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31 March 2006

Mr. Andrew Rice
National manager
Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2600

Dear Mr. Rice,

Subject: Joint study into the operation of the anti-dumping system

This submission to the joint study is made on behalf of Australian Vinyls Corporation Limited ("Australian Vinyls"), the sole Australian manufacturer of polyvinyl chloride ("PVC"), at Laverton in Victoria.

INTRODUCTION

PVC is a commodity product traded in large volumes around the world. The Australian market for PVC is supplied by Australian Vinyls and imports which, over the past decade, have been sourced from over 30 countries.

Australian Vinyls has been an applicant for anti-dumping action against dumped PVC and, at present, anti-dumping measures apply to PVC imported from USA, Japan, Israel, Hungary, Thailand and Korea.

The maintenance of the anti-dumping system is crucial to Australian Vinyls and Australian manufacturing industry. However, the legislative and policy framework needs to be supported by the operation of administrative practices which can deliver timely and effective remedial action. Over recent years, in particular, a number of current practices have undermined confidence in anti-dumping administration. As an active member of the Trade Remedies Task Force ("TRTF") group Australian Vinyls understands that this view is shared by manufacturing industry in general.

Having said that, Australian Vinyls acknowledges Departmental efforts to address industry's concerns in recent times in regard to China, and a willingness to work with industry on other issues such as unsuppressed selling price and profit component concerns. Indeed, Australian Vinyls welcomed a

preparedness by Customs recently to consider fresh argument in regard to profit in the USP.

Australian Vinyls welcomes the opportunity to contribute to the joint study through this paper and is also fully supportive of representations from the TRTF.

The following is a list of issues and concerns elaborated hereunder:

(A) Initiation of a dumping case, in particular:

- (i) Information requirements
- (ii) 'Normal Value'
- (iii) 'Export Price'
- (iv) Dumping margins
- (v) Feedback during screening process (*prima facie* stage)
- (vi) Continuity between the dumping liaison unit and investigation team

(B) Consistency Issues

(C) Transparency of data / Public File

(D) Due Allowances

(E) Country Hopping

(F) Drawback of dumping duties

(G) Accounting Standards

ISSUES

(A) Initiation of a dumping case

(i) Information requirements

- At a past meeting of the TRTF Customs made available its template of internal instructions for initiation/rejection of applications. While useful in understanding Customs screening process at *prima facie* lodgement stage, it would assist if the same document could be adapted and made available as a checklist for applicants pre-lodgement.
- In relation to the screening process, it remains a concern that in recent years Customs has invariably sought additional information from the applicant, beyond that which is asked of the application, in order to conduct some form of verification. In particular, source documentation/information is often requested to support Appendix A6 cost to make and sell data for the purpose of verification, which data is usually put to test in the course of an initiated inquiry.

The adoption of various verification processes at the screening stage invariably results in an extension to the 20 days *prima facie* period, adding to delays in the provision of any subsequent remedial action.

- In addition, Customs will use the provision of additional (requested) information, however trivial, as an excuse to extend the 20 day *prima facie* screening period. Australian Vinyls understands that applications found to be deficient in critical assessment data may lead to a re-start of the 'time clock'. However, it appears that no reasonableness test is applied where the additional information provided is incidental or has little impact on the ability of the officers to make a judgement on the merits of the application.
- Various appendix data is called for in the application, with some common data requirements. Company reporting systems invariably mean that some adjustments are often required to present data in the required appendix format. As a result, minor differences may occur between appendix data which might otherwise be expected to match. Customs is being overly pedantic in seeking exact data matches when a reasonable tolerance test should suffice.

(ii) 'Normal Value'.

- Obtaining satisfactory normal value information is often a difficult task for applicants. While Customs is usually sympathetic to these difficulties the expectation and satisfaction of some officers is unreasonably high.

In particular, historical data covering the whole of the claimed investigation/injury period is being insisted upon when it is sometimes impossible to obtain. At the *prima facie* stage Customs ought to be satisfied with evidence of dumping from contemporary normal value data.

- Particular complexities arise in obtaining Chinese normal values. In many cases 'like' goods are simply not sold on the domestic market in China. In the absence of Chinese price and cost information Customs ought to exercise some degree of flexibility and show a preparedness to accept, at *prima facie* stage, some form of soundly and reasonably based surrogate information. Of course, in keeping with legislative provisions surrounding the determination of normal value, all applicant claims can be fully tested during the course of a subsequent inquiry.

(iii) 'Export Price'.

- Confidentiality restrictions and generic tariff descriptions often hinder an applicant in the identification of export price, the volume of dumped imports and assessment of market share data.

In particular, where it is obvious that confidentiality concerns are not materially compromised, Customs ought to provide assistance in this area with the provision of basic information, sufficient for an application at *prima facie* stage. While a degree of assistance is sometimes provided, it is often inconsistently applied among officers.

- An application often needs to establish an export price from selling price information (of imported goods) in the Australian market. This brings with it some degree of guesswork as to an importer's on-costs beyond the FOB export point. The acceptance or otherwise of this data requires Customs to apply a degree of reasonableness in acceptance of an applicant's best endeavours in this regard.

Where a product has some anti-dumping 'history' Customs checks verified historical data against contemporary information provided by the applicant. Discrepancies found by Customs can lead to rejection of an application without feedback to the applicant as to the specific nature of the problem. While mindful of confidentiality concerns, Australian Vinyls sees no reason why Customs could not share some indicative data to assist an applicant in understanding where miscalculations have resulted in an application rejection.

(iv) Dumping margins.

- The above concerns regarding normal value and export price, where data availability is limited, is further exacerbated when claimed dumping margins are under 10%. In these circumstances there is a perceived reluctance by Customs to initiate a case. Applicants are being challenged with additional substantiation tests which cannot always be met, thereby acting as a trigger for Customs to reject the application.

Customs needs to apply a greater degree of reasonableness and not be shy about initiation when claimed margins are less than double digit. An initiated inquiry can fully test an applicant's claims.

(v) Feedback during screening process.

- The level of feedback provided to applicants during the *prima facie* screening period varies between officers. Particular officers are known to provide no communication at all, a situation Australian Vinyls has experienced before an application was rejected.
- Customs should be encouraged to inform the applicant of progress through the *prima facie* period and convey areas of concern at the earliest possible time in order to afford the applicant an opportunity to address queries or issues on a timely basis.

(vi) Continuity between the Dumping Liaison Unit and the Investigation team.

- It is not uncommon for applicants to run a draft application through the DLU, or otherwise seek guidance from this group on critical issues such as 'like goods' and normal value data preparatory to formal lodgement of an application with the investigation group. Industry has an understanding that the DLU is the first base for any queries or issues an applicant might have up to this point.
- However, experience has shown that there is no continuity between the DLU and the appointed investigation team. Queries satisfied at the DLU are often repeated by the investigation team. Expected time savings in this regard are not achieved. In addition, there are inconsistencies between the application standards applied by the DLU and those of the investigation team, as well as crucial decision making. In short, the investigation team has no regard for any preliminary work undertaken by the DLU.
- For whatever reason, if an applicant has had recourse to the DLU then there needs to be greater integration of this group with the process of subsequently establishing a *prima facie* case.

(B) Consistency Issues

- In keeping with certain points expressed above, inconsistency in applied standards and decisions/outcomes are key concerns for industry applicants. In addition there is clear indication that different attitudes to Australian manufacturing industry exists between investigation groups.
- Some officers have:
 - developed mindsets over time which are not open to fresh argument; and
 - a penchant for rejection or arriving at negative outcomes where discretionary powers could be exercised to otherwise favour industry applicants.
- A position higher than that of the case director could be established to review decisions at the *prima facie* stage, at Statement of Essential Facts stage and final report stage, particularly with regard to decisions arising from the exercise of discretionary powers. This would allow an 'independent' contact point should parties have a concern as to the handling or conduct of a case.

(C) Transparency of data / Public File

- The timely placement of exporter and importer verification visit reports allows for timely responses, if considered necessary, from the industry applicant.

It is becoming increasingly the norm for exporter visit reports to be placed on the public file only a few days before the due date for release of the Statement of Essential Facts, leaving no time for debate or to address queries from the industry applicant. Australian Vinyls sees no reason for the consistent delays in this regard, especially when it is Customs' practice for the overseas visiting team to 'sign off' on the accuracy of the exporter's reports before leaving their home country. Timing delays are seen as a deliberate ploy by both Customs and exporters/importers to gag further debate.

The exporter visit reports need earlier exposure on the public file than is currently the case so that key points can be established for consultation with applicants.

- Exporter and importer submissions and Customs' visit reports which reach the public file invariably contain large chunks of omitted text without an obvious attempt to supply a non-confidential summary. Customs should impose greater clarity in this area and insist upon the provision of more informative explanation in the absence of claimed confidential information.

(D) Due Allowances

- As a general observation, Customs too readily accepts due allowance claims by exporters without applying sufficient investigative rigour and a 'reasonableness' test. Officers are too focused on verification and lack investigative endeavour when, in some instances, claims are at odds with normal business practice.
- By way of actual case example:
 - Customs accepted that a royalty/management fee for the use of patent production technology was only applicable to domestic sales in the exporting country. The fee was said to be not applicable to export sales/production.
 - Separation between domestic and export sales is not a consideration for a licensee. While Customs reported verification of the exporter's licence agreement the fee arrangement was clearly not challenged as to its basis and rationale.
- In some exporting countries 'creative accounting' move costs from exported goods onto domestic goods in ways which clearly contradict wider industry practice in Australia and elsewhere in the relevant industry. An improved willingness to discuss these issues with local manufacturers, industry consultants and to rely on independent industry reports, where available, would improve the process used by Customs. Unfortunately

there appears to be, in some cases, a leaning towards accepting input from exporters or their agents as more relevant than wider industry practice and common sense analysis.

- The basis for some contentious due allowance claims and the rationale for acceptance (or otherwise) ought to receive greater transparency in public file documents.

(E) 'Country Hopping'

- The practice of 'country hopping' (where importers switch their source of supply to a new export country immediately following the imposition of dumping measures) is often a deliberate circumvention ploy which continues to frustrate (and cause injury to) Australian industry.

Unless an application for country hopping action is lodged before the finalisation of the initial inquiry Customs requires a new application for a new inquiry. In short, an applicant must go through the same lengthy process of application and inquiry without any fast track process to counter country hopping. Accordingly it could take up to a further 12 months before the situation is remedied.

- Provision exists under Section 269TAG of the Customs Act for the Minister to initiate an inquiry without the need for a formal application. Time and expense savings could be achieved in not having to prepare and lodge a new application. The Minister should be encouraged in this regard.
- Under these circumstances material injury need not be re-visited and the usual inquiry period could easily accommodate a shortened timetable.

(F) Drawback of Dumping Duties

- Current arrangements allowing drawback of dumping duties subverts relief obtained through the imposition of anti-dumping measures. Penalties imposed on dumped imports which have been assessed as injurious to local industry can be refunded upon export of goods incorporating the dumped imports as an input to manufacture. The impact is either that :
 - it denies the supply opportunity to the local producer; or
 - alternatively, the local producer is forced to offer rebates to match the size of the drawback in order to retain supply or partial supply.
- When an applicant for anti-dumping measures has successfully demonstrated that it has sustained material injury from dumped imports, allowing drawback of the dumping penalty is a dilution of the Government's commitment to provide an effective anti-dumping system. It is simply bad policy.

- It is Australian Vinyl's view that the anomaly could be relatively easy to correct through regulation change. A regulation amendment could be made to prevent drawback on goods, subject to anti-dumping measures, which are used to modify, or are otherwise incorporated as inputs to produce finished goods for export.
- Moreover, the drawback system can operate as it has done in providing incentives for exporters without also encouraging imports of dumped goods at the expense of local industry. The drawback system and Government policy need not be compromised by repealing the drawback of dumping duties provision.

(G) Accounting Standards

- Customs is giving too much reliance and weight to financial accounts having been audited in accordance with the exporting country's generally accepted accounting standards. The accounting practices in some exporting countries (mainly Asian) do not reflect international standards or even acceptable practice, e.g. the appropriate treatment of foreign exchange losses.
- The same may be said for certain due allowance claims, already mentioned at (D) above.

Should you require clarification or further information please do not hesitate to contact Terry O'Neill, in the first instance, on telephone 03 8711 3780 or mobile 0413 430 570.

Yours sincerely,

Terry O'Neill
(on behalf of Australian Vinyls Corporation Limited.)