10 November 2016

Ms Joan Fitzhenry
Senior Panel Member
Anti-Dumping Review Panel
c/- Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
10 Binara Street
Canberra
Australian Capital Territory 2601

By email

Dear Senior Member

Review of Ministerial decision – clear float glass
Submission of Xinyi Ultrathin Glass (Dongguan) Co., Ltd

We act for Xinyi Ultrathin Glass (Dongguan) Co., Ltd (“Xinyi”).

This submission is made on behalf of Xinyi in accordance with Section 269ZZJ of the Customs Act 1901 (“the Act”). Xinyi is a manufacturer and exporter of clear float glass (“CFG”) from the People’s Republic of China and is, accordingly, an interested party for the purposes of this review as per Section 269ZX of the Act, being

(c) a person who:

(ii) has been or is likely to be directly concerned with the importation or exportation into Australia of like goods, to the goods the subject to the reviewable decision;

(d) a person who is or is likely to be directly concerned with the production or manufacture of:

(ii) like goods to those goods that have been, or are likely to be, exported to Australia;

A Background information

This review has been initiated by the Anti-Dumping Review Panel (“the Review Panel”) in response to an application by Guardian Industries Co., Ltd (“Guardian review application” and “Guardian” respectively) concerning the reviewable decision made by the Parliamentary Secretary to the Minister for Industry, Innovation and Science (“reviewable decision” and the “Parliamentary Secretary” respectively) concerning the anti-dumping measures applicable to CFG exported from China (except Xinyi), Indonesia and Thailand (“the anti-dumping measures”). The reviewable decision was made following the Anti-Dumping Commission’s continuation inquiry (“the Inquiry”) in relation the subject CFG.

NON-CONFIDENTIAL
At the outset we would like to point out that the anti-dumping measures which were the subject of the Inquiry, and the reviewable decision, are not applicable to exports from Xinyi.

Xinyi was the target of various submissions made by Guardian during both the Inquiry and in Guardian’s review application. The assertions made against Xinyi are wrong, baseless and, in some cases, malicious.

B Xinyi has no strategic partnership with Viridian

Guardian’s review application criticises the Commission’s findings regarding certain assertions that Guardian and other parties made about Xinyi.¹

In particular, Guardian is critical of the Commission’s finding that there is no evidence of a “strategic partnership” between Xinyi and CSR Viridian Ltd, being the Australian industry manufacturer for the purposes of the Inquiry. These assertions are not new, in that they were made during the Inquiry and were dismissed by the Commission. Guardian once again fails to provide any evidence supporting its assertions in this regard.

In Guardian’s submission to the Commission dated 20 July, Guardian advised that it considered the alleged relationship to involve “an alliance or arrangement” between Viridian and Xinyi, and the purchase of CFG from Xinyi by Viridian.²

In response, Xinyi unequivocally stated that it “did not export the goods to Viridian in the last five years, either directly or indirectly”. This was confirmed by the Commission’s own assessment of Viridian’s information and the Australian Border Force database.³ The Commission said that there was simply no evidence before it suggesting that Xinyi supplemented Viridian’s production capacity in any way.⁴

It is therefore vexatious and peculiar for Guardian to continue to make its baseless assertions and to continue its criticism of the Commission’s view, as it has done in the following manner:

Whilst the findings at [8.8] above are contrary to the weight of evidence before the ADC, it is remarkable that the Final Report should state that there was no evidence for Guardian’s contentions, despite Guardian’s provision of the evidence identified at [8.4] above. The ADC would have had more evidence disproving its finding at [8.8(c)] above it had inquired into Xinyi as it ought to have done.

Contrary to Guardian’s claim, there was no evidence before the Commission which could serve to contradict the conclusion that it reached. Guardian now simply claims that the Commission “would have had more evidence disproving its finding … if it had inquired into Xinyi as it ought to have done”. To prove its assertions to be correct, Guardian should have provided the factual evidence that it so certainly believes existed to the Commission during the Inquiry. We consider it to be an abuse of process for Guardian to state in its application to the Review Panel that more evidence should have been collected during the Inquiry (meaning that the requisite evidence is not on the Commission’s record), when the Review Panel is constrained under Section 269ZZK(6)(d) of the Act only to consider “relevant information” (meaning that evidence to which it did have regard).

Guardian cannot substantiate its allegation against Xinyi, regardless of whether there is evidence of it on the Commission’s record or not. This is because:

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¹ Guardian review application, pages 12 to 14.
² Guardian submission, Public Record No.31.
³ Report No 335, at page 28.
⁴ Ibid, at page 37.
• the assertion that Xinyi and Viridian had an alliance or strategic partnership is false and was found by the Commission not to be supported by any evidence;\(^5\)

• the assertion that Xinyi’s prices were the lowest on the market is also false, was not supported by any evidence, and was rejected by the Commission based on the information available;\(^6\) and

• rather than supporting Guardian’s claim, the implication that a failure by the Commission to obtain evidence of what Guardian asserted during the Inquiry is an independent ground of review is instead fatal to Guardian’s claim.

We submit that Guardian’s claims are nothing more than baseless criticism and hopeful speculation. On Guardian’s own admission, they are not evidenced.

Guardian’s continued obsession about an alleged strategic partnership and supply arrangement between Xinyi and Viridian might have been excited by Xinyi’s statement that:

\[\text{On the other hand, Xinyi is not in possession of enough information to comment on AMG’s suggestion that Viridian may have purchased the goods as exported by Xinyi from other parties.}^7\]

Clearly the context of this statement was that Xinyi could only comment on the existence of any supply of CFG from Xinyi to Viridian based on its own knowledge. Xinyi made it clear that it did not export CFG to Viridian either directly or indirectly. Our client had no knowledge of any third party sales and therefore was not in a position to advise whether Viridian could have purchased Xinyi’s CFG from third parties without Xinyi’s knowledge. This should have been sufficient to address the alleged strategic relationship between Xinyi and Viridian and the issue of whether there had been any supply of CFG to Viridian by Xinyi.

Further, we note that Viridian itself addressed Guardian’s concern in its own submission, stating:\(^8\)

\[\text{Guardian’s submission (EPR 043, paragraph 1.4) picks up a comment made in the Xinyi submission that:}^9\]

\[\text{Viridian does not import 3-12mm clear float glass from Xinyi and does not purchase 3-12mm CFG manufactured by Xinyi from a third party.}\]

We urge the Applicant to withdraw its false accusations against Xinyi in this review procedure.

\section*{C Guardian’s assertions about Xinyi are irrelevant to the consideration required of the Commission}

Guardian’s persistent attack on Xinyi’s credibility is not only unsupported by evidence, but is also ultimately irrelevant to the Inquiry and the decision of the Parliamentary Secretary.

We have already addressed the false allegation regarding the existence of a strategic partnership between Xinyi and Viridian, which Guardian claims was set up to allow Xinyi to export CFG to Viridian. When this assertion was proven to be wrong, Guardian asserted:

\(^{5}\) Report No 335, at page 37.
\(^{6}\) Ibid.
\(^{7}\) Guardian review application, at para 8.9.
\(^{8}\) Viridian submission, Public Record No 45, at page 2.
Clearly Xinyi and the Applicant could have a relevant strategic partnership even if that partnership did not involve the direct importation of CFG from Xinyi to the Applicant.\(^9\)

However, Guardian does not elaborate at all upon the kind of strategic partnership it considers to have existed, or on the relevance of such a strategic partnership to the reviewable decision or to the current review.

We respectfully refer the Review Panel to Xinyi’s submission with respect to the task of the Commission in its Inquiry:

 Lastly, we note Guardian’s request that the continuation inquiry must be “restart[ed]” and “widen[ed]” by way of obtaining information from Xinyi, and from other importers, or that the measures should cease. In this regard all we would say is that a continuation inquiry operates in a different fashion to an anti-dumping investigation, and that what must be concluded at the end of such an inquiry is also different to an anti-dumping investigation. In a continuation inquiry, the facts which are relevant are those pertaining to the question of whether “the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent”. The “blame” and “finger pointing” that Guardian and AMG have engaged in is not only baseless but ultimately irrelevant. Simply put – would the expiration be likely to lead to a continuation or recurrence of dumping and injury. A continuation inquiry is a fact finding exercise, with the relevant facts being those which go towards the elucidation and satisfaction of that statutory test, and ultimately the exercise by the Minister of his or her discretion to continue the measures.\(^10\) [underlining in original]

The focus of a continuation inquiry must be on the exports subject to such measures, and the prospective implication of the expiration of such measures themselves. A baseless pursuit of the questions of whether:

- there is any strategic relationship between Viridian and Xinyi – being an exporter not subject to the measures; or

- the exports from Xinyi – again, not being the subject of the anti-dumping measures – were lower priced than the exports subject to the measures,

does not ultimately address the relevant question that the Commission was required to consider in order to provide its recommendations to the Minister at the conclusion of the Inquiry.

Further, Guardian’s claim that the Review Panel “ought to investigate Xinyi” is not supported by the relevant legal requirements to be observed by the Review Panel in its review procedure. It is not the role of the Review Panel to “investigate Xinyi”, or to engage in a new round of evidence gathering. The Review Panel is required only to have regard to relevant information as prescribed under Section 269ZZK of the Act.

Lastly, to the extent that imported CFG that is not subject to the anti-dumping measures in question can be a relevant consideration in a continuation inquiry, we note the Commission’s findings that:

In regard to lower priced CFG entering the Australian market, the Commission refers to the analysis undertaken at 8.4.2.3 which shows that goods not subject to measures are not priced as low as the goods subject to measures.\(^11\)

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9 Guardian review application, at para 8.10
10 Xinyi submission, Public Record No. 041, at page 3
11 Report No. 335, at page 36.
and:

The Commission has examined the prices obtained by the cooperating exporters already subject to measures and compared them to the prices obtained by other exporters not subject to measures (Confidential Attachment 8 refers). The Commission is satisfied that the prices obtained by the exporters subject to measures would, for most thicknesses, have been significantly more competitive in the absence of the anti-dumping measures.\textsuperscript{12}

The Commission’s consideration of exports not subject to the anti-dumping measures clearly included a consideration of the goods exported by Xinyi. The Commission found that there was no evidence that “Xinyi are the lowest on the market and the cause of price depression and suppression”.

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Our client is deeply disappointed and concerned by the repeated and false allegations made against it by Guardian.

We respectfully request the Review Panel to reject Guardian’s review application, and to affirm the Parliamentary Secretary’s decision.

Yours sincerely

Charles Zhan
Associate

\textsuperscript{12} Report No. 335, at page 56.