

exported PVC conform to the following specifications:

Imported PVC					
Grade (product code) / Type	Technical Specification / Test Method				
	K Value  DIN 53762	Polymeri- zation degrees	Bulk Density g/cm <sup>3</sup>	Volatile Matter  JIS-K6721	+ 42 mesh Course particles %
S-65S Flexible	64.6 ~ 66.0	1030 ± 30	0.48 ± 0.02	0.3 % max	< 0.01%
S-65 Flexible	64.6 ~ 66.0	1030 ± 30	0.50 ± 0.02	0.3 % max	< 0.01%
S-65 Rigid	64.6 ~ 66.0	1030 ± 30	0.52 ± 0.02	0.3 % max	< 0.01%
S-65 High density bulk	65.7 ~ 67.1	1050 ± 30	0.55 ± 0.02	0.3 % max	< 0.03%

Exported PVC						
Grade (product code)	Technical Specification / Test Method					
	K Value  DIN 53726	Relative Viscosity  D-1243	Inherent Viscosity  D-1243	Bulk Density g/cm <sup>3</sup> ASTM D-1895	Volatile Matter  ASTM D-3030	Sieve Analysis  ASTM D-1921
F622 / H622	65 ~ 67	2.17	0.91	0.55	0.30 %	99.9 % thru 40 mesh  5.0% thru 200 mesh

A technical specifications data sheet published by Formosa describes Formolon 622 as follows:

F622 is a medium-low molecular weight PVC homopolymer designed primarily for rigid extrusion applications, but it is also suitable for many flexible applications. This product has high bulk density and excellent dry flow characteristics, making it desirable for dry blending applications where uniform feed rate to an extruder is important.

**ISSUE:**

Whether the imported PVC is commercially interchangeable with the substituted PVC, for purposes of substitution unused merchandise drawback pursuant to 19 U.S.C. § 1313(j)(2).

**LAW AND ANALYSIS:**

Substitution, unused merchandise drawback is provided by 19 U.S.C. § 1313(j)(2), but the statute does not define “commercially interchangeable.” The CBP Regulations reflect the legislative history that explained the change from fungibility to commercial interchangeability as the standard for substitution unused merchandise drawback. Section 191.32(c) provides:

In determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value.

In *Texport Oil Co. v. United States*, 185 F.3d 1291 (Fed. Cir. 1999), the Federal Circuit Court of Appeals (“CAFC”) discussed the meaning of “commercially interchangeable.” The CAFC concluded that commercially interchangeable is “an objective, market-based consideration of the primary purpose of the goods in question.” The Texport court explained:

“[C]ommercially interchangeable” must be determined objectively from the perspective of a hypothetical reasonable competitor; if a reasonable competitor would accept either the imported or the exported good for its primary commercial purpose, then the goods are “commercially interchangeable” according to 19 U.S.C. § 1313(j)(2).

185 F.3d at 1295.

Thus, in accordance with *Texport*, commercial interchangeability is determined using an “objective standard.” An exported good will be considered commercially interchangeable with an imported good if a buyer, in an arms’-length transaction, would accept either good at the specified price for the purpose intended. In order to determine if either good at the specified price would be acceptable for the purpose intended, the relevant characteristics of the imported good are compared with those characteristics of the substituted good. Those pertinent characteristics include any governmental or industry standards applicable to the good, the tariff classification, part numbers if any, value, and any other characteristics relevant to the good.

#### Government and Recognized Industry Standards

Standards or grades established by the government or industry consensus aid in the determination of commercial interchangeability in that they establish markers by which the product is commoditized and measured against like products for use in the same manner, regardless of manufacturer. Generally, products that meet the same industry accepted standard may be used to produce the same products or utilized for the same purposes. These uses are typically indicated in the standard.

In this case, there are no government or industry standards governing the content of PVC. Formosa, however, publishes technical product specifications for use in the sale of its imported and substituted PVC products. Formosa sells three types of PVC under product number S-65: Flexible, Rigid, and High Density Bulk. You claim that because the imported merchandise (Product Nos. S-65S and S-65) and the exported F622 have similar K-values, these products are commercially interchangeable.

K-value is a measure of the average molecular weight of PVC based on measurements of viscosity of PVC in solution. K-values range from 35 to 80.

Low K-values imply a low molecular weight, which is easy to process but has inferior properties. High K-values imply a high molecular weight, which is difficult to process, but has superior mechanical properties, such as strength and shape retention. PVC products with higher K-values are generally required for rigid applications, such as production of pipes and tubes. The bulk density, expressed as  $\text{g/cm}^3$ , describes the weight of a unit of a material, in powdered or granular form, including air voids inherent in the material.

The specification sheets for the substituted F622 / H622 PVC states that a typical K-value is within the range of 65 ~ 67, based on DIN Method 53762. This K-value related to the Inherent Viscosity measurements of the PVC, which relates to the mechanical properties of the material. The specification sheet for the imported S65 (high bulk density) PVC lists a K-value range of 65.7 ~ 67.1, determined according to DIN Method 53762, a standardized test method developed by the German Institute for Standardization. The K-value for the S65 (high bulk density) PVC is consistent with the range for the substituted F622 / H622 PVC. The K-value specification range for the imported S-65S (flexible), S-65 (flexible), and S-65 (rigid) PVC is 64.6 ~ 66.0, within the range of the specification for the substituted F622 / H622 PVC.

In addition to K-value data, the specification sheets provide technical data regarding the bulk density. According to Formosa's specification sheet, the bulk density for the substituted F622 / H622 PVC is  $0.55 \text{ g/cm}^3$ , which is outside the range for the bulk density specification for the three of the four imported PVC products—*i.e.*, S-65S (flexible); S-65 (flexible); and S-65 (rigid)—are outside that range. However, the bulk density specification for the substituted F622 / H622 PVC is within the bulk density specification range for the imported S-65 (high bulk density), *i.e.*,  $0.55 \text{ g/cm}^3 \pm 0.02$ .

In support of the ruling request we also reviewed an actual Customer Quality Requirements ("CRQ") form used by one of Formosa's clients to indicate their product specifications for an order of H622 PVC. According to this form, the specification for the bulk density measurement was 0.53 ~ 0.58. Although both the imported S-65 (high density bulk) PVC and the substituted F622 / H622 PVC met the CRQ, the other imported PVC products did not. Consequently, the product specifications in an actual order support a finding of commercial interchangeability between the imported S-65 (high density bulk) PVC and the substituted F622 / H622 PVC. Furthermore, the CRQ indicates the imported S-65S (flexible), S-65 (flexible), and S-65 (rigid) PVC are not commercially interchangeable with the substituted F622 / H622 PVC.

### Part Numbers

Formosa uses different product numbers for its imported and substituted PVC products. For the imported PVC, Formosa uses the following product codes: S-65S; S-65; S-65; and S-65. Formosa uses two product codes for its

substituted merchandise: F622 and H622. Formosa asserts that the different product codes merely indicate the source of production.

Based on Formosa's product specification sheet, three of the imported PVC products have the same technical specifications for K-value, degrees of polymerization, volatile matter, and course particles. However, all four of the imported PVC products have varying specifications for bulk density. Consequently, we find that the part number criterion is satisfied partially.

#### Tariff Classification

You state that the imported and substitute PVC products are classified under 3904.10.00, HTSUS. Because the imported and exported merchandise are classified under the same subheading, we find that the tariff classification criterion is satisfied.

#### Relative Values

Goods that are commercially interchangeable generally have similar values when sold at the same place, at the same time, to like buyers, from like sellers. Even if the prices are not identical, the goods may still be considered commercially interchangeable if the difference is attributable to market conditions or the difference is immaterial.

According to the commercial invoice for the importation transaction, the per metric ton FOB price of S-65 PVC was \$890. For the export transaction, the commercial invoice for the sale of F622 indicates an FOB price of \$890 per metric ton. Because the imported S-65 PVC and the substituted F622 have the same price, the relative values criterion is satisfied for these two products. There is no information regarding the actual sale price of the other imported PVC products, *i.e.*, S-65S (flexible); S-65 (flexible); and S-65 (high density bulk).

#### HOLDING:

Based on the above findings, we determine that the imported S-65 (high density bulk) PVC and the substitute F622 / H622 PVC are commercially interchangeable for purposes of substitution unused merchandise drawback pursuant to 19 U.S.C. § 1313(j)(2). However, the imported S-65S (flexible), S-65 (flexible), and S-65 (high density bulk) are not commercially interchangeable with the substituted F622 / H622 PVC.

This decision is limited to the specific facts set forth herein. If the terms of the import or export contracts vary from the facts stipulated to herein, this decision shall not be binding on CBP as provided in 19 C.F.R. § 177.2(b)(1), (2) and (4), and 177.9(b)(1) and (2).

Sincerely,

William G. Rosoff, Chief  
Entry Process & Duty Refunds Branch