

For Publication

**Email**

15 July 2016

Mr George Katsoulis  
Anti-Dumping Commission  
Level 35  
55 Collins Street  
Melbourne VIC 3000  
[george.katsoulis@adcommission.gov.au](mailto:george.katsoulis@adcommission.gov.au)

Dear Mr Katsoulis

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

These submissions respond to the Statement of Essential Facts (SEF) published in the above-captioned Australian Anti-Dumping Commission (ADC) inquiry on 28 June 2016.

1. **Executive summary**

1.1 Our client submits that the SEF is flawed for the following reasons:

- (a) the SEF has been prepared without affording procedural fairness or natural justice to our client (see section 2);
- (b) aspects of the SEF are premised on an incorrect construction of the *Customs Act 1901* (Cth) (Act) (see section 3); and
- (c) the SEF fails to address or engage with many of the submissions and arguments which were put to the ADC by our client (see section 4);
- (d) the data underpinning the SEF is affected by unclear presentation of graphs and figures, factual errors, and illogical use of the data (see section 5).

1.2 Accordingly, our client submits that the ADC should remedy these issues by issuing a revised or supplementary SEF. Our client considers that if the ADC were to make its recommendation to the Parliamentary Secretary to the Minister on the basis of the current SEF, the Parliamentary Secretary would fall into error.

1.3 Further, pursuant to the ADC's invitation to make submissions as to the most appropriate methodology to determine the non-injurious price (NIP), our client submits that the NIP should be calculated by reference to the selling price of un-dumped imports (see section 6).

2. **Procedural fairness / natural justice**

2.1 The SEF records at 2.3 that the ADC has considered all submissions received up to and inclusive of 1 June 2016. It records that submissions received after 1 June 2016 were not considered in preparing the SEF because, in the Commissioner's opinion, to do so would prevent the timely placement of the SEF on the public record.<sup>1</sup> The result is that our client's submissions received by the ADC on 2 June 2016 (EPR 021), 10 June 2016 (EPR 022), 15 June 2016 (EPR 025 and EPR 027), and 22 June 2016 (EPR 029) (**excluded submissions**) have been excluded from consideration in preparing the SEF.

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<sup>1</sup> SEF at 11 [2.3].

- 2.2 The excluded submissions were highly relevant to the inquiry. They related to issues which are in contention and significant to the outcome. It is consequently difficult to understand how the Commissioner could have formed any opinion absent consideration of our client's full suite of submissions. As to the timely placement of the SEF on the public record, no reasons are provided in the SEF which justify the Commissioner's arriving at that opinion. However, whatever the Commissioner's actual reasons for forming that opinion may have been, our client considers that they could not have been adequate to justify omitting from the inquiry the relevant information and submissions comprised in the excluded submissions.
- 2.3 As you are well aware, our client is and has been fully engaged in discussions with the ADC after 1 June 2016. In the course of that engagement, our client was asked to clarify specific matters raised in its earlier submissions and comment on the ADC's approach, including the calculation of the dumping margin. By way of example, our client's submission dated 15 June 2016 (EPR 025) was made in response to a conversation with you, in which you sought clarification of our submission regarding the interaction of ss 269ZHF(2) and 269TDA of the Act.
- 2.4 Our client reasonably expected that the excluded submissions would be taken into account. Of course, our client does not assert that it should have been entitled to make submissions *ad infinitum*. However, in the circumstances, the Commissioner could and should have made a written request to the Minister pursuant to s 269ZHI of the Act for an extension of the period stated in s 269ZHE(1), a possibility which we had discussed with you. Our client considers that this would have been a more reasonable approach than discounting the excluded submissions without any notice to the interested parties.
- 2.5 The excluded submissions are incorporated into and form part of these submissions. The Commissioner must have regard to them, with each argument fully engaged with and addressed, before any recommendation can be made to the Minister in the Commissioner's report.<sup>2</sup>
3. **Application of incorrect legal tests under s 269ZHF(2) of the Act**
- Meaning of "likely"*
- 3.1 In our client's preliminary submission (EPR 014) (PS), our client submitted that the meaning of the word "likely" in s 269ZHF(2) of the Act is "more than a 50 percent chance or more probable than not".<sup>3</sup> The PS observed that the Commissioner must be satisfied on the basis of substantive and probative material that it is *probable* that dumping will continue or recur. The SEF makes no reference to these arguments, nor does it refer to or consider the issue with which the PS grapples.
- 3.2 The findings in the SEF concerning the likelihood of the continuance or recurrence of dumping appear to have been made on the basis that the Commissioner may recommend continuation of the measures if there is a *chance* that dumping could occur in the future. As a result, several of the ADC's findings in SEF 8.3, including its ultimate finding that dumping of CFG exported from Thailand is likely to continue, have been made erroneously. The SEF makes relevant findings as follows:

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<sup>2</sup> The Act, s 269ZHF(3)(a)(iv).

<sup>3</sup> PS at [2.1] to [2.5].

- (a) at SEF 8.3.4, that "[a]rguably, 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";
- (b) at SEF 8.3.6, 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"; and
- (c) at SEF 8.3.7, the ADC concludes that "if the anti-dumping measures with respect to Thailand are not continued, the dumping of CFG exported from Thailand is likely to continue".

3.3 In short, the ADC's reasoning is that, despite significant evidence to the contrary, because our client has been found to have dumped an insubstantial or negligible volume in the inquiry period, the continuation of the measures in the future is justified. Our client considers that the ADC's findings are insufficient to support its ultimate conclusion that dumping is *likely* to continue. The finding referred to at 3.2(a) above merely recognises an avenue which is "arguably" open to our client. The finding at 3.2(b) above acknowledges that our client does not intend to supply the Australian market with substantial volumes of the GUC, but then observes that this is insufficient to dispel the allegation that it is *likely* to dump again in the future. As a consequence, the ADC's conclusion at 3.2(c) is not supported by a reasoned argument in support of that conclusion.

3.4 It is not necessary, nor is it possible, for our client to *prove* that dumping will not occur in the future. But this is the standard which the ADC has effectively imposed on our client. The ADC has accepted that because there is a *chance* of dumping - a chance based on the obvious fact that our client cannot be precluded from changing its product mix - dumping is likely to occur. In our client's submission, that finding is insufficient, especially in light of the significant evidence to the contrary. The ADC needed to determine whether it was *likely* (meaning *probable*) that dumping would occur in the future, and it has not done so.

#### *Section 269TDA*

3.5 The SEF at 8.4.4 refers to our client's submission as to the effect of s 269TDA of the Act.<sup>4</sup> In short, that submission is that the qualifying words of s 269ZHF(2) - "*that the measures are intended to prevent*" - pick up s 269TDA. In this way, the Commissioner is obliged to consider whether dumping margins or volumes are negligible in the course of a continuation inquiry.

3.6 The construction of s 269ZHF(2) which is described at SEF 8.4.4 and adopted by the ADC renders the qualifying words otiose. The Explanatory Memorandum to the 1998 amendments to the Act explained that s 269ZHF(2) "*prohibits the [Commissioner] from recommending the continuation of anti-dumping measures unless he or she is satisfied the factual grounds that must be present prior to the taking of anti-dumping measures, set out in Division 3, have been satisfied*". Section 269TDA supplies one of those factual grounds. In this way, the construction of the Act at SEF 8.4.4 is directly contrary to the intention disclosed by the Explanatory Memorandum.

3.7 The SEF includes a quote from *Siam Polyethylene* in support of the proposition 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*

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<sup>4</sup> See PS 6.1 to 6.3.

"likely").<sup>5</sup> However, it omits to acknowledge the critical passage of *Siam Polyethylene* which follows immediately afterwards:

*"Since s 269TG(2) authorised the use of the measures where there was a threat of material injury to an Australian industry caused by dumping, the character of the likelihood in s 269ZHF(2) will take its meaning from the purpose for which the original imposition of dumping duty under s 269TG(2) was imposed".<sup>6</sup>*

3.8 As our client clearly explicated in the excluded submissions, s 269TDA is, by analogous reasoning, relevant to the Commissioner's present task. The arguments set out in the excluded submissions and the clear terms of the Explanatory Memorandum indicate that the approach in the SEF is incorrect.

3.9 In our client's view, the erroneous construction which has been given to s 269ZHF(2) in the SEF could have been avoided by the ADC's taking into account the excluded submissions. It is illustrative of the procedural unfairness (and consequent substantive unfairness) which our client has suffered as a consequence of having the excluded submissions not taken into account.

#### 4. Failure to address or engage with Guardian's submissions and arguments

4.1 The SEF omits to acknowledge, engage with, or consider significant aspects of our client's submissions which were put to the ADC and were relevant to the inquiry. This has of course been compounded by the Commissioner's decision not to consider the excluded submissions. As a consequence, several findings of fact made in the SEF have been made without consideration of all the relevant circumstances, or are otherwise inadequately supported. The ADC wrongly concludes that dumping and material injury caused by our client is likely to continue or recur.

##### *Likelihood of continuation or recurrence of dumping (SEF 8.3)*

4.2 The ADC finds at SEF 8.3 that the expiration of anti-dumping measures would lead, or would be likely to lead, to a continuance of dumping of CFG exported from Thailand. It gives four reasons for that finding, being the continuance of dumping during the inquiry period; the maintenance of export pathways; the availability of excess capacity in China; and the relative ease and commercial incentive to switch export markets.

4.3 In reaching its conclusion, the SEF ignores a number of submissions and relevant material advanced by our client as to the following matters:

- (a) (**overcapacity**) at SEF 8.3.4, the ADC records that our client has "*little - if any - excess production capacity*". It says that our client is [REDACTED] in Thailand to produce more of the GUC, and could do so to take advantage of the comparative proximity of Thailand to Australia. The SEF further says that exports from Thailand (and Indonesia) prior to the imposition of measures were at greater import volumes, and this may indicate that exporters from these countries can accelerate exports to Australia should the measures expire.

Our client maintains that [REDACTED] is speculative and is contradicted by the evidence before the ADC. In addition to the reasons acknowledged at SEF 8.3.6, our client explained at PS 4.3(b) why [REDACTED]

<sup>5</sup> Ibid at [46]-[47].

<sup>6</sup> Ibid at [47].

On 2 June 2016, our client made a further submission (EPR 021) which was dedicated to detailing and evidencing its contention that [REDACTED]. That further submission forms part of the excluded submissions and was not addressed or ignored.

- (b) **(export pathways)** at SEF 8.3.3, the ADC appears to accept Viridian's submission that *"exporters subject to measures have maintained export pathways and distribution channels into the Australian market since the anti-dumping measures were imposed"*. Our client responded to Viridian's allegations concerning export pathways at PS 3.2, where our client denies that it has distribution links (i.e. it has no distributor) in Australia.

The SEF does not address our client's response. It merely notes that our client is *"part of a broader global business which already supplies CFG to Australia from other countries not subject to measures"*.<sup>7</sup> It goes on to say that *"[a]rguably, 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"*. As is discussed at 3.2 to 3.4 above, such speculation is insufficient to ground a finding that our client is likely to engage in dumping in the future. However, by way of response to that speculation, our client says that its involvement in a *"broader global business"* [REDACTED].

In short, the fact that our client is part of a *"broader global business"* is irrelevant to the assessment to be undertaken.

*Likelihood of material injury (SEF 8.4)*

- 4.4 The ADC claims at SEF 8.4 that if 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. In arriving at its conclusion as to material injury, the ADC has not considered or engaged with several relevant submissions of our client, including:

- (a) **(market share)** our client explained at PS 5.1 to 5.5 that imports are unlikely to detract from Viridian's market share or profitability, in part due to increases in construction activity and subsequent increases in Australian CFG consumption. The ADC observes at SEF 5.4 that, because the increase in construction activity is disproportionately attributable to non-residential construction, it is less likely to benefit Viridian. This is because *"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 or repetitive sizes"*.

There are a number of problems with the ADC's analysis. First, it is unclear as to what point is being made with respect to the buoyancy of new housing activity when compared to total construction activity. According to the data presented in Figure 1, and according to our analysis, in December 2005, new housing activity accounted for approximately 33% of total construction activity. Similarly, in December 2015, new housing activity accounted for around 33% of total construction activity. It appears that during the entire period that a steady 1/3rd relationship was observed. New housing activity has continued to rise in a 1/3rd proportion with total construction activity. Second, the ADC notes that the finished windows used on non-residential projects are not the goods the subject of this

<sup>7</sup> SEF 8.3.4.

inquiry. It says that because finished windows have been manufactured from CFG, imports of those goods "impact on demand for Viridian's own production of CFG from its related customers".

In our client's submission, the ADC's assessment of likelihood of material injury should not be affected by such findings. To the extent that the products are not goods under consideration, they should be excluded from consideration. Additionally, any uncompetitive business practices of Viridian or its clients which detract from its market share, cannot be an indicator of injury attributable to dumping.<sup>8</sup> Similarly, increased demand for non-residential construction represents a change in patterns of consumption and any injury arising from those changes is not attributable to imports.<sup>9</sup>

- (b) (price depression or suppression) the SEF records at 6.3.2 that, since 2011, Viridian has been able to increase its unit selling prices and reduce its per unit cost to make and sell (CTMS), but that selling prices did not exceed CTMS until 2015. Indeed, Viridian's unit selling price has increased continually for the past ten years. As to its CTMS, our client considers that Viridian's high CTMS is attributable to the structural problems which afflict it and the restructuring efforts in which it has engaged. Despite Viridian being able to increase its prices (at the same time as reducing its CTMS), the ADC considers that price undercutting has occurred.<sup>10</sup> In our client's submission, Viridian's continually increasing sale prices, in the face of a declining CTMS, show that Viridian has not and will not suffer material injury.

The ADC found at SEF 8.4.2.1 that the CFG thicknesses which were most consistently undercut during the inquiry period were thicknesses of CFG which our client has historically not dumped,<sup>11</sup> namely, 4mm, 5mm and 8mm CFG. During the inquiry period, our client's volumes of 4mm, 5mm and 8mm CFG were as follows:

4mm CFG - [REDACTED];  
 5mm CFG - [REDACTED]; and  
 8mm CFG - [REDACTED].

At SEF 5.5, the ADC estimates the total volume of CFG sales in the Australian market to be 9.7 million square metres. Our client's imports of 4mm, 5mm and 8mm CFG during the inquiry period represent just [REDACTED] of that total market. It is irrational to suggest that our client's volumes of 4mm, 5mm and 8mm CFG could be price depressive or suppressive. The same can be said for all CFG thicknesses which our client has imported to Australia.

Further, the ADC's findings at SEF 8.4.2.3 and 8.4.3 - that *nearby* exporters are likely to export at low prices if measures are not continued, merely equates to protection of Viridian's local price premium. Our client made the submission at PS 5.7(a) and (b) that Viridian enjoys a price premium as a domestic producer which, as is discussed in greater detail at 5.7 to 5.10 below, the ADC has failed to quantify. A more accurate assessment is that exporters may be influenced by Viridian's price premium. Indeed, when the price premium is considered, it is clear that the "injury" which Viridian fears (and seeks to protect) from exporters is their ability to compete with Viridian's lead times.

<sup>8</sup> The Act, s 269TAE(2A)(f).

<sup>9</sup> The Act, s 269TAE(2A)(c).

<sup>10</sup> SEF 8.4.2.1.

<sup>11</sup> See SEF 2.1.3.

- (c) **(profits and profitability)** Viridian's profits and profitability have risen continually since 2008-2009.

The ADC found at SEF 8.4.2.2 that 4mm, 5mm and 6mm CFG thicknesses are "*consistently the largest contributors to Viridian's revenue*". It says that, along with 3mm CFG, these thicknesses represent the largest volumes of Viridian's sales (in m<sup>2</sup>). The ADC observes that "*the apparently consistent price undercutting of those particular thicknesses suggest that, if the measures were to expire, Viridian would experience material injury [emphasis added]*". This follows from the fact that these thicknesses "*account for the vast majority (in excess of 90 per cent) of the volume of exports m<sup>2</sup> which are subject to measures*".

These thicknesses (particularly 5mm and 6mm) have historically not been dumped by our client, as is demonstrated by the dumping duty rates currently in place.<sup>12</sup> Moreover, our client's exports of each of those thicknesses have been in volumes which could not have had a *material* adverse impact on Viridian. Accordingly, Viridian's revenue, profits, profitability, market share, or any other aspect of its business is unlikely to suffer injury as a result of our client's exports. Such injury is much more likely to be caused by exporters that place significant volumes of CFG in thicknesses which impact Viridian's business.

- (d) **(alternative causes of injury)** the ADC lists at SEF 8.4.4 the alternative causes of injury which were detailed by our client at PS 5.10 to 5.11. It also alludes to, but does not consider, the alternative causes of injury which our client identified at PS 5.12 based on Viridian's annual reports. In its conclusion at SEF 8.4.5, the ADC briefly states that "*[t]he Commission has identified no evidence that would suggest that Viridian is more likely to experience material injury as a result of other factors*".

The SEF does not seriously address the overwhelming impact of injurious factors that are not attributable to exports. Section 269TAE(2A) of the Act imposes upon the ADC an obligation to consider these factors, which it has failed to do. Our client considers that if alternative causes of injury had been properly considered in the SEF, any genuine injury to Viridian could not be attributed to speculative future dumping by our client.

## 5. Data issues

- 5.1 Our client has identified several problems with the facts underpinning the findings in the SEF. The data is affected by unclear presentation of graphs and figures, factual errors, and unreasonable or illogical use of the data.

### *Unclear presentation of graphs and figures*

- 5.2 The presentation of data in the SEF suffers from several defects. Notably, in some graphs and tables, the scale and/or unit of measurement is absent, which prevents a proper understanding of the information.
- 5.3 Figure 13 (at SEF 8.4.2.3) is illustrative of this point. No values are provided on the Y-axis, which makes it impossible to determine whether the FOB prices of the goods subject to measures are in fact "*substantially lower*" than the FOB prices of all other imports.

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<sup>12</sup> SEF 2.1.3.

- 5.4 As a result, our client cannot formulate properly particularised arguments in response. It is not possible to respond to data which is not reasonably clear. In order to ensure a fair and transparent inquiry, the ADC must ensure that its data is presented in a way which is clear and comprehensible. Much of the data presented in the SEF does not meet this threshold.

*Factual errors*

- 5.5 **(Market structure)** SEF 5.3 describes the market for CFG, recording that "*Viridian sells CFG to both related and unrelated customers who are processors*". It is incorrect to describe Viridian's relationship with its downstream business as involving *sales to related customers*. Viridian operates a downstream business, but always operates as the same legal entity. Accordingly, Viridian cannot *sell* CFG to related customers, being itself. CFG is instead simply moved from the Viridian float line to fabrication lines without any sale. This incorrect description or misunderstanding of Viridian's relationship with its downstream business appears several times throughout the SEF.
- 5.6 By misunderstanding the market structure in this way, the methodology used in the SEF to calculate price suppression and depression is flawed. Viridian has complete control over what it records as the internal "*price*" to its downstream operations. The SEF says at 5.3.1 that "*[i]nternal 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*". However, no scatter diagram was included in the SEF comparing internal and external pricing. In our client's submission, whether or not Viridian's record of internal "*prices*" is comparable with external prices, this methodology is not conducive to an accurate conclusion as to Viridian's pricing. The ADC should conduct its analysis by reference only to Viridian's external sales.
- 5.7 **(Price premium)** The ADC acknowledges at SEF 5.3.1 and 8.4.2.1 that Viridian is able to command a local price premium for local supply of the GUC. That Viridian can command such a premium is evident from the advantages available to Viridian as a local supplier, including faster and easier supply and packaging. The SEF records that the ADC has been "*unable to quantify*" the local price premium, but does not explain why it has been unable to do so, nor why it has not attempted to do so.
- 5.8 The price premium has an important bearing on the assessment of dumping margins and material injury. A WTO Panel Report indicates that:
- "Where, as here, the investigating authority has found that the domestic product benefits from price premium over the imports, it seems to us that a conclusion of significant price undercutting could not be reached by an objective investigating authority without some consideration of that price premium".<sup>13</sup>*
- 5.9 The ADC must determine Viridian's local price premium in order to properly conduct those assessments. It is entirely inadequate for the SEF to state that "*part of the difference in price [between Viridian and exporters] is the (unquantified) local price premium*", but then say nothing further than that "*the degree of price undercutting would be increased if the existing anti-dumping measures had not been applied*".<sup>14</sup> The part of the difference attributable to the local price premium should factor in to the assessment of dumping margins and whether or not material injury will occur.

<sup>13</sup> WTO Panel Report, *European Communities - Anti-Dumping Measure on Farmed Salmon from Norway*, 273 [7.639].

<sup>14</sup> SEF 8.4.2.1.



- 5.10 Our client's view is that Viridian's local price premium is in the range of 10-15%, being the difference between Viridian's prices and that of the highest priced exporter. There is no other consideration which can account for the difference in Viridian's prices and that of the highest priced exporter.
- 5.11 **(Price undercutting)** At SEF 8.4.2.1, the ADC makes various observations about price undercutting. Those observations are not prefaced or moderated by the legal requirement that such undercutting must be 'significant'.<sup>15</sup> Indeed no attempt is made to publicly quantify the price undercutting. Without conceding the acceptance or correctness of the ADC's price undercutting analysis - which the ADC itself concedes is not a *precise assessment* - based on the language used by the ADC in the SEF and our knowledge and Guardian's actual sales of CFG, if the ADC's observations were stated more correctly or fully, the results would be:
- (a) 3mm - Guardian did not price undercut in Q1, Q2 or Q4;
  - (b) 4mm - Guardian did not price undercut in Q1, Q2 or Q4;
  - (c) 5mm, 6mm and 8mm - Guardian did not price undercut in Q1 or Q2;
  - (d) 10mm and 12mm- Guardian did not price undercut in Q1, Q2, Q3 or Q4.

It follows that some of the ADC's conclusions, for example, Viridian's prices of █████ CFG were "*undercut by one exporter in Q1 and Q4 and were undercut by all exporters subject to measures in Q2 and Q3*" is patently incorrect.

*Use of data*

- 5.12 In assessing the likelihood of dumping and material injury at SEF 8.3 and 8.4, the ADC does not perform a country-by-country analysis of the data. In particular:
- (a) at SEF 8.3.3, Table 11 records the proportion of CFG imports originating from China, Indonesia and Thailand in the period 2009 to 2015. The table does not account for changes in volume according to country; and
  - (b) at SEF 8.4.2.1, the ADC observes that Viridian's CFG prices were undercut in respect of various thicknesses of CFG. The ADC notes that it "*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, [but] it does provide some indication of underlying trends and relativities of prices in the market*". In our client's submission, the analysis should be conducted on a country-by-country basis. A country-by-country analysis was undertaken in International Trade Remedies Branch Report No. 159C at 9.6.2, which demonstrated that levels of price undercutting were greater for exports from China and Indonesia than for exports from Thailand. Our client considers that if the same analysis had been undertaken in the current continuation inquiry, a similar result would have been achieved.

6. **Non-injurious price**

- 6.1 Part 10 of the SEF deals with non-injurious price (NIP) and the application of the lesser duty rule. As a preliminary issue, the unsuppressed selling price (USP) must be established. The

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<sup>15</sup> See Article 3.2 of Anti-Dumping Agreement and page 123 Dumping and Subsidy Manual.

ADC has indicated that it considers it may be necessary to determine the USP by reference to a constructed industry price, being Viridian's weighted average cost to make and sell (CTMS) the goods exclusive of profit.<sup>16</sup>

6.2 A determination of the USP by reference to Viridian's CTMS would result in an inflated NIP, such that the application of the lesser duty rule would be negated. This is so for the following reasons:

(a) Viridian is a high cost producer. This is an acknowledged fact. So much is clear from the literature and public statements of Viridian and its parent company:

(i) CSR faces *"increasing energy and manufacturing costs in Australia [which] have exacerbated Viridian's competitive position relative to imports"*;<sup>17</sup>

(ii) it will take *"an extended time to implement the restructuring program, it is expected the full benefit of these initiatives will not be realised until the financial year ending 31 March 2015"*;<sup>18</sup> and

(b) Viridian could not nominate a time period, nor express a view on the appropriate period in which to calculate the USP during the verification visit.<sup>19</sup> No doubt this is a consequence of the fact that any time period which it could have nominated would have been severely afflicted by its restructuring costs.

6.3 The USP should be derived from the selling price of un-dumped imports. We observe, in this regard, that the ADC has already undertaken an assessment of the FOB price for the goods under consideration by exporters that are not subject to measures.<sup>20</sup>

6.4 Finally, the SEF records that the ADC did not have any importer participation in relation to the inquiry. The electronic public record however does not provide any evidence that any importers were sent an importer questionnaire or any other invitation to provide information. In this way, the ADC ought to re-start the process of inviting importers so that the NIP is not left to guesswork and conjecture.

## 7. Conclusion

7.1 In our client's submission, the ADC should publish a revised or supplementary SEF which considers the excluded submissions; applies the correct construction of the Act; engages with our client's arguments and submissions; presents its data clearly and comprehensibly; calculates a NIP by reference to the selling price of un-dumped imports; and updates its findings accordingly.

<sup>16</sup> SEF 10.3-10.4.

<sup>17</sup> <http://www.csr.com.au/investor-relations-and-news/csr-news-releases/2013/restructure-of-iridian-glass-operations-and-trading-update>

<sup>18</sup> Ibid

<sup>19</sup> CSR Viridian Limited Verification Report at page 16.

<sup>20</sup> SEF 8.4.2.3 and Figure 13.

Mr George Katsoulis, Anti-Dumping Commission

15 July 2016

Yours sincerely

A handwritten signature in black ink, appearing to read 'Zac Chami', with a comma at the end.

**Zac Chami, Partner**  
+61 2 9353 4744  
zchami@claytonutz.com

Our ref 11276/80175855

