



## **Consideration report number: 582**

Application for a dumping duty notice and a countervailing duty notice

Submitted by: Oceania Glass Pty Ltd

In relation to clear float glass exported to Australia from Malaysia and the United Arab Emirates

6 April 2021

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## ABBREVIATIONS

Abbreviations/short form	Full reference
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
the Act	<i>Customs Act 1901 (Cth)</i>
the Applicant	Oceania Glass Pty Ltd
CEO	Chief Executive Officer
CFG	Clear Float Glass
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
CSR Viridian	CSR Viridian Limited
CTMS	Cost to make and sell
EXW	Ex-works
FOB	Free on Board
GOM	Government of Malaysia
INV 362	<i>Investigation No. 362</i>
LTAR	Less than adequate remuneration
mm	Millimetres
Oceania Glass	Oceania Glass Pty Ltd
PKNM	Perbadanan Kemajuan Negeri Melaka
REP 159C	<i>International Trade Remedies Branch Report to the Minister No. 159C</i>
REP 335	<i>Anti-Dumping Commission Report No. 335</i>
REP 362	<i>Anti-Dumping Commission Report No. 362</i>
ROI	Return on investment
SIE	State-invested enterprise
UAE	the United Arab Emirates
Xinyi Glass	Xinyi Glass Holdings Limited

# 1. FINDINGS AND RECOMMENDATIONS

This report provides the result of the consideration by the Anti-Dumping Commission (the Commission) of an application under section 269TB(1)<sup>1</sup> of the *Customs Act 1901* (Cth) (the Act) by Oceania Glass Pty Ltd (Oceania Glass, the Applicant) for the publication of a dumping notice in respect of clear float glass (CFG or the goods) exported to Australia from Malaysia and the United Arab Emirates (UAE) and a countervailing duty notice in respect of the goods exported to Australia from Malaysia.

Oceania Glass alleges that the Australian industry for CFG has suffered material injury caused by CFG exported to Australia from Malaysia and the UAE at dumped prices (Malaysia and UAE) and subsidised prices (Malaysia).

The legislative framework that underpins the making of an application and the Commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Act.

## 1.1. Findings

In accordance with section 269TC(1), the Commission has examined the application and is satisfied that:

- the application complies with the requirements of section 269TB(4) (as set out in section 2.2 of this report);
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report); and
- there appear to be reasonable grounds for the publication of dumping and countervailing duty notices in respect of the goods the subject of the application (as set out in chapters 3, 4, 5 and 6 of this report).

## 1.2. Recommendations

Based on the above findings, the Commission recommends that the Commissioner of the Anti-Dumping Commission (Commissioner) decide not to reject the application and initiate an investigation to determine whether a dumping and countervailing duty notice should be published.

The Commission further recommends that:

- exports to Australia during the investigation period 1 April 2020 to 31 March 2021<sup>2</sup> be examined for dumping and subsidisation, and
- details of the Australian market from 1 April 2017 be examined for injury analysis purposes.

If the Commissioner agrees with these recommendations, the Commissioner must give public notice of the decision in accordance with the requirements set out in section 269TC(4).

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901* (Cth) unless otherwise specified.

<sup>2</sup> As per section 3.2 of *The Anti-Dumping Commission Dumping and Subsidy Manual (November 2018)*, the investigation period is generally the 12 months preceding the initiation date and ending on the most recently completed quarter or month.

## 2. THE APPLICATION AND THE AUSTRALIAN INDUSTRY

### 2.1. Lodgement of the application

#### 2.1.1. Legislative framework

The procedures for lodging an application are set out in section 269TB.

The procedures and timeframes for the Commissioner's consideration of the application are set out in section 269TC.

#### 2.1.2. The Commissioner's timeframe

Event	Date	Details
Application lodged and received by the Commissioner under sections 269TB(1) and (5)	15 March 2021	The Commission received an application from Oceania Glass which alleges that the Australian industry is suffering material injury caused by the goods imported into Australia from Malaysia at dumped and subsidised prices and the UAE at dumped prices.
Consideration decision due under section 269TC(1)	6 April 2021 <sup>3</sup>	The Commissioner shall decide whether to reject or not reject the application within 20 days after the application was lodged.

### 2.2. Compliance with section 269TB(4)

#### 2.2.1. Finding

Based on the information submitted by the applicant, the Commission considers that the application complies with section 269TB(4).

#### 2.2.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a dumping and countervailing duty notice if, among other things, the Commissioner is not satisfied that the application complies with section 269TB(4).

#### 2.2.3. The Commission's assessment

The table below summarises the Commission's assessment of compliance with section 269TB(4).

Requirement for the application	Details
Lodged in writing under section 269TB(4)(a)	The applicant lodged in writing confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the Commission's website at <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a> .
Lodged in an approved form under section 269TB(4)(b)	The application is in the approved form (Form B108) for the purpose of making an application under section 269TB(1).

<sup>3</sup> The date 20 days after the application was lodged is 4 April 2021. As this is a Sunday, the decision is due on the next working day, Tuesday 6 April 2021 (noting that Monday 5 April 2021 is a public holiday).

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Requirement for the application	Details
Contains such information as the form requires under section 269TB(4)(c)	The applicant provided: <ul style="list-style-type: none"> <li>• a completed declaration;</li> <li>• answers to all questions that were required by Form B108 to be answered by the applicant;</li> <li>• completed appendices required by Form B108; and</li> <li>• sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.</li> </ul>
Signed in the manner indicated in the form under section 269TB(4)(d)	The application was signed in the manner indicated in Form B108 by a representative of the applicant.
Supported by a sufficient part of the Australian industry under section 269TB(4)(e) and determined in accordance with section 269TB(6)	Oceania Glass states it is the only Australian manufacturer of the goods.  The Commission has considered the Australian industry for CFG in previous cases, in which it was found that CSR Viridian Limited (CSR Viridian) was the sole Australian manufacturer. Oceania Glass was formed in February 2019, as a result of a separation of the CSR Viridian business. As a result of the separation, Oceania Glass retains the CFG manufacturing capabilities of CSR Viridian, representing the entire Australian industry. The Commission is not aware of any other manufacturers of CFG in Australia.  Thus the Commission is satisfied that Oceania Glass accounts for more than 50% of the portion of the Australian industry producing like goods that has expressed support, or opposition, to, the application and accounts for not less than 25% of the total production or manufacture of like goods in Australia.
Lodged in the manner approved under section 269SMS for the purposes section 269TB(4)(f)	The application was lodged in a manner approved in the Commission's instrument made under section 269SMS, being by email to an address nominated in that instrument. <sup>4</sup> The application was therefore lodged in a manner approved under section 269SMS(2).

### 2.3. The goods the subject of the application

#### 2.3.1. The goods

The table below outlines the goods as described in the application.

Full description of the goods, as subject of the application
Clear float glass (CFG) in nominal thicknesses of 3 to 12 millimetres (mm).

<sup>4</sup> *Form and manner of lodging and withdrawing applications relating to anti-dumping matters: Instrument under section 269SMS of the Customs Act 1901, 23 November 2018.*

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<b>Further information</b>		
The following table details the tolerances for each of the thicknesses in the nominated range:		
<b>Nominal Thickness (mm)</b>	<b>Acceptable Tolerances (mm)</b>	
	<b>Minimum</b>	<b>Maximum</b>
3	2.80	3.50
4	3.51	4.50
5	4.51	5.50
6	5.51	7.00
8	7.01	9.00
10	9.01	11.00
12	11.01	12.30
The goods the subject of the application have the following characteristics:		
<ul style="list-style-type: none"> <li>• transparent;</li> <li>• flat; and</li> <li>• rectangular or square in shape.</li> </ul>		
Glass with the following characteristics is <u>not</u> the goods the subject of the application:		
<ul style="list-style-type: none"> <li>• coating, colour, tint or opaqueness;</li> <li>• absorbent, reflective or non-reflective layer;</li> <li>• wired;</li> <li>• bent, edge-worked, engraved, drilled, enamelled or otherwise worked;</li> <li>• framed or fitted with other materials;</li> <li>• toughened (tempered) or laminated;</li> <li>• acid etched; or</li> <li>• low iron.</li> </ul>		

**2.3.2. Tariff classification**

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*.

<b>Tariff Subheading</b>	<b>Statistical Code</b>	<b>Description</b>
7005	FLOAT GLASS AND SURFACE GROUND OR POLISHED GLASS, IN SHEETS, WHETHER OR NOT HAVING AN ABSORBENT, REFLECTING OR NON-REFLECTING LAYER, BUT NOT OTHERWISE WORKED:	
7005.2	Other non-wired glass:	
7005.29.00	Float glass, having a nominal thickness:	
	03	Exceeding 3 mm but not exceeding 4 mm
	04	Exceeding 4 mm but not exceeding 6 mm
	05	Exceeding 6 mm but not exceeding 10 mm
	06	Exceeding 10 mm
	09	Not exceeding 3 mm

**Table 1: General tariff classification for the goods**

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of



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the goods the subject of the application. Please refer to the goods description in section 2.3.1 for authoritative detail regarding the goods the subject of the application.

**2.3.3. Previous investigations and inquiries**

Previous investigations	
2011	<p>The then Chief Executive Officer (CEO) of the then Australian Customs and Border Protection Service initiated an investigation (<i>Investigation No. 159</i>) following an application from CSR Viridian, into the alleged dumping of CFG exported to Australia from China, Indonesia and Thailand.</p> <p>On 2 December 2010, the delegate of the CEO made the decision to terminate the investigation in relation to one exporter, Xinyi Ultrathin (Donguan) Co Ltd, on the basis that the level of dumping was less than 2%.<sup>5</sup> The delegate also made the decision to terminate the investigation in relation to all other exporters on the basis that the injury, if any, to the Australian industry that has been, or may be, caused by dumping was negligible.<sup>6</sup></p> <p>An application was made by CSR Viridian to the then Trade Measures Review Office (TMRO) for the review of the termination notice, and a decision was made by the TMRO to revoke the termination decision.</p> <p>Following the resumption of <i>Investigation No. 159</i>, on 17 October 2011, the then Attorney-General published a dumping notice in respect of goods exported from China, Indonesia and Thailand, following consideration of <i>International Trade Remedies Branch Report to the Minister No. 159C (REP 159C)</i>.<sup>7</sup></p>
2016	<p>On 8 September 2016, the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science varied the anti-dumping measures and took steps to secure their continuation for a further five years.<sup>8</sup> This followed consideration of the Commissioner’s recommendation in <i>Anti-Dumping Commission Report No. 335 (REP 335)</i> as a result of <i>Continuation Inquiry No. 335</i>.</p>
2019	<p>On 7 March 2019, the Minister for Industry, Science and Technology varied the notice in relation to the anti-dumping measures to include CFG exported from Thailand with edge working in the form of an ‘arris’, ‘rough arris’ or ‘seamed’ edge (removal of the sharp edges of the glass) on any number of sides or faces of the goods. This followed consideration of the Commissioner’s recommendation in <i>Anti-Dumping Commission Report No. 479</i> as a result of <i>Anti-Circumvention Inquiry No. 479</i>.</p>
2021	<p>On 2 February 2021, the Commissioner initiated an inquiry into whether the continuation of anti-dumping measures applying to CFG exported to Australia from China, Indonesia and Thailand is justified. The anti-dumping measures are due to expire on 17 October 2021. This matter is currently ongoing.</p>

**Table 2: Background to CFG cases**

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<sup>5</sup> Section 269TDA(1).

<sup>6</sup> Section 269TDA(13).

<sup>7</sup> Australian Customs Dumping Notice No. 2011/50 refers.

<sup>8</sup> Anti-Dumping Notice No. 2016/85 refers.

## **2.4. Like goods and the Australian industry**

### **2.4.1. Finding**

The Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- Oceania Glass produces goods that have characteristics that closely resemble the goods the subject of the application, and
- at least one substantial process in the manufacture of those goods is carried out in Australia.

### **2.4.2. Legislative framework**

Section 269TC(1) requires that the Commissioner reject an application for a dumping and countervailing duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

Like goods are defined under section 269T(1). Sections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

### **2.4.3. Locally produced like goods**

The table below summarises the Commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

<b>Factor</b>	<b>The Applicant’s claims</b>	<b>The Commission’s assessment</b>
Physical likeness	The applicant claims that the locally produced goods are physically alike to the imported goods, and that it would be difficult to distinguish between the two.	The information provided by the applicant indicates that the locally produced and imported goods are clear, flat, rectangular or square in shape and traded in the same nominal thicknesses. This is supported by the Commission’s own analysis of the Australian Border Force (ABF) import database. The Commission is therefore satisfied that the locally produced goods and imported goods have similar physical characteristics.
Commercial likeness	The applicant claims that both the locally produced goods directly compete with the imported goods across its customer base. Customers are readily able to change supplier as both goods are homogenous products.	The Commission reviewed the confidential attachments provided with the application and found that there appears to be direct price competition in the Australian market between the locally produced goods and the imported goods. The Commission is therefore satisfied that the locally produced goods and imported goods are commercially alike.

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<b>Factor</b>	<b>The Applicant's claims</b>	<b>The Commission's assessment</b>
Functional likeness	The applicant claims that both the locally produced goods and the imported goods are functionally alike, and can be further processed to be laminated, double glazed, soft coated or toughened. The locally produced goods and the imported goods can be used for the same end-uses, such as windows or door panels.	The Commission notes the interchangeable nature of the locally produced goods and the imported goods, as evidenced by the confidential attachments provided with the application. These attachments show that the Australian industry competes for sales to the same customers for similar (or the same) end-uses. The Commission is therefore satisfied that the locally produced goods and the imported goods are functionally alike.
Production likeness	The applicant claims that the production process for CFG in Malaysia and the UAE is essentially the same as is used in Australia.	In previous investigations and inquiries relating to CFG, the Commission has found that locally produced CFG and imported CFG use essentially the same "float" production process. <sup>9</sup> The Commission is therefore satisfied that the locally produced goods and imported goods are produced using the same or similar production processes.
<b>Commission's assessment</b>		
Based on the analysis above, the Commission considers that locally produced CFG has characteristics that closely resemble the goods comprising the subject of the application and are, therefore, like goods.		

**2.4.4. Manufacture in Australia**

The table below summarises the Commission's assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

<b>The Applicant's claims</b>
Oceania Glass claims that it manufactures like goods in Australia. Certain raw material inputs are sourced from international markets. Oceania Glass describes and illustrates its production process on pp.12-13 of its application.
<b>The Commission's assessment</b>
Based on the description of the manufacturing process provided by Oceania Glass in its application, the Commission is satisfied that Oceania Glass manufactures CFG using the float process, and that this process takes place at its facilities in Australia. The Commission is therefore satisfied that like goods are manufactured in Australia, with at least one substantial process in the manufacture of these like goods being carried out in Australia.

<sup>9</sup> See, for example, REP 355 concerning the continuation of anti-dumping measures applying to CFG exported from China, Indonesia and Thailand.

## 2.5. Australian industry information

### 2.5.1. Background

The table below summarises the Commission’s assessment of whether Oceania Glass has provided sufficient information in the application to analyse the performance of the Australian industry.

<b>Have the relevant appendices to the application been completed?</b>		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Yes
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes
<b>General administration and accounting information – Oceania Glass Pty Ltd</b>		
History	Oceania Glass was created as a result of a demerger process on 31 January 2019. Prior to this, Oceania Glass was part of Viridian Glass (Viridian). The two businesses are now separate as a result of this demerger.	
Ownership	For the period up until and including 31 January 2019, Oceania Glass was owned by CSR Viridian. On 1 February 2019, CSR Viridian was purchased by Crescent Capital Partners IV, and as part of this acquisition, certain operations were transferred to a new, standalone legal entity (i.e. Oceania Glass).	
Operations	Oceania Glass specialises in the manufacturing, selling and distribution of flat architectural glass.	
Financial year	Oceania Glass’s financial reporting period is 1 April to 31 March.	
Audited accounts and annual reports	Since its demerger on 31 January 2019, Oceania Glass has been required to prepare and lodge financial statements to ASIC. The company provided a copy of the annual report and audited financial statements for CCP VI VG Holdings Pty Ltd, its statutory reporting entity, for the 14 month period ending 31 March 2020. As this was the company’s inaugural financial statement, it covered an extended period (approximately 14 months of sales).	
<b>Production and sales information</b>	<b>Cost to make and sell information</b>	<b>Other injury factors</b>
Oceania Glass has provided detailed production and sales information for the period 1 April 2016 to 31 December 2020.	Oceania Glass has provided detailed domestic cost to make and sell information for the period 1 April 2016 to 31 December 2020. Data has been provided base on various thicknesses as well as in aggregate.	Oceania Glass has provided data on other injury factors for the period 1 January 2017 to 31 December 2020.

**The Commission’s assessment**

Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse the performance of the Australian industry between 1 January 2017 and 31 December 2020.

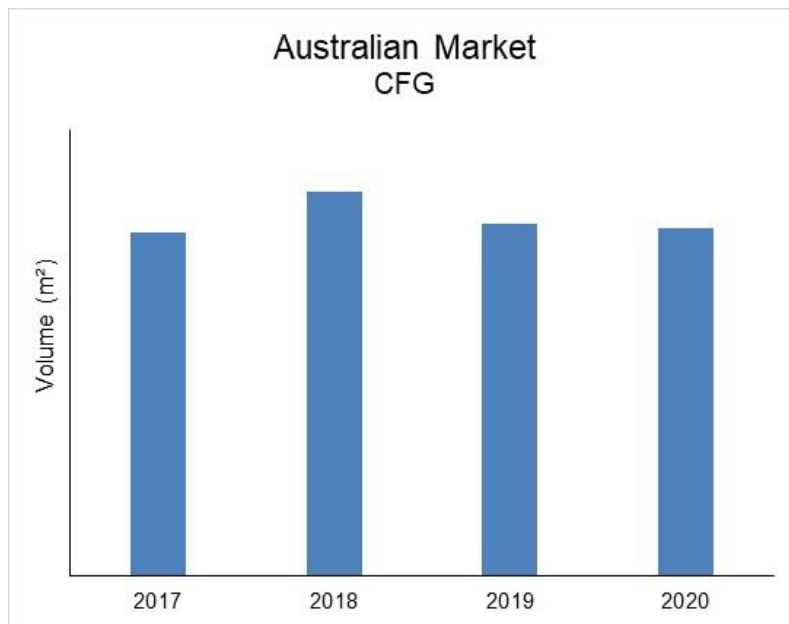
The Commission has recommended in section 1.2 that the Commissioner examine the period of 1 April 2020 to 31 March 2021 for dumping and subsidisation in relation to an investigation. The Commission will request additional information from the Australian industry to cover the period 1 January 2021 to 31 March 2021 for this purpose.

**2.5.2. Market size**

Oceania Glass estimated the size of the Australian market, in metres squared, using its sales of CFG and import data sourced from the Australian Bureau of Statistics (ABS). This is set out in Confidential Appendix A2 of its application.

The Commission has examined Oceania Glass’s approach and considers that its estimates of the Australian market size are based on a reasonable approach given the limited information available to it.

For the purposes of estimating the Australian market size, the Commission has instead relied upon Oceania Glass’s sales data and information obtained from the ABF import database which is considered more reliable than ABS data in this instance, due to the Commission’s ability to apply filters and eliminate outliers. The Commission’s estimate is shown in the chart below:



**Figure 1: Australian market for CFG**

The chart above shows the size of the Australian market peaking in 2018 with declines in subsequent years.<sup>10</sup>

The Commission will reconsider the size of the Australian market during the course the investigation, based on verified data from interested parties.

The Commission’s analysis of the Australian market size is contained in **Confidential Attachment 1**.

<sup>10</sup> All years shown in graphs throughout this report are calendar years.

## 3. REASONABLE GROUNDS – DUMPING

### 3.1. Findings

Pursuant to section 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from Malaysia and the UAE at dumped prices,
- the estimated dumping margin for exports from Malaysia and the UAE is greater than 2% and therefore is not negligible, and
- the estimated volume of goods from Malaysia and the UAE that appear to have been dumped is each greater than 3% of the total Australian import volume of goods and therefore is not negligible.

### 3.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Minister for Industry, Science and Technology must be satisfied of in order to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e. that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

### 3.3. Export price

#### 3.3.1. Legislative framework

Export price is determined by applying the requirements in section 269TAB taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

#### 3.3.2. The Applicant's estimate

The table below summarises the approach taken by the applicant to estimate export prices and the evidence relied upon.

Country	Basis of estimate	Details
Malaysia	ABS data	Oceania Glass used import data from the ABS to estimate export prices for goods exported from Malaysia and UAE. For each country, separate export prices were calculated for each statistical code of the tariff classification, which were then aggregated to determine a single export price.
UAE		

**Table 3: Oceania Glass's estimate of export prices from Malaysia and the UAE**

#### 3.3.3. The Commission's assessment

The Commission examined the export price calculations and supporting evidence provided by Oceania Glass. The Commission considers that Oceania Glass's approach to estimating export prices is reasonable, considering the potential limitations of the information available to it.

To assess the reliability of the export price estimated by Oceania Glass, the Commission compared the export prices for each country subject to the application to data obtained from the ABF import database. In its examination of this data, the

Commission identified consignments declared under the relevant tariff classifications. To exclude outlying data, which may distort any findings, the Commission then filtered the data to exclude transactions where the Free on Board (FOB) price per square metre was outside a range of AUD\$2 to AUD\$30. This was considered a reasonable price range to use as a filter for the goods, based on the export price and normal values referred to in the application, and observations from previous investigations and inquiries in respect of CFG.

The Commission calculated an export price for Malaysia and the UAE on a whole-of-country level and identified material variances between the Commission’s calculations and Oceania Glass’. The Commission considers the ABF import data to be more reliable as it allows for a more granular analysis of the import data, and has therefore relied on it for the purpose of its revised calculations of the estimated dumping margins at section 3.5.2.

Oceania Glass’s calculation of export price and the Commission’s comparison is provided at **Confidential Attachment 2**.

### **3.4. Normal value**

#### **3.4.1. Legislative framework**

Normal value is determined by applying the requirements in section 269TAC taking into account whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA;
- the goods were sold in the ordinary course of trade under section 269TAAD;
- there has been an absence or low volume of sales of like goods in the country of export; and
- whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under section 269TAC(1).

#### **3.4.2. The Applicant's estimate**

The table below summarises the approach taken by the applicant to estimate normal values and the evidence relied upon.

Country	Basis of estimate	Details
Malaysia	Commercial data	Oceania Glass constructed normal values at ex-works (EXW) terms using its own manufacturing and selling costs, plus an amount for profit <sup>11</sup> . Downwards adjustments for each country were made to the labour costs of manufacturing and selling activities based on World Bank data. As it does not have relevant information to be able to do so, Oceania Glass has made no adjustments for inland transport and port handling costs.
UAE		

**Table 4: Oceania Glass’s estimate of normal values from Malaysia and the UAE**

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<sup>11</sup> Oceania Glass applied a 10 per cent amount for profit for both Malaysia and the UAE. Oceania Glass claim in its application that this is a reasonable amount of profit for a capital intensive industry. Oceania Glass highlighted that Xinyi Glass Holdings (the parent company of the Malaysian exporter of CFG) recorded a 19.4% operating profit over revenue in the six months ending June 2020 (29.0% for same period in 2019). Oceania Glass considers that this demonstrates that the 10% profit applied in the constructed normal value is reasonable.

### 3.4.3. The Commission's assessment

#### Normal values

The Commission must determine whether there appear to be reasonable grounds for supporting a claim that the goods have been exported at dumped prices. The Commission is therefore required to assess whether the estimated normal value provided in the application is a reasonable estimate.

When making this assessment, the Commission is cognisant of the fact that applicants usually have access to limited data to enable them to estimate the costs in the country of production. The Commission considers it reasonable for applicants to use their own costs, but where it is reasonable and practicable to do so, the Commission considers that those costs should be adjusted to reflect costs in the country of production.

In certain circumstances, the Commission will have access to information which will enable it to make an assessment of the reasonableness of the information relied on by the applicant. The Commission may also have other sources of information that are directly relevant to the application, which the Commission may prefer to use in making its own assessment, particularly if that information is considered more relevant and reliable than the information relied upon by the applicant.

The Commission considers that the inputs used in the constructed normal value calculations by Oceania Glass are reasonable and free of error. The cost of production has been based on Oceania Glass's costs but adjusted to broadly reflect costs in Malaysia and the UAE. The profit applied in the calculations is based on a Malaysian exporter's financial statements. Removal of the profit from the calculation still results in dumping above negligible levels.

To further assess the suitability of the normal values calculated by Oceania Glass in respect of Malaysia, the Commission compared Oceania Glass's normal values to the normal values calculated in REP 335 for all other exporters from Thailand. The normal values in respect of Thailand were chosen for comparison as it is the most relevant and most contemporaneous data available to the Commission, noting also that Thailand is in a similar geographical region as Malaysia. The Commission's assessment showed that both normal values resulted in a dumping margin that was above negligible levels (section 3.5.2).

The Commission has no better information in respect of the UAE. Nonetheless, the approach taken by Ocean Glass for the UAE is consistent with that used for Malaysia and appears reasonable.

Oceania Glass's calculation of normal value and the Commission's assessment is provided at **Confidential Attachment 3**.

#### Adjustments to normal values

Although Oceania Glass does not have access to relevant information to adjust its estimated EXW normal values to ensure a fair comparison with FOB export prices, the Commission notes that such adjustments would increase the normal values and estimated dumping margins at section 3.5.2.

## 3.5. Dumping margins

### 3.5.1. Legislative framework

Dumping margins are determined in accordance with the requirements of section 269TACB.



Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

**3.5.2. The Commission's assessment**

The table below summarises the dumping margins estimated by the applicant and dumping margins calculated by the Commission, using the method described in sections 3.3.3 and 3.4.3. Dumping margins are expressed as a percentage of the export price.

<b>Country</b>	<b>The Applicant's estimate</b>	<b>Commission's revised estimate</b>
Malaysia	48.9%	54.8%
UAE	42.6%	40.0%

**Table 5: Estimate of dumping margins**

The Commission is satisfied that there appears to be reasonable grounds that the dumping margins are above negligible levels for Malaysia and the UAE.

The Commission's assessment of dumping margins is provided at **Confidential Attachment 4**.

**3.5.3. Volume of dumped goods**

Sections 269TDA(3) and (4) provide that an investigation into dumping must be terminated if the total volume of goods exported to Australia over the relevant investigation period that may be dumped is negligible. A negligible volume of goods is less than 3% of the total Australian import volume.

Based on its analysis of the ABF import database which shows the level of imports as being greater than 3% of the total Australian import volume, the Commission is satisfied that there appears to be reasonable grounds to consider that the volume of dumped goods are above negligible levels for each of Malaysia and the UAE.

The Commission's assessment of import volumes is provided at **Confidential Attachment 4**.

## 4. REASONABLE GROUNDS – SUBSIDISATION (MALAYSIA)

### 4.1. Findings

Pursuant to section 269TC(1)(c), the Commission considers that there appear to be reasonable grounds to support the claims that:

- the goods exported to Australia from Malaysia have been subsidised;
- the estimated subsidy margin for exports from Malaysia is greater than 2% and therefore is not negligible;<sup>12</sup> and
- the estimated volume of goods from Malaysia that appear to have been subsidised is greater than 4% of the total Australian import volume of goods and therefore is not negligible.<sup>13</sup>

### 4.2. Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a countervailing duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a countervailing duty notice.

Under section 269TJ, one of the matters that the Minister must be satisfied of in order to publish a countervailing duty notice is that subsidisation has taken place (to an extent that is not negligible). This issue is considered in the following sections.

### 4.3. Consultation with the Government of Malaysia

After receiving the application, in accordance with section 269TB(2C), the Commission invited the Government of Malaysia (GOM) for consultations. The purpose of the consultations is to provide the GOM with an opportunity to respond to the claims made within the application in relation to countervailable subsidies, including whether they exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry, with the aim of arriving at a mutually agreed solution.

To assist in determining whether it wished to undertake consultations and what it would like to consult on, the GOM was provided with a non-confidential version of the countervailing application.

The GOM did not respond to the Commission's initial consultation request. The Commission will continue to engage with the GOM and leave the opportunity for consultation open during the course of this investigation.

### 4.4. Subsidy programs

#### 4.4.1. Legislative framework

The determination as to whether there is a countervailable subsidy is made in accordance with section 269T(1), section 269T(2AA), section 269TACC and section 269TAAC.

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<sup>12</sup> Malaysia is a developing country and accordingly the threshold for determining whether the amount of countervailable subsidisation is negligible is 2% (section 269TDA(16) refers).

<sup>13</sup> Malaysia is a developing country and accordingly the threshold for determining whether the volume of subsidised goods is negligible is 4% (section 269TDA(8) refers).

#### 4.4.2. The Applicant's claims

The table below summarises the claims by the applicant that the goods exported to Australia have benefited from countervailable subsidies and the evidence relied upon.

Program	Summary of claims
Program 1 – Income tax reductions ('Pioneer Status')	Oceania Glass identified these programs from the Commission's findings in <i>Investigation No. 362 – Aluminium extrusions from Malaysia and Vietnam</i> (INV 362). The program numbers referred to are the program numbers from INV362, with the exception of program 7 which is a new program alleged in the application. <sup>14</sup>
Program 2 – Income tax allowance	
Program 3 – Double deductions for export credit insurance	
Program 4 – Double deductions for freight charges relating to goods originating from Sabah and Sarawak <sup>16</sup>	
Program 6 – Reinvestment allowance	
Program 7 – Gas at less than adequate remuneration (LTAR)	Oceania Glass claims that information from Glass Worldwide indicates that Xinyi Glass Holdings Limited (Xinyi Glass) from Malaysia has received beneficial taxation treatment which may relate to program 1, 2 or 6. <sup>15</sup>
	Oceania Glass was made aware of this program by the announcement from Xinyi Glass that it had acquired land from Perbadanan Kemajuan Negeri Melaka (PKNM) for the construction of a glass production plant. PKNM is a state-invested enterprise (SIE) and was involved in the development of land infrastructure for Xinyi Glass as part of the purchase agreement.

**Table 6: Summary of countervailable subsidies**

The Commission has examined the claimed subsidy programs in Oceania Glass's application. Although programs 1 to 6 were investigated in relation to aluminium extrusions, they may extend to all companies which meet the relevant eligibility criteria. These programs, and the evidence relied upon by Oceania Glass in its application, are summarised in **Non-Confidential Appendix 1**.

#### 4.4.3. The Commission's assessment

The Commission has previously assessed programs 1 to 6 during INV 362. In *Anti-Dumping Commission Report No. 362* (REP 362) the Commission identified that exporters of aluminium extrusions only received a countervailable subsidy under programs 4 and 6.<sup>17</sup>

With the exception of program 5, the programs assessed in REP 362 may also be applicable to exporters of CFG from Malaysia, as they are not limited to a specific product. Instead, the programs assessed in REP 362 appear to be applicable to all companies which meet the criteria, including being an exporter and a manufacturer. The Commission also notes the existence of preferential tax treatment enjoyed by

<sup>14</sup> Program 5 – Double deduction for insurance premiums for exporters and importers was also investigated in INV 362, however this program ceased to apply from the 2016 year of assessment.

<sup>15</sup> EPR 582, no 1, Oceania Glass, Public Record Application, Non-Confidential Attachment C-1.1.

<sup>16</sup> Oceania Glass has not claimed that a benefit has been received under this program in its application.

<sup>17</sup> EPR 362, no 89, REP 362.

glass manufacturers in Malaysia as cited in Glass Worldwide July/August 2019 in respect of programs 1, 2 and 6.

On these bases, the Commission considers the evidence provided upon by Oceania Glass at section 4.4.2 establishes an appearance of reasonable grounds that Malaysian exporters have received a benefit from these subsidy programs.

Oceania Glass has based its claim for program 7 on an announcement from Xinyi Glass that it had entered into an agreement for the acquisition of land from PKNM, a state-owned enterprise focused on economic development of the state of Malacca.<sup>18</sup>

The terms of the agreement between Xinyi Glass and PKNM state that PKNM has also agreed to construct the land infrastructure, which includes infrastructure for the supply of electricity, water and natural gas. Oceania Glass claims that this would reasonably be determined to include gas supply and a long-term supply agreement. Oceania Glass further claims that the acquisition costs for gas under this agreement are likely to be far lower than the current Malaysian domestic energy prices.<sup>19</sup>

Presently, the Commission considers that insufficient evidence was provided by Oceania Glass at section 4.4.2 to establish an appearance of reasonable grounds that Malaysian exporters have received a benefit from Program 7.

The Commission will further assess the existence of subsidy programs during the course of the investigation.

#### **4.4.4. Volume of subsidised goods**

Sections 269TDA(7) and (8) provide that an investigation into whether there are countervailing subsidies must be terminated if the total volume of goods exported to Australia over the relevant investigation period that may be subsidised is negligible.

A negligible volume of goods for a developing country is less than 4% of the total Australian import volume. The Commission has estimated the volumes of goods exported from Malaysia in **Confidential Attachment 4**. The Commission's assessment concludes that the volume of goods imported from Malaysia during the investigation period is greater than 4%. Accordingly, the Commission is satisfied that there appears to be reasonable grounds to consider that the volume of subsidised goods is above negligible levels for Malaysia.

### **4.5. Amount of countervailable subsidy**

#### **4.5.1. Legislative framework**

Subsidy margins are determined under section 269TACD.

The amount of the countervailable subsidisation and the volume of subsidised goods cannot be negligible. Whether the countervailable subsidisation is negligible is assessed under section 269TDA.

#### **4.5.2. The Commission's assessment**

Oceania Glass has not provided an estimated amount of subsidy received overall, or subsidy margins for the programs identified in section 4.4.2 in relation to exports of CFG from Malaysia. The Commission accepts that the applicant can only provide information available to it. Evidence regarding amounts of subsidies received is not always publically available and estimating subsidy margins can be difficult.

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<sup>18</sup> EPR 582, no 1, Oceania Glass, Public Record Application, Non-Confidential Attachment C-1.2.

<sup>19</sup> EPR 582, no 1, Oceania Glass, Public Record Application, p 48.

## PUBLIC RECORD

As discussed in section 4.4.3, the Commission has previously assessed subsidy programs relevant to exports from Malaysia in relation to aluminium extrusions. The subsidy margins calculated for aluminium extrusions in REP 362 with respect to exports from Malaysia were found to be above non-negligible (above 2%) levels for non-cooperative entities. These subsidy margins were calculated on the basis of a benefit received in relation to programs 4 and 6. Whilst Oceania Glass has not claimed that there has been a benefit received under program 4 in its application, the subsidy margin calculated in REP 362 was still above non-negligible levels with program 4 removed.<sup>20</sup>

The Commission considers for the purposes of this report, the subsidy margins determined in REP 362 establishes an appearance of reasonable grounds that the subsidy margin for exports of CFG from Malaysia are not negligible.

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<sup>20</sup> EPR 362, no 89, REP 362, Confidential Attachment 10.

## 5. REASONABLE GROUNDS – INJURY TO THE AUSTRALIAN INDUSTRY

### 5.1. Findings

Pursuant to section 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury in the form of:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability; and
- reduced return on investment (ROI).

### 5.2. Legislative framework

Under sections 269TG and 269TJ, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and/or a countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

### 5.3. The Applicant's claims

Oceania Glass claims that the Australian industry has been injured through:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced ROI; and
- reduced attractiveness to reinvest.

Oceania Glass notes in its application that the CFG business was purchased from CSR Viridian with effect from 1 February 2019, and that it considers material injury from dumped exports from Malaysia and UAE and subsidised exports from Malaysia commenced prior to Oceania Glass taking ownership.

### 5.4. Approach to injury analysis

#### 5.4.1. Legislative framework

The matters that may be considered in determining whether the Australian industry has suffered material injury are set out in section 269TAE.

#### 5.4.2. The Commission's approach

This section analyses the economic condition of the Australian industry and provides an assessment as to whether there appear to be reasonable grounds to support a claim that the Australian industry has suffered material injury.

In its analysis of volume effects and market share, the Commission has used data provided by the applicant in Confidential Appendix A2 to the Application in respect of Australian industry sales, and import data from the ABF import database.

The Commission's assessment of the economic condition of the Australian industry (and therefore the basis for the figures set out in this section) forms

**Confidential Attachment 1.**

### 5.4.3. Injury analysis period

The purpose of the injury analysis period is to enable the Commission to identify and examine trends in the Australian market, which in turn assists the Commission in its examination of whether material injury has been caused by dumping and subsidisation.

Oceania Glass has provided data from 1 January 2017 to 31 December 2020 for this purpose.

## 5.5. Volume effects

Oceania Glass has not claimed volume injury within its application.

### 5.5.1. Sales volume

The figure below depicts Oceania Glass's total sales volumes for the last four years ending 31 December 2020.

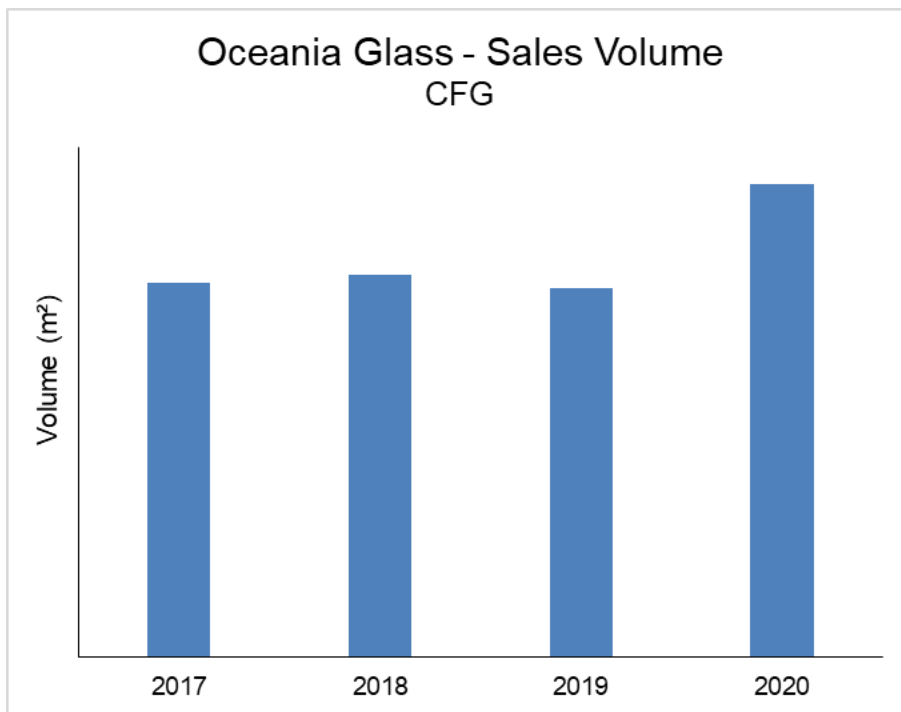


Figure 2: Oceania Glass's sales volume

The Commission notes that sales volumes were reasonably stable across the injury analysis period before increasing in 2020.

### 5.5.2. Market share

The figure below sets out the Commission's assessment of the market share held by Oceania Glass, imports from Malaysia and the UAE, imports from countries subject to measures, and imports from all other countries, since 1 January 2017.

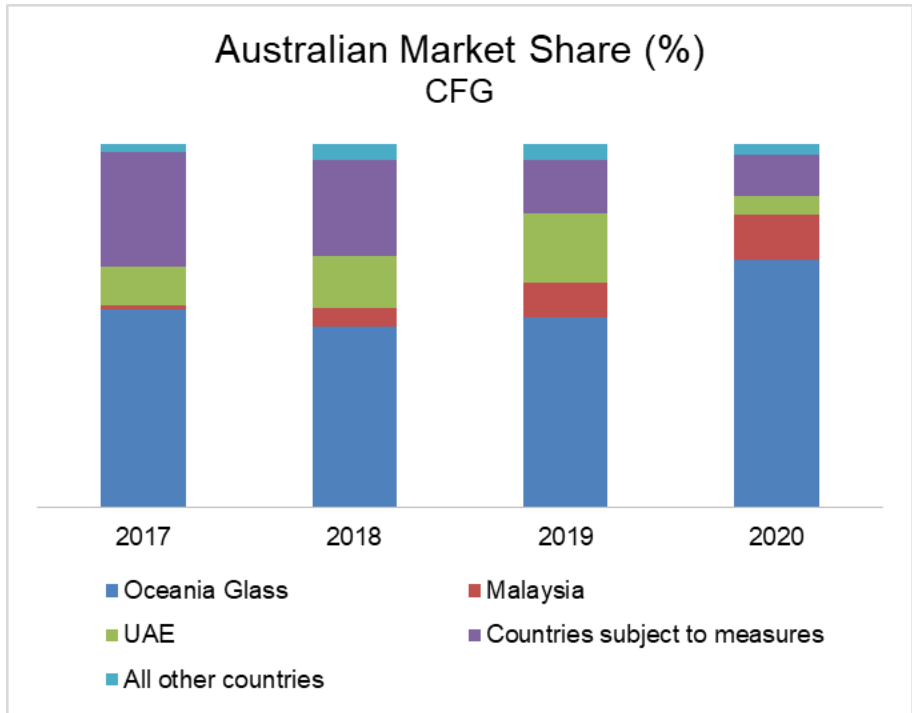


Figure 3: Australian market share

The figure above demonstrates that:

- Oceania Glass’s market share was relatively stable until 2019, however has increased in 2020;
- Malaysia’s market share has increased year on year throughout the injury analysis periods;
- the UAE enjoyed growing market share until 2019, however this has reduced significantly in 2020;
- countries subject to measures have experienced, in total terms, a reducing market share; and
- all other counties have maintained a small but stable market share.

**5.5.3. Conclusion – volume effects**

Based on the analysis above the Commission does not consider that the Australian industry has suffered injury in the form of lost sales volume, decreased production volumes or reduced market share.

**5.6. Price effects**

**5.6.1. Price depression and price suppression**

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Oceania Glass has alleged that price depression and price suppression has occurred due to price undercutting by the dumped and subsidised goods from Malaysia and the dumped goods from UAE.

The figure below shows the trends in Oceania Glass’s weighted average per unit selling price and weighted average per unit cost to make and sell (CTMS).



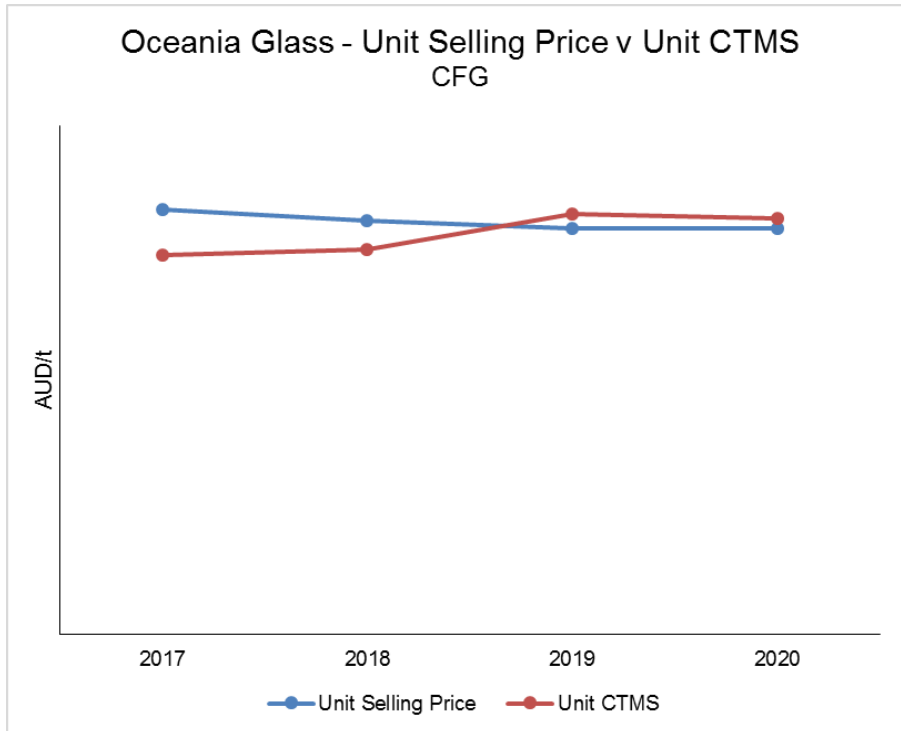


Figure 4: Comparison of Oceania Glass’s price and CTMS

The figure above demonstrates that:

- per unit selling prices were in decline from 2017 to 2019, with some stabilisation in 2020;
- per unit CTMS increased from 2017 to 2019 before reducing slightly in 2020; and
- due to the combination of falling sales prices and rising CTMS, Oceania Glass has moved from achieving a positive margin on sales at the commencement of the injury analysis period to a negative margin in 2020.

This analysis supports Oceania Glass’s claim that it has suffered injury in the form of price depression and suppression.

#### 5.6.2. Conclusion – price effects

Based on the above, the Commission is satisfied to that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of price depression and price suppression.

### 5.7. Profit and profitability effects

#### 5.7.1. Profit and profitability

Oceania Glass has alleged that it has suffered reduced profits and reduced profitability due to the dumped and subsidised goods from Malaysia and the dumped goods from UAE. Oceania Glass provided the unit profit or loss for its sales of like goods, which is charted in the figure below.

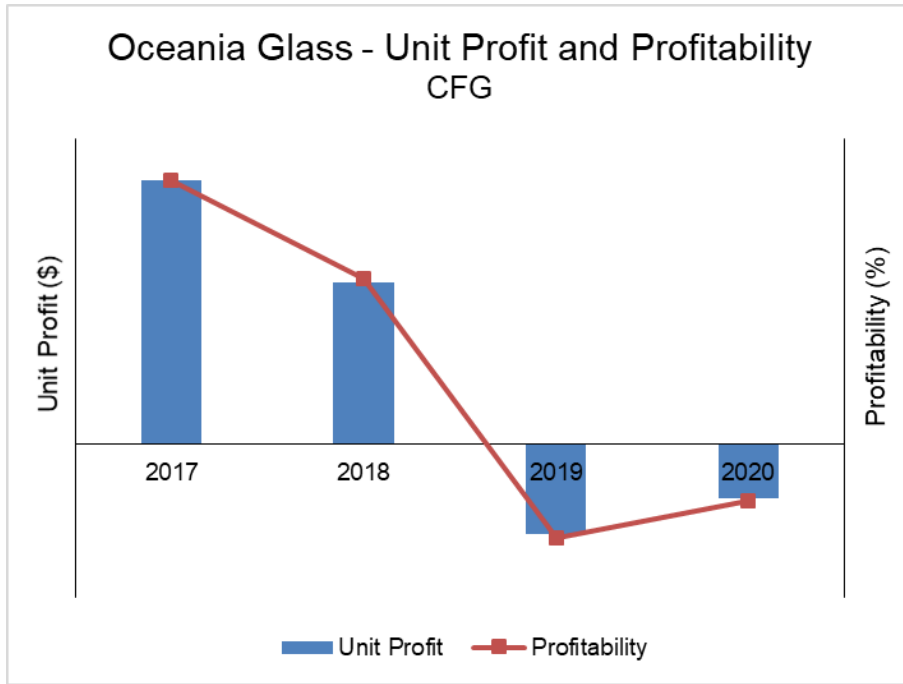


Figure 5: Comparison of Oceania Glass's unit profit and profitability

The figure above demonstrates that Oceania Glass was able to sell CFG profitably up until 2018, after which time sales were made on average at a loss.

This finding supports Oceania Glass's claim that it has suffered injury in the form of reduced profits and profitability.

**5.7.2. Conclusion – profit and profitability effects**

Based on the above, the Commission is satisfied to that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of lost profit and profitability.

**5.8. Other injury factors**

Oceania Glass has additionally claimed injury from:

- reduced ROI; and
- reduced attractiveness to reinvest.

**5.8.1. Return on investment**

Oceania Glass has claimed injury in the form of reduced ROI, which is charted in the figure below.

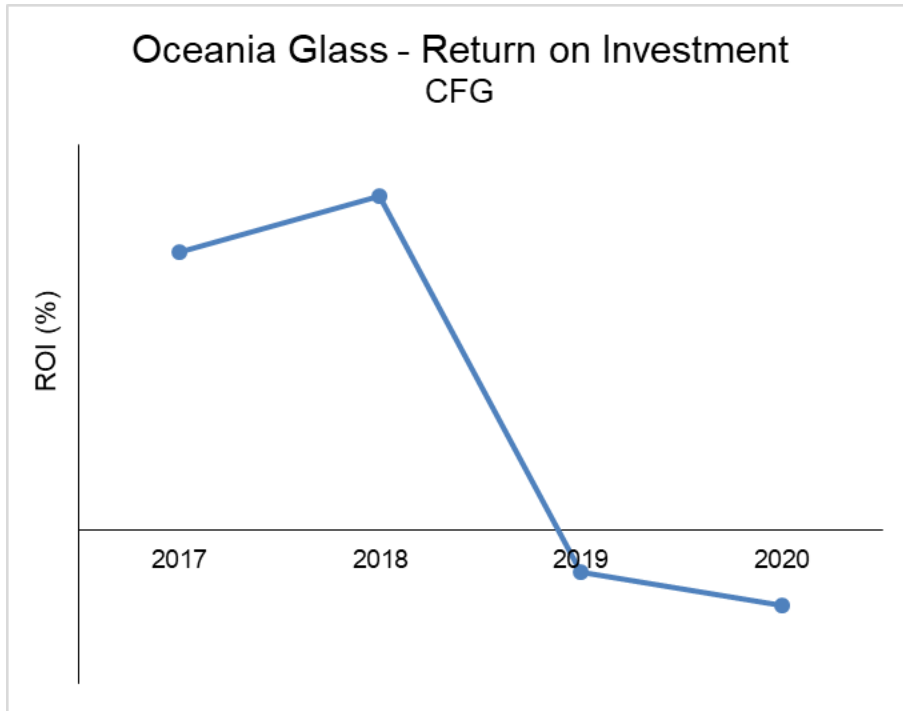


Figure 6: Oceania Glass's ROI

The figure above demonstrates that Oceania Glass has experienced a declining ROI from 2018. This finding supports Oceania Glass's claim that it has suffered injury in the form of reduced ROI.

#### 5.8.2. Attractiveness to reinvest

Oceania Glass submits in its application that a substantial investment will be required in 2026 in the float line that manufactures CFG. In order to make this investment, Oceania Glass's shareholders will require an expectation of a reasonable ROI in the lead up to that time.

Oceania Glass claims that the reduction in profitability due to under-priced imports means the forecast returns on this investment may not be satisfactory, and this could result in the closure of the only float line in Australia and the loss at least 120 jobs.

The Commission will investigate these claims during the investigation.

#### 5.8.3. Conclusion – other injury factors

Based on the above, the Commission is satisfied that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of reduced ROI.

### 5.9. The Commission's assessment

The Commission considers that there appear to be reasonable grounds to support the claim that the Australian industry has experienced injury in the form of:

- price depression;
- price suppression;
- loss of profits;
- reduced profitability; and
- reduced ROI.

The Commission's assessment of the economic condition of the Australian industry forms **Confidential Attachment 1**.

## 6. REASONABLE GROUNDS – CAUSATION FACTORS

### 6.1. Findings

Having regard to the matters contained in the application, and to other information considered relevant, the Commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumping or subsidisation, and that the injury is material.

### 6.2. Legislative framework

Under section 269TG and 269TJ, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and a countervailing duty notice is that the material injury suffered by the Australian industry was caused by dumping and subsidisation. This issue is considered in the following sections.

Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped or subsidised goods are set out in section 269TAE.

### 6.3. The Applicant’s claims

The table below summarises the causation claims of the applicant.

Injury caused by dumping and subsidisation
<p>Oceania Glass submit in its application that Malaysia and the UAE have emerged as the two largest sources of supply of CFG imports, accounting for 54 per cent of total CFG imports into Australia in 2020.</p> <p>Oceania Glass contend that dumped and subsidised imports from Malaysia and dumped imports from the UAE have secured increasing market share due to price undercutting evident in the market.</p> <p>Oceania Glass provided four case studies relating to both Malaysia and the UAE within its application to demonstrate price competition from dumped and subsidised imports, including instances where Oceania Glass has reduced its prices to retain business when faced with competitor pricing which has undercut its prices.</p> <p>Oceania Glass claim that due to the increasing availability of dumped and subsidised imports from Malaysia and dumped imports from the UAE it was unable to raise selling prices to recover increased costs of production, while also needing to reduce selling prices to hold sales volume and market share.</p> <p>Oceania Glass claim that the price depression and price suppression experienced has resulted in a significant deterioration in profit and profitability. Oceania Glass note that CFG represents a material part of its total sales, contributing more than 50 per cent of total sales by volume, and hence the deterioration in profit and profitability for the CFG business was material to its profit.</p>
Injury caused by other factors
<p>Oceania Glass note that the construction market is cyclical however during the COVID-19 pandemic has been relatively strong. Oceania Glass submitted that the relative strength in demand could start to decline and this would mean that the dumped and subsidised imports will put further significant pressure on the profitability of the float glass industry should activity decline.</p> <p>Oceania Glass also note that float glass manufacturing is energy intensive and the business has experienced significant cost increases over the last 4 years.</p>

## **6.4. The Commission's assessment**

### **6.4.1. Dumping margins**

Under section 269TAE(1)(aa) the Minister may have regard to the size of the dumping margins worked out in respect of the goods exported to Australia. As set out in section 3.5.2, there appear to be reasonable grounds for concluding that the goods exported from Malaysia and the UAE are dumped.

### **6.4.2. Subsidy margins**

Under section 269TAE(1)(ab) the Minister may have regard to the size of the subsidy margins worked out in respect of the goods exported to Australia. As set out in section 4.5.2, there appear to be reasonable grounds for concluding that the goods exported from Malaysia are subsidised.

### **6.4.3. Volume effects**

As noted in section 5.5 above, the Commission considers that Oceania Glass's sales volumes and market share have increased during the injury analysis period. The Commission is presently not of the view that the applicant has suffered material injury in the form of lost sales volumes nor reduced market share.

### **6.4.4. Price effects**

As noted in section 5.6, the Commission considers that Oceania Glass has suffered injury in the form of price depression and price suppression. The applicant claims that it has been unable to raise its sale prices when providing quotes to customers in line with the increased costs of manufacture, and further that it has had to reduce prices to customers to compete with the dumped and subsidised goods in the market.

The Commission understands, based on the information provided by the applicant and from prior matters investigated that the CFG market is price sensitive.<sup>21</sup> The applicant has provided as part of its application case studies demonstrating changes to its pricing resulting from the presence of goods from Malaysia and the UAE in the market undercutting its prices.

The Commission considers that it appears reasonable the presence of these imported goods, at prices that undercut the Australian industry, have caused Oceania Glass to reduce its selling prices as well as absorbing the additional costs of production it has experienced that might otherwise be passed on to customers.

As a result of the above, the Commission's preliminary view is that there appears to be reasonable grounds to establish that the Australian industry has experienced price injury in the form of price depression and price suppression as a result of dumped and subsidised goods exported from Malaysia, and dumped goods exported from the UAE.

### **6.4.5. Profit effects**

While Oceania Glass does not appear to have experienced injury in the form of lost sales volumes, as outlined at 6.4.4 above, the Commission is satisfied that there appears to be reasonable grounds to establish that the price of the goods sold by the applicant has been depressed and suppressed due to competition with dumped prices from Malaysia and UAE and subsidised prices from Malaysia.

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<sup>21</sup> REP 355, section 3.5.2, p 16; REP 159C, section 4.3.2, p 15.

The Commission is satisfied that the price depression and suppression experienced by Oceania Glass as a result of the dumped and subsidised prices, has translated into a loss of profit and profitability.

**6.4.6. Injury caused by factors other than dumping**

Oceania Glass acknowledged that it experienced an increase in its cost of production during the injury analysis period.

In accordance with section 269TAE(2A), the Commission will assess these and other potential causes of injury to the Australian industry during the course of the investigation.

**6.4.7. Conclusion – material injury caused by dumping and subsidisation**

The Commission considers that:

- the level of the dumping and subsidy margins indicated in the application and in the Commission's calculations;
- the preliminary assessment of price depression, price suppression, reduced profit and profitability, other injury factors; and
- examples of specific feedback from price negotiations,

support Oceania Glass's claim that there appear to be reasonable grounds that exports of the goods from Malaysia at dumped and subsidised prices, and from the UAE at dumped prices, have caused material injury to the Australian industry.

## 7. APPENDICES AND ATTACHMENTS

Appendices	Confidentiality	Title
Appendix 1	Non-confidential	Summary of countervailable programs

Attachments	Confidentiality	Title
Attachment 1	Confidential	Injury analysis
Attachment 2	Confidential	Export price analysis
Attachment 3	Confidential	Normal value analysis
Attachment 4	Confidential	Dumping margin and volume analysis

## 8. NON-CONFIDENTIAL APPENDIX 1

Summary of Oceania Glass's claims of countervailable programs relevant to Malaysia.

Programs 1 to 6 have been previously investigated by the Commission and the findings are contained in REP 362.<sup>22</sup>

No	Program name	Summary of claims
1	Income Tax Reductions ('Pioneer Status')	<p>The GOM provides assistance in the form of an exemption from tax to companies granted 'Pioneer Status'.</p> <p>The legal basis for this program includes:</p> <ul style="list-style-type: none"> <li>• <i>Income Tax Act 1967</i>: Income Tax Exemption Order (No. 11) 2006 [P.U. (A) 112/2006]; and</li> <li>• <i>Promotion of Investments Act 1986</i>.</li> </ul> <p>Pioneer Status may be granted to any company, intending to participate in certain investments, which meet the following criteria:</p> <ul style="list-style-type: none"> <li>• Value added;</li> <li>• Level of technology measured based on number of management and technical employees in the company; and</li> <li>• Compliance with a specific amount of fixed asset investment (excluding land cost) by specific time period.</li> </ul> <p>The GOM grants a company with Pioneer Status a 70% exemption (or any other rate as prescribed by the Minister) on corporate tax.</p> <p>This program was found to be a countervailable subsidy in REP 362, however the Commission found that no exporters received a benefit under this program.</p> <p>Oceania Glass claims that information from Glass Worldwide indicates that Xinyi Glass has received beneficial taxation treatment which may fall under this program.<sup>23</sup></p>

<sup>22</sup> Program 5 – Double deduction for insurance premiums for exporters and importers was also investigated in REP 362, however this program ceased to apply from the 2016 year of assessment.

<sup>23</sup> EPR 582, no 1, Oceania Glass, Public Record Application, Non-Confidential Attachment C-1.1.



**PUBLIC RECORD**

No	Program name	Summary of claims
2	Income Tax Allowance	<p>The GOM provides assistance in the form of a tax exemption equivalent to a proportion of certain capital expenditure incurred by eligible companies.</p> <p>The legal basis for this program includes:</p> <ul style="list-style-type: none"> <li>• <i>Income Tax Act 1967</i>: Income Tax Exemption Order (No. 12) 2006 [P.U. (A) 113/2006]; and</li> <li>• <i>Promotion of Investments Act 1986</i>.</li> </ul> <p>This program may be granted to any company, intending to participate in certain capital expenditure incurred on industrial buildings, plant and machinery which is directly used, which meet the following criteria:</p> <ul style="list-style-type: none"> <li>• Value added;</li> <li>• Level of technology measured based on number of management and technical employees in the company; and</li> <li>• Compliance with a specific amount of fixed asset investment (excluding land cost) by specific time period.</li> </ul> <p>This program was found to be a countervailable subsidy in REP 362, however the Commission found that no exporters received a benefit under this program.</p> <p>Oceania Glass claims that information from Glass Worldwide indicates that Xinyi Glass has received beneficial taxation treatment which may fall under this program.</p>
3	Double deductions for export credit insurance	<p>The GOM provides a double deduction for income tax purposes is provided to exporters for amounts incurred in relation to export credit insurance premiums.</p> <p>The legal basis for this program is <i>Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985</i> (P.U. (A) 526/1985) made under Section 154 of the <i>Income Tax Act 1967</i>.</p> <p>This program may be granted to companies which have paid a premium in respect of export credit insurance from an insurance company approved by the Minister of Finance.</p> <p>This program was found to be a countervailable subsidy in REP 362, however the Commission found that no exporters received a benefit under this program.</p> <p>Oceania Glass claims that Xinyi Glass would likely have received a benefit from this program as it is an exporter.</p>

**PUBLIC RECORD**

No	Program name	Summary of claims
4	Double deductions for freight charges relating to goods originating from Sabah and Sarawak	Oceania Glass did not claim that a benefit was received in relation to this program.
6	Reinvestment allowance	<p>The GOM provides assistance in the form of an exemption from statutory income for tax purposes to companies engaged in manufacturing and selected agricultural activities that reinvest for certain purposes.</p> <p>The legal basis for this program is Schedule 7a of the <i>Income Tax Act 1967</i>.</p> <p>This program may be granted to a company that carries out manufacturing or selected agricultural activities upon the completion of a qualifying project.</p> <p>This program was found to be a countervailable subsidy in REP 362, and a benefit was found to have been received by cooperating exporters.</p> <p>Oceania Glass claims that information from Glass Worldwide indicates that Xinyi Glass has received beneficial taxation treatment which may fall under this program.</p>
7	Gas for LTAR	<p>Oceania Glass claims that this program is a result of Xinyi Glass's acquisition of land in Malacca from a SIE, PKNM.</p> <p>PKNM's primary business is the economic development of the state of Malacca. As part of the land sales agreement with Xinyi Glass, PKNM has agreed to develop the land infrastructure for the supply of electricity, water and natural gas.</p> <p>Oceania Glass claims that this infrastructure may include a long-term supply agreement for natural gas.</p> <p>Oceania Glass referenced a study by the Oxford Institute for Energy Studies<sup>24</sup> which provides an estimate for current gas prices in Malaysia.</p> <p>Oceania Glass claims that the price charged to Xinyi Glass under the land acquisition agreement would be a fraction of the prices estimated in the study, and confer a benefit under LTAR.</p>

<sup>24</sup> EPR 582, no 1, Oceania Glass, Public Record Application, Non-Confidential Attachment C-1.3.