

**For publication**

Investigations 3  
Anti-Dumping Commission  
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Dear Case Manager

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

1. We act for Guardian Zoujaj International Float Glass Co. LLC (**Guardian RAK**) and refer to the Anti-Dumping Commission (**ADC**) investigation into certain clear float glass (**CFG**) products exported to Australia from Malaysia and the United Arab Emirates (**UAE**) following an application lodged by Oceania Glass Pty Ltd (**Applicant**).
2. For the purposes of this supplementary submission, we refer to:
  - (a) *Guardian RAK's supplementary submission dated 8 February 2022*, which submissions raised concerns about the existence and content of the Applicant's import-price parity model;
  - (b) *the ADC's email dated 18 February 2022*, by which the Applicant was requested to provide further information regarding its import price-parity model and its price setting mechanism; and
  - (c) *the Applicant's further supplementary submission dated 25 February 2022* - which supplementary submission sought to respond to the ADC's requisitions.
3. Guardian RAK expresses its concern about the credibility and reliability of the Applicant's response to the ADC in its further supplementary submission, and makes the following points:
  - (a) *First*, following the ADC's repeated requisitions on the topic, the Applicant has now conceded that it "*does not operate an 'IPP model'*" and there "*is no referenced 'IPP model'*". Instead, it simply "*monitors import parity prices*" (whatever that expression means) and is "*informed of its competitiveness with imports*" during negotiations with customers. The Applicant's concession:
    - (i) is contrary to the case it put to the ADC (see footnote 27 and Confidential Attachment 21). Indeed, the ADC expressly records, at SEF [5.4], that "*Oceania Glass provided the commission with an example of its import price parity model which the commission reviewed during verification*". The Applicant never complained about the ADC's reliance on an import parity model when such reliance was seemingly beneficial to it and never sought to correct the statement at [5.4] of the SEF. Indeed, in its post-SEF submission dated 17 January 2022, it indicated that it "*concur[red] with the Commission's analysis*"; and
    - (ii) undermines a critical aspect of the causation inquiry (see SEF at [5.4], [9.7.1], [9.7.3] and [9.12]). If the Applicant does not match prices in some systemic manner, as now seems to be its case, then there is

simply insufficient evidence for the ADC to be satisfied that dumping has caused any material injury.

- (b) *Second*, the Applicant admits that its "prices are above the import parity price [which] reflects a premium that the local supplier achieves via the certainty of supply and available technical support". As indicated in Guardian RAK's submission of 8 February 2022, the fact that the Applicant is able to demand prices above its (imported) competition creates doubt regarding the material injury allegedly suffered by the Applicant. In those circumstances, the better view of the evidence is that the Applicant has chosen a price point and premium which it considers the market will bear whilst maintaining (indeed increasing) its market share - which increase was noted by the ADC in Figure 9 of the SEF. The Applicant cannot take the benefits of that commercial strategy and then suggest it is has been disadvantaged.
- (c) *Third*, the Applicant's contention that "the Commission identified ... that the selling prices by Guardian RAK and EFG either undercut or were at the same level as Oceania Glass' prices" appears inconsistent with the admission made in (b) above. More fundamentally, however, the fact that the Applicant accepts that prices were often at comparable levels demonstrates that there was not "**significant price undercutting by the dumped imports**", as is required by Article 3.2 of the Anti-Dumping Agreement and p. 101 of the Dumping and Subsidy Manual.

More fundamentally, the Applicant's price premium advantage does not mean that any price difference between imported goods (whenever it is less) and the Applicant's pricing is to be regarded as "*price undercutting*". Price undercutting requires evidence of a systemic and sustained campaign by the importer and not an isolated singular sale where price was negotiated. Further, in order to make good a claim of undercutting, the ADC must be satisfied that the undercutting was "*significant*". To do this, the ADC would need to squarely consider the Applicant's price premium (see (b) above) and assess whether any price discrepancy reflects the reality of the Applicant having the advantage of a price premium. This is because, as noted by a WTO Panel Report:<sup>1</sup>

*Where, as here, the investigating authority has found that the domestic product benefits from price premium over the imports, it seems to us that a conclusion of significant price undercutting could not be reached by an objective investigating authority without some consideration of that price premium.*

- (d) *Fourth*, insofar as the price increases are concerned, the Applicant simply denies the existence of the 1 April 2020 increase without providing any explanation for why Guardian RAK's submission in this respect was incorrect. In circumstances where Guardian RAK submitted evidence showing a price increase signed by the Applicant's CEO, the ADC should not accept the applicant's contention at face value - indeed, to do so would be a justiciable legal error.
4. Accordingly, for the reasons stated above and for the reasons contained in its previous submissions of 17 January 2022 and 8 February 2022, Guardian RAK urges the ADC to:

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<sup>1</sup> WTO Panel Report, *European Communities - Anti-Dumping Measure on Farmed Salmon from Norway*, 273 [7.639].

- (a) recommend that the Minister impose no dumping duty in respect of CFG exported by Guardian RAK from the UAE; and
- (b) immediately cease the preliminary affirmative determination made on 14 December 2021.

Yours sincerely



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