

CUSTOMS ACT 1901 - PART XVB
TRADE MEASURES REPORT NO. 010

APPLICATION FOR DUMPING DUTIES:

POLYVINYL CHLORIDE HOMOPOLYMER RESIN

**EXPORTED FROM
HUNGARY,
INDONESIA,
THE REPUBLIC OF KOREA
AND SINGAPORE**

5 October 1999

AUSTRALIAN CUSTOMS SERVICE
CUSTOMS ACT 1901—PART XVB

TRADE MEASURES BRANCH

REPORT NO. 10

Polyvinyl Chloride Homopolymer Resin

Exported from

Hungary, Indonesia, the Republic of Korea and Singapore

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ABBREVIATIONS

| | |
|-------------------|---|
| ACDN | Australian Customs Dumping Notice |
| ADA | Anti-Dumping Authority |
| Asahimas | PT Asahimas Subentra Chemical |
| Australian Vinyls | Australian Vinyls Corporation Limited |
| BorsodChem | BorsodChem Rt |
| CEO | Chief Executive Officer of Customs |
| CFR | cost and freight |
| CIF | cost, insurance and freight |
| Citi Polymer | Citi Polymer Ltd |
| CTMS | cost to make and sell |
| Customs | Australian Customs Service |
| Dumping Duty Act | <i>Customs Tariff (Anti-Dumping) Act 1975</i> |
| FOB | free on board |
| Hanwha | Hanwha Chemical Corporation |
| Hyundai | Hyundai Corporation |
| Intermin | Intermin Enterprises Pte Ltd |
| Korea | The Republic of Korea |
| LG | LG Corporation International |
| Maspion | PT Siam Maspion Polymers |
| Minister | Minister for Justice and Customs |
| N/A | not applicable |
| NIFOB | non-injurious free on board price |
| NIP | non-injurious price |
| PAD | preliminary affirmative determination |
| PolyChem | PolyChem Pty Ltd |
| PVC | polyvinyl chloride homopolymer resin |
| Quantum | Quantum Chemicals Pty Ltd |
| Satomo | PT Satomo Indovyl Polymer |
| s. | section, sub-section or paragraph |
| SEF | statement of essential facts |
| SG&A expenses | selling, general and administrative expenses |
| SPC | Singapore Polymer Corporation (Pte) Ltd |
| Sumitomo | Sumitomo Corporation (Singapore) Pte Ltd |
| the Act | <i>Customs Act 1901</i> |
| the goods | the goods the subject of the application |
| TMRO | Trade Measures Review Officer |
| TRACE | Customs' commercial database |
| USA | The United States of America |
| USP | unsuppressed selling price |
| VCM | vinyl chloride monomer |

1 SUMMARY

1.1 BACKGROUND

On 5 March 1999, the Australian Customs Service (Customs) received an application from Australian Vinyls Corporation Limited (Australian Vinyls) for anti dumping measures to be imposed on imports of polyvinyl chloride homopolymer resin (PVC) exported to Australia from Hungary, Indonesia, the Republic of Korea (Korea) and Singapore.

On 1 April 1999, Customs initiated an investigation into the alleged dumping of PVC from the nominated countries. The initiation was formally notified in the Australian Financial Review and by Australian Customs Dumping Notice (ACDN) No. 99/016. The notices stated that submissions by interested parties must be lodged by 11 May 1999, that a statement of essential facts (SEF) would be issued by 20 July 1999 and that Customs would report to the Minister for Justice and Customs (Minister) by 3 September 1999.

On 19 July 1999, the Minister approved an extension of 30 days to the period for the issue of the SEF. This decision was notified in ACDN No. 99/028. This decision also resulted in the due date for Customs' report to the Minister being 30 days later than originally advised.

1.2 LIKE GOODS

PVC is a white powder produced by the polymerisation of vinyl chloride monomer (VCM). PVC grades are identified by an ISO 'K' value. In general, lower K value polymers are used for unplasticised applications, while higher K value polymers need plasticisers to make processing possible and are used for flexible applications. PVC is then processed by users who may employ a variety of different production methods, such as calendering, vacuum forming, extrusion, injection and blow moulding.

Customs examined information on PVC produced in Australia and on imported PVC and is satisfied that PVC produced in Australia and PVC imported from the nominated countries are like goods.

1.3 DUMPING

PVC exported to Australia from the four nominated countries was dumped. Dumping margins for the exporter from Singapore and two exporters from Indonesia were negligible. The volume of dumped goods from other exporters in Indonesia was also negligible. Dumping margins and the dumped volume of exports of PVC from Hungary and Korea were not negligible.

1.4 INJURY

The economic condition of the Australian industry declined over the period examined. Australian Vinyls' market share fell, it suffered price undercutting, price depression and price suppression and its profits and profitability declined.

1.5 CAUSAL LINK

Significant volumes of PVC were imported from Korea at dumped prices. PVC was also imported from Hungary at dumped prices. Customs considers that dumped PVC exported from Hungary and Korea to Australia has contributed to the material injury suffered by Australian Vinyls. Customs further considers that there is a threat that material injury suffered by the Australian industry will continue.

1.6 PRELIMINARY AFFIRMATIVE DECISION

On 5 October 1999, Customs made a preliminary affirmative determination (PAD) in respect of PVC exported to Australia from Korea and imposed securities in respect of those goods.

1.7 CONCLUSIONS

Customs recommends that the Minister be satisfied that:

- PVC has been exported to Australia from Hungary and Korea at dumped prices;
- PVC has been exported to Australia from Indonesia and Singapore at dumped prices, but dumping margins for the exporter from Singapore and two exporters from Indonesia were negligible and the dumped volume from the remaining exporters in Indonesia was negligible;
- the Australian industry producing PVC has suffered material injury from some cause or causes;
- dumped exports of PVC from Indonesia and Singapore to Australia have not caused material injury to the Australian industry;
- dumped exports of PVC from Hungary and Korea to Australia have caused material injury to the Australian industry;
- there is not a threat of material injury from dumping of PVC from Indonesia and Singapore to Australia; and
- there is a threat of material injury from dumping of PVC from Hungary and Korea to Australia.

Customs recommends that the Minister take anti-dumping action against exporters of PVC from Hungary and Korea to Australia.

Customs further recommends that the Minister take no anti-dumping action against exporters of PVC from Indonesia and Singapore to Australia.

Details of Customs' recommendations are at section 13.

A list of legal instruments required to give effect to these recommendations is at Attachment 1.

A statement of facts and the evidence relied on by Customs for this investigation is at Attachment 2.

2 BACKGROUND

2.1 PURPOSE OF INVESTIGATION

Part XVB of the *Customs Act 1901* (the Act) and the *Customs Tariff Anti-Dumping Act 1975* provide recourse for Australian industries that believe they are being injured by dumping. The purpose of the investigation is to submit a factual report to the Minister recommending whether anti-dumping action should be taken against exports of the goods the subject of the application (the goods) to Australia from the nominated countries.

Dumping, simply defined, occurs when goods are imported into Australia at prices lower than their normal value in the country of export. Anti-dumping measures may be imposed where dumping has caused, or threatens to cause, material injury to an Australian industry producing like goods.

A glossary of terms at Attachment 3 to this report contains more information about the legislation.

2.2 CHANGES TO AUSTRALIA'S ANTI-DUMPING SYSTEM

Changes to Australia's anti-dumping and countervailing system came into operation on 24 July 1998. Prior to this date, Customs and the Anti-Dumping Authority (ADA) administered the system.

Customs had 100 days to conduct an initial inquiry and to make a preliminary finding.

If Customs made a positive preliminary finding, the matter was referred to the ADA who had a further 120 days to conduct a final inquiry and report to the Minister.

If Customs made a negative preliminary finding, the applicant could appeal to the ADA. The ADA had 60 days to review this matter. It could either confirm Customs' finding or overturn the finding and substitute a positive preliminary finding. The ADA then had 120 days to conduct a final inquiry and report to the Minister.

Under the new arrangements the ADA was abolished and Customs became the sole agency responsible for dumping and countervailing investigations. Customs has 155 days from the date of initiation in which to conduct an investigation and report to the Minister. A new review body, the Trade Measures Review Officer (TMRO) was established.

2.3 THE INVESTIGATION PROCESS

Where the Australian industry applies under s. 269TB of the Act for the imposition of anti-dumping measures, it must provide reasonable evidence to support its claims. Customs has 20 days to review the application and will either reject the application or accept the application and initiate an investigation.

If Customs initiates an investigation, interested parties are invited to participate. Interested parties are advised of the investigation through an ACDN, a public notice

in a national newspaper or by direct contact. Submissions from importers, exporters and other interested parties are due within 40 days of initiation of the investigation.

At any time not earlier than 60 days after initiation, Customs may make a PAD if there appear to be sufficient grounds for the publication of a dumping duty notice. If Customs makes such a determination, it may require and take securities under s. 42 of the Act. Customs must have regard to the application, any submission received and any other relevant information in making a PAD. If Customs decides to take securities it must give public notice of that decision. Provisional measures, in the form of securities, provide the Australian industry with a temporary remedy from the effects of dumping pending the Minister's decision.

Customs must issue a SEF on or before 110 days after the initiation of the investigation. This statement outlines the facts on which Customs proposes to base its report to the Minister. The Minister may extend this deadline under certain circumstances. Interested parties then have 20 days to respond and lodge submissions on matters of concern.

Customs is not obliged to consider submissions in response to the SEF which are received more than 20 days after the statement was placed on the public record.

Customs must conduct its investigation and report to the Minister within 155 days of initiation unless the Minister has extended the deadline for the issue of the SEF. The report must recommend whether dumping duty notices should or should not be published and recommend the amount of any dumping duty. If measures are imposed, Customs is responsible for the administrative arrangements.

The recommendations to the Minister are based on:

- the application;
- submissions to which Customs had regard when formulating the SEF;
- the result of on-site verifications in Australia and overseas;
- any submission made in response to the SEF; and
- any other relevant matter.

The Minister's decisions are notified in the Gazette, through an ACDN and by a public notice in a national newspaper.

Interested parties have 30 days after the publication of the Minister's decision in which to ask the TMRO to review that decision. Following commencement of the review, parties have 30 days to lodge submissions in response to the grounds of appeal. The TMRO must make recommendations to the Minister within 60 days of the public notification of the review.

3 PREVIOUS INQUIRIES AND REVIEWS

Customs and the ADA have conducted numerous inquiries and reviews of normal values and non-injurious free on board prices (NIFOBs) in relation to the alleged dumping of PVC from a number of countries. These are summarised in the following table.

| Report | Preliminary finding | ADA recommendations |
|-----------------|--|--|
| 91/11 Aug 91 | Positive finding against Argentina, Brazil, Israel, Mexico, Taiwan & the United States of America (USA) Negative finding against Hungary, Poland, Korea & Singapore | Measures imposed against Brazil, Mexico & USA (report no. 52 of Dec 91) ADA substituted a positive preliminary finding (report no. 50 of Nov 91). After further inquiry no measures imposed (report no. 62 of Mar 92) |
| 92/9 May 92 | Positive finding against Canada, China, France, Japan, Norway, Romania, Saudi Arabia & Thailand Negative finding against the Netherlands and Sweden | Measures imposed against Canada, China, France, Japan, Norway, Saudi Arabia & Thailand (report no. 82 of Sep 92) ADA not asked to review finding |
| 93/4 Sep 93 | Review of NIFOBs for Brazil, Mexico & USA | |
| 93/14 Aug 93 | Positive finding against Finland | No measures (report no. 115 of Dec 93) |
| 94/1 May 94 | Review of NIFOBs & normal values for Brazil, Mexico & USA and NIFOBs for Canada, China, France, Japan, Norway, Saudi Arabia & Thailand | |
| 94/7 Apr 94 | Negative finding against Korea | No measures (report no. 131 of Jul 94) |
| 95/4 Aug 95 | Review of normal values & NIFOBs for Brazil, Canada, China, France, Japan, Mexico, Norway, Saudi Arabia, Thailand & USA | |

| Report | Preliminary finding | ADA recommendations |
|----------------|---|---|
| 96/1 Jan 96 | Review of normal values & NIFOBs for Brazil, Canada, China, France, Japan, Mexico, Norway, Saudi Arabia, Thailand & USA | |
| 96/6 Jul 96 | Positive finding against Belgium & Korea | No measures (report no. 158 of Nov 96) Following a decision of the Federal Court, this matter was reviewed. No measures (report no. 174 of Jul 97) |
| | | Measures continued against Brazil, Mexico & USA (report no. 160 of Nov 96) |
| | | Measures continued against Japan. Measures not continued against Canada, China, France, Norway, Saudi Arabia & Thailand (report no. 176 of Aug 97). The Minister did not accept the ADA's recommendations. Measures continued against Canada, China, France, Japan, & Thailand |
| Sep 97 | Termination of investigation against Indonesia, Iran and the United Arab Emirates | Termination decision supported (report no. 180 of Dec 97) |
| 97/4 Oct 97 | Positive finding against Germany, Hungary, India, Israel & the Netherlands | No measures (report no. 182 of Feb 98) |
| 98/6 Apr 98 | Review of normal values & NIFOBs for Thailand | |

Customs is currently reviewing normal values and NIFOBs for Japan, Thailand and the USA.

4 CURRENT INVESTIGATION

4.1 THE APPLICATION BY THE INDUSTRY

On 5 March 1999, Customs received an application from Australian Vinyls for anti dumping measures to be imposed on imports of PVC from Hungary, Indonesia, Korea and Singapore. The application alleged that injury was being caused to the Australian industry in the form of:

- price undercutting;
- price depression;
- price suppression;
- lost sales and effect on market share; and
- reduced profitability.

On the *prima facie* evidence, the application was not rejected and an inquiry was undertaken.

4.2 PUBLIC NOTICES

4.2.1 Initiation of investigation

On 1 April 1999, Customs initiated an investigation into the alleged dumping of PVC exported to Australia from Hungary, Indonesia, Korea and Singapore. The initiation of the investigation was formally notified in the Australian Financial Review and by ACDN No. 99/016. The notices stated that submissions by interested parties must be lodged by 11 May 1999, that a SEF would be issued by 20 July 1999 and that Customs would report to the Minister by 3 September 1999.

4.2.2 Extension of time for SEF

During the course of this investigation the Minister approved an extension of 30 days to the period for the issue of the SEF. This approval was granted under s. 269ZH1 of the Act. The request for an extension was made by the Australian industry to allow them time to address alleged significant discrepancies in the completeness of the normal value inquiry process at exporters in Indonesia and Singapore. The Minister agreed to the request on 19 July 1999 and this decision was notified in ACDN No. 99/028. This decision also resulted in the due date for Customs' report to the Minister being 30 days later than originally advised.

4.2.3 SEF

Customs placed the SEF on the public file on 19 August 1999. It requested responses from interested parties by 8 September 1999 and advised that Customs would report to the Minister by 5 October 1999.

4.2.4 PAD

On 5 October 1999, Customs made a PAD in respect of PVC exported to Australia from Korea and imposed securities in respect of those goods. Customs considered that it was appropriate to impose securities to prevent material injury occurring to the

Australian industry while the Minister considers Customs' report and recommendations.

4.2.5 Reports on Internet

The SEF, ACDNs and this report are available on Customs Internet homepage www.customs.gov.au/notices/index.htm.

4.3 INVESTIGATION DETAILS

At the initiation of the investigation, non confidential versions of the application and relevant questionnaires were distributed to known overseas exporters and Australian importers of the goods. This information was also sent to two exporters identified during the investigation. Copies of the non confidential versions of the application and Customs' initiation report were placed on the public file.

The public file is held by the Trade Measures Branch office management at Customs House, 5 Constitution Avenue, Canberra, ACT 2601, telephone (02) 6275 6057.

In compiling this report and recommendations, Customs examined submissions from the applicant, overseas exporters, Australian importers and other interested parties.

It undertook on-site verifications in Australia and overseas where necessary and practicable. It also had several meetings with interested parties and their representatives.

Customs started writing this report on 8 September 1999.

4.3.1 Submissions and information received

The following companies provided submissions after initiation of the investigation:

- BorsodChem Rt (BorsodChem);
- PT Asahimas Subentra Chemical (Asahimas);
- Singapore Polymer Corporation (Pte) Ltd (SPC);
-
- Intermin Enterprises Pte Ltd (Intermin);
- PolyChem Pty Ltd (PolyChem);
- Nylex Corporation Pty Ltd; and
- Huntsman Film Products Pty Ltd.
-
- Thor Plastics Pty Ltd

4.3.2 Companies visited

The following companies were visited during the investigation:

- Australian Vinyls;
-
- Kanji Group Pty Ltd;
- Sanwa Pty Ltd;

- Vinidex Tubemakers Pty Ltd;
- Quantum Chemicals Pty Ltd (Quantum);
- PolyChem;
- Primaplas Pty Ltd;
- Pipemakers (a division of Metroll Queensland Pty Ltd);
- BorsodChem;
- Asahimas;
- Hanwha Chemical Corporation (Hanwha);
- SPC;
-
-

5 GOODS UNDER INVESTIGATION

5.1 THE APPLICATION

The applicant described the goods as PVC. Paste and emulsion grades are not included. PVC is a white powder produced by the polymerisation of VCM.

The main raw material used in the manufacture of PVC is VCM. VCM is a liquefied gas made from oil or natural gas. PVC is produced in batches rather than by continuous production. The VCM is mixed with demineralised water, a suspension agent and an initiator or catalyst. The mixture is heated to start the reaction of converting the monomer (VCM) into a polymer (PVC). Once initiated, the reaction gives off heat and must be cooled. The reaction continues for five to eight hours, during which time about 80-90% of the monomer is converted to PVC. Excess VCM is removed and recycled. Temperature and reaction time govern the grade of PVC produced.

PVC grades are identified by an ISO 'K' value. In general, lower K value polymers are used for unplasticised applications, while higher K value polymers need plasticisers to make processing possible and are used for flexible applications. PVC is supplied in 25 kilogram, 500 kilogram or 1 tonne bags or in bulk.

PVC is then processed by users who may employ a variety of different production methods, such as calendering, vacuum forming, extrusion, injection and blow moulding. Each method may use a different grade of PVC depending on the end product/use, including pipe, plastic film and wire coating.

5.2 TARIFF CLASSIFICATION

PVC is classified to subheading 3904.10.00, statistical code 18 of the *Customs Tariff Act 1995*. The general rate of duty of 5% applies to the goods from the countries subject to the application.

5.3 LIKE GOODS

In the context of a dumping or subsidy inquiry, subsection 269T(1) of the Act defines 'like goods' as follows:

like goods, in relation to goods under consideration, means 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.

The issue of 'like goods' is important in two areas:

- (i) in assessing normal values in the country of export; and
- (ii) in determining whether there is an Australian industry producing the same product to that imported.

Customs examined information on the products produced in Australia and information on imported products. It is satisfied that PVC produced in Australia and PVC imported from the nominated countries are like goods.

6 THE AUSTRALIAN INDUSTRY AND MARKET

6.1 THE AUSTRALIAN INDUSTRY

Australian Vinyls is a joint venture formed in August 1997 between ICI Vinyls, now Orica Australia Pty Ltd, and Auseon Limited.

Australian Vinyls produces PVC marketed under the brand name "CORVIC". Australian Vinyls supplies PVC in bulk (either container or tanker), as well as in 25 kilogram or 1 tonne bags depending on user preference.

Australian Vinyls manufactures PVC at its plants at Altona and Laverton in Victoria; it is currently the only Australian manufacturer of PVC. Australian Vinyls provided confidential financial information in support of its application. Following the initiation of the investigation, Customs visited Australian Vinyls to verify the evidence set out in the application. From Customs' inspection of the Altona and Laverton plants, Customs considers the goods are wholly or partly manufactured in Australia and that there is a substantial process in the manufacture of the goods carried out in Australia. Accordingly, the requirements of s. 269T(2), (3) and (4) of the Act have been met.

Australian Vinyls employs about 200 people in the production and sale of PVC. About 170 staff are employed at the Altona and Laverton plants with a further 20 employed in the corporate office at Altona. Staff are also employed at other sites.

Customs' commercial data base (TRACE) revealed that Australian Vinyls had imported a small amount of PVC. Australian Vinyls stated that these imports were either paste not covered by the application or quantities of a very specialised PVC product not manufactured in Australia.

The goods under consideration are not close processed agricultural goods as set out in s. 269T(4A) and (4B) of the Act.

6.2 THE AUSTRALIAN MARKET

The Australian market for PVC is supplied by Australian Vinyls and by imports from a number of countries.

Based on the information contained within TRACE, Customs established that PVC has been imported from 26 countries between July 1998 and June 1999. The countries under review accounted for the majority of imports of PVC in that period. Korea was the major source of imports over this period, although Indonesia and Singapore also exported significant quantities to Australia. Hungary accounted for smaller quantities.

Australian Vinyls sells PVC to endusers; the major use is in the manufacture of PVC pipes and fittings. Australian Vinyls also owns four compounding plants accounting for a small percentage of total domestic sales. Australian Vinyls also export small quantities of PVC. All sales of PVC by Australian Vinyls are direct to its customers (end users).

The majority of Australian Vinyls' sales are under contractual arrangements whereby prices are negotiated and set on a monthly basis. These prices vary from customer to customer.

Analysis of information from TRACE identified 16 importers of PVC between July 1998 and June 1999. Importers are of two main categories:

- distributors, who sell to end users of PVC; and
- end users, who import direct and use the PVC in the manufacture of various products and do not sell the PVC in the form it was imported.

The price for PVC is influenced by world trends in the price of VCM, which is the major raw material input for the production of PVC. When the price of VCM is high, the price of PVC is usually high, and vice versa.

6.3 MARKET SIZE

In calculating the Australian market, Customs uses, where possible, verified sales data obtained from the Australian industry, importers and exporters. In this investigation, Customs used sales and import information obtained from the Australian manufacturer, importers, exporters and TRACE.

Customs found that some PVC had been entered for home consumption under incorrect tariff classifications. These import figures were adjusted in Customs' market calculation. Imports of paste and emulsion grades were excluded from Customs' market calculation.

Based on this data, Customs estimates that the total market for PVC sold in Australia is relatively stable. There is recent evidence of growth, but it is not possible at this stage to determine if this growth will be sustained or is attributable to other factors such as the introduction of a goods and service tax.

The charts below illustrate the relative stability in the size of the Australian market and relevant market shares over the period examined.

Chart 1: Australian market Qtr 4 1997 to Qtr 2 1999

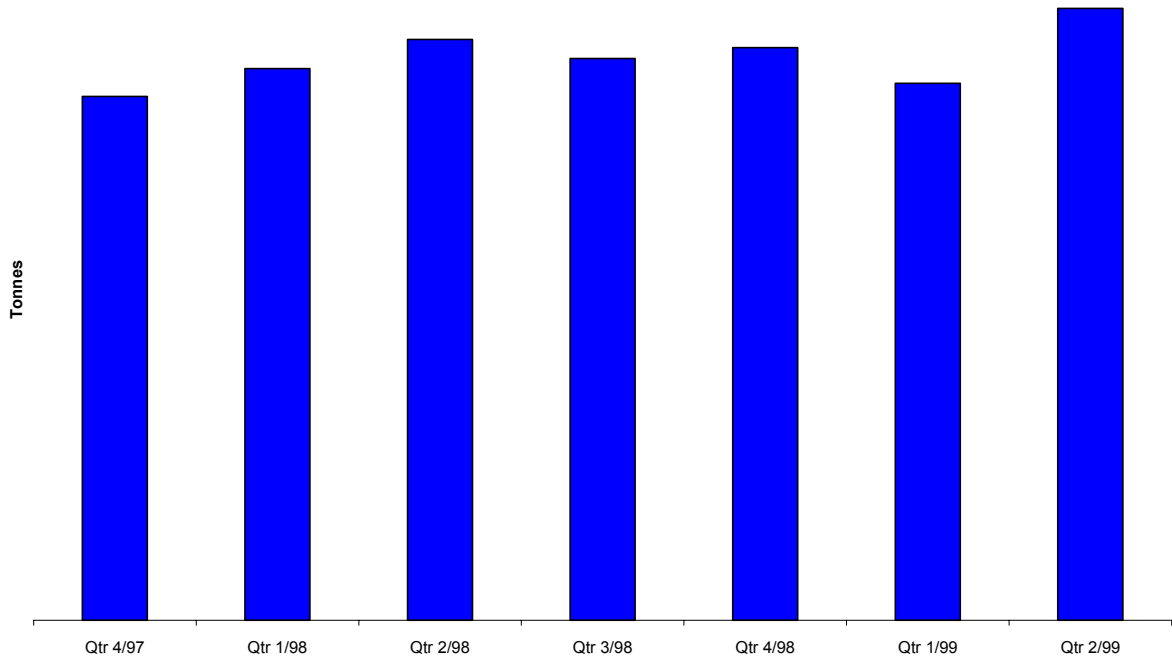


Chart 2: Market shares prior to claimed injury

4

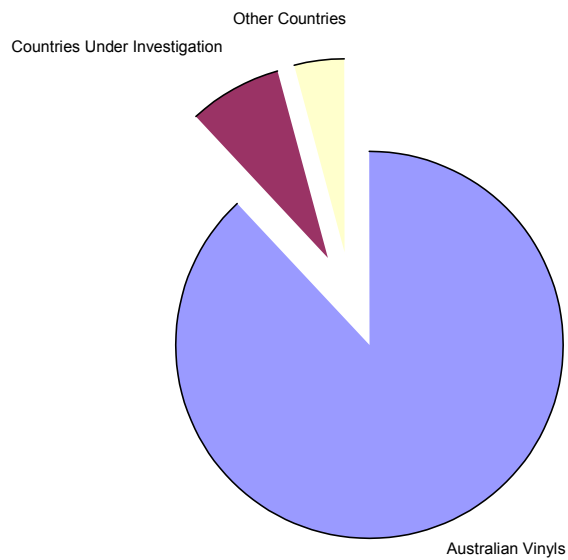
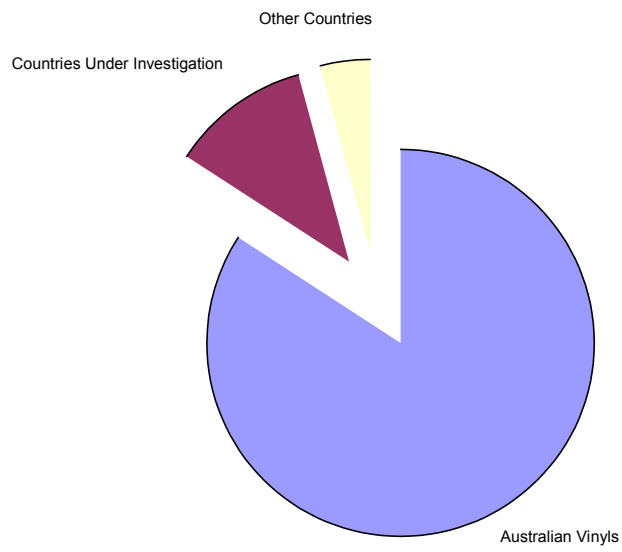


Chart 3: Market shares during injury period



7 THE DUMPING INVESTIGATION

7.1 INTRODUCTION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export. This section explains this aspect of Customs' investigation.

The ACDN formally notifying initiation of the investigation stated that Customs would examine exports to Australia from July 1998 onwards for the purpose of its dumping analysis. In accordance with s. 269TEA(2) of the Act, Customs has examined exports to Australia up to 8 September 1999, 20 days after the SEF was placed on the public record; a summary of these exports is at Confidential Attachment 4. However, it was not practicable to obtain normal value information after June 1999 and the investigation period is the period between July 1998 and June 1999.

During the investigation period, Customs identified that PVC had been exported to Australia from a total of eight manufacturers of PVC in the four nominated countries. It identified a further eight companies had been involved in the exportation of PVC manufactured by those manufacturers. Analysis of information from TRACE identified 16 importers of PVC manufactured in these countries. A matrix showing the amount imported by each importer through each company from each of the four nominated countries during the investigation period is at Confidential Attachment 5.

7.2 EXPORT PRICES

Customs has refined slightly the information on export prices presented in the SEF. Additional shipments have been included and excluded to account for goods that were incorrectly classified. Other shipments represent the consolidation of individual entry lines. These refinements have not materially changed the results of Customs' analysis.

7.2.1 Hungary

The goods exported to Australia from Hungary were manufactured by BorsodChem. Customs identified one Australian importer.

BorsodChem provided a submission to Customs. Customs visited the Australian importer on 27 April 1999 and visited BorsodChem on 14 and 15 June 1999.

Customs identified four exportations from Hungary to Australia during the investigation period. In addition, BorsodChem provided details of an exportation prior to the investigation period that was imported in the investigation period. The goods entered Australia between July 1998 and January 1999. There have been no entries of PVC from BorsodChem since the end of June 1999.

Customs' investigation confirmed that BorsodChem manufactured the goods and exported them to Australia. The company's Australian exports were arranged directly with the Australian importer. There was no evidence of a relationship other than for commercial trade between BorsodChem and the Australian importer. Customs is

satisfied that the sales by BorsodChem to the Australian importer were arms length transactions.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter. All exports were on the basis of cost and freight (CFR) and the place of export was the Hungarian border during rail transit.

Customs has determined export prices under s. 269TAB(1)(a) of the Act using the CFR price less ocean freight and less the proportion of the inland freight cost equivalent to the freight from the Hungarian border to the port of shipping.

Export price calculations are shown at Confidential Attachment 6.

7.2.2 Indonesia

The goods exported to Australia from Indonesia were manufactured by Asahimas, PT Siam Maspion Polymers (Maspion) and PT Satomo Indovyl Polymer (Satomo). Customs identified five Australian importers.

Asahimas

Asahimas provided a submission to Customs. The Australian importer of PVC from Asahimas was visited by Customs on 13 May 1999. Customs visited Asahimas on 16 and 17 June 1999.

Customs identified 64 exportations from Asahimas to Australia during the investigation period. It identified a further 15 entries between July 1999 and 8 September 1999. Customs notes that the invoiced prices for the later shipments were significantly higher than those verified during the normal value visit to Asahimas.

Customs' investigation confirmed that Asahimas manufactured the goods and exported them to Australia. The company's Australian exports are arranged through a distributor in Australia. There was no evidence of a relationship other than for commercial trade between Asahimas and the Australian importer. Customs is satisfied that the sales by Asahimas to the Australian importer were arms length transactions.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter. All exports were on the basis of cost, insurance and freight (CIF).

Customs has determined export prices under s. 269TAB(1)(a) of the Act using the CIF price less the cost of overseas freight and insurance.

Export price calculations are shown at Confidential Attachment 6.

Other Exporters

Customs notified Maspion and Satomo's Singapore agent, Sumitomo Corporation (Singapore) Pte Ltd (Sumitomo) that the investigation was initiated and invited them

to make a submission. Maspion did not respond to Customs' invitation. Sumitomo verbally advised Customs that it was not going to provide a submission. However, the Australian importer provided documentation to Customs in respect of each exportation. Customs also identified an exporter of Indonesian origin goods which was not a manufacturer. This exporter agreed to cooperate and provided information to Customs.

Customs identified two entries by Maspion in the investigation period. There have been no entries of PVC from Maspion since the end of June 1999. There were two Australian importers; one was visited on 27 April and provided all relevant documentation to Customs. Customs used this information, information extracted from TRACE and information obtained from other sources relating to ocean freight and insurance costs and has recommended that export prices be determined under s. 269TAB(3) of the Act.

Customs identified 10 entries from Satomo in the investigation period. There have been a further five entries between 1 July 1999 and 8 September 1999. Customs notes that the invoiced prices for these shipments were significantly higher than for the previous 10 shipments. There was one Australian importer and this company provided all relevant documentation to Customs. Customs used this information and information obtained from other sources relating to ocean freight and insurance costs and has recommended that export prices be determined under s. 269TAB(3) of the Act.

Customs identified eight exportations from the other exporter. There have been a further four entries between 1 July 1999 and 8 September 1999. Customs notes that the invoiced prices for these shipments were significantly higher than that for shipments in the second half of 1998 and the 1st quarter of 1999. Customs visited the Australian importer on 21 April 1999. Prices were verified at the importer's premises and relevant costs were obtained from the exporter. Customs has determined export prices under s. 269TAB(1)(a) of the Act using the CFR price less the cost of overseas freight.

Export price calculations are shown at Confidential Attachment 6.

7.2.3 Korea

The goods exported to Australia from Korea were manufactured by Hanwha, LG International Corporation (LG) and Hyundai Corporation (Hyundai). Customs identified 13 Australian importers.

Hanwha

Hanwha provided a submission to Customs. There were eight Australian importers of PVC manufactured by Hanwha; three of these importers dealt directly with Hanwha and the other five dealt through agents located in Korea and Singapore. The major direct importer was visited by Customs on 27 April 1999. Two of the importers who dealt through selling agents were visited on 21 April and 24 May 1999. Customs visited Hanwha between 7 and 11 June and again on 16 June 1999. Customs also visited two of the selling agents on 30 May 1999.

Customs identified 63 exportations from Hanwha to Australia during the investigation period. There have been no entries of PVC from Hanwha since the end of June 1999. Thirty two of the shipments were the result of direct dealings between Hanwha and the importers with the remaining 31 through agents.

Customs' investigation confirmed that Hanwha manufactured the goods. As mentioned above the exports were arranged through various channels. The Australian importers are both distributors and end users. Hanwha arranges shipment to Australia in accordance with instructions received from any of the parties ordering the goods. Customs considers that in all cases Hanwha was the exporter of the goods.

In respect of direct dealings between Hanwha and the importers, there was no evidence of a relationship other than for commercial trade between Hanwha and the Australian importers. Customs is satisfied that the sales by Hanwha directly to the Australian importers were arms length transactions and there are reasonable grounds to believe that the goods were exported to Australia other than by the importers and were purchased by the importers from the exporter. All exports directly from Hanwha to the Australian importers were on the basis of CFR.

Customs has determined export prices under s. 269TAB(1)(a) of the Act using the CFR price less the cost of overseas freight.

In respect of dealings through selling agents, there was no evidence of a relationship other than for commercial trade between the selling agents and the Australian importers. Customs is satisfied that the sales of Hanwha PVC through selling agents to the Australian importers were arms length transactions. For these sales there are reasonable grounds to believe that the goods were exported to Australia other than by the importers but the goods have not been purchased by the importers from the exporter as payment for the goods is made to the selling agents. The basis of these sales were CFR.

For seven of the shipments, where prices were verified at the importers' premises and relevant costs were obtained from the selling agent, Customs has recommended that export prices be determined under s. 269TAB(1)(c) of the Act using the CFR price less the cost of overseas freight.

For the remaining 24 shipments Customs was able to extract information about export prices from TRACE. Customs used this information and information obtained from other sources relating to ocean freight and has recommended that export prices be determined under s. 269TAB(3) of the Act.

Export price calculations are shown at Confidential Attachment 6.

Other Exporters

Customs notified LG and Hyundai, the other two manufacturers of PVC in Korea, and the remaining major supplier that the investigation was initiated and sought information from each. All declined to cooperate. LG subsequently provided a submission in response to the SEF. Discussion of issues in the submission is at section 11 of this report.

Customs identified 42 entries from LG and Hyundai. There have been a further 10 entries between 1 July 1999 and 8 September 1999. Customs notes that the invoiced prices for these shipments were significantly higher than for the shipments during 1998-99. There were four Australian importers; three of the importers were visited on 29 April, 12 May and 13 May 1999.

Customs identified three entries of PVC from Korea by other companies. There were two Australian importers; one importer advised the product was manufactured by Hyundai and the other was unable to advise who was the manufacturer. There have been no entries of PVC from other suppliers since the end of June 1999.

Customs has recommended that export prices be determined under s. 269TAB(3) of the Act using the CFR and free on board (FOB) prices less the cost of overseas freight as applicable.

Export price calculations are shown at Confidential Attachment 6.

7.2.4 Singapore

The goods exported to Australia from Singapore are manufactured by SPC. There was one Australian importer.

SPC provided a submission to Customs. Customs visited the Australian importer on 29 April 1999 and visited SPC on 23 and 24 May 1999.

Customs identified 13 exportations from Singapore to Australia during the investigation period. There have been a further nine entries between 1 July 1999 and 8 September 1999. Customs notes that the invoiced prices for these shipments were significantly higher than for the shipments in early 1999.

Customs' investigation confirmed that SPC manufactured the goods and exported them to Australia. The company's Australian exports were arranged directly with the Australian importer. There was no evidence of a relationship other than for commercial trade between SPC and the Australian importer. Customs is satisfied that the sales by SPC to the Australian importer were arms length transactions.

There are reasonable grounds to believe that the goods were exported to Australia other than by the importer and were purchased by the importer from the exporter. All exports were on a CIF basis.

Customs has determined export prices under s. 269TAB(1)(a) of the Act using the CIF transactions less overseas freight and insurance charges.

Export price calculations are shown at Confidential Attachment 6.

7.3 NORMAL VALUES

Customs has refined slightly the information on normal values presented in the SEF. These refinements have not materially changed the results of Customs' analysis.

7.3.1 Hungary

In determining normal values for BorsodChem, Customs considered information provided in its submission and gathered at the verification interview.

BorsodChem is the manufacturer and exporter of the goods under consideration. On the Hungarian domestic market, BorsodChem sells PVC direct to end users. There are no sales through agents.

BorsodChem declined to provide Customs with details of all of its domestic sales or to provide sufficient information to enable Customs to confirm whether domestic sales were in the ordinary course of trade. It was noted however, that some information was provided by BorsodChem which indicated that in the last two quarters of 1998, domestic sales of all grades of PVC were profitable. BorsodChem selected a domestic customer which it considered was a suitable customer for the purpose of comparing domestic sales with the export sales to Australia. BorsodChem provided details of that customer's sales for the last two quarters of 1998. That period closely aligned with the sales to Australia.

No market factor was identified to render the selected domestic sales to be unsuitable within the meaning of s. 269TAC(2)(a) of the Act. Customs verified the price paid by the domestic customer and is satisfied that the sales are arms length transactions.

However, Customs considers that the concept of 'ordinary course of trade' is not limited to s. 269TAAAD of the Act. To be satisfied that the selected sales are 'ordinary' they need to be compared to the circumstances which pertain to other, perhaps the majority, of sales. Customs did not have details of all domestic sales by BorsodChem and it was unable to test if the selected sales were in the ordinary course of trade. There were no known other sellers of like goods in Hungary. Customs has not ascertained the normal value in accordance with s. 269TAC(1) of the Act.

Insufficient verified cost information was available to determine a normal value under s. 269TAC(2)(c) of the Act.

Customs next attempted to examine the price paid or payable for like goods sold to an appropriate third country, using the provisions of s. 269TAC(2)(d) of the Act. BorsodChem did provide third country sales information but it could not be verified. Customs could not determine that sales to a selected customer were at arms length and it was not possible to identify other export customers in appropriate countries that purchased in similar volumes or circumstances to the Australian importer. Normal value cannot be determined under s. 269TAC(2)(d) of the Act.

Customs has recommend that the normal values be determined under s. 269TAC(6) of the Act, using domestic sales from BorsodChem to the nominated domestic customer adjusted to account for different circumstances between domestic and export sales. Customs considers that this is the best available information.

In its submission BorsodChem claimed an adjustment for inland freight. The normal value report recommended that export inland freight and credit terms be adjusted as

these cost differences between domestic and export sales were verified. Customs has recommended that the domestic sales be adjusted for verified differences in relation to export inland freight and credit terms to determine the normal value.

Normal value calculations are shown at Confidential Attachment 7.

7.3.2 Indonesia

Asahimas

In determining normal values for Asahimas, Customs considered information provided in its submission and gathered at the verification interview.

Asahimas is the manufacturer and exporter of the goods under consideration. On the Indonesian domestic market, Asahimas sells PVC to end users and dealers.

Asahimas declined to provide Customs with details of all domestic sales. There are numerous end users in the domestic market of which Asahimas has an association with two. Asahimas provided Customs with domestic sales details for a dealer which it argued were more comparable to export sales to Australia than sales to the other dealer and end users. The reasons proffered for this selection were that the Australian importer and the selected dealer are at the same level of trade and have a similar number of end user customers, both purchased a similar volume of PVC from Asahimas over the investigation period, the payment terms are comparable and sales to both customers are in the same currency. These claims were verified by Customs during the visit.

No market factor was identified to render the selected domestic sales to be unsuitable within the meaning of s. 269TAC(2)(a) of the Act. Customs verified the price paid by the domestic customer and is satisfied that the sales are arms length transactions. Sufficient verified cost information was available to enable an accurate assessment to be undertaken to determine if the domestic sales to the proffered customer were conducted in the ordinary course of trade.

However, Customs considers that the concept of 'ordinary course of trade' is not limited to s. 269TAAD of the Act. To be satisfied that the selected sales are 'ordinary' they need to be compared to the circumstances which pertain to other, perhaps the majority, of sales. The selected sales account for a small percentage of domestic sales. Insufficient details of other domestic sales were provided to enable Customs to test if the selected sales were in the ordinary course of trade. There were other sellers of like goods in Indonesia but they declined to provide information to the investigation. Customs has not ascertained the normal value in accordance with s. 269TAC(1) of the Act.

As normal value could not be assessed under 269TAC(1) of the Act, the next recourse was 269TAC(2)(c) of the Act. Customs examined the cost to manufacture the goods in Indonesia and the selling, general and administrative (SG&A) expenses associated with the sale on the basis that the goods instead of being exported had been sold for home consumption.

Customs' investigation team verified the cost to make and sell (CTMS) PVC, including the cost of the major raw material. The transfer price was verified and

compared to independently available data; this price recovered all costs. Customs also compared the verified costs with estimates obtained from costing models prepared by international marketing organisations; it found that the total cost before depreciation for an integrated PVC plant was similar to the verified cost. Sufficient information was available and verified to determine a constructed normal value.

Customs has recommended that normal values be determined under s. 269TAC(2)(c) of the Act, using the cost to manufacture the goods in Indonesia and the SG&A expenses associated with the sale on the basis that the goods instead of being exported had been sold for home consumption. An amount for profit to be added has been calculated from data observed in all of the markets examined throughout the investigation.

In its submission, Asahimas claimed adjustments to cover differences between export and domestic sales in relation to warehousing costs, royalty and management fees, domestic freight and insurance charges, interest on inventory and FOB charges, including fumigation costs. The normal value report recommended that normal values be determined under s. 269TAC(1) of the Act and that the price paid be adjusted for warehousing costs, royalty and management fees, domestic delivery and insurance charges and FOB charges. Customs has recommended, under the provision of s. 269TAC(9) of the Act, that the constructed CTMS be adjusted to account for verified differences between domestic and SG&A expenses (including warehousing costs and royalty and management fees), domestic delivery costs and FOB charges.

Normal value calculations are shown at Confidential Attachment 7.

Other Exporters

Customs notified Maspion and Satomo's Singapore agent, Sumitomo, that the investigation was initiated and invited them to make a submission. Maspion did not respond to Customs' invitation. Sumitomo verbally advised Customs that it was not going to provide a submission. The other exporter of Indonesian origin goods agreed to provide information to Customs and was visited on 30 May 1999.

For the 12 shipments from the two manufacturers, Customs does not have sufficient information to determine normal values under s. 269TAC(1) or (2) of the Act. It has recommended that normal values for those exporters be determined under s. 269TAC(6) of the Act using verified CTMS information from the manufacturer visited, adjusted for costs verified in relation to domestic delivery and FOB charges. This results in normal values higher than they might otherwise have been.

For the remaining exporter (eight shipments), PVC of Indonesian origin was exported from another country. Customs has recommended, in accordance with s. 269TAC(10) of the Act, that normal values be determined as if Indonesia was the country of export. Customs does not have sufficient information to determine normal values under s. 269TAC(1) or (2) of the Act. Customs has recommend that normal values be determined under s. 269TAC(6) of the Act using verified CTMS information from the manufacturer visited adjusted for costs verified in relation to freight to the country of export, freight, fumigation and packing costs in the country of export, FOB charges and sales commission.

Normal value calculations are shown at Confidential Attachment 7.

7.3.3 Korea

Hanwha

In determining normal values for Hanwha, Customs considered information provided in Hanwha's original submission, information gathered at the verification interview and information in Hanwha's submission in response to the SEF. Customs also considered this information when examining details relating to sales through agents located in Korea and Singapore. Two of the selling agents provided information to the investigation and were visited on 30 May 1999.

Hanwha is the manufacturer and exporter of the goods under consideration. On the Korean domestic market, Hanwha sells PVC directly to end users and also through distributors.

Hanwha provided Customs with a computer-generated list of all domestic sales of PVC for the period July 1998 to April 1999. Hanwha would only provide the listing of sales without customer names; however, the list of customer names was sighted by the investigation team. From the sales listing Customs selected random transactions. Evidence of sales directly to end users and through agents was verified.

No market factor was identified to render the domestic sales to be unsuitable within the meaning of s. 269TAC(2)(a) of the Act. Customs verified the price paid by domestic customers and an agent and is satisfied that the sales are arms length transactions. Sufficient verified cost information was available to enable an accurate assessment to be undertaken to determine that domestic sales were conducted in the ordinary course of trade.

Initially, Customs concluded that the normal value could be determined under s. 269TAC(1) of the Act using the weighted average selling price of domestic sales. However, Customs was unable to verify total sales revenue for PVC to company accounts and this raised the question as to whether the sales data was sufficiently verified. Customs could not be satisfied that all relevant data had been verified. There are other sellers of like goods in Korea but they initially declined to provide information to the investigation. Customs has not ascertained the normal value in accordance with s. 269TAC(1) of the Act.

Customs examined the cost to manufacture the goods in Korea and the SG&A expenses associated with the sale on the basis that the goods instead of being exported had been sold for home consumption. Sufficient information was available and verified to determine a constructed normal value.

Customs has recommended that normal values be determined under s. 269TAC(2)(c) of the Act, using the cost to manufacture the goods in Korea and the SG&A expenses associated with the sale on the basis that the goods instead of being exported had been sold for home consumption. An amount for profit to be added has been calculated from data observed in all of the markets examined throughout the investigation.

Hanwha did not claim any adjustments in its submission. The normal value report considered adjustments for inland freight, credit terms, waste levy, VAT and selling and administration costs. Adjustments for inland freight, credit terms, waste levy, and selling and administration costs were recommended. Customs has recommended, under the provision of s. 269TAC(9) of the Act, that the constructed CTMS be adjusted to account for the verified differences between export and domestic sales in relation to inland freight and FOB charges, credit terms, waste levy, and selling and administration costs.

For the shipments through the selling agents, Customs does not have sufficient information to determine normal values under s. 269TAC(1) or (2) of the Act. It has recommended that normal values for those suppliers be determined under s. 269TAC(6) of the Act using the normal values established for Hanwha adjusted to include a

Normal value calculations are shown at Confidential Attachment 7.

Other Exporters

LG provided a submission in response to the SEF. No other exporters or selling agents of PVC from Korea provided information to the investigation. Discussion of issues in the submission is at section 11 of this report.

For the remaining manufacturers and selling agents, Customs does not have sufficient information to determine normal values under s. 269TAC(1) or (2) of the Act. It has recommended that normal values for those exporters be determined under s. 269TAC(6) of the Act using CTMS information from the manufacturer visited adjusted for costs verified in relation to inland freight and FOB charges, waste levy and ascertained credit terms. In relation to selling agents, Customs also considers that a should be included. These adjustments result in normal values for both manufacturers and selling agents higher than they might otherwise have been.

Normal value calculations are shown at Confidential Attachment 7.

7.3.4 Singapore

In determining normal values for SPC, Customs considered information provided in SPC's submission and gathered at the verification interview.

SPC is the manufacturer and exporter of the goods under consideration. On the Singapore domestic market, SPC sells PVC direct to end users.

SPC provided a complete list of its domestic sales for the period January to March 1999. Customs chose one of SPC's customers for further inquiry and a detailed list of all PVC sales for the period July 1998 to April 1999 was obtained. This customer was chosen as being suitable for comparison on the basis of similar volumes and level of trade.

Customs found no evidence to indicate that the transactions were influenced by any relationship between the buyer and seller. Customs concluded that SPC sales on the domestic market were arms length transactions.

Based on the information provided and its verification, Customs established that the price paid in respect of a substantial quantity of the goods for an extended period of time did not recover the costs incurred in the production and sale of PVC within a reasonable period of time.

Domestic sales by SPC were not in the ordinary course of trade in accordance with s. 269TAAD of the Act. SPC is the only manufacturer of PVC in Singapore. Normal value could not be determined under s. 269TAC(1) of the Act.

Customs examined the cost to manufacture the goods in Singapore and the SG&A expenses associated with the sale on the basis that the goods instead of being exported had been sold for home consumption. Sufficient information was available and verified to determine a constructed normal value for the period July 1998 to April 1999.

Customs has recommended that normal values be determined under s. 269TAC(2)(c) of the Act, using the cost to manufacture the goods in Singapore and the SG&A expenses associated with the sale on the basis that the goods instead of being exported had been sold for home consumption.

SPC claimed adjustments for local transport and payment terms. The normal value report recommended adjustments for credit terms and the difference between domestic and export inland freight and packing. Customs has recommended, under the provision of s. 269TAC(9) of the Act, that the constructed CTMS be adjusted to account for verified differences between export and domestic sales in relation to credit terms, inland freight and packing.

Normal value calculations are shown at Confidential Attachment 7.

7.4 DUMPING MARGINS

A dumping margin is the amount by which the export price is less than the normal value. It is expressed as a percentage of the export price. The margin may be established on the basis of a comparison of either:

- weighted averages of comparable normal values and export prices; or
- normal values and export prices on a transaction by transaction basis; or
- individual export prices and normal values over part or parts of the investigation period, and weighted average export prices and normal values over another part, or other parts of the investigation period; or
- a weighted average of normal values and individual export price transactions (if the export price differs significantly between purchasers, regions, or time periods).

The method of calculation used to assess dumping margins for this report was the quarterly weighted averages of comparable normal values and export prices over the investigation period. The base date used for comparison purposes was the export invoice date.

Maximum dumping margins found for PVC exported from Hungary, Indonesia, Korea and Singapore are shown in the Table below.

Table 1: Maximum Dumping Margins

| Country | Exporter | Maximum Dumping Margins |
|-----------|-----------------------|-------------------------|
| Hungary | BorsodChem | 22.4% |
| Indonesia | Asahimas | 1.9% |
| | Other seller | 0% |
| | Other manufacturers | 9.8% |
| Korea | Hanwha | 9.2% |
| | Hanwha through agents | 13.6% |
| | Other manufacturers | 25.9% |
| | Other sellers | 33.8% |
| Singapore | SPC | 0.3% |

Note: negative dumping margins have been expressed as 0%.

Dumping margin calculations are shown at Confidential Attachment 8.

7.4.1 Negligible dumping margins

Section 269TDA(1) of the Act requires the Chief Executive Officer of Customs (CEO) to terminate an investigation, in relation to an exporter, where there has been

- no dumping by the exporter, or
- where all of the exporter's dumping margins are negligible (*de minimus*), ie. where all margins worked out under s. 269TACB of the Act, when expressed as a percentage of the export price or weighted average of export prices, are less than 2%.

Dumping margins for exports by Asahimas and from Indonesia and for SPC from Singapore, when calculated on the basis of quarterly weighted averages of comparable normal values and export prices, were below this threshold (ie less than 2%).

7.4.2 Negligible volume of dumped goods

Section 269TDA(3) of the Act provides that

if the volume of goods exported to Australia, over a reasonable examination period (whole or substantial part of the investigation period), from a particular country, that have been dumped is negligible, the CEO must terminate the investigation so far as it relates to that country.

This section defines a negligible volume of dumped goods as that which, when expressed as a percentage of the total Australian import volume is less than 3%.

Section 269TDA(5) of the Act provides that

imports of dumped goods may be "aggregated" from countries that individually constitute less than 3% of the total Australian import volume over a reasonable examination period. If cumulatively the aggregated volumes

account for more than 7% of the total Australian import volume they are not considered negligible.

Section 269TDA(6) of the Act provides that

the fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, is less than 2% does not prevent exports by that exporter being taken into account in working out the total volume of goods from a country that have been dumped or in aggregating for the purposes of subsection (5), the volumes of goods dumped.

The volume of dumped imports from Indonesia and Singapore were less than 3% each and totalled less than 7% of the total Australian import volume.

7.4.3 Termination of investigation

While the CEO has the power to terminate an investigation, it is first necessary to determine if dumping has or has not occurred. This determination can only be made by the Minister. Customs attempted to arrange for the Minister to make the necessary determinations that would enable the CEO to consider the appropriateness of a decision to terminate the investigation as far as it related to these exporters. The necessary determinations were not made before Customs completed its investigation and submitted its recommendations to the Minister.

Dumping volume calculations are shown at Confidential Attachment 9.

8 THE ECONOMIC CONDITION OF THE INDUSTRY

8.1 APPLICANT'S CLAIMS

Australian Vinyls claimed that it commenced to experience financial injury from January 1999, however, it claims it suffered price depression and price undercutting and an adverse affect on market share prior to the beginning of 1999. In its application, Australian Vinyls provided copies of market visit reports prepared by its staff. These reports alerted the local industry to the nature of import offers and the existence of price undercutting throughout the 3rd and 4th quarters of 1998.

In its application, Australian Vinyls claimed injury in the form of:

- price undercutting;
- price depression;
- price suppression;
- lost sales and effect on market share; and
- reduced profitability.

8.2 CUSTOMS' ASSESSMENT

Customs examined the Australian market from October 1997 to June 1999 for the purposes of its injury analysis. Customs compared Australian Vinyls' performance from July 1998 onwards (the claimed injury period) with its performance from October 1997 to June 1998.

Customs found that negligible dumping margins applied to PVC that had been exported by Asahimas and from Indonesia and by SPC from Singapore. Customs also calculated that negligible volumes of PVC had been exported from the remaining exporters in Indonesia at dumped prices. As previously stated, the necessary determinations were not made before Customs completed its investigation and submitted its recommendations to the Minister.

As no determination was made in relation to dumping margins for Indonesia and Singapore and no decision was made to terminate the relevant parts of the investigation, exports from Indonesia and Singapore have been included in the following analysis of injury.

8.2.1 Volume trends

The Australian market

Customs estimated the size of the Australian market for PVC using verified information on domestic sales by Australian Vinyls and information on imports from TRACE. Most of the information on imports was verified during industry visits by Customs' staff.

The Australian market for PVC was relatively stable, fluctuating around 50,000 tonnes per quarter, although it did increase by about 10% in the 2nd quarter of 1999.

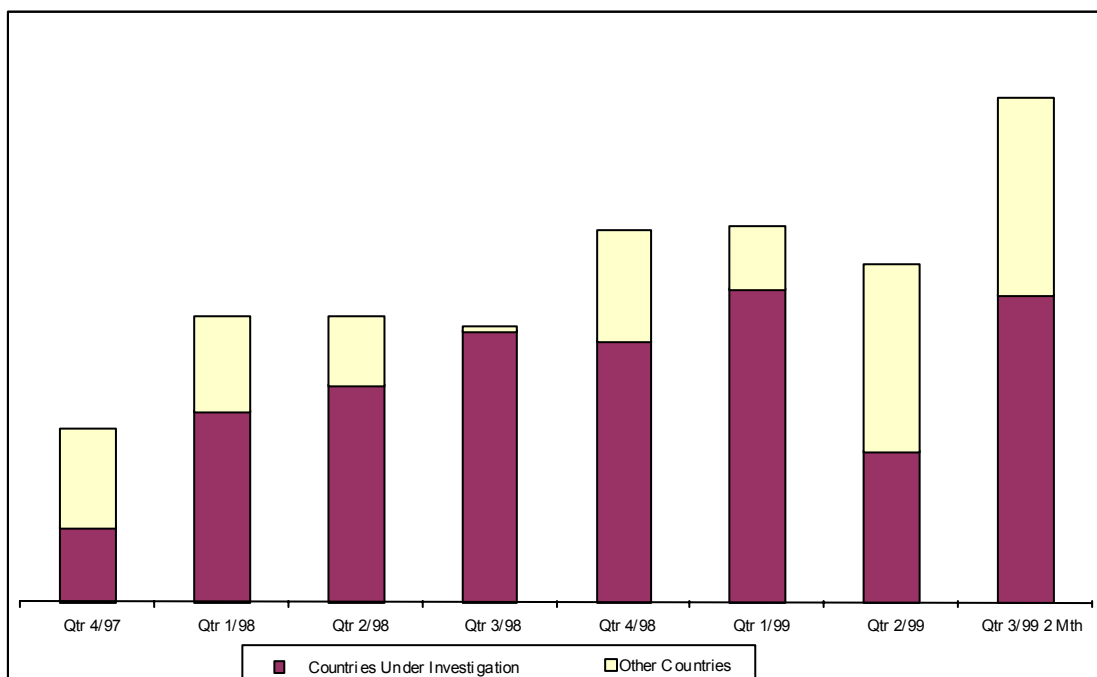
The market for the 3rd quarter of 1999 has been estimated using data for July and August. This indicates that the market has grown by almost 25% in this period.

Details of sales volumes and market shares for 1998-99 are at Confidential Attachment 10 and details for the 3rd quarter of 1999 are at Confidential Attachment 11.

Import volumes

Customs obtained information on imports to 8 September 1999 and extended its analysis of the volume of PVC imported from all countries from July 1997 to 8 September 1999. The results are illustrated in the graph below.

Chart 4: Import volumes



The total volume of imported PVC increased by about 65% in the nine months to June 1998. The volume further increased by 30% over the six months to December 1998. This volume was maintained in the 1st quarter of 1999. The volume of imports declined by 10% in the 2nd quarter of 1999, but was higher than the volume achieved prior to the claimed commencement of injury.

It is estimated that the volume of imports will more than double in the 3rd quarter of 1999.

The volume of PVC from the four countries under inquiry almost tripled in the nine months to June 1998. The volume further increased by almost 20% over the six months to December 1998, increased by a further 20% in the 1st quarter of 1999 and declined by about 50% in the 2nd quarter of 1999. Korea was the largest supplier, with imports from this source more than doubling in the 12 months to March 1999; imports from this source declined by 70% in the 2nd quarter of 1999. Imports from Indonesia and Singapore were also significant. Imports from Indonesia increased in

the 2nd quarter of 1999 and were more than double the volume achieved in the 2nd quarter of 1998. Imports from Singapore were significant in the last six months of 1998, but declined in the first six months of 1999.

The estimated volume of imports from Indonesia, Korea and Singapore increased significantly in the 3rd quarter of 1999.

Australian Vinyls' sales volume

Australian Vinyls provided information on its sales of PVC in its application. The sales volumes verified by Customs differed slightly from this information.

The volume of Australian Vinyls' domestic sales of PVC increased by about 6% over the nine months to June 1998. Sales volume declined by about 6% over the six months to December 1998 and declined by a further 8% in the 1st quarter of 1999. Sales volume increased by 19% in the 2nd quarter of 1999 to a level higher than that achieved prior to the claimed commencement of injury.

Australian Vinyls' estimated sales volume increased by a further 5% in the 3rd quarter of 1999.

Market shares

Australian Vinyls' market share declined by 4 percentage points in the nine months to June 1998 and declined by a further 4 percentage points to December 1998. Its market share declined by a further percentage point in the 1st quarter of 1999, but increased by 4 percentage points in the 2nd quarter of 1999. Its market share declined by 1 percentage point in the 12 months to June 1999.

Australian Vinyls' estimated market share fell by 12 percentage points in the 3rd quarter of 1999; as noted above, this market that has grown significantly.

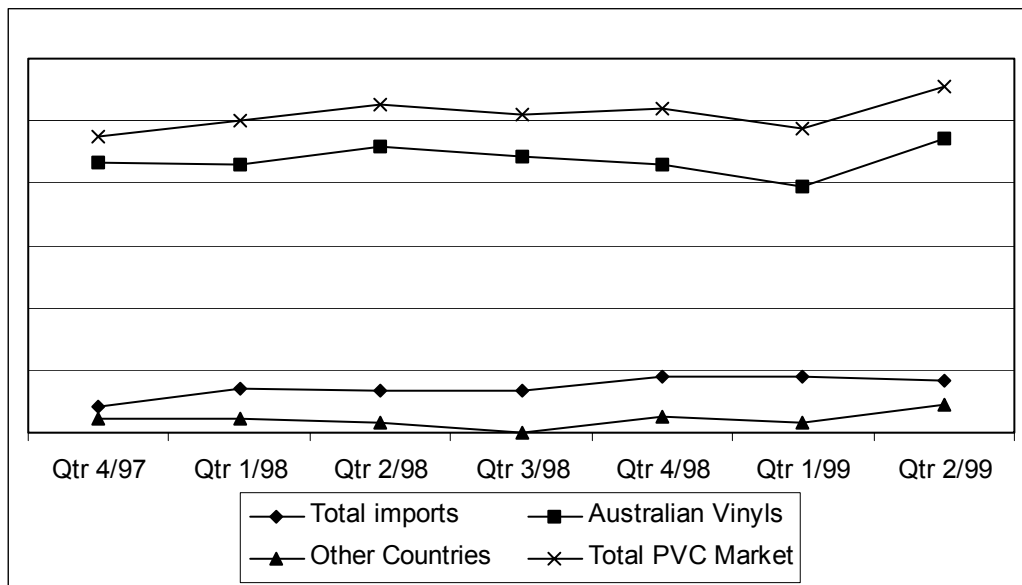
The market share of imports from the four countries under inquiry increased by 6 percentage points in the nine months to June 1998 and increased by a further 2 percentage points to December 1998. The market share of PVC from these countries increased by a further 4 percentage points in the 1st quarter of 1999, but fell by 9 percentage points in the 2nd quarter of 1999.

The estimated market share of PVC from the nominated countries increased by 9 percentage points in the 3rd quarter of 1999.

The market share of imports from Korea increased by 4 percentage points in the nine months to June 1998. This market share was maintained over the next six months and increased by a further 6 percentage points in the 1st quarter of 1999 then fell by 7 percentage points in the 2nd quarter of 1999. The market share of PVC from Indonesia peaked in the 4th quarter of 1998 and has maintained this market share since. The market share of PVC from Singapore has declined each quarter since the 3rd quarter of 1998.

The following graph illustrates the movement in quarterly market shares for PVC.

Graph 1: Australian market



8.2.2 Price trends

Price depression/undercutting

Price undercutting occurs when a company sells goods at a price below that achieved by its competitors, while price depression occurs when a company, for some reason, lowers its prices. Customs considers that the market visit reports provided by Australian Vinyls are *prima facie* evidence of price undercutting. However, Customs examined actual prices in the market place to analyse this claim. It found that the price of PVC from Korea and Singapore consistently undercut Australian Vinyls' monthly weighted average selling prices for domestically produced PVC. The price of PVC from Indonesia undercut Australian Vinyls' price on one occasion; this was in respect of one small shipment. The price of PVC from Hungary did not undercut Australian Vinyls' price.

Customs noted that Australian Vinyls sells to a number of customers while Singapore Polymer sells to one customer in Australia. It compared Australian Vinyls' price to this customer with the price the same customer was paying for PVC from Singapore. Prices were comparable; some months the imported price was lower, in others Australian Vinyls' price was lower.

Customs had insufficient information to undertake this comparison for PVC from other sources. It did not have information on all sales by importers and some importers sold to customers that did not purchase PVC from Australian Vinyls. Where comparisons were possible, Customs found the price of PVC from Korea generally undercut Australian Vinyls' price.

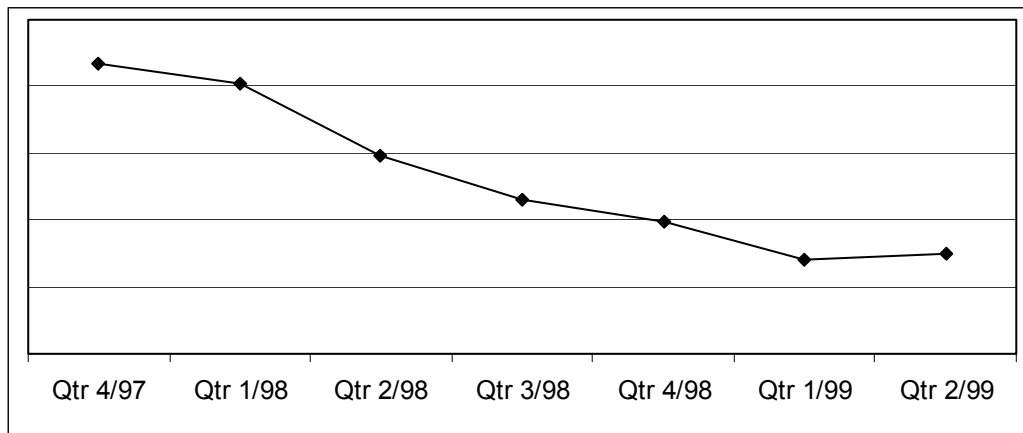
Customs calculated Australian Vinyls' quarterly weighted average selling prices for PVC. It found that these prices had steadily declined since October 1997, although

prices improved slightly in the 2nd quarter of 1999. Confidential Attachment 12 details the price comparisons that were made.

Customs considers that Australian Vinyls has suffered price depression and price undercutting.

The following graph illustrates quarterly movements in the Australian industry's selling prices.

Graph 2: Price depression



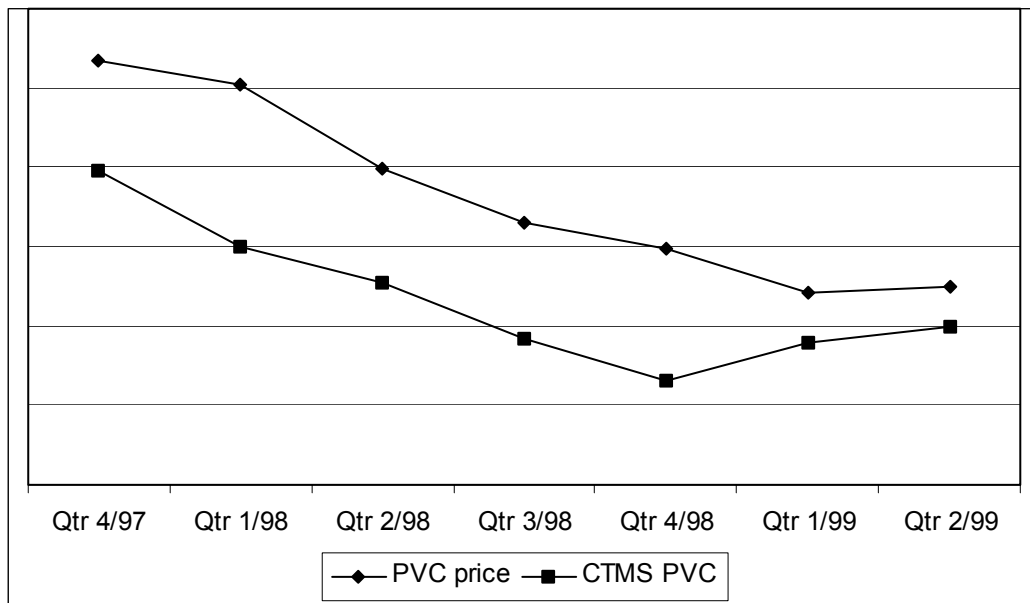
Price suppression

Price suppression occurs when the margin between a company's costs and prices is reduced.

Customs compared Australian Vinyls' quarterly weighted average selling prices with the corresponding quarterly CTMS PVC. It found that movements in costs, mainly the cost of imported VCM, reflected movements in selling prices. The margin between costs and prices increased in the 1st quarter of 1998, declined in the 2nd quarter of 1998 then increased over the next six months. The margin fell sharply in the 1st quarter of 1999 and fell further in the 2nd quarter of 1999. Customs considers that Australian Vinyls suffered price suppression.

The following graph illustrates quarterly price suppression.

Graph 3: Price suppression



8.2.3 Profits/profitability

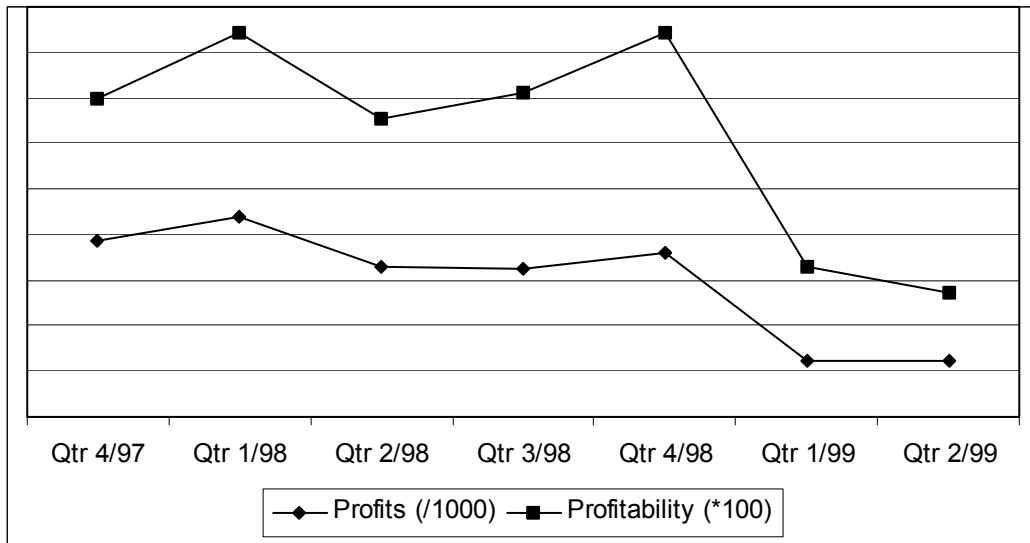
Customs calculated net profit and profitability for each quarter from October 1997 to June 1999. Profitability is measured as net profit expressed as a percentage of sales revenue. Customs used information verified during its visit to Australian Vinyls; this information differed slightly from that provided in the application.

Customs found that Australian Vinyls' net profit was relatively stable for the 15 months from the 4th quarter of 1997 to the end of 1998. However, net profit in the 1st quarter of 1999 was more than 65% lower than the quarterly average for the previous 15 months. Net profit fell slightly in the 2nd quarter of 1999.

Australian Vinyls' profitability showed a similar trend. It increased by 3 percentage points in the 15 months to December 1998 then declined by 10 percentage points in the 1st quarter of 1999. Profitability declined by a further percentage point in the 2nd quarter of 1999.

Customs analysis of profits and profitability is at Confidential Attachment 13. Customs considers that Australian Vinyls' profits and profitability has declined. The following graph illustrates movements in quarterly profits and profitability.

Graph 4: Profits and profitability



8.3 CONCLUSION

Over the period examined, Australian Vinyls' market share declined, it suffered price undercutting, price depression and price suppression and its profits and profitability declined. These effects were most noticeable in the 1st quarter of 1999, but worsened slightly in the 2nd quarter of 1999.

Customs considers that Australian Vinyls has suffered injury from some cause or causes and that this injury is material.

9 HAS DUMPING CAUSED MATERIAL INJURY?

As noted in previous sections, Customs considers that some importations of PVC have been dumped and that the economic performance of Australian Vinyls indicates that it has suffered injury.

Customs will now consider whether the effect of dumping is such that it has caused material injury to Australian Vinyls.

9.1 CLAIMS OF AUSTRALIAN VINYLs

In its application, Australian Vinyls claimed that it commenced to experience financial injury from January 1999. However, it claims it suffered price depression and undercutting and an adverse affect on market share prior to the beginning of 1999.

9.2 CLAIMS OF OTHER INTERESTED PARTIES

Other interested parties raised the following issues in submissions to Customs or during visits by Customs' staff.

- A number of companies maintain a second source of supply to guarantee supply. This is not possible without purchasing imported PVC.
- An enduser imported PVC after the Longford gas explosion and some importers reported an increase in inquiries for the supply of imported PVC after this incident.
- An importer commented on the issue of price depression by stating that the price of VCM is also depressed.
- There were claims that Australian Vinyls had a poor history of supply to Western Australian end-users.
- There were numerous claims that Australian Vinyls was not able to meet customer requirements with regard to volume and timeliness of supply.
- An enduser claimed that the price of PVC in Asia is below the market price in Australia. It considers that the actions of Australian Vinyls are anti-competitive, especially as Australian Vinyls is now the only Australian producer and as such faces minimal competition.
- An importer claimed that it cannot compete with the low prices offered by Australian Vinyls in the New Zealand market.

9.3 CUSTOMS' ASSESSMENT

9.3.1 Overview

PVC is a commodity product that is traded at world prices based on supply and demand. PVC prices, and prices for VCM, the major input into PVC, are published regularly. End users therefore know approximately how much they should pay for

product. Australian Vinyls accepts that it must compete in the international market place, but does not accept that it must compete with dumped prices.

PVC consumption is seasonal and mainly related to the building industry. In the northern hemisphere, consumption falls sharply in the winter months as building activity slows down. Pipes cannot be laid when snow covers the ground and low temperatures prevents the digging of trenches. PVC is also used to manufacture a wide range of toys, and markets such as the USA generate significant demand; toys for the Christmas market would normally be delivered in October and demand contracts during the Australian summer. However, PVC plants continue to operate during these times and producers look to offload stock at the best available prices. Such prices are often dumped prices.

The economic crisis that affected a number of Asian economies resulted in a large drop in domestic demand in these countries. PVC plants continued to operate and, as noted above, producers look to offload stock at the best available price.

The petrochemical industry is cyclical, with demand and prices fluctuating over time. Companies contacted by Customs indicated that the length of the cycle is about seven years. These companies claimed that PVC was at the bottom of the cycle.

The injury suffered by Australian Vinyls was most noticeable in the 1st quarter of 1999 when the petrochemical cycle was said to be at the bottom with low world demand and prices. Large consumers had reduced demand and the effect of the Asian economic crisis was being felt. Producers had excess stocks they wanted to offload. Imports from Korea, in particular, increased significantly. At face value, it would appear that dumping has caused the material injury suffered by Australian Vinyls.

However, Customs must consider if other factors have contributed to the injury suffered by Australian Vinyls.

9.3.2 Volume effects

Some end users claimed that Australian Vinyls could not meet their requirements and that they had to import product to maintain production. Australian Vinyls' production capacity is sufficient to meet total domestic demand. Customs estimated the market to be slightly over 200,000 tonnes in 1998-99. This compares with Australian Vinyls' production over this period of about tonnes and its capacity of about 220,000 tonnes.

Customs investigated these claims with end users, importers and Australian Vinyls.

A major disruption to the Victorian manufacturing industry occurred following the Longford gas explosion in October 1998.

Customs notes that production was only disrupted for about two weeks and found that there was no drop in Australian Vinyls' production in the 4th quarter of 1998. However, some companies advised Customs they were nervous about supply at this time and imported PVC.

Customs notes that production exceeded sales in the 4th quarter of 1998.

Australian Vinyls did suggest that some customers import small quantities of PVC in early 1999

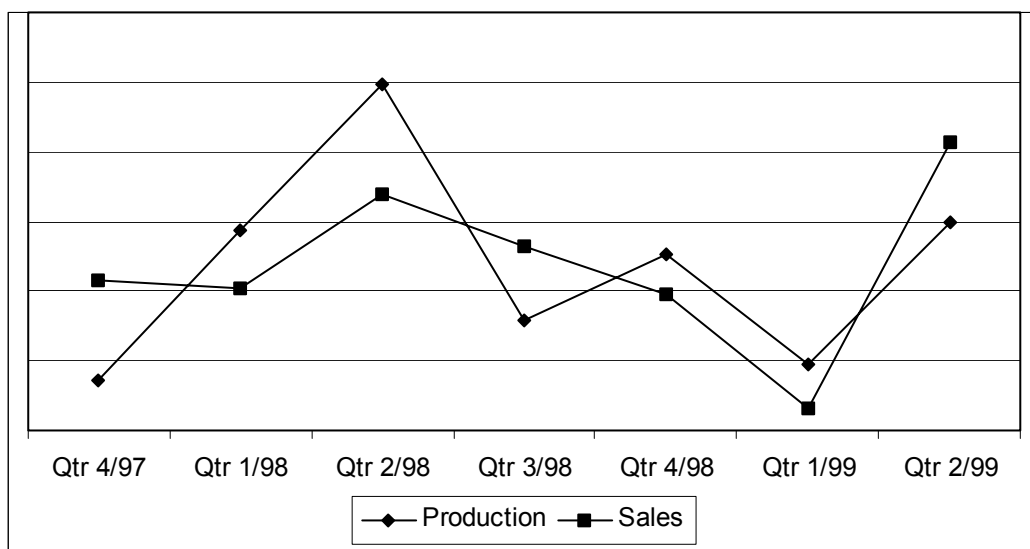
. The statutory shutdown of Laverton was postponed to enable stocks to be built up.

Customs found that actual production for the Altona plant in January 1999 was

. However, Customs notes that Altona is the smaller of Australian Vinyls' two plants and that sales are typically lower in January. Customs found that production exceeded sales in January and the 1st quarter of 1999.

The following graph illustrates Australian Vinyls' production and sales.

Graph 5: Production and sales



Australian Vinyls confirmed that there was a five day delay in restarting the Laverton plant after its statutory shutdown in April/May 1999. Some users complained that they could not obtain stock at this time.

. Customs has no firm evidence to either accept or reject these claims.

Customs recognises that Australian Vinyls has had some production problems since October 1998, but is satisfied these problems have not significantly contributed to the material injury the company has experienced.

9.3.3 Price effects

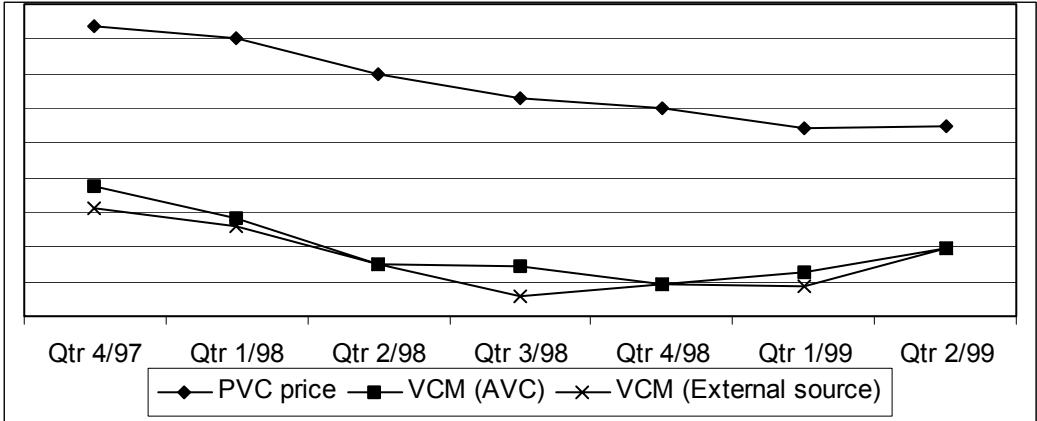
. Australian Vinyls may offer at a lower price in order to get the sale and hence maintain sales volume. The limited evidence of price undercutting may not mean that dumping is not causing material injury.

VCM is the major raw material input into PVC, accounting for about 70 to 80% of the cost to make. The price of PVC reflects the cost of VCM. The price of VCM fell during the period examined. Customs would expect the price of PVC to fall and the existence of price depression may not mean that any injury experienced by Australian Vinyls has been caused by dumping.

Customs noted that Australian Vinyls' pricing of PVC, cost of VCM and CTMS had a close correlation from the 4th quarter of 1997 to the end of 1998. As noted above, Australian Vinyls experienced price suppression in the 1st quarter of 1999. In this quarter the cost of VCM increased slightly. The CTMS increased by a larger amount:

However, there was also a significant drop in Australian Vinyls' quarterly weighted average selling price at a time when prices may be expected to increase. The following graph illustrates the movement in prices and the relationship with VCM.

Graph 6: Price movements



9.3.4 Profits and profitability

Using profits as the key indicator of performance of companies and industries is a well-established principle in financial analysis. However, any injury caused by dumping would be reflected in domestic operations as the companies' exports would be unaffected by dumping in Australia. Therefore, Customs analysed Australian Vinyls' profits and profitability attributable to domestic sales only. Export sales were excluded from the analysis.

Customs found that Australian Vinyls' profits and profitability were relatively stable from October 1997 to the end of 1998. However, both profits and profitability declined significantly in the 1st quarter of 1999 and remained at that level in the 2nd quarter. Australian Vinyls has claimed that its performance has not improved since July 1999, but has not been able to verify this claim.

Customs explored factors other than dumping that may have contributed to this decline in performance.

A number of interested parties claimed that production problems and extended statutory shutdowns resulted in Australian Vinyls having problems supplying its customers. Very little verifiable evidence was provided to support this claim and in one case Australian Vinyls provided evidence to refute such a claim. Customs' analysis of Australian Vinyls' production and sales did not support this claim.

VCM is the major raw material used in the production of PVC. Customs examined trends in VCM prices but found no movement that would have contributed to such a significant decline in Australian Vinyls' performance.

Customs could not identify any other factor that would have contributed to the decline in performance.

9.3.5 Other matters

A number of companies advised Customs that they maintain a 2nd source of supply. As there was now only one manufacturer of PVC in Australia, that 2nd source must be overseas. Australian Vinyls responded by stating that it had no problems with such a policy, but added that it has two plants and has plenty of stock. However, it does have a problem with the price of imports if those goods are dumped.

Some users claimed that Australian Vinyls treated Western Australia as an export market.

Australian Vinyls claims it now has the tonnage available and can readily supply PVC to Western Australia.

Customs notes that a major customer on the eastern seaboard claims Australian Vinyls has been unable to meet its requirements. The evidence to support this claim is inconclusive.

Some importers claimed that the price of PVC in Asia is below the market price in Australia. While this may be the case, the question is if that price is profitable and are the goods being dumped in Australia. The price of goods in the domestic market of the Asian countries investigated is discussed at Section 7 of this report.

Other companies claimed that they cannot compete with Australian Vinyls in New Zealand. Customs is investigating a complaint in relation to the Australian market and it does not consider this matter is relevant to the investigation of this dumping complaint.

9.4 CONCLUSION

Directions have been given to Customs by previous Ministers.

One of these directions required that the following aspects should be addressed when considering whether injury is material:

- the greater impact of injury during economic downturns;
- regional dumping;
- reduced rates of growth; and
- threat of injury.

Another direction concerning injury stated:

- 'material injury' is injury which is greater than that likely to occur in the normal ebb and flow of business; and
- only in rare exceptions would the government expect material injury, or the threat of injury, to be proven unless the Australian industry had suffered, or was threatened with, either
 - a 'material' diminution of profits; or
 - a 'material' loss of market share.

As discussed in the above subsections, Customs has found that Australian Vinyls' domestic profits and market share decreased during the investigation period.

Customs found that most imports from Indonesia and Singapore were not dumped. While the pricing of these imports may be contributing to injury being suffered by Australian Vinyls, this injury cannot be attributed to dumping.

Significant volumes of PVC were imported from Korea and were dumped. Customs considers that this has contributed to the reduced sales volume by Australian Vinyls and has caused prices to continue to decline in the 1st quarter of 1999. Customs concludes that dumped PVC from Korea has contributed to the material injury suffered by Australian Vinyls.

Imports from Hungary have been sporadic and accounted for less than 5% of the total Australian import volume. While the price of PVC from Hungary was generally higher than Australian Vinyls' price, PVC from Hungary was dumped. Customs concludes that dumped PVC from Hungary may have contributed to the material injury suffered by Australian Vinyls.

The following table illustrates the injury factors that can be attributed to PVC from the four countries.

Table 2: Dumping and Injury Effects by Country

| | Hungary | Indonesia | Korea | Singapore |
|---------------|---------|-----------|-------|-----------|
| Dumping | ✓ | N/A | ✓ | N/A |
| Price effect | | | ✓ | |
| Volume effect | | ✓ | ✓ | ✓ |

Having considered all of the above issues, Customs is satisfied that dumped imports from Hungary and Korea have caused material injury to the Australian industry.

10 THREAT OF MATERIAL INJURY

Customs addressed the question of whether or not material injury to Australian industry is threatened because of exports of the goods from Hungary, Indonesia, Korea and Singapore. In so doing, Customs considered whether there has been a change in circumstances such as would make injury foreseeable and imminent unless measures were imposed.

PVC is a commodity product that is traded at world prices based on supply and demand. PVC consumption is also seasonal and related to the building industry. In the northern hemisphere, consumption falls sharply in the winter months as building activity slows down. PVC is also used to manufacture a wide range of toys, and markets such as the USA generate significant demand. However, PVC plants continue to operate during these times and producers look to offload stock at the best available prices. Such prices are often dumped prices.

The injury suffered by Australian Vinyls was most noticeable in the 1st quarter of 1999, ie. the northern hemisphere winter. Imports increased significantly at that time.

Given the foregoing it is likely the material injury will continue for the Australian industry particularly when the seasonal fluctuations are in effect.

11 SUBMISSIONS IN RESPONSE TO SEF

Customs placed a SEF on the public record on 19 August 1999. Submissions were invited in response to the SEF by 8 September 1999. Customs received submissions from the following interested parties:

- Australian Vinyls;
- PolyChem;
- Quantum;
- Roger Simpson & Associates Pty Ltd;
- Satomo;
- Hanwha;
- LG;
- Embassy of the Republic of Indonesia; and
- Embassy of the Republic of Korea.

Submissions received in response to the SEF are at Confidential Attachment 14. Customs' consideration of the issues raised in each submission also form part of this attachment.

11.1 Australian Vinyls

Australian Vinyls provided a confidential submission to the SEF on 8 September 1999; a non confidential version was subsequently provided. The submission raised the following matters:

- Asian market conditions;
- global trends;
- PVC Market sectors;
- imports to Australia;
- Australian Vinyls' sales performance;
- acceptable profitability;
- dumping margins and causal link; and
- imports from Korea; and Imports from Indonesia.

11.2 PolyChem

PolyChem provided a non confidential submission to the SEF on 6 September 1999. The submission raised the following matters;

- dumping margins for Korea and Hungary;
- Australian market estimates;
- volume effects ;
- price effects;
- Australian Vinyls' ability to supply the Australian market;
- lack of information from their Korean Principal; and
- small volume of imports from Hungary.

11.3 Quantum

Quantum provided a confidential submission to the SEF on 7 September 1999; a non confidential version was subsequently provided. The submission raised the following matters;

- normal value calculations (LG);
- injury assessment;
- sales volume;
- price effects and price undercutting;
- price Suppression; and
- role of imports in the Australian market.

11.4 Roger Simpson & Associates Pty Ltd

Roger Simpson & Associates Pty Ltd, acting on behalf of Asahimas, provided a confidential submission to the SEF on 31 August 1999. The submission raised the following matters;

- normal value calculations for Asahimas; and
- termination of the investigation as it relates to Asahimas.

11.5 Sumitomo and Satomo

Sumitomo provided a confidential submission to the SEF on 8 September 1999.. The submission provided Satomo's response and raised matters in relation to the statements in the SEF regarding cooperation.

11.6 Hanwha

Hanwha provided a confidential submission to the SEF on 8 September 1999. The submission raised the following matters;

- constructed cost;
- exchange rate;
- period for calculating dumping margins; and
- Hanwha PVC had not been dumped.

11.7 LG

LG provided a confidential submission to the SEF on 6 September 1999. The submission consisted of a completed exporter's questionnaire.

11.8 The Indonesian Embassy

The Indonesian Embassy provided a submission on 1 September 1999. It submitted that Customs had covered most relevant facts in the SEF.

11.9 The Korean Embassy

The Korean Embassy provided a confidential submission to the SEF on 7 September 1999; a non confidential version was subsequently provided. The submission raised the following matters;

- PVC price;
- role of imports;
- Australian market; and
- abuse of the anti-dumping system by some Australian companies.

11.10 Customs' Consideration

Customs considered all submissions in response to the SEF. Submissions received in response to the SEF are at Confidential Attachment 14 together with Customs' consideration of the issues raised in each submission.

Customs reviewed the information and data provided by all parties. Customs points out that if companies do not cooperate during an investigation it must make decisions on the best available information.

The submissions received contained little new verifiable information. Appropriate adjustments have been made to normal value calculations but overall the submissions did not contain any argument that would cause Customs to alter its recommendations.

12 ANTI-DUMPING MEASURES

12.1 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 lesser duty may be applied if it is determined that a lesser duty is sufficient to remove the injury.

A non-injurious price (NIP) is calculated to determine the level of dumping duty that needs to be applied to dumped imports to remove the injury suffered by the Australian industry. The NIP is defined in s. 269TACA of the Act, as follows:

"The non-injurious price of goods exported to Australia is the minimum price necessary:

- (a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(l)(b) or (2)(b);"*

This lesser duty provision is contained at Article 9.1 of the World Trade Organisation Anti-Dumping Agreement which states that:

"it is desirable that the (anti-dumping) duty be less than the margin (of dumping), if such lesser duty would be adequate to remove the injury to the domestic industry."

Australian legislation reflects the principle of this provision in s. 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), which refers to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent injury to the local industry. This provides:

"The Minister must if the non-injurious price of the goods is less than the normal value of the goods have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (a) the export price of the goods of that kind so ascertained or last so ascertained; and*
- (b) that lesser duty*

does not exceed that non-injurious price"

Anti-dumping and countervailing duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export. Although the method of calculating a NIP is not defined in the legislation, it is generally derived from the Australian industry's unsuppressed selling price (USP).

An interim duty is collected on each importation of goods subject to anti-dumping measures.

In determining the amount of interim dumping duty payable, the Minister must ascertain an export price, a normal value and a NIP 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 NIP.

An importer can apply for repayment of any interim duty paid in excess of the actual duty liability. An affected party can seek a review of the interim duty to be paid in future shipments.

The following paragraphs explain how Customs calculated an interim dumping duty for the goods under investigation.

12.2 ASCERTAINED EXPORT PRICES AND NORMAL VALUES

Customs has ascertained export prices and normal values for BorsodChem using the weighted average values for the December quarter of 1998. BorsodChem has not exported PVC to Australia in 1999. These values were converted to Australian dollars using the exchange rate for 22 September 1999.

Customs has ascertained export prices and normal values for Hanwha using the weighted average values for the March quarter of 1999. Hanwha has not exported PVC to Australia since March 1999. These values were converted to Australian dollars using the exchange rate for 22 September 1999.

Customs has ascertained export prices and normal values for agents selling Hanwha product, for other Korean manufacturers of PVC and for other sellers of Korean PVC using the weighted average values for the March quarter of 1999. These companies have exported PVC to Australia since this time, but Customs does not have more recent information on normal values against which it can compare export prices. These values were converted to Australian dollars using the exchange rate for 22 September 1999.

12.3 ASCERTAINED NIP

Anti-dumping and countervailing duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export. Although the method of calculating a NIP is not defined in the legislation, it is generally derived from the Australian industry's USP.

12.3.1 Unsuppressed selling price

A USP is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to calculate the USP.

- The 1st option is to determine a price for locally produced goods when the Australian market was not affected by dumping.
- A 2nd option is to use the Australian industry's CTMS plus an estimated profit (if any) which the industry could achieve in a market not affected by dumping. In estimating this profit, Customs looks to the market for guidance.

- A 3rd option is to use the lowest price for undumped imports. However, this option presupposes that the market is unaffected by dumping. Further, it makes no allowance for any premium locally produced goods may expect to achieve over imports by virtue of normal commercial considerations such as shorter delivery times and reduced stock holdings.

Australian Vinyls provided a submission in relation to the calculation of a USP. It claimed that the March quarter of 1998 was the first normal reporting period following the creation of the joint venture in August 1997. It further claimed that in the March quarter of 1999 there was significant evidence of dumping and that this was having an impact on prices.

Australian Vinyls claims that its performance in 1998 provides a good measure of the profitability of a local PVC manufacturer. It claimed imports accounted for 15% of the market and that the year was characterised by vigorous competition from undumped imports. Further, it proposes that profit expressed in dollar, rather than percentage terms be used.

In this particular inquiry, Customs is reluctant to use the Australian Vinyls' selling prices to determine a USP. There have been claims that the market has been affected by dumping throughout the 1990s. Further, the PVC market is cyclical and prices achieved in, say 1998, may not be representative of market prices today.

Customs intends to determine a USP based on the Australian Vinyls' average CTMS PVC in the June quarter of 1999. It has used this data because it is the most recent available to Customs and is the best estimate of current costs.

Customs considered alternative methods to determine an appropriate level of profit. One option was to use a profit equivalent to the five year Treasury bond rate at June 1999 obtained from the July 1999 issue of the Reserve Bank of Australia Bulletin (5.90%). Another option was to use information on chemical industry profitability obtained from industry bodies such as the Plastics and Chemicals Industries Association.

Customs has used a mark up on costs derived from the most recent available information on the performance of the chemical industry in Australia.

12.3.2 Non-injurious price

The USP is equivalent to the landed duty paid into store cost of imports for end users. To calculate the NIP, post FOB exportation costs such as overseas freight, costs incurred in Australia and an amount for importer's profit are deducted from the USP. An example of this calculation is shown below:

| | |
|------------------------------------|------------|
| Unsuppressed selling price | 100 |
| | |
| Less post exportation costs | |
| ocean freight & marine insurance | 10 |
| Duty | 5 |
| Port & broker charges | 1 |
| Cartage to store | 2 |
| SG&A expenses | 8 |
| Profit | 10 |
| Total | 36 |
| | |
| Non-injurious price | 64 |

Customs has determined these costs for each country against which it is recommended that measures be imposed. Customs' calculations of NIPs are at Confidential Attachment 15.

The normal value is operative in determining the interim dumping duty for PVC from Hanwha of Korea. The non-injurious price is operative in determining interim dumping duties for PVC from BorsodChem of Hungary and other suppliers from Korea.

12.4 INTERIM DUMPING DUTY

The interim dumping duty is the amount equal to the sum of:

- The difference between the ascertained export price and the lower of the ascertained NIP and the ascertained normal value; and
- If the export price is lower than the ascertained export price, the amount by which the latter exceed the former.

An interim dumping duty may be ascertained:

- (a) as a proportion of the export price; or
- (b) by reference to a measure of the quantity of those particular goods; or
- (c) by reference to a combination of (a) and (b) above.

Customs has recommended that the interim dumping duty be ascertained by reference to a measure of quantity of the goods.

Details of ascertained export prices, normal values and NIPs are at Confidential Attachment 16.

13 RECOMMENDATIONS

Subsection 269TG(1) of the Act specifies that the Minister can take action against dumped goods that have already been exported to Australia. This action is normally limited to goods where securities have been taken. Customs has recommended that the Minister take anti-dumping action under s. 269TG(1) of the Act against exports of PVC from Korea.

Subsection 269TG(2) of the Act specifies that the Minister can take action against goods that have been exported to Australia or may be exported to Australia in the future. Customs is satisfied that exports from Hungary and Korea have been dumped and may be dumped in the future. It has recommended that the Minister take anti-dumping action under s. 269TG(2) of the Act.

Customs recommends that the Minister be satisfied that:

pursuant to s. 269TAAD(1) of the Act, certain sales of like goods sold for home consumption in Singapore by SPC were in substantial quantities at a price less than their cost and it is unlikely that the costs will be able to be recovered within a reasonable period;

- pursuant to s. 269TAB(3) of the Act sufficient information has not been furnished or is not available to enable export prices for PVC from Maspion, Sumitomo, Citi Polymer, , Intermin, LG, Hyundai and the Normandy Group SA to be ascertained under preceding subsections of s. 269TAB of the Act;
- pursuant to s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable the normal values for PVC from BorsodChem, , Maspion, Sumitomo, Citi Polymer, , , Intermin, LG, Hyundai and the Normandy Group SA to be ascertained under any preceding subsection of s. 269TAC of the Act;
- pursuant to s. 269TACB(4) of the Act, the quarterly weighted average of export prices during the investigation period was less than the quarterly weighted average of corresponding normal values over that period for BorsodChem, Asahimas, Maspion, Sumitomo, Hanwha, Citi Polymer, , , Intermin, LG, Hyundai, the Normandy Group SA and SPC; and
- pursuant to s. 269TG(1) of the Act, in respect of PVC from Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers that has already been exported to Australia, the amount of the export price is less than the amount of the normal value and because of that material injury to the Australian industry producing like goods has been caused (or in the case where a security has been taken under section 42 – material injury to the Australian industry producing like goods might have been caused);

pursuant to s. 269TG(2) of the Act, in respect of PVC from BorsodChem, Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers exported to Australia; the amount of the export price is less than the amount of the normal value 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 and because of that material injury to the Australian industry producing like goods has been caused; and

- dumping of PVC from Asahimas, Maspion and Satomo of Indonesia and from and SPC of Singapore has neither caused, nor does it threaten to cause, material injury to the Australian industry.

Customs recommends that the Minister:

- pursuant to s. 269TAAD(4) of the Act determine the amount to be the cost of production of like goods of PVC for SPC in Singapore and the amount to be the SG&A costs associated with the sale of those goods;
- pursuant to s. 269TAB(1)(c) of the Act determine, having regard to all the circumstances of exportation, export prices of PVC for and ;
- pursuant to s. 269TAB(3) of the Act determine, having regard to all relevant information, export prices of PVC for from Maspion, Sumitomo, Citi Polymer, , Intermin, LG, Hyundai and the Normandy Group SA;
- pursuant to s. 269TAC(2)(c) of the Act; determine the cost of production for PVC for Asahimas of Indonesia, Hanwha of Korea and SPC of Singapore and, on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade, determine the SG&A costs associated with the sale and any profit on the sale;
- pursuant to s. 269TAC(6) of the Act determine, having regard to all relevant information, normal values for PVC from BorsodChem, , Maspion, Sumitomo, Citi Polymer, , , Intermin, LG, Hyundai and the Normandy Group SA;
- pursuant to s. 269TAC(9) of the Act, direct that the constructed CTMS for Asahimas of Indonesia be adjusted to account for differences between domestic and export selling, general and administration expenses (including warehousing costs and royalty and management fees), domestic delivery costs and FOB charges;
- pursuant to s. 269TAC(9) of the Act, direct that the constructed CTMS for Hanwha of Korea be adjusted to account for differences between export and domestic sales in relation to inland freight and FOB charges, credit terms, waste levy, and selling and administration costs;
- pursuant to s. 269TAC(9) of the Act, direct that the constructed CTMS for SPC of Singapore be adjusted to account for differences between export and domestic sales in relation to credit terms, inland freight and packing;
- pursuant to s. 269TAC(10) of the Act, direct that normal values for be ascertained as if the country of origin were the country of export.

- pursuant to s. 269TACB(1) of the Act determine, by comparison of the quarterly weighted average of export prices and the quarterly weighted average of normal values, that PVC from BorsodChem, Asahimas, Maspion, Sumitomo, Hanwha, Citi Polymer, , , , Intermin, LG, Hyundai, the Normandy Group SA and SPC was or was not dumped;
- pursuant to s. 269TG(1) of the Act, declare by public notice that s. 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) applies to PVC from Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers that has already been exported to Australia;
- pursuant to s. 269TG(2) of the Act, declare by public notice that s. 8 of the Dumping Duty Act applies to PVC from BorsodChem, Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers exported to Australia after the date of publication of this notice;
- pursuant to s. 8(5) of the Dumping Duty Act direct that the element of interim dumping duty referred to in s. 8(4)(a) of the Dumping Duty Act for PVC from BorsodChem, Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers be ascertained by reference to a measure of the quantity of the goods;
- ascertain export prices, normal values and non-injurious prices as set out in Confidential Attachment 16;
- publish legal instruments under s. 269TG(1) and 269TG(2) of the Act and under s. 8(5) of the Dumping Duty Act;
- agree that, on the ground of confidentiality, the Tables attached to the legal instruments under s. 269TG(1) and 269TG(2) of the Act not be published; and
- pursuant to s. 269TL(1) of the Act, issue a public notice that she has decided, after having regard to Customs' recommendations, not to declare that s. 8 of the Dumping Duty Act applies to PVC exported to Australia from Indonesia and Singapore.

To give effect to these recommendations, Customs recommends that the Minister sign the legal instruments listed at Attachment 1.

14 ATTACHMENTS

- 1 List of legal instruments for the Minister's signature
 - 2 Statement of facts and evidence relied upon
 - 3 Glossary
 - 4* Summary of imports of PVC from 1 July 1999 to 8 September 1999
 - 5* PVC importer/exporter matrix
 - 6* Export price calculations
 - 7* Normal value calculations
 - 8* Dumping margin calculations
 - 9* Dumping volume calculations
 - 10* Sales volumes and market shares October 97 to June 99
 - 11* Sales volumes and market shares from 1 July 99 to 8 September 99
 - 12* Price comparisons
 - 13* Analysis of profits and profitability
 - 14* Consideration of submissions received in response to the SEF
 - 15* Calculation of non-injurious prices
 - 16* Ascertained export prices, normal values and non-injurious prices
- * Confidential attachments not included in the report that is available to the public

Attachment 1

List of legal instruments for the Minister's signature

ATTACHMENT 1

LIST OF LEGAL INSTRUMENTS FOR THE MINISTER'S SIGNATURE

- An instrument under s. 269TAAD(4) of the Act determining the cost of production of like goods to PVC by SPC in Singapore and the SG&A costs associated with the sale of those goods.
- An instrument under s. 269TAB(1)(c) of the Act determining export prices for and .
- Instruments under s. 269TAB(3) of the Act determining export prices for Maspion, Sumitomo, Citi Polymer, , Intermin, LG, Hyundai and the Normandy Group SA.
- Instruments under s. 269TAC(2)(c) of the Act determining normal values for Asahimas, Hanwha and SPC.
- Instruments under s. 269TAC(6) of the Act determining normal values for BorsodChem, , Maspion, Sumitomo, Citi Polymer, , , Intermin, LG, Hyundai and the Normandy Group SA.
- An instrument under s. 269TAC(10) of the Act directing that normal values for be ascertained as if the country of origin were the country of export.
- Instruments under s. 269TACB(1) of the Act determining that PVC from BorsodChem, Asahimas, Maspion, Sumitomo, Hanwha, Citi Polymer, , , Intermin, LG, Hyundai, the Normandy Group SA and SPC has or has not been dumped.
- Instruments under s. 269TG(1) of the Act, declaring that s. 8 of the Dumping Duty Act applies to PVC from Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers that has already been exported to Australia;
- Instruments under s. 269TG(2) of the Act, declaring that s. 8 of the Dumping Duty Act applies to PVC from BorsodChem, Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers that has been or may be exported to Australia.
- Instruments under s. 8(5) of the Dumping Duty Act ascertaining the element of interim dumping duty in relation to PVC from BorsodChem, Hanwha, companies selling PVC manufactured by Hanwha, other Korean manufacturers and companies selling PVC from other Korean manufacturers.
- Instruments under s. 269TL(1) of the Act declaring that PVC exported from Singapore and Indonesia to Australia are goods to which s. 8 of the Dumping Duty Act does not apply.

Attachment 2

Statement of facts and evidence relied upon

STATEMENT OF FACTS AND EVIDENCE RELIED UPON

Section 269TEA(5) of the Act requires that the report set out the material findings of fact on which the recommendations are based and also provide particulars of the evidence relied upon to support those findings.

In formulating the recommendations in this report, Customs had regard to:

| Section of report | Evidence relied upon |
|---|--|
| Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12. | <ul style="list-style-type: none">• the application;• submissions to which Customs had regard when formulating the SEF;• the result of on-site verifications in Australia and overseas;• any submission made in response to the SEF; and• any other relevant matter. |

Attachment 3

Glossary

GLOSSARY

Arms length

Section 269TAA of the Act sets out the circumstances where a transaction is to be treated as non arms-length.

A transaction cannot be considered to be arms-length if:

- there is a consideration other than price; or
- the price is influenced by a relationship between the importer and exporter; or
- the buyer will be reimbursed, compensated or receive a benefit in respect of the price (unless it is an established, normal business practice to do so).

Export sales may also be determined as not at arms length if the importer is selling at a loss.

Ascertained export price, normal value and non-injurious price

Where a decision is taken to impose provisional or final dumping measures, it is necessary to ascertain what is or would be the normal value, the export price and the non-injurious export price (in the case of final measures) of those goods. The details of these ascertained prices must be published in the formal notice of the positive finding unless the release of such details contains information regarded by an interested party as confidential. The ascertained export price should not be confused with the actual export price.

See also *normal value, export price, non-injurious price* and *interim duty*.

Australian industry

Section 269T(4) of the Act states there is an Australian industry in respect of 'goods of a particular kind' if there is a person or persons who produces like goods in Australia. Where the like goods are close processed agricultural goods, the Australian industry will include producers of raw agricultural products.

Goods are not considered to have been produced in Australia (other than unmanufactured raw products) unless the goods are wholly or partly manufactured in Australia. To be considered wholly or partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Applications must be supported by a sufficient part of the Australian industry. Section 269TB(6) of the Act defines a sufficient part of the Australian industry as domestic producers whose collective output is more than 50% of the total production of those that have commented on the application. Supporters of the application must also account for 25% or more of the total production.

See also *close processed agricultural goods* and *like goods*

Close processed agricultural goods

Refer s. 269(4), (4A), & (4B) of the Act. Close processed agricultural goods are defined as goods that are derived substantially or completely from raw agricultural goods where the raw goods are devoted substantially or completely to the processed goods. There must also be either a close price relationship between the goods, or a significant part of the production costs of the processed goods is constituted by the cost of the raw goods. Producers of close processed agricultural goods form part of the Australian industry in respect of considerations of material injury.

Dumping

Dumping occurs when goods are exported to Australia at a price that is below the "normal value" of the goods. Normal value is usually the domestic price of the goods in the country of export.

Australia's anti-dumping and countervailing legislation is found in Part XVB of the Act and the Dumping Duty Act. The legislation reflects Australia's rights and obligations as a signatory to the World Trade Organisation Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures and with the Government's industry and economic policies.

Australia's legislation does not seek to establish whether dumping was or is predatory, and in some sense unfair. Rather, the objective is simply to identify the price differentiation if it exists, any material injury caused thereby, and to provide a mechanism to remove the injurious effect of subsequent imports.

Dumping duty

Dumping duty is distinct from import duties. Dumping duties may apply to imports covered by measures in accordance with s. 269TG(1) of the Act as well as all future imports under s. 269TG(2) of the Act. Public notice is given if a dumping duty is to be imposed.

Dumping margin

The dumping margin is the difference between the export price and the normal value. Dumping margins are usually calculated for each individual exporter and can be expressed as a value or as a percentage of the export price.

Dumping margins can be determined using different methodologies depending on the circumstances of the investigation. Under s. 269TACB of the Act export prices are compared with normal values to arrive at dumping margins as follows:

- the weighted average export price over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
- using the above method in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or

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- the export price in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
- a combination of methods referred to above in respect of part or parts of the investigation

If the number of exporters who have provided a submission is so large that it is impractical to calculate individual dumping margins for each of the exporters, statistical sampling may be used to calculate dumping margins for those exporters with the largest volume of exports to Australia. The dumping margins established under this approach might then be used for the remaining exporters and applied as residual margins for that country.

Export price

Export prices are determined under s. 269TAB of the Act.

Usually the export price is determined under s. 269TAB(1)(a) using the actual price paid by the Australian importer, less post exportation charges, where:

- the importer is not the exporter;
- the transaction is arms length: and
- the goods have been purchased by the importer from the exporter.

When the sales are considered not to be arms-length, s. 269TAB(1)(b) and the related s. 269TAB(2) provide a method to determine the export price on the basis of the selling price by the importer, less prescribed deductions, provided:

- the subsequent sale in Australia by the importer was to a non-associated person; and
- the goods have been sold in the condition in which they were imported.

Prescribed deductions include any duties or sales tax paid or payable on the goods and all other costs or charges incurred after exportation and profit.

When the conditions of s. 269TAB(1)(a) and (1)(b) cannot be met, s. 269TAB(1)(c) permits the export price to be determined having regard to all the circumstances of the exportation.

When sufficient information has not been furnished, or is not available, to enable the export price to be determined under the preceding provisions, the export price is determined having regard to all relevant information under s. 269TAB(3).

See also *arms length*

Final measures

Final measures can take the form of dumping or countervailing duty (pre 1/1/93 measures), interim dumping or countervailing duty (post 1/1/93 measures) or an undertaking by the exporter (or in countervailing cases the exporter or the government of the exporting country). In accordance with s. 269TM of the Act,

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dumping and countervailing duties and undertakings remain in force for a maximum of five years, unless revoked earlier.

Initiation report

A report recommending or rejecting an application on the basis that reasonable grounds do or do not exist for the publication of a notice. The report will set out the reasons as to whether or not, *prima facie*, the application meets the provisions of s. 269TC of the Act.

Interim dumping/countervailing duty

Under the interim duty scheme, introduced on 1 January 1993, an amount of dumping/countervailing duty is collected on every importation of the goods. That duty is known as interim dumping/countervailing duty. Interim duty does not apply to goods that became subject to final anti-dumping and countervailing measures before 1 January 1993.

Interim duty (in the case of final measures) is the sum of: the difference between the ascertained normal value (or the ascertained non-injurious price if that is lower) and the ascertained export price of the goods, plus the amount by which the actual export price is less than the ascertained export price. The interim duty may be levied on an ad valorem basis (ie. x% of the export price), as a price per unit of quantity (eg. \$y per tonne) or as a combination of the two.

See also *ascertained normal value, export price and non-injurious price*.

Investigation

Customs role in the dumping and subsidisation investigation is to:

- consider applications for the publication of dumping duty and countervailing duty notices;
- make recommendations to the Minister on whether sufficient grounds exist or that there are not sufficient grounds for the publication of dumping duty and/or countervailing duty notices; and
- where appropriate, require and take securities in respect of any dumping duty/ countervailing duty that may become payable.

The legislation imposes time limits within which an investigation is conducted:

- 20 days to examine an application and if not satisfied about certain matters reject the application;
- if an application is not rejected, 60+ days after notifying the initiation of the investigation to reach a preliminary affirmative determination (if appropriate), 110 days to issue a statement of essential facts and 155 days to make a recommendation to the Minister;

Interested parties are invited to make submissions within the first 40 days after the notification of the initiation of an investigation. An extension to a deadline for receipt of submissions by interested parties may be extended if a request is received in

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writing and the request is reasonable and practicable given the circumstances of the investigation. Interested parties are also provided with an opportunity to lodge submissions in response to the statement of facts on which the CEO bases his recommendation to the Minister.

Investigation period

A period defined in the initiation notice over which importations of the goods under consideration are examined. The investigation period is relevant to the application of provisions dealing with such matters as the determination (for normal value purposes) of whether sales are in the ordinary course of trade, and in calculations to establish whether dumping or subsidy is negligible.

Like goods

Section 269T(1) of the Act 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.

Material injury

The Minister may impose measures to relieve the affect of dumping up to the level of the dumping margin, when it has been proven that dumping has caused or is threatening to cause material injury to the Australian industry. Section 269TAE of the Act lists factors that may be regarded in determining whether the Australian industry has suffered material injury caused by dumping and subsidisation.

The factors include:

- the size of the dumping margin/s in respect of the goods exported to Australia and/or particulars of any countervailable subsidy received in respect of goods exported to Australia;
- the quantity of goods under consideration exported to, and consumed in Australia during a particular period and the consequential effect on the quantity of like goods produced or manufactured in Australia by the Australian industry and sold or consumed in Australia;
- the export price of the goods under consideration and the price paid for the goods sold in Australia and the consequential effect on the price paid for like goods produced or manufactured by the Australian industry and sold in Australia; and
- the effect that the exportation of goods under consideration to Australia in those circumstances has on the relevant economic factors in relation to the Australian industry.

Non-injurious price

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.

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The level of dumping duty cannot exceed the margin of dumping, but lesser duty may be applied if it is determined that it is sufficient to remove the injury. A NIFOB or NIP is calculated for this purpose. The NIFOB and the NIP provide the mechanism whereby this lesser duty provision is given effect - the FOB price that would be sufficient to remove the injury caused to the Australian industry by the dumping.

The terms NIFOB and NIP have essentially the same meaning. The term NIFOB is not specifically defined in legislation but has application to anti-dumping measures imposed before 1 January 1993. The NIP was defined in legislation when the interim duty scheme was introduced on 1 January 1993.

Although the method of calculating a NIP is not prescribed in the legislation, Customs generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in the absence of the price effects of dumped/subsidised imports. This price is known as the unsuppressed selling price. From this, the costs incurred in importation are deducted until a notional selling price at an FOB level is ascertained.

Normal value

Section 269TAC of the Act provides the methods to be used when determining the normal value of goods exported to Australia.

Usually, the normal value is determined under s. 269TAC(1) and is the price paid for like goods in the domestic market of the exporting country provided:

- the goods are exported to Australia;
- the sale is in the ordinary course of trade;
- the sale is for home consumption in the country of export;
- the exporter's domestic sales are arms length ;
- the volume of sales in the domestic market of the exporting country is such as to permit a proper comparison with sales to Australia - generally an acceptable volume is taken to be 5% or more of the volume of the goods exported to Australia; and
- the situation in the exporters domestic market is such that the sales are suitable for determining a normal value.

If the exporter's domestic sales do not satisfy all of the above criteria, the same tests are applied to sales by other sellers of like goods on the domestic market of the exporting country.

Normal value cannot be determined under s. 269TAC(1) where:

- domestic sales that would be relevant for determining a price are absent or of low volume;
- the market situation in the country of export is such that it renders domestic sales as unsuitable for use in determining normal value; or
- it is not practical to obtain information in relation to sales by other sellers of like goods on the domestic market within a reasonable period.

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Section 269TAC of the Act provides alternative methods for determining normal values where the criteria of s. 269TAC(1) are not satisfied.

Section 269TAC(2)(c) provides that except where s. 269TAC(2)(d) applies, the normal value of the goods is the sum of:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the SG&A expenses associated with the sale; and
- an amount of profit.

In circumstances where a normal value cannot be determined from domestic selling prices because sales are found to be not in the ordinary course of trade, a profit component is not included.

Section 269TAC(2)(d) provides that, where normal value cannot be determined under the provisions of s. 269TAC(1), and the Minister so directs, the normal value of the goods is the price paid for like goods sold in the ordinary course of trade in arms length transactions for exportation to an appropriate third country.

Customs seeks evidence relating to both sections in order to decide which is the most suitable method for determining normal value.

Where it is satisfied that sufficient information has not been supplied or is not available to determine normal values under any of the preceding provisions, the normal value is determined under s. 269TAC(6) having regard to all relevant information.

Section 269TAC(4) provides a number of methods for determining normal values where the government of the country of export has a monopoly, or substantial monopoly of the trade of the country, and determines or substantially influences the domestic price of goods in that country. Normal values are determined using one of the following methods depending on what is appropriate and reasonable in the circumstances of the case:

- the price of like goods in a third country produced either for home consumption or for export to another appropriate country and sold in the ordinary course of trade, such sales being arms length transactions;
- the normal value is ascertained from the cost of production or manufacture, SG&A costs associated with the sale of like goods in a third country and the profit on that sale, or
- a value equal to the price payable for like goods produced or manufactured in Australia.

Sections 269TAC(8) and 269TAC(9) provide for adjustments to be made to the normal value to account for differences where the domestic and export sales prices:

- relate to sales occurring at different times;
- are not in respect of identical goods; or
- are modified in different ways by taxes or terms or circumstances of the sales.

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Section 269TAC(10) enables the normal value to be determined in the country of origin instead of the country of export when it is considered appropriate by the Minister.

Notice

A notice is a dumping duty or countervailing duty notice. It is a legal document signed by the Minister or her delegate, giving effect to the provisions of the Act and the Dumping Duty Act.

Ordinary course of trade

Section 269TAAD of the Act defines sales that are not in the ordinary course of trade. Where Customs is satisfied that the price paid for like goods is less than the cost to make and sell, in arms length transactions, then the sales are taken not to have been made in the ordinary course of trade if these sales:

- have been for an extended period of time - usually considered to be a 12 month period but not less than 6 months;
- are in respect of a substantial quantity of the goods - 20% or more of the volume sold on the exporters domestic market or for exportation to a third country; and
- those costs are unlikely to be recovered within a reasonable period of time.

Preliminary affirmative determination

A determination made by Customs not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application. If Customs makes a PAD it gives public notice in a national newspaper and an ACDN.

Customs may, at the time of the PAD or at any later time during the investigation, require and take securities in respect of interim duty that may become payable if Customs is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues. If Customs decides to take securities it gives public notice in a national newspaper and an ACDN.

Provisional measures - securities

Generally, provisional measures are applied in order to prevent further injury, or threat of injury, to the Australian industry after the PAD is made until a final finding is reached (when interim measures may be put in place). Provisional measures may also be collected in other circumstances, for example, a breach of undertaking or where interim duty is payable on goods as a result of an accelerated review.

Securities will be calculated as the sum of:

- (a) the amounts equal to the ascertained dumping margin; and
- (b) the amounts, if any, by which the actual export price is less than the ascertained export price.

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Sections 42 to 45 of the Act provide the legal authority for Customs to require and take provisional measures in the form of securities, and to refuse delivery of these goods until such time as the required security is given. Securities are collected on an individual shipment basis and in the case where securities have been imposed to protect the Australian industry during the remainder of an investigation, continue to be collected until a recommendation is made to the Minister.

Where the Minister accepts the recommendation to impose duties, current securities are converted to an interim duty liability. If the interim duty liability for the period of the final finding is less than the amount of securities collected, any additional securities are refunded.

Public file

A file maintained by Customs, in accordance with s. 269ZI of the Act, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is available for viewing and copying by all interested parties by contacting Trade Measures Office Management staff at Customs House, 5 Constitution Avenue, Canberra ACT 2601, telephone (02) 6275 6057.

Scope

Customs cannot recommend to the Minister whether anti-dumping action can be taken unless it has satisfactorily addressed the integral questions: have the goods been dumped, what has been the recent economic performance of the industry and has dumping caused material injury.

Securities

See *provisional measures*

Statement of essential facts

A statement placed on the public record at or before day 110 in the investigation process that sets out the facts on which the CEO will base his recommendation to the Minister. The statement will invite interested parties to lodge submissions in response to the issues raised.

Subsidisation

In many countries, subsidies are provided for the production or export of goods. Where subsidised exports cause, or threaten to cause, injury to an Australian industry, countervailing duties can be imposed.

Subsidisation occurs when a government, or a public body, or a private body who has been entrusted or directed by that government to carry out a function on its behalf; provides a financial contribution towards the production, manufacture or export of goods.

The financial contribution must involve:

- a direct transfer of funds; or

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- a direct transfer of funds depending on particular circumstances occurring; or
- the acceptance of liabilities either actual or potential; or
- the forgoing or non-collection of revenue (except an allowable exemption or remission); or
- the provision of services other than normal infrastructure.

Financial contribution can also relate to any form of income or price support that is used to either directly or indirectly increase exports from the country or limit imports into the country.

The financial contributions described above are only considered a subsidy for the goods under consideration if they confer a benefit in relation to those goods.

Section 269TJ of the Act requires a subsidy to be a countervailable subsidy before provisional measures can be imposed. A countervailable subsidy is defined under s. 269TAAC of the Act which states that for a subsidy to be a countervailable subsidy, it must be specific and must not be an excluded subsidy. Section 269TAAC goes on to further define the terms specific subsidy and excluded subsidy.

Section 269TACC outlines how Customs determines whether benefits have been conferred from a countervailable subsidy.

Trade Measures Review Officer

Various sections of the Act refer to Customs decisions that are appealable. Applicants may ask the TMRO to review Customs decisions in the case of:

- an application that is not accepted for investigation;
- termination of investigations; and
- a negative preliminary decision under s. 269Z.

The TMRO may confirm Customs initial decision or remit the matter to Customs for investigation. The TMRO does not perform an investigative function.

Interested parties may also ask the TMRO to review certain ministerial decisions, such as:

- the publication of a dumping duty notices; and
- a decision not to impose duty.