

For Publication

Investigations 3
Anti-Dumping Commission
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Dear Case Manager

Continuation Inquiry: Clear Float Glass exported to Australia from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand - Case No. 575

We act for Guardian Industries Corp Ltd (Thailand) (**Guardian**) and refer to the Anti-Dumping Commission (**ADC**) continuation inquiry into certain clear float glass (**CFG**) products exported from, relevantly, the Kingdom of Thailand (**Thailand**) following an application lodged by Oceania Glass Pty Ltd (**Applicant**).

The purpose of this submission is to respond to various documents uploaded to the Electronic Public Record (**EPR**) in this inquiry to date, and to demonstrate that the Commissioner of the ADC (**Commissioner**) should recommend to the Minister under s 269ZHF of the *Customs Act 1901* (Cth) (**Act**) that anti-dumping measures cease in respect of CFG.

1. Australian Industry Verification Report

- 1.1 Guardian refers to the Australian Industry Verification Report published on 20 May 2021 (EPR 16), and draws attention to a number of findings set out in that Report.
- 1.2 Firstly, Guardian notes the finding at paragraph [4.2] that: "*Oceania glass did not import the goods during the inquiry period. This was verified by reviewing the ABF import database*". Respectfully, Guardian suggests that that finding is not accurate, and submits that the Applicant has relied upon imports from Xinyi Glass and other manufacturers to supplement its local production capacity. In support of that proposition, Guardian:
 - (a) annexes as **Confidential Attachment 1** a statutory declaration made by an employee of a glass processor based in Victoria which purchases CFG from the Applicant (sensitive third-party information). The employee deposes that, based on the matters set out in the statutory declaration, "*I believe that Oceania Glass has supplied [the glass processor] with clear glass imported from Xinyi Malaysia, passed off as Oceania Glass product, in 2020 and 2021*";
 - (b) annexes as **Attachment 1** an email communication from the Applicant to a customer (sender and customer details and time stamp redacted: sensitive third-party information) dated December 2020 which refers to the demand for glass from the Applicant being "*beyond our supply capability*". The Applicant states that it "*continue[s] to exercise options to supplement supply*", and that it does "*not foresee an improvement to the current situation in the short to medium term*". The Applicant advises the customer that it "*may experience increases in lead times and periodically, stock might not be available when required*"; and

- (c) refers to the submission of PT Muliaglass uploaded on 12 March 2021 (EPR 3) at page 1.¹
- 1.3 Given the matters set out above, Guardian urges the ADC to reconsider the finding at paragraph [4.2] of the Verification Report and investigate the extent to which the Applicant or any affiliate or related third party:
- (a) purchases CFG from any overseas exporter (or local distributor with which the overseas exporter has a contract, arrangement or understanding); or
- (b) requests that any overseas exporter supplement the Applicant's domestic production.
- 1.4 Secondly, Guardian refers to the finding at paragraph [3.3] that: "*Due to the homogenous nature of CFG, price is the primary negotiating factor in the Australian market. As a commodity, there is very little differentiation between suppliers, going so far that in the absence of inline markings it is not possible to trace the origins of the CFG.*"
- 1.5 Respectfully, Guardian submits that these statements are not entirely correct. Guardian refers to **Confidential Attachment 1** and in particular: paragraphs [8] and [11](e) which demonstrate that there may be qualitative differences between CFG produced by different manufacturers; and paragraph [10] which demonstrates that such qualitative differences may inform a glass processor's decision as to whether CFG from a certain supplier is acceptable. Guardian submits that, to the extent the Applicant has relied on imported products to supplement its own supply, whether known to the customer at the time of ordering (eg. pursuant to communications such as **Attachment 1**) or not (eg. in the circumstances set out in **Confidential Attachment 1**), this may be a factor influencing customer satisfaction and purchasing decisions.
- 1.6 Thirdly, Guardian refers to the statement at paragraph [3.3] that the Applicant "*determines its prices using an import price parity model, which is significantly influenced by lower-priced imports*" and that the Applicant "*charges a slight premium for its merchandising sales*".
- 1.7 Respectfully, those statements are inconsistent. The fact of a price premium reflects that the Applicant is a price setter and does not set its price so as to match its competition. The price premium advantage affects the credibility of the Applicant's claim that it is suffering and would suffer price suppression.² Moreover, if it be that the Applicant does determine its prices using an import price parity model, that is a commercial decision for it. It does not furnish evidence that the Applicant is or would be compelled to lower its prices to defend its market share.
- 1.8 Fourthly, Guardian refers to the ADC's findings in the Verification Report which suggest that the Applicant has experienced positive sales and growth indicators. Such positive indicators include:

¹ which refers to "*requests to Muliaglass [by the Applicant] for significant volumes of CFG to supplement the requirements [sic] of both Oceania and their downstream processor Viridian*". See also submission of PT Muliaglass in Continuation Inquiry 575 uploaded on 10 May 2021 at page 1 which refers to the Applicant "... *still asking PT Muliaglass for support as a supplier to cover their shortfall in capacity to supply the market.*"

² Applicant's submission dated 24 June 2021 (EPR 18); Application, Attachment A page 6.

- (a) an increase in Australia sales volume since 2017, including a significant increase in 2020;³
 - (b) an increase in market share in 2020;⁴
 - (c) revenue growth in 2020;⁵
 - (d) a consistently high level of capacity utilization, with growth in 2020;⁶
 - (e) largely steady employment levels and wages, with a slight reduction in 2019 and 2020 respectively.⁷ Contrary to the ADC's conclusion at paragraph [8.6.9] of the Report that reduced employment and reduced wages indicate a deterioration in economic performance, both factors are positive indicators. Reduced employment should be considered a driver of efficiency, particularly if sales volume and production output increase (as is the case for the Applicant). Reduced wages have a positive influence on financials and are a driver of efficiency; total wages (as is charted at Figure 17) is a factor of headcount, and fewer heads reduce payroll costs; and
 - (f) increased receivables turnover.⁸ Faster collection on receivables is a favourable economic indicator.
- 1.9 Guardian submits that such positive indicators offset and undermine the Applicant's claim, relevant to the question of 'recurrence of material injury', that it has "*experienced a deterioration in its profit and profitability in 2019/20*", which "*continued the trend from 2018/19*" and "*demonstrates a deterioration in the industry's economic performance and is indicative of the susceptibility of the industry to changes in events including the expiration of anti-dumping measures against exporters that have maintained distribution links to the Australian market*".⁹
2. **Applicant's credibility**
- 2.1 Guardian refers to **Confidential Attachment 1** and submits that the matters deposed to (notably, the conclusion of the deponent that "*I believe that Oceania Glass has supplied [the glass processor] with clear glass imported from Xinyi Malaysia, passed off as Oceania Glass product, in 2020 and 2021*") cast into doubt the Applicant's general credibility and reduces the reliability of the claims upon which the Application is premised.
3. **Dumping is not likely to recur**
- 3.1 Guardian refers to the Applicant's submissions dated 28 May 2021 (EPR 17) at section III. Those submissions are without foundation and ought not be accepted.
- 3.2 The submission that it would "*clearly make commercial sense [for Guardian] to supply from Thailand (due to the short shipping timeframes) rather than the UAE should the measures be allowed to expire*" is illogical. Shipping timeframe is not the only let alone the predominant

³ at paragraphs [3.4], [8.3.1].

⁴ at paragraphs [3.4], [8.3.2].

⁵ at paragraph [8.6.3].

⁶ at paragraph [8.6.5].

⁷ at paragraphs [8.6.6], [8.6.7].

⁸ at paragraph [8.6.8].

⁹ Application (EPR 1), Attachment A page 7.

factor that contributes to commercial decisions around which products will be manufactured at which production facility and for which markets.

- 3.3 Guardian reiterates that, whether or not anti-dumping measures are continued as against Thailand, Guardian does not intend to supply CFG to Australia from its Thailand facility. The reasons for that are set out in Guardian’s submission dated 11 March 2021 (EPR 4) at paragraphs [3.3]-[3.4] and should be accepted over the Applicant’s speculative submissions.
- 3.4 The fact that Guardian has “*maintained distribution links into the Australian market*” is due to the export of value-added products (including mirror, picture frame glass and laminated products) to Australia, and does not constitute any evidence or indication that Guardian “*would seek to increase exports [of CFG] to Australia should the measures be allowed to expire*”.¹⁰
- 3.5 Guardian notes that, during the investigation period, it exported just one case of CFG 3mm to an Australian customer, with the acceptance of that order being mistakenly accepted by the plant. In support of the fact that Guardian does not export CFG to Australia, and to illustrate the matters set out at paragraph [3.3] of Guardian’s submission dated 11 March 2021, Guardian attaches as **Confidential Attachment 2** the relevant Australian price list (confidential business information).

4. **Conclusion**

- 4.1 The Commissioner should not be satisfied, in respect of Thailand, that the expiration of measures would lead, or be likely to lead, to a continuation of or recurrence of dumping and the material injury that the anti-dumping measures are intended to prevent.

Yours sincerely



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¹⁰ in the words of the Applicant’s submission dated 28 May 2021 (EPR 17).