

For Publication

Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

3 June 2021

investigations3@adcommission.gov.au

Dear Case Manager

Investigation – Dumping and Subsidisation: Clear Float Glass exported to Australia from Malaysia and the United Arab Emirates – Case No. 582

We act for Guardian Zoujaj International Float Glass Co. LLC (**Guardian RAK**) and refer to the Anti-Dumping Commission (**ADC**) investigation into certain clear float glass (**CFG**) products exported to Australia from Malaysia and the United Arab Emirates (**UAE**) following an application lodged by Oceania Glass Pty Ltd (**Applicant**).

This letter is a preliminary submission in relation to the above-captioned investigation. The purpose of the submission is to respond to the Application lodged by the Applicant and to demonstrate that no anti-dumping measures ought be imposed (at least insofar as the Application relates to goods exported from the UAE). Further, no preliminary affirmation determination (**PAD**) should be imposed in the absence of a very high degree of certainty that dumping (to a very significant degree) has occurred and that such dumping has caused material injury. Guardian RAK submits that, for the reasons set out below, the ADC cannot be so satisfied.

1. Investigation period

- 1.1 As a preliminary matter, Guardian RAK notes that the Commissioner has specified in the initiation notice an investigation period of 1 April 2020 to 31 March 2021. Guardian RAK submits that this investigation period, which coincides with the period of extreme and unprecedented disruption to global commercial production and trade due to the COVID-19 pandemic, is unreasonable and inappropriate. The purpose of any anti-dumping measure is to counter the effect of injurious dumping. Except in certain defined circumstances (see s 269TN of the *Customs Act 1901* (Cth) (**Act**)), measures are forward-looking rather than retrospective; a notice published under s 269TG of the Act applies to goods exported to Australia after the date of publication of the notice or such later date as specified. Measures are typically imposed for a period of 5 years. Guardian RAK submits that there is a logical disconnect between the prospective imposition of such measures and the examination of factors (such as export prices and normal values relating to data over the investigation period: s 269TACB) during an investigation period which inarguably does not represent any kind of status quo or normal trade and operating conditions.
- 1.2 Guardian RAK notes the policy statement in the Dumping and Subsidy Manual at [3.2] that “*Following specification in the initiation notice, the investigation period cannot be varied (subsection 269TC(5A))*”, but does not accept that that statement accurately reflects the terms of the cited statutory provision, which provides that, “*The Commissioner cannot vary the length of the investigation period*”. Respectfully, the specified length of the investigation period, being one year, could be retained whilst the investigation commencement and conclusion dates are rescheduled. Guardian RAK requests that the ADC consider revising the investigation period to one post pandemic-affected 2020 (noting that this may require a postponement of the investigation) in the interests of accuracy and fairness to all parties.

2. Applicant's claims of injury

2.1 The Applicant claims that it has suffered the following material injury caused by dumped imports of CFG from Malaysia and the UAE:

- (a) price depression;
- (b) prices suppression;
- (c) loss of profits;
- (d) reduced profitability;
- (e) reduced ROI; and
- (f) reduced attractiveness to reinvest.

2.2 Guardian RAK refers to the Australian Industry Verification Report published on 20 May 2021 in Continuation Inquiry 575 (in respect of the Applicant over a largely coterminous investigation period). The ADC's findings in that report suggest that the Applicant has experienced positive sales and growth indicators, which offset its claims of material injury. Such positive indicators include:

- (a) an increase in Australia sales volume since 2017, including a significant increase in 2020;¹
- (b) an increase in market share in 2020;²
- (c) revenue growth in 2020;³
- (d) a consistently high level of capacity utilization, with growth in 2020;⁴
- (e) largely steady employment levels and wages, with a slight reduction in 2019 and 2020 respectively.⁵ 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.⁶ Faster collection on receivables is a favourable economic indicator.

¹ Australian Industry Verification Report published 20 May 2021 in Continuation Inquiry 575 at paragraphs 3.4, 8.3.1.

² *ibid* at paragraphs 3.4, 8.3.2.

³ *ibid* at paragraph 8.6.3.

⁴ *ibid* at paragraph 8.6.5.

⁵ *ibid* at paragraphs 8.6.6, 8.6.7.

⁶ *ibid* at paragraph 8.6.8.

- 2.3 To the extent that the ADC finds that the Applicant has suffered 'material injury', Guardian RAK submits that the various indicia listed by the Applicant to demonstrate 'injury' are symptoms of the declining commercial performance of a struggling, inefficient manufacturer. It is well-known that the Applicant and its predecessor entity (Viridian Glass Australia) have struggled for years with profitability, due to economic circumstances that affect it directly. In 2018, for example, its then parent company (CSR Limited) identified "*operational issues*" at Viridian's factory and "*increasing energy costs*" as the cause of its decline in EBIT.⁷ The previous year, the parent company pointed to "*impacts from WA and NZ operations*" as the source of Viridian's decline in EBIT.⁸ In January 2019, CSR Limited sold the Viridian business (for reasons including that Viridian is exposed to high energy intensity) in a bid for Viridian "*to align its footprint and cost structure to operate more effectively*".⁹
- 2.4 Further to this point, the Applicant has a limited primary production capacity at its sole Dandenong float line, and is unable to single-handedly meet the demands of the Australian market. The Applicant has relied upon imports from Xinyi Glass and other manufacturers to supplement its local production capacity. In support of that proposition, Guardian RAK:
- (a) annexes as **Attachment 1** an email communication from the Applicant to a customer (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*";
 - (b) annexes as **Attachment 2** an email communication from the Applicant to its customers dated February 2021 which states that, "*...with significant demand for glass and disruptions continuing we have elected to supplement our locally manufactured QFloat™ Clear range with a selection of imported products. As you are aware Oceania Glass imports products to supplement its local range...*"; and
 - (c) refers to the submission of PT Muliaglass in Continuation Inquiry 575 uploaded on 12 March 2021 at page 1.¹⁰
- 2.5 Guardian RAK will in due course provide further information to the ADC evidencing the Applicant's reliance on imported products.
- 2.6 Guardian RAK notes that the Applicant identified that it "*has imported some CFG in small quantities*" (see Application at A-5 q.3) but at A-2 q.8 has not provided details of any relationship with any exporter to Australia/Australian importer of the goods in relation to CFG specifically. Guardian RAK submits that the matters set out at paragraph 2.4 above suggest that the Applicant may have understated its dependence on imported CFG. Given the findings recorded at paragraph 4.2 of the Australian Industry Verification Report published on 20 May 2021 in Continuation Inquiry 575, Guardian RAK urges the Commission to investigate and consider whether and to what extent the Applicant or any affiliate or related third party:

⁷ CSR Limited Annual Report 2018 p 3.

⁸ CSR Limited Annual Report 2017 p 2.

⁹ CSR Limited Annual Report 2019 p 4.

¹⁰ 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.

- (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.
- 2.7 Guardian RAK also requests that the ADC investigate the Applicant's claims regarding reduced ROI and attractiveness to reinvest and satisfy itself of the accuracy of the claims and figures provided. Guardian RAK notes that, following the sale by CSR Limited of the Viridian Glass business to Crescent Capital Partners (ie. a private equity business which prides itself on its deep industry expertise and active engagement model which serves to drive growth and performance improvement for its investee businesses)¹¹ for \$155 million in about November 2018 (sale completed by 31 January 2019), and the demerger process that resulted in the creation of the Applicant as a standalone legal entity, the Charter Hall Prime Industrial Fund acquired the South Dandenong site for \$100m through a sale and leaseback arrangement on a yield of 5.75%.¹² Accordingly, any assessment of the Applicant's cost base and return on investment must be assessed with the \$100m sale of its landholding taken into account.
- 3. **Injury and causation – other injurious factors**
 - 3.1 Guardian RAK submits that the Applicant, in seeking to assert the existence of a causal link between the alleged injury and allegedly dumped import competition from the UAE, has not adequately engaged with other factors which may be causing what the Applicant deems to be 'material injury'. Guardian RAK requests that the ADC investigate matters such as:
 - (a) the Applicant's inability to meet customer demands and expectations in terms of lead times, availability of stock and source of product (ie. whether the Applicant is supplying customers with domestically-produced or imported CFG), having regard to the Applicants' communications set out at paragraphs 2.4(a) and (b) above;
 - (b) the contracted market during the 2020 year. While the Applicant submits that the construction market has been relatively strong during the COVID-19 pandemic, data relating to building commencements and dwelling approvals available from the Australian Bureau of Statistics indicates that the value of residential building commencements decreased into 2020.¹³ Guardian RAK requests that the ADC investigate the extent to which reduced demand and disruption to the domestic construction market may have inhibited the increase of prices and lowering of prevailing market price such as to give the appearance of price 'suppression' and 'depression';
 - (c) any other disruptions to the Applicant's production capacity and increase in production costs the result of the COVID-19 pandemic. Guardian RAK notes that a joint statement published by the Australian Workers' Union (**AWU**) and the Applicant on 6 April 2020 called for the federal and state governments to classify the glass industry as essential to "*allow the industry to remain operational*" should severe lock-down scenarios be imposed to slow the spread of COVID-19.¹⁴ The AWU and Applicant stated that glass "*is a high capital cost industry*", and that

¹¹ see <https://www.crescentcap.com.au/> at "Our Investment Approach".

¹² see PRP Transactions in Review report (November 2019) at page 9: <https://www.prpsydney.com.au/wp-content/uploads/2019/12/TIR-November-2019-1.pdf>

¹³ see Australian Industry Verification Report published 20 May 2021 in Continuation Inquiry 575 at paragraph 3.2.2.

¹⁴ Joint Statement dated 6 April 2020 accessible at: <https://www.awu.net.au/news/2020/04/11175/awu-and-oceania-glass-issue-joint-statement>

a temporary shutdown to furnaces “*would post significant investment challenges for an already capital-intensive industry facing astronomical energy prices*”. Guardian RAK requests that the ADC investigate whether any such foreshadowed difficulties eventuated in the circumstances of COVID-19 lockdowns and restrictions in Victoria. The AWU and Applicant also noted in the joint statement that existing health and safety practices were “*galvanized and expanded since the outbreak of the COVID-19 pandemic*”; such measures including “*[f]ull segregation of departments...*” and “*[b]ack-up operational emergency teams for critical operations...mobilized in isolated conditions on-site and off-site*”. Guardian RAK requests that the ADC investigate the economic and operational impacts of such measures; and

- (d) the high energy costs for the Australian industry, as acknowledged by the Applicant.
- 3.2 Guardian RAK draws attention to the Australian market share held by exports from the UAE (which reduced significantly in 2020) as compared to those of Malaysia (which has increased year on year throughout the injury analysis periods).¹⁵ To the extent that the ADC determines that the Applicant has suffered material injury caused by dumped imports, such effects ought be attributed to Malaysia rather than the UAE.
- 3.3 Guardian RAK challenges the Applicant’s claims regarding price undercutting.¹⁶ Guardian RAK refers to the Australian Industry Verification Report published on 20 May 2021 in Continuation Inquiry 575 at paragraph 3.3 where it is stated that the Applicant “*determines its prices using an import price parity model, which is significantly influenced by lower-price imports*” and that the Applicant “*charges a slight premium for its merchandising sales*”. 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 price suppression. 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 was compelled to lower its prices to defend its market share.
4. **Conclusion**
- 4.1 Guardian RAK urges the ADC to consider revising the investigation period (though not the length of the investigation period), as the specified period, which encompasses the extreme disruption and instability brought on by the COVID-19 pandemic, is not representative of the domestic nor international markets for CFG as they currently stand and are likely to stand in the near future.
- 4.2 Guardian RAK submits that the Applicant has not suffered material injury caused by dumped imports of CFG from the UAE. The claims made by the Applicant of material injury ignore other variables which have impacted its commercial performance, including its own inefficiency and economic factors which affect it directly. The claims that any material injury was caused by dumping from the UAE also ignores other factors that may have contributed to any injury suffered by the Applicant, including the Applicant’s inability to meet customer demands and expectations in terms of lead times, availability of stock and source of product, increased operational costs due to COVID-19, a contracted domestic construction market, and high domestic energy costs. To the extent that the ADC determines that the Applicant has

¹⁵ Consideration Report 582 at paragraph 5.5.2.

¹⁶ Application at pages 29 – 30.

suffered material injury caused by dumped imports, such effects ought be attributed to Malaysia rather than the UAE.

Yours sincerely



Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Elodie Cheesman, Lawyer
+61 2 9353 5141
echeesman@claytonutz.com

Our ref 11276/19263/81012916

From: [REDACTED]@oceaniaglass.com.au>
Sent: [REDACTED] December 2020 [REDACTED]
To: [REDACTED]
Subject: Message from the CEO of Oceania Glass - glass supply security



Dear Oceania Glass Customers,

We write to you to ensure we are open and transparent with regard to the supply security of glass in Australia. The COVID-19 pandemic has created an international situation never seen before, with the following factors impacting global glass supply:

- A number of Float lines have permanently been shut and many others have been placed on soak, due to lock downs.
- Glass demand has surged in a number of countries due to government incentives to stimulate economic recovery.
- Global shipping has been thrown into disarray, with containers damming up in countries which are in lock down.
- Domestically, we have seen industrial action at ports causing further disruption to supply chains and consequently high demand on land transport.

These factors have resulted in a higher and unpredictable demand for glass from Oceania Glass, which is beyond our supply capability. We have implemented measures to maximise our production and supply chain capacity and continue to exercise options to supplement supply.

Unfortunately, we do not foresee an improvement to the current situation in the short to medium term. As a result, we are left with no choice but to introduce a system to manage supply, using historical demand by customers to balance our supply chain. Our goal is to try to manage continuity of supply in extraordinary circumstances.

We would like to reassure our long-term loyal customers that the historical volumes you have bought from us will be honoured into the future. We will do what we can to meet additional demand but cannot guarantee this.

Considering the current situation, we want you to know that we are doing everything we can to meet your needs. However, we are not able to supply with

the reliability you have been accustomed to over many years. You may experience increases in lead times and periodically, stock might not be available when required.

We apologise that we are not able to meet the service levels you have come to expect from us, but hope you can understand that this is beyond our control. In the meantime, I would like to thank our customers for their flexibility, patience and understanding during this challenging period of high and unpredictable demand.

We encourage open communication at this time and although we have shared our plan in this communication, please do not hesitate to contact your account manager.

Yours sincerely,



Corné Kritzinger
CEO

Oceania Glass
95 Greens Rd, Dandenong South, Victoria 3175, Australia



oceaniaglass.com.au

From: [REDACTED]@oceaniaglass.com.au>

Sent: [REDACTED] February 2021

Subject: Message from the CEO of Oceania Glass - glass supply update



Dear Oceania Glass Customers,

would like to provide a further update on our supply position in Western Australia.

Last year I wrote to you to advise we were experiencing disruptions to supply to Western Australia from a combination of factors, including transport and industrial unrest at the ports. Our goal is to maintain continuity of supply to Western Australia, but with significant demand for glass and disruptions continuing we have elected to supplement our locally manufactured QFloat™ Clear range with a selection of imported products.

As you are aware Oceania Glass imports products to supplement its local range and we have applied the same care to sourcing the products below as you are accustomed to. As such these products have the same service support and warranty that our locally manufactured QFloat™ products enjoy.

Local		Import		
Mat No	Description	Mat No	Description	Sheets per pack
412528	4 Clr GTT 3660x2440 30	345908	4 Clr GTT 3660x2440 30	No change
403853	5 Clr GTT 3660x2440 24	345909	5 Clr GTT 3660x2440 26	Local 24, Import 26 sheets per pack
411961	6 Clr GTT 3660x2440 20	345910	6 Clr GTT 3660x2440 22	Local 20, Import 22 sheets per pack
424520	10 Clr GTT 3660x2440 11	345911	10 Clr GTT 3660x2440 13	Local 11, Import 13 sheets per pack

The imported sourced products are differentiated by their material number from our locally manufactured product and in some cases as outlined above have a different sheet per pack quantity. The imported products will not attract the Western Australia freight surcharge. If you have projects that have a local content requirement for QFloat™ Clear, please identify this with your Account Manager at your earliest opportunity.

Thank you for your understanding and working with us during this challenging time. If you have any further questions, please do not hesitate to contact your Account Manager.

Yours sincerely,



Corné Kritzinger

CEO

Oceania Glass

35 Greens Rd, Dandenong South, Victoria 3175, Australia

