

Non-confidential**Email**

28 July 2016

Mr George Katsoulis
Anti-Dumping Commission
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Dear Mr Katsoulis

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

This letter responds to the submission made by the Applicant published on 22 July 2016 (**Submission**).

1. 7005.29.09 — Chinese imports

- 1.1 The Submission is premised on the view that the Department of Immigration and Border Protection CFG import data attached to our client's submission dated 20 July 2016 (**the DIBP data set**) does not distinguish between 2mm and 3mm CFG. It states that *'import code 700529009 includes CFG not exceeding 3mm. This means that 2mm thicknesses would be included along with 3mm. Consequently, Guardian's analysis in paragraph 2 excludes both 2 mm and 3 mm thicknesses.'*
- 1.2 From 2012, the DIBP data set recorded imports of *'[f]loat glass having a nominal thickness not exceeding 3 mm'* under code 7005.29.09. Its descriptor is ambiguous. It appears to include every thickness up to 3mm and no others; if it was intended to include a nominal thickness of 3mm, it might have been clearer by saying *'up to and including 3 mm'*.
- 1.3 In any event, if it is accepted that code 7005.29.09 includes 3mm float glass imports, then this does not alter the analysis in paragraph 2 of our client's submission of 20 July 2016 or the conclusions drawn from that analysis. If imports classified under code 7005.29.09 were included in the sums supplied at paragraph 2, the revised sums would show that:
- (a) 1,551,572.76 sqm, rather than 1,457,868.49 sqm, of CFG was placed into the Australian market in 2015 from China and the customs value of that was AU\$13,224,426.69 rather than AU\$12,911,293.27.
 - (b) 940,413.87 sqm, rather than 902,316.019 sqm, of CFG was placed into the Australian market in 2014 from China and the customs value of that was AU\$7,862,537.80 rather than AU\$7,748,512.19.
 - (c) 988,338.08 sqm, rather than 954,803.72 sqm, of CFG was placed into the Australian market in 2013 from China and the customs value of that was AU\$7,776,263.08 rather than AU\$7,641,781.89.
 - (d) 926,381.98 sqm, rather than 883,185.84 sqm, of CFG was placed into the Australian market in 2012 from China and the customs value of that was AU\$6,580,682.47 rather than AU\$6,417,412.70.

- 1.4 Figures 4 and 5 of the Statement of Essential Facts (**SEF**), when read together with the DIBP data set, reveal that very large quantities of CFG have been imported from China since anti-dumping measures were imposed and that these imports are entirely or almost entirely from Xinyi Ultrathin (Donguan) Co Ltd (**Xinyi**). The revised figures in paragraph 1.2 above therefore do not alter the conclusions stated in paragraph, namely that:
- (a) all or predominantly all Chinese CFG imports from 2012–2015 were from Xinyi; and
 - (b) the volume and value of product from Xinyi has nearly doubled.
2. **7005.29.09 — Thai imports**
- 2.1 The Applicant refers to Part 4 of our client's submission dated 22 June 2016 (at EPR029), in which our client submitted that the chart supplied by the Applicant in its submission dated 17 June 2016 (at EPR028) misrepresented Thai CFG import volumes. The Applicant states that *'Guardian seemed to be indicating in that submission that imports in code 09 (when it commenced) from Thailand were mainly 2mm thickness'*. To the contrary, our client's submission did not refer to the statistical codes under which float glass thicknesses are classified. In particular, it did not consider whether the Applicant included code 7005.29.09 in its calculations. It only observed that *'[t]he Applicant's chart appears to include goods other than the goods under consideration, namely, 2mm clear float glass.'*
- 2.2 The Applicant states in its Submission that *'[i]f our understanding is correct then code 09 from Thailand for the 2012–2015 period principally includes 2mm thickness but this has not been shown in the submission'*. It is not necessary for our client to attempt to describe the composition of Thai imports classified under code 7005.29.09. The classification includes goods other than goods under consideration and therefore falls outside the terms of the Continuation Inquiry.
3. **Market share**
- 3.1 In Part 4 of our client's submission dated 20 July 2016, it was submitted that the Applicant enjoys the local price premium of a dominant market player with the Applicant's 63%–67% market share. In its Submission, the Applicant responded that our client's conclusions as to market share are *'not correct'*, apparently because they rely on the data given in Figure 2 of the SEF, which includes sales by the Applicant to related parties.
- 3.2 In our client's submission, it is perverse to allow the Applicant to exclude a portion of its sales from a calculation of its market share simply by making the purchaser a related party. The Anti-Dumping Commission's findings as to market share in Part 5.5 of the SEF correctly include the Applicant's related party sales. That market share calculation illustrates the Applicant's dominant market position and consequent price premium.
- 3.3 Finally, it is telling that, although the Applicant denies the existence of a local price premium in its Submission, it does not address our client's submissions regarding its local production and lead time advantages.
4. **Confidential information**
- 4.1 The Applicant refers to a confidential attachment to its Submission. The nature and contents of the confidential attachment are not apparent from reading the Submission.

- 4.2 Our client notes that, despite the language of the last paragraph of the Submission, the making of an application under Part XVB Division 6A of the Act may involve the disclosure of information that the Applicant would not otherwise have disclosed or would not otherwise be known. The Applicant cannot approbate and reprobate by applying for a public decision but declining to participate publicly in the decision-making process.
- 4.3 Even if it is accepted that the confidential attachment is genuinely confidential or would adversely affect a person's business or commercial interests, our client notes that the Applicant is obliged under s 269ZJ of the *Customs Act 1901* (Cth) (**Act**) to summarise the confidential attachment.
- 4.4 The Applicant's Submission further refers to '*yesterday's conversation*'. Section 269ZJ(4) of the Act prevents the Commissioner from taking any information conveyed in that conversation into account unless it is put in writing by the Applicant or by the Commissioner and thereby becomes available as a part of the public record.
- 4.5 Even if the conversation or its contents is genuinely confidential or would adversely affect a person's business or commercial interests, our client requires that the Applicant or the Anti-Dumping Commission summarise the conversation, including its topics and conclusions, subject to considerations of confidentiality and to the need to protect business and commercial interests.

Finally, we note that the Applicant's Submission does not address vital aspects of our client's submission, namely, the Applicant's relationship with Xinyi, the Applicant's use of any strategic partners to supplement its supply, Xinyi's large import volumes, and the necessity of inquiries by the Anti-Dumping Commission into these questions.

Yours sincerely



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