PUBLIC RECORD

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 335

INQUIRY CONCERNING THE CONTINUATION OF ANTI-DUMPING MEASURES APPLYING TO

CLEAR FLOAT GLASS

EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, REPUBLIC OF INDONESIA AND KINGDOM OF THAILAND

June 2016

CONTENTS

ABBREVIATIONS

AAP	AGC Asia Pacific Pte Ltd
ABF	Australian Border Force
ADA	Anti-Dumping Agreement
AMG	PT Asahimas Flat Glass Tbk
ABS	Australian Bureau of Statistics
the Act	*Customs Act 1901*
the applicant	CSR Viridian Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CFG	clear float glass
China	the People's Republic of China
DCS	Developing Country Status
EPR	electronic public record
FIS	Free in Store
FOB	Free on Board
the goods	clear float glass (CFG) as per section 3.3 - the goods the subject of the application
Guardian	Guardian Industries Corp Ltd
Indonesia	the Republic of Indonesia
inquiry period	the period from 1 January 2015 to 31 December 2015
Muliaglass	PT Muliaglass
OCOT	ordinary course of trade
REP 159C	*Trade Remedies Branch Report 159C*
REP 300	*Anti-Dumping Commission Report 300*
TCO	Tariff Concession Order
Thailand	the Kingdom of Thailand
TMRO	Trade Measures Review Officer
UAE	United Arab Emirates
USD	United States Dollar
Viridian	CSR Viridian Limited
Xinyi	Xinyi Ultrathin (Donguan) Co. Ltd
year ending March	YEM

1. SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This Statement of Essential Facts (SEF) concerns the inquiry conducted by the Anti-Dumping Commission (the Commission) into the continuation of the anti-dumping measures applying to clear float glass (CFG) exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand). This SEF sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary).[1]

The anti-dumping measures applicable to exports of CFG to Australia from China, Indonesia and Thailand are due to expire on 17 October 2016.

1.2 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act)[2] sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.

Subsection 269ZHE(1) requires that the Commissioner publish a statement of essential facts on which he proposes to base his recommendations to the Parliamentary Secretary concerning the continuation of the measures. Subsection 269ZHE(2) requires that in doing so the Commissioner must have regard to the application, any submissions received within 37 days of the initiation of the inquiry and may have regard to any other matters that he considers relevant.

Pursuant to subsection 269ZHF(2), in order to recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measure is intended to prevent.

1.3 Findings and conclusions

The inquiry was initiated on 22 February 2016 following the Commissioner's consideration of an application lodged by CSR Viridian Limited (Viridian) seeking the continuation of the anti-dumping measures.

For the purpose of this inquiry, the Commissioner established an inquiry period of 1 January 2015 to 31 December 2015. The Commission has also examined data from the Australian Border Force (ABF) import database for the period from 1 January 2009 to

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[1] On 23 December 2014, the Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act 1901* to the Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

[2] All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

31 December 2015, financial data from Viridian from 17 October 2011 to 31 December 2015 and the data obtained in the original investigation (covering both the investigation period of 1 April 2009 to 31 March 2010 and the injury analysis period from 1 April 2006) for the purpose of analysing trends in the market for CFG and assessing potential injury factors.

On the basis of the evidence currently available, the Commissioner is satisfied that:

- there remains an Australian industry, comprising Viridian, which manufactures CFG (Chapter 4 refers);
- demand in Australia for CFG is met by sales of CFG by Viridian and by imports, and demand for CFG follows movements in overall construction activity (Chapter 5 refers);
- the Australian industry has experienced an overall improvement in its performance since the anti-dumping measures were imposed in 2011, both through its own cost reduction initiatives and reduced competition from dumped imports (Chapter 6 refers);
- dumped goods from China, Indonesia and Thailand have been present in the market during the inquiry period (Chapter 7 refers); and
- a comparison of the prices obtained by Viridian, the dumped goods and the undumped goods during the inquiry period indicates that the removal of the anti-dumping measures would be likely to result in a recurrence of the dumping of CFG and be likely to result in a recurrence of material injury being experienced by the Australian industry (Chapter 8 refers).

1.4 Proposed recommendation

Based on the above findings, the Commissioner proposes to recommend to the Parliamentary Secretary that she take steps to secure the continuation of the anti-dumping measures applicable to CFG exported from China, Indonesia and Thailand. The Commissioner also proposes to recommend to the Parliamentary Secretary that the variable factors be modified, and that, if the Parliamentary Secretary fixes different variable factors, she should consider changing the form of measures to an *ad valorem* form of duty.

1.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary.

This SEF represents an important stage in the inquiry. It informs interested parties of the facts established to date and allows them to make submissions in response.

It is important to note that the SEF may not represent the final views of the Commissioner.

The Commissioner must have regard to submissions received in relation to this SEF within 20 days of the SEF being placed on the public record in making his final report to the Parliamentary Secretary. The report will recommend whether or not the anti-dumping measures should be secured, and if so, whether the relevant notice remains unaltered, ceases to apply to particular exporters, or has effect as if different variable factors had been ascertained and therefore the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **18 July 2016**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.[3]

The Commissioner must report to the Parliamentary Secretary by 26 July 2016.

Submissions should preferably be emailed to operations1@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 1
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at the Commission's web site www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2467 to make an appointment), or online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

[3] Subsection 269ZHF(4).

2. BACKGROUND

2.1 Initiation and current measures

Consideration Report 335 on the electronic public record (EPR)[4] sets out the Commissioner's reasons for initiating the current continuation inquiry and the history of the anti-dumping measures applying to CFG exported to Australia.

Dumping duties were imposed on CFG exported from China, Indonesia and Thailand on 17 October 2011.[5] The then Attorney General[6] published a dumping duty notice for CFG exported to Australia from China (other than by Xinyi Ultrathin (Donguan) Co. Ltd (Xinyi)), Indonesia and Thailand based on the recommendations outlined in *Trade Measures Branch Report 159C* (REP 159C).[7]

The calculation of the amount of dumping duty to be collected is established using the combination of fixed and variable duty method, comprising a fixed rate of duty (based on the margin of dumping found for each thickness of CFG) and a variable rate of duty (based on the confidential ascertained export price for each thickness of CFG). Australian Customs Dumping Notice Number 2011/56 details the fixed rates of duties for measures imposed on CFG:

2.1.1 CFG exported from China

Thickness	Guangzhou CSG Glass Co Ltd	Other Chinese exporters (except Xinyi)
3 mm	11.4%	26.4%
4 mm	18.0%	33.3%
5 mm	18.8%	34.8%
6 mm	10.0%	25.1%
8 mm	19.3%	33.6%
10 mm	9.4%	23.8%
12 mm	0.0%	8.1%

Table 1 – Dumping duty rates for CFG exported from China

[4] The EPR is located at www.adcommission.gov.au.

[5] Australian Customs Dumping Notice No. 2011/50 refers.

[6] The Attorney General was the decision maker at this point in time for anti-dumping matters.

[7] REP 159C http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR159c.aspx.

2.1.2 CFG exported from Indonesia

Thickness	PT Asahimas Flat Glass Tbk	PT Muliaglass	Other Indonesian exporters
3 mm	8.7%	23.9%	31.2%
4 mm	0.0%	6.6%	21.5%
5 mm	0.0%	3.9%	19.7%
6 mm	12.2%	9.2%	25.2%
8 mm	0.0%	0.0%	9.3%
10 mm	1.1%	7.5%	22.3%
12 mm	4.2%	9.4%	23.4%

Table 2 – Dumping duty rates for CFG exported from Indonesia

2.1.3 CFG exported from Thailand

Thickness	Guardian Industries Corp Ltd	Other Thai exporters
3 mm	3.7%	12.0%
4 mm	5.5%	13.8%
5 mm	0.0%	5.3%
6 mm	0.0%	4.7%
8 mm	0.0%	2.8%
10 mm	8.7%	16.8%
12 mm	12.8%	20.7%

Table 3 – Dumping duty rates for CFG exported from Thailand

2.2 Conduct of inquiry

The Commission established an inquiry period of 1 January 2015 to 31 December 2015. The Commission has also examined data from the ABF import database for the period from 1 January 2009 to 31 December 2015 and financial data from Viridian from 17 October 2011 to 31 December 2015 for the purpose of analysing trends in the market for CFG and assessing potential injury factors.

2.2.1 Australian Industry

Viridian is the sole manufacturer of CFG in Australia and as such, is the Australian industry producing like goods to the goods covered by the measures.

The Commission conducted a verification visit to Viridian's premises on 26, 27 and 29 April 2016. The report in relation to this visit is available on the EPR.[8]

[8] http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20335/019%20-%20Verification%20Report%20-%20CSR%20Viridian%20Ltd.pdf.

2.2.2 Importers

The Commission identified several importers in the ABF import database that imported CFG from the countries subject to measures during the inquiry period. The seven largest importers, collectively representing 83 per cent of the total volume (in square metres, or m^2) of CFG imported during the inquiry period, were contacted to bring the continuation inquiry to their attention and to seek their participation.

Part A of the importer questionnaire was sent to the seven largest importers; however, the Commission received only one Part A response. The importer that responded to the Part A importer questionnaire subsequently advised that it no longer wished to participate in the continuation inquiry. The Commission also contacted the seven identified importers by telephone. To date, no importers have participated in nor made submissions to this inquiry.

2.2.3 Exporters

The Commission identified twenty five exporters in the ABF import database that exported CFG from the countries subject to measures during the inquiry period. An exporter questionnaire was uploaded onto the case page on the Commission's website and the exporters were contacted and invited to participate in this continuation inquiry. The Commission received four exporter questionnaire responses, which collectively represented 96 per cent of the total volume (in m^2) of CFG exported in the inquiry period by those exporters that are subject to measures.

A response to the exporter questionnaire was received from the following exporters:

Indonesia

AGC Asia Pacific Pte Ltd (AAP) and PT Asahimas Flat Glass Tbk (AMG)

AAP and AMG are related entities. The Commission conducted a verification visit to AMG's premises on 27-29 April 2016 and 2 May 2016. The report in relation to this visit is available on the EPR.[9] As per Section 3.3 of that report, there is a close structural and commercial relationship between the companies, and a harmonisation of activities to fulfil a common corporate objective. In particular, both AMG and AAP are owned (in full or in part) by Asahi Glass Co., Ltd; it was a requirement that AMG export all of its products to Australia through AAP and the price paid to AMG for goods exported to Australia was dependent on the price negotiated by AAP with its customers and was set by AAP with reference to internal guidelines, with no apparent negotiation between the two companies.

Consistent with the policy and practice set out on page 67 of the *Dumping and Subsidy Manual*, the Commission therefore considers that it is appropriate to treat AAP and AMG as a single entity for the purpose of calculating an export price to Australia. As such, AMG, the manufacturer of the goods subject to this inquiry, is considered to be the exporter of the goods.

[9] http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20335/023%20-%20exporter%20visit%20report%20-%20PT%20Asahimas.pdf

PT Muliaglass (Muliaglass)

The Commission conducted a verification visit to Muliaglass' premises on 18-20 and 23 May 2016. The report in relation to this visit is available on the EPR.[10]

Thailand

Guardian Industries Corp Ltd (Guardian)

The Commission conducted a verification visit to Guardian's premises on 9-11 and 13 May 2016. The report in relation to this visit is available on the EPR.[11]

The Commission considers that AMG, Muliaglass and Guardian have cooperated with the inquiry.

2.3 Submissions received from interested parties

The Commission has also received the following submissions during the inquiry.

Interested Party	Date Received	Document No on EPR
Viridian	11/4/2016	010
Viridian	19/5/2016	013
Guardian	20/5/2016	014
Guardian	21/5/2016	015
Viridian	26/5/2016	016
Viridian	27/5/2016	017
AMG	27/5/2016	018
Guardian	1/6/2016	020
Guardian	2/6/2016	021
Guardian	10/6/2016	022
Guardian	15/6/2016	025
Guardian	15/6/2016	027
Viridian	17/6/2016	028
Guardian	22/6/2016	029

Table 4 – Submissions received

The Commission has considered all submissions received up to and including 1 June 2016. The submissions received after this date have not been considered as to do so would, in the Commissioner's opinion, prevent the timely placement of the SEF on the public record (as per subsection 269ZHF(3) of the Act).

[10] http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20335/024%20-%20Exporter%20visit%20report%20-%20PT%20MuliaGlass.pdf

[11] http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20335/026%20-%20Exporter%20visit%20report%20-%20Guardian%20Industires.pdf

3. THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the CFG produced locally is "like" to the goods under consideration.

3.2 Legislative framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

> "G*oods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*"

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

i. physical likeness;
ii. commercial likeness;
iii. functional likeness; and
iv. production likeness.

3.3 The goods

The goods the subject of the current anti-dumping measures (the goods) are clear float glass in nominal thicknesses of 3 to 12 millimetres (mm).

The acceptable tolerances to these thicknesses are:

Nominal thickness (mm)	Acceptable tolerances (mm)	
	Minimum	Maximum
3	2.80	3.50
4	3.51	4.50
5	4.51	5.50
6	5.51	7.00
8	7.01	9.00
10	9.01	11.00
12	11.01	12.30

Table 5 – Thickness tolerances for CFG

The goods have the following characteristics:

- transparent;
- flat; and
- rectangle or square in shape.

Glass with the following characteristics is not the goods the subject of the application:

- coated, coloured, tinted or opaque;
- absorbent, reflective or non-reflective layer;
- wired;
- bent, edge-worked, engraved, drilled, enamelled or otherwise worked;
- framed or fitted with other materials;
- toughened (tempered) or laminated;
- acid etched; or
- low iron.

3.4 Tariff classification of the goods

The tariff classification of the goods is 7005.29.00, statistical codes 3, 4, 5, 6 and 9 in Schedule 3 of the *Customs Tariff Act 1995*. Indonesia is subject to the Developing Country Status (DCS) rate of 4 per cent, and imports from Thailand are free of duty. China is subject to a general rate of duty of 3 per cent as a result of the China Australia Free Trade Agreement.

3.4.1 Tariff Concession Orders

There are two Tariff Concession Orders (TCOs) linked to tariff classification 7005.29.00, detailed below:

TCO	Description
TC 9209312	Float Glass, clear, iron content equal to or less than 0.02 per cent in sheets, non-wired, without an absorbent or reflecting layer, not being cast, rolled, drawn or blown glass.
TC 8533852	Glass, having a thickness of not less than 13.5mm

Table 6 – Tariff Concession Orders applying to CFG

Glass subject to the TCOs above are not the goods. The glass applicable to TC 9209312 is a low iron glass, and TC 8533852 has a nominal thickness exceeding the accepted maximum specified tolerance of glass with a thickness of 12 mm (as noted in section 3.3 above).

3.5 Like goods

Viridian is the sole manufacturer of CFG in Australia.

CFG manufactured at Viridian's Dandenong plant closely resembles the goods exported to Australia from China, Indonesia and Thailand.

CFG sold in Australia (both Australian made and imported) is of international quality, sometimes referred to as western quality, which is characterised by the amount of distortions and imperfections in the glass. International quality CFG can also be separated into different grades.

3.5.1 Physical likeness

CFG produced by Viridian has a physical likeness to the goods exported to Australia from China, Indonesia and Thailand.

Viridian manufactures CFG in thicknesses of between 3 mm to 12 mm, which is the same as the goods.

The quality of the exported goods can be described as "international quality", which is the same quality as the CFG manufactured by Viridian.

3.5.2 Commercial likeness

CFG produced by Viridian has a commercial likeness to the goods exported to Australia from China, Indonesia and Thailand.

Viridian competes directly with overseas manufacturers of the goods and its customers are able to easily switch suppliers of CFG.

The CFG market is price sensitive and CFG is a homogenous product.

3.5.3 Functional likeness

CFG produced by Viridian has a functional likeness to the goods exported to Australia from China, Indonesia and Thailand.

Both the CFG manufactured by Viridian and the goods exported to Australia can be further processed to be laminated, double glazed, soft coated or toughened, and can be used for the same end-uses, such as for windows or door panels. There is no substitute for CFG as an input into these downstream processing activities; however, there are a range of substitutes available to customers at the end user level (for example, doors without glass panels, timber doors, etc.).

3.5.4 Production likeness

CFG produced by Viridian has a production likeness to the goods exported to Australia from China, Indonesia and Thailand.

The manufacture of CFG uses a float process, which was first invented by Sir Alastair Pilkington in 1952. The float process of manufacturing CFG that Viridian uses is essentially the same as the production process of the goods exported from China, Indonesia and Thailand.

3.6 Conclusion

For the purpose of considering whether there is an Australian industry producing like goods, the Commissioner makes this determination by considering the description of the goods as a whole.

Noting the very similar physical, commercial, functional and production likenesses between the goods under consideration and the goods produced by Viridian, the Commissioner is satisfied that there is an Australian industry producing like goods.

4. THE AUSTRALIAN INDUSTRY

4.1 Finding

The Australian industry producing the like goods is comprised entirely of Viridian.

4.2 Legislative framework

The Commissioner must be satisfied that the "like" goods are in fact produced in Australia. Subsection 269T(2) of the Act specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under subsection 269T(3), in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

During the verification visit, the Commission undertook a tour of Viridian's Dandenong float line and observed Viridian's manufacturing process of CFG to be as follows:

- raw materials of CFG (sand, dolomite, limestone, salt cake, soda ash and carbon) are delivered to Viridian's facility by each supplier, and are stored in silos for feeding into the production process;
- the raw materials are blended in specific proportions and mixed with "cullet" (crushed glass made from scraps) into the raw material mixture (known as "batch", which generally consists of 30 per cent cullet and 70 per cent of the combined other raw materials);
- the batch is then transported on a conveyer belt to the float line;
- the batch is fed into a furnace already containing molten glass, which is heated at 1,600ºC;
- the batch melts and is incorporated into the molten glass;
- the molten glass mixture from the furnace then gradually flows onto a bath of molten tin, forming a continuous ribbon;
- top rollers grip the edges of the ribbon and stretch the glass to achieve the target thickness (the line roller conveyor speed is also used);
- the ribbon floats along the molten tin bath, and the temperature of the molten glass is reduced to 600ºC where it begins to solidify;
- the glass ribbon is lifted off the tin onto rollers;
- the rollers convey the glass along the production line, with the speed of the rollers controlled to create various desired thicknesses of glass;
- the glass goes through an annealing process where the ribbon is gradually cooled in a lehr to prevent stresses in the glass;
- the glass is then inspected by a computerised system to detect faults before the edges (which are perforated from where the top rollers gripped the glass) are cut off and the glass cut to the desired size;
- the finished glass is then automatically lifted off the line and stacked onto frames for packing and dispatch.

4.4 Conclusion

The Commission is satisfied that the manufacture of CFG is wholly carried out in Australia, and therefore there is an Australian industry producing like goods.

5. AUSTRALIAN MARKET

5.1 Finding

The Commissioner has found that the Australian market for CFG was approximately 9.7 million m^2 in the inquiry period, with demand driven primarily by housing and construction activity. The market is supplied by Viridian and from imports from the countries subject to measures, as well as from other countries not subject to measures.

5.2 Introduction

The following analysis relies on information from the ABF import database as well as verified data obtained from the Australian industry and exporters.

The Commission observed a number of irregularities in the data for CFG recorded in the ABF import database, such as where the statistical quantity value recorded was resulting in an unrealistic per unit value price. Where the cause of these irregularities could be identified (such as a decimal place error), they were corrected having regard to the goods description. However, some irregularities could not be corrected due to a lack of precision in the goods description.

Approximately 8 per cent of the total number of lines of import consignments reported for calendar years 2012, 2013, 2014 and 2015 contained unrealistic price and / or volume data, which were not able to be corrected by reference to the goods description. These transactions were nevertheless included in the determination of total import volumes. These unreliable transactions represented 9% of the total volumes.

The Commission's data set is included at **Confidential Attachment 1**.

5.3 Market structure

As was noted in Chapter 3, CFG is usually further processed to be laminated, double glazed, soft coated or toughened for relevant end use, such as for windows or door panels. CFG is therefore sold to either intermediate glass processors (who will temper, toughen, laminate or otherwise add value to the CFG for further uses) or to glass fabricators (for end uses such as shower screens, glass splashbacks, doors, windows). The glass processors (which tend to purchase larger volumes of CFG than the fabricators) also sell the value-added glass products to fabricators. Once processed, the CFG is no longer considered "the goods" or "like goods" for the purpose of this continuation inquiry.

Viridian sells CFG to both related and unrelated customers who are processors, which in turn will sell to fabricators; CFG will also sell directly to fabricators. Whilst the related customers only purchase CFG from Viridian, unrelated processors and fabricators will also purchase imported CFG. The following diagram illustrates this market structure.

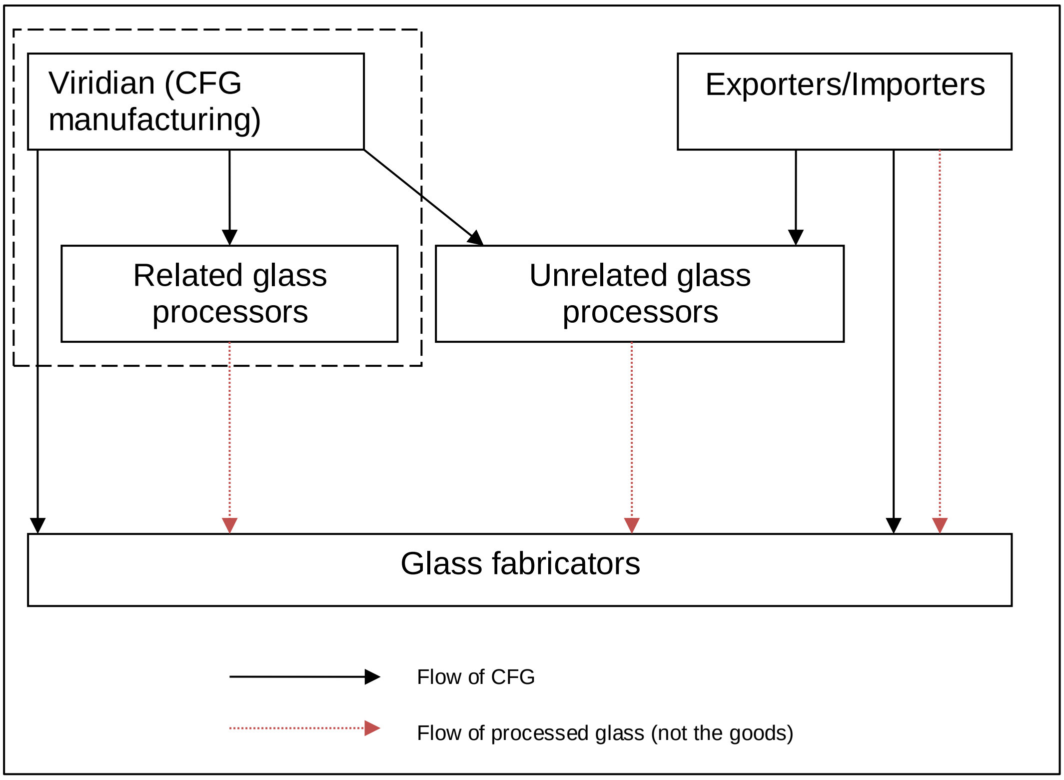

Diagram 1 – Market structure for CFG in Australia

5.3.1 Prices

The Commission has found that Viridian negotiates supply contracts which incorporate a price list with its unrelated customers. Viridian has demonstrated that these prices are regularly moderated by reference to known import offers in the market and the volume and mix of products actually purchased. Viridian explained that there is no formal process or system which guides the price negotiation, but it considers that the final prices agreed reflect what the market is willing to pay.

Internal transfer values to Viridian's related customers are set by reference to prices being obtained from unrelated customers, and which are also moderated by the volume purchased and the mix of products. This approach enables Viridian's business units to compete in downstream markets. The original investigation found that Viridian was able to obtain a price premium in the market; Viridian advised the Commission that it considers that price competition from imports is eroding that premium. The Commission has been unable to quantify a premium in the current inquiry, and therefore has made no finding at this time with regard to this claim.

The Commission has found that Viridian competes with exporters of CFG for both sales to unrelated glass processors and glass fabricators. The related glass processors compete with the unrelated glass processors for sales of value added glass products to the fabricators, which puts pressure on Viridian to ensure that its prices to related customers are competitive with imported CFG.

5.4 Demand for CFG

Both the Australian industry and Guardian[12] have indicated that demand for CFG in the Australian market generally aligns to construction activity and the downstream demand for other products which rely on CFG as the key input (such as laminated glass).

Viridian advised that although the building construction trend over the last few years has been strong, Viridian's downstream related customers find it more difficult to compete on price for projects such as apartments or office buildings where there are a large volume of windows of repetitive sizes. Viridian advised that these projects tend to be supplied by imports; although the finished windows are not the goods, the subject of this inquiry, they have nevertheless been manufactured from CFG. The volume of imported finished products (such as windows for office and apartment buildings) impact on demand for Viridian's own production of CFG from its related customers.

Viridian advised that demand for CFG amongst its customers (processors and fabricators) tends to be primarily driven by downstream demand in the housing sector. Figure 1, below, shows the value of all construction activity in Australia in the quarters ending December from 2005 to 2015 compared to the value of total new housing activity. The value of new housing activity is less buoyant when compared to total construction activity, which includes construction of large buildings such as offices and apartments.

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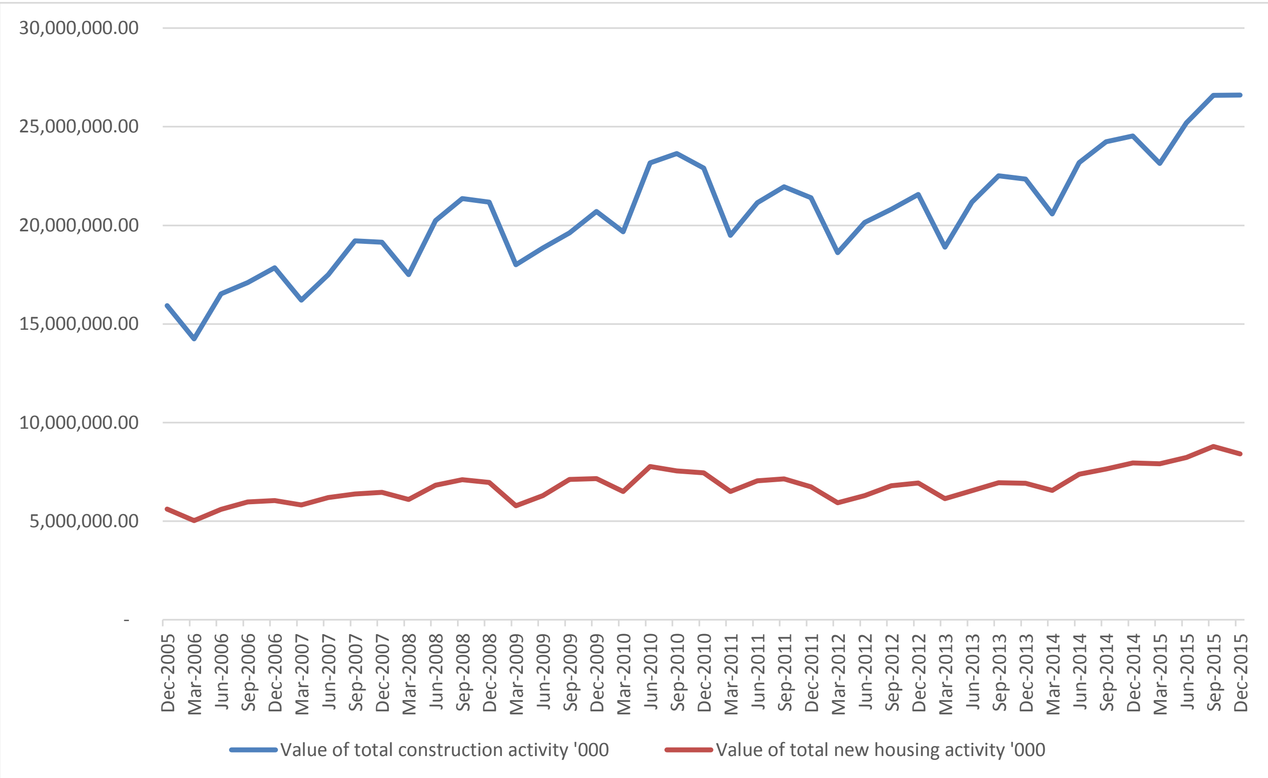

Figure 1: Value of total construction activity and the value of total new housing activity

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[12] Document 014 on the EPR refers.

Source: Australian Bureau of Statistics[13]

5.5 Market size and share

The Australian CFG market is supplied from local production by Viridian and by imports.

Figure 2, below, shows the comparative share of the market by volume (m^2) between CFG sourced from Viridian and from imports. The total volume of sales in the Australian market (estimated at 9.7 million m^2 in calendar year 2015) largely corresponds to the trend in new housing activity indicated in Figure 1.

Viridian's sales volume is comprised of both external sales and internal transfers to related party customers.

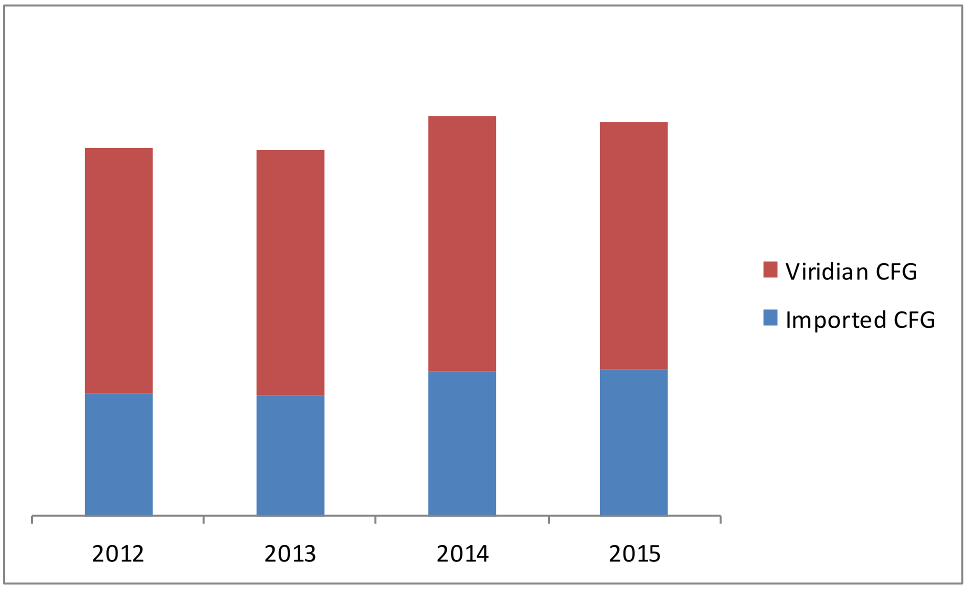

Figure 2: Market size and share between Australian industry and imports

Source: ABF import data base and Confidential Appendix A6

Imports of CFG in 2015 were predominantly sourced from Indonesia, China and the United Arab Emirates (UAE), which collectively accounted for around 83 per cent of all imports during the inquiry period.

[13] ABS Catalogue No 8752.0 Building Activity, Australia: TABLE 40.

Figure 3, below, shows the respective share of imports held by CFG which was subject to measures and CFG which was not. Imports from Xinyi which are exempt from measures are included in the 'not subject to measures' totals.

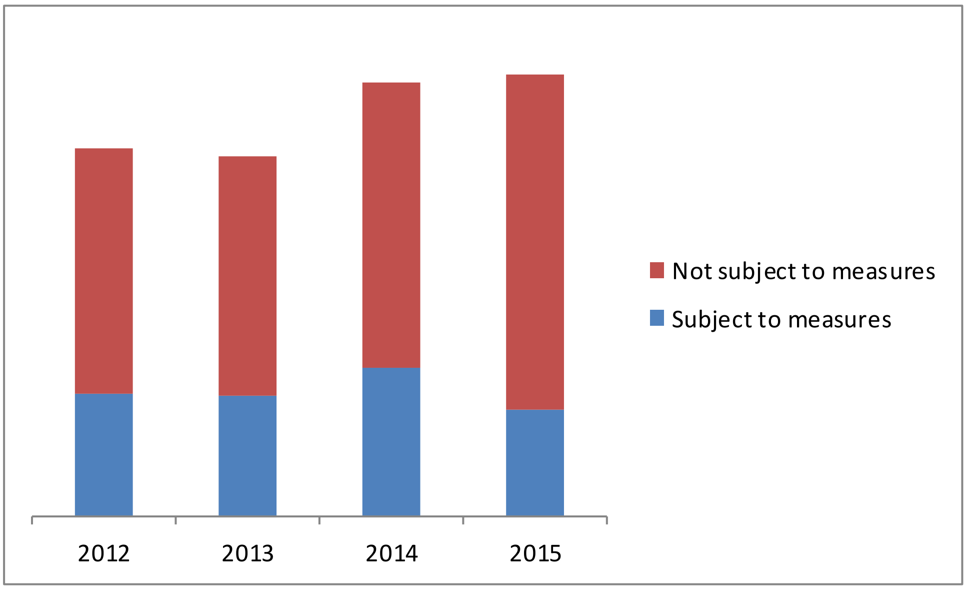

Figure 3: Share of imports by reference to measures

Source: ABF import data base

5.6 Impact of anti-dumping measures on import volume

Anti-dumping measures were imposed on CFG exported from China (except by Xinyi), Indonesia and Thailand on 17 October 2011.

Movements in the respective shares of CFG exported to Australia is illustrated in Figure 4, below. Figure 4 demonstrates that, following the imposition of measures in 2011, other countries not subject to the measures increased their share of the market. The imposition of anti-dumping measures has had a significant impact on import volumes from China, Indonesia and Thailand. To provide greater clarity, import volumes from Xinyi are also included in 'countries not subject to measures'.

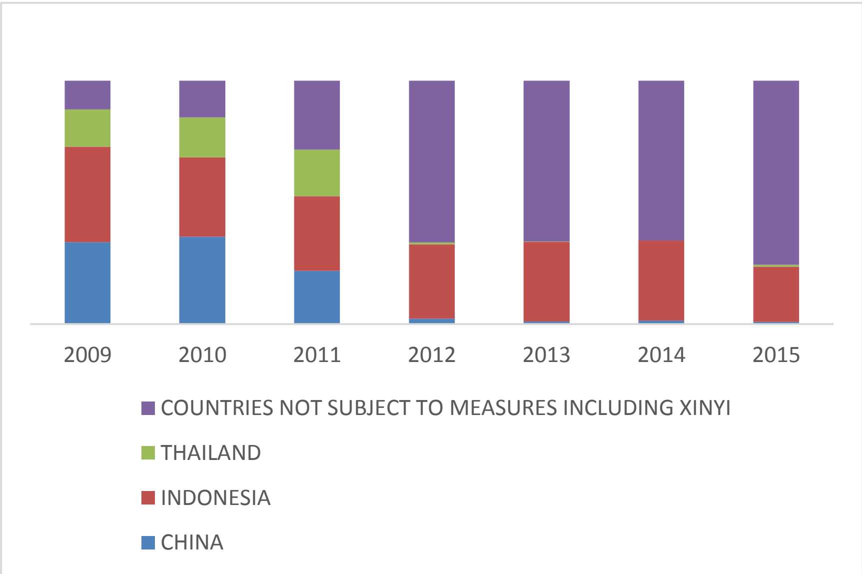

Figure 4: Share of CFG imported to Australia, by country

Source: ABF import data base

Figure 5, below, compares the quarterly import volumes (m^2) of CFG between the three countries subject to measures and other exporters not subject to measures. Again, imports from Xinyi are included in ‘countries not subject to measures’.

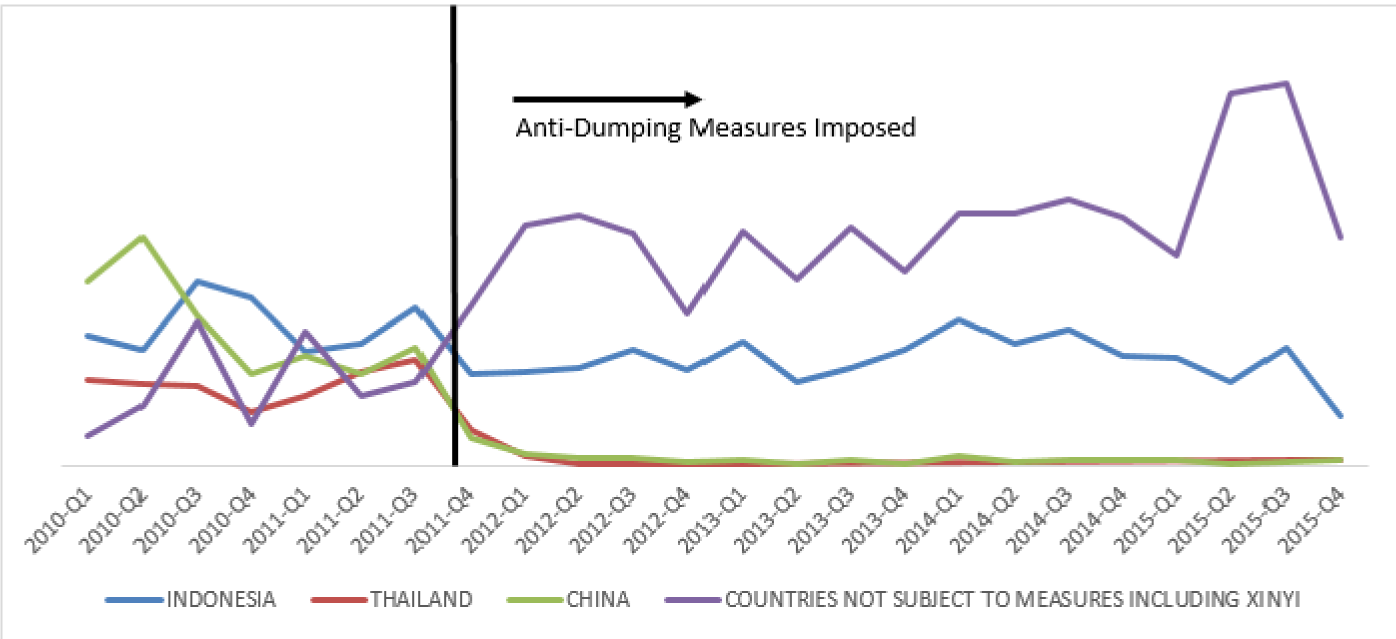

Figure 5: Quarterly import volumes of CFG

Source: ABF import data base

Figure 5 demonstrates that quarterly volumes can fluctuate significantly, and that they have been directly impacted by the imposition of the anti-dumping measures. As was the case in Figure 4, the imposition of the anti-dumping measures had a significant negative impact on exporters subject to measures which have significantly lost market share. Exporters not subject to measures have significantly gained market share.

6. ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Approach to analysis

As Viridian is the sole producer of CFG in Australia, for the purposes of the inquiry the Commission has used Viridian's data to assess the economic performance of the Australian industry. This approach is consistent with the original investigation.

For the following analysis, the Commission has relied on Viridian's verified data from the original investigation and from the current inquiry. The years ending March (YEM) in the period from 1 April 2006 to 31 March 2010 (the period examined in the injury analysis for the original investigation, inclusive of the investigation period 1 April 2009 to 31 March 2010) have been examined for the purposes of examining trends in the economic condition of the Australian industry prior to the imposition of the anti-dumping measures on 17 October 2011. The Commission has subsequently examined calendar years in the period from 1 January 2012 to 31 December 2015, for the purposes of examining trends in the economic condition of the Australian industry following the imposition of the anti-dumping measures. The Commission has not examined the period between 1 April 2010 and 31 December 2011 as no verified data for Viridian is available for this period.

The Commission's graphs have been produced using a consistent scale for volumes, prices, costs, profit and profitability, to enable a comparison between the two examined periods. The analysis draws on all of Viridian's verified data, inclusive of sales to both external customers and internal transfers to related parties. The original data and analysis on which the Commission has relied to assess the economic position of the Australian industry is at **Confidential Appendix 1**.

6.2 Economic condition prior to measures

In the original investigation, it was determined that Viridian suffered injury caused by dumping in the form of:

- lost sales volume;
- price depression;
- price suppression;
- lost sales revenue; and
- lost profit and profitability.

6.2.1 Sales volume during the injury analysis period in the original investigation

Figure 6, below, indicates that the Australian industry lost sales volume (m^2) in each year over the original investigation period.

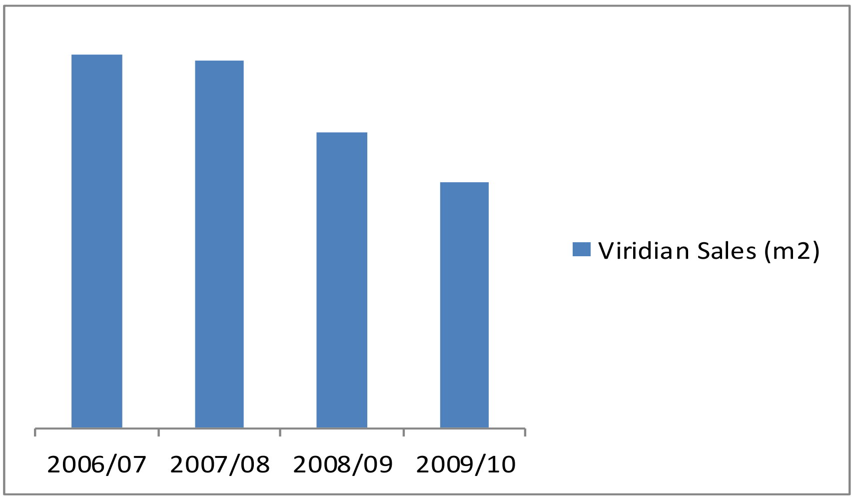

Figure 6: Viridian sales volumes in the original injury analysis and investigation period

Source: Confidential Appendix A6 from original investigation

6.2.2 Price depression and price suppression during the injury analysis period in the original investigation

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases which otherwise would have occurred, have been prevented. Viridian was found to have suffered price depression and price suppression in the original investigation.[14]

Figure 7, below, shows that Viridian's unit selling prices gradually increased over the four year period. However, Viridian's unit selling prices were not able to match an increase in the unit cost to make and sell (CTMS) in YEM 2009 and 2010. Whilst conditions improved in YEM 2010, Viridian was unable to fully recover its costs.

Figure 7: Comparison of Viridian unit selling price and unit CTMS in the original injury analysis and investigation period

Source: Confidential Appendix A6 from original investigation

[14] The Commission notes that Figure 7 indicates an overall increase in unit prices over the period. However, section 8.5.2 of REP 159C demonstrates that sales to external customers of particular thicknesses of CFG experienced price depression.

6.2.3 Profits and profitability during the injury analysis period in the original investigation

Movements in Viridian's profits and profitability are illustrated in Figure 8, below. Although Viridian's profit and profitability improved in YEM 2010, it still recorded negative results.

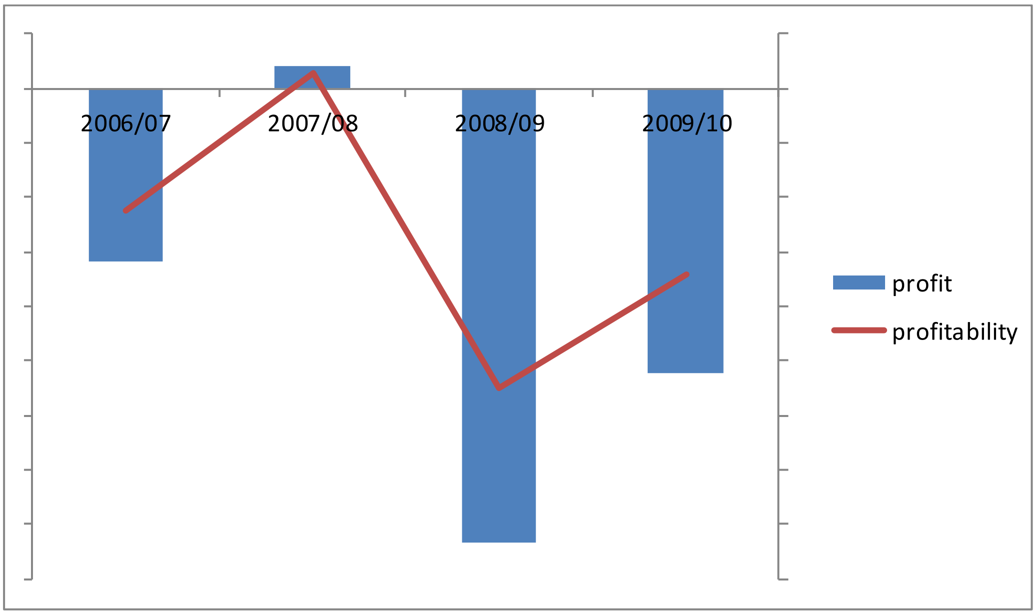

Figure 8: Profit and profitability in the original injury analysis and investigation period

Source: Confidential Appendix A6 from original investigation

6.2.4 Other factors in the original investigation

Other factors, such as the global financial crisis and the subsequent decline in building activity, operational issues within Viridian, the Dandenong plant refurbishment, the Australian industry being a high cost producer, the value of the Australian dollar and a shift in demand to more energy efficient glass had contributed to the injury suffered by the Australian industry during the original investigation period.

However, notwithstanding these other factors, the then Attorney General was satisfied that the injury to the Australian industry caused by dumping from the countries under consideration was material.

6.3 Economic condition subsequent to measures

6.3.1 Sales volume after 2011

Figure 9, below, shows that Viridian's sales volumes since the imposition of measures have been generally flat. Viridian's sales volume is comprised of both external sales and internal transfers.

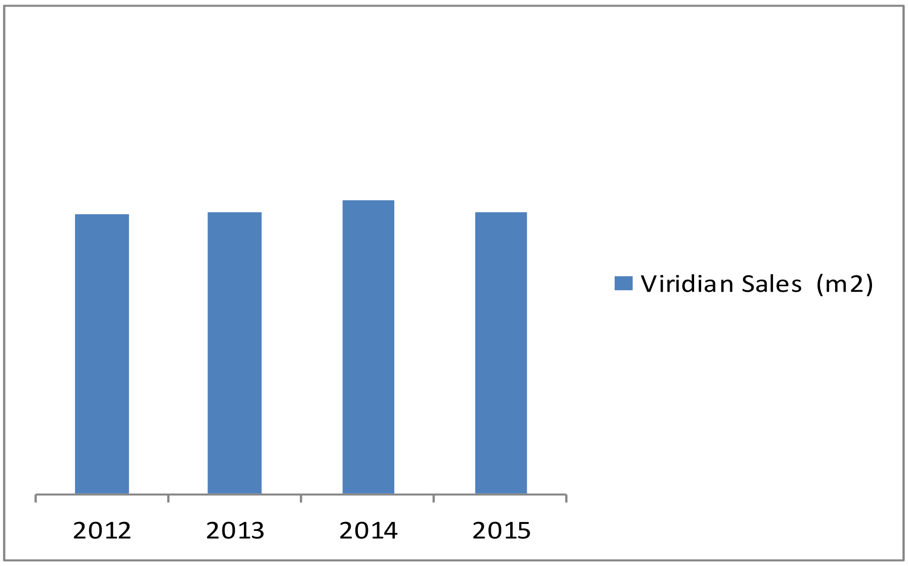

Figure 9: Viridian sales volumes in the current period

Source: Confidential Appendix A6 from current inquiry

In terms of comparison against the period in the original dumping investigation (Figure 6), Viridian was able to exceed the YEM 2010 sales volume in only one year, 2014. Although Viridian was not able to achieve the sales volumes realised in the original investigation period, it appears that its sales volumes have nonetheless remained stable since the measures have been imposed.

As noted in Chapter 5, sales volumes have tended to follow construction activity. Viridian advised during the verification visit that changing building standards have resulted in increasing sales of 4 mm thickness glass instead of the more traditional 3 mm, which is corroborated by the Commission's analysis of the change in the respective share of sales obtained by Viridian for each thickness of CFG since 2011 (**Confidential Appendix 1** refers).

6.3.2 Price depression and price suppression after 2011

Figure 10, below, shows Viridian's more recent unit selling prices and CTMS of CFG. Since the imposition of measures, Viridian has been able to increase its unit selling prices. Viridian's per unit CTMS has steadily improved since 2012 and against the four year period in the original dumping investigation. Despite the reduction in CTMS, unit selling prices did not exceed unit CTMS until 2015.

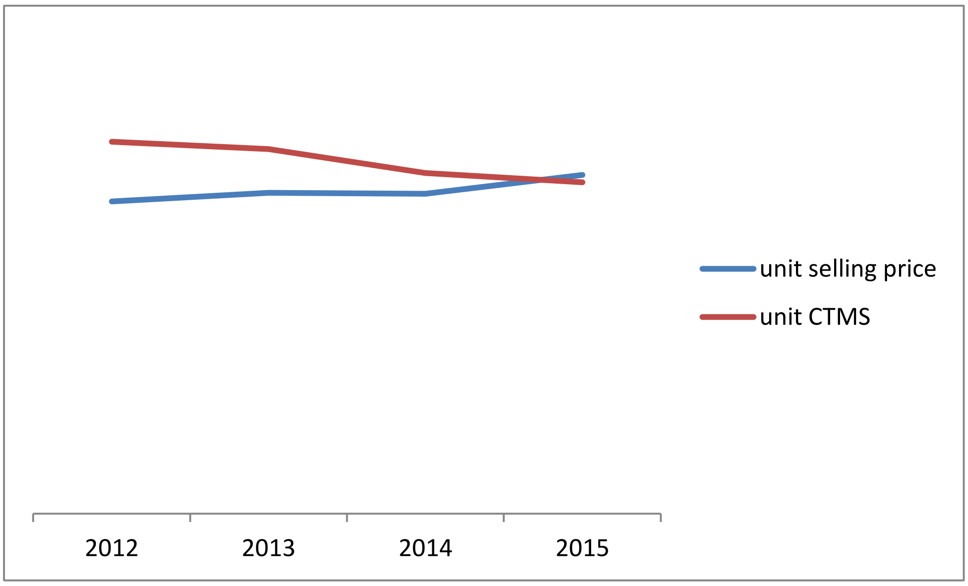

Figure 10: Comparison of Viridian unit selling price and CTMS in the current period

Source: Confidential Appendix A6 from current inquiry

6.3.3 Profits and profitability after 2011

Movements in Viridian's profits and profitability are illustrated in Figure 11.

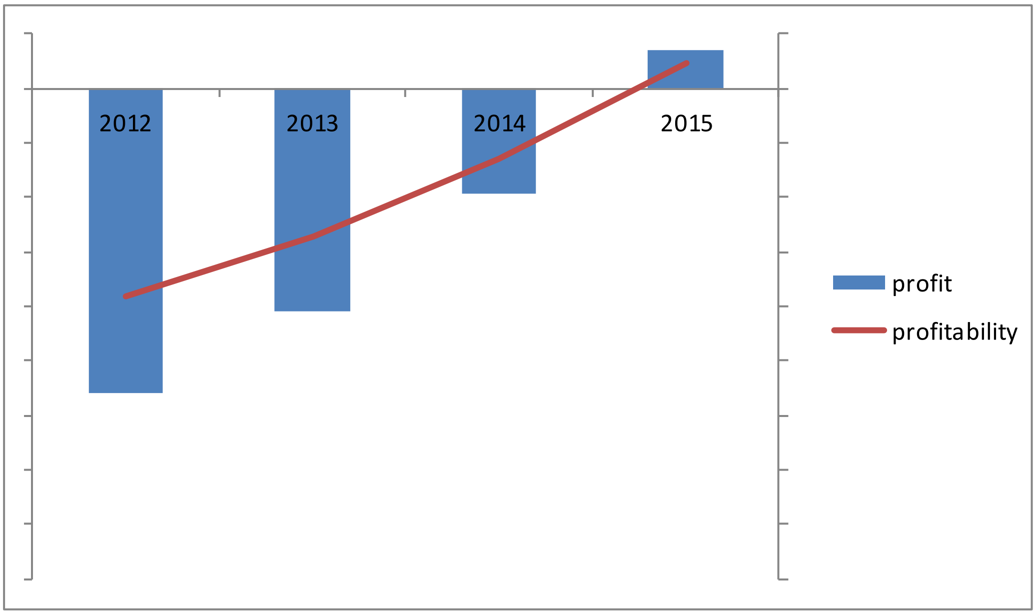

Figure 11: Profit and profitability in the current period

Source: Confidential Appendix A6 from current inquiry

Figure 11 shows that Viridian's profit and profitability was at its lowest in 2012 and remained negative between 2012 and 2014 before returning to a positive value during 2015. In comparison to the original dumping investigation (Figure 8), calendar year 2012 recorded losses in terms of both profit and profitability which were in excess of those in YEM 2010; however, a significant improvement has been noted in every year since 2012.

6.3.4 Other factors that may impact economic performance after 2011

In 2013, Viridian decommissioned the Ingleburn manufacturing plant. Whilst resulting in significant job losses, this consolidated Viridian's manufacturing into one site and reduced its fixed costs, which has contributed to the improvement in per unit CTMS in the current period despite relatively flat sales volumes. In addition, Viridian restructured its related party business into five business units to focus on delivering higher value downstream products to key market segments, invested in production line consolidation and its warehouse management. Although not directly related to the production of the goods, these business improvements ultimately improved demand for CFG from Viridian's related customers, helped to raise its unit selling prices for CFG and contributed to the company's improved profit and profitability.

As demonstrated in chapter 5, the volume of CFG coming from exporters not subject to measures has increased. As will be seen in section 8.3.3 of this report, overall import volumes have remained relatively steady from 2009 to 2015.

7. ASCERTAINMENT OF VARIABLE FACTORS

7.1 Legislative framework

In accordance with subsection 269ZHF(2) of the Act, the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping. The existence of dumping during the inquiry period may be an indicator of whether dumping may occur in the future.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB.

7.2 Calculation of dumping margins

For all dumping margins calculated for the purposes of this inquiry, the Commission compared the weighted average export prices over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

7.2.1 Uncooperative exporters

Subsection 269T(1) provides that an exporter is an "uncooperative exporter", where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) indicates at clause 8 that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period. After having regard to the Direction, the Commissioner determined that all exporters which did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period (being 37 days, concluding on 1 April 2016), were to be uncooperative exporters.

As provided for in subsection 269TACAB(1), for uncooperative and all other exporters, export price and normal value were worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively by having regard to all relevant information.

7.3 Ascertainment of variable factors – Indonesia

7.3.1 AMG

7.3.1.1 Export price

The Commission is satisfied that the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

The export price for AMG was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

7.3.1.2 Normal value

The Commission is satisfied that it found sufficient volumes of domestic sales of CFG for home consumption in Indonesia, for all models exported to Australia, that were arms length transactions and at prices that were in the ordinary course of trade (OCOT). The Commission is therefore satisfied that the prices paid in respect of domestic sales of CFG are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that certain adjustments, in accordance with subsection 269TAC(8), are necessary to ensure fair comparison of normal values with export prices.

<u>Adjustments</u>

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic credit	**Deduct** the cost of domestic credit.
Domestic inland freight	**Deduct** the cost of domestic inland freight.
Domestic packaging	**Deduct** the cost of domestic packaging.
Export inland freight and fumigation	**Add** the cost of export inland freight and fumigation.
Export packaging	**Add** the cost of export packaging.
Export credit	**Add** the cost of export credit.

Table 7: Adjustments to PT Asahimas Flat Glass Tbk normal value

7.3.1.3 Dumping margin

The Commission has calculated a dumping margin in respect of CFG exported to Australia by AMG for the inquiry period. The margin is **14.4 per cent**.

The Commission's calculations are included at **Confidential Attachment 2**.

7.3.2 Muliaglass

7.3.2.1 Export price

The Commission is satisfied that the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

The export price for Muliaglass was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

7.3.2.2 Normal value

The Commission is satisfied that it found sufficient volumes of domestic sales of CFG for home consumption in Indonesia, for all models exported to Australia, that were arms length transactions and at prices that were in the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of CFG are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that certain adjustments, in accordance with subsection 269TAC(8), are necessary to ensure fair comparison of normal values with export prices.

<u>Adjustments</u>

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic credit	**Less** an amount for domestic credit
Domestic packaging	**Less** domestic packaging expenses
Domestic inland freight	**Less** an amount for domestic inland freight
Domestic sales commission	**Less** an amount for domestic sales commission paid to Mulia Industrindo
Export credit	**Add** an amount for export credit
Export packaging	**Add** an amount for export packaging
Export trucking and clearance	**Add** an amount for export trucking and clearance charges
Export documentation and sealing	**Add** an amount for export documentation and sealing fees
Australian representative expenses	**Add** an amount for the portion of Australian representative's expenses dedicated to the goods sold in Australia

Table 8: Adjustments to PT Muliaglass normal value[15]

7.3.2.3 Dumping margin

The Commission has calculated a dumping margin in respect of CFG exported to Australia by PT Muliaglass for the inquiry period. The margin is **0.3 per cent**.

The Commission's calculations are included at **Confidential Attachment 2**.

7.3.3 Uncooperative exporters from Indonesia

For all other exporters from Indonesia, the Commission has calculated export price and normal value (and subsequently a dumping margin) by reference to all relevant information. The Commission has done this by comparing the highest weighted average quarterly normal value calculated for the cooperating exporters and compared it to the lowest weighted average quarterly export price calculated for cooperating exporters. The margin for all other exporters of CFG from Indonesia is **38.4 per cent**.

The Commission's calculations are included at **Confidential Attachment 2**.

7.4 Ascertainment of variable factors – Thailand

7.4.1 Guardian

7.4.1.1 Export price

The Commission is satisfied that the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

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[15] The exporter visit report for Muliaglass includes an adjustment under subsection 269TAC(8) for "domestic bonus payments". More correctly, this amount was addressed when establishing the price paid or payable under subsection 269TAC(1), and has therefore been removed from the table.

The export price for Guardian was calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

7.4.1.2 Normal value

The Commission is satisfied that it found sufficient volumes of domestic sales of CFG for home consumption in Thailand, for all models exported to Australia, that were arms length transactions and at prices that were in the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of CFG are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that certain adjustments, in accordance with subsection 269TAC(8), are necessary to ensure fair comparison of normal values with export prices.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8) of the Act, and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices:

Adjustment Type	Deduction/addition
Domestic credit	**Less** an amount for domestic credit
Domestic packaging	**Less** domestic packaging expenses
Domestic inland freight	**Less** an amount for domestic inland freight
Domestic commission	**Less** an amount for domestic commission
Domestic warehousing	**Less** an amount for domestic warehousing
Export credit	**Add** an amount for export credit
Export packaging	**Add** an amount for export packaging
Export inland transport and port charges	**Add** an amount for export inland freight and port charges
Export commission	**Add** an amount for export commission
Export handling and other	**Add** an amount for export handling and other
Tax credit	**Less** tax credit

Table 9: Adjustments to Guardian normal value

7.4.1.3 Dumping margin

The Commission has calculated a dumping margin in respect of CFG exported to Australia by Guardian for the inquiry period. The margin is **8.8 per cent**.

The Commission's calculations are included at **Confidential Attachment 2**.

7.4.2 Uncooperative exporters from Thailand

For all other exporters from Thailand, the Commission has calculated export price and normal value (and subsequently a dumping margin) by reference to all relevant information. The Commission has done this by calculating a weighted average export price for the two quarters that represented the period that the goods were exported to Australia, and comparing this to the weighted average normal value calculated for the cooperating exporter for the same quarters, but excluding any favourable adjustments. The dumping margin for all other exporters of CFG from Thailand is **25.8 per cent**.

The Commission's calculations are included at **Confidential Attachment 2**.

7.5 Ascertainment of variable factors – China

No exporters of CFG from China that are subject to measures have provided a response to the exporter questionnaire. As noted in section 7.2.1, the Commissioner has therefore determined that all exporters of the goods from China that are subject to the measures relevant to this inquiry are uncooperative exporters.

The Act contains provisions for determining export price and normal value when exporters do not cooperate with an investigation. As mentioned in 7.2.1, subsection 269TACAB(1) provides that for uncooperative and all other exporters, export price and normal value are to be worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively by having regard to all relevant information.

7.5.1 Export price

Under subsection 269TAB(3), where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such an amount as is determined by the Minister having regard to all relevant information.

Noting that importers of CFG from China have also provided no relevant information to this inquiry, the Commission considers that the ABF import database provides the most relevant and best available information to determine an export price for Chinese exporters.

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission used the ABF import database to calculate a weighted average Free on Board (FOB) price for the goods exported from China and entered for home consumption in Australia during the inquiry period. The Commission has disregarded any transactions from the ABF import database which appear to have occurred between related parties (transactions that appear to not be arms length), using publicly available information to determine whether a relationship exists between the exporter and importer. However, the Commission recognises that without cooperation from exporters or importers it is difficult to determine if transactions within the ABF import database are at arms length.

7.5.2 Normal value

Under section 269TAC(6), where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections, the normal value of those goods is such an amount as is determined by the Minister having regard to all relevant information.

As outlined in Chapter 13 of the *Dumping and Subsidy Manual*:

> Where there is no cooperation at all from producers in a country, regard will be had to any of the following:
>
> - price lists, provided there is supporting information from independent sources;
> - information from other independent sources (e.g. trade publications, trade statistics);
> - industry publications and industry consultancy reports;
> - information set out in the application if such information is considered reliable;
> - information gathered from other countries subject of the same investigation;
> - earlier dumping investigations.

The Commission has been unable to obtain any reliable information, supported by independent sources, to determine a normal value that is based on actual prices of CFG sold in China during the inquiry period. The Commission further notes that Viridian has submitted that the Chinese market for CFG is subject to a particular market situation.[16] These claims have not been investigated in this inquiry.[17]

The information obtained by the Commission in the original investigation suggests that normal values for CFG produced in China, Indonesia and Thailand were similar for each thickness. Given that raw materials and energy costs make up the largest share of the cost of production for the goods, the Commission considers that it may be reasonable to assume that the cost of raw materials would not deviate significantly between countries. Further, the original investigation found that imports from these countries were directly substitutable in most cases and made to "international quality"; the Commission remains satisfied this is still the case.

Although the Commission could rely on relevant information concerning normal values in China in the original investigation, the normal values for the cooperating exporters in other countries (Thailand and Indonesia) have shifted significantly in the last five years and it appears reasonable to conclude that normal values in China have also moved. There is no other relevant information available to the Commission at this stage of the inquiry that would undermine this assumption.

The Commission has therefore determined normal value for uncooperative exporters from China pursuant to subsection 269TAC(6) having regard to all relevant information. Specifically, the Commission has calculated the average increase in normal values for each thickness of the three cooperating exporters since the original investigation. The simple average of all of those increases (approximately 21 per cent) has then been applied to the total weighted average normal values for each thickness of CFG sold by Guangzhou CSG Glass Co Ltd between 1 April 2009 and 31 March 2010 (this company

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[16] Document 010 on the EPR refers.

[17] Section 4.4.2 of *Consideration Report 335* notes that the existence of a particular market situation was alleged in Viridian's application for the continuation of the measures, but that there was insufficient evidence in order to investigate the claims at that time. Viridian's subsequent submission provided further evidence to support these claims. However, market situation is a relevant consideration when establishing normal values under section 269TAC (1). As there is no cooperation from Chinese exporters, the Commission is precluded from establishing normal values using section 269TAC (1) and as such, market situation is not a relevant consideration.

was the sole cooperating exporter from China found to have been dumping during the original investigation period).

7.5.3 Dumping margin

The Commission has calculated a dumping margin for all exporters from China (excluding exporters not subject to the measures) of **23.4 per cent**.

The Commission's calculations are included at **Confidential Attachment 2**.

7.6 Conclusion

The Commission has calculated the following dumping margins:

Exporter	Dumping Margin
Indonesia	
PT Asahimas Flat Glass Tbk (either directly or exported via AGC Asia Pacific Pte Ltd)	14.4 %
PT Muliaglass	0.3 %
Uncooperative and all other exporters	38.4 %
Thailand	
Guardian Industries Corp Ltd	8.8%
Uncooperative and all other exporters	25.8 %
China	
Uncooperative and all other exporters (except Xinyi Ultrathin (Donguan) Co. Ltd)	23.4 %

Table 10 – Dumping margins calculated for the inquiry period

8. LIKELIHOOD OF DUMPING AND MATERIAL INJURY CONTINUING OR RECURRING

8.1 Finding

The Commissioner is satisfied that the expiration of the anti-dumping measures to which the application relates would lead, or would be likely to lead, to a continuation of, or a recurrence of, both the dumping and the material injury that the measures are intended to prevent.

8.2 Legislative framework

In accordance with subsection 269ZHF(2) of the Act, the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping or subsidisation and the material injury that the anti-dumping measures are intended to prevent.

8.3 Likelihood of dumping continuing or recurring

8.3.1 Australian industry's claims

In its application, Viridian submitted that:

- exporters have not requested a review of variable factors which is a reasonable indication that the dumping margin has not changed following the imposition of anti-dumping measures in October 2011;
- exports of CFG from China, Indonesia and Thailand have had a significant impact in the Australian market;
- the CFG industry in China, Indonesia and Thailand is characterised by overcapacity; and
- Government of China influence in the raw materials market has caused artificially low prices for CFG in China.[18]

8.3.2 Analysis of dumping within the inquiry period

As shown in Chapter 7, the Commission calculated dumping margins as part of this continuation inquiry. The Commission considers that CFG has been exported from China, Indonesia and Thailand to Australia at dumped prices during the inquiry period. The Commission considers that dumped imports of CFG represented approximately 9 per cent of the Australian market during the inquiry period.

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[18] These claims have not been assessed; footnote 17 refers.

8.3.3 Import volumes

Table 11, below, shows that, as a proportion of total imports of CFG, imports from China, Indonesia and Thailand have declined as a result of the imposition of the anti-dumping measures from 17 October 2011. The import volumes in years 2012 to 2015 are inclusive of all exporters, including Xinyi (which is not subject to measures).

Proportion of CFG imports originating from China, Indonesia and Thailand						
2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
88%	85%	74%	50%	55%	49%	51%

Table 11: Proportion of imports from countries subject to measures

Despite the overall decline in the volume of imports from these countries, the Commission notes that exporters subject to measures have maintained export pathways and distribution channels into the Australian market since the anti-dumping measures were imposed.

Further, the Commission notes that overall import volumes have remained largely stable since 2009, as shown by Figure 12.

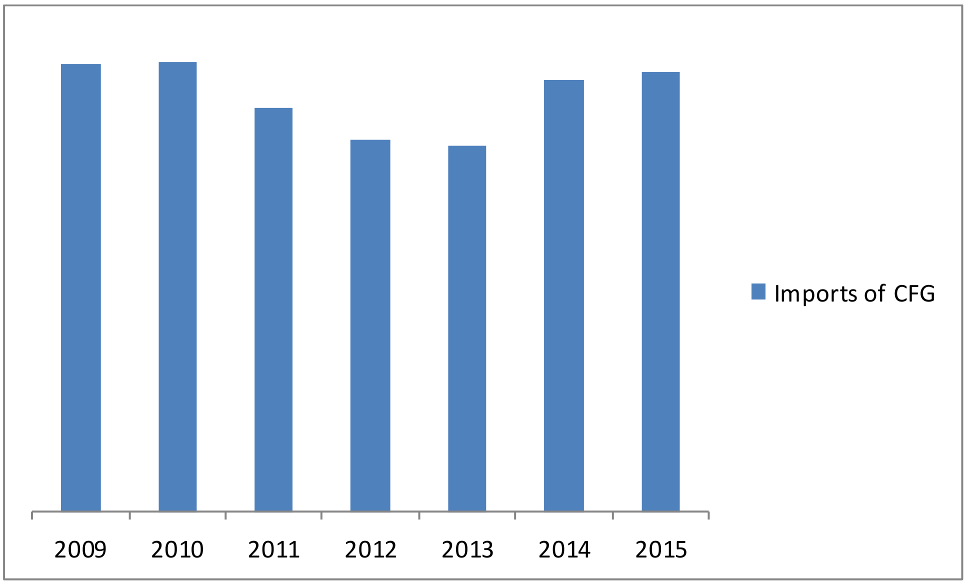

Figure 12: Imports of CFG by volume (m^2)

Source: ABF database

When compared to Figure 4 and Figure 5, the Commission considers that the imposition of the anti-dumping measures in 2011 largely resulted in a shift of import supply to countries and exporters not subject to measures.

8.3.4 Overcapacity

As was noted in *Consideration Report 335*, according to a report published by the European Union Chamber of Commerce in China, China had a flat glass capacity of 10,750,000 tonnes as at 2014.[19] The same report also states that theoretical capacity has increased in China. In 2013 there were 290 production lines in total of which 230 were active. As at September 2015, there were 346 production lines of which 216 were active. Based on the information available, the Commission is satisfied that there is excess production capacity for CFG available in China.

The Commission observes that, due to the nature of the CFG production process, manufacturers are hesitant to close down existing production lines to manage fluctuations in demand as it is time and cost prohibitive to recommence production.[20] Further, this provides an additional incentive to CFG producers to operate at or near capacity in order to minimise the per unit cost of production as much as possible.

The Commission notes that Guardian currently has little - if any - excess production capacity. However, this does not preclude Guardian from changing the composition of its production mix to produce more of the goods that are subject to measures. The Commission notes that Guardian is part of a broader global business which already supplies CFG to Australia from other countries not subject to measures. Arguably, Guardian could adjust its production portfolio to take advantage of the comparative proximity of its Thailand plant to Australia to replace CFG exported from other parts of the global business if it was considered commercially advantageous to do so.

The Commission notes that Muliaglass appears to have sufficient spare capacity to increase export volumes immediately if it wished to do so, whereas AMG currently has little - if any - excess production capacity. However, the Commission does not have any information on the proportion of capacity that is consumed by the goods subject to measures. Arguably, AMG may be able to change the composition of its production mix to produce more of the goods that are subject to measures. It is also noted that AMG is part of a broader global business which already supplies small volumes of CFG to Australia from other countries not subject to measures.[21] Arguably, in the absence of anti-dumping measures, AMG could adjust its production portfolio to take advantage of the comparative proximity of its Indonesia plant to Australia to replace CFG exported from other parts of the global business if it was considered commercially advantageous to do so.

With regard to Indonesia and Thailand more broadly, the Commission notes that exports prior to the imposition of measures (as per Figure 4 and 5) were at greater import volumes and this may indicate that these countries can accelerate exports to Australia should the measures expire.

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[19] European Union Chamber of Commerce in China, 2016, *Overcapacity in China*, http://www.europeanchamber.com.cn/en/publications-overcapacity-in-china

[20] As per the *Overcapacity in China* report, it takes 6 months to recommence production and costs approximately USD 7.5 million.

[21] This can be seen from the ABF import database – **Confidential Attachment 1** refers.

8.3.5 Exports to other markets

The Commission has observed that CFG exported from China is subject to anti-dumping measures imposed by Brazil on 19 December 2014.[22] These measures apply to thicknesses of CFG ranging from 2 mm to 19 mm. The Commission considers that the findings of the Brazil anti-dumping authority is prima facie evidence that Chinese exporters have recently dumped CFG in other markets.

8.3.6 Submissions

Guardian claims that it has not dumped CFG during the inquiry period, or at any other time since the measures were imposed. Guardian points to evidence which suggests that its sales to Australia are at prices which are consistently higher than Guardian's prices in third countries. Guardian claims that global primary production overcapacity no longer exists, which has coincided with increasing demand in Thailand which has been profitable for Guardian. Guardian claims that it does not intend to supply the Australian market with any substantial volume of CFG, due to its own domestic market strategies. Noting the correlation between GDP growth and glass consumption, Guardian notes that IMA Asia has forecast that Thailand's real GDP growth is expected to increase from 3.4 per cent in 2016 to 5.7 per cent in 2020. Guardian will therefore have adequate demand in its domestic market and therefore it would not be rational to dump its product in other markets. Guardian concludes that it is therefore speculative to suggest that Guardian will dump in the future.[23]

The Commission observes that, contrary to the above assertion, Guardian was found to have dumped the goods that were exported to Australia during the inquiry period. During the verification visit the Commission examined Guardian's production capacity and its ability to supply the Australian market; the Commission notes that whilst Guardian may not currently intend to supply the Australian market with any substantial volumes, it does not necessarily follow that dumping will not recur. Indeed, as can be seen from Figure 5 in section 5.6 of this report, exports from Thailand currently represent a very small proportion of the market; Guardian is already supplying insubstantial volumes at dumped prices.

8.3.7 Conclusion

Given the above analysis, the Commission considers that because of:

- the continuation of dumping during the inquiry period by identified exporters;
- the maintenance of export pathways;
- the availability of excess capacity in China; and,
- the relative ease, and potential commercial incentive to switch export markets,

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[22]http://pesquisa.in.gov.br/imprensa/servlet/INPDFViewer?jornal=1&pagina=70&data=19/12/2014&captchafield=firistAccess

[23] Document 014 on the EPR refers.

that:

- if the anti-dumping measures with respect to China are not continued, the dumping of CFG exported from China is likely to continue;
- if the anti-dumping measures with respect to Indonesia are not continued, the dumping of CFG exported from Indonesia is likely to continue; and
- if the anti-dumping measures with respect to Thailand are not continued, the dumping of CFG exported from Thailand is likely to continue.

8.4 Likelihood of material injury continuing or recurring

8.4.1 Australian industry's claims

In its application, Viridian submitted that:

- if the measures were not continued it would be reasonable to predict that import volumes would increase;
- it would be increasingly difficult to sustain price increases due to import price offers; and
- any reduction in the average selling price following the removal of duties would have an adverse impact on Viridian's profit and profitability.

Subsequently, Viridian provided further information to demonstrate the claimed impact that a decline in its sales volume and a reduction in its prices would have on the profit and profitability of the company (**Confidential Attachment 3** refers).

8.4.2 Price effects

The Commission considers that CFG is largely a commodity product – the Australian produced goods and the imported goods have similar end uses, meet the same quality specifications and standards, are sold to the same types of customers and compete directly with each other in the same markets. Viridian provided the Commission with evidence which demonstrates that it had lost sales during the inquiry period to external customers when it was unable to match the price of the imported goods. Viridian also provided evidence which showed that its external customers use import offers to negotiate better prices.[24] As a result, the Commission has found that significant price competition occurs between the domestically produced and imported goods.

8.4.2.1 Comparison of prices

To assess the effect of the existing anti-dumping measures on price competition, the Commission analysed verified export sales data from the cooperating exporters during the inquiry period to establish prices at a Free in Store (FIS) level to enable a comparison with Viridian's FIS sales prices during the same period. Noting that no cooperating importers have provided relevant information to the Commission in the current inquiry, the Commission adjusted the verified FOB prices of the cooperating exporters by adding:

- verified ocean freight and insurance costs derived from the three cooperating exporters' own data;
- the applicable customs and interim dumping duties that were payable at the time of importation; and

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[24] Confidential Attachment 4 refers.

- customs and port clearance fees, derived from the original investigation; and
- an amount for any relevant importer selling, general and administration costs and profit, also derived from the original investigation.

The Commission notes that a proportion of Viridian's sales of CFG are to related entities. Although the Commission is satisfied that Viridian's prices to related entities are based on the prevailing market price to unrelated customers (as was noted in the relevant verification report)[25], the Commission has nevertheless undertaken the following price comparison using only Viridian's sales to unrelated customers.

The Commission has observed that, during the inquiry period, Viridian's CFG prices in thicknesses of:

- 4 mm, 5 mm and 8 mm were consistently undercut by all imports of the goods subject to measures in every quarter;
- 6 mm and 12 mm were undercut from Q2 to Q4 by all imports of the goods subject to measures;
- 3 mm prices were undercut in Q1 and Q2 by at least one exporter and were undercut by all exporters subject to measures in Q3; and
- 10 mm prices were undercut by one exporter in Q1 and Q4 and were undercut by all exporters subject to measures in Q2 and Q3.

Whilst the Commission does not consider that the methodology used in this analysis enables a precise assessment of the degree of price undercutting that has actually occurred during the inquiry period, it does provide some indication of underlying trends and relativities of prices in the market. The Commission finds that there is clearly close price competition between the Australian industry and the imported goods; it appears likely that some part of the difference in price is the (unquantified) local price premium which Viridian may be able to command for local supply, but the degree of price undercutting would be increased if the existing anti-dumping measures had not been applied.

The Commission's calculations and analysis is at **Confidential Attachment 5**.

8.4.2.2 Contribution to revenue by thickness

The Commission has also examined what proportion of Viridian's sales revenues were derived from each thickness of CFG during the last four years. This analysis can be found in **Confidential Attachment 6**.

The Commission notes that 4 mm, 5 mm and 6 mm thicknesses are consistently the largest contributors to Viridian's revenue, and along with the 3 mm thickness represent the largest volumes (by m^2) of Viridian's sales. The Commission has also observed that these thicknesses also account for the vast majority (in excess of 90 per cent) of the volume of exports (m^2) which are subject to measures. Accordingly, the Commission considers that the apparently consistent price undercutting of those particular thicknesses suggest that, if the measures were to expire, Viridian would experience material injury.

[25] Document 019 on the EPR refers.

8.4.2.3 Comparison of prices for goods subject to measures and all other goods

The Commission identified unit prices for CFG per m^2 in the ABF import database and compared these to verified prices obtained by Viridian. The Commission therefore established a range of “normal” prices in order to exclude unrealistic transactions from its price analysis. Transactions which fell outside of this range, representing 5 per cent of the total number of lines of import transactions, were excluded from the following analysis.

The Commission calculated a weighted average of the FOB prices (on a per m^2 basis) of the goods subject to measures and compared them to the FOB prices (again, on a per m^2 basis) of all other imports in each month of the inquiry period. Referring to Figure 13 below, it becomes apparent that the FOB prices for the goods subject to measures during the inquiry period are substantially lower than the FOB prices of the goods which are not subject to measures.

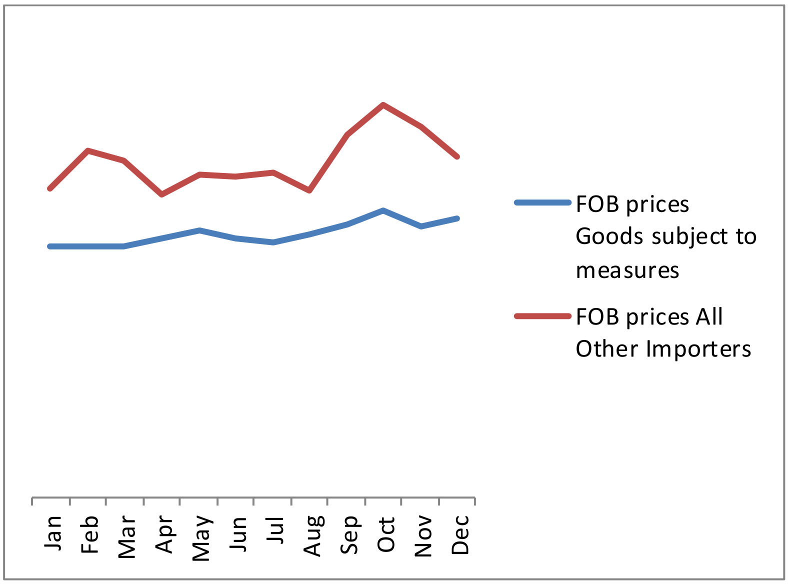

Figure 13: Comparison of FOB prices for goods subject to measures versus goods not subject to measures

Source: ABF import database

Given this comparison is at FOB, the Commission notes that the cost of shipping to Australia and the ultimate dumping duty payable are the key differences in the ultimate prices payable and therefore the competitiveness of the goods. The Commission also notes that the largest source of other imports during the inquiry period was the UAE; goods exported from this country are already likely to attract a higher cost of shipping with longer lead times. If the anti-dumping measures are not continued, the competitiveness of the goods from countries not subject to the measures will be reduced by comparison with the countries currently subject to measures, which are all in closer proximity to the Australian market. It is likely that if the measures lapse, Indonesia and Thailand in particular become more attractive sources of CFG to the Australian market due to the shorter distance and therefore shorter lead times and likely lower cost of ocean freight.

Accordingly, the Commission considers that, if the anti-dumping measures are not continued, the goods exported from the countries currently subject to measures will become significantly more attractive to importers on the basis of price and or lead time. The Commission anticipates that, if the measures are not continued and dumping reoccurs, Viridian would face pressure to reduce its prices in order to retain sales volumes. The Commission considers that overall revenue would be placed under pressure as a result, and there would be consequential adverse impacts on Viridian's profit and profitability.

8.4.3 Volume effects

The Commission has found that exports of CFG to Australia from the countries subject to measures have continued. Although the volumes are not as large as those preceding the imposition of the anti-dumping measures, they nonetheless represent 24 per cent of the total volume of CFG imported into Australia in the inquiry period (this excludes Xinyi import volumes).

The Commission is of the view that if the measures are removed, the excess capacity to produce CFG in China will result in larger volumes being exported to Australia. Similarly, exports from Indonesia and Thailand would also increase due to the close proximity of these countries to Australia and the relatively short lead times to deliver CFG to Australia. These countries have strong distribution links and are active in the Australian market; the price advantage that arises if the anti-dumping measures expire is likely to result in increased volumes of imports in order to meet demand at the expense of the higher priced Australian goods and higher priced CFG from other countries.

For the above reasons, the Commission considers that, if the anti-dumping measures are not continued, import volumes from the countries subject to measures are likely to increase. These increased volumes would be expected to reduce Viridian's market share and overall revenue, and would be expected to have a consequential adverse impact on Viridian's profit and profitability.

8.4.4 Submissions

<u>Guardian</u>

Guardian has submitted that Viridian has not experienced material injury as a result of imports during the period since 2013, arguing that imports have supplemented Viridian's limited production capacity in a market characterised by increasing demand.[26] Guardian argues that the continuation of the anti-dumping measures will not lead to increased production by Viridian; rather, that imports from countries not subject to the measures will increase to meet increases in demand.

Guardian submits that Viridian is the de facto price setter in the market, citing the finding in REP 159C that Viridian enjoys an apparent 8 per cent pricing advantage as a local manufacturer. Guardian claims that its prices are profitable and higher than that of other exporters, that Xinyi is actually the lowest price supplier in the market, and that Viridian imports Xinyi product to on-sell to its own customers.

Guardian submits that if the anti-dumping measures on Guardian are continued, other exporters will likely take advantage to sell large volumes at lower prices and cause price depression or suppression.

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[26] Document 014 on the EPR refers.

Guardian submits that Viridian is increasing profits, and therefore is not and will not suffer material injury. Guardian sets out a range of other factors that will cause injury which is not attributable to exports by Guardian, variously citing:

- Viridian's apparently poor customer service;
- the apparent low quality of goods imported by Viridian;
- Viridian's alienation of downstream customers by its trading practices;
- that Viridian is manufacturing in a market with a comparative disadvantage in primary glass production;
- the appreciation of the Australian dollar;
- the apparent inefficiency of Viridian's business and its high fixed costs (for example, Guardian points to Viridian's manufacture of several different products on a single float line);
- the normal ebb and flow of the business cycle; and
- Viridian's business restructure in 2013.

Guardian also cited various comments made in annual reports in 2011 and 2013 which suggest that the injury experienced by Viridian has been caused by a range of factors other than dumping.

Guardian then submits that, even if the Commissioner considers that dumping or material injury are likely to occur, the Commissioner cannot be satisfied that such dumping or injury will not be negligible. Guardian argues that if the applicant were applying for a dumping duty notice under section 269TB of the Act instead of this continuation inquiry, the Commissioner would be bound to terminate the inquiry under subsections 269TDA(1), (3), or (13) on the basis that the volume and margin of dumping by Guardian is negligible and therefore would not have caused material injury. Therefore, Guardian argues that subsection 269ZHF(2) of the Act prohibits the Commissioner from recommending the continuation of the measures.

Viridian

Viridian has responded to the various claims made by Guardian in the above submission.[27] Viridian largely refers to evidence that it has placed before the Commission and which has been verified, but which is commercially sensitive. Put briefly, Viridian does not supplement its sales with imports, has the ability to increase its production volume of CFG and that its customers do not consider Viridian to be the price setter in the market. Viridian also submits that there are a range of flaws in the claims made by Guardian with respect to their applicability to the goods.

Commission analysis

The Commission notes that profit is not the only way that an industry may suffer injury due to dumping. Dumping may also cause other types of injury to the Australian industry, such as a loss of market share or sales volumes. The Commissioner will consider a range of indicators of injury in assessing whether material injury is likely to continue or recur if the anti-dumping measures expire.

Further, results about past injury to the Australian industry are not necessarily determinative of future injury, and are not sufficient on their own to satisfy the

[27] Document 017 on the EPR refers.

Commissioner's consideration of future events. As Rares J has noted, the scenarios in subsection 269ZHF(2) "involve a consideration of future events based on an evaluation of the present position", and that the question of whether the expiration of the measures would be likely to lead to dumping and material injury "requires a prediction to be made" (which is qualified by the presence of "likely").[28]

The Commissioner is not limited to considering the statements in the Australian industry's annual reports about the factors that have contributed to its performance. Accordingly, the fact that dumping is not mentioned in those annual reports as a cause of injury does not, of itself, prevent the Commissioner from making a different finding. However, the Commissioner will consider this information before making a recommendation.

There is no reference to continuation inquiries in section 269TDA. Similarly, section 269TDA is not referred to in Division 6A of Part XVB of the Act, which has a distinct statutory purpose that is different to that of Division 2 of Part XVB of the Act. Rares J noted that a review under Division 6A of Part XVB of the Act is not intended as a complete replication of the process under Division 3 involved in the initial imposition of anti-dumping measures.[29] Accordingly, the task for the Commissioner as provided in subsection 269ZHF(2) should not be interpreted as containing the same legislative test in section 269TDA. The Commission considers that doing so would lead to an improper construction of subsection 269ZHF(2).

8.4.5 Conclusion

The Commission considers that the Australian industry's economic condition (as outlined in Chapter 6) indicates that Viridian is currently seeing a general trend of improvement. Whilst sales volumes have remained steady and profit and profitability have improved, in a price sensitive market the Commission considers that price competition from dumped goods would be likely to have a material adverse impact on Viridian's performance. Notwithstanding the range of business improvement initiatives undertaken by Viridian since the imposition of the anti-dumping measures which have clearly contributed to its improved performance, it appears that the anti-dumping measures have prevented further material injury. Arguably, the imposition of the measures has provided Viridian with a greater level of assurance that such improvements would generate a positive return. Further, Viridian has advised that it is planning for a rebuild of its CFG production line between 2020 and 2025 at a cost of $70 million (today's value), but that the decision to invest may be jeopardised by the prospect of future competition from dumped goods.

The Commission considers that, given the close price competition which occurs between Viridian and the imported goods from all sources, a recurrence of dumping of the goods currently subject to measures would be likely to result in lower prices for those goods. Those goods would be likely to gain market share at the expense of imports from countries which are not currently subject to measures and which are further away from the Australian market. Such a reduction in prices would have a direct and negative impact on Viridian's prices, sales volumes, market share, revenue, profit and profitability.

The Commission has identified no evidence that would suggest that Viridian is more likely to experience material injury as a result of other factors.

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[28] *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838, paragraphs 46-47.

[29] ibid., paragraph 41.

8.5 Summary

The Commissioner considers that the above analysis demonstrates that:

- if the anti-dumping measures with respect to China are not continued, the dumping of CFG exported from China is likely to continue and cause material injury to Viridian to recur;
- if the anti-dumping measures with respect to Indonesia are not continued, the dumping of CFG exported from Indonesia is likely to continue and cause material injury to Viridian to recur; and
- if the anti-dumping measures with respect to Thailand are not continued, the dumping of CFG exported from Thailand is likely to continue and cause material injury to Viridian to recur.

The Commissioner considers that the expiration of measures would lead, or be likely to lead, to a recurrence of the dumping and the material injury that the anti-dumping measures are intended to prevent.

9. PROPOSED MEASURES

9.1 Finding

Having established that dumping is likely to recur and that material injury is likely to recur if the anti-dumping measures are not continued, the Commissioner proposes to recommend that the Parliamentary Secretary secure the continuation of anti-dumping measures applying to certain CFG exported to Australia from China, Indonesia and Thailand.

Based on the information available at this stage of the inquiry, the Commissioner proposes to recommend that, in continuing the anti-dumping measures, interim dumping duty be calculated based on the *ad valorem* duty method. Furthermore, the Commissioner also proposes to recommend that the dumping duty notice be altered to specify single variable factors for all thicknesses of CFG.

9.2 Existing measures

The method of interim dumping duty currently applied to CFG is the combination of fixed and variable duty method (combination duty method).[30] The dumping duty notice published in respect of CFG exported from China, Indonesia and Thailand specifies different variable factors for different thicknesses of the goods.

9.3 Forms of duty available

The forms of duty available to the Parliamentary Secretary when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Dumping Duty Regulation) and include:

- fixed duty method ($X per tonne);
- floor price duty method;
- combination duty method; or
- *ad valorem* duty method (i.e. a percentage of the export price).[31]

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Parliamentary Secretary, the Commissioner will have regard to the published *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines)[32] and relevant factors in the CFG market.

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[30] At the time the measures were imposed, the combination duty method was the only form of duty available.

[31] Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013.*

[32] Available at http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsofdumpingduty-November2013.pdf

9.3.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Parliamentary Secretary exercises powers to ascertain an amount for the export price and the normal value.

9.3.2 Floor price duty method

The floor price duty method sets a "floor" – for example a normal value of $100 per tonne – and duty is collected when the actual export price is less than that normal value of $100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

This duty method does not use an ascertained export price as a form of "floor price" as occurs with the combination and fixed duty methods.

9.3.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* dumping duty is determined for the product as a whole, meaning that a single ascertained export price is required when determining the dumping margin.

9.3.4 Combination duty method

The combination duty comprises two elements: the "fixed" element and the "variable" duty element. The fixed element is determined when the Parliamentary Secretary exercises powers to "ascertain" an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* on the ascertained export price.

The variable component stems from a feature of this form of duty whereby, having ascertained the export price for the purposes of imposing the dumping duty, if the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price). It is called a "variable" element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

9.4 Federal Court finding

As outlined above, different variable factors currently apply to differing thicknesses of CFG. Since those measures were imposed, the Federal Court handed down a decision indicating that dumping duty notices are not able to specify different variable factors for different sub-sets of the goods.[33] Consistent with the Federal Court finding, the Commissioner is proposing to recommend the dumping duty notice be altered to specify common variable factors for all thicknesses of CFG.

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[33] *Federal Court of Australia, Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870* at para. 154, http://www.adcommission.gov.au/cases/Pages/Federal-Court-Cases.aspx.

9.5 Submissions received regarding form of measures

Viridian

In a submission dated 19 May 2016, Viridian considers that the combination method is the appropriate form of duty to apply to CFG. Viridian quotes *Anti-Dumping Commission Report 300* (REP 300)[34] as its main argument for a combination method:

> *"The Commission therefore considers that there is a significant risk that the exporters may further reduce their prices to avoid the effects of duty which would result in diminishing the effectiveness of the measures if an ad valorem only form of duty is applied. The Guidelines explain that in cases where exporters have room to further decrease their export prices, and the market is sensitive to price instability, a duty method is needed that would prevent further price decreases. In this circumstance, a fixed amount of duty, or an ad valorem duty, would not prevent the fall and the floor price method would be preferred."*

AMG

In a submission dated 27 May 2016, the exporter argues that the current form of duties should not be applied in light of the *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth [2013] FCA 870* (FCA 870). The exporter argues that the combination duty may not suit situations where there are many models or types of models with significant price differences and that should the measures continue, an *ad valorem* method would be an appropriate form of duties.

Guardian

In a submission dated 1 June 2016, Guardian argues that an *ad valorem* is the preferred form of duty as:

- *ad valorem* is suitable for products with varying dimension, quality and price;
- simple to administer and difficult to circumvent;
- the combination method has a perverse effect on importers and the downstream industry in a volatile market or a market that is subject to natural price instability;
- Guardian does not have complex related party structures that can manipulate industry prices;
- There is no evidence to suggest that prices will be manipulated in regard to exports from Thailand;
- Thai exporters are not able to reduce prices to the same extent as exporters from China, and that if the Commissioner recommends a 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 an *ad valorem* duty;
- The reasons cited by Viridian in REP 300 for imposing a combination duty method do not apply to Thai exporters as REP 300 relates to:
  - specific challenges that the steel industry faces;
  - the likelihood of continuing material injury is unlikely in respect of CFG;
  - there is no market situation present in this inquiry;
  - if the willingness of Chinese exporters to lower prices is applicable to the present inquiry, this would not justify the imposition of combination method duty on Thai exporters; and

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[34] http://www.adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20300/063%20-%20REP%20300.pdf

- REP 300 involved complex related party transactions and goods which were almost entirely fungible and these considerations do not apply to this continuation inquiry.

9.6 Factors taken into consideration by the Commission

The Commission has weighed up the following factors in determining which duty method is the most appropriate in the circumstances.

Potential incentives to lower export prices

The exporter verification teams found that all sales of CFG from the nominated countries were conducted at arms length and that there was no evidence of:

- any consideration in respect of the goods other than their price;
- price being influenced by a commercial or any other relationship between buyer and seller; and
- any direct or indirect reimbursement or compensation in respect of, the whole or part of the price.

As a result, for all cooperating exporters, export prices were determined under paragraph 269TAB(1)(a) using arms length invoice prices less any other costs occurring after exportation. The Commission considers that exporters dealing at arms length with importers are less likely to be commercially motivated to lower export prices.

With regard to China, no exports were verified by the Commission. However, the Commission has not identified any evidence in the ABF import database which would suggest that the (admittedly small) volume of exports from China were not arms length transactions.

Exporters who are related to the importer, or are part of the same corporate entity, on the other hand, are more likely to lower export prices. There is no evidence to suggest that an *ad valorem* method of duty will lead to, or encourage, exporters to reduce their prices.

REP 300

The Commission notes that the subject product and the circumstances relating to REP 300 are different and not applicable to this continuation inquiry. The reasons for selecting a combination duty method are explained extensively in REP 300 and the Commission considers that those reasons are not applicable to this continuation inquiry.

9.7 Conclusion

The Commissioner has had regard to the Guidelines and considers that the *ad valorem* duty method is the appropriate form of measure where there are many models or types of models, where prices vary significantly over time, and where there is significant price variation between models. All three circumstances occur with regard to CFG. Accordingly, the Commissioner proposes to recommend the dumping duty notice be altered to specify single variable factors and to change the form of duty from the combination duty method to the *ad valorem* method.

The Commissioner notes that the small dumping margin for Muliaglass may be readily absorbed by the importer, and that it may be attractive to dump CFG at lower prices in order to win market share from the other exporters also subject to measures. However, the Commissioner considers that the prospect of a future review of measures and the potential to impose a larger dumping margin if dumping were to occur would discourage this behaviour.

The Commissioner proposes to recommend to the Parliamentary Secretary that she establish the relevant variable factors of normal value and export price for exporters as was outlined in Chapter 7, with the effect that:

- CFG exported from China by uncooperative and all other exporters (except Xinyi) will be subject to a dumping margin of 23.4 per cent;
- CFG exported from Indonesia by AMG will be subject to a dumping margin of 14.4 per cent;
- CFG exported from Indonesia by Muliaglass will be subject to a dumping margin of 0.3 per cent;
- CFG exported from Indonesia by uncooperative and all other exporters will be subject to a dumping margin of 38.4 per cent;
- CFG exported from Thailand by Guardian will be subject to a dumping margin of 8.8 per cent; and
- CFG exported from Thailand by uncooperative and all other exporters will be subject to a dumping margin of 25.8 per cent.

10. NON-INJURIOUS PRICE AND LESSER DUTY RULE

10.1 Non-Injurious Price (NIP)

The NIP is defined in section 269TACA of the Act as “the minimum price necessary … to prevent the injury, or a recurrence of the injury, or to remove the hindrance [to the industry]” caused by the dumped goods the subject of a notice under section 269TG. The NIP is ordinarily determined by having regard to the Australian sales price from a period where the industry is not affected by dumping.

10.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).[35] The level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Parliamentary Secretary must also have regard to the desirability of fixing a lesser amount of duty.

10.3 The Commission’s preferred approach to establishing unsuppressed selling prices

The Commission generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price.

The Commission’s preferred approach to establishing unsuppressed selling prices is set out in chapter 23 of the *Dumping and Subsidy Manual* and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

[35] Subsection 8(5B) of the Dumping Duty Act.

10.4 Discussion

The Commission has been unable to identify any relevant selling prices at a time unaffected by dumping. Further, the Commission did not have any importer participation in relation to this inquiry. As such, it has no verifiable data on costs that are typically incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

Viridian has provided information in relation to overseas freight, insurance, into store costs relating to its imports of other goods not subject to the measures which it submits could be used to establish a NIP. However, the Commission does not have any information in relation to importer expenses and profit. In addition, the Commission has no evidence of the actual selling prices of goods not subject to measures, and no reliable means of adjusting the FOB prices for these goods to estimate selling prices in the market. At this point, the Commission considers that it may be necessary to determine a NIP by reference to Viridian’s weighted average CTMS of the goods and therefore exclusive of profit.

Interested parties are invited to make further submissions (with evidence as applicable to demonstrate claims) on the most appropriate methodology to determine NIP. The Commissioner must have regard to submissions received within 20 days of the SEF being placed on the public record in making a final recommendation to the Parliamentary Secretary.

11. APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Appendix A4 & A6 data
Confidential Attachment 1	ABF import database extract for CFG
Confidential Attachment 2	Dumping margin calculations
Confidential Attachment 3	Viridian analysis of volume / pricing impact
Confidential Attachment 4	Evidence of import price offers
Confidential Attachment 5	Price undercutting analysis
Confidential Attachment 6	Comparison of Viridian sales volume and revenue contribution by thickness