



# Application for review of a Commissioner's decision

*Customs Act 1901 s 269ZZQ*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 June 2021 for a review of a reviewable decision of the Commissioner of the Anti-Dumping Commission.

Section 269ZZO of the *Customs Act 1901* sets out who may make an application to the ADRP for a review of a decision of the Commissioner.

All sections of the application form must be completed unless otherwise expressly stated in this form.

## **Time**

Applications must be made within 30 days after the applicant was notified of the reviewable decision.

## **Conferences**

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

## **Further application information**

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 10, 11, 12 and/or 13 of this application form (s269ZZQA(1)). See the ADRP website for more information.

## **Withdrawal**

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

## **Contact**

If you have any questions about what is required in an application, refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email [adrp@industry.gov.au](mailto:adrp@industry.gov.au).

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<sup>1</sup> By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

## PART A: APPLICANT INFORMATION

### 1. Applicant's details

Applicant's name: Oceania Glass Pty Ltd	
Address: 95 Greens Road, Dandenong South, Victoria 3175.	
Type of entity (trade union, corporation, government etc.): Company.	

### 2. Contact person for applicant

Full name: Anthony Alembakis	
Position: Chief Financial Officer	
Email address: AAlembakis@oceaniaglass.com.au	
Telephone number: (03) 9212 2344	

### 3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO

Section 269T of the *Customs Act 1901* ("the Act") defines "interested party" for the purposes of an anti-dumping investigation includes "a person or body representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods".

Oceania Glass Pty Ltd ("Oceania Glass") is an Australian manufacturer of the goods to which the termination decision of the Commissioner relates in Investigation No. 582. Oceania Glass is therefore an interested party for the purposes of the Act and this application.

### 4. Is the applicant represented?

Yes ☒ No ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

***\*It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.\****



## PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

**5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:**

- ☐ Subsection 269TC(1) or (2) – *a negative prima facie decision*
- ☐ Subsection 269TDA(1) – *a termination decision*
- ☐ Subsection 269TDA(2) – *a termination decision*
- ☐ Subsection 269TDA(3) – *a termination decision*
- ☐ Subsection 269TDA(7) – *a termination decision*
- ☒ Subsection 269TDA(13) – *a termination decision*
- ☐ Subsection 269TDA(13A) – *a termination decision*
- ☐ Subsection 269TDA(14) – *a termination decision*
- ☐ Subsection 269TDA(14A) – *a termination decision*
- ☐ Subsection 269X(6)(b) or (c) – *a negative preliminary decision*
- ☐ Subsection 269YA(2), (3), or (4) – *a rejection decision*
- ☐ Subsection 269ZDBEA(1) or (2) – *an anti-circumvention inquiry termination decision*

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

**6. Provide a full description of the goods which were the subject of the reviewable decision:**

The goods the subject of the reviewable decision as described in Report No. 582 are:

*“CFG [clear float glass] in nominal thicknesses of 3 to 12 millimeters (mm).”*

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

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

The subject goods have the following characteristics:

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

Glass with the following characteristics is not the subject goods:

- 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.

**7. Provide the tariff classifications/statistical codes of the imported goods:**

The tariff classification of the CFG 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.

**8. If applicable, provide the Anti-Dumping Notice (ADN) number of the reviewable decision:**

Anti-Dumping Notice (ADN) number: ADN No. 2022/059. Please refer to Non-Confidential Attachment 1.

Date ADN was published: 23 June 2022.

**9. Provide the date the applicant received notice of the reviewable decision:**

The applicant was notified by email on 23 June 2022 of the Commissioner's decision.

***\*Attach a copy of the notice of the reviewable decision to the application\****

## **PART C: GROUNDS FOR YOUR APPLICATION**

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☐

**10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

Refer Non-Confidential Attachment A.

**11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10:**

Refer Non-Confidential Attachment A.

**12. Set out how the grounds raised in question 10 support the making of the proposed correct or preferable decision:**

Refer Non-Confidential Attachment A.

**13. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision:**

*Only answer question 13 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act 1901.*

Refer Non-Confidential Attachment A.

**14. Please list all attachments provided in support of this application:**



Non-Confidential Attachment 1 – ADN 2022/059.  
Non-Confidential Attachment A – Grounds for Review.

#### PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* beginning to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name: Anthony Alembakis

Position: Chief Financial officer

Organisation: Oceania Glass Pty Ltd

Date: 12 / 07 / 2022

## PART E: AUTHORISED REPRESENTATIVE

*This section must only be completed if you answered yes to question 4.*

### Provide details of the applicant's authorised representative

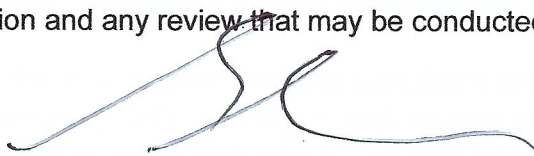
Full name of representative: John O'Connor
Organisation: John O'Connor and Associates Pty Ltd
Address: P.O. Box 329, Coorparoo QLD 4151
Email address: jmoconnor@optusnet.com.au
Telephone number: (07) 3342 1921

### Representative's authority to act

***\*A separate letter of authority may be attached in lieu of the applicant signing this section\****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:



(Applicant's authorised officer)

Name: Anthony Alembakis

Position: Chief Financial Officer

Organisation: Oceania Glass Pty Ltd

Date: 12 / 07 / 2022





*Customs Act 1901 (Cth) – Part XVB*

## **ANTI-DUMPING NOTICE NO 2022/059**

**Clear float glass**

**Exported to Australia from Malaysia and  
the United Arab Emirates**

**Termination of Investigation No 582 in relation to  
the United Arab Emirates**

**Public notice under section 269TDA(15) of the *Customs Act 1901 (Cth)***

On 27 April 2021, I, Dr Bradley Armstrong PSM, the Commissioner of the Anti-Dumping Commission (commission), initiated an investigation into the alleged dumping of clear float glass (CFG, the goods) exported to Australia from Malaysia and the United Arab Emirates (UAE), and the alleged subsidisation of the goods exported to Australia from Malaysia.<sup>1</sup> I initiated the investigation following an application lodged by Oceania Glass Pty Ltd under section 269TB(1) of the *Customs Act 1901 (Cth)* (the Act).

The commission published a public notice (initiation notice) of my decision to initiate the investigation on the commission's website on 27 April 2021. The initiation notice is available on the commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

As a result of the commission's investigation I am 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.

Therefore, I have terminated the investigation so far as it relates to the UAE, in accordance with section 269TDA(13) of the Act.

In making the decision to terminate the investigation, I have had regard to the application, submissions from interested parties, *Statement of Essential Facts No 582* (SEF 582) and submissions in response to SEF 582.

*Termination Report No 582A*, which sets out the reasons for my decisions, including the material findings of fact or law upon which the decisions are based, has been placed on the commission's public record at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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<sup>1</sup> The commission published the findings and recommendations in relation to Malaysia in *Termination Report No 582 – EPR 582*, no 026.

The applicant may request a review of my decisions to terminate the investigation by lodging an application with the Anti-Dumping Review Panel in the approved form and manner within 30 days of the publication of this notice.

You may enquire about this notice by contacting the case manager by phone on +61 3 8539 2525 or by email at [investigations3@adcommission.gov.au](mailto:investigations3@adcommission.gov.au).

Dr Bradley Armstrong PSM  
Commissioner  
Anti-Dumping Commission

23 June 2022

## I. Background

On 15 March 2021 Oceania Glass Pty Ltd (“Oceania Glass”) lodged an application for anti-dumping measures in respect of exports to Australia from Malaysia and the United Arab Emirates (“UAE”). Oceania Glass’ application alleged that exports of clear float glass (“CFG”) from Malaysia and the UAE were at dumped prices that had caused material injury to the Australian industry manufacturing like goods.

Oceania Glass is the sole Australian manufacturer of CFG at its Dandenong South plant in Victoria.

On 27 April 2021 the Commissioner decided not to reject Oceania Glass’ application for measures and published ADN 2021/054 and Consideration Report No. 582 commencing a formal investigation.

On 14 December 2021 the Commissioner published Statement of Essential Facts (“SEF”) No. 582 that found:

- exports of CFG from Malaysia by Xinyi Energy Smart (Malaysia) Sdn Bhd (“Xinyi”) were at undumped margins of dumping of negative 7.4 per cent;
- exports of CFG by Emirates Float Glass LLC (“EFG”) were at dumping margins of 42.5 per cent;
- exports by Guardian Zoujaj International Float Glass Co LLC (“Guardian RAK”) were at dumping margins of 23.8 per cent;
- exports by all other exporters in the UAE were at dumping margins of 42.5 per cent;
- the Australian industry had suffered injury that was material from the exports of CFG to Australia; and
- that the dumping of exports from the UAE was likely to continue.

SEF 582 confirmed that the Commissioner proposed to recommend to the Minister that anti-dumping measures were required to prevent further material injury to the Australian industry from the dumped exports from the UAE.

Following the publication of SEF 582, the Anti-Dumping Commission (“the Commission”) received eight submissions (four from Guardian RAK; 4 submissions from Oceania Glass). Guardian RAK made representations about Oceania Glass’ pricing methodologies, with the Commission inquiring further of Oceania Glass about its “*price setting practices*”.

Following the Commission’s assessment of Guardian RAK’s claims and Oceania Glass’ responses, the Commission concluded that it “*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.*” Further, the Commission states in Termination Report 582A (“Report 582A”) that it “*...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 the 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.*”

On 23 June 2022, the Commissioner terminated the investigation into exports of CFG from the UAE. Oceania Glass is seeking a review of the Commissioner’s termination decision on exports of CFG from the UAE (as reflected in Report No. 582) as the Commissioner’s decision is not the correct or preferred decision concerning the UAE exports to Australia.

The grounds of review relied upon by Oceania Glass that the Commissioner’s termination decision of the investigation into CFG from the UAE is detailed below.



## II. Grounds of Appeal

- A. **First Ground** – the Commissioner’s decision that he is not satisfied that there is a causal link between dumped exports of the goods from the UAE and Australian industry’s economic position is not the correct or preferred decision.

### 10. Grounds

**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

#### 10.1 – Dumping & volumes

It is not in dispute that the goods exported to Australia from the UAE during the investigation period<sup>1</sup> were at dumped prices. The Commission assessed exports from the UAE as having the following dumping margins:

Country – UAE	Exporter	Dumping Margin
	Emirates Float Glass LLC	42.5 per cent
	Guardian Zoujai International Float Glass Co LLC	23.8 per cent
	All other exporters	42.5 per cent

Similarly, it is not in dispute that the import volume of the goods from the UAE when expressed as a percentage of the total import volume during the investigation period “*was greater than 3% of the total import volume and is therefore not negligible*”<sup>2</sup>.

Oceania Glass notes the Commission’s analysis at Section 8.4.1 of SEF 582 that confirms Oceania Glass’ overall CFG sales volumes were flat in 2019/20 and increased in 2020/21 (i.e. Figure 7). It is further noted that the Commission’s forensic analysis of Oceania Glass’ sales volumes by quarter during the investigation period declined from the September 2020 quarter through until the March 2021 quarter, with the final quarter of the investigation period confirming the lowest sales volume of the four quarters of the investigation period (i.e. Figure 8). Oceania Glass acknowledges that the import volumes of CFG from the UAE in 2020/21 declined from the previous year (i.e. Figure 5 of SEF 582), although these volumes increased quarter-on-quarter throughout the investigation period (i.e. Figure 6 of SEF 582).

Therefore, the verified sales data of the imported CFG from the UAE at significantly **dumped** prices increased quarter on quarter throughout the 2020/21 investigation period in which Oceania Glass’ sales volumes declined across the investigation period.

#### 10.2 – Statement of Essential Facts 582 - Injury & causal link

The Commission further confirmed that Oceania Glass had experienced price suppression resulting in reduced profits and profitability in the investigation period as Oceania Glass’ cost to make and sell (“CTMS”) increased as prices remained flat. The Commission also determined that Oceania Glass had experienced a reduced return on investment during the investigation period.

In its examination of the causal link between the dumped exports from the UAE and the injury experienced by Oceania Glass, the Commission undertook an industry analysis methodology based upon the “but for” methodology where “*it’s possible to compare the current state of the Australian industry to the state that the Australian industry would likely have been in, if there had been no dumping and/or subsidisation*”<sup>3</sup>. The Commission referenced the ‘but for’ analysis as described in the Material Injury Direction<sup>4</sup> that sets out that the Commissioner “*be mindful that a decline in the Australian industry’s rate of growth may be just as relevant as the movement of an industry from*

<sup>1</sup> Investigation period is 1 April 2020 to 31 March 2021.

<sup>2</sup> Statement of Essential Facts (SEF) No. 582, Section 6.11, P. 46.

<sup>3</sup> SEF No. 582, Section 9.4, P. 64.

<sup>4</sup> ADN 2012/14 refers.

*growth to decline. This consideration is a corrective to the simple conclusion that the Australian industry would necessarily have been more prosperous, but for the presence of the dumped goods."*

In SEF 582 (at Section 9.5) the Commission referenced the size of the dumping margins for exports of CFG from the UAE and stated that the margins afforded the UAE exporters *"with the ability to offer the goods to importers in Australia at prices that were lower than otherwise would have been the case"*.

Oceania Glass notes that the Commission did not consider that it had experienced volume related injury during the investigation period (when taken as a whole and compared with earlier twelve-month intervals) however, it must be acknowledged that Oceania Glass did experience a decline in volumes from the September 2020 quarter at a time when sales volumes for imported CFG from the UAE increases on a quarter-by-quarter basis.

In its price undercutting analysis (section 9.7.1, SEF 582), the Commission examined undercutting at the model and at the customer level. The Commission was satisfied that *"there is a high level of price competition within the [Australian] market"* and that *"no single exporter remained the lowest priced over the investigation period and all examined exporters had the lowest prices at one point."* In respect of the pricing trends on a per model basis, the Commission observed selling prices for:

- *Malaysia increased in the second half of the investigation period to prices that were no longer undercutting Oceania Glass;*
- *the UAE generally decreased over the investigation period, leading to the emergence of undercutting or an increase in undercutting;*
- *Indonesia either decreased, leading to the emergence of undercutting or remained at sustained levels of undercutting.*

Oceania Glass notes that exports from Malaysia were found not to be at dumped prices in Investigation No. 582. Further, the anti-dumping measures were continued and revised following Continuation investigation No. 575. Oceania Glass further notes that the Commission determined that selling prices from the UAE *"generally decreased over the investigation period"* resulting in price undercutting experienced by Oceania Glass.

The price undercutting from exports of the UAE across the investigation period is consistent with the increase in sales volumes for imported CFG from the UAE across the investigation period (refer to Figure 6 in SEF 582).

Oceania Glass concurs with the Commission's statement in SEF 582 that Oceania Glass was under pricing pressures in the investigation period and that it *"was unable to raise its prices in response to rising costs"* and hence experienced price suppression during this period. The pricing pressures experienced by Oceania Glass could be attributed to the dumped exports of CFG from the UAE (as per the 'but for' injury analysis methodology).

In its further analysis on a per model basis, the Commission confirmed that Oceania Glass' weighted average selling price across the investigation period was either undercut by import prices from the UAE or prices were comparable (with the exception of the 10mm model) (refer Figure 16 of SEF 582). The Commission additionally examined a 'remedied' price for the imported UAE CFG which it found to be higher – enabling Oceania Glass to lift prices – if the dumping were removed from UAE prices.

When examined at the customer level, the Commission confirmed that the UAE exporter EFG undercut Oceania Glass in all quarters at one customer (Customer B) and for another customer (Customer C) Oceania Glass' selling prices were suppressed due to the dumping of imports by Guardian RAK.

In its commentary on price undercutting by Guardian RAK, the Commission stated *"that in circumstances where Guardian RAK increased its prices, Oceania Glass was also able to increase its own prices and as such **there is a causal link** between competitor prices (which in this case are dumped) and the limitations on Oceania Glass raising its prices"* (emphasis added).

In SEF 582 the Commission was satisfied that a causal link existed between the dumping of CFG from the UAE and the material injury in the form of price undercutting leading to price suppression and reduced profits and profitability experienced by Oceania Glass in the investigation period.

### 10.3 – Termination Report 582A

The Commission's findings and conclusions in SEF 582 shifted in its subsequent deliberation of representations by Guardian RAK as reflected in Termination Report 582A (Term 582A). In a reversal of its position in SEF 582, the Commission stated that following a re-evaluation of all of the available evidence the Commission altered its original conclusions and concluded that the Commissioner *"is not satisfied that dumped exports of the goods from the UAE have caused material injury to the Australian industry"*. Further, *"The Commissioner is not 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)"*.

The Commissioner's termination decision is, allegedly, based upon representations raised by Guardian RAK and subsequent Oceania Glass' responses to questions following the publication of SEF 582.

It is asserted by the Commission *"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."* Reference is made by the Commission to *"Section 269TAE that requires a finding of material injury caused by dumping to be based on facts and not merely allegations, conjecture or remote possibilities."* The Commission further states that *"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 offers in the market. This intelligence and a range of other factors (such as costs) inform Oceania Glass in its pricing decisions."*

Oceania Glass highlights with the Ant-Dumping Review Panel ("ADRP") the error in the Commission's reversal of the preferred decision that injury from the dumped exports from the UAE could be considered material (as reflected in SEF 582). The Commission has stated there is limited evidence that Oceania Glass sets prices with reference to the dumped goods from the UAE. However, the Commission noted in its examination of injury on a customer by customer basis that Oceania Glass' prices and the prices of dumped CFG from the UAE were closely aligned with Oceania Glass' prices although at one customer Oceania Glass' prices were undercut by EFG, and that Guardian RAK's prices suppressed Oceania Glass' prices at another customer.

It is evident that there exists available information (as originally supplied by Oceania Glass in its application demonstrating price undercutting, despite the Commission ruling that the negotiation occurred prior to the investigation period although depressed prices were evident during the period) and verified by the Commission that confirms injury caused by the exports from the UAE. It is incorrect, therefore, for the Commission to claim that there is "limited" information available to it.

It should be recalled that Investigation No. 582 is not the first investigation into exports of CFG to Australia. Anti-dumping measures have previously applied to exports of CFG from China, Indonesia and Thailand (the latter where Guardian RAK's affiliated company was an exporter) and were recently the subject of continuation of measures investigation No. 575. The CFG market participants in Australia are aware therefore of the likely impost if dumping measures are applied and customers are less likely to inform Oceania Glass of competitor activity for imported CFG<sup>5</sup>. As a result, the ability of Oceania Glass to obtain a quantum of information evidencing the prices of UAE imports is rendered difficult.

Contrary to the Commission's claim about the 'limited' available evidence and Oceania Glass' statements about the difficulty in obtaining competitor quotations, the Commission at Section 8.6 of Term 582A states:

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

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<sup>5</sup> See Section 8.5 of Term 582A where the Commission acknowledged Oceania Glass' statements concerning the difficulty associated with obtaining competitive offers.



- *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."*

The facts and evidence that the Commission referenced in SEF 582 confirm otherwise. The facts are that at two customers the selling prices of imported CFG from the UAE either undercut or suppressed Oceania Glass' selling prices during the investigation period. When combined with the evidence of the increasing sales volumes across the investigation period for imported CFG from UAE – coinciding with Oceania Glass' decline in volumes in the second half of the investigation period – it is clear that the evidence supports the 'but for' injury analysis that Oceania Glass would have been able to raise its prices from suppressed levels in the absence of the dumping (at significant margins) from the UAE.

The Commission's findings in Term 582A that do not attribute the injury sustained by Oceania Glass to the dumped exports from the UAE are not supported by the available evidence.

The Commission further states (at Section 8.6.1 of Term 582A) that "*the prices of dumped goods from the UAE did not observably influence Oceania Glass's prices in the investigation period.*" The Commission considered that imports from other countries, such as Malaysia, to be the primary source of influence on Oceania Glass' prices. It may be recalled that the Ministerial Direction on Material Injury notes that injury from dumping may not be the sole cause of injury experienced by an industry. That is, where an industry is suffering injury from a number of influences, the injury that can be attributed to the dumping *must be material in degree*. Oceania Glass does not dispute that the undumped imports from Malaysia have influenced Oceania Glass' selling prices, however, it cannot be ignored that dumped prices for UAE CFG did similarly influence prices.

The Commission did not undertake an analysis to quantify the impact of the dumping from the UAE on the customers at which it had confirmed that price undercutting and price suppression were observed. Rather, the Commission merely dismissed the injury at the two customers as 'negligible' and pointed to the influence of the pricing from other sources as being the cause of the injury. It is therefore erroneous for the Commission to dismiss the impact of the dumping from the UAE sourced CFG.

Oceania Glass considers that the Commission's statement concerning the monitoring of import prices is inaccurate. Oceania Glass did confirm that it monitors domestic pricing in another country – not the UAE, as domestic selling price information in the UAE is not readily available. The country in which Oceania Glass does monitor CFG domestic prices – China – is the largest global producer of CFG and therefore has the lowest production costs and selling prices for CFG. It is therefore not unreasonable for Oceania Glass to reference competitor offers for UAE sourced CFG with the domestic selling prices of the largest producing CFG country globally to validate the authenticity of the UAE price offers. The UAE does not possess a comparative advantage in CFG production costs that would signal CFG selling prices to be lower than those in China. Oceania Glass' testing of the UAE price offers with other sources of competition is not unusual or unrealistic (with benchmarking exercises of this nature considered relevant).

Oceania Glass further contends that the Commission's analysis to establish the existence of a correlation between Oceania Glass' prices and imports from the UAE is somewhat simplistic. The Commission observed that Oceania Glass' prices remained flat in response to variations in the UAE prices. Oceania Glass did not move its selling prices as it wanted to maintain volumes at this time and not lose sales to dumped imports. Oceania Glass did not respond to lower prices for UAE product as it would lose profit and profitability to the dumped goods – hence price stability is effective to maintain volume (at the time was an important objective).

It cannot therefore be concluded that Oceania Glass' selling prices for CFG were not influenced by dumped exports from the UAE. The available evidence confirms that:

- sales by Oceania Glass and the UAE competed at the same customers;
- the Commission did evidence selling prices for dumped CFG from the UAE undercut Oceania Glass' prices at one customer and suppressed prices at another customer;

- the benchmarking of competitive offers for CFG from the UAE with the domestic selling prices (adjusted to FIS prices) is not unreasonable and cannot be disregarded;
- the decline in quarterly sales by Oceania Glass in the second half of the investigation period coincided with the increase in the quarterly sales of imports from the UAE; and
- the absence of any quantification of the injury from the dumped exports from the UAE limits the Commissioner's ability to dismiss the injury (from UAE imports) as negligible.

The Commission had before it evidence confirming that the significantly dumped CFG exports from the UAE had a price impact on Oceania Glass in both a price undercutting and price suppression basis (thereby influencing Oceania Glass' profit and profitability). The Commission did not seek to quantify the impact of the price undercutting and price suppression on:

- the two identified common customers;
- overall across Oceania Glass' customer basis,

in order that the Commissioner might be satisfied that the injury that was attributed to the exports from the UAE was "negligible."

Oceania Glass therefore contends that the Commissioner's decision to terminate Investigation No. 582A in respect of CFG exports to Australia from the UAE is not the correct or preferred decision.

## 11. Grounds in support of the decision

**Set out how the grounds raised in Question 10 support the making of the proposed correct or preferable decision.**

The proposed recommendation in SEF 582 confirmed that the dumping of CFG from the UAE had caused injury to the Australian industry that was material. The Commissioner's original proposed recommendation was the correct and preferred decision as it established that *but for* the dumping from the UAE, Oceania Glass would have secured higher prices that were non-injurious in the investigation period.

It cannot be dismissed that the dumping of CFG from the UAE would have little, or no, effect on Oceania Glass' selling prices in a competitive market for substitutable CFG.

In Term 582A the Commissioner has rejected Oceania Glass' benchmarking of competitive offers for CFG with Chinese domestic selling prices as it "weakens" the causal link between dumping and injury to the Australian industry. This conclusion is arrived at without rigorous examination of the relativities of the two sources of supply (anti-dumping measures applied to exports of CFG from China in the investigation period) with the Commission failing to understand the relevance of the benchmarking.

The Commissioner has further erred by not seeking to quantify the injury that was observed (validated in SEF 582 at two customers) and not extrapolating beyond the two identified customers before dismissing the observed injury to the Australian industry as 'negligible'.

The full consideration of the observable evidence confirms that the proposed recommendation in SEF 582 was the correct and preferred decision. The correct and preferable decision is that the Termination Report No. 582A is withdrawn (or rescinded) and that the Commissioner affirms his original recommendation(s) as detailed in SEF 582 that the Minister impose anti-dumping measures on clear float glass exported from the UAE.

**12. Material difference between the decisions**

**Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

The material difference to the correct and preferred decision as proposed Questions 10 and 11 above as opposed to the decision in Term 582A is that the Commissioner should have recommended (as per SEF 582A) the Minister impose interim anti-dumping measures on exports of CFG to Australia by all exporters in the UAE.