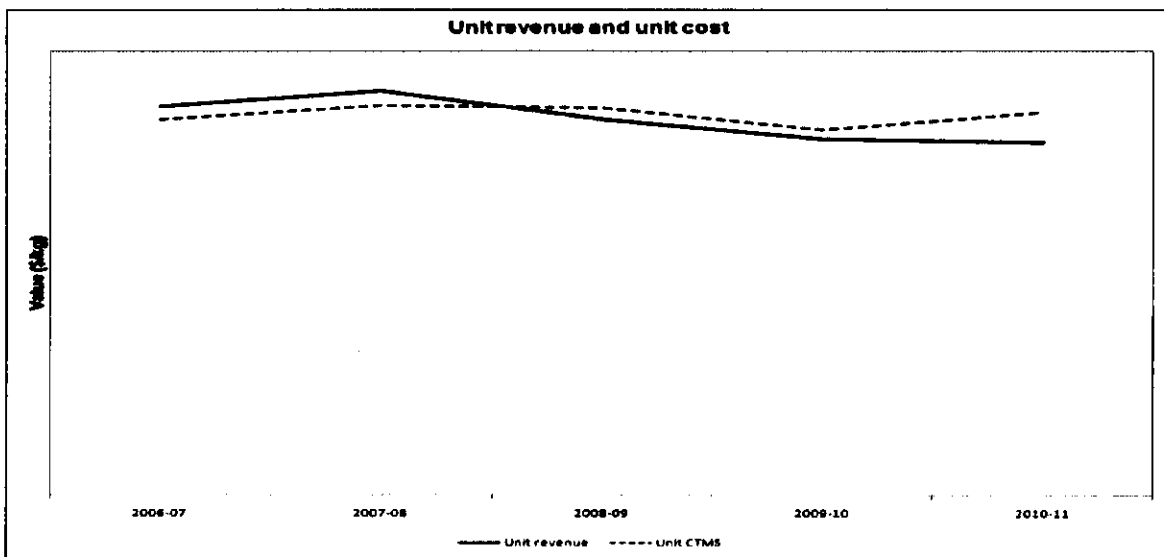
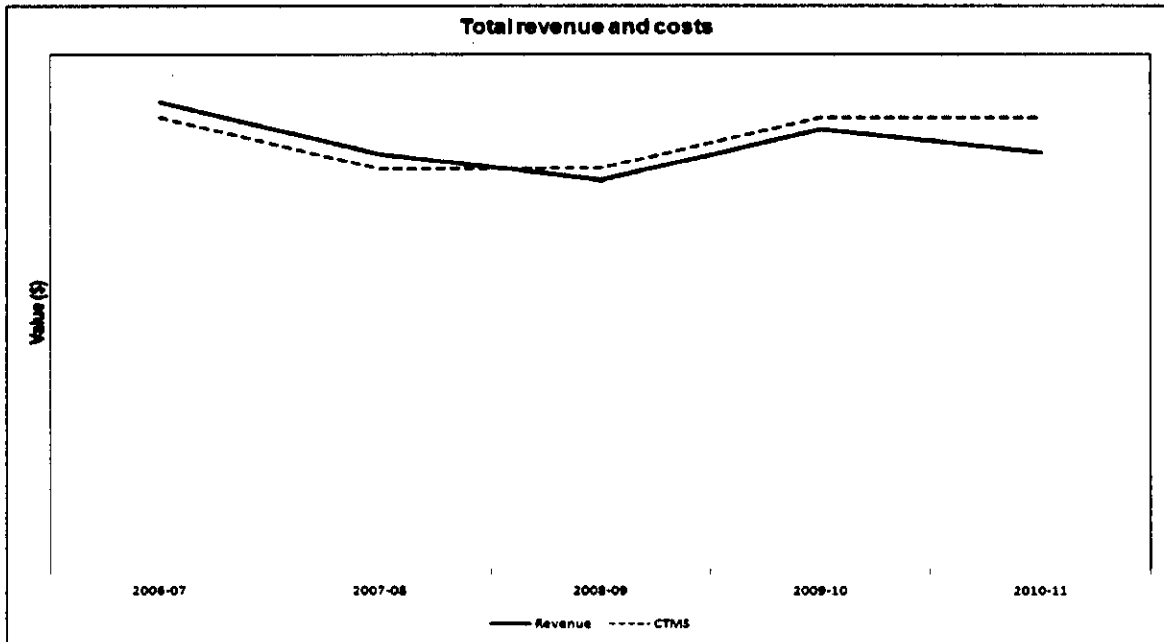
It is therefore submitted that the information provided by the Applicant in the Application was not sufficient to establish reasonable grounds on which a finding of material injury can be made. Those allegations came too soon after a decision had already been made by Customs that the circumstances the Applicant now faces could not lead to a recurrence of injury. In effect, the allegations made by the Applicant have already been examined by the CEO. The CEO was satisfied that the allegations – if later made – would not constitute a recurrence of material injury to the Australian industry.

F Prices were depressed before imports from Korea

Upon reviewing the allegations made by the Applicant, it is clear that the specific instances of material injury alleged to have occurred cannot be claimed to be as a result of the importation of PVC from Korea. In this and the following sections we analyse the information on which those allegations were made.

The Applicant alleges that imports of PVC from Korea have caused both suppression and depression of its prices. However, it is readily apparent that such injury has not been caused by LG's imports. This is borne out when regard is had to the actual situation in the market.

The following graphs are taken from International Trade Remedies Report No. 174 ("Report 174") regarding the continuation of anti-dumping measures against PVC exported from the United States of America. They relate to AVC's revenue and costs.



From these graphs, it is clear that AVC's cost to make and sell has been greater than its revenue – in both total and per unit terms – since early 2008. The negative margin between revenue and costs increased in 2009/10 and again, "slightly" in 2011.¹⁰ The measures on

¹⁰ Consideration Report, page 13

Korean imports were not lifted until March 2010 – by which time the per unit cost of production faced by AVC had already begun to rise.

Based on the information in the Application, the cost/revenue trend between 2009 and 2011 can be described as follows:

Table 2 – AVC's price variation v cost variation

Period	2009	2010	2011
Cost Variation Index	100	105.38	105.58
Price Variation Index	100	103.32	99.03

It is clear from this information that AVC's prices have been suppressed by competitive conditions since at least 2008/2009. This suppression cannot be a function of the more recent imports from Korea – dumped or otherwise. Rather, it must be due to a continuation of existing competitive conditions within the Australian market, and the way in which AVC chooses to address those conditions.¹¹ The facts demonstrate that these conditions have not changed since the discontinuation of the measures against Korean imports, and therefore any injury that AVC has suffered since then cannot be due to Korean imports. No change in circumstances is demonstrated.

G Korean imports have had no relevant price effect

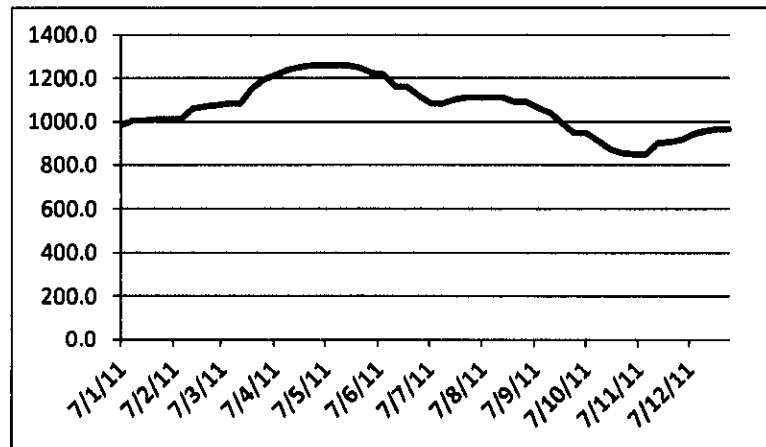
It should not be incumbent on LG to explain why the Applicant has been unable to lift its price, nor why the price fell in 2011. As already demonstrated, Korean imports have not changed the conditions within which AVC has been operating.

¹¹ Another way that AVC chooses to address its lack of competitiveness has been to import low-priced PVC from Taiwan – a practice which itself contributes to its own injury, as further explained in this Section G (below).

Nonetheless, it should be apparent to Australian Customs, from its previous investigations, why this is so. Australian Customs has noted that:

- *The Australian PVC market is integrated into the Asian regional market i.e. the prices of the Australian PVC market follow Asian prices, with supplier prices to Australia on par with regional prices. Australian selling prices are typically set with reference to the Asia prices published by Hariman Chemsult Ltd and Chemical Industry News and Intelligence (ICIS.Com);*
- *AVC takes account of Asian regional prices, generally pricing to parity, once adjusted for differential delivery and other costs.¹²*

Imports of PVC into Australia have followed the trends of the Asian spot-price. The following graph – based on [CONFIDENTIAL TEXT DELETED], represents the trend in the Asian spot-price (in USD) during 2011:



As you will observe, the Asian spot price for PVC fell by 33% between May and November 2011 – bottoming out at around USD850 per MT. This is the lowest the Asian spot-price has been since late 2009. AVC has a policy of pricing its product at parity with the Asian spot-price. We submit that this is the important underlying cause of both its complained price depression/ suppression and the fall in its “Price Variation Index” in 2011.¹³

¹² Report 151 page 30

¹³ The key point here – as we reiterate in this submission – is that AVC cannot blame the mere coincidence of Korean exports with its injury if its pricing is not cognisant of or is not concerned with the pricing of Korean exports. This is even more pronounced when the price of the Korean exports is not at

The trend in the Asian spot-price affected all prices in the Australian market:

Table 3 – weighted average import prices per MT vs average Asian spot price per MT

2011	LG/LGI imports ¹⁴	All imports ¹⁵	Asian spot price ¹⁶	Thai imports ¹⁷
Q1	[CONFIDENTIAL]	1,054.87	1056.60	1,054.55
Q2	[CONFIDENTIAL]	1,148.40	1226.70	1,122.58
Q3	[CONFIDENTIAL]	1,103.45	1074.30	1,079.73

From this table it is evident that the prices of LG/LGI imports over the three quarters shown in Table 3¹⁸ were well above:

- the average import prices;
- Thai import prices; and
- Asian spot prices.

Thus, other sources of imports into Australia were more competitively priced than LG, which all followed the trend established by the Asian spot price. As noted above, the Australian industry

the level that AVC uses as its pricing reference point, and where other imports are available at lower prices.

¹⁴ Source – LG/LGI's EQ.

¹⁵ Source - ABS.

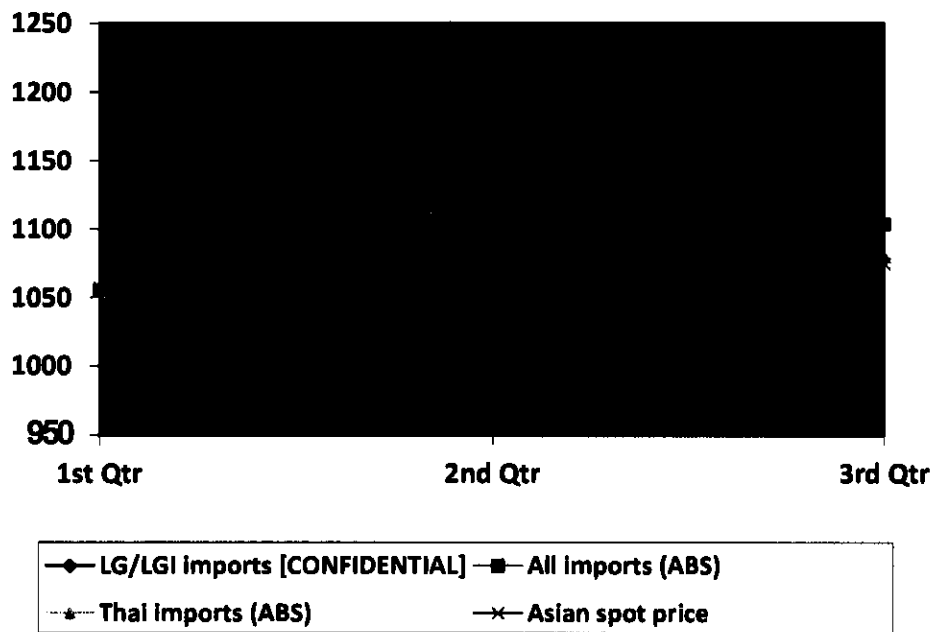
¹⁶ [CONFIDENTIAL TEXT DELETED]

¹⁷ Source - ABS

¹⁸ Q4 data has not been included because the available ABS data appears to be incomplete. It has not counted for any Korean imports and a substantial part of Thai imports. It is possible that those imports were accounted for under "confidential" statistics however given that Korean and Thai imports are well captured in other quarters one could assume that they would not have been recorded as confidential in the last quarter. On that basis one might conclude that the ABS data also did not account for some other sources of imports in the last quarter.

cannot supply the full Australian market for PVC. If Korean imports had not been present in the market, then imports would have been brought in from other sources at the same, or lower, costs throughout 2011.

This is demonstrated by the following chart of the average prices shown in Table 3:



Another key indication that LG's exports have not created injurious market conditions for the Australian industry can clearly be observed in its practice of importing PVC from Taiwan. To the best of our client's knowledge, 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 AVC's buy price of PVC from Taiwan is a driver of its sell price of both that PVC and of the PVC it produces.

There are two cogent reasons for this. First, AVC cannot possibly have a two-tiered pricing structure for the same product. Secondly, AVC's buy price of PVC from Taiwan informs AVC of the prices at which PVC is available to its customers. As Customs has previously found, AVC prices to parity with Asian regional prices. Thus, it cannot have been LG's exports that create the price basis AVC has been using. Rather, it is its own perfect knowledge of its own Taiwan

buy prices – and of Asian spot price – each of which has been lower than LG’s export prices – that have been AVC’s relevant benchmark. To blame LG’s higher prices as a cause of injury, or to say that the injury so caused is material, by waving around a few competitive quotations (which neither our client nor ourselves will have the opportunity to inspect or contest) is an entirely incorrect and inadequate excuse for the position in which it finds itself. Therefore, even if AVC 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 AVC itself, and by the way this affects its own pricing.

We would also like it to be noted that a sharp downward price-cycle has a greater negative effect on AVC than its competitors. The reason for this – as advised to us through discussions with market participants - is that although AVC has a policy to price at parity with the Asian spot-price, its price setting mechanism lags behind those prices. This occurs because AVC, unlike many of its competitors, does not have the ability to produce its own vinyl chloride monomer (“VCM”). VCM is the primary raw material required for the production of PVC. AVC is required to purchase its VCM at market prices. This locks in the major cost-component of AVC produced-PVC at a level which reflects the conditions in the market months before the sale of the PVC. As a result, when the regional price of PVC falls rapidly over a short period of time, AVC will have higher prices than those of its Asian competitors, because it needs to cover the cost of VCM purchased at an earlier time. Thus AVC will appear to be less competitive in the context of the Australian market. Alternatively, when the price rises, AVC will appear to be more competitive.

The foregoing indicates that any inability that AVC may have suffered in lifting its prices can be seen as a result of lower priced imports than those of LG/LGI; the Australian industry’s policy of Asian spot price parity, and the prices of its own imports; and its policy of locking in forward prices, but then being unable to increase them when conditions change. These factors – and the general economic conditions which created the fluctuations in the Asian spot price – can therefore be seen as reliable and logical causes of the Applicant’s injury. The relatively small volume of imports from Korea – which did not increase the overall level of imports in the market, and which were made at prices above the prices of other more competitive sources of PVC - cannot be blamed.

AVC is (and has been historically) unable to lift its price above its costs. In 2011 the indicator by which it sets its prices has fallen sharply. Again, this cannot be attributed to the introduction of Korean PVC into the Australian market. It is simply a function of the prevailing market conditions and how AVC has traditionally responded to them.

Accordingly, it is submitted that there are no grounds on which price suppression and/or depression or decrease in revenues can be claimed to be a result of imports from Korea. No change in circumstances as a result of imports from Korea can be demonstrated.

H There has been no volume-related injury to AVC

The Applicant alleges that the imports from Korea caused a reduction in sales volume and market share. We have reviewed the information in the Application with regard to the Australian market. The Applicant's claim does not appear to be borne out by the information provided by the Applicant.

In this regard, please refer to the below table. We have adapted this information in the Application to make 2009 the base year so that it better reflects the period of injury for the determination:

Table 4 - Indexed table of sales quantities

	2009	2010	2011
AVC sales	100	102.64	101.59
Imports from Korea	100	111.16	1,665.87
Other imports	100	114.42	93.87
Total imports	100	124.80	117.90
Total market	100	109.08	106.24

Based on this information, the following observations can be made:

- The 2011 volume of Korean imported AVC is only "high" in comparison to the "negligible" levels of PVC imported in the base year of 2009. In real terms the quantities of PVC imported from Korea during 2011 are reasonable in market terms. Based on the values in the Exporter Questionnaire it is clear that they accounted for [CONFIDENTIAL TEXT DELETED]% of Australian market demand for PVC.
- In comparison, AVC's current production capacity of 140,000 tonnes is sufficient to meet 68% of the Australian market demand. AVC has stated that it was operating at full capacity when LG began to import commercial levels of PVC into Australia.
- AVC's sales were actually greater in 2010 and 2011, when LG was importing PVC into Australia, than compared to 2009, when LG was importing "negligible" quantities of PVC into Australia.
- In contrast, during the same period the total market fell by 2.84% when compared to its 2009 levels. The total market index in Table 4 includes both AVC-produced and AVC-imported PVC. Thus, the reported 1.05% decline in AVC's sales in 2011 was disproportionate (much less) than the total market decline. The bulk of this decline must be a result of the fall in "other imports".
- As indicated above, based on information from the ABS, overall imports fell by 6%. This is consistent with the information included in Table 4.
- It is therefore unclear why AVC alleges it suffered a decrease in sales volume or market share. It is true that they have decreased slightly, but less so than the entire market did in the same period. More tellingly, these sales have not decreased below the level they were in 2009, when there were very limited imports of Korean PVC into the Australian market.

If anything can be read into these figures it is that the introduction of LG-produced PVC into the Australian market has had no effect on the sales or market share of AVC's Australian-produced PVC. To the extent there was any change in the sales of the Applicant - assuming that those sales were of the Applicant's Australian-produced PVC - that decline was neither material nor injurious. The Applicant suffered a small fall in sales in 2011 as compared to 2010 - sales in

the market as a whole suffered a bigger fall. This is clearly in line with the *"normal ebb and flow of business"*.

At the same time, it is clear that, if the increase in imports from Korea did have any effect on sales, it has been on the sales of "other imports". The quantity of "other imports" sales has decreased materially as the quantity of Korean imports increased. We would note that the decline in sales from "other imports" is greater than that suffered by the Applicant. Therefore, we have to doubt the validity of Australian Customs' statement that *"this increase in the market share has been at the expense of AVCs sales of import PVC and, to a lesser extent impacted by on the share held by other importers"*. If anything, the information available points to the inverse conclusion.

It is unknown to what degree AVC's imports of PVC have featured in its allegations of loss of sales volume and market share. Once again we would note that these cannot rightfully be said to be injurious to the Australian industry because sales of PVC imported by the Applicant cannot be said to be sales of PVC produced by the Australian industry.

We submit that there are no grounds for the allegation that imports of PVC from Korea have materially injured the Australian industry through reduction of market share or sales volume.

I AVC has not suffered injury through reduced production

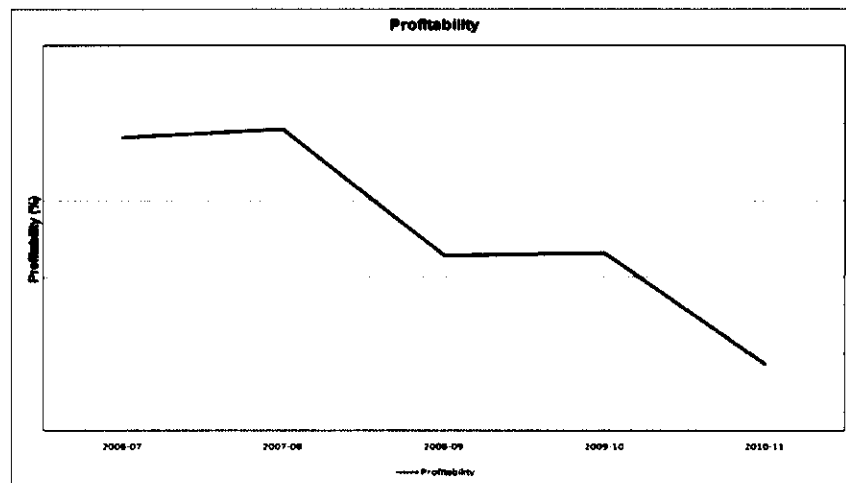
It is also unclear why "reduced production" has been listed as a form of material injury suffered by the Australian industry. It is noted in the application that AVC's facility has been operating *"at close to full rates"* and that the only impact in terms of sales volume has been at the *"expense of AVC's sales of imported PVC"*.

As noted – imported PVC is not produced in Australia. To the extent that AVC imported PVC it cannot be claimed to be part of the Australian industry producing like goods. Therefore it is both semantically and legally incorrect to claim that material injury in the form of reduced production volumes has occurred as a result of imports of PVC from Korea.

We submit that the allegation that imports of PVC from Korea have materially injured the Australian industry through reduced production volumes is erroneous and cannot be supported in law or fact.

J Any loss of profit is not as a result of Korean PVC imports

AVC has traded unprofitably over the analysis period. This continues a trend which was evident as long ago as in 2008. The following graph from Report 174 illustrates this trend:



We note that the Consideration Report explains that this trend increased in the latter months of 2011.

The foregoing analysis demonstrates that imports of PVC from Korea have not caused material injury through:

- price suppression, depression or undercutting or reduction in revenue;
- reduced sales volume or market share; or
- reduced production volumes.

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. Without these other features there can be no causal link between the imports under investigation and the claimed fall in profits.

Further, to the degree that any fall in profits is a result of AVC's choice not to import PVC from Taiwan, this cannot be included as "material injury to an Australian industry producing like goods".

We do not have a detailed knowledge of AVC's accounts or its business. We are certainly unaware of the success or otherwise of the non-PVC facets of that business and cannot comment on how they may have contributed to this profit outcome. However, we would note that the sheer level of unprofitability identified by AVC in its Application cannot possibly be attributed to LG's imports of PVC in all of the circumstances we have identified in this submission. A causal link is simply not apparent.

K Conclusion

The current investigation is the latest in a long-line of anti-dumping allegations made by the Australian industry. Indeed, anti-dumping measures have been imposed on imports of PVC from no less than 18 countries from as far back as 1991.¹⁹ Currently the only dumping measures imposed on PVC are on imports from Japan and the United States of America.

The Australian industry has been protected from major competition for the last twenty years. It seems to LG that the Australian industry has used anti-dumping "protection" to such an extreme degree that it has now reached a position of being insensitive to import competition.

The Australian industry has not directly responded to LG's renewed import activity in any way which might attract a causal nexus between those imports and any injury it claims to have suffered. AVC has a policy of pricing at the Asian spot price. It probably does this in order to retain customers who might otherwise be attracted to do business with exporters that offer PVC resin to the Australian market at those levels.

¹⁹ Argentina, Brazil, Israel, Mexico, Taiwan, United States of America, Hungary, Poland, Korea and Singapore, Canada, China, France, Japan, Norway, Romania, Saudi Arabia, Thailand.

However, LG has not offered PVC at those levels. LG is fully cognisant of the Applicant's proclivity to appeal to Customs for "dumping" barriers to be erected against its competitors whenever a new entrant commences to supply the Australian market. Therefore, LG has priced its sales of PVC to Australia at reasonable and responsible levels, and always above Asian spot price levels. The evidence shows that other export sources must have been making price offers into the Australian market at levels much lower than those of LG. In these circumstances the elements of "action" (dumped prices) and "reaction" (a response to those dumped prices leading to financial harm) are not apparent. These elements are absolutely necessary to establish the requisite causal link in cases such as this.

Our client strongly urges Australian Customs to accept that no action may be taken against LG's exports without a relevant connection between those exports and the Applicant's financial situation. This seems self-evident, but is definitely worth repeating. Australian Customs should recognise that the Applicant's claim is a convenient fabrication. Years of protection have convinced the Applicant that imports have no place in the Australian market, and that the mere coincidence of its poor financial performance and increasing exports from a particular exporter is enough to justify the cocooning comfort of protection from its competitors.

The action of LG simply exporting PVC to Australia is not being met with a reaction by the Applicant. The Applicant prices its PVC with other stimuli in mind. No change in the Applicant's circumstances can be tied to LG's exports of PVC.

On behalf of LG Chem, we submit that exports of Korean PVC to Australia:

- have not caused price suppression, price depression, price undercutting or a reduction in revenue to an Australian industry producing like goods;
- have not reduced the sales volume or market share of an Australian industry producing like goods;
- have not reduced production volumes of an Australian industry producing like goods.

Accordingly, exports of Korean PVC to Australia are not responsible for any loss of profits and reduction in return on investment of the applicant.

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.

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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 once it has reached the same conclusion.

Daniel Moulis
Principal

Alistair Bridges
Solicitor