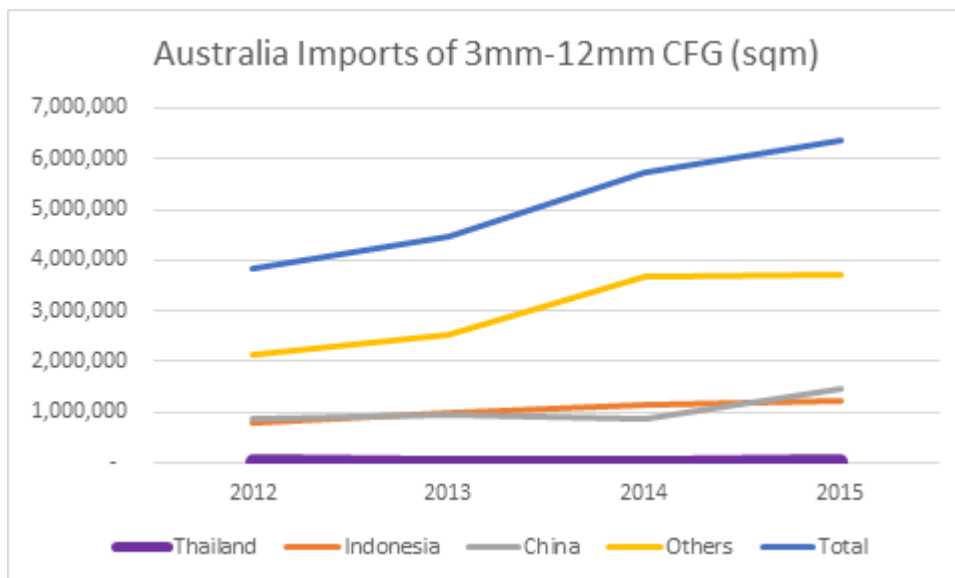


PUBLIC RECORD  
DATE RECEIVED 15 JUNE 2016

Dear Mr Katsoulis

This email expands on Guardian's previous submissions regarding the relevance of the negligibility provisions in s 269TDA of the *Customs Act* to the Commission's powers under s 269ZHF(2).

As you know, Guardian's import volumes have been exceptionally low over the entire 5 year period since 2012:



Thai export volumes have been, and will continue to be, negligible, within the meaning of s 269TDA(4) of the Act. For this reason, and for the reasons given in section 5 of Guardian's preliminary submissions, any material injury attributable to Thai exports will also continue to be negligible.

The circumstances of Thai CFG exports to Australia in 2016 are therefore exactly the same as in 1998. In 1998, the Anti-Dumping Authority published its Report in Continuation Inquiry 191, also concerning Thai CFG exports. The dumping notice, together with the Report's summary and conclusions, is **attached**. The Report observed: *'By law, the Authority must not recommend the continuation of dumping duties unless it is satisfied that their expiration would lead, or be likely to lead, to a continuation of, or recurrence of, the material injury that the dumping duties were intended to prevent'*. The Authority considered that expiration would not be likely to lead to a continuation or recurrence of the material injury that the dumping duties were intended to prevent because:

- *'Negligible CFG has been imported from Thailand since measures were imposed in September 1993';*
- *'There is no evidence to suggest that Thai producers are planning to export to Australia at dumped prices in quantities sufficient to cause material injury'; and*
- *'CFG imported from other sources have [sic] been present in significant quantities in the Australian market'.*

In light of these factors, the Authority was *'not satisfied that, if the antidumping duties were removed, CFG from Thailand will be dumped in sufficient quantities to cause material injury to Pilkington'*. The Authority correctly applied the 'negligible volume' and 'negligible injury' tests to the continuation inquiry.

Just like in 1993–1998, Guardian has imported negligible volumes of CFG from 2011–2016 and is highly unlikely to cause material injury. CFG imports from other countries dwarf Thailand's CFG imports.

The Authority in Report 191 proceeded on the basis that it could not recommend continuation where import volumes or injury were negligible. There is no evident and justifiable reason for departing from the approach adopted by the Authority in 1998. It thereby behoves the Commission to adopt the same approach and come to same conclusion as it did in 1998.

Kind regards

**Zac Chami, Partner**  
**Clayton Utz**

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2016 IFLR ASIA AWARDS



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**AUSTRALIAN  
CUSTOMS SERVICE**

**Australian Customs Dumping Notice**  
**No. 98/053**

**ANTI-DUMPING AUTHORITY**

**CONTINUATION INQUIRY  
CLEAR FLOAT GLASS FROM THAILAND**

The Anti-Dumping Authority has advised the Australian Customs Service of the following which is reproduced below for information.

‘The Anti-Dumping Authority has completed its inquiry into whether dumping duties currently applying to exports to Australia of clear float glass (CFG) from Thailand (except for exports from Bangkok Float Glass Co Ltd) should be continued beyond their scheduled expiry date of 29 September 1998.

The Authority was not satisfied that the expiry of the duties would lead, or be likely to lead, to a recurrence of the material injury which the duties were intended to prevent.

Accordingly, the Authority recommended to the Minister that he take no action to continue the dumping duties.

The Minister has accepted the Authority’s recommendation and, as a consequence, the dumping duties will expire on 29 September 1998.

Copies of the non-confidential version of the Authority’s Report no. 191 will be available in due course. Inquiries for copies should be addressed to the Information Officer, Ms Margaret McLeod, at the Authority on telephone (02) 6213 6754 or email [MMCLEOD@dist.gov.au](mailto:MMCLEOD@dist.gov.au).’

A copy of the summary and conclusions from the Authority’s Report is attached for information.

(Paul O’Connor)  
National Manager, Trade Measures  
for Chief Executive Officer  
Canberra ACT 2601

14 September 1998

# 1 SUMMARY AND CONCLUSIONS

## 1.1 Summary

### Background

This report presents the Authority's conclusions and recommendations as a result of its inquiry into whether the dumping duties currently applying to imports of clear float glass (CFG) from Thailand (except for exports from Bangkok Float Glass Co Ltd) should be continued beyond the expiry date.

Under the 'sunset' provisions of Australia's anti-dumping legislation, anti-dumping measures (including dumping duties) automatically expire five years after the date on which they were imposed unless they are revoked before the end of that period. However, eight months before the measures expire, interested parties are able to apply to the Authority for continuation of the measures for a further five years beyond the expiry date.

In September 1993, following an inquiry by the Authority, the then Minister for Science and Small Business accepted the Authority's recommendation to impose dumping duties on CFG (see the Authority's Report no. 109). The duties are due to expire in September 1998.

On 23 March 1998, the Authority received an application from Pilkington (Australia) Ltd (Pilkington), the sole Australian manufacturer of CFG, for the continuation of the duties. The Authority decided to hold an inquiry into the matter.

By law, the Authority must not recommend the continuation of dumping duties unless it is satisfied that their expiration would lead, or be likely to lead, to a continuation of, or recurrence of, the material injury that the dumping duties were intended to prevent.

CFG is available in varying thicknesses and sizes, and is mainly used for residential and architectural glazing, and in furniture manufacture. It is often further processed before final use. Common processes are toughening and laminating.

The Authority estimates that the total Australian market for CFG of a thickness of 3 mm to 6 mm is currently worth about \$75 million.

### The Authority's assessment

The Australian market for CFG is supplied by Pilkington and by imports. China and Indonesia are the major sources of imports at present.

The Australian industry asked the New Zealand Government to determine whether CFG was being dumped on to the New Zealand market and, if so, whether it was causing or threatening material injury to the Australian industry – a process known under the World Trade Organisation's (WTO) anti-dumping agreement as a third country dumping inquiry.

The Trade remedies group of the Ministry of Commerce in New Zealand (New Zealand dumping authority) found that Thai exporters had been dumping CFG into New Zealand and that the dumping margins were significant. It also found that dumping had caused material injury to the Australian industry. The Minister of Commerce of New Zealand has decided, however, not to impose anti-dumping duties on CFG imports from Thailand into New Zealand.

The Authority notes that in New Zealand there is no CFG industry and that there is intense competition among various exporters, which has resulted in most exporters dumping CFG into that market.

In July 1998, the Bureau of Import Services of the Republic of the Philippines decided *not* to initiate an inquiry on an application by a Philippine CFG producer seeking anti-dumping measures on imports of Thai CFG into the Philippines. The Bureau dismissed the application as there was insufficient evidence to support the allegations of dumping, threat of injury and causal link between the dumped imports and the alleged injury.

According to recent Thai newspaper reports, there is excess capacity to produce CFG in Thailand. However, the reports also indicate that Thai producers are planning to reduce their output significantly and to export any surplus to third countries.

Negligible CFG has been imported from Thailand since measures were imposed in September 1993.

There is no evidence to suggest that Thai producers are planning to export to Australia at dumped prices in quantities sufficient to cause material injury.

CFG imported from other sources have been present in significant quantities in the Australian market.

The Australian industry has shown that it will not hesitate in seeking anti-dumping action if it believes there is a case to answer; this in itself can act as a deterrent against dumping by companies that are aware of this behaviour.

Taking into account all of the above, the Authority is not satisfied that, if the anti-dumping duties were removed, CFG from Thailand will be dumped in sufficient quantities to cause material injury to Pilkington.

The evidence relied upon by the Authority in this inquiry is listed at Attachment 1.

## **1.2 Conclusions**

The Authority is not satisfied that the dumping duties currently applying to CFG imported from Thailand (except for exports from Bangkok Float Glass) should be continued for a further five years.

Details of the Authority's recommendations are at Chapter 9.