

PUBLIC FILE

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29 August 2011

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Dear Ms Reid

Resumed dumping investigation - Statement of Essential Facts No 159C

We refer to the Statement of Essential Facts No 159C in respect of the resumed investigation into Clear Float Glass exported to Australia from the People's Republic of China, Indonesia and Thailand dated 9 August 2011.

In accordance with Customs' request for "comments from interested parties on the preliminary findings expressed" in Statement of Essential Facts No 159C, we lodge these submissions on behalf of our client, Guardian Industries Corp Ltd (Guardian).

Based on the findings of fact made by Customs as set out in sections 4, 5, 6 and 7 of Statement of Essential Facts No 159C, we submit that the investigation must be terminated.

Statement of Essential Facts No 159C at page 42 relevantly states:

"Customs and Border Protection makes the following findings:

- the 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;
at least part of the observed price suppression was due to the refurbishment of the Dandenong plant. Unit costs increased in the investigation period due to lower volume, which as stated above is not considered to be due to dumping;
the Australian dollar increased by 30% over the investigation period, contributing to the reduction in import prices. While it is not possible to quantify this effect precisely, it is not insignificant. It is possible it accounts for anywhere between 8% and 100% of the undercutting margin, depending on the country of origin and thickness;
a comparison of the undumped prices to Viridian's external prices shows that even without dumping, and affording Viridian a premium above import prices, Viridian may have experienced suppressed or depressed prices to the same degree in order to be competitive in the market;
an estimate of the revenue loss caused by the price depression shows that if the entirety was attributed to dumping the estimated revenue loss would be 5%. Given the impacts of the

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strengthening Australian dollar and the global financial crisis that contributed to that price depression, any part due to dumping is not material; and

- because the lost volume was not caused by dumping, and if price injury caused by dumping is not considered material, [then] consequently the lost profits and profitability caused by dumping would not be considered material."

The findings of fact set out in Statement of Essential Facts No 159C as summarised above demand that the Chief Executive Officer of Customs be satisfied that any dumping has not caused any injury or has caused only negligible injury to the Australian industry. It is respectfully submitted that the facts do not allow the Chief Executive Officer to hold a contrary view.

The language used in section 269TDA(13) of the Customs Act 1901 (Cth) imposes a positive and mandatory obligation on the Chief Executive Officer to terminate this investigation. The mandatory nature of section 269TDA(13) seems to be acknowledged by Customs in Statement of Essential Facts No 159C where it says at pages 5 and 6:

"if the delegate is of the view that dumping did not cause material injury to the Australian industry the resumed investigation will be terminated".

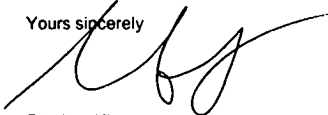
In accordance with the findings of fact made by Customs in Statement of Essential Facts No 159C and the mandatory legal obligation imposed by section 269TDA(13), the Chief Executive Officer has no option but to terminate the investigation generally or at least insofar as it relates to Thailand. If the Chief Executive Officer were to do otherwise then that would amount to a denial of procedural fairness and would constitute an error of law.

In support of this submission, we refer Customs to, and repeat, the submissions previously made by us on behalf of Guardian in our letters to Customs:

- 1 dated 23 June 2010 in section 2 at pages 2 and 3 under the heading "Any injury is self-inflicted or extraneous to alleged dumping" and in section 7 at pages 6 and 7 under the heading "No material injury and no causation"; and
- 2 dated 25 November 2010 at page 3 under the heading "Failure to analyse effect of dumping on a country-by-country basis".

We also submit that, in terminating this investigation, Customs should take comfort from the fact that the financial statements and announcements of CSR Limited (the owner of CSR-Viridian Limited, the applicant and, for the purposes of Part XVb of the Customs Act, the sole representative of the Australian industry) support Customs' findings of fact in relation to the true causes of any injury suffered by the Australian industry: see Statement of Essential Facts No 159C at section 6.4.5.

Yours sincerely



Stephen Klotz
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