

18 August 2021

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

Email: Investigations3@adcommission.gov.au

Public File

Dear Sir/Madam

Investigation No. 582 - Clear float glass exported from Malaysia and UAE – Exporter briefing

(i) **Xinyi Energy Smart (Malaysia) Sdn Bhd (Malaysia) “Xinyi”**

(a) **Background**

XINYI established production facilities in the State of Malacca, Malaysia in 2014, where until prior to this date, the Hong Kong registered entity predominantly housed its manufacturing base in the PRC.

The strategic move into Malaysia was intended to take advantage of favourable incentives and benefits on offer from Malaysian Government agencies and the ASEAN Free Trade zone. The move into Malaysia would ultimately provide Xinyi with a competitive advantage to other countries in the region, particularly Australia, and grow the Malaysian Glass industry as a key export industry. Since completing construction of its first float glass plant, Xinyi has driven the strong export of glass from Malaysia, which reached more than US\$1.3B in the 2020 year, a 64% increase from 2015. <https://tradingeconomics.com/malaysia/exports/glass-glassware>

Xinyi acknowledged that key glass making inputs of natural gas and soda ash are favourable in Malaysia, where its manufacturing facilities will also be out with anti-dumping rules applicable to its home base in the PRC. <https://www.glassworldwide.co.uk/sites/default/files/afgm-articles/Malaysia.pdf>.

The favourable soda ash purchase price is a relevant consideration for the ADC as it is potentially supplied by a Xinyi affiliate ex China (China being the world’s largest source for soda ash).

Also, Xinyi recently announced an internal supply arrangement concerning silica sand. It would be helpful to understand the extent to which such agreements were in place for the reference period and the particulars of those agreements, being at arms-length. Please see announcement attached:

https://staticpacific.blob.core.windows.net/press-releases-attachments/1312321/HKEX-EPS_20210526_9778491_0.PDF

So what are the benefits on offer to XINYI in Malaysia?

(b) Corporate tax

- It is noted that corporate tax incentives and exemptions exist for exporters of up to 15% for exported goods: See gazetted references within: https://www.crowe.com/my/-/media/Crowe/Firms/Asia-Pacific/my/CroweMY/News/Tax-Chat-7_2019_2.pdf?la=en-GB&modified=20190801080134&hash=2CE247E3E8FDCA6336A5890A0B7D94D99AADC1DE

(c) Natural Gas

- Xinyi entered Malaysia via the acquisition of land from PKNM (<https://pknmenergy.com.my/about-us/>). PKNM is a government agency corporation that has specific mandate to grow economic development in the State of Malacca. <https://m.marketscreener.com/XINYI-GLASS-HOLDINGS-LTD-6170707/news/Xinyi-Glass-Announcement-Acquisition-of-land-in-malacca-malaysia-for-construction-of-a--19471715/>.
- PKNM's primary business is the development of upstream oil and gas and as part of the land sales agreement, PKNM agreed to develop the services infrastructure for Xinyi, who have declared their plan to develop extensive glass manufacturing facilities at the plant.
- These services infrastructure would reasonably be determined to include gas supply, which would include a long-term supply agreement.
- Although natural gas supply in Malaysia is a regulated industry essentially handled by the National Petroleum Corporation in Petronas. PKNM's mandate granted by the Melaka State Government allows the corporation to make long term sales agreements outside of national supply rules for Industrial Users.
- A recent study by The Oxford Institute for Energy Studies, suggests that current energy prices should be approximately 35MYR/MMBtu (A\$12.16/Gj). Under the land acquisition agreement, it's likely that the acquisition costs per gigajoule would be a fraction of this inflation driven price level and it is estimated that Xinyi's acquisition costs are more like A\$3.00/Gj, which is favourable to supply agreements of Oceania Glass Pty Ltd.
- <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2020/03/Gas-Industry-Reform-and-the-Evolution-of-a-Competitive-Gas-Market-in-Malaysia-NG-158.pdf>

(d) Undocumented and 'slave' labour

- Foreign and undocumented workers are common and a recognised issue within the Malaysian executive. <http://mycc.my/document/files/PDF%20Dokumen/Foreign%20Labour%20in%20Malaysia%20Selected%20Works.pdf>

- These workers are typically employed in low skilled manufacturing functions. Their human rights are not always respected and essentially open to being trafficked.
- http://factsanddetails.com/southeast-asia/Malaysia/sub5_4e/entry-3695.html
- <https://www.minderoo.org/walk-free/news/forced-labour-number-one-issue-for-malaysian-business-says-worlds-largest-industry-coalition/>
- It is appropriate to understand the demographics of labour employed by Xinyi, including the country of origin, visa status as relevant, and how the wages of those employees compare to the national averages in Malaysia.

(e) Tax planning

- Xinyi Glass Holdings Limited is the ultimate holding company of Xinyi and is registered in the Cayman Islands. The Cayman Islands has a 0% tax rate. The domicile of Xinyi is a peculiar situation given the company predominately manufactures in China and only recently expanded into Malaysia.
- The majority of its paid-up capital is within companies registered in China (see Note 10 of Xinyi's 2020 annual report at page 111).
- Xinyi distributes products across the world, including Australia although it does not have a registered entity in Australia. Shipments to Australia are made on FOB or CIF terms.
- Xinyi is active in its tax planning and as the Chairman maintains in its 2020 Annual Report at page 7 (https://www.xinyiglass.com/uploadfiles/2021/04/HKEX-EPS_20210422_9728951_0.PDF):

*"... the Group is exploring acquisitions and new expansion opportunities in China and overseas which can provide attractive and larger markets, lower raw material costs, better production and energy cost and **more favourable tax treatments and other incentives**"*

The position suggests that any dumping duties would be a deterrent to Xinyi who may use economies of scale to export glass to such favourable countries.

(f) Other dumping cases

- Xinyi has been found to be dumping CFG in India in 2020, which imposed a flat penalty of US\$272.87/tonne. The determination was based on undercutting and underselling, which lead to material injury being suffered by the Indian CFG industry:
 - <https://glassbulletin.com/latest-updates/india-imposes-anti-dumping-duty-on-malaysian-float-glass-for-5-yrs/>
 - <https://www.dgtr.gov.in/anti-dumping-cases/clear-float-glass-originating-or-exported-malaysia>

EXPORTER BRIEFINGS - ADC application – No. 582 - Clear float glass:**(ii) Guardian Zoujaj International Float Glass Co LLC (United Arab Emirates) “Guardian”****(a) Background**

The \$150 million float glass plant of Guardian RAK, which began full production in September 2007, produces 700 tonnes of glass per day, used in automotive, commercial, residential and furniture applications.

The Guardian business is 45% owned by Guardian industries, classified as a technical partner, and National Company for Glass Industries Ltd (Zoujaj), which owns a controlling 55% stake and is a Saudi Arabian domiciled company.

Guardian is a diversified global manufacturing company headquartered in Michigan, US, with leading positions in float glass, fabricated glass products, fiberglass insulation and other building materials for commercial, residential, and automotive applications.

The plant is located in the Ras Al Khaimah economic zone within the Emirate. The zone is managed by RAK Investment Authority (RAKIA). The ‘free zone’ promotes the following advantages:

- 100% capital and profit repatriation.
- 100% ownership.
- Flexi-desk options.
- Low-cost storage facility.
- Fast licensing.
- Easy operability.
- 0% tax – corporate and personal.
- Low-cost leasing facility.

In Guardian’s technical capacity, the company provides operational expertise to run the plant, along with technical input for the broad product range manufactured, including CFG. In return, Guardian will receive a volume of glass off-take for international distribution.

EXPORTER QUESTIONNAIRE RESPONSE: XINYI

1. What are the gas supply arrangements of Xinyi; is Xinyi supplied by Petronas or does Xinyi have a specific arrangement outside of the national pricing regimes? It was earlier noted that Xinyi was supplied by PKNM (<https://pknmenergy.com.my/about-us/>). PKNM is a government agency corporation that has specific mandate to grow economic development in the State of Malacca. <https://m.marketscreener.com/XINYI-GLASS-HOLDINGS-LTD-6170707/news/Xinyi-Glass-Announcement-Acquisition-of-land-in-malacca-malaysia-for-construction-of-a--19471715/>
 - a. Contracts were not supplied at section H-2.3 although these are relevant to understand the arrangements and pricing for gas supply, given that gas is a major ingredient to the manufacture of natural gas. ADC to request gas contracts and assess if at market value.
 - b. Historical contracts would also be relevant to understand any assistance Xinyi has received.
 - c. Xinyi has not provided a response at H-2.7 – ADC to address.
2. What are the demographics of labour employed by Xinyi, including the country of origin, visa status as relevant, and how the wages of those employees compare to the national averages in Malaysia?
 - a. Please advise if any accommodation is provided by XINYI
3. Xinyi has not suitably provided a response through H-5 and specifically at H-5.2.

EXPORTER QUESTIONNAIRE: GOVERNMENT OF MALAYSIA

1. The response at C.3-1 notes that the Gas subsidy rationalisation plan is only applicable to Petronas and does not state whether its applicable to State Invested Enterprises (SIE) or other organisations. Petronas does not appear to provide the 100% share of delivering gas into Malaysia, as noted above by the PKNM example.

EXPORTER QUESTIONNAIRE RESPONSE: GUARDIAN

1. What is the relationship between Guardian Zoujaj international Float Glass Co. ("The manufacturer") and the exporter 'Guardian RAK'.
 - a. It is understood that commercially within affiliated companies sales are not always at arms-length;
 - b. Is there an off-take agreement between the units and what are its drivers?
 - c. Does Guardian RAK earn a dividend from The Manufacturer?
2. Important to understand who is the actual Exporter? The manufacturer or Guardian RAK, or is it Glass Management SVS or Guardian RAK?
3. The responses are not clear at which entity they relate or if they relate to one entity at all? Given the comments above, there may be responses from multiple organisations.



oceaniaglass.com.au

ABN 99 630 152 206

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

If you have any questions concerning this submission, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Alembakis", with a long horizontal flourish extending to the right.

Anthony Alembakis
Chief Financial Officer