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commercial + international

22 September 2021

**The Director  
Investigations 3  
Anti-Dumping Commission  
GPO Box 2013  
Canberra  
Australian Capital Territory 2601**

**By email**

Dear Director

## **Investigaiton 582 – Xinyi Energy Smart (Malaysia) Sdn Bhd response to “Exporter Briefing” submission**

As you know we act for Xinyi Energy Smart (Malaysia) Sdn Bhd (“Xinyi ESM”) in this investigation.

We refer to the Exporter Briefing submitted by Oceania Glass Pty Ltd (“Oceania Glass”) dated 18 August 2021 (hereinafter the “Exporter Briefing”).

Xinyi ESM is fully committed to cooperating with the Australian Anti-Dumping Commission’s (“the Commission”) handling of Investigation 582 in accordance with the standards and procedures set out under the *Customs Act 1901* (“the Act”).

From the outset of this investigation, Xinyi ESM has acted in good faith, comprehensively and expeditiously responded to exporter questionnaires (“the EQR”) and verification request. This is despite the many significant challenges that Xinyi ESM faces as the Covid-19 pandemic wreaks havoc through Malaysia. This is also despite Xinyi ESM’s view that the dumping and subsidisation allegations contained in Oceania Glass’s application lacked sufficient evidence and justifications. Xinyi ESM is confident that the Commission will find the clear float glass it exported to Australia during the investigation period was not dumped and that it did not receive any actionable subsidies.

On the other hand, Xinyi ESM wishes to express its serious concerns that Oceania Glass has chosen to repeat its unsubstantiated claims in the Exporter Briefing, while making additional egregious allegations that are false and misleading. In this submission, we respond to each of those claims in turn.

a Corporate tax

The Exporter Briefing claims that:

*It is noted that corporate tax incentives and exemptions exist for exporters of up to 15% for exported goods.<sup>1</sup>*

This comment appears to be speculative and is unsupported by positive evidence. Moreover, Oceania Glass has not explained the relevance of the claim to either the goods under investigation or Xinyi ESM in particular. In any case, Xinyi ESM has fully responded to issues concerning applicable tax and subsidies during the investigation period in its EQR.

b Natural Gas

The Exporter Briefing claims that:

*Xinyi entered Malaysia via the acquisition of land from PKNM.... 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 agreement of Oceania Glass Pty Ltd.<sup>2</sup>*

Oceania Glass's claim that Xinyi ESM is somehow "*likely*" to have been supplied with gas at "*more like A\$3.00/Gj*" is completely false and without basis. The reference materials contained in the Exporter Briefing does not support this claim at all. This claim is false and misleading.

c Labour issue

The Exporter Briefing claims, under the heading of "[u]ndocumented and 'slave' labour":

- *Foreign and undocumented workers are common and a recognised issue within the Malaysian executive.*
- *...*
- *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.<sup>3</sup>*

Xinyi ESM expresses its strong concern on Oceania Glass's broad-brushed assertion on such a serious issue. The Exporter Briefing appears to suggest that, just because Xinyi ESM is located in Malaysia, it should be suspected of engaging in human rights violations and the use of "slave labour. Oceania Glass's attempt to smear Xinyi ESM by associating it with such heinous activities are completely false, baseless, and inappropriate. The list of websites cited in the Exporter Briefing amounted to no more than a random assortment of news clippings and webpages, completely unrelated and unconnected to Xinyi ESM. In its ignorance, Oceania Glass seeks to associate a serious human rights issue with Xinyi ESM's business operations and Malaysian business generally merely on the basis that they are Malaysian businesses. This is unacceptable.

Xinyi ESM, as part of the Xinyi Glass group, has a strong culture and focus on ensuring the best practices that provide continuous improving working conditions, a fair, just and reasonable environment for all of its workers, and compliances with applicable labour laws and regulations as a key aspect of its corporate responsibilities. Xinyi Glass group also explicitly prohibit the use of child or forced labour.<sup>4</sup> To

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<sup>1</sup> EPR 582-12, page 2.

<sup>2</sup> Ibid, page 2.

<sup>3</sup> Ibid, pages 2 to 3.

<sup>4</sup> See, for example, Xinyi Environmental Social, and Governance Report 2020, which is accessible at: <https://www.xinyiglass.com/en/report/list.aspx>

be clear, Oceania Glass's attempt to besmirch Xinyi ESM's reputation in this way is slanderous, misleading and deceptive. Xinyi ESM requests Oceania Glass to withdraw this baseless accusation.

d Tax planning

The Exporter Briefing claims that:

*Xinyi is active in its tax planning ... [and is] "exploring ... more favourable tax treatments and other incentives[.]"<sup>5</sup>*

Xinyi ESM advises that there is nothing untoward with respect to its corporate commercial and tax planning. The fact that Xinyi is "active in its tax planning" is entirely within the norm and is something that would be expected of a corporate group publicly listed on the Hong Kong Stock Exchange. On this point, we note that Oceania Glass is itself arranged behind a sophisticated and complex equity structure which ultimately shares control with Viridian Glass Pty Ltd, even after the separation of clear float glass and the downstream processing business of the former CSR Viridian in 2019.

As to the comment that "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", we respectfully submit that this statement makes no sense at all and, in any case, unsupported by any evidence.

e Other dumping cases

The Exporter Briefing claims that:

*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...<sup>6</sup>*

The anti-dumping investigation in India is irrelevant to the present investigation or Oceania Glass's own injury allegation. Further, this claim is also false and misleading. Xinyi ESM can advise that the Indian investigation resulted in the imposition of a floor price at US\$272.87 per tonne in relation to Xinyi ESM's exports to India, not a "flat penalty".

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We respectfully request the Commission to dismiss the Exporter Briefing claims, on the basis that they are false, unsubstantiated, and misleading.

Xinyi ESM will continue to fully cooperate with the Commission's investigation to its best ability.

Yours sincerely



**Charles Zhan**  
Partner



**Elijah Lim**  
Lawyer

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<sup>5</sup> EPR 582-12, page 3.

<sup>6</sup> Ibid.