



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

**STATEMENT OF ESSENTIAL FACTS  
NO 582**

**ALLEGED DUMPING OF CLEAR FLOAT GLASS  
EXPORTED TO AUSTRALIA FROM MALAYSIA AND THE  
UNITED ARAB EMIRATES**

**AND**

**ALLEGED SUBSIDISATION OF CLEAR FLOAT GLASS  
EXPORTED TO AUSTRALIA FROM MALAYSIA**

**14 December 2021**

<b>CONTENTS</b>
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<b>CONTENTS.....</b>	<b>2</b>
<b>ABBREVIATIONS.....</b>	<b>5</b>
<b>1 SUMMARY AND RECOMMENDATIONS .....</b>	<b>7</b>
1.1 PRELIMINARY FINDINGS .....	7
1.2 AUTHORITY TO MAKE DECISION .....	7
1.3 PRELIMINARY FINDINGS AND CONCLUSIONS .....	9
<b>2 BACKGROUND.....</b>	<b>13</b>
2.1 INITIATION .....	13
2.2 PREVIOUS CASES .....	14
2.3 CONDUCT OF THE INVESTIGATION .....	16
2.4 SUBMISSIONS RECEIVED FROM INTERESTED PARTIES .....	17
2.5 PRELIMINARY AFFIRMATIVE DETERMINATION .....	18
2.6 RESPONDING TO THIS SEF.....	18
<b>3 THE GOODS AND LIKE GOODS.....</b>	<b>20</b>
3.1 PRELIMINARY FINDING .....	20
3.2 LEGISLATIVE FRAMEWORK .....	20
3.3 THE GOODS .....	20
3.4 TARIFF CLASSIFICATION.....	21
3.5 LIKE GOODS.....	21
<b>4 THE AUSTRALIAN INDUSTRY .....</b>	<b>23</b>
4.1 PRELIMINARY FINDING .....	23
4.2 LEGISLATIVE FRAMEWORK .....	23
4.3 AUSTRALIAN INDUSTRY.....	23
4.4 PRODUCTION PROCESS .....	23
4.5 PRELIMINARY CONCLUSION .....	24
<b>5 AUSTRALIAN MARKET.....</b>	<b>25</b>
5.1 PRELIMINARY FINDING .....	25
5.2 BACKGROUND.....	25
5.3 MARKET STRUCTURE.....	25
5.4 PRICING .....	28
5.5 MARKET SIZE .....	29
<b>6 DUMPING INVESTIGATION.....</b>	<b>31</b>
6.1 PRELIMINARY FINDING .....	31
6.2 LEGISLATIVE AND POLICY FRAMEWORK .....	31
6.3 COOPERATIVE EXPORTERS .....	32
6.4 UNCOOPERATIVE EXPORTERS .....	33
6.5 XINYI ESM.....	34
6.6 EFG.....	37
6.7 GUARDIAN RAK .....	41
6.8 ALL OTHER EXPORTERS – UAE .....	45
6.9 SUMMARY OF DUMPING MARGINS .....	45
6.10 LEVEL OF DUMPING .....	45
6.11 VOLUME OF DUMPED IMPORTS .....	46
<b>7 SUBSIDY INVESTIGATION – MALAYSIA.....</b>	<b>47</b>
7.1 PRELIMINARY FINDING .....	47
7.2 RELEVANT LEGISLATION .....	47

## PUBLIC RECORD

7.3	INVESTIGATED PROGRAMS.....	49
7.4	SUMMARY OF PROGRAMS .....	50
7.5	INFORMATION CONSIDERED BY THE COMMISSION.....	50
7.6	SUBSIDY ASSESSMENT .....	51
7.7	LEVEL OF SUBSIDISATION.....	52
7.8	VOLUME OF SUBSIDISED GOODS .....	52
<b>8</b>	<b>ECONOMIC CONDITION OF THE INDUSTRY .....</b>	<b>54</b>
8.1	PRELIMINARY FINDING .....	54
8.2	INTRODUCTION .....	54
8.3	APPROACH TO INJURY ANALYSIS.....	54
8.4	VOLUME EFFECTS.....	54
8.5	PRICE SUPPRESSION AND DEPRESSION .....	57
8.6	PROFITS AND PROFITABILITY .....	59
8.7	OTHER ECONOMIC FACTORS .....	61
8.8	CONCLUSION .....	62
<b>9</b>	<b>HAS DUMPING CAUSED MATERIAL INJURY? .....</b>	<b>63</b>
9.1	PRELIMINARY ASSESSMENT .....	63
9.2	LEGISLATIVE FRAMEWORK .....	63
9.3	CUMULATIVE EFFECT OF INJURY .....	63
9.4	APPROACH TO CAUSATION ANALYSIS .....	64
9.5	SIZE OF DUMPING MARGINS.....	65
9.6	VOLUME EFFECTS.....	65
9.7	PRICE EFFECTS.....	65
9.8	PROFIT EFFECTS.....	72
9.9	OTHER ECONOMIC FACTORS .....	72
9.10	FACTORS OTHER THAN DUMPING CAUSING INJURY.....	73
9.11	MATERIALITY OF INJURY CAUSED BY DUMPING.....	76
9.12	CONCLUSION .....	77
<b>10</b>	<b>WHETHER DUMPING MAY CONTINUE.....</b>	<b>79</b>
10.1	PRELIMINARY FINDING .....	79
10.2	INTRODUCTION .....	79
10.3	WHETHER DUMPING MAY CONTINUE .....	79
<b>11</b>	<b>NON-INJURIOUS PRICE.....</b>	<b>82</b>
11.1	PRELIMINARY ASSESSMENT OF NIP.....	82
11.2	INTRODUCTION .....	82
11.3	LEGISLATIVE FRAMEWORK .....	82
11.4	LESSER DUTY RULE.....	82
11.5	CALCULATION OF THE NON-INJURIOUS PRICE.....	83
<b>12</b>	<b>PROPOSED MEASURES.....</b>	<b>85</b>
12.1	PRELIMINARY FINDING .....	85
12.2	CURRENT MEASURES .....	85
12.3	FORMS OF DUMPING DUTY AVAILABLE.....	85
12.4	COMMISSION’S CONSIDERATION.....	86
<b>13</b>	<b>PRELIMINARY AFFIRMATIVE DETERMINATION .....</b>	<b>88</b>
13.1	INTRODUCTION .....	88
13.2	FINDING .....	88
13.3	SECURITIES.....	88
<b>14</b>	<b>TERMINATION IN RELATION TO MALAYSIA.....</b>	<b>90</b>
<b>15</b>	<b>APPENDICES AND ATTACHMENTS.....</b>	<b>91</b>

## **PUBLIC RECORD**

<b>APPENDIX A</b>	<b>ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS.....</b>	<b>92</b>
A1	INTRODUCTION .....	92
A2	ASSESSMENT OF PROGRAMS .....	94

**PUBLIC RECORD**

**ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901 (Cth)</i>
the applicant, the Australian industry, Oceania Glass	Oceania Glass Pty Ltd
CFG, the goods	clear float glass
China	the People's Republic of China
CIF	cost, insurance and freight
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975 (Cth)</i>
EFG	Emirates Float Glass LLC
EPR	Electronic Public Record
EXIM	Export Import Bank of Malaysia Berhad
FOB	free on board
GMB	Gas Malaysia Berhad
GMES	Gas Malaysia Energy and Services Sdn Bhd
GOM	Government of Malaysia
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Guardian RAK	Guardian Zoujaj International Float Glass Co. LLC
Indonesia	the Republic of Indonesia
IRB	Inland Revenue Board
LTAR	less than adequate remuneration
the manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)</i>
MCC	model control code
MIDA	Malaysian Investment Development Authority
the Minister	the Minister for Industry, Energy and Emissions Reduction
MITI	Ministry of International Trade and Industry
NIP	non-injurious price
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
REQ	response to exporter questionnaire

## PUBLIC RECORD

RGQ	response to government questionnaire
RIQ	response to importer questionnaire
ROI	return on investment
SEF	Statement of Essential Facts
SIE	state-invested enterprise
Thailand	The Kingdom of Thailand
UAE	United Arab Emirates
USP	unsuppressed selling price
Watson Glass	Watson Glass Pty Ltd
Xinyi ESM	Xinyi Energy Smart (Malaysia) Sdn Bhd

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Preliminary findings

This statement of essential facts (SEF) no 582 has been prepared in response to an application by Oceania Glass Pty Ltd (the applicant, Oceania Glass). Oceania Glass is seeking the publication of a dumping duty notice in respect of clear float glass (CFG, the goods) exported to Australia from Malaysia and the United Arab Emirates (UAE) (collectively, the subject countries) and a countervailing duty notice in respect of the goods exported to Australia from Malaysia.

Oceania Glass, the sole member of the Australian industry manufacturing like goods, claims that it suffered material injury because of dumped and subsidised imports of the goods.

The Commissioner of the Anti-Dumping Commission (the Commissioner) has found that exporters from Malaysia did not export the goods to Australia at dumped and subsidised prices.

The Commissioner has found that exporters from the UAE exported the goods to Australia at dumped prices.

The Commissioner has found that the dumped exports of the goods to Australia from the UAE caused material injury to the Australian industry.

Based on these preliminary findings and, subject to any further submissions received in response to this SEF, the Commissioner proposes to:

- recommend that the Minister for Industry, Energy and Emissions Reduction (the Minister) publish a dumping duty notice in respect of all exports of the goods to Australia from the UAE, and
- terminate the dumping and countervailing investigations as they relate to all exporters from Malaysia.

### 1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act) describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under section 269TB(1).<sup>1</sup>

#### 1.2.1 Application

On 15 March 2021, Oceania Glass lodged an application alleging that the Australian industry manufacturing CFG has suffered material injury caused by exports of the goods

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

## PUBLIC RECORD

to Australia from the UAE at dumped prices, and from Malaysia at dumped and subsidised prices.

Having considered the application, the Commissioner decided not to reject the application and initiated *Investigation No 582* on 27 April 2021.

Anti-Dumping Notice (ADN) No 2021/054 and *Consideration Report No 582* provide further details relating to the initiation of the investigation.<sup>2</sup>

### 1.2.2 Preliminary Affirmative Determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made.

On 28 June 2021, being 60 days after the initiation of the investigation, the Commissioner published a status report.<sup>3</sup>

As required by section 9 of the PAD Direction, if the Commissioner has published a status report in relation to an investigation, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF.

The Commissioner has reconsidered whether to make a PAD, and decided to do so in conjunction with publishing this SEF. This has been discussed in Chapter 13.

### 1.2.3 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3),<sup>4</sup> place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.<sup>5</sup>

In formulating the SEF, the Commissioner must have regard to the application, and any submissions concerning publication of the notice that are received by the Anti-Dumping Commission (the commission) within 37 days after the date of initiation of the

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<sup>2</sup> Electronic Public Record (EPR) 582, nos 002 & 003.

<sup>3</sup> EPR 582, no 006.

<sup>4</sup> The Minister's powers under section 269ZHI(3) have been delegated to the Commissioner (ADN No 2017/010).

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

investigation.<sup>6</sup> The Commissioner may also have regard to any other matters considered relevant.<sup>7</sup>

The SEF was originally due to be placed on the public record by 16 August 2021. However, the due date for the SEF and final report was extended on 2 occasions.<sup>8</sup> The Commissioner is now required to place the SEF on the public record by 14 December 2021.

#### **1.2.4 Report to the Minister**

The Commissioner's report in relation to this investigation was initially due to be provided to the Minister on, or before, 29 September 2021. However, the due date for the final report was extended on 2 occasions.<sup>9</sup> The report and recommendations must now be provided to the Minister on, or before, 18 February 2021, unless the investigation is terminated earlier or a further extension is made.

### **1.3 Preliminary findings and conclusions**

The Commissioner's preliminary findings and conclusions in this SEF are based on available information at this stage of the investigation. A summary is provided in the paragraphs below. The remainder of this report provides greater detail.

#### **1.3.1 The goods and like goods and the Australian industry (Chapters 3 and 4)**

The Commissioner considers that locally produced CFG is 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises solely of Oceania Glass.

#### **1.3.2 Australian market (Chapter 5)**

The Australian market for the goods and like goods is supplied from local production and by imports from several countries, including the subject countries.

#### **1.3.3 Dumping investigation (Chapter 6)**

The commission's assessment of dumping margins is set out in the table below.

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<sup>6</sup> Section 269TDAA(2)(a).

<sup>7</sup> Section 269TDAA(2)(b).

<sup>8</sup> EPR 582, nos 011 & 019.

<sup>9</sup> Ibid.

## PUBLIC RECORD

Country	Exporter	Dumping Margin
Malaysia	Xinyi Energy Smart (Malaysia) Sdn Bhd	-7.4%
UAE	Emirates Float Glass LLC	42.5%
	Guardian Zoujaj International Float Glass Co LLC	23.8%
	All other exporters	42.5%

**Table 1: Summary of dumping margins**

### **1.3.4 Subsidy investigation – Malaysia (Chapter 7)**

The commission did not find that there were any countervailable subsidies received by exporters from Malaysia.

### **1.3.5 Economic condition of the Australian industry (Chapter 8)**

The Commissioner is preliminarily satisfied that the Australian industry has experienced injury during the investigation period in the form of:

- price suppression
- reduced profit and profitability
- reduced return on investment (ROI).

### **1.3.6 Has dumping caused material injury? (Chapter 9)**

The Commissioner is preliminarily satisfied that the Australian industry has experienced material injury caused by dumped exports of the goods to Australia from the UAE.

This is based on the following evidence before the Commissioner, as discussed throughout this report:

- there is a high level of price competition within the Australian market for the goods
- the goods were exported from the UAE at dumped prices
- the dumping margins in respect of the goods exported from the UAE are significant
- the Australian industry and exporters from the UAE share a substantial number of customers
- the prices of the goods exported from the UAE either undercut the Australian industry or were comparable
- the dumped exports of the goods from the UAE are either lower or comparable prices placed pressure on the Australian industry to keep its prices lower over the investigation period than prices might otherwise had been in the absence of dumping from the UAE
- the Australian industry's lower prices have resulted in price suppression, reduced profit and profitability and reduced ROI.

### **1.3.7 Whether dumping and subsidisation may continue (Chapter 10)**

The Commissioner considers that the exports of the goods to Australian from the UAE may continue in the future at dumped prices.

### 1.3.8 Non-injurious price (Chapter 11)

The commission has determined that the non-injurious price (NIP) is less than the normal values ascertained for exporters from the UAE. The Commissioner recommends that the Minister have regard to the desirability of applying a lesser rate of duty for exporters from the UAE.

### 1.3.9 Proposed measures (Chapter 12)

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the *ad valorem* duty method, be imposed in the form of a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from the UAE.

The Commissioner proposes to recommend to the Minister the effective rates of IDD as summarised in the below table:

Country	Exporter	Proposed duty method	Effective IDD rate (%)
UAE	Emirates Float Glass LLC	<i>ad valorem</i>	37.9%
	Guardian Zoujaj International Float Glass Co LLC	<i>ad valorem</i>	14.5%
	All other exporters	<i>ad valorem</i>	37.9% <sup>10</sup>

**Table 2: Summary of proposed effective interim dumping duty**

### 1.3.10 Preliminary affirmative determination (Chapter 13)

As part of this SEF, the Commissioner, after having regard to the application, the submissions received and other relevant information, has determined that it is appropriate to make a PAD. Pursuant to section 269TD(1)(a), the Commissioner is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from the UAE.

As a result, the Commissioner has made a PAD, pursuant to section 269TD. Securities will be taken in relation to interim dumping duty (IDD) that may become payable for imports of the goods that are entered for home consumption from 15 December 2021.

### 1.3.11 Termination in relation to Malaysia (Chapter 14)

Section 269TDA provides for when the Commissioner must terminate an investigation.

The Commissioner proposes to terminate:

- the dumping investigation in relation to Xinyi ESM under section 269TDA(1) due to no dumping

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<sup>10</sup> The commission has used the same rate as EFG, the highest rate observed for cooperating exporters. See section 6.8.

## **PUBLIC RECORD**

- the dumping investigation in relation to Malaysia under section 269TDA(3) due to a negligible volume (zero) of dumped exports
- the subsidy investigation in relation to Xinyi ESM under section 269TDA(2)(b)(i) due to no countervailable subsidy having been received
- the subsidy investigation in relation to Malaysia under section 269TDA(7) due to a negligible volume (zero) of goods receiving a countervailable subsidy.

## 2 BACKGROUND

### 2.1 Initiation

On 27 April 2021, the Commissioner initiated an investigation into the alleged dumping of CFG exported to Australia from Malaysia and the UAE and the alleged subsidisation of CFG exported to Australia from Malaysia.<sup>11</sup>

The Commissioner decided to initiate an investigation following an application lodged by Oceania Glass, a manufacturer of CFG in Australia, under section 269TB of the Act. In its application, Oceania Glass claimed that the Australian industry has suffered material injury in the form of:

- price depression
- price suppression
- lost profit and profitability
- reduced ROI
- reduced attractiveness to reinvest.<sup>12</sup>

The Commissioner specified in the initiation notice that the investigation period is 1 April 2020 to 31 March 2021, and the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and/or subsidised imports is from 1 April 2017.

#### 2.1.1 Submissions in response to initiation

##### Guardian RAK

In its submission of 3 June 2021, Guardian RAK responded to the initiation notice. Guardian RAK considers that the investigation period specified by the Commissioner in the initiation notice is unreasonable and inappropriate because it coincides with an extreme and unprecedented disruption to global commercial production and trade due to the COVID-19 pandemic.<sup>13</sup> Guardian RAK requested that the commission consider revising the investigation period to a period unaffected by the COVID-19 pandemic (and potentially postponing the investigation) in the interests of accuracy and fairness to all parties. Guardian RAK consider that export prices and normal values in the investigation period do not 'represent any kind of status quo or normal trade and operating conditions'.

The commission does not consider that the Commissioner's specified investigation period is unreasonable or inappropriate. Per section 3.2 of the *Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)* (the manual) the investigation period is

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<sup>11</sup> Anti-Dumping Notice (ADN) no 2021/054 (the initiation notice).

<sup>12</sup> EPR 582, no 001.

<sup>13</sup> EPR 582, no 005.

## PUBLIC RECORD

generally the 12 months preceding the initiation date and ending in most recently completed quarter or month.

The commission notes that sections 269TAB and 269TAC outline the various requirements for the determination of export prices and normal values during an investigation period, noting that the Minister has the ability to disregard any information that he or she considers to be unreliable under sections 269TAB(4) and 269TAC(7), if required. In addition, in publishing a notice under section 269TG(2), the Minister must be satisfied that the amount of the export price of like goods that may be exported to Australia in the future (i.e. after the investigation period) may be less than the normal value of the goods. Further, the Minister must not attribute injury to the Australian industry from dumped goods to factors other than dumping consistent with section 269TAE. These matters have been considered throughout this report. For these reasons, the commission considers that the investigation period provides for accuracy and fairness to all parties. The commission does not consider it necessary to revise the investigation period as requested by Guardian RAK.

### Government of Malaysia

The Government of Malaysia, in its submission in response to the initiation, submitted that there was insufficient evidence of injury caused by subsidisation programs, and that there are other factors that could have contributed to any injury other than Malaysian exports.<sup>14</sup>

As detailed in *Consideration Report No 582*, the commission was satisfied that there appeared to be reasonable grounds for the publication of a countervailing duty notice. As discussed further within this report, the commission has found that there were no countervailable subsidies received by exporters of the goods from Malaysia.

## 2.2 Previous cases

On 19 April 2010, the then Chief Executive Officer (CEO) of the then Australian Customs and Border Protection Service initiated an investigation (*Investigation No 159*) into the alleged dumping of CFG exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), and the Kingdom of Thailand (Thailand). 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>15</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>16</sup> An application was made 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. Following the resumption of *Investigation No 159*, on 17 October

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<sup>14</sup> EPR 582, no 008.

<sup>15</sup> Section 269TDA(1).

<sup>16</sup> Section 269TDA(13).

## PUBLIC RECORD

2011, the then Attorney-General published a dumping notice in respect of goods exported from China, Indonesia and Thailand, following consideration of *International Trade Remedies Branch Report to the Minister No 159C* (REP 159C).<sup>17</sup>

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 secured their continuation for a further 5 years.<sup>18</sup> This followed consideration of the Commissioner's recommendation in *Anti-Dumping Commission Report No 335* (REP 335) as a result of *Continuation Inquiry No 335*.

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 *Anti-Dumping Commission Report No 479* as a result of *Anti-Circumvention Inquiry No 479*.

On 7 October 2021, the Acting Minister for Industry, Science and Technology decided not to continue the anti-dumping measures applying to China, Thailand and PT Muliaglass from Indonesia. The Acting Minister for Industry, Science and Technology further decided to continue the anti-dumping measures applying to PT Asahimas Flat Glass Tbk from Indonesia and all other Indonesian exporters for a further 5 years.<sup>19</sup> This followed consideration of the Commissioner's recommendation in *Anti-Dumping Commission Report No 575* as a result of *Continuation Inquiry No 575* (CON 575).

Anti-dumping measures are currently applicable to all imports from Indonesia, excluding PT Muliaglass.

A background to key cases in relation to the goods is summarised in Table 3 below.

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<sup>17</sup> Australian Customs Dumping Notice no 2011/50.

<sup>18</sup> ADN no 2016/85.

<sup>19</sup> ADN no 2021/116.

## PUBLIC RECORD

Case type and number	ADN number	Date	Country of export	Findings
Investigation No 159C	2011/050	17 October 2011	China Indonesia Thailand	Measures imposed on exporters from China (except Xinyi Ultrathin (Donguan) Co Ltd), Indonesia and Thailand.
Continuation Inquiry No 335	2016/085	8 September 2016	China Indonesia Thailand	Measures continued and variable factors altered for all exporters (except Xinyi Ultrathin (Donguan) Co Ltd).
Anti-Circumvention Inquiry No 479	2019/019	7 March 2019	Thailand	Notice altered in relation to Thailand.
Continuation Inquiry No 575	2021/116	7 October 2021	China Indonesia Thailand	Measures allowed to expire for all exporters from China and Thailand, and PT Muliaglass from Indonesia. Measures continued and variable factors altered for PT Asahimas Flat Glass Tbk. Measures continued for all other exporters from Indonesia (excluding PT Muliaglass)

**Table 3: Summary of cases undertaken in relation to the goods**

### 2.3 Conduct of the investigation

#### 2.3.1 Australian industry

The Commissioner is satisfied that the applicant for the investigation, Oceania Glass, represents the Australian industry producing like goods to the goods the subject of the application.

#### 2.3.2 Importers

The commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from Malaysia and the UAE during the investigation period. The commission forwarded importer questionnaires to 8 importers and placed a copy of the importer questionnaire on the commission's website for completion by other importers which were not contacted directly.

The commission received one response to the importer questionnaire (RIQ) from Watson Glass Pty Ltd (Watson Glass). The commission completed a verification of the information contained within Watson Glass's RIQ and published a verification report on the public record for the case.<sup>20</sup>

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<sup>20</sup> EPR 582, no 016.

### 2.3.3 Exporters

The commission forwarded exporter questionnaires to 3 exporters at the beginning of the investigation. The commission received a completed exporter questionnaire from all 3 exporters. The responding exporters are summarised below.

Country	Exporter name	Extension length	Questionnaire submission date
Malaysia	Xinyi Energy Smart (Malaysia) Sdn Bhd	28 days	1 July 2021
UAE	Emirates Float Glass LLC	27 days	27 June 2021
	Guardian Zoujaj International Float Glass Co LLC	N/A	3 June 2021

**Table 4: Exporter questionnaires received**

The commission initially identified several other exporters from both Malaysia and the UAE through the ABF import database. In the course of conducting this investigation, the commission determined that these entities were not exporters of the goods from the subject countries as they were found to be incorrectly entered in the ABF import database.

### 2.3.4 Foreign governments

The commission forwarded a government questionnaire to the Government of Malaysia (GOM) at the beginning of the investigation. A response was received from the GOM on 1 July 2021 and this response has been considered by the Commissioner in reaching the conclusions contained within this SEF.<sup>21</sup>

## 2.4 Submissions received from interested parties

The commission received submissions from interested parties prior to the publication of this SEF. These submissions have been considered by the Commissioner in reaching the conclusions contained within this SEF.

EPR number	Interested party	Date received
004	Emirates Float Glass LLC	30 May 2021
005	Guardian Zoujaj International Float Glass Co LLC	3 June 2021
008	Government of Malaysia	1 July 2021
012	Oceania Glass Pty Ltd	18 August 2021
014	Xinyi Energy Smart (Malaysia) Sdn Bhd	23 September 2021

**Table 5: Submissions received prior to SEF**

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<sup>21</sup> The GOM was provided an extension of time (28 days) to lodge its response.

## **2.5 Preliminary affirmative determination**

In accordance with section 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD), if satisfied that there appears to be (or it appears that there will be) sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice.

A PAD may be made no earlier than day 60 of the investigation. In accordance with the *Customer (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction), 60 days after the initiation of an investigation, the Commissioner must make a PAD or provide a Status Report outlining the reasons why a PAD has not been made.

On 28 June 2021, the Commissioner provided a Day 60 Status Report outlining that the Commissioner was not satisfied that at that stage of the investigation there appeared to be sufficient grounds for the publication of a dumping duty notice.<sup>22</sup>

The PAD Direction also requires the Commissioner to reconsider making a PAD after the publication of a status report, at least once prior to the publication of the SEF. In preparing this SEF, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available and assessed since 28 June 2021. The Commissioner is now satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in relation to the goods exported to Australia from the UAE, in accordance with subsection 269TD.

The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues. The Commissioner considers that the Commonwealth should take securities under section 42 of the Act in respect of interim dumping duty that may become payable in relation to the goods exported to Australia from the UAE. The Commissioner is satisfied that securities are necessary to prevent material injury to the Australian industry occurring while the investigation continues.

A detailed discussion of this is set out at Chapter 13 of this report.

Securities will apply to imports of the goods from the UAE entered for home consumption on or after 15 December 2021.

## **2.6 Responding to this SEF**

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister for Industry, Energy and Emissions Reduction.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

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<sup>22</sup> ADN no 2021/010.

## PUBLIC RECORD

It is important to note that the SEF may not represent the final views of the Commissioner.

As detailed in ADN 2021/143, interested parties have 34 days to respond to the SEF.<sup>23</sup> The Commissioner will consider these responses in making their final report to the Minister. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **17 January 2022**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The Commissioner must report to the Minister by **18 February 2022**.

Submissions should preferably be emailed to [investigations3@adcommission.gov.au](mailto:investigations3@adcommission.gov.au)

Alternatively, interested parties may post submissions to:

Director Investigations 3  
Anti-Dumping  
Commission  
GPO Box 2013  
Canberra ACT 2600  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the commission's web site [www.adcommission.gov.au](http://www.adcommission.gov.au)

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the commission's visit reports and other publicly available documents.

Documents on the Electronic Public Record (EPR) should be read in conjunction with this SEF.

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<sup>23</sup> 20 days provided for under the Act plus additional time to account for a reduced activity period and public holidays over the Christmas and New Year period.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Preliminary finding

The Commissioner considers that the clear float glass produced locally are 'like goods' to the goods the subject of the application.

### 3.2 Legislative framework

Section 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping 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.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

*...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are like to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness
- iv. production likeness.

### 3.3 The goods

The goods the subject of the application (the goods) are:

*Clear float glass (CFG) in nominal thicknesses of 3 to 12 millimetres (mm).*<sup>24</sup>

The following table details the tolerances for each of the thicknesses in the nominated range:

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<sup>24</sup> EPR 582, no 002.

## PUBLIC RECORD

Nominal Thickness (mm)	Acceptable Tolerances (mm)	
	Minimum	Maximum
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

**Table 6: Acceptable nominal thickness of CFG**

The goods the subject of the application have the following characteristics:

- transparent
- flat, and
- rectangular or square in shape.

Glass with the following characteristics is not the goods the subject of the application:

- coating, colour, tint or opaqueness
- absorbent, reflective or non-reflective layer
- wired
- bent, edge-worked, engraved, drilled, enamelled or otherwise worked
- framed or fitted with other materials
- toughened (tempered) or laminated
- acid etched, or
- low iron.

### 3.4 Tariff classification

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

- 7005.29.00 (statistical codes 03, 04, 05, 06 and 09).

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 the goods description set out above. Please refer to the goods description at section 3.3 for authoritative detail regarding the particulars of the goods, the subject of this investigation.

The tariff classifications above capture imports of CFG in square metres, and the commission has used this unit of measurement in its volume and unit analysis.

### 3.5 Like goods

This section sets out the commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods and are therefore 'like goods'. For

the purposes of the findings below, the commission has relied upon information obtained from the verification of Oceania Glass's manufacturing facilities as part of CON 575, information provided by cooperating exporters of the goods and prior findings of the commission.

### **3.5.1 Physical likeness**

The commission considers that the CFG the Australian industry produces for sale into the Australian market are physically like to the goods. They share similar physical characteristics, being clear (transparent), flat, rectangular or square in shape, and traded with a nominal thickness of 3 mm to 12 mm.

### **3.5.2 Commercial likeness**

The commission considers the CFG the Australian industry produces for sale in the Australian market are commercially like to the goods. They are sold into the same market sectors, are interchangeable and use similar distribution channels.

### **3.5.3 Functional likeness**

The commission considers the CFG the Australian industry produces for sale in the Australian market are functionally like to the goods. They have similar end-uses, including window and door applications, and are able to be further worked into alternate products through laminating, coating, and other value-add processes.

### **3.5.4 Production likeness**

The commission considers the Australian industry uses the same or similar raw material inputs and manufacturing processes domestically that exporters use to produce the goods.

### **3.5.5 Like goods assessment**

Based on the above findings, the commission considers that the CFG the Australian industry manufactures, whilst not identical, have characteristics closely resembling the goods exported to Australia, as:

- the physical characteristics of the goods and locally produced goods are similar
- the goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market
- the goods and locally produced goods are functionally alike as they have a similar range of end uses
- the goods and locally produced goods consist of the same raw materials and are manufactured in a similar manner.

As such, the Commissioner is satisfied that the Australian industry for CFG produces like goods to the goods the subject of the application, as defined in section 269T(1).

## **4 THE AUSTRALIAN INDUSTRY**

### **4.1 Preliminary finding**

The Commissioner is satisfied that there is an Australian industry producing like goods, consisting solely of Oceania Glass.

### **4.2 Legislative framework**

The Commissioner must be satisfied that the like goods are in fact produced in Australia. Sections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### **4.3 Australian industry**

Oceania Glass is the only operator of a float glass manufacturing line in Australia. It is therefore the only manufacturer of CFG in Australia. No further Australian industry manufacturers of the goods identified themselves to the commission following the initiation of the investigation, nor were any further Australian industry manufacturers identified by the commission during the investigation.

### **4.4 Production process**

The CFG produced by Oceania Glass is manufactured using the float process.

Raw materials (such as soda ash and sand) are first melted together in a large furnace. The molten glass is then floated on a 'bath' of molten tin. The floating of the molten glass on tin gives the glass an evenly formed width and height.

After the molten glass is formed, it is cooled in a controlled environment, and cut into large stock sheets.

The production process results in a degree of non-conformant glass, called cullet. Cullet is eventually fed back into the process at the raw materials stage to be used for new glass production.

A diagram of the production process is shown in Figure 1 below.

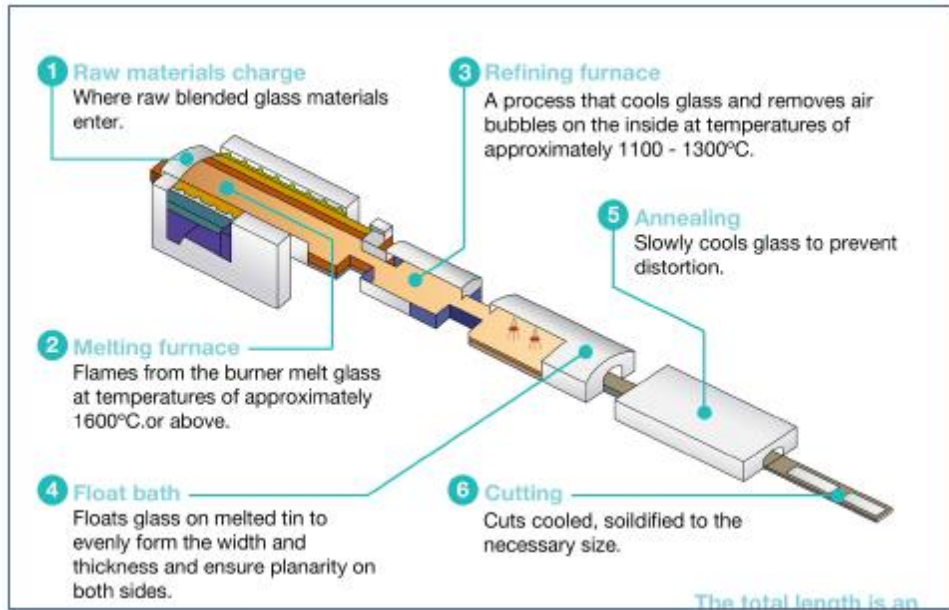


Figure 1: CFG production process<sup>25</sup>

#### 4.5 Preliminary conclusion

The commission is satisfied that the manufacture of CFG is substantially carried out in Australia, and therefore there is an Australian industry who continue to produce like goods.

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<sup>25</sup> EPR 582, no 001, p 13.

## 5 AUSTRALIAN MARKET

### 5.1 Preliminary finding

The commission has found that, during the investigation period, the Australian market for the goods was supplied by:

- Oceania Glass, the sole domestic manufacturer representing the Australian industry
- imports from countries subject to measures (Indonesia, excluding PT Muliaglass)
- imports from countries not subject to measures (including Malaysia and the UAE).

### 5.2 Background

Imported CFG supplied to the Australian market is sourced from numerous countries. In recent years the highest volumes originate from Malaysia, Indonesia and the UAE according to the ABF database.

Anti-dumping measures are currently applicable to all imports from Indonesia, except from the exporter PT Muliaglass.

CFG is considered a commodity product and customers are able to readily change supplier.

### 5.3 Market structure

The market structure for CFG in Australia consists of:

- domestic manufacturer Oceania Glass
- importers of CFG
- downstream domestic glass processors
- downstream domestic glass fabricators
- importers of processed or fabricated glass.

Oceania Glass sells to domestic glass processors and fabricators. Once the glass has been subject to processing or fabrication, it is no longer considered the goods.

## PUBLIC RECORD

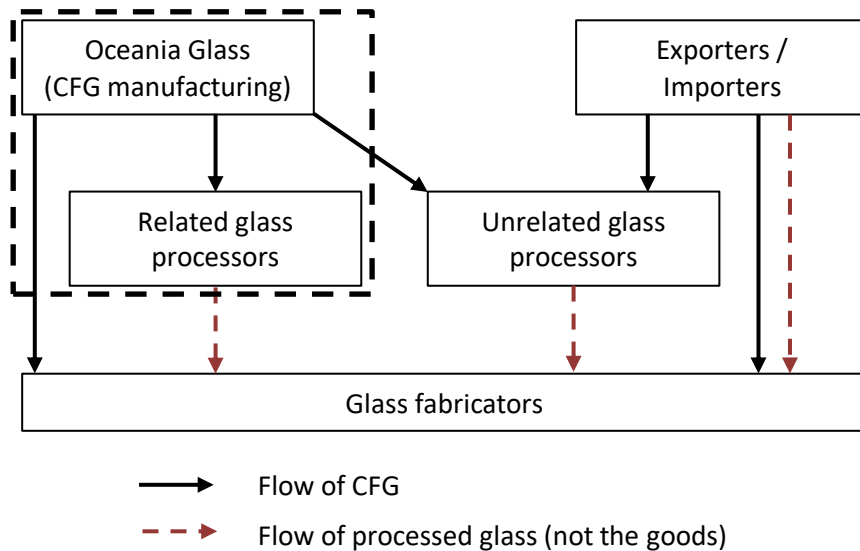


Figure 2: Australian market structure for CFG

### 5.3.1 Supply and distribution

Oceania Glass distributes its CFG through 2 avenues; direct supply to the customer via a network of distribution centres or via merchandising stores.

Oceania Glass's distribution and merchandising centres are at these locations:

- Dandenong, VIC (manufacturing site)
- Ingleburn, NSW (distribution centre)
- Port of Brisbane, QLD (distribution centre)
- Bibra Lake, WA (distribution centre)
- Springvale, VIC (merchandising)
- Ingleburn, NSW (merchandising).

Oceania Glass uses a combination of transportation modes that allow for cost minimisation and high utilisation of the fleet. The transport modes include sea-freight to WA and the use of 'Floatliners' for road transport. Oceania Glass owns a substantial fleet of custom-built containers specifically for transporting glass. It uses a third-party freight provider to transport these containers. Oceania Glass uses its own drivers and vehicles for merchandising deliveries.

CFG is sold in sheets which are measured in square metres, and customers typically purchase a number of sheets of varying sizes and thicknesses per sale.

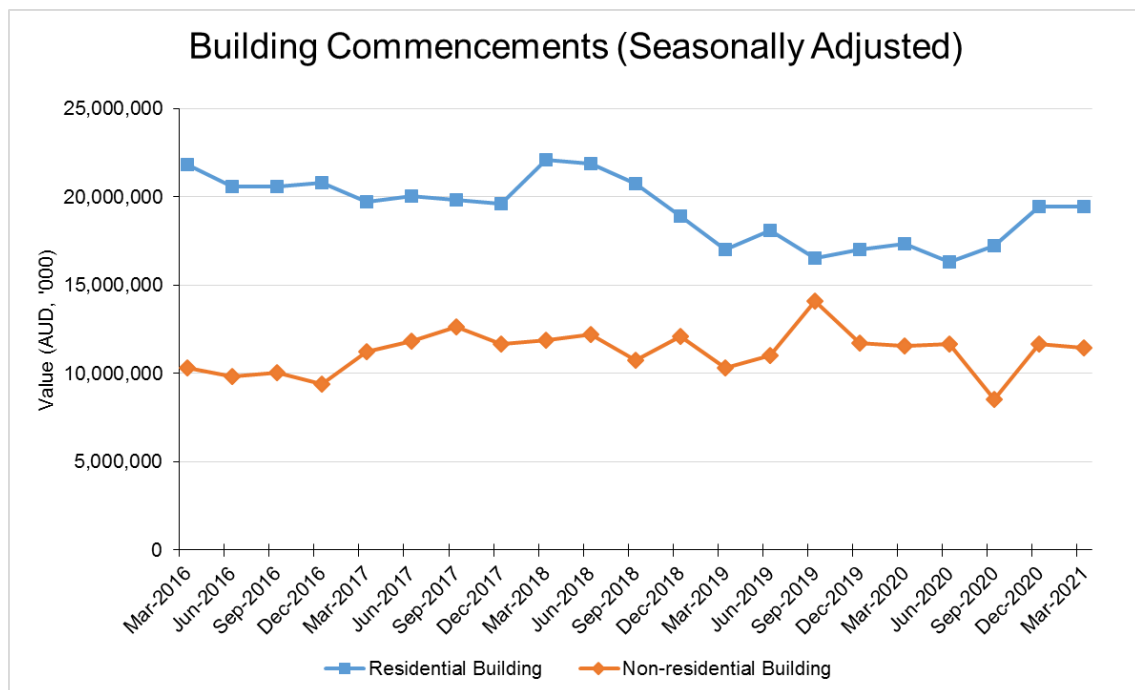
### 5.3.2 Demand

Oceania Glass indicated that demand for CFG is driven by activity in the residential (e.g. housing) and commercial (e.g. retail and offices) building construction sectors. There are a number of measures of activity in these sectors, including building commencements. To assess the demand factors, the commission has examined data relating to building

**PUBLIC RECORD**

commencements and dwelling approvals available from the Australian Bureau of Statistics (ABS).<sup>26</sup>

Figure 3 shows the value of building commencements for residential and non-residential buildings. Residential includes buildings such as houses and apartments, all of which utilise CFG in their construction. Non-residential includes buildings such as retail and office buildings, however it also includes other building such as warehouses which may not have as high a demand for CFG as the other categories. The value of residential building commencements has decreased slowly throughout 2018, before increasing slightly into 2021, returning to levels close to 2017 values. Non-residential construction has remained at broadly consistent levels since 2016. The commission considers that the variation in residential building commencements has a greater impact on the demand due to the higher requirement of CFG for this type of building.



**Figure 3: Australian building commencements**

The dwelling approvals data shown in Figure 4 indicates that there is a potential for an overall recovery of the residential building sector. Dwelling approvals have fallen since 2018, however they have slightly recovered from mid-2020 to early-2021. Although there is a dip in mid-2021, levels remain closer to the number of approvals in 2017, prior to the decrease. The commission considers that demand for CFG may increase in the future if the residential building sector recovers.

<sup>26</sup> Confidential Attachments 19 & 20.

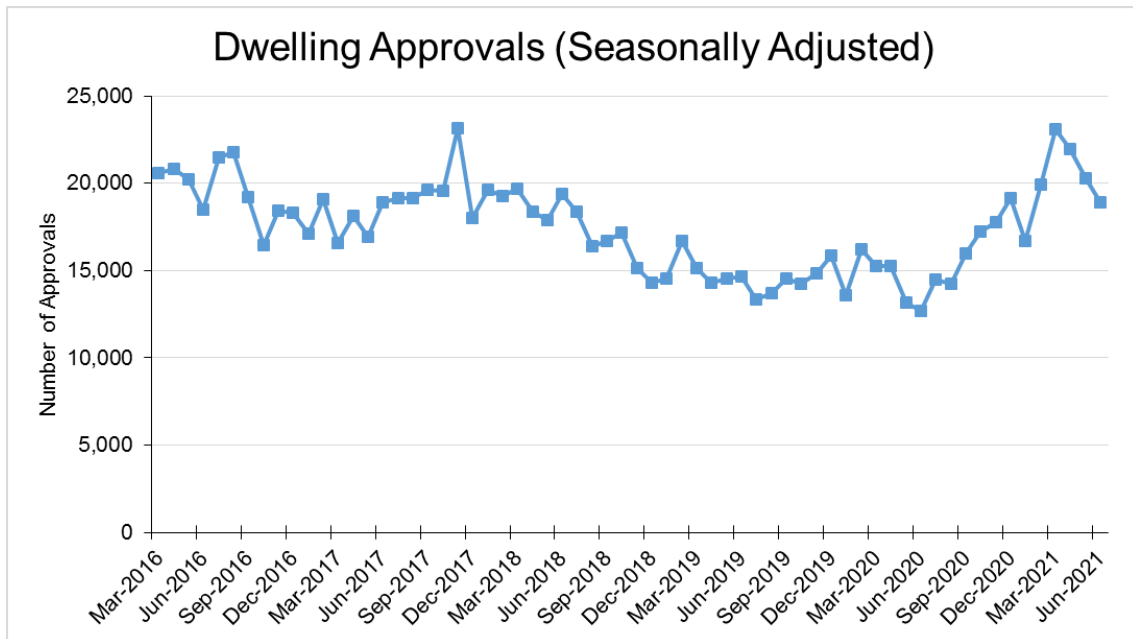


Figure 4: Australian dwelling approvals

## 5.4 Pricing

Due to the homogenous nature of CFG, price is the primary negotiating factor in the Australian market. As a commodity, there is very little differentiation between suppliers, going so far that in the absence of inline markings it is difficult to trace the origins of the CFG.

Oceania Glass considers that the following features and characteristics affect price:

- demand and supply across the Asian region and globally
- construction activity across residential and commercial sectors
- environmental regulation that is increasingly mandating minimum performance of glass, particularly in respect of thermal performance
- natural gas costs
- current strength of AUD v USD
- freight costs.

In terms of price setting practices, Oceania Glass determines its prices using an import price parity model, which is significantly influenced by lower-priced imports. Development of such a model is possible due to the relative transparency of pricing within the Australian market, with importers offering price lists in order to establish new customers and supply lines into Australia. Oceania Glass provided the commission with an example of its import price parity model which the commission reviewed during verification.<sup>27</sup>

Oceania Glass charges a slight premium for its merchandising sales, which covers additional expenses associated with operation of the merchandising centre.

<sup>27</sup> Confidential attachment 21.

### 5.5 Market size

The commission has estimated the size of the Australian market for CFG using the domestic sales data from Oceania Glass and data sourced from the ABF import database. The information sourced from the ABF import database was determined using the relevant tariff codes for CFG (7005.29.00) and additional filtering to remove imports that are not the goods.

Figure 5 below depicts the commission’s estimate of the Australian market size for CFG from 1 April 2017 to 31 March 2021.

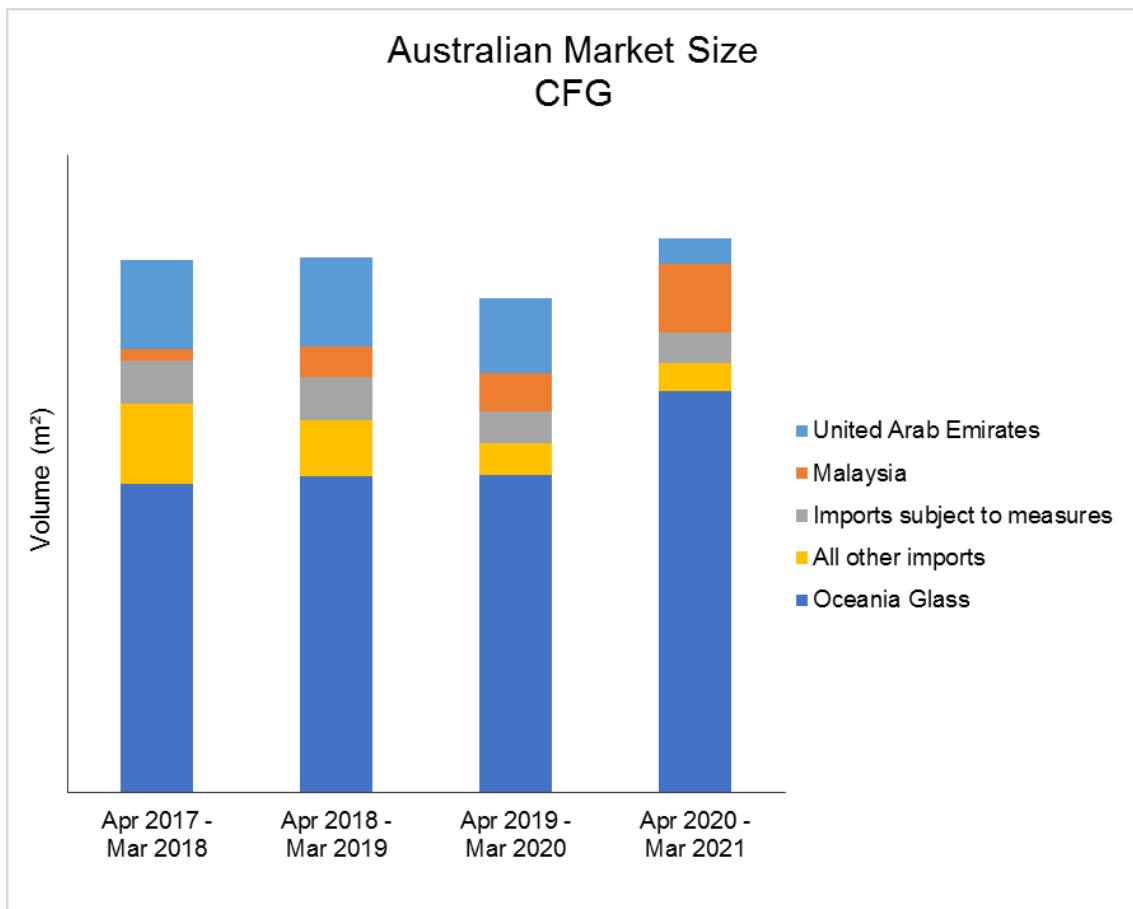


Figure 5: Australian market size (injury analysis period)

Figure 5 shows that the overall size of the Australian market for CFG has increased since 2017.

The size of the Australian market has fluctuated over the investigation period and has increased in size overall (Figure 6). The volume of exports of the goods from both Malaysia and the UAE have increased over the investigation period.

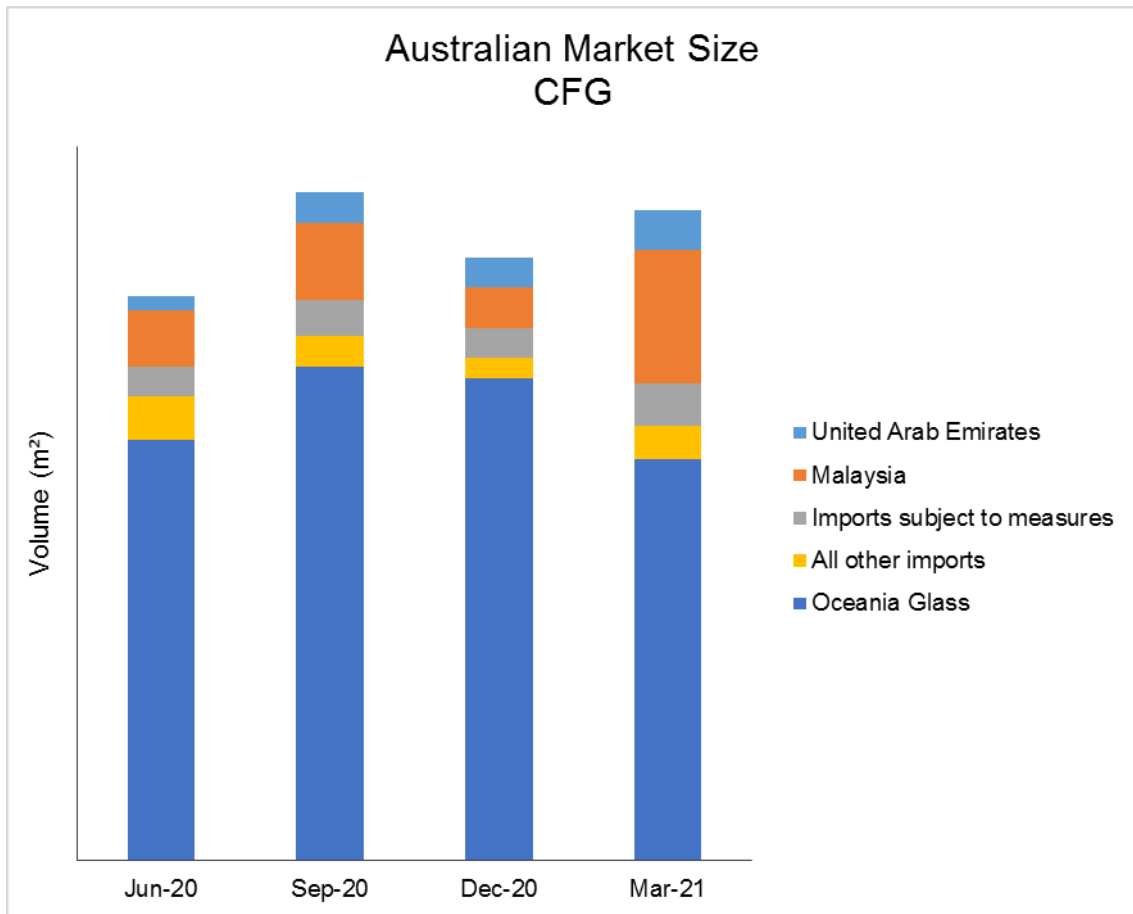


Figure 6: Australian market size (investigation period)

The commission's analysis of the Australian market is contained in **Confidential Attachment 1**.

## **6 DUMPING INVESTIGATION**

### **6.1 Preliminary finding**

The commission found that the goods exported to Australia from Malaysia have not been dumped. The commission found that the goods exported to Australia from the UAE have been dumped and that the dumping margins are not negligible.

The commission’s assessment of the dumping margins is set out in Table 7 below.

Country	Exporter	Dumping Margin
Malaysia	Xinyi Energy Smart (Malaysia) Sdn Bhd	-7.4%
UAE	Emirates Float Glass LLC	42.5%
	Guardian Zoujaj International Float Glass Co LLC	23.8%
	All other exporters	42.5%

**Table 7: Summary of dumping margins**

### **6.2 Legislative and policy framework**

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that exporters exported dumped goods to Australia.

Section 269TDA(1) also requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that the exporter has not dumped the goods, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Dumping occurs when an exporter exports a product from one country to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC, respectively.

#### **6.2.1 Export price**

The export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arms length transactions under section 269TAA. Section 269TAB(1)(a) generally provides that, subject to certain conditions, the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer, where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arms length transactions.

## **PUBLIC RECORD**

Where the conditions in section 269TAB(1)(a) are not met, such as when the export transactions are not arms length or the importer(s) have not purchased the goods from the exporter, the export price is determined under sections 269TAB(1)(b) or (c).

Section 269TAB(3) provides that, where the export price cannot be established under the preceding provisions, the export price is determined by having regard to all relevant information.

### **6.2.2 Normal value**

The normal value is determined in accordance with section 269TAC. Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or payable) for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

However, if one of the circumstances set out in sections 269TAC(2)(a) or (b) is present, such as where there is an absence or low volume of relevant sales of like goods in the market of the country of export or there is a particular market situation, section 269TAC(1) may not be used. In this instance, the normal value of the goods is to be calculated through either a constructed normal value under section 269TAC(2)(c) or using prices of like goods exported to a third country under section 269TAC(2)(d).

An exporter's domestic sales of like goods are taken to be in a low volume where the total volume of sales of like goods for home consumption in the country of export by the exporter is less than 5% of the total volume of the goods under consideration that are exported to Australia by the exporter (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).<sup>28</sup>

Section 269TAC(6) provides that, where the normal value cannot be established under the preceding provisions, the normal value is determined by having regard to all relevant information.

### **6.2.3 Dumping margin**

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of this investigation, the commission compared the weighted average Australian export prices with the corresponding quarterly weighted average normal values for the investigation period in accordance with section 269TACB(2)(a).

## **6.3 Cooperative exporters**

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

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<sup>28</sup> Section 269TAC(14).

## PUBLIC RECORD

At the outset of the investigation, the commission forwarded questionnaires to identified exporters, and a copy was also placed on the commission's website for completion by any other exporters. The commission received REQs from the following entities:

- Xinyi Energy Smart (Malaysia) Sdn Bhd (Xinyi ESM)<sup>29</sup>
- Emirates Float Glass LLC (EFG)<sup>30</sup>
- Guardian Zoujaj International Float Glass Co LLC (Guardian RAK).<sup>31</sup>

The commission considers all entities listed above, who provided a REQ and whose exports were examined as part of the investigation, to be cooperative exporters.

### 6.4 Uncooperative exporters

Section 269T(1) provides that an exporter is an uncooperative exporter if the Commissioner is satisfied that:

- an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or
- an exporter significantly impeded the investigation.

The Commissioner must determine an exporter to be an uncooperative exporter on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so within the legislated period.<sup>32</sup>

There were no exporters that the commission considers uncooperative exporters pursuant to section 269T(1). The commission considers that the volumes from exporters who cooperated with the investigation likely represents the total volume of exports relevant to the investigation period.

As the Commissioner is proposing to recommend that measures be imposed in the form of a dumping duty notice in respect of the goods exported to Australia from the UAE, the commission has determined a rate for the category of 'all other exporters' at section 6.8.

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<sup>29</sup> EPR 582, no 010.

<sup>30</sup> EPR 582, no 013.

<sup>31</sup> EPR 582, no 009.

<sup>32</sup> Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction).

## **6.5 Xinyi ESM**

### Verification

The commission conducted a remote verification of Xinyi ESM's REQ. A report covering the verification findings is available on the public record.<sup>33</sup>

The commission is satisfied that Xinyi ESM is the producer of the goods and like goods. The commission is further satisfied that the information that Xinyi ESM provided is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

### Export price

The commission considers Xinyi ESM to be an exporter of the goods,<sup>34</sup> as Xinyi ESM:

- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- arranges and pays for the ocean freight and marine insurance in relation to cost, insurance and freight (CIF) sales.

The commission is satisfied that for all Australian export sales during the period, Xinyi ESM was the exporter of the goods.

Xinyi ESM did not make Australian sales of the goods to any related customers during the investigation period.

In respect of Xinyi ESM's Australian sales of the goods to its unrelated customers during the period, the verification team found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or

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<sup>33</sup> EPR 582, no 017.

<sup>34</sup> The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

## PUBLIC RECORD

- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>35</sup>

The commission therefore considers that all export sales made by Xinyi ESM during the investigation period were arms length transactions.

From the above findings, the commission is satisfied that Xinyi ESM is an exporter of the goods to Australia, that the goods were exported to Australia otherwise than by the importer and that the goods were purchased in arms length transactions by the importer from the exporter.

In respect of Australian sales of the goods by Xinyi ESM, the commission has determined the export price under section 269TAB(1)(a), being the price paid by the importer to Xinyi ESM less transport and other costs arising after exportation.

### Normal Value

Xinyi ESM did not make domestic sales of like goods to any related customers during the investigation period.

In respect of Xinyi ESM's domestic sales of like goods to its unrelated customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all of Xinyi ESM's domestic sales to its unrelated domestic customers during the period were arms length transactions.

Section 269TAAD states that domestic sales of like goods are not in the OCOT if arms length transactions are:

- unprofitable in substantial quantities over an extended period and
- unlikely to be recoverable within a reasonable period.<sup>36</sup>

The commission tested profitability by comparing the net invoice price, less any reimbursements, against the relevant cost for each domestic sales transaction.

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<sup>35</sup> Section 269TAA.

<sup>36</sup> In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

## **PUBLIC RECORD**

The commission then tested whether the unprofitable sales were in substantial quantities (not less than 20%) by comparing the volume of unprofitable sales to the total sales volume, for each model over the period.

Finally, the commission tested recoverability by comparing the net invoice price, less any reimbursements, against the relevant weighted average cost over the period for each domestic sales transaction.

As the volume of relevant domestic sales of each of Xinyi ESM's exported models are 5% or more of the volume exported, the case team considers it can make a proper comparison at the model level.

The commission also assessed the total volume of relevant domestic sales of like goods as a percentage of the total volume of goods exported to Australia and found that the volume of relevant domestic sales was not less than 5%.

The commission is satisfied that there were sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and sold at prices that were within the OCOT.

The commission has therefore determined the normal value for Xinyi ESM under section 269TAC(1).

### Adjustments

In using domestic sales as a basis for normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of the goods exported to Australia and the export price of the exported goods would not affect the comparison of domestic prices with export prices.

The commission is satisfied that there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments are necessary to ensure a fair comparison of normal value and exporter prices. The normal value and export price have been compared at free on board (FOB) terms.

## PUBLIC RECORD

Adjustment Type	Basis for adjustment	Deduction/addition
Domestic credit terms	Credit terms are different between export and domestic sales	<b>Deduct</b> an amount for domestic credit terms
Domestic inland transport	Cost incurred from transporting like goods from the factory to the domestic customer	<b>Deduct</b> an amount for domestic inland transport
Domestic ocean freight	Domestic ocean freight is paid for transport to certain domestic customers	<b>Deduct</b> an amount for domestic ocean freight
Export inland transport	Cost incurred from transporting the goods from the factory to the port	<b>Add</b> an amount for export inland transport
Export port and handling charges	Cost incurred at the port, including port handling charges, bill of lading fees, etc.	<b>Add</b> an amount for export port and handling charges
Export bank charges	Bank charges paid on foreign currency accounts	<b>Add</b> an amount for export bank charges
Export credit terms	Credit terms are different between export and domestic sales	<b>Add</b> an amount for export credit terms

**Table 8: Summary of adjustments – Xinyi ESM**

### Dumping Margin

The dumping margin was assessed by comparing weighted average Australian export prices to the corresponding quarterly weighted average normal value for the investigation period.<sup>37</sup>

The dumping margin for the goods exported to Australia by Xinyi ESM for the investigation period is **-7.4%**.

The commission's calculations for Xinyi ESM are at **Confidential Attachments 2 to 5**.

## **6.6 EFG**

### Verification

The commission did not conduct a full verification of EFG's REQ, but assessed the information in the respondents' questionnaires in accordance with the intent of ADN no 2016/30. Based on that assessment, the commission is satisfied that EFG is the producer of the goods and like goods and that the information that EFG provided is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.<sup>38</sup>

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<sup>37</sup> Section 269TACB(2)(a).

<sup>38</sup> EPR 582, no 018.

Export price

The commission considers that EFG is an exporter of the goods,<sup>39</sup> as EFG:

- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as the shipper on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- arranges and pays for the ocean freight and marine insurance in relation to CIF sales.

EFG did not make Australian sales of the goods to any related customers during the investigation period.

In respect of EFG's export sales of the goods to its unrelated customers during the investigation period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>40</sup>

The commission therefore considers that all export sales made by EFG during the investigation period were arms length transactions.

From the above findings, the commission is satisfied that EFG is an exporter of the goods to Australia, that the goods were exported to Australia otherwise than by the importer and that the goods were purchased in arms length transactions by the importer from the exporter.

In respect of Australian sales of the goods by EFG, the commission has determined the export price under section 269TAB(1)(a), being the price paid by the importer to EFG, less transport and other costs arising after exportation.

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<sup>39</sup> The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

<sup>40</sup> Section 269TAA.

Normal Value

EFG made domestic sales of like goods to related and unrelated customers during the investigation period.

In respect of EFG's domestic sales of like goods to its related and unrelated customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>41</sup>

The commission therefore considers that all domestic sales made by EFG to its related and unrelated domestic customers during the period were arms length transactions.

Section 269TAA states that domestic sales of like goods are not in the OCOT if arms length transactions are:

- unprofitable in substantial quantities over an extended period and
- unlikely to be recoverable within a reasonable period.<sup>42</sup>

The commission tested profitability by comparing the net invoice price, less any reimbursements, against the relevant cost for each domestic sales transaction.

The commission then tested whether the unprofitable sales were in substantial quantities (not less than 20%) by comparing the volume of unprofitable sales to the total sales volume, for each model over the period.

Finally, the commission tested recoverability by comparing the net invoice price, less any reimbursements, against the relevant weighted average cost over the period for each domestic sales transaction.

As the volume of relevant domestic sales of each of EFG's exported models are 5% or more of the volume exported, the case team considers it can make a proper comparison at the model level.

The commission also assessed the total volume of relevant domestic sales of like goods as a percentage of the total volume of goods exported to Australia and found that the volume of relevant domestic sales was not less than 5%.

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<sup>41</sup> Section 269TAA.

<sup>42</sup> In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

## PUBLIC RECORD

From the above, the commission is satisfied that there are sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and at prices that were within the OCOT.

The commission has therefore determined the normal value for EFG under section 269TAC(1).

### Adjustments

In using domestic sales as a basis for normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of the goods exported to Australia and the export price of the exported goods would not affect the comparison of domestic prices with export prices.

The commission is satisfied that there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these adjustments are necessary to ensure a fair comparison of normal value and exporter prices. The normal value and export price have been compared at FOB terms.

<b>Adjustment type</b>	<b>Basis for adjustment</b>	<b>Deduction/addition</b>
Domestic packaging	Domestic packaging was found to be different to export packaging	<b>Deduct</b> an amount for domestic packaging
Domestic inland transport	Cost incurred from transporting like goods from the factory to the domestic customer	<b>Deduct</b> an amount for domestic inland transport
Domestic credit terms	Credit terms are different between export and domestic sales	<b>Deduct</b> an amount for domestic credit terms
Export packaging	Export packaging was found to be different to domestic packaging	<b>Add</b> an amount for export packaging
Export inland transport	Cost incurred from transporting the goods from the factory to the port	<b>Add</b> an amount for export inland transport
Export handling & other	Cost incurred at the port, including port handling charges, bill of lading fees, etc.	<b>Add</b> an amount for export handling & other
Export commission	Commission paid to export sales agent	<b>Add</b> an amount for export commission
Export credit terms	Credit terms are different between export and domestic sales	<b>Add</b> an amount for export credit terms

**Table 9: Summary of adjustments – EFG**

### Dumping Margin

The dumping margin was assessed by comparing weighted average export prices to the corresponding quarterly weighted average normal value for the investigation period.<sup>43</sup>

The commission has calculated a preliminary dumping margin for the goods exported to Australia by EFG of **42.5%**.

The commission's calculations are at **Confidential Attachments 6 to 9**.

## **6.7 Guardian RAK**

### Verification

The commission did not conduct a full verification of Guardian RAK's REQ, but assessed the information in the respondents' questionnaires in accordance with the intent of ADN no 2016/30. Based on that assessment, the commission is satisfied that Guardian RAK is the producer of the goods and like goods and that the information that Guardian RAK provided is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.<sup>44</sup>

### Export price

The commission considers that Guardian RAK is an exporter of the goods,<sup>45</sup> as Guardian RAK:

- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as the shipper on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export
- arranges and pays for the ocean freight and marine insurance in relation to CIF sales.

Guardian RAK did not make Australian sales of the goods to any related customers during the investigation period.

In respect of Guardian RAK's export sales of the goods to its unrelated customers during the investigation period, the case team found no evidence that:

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<sup>43</sup> Section 269TACB(2)(a).

<sup>44</sup> EPR 582, no 018.

<sup>45</sup> The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

## PUBLIC RECORD

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>46</sup>

The commission therefore considers that all export sales made by Guardian RAK during the investigation period were arms length transactions.

From the above findings, the commission is satisfied that Guardian RAK is an exporter of the goods to Australia, that the goods were exported to Australia otherwise than by the importer and that the goods were purchased in arms length transactions by the importer from the exporter.

In respect of Australian sales of the goods by Guardian RAK, the commission has determined the export price under section 269TAB(1)(a), being the price paid by the importer to Guardian RAK, less transport and other costs arising after exportation.

### Normal Value

Guardian RAK did not make domestic sales of like goods to any related customers during the investigation period.

In respect of Guardian RAK's domestic sales of like goods to its unrelated customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller, or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>47</sup>

The commission therefore considers that all domestic sales made by Guardian RAK to its unrelated domestic customers during the period were arms length transactions.

Section 269TAAD states that domestic sales of like goods are not in the ordinary course of trade (OCOT) if arms length transactions are:

- unprofitable in substantial quantities over an extended period and

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<sup>46</sup> Section 269TAA.

<sup>47</sup> Section 269TAA.

## PUBLIC RECORD

- unlikely to be recoverable within a reasonable period.<sup>48</sup>

The commission tested profitability by comparing the net invoice price, less any reimbursements, against the relevant cost for each domestic sales transaction.

The commission then tested whether the unprofitable sales were in substantial quantities (not less than 20%) by comparing the volume of unprofitable sales to the total sales volume, for each model over the period.

Finally, the commission tested recoverability by comparing the net invoice price, less any reimbursements, against the relevant weighted average cost over the period for each domestic sales transaction.

The commission found that in relation to 2 models there were insufficient sales of like goods sold in the OCOT on the basis that there was an absence, or low volume, of relevant sales of like goods in the market of the country of export. For these models, the commission was satisfied that there were sufficient domestic sales volumes of surrogate models based on the models with the closest physical characteristics under the model control code (MCC) hierarchy structure. Accordingly, the commission has applied a specification adjustment to these models when calculating the normal value.

As the volume of relevant domestic sales of the remainder of Guardian RAK's exported models are 5% or more of the volume exported, the commission considers it can make a proper comparison at the model level.

The commission also assessed the total volume of relevant domestic sales of like goods as a percentage of the total volume of goods exported to Australia and found that the volume of relevant domestic sales was not less than 5%.

From the above, the commission is satisfied that there are sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and at prices that were within the OCOT.

The commission has therefore determined the normal value for Guardian RAK under section 269TAC(1).

### Adjustments

In using domestic sales as a basis for normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of the goods exported to Australia and the export price of the exported goods would not affect the comparison of domestic prices with export prices.

The commission is satisfied that there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The commission considers these

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<sup>48</sup> In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

**PUBLIC RECORD**

adjustments are necessary to ensure a fair comparison of normal value and exporter prices. The normal value and export price have been compared at FOB terms.

<b>Adjustment type</b>	<b>Basis for adjustment</b>	<b>Deduction/addition</b>
Domestic packaging	Domestic packaging was found to be different to export packaging	<b>Deduct</b> an amount for domestic packaging
Domestic inland transport	Cost incurred from transporting like goods from the factory to the domestic customer	<b>Deduct</b> an amount for domestic inland transport
Domestic sales team expenses	Cost of dedicated domestic sales staff	<b>Deduct</b> an amount for domestic sales team expenses
Domestic credit terms	Credit terms are different between export and domestic sales	<b>Deduct</b> an amount for domestic credit terms
Export packaging	Export packaging was found to be different to domestic packaging	<b>Add</b> an amount for export packaging
Export inland transport	Cost incurred from transporting the goods from the factory to the port	<b>Add</b> an amount for export inland transport
Export handling & other	Cost incurred at the port, including port handling charges, bill of lading fees, etc.	<b>Add</b> an amount for export handling & other
Export commission	Commission paid to export sales agent	<b>Add</b> an amount for export commission
Export credit terms	Credit terms are different between export and domestic sales	<b>Add</b> an amount for export credit terms
Specification adjustment	Insufficient volume of domestic sales for a proper comparison at the model level	Adjustment made using the cost to make and sell difference and an amount for OCOT profit

**Table 10: Summary of adjustments – Guardian RAK**

Dumping Margin

The dumping margin was assessed by comparing weighted average export prices to the corresponding quarterly weighted average normal value for the investigation period.<sup>49</sup>

The commission has calculated a preliminary dumping margin for the goods exported to Australia by Guardian RAK of **23.8%**.

The commission’s calculations are at **Confidential Attachments 10 to 13**.

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<sup>49</sup> Section 269TACB(2)(a).

### 6.8 All other exporters – UAE

As outlined in section 6.4, the Commissioner does not consider that there are any uncooperative exporters that would be the subject of the investigation as defined in section 269T(1).

After having regard to all relevant information, export prices for all other exporters from the UAE have been established in accordance with section 269TAB(3) and normal values in accordance with section 269TAC(6).

The commission has used EFG’s export price and normal value in calculating the dumping margin for all other exporters from the UAE. The dumping margin for EFG is the highest observed out of the cooperating exporters and demonstrates a price at which an exporter from the UAE may export the goods to Australia.<sup>50</sup>

In line with the above, the commission has calculated a preliminary dumping margin for the category of all other exporters from the UAE of **42.5%**.

### 6.9 Summary of dumping margins

The commission ascertained the following dumping margins for the goods exported to Australia from Malaysia and the UAE during the investigation period:

Country	Exporter	Dumping Margin
Malaysia	Xinyi Energy Smart (Malaysia) Sdn Bhd	-7.4%
UAE	Emirates Float Glass LLC	42.5%
	Guardian Zoujaj International Float Glass Co LLC	23.8%
	All other exporters	42.5%

Table 11: Preliminary dumping margins

### 6.10 Level of dumping

Section 269TDA(1) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods, or if the dumping margin for the exporter is less than 2%.

#### UAE

The commission is satisfied that all goods from UAE exporters during the investigation period were dumped and the dumping margin for all UAE exporters of the goods is 2% or more.

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<sup>50</sup> This approach is similar to that taken in *Investigation No 240* and *Investigation No 495*.

Malaysia

As discussed in section 6.5, the commission is satisfied that the goods exported to Australia by Xinyi ESM are not dumped. Accordingly, the Commissioner proposes to terminate the dumping investigation as it relates to Xinyi ESM, pursuant to section 269TDA(1)(b)(i).

**6.11 Volume of dumped imports**

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period, where section 269TDA(5) does not apply. Section 269TDA(5) does not apply to this investigation.

Using data from the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market.

UAE

Based on the commission's calculations, the Commissioner is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods exported from the UAE was greater than 3% of the total import volume, and is therefore not negligible. Accordingly, there is no basis for the Commissioner to terminate the investigation in relation to the UAE.

Malaysia

In relation to Malaysia, Xinyi ESM was the only Malaysian exporter during the investigation period and its goods were not dumped. Accordingly, no goods were exported to Australia from Malaysia at dumped prices. As such, the Commissioner proposes to terminate the dumping investigation as it relates to Malaysia, pursuant to section 269TDA(3) on the basis that the volume of dumped goods is negligible.

## 7 SUBSIDY INVESTIGATION – MALAYSIA

### 7.1 Preliminary finding

The commission has preliminarily found that Malaysian exporters have not received countervailable subsidies in respect of the goods exported to Australia during the investigation period.

Accordingly, the Commissioner is preliminarily satisfied that it is necessary to terminate the subsidy investigation under sections 269TDA(2)(b)(i) and 269TDA(7).

### 7.2 Relevant legislation

Section 269T(1) defines ‘subsidy’ as follows:

**subsidy**, in respect of goods exported to Australia, means:

(a) a financial contribution:

- (i) by a government of the country of export or country of origin of the goods; or
- (ii) by a public body of that country or a public body of which that government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
  - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
  - (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
  - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
  - (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.<sup>51</sup>

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<sup>51</sup> Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

## PUBLIC RECORD

Section 269TAAC defines a 'countervailable subsidy' as follows:

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
  - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
  - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
  - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
  - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
  - (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
  - (b) eligibility for the subsidy is automatic; and
  - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
  - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
  - (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
  - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
  - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
  - (d) the manner in which a discretion to grant access to the subsidy has been exercised;determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
  - (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
  - (b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

### **7.3 Investigated programs**

The applicant alleged the existence of 4 programs in relation to exports of the goods from Malaysia, based on previous findings made by the commission in respect of subsidies received for other products manufactured in Malaysia (specifically aluminium extrusions). The applicant argued that such subsidies would be applicable to CFG as the GOM offers these subsidies to businesses that invest in manufacturing in Malaysia. Accordingly, the applicant considers that CFG from Malaysia would be in receipt of the same benefits.

The applicant also alleged that Xinyi ESM received natural gas for less than adequate remuneration (LTAR). This allegation was based on an announcement from Xinyi ESM that it had entered into an agreement with a state-invested enterprise (SIE) for the acquisition of land and services infrastructure, including gas supply.

The GOM provided information in its response to the government questionnaire (RGQ) on 2 additional programs not previously identified.

Based on information provided by the GOM in its RGQ and information provided by the GOM to the World Trade Organization (WTO), the commission identified that programs 1 (income tax reductions ('Pioneer Status')) and 2 (income tax allowance) were in fact made up of separate programs.

The above findings brought the total of investigated programs to 9 for this investigation.

## 7.4 Summary of programs

The commission has set out each program and its finding in respect of each program in the table below.

Program Number <sup>52</sup>	Program name	Program Type	Countervailable subsidy received?
<b>Programs included in application</b>			
1A	Pioneer Status	Tax	No
1B	Exemptions of income	Tax	No
2A	Investment tax allowance	Tax	No
2B	Exemption of income equivalent to capital expenditure incurred	Tax	No
3	Double deductions for export credit insurance	Tax	No
6	Reinvestment allowance	Tax	No
7	Gas at less than adequate remuneration (LTAR)	LTAR	No
<b>Further identified programs</b>			
8	Green technology tax incentive	Tax	No
9	Wage subsidy program	Tax	No

**Table 12: Investigated subsidy programs**

The commission's findings in relation to each program investigated are outlined in **Non-confidential Appendix A**.

## 7.5 Information considered by the commission

### 7.5.1 Information provided by exporters

The commission has relied upon information provided by Xinyi ESM, the only exporter of the goods from Malaysia during the investigation period, when assessing the alleged subsidy programs. This included information Xinyi ESM provided in its REQ as well as information provided during and after verification.

### 7.5.2 Information provided by the Government of Malaysia

In accordance with section 269TB(2C), the commission invited the GOM for consultations during the consideration phase of the investigation concerning the claims made by the applicant in relation to countervailable subsidies.

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<sup>52</sup> Program numbering from 1-6 is consistent with that in *Investigation No 362* (INV 362). Program 4 (Double deductions for freight charges relating to goods originating from Sabah and Sarawak) was not included as Oceania Glass has not claimed that a benefit has been received under this program in its application. Program 5 (Double deduction for insurance premiums for exporters and importers) was investigated in INV 362 but ceased to apply from the 2016 year of assessment.

On 27 April 2021, the commission also sent a Government Questionnaire to the GOM, which included questions relating to each of the alleged subsidy programs identified in the application. A response to the questionnaire was provided by the GOM to the commission on 10 June 2020.<sup>53</sup>

### **7.5.3 Other information considered as part of this assessment**

The commission also considered as part of this assessment:

- information provided in the application
- submissions received in relation to subsidies provided to Malaysian exporters<sup>54</sup>
- information the GOM provided to the WTO<sup>55</sup>
- previous investigations by the commission into subsidies provided to Malaysian exporters
- information from government and non-government entities in Malaysia.

## **7.6 Subsidy assessment**

### **7.6.1.1 Xinyi Energy Smart (Malaysia) Sdn Bhd**

The commission investigated whether Xinyi ESM received a benefit from any countervailable subsidy during the investigation period as part of the verification.<sup>56</sup>

The commission did not find any evidence that Xinyi ESM had received a benefit under programs 1A, 1B, 2A, 2B, 3 and 6.

#### Program 7 – Natural gas at LTAR

In its application, Oceania Glass alleged that Xinyi ESM would have received natural gas at LTAR due to the purchase agreement that Xinyi ESM had made with the SIE, Perbadanan Kemajuan Negeri Melaka (PKNM).<sup>57</sup>

As detailed in the verification report, the commission verified Xinyi ESM's purchases of natural gas in the investigation period.

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53 EPR 582, no 007.

54 EPR 582, nos 008, 012 & 014.

55 World Trade Organization (WTO), 'Committee on Subsidies and Countervailing Measures - Subsidies - New and full notification pursuant to article XVI:1 of the GATT 1994 and article 25 of the Agreement on Subsidies and Countervailing Measures – Malaysia', *WTO doc no 21-5232*, WTO, 2021.

56 EPR 582, no 017, Chapter 12.

57 EPR 582, no 001, p 48.

## PUBLIC RECORD

As part of the verification, Xinyi ESM provided the commission with copies of its:

- gas supply agreement
- invoices of gas purchases
- land purchase agreement with PKNM.

From the evidence provided in these documents, the commission confirmed that Xinyi ESM did not purchase natural gas from PKNM during the investigation period, nor did it enter into a supply agreement with PKNM for the supply of natural gas.

Due to the historical regulation of the natural gas market by the GOM, the commission conducted further analysis to determine the existence of a countervailable subsidy. The commission found that there was no benefit conferred by the GOM, any other public body, or a private body directed by the government to carry out a governmental function.

The commission's analysis of Program 7 is detailed in section A2.7 of this report.

### Program 9 – Wage subsidy program

During the verification, the commission identified that Xinyi ESM had received a benefit under Program 9. In the verification report, the commission had calculated a preliminary subsidy margin of 0.1% on the basis that Program 9 may be a countervailable subsidy, subject to the commission's further analysis. As detailed in section A2.9, although the commission found that the GOM conferred a benefit to Xinyi ESM under Program 9, the benefit was not countervailable as it was not specific.

Accordingly, the commission has found that Xinyi ESM has not received a countervailable subsidy in respect of the goods under any program during the investigation period.

## 7.7 Level of subsidisation

Section 269TDA(2) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if satisfied either that:

- an exporter did not receive a countervailable subsidy in respect of the goods
- if an exporter did receive a subsidy, the level of the subsidy did not at any time during the investigation period exceed a negligible level.

The commission has found no evidence that Xinyi ESM received a countervailable subsidy in respect of the goods during the investigation period.

The Commissioner is therefore proposing to terminate the subsidy investigation in relation to Xinyi ESM in accordance with section 269TDA(2)(b)(i).

## 7.8 Volume of subsidised goods

Section 269TDA(7) provides that the Commissioner must terminate a subsidy investigation, in so far as it relates to a country of export of the goods, if satisfied that the total volume of goods that have, or may be, exported to Australia in respect of which a countervailable subsidy has been, or may be, received is negligible.

## PUBLIC RECORD

Pursuant to section 269TDA(8), a negligible volume for Malaysia is a volume less than 4% of the total volume of goods imported into Australia over a reasonable examination period.<sup>58</sup>

The commission has found that:

- Xinyi ESM was the only exporter of the goods from Malaysia during the investigation period
- the total volume of goods exported by Xinyi ESM found to be in receipt of a countervailable subsidy was zero.

The Commissioner is therefore proposing to terminate the subsidy investigation in relation to Malaysia in accordance with section 269TDA(7) as the total volume of goods that have been exported to Australia in respect of which a countervailable subsidy has been received is negligible.

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<sup>58</sup> Malaysia is classified as a Developing Country under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

## 8 ECONOMIC CONDITION OF THE INDUSTRY

### 8.1 Preliminary finding

Based on an analysis of the information contained in the application and further information obtained and analysed, the commission considers that Oceania Glass has experienced injury during the investigation period in the form of:

- price suppression
- reduced profit and profitability
- reduced ROI.

### 8.2 Introduction

In its application, Oceania Glass claimed that the Australian industry has experienced injury in the form of:

- price depression
- price suppression
- lost profit and profitability
- reduced ROI
- reduced attractiveness to reinvest.<sup>59</sup>

Oceania Glass also noted in its application that it considers the material injury to have commenced prior to the transfer of ownership in 2019, i.e. in 2017 and 2018.

### 8.3 Approach to injury analysis

The analysis detailed in this chapter is based on financial information submitted by Oceania Glass, data from the ABF import database and data from cooperating exporters. The commission considers that this information is reliable and relevant to use for injury analysis purposes.

The figures presented have been compiled on an annual basis for the 4 year period ending 31 March 2021 (year ending March, YEM).

This preliminary assessment is at **Confidential Attachment 14**.

### 8.4 Volume effects

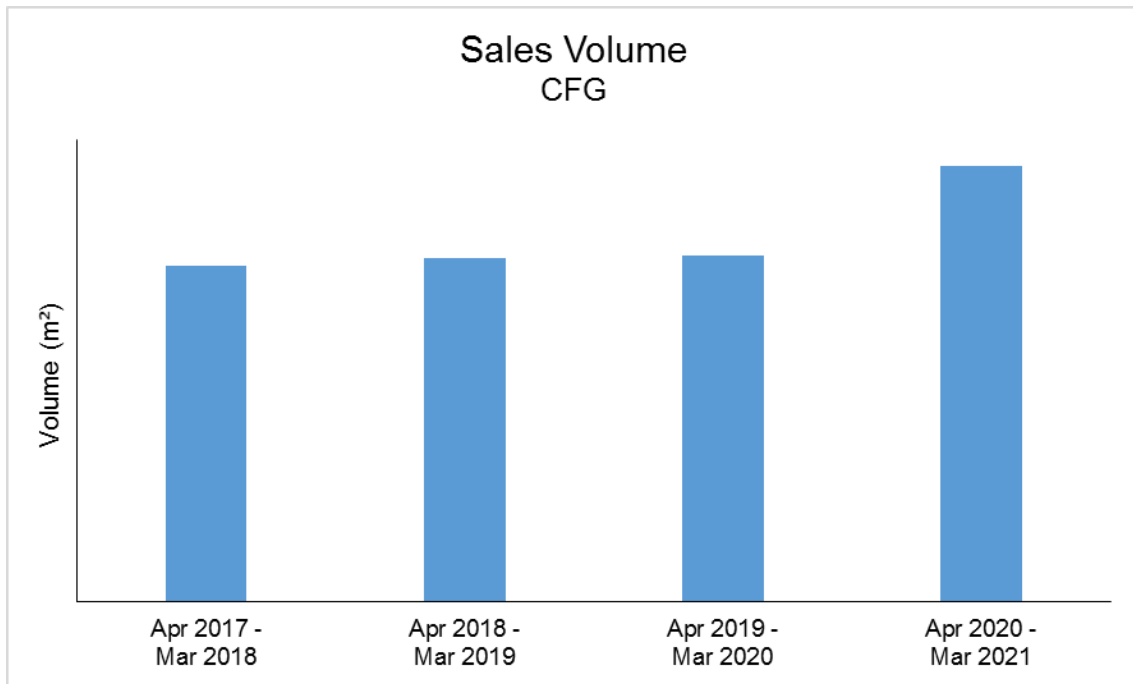
#### 8.4.1 Sales volume

Oceania Glass has not claimed volume injury within its application.

Oceania Glass's total sales volumes are depicted in Figure 7, showing that they were reasonably stable across the injury analysis period before increasing in YEM2021.

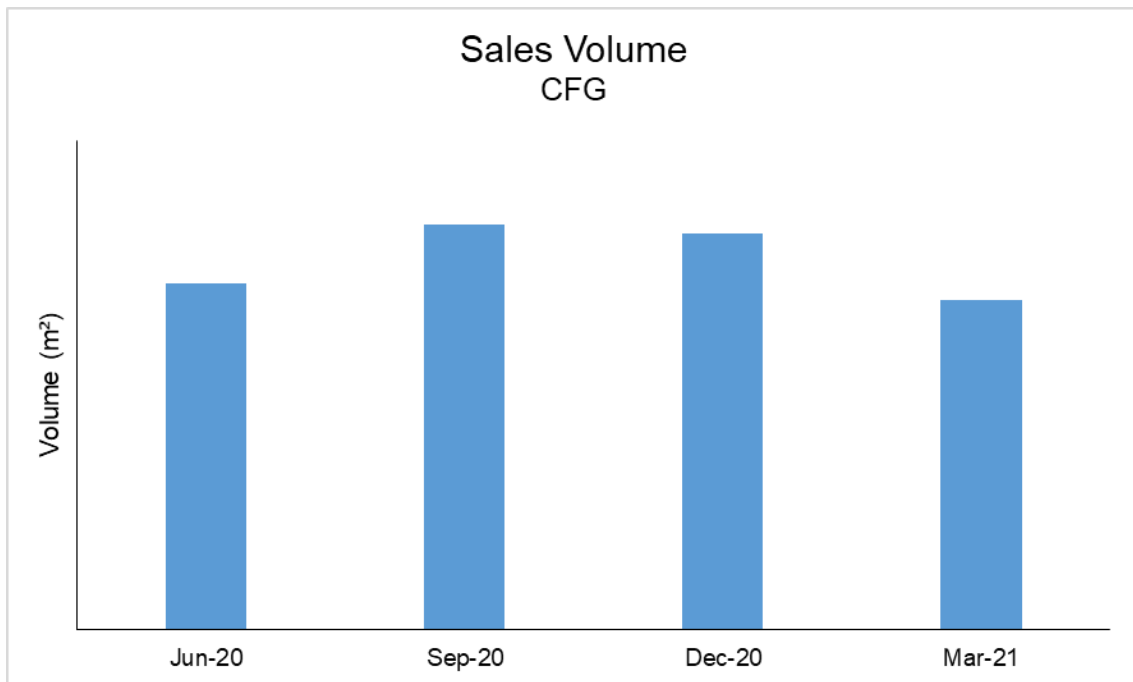
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<sup>59</sup> EPR 582, no 001.



**Figure 7: Oceania Glass sales volume (injury analysis period)**

The commission further examined Oceania Glass’s sales volumes over the investigation period as shown in Figure 8.



**Figure 8: Oceania Glass sales volume (investigation period)**

The commission observed that Oceania Glass’s sales volume increased in the first 2 quarters, then decreased in the last 2 quarters. The commission considers that this indicates that although Oceania Glass experienced an increase in overall sales volumes in YEM2021, this increase may be short-lived.

## PUBLIC RECORD

The commission considers that although it appears that Oceania Glass has not experienced injury in the form of loss of sales volume over the injury analysis period, this trend is potentially reversing over the investigation period.

### 8.4.2 Market share

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 is set out in Figure 9.

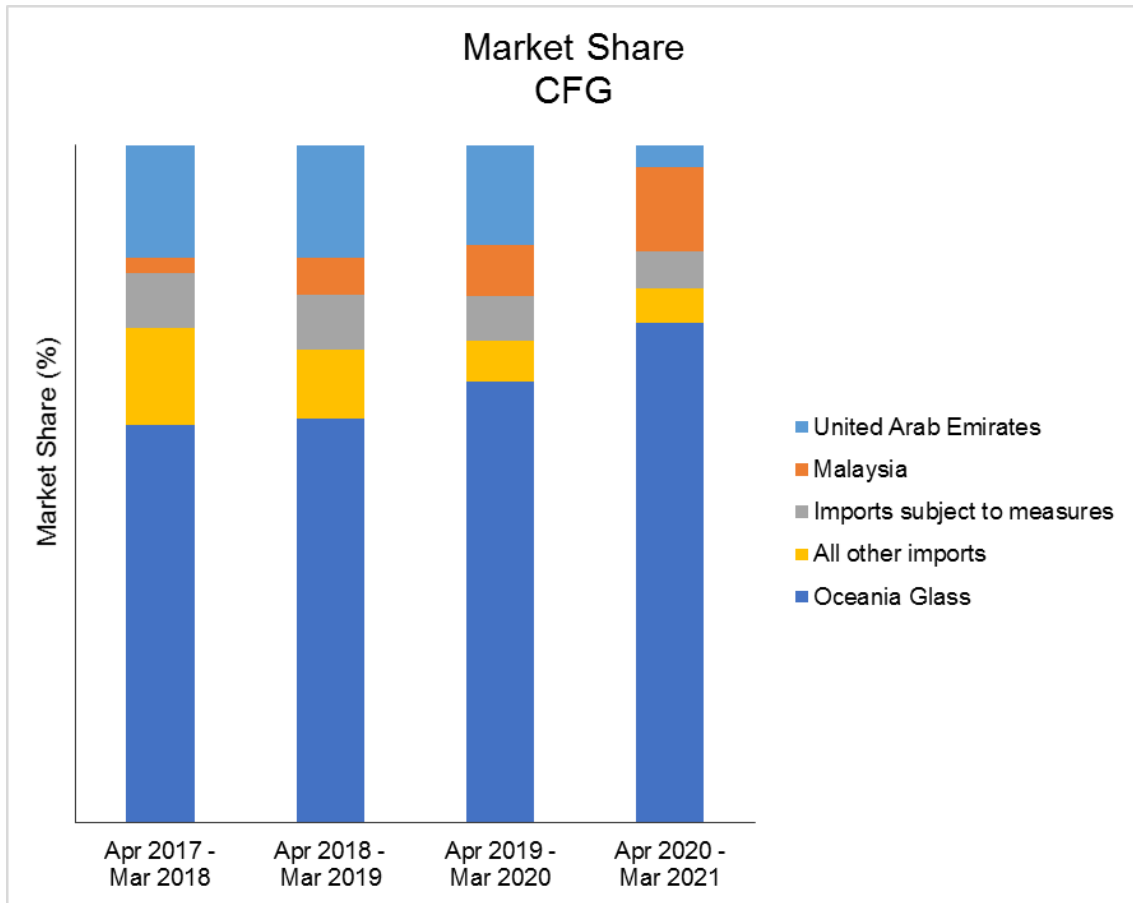


Figure 9: Australian market share (injury analysis period)

This chart indicates that, in relation to the injury analysis period:

- Oceania Glass maintained a relatively stable market share until YEM2019, with an increase in market share from YEM2020
- Malaysia's market share has increased year on year
- the UAE's market share was growing until YEM2020, but reduced significantly in YEM2021
- imports subject to measures have experienced a reduction in market share
- all other imports have also reduced.

## PUBLIC RECORD

Having regard to the market share over the investigation period shown in Figure 10, the commission found:

- Oceania Glass's market share increased in the first 3 quarters, before decreasing in the last quarter
- the market share of imports increased in the last quarter, displacing the market share held by Oceania Glass
- the market share of Malaysia increased substantially in the last quarter.

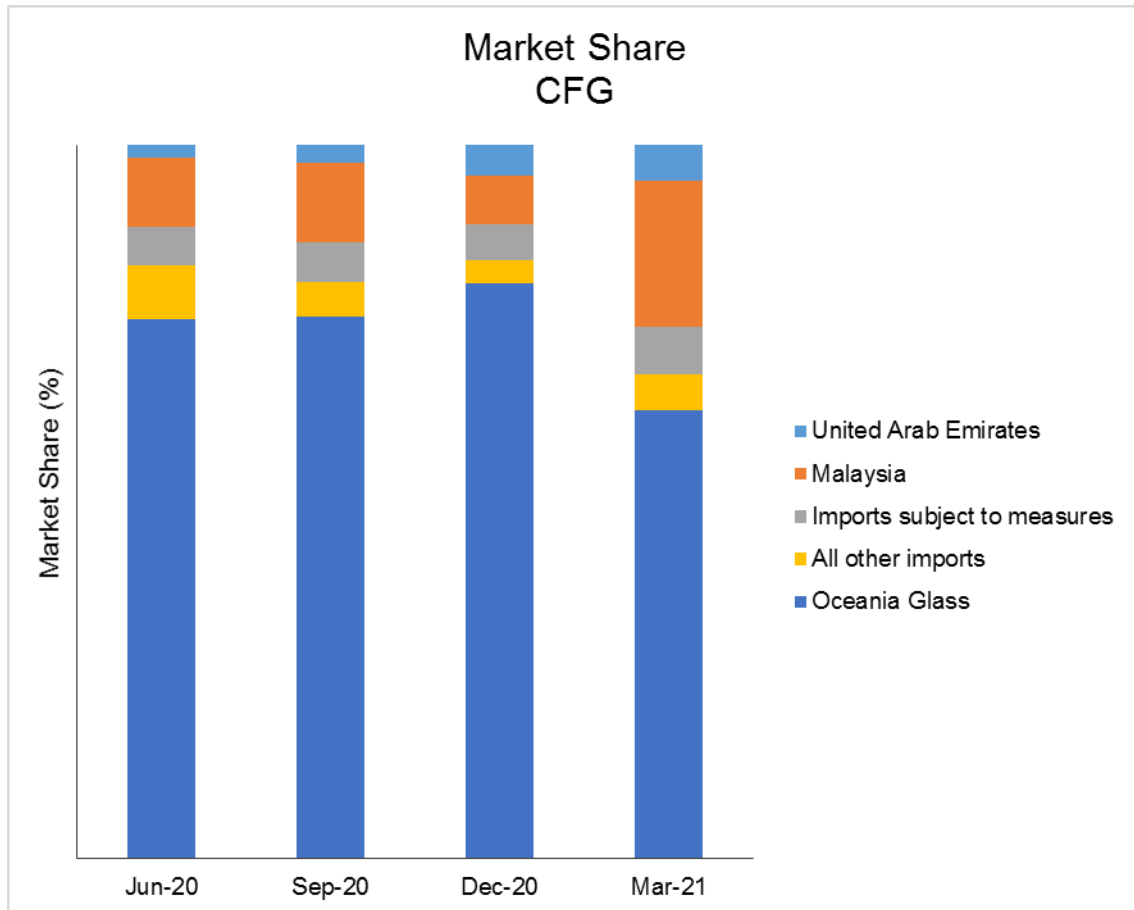


Figure 10: Australian market share (investigation period)

### 8.4.3 Conclusion – volume effects

This analysis indicates there was no injury suffered by the Australian industry in the form of lost sales volume or reduced market share over the injury analysis period.

## 8.5 Price suppression and depression

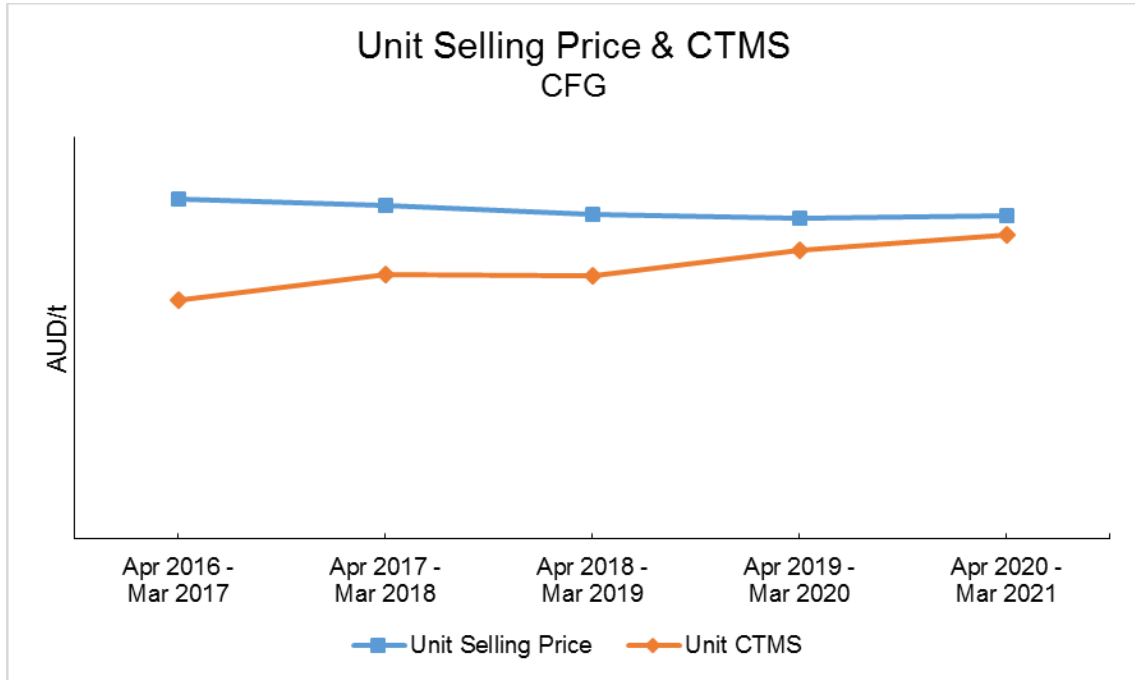
### 8.5.1 Price depression and price suppression

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.

**PUBLIC RECORD**

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

Figure 11 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 11: Oceania Glass unit selling price and CTMS (injury analysis period)**

Oceania Glass experienced a reduction in selling prices per unit from YEM2017 to YEM2019, with prices stabilising across YEM2020 and YEM2021. The commission considers that this may be indicative of price depression.

Throughout this same injury analysis period the unit CTMS increased resulting in a decrease in the margin between unit selling prices and costs. The commission considers that price suppression is evident.

To further test the appearance of price suppression and depression, the commission examined the unit selling price and CTMS across the investigation period.

## PUBLIC RECORD



**Figure 12: Oceania Glass unit selling price and CTMS (investigation period)**

Figure 12 indicates that during the investigation period Oceania Glass experienced:

- an increase in the margin between unit selling price and CTMS in the first 2 quarters
- a decrease in the margin between unit selling price and CTMS in the last 2 quarters
- flat unit selling prices across the investigation period.

### 8.5.2 Conclusion – price effects

Based on this analysis, the commission considers that Oceania Glass has:

- experienced price depression across the injury analysis period
- not experienced price depression across the investigation period
- experienced price suppression across both the injury analysis period and the investigation period.

## 8.6 Profits and profitability

### 8.6.1 Profit and profitability

Oceania Glass has claimed that it has suffered reduced profits and reduced profitability due to the alleged dumped and subsidised goods from Malaysia and the dumped goods from UAE. Figure 13 below charts Oceania Glass's unit profit and profitability as a percentage of revenue across the injury analysis period.

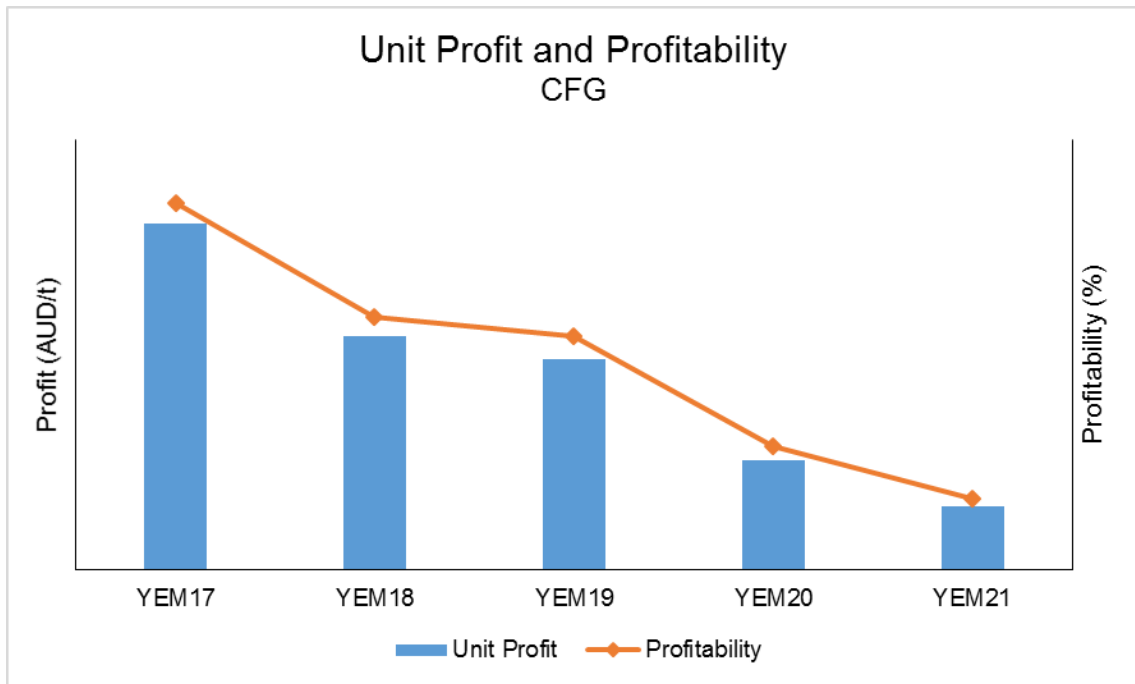


Figure 13: Oceania Glass's unit profit and profitability (injury analysis period)

Oceania Glass's profit margin has experienced a sustained decline over the injury analysis period.

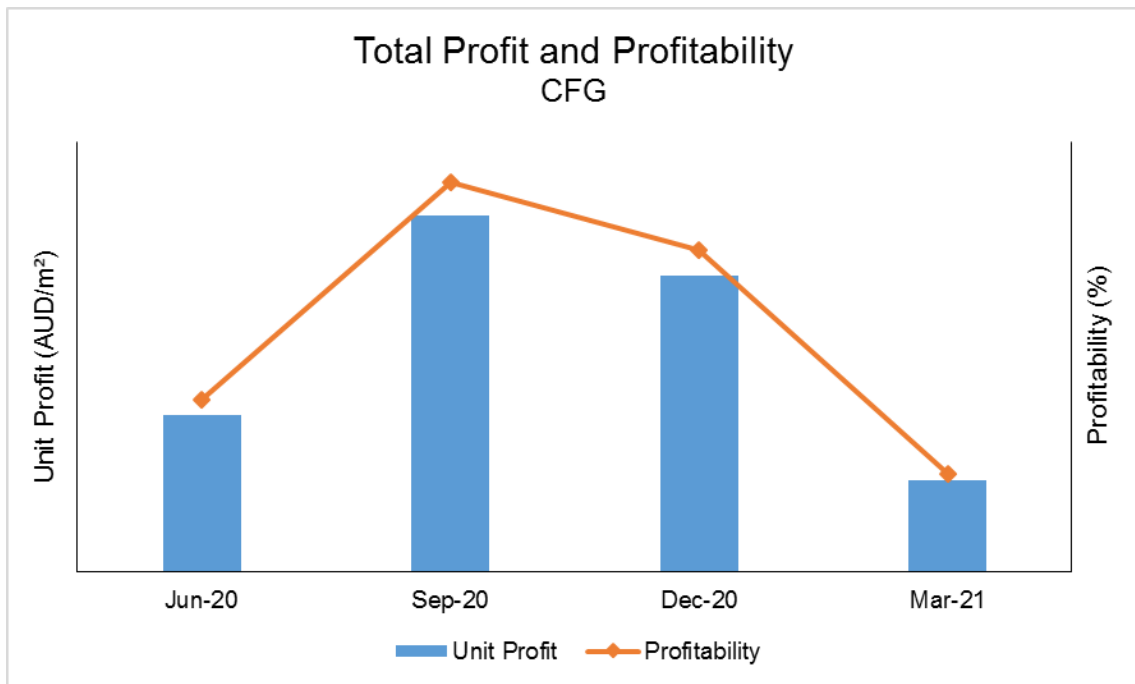


Figure 14: Oceania Glass's unit profit and profitability (investigation period)

Oceania Glass experienced a recovery in its unit profit and profitability from the Jun-20 quarter to the Sep-20 quarter. However, by the end of the investigation period its unit profit and profitability had deteriorated to its lowest levels.

## PUBLIC RECORD

As the unit selling price over the investigation period was found to be flat, the change in the unit profit and profitability is reflective of the changes in unit CTMS.

### 8.6.2 Conclusion – profit and profitability effects

Based on this analysis, the commission considers that Oceania Glass has experienced injury in the form of reduced profits and reduced profitability across the injury analysis period.

## 8.7 Other economic factors

Oceania Glass has also claimed injury from reduced ROI and reduced attractiveness to reinvest.

### 8.7.1 Return on investment

Oceania Glass's ROI, calculated as trading profit divided by revenue, is charted in Figure 15. The commission notes that ROI has been presented for the entire business as it was not possible to isolate ROI as it related specifically to the domestic sale of like goods. Oceania Glass's domestic sales of like goods account for 30% to 40% of its revenue. The commission considers that the business-wide ROI represents a valid proxy of the movement in ROI in respect of like goods.

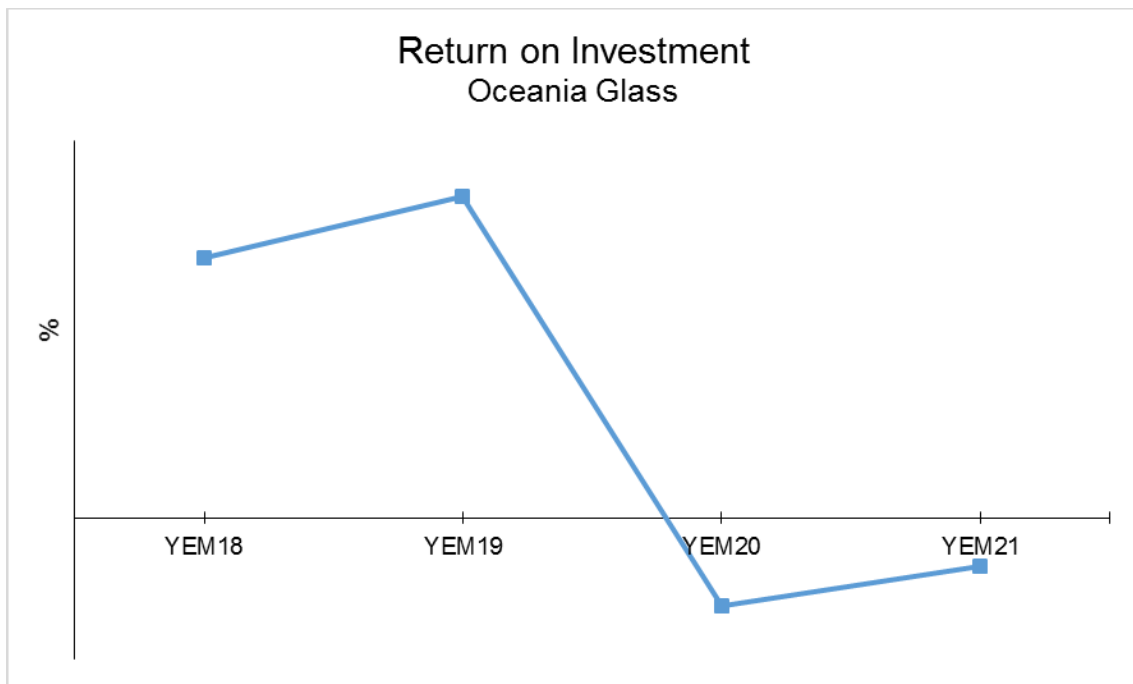


Figure 15: Oceania Glass's return on investment

This demonstrates that Oceania Glass's ROI declined after YEM2019, with only a slight improvement in YEM2021 that has not returned to positive figures. Based on these findings, the commission considers that Oceania Glass continues to experience injury in the form of reduced ROI across the injury analysis period.

### **8.7.2 Attractiveness to reinvest**

Oceania Glass submitted in its application that a substantial investment will be required in the float line that manufactures CFG in 2026. In order to make this investment, Oceania Glass's shareholders will require an expectation of a reasonable return on investment leading up to that year.

Oceania Glass claims that the reduction in profitability due to under-priced imports means the forecast returns on this investment may not be satisfactory. If this investment is not made, it could result in the closure of Oceania Glass's float line as it transitions to a different business model.

The commission considers that the reduced profit and profitability and ROI may affect any upcoming capital investment.

## **8.8 Conclusion**

Based on an analysis of the information contained in the application and further information obtained and analysed, the commission considers that Oceania Glass has experienced injury during the investigation period in the form of:

- price suppression
- reduced profit and profitability
- reduced ROI.

## 9 HAS DUMPING CAUSED MATERIAL INJURY?

### 9.1 Preliminary assessment

The Commissioner is preliminarily satisfied that the Australian industry has suffered material injury as a result of exports of the goods to Australia at dumped prices from the UAE in the form of:

- price suppression
- reduced profit and profitability
- reduced ROI.

### 9.2 Legislative framework

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

Section 269TAE(1) outlines the factors, to which the Commissioner has had regard, and that may be taken into account when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

In assessing material injury, the commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).

As set out in Chapters 6 and 7, the Commissioner proposes to terminate the investigation into dumped and subsidised goods from Malaysia, subject to submissions, on the basis that there is no dumping and no or negligible subsidisation of the exports of the goods.

Accordingly, in this chapter the commission has only considered whether injury has been caused by dumped exports of the goods from the UAE.

The commission has considered whether the goods exported to Australia from Malaysia have caused injury to the Australian industry under factors other than dumping in section 9.10.1.

### 9.3 Cumulative effect of injury

Section 269TAE(2C) provides that when determining whether material injury to an Australian industry has been, or is being, caused or threatened by exports to Australia from different countries, the Minister should consider the cumulative effect of those exports only if the Minister is satisfied that:

- the margin of dumping established for each exporter and/or the amount of countervailable subsidy received is not negligible

## PUBLIC RECORD

- the volume of dumped and/or subsidised imports from each country is not negligible, and
- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

As detailed in sections 6.11 and 7.8, the volume of dumped and subsidised exports from Malaysia was found to be negligible.

Accordingly, the commission has not considered the cumulative effect of the exports from Malaysia and the UAE.

### 9.4 Approach to causation analysis

As outlined in Chapter 8, the commission considers that the Australian industry has experienced injury in the investigation period and that this injury has coincided with the presence of dumped goods from the UAE. This chapter will analyse whether dumping has caused injury to the Australian industry and whether that injury is material.

In assessing the materiality of injury, the commission notes Chapter 22 of the manual which states that causal effects may be examined using what is termed a 'coincidence' analysis; by comparing the state of the Australian industry in the investigation period to a point in time prior to the injury having commenced. Another approach would be to use a 'but for' analytical method, positing what would have happened in the Australian domestic market 'but for' the presence of the dumped goods.

During the injury analysis period, anti-dumping measures applied to CFG exported to Australia from China, Indonesia and Thailand. The presence of these goods subject to anti-dumping measures during the injury analysis period can make it difficult for the commission to assess the causation and materiality of injury using a coincidence analysis.

Where a coincidence analysis is not possible, the commission may undertake an alternative analytical method, such as a 'but for' analysis, to examine causal effects. Using a 'but for' analysis, it's possible to compare the current state of the Australian industry to the state that the Australian industry would likely have been in, if there had been no dumping and/or subsidisation.

The commission has conducted a 'but for' analysis to determine what the economic condition of the Australian industry would have been if the goods were not exported from the UAE at dumped prices (for example, in terms of prices and profits).

A 'but for' analysis seeks to determine if the dumping is responsible for the material injury having regard for other potential causes of injury.

The 'but for' analysis used by the commission is explained in greater detail in the Material Injury Direction which, amongst other things, sets out that the Commissioner is directed to be mindful that a decline in the Australian industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. This consideration is a corrective to the simple conclusion that the Australian industry would necessarily have been more prosperous, but for the presence of the dumped goods.

## PUBLIC RECORD

The commission has assessed injury and causation by examining the following evidence:

- verified volume, price and profit effects of the Australian industry during the injury analysis and investigation periods
- verified sales data from cooperating exporters and participating importers to determine relevant selling prices and volumes of the goods
- information from the ABF import database to determine import volumes and export prices
- the broader context of the economic condition of the Australian industry.

### 9.5 Size of dumping margins

Section 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of the goods of that kind that have been exported to Australia.

The dumping margins found in Chapter 6 relevant to this analysis are summarised below.

Country	Exporter	Dumping Margin
UAE	Emirates Float Glass LLC	42.5%
	Guardian Zoujaj International Float Glass Co LLC	23.8%

**Table 13: Summary of dumping margins for injury consideration**

The commission considers that the magnitude of dumping by the exporters from the UAE provided them with the ability to offer the goods to importers in Australia at prices that were lower than would otherwise have been the case.

### 9.6 Volume effects

As discussed in section 8.4, the commission does not consider that Oceania Glass has experienced volume related injury in the investigation period.

The commission's analysis of Oceania Glass's sales volume is included at **Confidential Attachment 14**.

### 9.7 Price effects

As discussed in section 8.5, the commission is satisfied that Oceania Glass has experienced injury in the form of price suppression. Oceania Glass claimed in its application that it has been unable to increase its prices for like goods, in a period where its production costs have risen, because of dumped and subsidised imports from the subject countries undercutting its selling prices.

In addition to exports of the goods from Malaysia and the UAE, the commission has had regard to the effect of exports of the goods from Indonesia (both subject and not subject to measures) on the Australian industry. As a result of CON 575, anti-dumping measures currently apply to exports of the goods from Indonesia (excluding PT Muliaglass). The commission also examined exports from China and Thailand as part of CON 575. The

commission found that these exports were not causing injury to the Australian industry and the measures in relation to China and Thailand were allowed to expire.<sup>60</sup> Accordingly, the commission has not considered the effects of exports of the goods to Australia from China and Thailand in this report.

### **9.7.1 Price undercutting**

Price undercutting occurs when goods exported to Australia are sold in the Australian market at a price below that of the Australian produced like goods (consistent with section 269TAE(1)(e)). The manual at section 22.3 highlights that price undercutting analysis is a feature of the commission's practice in determining whether dumping has caused injury.

The commission has undertaken a price undercutting analysis that focuses on data that covers transactions made during the investigation period. This analysis compares the price of the goods exported to Australia with the sales price of the locally produced goods in the Australian market.

The results of the commission's price undercutting analysis provides information that aids in assessing the effect of dumped exports on the Australian industry's prices and whether this caused injury in the form of price depression and price suppression, amongst others.

In order to compare Oceania Glass's prices to the price of the goods exported to Australia, the commission compared the quarterly weighted average free into store (FIS) selling price of like goods by Oceania Glass against the quarterly weighted average FIS selling price of the goods exported to Australia by cooperating exporters from Indonesia, Malaysia and the UAE.<sup>61</sup>

As detailed in the Australian industry report, Oceania Glass sells at 2 levels of trade; direct to customers or through merchandising stores.<sup>62</sup> The commission has used the quarterly weighted average FIS selling prices for Oceania Glass's direct sales in order to perform a 'like for like' comparison to the imported goods. These direct sales make up approximately 92% of Oceania Glass's domestic sales volume.

The commission calculated the quarterly weighted average FIS selling price for the goods exported to Australia as follows:

- the weighted average CIF price for imports using verified exporter data,<sup>63</sup> plus
- an average importation cost using verified importer data.

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<sup>60</sup> ADN no 2021/116.

<sup>61</sup> FIS prices from Indonesia were obtained using verified data from CON 575. This data covers the first 3 quarters of the investigation period.

<sup>62</sup> EPR 582, no 015.

<sup>63</sup> Including any relevant interim dumping duty (IDD).

**PUBLIC RECORD**

The commission’s price undercutting analysis is included at **Confidential Attachments 15 and 16**.

Price undercutting at model level

The commission compared the selling prices for all models sold by Oceania Glass to the FIS prices of cooperating exporters from Indonesia, Malaysia and the UAE.

The commission found that:

- Oceania Glass was undercut on each model and in each quarter of the investigation period, with the range of undercutting between 1% and 28%
- for each exporter from Indonesia, Malaysia and the UAE considered, the level of undercutting varied across each model and quarter
- at various intersection points (model and quarter), 4 of the 5 exporters compared were responsible for the greatest extent of undercutting
- for 3 of the 4 quarters a single exporter was the lowest priced for a majority of the observed models.

Width	Jun-20		Sep-20		Dec-20		Mar-21	
	Entity	%	Entity	%	Entity	%	Entity	%
3 mm	Exporter B	-4%	Exporter E	-10%	Exporter D	-17%	Exporter B	-15%
4 mm	Exporter A	-1%	Exporter E	-7%	Exporter D	-6%	Exporter B	-10%
5 mm	Exporter A	-6%	Exporter A	-11%	Exporter D	-18%	Exporter B	-14%
6 mm	Exporter A	-10%	Exporter E	-14%	Exporter D	-28%	Exporter B	-17%
8 mm	Exporter A	-19%	Exporter A	-22%	Exporter E	-10%	Exporter C	-7%
10 mm	Exporter A	-9%	Exporter A	-11%	Exporter E	-2%	Exporter B	-14%
12 mm	Exporter A	-12%	Exporter A	-12%	Exporter E	-7%	Exporter B	-13%

**Table 14: Summary of undercutting analysis<sup>64</sup>**

The commission considers that this analysis indicates that there is a high level of price competition within the market; no single exporter remained the lowest priced over the investigation period and all examined exporters had the lowest prices at one point.

As discussed in section 5.4, the commission is satisfied that Oceania Glass determines its prices using an import price parity model. Table 14 indicates that there is a high presence of lower priced goods which the commission considers limits Oceania Glass’s ability to raise its own prices.

Having regard to the pricing trends on a per model basis, the commission observed that selling prices for:

- Malaysia increased in the second half of the investigation period to prices that were no longer undercutting Oceania Glass
- the UAE generally decreased over the investigation period, leading to the emergence of undercutting or an increase in undercutting

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<sup>64</sup> Negative values indicate undercutting.

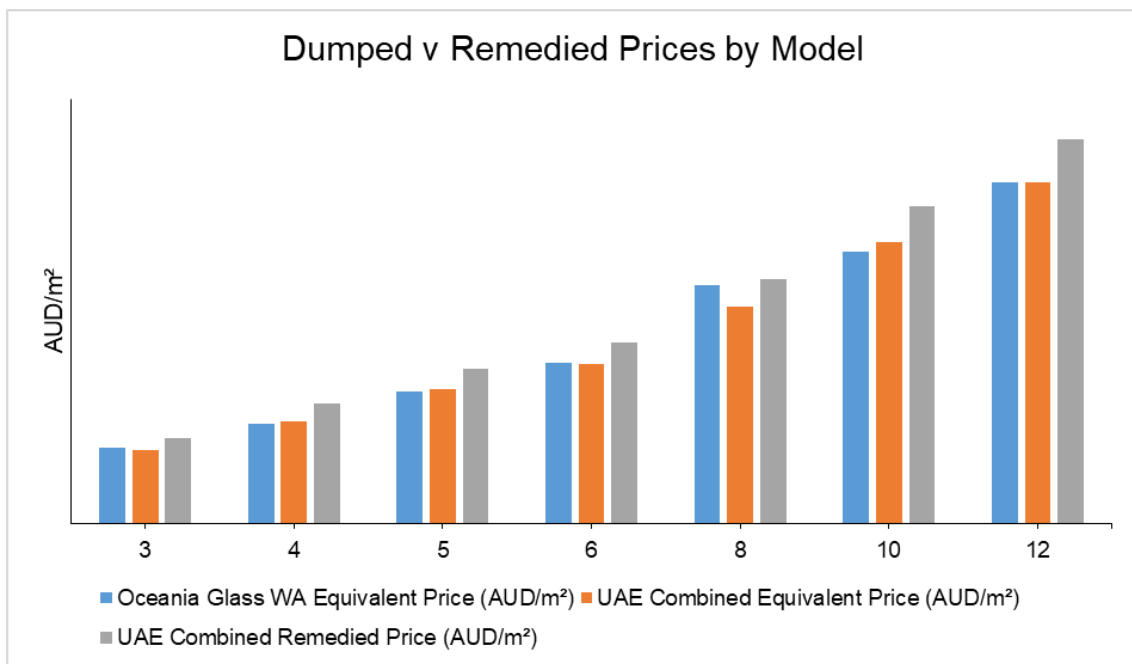
## PUBLIC RECORD

- Indonesia either decreased, leading to the emergence of undercutting or remained at sustained levels of undercutting.

The commission found that in cases where the Australian industry's prices were not undercut on a per model basis by dumped exports of the goods from the UAE they were otherwise comparable. Given the level of price competition within in the Australian market and Oceania Glass's import price parity model, the commission considers that this indicates that Oceania Glass was under pricing pressure from dumped exports of the goods from the UAE. The commission considers that this supports Oceania Glass's claims that it has been unable to raise its prices in response to rising costs.

Having regard to the size of the dumping margins outlined in section 9.5, the commission considers that exporters from the UAE have a considerable advantage in determining selling prices when exporting to Australia.

Furthermore, the commission has calculated a 'remedied' selling price for exports of the goods from the UAE. The remedied price is the price at which the goods would be sold if subject to dumping duties.<sup>65</sup> The commission found that the goods sold at the remedied price no longer undercut the Australian industry at any stage of the investigation period (Figure 16). The remedied price provided a margin by which Oceania Glass may be able to increase its prices.



**Figure 16: Dumped and remedied price comparison**

Figure 16 shows that over the investigation period prices from the UAE either undercut the Australian industry or were comparable, with the exception of the 10 mm model. When the commission examined this model further, it found that prices had decreased

<sup>65</sup> The commission has used the effective rate of duty, as outlined in Chapter 12.

## PUBLIC RECORD

over the investigation period and undercut the Australian industry in the fourth quarter (Figure 17).

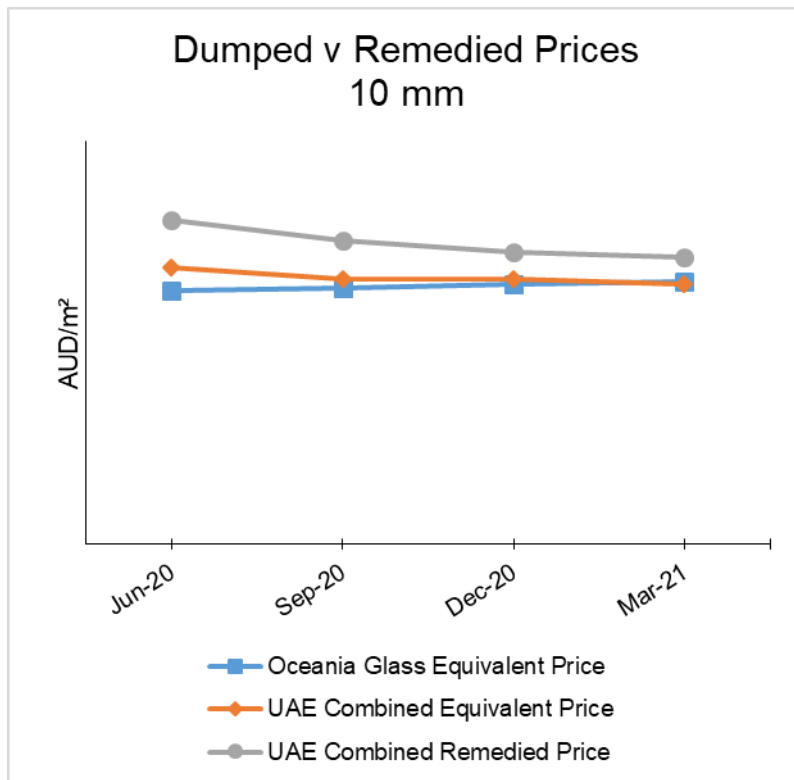


Figure 17: 10 mm dumped and remedied price comparison

### Price undercutting at customer level

The commission also conducted a targeted undercutting analysis which examined the selling prices of the highest selling volume models to common customers between Oceania Glass and cooperating exporters from Malaysia and the UAE. The commission observed that, with the exception of one substantial customer, the Indonesian exporters did not compete directly with exports from Malaysia and the UAE during the investigation period.

The commission examined the largest common customer (customer A) between Oceania Glass and Guardian RAK, particularly the models sold in the highest volumes by Guardian RAK; 4 mm, 5 mm and 10 mm. This was the only customer which was also in competition with PT Asahimas from Indonesia (however it made no sales of 10 mm).

The commission found that over the investigation period:

- there was little movement in selling prices from both Oceania Glass and Guardian RAK, whilst prices from PT Asahimas decreased
- the selling prices of Guardian RAK and Oceania Glass were comparable for the majority of models and quarters
- selling prices from PT Asahimas were comparable to Oceania Glass and Guardian RAK in the first 2 quarters, and undercut both entities in the third quarter by a substantial amount

## PUBLIC RECORD

The commission considers that in respect of customer A, PT Asahimas had a greater suppressive effect on Oceania Glass's prices for the 4 mm and 5 mm models. For the 10 mm model, the commission considers that Oceania Glass was under pricing pressure from Guardian RAK.

The commission examined the largest common customer (customer B) between Oceania Glass and EFG, particularly the models sold in the highest volumes by EFG. The commission found that over the investigation period:

- selling prices from EFG and Oceania Glass remained steady
- EFG undercut Oceania Glass in all quarters in which it sold to the customer.

The commission considers that in respect of customer B, Oceania Glass was subject to price pressures due to being undercut by goods exported at dumped prices by EFG. Had EFG offered the goods to this customer at an un-dumped price, Oceania Glass would likely have been able to obtain a higher selling price for its sales to this customer.

The commission examined the customer (customer C) which purchased the highest volume from Oceania Glass that also purchased from Xinyi ESM and Guardian RAK. For the highest selling models, the commission observed that over the investigation period:

- selling prices from all entities remained steady
- there was no undercutting by Xinyi ESM
- selling prices from Guardian RAK were comparable to Oceania Glass.

The commission considers that had Guardian RAK not sold the goods to customer C at dumped prices, Oceania Glass would have been able to raise its prices to the same level as Xinyi ESM.

The commission also examined the selling prices to a customer (customer D) which purchased CFG from all 3 cooperating exporters as well as Oceania Glass. For the highest selling models, the commission observed that over the investigation period:

- the customer only purchased from Xinyi ESM and EFG in the first half at prices that undercut Oceania Glass
- the customer only purchased from Guardian RAK in the second half at prices that were comparable to Oceania Glass
- selling prices from Oceania Glass and Guardian RAK increased from the third quarter to the fourth quarter.

The commission considers this indicates that in circumstances where Guardian RAK increased its prices, Oceania Glass was also able to increase its own prices and as such, there is a causal link between competitor prices (which in this case are dumped) and the limitations on Oceania Glass raising its prices.

### **9.7.2 Submissions regarding price effects**

In its submission of 3 June 2021, Guardian RAK claimed that the presence of a slight premium on Oceania Glass's merchandising sales indicates that Oceania Glass is 'a price

setter' and 'does not set its price so as to match its competition'.<sup>66</sup> These comments were made in relation to the assertion by Oceania Glass that it uses an import parity price model to determine its prices.

As noted at section 9.7.1, the commission has had regard to Oceania Glass's direct sales for the purposes of the price undercutting analysis (which do not include the premium) as these sales make up approximately 92% of Oceania Glass's domestic sales volume. Further, as noted in the Australian industry verification report for CON 575, Oceania Glass charges a slight premium in respect of its merchandising sales in order to cover the additional expenses associated with the operation of the merchandising centre.<sup>67</sup>

### **9.7.3 Price effects – conclusion**

As discussed in section 6.5, Xinyi ESM was found to not be dumping during the investigation period. The commission's price analysis also revealed that selling prices from Xinyi ESM increased in the second half of the investigation period. Accordingly, the commission has not found that price injury has been caused by Xinyi ESM.

The commission considers that the price undercutting analysis above demonstrates the high level of pricing competition within the CFG market in Australia. As Oceania Glass uses an import price parity model to determine its selling prices, the presence of lower priced exports limits its opportunity to increase its prices in response to increases in its CTMS.

Oceania Glass's selling prices were found to be flat over the investigation period for the majority of its customers, while in some instances exporters were able to adjust their pricing as a result of dumping. The commission considers that this indicates that Oceania Glass is under pressure to maintain its pricing in order to remain competitive with the price of dumped goods from the UAE, resulting in the emergence of price suppression as identified in section 8.5.

This pricing pressure is further highlighted by Oceania Glass's inability to raise its prices despite the increase in its sales volumes over the investigation period. As identified in section 8.4, Oceania Glass's sales volumes increased in YEM21. The primary reason for this increase was the difficulty in importing CFG into Australia due to the COVID-19 pandemic, which increased demand for locally produced CFG. Although Oceania Glass had the advantage of being the only domestic supplier, it was unable to raise its prices due to the presence of dumped exports from the UAE.

As outlined in section 9.5, the commission considers that the magnitude of dumping by the exporters from the UAE provides them with the ability to offer the goods to importers in Australia at prices that were lower than would otherwise have been the case. In circumstances where Oceania Glass uses an import price parity model to determine its prices, coupled with the ability of customers to readily switch sources of supply, exporters from the UAE have an increased competitive advantage.

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<sup>66</sup> EPR 582, no 005, p 5.

<sup>67</sup> EPR 575, no 016, p 11.

In the absence of dumping, the commission considers it is reasonable that the prices of goods exported from the UAE would have been higher. This was highlighted in the commission's undercutting analysis where it observed that both exporters from the UAE were able to decrease prices over the investigation period, and in the remedied price analysis where neither exporter was found to be undercutting at the remedied price. The remedied price analysis showed that there was a margin by which Oceania Glass may have been able to increase its prices, if the goods were not dumped.

The commission considers that the current evidence before it shows that 'but for' the presence of dumped exports of the goods from the UAE Oceania Glass would have been able to raise its selling prices.

## **9.8 Profit effects**

As detailed in section 8.6, Oceania Glass experienced a sustained downwards trend in its profit and profitability over the entire injury analysis period. The commission also found that the changes to the unit CTMS were reflected in the unit profit and profitability over the investigation period.

The commission considers that this is consistent with Oceania Glass's claims that it has been unable to raise its selling prices in response to increases in its CTMS. As Oceania Glass has been unable to change its selling prices in response to increasing costs, its profit and profitability has been predominantly affected by changes to its CTMS.

The commission also found that despite the increase in sales volumes in the investigation period (Figure 7). Oceania Glass's profit and profitability decreased over the injury analysis period (Figure 13). As discussed above in section 9.7, Oceania Glass has not been able to increase its prices despite an increase in demand.

As discussed in section 9.7 above, the commission considers that Oceania Glass would have been able to increase its selling prices 'but for' the presence of dumped exports of the goods from the UAE. This is particularly evident in the second half of the investigation period in which Oceania Glass experienced the greatest increase in its CTMS.

The commission considers that this indicates that Oceania Glass has experienced injury in the form of reduced profit and profitability caused by dumped exports of the goods from the UAE.

## **9.9 Other economic factors**

As detailed in section 8.7, Oceania Glass has experienced a reduction in its ROI such that it has been negative for the last 2 years of the injury analysis period. Although the ROI presented in this report is for the entire Oceania Glass business, it is still materially influenced by Oceania Glass's sales of like goods which account for 30% to 40% of Oceania Glass's revenue.

The commission considers that a material portion of the ROI injury experienced by Oceania Glass is a result of the combined effects of injury in the form of price suppression and reduced profit and profitability as discussed in sections 9.7 and 9.8.

The commission also considers that the reduced profit and profitability and ROI may affect Oceania Glass's ability to secure the required capital investment in the float line that manufactures CFG.

## **9.10 Factors other than dumping causing injury**

Section 269TAE(2A) requires the Minister to consider whether injury to an industry is due to factors other than the exportation of the goods. This provision contains a list of factors that the Minister may have regard to when considering whether injury is due to factors other than exportation of the goods, but it is not an exhaustive list.

The commission has considered the following factors as possible causes of injury:

- exports from countries other than the UAE
- decline in demand for CFG
- performance of Australian industry
- ability of the Australian industry to meet customer requirements
- effects of the COVID-19 pandemic.

### **9.10.1 Exports from countries other than the UAE**

#### Malaysia

As detailed in section 8.4, imports of the goods at un-dumped prices from Malaysia have increased over both the injury analysis period and the investigation period.

The commission observed that prices of the goods exported from Malaysia generally undercut those of the Australian industry in first half of the investigation period and increased to levels that were no longer undercutting in the second half.

The commission considers that the level of undercutting present in the first half of the investigation period has placed pressure on Oceania Glass to either maintain or lower its prices to competing customers. The commission considers that this supports the claims made by Oceania Glass in its application.

To assess the level of influence of the goods exported from Malaysia on those exported from the UAE, the commission examined customers which imported the goods from both countries. The commission identified that out of approximately 25 customers which imported the goods from the UAE, the UAE and Malaysia only competed for 5. The commission considers that this indicates that the effects of exports from both countries are largely separate from each other.

The commission considers that the goods exported from Malaysia are a relevant factor other than dumping that impacted the Australian industry's economic condition over the investigation period.

#### Indonesia

The commission also examined exports of the goods from Indonesia. As identified above in section 9.7, the commission found that exports of the goods from Indonesia did not compete with exports from the UAE, with the exception of one customer (customer A).

The Indonesian exporter PT Asahimas which sold to customer A is currently subject to measures and any injury caused would be remedied by those measures. The commission did not find that any other exporter from Indonesia was competing with Oceania Glass and the UAE for specific customers.

The commission considers that any injury caused by exports of the goods from Malaysia and Indonesia does not preclude the Australian industry also being materially injured by dumped exports of the goods from the UAE.

### **9.10.2 Decline in demand for CFG**

Oceania Glass claimed that a decline in demand for CFG could lead to increased pressure on its profitability from dumped and subsidised imports.<sup>68</sup>

The commission examined the demand factors for CFG in Australia in section 5.3.2, including building commencements and dwelling approvals. The commission found that recently building commencements had partially recovered from a drop in 2019 and that dwelling approvals had also increased from a low in mid-2020.

The overall increase in the market size for CFG in YEM21 (Figure 5) and the trend in the factors above indicate that demand for CFG may increase in future. The increase in demand may provide opportunities for the Australian industry to increase its profitability.

Guardian RAK submitted that contraction in the market for CFG may have inhibited the increase of prices leading to the lowering of the prevailing market price.<sup>69</sup> As detailed above, the demand factors for CFG indicate that demand is increasing. When compared to the Australian industry's selling prices (Figure 12) the apparent increase in demand has not enabled the Australian industry to raise its selling prices. The commission considers that competition from imports of the goods has had a greater effect on the Australian industry's selling prices.

### **9.10.3 Performance of Australian industry**

Oceania Glass stated that it had experienced increases in its energy costs over the last 4 years, and that these increased prices are not forecast to decrease.<sup>70</sup>

In addition to rising energy costs, Guardian RAK submitted that the injury experienced by the Australian industry is due to business related inefficiencies.<sup>71</sup> The examples cited by Guardian RAK from annual reports are broad in nature and are not specific to the sale and production of CFG. The commission has examined the annual reports and is unable to identify any specific references to operational inefficiencies or poor decision making

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<sup>68</sup> EPR 582, no 001, p 32.

<sup>69</sup> EPR 582, no 005, p 4.

<sup>70</sup> EPR 582, no 001, p 32.

<sup>71</sup> EPR 582, no 005, p 3.

that are linked directly to CFG. The commission has not been provided with any further evidence in support of these claims.

In assessing the economic condition of the Australian industry in Chapter 8, the commission has examined the economic injury factors relative to the Australian industry's CFG sales only. Relevant costs have been included in the commission's calculation of the CTMS. As can be seen in section 8.5, Oceania Glass has been unable to raise its prices in response to increasing CTMS, leading to a reduction in profit and profitability. It is not clear how the submissions link the claimed operational inefficiencies and poor business management decisions to the economic performance of Oceania Glass's sales of CFG to any measurable degree.

#### **9.10.4 Ability of the Australian industry to meet customer requirements**

Guardian RAK submitted that the inability of the Australian industry to meet customer demands is a contributing factor to the injury that the Australian industry has experienced.<sup>72</sup>

Guardian RAK referenced communications from Oceania Glass which stated that Oceania Glass was experiencing issues with its supply capacity and that it was supplementing some of its products with imports. The commission confirmed that Oceania Glass had imported the goods during the investigation period; however, the volume of imported goods was found to be less than 5% of Oceania Glass's total sales over the investigation period.

The commission does not consider that the Australian industry importing the goods, or being unable to fully supply the Australian market from its own production, precludes the prospect of dumped exports materially injuring Australian industry. Further, Guardian RAK did not specify how the ability of Oceania Glass to meet its customer's requirements was causing it to experience injury.

#### **9.10.5 Effects of COVID-19 pandemic**

Guardian RAK submitted that the operational effects of the COVID-19 pandemic may have been a contributing factor to the injury experienced by the Australian industry.<sup>73</sup>

One of the effects referenced was the potential temporary shutdown of the glass manufacturing furnaces. The commission has visited Oceania Glass's manufacturing facility previously as part of CON 575 and confirmed that Oceania Glass did not have to shut down its glass manufacturing furnaces as part of any COVID-19 related restrictions.<sup>74</sup>

The commission also discussed other effects of COVID-19 related restrictions on Oceania Glass's operation at the site visit. Oceania Glass stated that COVID-19 related restrictions

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<sup>72</sup> EPR 582, no 005, p 4.

<sup>73</sup> EPR 582, no 005, pp 4-5.

<sup>74</sup> EPR 575, no 012.

had an impact on its daily operations, which the commission considers would have an impact on the injury experienced by the Australian industry. The commission considers that the exact impact of these effects is difficult to quantify, however they may be reflected in measures such as the Australian industry's increased CTMS.

In assessing the impact of the effects described above, the commission observes that the Material Injury Direction states that injury from dumping and subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree.

## **9.11 Materiality of injury caused by dumping**

### **9.11.1 Submissions regarding materiality of injury**

In its submission of 30 May 2021, EFG contested the allegations of injury caused by dumped exports in the application on the basis of its low volume of exports. EFG also submitted that it supplied Australian customers who were unable to be supplied by the Australian industry and thus could not have contributed to any injury.<sup>75</sup>

In determining whether material injury to an Australian industry has been caused by dumped exports of the goods, the commission generally has regard to the total quantity of the goods exported at dumped prices from the subject country.<sup>76</sup>

In its submission of 30 June 2021, the GOM submitted that the Australian industry is not materially injured due to increases in certain economic factors.<sup>77</sup> In determining the materiality of any injury experienced by the Australian industry, the commission has had regard to multiple factors as detailed in Chapter 8. As outlined in that chapter, although the Australian industry has experienced an increase in its sales volume for the investigation period (Figure 7), it has experienced injury in the form of price suppression (Figure 11), reduced profit and profitability (Figure 13), and reduced ROI (Figure 15). As detailed above in section 9.5, the commission has not attributed injury to the Australian industry as being caused by exports of the goods from Malaysia, as these exports have not been dumped.

### **9.11.2 The commission's assessment of materiality of injury**

The Material Injury Direction provides that the materiality of injury caused by a given degree of dumping (and subsidisation, though subsidisation is not relevant to the investigation as the commission proposes to terminate that part of the investigation) can be judged differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped products in the market, could at another time,

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<sup>75</sup> EPR 582, no 004.

<sup>76</sup> Section 269TAE(1).

<sup>77</sup> EPR 582, no 008, p 2.

weakened by other events, suffer material injury from the same amount and degree of dumping.

The commission's analysis of the economic condition of the Australian industry in the investigation period found that whilst the Australian industry experienced an increase in sales volume and market share, its:

- unit CTM increased
- unit selling prices stagnated
- profit and profitability deteriorated
- ROI remained at a negative level.

As detailed in this chapter, the commission considers that dumped exports of the goods from the UAE have caused injury to the Australian industry.

The commission found that the common customers between the exporters from the UAE and the Australian industry accounted for over 40% of the Australian industry's sales volumes of like goods. The volume of these customers represent a material proportion of the Australian industry's customer base.

Coupled with the rapid increase in import volumes from the UAE over the investigation period (Figure 10), the commission considers that the prices of the dumped exports of the goods from the UAE placed downwards pressure on the Australian industry's prices offered to a substantial number of its customers during the investigation period.

The commission considers that 'but for' the presence of the dumped exports of the goods from the UAE, the Australian industry would have been able to achieve higher selling prices. The ability to sell at increased prices would have translated into increased profit and profitability, and an increased ROI for the Australian industry. Given the volume of common customers between the UAE and the Australia industry, these increases would be material.

When taken as a whole, the commission considers that the Australian industry's injury resulting from dumped exports of the goods from the UAE was material.

## **9.12 Conclusion**

The commission has found that, in respect of goods imported from the UAE:

- the volume of dumped goods exported to Australia is not negligible
- all dumped goods exported to Australia were above negligible levels of dumping
- the volume of imports from the UAE has risen over the investigation period
- there is a high level of price competition between the goods exported to Australia at dumped prices and the Australian industry
- the prices of the Australian industry are closely correlated with the prices of imported goods due to its import price parity model
- the goods exported to Australia at dumped prices have undercut the Australian industry's prices for certain customers, in certain models and quarters
- where the goods exported to Australia at dumped prices have not undercut the Australian industry, they were otherwise comparable

## **PUBLIC RECORD**

- the price of the goods exported to Australia would not have undercut the Australian industry's prices if the goods were not dumped
- the Australian industry would have been able to increase its prices in a market not affected by the goods exported to Australia at dumped prices and such increases would have reflected positively on the Australian industry's profit and profitability, and ROI over the investigation period
- the injury caused by goods exported to Australia from the UAE at dumped prices can be separated from other potential causes of injury

As such the commission considers that exports of the goods to Australia from the UAE at dumped prices has caused material injury to the Australian industry in the form of price suppression, reduced profit and profitability and reduced ROI.

## 10 WHETHER DUMPING MAY CONTINUE

### 10.1 Preliminary finding

The Commissioner is preliminarily satisfied that dumping may continue in relation to the export of the goods from the UAE.

### 10.2 Introduction

To publish a notice under section 269TG(2) the Minister must be satisfied that, among other things, dumping may continue.

In assessing whether dumping and/or subsidisation may continue, the Commissioner considers the term 'may' to mean 'possible'.

As detailed in Chapter 6 and 7, the Commissioner is proposing to terminate the investigation in relation to the dumping and subsidisation of goods exported to Australia from Malaysia. Accordingly, this chapter does not apply to exports of the goods from Malaysia.

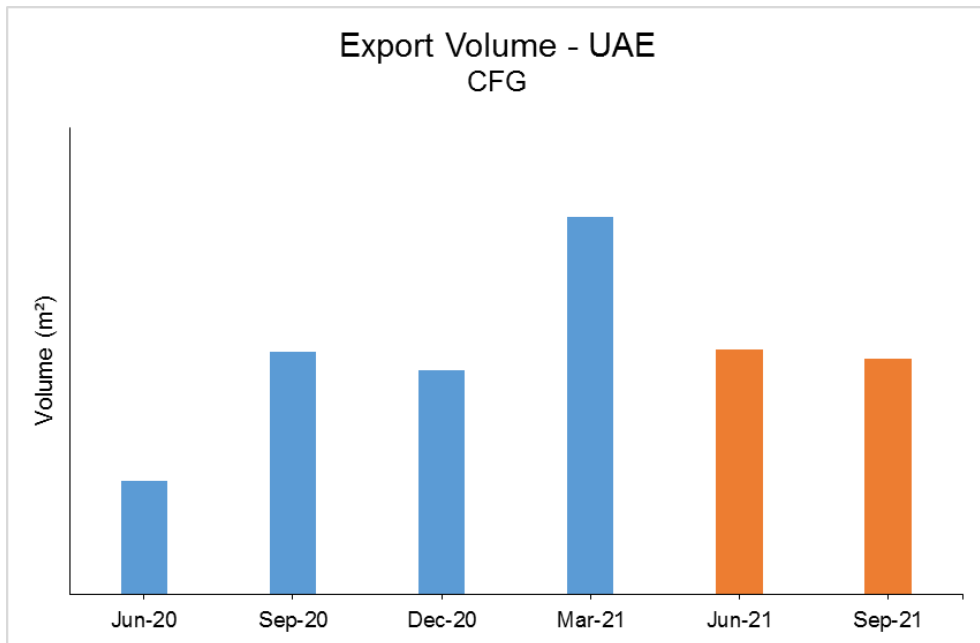
### 10.3 Whether dumping may continue

In assessing whether dumping may continue, the Commissioner considers prior evidence of dumping to be a relevant consideration.

The commission calculated weighted average dumping margins of 42.5% for EFG, and 23.8% for Guardian RAK during the investigation period.

The commission also examined the quarterly dumping margins calculated over the investigation period. The commission found that the dumping margin for both exporters was positive in all 4 quarters which the commission considers supports a finding that dumping may continue.

As observed in section 5.5, export volumes from the UAE increased over the investigation period. The commission also found that export volumes have continued since the investigation period at sustained levels (Figure 18).



**Figure 18: Export Volume - UAE**

In addition, the commission found that the UAE continued to be the second largest source of supply of CFG to Australia after the investigation period. The commission considers that these factors indicate that the UAE continues to maintain distribution links in the Australian market.

The commission examined the excess capacity available for the cooperating exporters from the UAE during the investigation period. The commission found that both exporters had excess capacity of over 20%. The commission considers that this excess capacity could be directed towards Australia and exporters may reduce prices to increase sales volumes in order to utilise this spare capacity. This supports a finding that dumping may continue.

The commission also assessed the movement in FOB prices after the investigation period to determine whether dumping may continue (Figure 19).

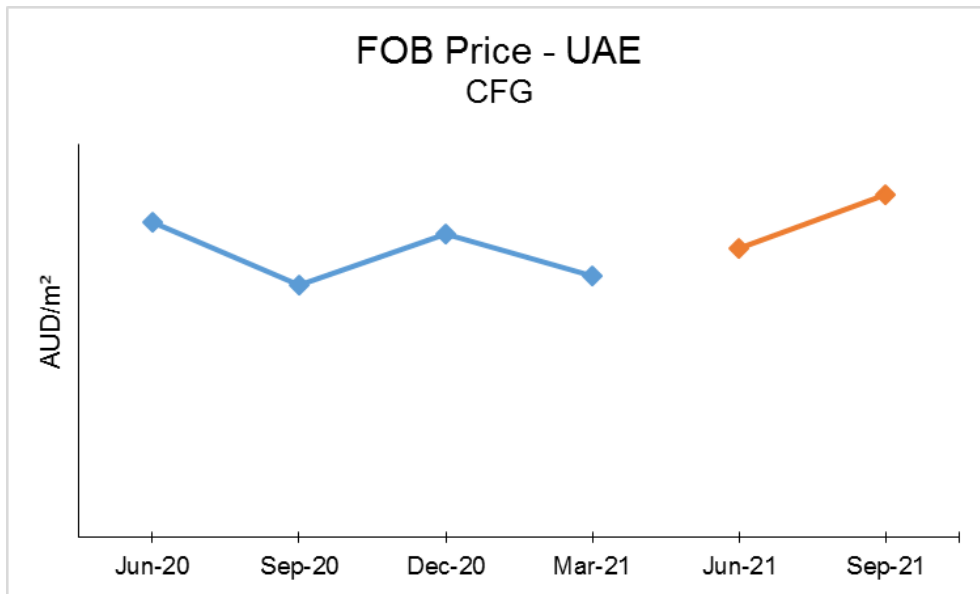


Figure 19: FOB Price – UAE

The average FOB price was found to have increased after the investigation period. Given the dumping margins of 23.8% to 42.5%, the commission considers that it is unlikely that the observed changes in FOB export prices after the investigation period have removed the possibility of dumping continuing.

The commission also found that the average domestic selling prices for both exporters increased slightly over the investigation period, which would negate the effect of increasing FOB prices in the determination of dumping.

As detailed in section 9.7 there is a high level of price competition within the CFG market in Australia. The commission considers that this pricing competition coupled with the levels of dumping found in respect of the exporters from the UAE support a finding that dumping may continue as exporters compete to maintain market share.

Based on these factors, the Commissioner considers that dumping may continue in relation to the UAE exporters.

The commission's analysis of the continuation of dumping is contained in **Confidential Attachment 17**.

## 11 NON-INJURIOUS PRICE

### 11.1 Preliminary assessment of NIP

As the Commissioner proposes to terminate the part of the dumping investigation in relation to Malaysia and the whole of the countervailing investigation, the Minister need not have regard to the desirability of specifying a lesser rate of duty for that country.

For all exporters from the UAE the commission determined that the NIP is less than the normal value. The Commissioner therefore proposes to recommend that the Minister have regard to applying a lesser amount of duty for these exporters.

### 11.2 Introduction

The NIP is defined in section 269TACA as ‘the minimum price necessary to prevent the injury, or a recurrence of the injury’ caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice. The commission will generally derive the NIP from the Australian industry’s unsuppressed selling price (USP).

### 11.3 Legislative framework

Where the Minister is required to determine the IDD, section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) (Dumping Duty Act) applies. A lesser dumping duty may be imposed where the NIP of the goods is less than the normal value of the goods (‘lesser duty rule’).

When the lesser duty rule applies, section 8(5B) of the Dumping Duty Act requires that the sum of the export price and the interim dumping duty payable does not exceed the NIP.

However, pursuant to section 8(5BAA), the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)
- there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

While the Minister is not required to consider imposing a lesser amount of duty, they may still exercise their discretion to do so.

### 11.4 Lesser duty rule

As the Commissioner proposes to terminate the dumping and countervailing investigation as it relates to all exporters from Malaysia, the commission has not had regard to the lesser duty rule for these exporters.

In respect of exports of the goods from the UAE, the commission does not consider that any of the exceptions in the Dumping Duty Act apply. The commission has therefore

considered whether to recommend that the Minister consider the desirability of applying a lesser rate of duty to these exports, if applicable.

## **11.5 Calculation of the non-injurious price**

### **11.5.1 Approaches to calculating the NIP**

The legislation does not prescribe the methods of calculating a NIP, however there are several methods outlined in the manual.<sup>78</sup>

The commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The commission's preferred approach to establishing the USP is set out in the manual and observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping
2. constructed industry prices – industry cost to make and sell plus profit
3. selling prices of un-dumped imports.

Having calculated the USP, the commission then calculates the NIP by deducting the costs incurred in transitioning the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

### **11.5.2 Commission's assessment of the calculation of the NIP**

In following the hierarchy as set out above, the commission has considered whether the USP may be established using industry selling prices at a time unaffected by dumping. The commission considers that it is not practicable to establish a USP based on a time when the Australian industry's prices were not affected by dumping, because the goods have previously been found to be dumped and injurious to the Australian industry. The commission notes that the goods have been imported from a number of different countries over a sustained and lengthy period of time.<sup>79</sup>

The next available option to establish the USP in the hierarchy set out above is to construct industry prices based on industry cost to make and sell plus an amount for profit. The commission considers that this method is the most appropriate method in this instance.

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<sup>78</sup> The manual, Chapter 24.

<sup>79</sup> At the time of publication of this SEF, measures only apply to the goods exported from Indonesia (excluding PT Muliaglass). However, measures have previously been variously imposed since 2011 on exports from China, Thailand and from Indonesia by PT Muliaglass (those measures were removed following CON 575).

## PUBLIC RECORD

For the purpose of this investigation, a weighted average USP has been determined based on a weighted average of verified Australian CTMS data covering the investigation period, plus a reasonable amount of profit achieved by the Australian industry.

The commission has previously determined a reasonable amount of profit achieved by the Australian industry as part of CON 575.<sup>80</sup> The commission has again used this amount of profit in the calculation of the USP for this investigation.

Having calculated the USP, the commission has made the following deductions to calculate the NIP:

- Australian importation and delivery costs
- ocean freight and marine insurance costs
- applicable customs duties.

The commission has found that the calculated NIP is less than the normal value ascertained for both EFG and Guardian RAK. Accordingly, the Commissioner proposes to recommend that a lesser rate of duty be applied to EFG, Guardian RAK and the 'All other exporters' rate.

The commission's USP and NIP calculation is at **Confidential Attachment 18**.

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<sup>80</sup> REP 575, Chapter 9.

## 12 PROPOSED MEASURES

### 12.1 Preliminary finding

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the *ad valorem* duty method, be imposed in the form of a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from the UAE.

### 12.2 Current measures

Currently, the IDD is worked out for all exporters from Indonesia (excluding PT Muliaglass) using the *ad valorem* duty method. The IDD liability is calculated by multiplying the dumping export price (DXP) by the applicable *ad valorem* duty rate.<sup>81</sup>

### 12.3 Forms of dumping duty available

The forms of dumping duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include the:

- fixed duty method (i.e. \$X per tonne)
- floor price duty method
- combination duty method, or
- *ad valorem* duty method (i.e. a percentage of the export price).<sup>82</sup>

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain duty methods will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guidelines on the Application of Forms of Dumping Duty November 2013* (the Guidelines) and relevant factors in the market for the goods.<sup>83</sup>

#### 12.3.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises their powers to ascertain an amount for the export price and the normal value.

#### 12.3.2 Floor price duty method

The floor price duty method sets a ‘floor’ – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100

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<sup>81</sup> Dumping Commodity Register at [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>82</sup> Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

<sup>83</sup> Available on the commission’s website here: [Guidelines on Forms of Dumping Duties](#)

per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

### **12.3.3 *Ad valorem* duty method**

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* dumping duty is determined for the product as a whole. This means that a single ascertained export price is required when determining the dumping margin. The *ad valorem* duty method is the simplest and easiest form of duty to administer when delivering the intended protective effect.

### **12.3.4 Combination duty method**

The combination duty method comprises 2 elements: the 'fixed' element and the 'variable' duty element. The fixed element is determined when the Minister exercises powers to 'ascertain' an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* applied to the ascertained export price.

If the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price). It is called a variable element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

## **12.4 Commission's consideration**

In consideration of the forms of dumping duty available, the Guidelines outline that in a falling market, the combination duty method is considered inappropriate as it may be considered punitive due to the operation of the fixed element. Analysis of the market as outlined in Chapters 5 and 8, in particular the decreasing trend in export prices for exporters from the UAE over the investigation period, suggests there may be risk of a falling market and therefore a combination duty may cause disadvantage to subject exporters if imposed.

For exporters from the UAE, the commission found that all sales of CFG were arms length transactions and are therefore less commercially motivated to lower export prices. Exporters who are related to the importer in some way are more likely to lower export prices, so in the absence of this relationship there is no evidence to suggest that an *ad valorem* duty method would incentivise exporters to reduce their prices.

The Commissioner has had regard to the Guidelines and considers that the *ad valorem* duty method is the appropriate form of measure where there are many models or types of models, where prices vary significantly over time, and where there is significant price variation between models. These circumstances are applicable to CFG.

The Commissioner has found in Chapter 11 that the NIP is less than the normal value for exporters from the UAE. Accordingly, the Commissioner has had regard to applying a lesser rate of duty when proposing the effective rate of IDD.

## PUBLIC RECORD

The Commissioner proposes to recommend to the Minister the effective rates of IDD as summarised in the below table:

Country	Exporter	Proposed duty method	Effective IDD rate (%)
UAE	Emirates Float Glass LLC	<i>ad valorem</i>	37.9%
	Guardian Zoujaj International Float Glass Co LLC	<i>ad valorem</i>	14.5%
	All other exporters	<i>ad valorem</i>	37.9% <sup>84</sup>

**Table 15: Summary of proposed effective interim dumping duty**

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<sup>84</sup> The commission has used the same rate as EFG, the highest rate observed for cooperating exporters. See section 6.8

## 13 PRELIMINARY AFFIRMATIVE DETERMINATION

### 13.1 Introduction

Under section 269TD, at any time not earlier than 60 days after the date of the initiation of an investigation into whether there are sufficient grounds for the publication of a dumping duty notice, in respect of the goods subject to the application, the Commissioner may make a PAD. The Commissioner may make a PAD, on being satisfied that:

- there appears to be sufficient grounds for the publication of such a notice, or
- it appears that there will be sufficient grounds for the publication of such notice subsequent to the importation into Australia of such goods.

In relation to a dumping investigation, the Commonwealth may, at the time of making a PAD (or at any later time during the investigation), require and take securities under section 42 in respect of any interim dumping duty that may become payable. The commission may do this if satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

### 13.2 Finding

As outlined in Chapter 6, the Commissioner has found that the goods exported to Australia from the UAE during the investigation period were at dumped prices. As outlined in Chapter 9, the Commissioner is also satisfied that the dumped exports from the UAE have caused material injury to the Australian industry producing like goods.

Accordingly, the Commissioner has decided to make a PAD in relation to the UAE under section 269TD and is satisfied that it is necessary to require and take securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

As a result of the proposed termination outlined in Chapter 14, the commission does not consider it appropriate to make a PAD in relation to the goods exported from Malaysia.

### 13.3 Securities

The PAD, including the level of securities, will be publicly notified by way of an ADN in accordance with sections 269TD(4)(a) and 269TD(5). Securities will be collected from all exporters of the goods from the UAE and entered for home consumption on or after 15 December 2021.

The Commonwealth will calculate the amount of securities payable using the *ad valorem* method. The securities applicable to the goods exported to Australia will apply as follows.

**PUBLIC RECORD**

<b>Country</b>	<b>Exporter</b>	<b>Proposed duty method</b>	<b>Effective IDD rate (%)</b>
UAE	Emirates Float Glass LLC	<i>ad valorem</i>	37.9%
	Guardian Zoujaj International Float Glass Co LLC	<i>ad valorem</i>	14.5%
	All other exporters	<i>ad valorem</i>	37.9%

**Table 16: Summary of dumping securities**

## **14 TERMINATION IN RELATION TO MALAYSIA**

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate the dumping investigation in relation to:

- Xinyi ESM due to no dumping under section 269TDA(1)(b)(i)
- Malaysia due to negligible volume (zero) of dumped exports under section 269TDA(3).

The Commissioner also proposes to terminate the subsidy investigation in relation to:

- Xinyi ESM due to no countervailable subsidy having been received under section 269TDA(2)(b)(i)
- Malaysia due to negligible volume (zero) of goods which have been in receipt of a countervailable subsidy under section 269TDA(7).

**15 APPENDICES AND ATTACHMENTS**

<b>Confidential Attachment 1</b>	Australian market
<b>Confidential Attachment 2</b>	Xinyi ESM export price
<b>Confidential Attachment 3</b>	Xinyi ESM CTMS
<b>Confidential Attachment 4</b>	Xinyi ESM normal value
<b>Confidential Attachment 5</b>	Xinyi ESM dumping margin
<b>Confidential Attachment 6</b>	EFG export price
<b>Confidential Attachment 7</b>	EFG CTMS
<b>Confidential Attachment 8</b>	EFG normal value
<b>Confidential Attachment 9</b>	EFG dumping margin
<b>Confidential Attachment 10</b>	Guardian RAK export price
<b>Confidential Attachment 11</b>	Guardian RAK CTMS
<b>Confidential Attachment 12</b>	Guardian RAK normal value
<b>Confidential Attachment 13</b>	Guardian RAK dumping margin
<b>Confidential Attachment 14</b>	Australian industry injury analysis
<b>Confidential Attachment 15</b>	Price effects and undercutting
<b>Confidential Attachment 16</b>	Causation Analysis
<b>Confidential Attachment 17</b>	Continuation of dumping analysis
<b>Confidential Attachment 18</b>	NIP and USP calculations
<b>Confidential Attachment 19</b>	ABS building commencements
<b>Confidential Attachment 20</b>	ABS dwelling approvals
<b>Confidential Attachment 21</b>	Import pricing parity model

## APPENDIX A ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS

### A1 Introduction

#### A1.1 Definition of Government, public and private bodies

In its assessment of each program, the commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods
- a public body of that country or a public body of which that government is a member, or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

#### A1.2 Government

As described in section 16.2 of the manual, the commission considers the term 'government' is taken to include government at all different levels, including at a national and sub-national level.

#### A1.3 Public bodies

The term 'public body' is not defined in the Act. Determining whether an entity is a public body requires evaluation of all available evidence of the entity's features and its relationship with government, including the following:

- 1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
  - legislation and other legal instruments
  - the degree of separation and independence of the entity from a government, including the appointment of directors
  - the contribution that an entity makes to the pursuit of government policies or interests, such as taking into account national or regional economic interests and the promotion of social objectives.
- 2) The body's ownership and management structure, such as whether the body is wholly- or part-owned by the government, or whether the government has a majority of shares in the body. A finding that a body is a public body may be supported through:
  - the government's ability to make appointments
  - the right of government to review results and determine the body's objectives
  - the government's involvement in investment or business decisions.

## PUBLIC RECORD

The commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*.<sup>85</sup> In that case, the Appellate Body referred to the following 3 indicia which may assist in assessing whether an entity was a public body vested with, or exercising, government authority:

- where a statute or other legal instrument expressly vests government authority in the entity concerned
- where there is evidence that an entity is, in fact, exercising governmental functions
- where there is evidence that a government exercises meaningful control over an entity and exercises governmental authority in the performance of government functions.

These principles have also previously been considered in the Federal Court of Australia.<sup>86</sup>

### **A1.4 Private bodies**

Where an entity is neither a government nor public body, the commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Having regard to section 16.3 of the manual, in determining the character of an entity which may have provided a financial contribution the commission will consider whether a private body has been:

- ‘entrusted’ to carry out a government function, which occurs when a government gives responsibility to a private body
- ‘directed’ to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by government, of themselves, are not sufficient to satisfy this test. However, threats and inducements may be evidence of entrustment or inducements. It is where the private body is considered a proxy by government to give effect to financial contributions that this test will be satisfied.

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<sup>85</sup> DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

<sup>86</sup> See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73].

## A2 Assessment of programs

### A2.1 Program 1A – Pioneer status

#### Background

The GOM provides assistance in the form of an exemption of statutory income for the purposes of calculating income tax to certain enterprises which have been granted 'pioneer status'.

The purpose of this program is to encourage investments in promoted products/activities in the manufacturing, agriculture, tourism (including hotel) and approved services sectors that can contribute to the future growth and development of the economy.

Any company which has received a benefit under this program cannot receive a benefit under the investment tax allowance (Program 2A) for the same promoted activity or promoted product, unless it surrenders its pioneer status.

#### Legal basis

The legal basis for this program is the *Promotion of Investments Act 1986*.

This program is ongoing.

#### WTO notification

The GOM notified the WTO of this program for the period 1 January 2020 to 31 December 2021.<sup>87</sup>

#### Eligibility criteria

Pioneer status may be granted to companies which participate in promoted activities or produce promoted products.<sup>88</sup>

Companies are required to submit an application to the Malaysian Investment Development Authority (MIDA), an agency under the Ministry of International Trade and Industry (MITI) before commencing operation/production of the promoted activity/product. This ensures the applicant complies with the eligibility conditions.

The GOM grants a company with pioneer status a 70% exemption (or any other rate as prescribed by the Minister) of its statutory income for the purpose of calculating income tax. The amount of statutory income may also be further reduced by meeting certain criteria.

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<sup>87</sup> WTO, *WTO doc no 21-5232*.

<sup>88</sup> Malaysian Investment Development Authority (MIDA), [Promoted Activities](#), MIDA website, 2021.

## PUBLIC RECORD

The tax relief period begins on the specific production day and continues for a period of 5 years (unless extended under certain circumstances).

### Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of CFG in Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being income tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under this program in respect of the goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific. As provided for in section 269TAAC(2)(a), a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

As the criteria or conditions providing access to the subsidy is limited to particular enterprises engaging in specific activities or producing specific products, and noting that applicants are required to submit an application and meet eligibility criteria, the specificity of the subsidy is not excepted by reference to section 269TAAC(3).

The commission determines that Program 1A is a countervailable subsidy in respect of the goods.

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).

Xinyi ESM have confirmed that it has not applied for nor received pioneer status under the *Promotion of Investments Act 1986*. On the basis of this and other information obtained from Xinyi ESM, the commission has determined that the company did not receive a benefit under this program during the investigation period.

### **A2.2 Program 1B – Exemptions of income**

#### Background

The GOM provides assistance in the form of an exemption of statutory income for the purposes of calculating income tax to approved businesses.

The purpose of this program is to encourage high impact, high value-added and strategic investments that contribute to the future growth and development of the Malaysian economy.

## PUBLIC RECORD

Any company which has received a benefit from having pioneer status (Program 1) or the investment tax allowance (Program 3) under the *Promotion of Investments Act 1986* is not eligible to receive a benefit under this program.

Any company which has received a benefit under the reinvestment allowance (Program 6) under schedule 7A of the *Income Tax Act 1967* is not eligible to receive a benefit under this program.

### Legal basis

The legal basis for this program is the *Income Tax (Exemption) Order (No.11) 2006 [P.U.(A) 112/2006]*.

This program is ongoing.

### WTO notification

The commission is not aware of any WTO notification of this program.

### Eligibility criteria

Approved businesses are any company intending to participate in high impact, high value-added and strategic investments that can contribute to the future growth and development of the Malaysian economy.

The GOM outlined the eligibility criteria for an approved business as:

- value added
- level of technology measured based on number of management and technical employees in the company, and
- compliance with a specific amount of fixed asset investment (excluding land cost) by specific time period.

Companies are required to submit an application to the Malaysian Investment Development Authority (MIDA), an agency under the Ministry of International Trade and Industry (MITI) before commencing operation/production. This ensures the applicant complies with the eligibility conditions.

After MIDA is satisfied that the company has complied with the eligibility conditions, MIDA will determine the production date for the company and determine the start and end date of the program.

Later, companies approved with the program submit their claims to the Inland Revenue Board (IRB) together with their annual tax returns containing the calculation of claimed tax exemptions.

The GOM grants an approved business a 70% exemption (or any other rate as prescribed by the Minister) of its statutory income for the purposes of calculating income tax. The amount of statutory income may also be further reduced by meeting certain criteria.

Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of CFG in Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being income tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under this program in respect of the goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific. As provided for in section 269TAAC(2)(a), a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

As the criteria or conditions providing access to the subsidy favours particular enterprises, and noting that applicants are required to submit an application and meet eligibility criteria, the specificity of the subsidy is not excepted by reference to section 269TAAC(3).

The commission determines that Program 1B is a countervailable subsidy in respect of the goods.

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).

On the basis of information obtained from Xinyi ESM, the commission has determined that the company did not receive a benefit under this program during the investigation period.

**A2.3 Program 2A – Investment tax allowance**

Background

The GOM provides assistance in the form of an exemption of statutory income equivalent to a proportion of certain capital expenditure incurred by qualifying companies.

The purpose of this program is to encourage investments in promoted products/activities in the manufacturing, agriculture, tourism (including hotel) and approved services sectors that can contribute to the future growth and development of the economy.

Legal basis

The legal basis for this program is the *Promotion of Investments Act 1986*.

This program is ongoing.

WTO notification

The GOM notified the WTO of this program for the period 1 January 2020 to 31 December 2021.<sup>89</sup>

Eligibility criteria

This program may be granted to any company which participates in a promoted activity or produces a promoted product.<sup>90</sup>

Companies are required to submit an application for the exemption to MIDA, an agency under MITI.

A company granted an investment tax allowance is generally entitled to deduct 60% of its qualifying capital expenditure from 70% of its statutory income.<sup>91</sup> Any unutilised allowance can be carried forward to subsequent years until fully utilised.

Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of CFG in Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being income tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under this program in respect of the goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific. As provided for in section 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

As the criteria or conditions providing access to the subsidy is limited to particular enterprises which incur qualifying capital expenditures, and noting that applicants are required to submit an application and meet eligibility criteria, the specificity of the subsidy is not excepted by reference to section 269TAAC(3).

The commission determines that Program 2A is a countervailable subsidy in respect of the goods.

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<sup>89</sup> WTO, *WTO doc no 21-5232*.

<sup>90</sup> MIDA, [Promoted Activities](#), MIDA website, 2021.

<sup>91</sup> These amounts may vary depending on the type of approval granted by the relevant authority.

## PUBLIC RECORD

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).

On the basis of information obtained from Xinyi ESM regarding capital allowance deductions within the relevant period, the commission has determined that these were standard depreciation of assets and do not relate to any additional deduction or exemption. Therefore, the company did not receive a benefit under this program during the investigation period.

### **A2.4 Program 2B – Exemption of income equivalent to capital expenditure incurred**

#### Background

The GOM provides assistance in the form of a tax exemption equivalent to a proportion of certain capital expenditure incurred by qualifying companies.

The purpose of this program is to encourage high impact, high value-added and strategic investments that contribute to the future growth and development of the Malaysian economy.

#### Legal basis

The legal basis for this program is *Income Tax (Exemption) Order (No.12) 2006 [P.U.(A) 113/2006]*.

This program is ongoing.

#### WTO notification

The commission is not aware of any WTO notification of this program.

#### Eligibility criteria

This program may be granted to any company intending to participate in high impact, high value-added, and strategic investments that can contribute to the future growth and development of the Malaysian economy. The allowance is only given on capital expenditure incurred on industrial buildings, plant and machinery directly used.

The GOM outlined the eligibility criteria for a company as:

- value added
- level of technology measured based on number of management and technical employees in the company and
- compliance with a specific amount of fixed asset investment (excluding land cost) by specific time period.

Companies are required to submit an application for the exemption to MIDA, an agency under MITI. The company is then required to establish the commencement of this program period which is on the incurrence of the first capital expenditure duly certified by

## PUBLIC RECORD

MIDA. Subsequently, companies approved under the program submit their claims to the IRB together with their annual tax returns containing the calculation of claim for the tax allowance.

A company granted an income tax allowance is entitled to a tax exemption at a rate as determined by the Minister in the approval letter for the business. The amount of statutory income exempt cannot be in excess of 70% (or any other rate as prescribed by the Minister) for each year of assessment. Any unutilised allowance can be carried forward to subsequent years until fully utilised.

### Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of CFG in Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being income tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under this program in respect of the goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific. As provided for in section 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

As the criteria or conditions providing access to the subsidy is limited to particular enterprises which incur qualifying capital expenditure, and noting that applicants are required to submit an application and meet eligibility criteria, the specificity of the subsidy is not excepted by reference to section 269TAAC(3).

The commission determines that Program 2B is a countervailable subsidy in respect of the goods.

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).

On the basis of information obtained from Xinyi ESM regarding capital allowance deductions within the relevant period, the commission has determined that these were standard depreciation of assets and do not relate to any additional deduction or exemption. Therefore, the company did not receive a benefit under this program during the investigation period.

## **A2.5 Program 3 – Double deductions for export credit insurance**

### Background

The GOM provides a double deduction for income tax purposes to exporters for amounts incurred in relation to export credit insurance premiums, to encourage Malaysia's exporters to penetrate into non-traditional markets.

### Legal basis

The legal basis for this program is *Income Tax (Deductions of Premiums for Export Credit Insurance) Rules 1985 [P.U. (A) 526/1985]* made under section 154 of the *Income Tax Act 1967*.

The program was established in 1985 and is an ongoing program. This program is effective from year of assessment 1986 and subsequent years of assessment.

### WTO notification

The commission is not aware of any WTO notification of this program.

### Eligibility criteria

The program is available to all Malaysian incorporated companies. To be eligible, a company must be approved by the Minister of Finance and pay an export credit insurance premium with an insurance company. During the investigation period, the Export Import Bank of Malaysia Berhad (EXIM) was the only approved insurance company under this program.

Upon request by a policyholder, the EXIM will issue a certificate under *Income Tax (Deduction for Export Credit Insurance) Rules 1985* for policyholders to claim a double deduction. The policyholder has to retain the above-mentioned certificate along with all official receipts issued by EXIM.

There is no application process. Companies make claims during submission of an income tax return (i.e. self-assessment).

### Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the goods from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being income tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under this program in respect of the goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

## PUBLIC RECORD

Under section 269TAAC(1), a subsidy is countervailable if it is specific. As provided for in section 269TAAC(2)(a), a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

Access to this subsidy is limited to customers of approved insurance companies. During the investigation period access to this subsidy was limited to customers which purchased export credit insurance from EXIM as it was the only approved insurance company. The commission is satisfied that this subsidy is explicitly limited to particular enterprises.

The commission also considers that the specificity of this subsidy is not excepted by reference to section 269TAAC(3).

Accordingly, the commission determines that Program 3 is a countervailable subsidy in respect of the goods.

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return).

On the basis of information obtained from Xinyi ESM, the commission has determined that the company did not receive a benefit under this program during the investigation period.

### **A2.6 Program 6 – Reinvestment allowance**

#### Background

The GOM provides assistance in the form an exemption from statutory income for tax purposes to companies engaged in manufacturing and selected agricultural activities that incur capital expenditure for the purposes of expansion, automation, modernisation or diversification of their businesses.

Any company which has received a benefit from having pioneer status (Program 1) or the investment tax allowance (Program 3) under the *Promotion of Investments Act 1986* is not eligible to receive a benefit under this program.

#### Legal basis

The legal basis for this program is schedule 7A of the *Income Tax Act 1967*.

The approved capital expenditure is contained in Public Rulings 10/2020 and 11/2020.

This program is ongoing.

#### WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Companies can only claim the reinvestment allowance upon fulfilling the following conditions:

- the business has been in operation for not less than 36 months and
- the company has incurred in the basis period for a year of assessment capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project.

Companies can only claim the reinvestment allowance upon the completion of a qualifying project, i.e. after a building is completed or when the plant/machinery is put to operational use.

The reinvestment allowance will be given for a period of 15 consecutive years beginning from the year of assessment in which the first reinvestment is made.

The reinvestment allowance is given at the rate of 60% on the qualifying capital expenditure incurred by the company, and can be offset against 70% of its statutory income for the year of assessment. Any unutilised allowance can be carried forward up to a maximum of 7 years of assessment. A company can offset the reinvestment allowance against 100% of its statutory income for the year of assessment if the company attains a productivity level exceeding the level determined by the Ministry of Finance.

Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the production/manufacture of CFG from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under the programs in connection with the production, manufacture or export of those goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific. As provided for in section 269TAAC(2)(a), a subsidy is specific if the subsidy is explicitly limited to particular enterprises.

The commission considers that the criteria or conditions providing access to the subsidy are limited to particular enterprises. Under schedule 7A of the *Income Tax Act 1967*, access to the subsidy is limited to companies which have been in operation for not less than 36 months and have incurred capital expenditure on a factory, plant or machinery used in Malaysia for the purposes of a qualifying project. Qualifying projects are defined under schedule 7A of the *Income Tax Act 1967* as:

## PUBLIC RECORD

- a project undertaken by a company, in expanding, modernising or automating existing business in respect of manufacturing of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry, or
- an agricultural project undertaken by a company in expanding, modernising or diversifying its cultivation and farming business excluding the business of rearing chicken and ducks.

As the criteria or conditions providing access to the subsidy is limited to particular enterprises (manufacturing and agricultural) and the specificity of the subsidy is not excepted by reference to section 269TAAC(3), the commission determines that Program 6 is a countervailable subsidy in respect of the goods.

On the basis of information obtained from Xinyi ESM, the commission has determined that the company did not receive a benefit under this program during the investigation period.

### **A2.7 Program 7 – Gas at less than adequate remuneration**

#### Background

The GOM has regulated natural gas prices in Malaysia at the distribution segment since 2002. Regulation was introduced in response to the Asian Financial Crisis of 1997-1998.<sup>92</sup>

Since 2014, the GOM has taken steps to reform the natural gas market and shift it away from regulation by increasing the regulated gas price in 6-monthly increments until it reaches market parity. This staggered increasing of the regulated gas price ceased in 2019, however some elements of price regulation remain.

The relevant segment of the market for this investigation is the distribution segment. Natural gas provided at the distribution segment is used for a number of applications, including the production of CFG. The main natural gas supplier at the distribution segment is Gas Malaysia Energy and Services Sdn Bhd (GMES). GMES is a wholly-owned subsidiary of Gas Malaysia Berhad (GMB). A range of industries make up GMB's customer base. Relevantly, glass products constituted 9% of the industrial customer base by volume during its financial year ending 31 December 2020.<sup>93</sup>

GMES purchases natural gas at the transmission segment from Petronas Energy & Gas Trading Sdn Bhd (PEGT). PEGT is a wholly-owned subsidiary of Petroliaam Nasional Berhad (PETRONAS), which is wholly-owned by the GOM.

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<sup>92</sup> EPR 582, no 007, p 16.

<sup>93</sup> Gas Malaysia Berhad (GMB), Annual Report 2020, GMB, 2021, p 33.

## PUBLIC RECORD

In order to further facilitate the transition to market-based pricing, the GOM made the decision to regulate the natural gas price for the distribution segment from GMES to its customers for the period 1 January 2020 to 31 December 2021.<sup>94</sup>

The regulated price from GMES to its customers is made up of several components, including the unregulated base price from Petronas to GMES and, until 1 October 2021, a legacy cost (called the Gas Cost Pass Through (GCPT)). Throughout the investigation period, the GCPT resulted in a surcharge to customers of GMES, resulting in higher than market prices.<sup>95</sup>

The unregulated natural gas price from PEGT to GMES is determined by the Malaysia Reference Price (MRP), Peninsula Gas Utilisation (PGU) tariff and additional negotiations between the seller and the customer.<sup>96</sup>

### Legal basis

There is no specific legal basis for this program.

The supply of gas through pipelines in Malaysia is regulated by the Energy Commission which is authorised under the *Gas Supply Act 1993*.

The strategic shifts to reform the gas market in Malaysia are detailed in the *10<sup>th</sup> Malaysia Plan and New Energy Policy (2011-2015)* and *11<sup>th</sup> Malaysia Plan (2016-2020) – Subsidy Rationalisation Policy*.

### WTO notification

The commission is not aware of any WTO notification of this program.

### Eligibility criteria

There is no application process. All customers of GMES automatically have access to the program.

### Commission's assessment

The commission considers that the Energy Commission is a public body for the purposes of section 269T.

The commission considers that the regulation of pricing from GMES by the GOM constitutes a private body being directed by the government to carry out a governmental function. The commission therefore considers any benefit provided by GMES is a subsidy for the purposes of section 269T.

The amount of benefit where there has been a provision of goods or services by the government is the difference between the price paid by enterprises for the government

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<sup>94</sup> Energy Commission (EC), Annual Report 2019, EC, 2021, p 118.

<sup>95</sup> EC, [Regulated Piped Gas Prices](#), EC website, 2021.

<sup>96</sup> PETRONAS, [Gas Pricing & Tariff](#), PETRONAS website, 2021.

## PUBLIC RECORD

provided goods or service, and adequate remuneration for the product or service in relation to prevailing market conditions. If the price paid to the government is less than this amount, a benefit has been conferred.

The commission considers that the prevailing market conditions for natural gas in Malaysia is the unregulated price for natural gas offered by private suppliers

The current natural gas price for GMES is the unregulated price plus a surcharge amount, resulting in prices from GMES which are higher than the prevailing unregulated prices.

Accordingly, the commission considers that there is no financial contribution and therefore no benefit has been conferred.

Accordingly, the commission considers that Program 7 is not a countervailable subsidy in respect of the goods.

### **A2.8 Program 8 – Green technology tax incentive**

#### Background

The purpose of this program is to boost the Malaysian green economy and assist in reaching the objective of 20% renewable energy capacity mix for the nation by 2025, in line with reducing 45% of Green House Gas emission intensity by 2030. This is done through encouraging investments in green technology industries for projects and encouraging companies to acquire assets that have been verified as green technology.

Eligible green technology projects receive Green Investment Tax Allowance (GITA) of 100% of qualifying capital expenditure incurred, which can be offset against 70% of statutory income in the year or assessment. Any unutilised allowances can be carried forward until they are fully absorbed.<sup>97</sup> There is also Green Income Tax Exemption (GITE) for green technology service providers.<sup>98</sup>

#### Legal basis

The legal basis for this program is section 127 of the *Income Tax Act 1967*.

This program is ongoing.

#### WTO notification

The commission is not aware of any WTO notification of this incentive.

#### Eligibility criteria

Companies applying are eligible if they are incorporated under the *Companies Act 2016* and achieve the following green results:

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<sup>97</sup> EPR, no 007, p 65.

<sup>98</sup> Available on the Malaysian Green Technology and Climate Change Centre website at <https://www.mgtc.gov.my/our-services/green-investment-tax-incentives-gita-gite/>

## PUBLIC RECORD

- conserve the use of energy and/or other forms of natural resources or promotes the use of renewable energy or recycles waste material resources
- minimise the degradation of the environment or reduces greenhouse emissions
- promote health and improve the environment.<sup>99</sup>

Companies must make an application to the Malaysian Investment Development Authority (MIDA).<sup>100</sup> Once approval has been received, the companies must submit annually to the Malaysian Green Technology and Climate Change Centre for validation.

Claims must then be submitted to the Inland Revenue Board along with the company's annual tax returns containing the calculation of claim for the tax exemption.

### Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the goods from Malaysia, which involves foregoing, or non-collection, of revenue due to the GOM (being corporate tax) by eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises because of the tax savings realised. Where exporters of CFG during the investigation period received tax savings under this program in respect of the goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific.

The commission considers that the circumstances under section 269TAAC(2) do not apply to this program.

The specificity of this program is not excepted under section 269TAAC(3) as eligibility for this program is not automatic; eligible companies are required to submit applications to MIDA and receive approval in order to obtain a benefit.

Having regard to the circumstances under section 269TAAC(4), the commission considers that this program is not specific as:

- any company which undertakes qualifying activities is eligible
- there is no targeting of specific companies, sectors, or geographical areas

The commission therefore determines that Program 8 is not specific and therefore is not a countervailable subsidy in respect of the goods.

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<sup>99</sup> EPR, no 007, p 59.

<sup>100</sup> Available on the MyHijau website at <https://www.myhijau.my/green-incentives/>

## **A2.9 Program 9 – Wage subsidy program**

### Background

This program subsidised the wages of employees earning under a certain threshold by financially supporting employers suffering from the economic impact of COVID-19.<sup>101</sup> The program commenced in April 2020 and has subsequently been extended past the initially planned 6 month period.<sup>102</sup>

### Legal basis

This program with implemented under *Employer Circular No. 3/2020* and *No. 5/2020*.

This program was established on 1 April 2020 and is ongoing.

### WTO notification

The commission is not aware of any WTO notification of this program.

### Eligibility criteria

Employers needed to apply online and keep their business details such as number of eligible employees up to date through an online portal. Eligibility conditions include:

- decline in revenue
- employer registration
- employee wages
- other conditions, including retrenchment of certain employees.

The eligibility and subsidy amount entitled was also dependent on the size of the company, however there have been changes and expansions to the scheme past the initial implementation.<sup>103</sup>

### Commission's assessment

Based on the information above, the commission considers that the laws governing this program mandate a financial contribution by the GOM, to the extent that it is made in connection with the goods from Malaysia, which involves a financial contribution from the GOM (being wage subsidies) to eligible enterprises in Malaysia.

Having regard to all relevant information about this program, as required by section 269TACC(1), the program is considered to confer a benefit to eligible enterprises

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<sup>101</sup> EPR, no 007.

<sup>102</sup> Available on the Malaysian Ministry of Finance website at <https://belanjawan2021.treasury.gov.my/manfaat/index.php/en/wage-sub-prog-en>

<sup>103</sup> Available on the Malaysian Ministry of Finance website at <https://belanjawan2021.treasury.gov.my/manfaat/index.php/en/wage-sub-prog-en>

## PUBLIC RECORD

because it is a direct financial payment received from a government of a country.<sup>104</sup> Where exporters of CFG during the investigation period received wage subsidies under the programs in connection with the production, manufacture or export of those goods, it would confer a benefit in relation to those goods and the financial contribution would meet the definition of subsidy under section 269T.

Under section 269TAAC(1), a subsidy is countervailable if it is specific. Under section 269TAAC(3) and subject to section (4), a subsidy is not specific if eligibility is automatic and based on strictly applied objective conditions, and those criteria do not favour particular enterprises over others, are economic in nature, and horizontal in application.

The commission considers that the eligibility criteria for the wage subsidy program do not favour any particular enterprises, sectors, or regions over others. All employers who meet the criteria regarding the negative economic impacts due to the COVID-19 pandemic are eligible to receive the benefit.

As such, the commission determines that Program 9 is not a countervailable subsidy in respect of the goods.

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<sup>104</sup> Section 269TACC(2)(a).