

PUBLIC RECORD
EMAIL SUBMISSION RECEIVED 15 JUNE 2016

Dear George

Further to our conversation, the relevant argument is made at paragraph 6.2 of Guardian's preliminary submissions. Essentially, s.269ZHF(2) requires that measures only be continued if their expiration would lead, or be likely to lead, to the continuation or recurrence of the dumping and material injury '*that the anti-dumping measure is intended to prevent*'. The words '*intended to prevent*' take one back to s.269TDA. If the dumping volumes or material injury are negligible, no measures could have been imposed. The dumping would therefore not be the kind of dumping that the measures are '*intended to prevent*'. Section 269ZHF(2) therefore prevents the Commissioner from recommending that the measures being continued. It is still an *in futuro* inquiry, but the words '*continuation*', '*recurrence*' and '*intended to prevent*' require reference to past facts.

Additionally, it makes no sense for the ADC to have undertaken a visit and re-investigated the matter, including by verifying export prices (s.269TAB) and normal values (s.269TAC), to then suggest that negligible volumes (which would result in a termination of an investigation) have no part to play in the final decision. The added anomaly is that it would effectively mean that an exporter is more disadvantaged in a continuation inquiry than in an investigation. Clearly that was not and could never have been the Parliamentary intention when the legislation was enacted.

We also discussed how the meaning of '*material injury*' remains constant throughout the Act. In *Siam Polyethylene v Minister of State for Home Affairs (No 2)* [2009] FCA 838, the ADC's failure to apply in s 269ZHF(2) the meaning of '*material injury*' given by ss 269TAE(2A)-(2B) resulted in jurisdictional error. When determining the likelihood that the dumping and material injury '*that the anti-dumping measure is intended to prevent*' are likely to continue or recur, the limited sense of '*material injury*' conveyed by ss 269TAE must be used.

Please let me know if you have any questions.

Kind regards

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