

**For Publication****Email**

1 June 2016

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Anti-Dumping Commission  
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Dear Mr Katsoulis

**Guardian Industries Corp Ltd (Guardian)  
Clear Float Glass exported from China, Indonesia and Thailand (Continuation Inquiry No. 335)**

As you know, we act for Guardian. We refer to the letter sent to you on behalf of CSR Viridian Ltd (**Applicant**) dated 19 May 2016 (**Applicant's Letter**).

The Applicant's Letter suggests that '*interim dumping duties*' should '*be calculated using the combination of fixed and variable duty method (combination method)*'. The power to impose interim dumping duties is contained in Division 3 of Part XVB of the *Customs Act 1901* (Cth) and is not relevant to a continuation inquiry under Division 6A of that Part.

Our client nevertheless submits that if the Commissioner of the Anti-Dumping Commission (**Commissioner**) recommends that anti-dumping measures be continued, which they should not be in respect of our client, those measures should take the form of *ad valorem* duty rather than duty by combination method.

*Ad valorem* duty is to be preferred because:

1. unlike the combination method, *ad valorem* duty is suitable for products such as clear float glass (**CFG**) which vary in dimension, quality and price;
2. *ad valorem* duty is the simplest form of duty to administer and can be more difficult to circumvent: *Guidelines on the Application of Forms of Dumping Duty (Guidelines)* at pp 11, 15;
3. the combination method has perverse effects on importers and downstream industry in a volatile market: *Guidelines* at p 6. Although the combination method is appropriate where market prices are forecast to be relatively stable, CFG prices are likely to increase and decrease rapidly in line with a spike in residential construction in Australia (especially in the eastern capital cities). We have described this spike at paragraph 5.4 of our preliminary submissions. This variation exists over and above the natural instability in the price of a globally traded commodity;
4. the combination method is useful in cases of proven price manipulation or complex related party structures: *Guidelines* at p 7. There is no price manipulation or complex related party structure relevant to our client, except for the related party structures of the Applicant;
5. there is not a skerrick of evidence or reason to think that exporters from the Kingdom of Thailand (**Thai exporters**) are likely to reduce prices in order to circumvent *ad valorem* duty, because:

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- (a) the practice of lowering prices to circumvent *ad valorem* duty is largely hypothetical. If it occurs, it is rare: *Guidelines* at p 14; and
  - (b) Thai exporters are not able to reduce prices to the same extent as exporters from the People's Republic of China (**Chinese exporters**). Our client therefore submits that, if the Commissioner recommends continuation of anti-dumping measures and considers that combination method duty should be imposed in respect of Chinese exporters, Thai exporters should be subject to *ad valorem* duty instead. This would limit the adverse effects of the anti-dumping measures on downstream industry and avoid the negative consequences of *ad valorem* duty discussed in this letter; and
6. although the Applicant's Letter contends that the '*situation in Report 300 is similar to the issues faced by Viridian*', the Anti-Dumping Commission identified particular reasons in Final Report 300 for declining to impose *ad valorem* duty, none of which apply to Thai exporters of CFG, namely:
- (a) '*specific challenges that the steel industry faces*';
  - (b) the high likelihood of continuing material injury, which is unlikely in respect of CFG imports for the reasons given in section 5 of our client's preliminary submissions;
  - (c) '*the Commission's findings in regards to market situation*', whereas there is no proved market situation relevant to the present inquiry: Consideration Report 335 at 4.4.2; and
  - (d) '*willingness of Chinese exporters to lower prices*', which, if applicable to the present inquiry, would not justify the imposition of combination method duty on Thai exporters.

Investigation 300 concerned complex related party transactions and goods which were almost entirely fungible. Those powerful considerations do not apply to this continuation inquiry. The Applicant's Letter does not otherwise explain why the combination method should be used.

Yours sincerely



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