

JELD-WEN. PUBLIC FILE

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Ms Joanne Reid
Director Operations 2
Trade Measures Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

29th August 2011

Dear Ms Reid

Submission on Statement of Essential Facts No. 159C

JELD-WEN Australia Pty Ltd (JELD-WEN Australia) makes the following submission in response to the above re-investigation and provides comments in relation to the Statement of Essential Facts No.159C published on 8th August 2011.

Yours sincerely



Ron Silberberg AO
Senior Corporate Advisor
JELD-WEN Australia Pty Limited

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Submission on Statement of Essential Facts No. 159C

JELD-WEN Australia Pty Ltd (JWA) supports the conclusion reached by Customs in Statement of Essential Facts No. 159C that the injury experienced by CSR Viridian Limited (Viridian) during the investigation period was not caused by imports, but instead by other economic factors. JWA submits that the investigation should again be terminated under sections 269TDA(1) and/or (13) of the *Customs Act 1901*.

JWA accepts that Viridian experienced a marked reduction in Clear Float Glass volumes over the injury analysis period and agrees with Customs that 'the reduced volume was not caused by dumping' (SEF 159C, page 32).

In looking at "the size of the Australian clear float glass market" (SEF159C, page 14) Customs took account of Bulk CFG *and* the diversion of Bulk CFG to Internally Processed volumes. Customs found that "Viridian's loss of volume was due to a contraction in the market." (SEF159C, page 29).

Analysis by JWA indicates that the reduction in Bulk CFG *volumes* supplied by Viridian Upstream over the course of the injury analysis period can be explained in its *entirety* by:

- the shift in market demand towards thermally efficient glass and toughened glass;
- the decline in building activity in the aftermath of the global financial crisis; and
- the loss of customer base from Viridian Downstream to competitors due to chronic service failures in Viridian Downstream.

None of these developments can be attributed to dumped or un-dumped imports.

During the investigation period, YEM2010, Customs found that "injury to Viridian in the form of lost sales volume was not caused by dumping but by a contraction in the market during the last quarter of YEM2010" (SEF159C, page 5).

JWA maintains that the same factors impacting on Bulk CFG volumes over the injury analysis period were at work during YEM2010. However, the reduction in volumes of Bulk CFG in YEM2009 and YEM2010 was more heavily affected by the contraction in the building sector and the erosion of Viridian Downstream's customer base, as window fabricators moved their business to Independent Glass Processors that spread their purchases of glass between Viridian Upstream and Imports.

The decision by of a number of window fabricators to move from Viridian Downstream to Independent Glass Processors was driven by systemic service failures in Viridian Downstream. It was not influenced by Imports, dumped or otherwise, since the vast majority of window fabricators were not importers of float glass. The loss of business from Viridian Downstream to Independent Glass Processors did not lead to a commensurate increase in Imports because Independent Glass Processors that were customers of Viridian Upstream continued to source most of their Bulk CFG orders from Viridian Upstream.

In relation to *price depression* and *price suppression*, Customs found that Viridian was uncompetitive against imports of CFG after removing the estimated dumping margins. According to Customs Viridian experienced a price-cost squeeze as reduced volumes caused by the contraction in building activity raised Viridian's costs to manufacture. Secondly, a 30 per cent appreciation of the Australian dollar over the course of the investigation period made imports more price competitive and restricted Viridian's ability to lift prices to recover high costs to manufacture. (SEF 159C, page 29).

Whereas Customs has negated the earlier finding relating to the significance of dumped imports on market volumes, JWA submits that Customs ought to have taken the opportunity to revisit the estimates of dumping margins (albeit revised downwards by 29 per cent in relation to Chinese 'other exporters') published in the Termination Report 159 (TER159B). JWA objected to the estimates of dumping margins provided by Customs in SEF 159 and TER159B based on information provided to Customs at the time. It is recommended that the new Customs team verify the data assembled on CFG export prices and dumping margins.

JWA welcomes the reliance and credibility Customs has placed on the statutory reports of CSR Limited relating to the impact on Viridian of the downturn in the residential and commercial building industry and the high Australian dollar during the investigation period.

Dumping Margins

In SEF159C it is asserted that "Clear float glass was exported to Australia from China, Indonesia and Thailand during the investigation period at dumped prices." (SEF159C, page 5). The statement is sweeping and implies, incorrectly that all CFG exports were at dumped prices.

Elsewhere, it is claimed that: "While Viridian experienced injury in the form of price depression and suppression, a comparison of the un-dumped prices with Viridian's prices shows that the level of undercutting would have made it difficult for Viridian to compete with un-dumped imports without reducing or suppressing price." (SEF159C, page 29).

According to Customs, the market was sensitive to price differentials between locally-produced glass and Imports. On this basis, the question should be asked: If Viridian would have struggled to compete against un-dumped prices, **why would exporters needlessly reduce their margins?**

The contention in relation to dumped prices is not the outcome of a re-investigation of dumping margins. Instead, SEF159C relies on the methodology employed in TER 159B. While it may be argued that the methodology had not been re-visited due to time constraints, an explanation for the reduction in dumping margins between SEF159 and TER159B could have been provided. In the case of 'other exporters' from China, which accounted for "approximately 90% of the total volume of CFG exported to Australian from China during the investigation period" (SEF159, page 24) the estimate of dumping margin was revised downwards by 29 per cent in TER159B (page 25). The dumping margin for 'other exporters' from Indonesia was reduced by 26 per cent between SEF159 and TER159C.

JWA consistently has taken issue with the methodology employed by Customs to estimate dumping margins, and in particular the reliability of desk-top audits and the extent of dumped imports in the market. The volumes involved should have been disclosed in the interests of transparency.

Based on external pricing information obtained and supplied previously to Customs, the average price of 4mm CFG Imports from China was 18.8 per cent **higher** than comparable Imports from Indonesia and Thailand. In contrast, Customs estimated that the dumping margin was much higher for 4mm CFG exported from China.

The volume of float glass produced in the sampled region of China was more than 3 million tonnes per annum, representing about 10 per cent of all float glass volumes manufactured in China and 10 times the size of the total float glass market in Australia.

Internal Transfers

Customs notes in SEF No. 159C:

The TMRO asked Customs and Border Protection to give particular attention to whether any decline in internal transfer volume, after taking into account the volume diverted to internal processing, was material injury attributable to dumping. (page 14).

Customs advises that in examining sales volumes and market share it took into account volumes of CFG diverted by Viridian "from external sales to internal transfers and from internal transfers to internal processing during the injury analysis period." (SEF159C, page 15). A further area deserving of attention concerns the volume of internal transfers that may have been converted to external sales as a consequence of a number of glass merchants setting up their own processing operations.

The acquisition of Don Mathieson and Staff Glass Pty Ltd (DMS) saw the assignment (initially) of previously external sales of CFG to Internal Transfers. Subsequently, Laminated float glass produced by Viridian Downstream was re-classified as an Internally Processed output of Viridian Upstream, resulting in a substantial reduction in the volume of Internal Transfers of CFG from Viridian Upstream to Viridian Downstream. In addition, Customs found that substantial volumes of CFG were retained by Viridian Upstream for further processing and subsequently transferred to Viridian Downstream and sold to Independent Glass Processors.

In its submission of 1 July 2011, Blackburn, Croft & Co Ltd noted for the first time there had been an increase in the number of customers of Viridian Downstream that were re-assigned to Viridian Upstream, indicating that volumes of CFG were diverted from Internal Transfers to External Sales. Customs acknowledged the point (SEF159C, page 38). Just as DMS volumes of Laminated glass were reversed from Internal Transfers to Internal Processed volumes, it would seem appropriate to quantify the extent to which Internal Transfers were diminished by the re-alignment of glass processors from Viridian Downstream to Viridian Upstream.

Internal Processing Volumes, Energy Efficient Glass and Tint

In SEF159C (page 15) Customs reports that: "A high proportion of clear float glass produced by Viridian was diverted to internal processing during the investigation period" and determined that the "volume of clear float glass diverted to internal processing (including the volume diverted to the coating facility) should be included in market volume." However, Tinted glass volumes were *not* included in the calculation of market volume on the grounds that "tinted glass is not produced from clear float glass." (SEF159C, page 15).

While JWA concurs with the inclusion of Internal Processing volumes in the assessment of market volumes, it would have been helpful had Customs explained more fully the reasons for its decision to aggregate Internal Processing volumes with (unprocessed) Bulk CFG.

In SEF159C (page 38) it is stated: "Interested parties have claimed that Viridian has moved to producing more high value energy efficient glass at the expense of clear float glass volume." "Customs and Border Protection is satisfied that any shift to the production of energy efficient glass is accounted for by including internal processing volumes in the calculation of market volume and market shares."

The changing composition of Viridian Upstream's output towards Energy Efficient Glass was an integral plank of Viridian's business strategy. Indeed, when acquiring Pilkington Australasia (re-named Viridian) in 2007, CSR's then Managing Director, Jerry Maycock remarked that the glass business was "ideally positioned to capitalise on...an increasing focus on energy efficiency." (CSR News Release 29 June 2007). More recently, Viridian has advised that its business strategy is to "Displace commodity float glass with higher-functioning float glass." Also, "Growth in the energy efficiency glass category has partly offset the decline in overall market volume." (CSR Viridian, Analyst Site Visit Presentation- Clayton 30 June 2011).

For the purposes of analysing changes in Viridian's market size and sales volumes, Customs has aggregated the production of Bulk CFG diverted to internally processed volumes with Bulk CFG. It is not apparent what clear float glass was included in internally processed volumes. However, it is stated that Tint was excluded. JWA submits that Tint volumes should be included in an analysis of variations in market volume of CFG, because Tint services the market for Energy Efficient Glass that has underpinned Viridian's business strategy. According to Viridian, volumes of Tint held steady during the investigation period when production of CFG was in decline. The relative stability of (higher-value) Tint volumes would have helped to ameliorate the reduction in sales of Bulk CFG.

Viridian Internal Processing Transfers should include:

- Bulk CFG transferred to Viridian Laminating plants (Clayton, Dandenong and Ingleburn);
- Bulk Toughened (Dandenong);
- Silver line (Dandenong);
- CFG that is coated 'on line' at Dandenong.

Tint Float Glass (TFG) has been excluded by Customs from the total float glass market as well as internally processed glass volumes on the grounds that Tint is not produced from clear float glass. TFG in Australia is manufactured on the same float lines as CFG. In other countries, TFG is often produced on a dedicated float line.

TFG is thermally efficient glass (reducing infrared radiation relative to CFG and reducing the energy required to artificially cool a building). TFG is an important mediator of heat transfer in hot climate zones, especially suited for much of Australia. Viridian manufactures grey (and sometimes bronze) TFG at Ingleburn and Green and Supergreen TFG at Dandenong.

As market demand shifted to more thermally efficient glass (Low-e, Tint, Laminated), safer glazing (Laminated and Toughened glass), inevitably, processed glass products replaced CFG. Since CFG is the 'substrate' for Bulk Laminated, Silvered, Coated and Toughened Glass, it is appropriate to look at variations in the market volumes of CFG against all of these product segments when assessing the operation of Viridian Upstream. Insofar as Tint Float Glass volumes are concerned, JWA submits that Tint volumes should also be factored into an analysis of market volumes, because it is part of the 'family' of Energy Efficient Glass, which has been replacing CFG.

Bulk CFG has been a diminishing share of market demand, which has been driven by building regulation and consumer preferences for higher-value thermally efficient glass and safety glass in buildings. The exclusion of Bulk CFG volumes used in the production of Processed Glass from the analysis of market volumes would risk the possibility of a highly distorted picture being formed about the performance of CFG within the Australian Float Glass building market. The inter-related nature of movements in CFG and Bulk Processed Glass supports the decision of Customs to include internally processed CFG when seeking to examine and explain changes in the volume of CFG produced by Viridian Upstream.

It should be noted that the increased incidence of double-glazed windows, laminating, and toughened glass has had a beneficial effect on the CFG volumes, measured in tonnes that will not have been reflected in estimates of market size based on square metres. Consequently, limiting the assessment of market volumes to square metres instead of tonnes would understate the quantum of glass volumes as the building market moved towards an increased take-up of energy efficient glass and safety glass. The divergence between market volumes based on square metres versus tonnes is likely to increase as energy efficiency regulation of the building envelope is set to be tightened further under the National Energy Efficiency Strategy, agreed to by the Council of Australian Governments.

Building Activity

The volume of CFG and other glass produced by Viridian Upstream is a direct function of market demand. The level of production is set by orders, not optimal plant capacity. Viridian Upstream relies on a Sales and Operating Plan that compiles weekly forecasts of orders received from Viridian Downstream and major Independent Glass Producers on a regional basis. Because Viridian

Upstream is producing to match with orders, there is no unplanned inventory. In this way changes in volumes of glass produced by Viridian Upstream will fluctuate in line with variations in demand internally from Viridian Downstream as well as from Independent Glass Processors.

Customs recognises that the demand for float glass is closely correlated with the volume of building activity (SEF159C, page 16). Customs has attributed Viridian's lost sales and volumes to the 'contraction in the market during the last quarter of YEM210' (SEF159C, page 5).

The volume of float glass is depicted against the 'number of building starts' (See SEF159C, Diagram 1 on page 17). However, it would appear that the number of building starts is the number of dwelling commencements and does not include commercial building activity. It is recommended that Customs should include commercial construction activity, since Viridian had substantial exposure to the commercial building market.

The most appropriate measure of building activity is private gross fixed capital expenditure on dwellings and non-dwellings adjusted for changes in prices (see ABS Catalogue 5206.0 Table 2). The volume of building activity peaked at the start of YEM2009 and then went into a steep decline until the September quarter 2009. Capital expenditure on residential and commercial buildings plummeted by nearly \$11 billion in YEM2010, a reduction of 9.6 per cent, which was greater than the reduction in total market and Viridian's volumes of float glass. More than 70 per cent of the decline in building activity in YEM2010 occurred in the commercial construction sector.

That float glass volumes fared better than overall building activity levels was due in part to the increased use of double-glazed windows and (thicker) more energy efficient glazing. But the demand for energy efficient glazing could not escape completely the severe downturn, particularly in commercial building, which had a higher requirement for energy efficient glass relative to residential buildings.

Having regard to the course of commercial building activity would strengthen the assessment of Customs that the decline in Viridian's sales volumes during the investigation period could be linked to the contraction in residential *and* commercial building activity.

Service Issues in Viridian Downstream

Customs considers the potential role of service failures in the Viridian Downstream division, a major source of demand for glass produced by Viridian Upstream. However, Customs contends that the impact of the dislocation in Viridian Downstream is difficult to quantify.

Prior to the acquisition of DMS, Viridian Downstream accounted for about 30 per cent of the glass processing sector (CSR News Releases 29, 30 June 2007). The purchase by CSR Limited of DMS in 2007 lifted Viridian Downstream's market share in the order of 8 percentage points. The impact of the acquisition of DMS on volumes of float glass supplied by Viridian Upstream was much less because DMS had been mainly a customer of Viridian Upstream with a modest contribution from

imports. However, because Viridian Downstream was tied to Viridian Upstream, the purchase of DMS meant there was a positive effect on volumes of float glass produced by Viridian Upstream.

According to the Viridian Site Visit Presentation of 30 June 2011, Viridian Downstream's market share by YEM2011 had declined to 30 per cent, the level applying prior to the acquisition of DMS. The loss of market share by Viridian Downstream had the effect of reducing significantly Internal Transfers from Viridian Upstream to Viridian Downstream. The loss in market share of Viridian Downstream did not translate into a corresponding reduction in demand for float glass from Viridian Upstream because Independent Glass Processors that competed with Viridian Downstream stayed loyal to Viridian Upstream. But since Independent Glass Processors, unlike Viridian Downstream, were not exclusive purchasers of Viridian Upstream, there was some leakage of demand to Imports.

The decision to switch from Viridian Downstream to Independent Glass Processors was made by a number of window fabricators and glass merchants in the face of systemic service failures in Viridian Downstream. The relative price of imports was not a factor in their decision-making because the majority of window fabricators and glass merchants were not importers. With the onset of a sharp downturn in the building industry, window fabricators were under severe margin pressure from builders and contractors and were experiencing collateral damage occasioned by service failures in Viridian Downstream.

Blackburn, Croft & Co Ltd has provided a 'confidential' customer survey, presumably to counter observations about service difficulties in Viridian Downstream. However, it was the CSR Board of Directors in its statutory accounts and results' presentation for YEM2010 that acknowledged the service failures leading to a loss of market share in Viridian Downstream. Viridian Downstream lost part of its customer base, which reduced internal demand for float glass but saw some increase in the sale of float glass by Viridian Upstream to large-scale Independent Glass Processors.

Figures relating to Delivery In Full and On Time made public by Viridian (site visit presentation of 30 June 2011) show that in mid-YEM2010, about 1 in 4 orders supplied by Viridian Downstream were not delivered on time and/or were defective. The information on DIFOT presented by Viridian was at the national level and was not confined to the previous DMS operations. As was commented by CSR at the time, the attempt to integrate the software functions of Viridian Downstream had been extremely challenging and difficult causing severe dislocation in the business and for its customers. Such a high level of service delivery failure generated considerable tension in the supply chain. In these circumstances it is not surprising that a number of Viridian's Downstream customers shifted their business to Independent Glass Processors. A discussion with major window fabricators would confirm the parlous state of affairs at the time in Viridian Downstream.

While acknowledging the difficulty in ascertaining the precise impacts on Viridian Upstream of the shift in customers away from Viridian Downstream to Independent Glass Processors, it ought to be possible to develop some estimates of the reduction in float glass volumes based on the decline in Viridian Downstream's market share and the proportion of Import volumes in float glass procured by Independent Glass Processors.