

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**) in the above captioned continuation inquiry. We refer to the Statement of Essential Facts (**SEF**) published on 5 July 2021.

Non-satisfaction of s 269ZHF(2) test

Guardian welcomes and supports the Commissioner's preliminary finding of non-satisfaction that the expiration of the current measures in respect of goods from Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping and the material injury that the measures are intended to prevent.

Guardian observes that there is an evident and intelligible basis for the Commissioner's preliminary finding, and submits that it is legally reasonable and open to the Commissioner to conclude that the test set out in s 269ZHF(2) of the *Customs Act 1901* (Cth) is not met, and accordingly the Commissioner is prohibited from recommending to the Minister that anti-dumping measures be continued.

In particular, the Commissioner's preliminary finding was made:

- accepting Guardian's submission that the meaning of the word "likely" in s 269ZHF(2) means "more than 50 percent chance" and nothing less than "probable" (pursuant to Australian and WTO appellate body authorities): SEF at [8.2];
- taking into account the changes in Guardian's dumping margin since 2011: SEF at [8.5.1]. The Commission considered that:
 - the preliminary margin ascertained for the inquiry period may not be representative of the export price of possible future exports, given that it was based on a single export. While Guardian maintains that it does not intend to supply CFG from its Thailand facility (for the reasons set out in its submission dated 11 March 2021 at paragraphs [3.3]–[3.4], and its submissions dated 2 July 2021 at [3.4]–[3.5]), it supports the Commission's finding that the ascertained preliminary margin is not representative. The anomalous nature of the single export is supported by the material referred to at paragraph [3.5] of Guardian's submissions dated 2 July 2021;
 - while historical dumping may be an indicator that an exporter may dump in the future, that of itself is not sufficient to warrant a determination that an exporter is *likely* to export at dumped prices in the future. Given that the test in s 269ZHF(2) is a forward-looking one of likelihood, that statement is correct as a matter of law and logic; and
- taking into account that there is insufficient evidence to satisfy the Commission that Guardian is "likely" to export at dumped prices in the future: SEF at [8.5.1].

These matters provide a justifiable basis for a conclusion that, in respect of Thailand, the expiration of measures would not 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.

Preliminary findings in relation to Economic Condition of the Industry

In respect of the Commission's preliminary findings at sub-section [5.3] and section [6] of the SEF, Guardian refers to and repeats the submissions set out at paragraphs [1.4] – [1.9] of its submissions dated 2 July 2021 (EPR 22).

Yours sincerely



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