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Ref. No.: 30/Y&C/VII/2021

Jakarta, 26 July 2021

To:

Director, Investigations 3

Anti-Dumping Commission

Department of Industry, Science, Energy and Resources

Australian Government

Re: Rebuttal to Statement of Essential Facts 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 Sir,

We, Law office Yang & Co., in this matter representing PT Asahimas Flat Glass, Tbk ("**AMG**") and AGC Asia Pacific Pte Ltd ("**AAP**"), convey our response to Statement of Essential Facts No. 575 Inquiry Concerning the Continuation of Anti-Dumping Measures Applying to Clear Float Glass Exported to Australia from The People's Republic of China, The Republic of Indonesia and The Kingdom of Thailand issued by Australian Anti-Dumping Commission ("**ADC**") dated 5 July 2021 ("**SEF**"). We do not agree and strongly against the proposed recommendation from ADC to continue applying dumping duty for the goods exported from AMG, based on the following reasons:

1. Explanation of the products sold at dumped price

AMG's sale to Australia during period of investigation is solely to support AMG customers who bought value added products from AMG. Especially during the 4th quarter of 2020, the certain Australian customers asked for help from AMG to supply CFG, because they have trouble to source CFG locally. AMG gave [Official: Sensitive/Confidential] price due to the relationship with [Official: Sensitive/Confidential] customers, [Official: Sensitive/Confidential]. The comparison of value added products and CFG bought by those Australian customers was [Official: Sensitive/Confidential] value added products and [Official: Sensitive/Confidential] of CFG of all export to Australia. Please see attached **Exhibit 1 (Official-Sensitive / Confidential)**, showing the information of products bought by the Australian Customer.

Further, the lack of CFG within Australia was proven by the letters from the Petitioner to its customers on 16 December 2020, Exhibit 5 of our Letter No. 47/Y&C/IV/2021 dated 29 April 2021 ("**First Injury Submission**") and Guardian Industries Corp Ltd. (Thailand)'s submission dated 2 July 2021, paragraph 1.2(b) Attachment 1.

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We again reiterate that AMG Business Strategy is to sell value added products for export market. AMG is not aiming to sell CFG for exports, the sale of CFG merely for situational condition where the Australian customers who bought value added products cannot source their CFG from local market [Official: Sensitive/Confidential].

2. **AMG export is negligible to cause injury to the Petitioner.**

Based on the following facts, AMG export is negligible to cause injury to Australia Industry/Petitioner:

- a. We refer to paragraph 8.6.1 of SEF, in which ADC acknowledged that the volume of exported product by AMG during the inquiry period only represented less than half of one percent of the Australian industry's sales for the same period.
- b. The export volume of CFG from AMG to Australia from 2016 to 2020 was significantly showing a down trend, *i.e.*: [Table is sensitive/confidential]

Table 2.b. AMG Volume of CFG Export to Australia during 2016 to 2020 (in Index)

Description	2016	2017	2018	2019	2020
Volume of Export CFG from AMG to Australia (Ton)	100	52	20	18	9

- c. Again, we highlight the volume of AMG export of CFG to Australia during the inquiry period as follows:
 - i. AMG's export of CFG to Australia was only [Official: Sensitive/Confidential] against [Official: Sensitive/Confidential] the total of Australia import of CFG, or only [Official: Sensitive/Confidential] against the whole import of CFG into Australia.
 - ii. Total Indonesia export of CFG to is [Official: Sensitive/Confidential] while AMG's export was only [Official: Sensitive/Confidential] or only [Official: Sensitive/Confidential] against overall export of CFG from Indonesia.

Therefore, it is conclusive that the export of CFG by AMG to Australia during the period of investigation is very small, and the trend from 2016 shows a down trend, thus AMG cannot cause injury to Australian Industry/Petitioner.

- d. Further, we refer to Articles 3.1 and 3.2 of Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Anti-Dumping Agreement ("**AD Agreement**"), as follows:

"3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on **positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.**"

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“3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.”

Note: bold and underline are added

- e. We also refer to Appellate Body Report, US – Oil Country Tubular Goods Sunset Reviews, para. 278:

*“In our view, however, the Anti-Dumping Agreement distinguishes between ‘determination[s] of injury’, addressed in Article 3, and determinations of likelihood of ‘continuation or recurrence ... of injury’, addressed in Article 11.3. In addition, Article 11.3 does not contain any cross-reference to Article 3 to the effect that, in making the likelihood-of-injury determination, **all the provisions of Article 3—or any particular provisions of Article 3—must be followed by investigating authorities. Nor does any provision of Article 3 indicate that, wherever the term “injury” appears in the Anti-Dumping Agreement, a determination of injury must be made following the provisions of Article 3.**”*

Note: bold and underline are added

Based on the above facts, articles 3.1 and 3.2 of AD Agreement and paragraph 278 of Appellate Body Report US – Oil Tubular Goods Sunset Reviews, we believe ADC has wrongly made recommendation to continue applying anti dumping duty to AMG, on the basis of AMG has the ability to cause injury to Australian Industry/Petitioner.

We are confused with ADC’s analysis to determine that AMG with export to Australia for CFG only [Official: Sensitive/Confidential] of the total import, less than half of one percent of Australian industry’s total sales, and a down trend volume of export CFG will cause or would lead or would likely to lead to cause injury to the Australian Industry. While China and Thailand are exempted from Anti Dumping Duties which they have higher dumping duties and even worse, China did not cooperate to this investigation. The reason of ADC exempts China and Thailand are because their export volumes were negligible to cause injury to Australian industry. It is ironic that ADC does not take the same approach to AMG.

- f. We refer to paragraph 8.4.1, Table 11 – Index of change in Imports since 1 January 2016 of SEF. Table 11 shows index data of the imports of CFG from China, Indonesia and Thailand. The index data shows that the imports of CFG from China by Australia are lower than Indonesia significantly. We argue the approach of ADC in presenting Table 11 for import of CFG from China. Please find below the import data from China and Indonesia, it shows that mostly imports from China is more than Indonesia, only in 2020,

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the imports from Indonesia is slightly higher, but those were not coming from AMG. Please see below, import data of CFG to Australia from Trade Data International Pty Ltd that we have submitted as Exhibit 1 of our First Injury Submission, as follows:

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Based on the above data, it is obvious that volume of import of CFG from AMG is much lesser than from China and Thailand. Therefore if China and Thailand are exempted from Anti Dumping Investigation because of the decrease in volume of import, then ADC shall also take the same approach to AMG.

ADC's recommendation to continue applying Anti Dumping Duty to AMG is very unfair and breaches AD Agreement. We urge ADC to fairly take the same approach to AMG just like the consideration that they take to China and Thailand. It is obvious and proven that AMG's export to Australia is negligible and therefore it will not cause or likely to cause any injury to Australian Industry. ADC does not have positive evidence to conclude that AMG cause or would lead, or would be likely to lead, to cause material injury to the Australian industry based on the volume of export of AMG, and how ADC treats China and Thailand.

- g. Further, we refer to paragraph 9.1 of SEF, the ADC did not identify any exporters from Indonesia other than AMG and PT Muliaglass. In paragraph 8.6.1. of SEF, ADC determined that the exports during the inquiry period by PT Muliaglass were not at dumped prices while AMG was found to be exporting CFG at dumped prices. Therefore, since PT Muliaglass was not found to be sold CFG at dumped price, the negligible volume of export of CFG by AMG to Australia cannot cause or would cause or likely to cause injury to Australian industry. The AMG's export of CFG was only [Official: Sensitive/Confidential] against [Official: Sensitive/Confidential] the total of import of CFG into Australia, or only [Official: Sensitive/Confidential] of total import of CFG by Australia.
- h. We refer to Article 5.8 of AD Agreement:

*"An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price. **The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member**, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."*

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The Article 5.8 of the AD Agreement stipulates that the volume of dumped imports for less than 3 percent is negligible. The AMG's export of CFG was only [Official: Sensitive/Confidential] or less than the 3 percent threshold regulated under the Article 5.8 of the AD Agreement. Therefore, ADC shall recommend that the volume of dumped imports is negligible, and in consequences ADC shall recommend to discontinue the application of dumping margin to AMG.

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

ADC did not consider the import of CFG from The People's Republic of China and The Kingdom of Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping and the material injury to the Australian industry, and consider that PT Muliaglass were not at dumped prices. Therefore, it is logical to accuse that the injury suffered by Petitioner (if any) was caused by the import from Malaysia and United Arab Emirates ("UAE") based on the Application for the Publication of Dumping and/or Countervailing Duty notices Clear Float Glass exported from Malaysia and the UAE dated 15 March 2021 (Case No. 582) initiated by the Petitioner. In fact, the import of CFG to Australia from Malaysia and UAE increased and dominated the whole import of CFG to Australia, as highlighted by AMG, PT Muliaglass, Guardian, and Government of Indonesia in their submissions.

Therefore, it is unjustifiable for ADC to conclude that AMG continue to cause, would cause or likely to cause the injury to the Petitioner on this investigation. Since the product between this Case No. 575 and Case No. 582 are the same, we urge ADC to consider and analyse the impact of import from Malaysia and UAE on the Petitioner's injury on this investigation.

4. The Petitioner Imports CFG

As pointed on Paragraph 6.4.3 of the SEF, Multiple interested parties, including AMG accused that the Petitioner has imported CFG itself. We again refer to paragraph 2 of our Letter No. 03/Y&C/VII/2021 dated 05 July 2021 ("**Second Injury Submission**") and paragraph 1.2 of submission from Guardian Industries Corp Ltd dated 2 July 2021 to ADC for Case No. 575.

Further, we refer to the Government of Malaysia ("**GOM**") Submission dated 30 June 2021 to ADC for Case No. 582, in which they also highlighted the import conducted by the Petitioner from the Malaysia to cater to the domestic demand which contributed to the self-inflicting injury.

Although, on paragraph 8.6.4., ADC stated that ADC has not found any evidence of imports of CFG from Malaysia by the Petitioner in the inquiry period. By the facts that so many parties allege on the self-import, ADC shall take it very serious and shall thoroughly verify these facts. We urge ADC to also verify the import of CFG conducted by the Petitioner's affiliate *i.e.* Viridian Glass.

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5. No Excess Capacity from AMG as Alleged by Petitioner

We refer to Paragraph 8.4.3 of SEF, ADC neglects AMG information that AMG has no excess production capacity. In contrary ADC baselessly accused that AMG will direct the excess capacity to Australia. We reiterate that AMG has no excess capacity as AMG dedicates and focuses its production capacity to support Indonesian market and value-added products for the building sector and automobile industry.

AMG's glass production capacity was increased from 570,000 tons per year in 2016 to 720,000 tons per year in 2019, or increased of 150,000 tons capacity per year. We attach AMG News Release dated 18 February 2019 as **Exhibit 2- Asahimas Inaugurate of Flat Glass Plant in Cikampek**. However, despite of the facts AMG increased its production capacity, AMG's exports of CFG to Australia during 2016 to 2020 were significantly decreased as shown in Table 2.b, paragraph 2.b above.

AMG's business plan for the increased capacity is for solar-control coating facility of architectural glass for energy-saving buildings, which are growing in Indonesia and other Asian countries. Please see attach AGC News Release dated 9 November 2016 explaining AMG Business Strategy for the increased capacity, as **Exhibit 3 – AGC to Set Up Solar Control Coating Facility in Indonesia for its Architectural Glass Production**.

We refer to AMG's Annual Report for year 2020, which we have submitted to ADC on 23 April 2021). Page 38, 39, 40 and 49 of AMG Annual Report for year 2020 explains that AMG dedicates and focus its production to support Indonesian market and value-added products for the building sector and automobile industry. Please see below the summary:

- a. For Indonesian market:
 - The Indonesia's total population of 270 million citizens would require around 800 thousand tons. With this huge market, AMG's flat glass factories combined annual production capacity, *i.e.*, 720,000 tons per year will be able to supply to the Indonesian market.
- b. For automotive industry:
 - AMG locates their Cikampek flat glass factory near their automotive glass factory to allow AMG's automotive glass operations to be closely integrated with raw material and human resources, resulting in a more effective and efficient operation
 - AMG export destination countries of Auto Replacement Glass are Japan, ASEAN, Europe, Americas and China; and
 - The automotive glass produced by the AMG uses flat glass specialized for automotive as its raw material. AMG exports its automotive glass to several countries with automotive manufacturers, especially in Asia.
- c. For value-added products:
 - AMG focus on the valued-added products by adding new variant of value-added glass products as new green products.

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This shows that the AMG dedicates and focuses its production capacity to support Indonesian market and value-added products for the building sector and automobile industry. AMG has no excess capacity to exports CFG to Australia.

Therefore, ADC's accusation that AMG has excess capacity and will direct the excess to Australia is baseless. We respectfully request ADC to consider the above facts.

Thank you for your kind attention.

Kind Regards,
Law Office Yang & Co



Christian Jaya, SH, LL.M

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