



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

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R E P O R T

*CUSTOMS ACT 1901 - PART XVB*

**INTERNATIONAL TRADE REMEDIES BRANCH**

**REPORT TO THE MINISTER NO.180**

**ACCELERATED REVIEW OF**

**DUMPING DUTY NOTICE**

**PTT POLYETHYLENE CO LTD**

**LINEAR LOW DENSITY POLYETHYLENE**

**FROM**

**THAILAND**

12 November 2011

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## 1. SUMMARY AND RECOMMENDATIONS

This accelerated review is in response to an application by PTT Polyethylene Co Ltd (PTTPE) seeking an accelerated review of the dumping duty notice applying to linear low density polyethylene (LLDPE) exported to Australia from Thailand.

The Australian Customs and Border Protection Service (Customs and Border Protection) examined information provided by PTTPE and other relevant information to determine if the dumping duty notice should be altered.

This report sets out the facts on which the delegate of the Chief Executive Officer (CEO) of Customs and Border Protection Service is basing his recommendations to the Minister for Home Affairs (the Minister) for the dumping duty notice applicable to LLDPE from Thailand.

### 1.1 Applicable law

Division 6 of Part XVB of the Act<sup>1</sup> enables affected parties to apply for an accelerated review of a dumping duty notice. The Division, among other matters:

- sets out the procedures to be followed by the Chief Executive Officer of Customs and Border Protection (CEO) in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the dumping duty notice unaltered or to alter the notice as appropriate.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection. After conducting a review of anti-dumping measures, the delegate must give the Minister a report containing recommendations<sup>2</sup>.

### 1.2 Recommendation

The CEO recommends to the Minister that the dumping duty notice be altered so as to apply to the applicant as if different variable factors had been fixed.

The CEO recommends that the Minister sign the attached schedule (**confidential attachment 1**) and sign the attached public notice (**confidential attachment 2**) to declare that the dumping duty notice in respect of LLDPE exported from Thailand be altered so as to apply to the applicant as if different variable factors had been fixed.

### 1.3 Findings and conclusions

Based on all available information the CEO has found that:

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<sup>1</sup> A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

<sup>2</sup> S 269ZG(1).

- the export price for LLDPE exported by PTTPE has been determined having regard to all relevant information<sup>3</sup> and
- the normal value for LLDPE exported by PTTPE has been established using domestic sales by PTTPE in Thailand<sup>4</sup> adjusted for comparison with the export price<sup>5</sup>.

Based on these findings, the CEO recommends to the Minister that the dumping duty notice for LLDPE from Thailand be altered so as to apply to the applicant as if different variable factors had been fixed.

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<sup>3</sup> Ss 269TAB(3)

<sup>4</sup> Ss 269TAC(1)

<sup>5</sup> Ss 269TAC(8)

## 2. INTRODUCTION

### 2.1 Accelerated review process

Division 6 of Part XVB of the Act deals with accelerated reviews of dumping duty notices.

Under section 269ZE(1), a new exporter can apply for an accelerated review of a dumping duty notice as far as it affects that exporter. A new exporter is defined in section 269T as an exporter who did not export goods covered by the dumping duty notice to Australia at any time during the period:

- (a) starting at the start of the investigation period covered by the original investigation; and
- (b) ending immediately before the day the CEO placed on the public record the statement of essential facts in the original investigation.

An application for an accelerated review must be in writing and contain:

- a description of the kind of goods to which the dumping duty notice relates; and
- a statement of the basis on which the exporter considers that the dumping duty notice is inappropriate so far as the exporter is concerned.

If the CEO is satisfied in respect of these matters the CEO must conduct such inquiries as the CEO thinks fit and report to the Minister within 100 days from the date the application was lodged.

The CEO may terminate the review if the CEO becomes satisfied that the exporter is refusing to cooperate with the review or is related to an exporter who was a selected exporter<sup>6</sup> in the original investigation.

After considering the recommendation of the CEO and the reasons for the recommendation, the Minister must declare the original dumping duty notice:

- remain unchanged; or
- have effect as if it had not applied to the applicant; or
- have effect as if it had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of duty payable by the applicant.

### 2.2 The original investigation

Anti-dumping measures were imposed on exports of LLDPE from Thailand on 3 December 2003, REP 67 refers.

On 23 September 2005, the variable factors were altered as a result of a review of the measures, REP 89 refers. On 3 July 2008, the variable factors were altered as a result of another review of the measures, REP 134 refers. On

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<sup>6</sup> As defined in S. 269T and per Ss 269ZE(2)

1 September 2008, the measures were continued for a further five years following a continuation inquiry into the measures, REP 137 refers

The current measures in regards to LLDPE exported from Thailand are due to expire on 3 December 2013.

### **2.3 The current application**

The CEO commenced this review following receipt of an application by PTT Polymer Marketing Co. Ltd (PTTPM). PTTPM is a trading company that exports LLDPE and also sells LLDPE on the domestic market in Thailand. The LLDPE that PTTPM sells is manufactured by PTTPE, an affiliated company. For the purpose of this application the CEO considers that PTTPE is the exporter.

Customs and Border Protection checked its import database and previous records and was satisfied that PTTPE met the definition of a new exporter<sup>7</sup>. The CEO was satisfied that PTTPE was not related to any selected exporter in relation to the application for publication of the dumping duty notice<sup>8</sup>.

The CEO was also satisfied in respect of the other conditions relating to an application for an accelerated review and commenced the review.

The CEO set a review period of 1 July 2010 to 30 June 2011 to assess normal values and export prices for this application.

### **2.4 Goods the subject of the review**

The goods in the application are the goods covered by the dumping duty notice described as linear low density polyethylene (LLDPE). LLDPE is a polymer of ethylene, in primary form, having a specific gravity of less than 0.94 grams per cubic centimetre.

The goods are classified within 3901.10.00, statistical code 01 and 3901.90.00, statistical code 06 in Schedule 3 to the *Customs Tariff Act 1995*. The rate of duty is free for LLDPE imported from Thailand in accordance with the Thailand Australia Free Trade Agreement (which was effective 1 January 2008).

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<sup>7</sup> As defined in S. 269T

<sup>8</sup> As per Ss 269ZE(2)

## 3. EXPORT PRICE AND NORMAL VALUE

### 3.1 Findings

- the export price for LLDPE exported by PTTPE has been determined having regard to all relevant information<sup>9</sup>; and
- the normal value for LLDPE exported by PTTPE has been established using domestic sales by PTTPE in Thailand<sup>10</sup> adjusted for comparison with the export price<sup>11</sup>.

### 3.2 Export price

The applicant stated it had never exported the goods to Australia. A list of products it intended to export to Australia was provided with the application. This list showed a range of LLDPE products all falling within the definition of the goods.

As PTTPE or any of its affiliates have not exported LLDPE to Australia, the CEO recommends that the Minister set an export price equal to the normal value calculated for PTTPE.

The CEO recommends that the one export price be set to cover all products of LLDPE exported by PTTPE at a free on board (FOB) cash price per kilogram (kg).

The export price for export sales of LLDPE to Australia by PTTPE, via its affiliate PTTPM, has been determined having regard to all relevant information.

Export price calculations are at **Confidential Attachment 3**.

### 3.3 Normal value

The CEO found that PTTPE's domestic sales of LLDPE were at arms length and in the ordinary course of trade.

Normal value for LLDPE exported by PTTPE has been established using domestic sales by PTTPE in Thailand adjusted for comparison with the export price.

Adjustments have been made for export inland freight and FOB expenses.

Normal value calculations are at **Confidential Attachment 3**.

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<sup>9</sup> Ss 269TAB(3), as sufficient information is not available.

<sup>10</sup> Ss 269TAC(1), sales in ordinary course of trade in the home market

<sup>11</sup> Ss 269TAC(8), adjusted to comparison with the export price

## 4. NON-INJURIOUS PRICE

### 4.1 Findings

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.

The calculation of the non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping<sup>12</sup>.

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

The CEO used the most recently available information to establish a non-injurious price at the FOB level.

The non-injurious price was above the normal value for PTTPE.

Non-injurious price calculations are at **Confidential Attachment 3**.

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<sup>12</sup> The non-injurious price is defined in s.269TACA.

## 5. EFFECT OF THE REVIEW

As a result of this review, the CEO recommends that the original dumping duty notice be applied to the applicant but with fixed specified different variable factors relevant to the determination of the duty payable by the applicant.

The export price determined for PTTPE is equal to the normal value established for PTTPE.

The normal value is below the level of the NIP and the operative<sup>13</sup> measure for LLDPE exported by PTTPE is the normal value established for PTTPE.

The amount of interim dumping duty imposed on exports by PTTPE will be zero. Should PTTPE export at a price less than the determined export price then interim dumping duty will be payable on the difference between the determined export price from this review and the actual export price of those exports.

The proposed anti-dumping measures for PTTPE are at the level of the measures applicable for all other exporters of LLDPE from Thailand. The level of the measures has not been reduced by the lesser duty rule as the normal value is below the non-injurious price.

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<sup>13</sup> The operative measure is the lesser of the normal value or non-injurious price. The difference between the revised operative measures and the revised export prices provide for the fixed component of interim dumping duty per unit.

## 6. RECOMMENDATIONS

The CEO recommends that the Minister considers this report, and if agreed, sign the attached schedule (**confidential attachment 1**) and sign the attached public notice (**confidential attachment 2**) to **declare**:

- under s. 269ZG(3)(b)(ii) of the Act, that, with effect from the date of the application is lodged, this Act and the *Customs Tariff (Anti-Dumping) Act 1975* have effect as if the original dumping duty notice had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of the duty payable by the applicant.

The CEO recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for LLDPE exported to Australia from Thailand by PTT Polyethylene Co Ltd the subject of this review, to be ascertained under the preceding subsections of s. 269TAB of the Act.

The CEO recommends that the Minister **determine**:

- in accordance with s. 269TAB(3) of the Act, the export prices for LLDPE exported to Australia from Thailand by PTT Polyethylene Co Ltd the subject of this review, is the amount having regard to all relevant information.

The CEO recommends that the Minister **directs**:

- in accordance with s. 269TAC(8) of the Act, in assessing normal value for PTT Polyethylene Co Ltd, that the price paid for like goods be adjusted for export inland freight and free on board expenses.

## 7. CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Schedules – determine, direct
Confidential attachment 2	Section 269ZG(3)(b)(ii) public notice
Confidential attachment 3	Export prices, normal values & NIP

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