



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

TERMINATION REPORT
NO 582A

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

23 June 2022

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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 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
EFG	Emirates Float Glass LLC
EPR	Electronic Public Record
FOB	Free on Board
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
the investigation period	1 April 2020 to 31 March 2021
IPP	import price parity
Indonesia	the Republic of Indonesia
the manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)</i>
MCC	model control code
the Minister	the Minister for Industry, Energy and Emissions Reduction
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
REQ	response to the exporter questionnaire
RGQ	response to the government questionnaire
RIQ	response to the importer questionnaire
ROI	return on investment
SEF	Statement of Essential Facts
SEF 582	<i>Statement of Essential Facts No 582</i>
TER 582	<i>Termination Report No 582</i>
Thailand	The Kingdom of Thailand

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UAE	United Arab Emirates
Watson Glass	Watson Glass Pty Ltd
Xinyi ESM	Xinyi Energy Smart (Malaysia) Sdn Bhd
YEM	year ending March

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (the commission) has prepared this *Termination Report No 582A* in response to an application made by Oceania Glass Pty Ltd (Oceania Glass)¹ in respect of clear float glass (CFG, the goods) exported to Australia from Malaysia and the United Arab Emirates (UAE).² Oceania Glass alleges that the Australian industry has experienced material injury caused by:

- dumped imports of the goods from Malaysia and the UAE
- subsidised imports of the goods from Malaysia.

This termination report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) reasons for terminating the dumping investigation in relation to all exports of the goods to Australia from the UAE. This represents a change from the Commissioner's preliminary recommendation in *Statement of Essential Facts No 582* (SEF 582), which was a recommendation to impose measure on exports of the goods from the UAE.

This termination report follows the commission's publication of SEF 582 on 14 December 2021,³ as well as *Termination Report No 582* (TER 582) and the associated termination notice published on 18 February 2022.⁴ TER 582 sets out the Commissioner's reasons for terminating the dumping investigation and subsidy investigation in relation to all exports of the goods to Australia from Malaysia.

1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (Cth) (the Act)⁵ describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner when conducting investigations in relation to the goods covered by an application under section 269TB(1). Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation.

The commission has prepared this report to support the Commissioner in his consideration of the application, pursuant to the commission's function specified in section 269SMD.

1.2.1 Application

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

¹ The commission also refers to Oceania Glass as the Australian industry in this report.

² The commission refers to Malaysia and the UAE collectively as 'the subject countries' in this report.

³ Electronic Public Record (EPR) 582, no 020.

⁴ EPR 582, nos 026 & 027.

⁵ All legislative references in this report are to the *Customs Act 1901* (Cth), unless otherwise stated.

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goods 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) 2021/054 and *Consideration Report No 582* provide further details relating to the initiation of the investigation.⁶

1.3 Findings and conclusions

The commission's findings and conclusions in this termination report represent a change in position from those preliminary found in SEF 582. The commission has reached these findings and conclusions through further investigation because of submissions provided in response to SEF 582 and additional information provided by the Australian industry.

The commission considers that the available evidence does not support a finding that dumped exports of the goods from the UAE have had a material effect on the Australian industry's price, volume, profit or return on investment (ROI).

1.3.1 Background to SEF 582

On 14 December 2021, the Commissioner published SEF 582, which preliminarily recommended that then Minister for Industry, Energy and Emissions Reduction (the Minister) publish a dumping duty notice in relation to the goods exported to Australia from the UAE, subject to submissions received in response to SEF 582.

The Commissioner made the preliminary recommendation in SEF 582 having regard to the commission's dumping findings and the commission's examination of the Australian industry's economic condition during the investigation period.

The commission found in SEF 582 that the Australian industry experienced price suppression (a narrowing between costs and selling prices), reduced profits and reduced ROI during the investigation period. These economic factors share a common link to price effects. Accordingly, in SEF 582, the commission focused its examination of whether the dumped goods caused material injury to the Australian industry on the relationship between prices of the imported goods from the UAE and the Australian industry's prices for like goods.

Relevant evidence to the commission's findings in SEF 582 included:

- the size of the dumping margins (23.8% for Guardian Zoujaj International Float Glass Co LLC (Guardian RAK), the largest exporter of the goods from the UAE, and 42.5% for Emirates Float Glass LLC (EFG)).
- the Australian industry's claim that it used an 'import price parity' (IPP) model⁷

⁶ EPR 582, nos 002 and 003.

⁷ An IPP model uses import prices as the basis to establish a company's own domestic prices.

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- the Australian industry's claim that, based on the IPP model, it had regard to and responded to prices of the dumped goods from the UAE
- price undercutting for certain customers that purchased like goods from the Australian industry and imported the goods from the UAE
- general observations regarding the importance of price in the Australian market's purchasing decisions
- an argument that 'but for' the dumped goods from the UAE, the Australian industry's economic condition would be better, i.e. less price suppression, higher profits and higher ROI.⁸

Following SEF 582, the Commissioner terminated the investigation in relation to Malaysia on the basis that the goods were not dumped and that there were negligible (zero) volumes of dumped goods.⁹

1.3.2 Submissions to SEF 582

Following SEF 582, the commission received 8 submissions; 4 from Guardian RAK and 4 from Oceania Glass. Guardian RAK's submissions focussed on Oceania Glass's price setting practices (including that if Oceania Glass did use an IPP model, any competitive pricing pressure would be coming from Malaysia and not the UAE) and claimed that the relationship between prices of the dumped goods from the UAE and the injury experienced by the Australian industry was unfounded. In response to Guardian RAK's submissions, the commission sought further clarification and evidence from the Australian industry regarding its price setting practices on 2 occasions.

An outline of the submissions received in response to SEF 582 is at section 8.5.

1.3.3 Commissioner's finding in this report

The commission has carefully considered the submissions to SEF 582 and re-evaluated all of the available evidence. This has led the commission to make a different finding in this report.

The commission does not consider that dumped exports of the goods from the UAE have caused material injury to the Australian industry, and that the injury, if any, that has been, or may be, caused is negligible.

The commission is not satisfied that there is a causal link between dumped exports of the goods from the UAE and the Australian industry's economic position. The available evidence does not support that that dumped exports of the goods from the UAE are the cause of Australian industry's price suppression, reduced profits and reduced ROI during the investigation period.

The commission has summarised the reasons for the change in finding below.

⁸ The commission's approach to the 'but for' analytical method is outlined in Chapter 22 of the manual and further expanded on in Chapter 8.

⁹ ADN 2022/017 and *Termination Report No 582*, published 18 February 2022, refer to EPR 582 nos 26 and 27.

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Price effects

The commission considers that there is limited evidence that the Australian industry had access to, or sets its prices with reference to, prices of the dumped goods from the UAE.¹⁰

In contrast, the available evidence supports that the Australian industry monitors prices from other countries. Oceania Glass uses this information to assess intelligence that it receives about competitive price offers in the market. This intelligence and a range of other factors (such as costs) inform Oceania Glass in its pricing decisions.

Based on Oceania Glass's responses to the commission's questions following SEF 582, the commission considers that there is no IPP model as described in SEF 582. Instead, the commission understands that Oceania Glass uses import prices from countries other than the UAE to assess the credibility of counter import offers from its customers. This weakens Oceania Glass's claim and the commission's previous finding in SEF 582 of a causal link between the dumped prices of the goods exported from the UAE and any injury that the Australian industry may have experienced in the investigation period. The evidence Oceania Glass provided indicates it is more likely to be setting its prices with regard to prices from countries other than the UAE.

The commission considers that the available evidence does not support that dumped exports of the goods from the UAE have caused the price suppression experienced by the Australian industry. Instead, evidence suggests that price suppression is likely attributable to factors other than dumping, including the price of un-dumped goods from Malaysia, Oceania Glass's price setting practices during the investigation period and Oceania Glass's increasing cost of production.

Following SEF 582, the commission has compared selling prices and volumes of the most common models for customers who purchase from the UAE and the Australian industry and found that there was no significant correlation between movements in the two. Accordingly, the commission does not consider that dumped goods from the UAE have caused the price suppression experienced by the Australian industry.

The evidence in relation to the reasons for the price undercutting by the UAE has changed following SEF 582 to indicate the price disparity may be, at least in part, a result of pricing decisions within the control of Oceania Glass. After SEF 582, Oceania Glass confirmed that it seeks to achieve a price 'premium' for the supply of local like goods but did not disclose the size of this premium. The existence of the price premium dilutes the margin of undercutting by dumped exports of the goods from the UAE for certain customers of Oceania Glass. In addition to the existence of a price premium, the average margin of undercutting does not reflect the large levels of dumping occurring (23.8% and 42.5%). The commission considers this does not indicate a strong causal relationship between dumping and price undercutting.

The commission has provided further information regarding price effects in section 8.6.1.

¹⁰ Section 269TAE requires a finding of material injury caused by dumping to be based on facts and not merely on allegations, conjecture or remote possibilities.

Volume effects

The commission has found that the Australian industry has not experienced volume injury due to increased sales volumes and market share in the investigation period. This is despite the presence of dumped goods from the UAE.

The commission found that the Australian market share of the UAE was significantly smaller than that of Malaysia during the investigation period.¹¹The commission also found that the volume of imports from the UAE decreased and market share held by UAE imports significantly declined in the investigation period. This decrease occurred despite the overall size of the Australian market increasing.

Even with the small volume of imports from the UAE, the commission found that the current level of Oceania Glass's capacity utilisation would not allow it to capture additional sales volume and market share held by imports from the UAE.

The commission has provided further information regarding volume effects in section 8.6.2.

Profit and ROI effects

Profit and ROI rely on volume and price as inputs. In the absence of evidence of relationship between Oceania Glass's domestic sales prices and prices of the dumped goods from the UAE in the investigation period, there is nothing to indicate that 'but for' the dumped goods, Oceania Glass's prices would be different. In addition, the commission considers that Oceania Glass would not have been able to increase its sales volumes. Accordingly, the commission is satisfied that the dumped exports of the goods from the UAE have not caused any reduction in Oceania Glass's profit and ROI.

The commission has provided further information regarding profit and ROI effects in section 8.6.3.

Conclusion

Having weighed up all the available evidence, the Commissioner is not satisfied that dumped exports of the goods from the UAE have caused material injury to the Australian industry. The commission is not satisfied that the information provided by the Australian industry addresses that it has experienced material injury from dumped exports of the goods from the UAE.

The Commissioner is satisfied that any injury to the Australian industry from dumped exports of the goods from the UAE is negligible. Accordingly, the Commissioner has terminated this investigation as it relates to the UAE under section 269TDA(13).

Chapter 9 provides further details.

¹¹ Confidential attachment 1.

2 BACKGROUND

2.1 Initiation

2.1.1 Background

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.¹²

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

- price depression
- price suppression
- lost profit and profitability
- reduced ROI
- reduced attractiveness to reinvest.¹³

The Commissioner specified in the initiation notice that:

- the investigation period is 1 April 2020 to 31 March 2021
- the injury analysis period for determining whether material injury to the Australian industry has been caused by exports of dumped and/or subsidised imports is from 1 April 2017.

2.1.2 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.¹⁴ 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'.

Commissioner's response to Guardian RAK's submission

¹² ADN 2021/054 (the initiation notice).

¹³ EPR 582, no 001.

¹⁴ EPR 582, no 005.

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The Commissioner is satisfied that the investigation period is reasonable and appropriate. As per section 3.2 of the *Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)* (the manual) the investigation period is generally the 12 months preceding the initiation date and ending in the most recently completed quarter or month. The Commissioner's investigation period follows the manual's outlined approach, which resulted in a contemporary period of examination. The Commissioner considers that postponing the investigation would cause an unnecessary delay to the commission's examination of the Australian industry's claims.

In response to Guardian RAK's claims that the COVID-19 pandemic may affect the investigation findings, the commission notes that the Act specifies specifically that the Minister must not attribute injury to the Australian industry from dumped goods to factors other than dumping consistent with section 269TAE. The Minister could, if necessary, also disregard certain information if found to be unreliable. The commission has considered these matters throughout this report.

For the above 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 (GOM), 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.¹⁵

Commissioner's response to the GOM

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. The commission has found that exporters of the goods from Malaysia did not receive any countervailable subsidies, and the Commissioner terminated the subsidy investigation for the reasons outlined in TER 582.

2.2 Previous cases

Anti-dumping measures are currently applicable to all exports of the goods to Australia from the Republic of Indonesia (Indonesia), excluding PT Muliaglass.

A background to key cases in relation to the goods is summarised in Table 1.

¹⁵ EPR 582, no 008.

PUBLIC RECORD

Case type and number	ADN number	Date	Country of export	Findings
Investigation No 159C	2011/050	17 October 2011	The People's Republic of China (China) Indonesia The Kingdom of Thailand (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 1: Summary of cases undertaken in relation to the goods

2.3 Conduct of the investigation

2.3.1 Statement of essential facts

The Commissioner was originally due to place the Statement of Essential Facts (SEF) on the public record on or before 16 August 2021. The Commissioner extended the due date for the SEF.¹⁶ The Commissioner placed the SEF on the public record on 14 December 2021.¹⁷

2.3.2 Australian industry

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

2.3.3 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

¹⁶ EPR 582, nos 011 & 019.

¹⁷ EPR 582, no 020.

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copy of the importer questionnaire on the commission's website for completion by other importers that the commission did not contact 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.¹⁸

2.3.4 Exporters

The commission forwarded exporter questionnaires to 3 exporters at the beginning of the investigation. The commission received a completed response to the exporter questionnaire (REQ) from all 3 exporters. The commission has summarised details of the REQs 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 2: Exporter questionnaire responses

The commission initially identified other potential 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 the commission considers that importers might have incorrectly entered the supplier details in the ABF import database.

2.3.5 Foreign governments

The commission received correspondence from the Government of the UAE that it wished to be an interested party as part of this investigation.

The commission forwarded a government questionnaire to the GOM at the beginning of the investigation. The commission received a response to the government questionnaire (RGQ) from the GOM on 1 July 2021.¹⁹ The Commissioner considered this response as part of TER 582.

2.4 Submissions received from interested parties

The commission received 5 submissions from interested parties prior to the publication of SEF 582, available on the public record. The Commissioner considered these submissions when reaching his preliminary conclusions in that SEF.

¹⁸ EPR 582, no 016.

¹⁹ The commission provided the GOM with an extension of time (28 days) to lodge its response.

PUBLIC RECORD

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 3: Submissions received prior to SEF

Following the publication of SEF 582, the commission received the following 8 submissions detailed in Table 4. The Commissioner has considered these submissions in reaching the conclusions contained within this report.

EPR number	Interested party	Date received
022	Oceania Glass Pty Ltd	17 January 2022
023	Guardian Zoujaj International Float Glass Co LLC	17 January 2022
024	Oceania Glass Pty Ltd	24 January 2022
025	Guardian Zoujaj International Float Glass Co LLC	9 February 2022
029	Oceania Glass Pty Ltd	25 February 2022
030	Guardian Zoujaj International Float Glass Co LLC	3 March 2022
031	Oceania Glass Pty Ltd	7 March 2022
033	Guardian Zoujaj International Float Glass Co LLC	16 March 2022

Table 4: Submissions received in response to SEF 582

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.

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.

A PAD may be made no earlier than day 60 of the investigation. In accordance with the 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 was not made.

PUBLIC RECORD

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.²⁰

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.

On 14 December 2021, the Commissioner made a PAD, as there appeared to be sufficient grounds for the publication of a dumping duty notice at that stage of the investigation.²¹ Based on information before him at that time, the Commissioner was also satisfied that it was necessary for the Commonwealth to require and take securities while the investigation continued.

Because of the termination of the investigation, it is no longer necessary for the Commonwealth to require and take securities, as the investigation has not continued.

2.6 Public record

The public record contains non-confidential submissions by interested parties, the commission's reports, and other publically available documents. It is available online at www.adcommission.gov.au. Interested parties should read documents on the public record in conjunction with this report.

²⁰ ADN 2021/081.

²¹ ADN 2021/152.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner is satisfied that locally manufactured CFG are 'like goods' to the goods the subject of the application.

3.2 Legislative framework

Section 269TC(1) 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:

*CFG in nominal thicknesses of 3 to 12 millimetres (mm).*²²

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

²² 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 5: 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 tariff classification 7005.29.00 (statistical codes 03, 04, 05, 06 and 09) in Schedule 3 to the *Customs Tariff Act 1995* (Cth).

The tariff classification and statistical codes may include goods that are both subject and not subject to this investigation. The commission has listed the tariff classification and statistical codes for reference only, and these do not form part of the goods description set out above. Please refer to the goods description at section 3.3 for detail regarding the particulars of the goods the subject of this investigation.

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

3.5 Model control code

As detailed in the initiation notice, the commission proposed the model control code (MCC) structure below:

PUBLIC RECORD

Category	Sub-category	Sales data	Cost data
Nominal thickness	3 mm	Mandatory	Mandatory
	4 mm		
	5 mm		
	6 mm		
	8 mm		
	10 mm		
	12 mm		

Table 6: MCC structure

The commission invited interested parties to make submissions with proposals to modify the MCC structure.

The commission did not receive any submissions that contained a proposal to modify the MCC structure. The commission applied the MCC structure as detailed above in its assessment of dumping and material injury to the Australian industry.

3.6 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 *Continuation Inquiry No 575*, information provided by cooperating exporters of the goods and prior findings of the commission.

3.6.1 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.

3.6.2 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 and use similar distribution channels.

3.6.3 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.

3.6.4 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.

3.6.5 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.

Based on the commission's analysis, 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 Findings

The Commissioner finds 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 produced in Australia. Sections 269T(2) and 269T(3) 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 Commissioner to consider the goods 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.

Oceania Glass is a privately owned company focused on the bulk manufacture and distribution of glass for use by glass processors and window and door fabricators. Oceania Glass's glass manufacturing operations are based in Dandenong, VIC and it operates 2 merchandising businesses located in Springvale, VIC and Ingleburn, NSW.

Oceania Glass was formed following a demerger of CSR Viridian Limited. CSR Viridian Limited was sold to Crescent Capital Partners (CCP) on 31 January 2019. CST Viridian Limited was split into two separate legal entities; Oceania Glass and Viridian Glass Pty Ltd (Viridian Glass).

Viridian Glass is involved in the processing of glass, which involves the manufacture of double-glazing, custom lamination, cut to size product and custom decorative solutions.

Further details regarding the Australian industry are contained within the industry verification report.²³

4.4 Production process

Oceania Glass manufactures CFG using the float process.

First, raw materials (such as soda ash and sand) are 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.

²³ EPR 575, no 016.

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After the molten glass forms, 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.

Figure 1 provides a general overview of the production process.

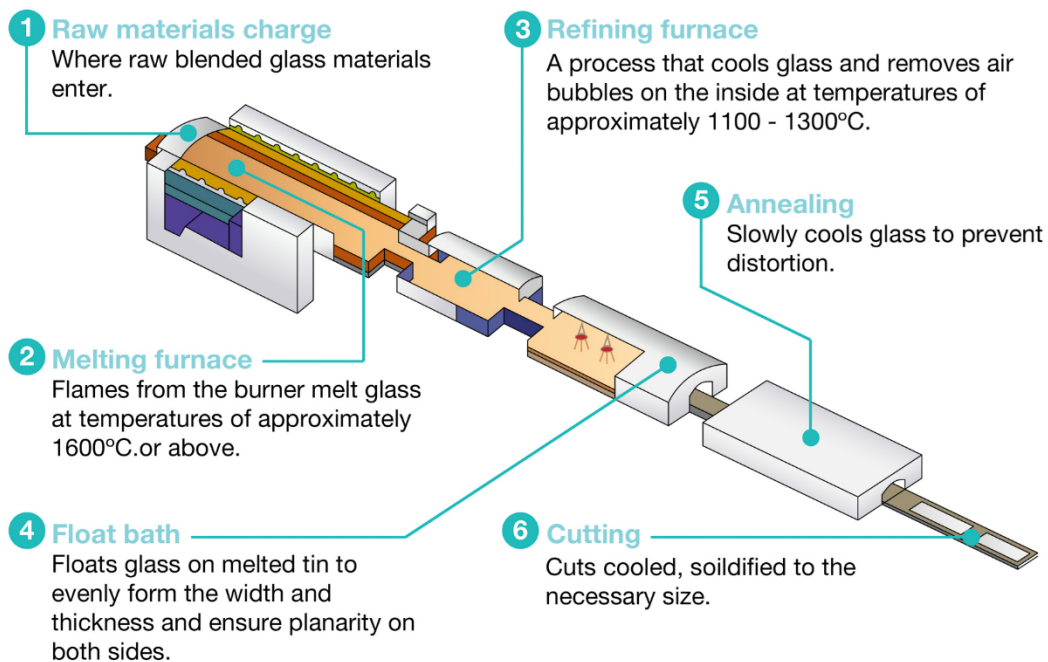


Figure 1: CFG production process²⁴

4.5 Conclusion

The Commissioner is satisfied that:

- at least one substantial process of manufacture of like goods is carried out in Australia
- like goods were wholly or partly manufactured in Australia
- there is an Australian industry, consisting solely of Oceania Glass, which produces like goods to the goods exported to Australia.

²⁴ EPR 582, no 001, p 13.

5 AUSTRALIAN MARKET

5.1 Finding

The Commissioner finds that the Australian industry and imports from a number of countries, including Malaysia and the UAE, supply the Australian market for the goods and like goods.

5.2 Background

The Australian market sources imported CFG from numerous countries. In recent years, the highest volumes originate from Malaysia, Indonesia and the UAE according to the ABF import database.

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

CFG is a commodity product and customers can 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 and 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, the commission considers it is no longer the goods as detailed in section 3.3.

Figure 2 provides a basic overview of the market structure for CFG in Australia. Oceania Glass and exporters/importers supply CFG to domestic Australian processors and fabricators. Exporters/importers and processors may also supply processed glass to fabricators, however this is not considered the goods. Oceania Glass competes with exporters/importers of CFG for sales to processors and fabricators.

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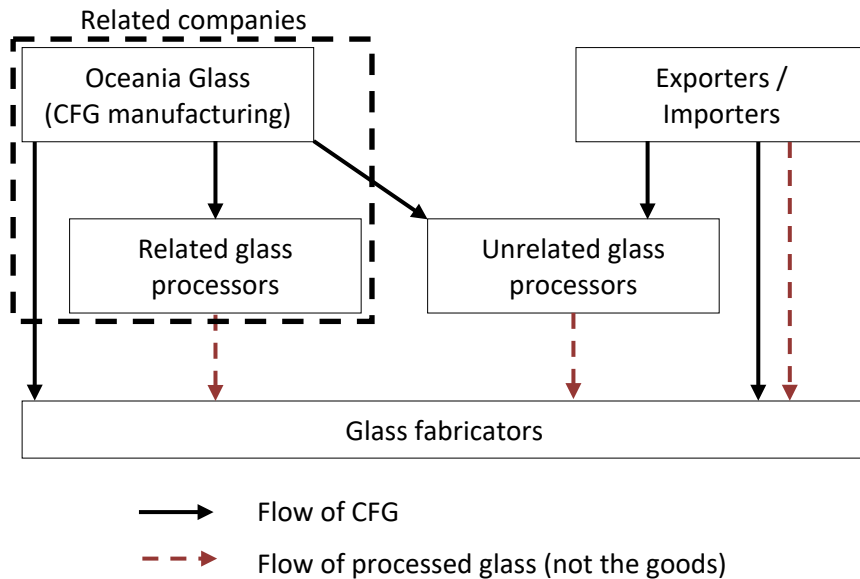


Figure 2: Australian market structure for CFG

5.3.1 Supply and distribution

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

Both avenues act as locations for storage and order consolidation. Merchandising stores typically handle smaller quantities of products and have slightly increased operating costs compared to distribution centres. Oceania Glass charges a slight premium for its merchandising sales, which covers these additional expenses.

Oceania Glass makes approximately 92% of its sales directly through its distribution network.

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

5.3.2 Demand

Understanding the demand factors helps to inform the commission on whether dumping or other factors have caused injury to the Australian industry.

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 commencements and dwelling approvals available from the Australian Bureau of Statistics (ABS).²⁵

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 buildings such as warehouses that 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 demand due to the higher requirement of CFG for this type of building.

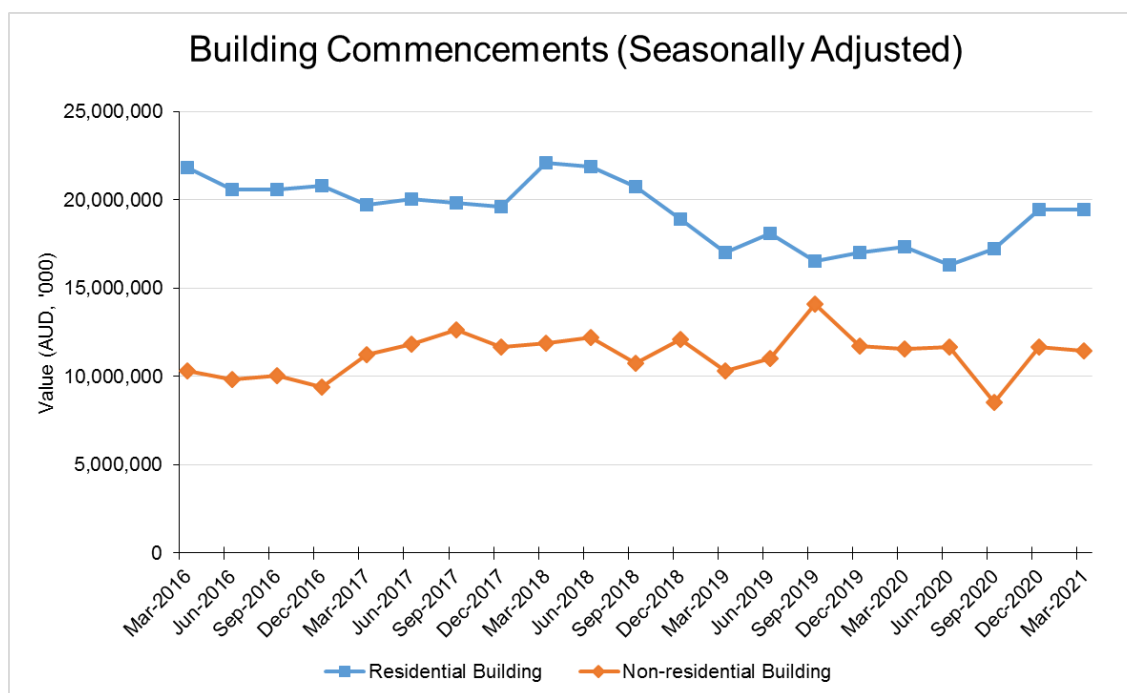


Figure 3: Australian building commencements

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

²⁵ Confidential Attachments 13 & 14.

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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.

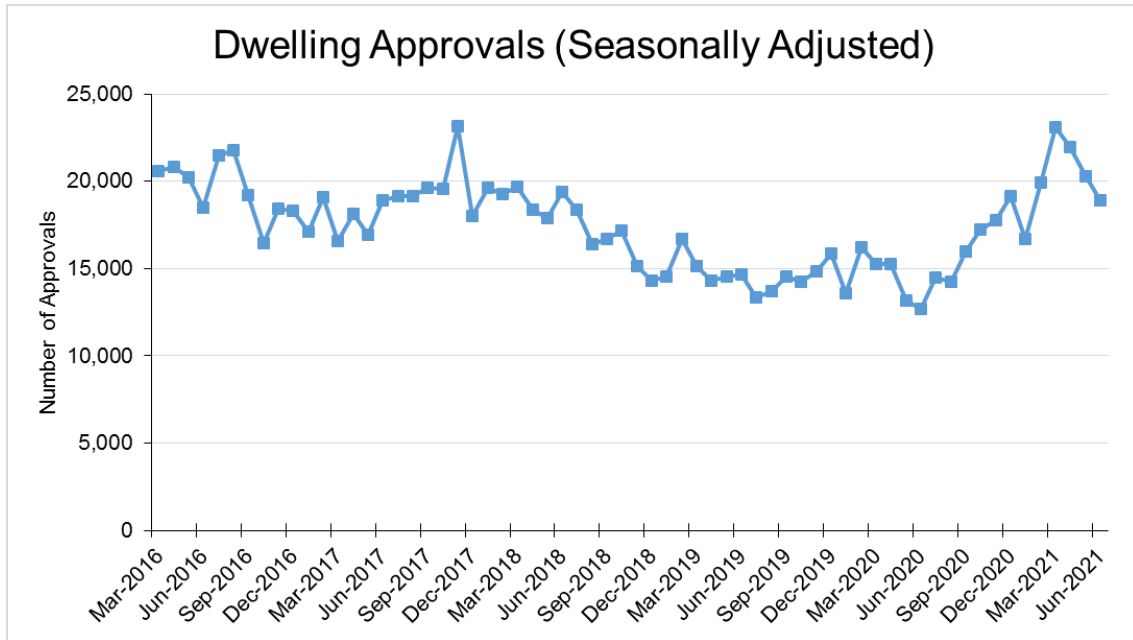


Figure 4: Australian dwelling approvals

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 to USD
- freight costs.

The commission stated in SEF 582 that Oceania Glass determined its prices using an IPP model. Oceania Glass provided further information in submissions that has changed the commission's understanding of Oceania Glass's price setting practices.²⁶

²⁶ EPR 582, nos 024 & 029.

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Instead of using a strict IPP model as part of its price setting practice, Oceania Glass monitors a range of factors, including international pricing, raw material pricing and trends in freight costs in order to assess its competitiveness with imports. As a result, Oceania Glass uses this information to 'assess the credibility of offers for CFG by suppliers into the Australian market.'²⁷

Oceania Glass provided the commission with examples of how it determines these import reference prices from a couple of countries (not including the UAE). Oceania Glass highlighted that it will not price against import offers below the import reference price for a particular country (not the UAE).²⁸

Oceania Glass also highlighted that some customers do not disclose import sources or supplier names, which makes it difficult for Oceania Glass to know where offers are coming from.²⁹

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 commission identified the goods in the ABF import database using the relevant tariff subheading for CFG (7005.29.00) and additional filtering to remove imports that do not appear to be the goods.

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

²⁷ EPR 582, no 029, p 2.

²⁸ EPR 582, no 029, p 2.

²⁹ EPR 582, no 029, p 3.

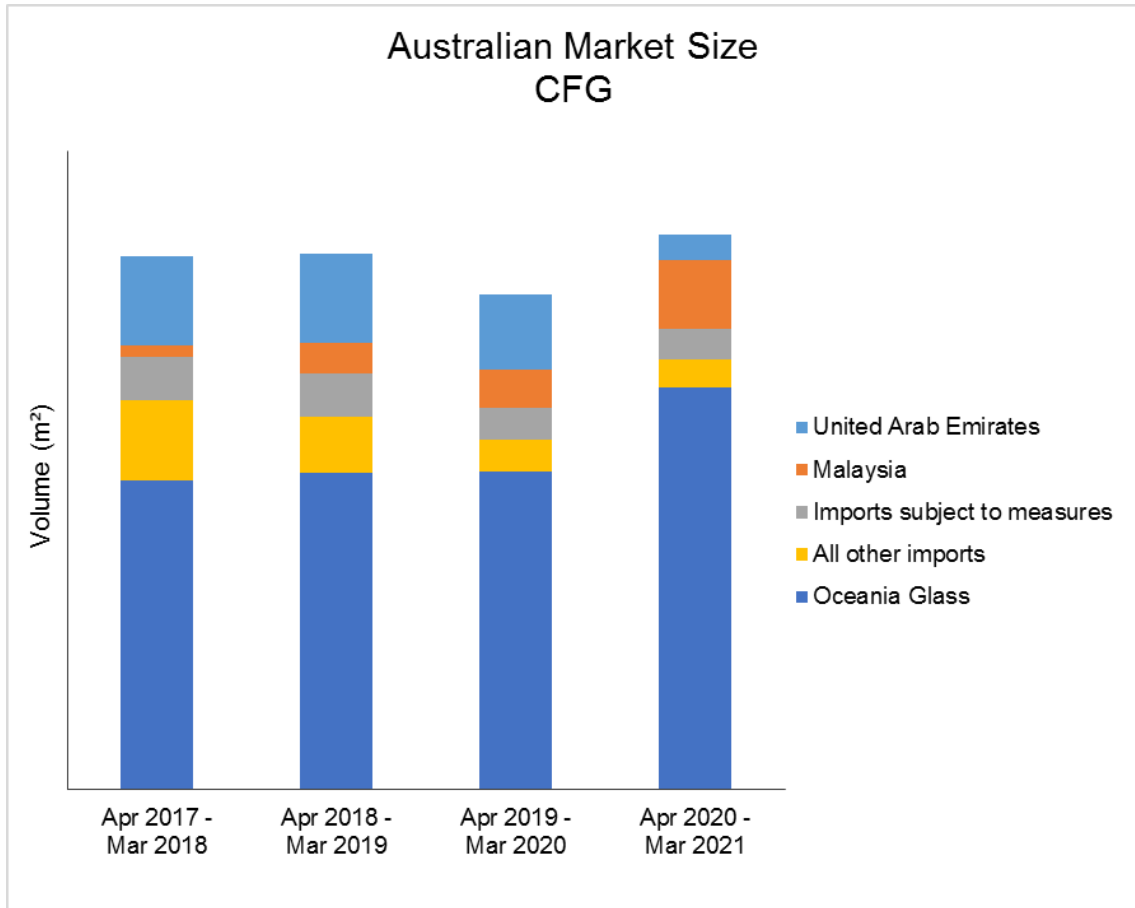


Figure 5: Australian market size (injury analysis period)

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.

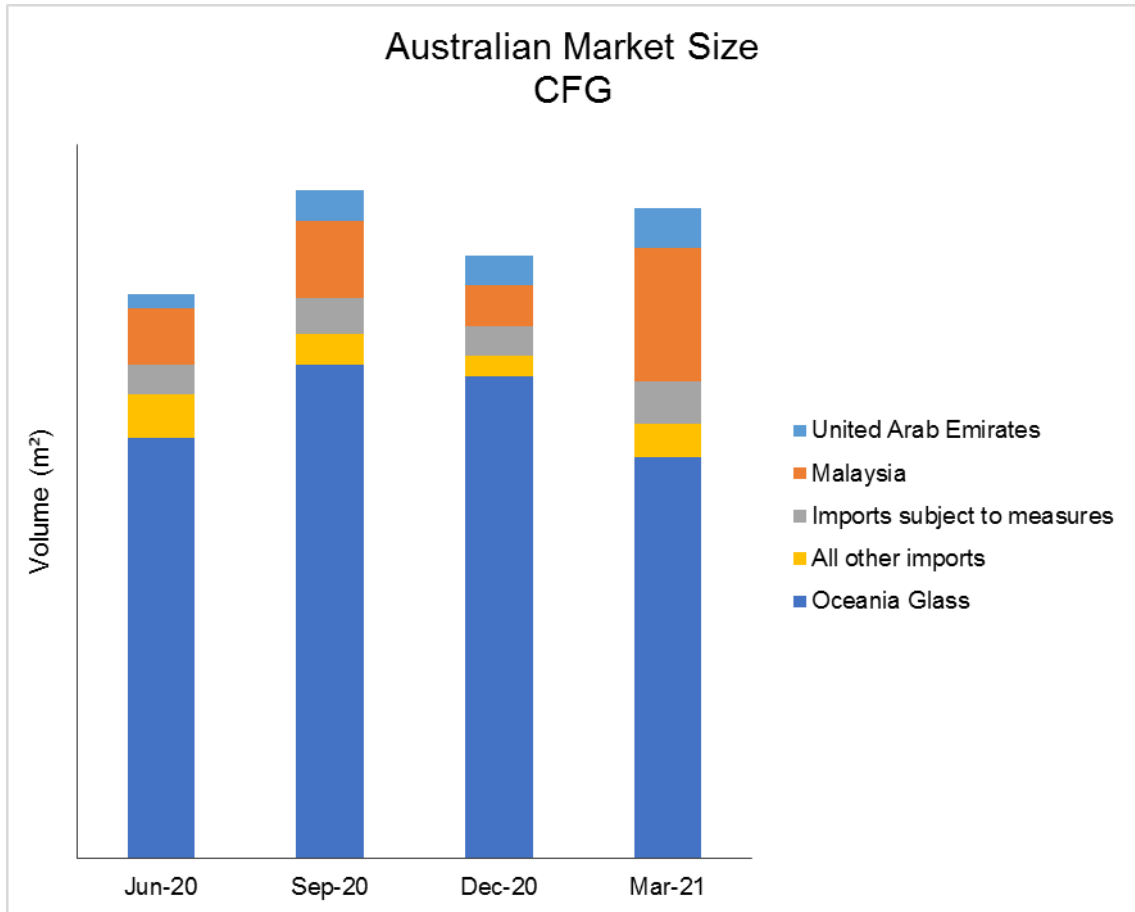


Figure 6: Australian market size (investigation period)

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

6 DUMPING INVESTIGATION - UAE

6.1 Finding

The Commissioner has found that exporters of the goods from the UAE dumped the goods during the investigation period, and the levels of dumping were not negligible.

The commission's determination of dumping margins for exporters from the UAE are summarised in Table 7.

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

Table 7: Dumping margins

6.2 Legislative and policy framework

In a 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) provides that generally, 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.

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).

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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 commission determines normal value 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 low volume where:

the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter.

An exporter's domestic sales of like goods may not be taken to be low volume where the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purpose of assessing a dumping margin.³⁰

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'.

At the beginning of the investigation, the commission forwarded questionnaires to identified exporters, and a copy was also placed on the commission's website for

³⁰ Section 269TAC(14).

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completion by any other exporters. The commission received REQs from the following entities:

- Xinyi Energy Smart (Malaysia) Sdn Bhd (Xinyi ESM)³¹
- EFG³²
- Guardian RAK.³³

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

The dumping margin for Xinyi ESM is contained within TER 582.³⁴

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.³⁵

In the present inquiry, there are no exporters that the commission considers to be 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.

6.5 EFG

The commission conducted a risk-based assessment of EFG's REQ. Based on that assessment, and having regard to the level of detail in the REQ, the commission is satisfied that:

- EFG is the producer of the goods and like goods

³¹ EPR 582, no 010.

³² EPR 582, no 013.

³³ EPR 582, no 009.

³⁴ EPR 582, no 026.

³⁵ Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction).

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- the information that EFG provided is relevant, accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.³⁶

6.5.1 Export price

The commission considers that EFG is an exporter of the goods,³⁷ 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 Cost, Insurance and Freight (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 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.³⁸

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.

³⁶ EPR 582, no 018.

³⁷ 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 (the manual, section 6.2).

³⁸ Section 269TAA.

6.5.2 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 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.³⁹

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.⁴⁰

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 MCC 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.

Using the MCC structure outlined in section 3.5, the commission compared the volume of relevant domestic sales to the volume of export sales for MCCs which were exported to Australia. As the volume of relevant domestic sales of each of EFG's exported MCCs are 5% or more of the volume exported, the case team considers it can make a proper comparison at the MCC 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%.

³⁹ Section 269TAA.

⁴⁰ In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

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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).

6.5.3 Adjustments

As domestic sales were used as a basis for normal value under section 269TAC(1), the commission considers that certain adjustments are necessary in accordance with section 269TAC(8). These adjustments ensure that differences between the domestic and export sales would not affect the comparison of the normal value and export price.

The commission is satisfied that there is sufficient information to justify the adjustments outlined in Table 8.

The commission has compared the normal value and export price at Free on Board (FOB) terms.

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

Table 8: Summary of adjustments – EFG

Submissions in response to adjustments

In its submission of 17 January 2022, Oceania Glass raised concerns that the commission had not made an adjustment for differences in the physical characteristics of the goods sold domestically and exported.⁴¹

The commission did not identify any differences in physical characteristics that would give rise to material differences in price comparability. Examination of EFG's Australian and

⁴¹ EPR 582, no 022, p 2.

domestic sales listings did not provide any physical differences other than that outlined in the MCC structure (thickness).⁴²

6.5.4 Dumping margin

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

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

6.6 Guardian RAK

The commission conducted a risk-based assessment of Guardian RAK's REQ. Based on that assessment, and having regard to the level of detail in the REQ, the commission is satisfied that:

- Guardian RAK is the producer of the goods and like goods
- the information that Guardian RAK provided is relevant, accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.⁴³

6.6.1 Export price

The commission considers that Guardian RAK is an exporter of the goods, 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:

- 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

⁴² **Confidential Attachments 2 & 4.**

⁴³ EPR 582, no 018.

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- 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.⁴⁴

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.

6.6.2 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.⁴⁵

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 OCOT if arms length transactions are:

- unprofitable in substantial quantities over an extended period and
- unlikely to be recoverable within a reasonable period.

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 MCC over the period. Finally, the commission tested recoverability by comparing

⁴⁴ Section 269TAA.

⁴⁵ Section 269TAA.

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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 MCCs 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 MCCs, the commission was satisfied that there were sufficient domestic sales volumes of surrogate MCCs based on the MCCs with the closest physical characteristics under the MCC structure. Accordingly, the commission has applied a specification adjustment to these MCCs when calculating the normal value.

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

Having regard for the points set out 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).

6.6.3 Adjustments

As domestic sales were used as a basis for normal value under section 269TAC(1), the commission considers that certain adjustments are necessary in accordance with section 269TAC(8). These adjustments ensure that differences between the domestic and export sales would not affect the comparison of the normal value and export price.

The commission is satisfied that there is sufficient information to justify the adjustments outlined in Table 9.

The commission has compared the normal value and export price at FOB terms.

Adjustment type	Basis for adjustment	Deduction/addition
Domestic packaging	Domestic packaging was found to be different to export packaging	Deduct an amount for domestic packaging
Domestic inland transport	Cost incurred from transporting like goods from the factory to the domestic customer	Deduct an amount for domestic inland transport
Domestic sales team expenses	Cost of dedicated domestic sales staff	Deduct an amount for domestic sales team expenses
Domestic credit terms	Credit terms are different between export and domestic sales	Deduct an amount for domestic credit terms
Export packaging	Export packaging was found to be different to domestic packaging	Add an amount for export packaging
Export inland transport	Cost incurred from transporting the goods from the factory to the port	Add an amount for export inland transport

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Adjustment type	Basis for adjustment	Deduction/addition
Export handling & other	Cost incurred at the port, including port handling charges, bill of lading fees, etc.	Add an amount for export handling & other
Export commission	Commission paid to export sales agent	Add an amount for export commission
Export credit terms	Credit terms are different between export and domestic sales	Add an amount for export credit terms
Specification adjustment	Insufficient volume of domestic sales for a proper comparison at the MCC level	Adjustment made using the cost to make and sell (CTMS) difference and an amount for OCOT profit

Table 9: Summary of adjustments – Guardian RAK

6.6.4 Dumping margin

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

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

6.7 Summary of dumping margins

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

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

Table 10: Dumping margins

6.8 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%.

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

6.9 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.

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

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, the Commissioner has not terminated the investigation in relation to the UAE under section 269TDA(3).

The commission's calculation of the volume of dumped imports from the UAE is at **Confidential Attachment 18**.

7 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

7.1 Finding

The Commissioner is satisfied that the Australian industry experienced downward trends in its economic factors during the investigation period as it relates to:

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

The Commissioner has come to this conclusion based on the commission's analysis of:

- the information contained in Oceania Glass's application
- information obtained during previous verification activities involving Oceania Glass.

7.2 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.⁴⁶

7.3 Approach to economic condition analysis

The commission has based its analysis in this chapter 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 the purposes of assessing the economic condition of the Australian industry.

The commission has compiled the figures presented in this chapter on an annual basis for the 4-year period ending 31 March 2021 (year ending March, or YEM).

The commission's analysis in this chapter does not consider whether dumped exports of the goods have caused the downward trends in economic factors. This analysis is contained within Chapter 8.

The commission's assessment of the economic condition of the Australian industry is at **Confidential Attachment 10**.

⁴⁶ EPR 582, no 001.

7.4 Volume

The commission considers that the Australian industry did not experience a downward trend in the form of lost sales volume or reduced market share over the injury analysis period, including the investigation period.

The commission’s assessment of injury in relation to volume is contained in section 8.6.2.

7.4.1 Sales volume

Oceania Glass has not claimed volume injury within its application.

The commission has depicted Oceania Glass’s total sales volumes in Figure 7, showing that they were reasonably stable across the injury analysis period before increasing in YEM 2021.

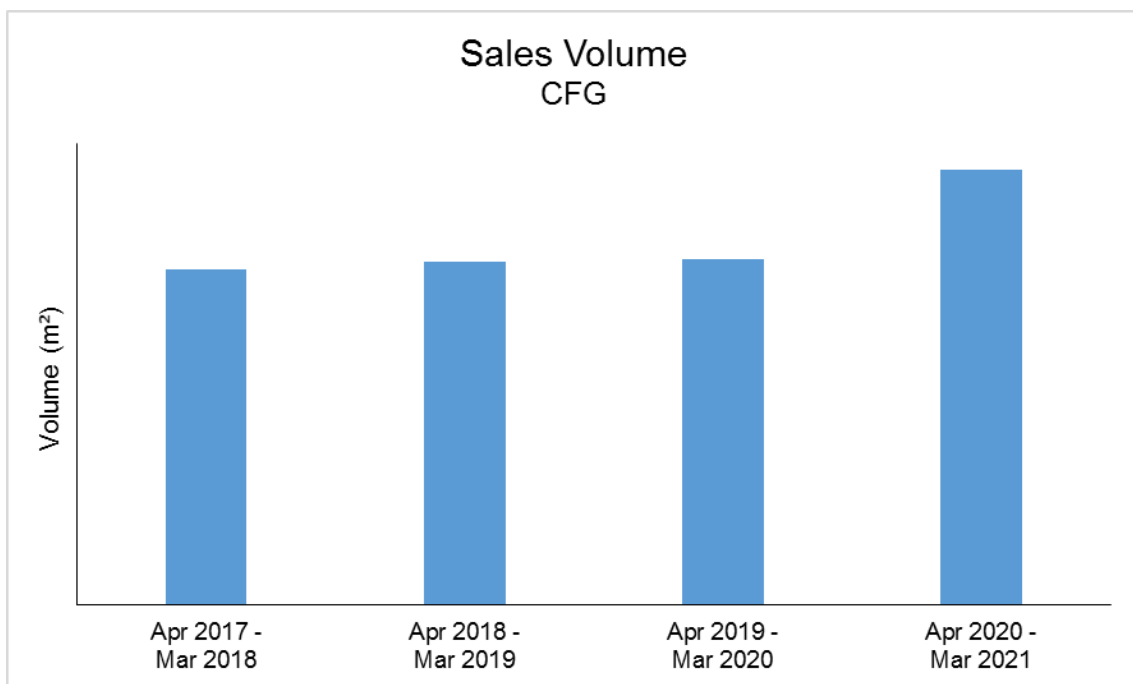


Figure 7: Oceania Glass sales volume (injury analysis period)

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

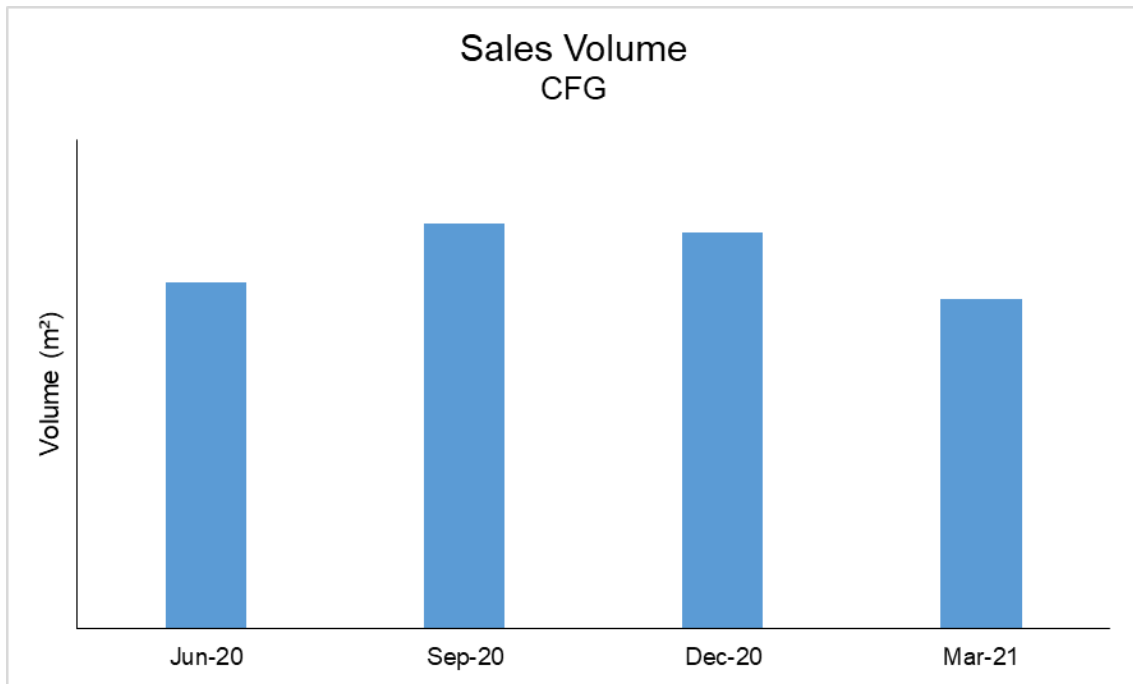


Figure 8: Oceania Glass sales volume (investigation period)

The commission observed that Oceania Glass's sales volume increased in the first 2 quarters, then decreased in the last 2 quarters.

7.4.2 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.

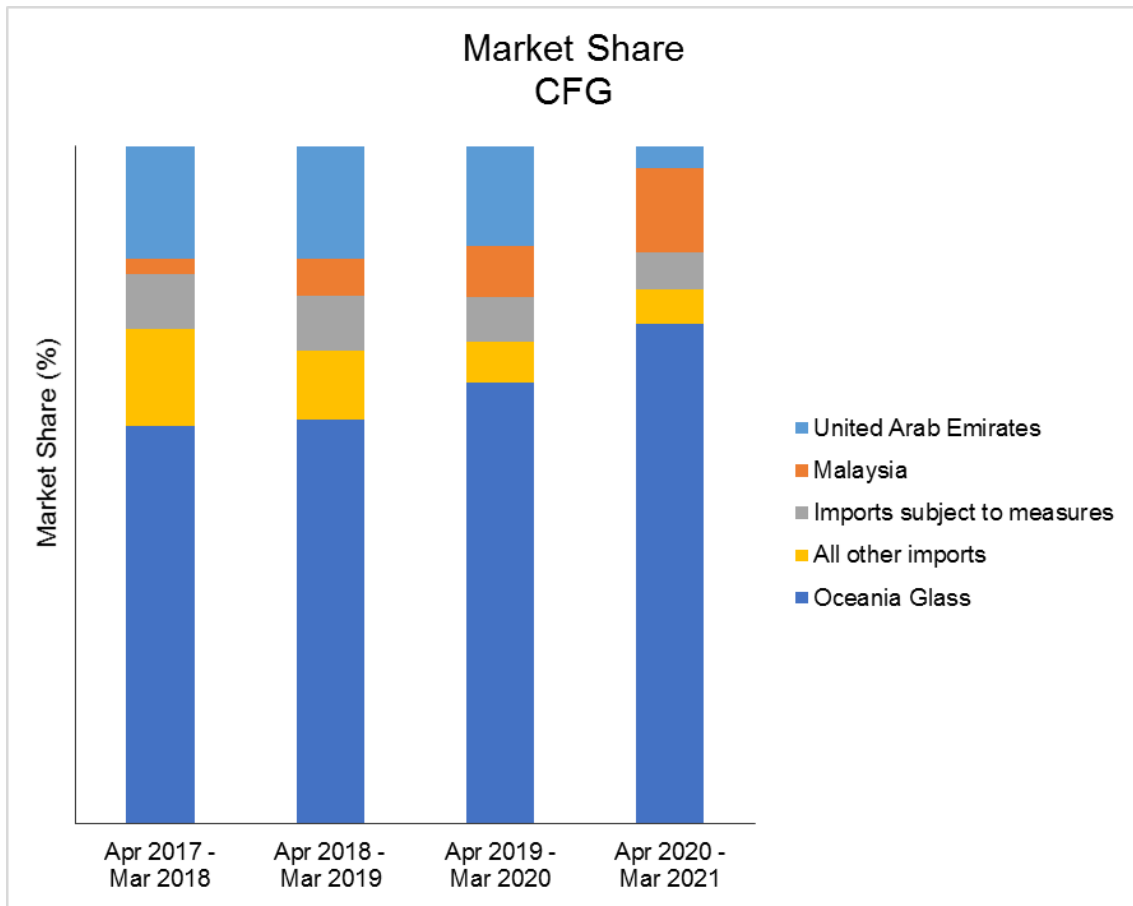


Figure 9: Australian market share (injury analysis period)

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

- the UAE’s market share was stable until YEM 2020 and reduced significantly in YEM 2021
- Oceania Glass maintained a stable market share until YEM 2019, with an increase in market share from YEM 2020
- Malaysia’s market share has increased year on year
- imports subject to measures have experienced a reduction in market share
- all other imports have also reduced.

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 from the UAE increased between the first and last quarter, however this followed a very low level of market share in the first quarter. The UAE’s market share in YEM 2021 as a whole nonetheless represented a significant decrease on its market share in YEM 2020
- the market share of Malaysia increased substantially in the last quarter
- the market share of imports increased in the last quarter, displacing the market share held by Oceania Glass (this was primarily attributable to the increase in Malaysian imports).

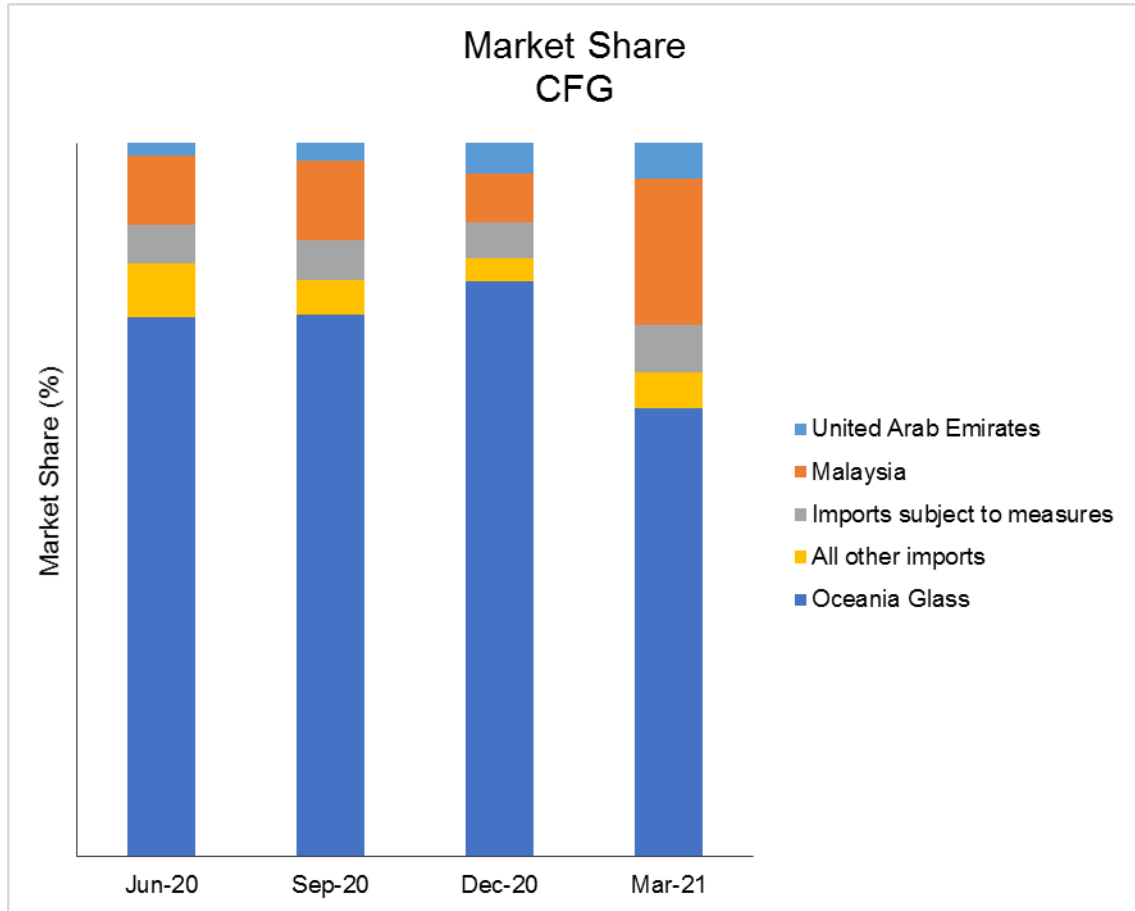


Figure 10: Australian market share (investigation period)

7.5 Price

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 the injury analysis period and investigation period.

The commission's assessment of injury in relation to price is contained in section 8.6.1.

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.

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 shows the trends in Oceania Glass's weighted average per unit selling price and weighted average per unit CTMS.

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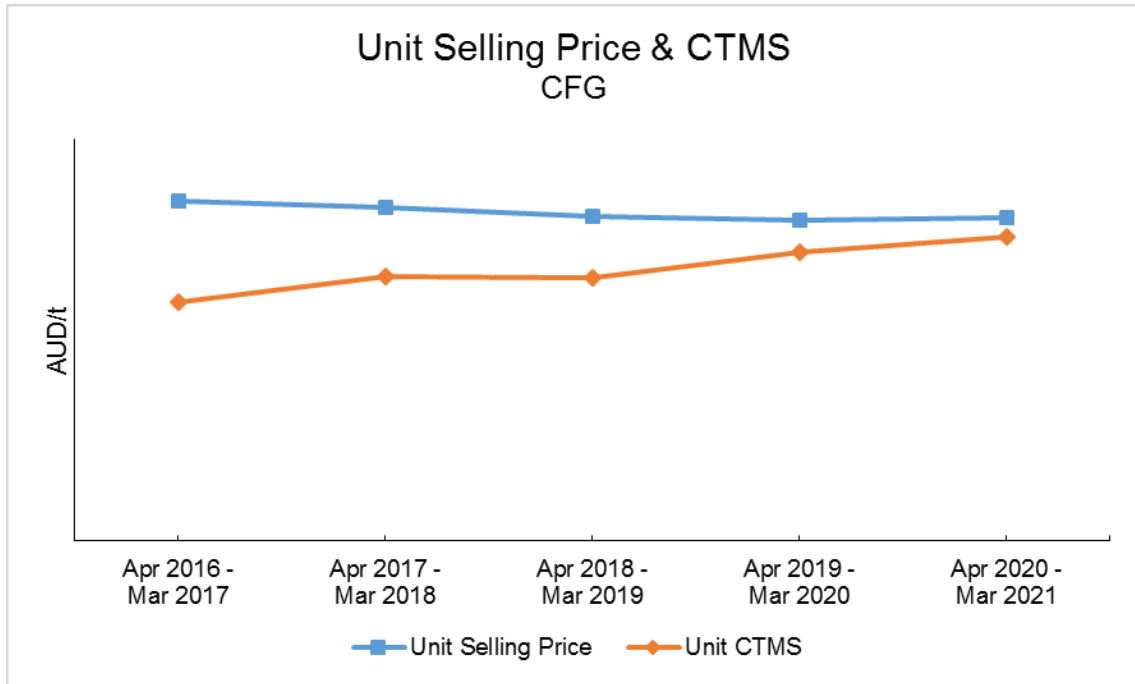


Figure 11: Oceania Glass unit selling price and CTMS (injury analysis period)

Oceania Glass experienced a reduction in selling prices per unit from YEM 2017 to YEM 2019, with prices stabilising across YEM 2020 and YEM 2021. 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 this indicates Oceania Glass has experienced price suppression. Whether dumped exports of the goods from the UAE have caused this price suppression is discussed in Chapter 8.

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

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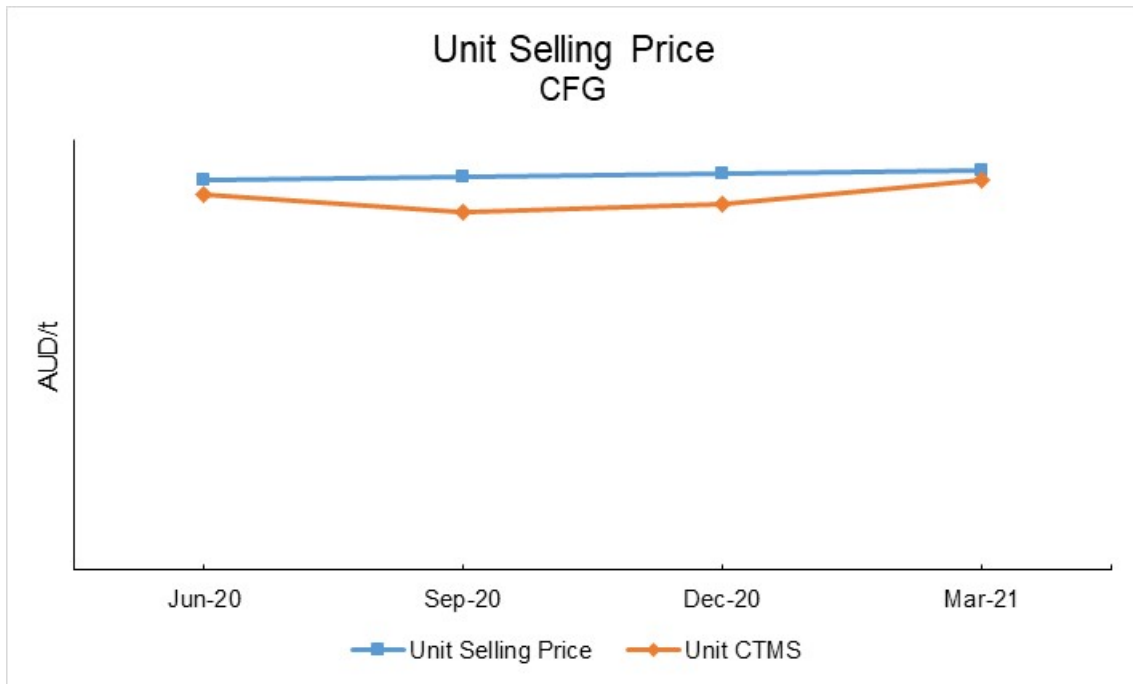


Figure 12: Oceania Glass unit selling price and CTMS (investigation period)

Figure 12 shows that although Oceania Glass's prices remained constant during the investigation period, it did not raise its prices in response to an increase in CTMS from the Sep-20 quarter to the Mar-21 quarter. The commission considers that this may be indicative of price suppression.

7.6 Profit and profitability

The commission considers that Oceania Glass has experienced a downwards trend in the form of reduced profits and reduced profitability across the injury analysis period.

The commission's assessment of injury in relation to profit and profitability is contained in section 8.6.3.

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

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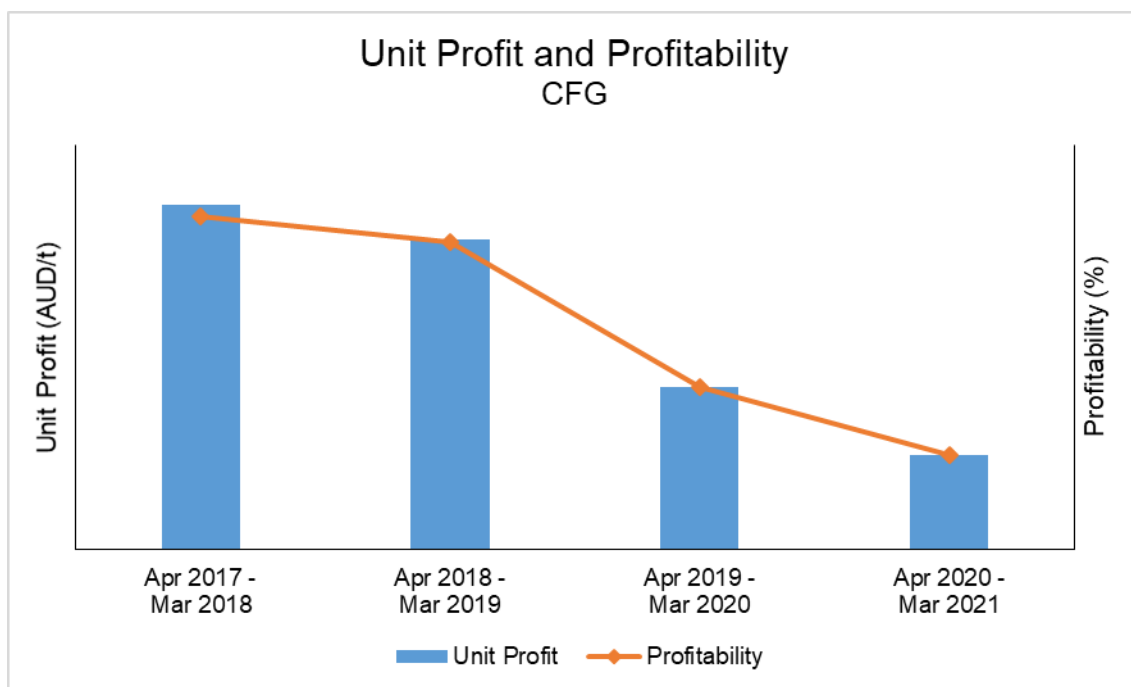


Figure 13: Oceania Glass's unit profit and profitability (injury analysis period)

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

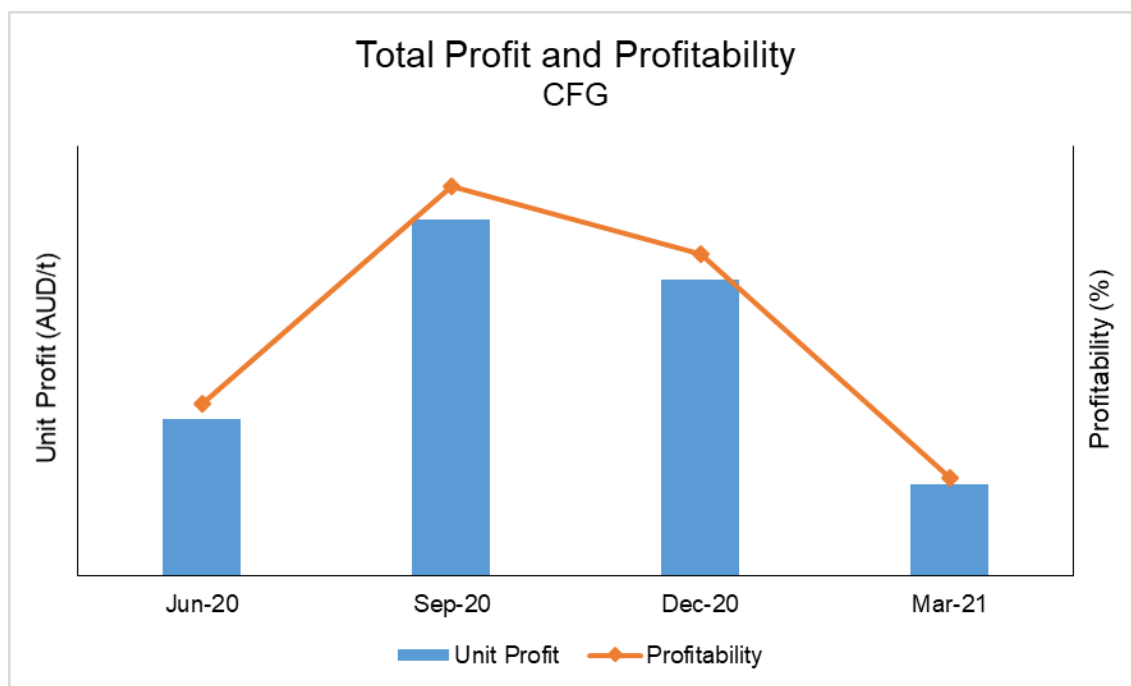


Figure 14: Oceania Glass's unit profit and profitability (investigation period)

Figure 14 shows that Oceania Glass's profit and profitability increased between the Jun-20 quarter and the Sep-20 quarter before decreasing from the Sep-20 quarter to the Mar-21 quarter. As the unit selling price over the investigation period was found to be flat, this change in the unit profit and profitability is reflective of the changes in unit CTMS (Figure 12).

7.7 Other economic factors

The commission considers that Oceania Glass has also experienced a downward trend in the form of reduced ROI and that this may result in a reduced attractiveness to reinvest.

The commission's assessment of injury in relation to ROI is contained in section 8.6.3.

7.7.1 Return on investment

Figure 15 charts Oceania Glass's ROI, calculated as trading profit divided by revenue. Oceania Glass provided its ROI for the entire business, because 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 factors unrelated to sales of like goods have influenced the movements in the business-wide ROI. Oceania Glass has calculated ROI using trading profit and revenue, and as shown in section 7.6, Oceania Glass's profit for sales of like goods remained positive over the injury analysis period.

Nevertheless, Oceania Glass's ROI declined after YEM 2019, with only a slight improvement in YEM 2021 that has not returned to positive figures. Based on these findings, the commission considers that Oceania Glass continues to experience downward trends in the form of reduced ROI across the injury analysis period.

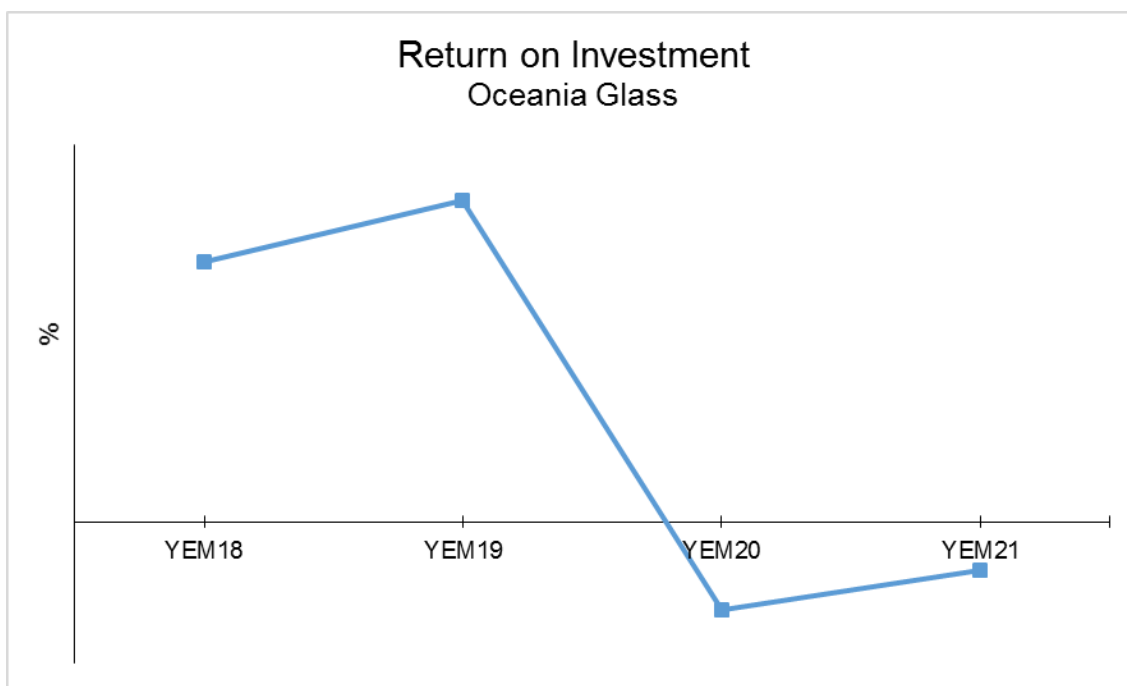


Figure 15: Oceania Glass's ROI

7.7.2 Attractiveness to reinvest

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

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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 Oceania Glass is not able to make this investment, 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 decisions.

7.8 Conclusion

Based on an analysis of the information contained in the application and further information obtained and analysed, the Commissioner is satisfied that Oceania Glass has experienced downward trends in its economic factors during the investigation period in the form of:

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

However, Oceania Glass did not experience downwards trends in the form of lost sales volumes or reduced market share during the investigation period. In fact, Oceania Glass's sales volumes in the investigation period represented a considerable increase on its sale volumes in the YEM 2020 (albeit with a dip in the last quarter of YEM 2021). Oceania Glass also increased its market share in the investigation period compared to YEM 2020.

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Finding

The Commissioner is not satisfied that the Australian industry has experienced material injury because of the goods exported to Australia from the UAE at dumped prices.

The commission considers that the available evidence does not support a causal link between the dumped goods exported to Australia from the UAE and the downwards trends in relation to the Australian industry's economic indicators of price suppression and reduced profit and profitability (as outlined in Chapter 7) in the investigation period.

The commission has come to this conclusion having considered the submissions received in response to SEF 582 (Table 4) and re-examined the available evidence.⁴⁷

8.2 Legislative framework

In order to publish a dumping duty notice under section 269TG, the Minister must be satisfied that material injury to an Australian industry has been, or is being, caused or threatened because of dumping.

Section 269TAE(1) outlines the factors, to which the Commissioner has had regard, 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).

8.3 Approach to causation analysis

In this chapter, the commission has examined whether the dumped goods from the UAE caused material injury to the Australian industry.

As outlined in Chapter 7, the commission is satisfied that the Australian industry has experienced a downwards trend in certain economic factors (price suppression, reduced profit and profitability, and reduced ROI). These downwards trends coincided with the presence of dumped goods from the UAE as outlined in Chapter 6. The commission also notes that the market share of the dumped goods from the UAE has decreased during the investigation period (Figure 9).

⁴⁷ The commission has discussed the re-examination of available evidence in various sections of this chapter. Further information is contained within Confidential Appendix 1, which includes confidential information relating to the pricing behaviours of the Australian industry.

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As part of this assessment, the commission has addressed the impact of the goods from Malaysia, treating them as a factor other than dumping. This is on the basis that the Commissioner has terminated the investigation into dumped and subsidised goods from Malaysia, because there is no dumping and no, or negligible, subsidisation of the exports of the goods.⁴⁸ The commission has also examined additional factors other than dumping, known to have affected the Australian industry during the investigation period.

The commission has used a 'but for' analytical method when undertaking its causation assessment in this report. This method examines what the commission considers likely would have happened in the Australian domestic market 'but for' the presence of the goods at dumped prices.

Using a 'but for' analysis, the commission has compared the current state of the Australian industry to the state that the Australian industry would likely have been in if the goods were not exported from the UAE at dumped prices.

An alternative method of causation analysis is 'coincidence' analysis. Using this method, the commission examines causation by comparing the state of the Australian industry in the investigation period to a point in time prior to the injury having commenced.

The commission does not consider that the coincidence analysis method is suitable to assess causation in this report. 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 makes it unsuitable for the commission to assess the causation and materiality of injury using a coincidence analysis. This is because there is no prior point in time to compare the state of the Australian industry in the absence of dumping.

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

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

8.4 Preliminary finding in SEF 582

On 14 December 2021, the Commissioner published SEF 582, which preliminarily recommended that the Minister publish a dumping duty notice in relation to the goods exported to Australia from the UAE, subject to submissions received in response to SEF 582.

⁴⁸ ADN 2022/017.

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The Commissioner made the preliminary recommendation in SEF 582 having regard to the commission's dumping findings and the commission's examination of the Australian industry's economic condition during the investigation period.

The commission preliminarily found in SEF 582 that the Australian industry experienced price suppression (a narrowing between costs and selling prices), reduced profits and reduced ROI during the investigation period. These economic factors share a common link to price effects. Accordingly, in SEF 582, the commission focused its examination of whether the dumped goods caused material injury to the Australian industry on the relationship between prices of the imported goods from the UAE and the Australian industry's prices for like goods.

Relevant evidence to the commission's findings in SEF 582 included:

- the size of the dumping margins (23.8% for Guardian RAK, the largest exporter of the goods from the UAE, and 42.5% for EFG).
- the Australian industry's claim that it used an IPP model
- the Australian industry's claim that, based on the IPP model, it had regard to and responded to prices of the dumped goods from the UAE
- price undercutting for certain customers that purchased like goods from the Australian industry and imported the goods from the UAE
- general observations regarding the importance of price in the Australian market's purchasing decisions
- an argument that 'but for' the dumped goods from the UAE, the Australian industry's economic condition would be better, i.e. less price suppression, higher profits and higher ROI.⁴⁹

Following SEF 582, the Commissioner terminated the investigation in relation to Malaysia on the basis that the goods were not dumped and that there were negligible (zero) volumes of dumped goods.⁵⁰

8.5 Submissions received in response to SEF 582

Following the publication of SEF 582, the commission received the following 8 submissions detailed in Table 11:

⁴⁹ The commission's approach to the 'but for' analytical method is outlined in Chapter 22 of the manual and further expanded on in Chapter 8.

⁵⁰ ADN 2022/017.

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EPR number	Interested party	Date received
022	Oceania Glass Pty Ltd	17 January 2022
023	Guardian Zoujaj International Float Glass Co LLC	17 January 2022
024	Oceania Glass Pty Ltd	24 January 2022
025	Guardian Zoujaj International Float Glass Co LLC	9 February 2022
029	Oceania Glass Pty Ltd	25 February 2022
030	Guardian Zoujaj International Float Glass Co LLC	3 March 2022
031	Oceania Glass Pty Ltd	7 March 2022
033	Guardian Zoujaj International Float Glass Co LLC	16 March 2022

Table 11: Submissions received in response to SEF 582

Submissions from Oceania Glass

In its submission of 17 January 2022, Oceania Glass welcomed the preliminary finding concerning exports of CFG to Australia from the UAE. This included the implementation of provisional measures on all exports of the goods from the UAE, though Oceania Glass did not support the commission’s proposal of the *ad valorem* duty method.⁵¹ Oceania Glass highlighted the commission’s undercutting analysis in support of the preliminary causation finding in SEF 582.

On 24 January 2022, Oceania Glass lodged a submission in response to the commission’s request for further information regarding Oceania Glass’s IPP model and general pricing strategy. Oceania Glass advised that it does not operate an IPP model by country; instead, Oceania Glass monitors import prices from key source countries on an ongoing basis, along with raw material costs and trends in shipping/freight costs to inform its pricing. Oceania Glass submitted that it uses this information to offer prices that are competitive with imports.⁵²

Oceania Glass also responded to Guardian RAK’s claims regarding its recent price increases (following the investigation period), and that this was evidence that it was not experiencing injury. Oceania Glass stated that its pricing is determined by assessing its overall financial position and that its current economic situation required it to increase its prices. Oceania Glass stated that the recent price increases were in response to increasing production costs; however, it was not able to recover all of the production cost increases due to pressures from lower import prices.⁵³ The commission discusses the information provided in this submission in section 8.6.

The commission again requested information from Oceania Glass in relation to its import price monitoring. In response, Oceania Glass lodged a submission on 25 February 2022. In this submission, Oceania Glass advised that it:

- monitors import prices sourced from ABS import data

⁵¹ EPR 582, no 022.

⁵² EPR 582, no 024, p 2.

⁵³ EPR 582, no 024, p 2-3.

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- does not operate an IPP model that uses domestic selling prices in other countries
- does not have access to domestic pricing information for CFG in countries that are key suppliers in the Australian market
- accesses limited domestic pricing information for CFG sold in a particular country
- uses this pricing to assess the credibility of offers for CFG received in negotiations with customers
- will not price below the landed price equivalents from this source country
- is advised of its competitiveness with imports during customer negotiations.

Oceania Glass also stated that it has encountered reluctance by its customers to disclose the import source and supplier name of counter offers. This has made it difficult for Oceania Glass to provide clear price undercutting examples in support of material injury caused by dumped imports. Oceania Glass referred to the case studies included in its application as examples of where customers have provided the source of import offers. The commission has assessed the relevance of these case studies in section 8.6.1.

Oceania Glass also submitted that the fact that its prices were above import prices was reflective of a premium that it achieves through certainty of supply and available technical support.⁵⁴ The commission has assessed the relevance of Oceania Glass's price premium in section 8.6.1.

Oceania Glass again submitted that it has increased its prices since the end of the investigation period due to several years of cost increases, which it was no longer able to absorb.⁵⁵

In its submission of 7 March 2022, Oceania Glass reiterated points raised in its previous submissions, including how its pricing process operates and that it has experienced material injury due to dumped imports.⁵⁶

Submissions from Guardian RAK

In its submission of 17 January 2022, Guardian RAK contested several of the findings made in SEF 582 in relation to the UAE exporters' influence on pricing on the Australian industry.⁵⁷ Guardian RAK submitted that:

- Oceania Glass's use of an IPP model is a commercial decision and any price injury caused by this decision, which helped Oceania Glass to increase its market share, cannot be attributed to dumped exports from the UAE
- the pricing pressure from Malaysian exporters is much more significant than that of UAE exporters
- the undercutting analysis in SEF 582 showed that there was price undercutting from countries other than the UAE during the investigation period and that the

⁵⁴ EPR 582, no 029, pp 3-4.

⁵⁵ EPR 582, no 029, p 4.

⁵⁶ EPR 582, no 031.

⁵⁷ EPR 582, no 023.

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evidence does not support that goods dumped by Guardian RAK have caused material injury to the Australian industry.⁵⁸

Guardian RAK submitted that these points supported a conclusion that the Australian industry had not experienced injury *caused* by dumped exports of the goods from the UAE.

Guardian RAK also submitted that there was no evidence that dumping or injury may continue.⁵⁹ In support of this assertion, Guardian RAK pointed to the effects of the COVID-19 pandemic on the investigation period and how these effects did 'not represent any kind of status quo or normal trade and operating conditions.' Guardian RAK submitted that changes after the investigation period (including an increase in FOB prices) would result in dumping no longer occurring. Guardian RAK also referenced price increases by Oceania Glass as further evidence that the Australian industry would not continue to experience injury (in the form of price suppression) after the investigation period.

In its submission of 9 February 2022 in response to Oceania Glass, Guardian RAK expressed concern that Oceania Glass did not provide sufficient information or evidence to address the commission's questions regarding Oceania Glass's price setting behaviours.⁶⁰ Guardian RAK also submitted that Oceania Glass asserting that its prices were above import prices during the investigation period, in conjunction with Oceania Glass making several price increases after the investigation period, suggests that Oceania Glass can demand prices above imported competition and this therefore casts doubt on the allegations of material injury.⁶¹

In its submission of 3 March 2022, Guardian RAK submitted that Oceania Glass's concession that it in fact does not operate an IPP model is contrary to previous assertions and undermines a critical aspect of the causation analysis in SEF 582.⁶² Guardian RAK also submitted that the existence of a price premium for Oceania Glass's domestic sales weakens the argument that price undercutting has caused material injury. Guardian RAK further highlighted that the levels of undercutting found in SEF 582 were not indicative of levels of the 'significant price undercutting' required for a finding of material injury caused by dumped exports. Guardian RAK submitted that the commission would need to assess any difference between Oceania Glass's prices and the prices from the UAE in the context of the Oceania Glass's domestic price premium.⁶³

In its submission of 16 March 2022, Guardian RAK submitted that there is no finding in SEF 582 to support Oceania Glass's statements in its submission of 7 March 2022, that Guardian RAK's prices were below the Australian industry's selling prices, and that its prices were the lowest in the market during the investigation period. Guardian RAK submits that each of these statements is incorrect with reference to points made in

⁵⁸ EPR 582, no 023, p 3.

⁵⁹ EPR 582, no 023, pp 4-5.

⁶⁰ EPR 582, no 025.

⁶¹ EPR 582, no 025, p 2.

⁶² EPR 582, no 030.

⁶³ EPR 582, no 030, p 2.

previous submissions and SEF 582.⁶⁴ Guardian RAK also noted that Oceania Glass has not been able to provide evidence or arguments to show a causal relationship between any alleged dumping by the UAE and material injury experienced by the Australian industry.⁶⁵

8.6 Commission's response to submissions and re-examination of evidence

The commission now considers that the available facts and evidence no longer support the recommendation in SEF 582 that the Minister publish a dumping duty notice.

As described in both section 269TAE(2AA) and in the Material Injury Direction, a finding that material injury has been caused by dumping must be based on facts and not on conjecture or remote possibilities.

Based on the available evidence, the commission's finding in this report is that:

- Oceania Glass's prices are not observably influenced by prices of the goods exported to Australia from the UAE
- the downward trends in economic factors experienced by Oceania Glass during the investigation period are not attributable to dumped exports of the goods from the UAE.

8.6.1 Price

In this section, the commission has assessed:

- Oceania Glass's operation of an IPP model
- imports from countries other than the UAE
- case studies provided by Oceania Glass as evidence to support causation
- the correlation of Oceania Glass's prices and the price of imports from the UAE

The commission has also analysed the pricing behaviours of the Australian industry in **Confidential Appendix 1**.

As explained below, the commission finds that the prices of dumped goods from the UAE did not observably influence Oceania Glass's prices in the investigation period.

On the contrary, the commission considers that it is imports of the goods from other countries, such as Malaysia, are the primary source of price pressure on Oceania Glass's prices.

The commission considers that the available evidence shows that Oceania Glass does not have direct regard to prices of the goods from the UAE in setting its own prices. This evidence includes case studies provided by Oceania Glass where customers used Malaysian prices in their negotiations with Oceania Glass, and the comparison of

⁶⁴ SEF 582, section 9.7.1.

⁶⁵ EPR 582, no 033.

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available sales data that shows a lack of correlation between movements in UAE prices and Oceania Glass's prices during the investigation period.

As a result, the commission finds that the dumped goods from the UAE did not cause the price suppression experienced by the Australian industry during the investigation period.

Oceania Glass does not base its prices on import prices

In SEF 582, the commission considered that Oceania Glass determined its prices by reference to import prices (including imports from the UAE), and that this might evidence a causal link between dumped exports of the goods from the UAE and the downwards trend in economic factors that the Australian industry experienced in the investigation period.

Having considered submissions to SEF 582 and having sought further clarification from Oceania Glass regarding its pricing practices, the commission now considers that this is not the case. From the information contained within the submissions and responses to the commission's queries, the commission considers that prices from the UAE do not inform Oceania Glass's pricing model. The commission understands that Oceania Glass uses available pricing information from certain countries, other than the UAE, to assess the credibility of import price offers from its customers. Oceania Glass did not provide any evidence that it used a pricing model to assess the credibility of import price offers from the UAE during the investigation period.

The evidence provided by Oceania Glass indicates that it did not have access to or monitor prices from the UAE as part of its pricing model. Oceania Glass submitted that it monitors ABS import data to assess pricing from certain countries.⁶⁶ Oceania Glass also utilised import data from the ABS to determine export prices from the UAE as part of its application.⁶⁷ The commission considers that this data would have a limited influence on Oceania Glass's pricing for the following reasons:

- ABS groups its data by tariff heading, which limits its application to individual thicknesses of CFG
- ABS publishes its data with a delay of up to several months, which limits Oceania Glass's opportunity to respond to current pricing.

Documents containing Oceania Glass's assessment of import prices are at **Confidential Attachments 15 & 16**.

Imports from countries other than the UAE are causing injury

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

In SEF 582, the commission preliminarily considered that the effects of Malaysian prices were largely separate from UAE prices given the lack of competition between the 2

⁶⁶ EPR 582, no 029, p 2.

⁶⁷ EPR 582, no 001, p 38.

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countries for certain customers.⁶⁸ Further examination of the case studies provided by Oceania Glass in its application showed that where customers had used price offers from Malaysia as part of the negotiation process, those customers did not necessarily purchase the goods from Malaysia.⁶⁹ The commission considers that this indicates that although customers may not purchase the goods from Malaysia, Malaysian prices nevertheless influence Oceania Glass's own pricing. Oceania Glass also provided evidence that it monitored prices from Malaysia as part of its process for assessing the credibility of import price offers. In light of this, the commission does not maintain its preliminary finding in SEF 582 that the effects of Malaysian prices are separate from UAE prices.

In SEF 582, the commission observed that FIS prices of the goods exported from Malaysia generally undercut those of the Australian industry in the first half of the investigation period.⁷⁰ Although Malaysian prices increased to levels that were no longer undercutting in the second half of the investigation period, the commission has found that this price increase was due to increases in shipping costs, and the underlying FOB prices had remained the same throughout the investigation period. The commission considers that in the event that shipping prices were to decrease, equivalent prices from Malaysia would return to levels that would undercut the Australian industry.

The commission considers that any price injury experienced by Oceania Glass in the investigation period more likely relates to un-dumped exports from Malaysia. The commission has based this finding on the volumes of un-dumped exports from Malaysia, the observed levels of price undercutting (excluding the increased CIF prices due to increases in shipping costs) and the evidence of Oceania Glass's assessment of Malaysian prices as part of its import reference pricing strategy. The trends in market share shown in Figure 9 also support this finding. Those trends indicate that volumes from the UAE decreased at the same time that volumes from Malaysia increased substantially. The commission considers that this is indicative of greater competitive overlap between imports of the goods from Malaysia and the Australian industry, rather than imports from the UAE.

In addition to imports from Malaysia, in its submission of 25 February 2022,⁷¹ Oceania Glass stated that prices from another country other than the UAE formed part of its assessment of import price offers.⁷² Furthermore, Oceania Glass stated that it would not price below the landed price from this country, as that price was not sustainable. The commission considers that this indicates that prices from that particular country also have a substantial effect on Oceania Glass's pricing negotiations.

The case study evidence provided by Oceania Glass does not support causation

As part of its application, Oceania Glass provided case studies where it claimed export prices had influenced its own prices, including one case study linked to goods from the

⁶⁸ SEF 582, section 9.10.1.

⁶⁹ **Confidential Attachment 17.**

⁷⁰ SEF 582, section 9.7.1.

⁷¹ EPR 582, no 029, p 2.

⁷² This country has not been named for confidentiality purposes.

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UAE. However, the commission considers that this case study does not support the proposition that exports from the UAE influenced its prices to certain customers in the investigation period.

In its submission of 25 February 2022, Oceania Glass referred to this case study as an example of where it was required to lower prices to a customer in response to offers from an exporter from the UAE.⁷³ The commission notes that the pricing negotiations detailed in this case study occurred in 2019. As detailed in the manual, the commission focuses its causation analysis on injury indicators in the investigation period. This is necessary to demonstrate a causal link between dumping in the investigation period and injury in the investigation period. The commission acknowledges that the supply contract referenced in this case study extended over the investigation period. However, it remains that prices prior to the investigation period governed Oceania Glass's prices to that particular customer in the case study and that those prices relate to a period where dumping has not been assessed. As such, the commission finds that the case study provided by Oceania Glass does not support the proposition that Oceania Glass experienced material price injury in the investigation period due to dumped exports from the UAE.

Oceania Glass did not furnish any further evidence in respect of exports from the UAE influencing its pricing decisions during the investigation period.

Oceania Glass's prices do not significantly correlate with prices of imports from the UAE

In SEF 582, the commission considered that the price undercutting analysis at the customer level indicated that Oceania Glass was under pressure to maintain its prices due to dumped exports of the goods from the UAE.⁷⁴ Part of the basis for this finding was that Oceania Glass used an IPP model to set its prices relative to export prices from the UAE.

As stated above, Oceania Glass monitors import prices in order to assess the credibility of import price offers from its customers. Oceania Glass also stated that, although it does not model import prices, it 'responds to customer feedback concerning import offers for supply'.⁷⁵ Oceania Glass did not provide direct evidence of the purported responses to import offers. However to assess the validity of Oceania Glass's claims, the commission examined the available sales data to establish whether there was a correlation between Oceania Glass's prices and imports from the UAE. Oceania Glass's prices showed little to no movement in response to movements in prices for exports from the UAE individually for the specific customers observed in SEF 582, or as an aggregate of all customers. The commission found that Oceania Glass's prices remained at the same levels even when UAE prices were higher and once UAE prices dropped below Oceania Glass's, Oceania Glass did not reduce its prices.

⁷³ EPR 582, no 029, p 3.

⁷⁴ SEF 582, section 9.7.1.

⁷⁵ EPR 582, no 029, p 3.

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Having regard to the pricing analysis, the commission considers that Oceania Glass's pricing over the investigation period has not reflected a response to the selling prices from exporters from the UAE.

The commission considers that this evidence supports a finding that there is no causal link between dumped exports of the goods from the UAE and Oceania Glass's prices.

The commission's analysis of pricing and volume trends is contained in **Confidential Attachment 12**.

Furthermore, Oceania Glass's statements that its prices are higher than those from the UAE due to the inclusion of a 'premium' indicates that the undercutting observed may be due to factors other than dumping.⁷⁶ The commission acknowledges Guardian RAK's submission of 3 March 2022 that it should consider the premium charged by Oceania Glass in the context of price undercutting; however, the commission does not agree that Oceania Glass is precluded from being injured by dumped exports of the goods in the absence of 'significant' undercutting. The commission notes that Oceania Glass has not provided any mechanism by which to quantify or assess the premium in a meaningful way that would be applicable to the price undercutting analysis. Absent of a quantitative analysis, the commission considers that the level of undercutting found in respect of the exports from the UAE may be diluted by the effects of the domestic price premium achieved by Oceania Glass.

8.6.2 Volume

The commission has found that the Australian industry has not experienced volume injury due to its increased sales volumes and market share in the investigation period. This is despite the presence of dumped goods from the UAE. In contrast, the volume of imports from the UAE decreased and market share held by UAE imports significantly declined in the investigation period (Figure 9). This decrease occurred despite the overall size of the Australian market increasing (Figure 5).

The commission considers that, over the investigation period, imports from Malaysia are predominantly responsible for any decrease in Oceania Glass's market share. Figure 10, shows Oceania Glass increasing its market share in the first 3 quarters of the investigation period, despite increasing market share from dumped exports from the UAE. Oceania Glass also has its highest market share in the quarter in which Malaysia's is the lowest. In the final quarter, Malaysia market share is at its highest and has significantly displaced Oceania Glass's market share.

In addition, the current level of Oceania Glass's capacity utilisation would not allow it to capture additional sales volume and market share held by imports from the UAE.

8.6.3 Profit and ROI

As detailed in section 7.6, Oceania Glass experienced a sustained downwards trend in its profit and profitability over the entire injury analysis period. The commission also found

⁷⁶ EPR 582, no 029, p 3.

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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, the commission considers that changes to its CTMS have predominantly affected its profit and profitability.

As discussed in section 8.6.1 above, the commission considers that dumped exports of the goods from the UAE have not observably influenced Oceania Glass's prices. Accordingly, the commission does not consider that Oceania Glass would have been able to increase its selling prices in response to its increasing CTMS 'but for' the presence of dumped exports of the goods from the UAE. The commission therefore considers that the available evidence does not establish that Oceania Glass has experienced material injury in the form of reduced profit and profitability caused by dumped exports of the goods from the UAE.

As detailed in section 7.7.1, 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 Oceania Glass's sales of like goods account for 30% to 40% of Oceania Glass's revenue, the commission considers that factors unrelated to sales of the goods have influenced the movements in the business-wide ROI. This is because Oceania Glass's profit for sales of like goods remained positive over the injury analysis period.

Given the lack of evidence that prices from the UAE have influenced Oceania Glass's pricing and profit and profitability, the commission is not satisfied that dumped exports of the goods from the UAE have caused material injury to Oceania Glass in the form of reduced ROI.

8.7 Factors other than dumping causing injury

The commission examined factors other than dumping causing injury as part of SEF 582 as part of the requirements under section 269TAE(2A).

The commission considered the following factors as possible causes of injury in SEF 582:

- 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.

The commission has revisited the effect of exports from countries other than the UAE as part of section 8.6.

The commission has not revisited the remaining factors other than dumping as part of this report.

8.8 Injury caused by dumping is negligible

Based on an assessment of all available evidence, the commission considers that any injury to the Australian industry's injury caused by dumped exports of the goods from the UAE was negligible.

8.8.1 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 can be judged differently, depending on the economic condition of the Australian industry experiencing 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, weakened by other events, experience 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 remained steady
- profit and profitability decreased.

As detailed above in section 8.6, based on the available evidence the commission is not satisfied that dumped exports of the goods from the UAE have caused a material amount of the injury experienced by the Australian industry. Of the evidence available to the commission, Oceania Glass provided only one example where import offers from the UAE had influenced its prices (which occurred prior to the investigation period). The commission does not consider that this is sufficient to make a finding that the injury caused to the Australian industry by dumped exports of the goods from the UAE is material. The balance of evidence before the commission demonstrates that pricing pressure on the Australian industry comes from imports of the goods from countries other than the UAE, and that the dumped goods from the UAE do not observably influence Oceania Glass's prices.

The commission considers that the available evidence supports a conclusion that any injury caused by dumped exports of the goods from the UAE is not material.

8.8.2 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 because of its low volume of exports. EFG also submitted that it supplied Australian customers who were unable to purchase from the Australian industry and thus could not have contributed to any injury.⁷⁷

⁷⁷ EPR 582, no 004.

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In determining whether dumped exports of the goods have caused material injury to an Australian industry, the commission generally has regard to the total quantity of the goods exported at dumped prices from the subject country.⁷⁸

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.⁷⁹ In determining the materiality of any injury experienced by the Australian industry, the commission has had regard to multiple factors as detailed in Chapter 7. 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 downwards trends in its economic condition in the form of price suppression (Figure 11), and reduced profit and profitability (Figure 13). Regardless, the commission has concluded that these downwards trends are not material injury caused by dumped goods from the UAE.

8.9 Conclusion

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

- the amount of injury that could be attributed to dumped exports of the goods from the UAE is negligible
- imports from countries other than the UAE have influenced the Australian industry's prices
- the lack of causal effect on the Australian industry's prices has a flow-on effect to its other injury factors
- the Australian industry's pricing does not appear to correlate with the import offers from the UAE
- there is limited additional evidence that the Australian industry's prices are directly influenced by exports from the UAE
- while there is price competition between the goods exported to Australia and the Australian industry, the Australian industry does not operate an IPP model for matching import prices specifically from the UAE, although it monitors pricing in other ways.

As such, the Commissioner is not satisfied that exports of the goods to Australia from the UAE at dumped prices have caused material injury to the Australian industry.

⁷⁸ Section 269TAE(1).

⁷⁹ EPR 582, no 008, p 2.

9 TERMINATION OF THE INVESTIGATION - UAE

9.1 Finding

The Commissioner is satisfied that the injury, if any, to the Australian industry that has been or may be caused as a result of the goods exported from the UAE at dumped prices is negligible.

9.2 Termination legislation

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation in its entirety, or in respect of a specific exporter. Section 269TDA provides for rules of termination based on the materiality of injury caused by dumping and subsidisation by countries and exporters.

9.3 Termination of dumping investigation

Section 269TDA(13) states that the Commissioner must terminate a dumping investigation, so far as it relates to goods exported from a particular country of export, if satisfied that the injury to the Australian industry that has been, or may be, caused by those exports is negligible.⁸⁰

Based on the findings in this report, the Commissioner is satisfied that any injury to the Australian industry that has been, or may be, caused by dumped exports of the goods from the UAE is negligible.

Accordingly, the Commissioner must terminate the dumping investigation in relation to the UAE.

⁸⁰ Section 269TDA(13A) (consideration of cumulative effect of exports) does not apply in this circumstance.

10 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Australian market
Confidential Attachment 2	EFG export price
Confidential Attachment 3	EFG CTMS
Confidential Attachment 4	EFG normal value
Confidential Attachment 5	EFG dumping margin
Confidential Attachment 6	Guardian RAK export price
Confidential Attachment 7	Guardian RAK CTMS
Confidential Attachment 8	Guardian RAK normal value
Confidential Attachment 9	Guardian RAK dumping margin
Confidential Attachment 10	Australian industry economic analysis
Confidential Attachment 11	Price effects and undercutting
Confidential Attachment 12	Causation analysis
Confidential Attachment 13	ABS building commencements
Confidential Attachment 14	ABS dwelling approvals
Confidential Attachment 15	Import price reference – Country 1
Confidential Attachment 16	Import price reference – Country 2
Confidential Attachment 17	Case study assessment
Confidential Attachment 18	Volume of dumped imports
Confidential Attachment 19	Australian industry sales
Confidential Attachment 20	Australian industry work program – Continuation Inquiry No 575
Confidential Attachment 21	Australian industry confidential application
Confidential Attachment 22	Australian industry submission attachment
Confidential Attachment 23	ABF import data
Confidential Appendix 1	Australian industry pricing behaviours

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