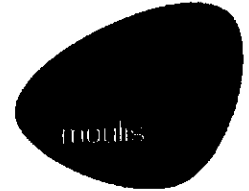


Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia

Telephone +61 2 6163 1000
Facsimile +61 2 6162 0606
Email: info@moulislegal.com
www.moulislegal.com

24 July 2012



commercial+international

Mr J Bracic
Director Operations 1
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601

By email

Dear John

Alleged dumping of PVC resin from Korea Publication of preliminary affirmative determination

We refer to preliminary affirmative determination 187 ("PAD 187") published by Australian Customs and Border Protection Service ("Australian Customs") on 28 June 2012.

As you are aware, LG Chem, Ltd ("LG Chem") lodged a submission regarding the material injury allegations made by Australian Vinyls Corporation Pty Ltd ("AVC") on 29 June 2012. That submission demonstrated two things:

- firstly, that many of the forms of material injury claimed to have been suffered by AVC were not supported by the information AVC supplied; and
- secondly, that there was no causal nexus between the claimed injury and LG Chem's exports of polyvinyl chloride homopolymer resin ("PVC") to Australia.

We believe that the information contained in LG Chem's previous submission is clear and unequivocal. Imports of PVC from Korea cannot have caused material injury to AVC. Our previous submission requested Australian Customs to terminate the investigation at the soonest possible opportunity – a request we now respectfully reiterate.

Our previous submission was drafted prior to the release of PAD 187. For the sake of comprehensiveness and for the assistance of Australian Customs, we now wish to address some of the preliminary views that were expressed in PAD 187.

NON-CONFIDENTIAL

1 The preliminary views in PAD 187

PAD 187 was made very soon after the 60 day post-initiation period had expired, and was made without Australian Customs having had the benefit of LG Chem's previous submission. In fact it would seem to us that there was not much more on the public record with regard to material injury issues at the time of the PAD other than the Application itself, and we regret not being able to provide you with LG Chem's previous submission within that 60 day period.

Australian Customs explains the reasons for the making of the PAD in the following paragraph:

[Australian Customs] considers that the dumping margin has enabled exports from Korea to secure sales in Australia at lower prices than if there was no dumping of goods. These lower prices have led to price undercutting of industry prices causing Australian Vinyls to lower its price leading to price suppression, price depression, lower revenues, reduced profits and profitability and lower return on investment.

For the sake of clarity, we would note that at the time PAD 187 was published, LG Chem's information had yet to be verified. We hope that it will now have become apparent to Australian Customs that LG Chem's exports – at the price they were exported – did not cause material injury to AVC *whether or not they were dumped.*

We are unable to address Australian Customs' specific finding of causation between the imported goods and the alleged material injury. Australian Customs' analysis in this regard was contained in Confidential Appendix 2 to the PAD, and we do not have a right of access to that analysis. Therefore we cannot provide any specific comments as to that analysis.

However, PAD 187 does briefly mention "other factors" that may have caused the injury:

[Australian Customs] notes the presence of imports from other countries in the market and that these imports may also have had an effect on [AVC]. [Australian Customs] also notes that general economic conditions may be having an effect due to uncertainty from the ongoing global financial crisis.

The manner in which these other factors were considered in the making of PAD 187 is not clear. We also note that a number of the important factors raised in LG Chem's previous submission were not mentioned – and therefore not evaluated - in PAD 187. We recognise that our previous submission had not been provided to the decision maker before PAD 187 was published. At the same time, many of the causative factors highlighted in that submission were based on previous Australian Customs investigations of PVC exports to Australia, which contained information which is relevant to the injury period and which in many instances was supplied by AVC itself.

Causation is an indispensable aspect of an affirmative finding, whether preliminary or final. We respectfully submit that to establish a causal link between imports and injury much more needs to be shown than the coincidental presence in a particular market place of goods from a domestic producer at the same time as goods from one specific export source amongst a number of export sources.

If due consideration is given to the causative factors explained in LG Chem's previous submission, we submit that the injury analysis and conclusions in PAD 187 will need to be

revisited and revised.

2 Price effects

PAD 187 states that:

[Australian Customs] found that [AVC's] selling costs have exceeded selling prices over the period of analysis and that, whilst costs have remained unchanged in 2011, prices fell slightly in the same period, the negative margin between revenue and costs indicates that prices have been suppressed.

We have addressed AVC's price depression/ suppression and undercutting allegations against LG Chem in our previous submission. We will not repeat those submissions here, and we again recommend those submissions to you.

The extract from the PAD says these things:

- AVC's costs have exceeded its selling prices at all times during the injury investigation period;
- that AVC's costs have only slightly increased since LG Chem's exports recently began to enter the Australian market in commercial quantities (or, on AVC's evidence, they have been "relatively stable");
- that AVC's prices have fallen further during 2011 (at a time when – as pointed out in Table 3 of our previous submission – LG Chem's export prices to Australia were by no means the lowest priced of the major import sources – *in fact they were the highest*).

The link between the claimed price effects and the presence of LG Chem-produced PVC in the Australian market is not evident in PAD 187. In the PAD it is conceded that selling costs have exceeded selling prices *over the period of analysis*. The period of analysis began on 1 January 2009, at which point, according to Australian Customs Report No. 151, imports of PVC from Korea were "negligible". As noted in Australian Customs Report No. 174, AVC has suffered from price suppression/depression since early 2008.

AVC is a perennial user of Australia's anti-dumping system. Australian Customs has conducted twelve investigations, re-investigations and continuation investigations regarding PVC since 1999. For the last four years, AVC has continued to operate under the conditions mentioned in the PAD – ie, conditions of continuing and ever-increasing losses. This alone should indicate that AVC's inability to raise its price above costs reflects something other than the impacts of imports from any one source.

The long-term nature of the price suppression/depression suffered by AVC is somewhat reflected in PAD 187:

profits and profitability have declined since 2009 as costs continued to be above prices.

This situation is meaningful and needs to be factored into Australian Customs' injury analysis. We submit that there is no relevant difference in AVC's financial situation that could be said to have been caused by LG Chem's exports. It would appear that the price suppression/

depression alleged to have been caused by imports of LG Chem's PVC began three years prior to LG Chem's recent commercial entry into the Australian market. During these years LG Chem exported a "negligible" level of PVC into Australia.

We do not see how it can be said that the continuation of AVC's long term price suppression/ depression is a result of LG Chem's exports of PVC.

3 Revenue, profit, profitability effects and other injury factors

In our previous submission, we noted that for a dumping notice to be published – and indeed for the publication of a PAD – the only relevant material injury that can be taken into account is material injury to an Australian industry producing like goods.

Similarly, in PAD 187 Australian Customs notes that:

In assessing the injury to the Australian industry [Australian Customs] has analysed only those factors relating to PVC produced by [AVC]. Imports of PVC by [AVC] are excluded from this analysis unless otherwise noted.

It is unclear how, and to what extent, the revenue, profit, profitability and other injury factors were isolated from the impact of AVC's reduction in imports in PAD 187. LG Chem assumes that Australian Customs has adapted this information appropriately so that no impact from AVC's imports was considered in making the PAD.

As AVC has suffered from an inability to raise its price above its costs since at least 2008 – and throughout the entirety of the injury period – one would have to question to what degree PVC from Korea could be held accountable for the revenue effect and the flow on revenue, profit, profitability and return on investment effects complained of by AVC. There would have to be very strong evidence to show a causal relationship between LG Chem's PVC and AVC's inability to raise its price above its costs. LG Chem's exported PVC is clearly in the market – but in the circumstances of this case it is simply not plausible to leap from that fact to a finding that its PVC exports have caused material injury to AVC.

In our previous submission we believe we demonstrated that no such causal relationship exists. The pricing pressures that AVC operates under have been in place for many, many years. Its importation of PVC from Taiwan, whether before 2011 or not; its focus on the Asian spot price; and the demands it faces from its customers, who also focus on that spot price - all combine to cause it to compete at levels which are unrealistic from its own perspective.

LG Chem's exports from Korea at higher prices than the existing levels of import prices, which PAD 187 acknowledges can have had no volume effects, cannot have caused material injury to AVC. AVC would be in precisely the same position now had LG Chem not imported any PVC into Australia during the injury period.

The PAD was made before Australian Customs had the opportunity to verify LG Chem's exporter information. LG Chem maintains its position that it has not exported PVC at dumped prices to Australian customers. If a dumping margin is established on that information, we expect that it could only be very slight, and would not exist at all were it not for technical differences in calculation methods as between Australian Customs and LG Chem. The degree by which other export prices and the Asian spot price are lower than LG Chem's export price to

Australia would, in our view, far exceed any such slight margin. This supports LG Chem's view that it is impossible for it to have caused any form of injury to the Australian industry in the circumstances of this case.

There is no evidence to establish that the claimed revenue, profit, profitability and return on investment effects were caused by LG Chem's imports. AVC would have suffered that injury even if LG Chem's PVC was not present in the Australian market during 2011.

4 Information relied upon in the PAD

LG Chem takes issue with certain allegations, conclusions and evidence submitted by AVC to Australian Customs. As noted above, Australian Customs will ultimately have significant amounts of verified information available to it on the state of AVC's business during the injury period. In that context there should be no need to rely on unfounded allegations, "documents detailing discussions" and indeterminate assertions made by AVC's customers. LG Chem counsels Australian Customs to ensure that no reliance is placed on second-hand and self-serving information which is not independently supported.

In this context, LG Chem strongly disagrees with the following statement:

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

This statement completely ignores AVC's adherence to the Asian spot price – a practice on AVC's part which has definitively been established by Australian Customs in previous investigations. LG Chem's previous submission shows that the Asian spot price fell significantly in 2011. Therefore AVC will have been required to substantially lower its prices as a result of its own pricing policy.

It is clear that even if LG Chem had not imported PVC into Australia, AVC would have still been forced to lower its price, or risk losing market share to other imports. Moreover, LG Chem's exports of PVC have been at higher prices than those of other exporters. Higher-priced LG Chem exports cannot have had a part to play in that price-lowering.

The second issue that LG Chem wishes to address arises from the following paragraph:

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

Obviously, as we have not seen these documents, we cannot comment on the details contained in them. However, it would be remiss of us if we did not address the highly questionable probative value of "documents detailing discussions with a number of individual customers". Were these documents sworn statements? Were they even reviewed by the customers to whom the comments were attributed? What was the basis for the claimed undercutting of prices – if it

was some form of data why was this not submitted in support of the application? One might expect a customer to exaggerate or to even misrepresent price offers received from different suppliers, in an effort to obtain the lowest price possible from one of them.

Information such as this should be treated with the utmost caution, and we would suggest it cannot be accepted unless verified by documents such as final contracts. We are especially curious about these statements, given that the information in LG Chem's previous submission establishes that LG Chem's PVC was not the lowest priced in the market. Imports from Thailand were consistently lower, for example.

The allegation that LG Chem lowers its prices to undercut AVC's prices is completely inaccurate. To be frank, the Australian market is not a strategically important market for LG Chem. If Australian customers wish to purchase the product at the price offered by LG Chem, then they may. If they do not, then no sale will be made. LG Chem is concerned to ensure that it does maintain its distance from the lowest prices in the Australian market, and is not at all desperate to make sales into the Australian market given its previous experiences with the almost perpetual anti-dumping regime applying to PVC resin.

Again, it is to be noted that the Asian spot price fell dramatically during 2011. We very much doubt that there was any "tit-for-tat" lowering of prices between LG Chem and AVC, despite what has been claimed in the anonymous "documents" referred to in PAD 187.

We also question the utility of the following statement in PAD 187:

Interested parties have confirmed that import prices have been used to leverage competitive prices from [AVC], and that prices offered by [LG] would have had an impact on [AVC's] pricing strategy.

Obviously import prices – in a generic and strategic sense - would have been used by customers to negotiate prices with AVC. As noted above, Australian produced PVC and imported PVC are highly substitutable. Therefore it would be unusual if such price negotiations were not a feature of the market.

However, the suggestion that LG Chem's prices "would have an impact on AVC's pricing strategy", is a statement with no value. It can just as easily be asserted that prices of PVC imported from Thailand, Taiwan or any other of the numerous countries from which PVC was sourced during 2011 would have had an impact on AVC's pricing strategy. It adds nothing to the injury analysis.

Our previous submission showed that imports from other sources were priced lower than those from Korea. It also showed that the regional price fell sharply during 2011. These are the factors AVC would have considered in its pricing strategy, and not the higher prices of Korean PVC.

5 Conclusion

The information included in PAD 187 is incomplete and incorrect, which is totally consistent with its preliminary nature, and the fact that it was issued at a very early stage of the investigation. The conclusions drawn in that report must be considered in that context. Unfortunately we

believe that the analysis ignored many causative factors and alternative explanations, and we regret our inability to provide a submission to you before the time at which the PAD was made.

On any reasonable view, we consider that LG Chem has established - in this letter and in our previous submission - that the presence of Korean PVC in the Australian market has not been a cause of material injury to AVC. To the contrary, it appears self-evident that that injury would have been suffered by AVC if LG Chem had not imported any goods into Australia in 2011.

And, as we have pointed out in our previous submission, Australian Customs itself postulated - in Report No. 151 - that the situation in which AVC now finds itself might come about. That postulation was accompanied by a finding that such a situation would not be one in which it could be said that imports of PVC from Korea would cause material injury to AVC.

Accordingly, LG Chem requests Australian Customs to reconsider these matters carefully, and to decide whether to terminate this investigation at its soonest possible convenience.

Yours sincerely



Alistair Bridges
Solicitor