

Law Office
YANG & CO
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Public Record

Ref. No.: 47/Y&C/IV/2021

Jakarta, 29 April 2021

To:

Director, Investigations 3

Anti-Dumping Commission

Department of Industry, Science, Energy and Resources

Australian Government

Re: Case No. 575 - Continuation of Anti-Dumping Measures on Clear Float Glass exported from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand ("AD Investigation")

Dear Sirs,

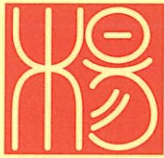
We, Law office Yang & Co., in this matter representing PT Asahimas Flat Glass, Tbk ("**AMG**") and AGC Asia Pacific Pte Ltd ("**AAP**"), convey our injury defence on the Application submitted by Oceania Glass Pty Ltd and the initiation of a continuation inquiry No. 575 into Anti-Dumping Measures on Clear Float Glass initiated by Australian Anti-Dumping Commission, as follows:

1. Injury suffered by Petitioner (if any) is not caused by the Exporters Under Investigation

We refer to Table 4 – Import Volumes CFG ex China, Indonesia and Thailand 2017 to 2020 (square meters) presented by the Petitioner in the Application for the Continuation of Anti Dumping dated 4 January 2021. We can see from the table that the biggest volumes in 2017 until 2020 come from other countries that do not subject to anti dumping investigation. Further, please find enclosed as **Exhibit 1 – Export to Australia from 2017 until 2020 per country that we have obtained from Trade Data International Pty Ltd (Official-Sensitive/Confidential)**. It clearly shows that in 2020 the biggest exporter of CFG to Australian market come from Malaysia with the total volume of [Confidential] which represents [Confidential] out of the total CFG imported to Australia with the volume of [Confidential] and the lowest price amongst other exporters *i.e.* in the average price of [Confidential]. The second largest exporter of CFG to Australia is United Arab Emirates, with around [Confidential] of the total import of CFG to Australia.

Thus, it is unfair and breaching the spirit of WTO Agreement, if the AD investigation does not include Malaysia and United Arab Emirates.

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Public Record

Therefore, there is a prima facie evidence showing that the injury suffered by the Petitioner (if any) is not caused by the Exporters under investigation, but from other countries not subject to AD Investigation, such as Malaysia and United Arab Emirates.

We also see a strong indication that the Petitioner is trying to take Indonesia out of the market unfairly with Anti Dumping rates, while letting exporters from Malaysia to freely export to Australia. We strongly urge ADC to carefully investigate this motive.

2. Domestic Production is not Enough to Cover the Australian Domestic Market

We understand that the history of ownership of Dandenong Furnace, the only furnace owned by the Petitioner, which was originally owned by Pilkington Australasia group and then acquired by CSR Limited Group in 2007, before being taken over in 2019 by Crescent Capital. Then, Crescent Capital separated the upstream industry *i.e.*, Oceania Glass (Petitioner), and downstream industry *i.e.*, Viridian Glass, to better focus on growing the industry to the public.

From the PPT file that is available to the public during the acquisition of Viridian Glass Australia by CSR Limited from Pilkington Australasia, we can see that Dandenong Furnace has the capacity of 120,000 MT. **The PPT File is attached as Exhibit 2 – PPT File Acquisition by CSR Limited.** Other furnaces had been shut down and closed. We understand that under Petitioner ownership, Dandenong Furnace has been running with full capacity so the production capacity reached 170,000 MT per year. Considering Australia's imports of CFG from 2018 until 2020 which averaged around [Confidential] (Please see Exhibit 1 for average of CFG Import of Australia in 2017 until 2020) and exports during this time period averaged around [Confidential] from data between 2018 to 2020 **(Please see as Exhibit 3 - Australian Export Data on CFG issued by Australian Bureau of Statistics (Official-Sensitive/ Confidential)).** Thus the domestic consumption for CFG in Australia is in the average of [Confidential]. Therefore, Dandenong Furnace being the only furnace owned by the Petitioner is not enough to cover the whole Australian Market.

For evidence, enclosed marked as **Exhibit 4 - Letter from CEO of Petitioner on 16 December 2020 (Official-Sensitive/ Confidential)** to their customers, stating about the surge of glass demand and how the Petitioner struggles to fulfil such demand.

We quote from the letter, as follows:

Paragraph 2:

[Confidential]



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First sentence of Paragraph 3:

[Confidential]

Note: bold and underlined are added to emphasize.

From the above it is concluded that Petitioner cannot fulfil the entire demand in Australia market. Therefore, the domestic industry is supplementing their short fall with self-import from Malaysia at very low prices whilst keeping the products from Indonesia out due to Anti-Dumping Duties. Although the Petitioner said that situation will not improve in the short to medium term, they still ask the ADC to extend AD Duties with the help of this sunset review.

Eventually the Petitioner and Viridian monopoly both in upstream and downstream will be strengthened. Therefore, it leads to significant disadvantage for Australia construction industry and eventually end users such as builders and housing owners, as the only outcomes of this demand supply gap are more expensive products.

3. The Petitioner is not injured

The Petitioner is running his furnace at full capacity as described in Exhibit 4 – Letter from CEO of Petitioner on 16 December 2020. Meanwhile, Petitioner has 80% of the market shares. It is well known in the market that Petitioner could not produce grey tinted glass since they are focussing on the production of CFG. Therefore, to fill in the shortage, the Petitioner has been importing substantial volumes of CFG from Xinyi Malaysia.

Based on CEO of Petitioner letter dated 4 June 2020 to customers, attached as **Exhibit 5 - Letter from CEO of Petitioner on 4 June 2020 (Official-Sensitive/ Confidential)**, the petitioner has increased prices since April 2020, and further confirmed the simplification of the increment methodology.

We quote Paragraph 3 of his letter, as follows:

[Confidential]

We quote Paragraph 4 of his letter, as follows:

[Confidential]

The above information clearly proves that the Petitioner is not getting injured instead he has been enjoying a monopoly in the market.



Public Record

Further, it is also confirmed that Petitioner is also importer of CFG, and selling the imported products to customers. It is therefore reasonable to allege that the Petitioner has been importing big volume from Malaysia, therefore keeping out Malaysia from the AD Investigation. The Petitioner as the importer of the Goods Under Consideration shall be considered as self injury, *i.e.* injury caused by their own action.

4. No Excess Capacity from AMG as Alleged by Petitioner

AMG has started increasing its capacity since 2016. The reasons are because AMG dedicates and focuses its production capacity to support Indonesian market and value added products for the building sector and automobile industry. From the total AMG production capacity, more than [Confidential] are sold in Indonesian domestic market, while the rest are meant for exports of value added products for building sector and automobile industry. **Please see as Exhibit 6 - AMG Brochure of Coated Glass**, which shows that AMG focuses on value added products, not CFG.

AMG's export to Australia for CFG kept decreasing from [Confidential] or [Confidential] of the total sales of AMG in 2016 to [Confidential] or [Confidential] of the total sales of AMG in 2020. To prove that AMG is not focussing on CFG sales, can also be seen by the export volume of CFG to all countries from 2016 to 2020 were not significant, and contributed to an average of [Confidential] of the total AMG sales.

In terms of AMG's domestic sales, the trend is up-trend for 2016 until 2020, except for automotive sector in 2020 due to Covid-19 Pandemic. Please see as **Exhibit 7 - news from electronic media in Indonesia regarding the sharp decrease of automotive Industry in Indonesia for 2020**.

We have provided our sales information from 2016 until 2020 in **Exhibit 8 - AMG total Sales Domestic and Export for year 2016-2020 (OFFICIAL - Sensitive/ Confidential)**. This information will show ADC that AMG has full capacity and already has its own market. It has no excess capacity as alleged by the Petitioner.

Therefore, the allegation of the Petitioner that AMG has excess capacity and can cause future injury to Petitioner is baseless and just not true.

5. AMG export is negligible to cause injury to the Petitioner.

AMG's export during the period of investigation was negligible, which was only [Confidential] against [Confidential] the total of CFG import to Australia, or only [Confidential]. Only Malaysia imports are causing injury to the Petitioner but these are self inflicted, as already pointed out in paragraph 2 and 3 above.

7/2/21



Public Record

6. The Petitioner has enjoyed monopoly and protection for ten years

The Petitioner, as the only producer of CFG in Australia has enjoyed monopoly for the Australian market, and 10 years protection from anti dumping duties applied from the Exporters under investigation. Based on the data set out in paragraph 2 above, we understand that the Petitioner has 80% market shares of the Australian market.

It will create unfair practice and injury for the downstream industry in Australia *i.e.*, domestic processors, builders and housing owners, if the anti dumping duties continue to be applied.

The Commission shall carefully consider the consequences of long continued protection.

7. Decrease of Export to Australia from China, Indonesia and Thailand

The trend of export to Australia from China, Indonesia and Thailand were decreasing from 2017 to 2020 (Please see Exhibit 1). Therefore, it is illogical for the Petitioner to claim that it has injured due to the export from China, Indonesia and Thailand.

Since Chinese company is exporting CFG through Malaysia and Thai company is doing so through United Arab Emirates, and there is no possibility of future injury from Indonesia (as explained in paragraph 4). Therefore, we would like to ask the ADC to terminate and close this investigation.

8. COVID-19 Pandemic

The period of investigation set out in this Anti Dumping investigation, is the COVID19 period. As you can see that [Confidential]. Therefore, ADC shall carefully consider this up-normal situation.

Thank you for your kind attention.

Kind Regards,
Law Office Yang & Co.

Christian Jaya, SH, LL.M

**Exhibit 1 – Export to Australia from 2017 until 2020 Per
Country**

OFFICIAL-Sensitive/ Confidential

Exhibit 2 – PPT File Acquisition by CSR Limited

Exhibit 3 – Australian Export Data of Australia on CFG
OFFICIAL-Sensitive/ Confidential

Exhibit 4- Letter from CEO of Petitioner in 16 December 2020

OFFICIAL-Sensitive/ Confidential

Exhibit 5 – Letter from CEO of Petitioner in June 2020

OFFICIAL-Sensitive/ Confidential

Exhibit 6 – AMG Brochure of Coated Glass

**Exhibit 7 News from Electronic Media in Indonesia regarding
the Sharp Decrease of Automotive Industry in Indonesia for
2020**

**Exhibit 8 – AMG Total Sales Domestic and Export for Year 2016
– 2020**

OFFICIAL-Sensitive/ Confidential