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The Director Operations 1
Anti-Dumping Commission
55 Collins Street
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Australia
Attention: G Katsoulis

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Non-confidential

Dear George

EPR 025 and EPR 027 Emails from Guardian Industries Corp Ltd

The first email refers to the Guardian document EPR 014 and specifically to paragraph 6.2 shown below for convenience:

> The Act prohibits the Commissioner from recommending that anti-dumping measures be continued unless he is satisfied that their expiration would lead, or be likely to lead, to the continuation or recurrence of the dumping "*that the anti-dumping measure is intended to prevent*": s 269ZHF(2). An anti-dumping measure is not "*intended to prevent*" dumping of a kind which the Act would have required the Commissioner not to investigate. If the Applicant were applying for a dumping duty notice under s 269TB of the Act, instead of its continuation under ss 269ZHB–269ZHC, the Commissioner would be bound to terminate the inquiry under ss 269TDA sub-ss (1), (3) or (13) on the basis that the dumping was negligible. Accordingly, s 269ZHF(2) of the Act prohibits the Commissioner from recommending the continuation of an anti-dumping measure unless the Commissioner is satisfied that the dumping that will allegedly continue or recur would be of a non-negligible volume, be at a non-negligible margin, and cause non-negligible material injury.

The Siam case referenced in the first email (EPR 025) was limited to the material injury provisions in Division 2 in the Act (Divisions 1, 2 and 3 deal with the preliminary and procedural matters leading to a Ministerial decision to publish or not to publish a dumping duty notice or a countervailing duty notice or to accept an undertaking instead of publishing such a notice.) It was considered that those material injury tests were also applicable in a continuation inquiry.

There is no support in Siam to apply the negligible test in s.269TDA (which enacts Article 5.8 of the Anti-Dumping Agreement.) to the current continuation inquiry. In US-Corrosion Steel Sunset Review the Panel considered whether the

de minimis references to both dumping margins and dumping volumes in Article 5.8 were applicable to sunset reviews and found that they did not apply:

"In particular, the text of paragraph 8 of Article 5 refers expressly to the termination of an *investigation* in the event of *de minimis* dumping margins. There is, therefore, no textual indication in Article 5.8 that would suggest or require that the obligation in Article 5.8 also applies to sunset reviews. Nor is there any such suggestion or requirement in the other provisions of Article 5"[1]

Import volumes may reflect the effect of the measures. The termination provisions in s.269TDA are not relevant to a continuation inquiry.

An exporter is not disadvantaged in a continuation inquiry compared with an original investigation. If after measures are imposed an exporter decides to reduce exports then that is quite different from an investigation being terminated because of a negligible volume of dumped goods. A decision by an exporter to reduce exports is not part of the consideration in assessing what is a negligible volume of dumped goods in an investigation. That assessment is done on facts relating to the dumping period of investigation. If an exporter wants to review the quantum of and need for measures then there are provisions in the Act to facilitate this.

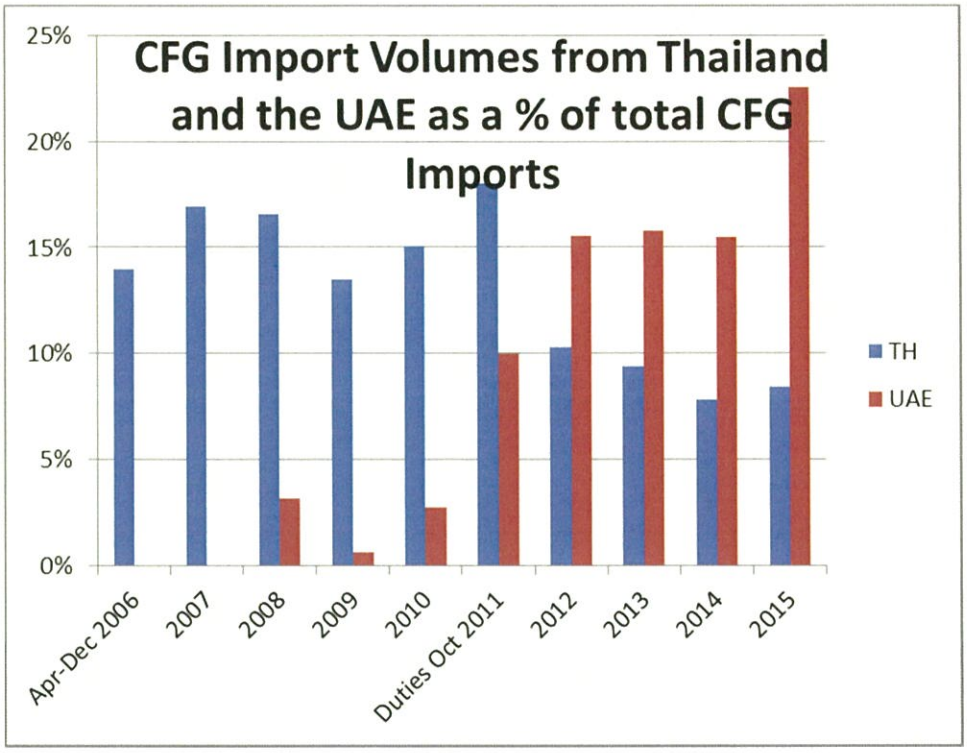
In the case of exports from Thailand the exporter has not requested a review since the measures were imposed in 2011.

In EPR 027 the exporter refers to a 1998 inquiry which it contends supports its argument about negligibility. The interpretation of the then Australian authority (without considering its relevance) has been overtaken by the Panel report referred to above.

The negligibility threshold for dumped imports in an investigation (ignoring aggregation) is 3% of the total Australian import volume. Even though this threshold does not apply in a continuation inquiry the exporter's imports into Australia appear to be well in excess of this threshold.

This is shown in the following chart.

[1]Panel Report US-Corrosion Steel Sunset Review para 7.70. 14 August 2003.See paras 7.67-7.68 for the non-applicability of both de minimis standards.



This chart also shows CFG imports from the UAE where Guardian has a plant producing CFG and which is exported to Australia (see Viridian's email, 18 May 2016).

In the visit report Guardian argued to use the import volumes in 2010 as "the volume mix in 2015 was not representative". The percentage volumes imported from Thailand prior to the measures being imposed in October 2011 are significantly higher than in the subsequent periods. Is the exporter suggesting that in the absence of measures import volumes would return to the level in 2010?

It has been shown that the negligible thresholds found in s.269TDA do not apply in a continuation inquiry. Furthermore the diversion of imports from Thailand to the UAE coincided with the imposition of measures. Even though the negligible thresholds do not apply, the Thai exporter has been well in excess of the 3% referred to in s.269TDA.

Yours sincerely

Jules Croft