



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

**PUBLIC RECORD**

**CUSTOMS ACT 1901 - PART XVB**

**REPORT  
NO. 335**

**INQUIRY CONCERNING THE CONTINUATION  
OF ANTI-DUMPING MEASURES APPLYING TO**

**CLEAR FLOAT GLASS**

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

**12 August 2016**

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**ABBREVIATIONS**

AAP	AGC Asia Pacific Pte Ltd
ABF	Australian Border Force
AMG	PT Asahimas Flat Glass Tbk
ABS	Australian Bureau of Statistics
AIG	Australian Independent Glass Pty Ltd
the Act	<i>Customs Act 1901</i>
the applicant	CSR Viridian Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CFG	clear float glass
CIF	Cost, Insurance and Freight
CTMS	cost to make and sell
China	the People's Republic of China
DCS	Developing Country Status
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
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
NIP	non-injurious price
OCOT	ordinary course of trade
REP 159C	<i>Trade Remedies Branch Report 159C</i>
REP 300	<i>Anti-Dumping Commission Report 300</i>
SG&A	selling, general and administrative
Siam	Siam Guardian Glass Co Ltd
<i>Siam (No 2)</i>	<i>Siam Polyethylene v Minister of State for Home Affairs (No 2) [2009] FCA 838</i>

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SEF	Statement of Essential Facts
TCO	Tariff Concession Order
Thailand	the Kingdom of Thailand
TMRO	Trade Measures Review Officer
UAE	United Arab Emirates
USD	United States Dollar
USP	unsuppressed selling price
Viridian	CSR Viridian Limited
Xinyi	Xinyi Ultrathin (Donguan) Co. Ltd
year ending March	YEM

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

This report relates to a continuation inquiry by the Anti-Dumping Commission (the Commission) 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). An application was made under subsection 269ZHB(1) of the *Customs Act 1901* (the Act)<sup>1</sup> by CSR Viridian Limited (Viridian) for the continuation of the measures.

This report sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary)<sup>2</sup> in relation to this application.

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 Applicable legislation

Division 6A of Part XVB of the Act requires the Commissioner to publish a notice on the Commission's website informing persons of the impending expiry of anti-dumping measures and inviting certain persons (as outlined in subsection 269ZHB(1)(b)) to apply for a continuation of the measures.

Division 6A of Part XVB of the Act:

- sets out the consequences if no application is made;
- outlines the procedures to be followed by the Commissioner in dealing with an application and preparing a report for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of the measures.

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

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

<sup>2</sup> The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

## **1.3 Findings and conclusions**

The Commissioner has made the following findings and conclusions based on all available evidence:

### **1.3.1 The goods and like goods (Chapter 3)**

Locally produced CFG is like to the goods under consideration.

### **1.3.2 Australian industry (Chapter 4)**

There is an Australian industry producing like goods.

### **1.3.3 Australian market and economic condition of the industry (Chapters 5 and 6)**

The Australian market for CFG is supplied by the Australian industry and by imports, including but not exclusively from China, Indonesia and Thailand. The condition of the Australian industry, comprising Viridian, has improved since the anti-dumping measures were imposed in 2011.

### **1.3.4 Variable factors (Chapter 7)**

The Commission has found that CFG from China, Indonesia and Thailand was dumped during the inquiry period.

### **1.3.5 Will dumping and material injury continue or recur? (Chapter 8)**

The Commissioner is satisfied that it is likely dumping will recur if the anti-dumping measures are not continued, and that the recurrence of dumping is likely to cause material injury to the Australian industry.

## **1.4 Recommendation**

The Commissioner recommends that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures applicable to CFG exported from China, Indonesia and Thailand.

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained, and that, if the Parliamentary Secretary fixes different variable factors, he should consider changing the form of measures to the *ad valorem* form of duty method.

The Commissioner recommends that the non-injurious price (NIP) be derived from an unsuppressed selling price (USP) based on Viridian's cost to make and sell (CTMS) plus an amount for profit, less adjustments reflecting the cost to import CFG from China, Indonesia and Thailand.

## 2 BACKGROUND

### 2.1 Initiation

On 2 December 2015, in accordance with subsection 269ZHB(1) of the Act, a notice was published on the Commission's website inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures applying to CFG exported to Australia from China, Indonesia and Thailand.

On 1 February 2016, Viridian, a member of the Australian industry producing CFG, lodged an application for the continuation of the measures, which was within the applicable legislative timeframe.<sup>3</sup>

*Consideration Report 335* on the electronic public record (EPR)<sup>4</sup> sets out the Commissioner's reasons for initiating the current continuation inquiry. The inquiry was initiated on 22 February 2016 and the decision was publicised in notice ADN No. 2016/19.

### 2.2 Current measures

Anti-dumping measures in the form of dumping duties were imposed on CFG exported from China, Indonesia and Thailand on 17 October 2011.<sup>5</sup> The then decision maker, the Attorney General, 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).<sup>6</sup>

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). The statistical quantity recorded in the DIBP Integrated Cargo System is square metres (m<sup>2</sup>), and so the fixed and variable components are calculated by reference to m<sup>2</sup>.

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<sup>3</sup> In accordance with subsection 269ZHB(1)(b).

<sup>4</sup> The EPR is located at [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>5</sup> Australian Customs Dumping Notice No. 2011/50 refers.

<sup>6</sup> REP 159C <http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR159c.aspx>.



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Australian Customs Dumping Notice Number 2011/56 details the following fixed rates of duty for exports of CFG:

**2.2.1 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**

**2.2.2 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**

**2.2.3 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**

## **2.3 Conduct of continuation inquiry**

The Commission 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 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. The Commission has also had regard to the findings in the original investigation as set out in REP 159C.

### **2.3.1 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.<sup>7</sup>

### **2.3.2 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<sup>2</sup>) of CFG imported during the inquiry period, were contacted in writing and by telephone 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 nevertheless received a submission from an importer listed in section 2.5.

### **2.3.3 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<sup>2</sup>) 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.

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<sup>7</sup> Document 019 refers.

### **2.3.3.1 Indonesia**

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

AAP and AMG are related entities; AMG produces CFG, which is then sold to export markets through AAP, a trader based in Singapore. Both entities provided a response to the exporter questionnaire. The Commission subsequently 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.<sup>8</sup>

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 has made due allowance for the arrangements between AMG and its related trader for the purpose of calculating the variable factors. As the manufacturer of the goods subject to this inquiry and having regard to these arrangements, the Commission considers AMG to be the exporter of the goods.

#### 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.<sup>9</sup>

### **2.3.3.2 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.<sup>10</sup>

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

## **2.4 Statement of Essential Facts**

On 22 June 2016, the Commissioner placed on the public record *Statement of Essential Facts* 335 (SEF 335), setting out the findings on which the Commissioner proposed to base his recommendation to the Parliamentary Secretary concerning the continuation of the anti-dumping measures.

Interested parties were invited to make submissions to the Commissioner in response to SEF 335 by 18 July 2016 (20 days after the SEF was placed on the public record).

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<sup>8</sup> Document 023 refers.

<sup>9</sup> Document 024 refers.

<sup>10</sup> Document 026 refers.

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## 2.5 Submissions received from interested parties

Non-confidential versions of all submissions are available on the EPR.

The Commission received the following submissions prior to the publication of the SEF.

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

**Table 4 – Submissions received prior to publication of SEF 335**

The Commission received the following submissions in response to SEF 335.

Interested Party	Level of trade	Date Received	Document No on EPR
Guardian	Exporter	5/7/2016	031
Government of Indonesia	Government	15/7/2016	032
AMG	Exporter	15/7/2016	033
Guardian	Exporter	15/7/2016	034
Viridian	Australian industry	18/7/2016	035
Guardian	Exporter	20/7/2016	036
Viridian	Australian industry	22/7/2016	037
Viridian	Australian industry	26/7/2016	038
Guardian	Exporter	28/7/2016	040
Xinyi	Exporter	1/8/2016	041
Australian Independent Glass Pty Ltd	Importer / Fabricator	2/8/2016	042
Guardian	Exporter	3/8/2016	043
AMG	Exporter	3/8/2016	044
Viridian	Australian industry	5/8/2016	045

**Table 5: Submissions received in response to the SEF**

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For the purposes of the SEF, the Commissioner did not have regard to submissions received after 1 June 2016 because the submissions received after that date would, in the Commissioner's opinion, have prevented the timely placement of the SEF on the public record (subsection 269ZHE(3)).

All submissions received by the Commission in the course of this inquiry (including those which were not considered in the SEF) have been considered in preparing this report.

### 2.5.1 Claims concerning procedural fairness

In submissions in response to the SEF, Guardian outlined that it had not been accorded procedural fairness because the Commissioner had not considered any of Guardian's submissions received after 1 June 2016. Guardian submitted that it was disadvantaged because the Commissioner's views on those submissions were not known to it, and therefore it had no opportunity to exercise a right of reply.<sup>11</sup>

The Commission notes that, in considering submissions from interested parties when preparing the SEF, the Commissioner followed the legislative requirements set out in section 269ZHE and afforded the same treatment to all interested parties:

- the Commissioner had regard to all submissions relating to the continuation inquiry received with 37 days of the publication of the notice under subsection 269ZHD(4), being all submissions received by 30 March 2016 (subsection 269ZHE(2)(a)(ii)); and
- the Commissioner also had regard to all submissions received between 30 March 2016 and 1 June 2016.

In any event, the Commissioner has had regard to all the submissions noted in Table 4 and Table 5 in deciding on the recommendations to be made to the Parliamentary Secretary in this report. The Commission notes that the substantive matters raised by Guardian in its submissions made in response to the SEF are essentially the same as those raised previously, and all of Guardian's submissions have been considered.

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<sup>11</sup> Documents 031 and 034 on the EPR refer.

### **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:

*“Goods 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 CFG in nominal thicknesses of 3 to 12 millimetres (mm).

The tolerances for each of these thicknesses are set out in Table 5.

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 6 – Thickness tolerances for CFG**

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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.

Exports from China are subject to a general rate of duty of 3 per cent which applies from 1 January 2016 as a result of the China Australia Free Trade Agreement. A general rate of duty of 5 per cent applied prior to 20 December 2015, and a rate of 4 per cent applied from 20 December 2015 to 31 December 2015.

#### 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 7 – 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 1,600°C;
- 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 600°C 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 Commissioner 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<sup>2</sup> 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 in the import database. However, due to a lack of precision in the way that goods are described in import declarations (for example, a description “float glass” provides no guidance as to thickness), some irregularities could not be corrected.

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 description of the goods in the relevant import declaration. These lines in the ABF import database were nevertheless included in the Commission’s assessment of import volumes, accounting for 9 per cent of the total volume of CFG imported during the period from 1 January 2012 to 31 December 2015.

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

#### 5.2.1 Submissions concerning data accuracy

Following publication of the SEF, Guardian made submissions regarding the accuracy and reliability of the data used by the Commission for its analysis of the market.<sup>12</sup> Guardian referred to information it has obtained from the ABF under the *Freedom of Information Act 1982*, and asserted that the data recorded in the ABF import database is unreliable (pointing, for example, to significant price and volume swings for 3 mm thickness of CFG exported from China that appeared counterintuitive alongside prices and volumes of CFG exported from Thailand or Indonesia). Guardian nevertheless relies on this data to draw conclusions regarding the volume of CFG imported into Australia, and the volume of CFG that Viridian has produced and supplied to the market.

The Commission notes that the information which Guardian has obtained from the ABF is at the aggregate level and does not appear to have been refined to include only the

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<sup>12</sup> Document 036 on the EPR refers. Guardian considers that the flaws in the data are so grave that the inquiry process ought to be restarted, widened and importers re-invited to participate. Alternatively, Guardian argues that the measures should not be continued, and that Viridian ought to make a new application seeking the imposition of the measures instead. Viridian made further submissions in response refuting a range of Guardian’s claims (documents 037 and 038 refer).

goods and to improve the accuracy of the data. For example, the data obtained by Guardian will include all glass products falling under the relevant tariff classification, but will include transactions for products which are not the goods (such as tinted, laminated, coloured or etched glass). As explained above, the description of the goods in the import declarations has been used to remove these types of transactions and other irregularities in the data.<sup>13</sup> Accordingly, the Commission is satisfied that the data set in **Confidential Attachment 1** provides a much greater level of reliability on which to base its analysis than the data provided by Guardian.

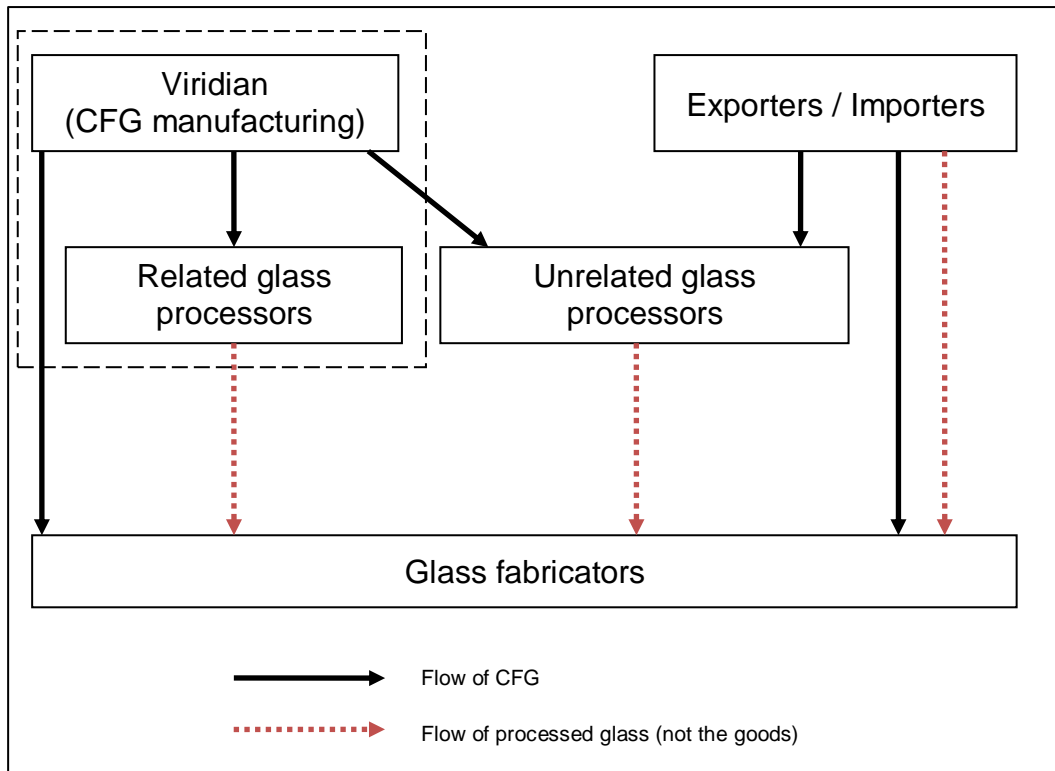
### **5.3 Market structure**

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 primarily sells CFG to both related and unrelated glass processors, which in turn will sell to fabricators; Viridian will also sell CFG directly to fabricators, all of whom are unrelated to Viridian. Whilst its related customers purchase CFG exclusively from Viridian, the unrelated processors and fabricators also purchase imported CFG from a range of sources. The following diagram illustrates this market structure.

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<sup>13</sup> The Commission also had regard to the dumping specification numbers for the goods, which identified thicknesses.



**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 Commissioner 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.

### 5.3.2 Submissions regarding price premium

At the time of SEF 335, the Commission had been unable to quantify a premium in the current inquiry and therefore made no finding.

In submissions following the publication of the SEF, Guardian asserts that the Commission has not quantified the premium in the current inquiry, not explained its

reasons for not quantifying the premium, and that the pricing premium should be considered a relevant factor in the assessment of dumping margins and whether or not material injury will occur.<sup>14</sup> Guardian claims that Viridian must be enjoying a local premium given its market share and market power, and that Viridian's attempts to downplay these facts should be rejected. Guardian estimates that Viridian's local price premium is in the range of 10 to 15 per cent, whereas this is disputed by Viridian.<sup>15</sup> No relevant evidence (such as details of price negotiations) has been provided by any parties alleging the existence of the price premium.

In the original investigation and as reported in REP 159C, the Commission notes that the price premium was calculated as being 8 per cent. However, the Commission observes that this figure was derived from the weighted average difference in per m<sup>2</sup> prices obtained by Viridian compared to those obtained per m<sup>2</sup> by the cooperating importers for certain thicknesses of CFG. Notwithstanding the Commission's doubts as to the suitability of the analysis in REP 159C for this purpose, the absence of cooperation from importers in this inquiry means that the Commission has insufficient data to accurately isolate and distinguish the impact of any price premium in the market.

In considering this issue, the Commission has taken the view that any higher price negotiated by Viridian reflects its ability to negotiate the best possible price with its customers that takes into account the benefits of local supply. It follows that in these circumstances the price premium is part of normal market pricing. This view is consistent with the findings in other dumping investigations, such as steel reinforcing bar exported to Australia from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey.<sup>16</sup>

### **5.3.3 Submissions regarding transfer pricing**

Guardian made submissions on the differences between Viridian's internal and external pricing, stating that it is clear that Viridian's internal pricing is lower than external prices, and that this should be made explicit.<sup>17</sup> As evidence, Guardian provided two documents dating back to 2013 regarding Viridian's intended import supply from strategic partners as a result of the closure of the Ingleburn manufacturing facility and pricing issues pertaining to the then upward and downstream business model. Guardian also states that it was incorrect in SEF 335 to describe Viridian's relationship with its downstream business as involving sales to related customers. The submissions also advise that the Commission should conduct its analysis with reference to Viridian's external sales only.

In regard to internal sales, the Commission again notes that the transfer price to Viridian's internal business units are set by reference to prices being obtained from external customers which are also moderated by the volume purchased and the mix of products. As such, it is incorrect to say that all prices to internal business units are lower than external sales because the Commission has found that both the product mix and volumes sold have an influence on prices.

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<sup>14</sup> Documents 031, 034, 036 and 040 on the EPR refer. Australian Independent Glass Pty Ltd supports the view that Viridian commands a price premium (document 042 refers).

<sup>15</sup> Document 017 on the EPR refers. Viridian also submits that its customers do not consider it to be the price setter in the market.

<sup>16</sup> Refer EPR for steel reinforcing bar investigation 264: document 098, pages 83-84.

<sup>17</sup> Documents 031 and 034 on the EPR refer.

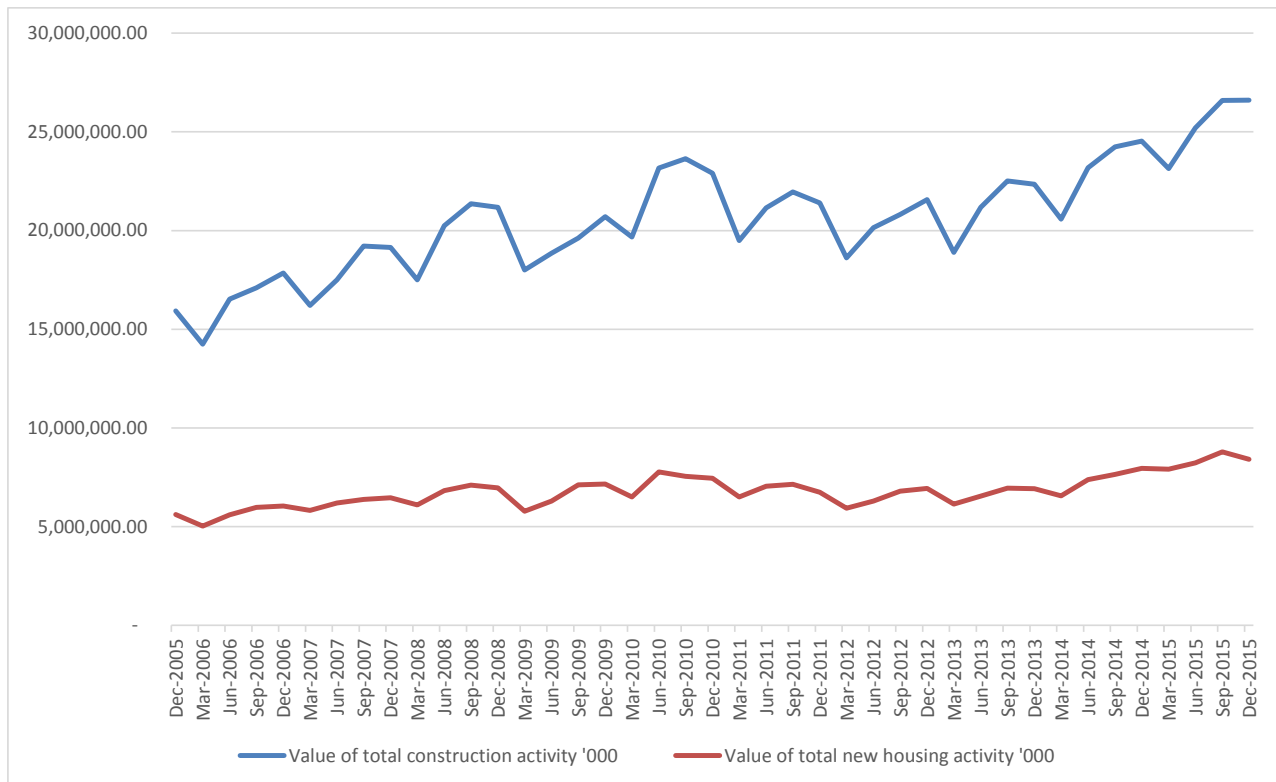
The Commission also notes that for the purposes of its analysis relating to price in the following chapters, only Viridian’s sales to external, non-related customers has been used.

### 5.4 Demand for CFG

Both the Australian industry and Guardian<sup>18</sup> 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) therefore has an impact on demand for Viridian’s own production of CFG.

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.



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

<sup>18</sup> Document O14 on the EPR refers.



Source: Australian Bureau of Statistics, Catalogue No. 8752.0

### 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<sup>2</sup>) between CFG sourced from Viridian and from imports. The total volume of sales in the Australian market (estimated at 9.7 million m<sup>2</sup> 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.



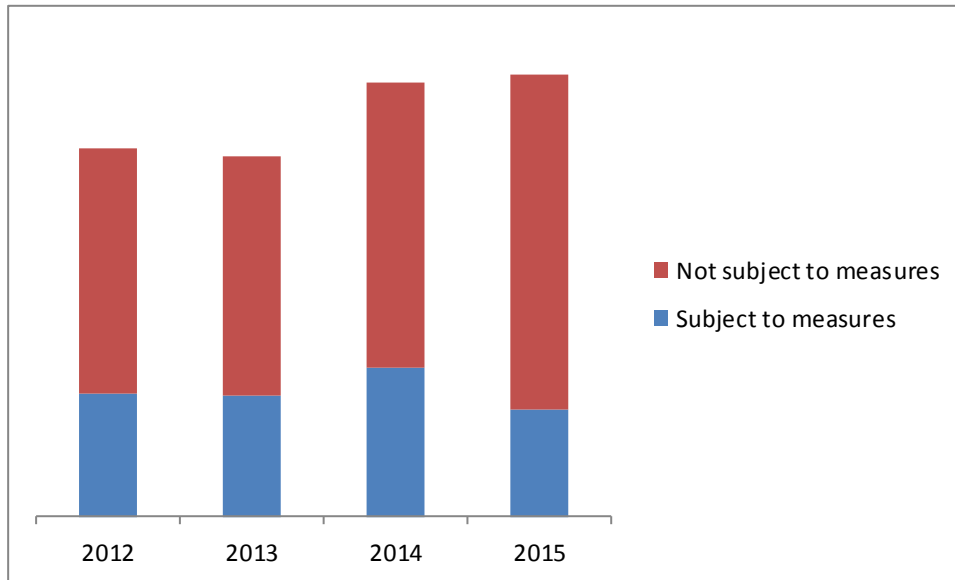
**Figure 2: Market size and share between Australian industry and imports (m<sup>2</sup>)**

Source: Confidential Attachment 1 and Confidential Appendix A6

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

Figure 3, below, shows the respective share of imports held by CFG which was subject to measures (all exports from Indonesia and Thailand, and all exports from China except from Xinyi) and CFG which was not subject to measures (exports from all other countries, plus exports from Xinyi).

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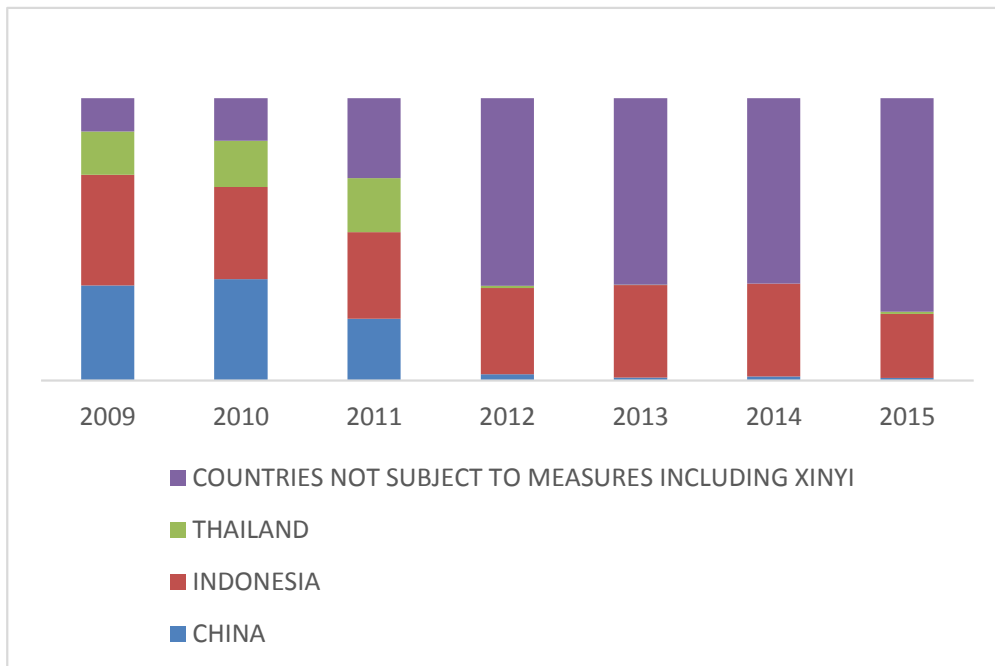
**Figure 3: Share of imports by reference to measures (m²)**

Source: Confidential Attachment 1

**5.6 Impact of anti-dumping measures on import volume**

As was noted earlier in this report, 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. For consistency, import volumes from Xinyi are included in 'countries not subject to measures'.

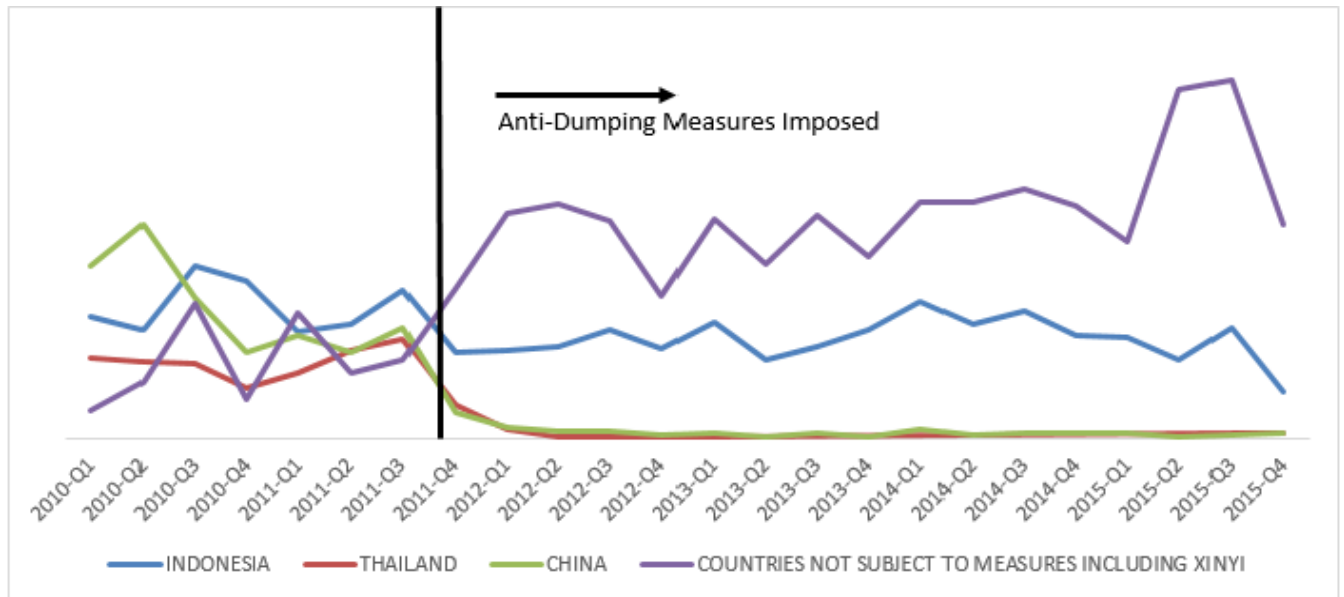


**Figure 4: Share of CFG imported to Australia, by country (m²)**

Source: Confidential Attachment 1

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Figure 5, below, compares the quarterly import volumes (m<sup>2</sup>) 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 (m<sup>2</sup>)**

Source: Confidential Attachment 1

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

### 5.6.1 Submissions concerning import volumes

Guardian has claimed that Viridian has insufficient capacity to supply the Australian market, and has therefore entered into a strategic relationship with Xinyi in order to import large volumes of CFG.<sup>19</sup> These views have been endorsed in a submission by Australian Independent Glass Pty Ltd (AIG)<sup>20</sup> and AMG,<sup>21</sup> and refuted by Viridian<sup>22</sup> and Xinyi.<sup>23</sup>

<sup>19</sup> Documents 015, 031 and 036 on the EPR refer. Guardian directs the Commission's attention to a statement in Viridian's application that refers to closure of the Ingleburn factory in 2013. The statement refers to "volume previously supplied by Ingleburn will be supplied by Viridian's Dandenong facility and supplemented by imported supply from strategic partners."

<sup>20</sup> Document 042 refers.

<sup>21</sup> Document 033 refers.

<sup>22</sup> Documents 017 and 035 refer.

<sup>23</sup> Document 041 refers.

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The Commission has examined the volume of CFG imported by Viridian during the inquiry period as reported in the ABF import database. Based on the ABF database, Viridian's imports of CFG during the inquiry period from all sources accounts for less than 1 per cent of the total import volume. The volume of CFG imported by Viridian during the inquiry period represents less than 0.5 per cent of Viridian's domestic sales volume (**Confidential Attachment 2** refers).

None of the goods imported by Viridian were exported by Xinyi. The Commission finds that no strategic relationship exists between these parties.

## 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<sup>2</sup>) in each year over the original investigation period.

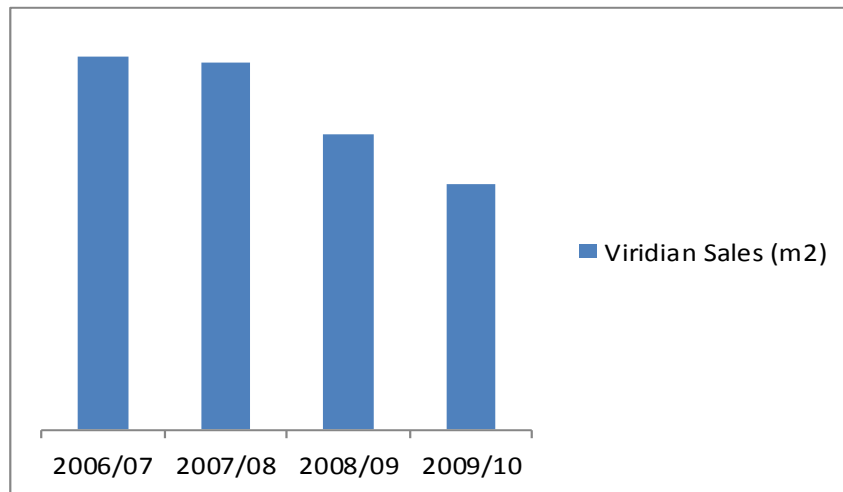


Figure 6: Viridian sales volumes in the original injury analysis and investigation period (m<sup>2</sup>)

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.<sup>24</sup>

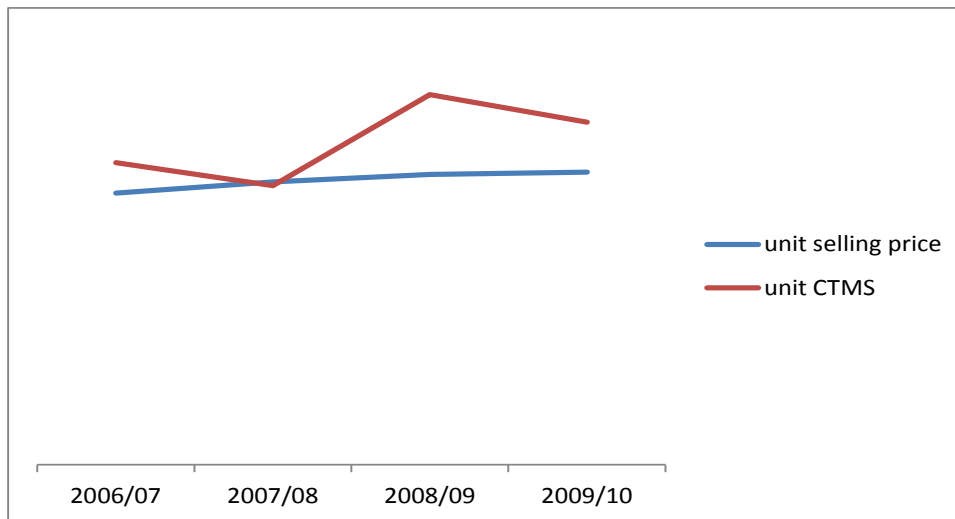
Figure 7, below, shows that Viridian's unit selling prices gradually increased over the four year period. However, Viridian's unit selling prices were not able to match an increase in the unit CTMS in YEM 2009 and 2010. Whilst conditions improved in YEM 2010, Viridian was unable to fully recover its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

The data in Figure 7 is presented in tonnes as expenditures pertaining to cost to make are recorded in tonnes.

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<sup>24</sup> 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.

## PUBLIC RECORD

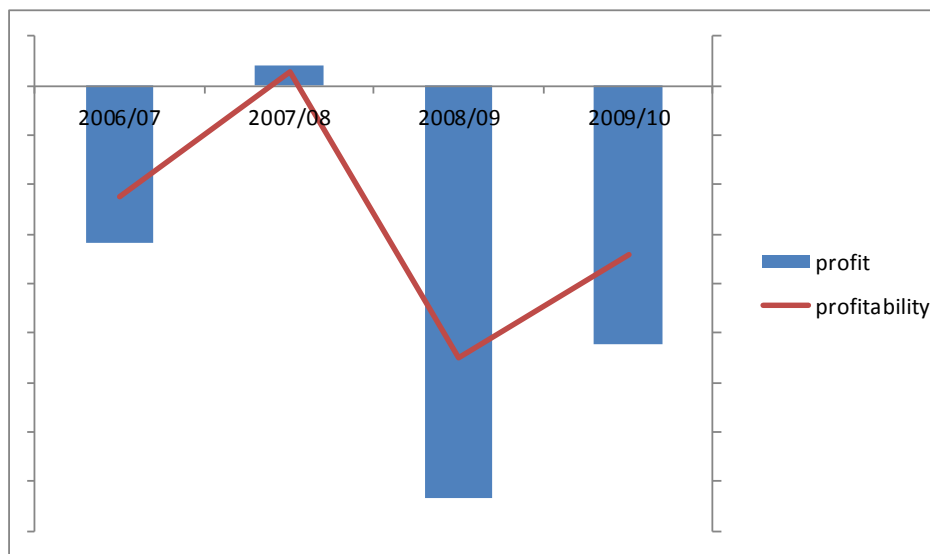


**Figure 7: Comparison of Viridian unit selling price and unit CTMS (in tonnes) in the original injury analysis and investigation period**

*Source: Confidential Appendix A6 from original investigation*

### 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.

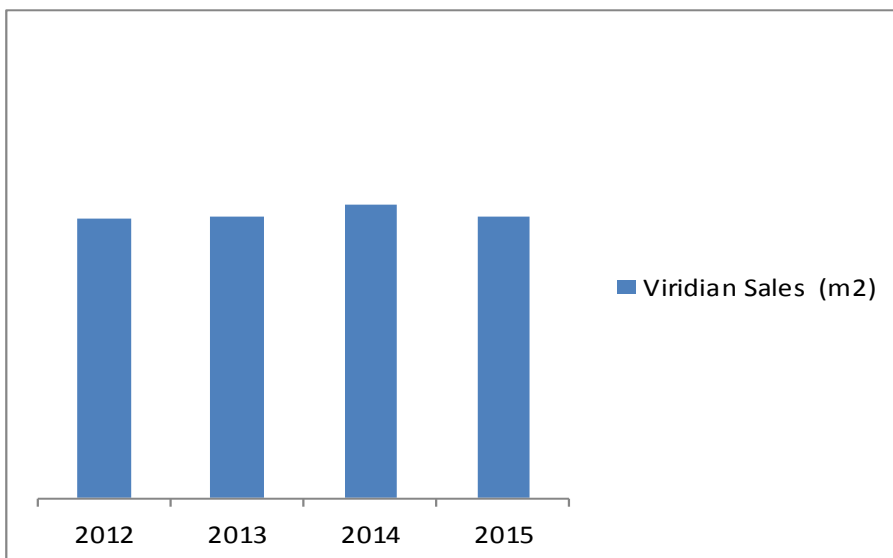


Figure 9: Viridian sales volumes in the current period (m²)

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).

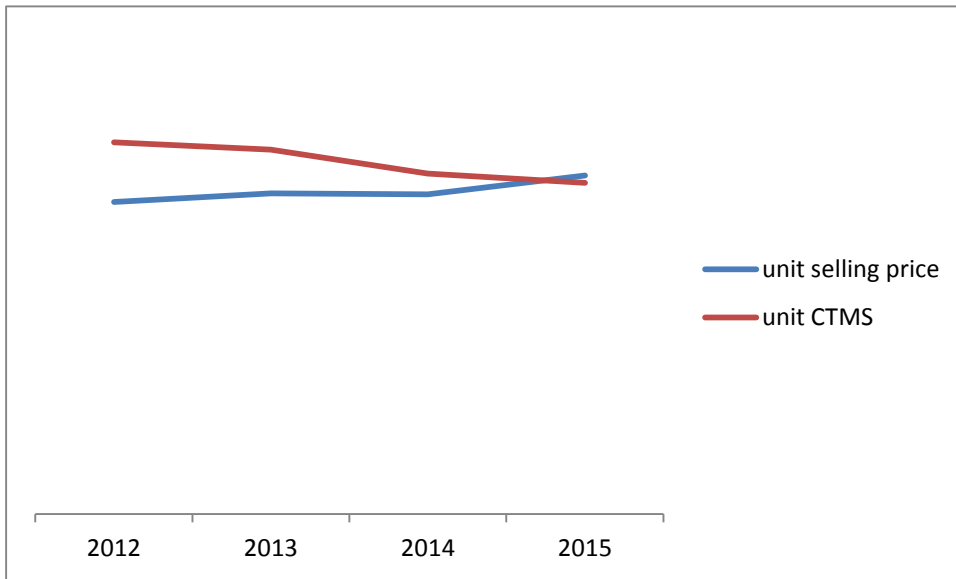
#### 6.3.2 Price depression and price suppression after 2011

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.



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The data in Figure 10 is presented in tonnes as expenditures pertaining to cost to make are recorded in tonnes.

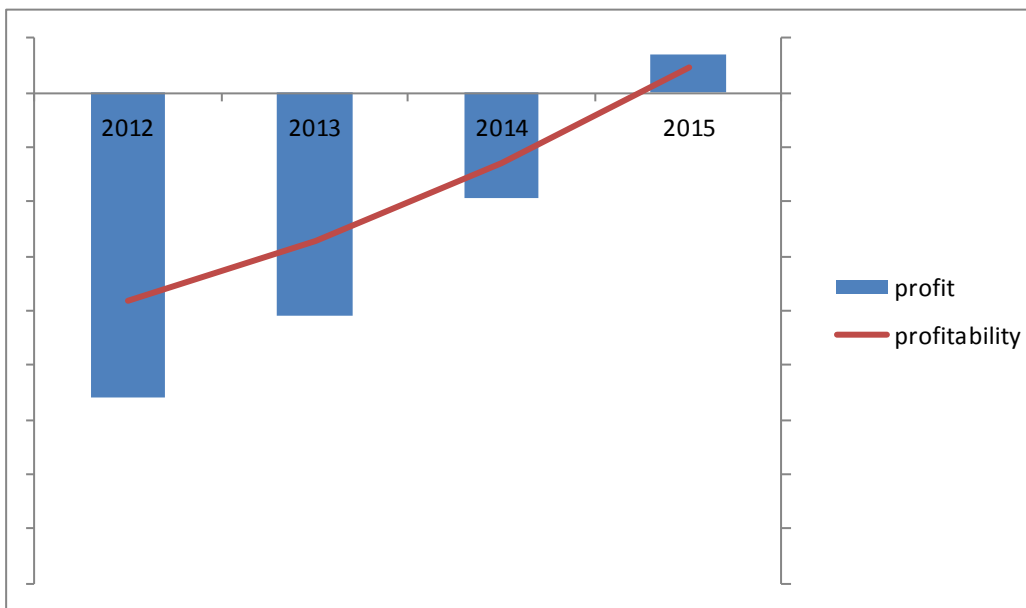


**Figure 10: Comparison of Viridian unit selling price and CTMS (in tonnes) in the current period**

*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 supplied by exporters that are 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.

## **6.4 Submissions regarding the economic condition of the industry**

Several submissions have been received in relation to the economic condition of the industry. Each of these have been summarised below.

### **6.4.1 Guardian**

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.<sup>25</sup> 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 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 delivery and customer service standards;
- 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 cited various comments made in Viridian's annual reports in 2011 and 2013 which suggest that the injury experienced by Viridian had been caused by a range of

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<sup>25</sup> Document 014 on the EPR refers.

factors other than dumping. Guardian suggests that any injury experienced by Viridian would be self-inflicted due to its upstream and downstream business structure, and redundancy costs associated with restructuring activities.<sup>26</sup>

#### **6.4.2 Australian Independent Glass Pty Ltd**

A submission was received by AIG, a glass manufacturer, processor and wholesaler.<sup>27</sup> The submission states that:

- the prospect of continued anti-dumping measures on CFG imports threatens its small business and other local fabricators;
- AIG cannot purchase glass products from Viridian due to Viridian's manipulative and predatory market conduct, alleging that Viridian abuses its market dominance;
- anti-dumping measures are a tax on businesses;
- Xinyi is the source of large quantities of the subject goods and these have the lowest prices in the market; Xinyi is therefore the cause of the price suppression and depression and not the importers; and
- Viridian imports large quantities of glass from Xinyi to supplement its limited production capacity.

The submission concludes that Viridian's conduct has precluded AIG from being able to purchase Viridian products; that AIG's business depends on a level playing field that allows it to purchase CFG at fair value; that Viridian's injury is self-inflicted; and that the Commission did not properly consider this injurious factor in the SEF.

#### **6.4.3 AMG**

AMG submitted that it does not agree with the Commission's finding in the SEF that the imposition of anti-dumping measures materially contributed to Viridian's improved performance. AMG submits this is because imports subject to measures were replaced by imports not subject to measures, which are entering the market at lower prices.<sup>28</sup> AMG supports this statement with ABS import statistics that demonstrates that volumes from China (which it largely attributes to Xinyi) and UAE are significantly higher than Indonesia and Thailand, and that prices for CFG from the UAE on a Cost, Insurance and Freight (CIF) basis are significantly lower than those from Indonesia and Thailand.

#### **6.4.4 Government of Indonesia**

The Government of Indonesia also claims that Viridian's increased profit performance is mainly due to improvements in Viridian's cost management, and not because of the anti-dumping measures.<sup>29</sup> It claims that the continuation of measures will lead to a higher volume of imports from countries not subject to measures, and that the real problem faced by the Australian glass industry is not attributable to imported CFG but an increase in imports of finished products such as laminated glass.

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<sup>26</sup> Document 022 on the EPR refers.

<sup>27</sup> Document 042 on the EPR refers.

<sup>28</sup> Document 033 on the EPR refers.

<sup>29</sup> Document 032 on the EPR refers

The Government of Indonesia submits that continuing the measures will be to the detriment of independent glass processors, which require CFG as a raw material. The Government of Indonesia also submits that Viridian relies on CFG exported from Indonesia to supply its glass fabrication operations based in New Zealand, arguing that this is evidence of Viridian's inability to meet existing local demand.<sup>30</sup>

#### **6.4.5 Viridian**

Viridian has made a number of submission which relate to the matters raised in the preceding sections.<sup>31</sup> Viridian stated that it does not supplement its sales with imports, does not import CFG from Xinyi, has the ability to increase its production volume of CFG, is not the price setter in the market, that the upstream and downstream business structure referred to by Guardian has changed and that removing the anti-dumping measures will require Viridian to reduce prices to maintain volumes.

### **6.5 Commission analysis**

#### **6.5.1 Viridian's economic performance not attributed to anti-dumping measures**

Referring to Figure 1 in section 5.4, the value of new housing activity has been flat since 2011 and increased in 2014 and 2015. The Commission considers that Viridian's sales volume has been consistent with this pattern except for 2015.

In regard to lower priced CFG entering the Australian market, the Commission refers to the analysis undertaken at 8.4.2.3 which shows that goods not subject to measures are not priced as low as the goods subject to measures. The analysis was based on FOB prices and landed prices for 3mm, 4mm, 5mm and 6mm which accounts for the vast majority (in excess of 90 per cent) of the volume of exports (m<sup>2</sup>) which are subject to measures in the inquiry period.

In reference to comments linked to Viridian's annual reports, the Commission notes that profit is not the only way that an industry may experience 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 in assessing whether material injury is likely to continue or recur if the anti-dumping measures expire.

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.

#### **6.5.2 Downstream effects and finished goods**

Downstream markets are outside the scope of this inquiry. Similarly, comments relating to the increased importation of finished products having a negative effect on processors relates to finished goods that are not the goods and therefore outside the scope of this inquiry.

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<sup>30</sup> Guardian makes a similar submission (document 036 on the EPR refers).

<sup>31</sup> Documents 016, 017 and 045 on the EPR refers

### **6.5.3 Response to AIG's submission**

The submission from AIG was not supported with any evidence and the claims are not consistent with the Commission's analysis and findings. The Commission has not found evidence that supports the contention that Viridian imports large quantities of CFG, that Xinyi supplements Viridian's production capacity or that CFG prices from Xinyi are the lowest on the market and the cause of price depression and suppression.

### **6.5.4 ABS Data**

AMG's submission refers to ABS data and concludes that exports from the UAE have the lowest CIF unit prices. The Commission notes that the ABS data would include products that are not the goods, and using this data without further refinement will lead to incorrect conclusions. Consequently, the Commission does not agree with AMG's conclusion that UAE prices are significantly lower than those from Indonesia and Thailand.

### **6.5.5 Ability to supply goods to New Zealand**

The Commission notes that the New Zealand market for CFG is not considered to be the Australian market, and therefore Viridian's ability to supply to it is irrelevant to this inquiry. As noted elsewhere, the Commission is satisfied that Viridian would be able to increase its production of CFG by adjusting its product mix if it was economic to do so.

## 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.

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) provides 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,<sup>32</sup> within the legislated period (being 37 days from the date that the exporter questionnaire was provided, concluding on 1 April 2016), were 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.

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<sup>32</sup> Document 009 on the EPR indicates that both Guardian and Muliaglass sought and were granted extensions of time to complete the exporter questionnaire. The new deadline was 15 April 2016.

### 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.

##### 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	<b>Deduct</b> the cost of domestic credit.
Domestic inland freight	<b>Deduct</b> the cost of domestic inland freight.
Domestic packaging	<b>Deduct</b> the cost of domestic packaging.
Export inland freight and fumigation	<b>Add</b> the cost of export inland freight and fumigation.
Export packaging	<b>Add</b> the cost of export packaging.
Export credit	<b>Add</b> the cost of export credit.

**Table 8: 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 3**.

## **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.

#### 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:



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

**Table 9: Adjustments to PT Muliaglass normal value<sup>33</sup>**

### **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 3**.

### **7.3.3 All other 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. Specifically, the Commission considers that it is reasonable to conclude that an exporter would:

- be at least as efficient as the most efficient of the cooperating exporters;
- obtain prices for CFG on the domestic market in Indonesia which are at least as high as the highest prices obtained by the cooperating exporters; and
- obtain prices for CFG exported to Australia which are at least as low as the lowest prices obtained by the cooperating exporters.

The Commission has therefore calculated a dumping margin by comparing the highest weighted average normal value calculated for the cooperating exporters and compared it to the lowest weighted average 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 3**.

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<sup>33</sup> 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.

## **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.

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:

**PUBLIC RECORD**

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

**Table 10: 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 3**.

### **7.4.2 All other 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 3**.

## **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 section 7.2.1 of this report, 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.<sup>34</sup>

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<sup>34</sup> Document 010 on the EPR refers.

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These claims have not been investigated in this inquiry.<sup>35</sup>

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 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 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 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 3**.

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<sup>35</sup> 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 determining whether normal values can be established under section 269TAC(1). As there is no cooperation from Chinese exporters, the Commission is already precluded from establishing normal values using section 269TAC(1) (because of the operation of subsection 269TACAB(1)) and as such, market situation is not a relevant consideration.

## 7.6 Conclusion

The Commission has calculated the following dumping margins:

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

**Table 11 – 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.<sup>36</sup>

#### **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, and that dumped imports of CFG represented approximately 9 per cent of the Australian market (or approximately 24 per cent of all imports of CFG) during the inquiry period.

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<sup>36</sup> These claims have not been assessed; footnote 34 refers.

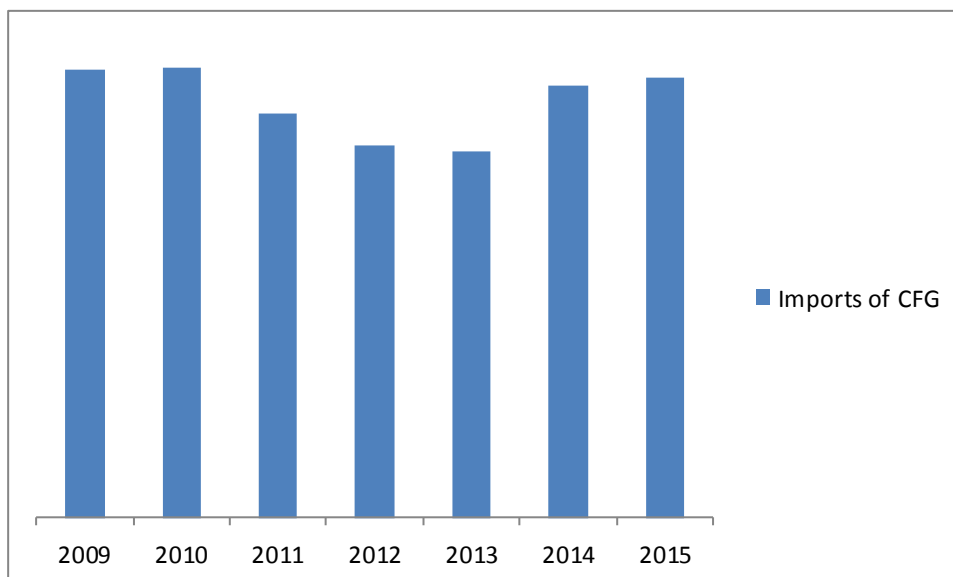
### 8.3.3 Import volumes

Table 12, below, shows that, as a proportion of total imports of CFG, imports from China, Indonesia and Thailand have declined following 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 12: Proportion of imports from countries subject to measures (m<sup>2</sup>)**

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.<sup>37</sup> 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<sup>2</sup>)**

*Source: Confidential Attachment 1*

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.

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<sup>37</sup> The Commission notes Guardian’s submission that it has an Oceania territory manager in Australia, rather than a “distribution channel” – document 022 on the EPR refers. However, the Commission is using the expression in the general sense that the exporters have a mechanism through which they engage with potential customers and conclude sales.



### 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.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> 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 has observed that whilst exports from Guardian's Thailand operations have significantly reduced, exports from Guardian's global business to Australia have significantly increased since the imposition of measures (**Confidential Attachment 4** refers).

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. The Commission does not have any information on the proportion of capacity that is consumed by the goods subject to measures. However, 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.<sup>41</sup> 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.

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<sup>38</sup> European Union Chamber of Commerce in China, 2016, *Overcapacity in China*, <http://www.eurochamber.com.cn/en/publications-overcapacity-in-china>

<sup>39</sup> The Commission notes that Guardian disputes that there is excess capacity in China (document 022 on the EPR refers). The Commission does not consider Guardian's view to be persuasive in light of the other evidence referred to.

<sup>40</sup> As per the *Overcapacity in China* report, it takes 6 months to recommence production and costs approximately USD 7.5 million.

<sup>41</sup> This can be seen from the ABF import database – **Confidential Attachment 1** refers.

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

### **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.<sup>42</sup> These measures apply to thicknesses of CFG ranging from 2 mm to 19 mm, and to exporters that were active in the Australian market prior to the imposition of measures in 2011. 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, and would be likely to do so in the Australian market if the measures are not continued.

### **8.3.6 Submissions regarding recurrence of dumping**

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.<sup>43</sup>

Guardian made further submissions stating that it is unlikely, if not entirely remote, that it will dump goods due to its own domestic market strategies; Guardian advises that it does not intend to supply the Australian market with any substantial volume of CFG in the future.<sup>44</sup>

The Commission observes that, contrary to the above assertions, 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

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<sup>42</sup><http://pesquisa.in.gov.br/imprensa/servlet/INPDFViewer?jornal=1&pagina=70&data=19/12/2014&captchaId=firistAccess>

<sup>43</sup> Document 014 on the EPR refers.

<sup>44</sup> Documents 021 and 034 on the EPR refer.

proportion of the market; Guardian is already supplying these insubstantial volumes at dumped prices.

### **8.3.7 Conclusion**

Given the above analysis, the Commissioner finds 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,

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.

Following the verification visit and as a result of the Commission seeking further clarification of Viridian's claims in preparing the visit report, Viridian provided further information to demonstrate the claimed impact that a decline in its sales volume or a reduction in its prices would have on the profit and profitability of the company (**Confidential Attachment 5** refers).

This analysis demonstrates the effect that a decline in sales volumes or a decline in prices would have had on the data which was verified for the inquiry period, applying those effects in proportion to the CTMS against the relevant line items. The Commission is satisfied that the analysis is indicative of the degree of injury that is likely to be experienced in those circumstances.

### **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.<sup>45</sup> As a result, the Commission has found that significant price competition occurs between the domestically produced and imported goods.<sup>46</sup>

#### **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 quarterly 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
- customs and port clearance fees, derived from the original investigation; and
- an amount for any relevant importer selling, general and administrative (SG&A) costs and profit, also derived from the original investigation.<sup>47</sup>

The Commission notes that a proportion of Viridian's sales of CFG are to related entities. Although the Commission is satisfied that Viridian's transfer prices to related entities are based on the prevailing market price to unrelated customers (as was noted in the relevant verification report),<sup>48</sup> 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:

- 3 mm were undercut in the first and second quarters by imports from at least one exporter, and were undercut by imports from all exporters subject to measures in the third quarter;
- 4 mm were undercut by all imports of the goods subject to measures in every quarter;
- 5 mm were undercut by all imports of the goods subject to measures in every quarter;

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<sup>45</sup> **Confidential Attachment 11** refers.

<sup>46</sup> The Commission notes Guardian's submission, document 036 on the EPR, which asked if the Commission was provided with evidence of price comparisons or price offers from Xinyi. The Commission does not consider the source of the import price offers to be relevant to establish that price competition between the Australian industry and imported goods occurs. In any event, the analysis in the remainder of this Chapter addresses the claim being made by Guardian that Xinyi would be the predominant cause of any injury to the Australian industry.

<sup>47</sup> No adjustments have been made to the data from the original investigation for this analysis.

<sup>48</sup> Document 019 on the EPR refers.

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- 6 mm were undercut by imports of the goods subject to measures by all exporters in the second, third and fourth quarters, and were undercut by imports from a single exporter in the first quarter;
- 8 mm were undercut by all imports of the goods subject to measures in every quarter;
- 10 mm were undercut by imports of the goods subject to measures from a single exporter in the first and fourth quarters, and were undercut by imports from two exporters in the second and third quarters; and
- 12 mm were undercut by imports of the goods subject to measures from at least one exporter in every quarter.

The Commission notes that not all exporters supplied every thickness of CFG to the Australian market in every quarter. The Commission's calculations and analysis is at **Confidential Attachment 6**.

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; the degree of price undercutting would be increased if the existing anti-dumping measures had not been applied.<sup>49</sup>

### 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 7**.

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<sup>2</sup>) of Viridian's sales. The Commission has also observed that these thicknesses also account for the vast majority (in excess of 90 per cent in the inquiry period) of the volume of exports (m<sup>2</sup>) 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.

### 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<sup>2</sup> in the ABF import database for 3, 4, 5 and 6 mm thicknesses.

The Commission calculated a weighted average of the FOB prices (on a per m<sup>2</sup> basis) of the goods subject to measures and compared them to the FOB prices (again, on a per m<sup>2</sup> basis) of all other imports in each month of the inquiry period. The calculations are based

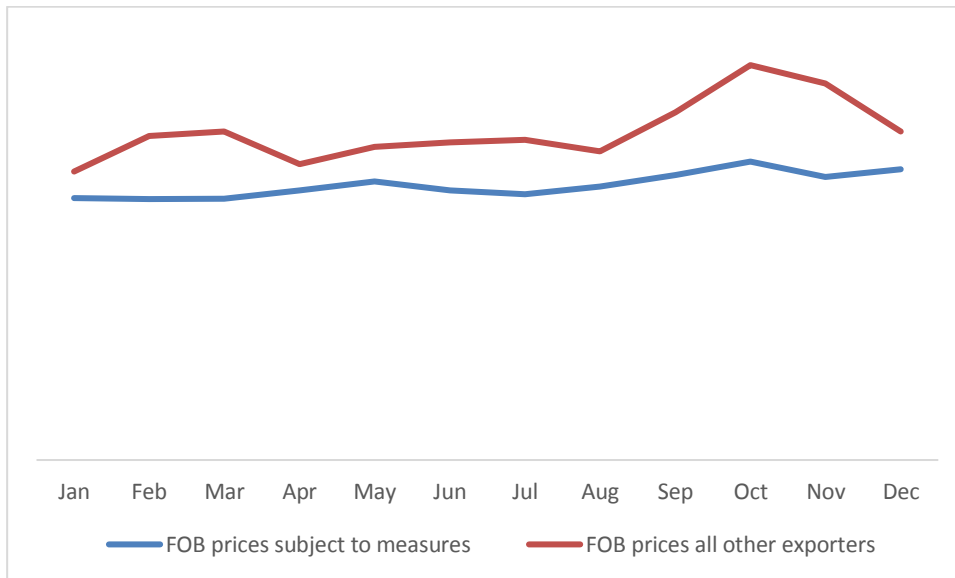
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<sup>49</sup> The Commission has not undertaken the same analysis using imports of CFG from China due to a lack of data concerning ocean freight, insurance and other related costs. The Commission also notes that, as per the analysis in section 5.3.2, some part of the price undercutting which currently occurs may be attributable to an unquantified price premium. However, the absence of the dumping measures would not result in an increase in that premium.

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on the thicknesses identified above in section 8.4.2.2 as these thicknesses represent the biggest contributors to Australian industry revenue and are the largest volume of exports into Australia (**Confidential Attachment 8 refers**).

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 monthly FOB prices for goods subject to measures versus goods not subject to measures during inquiry period (m<sup>2</sup>)**

*Source: Confidential Attachment 1*

Given this comparison is at FOB, the Commission notes that the cost of shipping to Australia, customs duty and the dumping duty payable are the key differences in the ultimate prices payable and therefore the competitiveness of the goods.

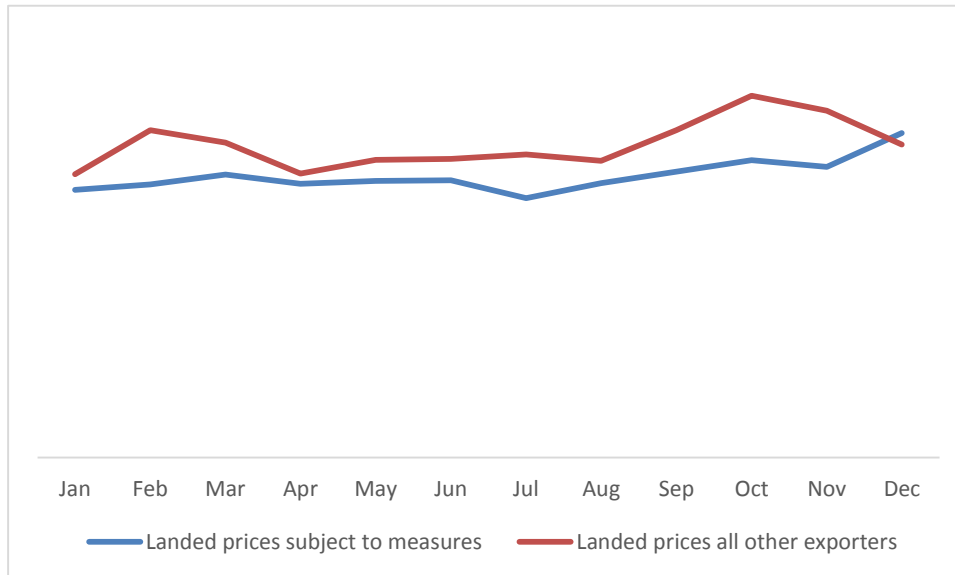
On the same basis, the Commission calculated a weighted average of the landed prices (on a per m<sup>2</sup> basis) of the goods subject to measures and compared them to the landed prices (again, on a per m<sup>2</sup> basis) of all other imports in each month of the inquiry period.

The landed prices have accounted for:

- the total amount paid for goods based on invoice, packed and in export condition at place of export (typically at FOB);
- applicable customs duty;
- amount paid to transport the goods to Australia and to insure the goods for that transport; and
- relevant interim dumping duty.

Figure 14 below shows that, at the landed prices, the goods subject to measures are generally lower than the goods which are not subject to measures. It demonstrates that the goods subject to measures, which have been found to be dumped, are already cheaper at landed prices, and removing the measures will likely widen the gap.

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**Figure 14: Comparison of monthly landed prices for goods subject to measures versus goods not subject to measures during inquiry period (m<sup>2</sup>)**

Source: Confidential Attachment 1

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, as outlined above, because the Commission considers that dumping is likely to continue), 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.

#### 8.4.2.4 Submissions regarding price

Guardian requested that it be separated from the FOB price analysis in Figure 13 and displayed as a separate line.<sup>50</sup> Guardian also claimed that other exporters in the market, particularly Xinyi, offer substantially cheaper prices. 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. Guardian therefore submits that if the anti-dumping measures on Guardian are continued, other exporters will likely

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<sup>50</sup> Document 031 on the EPR refers.

take advantage to sell large volumes at lower prices and cause price depression or suppression.

The Commission has examined the prices obtained by the cooperating exporters already subject to measures and compared them to the prices obtained by other exporters not subject to measures (**Confidential Attachment 8 refers**). The Commission is satisfied that the prices obtained by the exporters subject to measures would, for most thicknesses, have been significantly more competitive in the absence of the anti-dumping measures. With respect to the behaviour of other suppliers and their impact on the market, the Commission notes that exporting large volumes of CFG at low prices is only of concern if those prices are dumped.

### **8.4.3 Volume effects**

The Commission has found that exports of CFG to Australia from the exporters 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.

The Commission is of the view that if the measures are removed, the excess capacity to produce CFG in China is likely to result in larger volumes being exported to Australia. Similarly, exports from Indonesia and Thailand would also be likely to 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 remain 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.

#### **8.4.3.1 Submissions regarding volume**

The Government of Indonesia notes that export volumes from Indonesia and their pricing over the last 10 years have been stable. The Government of Indonesia notes that the Commission was not able to demonstrate that there is excess capacity in Indonesia in SEF 335, and claims that there is no evidence that imports will accelerate should the measures expire. Accordingly, the Government of Indonesia submits that there is no valid reason for continuing the measures.

The Commission observes that export volumes and prices for CFG supplied by Indonesian exporters have remained relatively stable despite the imposition of measures. However, the Commission also notes that, as previously mentioned in section 8.3.4, Muliaglass appears to have sufficient spare capacity to increase export volumes immediately. The Commission noted that AMG currently has little, if any, excess production capacity, but that AMG may be able to change the composition of its production mix to produce more of the goods that are subject to measures.

The ongoing presence of dumped goods from Indonesia in the Australian market suggests that the expiry of the anti-dumping measures would be unlikely to lead to a



sudden increase in import volumes from Indonesia, but would lead to a reduction in prices.

## **8.5 Other submissions**

Interested parties made other submissions with regard to the Commission's analysis.

### **8.5.1 Guardian**

Guardian made several submissions in relation to the application of the Act.<sup>51</sup>

Guardian 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.

Guardian argues that if negligible volumes are not considered as part of a continuation inquiry, an exporter is more disadvantaged than during an investigation; and that in *Siam Polyethylene v Minister of State for Home Affairs (No 2)* [2009] FCA 838 (hereafter, "*Siam (No 2)*"), the Anti-Dumping Commission's failure to apply in s 269ZHF(2) the meaning of 'material injury' given by subsections 269TAE(2A)-(2B) resulted in jurisdictional error. When determining the likelihood that the dumping and material injury 'that the anti-dumping measure is intended to prevent' are likely to continue or recur, the limited sense of 'material injury' conveyed by ss 269TAE must be used in this inquiry.

To support its view that section 269TDA applies to a continuation inquiry, Guardian refers to the *Siam (No 2)* case and states that, in that case, the Federal Court of Australia held that the material injury provisions in subsection 269TAE(2) affected the meaning of material injury in subsection 269ZHF(2). Guardian submits that this means subsection 269TAE(2) is not confined to Division 2 of Part XVB of the Act.

By extension, Guardian submits that section 269TDA is also relevant to the application of section 269ZHF. Guardian submits that this is because section 269TDA is not expressly limited by sections 269TG and TJ (like subsection 269TAE(2) is), or any other section, and therefore applies even more broadly than subsection 269TAE(2).

### **8.5.2 Viridian**

Viridian also made several submissions in response to Guardian's interpretation of the application of the Act.<sup>52</sup> Viridian contends:

- that the material injury provisions in the *Siam (No 2)* case were limited to Division 2 of the Act and there is no basis in the case to apply the negligible test in section 269TDA;

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<sup>51</sup> Document 014, 025, 027, 029, 034

<sup>52</sup> Document 028 and 038 on the EPR refers

- it cites a WTO Panel decision<sup>53</sup> in a United States of America sunset review that considered that the *de minimis* references to both dumping margins and volumes in Article 5.8 were not applicable to sunset reviews;
- that the sunset review referenced by Guardian in 1998 where the Anti-Dumping Authority ruled that measures should not be continued against Thailand due to negligible volumes has been overtaken by the WTO Panel decision already mentioned; and
- termination provisions in section 269TDA are not relevant in a continuation inquiry.

## **8.6 Commission analysis of submissions**

### **8.6.1 Applicability of section 269TAE to a continuation inquiry**

There is no reference in section 269TAE to sections 269ZHF or 269ZHG.

In *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86, the Full Federal Court cast doubt over the single judge's analysis in *Siam (No 2)* about the applicability of the provisions in section 269TAE to a continuation inquiry. The Full Federal Court noted that the application of subsection 269TAE(2A), (2B) or (2C) "to the task being undertaken when discharging the functions conferred by s 269ZHF and s 269ZHG is ... not immediately self-evident". The Full Court also noted that "[n]or is the application of s 269TAE to s 269ZHF or s 269ZHG to be assumed," and that the relevance of some of these provisions "may well depend on the particular facts and circumstances of the inquiry".

The Commission notes that some of the factors outlined in section 269TAE may be relevant to a continuation inquiry in so far as they relate to the injury that is currently being suffered by the Australian industry. The Commission has, for example, considered several of these factors in this report.<sup>54</sup> However, the Commissioner's statutory task in a continuation inquiry is different to that of an investigation, and requires the Commissioner to consider whether material injury will continue or recur, rather than to consider whether the Australian injury has suffered material injury.

Rares J noted in *Siam (No 2)* that 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") (at 46-47). 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 Commissioner's consideration of future events.

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<sup>53</sup> Panel Report, *US-Corrosion Steel Sunset Review* (14 August 2003), paragraph 7.70. See paragraphs 7.67, 7.68 for the non-applicability of both *de minimis* standards.

<sup>54</sup> Such as dumping margins, the quantity of the goods that have been or are likely to be exported, any changes or likely changes in the proportion of the goods exported into Australia or the goods manufactured and sold by the Australian industry, export prices, the volume and prices of goods imported that are not dumped or from countries that are not subject to measures, demand factors for CFG. The Commission has also examined relevant economic factors in relation to the Australian industry such as market share, production volumes, profits, profitability and investment in the industry.

### 8.6.2 Termination provisions in section 269TDA

There is no reference to a continuation inquiry 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.

While section 269TDA is not expressed as being limited by sections 269TG or 269TJ, there are a number of other limitations in the text of section 269TDA. Section 269TDA is titled “Termination of investigations” and relates to applications for a dumping and / or a countervailing duty notice. These limitations in the text of section 269TDA suggest that its operation is limited to investigations, and does not apply to other cases such as continuation inquiries.

Guardian outlined its view that subsection 269ZHF(2) requires consideration of the matters under subsection 269TG(2) (and Division 3 of Part XVB more broadly), and quotes from *Siam (No 2)* to support its view.<sup>55</sup> Guardian states that, by analogous reasoning, section 269TDA is also a relevant consideration for the purposes of a continuation inquiry.

The Commission notes that the primary judge’s statements about the interrelationship between subsections 269TG(2) and 269ZHF(2) in *Siam (No 2)* were queried by the Full Federal Court in *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86. The Full Federal Court noted that “it may not be without significance to the interrelationship as between s 269TG (and s 269TAE(1)) and s 269ZHF(2) that Division 3 and Division 6A of Part XVB apply at different stages”. The Full Federal Court also noted that “[a] tentative view is, however, expressed that s 269TG is not incorporated as a matter of statutory construction such that the requirements of that section have to necessarily be considered whenever the functions conferred by s 269ZDA or s 269ZDB are being discharged” and that “there is no self-evident reason why the powers conferred by s 269ZDA and s 269ZDB are not powers only constrained by the express terms in which they are conferred”. While these particular statements relate to a review of measures (as the Full Federal Court was considering appeals from two separate decisions of the primary judge), they tend to highlight that the functions and powers in the Act should be interpreted according to their own express terms (and the constraints of those express terms), rather than being constrained by other provisions in the Act.

In any case, Division 3 of Part XVB relates to the consideration of anti-dumping matters by the Minister. Conversely, section 269TDA is contained in Division 2 of Part XVB and relates to the termination of investigations by the Commissioner. As such, section 269TDA does not supply a factual ground of which the Minister must be satisfied prior to the taking of anti-dumping measures.

Because the applicability of section 269TDA to a continuation inquiry is not readily apparent, the Commissioner is not prevented from recommending that measures be continued where the volume of exports is negligible as defined in subsection 269TDA(4). In certain circumstances, it may be open to the Commissioner to consider low volumes of exports if they are relevant to determining whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

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<sup>55</sup> Document 034 on the EPR refers.

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In this case, the Commission considers that Guardian's low volumes of exports since 2012 are not determinative in assessing whether dumping and material injury will continue or recur if the measures expire. This is because the Commission has observed that Guardian's global business has significantly increased the volume of CFG exports into Australia since the imposition of measures even though exports from its Thai operations have significantly diminished. Guardian could readily 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. In addition to this, the Commission has found that the goods exported by Guardian during the inquiry period have been dumped.

The way in which the provisions relating to the termination of investigations and the provisions relating to continuation inquiries are set out in the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* provides a similar distinction to that which appears in the Act. This distinction has also been discussed in international jurisprudence.

### 8.6.3 Meaning of "likely"

Guardian contends that the word 'likely' in subsection 269ZHF(2) means more than 50 per cent chance or more probable than not, and that the findings in the SEF are based on the *chance* that dumping could occur in the future instead of *likely*.<sup>56</sup> Guardian contends that the Commission's findings are not sufficient to support the conclusion that dumping is likely to continue.

In *Siam (No 2)*, the single judge concluded that the term "likely" in subsection 269ZHF(2) meant "more probable than not". This finding was not disturbed by the Full Federal Court on appeal. The Commission agrees with Guardian's submission of the meaning of "likely" in subsection 269ZHF(2) and that the recommendation to the Parliamentary Secretary in this report is made on this basis.

### 8.6.4 Continuation Inquiry 191

Guardian's submissions refer to a continuation inquiry concerning CFG conducted by the then Anti-Dumping Authority in August 1998.<sup>57</sup> In that report, it was recommended that the dumping duties imposed on CFG exported to Australia from Thailand (other than for Bangkok Float Glass Co Ltd) not be continued. The report states:

- that exports of CFG to Australia from Thailand had been virtually non-existent in 1994-95 and negligible overall since the measures were imposed;
- that CFG from sources other than Thailand are likely to have a major influence in the Australian market in the future; and
- that there is no evidence to suggest that Thai producers are planning to export to Australia at dumped prices in quantities sufficient to cause material injury.

In *Continuation Inquiry 191*, the then applicant alleged that excess capacity available to Siam Guardian Glass Co Ltd (Siam) would be used to export CFG to Australia and would cause material injury due to price depression, loss of sales and loss of market share.

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<sup>56</sup> Document 034 on the EPR refers.

<sup>57</sup> Documents 021 and 027 on the EPR refer.

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Siam was formed in 1990 as a joint venture between Guardian and the Siam Cement Public Company Limited. In 1999, Guardian acquired full control of Siam.

Siam made a submission during the then continuation inquiry stating (amongst various items) that:

- it has markets in the USA, South America and Europe to absorb excess stock;
- there is no evidence in the application that could positively satisfy the Anti-Dumping Authority that the expiration of the notice would lead, or be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measure is intended to prevent;
- all available reliable evidence indicates that the expiration will not lead, and would not be likely to lead, to a continuation of, or a recurrence of the material injury that the anti-dumping measures was intended to prevent;
- should Siam commence exports of CFG to Australia now or in the foreseeable future, such exports could not and would not be at dumped prices, primarily due to the devaluation of the Thai Baht; and
- it would not be in Siam's interest to recommence exports to Australia at dumped prices.

Guardian contends that the small volumes exported to Australia since the current anti-dumping measures were imposed in October 2011 creates similar circumstances to those considered in the 1998 inquiry, and for this reason the measures should not be continued against Guardian.

The Commission observes that Guardian was subsequently found to have increased export volumes substantially in the injury analysis period in REP159C (being from 1 April 2006), and that these volumes were found to have been dumped in the relevant investigation period (1 April 2009 to 31 March 2010) and caused injury to the Australian industry. As it has occurred previously, the Commission considers that it is likely that CFG will be exported to Australia from Thailand in the future, regardless of whether the anti-dumping measures are continued.

The Commission again notes that Guardian has been found to have dumped the small volume of CFG that it exported during the inquiry period, and considers that the global supply of CFG has changed substantially since the 1998 inquiry, including as a result of new and / or expanded capacity in a range of exporting countries. On that basis, the Commission considers that the circumstances in which the Anti-Dumping Authority made its findings in 1998 are of limited relevance to the Commission's analysis in 2016.

### 8.7 Conclusion

The Commissioner considers that the Australian industry's economic condition (as outlined in Chapter 6) indicates that Viridian is currently experiencing a general trend of improvement. Whilst sales volumes have remained steady and profit and profitability have improved, in a price sensitive market the Commissioner 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

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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 Commissioner 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 Commissioner notes that Viridian's analysis in **Confidential Attachment 5** provides an indication of the scale of injury that Viridian would experience in these circumstances.

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

The Commissioner therefore 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).<sup>58</sup> 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).<sup>59</sup>

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)<sup>60</sup> and relevant factors in the CFG market.

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<sup>58</sup> At the time the measures were imposed, the combination duty method was the only form of duty available.

<sup>59</sup> Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

<sup>60</sup> Available at

<http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsodumpingduty-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.<sup>61</sup> 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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<sup>61</sup> 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

### 9.5.1 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)*<sup>62</sup> 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.”*

Viridian made a subsequent submission on this matter post SEF 335 noting that if an *ad valorem* duty method is preferred, then it can be based on a dollar per tonne basis similar to the measures imposed by Brazil and India.<sup>63</sup>

### 9.5.2 AMG

AMG argues that the current form of duties should not be applied in light of the decision in *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870 (FCA 870). AMG 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.<sup>64</sup>

### 9.5.3 Guardian

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

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<sup>62</sup> <http://www.adcommission.gov.au/cases/EPR%20251%20%20300/EPR%20300/063%20-%20REP%20300.pdf>

<sup>63</sup> Document 035 on the EPR refers.

<sup>64</sup> Document 018 on the EPR refers.

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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
  - REP 300 involved complex related party transactions and goods which were almost entirely fungible and these considerations do not apply to this continuation inquiry.<sup>65</sup>

### 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.

#### 9.6.1 Potential incentives to lower export prices

The exporter verification teams found that all sales of CFG from the cooperating exporters 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.

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<sup>65</sup> Document 020 on the EPR refers.

### 9.6.2 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.

### 9.6.3 *Ad valorem* on a dollar per tonne basis

The current anti-dumping measures require customs brokers and dealers to declare statistical quantity in square metres when the goods are imported. As a result, all dumping margins relevant to this inquiry have been calculated on a square metre basis. For these reasons, the Commission considers that the form of measures should continue to apply on this basis.

## 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 he 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 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 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).<sup>66</sup> 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 (USP).

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 CTMS 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.

### 10.4 The Commission’s calculation of USP and NIP

The Commission has been unable to identify any relevant selling prices at a time unaffected by dumping and as such, it is not preferable to use Viridian’s sales prices in establishing a USP. The Commission has therefore used a constructed method for establishing the USP and considers it reasonable to use Viridian’s CTMS data in the

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<sup>66</sup> The lesser duty rule is outlined in subsection 8(5B) of the Dumping Duty Act.

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inquiry period (1 January 2015 to 31 December 2015) as this data has been verified and reflects the most recent period.<sup>67</sup>

In constructing a USP, the Commission calculated a weighted CTMS pertaining to each thickness of CFG against the total value of external sales. With regard to profit, the Commission has reconsidered the position proposed in the SEF. The Commission now considers that it is appropriate to include the profit margin that Viridian achieved in the inquiry period, since this represents the most recent unsuppressed price that Viridian has been able to achieve in the market. This approach has not had any impact on the effective rate of duty payable by the cooperating exporters.

In determining the NIP, the Commission adjusted the USP for overseas freight, insurance, delivery, port and customs clearance fees:

- for Indonesia and Thailand, the costs in relation to ocean freight and insurance were based on actual verified data pertaining to the exporters whereas the costs associated with ports, customs and delivery were based on the verified data in the original investigation (REP 159C);
- for China, the lowest verified actual cost of ocean freight and insurance was applied based on current verified data from Indonesian and Thai exporters and the lowest port, customs and delivery costs were applied using verified data from the original investigation (REP 159C).

No adjustments were made in the original investigation (REP 159C) for importer SG&A expenses or profit as the post importation costs were based on the most efficient importers which were all end users of the product. As the same circumstances were present during this continuation inquiry, no adjustment is being made in relation to these items for the current inquiry.

The Commission notes that for uncooperative exporters from China and all other exporters from Indonesia, the NIP is less than the normal value and, therefore, the Parliamentary Secretary must have regard to the lesser duty rule.

For all other exporters, the NIP exceeds the normal value and, therefore, the NIP is not the operative measure for these exporters.

The calculations are available in **Confidential Attachment 9 – NIP**.

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<sup>67</sup> Guardian's submission (Document 34) advocated for the Commission to establish a USP derived from selling prices of un-dumped imports. The Commission notes that it has no evidence of the actual selling prices of un-dumped imports, and has followed its preferred hierarchy and established the USP using the constructed method.

## 11 RECOMMENDATIONS

On the basis of the reasons contained in this report, and in accordance with subsection 269ZHF(2) of the Act, the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to certain CFG exported to Australia from China, Indonesia and Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

As such, the Commissioner recommends that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures relating to certain CFG exported to Australia from China, Indonesia and Thailand from the expiry date of 17 October 2016.

### **The Commissioner recommends the Parliamentary Secretary be satisfied:**

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished and is not available, to enable the export price of CFG exported to Australia from China to be determined under subsections 269TAB(1)(a), (b), or (c); and
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of CFG exported to Australia from China to be ascertained under the preceding subsections of 269TAC (other than subsection 269TAC(5D)) for 'uncooperative' and 'all other' exporters;

### **The Commissioner recommends that the Parliamentary Secretary determine:**

- in accordance with subsection 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid or payable for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the ordinary course of trade, that the amounts for the cost of production or manufacture of CFG in Indonesia by Muliaglass and AMG and in Thailand by Guardian are as set out in Chapter 7 and the administrative, selling and general costs associated with the sale of those goods are as set out in **Confidential Attachment 9**;
- being satisfied that subsection 269TAB(1)(a) applies, that the export price of CFG exported from Indonesia by AMG and Muliaglass and Thailand by Guardian is the price paid or payable for the goods by the importer, other than any part of the price that represents a charge in respect of any other matter arising after exportation, as set out in **Confidential Attachment 3**;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Indonesia in sales that are arms length transactions by AMG and Muliaglass, that the normal values of CFG exported from Indonesia by AMG and Muliaglass are the price paid or payable for like goods as set out in **Confidential Attachment 3**;

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- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Thailand in sales that are arms length transactions by Guardian, that the normal value of CFG exported from Indonesia by Guardian is the price paid or payable for like goods as set out in **Confidential Attachment 3**;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price of CFG exported from China, Indonesia and Thailand for the 'uncooperative' and 'all other' exporters are set out in **Confidential Attachment 3**;
- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal value of CFG exported from China, Indonesia and Thailand for the 'uncooperative' and 'all other' exporters are set out in **Confidential Attachment 3**;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1), that the dumping margins for all exporters from China, Indonesia and Thailand in respect of CFG exported to Australia is the difference between the weighted average export prices of CFG over the whole of the inquiry period and the weighted average of corresponding normal values over that period as set out in **Confidential Attachment 3**;
- in accordance with subsection 269TAC(8), that, as the normal value of CFG exported to Australia is the price paid or payable for like goods sold in Indonesia by Muliaglass and AMG and in Thailand by Guardian, the normal value be adjusted for specified differences between like goods sold in Indonesia by Muliaglass and AMG and in Thailand by Guardian and export sales, as set out in Chapter 7 and
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of CFG exported to Australia from China, Indonesia and Thailand is an amount which will be worked out in accordance with the *ad valorem* duty method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

### **The Commissioner recommends that the Parliamentary Secretary declare:**

- in accordance with subsections 269ZHG(1)(b) that he has decided to secure the continuation of the anti-dumping measures applying to CFG exported from China, Indonesia and Thailand.

### **The Commissioner recommends that the Parliamentary Secretary determine:**

- in accordance with subsection 269ZHG(4)(a)(iii) that the dumping duty notice continues in force after 17 October 2016 but that, after 17 October 2016, the notice has effect, in relation to exporters generally, as if different variable factors had been fixed, those factors being set out in **Confidential Attachment 10 – Measures**.

### **The Commissioner recommends the Parliamentary Secretary have regard to:**

- in accordance with subsection 8(5B) of the Dumping Duty Act, in relation to CFG exported to Australia from China and Indonesia by 'uncooperative' and 'all other' exporters, the desirability of specifying a method such that the sum of the amounts

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outlined in subsections 8(5B)(c) and (d) of the Dumping Duty Act do not exceed the non-injurious price.

### **The Commissioner recommends the Parliamentary Secretary not have regard to:**

- in accordance with subsection 8(5B) of the Dumping Duty Act, in relation to CFG exported to Australia from Indonesia by Muliaglass and AMG and from Thailand, the desirability of specifying a method such that the sum of the amounts outlined in subsections 8(5B)(c) and (d) of the Dumping Duty Act do not exceed the non-injurious price in light of findings in **Confidential Attachment 9** that the non-injurious price is greater than the normal value.



**12 APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Appendix A4 & A6 data
<b>Confidential Attachment 1</b>	ABF import database extract for CFG
<b>Confidential Attachment 2</b>	Viridian's import volumes
<b>Confidential Attachment 3</b>	Dumping margin calculations
<b>Confidential Attachment 4</b>	Guardian's Thai and UAE imports
<b>Confidential Attachment 5</b>	Viridian analysis of volume / pricing impact
<b>Confidential Attachment 6</b>	Price undercutting analysis
<b>Confidential Attachment 7</b>	Comparison of Viridian sales volume and revenue contribution by thickness
<b>Confidential Attachment 8</b>	FOB and landed prices subject and not subject to measures
<b>Confidential Attachment 9</b>	Non-injurious price
<b>Confidential Attachment 10</b>	Summary of Measures
<b>Confidential Attachment 11</b>	Evidence of import price offers