



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

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 public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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

² As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(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.

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.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Guardian Industries Corp Ltd

Address: 49 Moo 7, Nongplamoh, Nongkhae, Saraburi, 18140 Thailand

Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: Tom Pastore

Position: General Counsel

Email address: tpastore@guardian.com

Telephone number: 1-248-340-2177

3. Set out the basis on which the applicant considers it is an interested party

The applicant is an interested party since it is directly concerned with the importation into Australia of the goods the subject of the reviewable decision and it is directly concerned with the production or manufacture of the goods the subject of the reviewable decision.

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 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

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

See attached submissions

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

See attached submissions

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

See attached submissions

9. Provide the date the notice of the reviewable decision was published

See attached submissions

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds 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 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.

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.

See attached submissions

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.

See attached submissions

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

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

See attached submissions

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* it gives public notice of its intention 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;
- 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: Zac Chami

Position: Partner

Organisation: Clayton Utz

Date: 23/ 09 /2016

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: Zac Chami

Organisation: Clayton Utz

Address: Level 15, 1 Bligh St Sydney NSW 2000

Email address: zchami@claytonutz.com

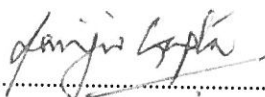
Telephone number: 02 9353 4744

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: Sanjiv Gupta

Position: General Manager, Asia Pacific Region

Organisation: Guardian Industries Corp Ltd

Date: 23/ 09 /2016

Non-confidential**Email**

23 September 2016

Anti-Dumping Review Panel
 c/o Legal, Audit and Assurance Branch
 Department of Industry, Innovation and
 Science
 GPO Box 9839
 Canberra ACT 2601
ADRP@industry.gov.au

Dear Sir/Madam

Application for review — Anti-Dumping Notice 2016/85

These submissions are made by Guardian Industries Corp Ltd (**Guardian**) in support of an application pursuant to s 269ZZE of the *Customs Act 1901* (Cth) (**Act**) for review of the decision made by the Parliamentary Secretary to the Minister for Industry, Innovation and Science (**Parliamentary Secretary**) published in Anti-Dumping Notice 2016/85.

1. Executive summary

- 1.1 Guardian invites the Anti-Dumping Review Panel (**ADRP**) to review the decision of the Parliamentary Secretary, which adopted the recommendations of the Anti-Dumping Commission (**ADC**), on six grounds, namely:
- (a) the ADC's finding that dumping by Thai exporters is likely to continue or recur was not the correct or preferable finding (see Part 5);
 - (b) the ADC's finding that the Applicant is threatened with material injury should measures be allowed to expire was not the correct or preferable finding (see Part 6);
 - (c) the ADC's finding that future injury to the Applicant could be attributed to Thai dumping was not the correct or preferable finding (see Part 7);
 - (d) the ADC's finding that the Applicant does not directly or indirectly import large quantities of low-cost CFG from Xinyi or some other Asian exporter was not the correct or preferable finding (see Part 8);
 - (e) the ADC misapplied s 269ZHF(2) of the Act (see Part 9); and
 - (f) the ADC failed to properly calculate a non-injurious price (**NIP**) (see Part 10).
- 1.2 The consequence of each of the above errors (singularly or cumulatively) is that the ultimate recommendation of the ADC and the decision of the Parliamentary Secretary were not correct or preferable.
- 1.3 Guardian submits that the ADRP ought to recommend that the Parliamentary Secretary's decision be revoked.
- 1.4 Alternatively, Guardian submits that the ADRP ought to recommend that the Parliamentary Secretary's decision be revoked and substituted with a decision to publish a dumping duty

notice in the terms of the notice published on 8 September 2016 but without including an order that the anti-dumping measures be continued in respect of the Kingdom of Thailand.

- 1.5 These proposed recommendations, if adopted, would have the effect of allowing anti-dumping measures to expire in respect of Thai CFG exports.

2. Background

Original investigation

- 2.1 On 19 April 2010 the Chief Executive Officer of the Australian Customs and Border Protection Service (**CEO**) commenced an investigation (**Original Investigation**) into alleged dumping of clear float glass (**CFG**) exported from China, Indonesia and Thailand.¹
- 2.2 On 21 December 2010 the ADC published Termination Report 159B recommending that the CEO terminate the Original Investigation. A delegate of the CEO terminated the investigation accordingly by publishing a notice on 22 December 2010.²
- 2.3 On 20 January 2011 CSR Viridian Ltd (**Applicant**) applied for review of the delegate's decision by the Trade Measures Review Officer (**TMRO**).
- 2.4 On 21 March 2011 the TMRO revoked the Delegate's decision.
- 2.5 On 13 May 2011 the CEO published a notice announcing that the Original Investigation would resume.³
- 2.6 On 23 September 2011 the CEO published Final Report 159C recommending that the Attorney-General publish an anti-dumping notice with respect to the goods. The Attorney General adopted this recommendation and published an anti-dumping notice.⁴
- 2.7 Guardian and other interested parties applied to the TMRO for review of the Attorney-General's decision. On 14 December 2011 the TMRO published a notice pursuant to s 269ZZI of the Act commencing a review of the Attorney-General's decision. On 13 February 2012 the TMRO published its decision that certain findings made in Final Report 159C were incorrect and recommended that the Attorney-General direct the CEO to reinvestigate its findings. On 29 February 2012 the Attorney-General adopted this recommendation and directed the CEO to reinvestigate certain findings made in report no. 159C.
- 2.8 On 27 April 2012, having reinvestigated its findings, the CEO recommended that the Minister for Home Affairs affirm the Attorney-General's decision to publish dumping duty notices.⁵ The Minister for Home Affairs adopted this recommendation and affirmed the Attorney-General's decision.

Continuation inquiry

- 2.9 On 1 February 2016 the Applicant applied for continuation of the anti-dumping measures imposed in 2011 (**Application**).

¹ Initiation report no. 159.

² Australian Customs Dumping Notice 2010/48.

³ Australian Customs Dumping Notice 2011/10.

⁴ Australian Customs Dumping Notice 2011/50.

⁵ Report no. 159D.

- 2.10 On 22 February 2016 the ADC published a report (**Consideration Report**) recommending that the Commissioner initiate a continuation inquiry (**Inquiry**). The Commissioner published his decision to initiate the Inquiry pursuant to s 269ZHD(4) of the Act on the same day.⁶
- 2.11 On 28 June 2016 the ADC published a statement of essential facts (**SEF**) pursuant to s 269ZHE of the Act.
- 2.12 On 12 August 2016 the Commissioner recommended in report no. 335 (**Final Report**) that the Parliamentary Secretary order that the anti-dumping measures be continued. On 8 September 2016 the Parliamentary Secretary published his decision to order the continuation of measures adopting the recommendations made in the Final Report.⁷
3. **Goods**
- 3.1 The goods under consideration comprise 3–12mm CFG that is transparent, flat and rectangle or square in shape, but excluding certain worked goods.
- 3.2 The tariff classification of the goods is 7005.29.00, statistical codes 3, 4, 5, 6 and 9 in Sch 3 of the *Customs Tariff Act 1995* (Cth).
4. **Findings of the ADC**
- 4.1 The ADC found in its Final Report that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation or recurrence of the dumping and material injury that the measures are intended to prevent.⁸
- 4.2 In Guardian's submission, this finding is not correct or preferable in view of the relevant facts. It is entirely unlikely that, if anti-dumping measures expired in respect of Thai exports, the requisite kind of dumping or material injury would continue or recur.
- 4.3 We note that, throughout the Final Report, the ADC varies between characterising the future dumping and material injury as a recurrence and characterising it as a continuance.⁹ Specificity and accuracy being the hallmarks of accurate inquiry, this inconsistency calls into question what findings the ADC has made and whether it is in fact satisfied that Guardian has dumped any CFG throughout the investigation period.
5. **Likelihood of dumping**
- 5.1 The ADC considered whether dumping would continue or recur if measures expired in its Final Report at [8.3]. This consideration is about four pages long. It is almost entirely identical to the corresponding section [8.3] in the SEF. It is therefore difficult to see how the ADC has seriously taken into account the 14 submissions subsequently made by interested parties since publishing the SEF as it claims to have done.¹⁰

⁶ Anti-Dumping Notice 2016/19.

⁷ Anti-Dumping Notice 2016/85.

⁸ Final Report at [8.1].

⁹ See Final Report at [1.3.5], [8.3.7], [8.4.2.3], [8.7], [9.1].

¹⁰ Final Report at [2.5]–[2.5.1].

- 5.2 The Final Report's findings concerning the likelihood of dumping are, like those in the SEF, unsatisfactory. The Final Report gives four reasons for finding that dumping is likely to continue,¹¹ namely:
- (a) that dumping has continued during the Inquiry period (**First Reason**);
 - (b) that exporters have maintained export pathways (**Second Reason**);
 - (c) overcapacity in China (**Third Reason**); and
 - (d) the relative ease and potential commercial incentive for exporters to switch export markets to Australia (**Fourth Reason**).

First Reason

- 5.3 Despite the First Reason, the ADC found at [8.3.3] of the Final Report that:
- (a) the proportion of total Australian CFG imports that are exported from China, Indonesia and Thailand has declined since 2009; and
 - (b) that decline is particularly apparent when Xinyi Ultrathin Glass (Dongguan) Co. Ltd (**Xinyi**), a Chinese exporter not subject to measures, is removed from the calculation.
- 5.4 Moreover, exports from Thailand generally, and Guardian in particular, have been minute over the past five years. Despite this, the Final Report gives the First Reason as one of the reasons for finding that Thai exporters in particular are likely to continue dumping. In Guardian's submission, the minute Thai export volumes naturally suggest that future dumping caused by Thai exporters would be negligible at most. Therefore, for the reasons given at [9.5]–[9.14] below, the ADC ought to have ordered that measures expire in respect of Thai exporters.
- 5.5 Moreover, the evidence supplied by Guardian outlined at [5.18] below further supports that the correct view is clearly that Guardian is unlikely to dump CFG in the future.

Second Reason

- 5.6 In the Final Report, the ADC reasons that the persistent decline in CFG imports from China, Indonesia and Thailand does not mean that dumping is unlikely to continue or recur, since exporters from those countries *'have maintained export pathways and distribution channels into the Australian market since the anti-dumping measures were imposed'*.¹²
- 5.7 Like the First Reason, the Second Reason mostly concerns exporters other than Guardian. The ADC adopted it uncritically from the Applicant's Application.¹³ In response Guardian informed the ADC that it had no Australian distribution links other than an Oceania Territory Manager.¹⁴ This information was never addressed in the SEF, even though it was advanced in Guardian's preliminary submissions, which the ADC nominally considered in preparing the

¹¹ See [8.3.7].

¹² At [8.3.3].

¹³ At p 9.

¹⁴ EPR014 at [3.2]; EPR022 at [1].

SEF.¹⁵ In the Final Report the ADC acknowledged this information in a footnote but noted that Guardian's Oceania Territory Manager was nonetheless a '*mechanism through which [exporters] engage with potential customers and conclude sales.*'¹⁶

- 5.8 Even if Guardian had maintained real distribution channels into Australia, it would be speculative and hypothetical to suppose that this made it likely that Guardian would use those channels to dump goods under consideration.
- 5.9 Given that Guardian only employs a single Oceania Territory Manager for Australia, its relative lack of entrenched export pathways makes it significantly less likely that it will dump goods under consideration in the future.
- 5.10 If the ADC's reasoning is accepted, it would be incumbent on exporters to remove all their Australian distribution channels before opposing continuation of measures — by which time it would be futile to oppose continuation.
- 5.11 Australian companies import CFG from exporters such as Guardian because the Applicant, which now has only one Australian manufacturing facility, does not have sufficient production capacity to supply the Australian market.¹⁷
- 5.12 Guardian notes that it sells goods other than goods under consideration in Australia, in respect of which there is no allegation of dumping. The ADC's inference that the employment of an Oceania Territory Manager makes future dumping of CFG probable is merely conjecture and supposition, given that there is a natural alternative explanation for his employment.

Third Reason

- 5.13 The Final Report at [8.3.7] records that one of the ADC's reasons for finding that dumping of CFG from Thailand is likely to continue is the availability of excess production capacity in China. This is absurd and the Final Report discloses no connection, or attempt to draw a connection, between excess Chinese production capacity and the probability of future dumping from Thailand. Indeed, the SEF and final Report confirm that Guardian has little excess production capacity, or perhaps none.¹⁸

Fourth Reason

- 5.14 The Final Report at [8.3.7] records that one of the ADC's reasons for finding that dumping of CFG from Thailand is likely to continue is '*the relative ease, and potential commercial incentive to switch export markets.*'
- 5.15 The Final Report's consideration of this factor at [8.3.5] is brief and is apparently confined to considering dumping by Chinese exporters. It does not support the ADC's conclusion that dumping from Thailand is likely to continue.
- 5.16 In the Final Report's consideration of overcapacity issues at [8.3.4], the ADC states:

¹⁵ SEF at [2.3]

¹⁶ At p 48 n 37.

¹⁷ See EPR014 at [5.2]–[5.6], [5.10](h)(ii); EPR022 at [4], [6]–[10]; EPR036; EPR043 at [1.5](b); Final Report at [5.6.1], [6.4.1].

¹⁸ At [8.3.4].

'Arguably, Guardian could adjust its production portfolio to take advantage of the comparative proximity of its Thailand plant to replace CFG exported from other parts of the global business if it was considered commercially advantageous to do so.'

And:

'The Commission has observed that whilst exports from Guardian's Thailand operations have significantly reduced, exports from Guardian's global business to Australia have significantly increased since the imposition of measures.'

5.17 These statements are apparently made in support of the Fourth Reason.

5.18 Guardian objects strongly to these statements, which, in its submission, are irrelevant, speculative and, even if they were accepted, could not assist demonstrating that Guardian is likely to dump CFG in the future in the sense required by the Act. In particular:

- (a) Guardian made submissions raising the Applicant's ability to export to New Zealand, and the state of the New Zealand CFG market, as factors relevant to the ADC's consideration of material injury.¹⁹ The ADC rejected those submissions because *'the New Zealand market for CFG is not considered to be the Australian market, and therefore Viridian's ability to supply to it is irrelevant to this inquiry.'*²⁰ Notwithstanding this, the ADC subsequently had regard to Guardian's alleged status as a *'global business'* — including its ability to export CFG from different countries — when considering the likelihood of future dumping.²¹ This inconsistency in the ADC's approach has infected its conclusion that Thai exporters are likely to dump CFG.
- (b) The ADC included the first statement listed above at [5.16] in the SEF. Guardian subsequently made submissions detailing the errors in that statement.²² The ADC has not rectified, or indeed acknowledged, those errors. Instead, it has amplified and extended that statement with its statement that *'exports from Guardian's global business to Australia have significantly increased since the imposition of measures'*.²³ The Final Report now treats Guardian's alleged imports from countries outside the scope of the Inquiry as a basis for continuing measures in respect of Thai imports. This approach is unsound, weakly reasoned and impermissibly takes into account exports from third countries.
- (c) Guardian has also made submissions containing evidence and reasons which show that Guardian does not plan to import, and is very unlikely to import, significant quantities of CFG, let alone dumped CFG, in the future.²⁴ The ADC's reasoning at [8.3.6] of the Final Report that *'whilst Guardian does not currently intend to supply Australia with any substantial volumes, it does not necessarily follow that dumping will not recur'* is weak. If Guardian's evidence shows that it is unlikely but not impossible that Guardian will dump CFG, the ADC ought to have found that dumping is not likely and recommend that measures expire accordingly. Instead, the ADC has essentially required Guardian to prove that it would not dump

¹⁹ EPR014 at [5.3]–[5.5].

²⁰ Final Report at [6.5.5].

²¹ At [8.3.4].

²² EPR034 at [3.2]–[3.4], [4.3].

²³ Final Report at [8.3.4].

²⁴ EPR021; EPR034 at [4.3](a).

CFG when it should have considered whether it is likely that Guardian would dump CFG.

- (d) A similar error is evident from the statements above. Even though the ADC has acknowledged in the Final Report (but not the SEF) that the word '*likely*' in s 269ZHF(2) of the Act means '*more than a 50 per cent chance*',²⁵ the Final Report replicates all the findings made by the ADC in the SEF that were based on a different construction of the word '*likely*'. The first statement:
- (i) is prepped by the adverb '*arguably*';
 - (ii) only expresses a possibility, rather than a probability, that Guardian '*could adjust its production portfolio*'; and
 - (iii) is speculative and hypothetical rather than being a positive finding made on real evidence.

In Guardian's submission, such a statement cannot assist in reaching the ultimate finding that Thai exporters are likely to dump CFG. It only supports a chance, but not a likelihood, of dumping.

- 5.19 The statement in the final report that '*changing the composition of its production mix to produce more of the goods that are subject to measures*'²⁶ discloses deficiencies in the ADC's fact-finding and reasoning processes for much the same reasons as given in [5.18] above. In short, the statement is speculative, hypothetical and contradicted by the evidence before the ADC. It does not contribute to the conclusion that future dumping from Thailand is likely.

Conclusion

- 5.20 By way of summary, the totality of the ADC's reasons for finding that future dumping of CFG from Thailand is likely are:
- (a) that Guardian has dumped minute volumes of CFG over the investigation period;
 - (b) that Guardian has an Oceania Territory Manager;
 - (c) excess Chinese production capacity; and
 - (d) that Guardian could arguably adjust its production portfolio as it is a global business.
- 5.21 When cumulatively considered, these reasons fall far short of establishing that Thai exporters are likely to dump CFG, in the sense that there is a more than fifty per cent chance. They are scarcely relevant to, let alone probative of, the question whether dumping is likely. In Guardian's submission, there is no satisfactory basis for the ADC's finding that dumping by Thai exporters is likely to continue or recur.

²⁵ At [8.6.3].

²⁶ At [8.3.4].

6. **Likelihood of material injury**

- 6.1 The ADC's consideration of whether the Applicant is likely to suffer material injury appears in the Final Report at [8.4]–[8.7].
- 6.2 The ADC concluded that the expiration of anti-dumping measures would result in '*a direct and negative impact on Viridian's prices, sales volumes, market share, revenue, profit and profitability*'.²⁷ The substance of the Final Report's consideration, however, mostly focuses on price effects and volume effects.
- 6.3 **(Price effects)** The ADC's assessment of future price effects of the expiration of anti-dumping measures is flawed.
- 6.4 **First**, the ADC's approach to assessing material injury has been to focus on past injury in order to project future injury. Guardian does not object to this approach, however it considers that if Thai price effects through the Inquiry period are calculated they could disclose no trend of suppressing or depressing local prices. As Guardian has submitted, Thai import volumes are so small that they could not possibly have had a detectable suppressive or depressive price effect.²⁸
- 6.5 Even if the ADC's analysis of price effects establishes that the Applicant will likely suffer some material injury if all anti-dumping measures expired, this cannot establish that the Applicant will likely suffer material injury if measures expire in respect of Thailand in particular.
- 6.6 Guardian therefore submitted that the ADC should analyse the alleged suppressive or depressive effect of Guardian's prices separately.²⁹ Although the ADC referred to this submission, the ADC has apparently failed to undertake this analysis.³⁰ The ADC is required to consider Thailand separately in respect of material injury by virtue of s 269TAE(2C)(d) of the Act.
- 6.7 **Secondly**, the ADC found that, at certain times during the Inquiry period, the Applicant's prices for some CFG thicknesses were undercut by exporters.³¹ Its findings in the Final Report as to how many exporters undercut in which quarters and in respect of which quarters differs, without warning or explanation, from the findings made in the SEF. This is so despite the fact that the stated method used is the same in the SEF³² and the Final Report.³³ This anomaly calls into doubt the accuracy of the ADC's findings, the calculation of which is confidential. It may be a consequence of Guardian's submissions as to apparent inaccuracies in the calculation.³⁴ Since the calculation, which the ADC has acknowledged is not precise,³⁵ is confidential, Guardian is unable to identify other errors for the ADRP. We respectfully invite the ADRP to reconsider the ADC's calculations.
- 6.8 **Thirdly**, the ADC has found that Thai imports are likely to cause injury by way of price suppression or depression without considering the extent to which that suppression or depression is explicable by the Applicant's price premium.

²⁷ Final Report at [8.7].

²⁸ EPR034 at 4.4(b).

²⁹ EPR031 at [3]; EPR034 at [5.12].

³⁰ Final Report at [8.4.2.4].

³¹ Ibid.

³² At [8.4.2.1].

³³ Ibid.

³⁴ EPR034 at [5.11].

³⁵ Final Report at [8.4.2.1].

- 6.9 Although the ADC conceded the existence of a price premium,³⁶ since it did not quantify that premium, all its calculations and analysis effectively proceeded on the basis the Applicant had no price premium.
- 6.10 The ADC considered that the Applicant's price premium could not be calculated and, in any event, simply reflects the benefits of local supply.³⁷
- 6.11 The reason given by the ADC for not calculating a price premium is that importers have failed to co-operate with the Inquiry and the ADC therefore lacks the necessary data to calculate a premium.
- 6.12 The failure of importers to co-operate is unfortunate but their reluctance to spontaneously supply the necessary data is due to their apprehension that, since the Applicant dominates the Australian CFG market, they would face commercial recriminations if they supply data to the ADC that is unfavourable to the Applicant. The ADC ought to have used its compulsive powers to remediate the situation. The Applicant cannot simply be presumed to have a 0% price premium as a result.
- 6.13 Moreover, in the absence of satisfactory data, the most accurate approach is to adopt the findings of the Original Investigation, even though the Applicant's price premium has realistically increased in the last five years. The Applicant's price premium should therefore be taken to be 8%.
- 6.14 The Final Report refers to Report 264, pp 83–4, apparently in support of a view that the Applicant's premium need not be taken into account since it simply reflects the benefits of local supply.³⁸
- 6.15 Report 264 only concluded that no discount should be applied for a price premium for the Green Star rating of the relevant goods. That is a premium attaching to something which inheres in the goods. It is not to be treated like a premium for shorter lead times, and other benefits consequent on the Applicant's location in Australia, which are extraneous to the goods and must be separated from the underlying price for the goods if a fair comparison of prices is to be made.
- 6.16 Guardian's view is supported by the WTO Panel Report *European Communities — Anti-Dumping Measure on Farmed Salmon from Norway*, 27.3 [7.639].
- 6.17 The ADC's failure to account for the Applicant's price premium vitiates its findings as to the likelihood of price suppression or depression.
- 6.18 We also note that the Final Report states that 'some part of the price undercutting which currently occurs may be attributable to an unquantified price premium. However, the absence of the dumping measures would not result in an increase in that premium'.³⁹ This appears to misunderstand the relevance of the Applicant's price premium. It is not to the point that the premium would or would not exist if there were no anti-dumping measures. The price premium is relevant since it affects the proper calculation of any price undercutting. The Australian market will naturally pay a premium to the local supplier due to shorter delivery times and ease of offloading specialised delivery trucks, instead of dealing with the increased demands

³⁶ Final Report at [5.3.2].

³⁷ Ibid.

³⁸ At [5.3.2].

³⁹ Final Report at [8.4.2.1] n 49

of offloading export shipping containers which require more labour resources and handling equipment.

6.19 (**Volume effects**) The ADC found that import volumes decreased and the Applicant's sales volumes remained steady since the imposition of anti-dumping measures.⁴⁰ Whereas price effect trends appeared favourable to the Applicant and so the ADC used a projection of those 'underlying trends'⁴¹ to assess the likelihood of future material injury, it did not use a projection of volume trends to determine the likelihood of injury in respect of volume effects. Instead, it used conjecture to suggest that, should measures expire, exporters would increase volumes of CFG exports.⁴²

6.20 This approach is inconsistent with the ADC's approach to price effects. It is also speculative and contrary to the evidence. The ADC has failed to comply with s 269TAE(2AA) of the Act, which expressly requires the threat of material injury to be assessed 'based on facts and not merely on allegations, conjecture or remote possibilities'.

7. **Attributability of material injury to exports**

7.1 Section 269TAE(2A) of the Act requires that an assessment of the threat of material injury exclude injury threatened by a factor other than the exportation of the goods.

7.2 Guardian has made submissions in support of its view that, to the extent that the Applicant is likely to feel injury, that injury is not legally attributable to exported CFG pursuant to s 269TAE(2A).⁴³ By way of summary, Guardian contends that:

- (a) the Applicant alienates customers and potential customers through its restrictive trade practices and customer service failures;
- (b) Australia has a comparative disadvantage in primary glass production;
- (c) the Applicant runs an inefficient business with an unprofitably high CTMS; and
- (d) the Applicant's public statements disclose no concern for injury caused by dumping. To the contrary, they reveal that the Applicant's business is and will be, by its own admission, beleaguered by injuries not attributable to exports.

7.3 The ADC's consideration of these submissions appears in Part 6 of the Final Report. Part 6 of the Final Report concerns the economic condition of the Australian industry. In the Final Report's consideration of the likelihood of future material injury at Part 8, there is a single sentence on the attributability of material injury to exports:

*The Commissioner has identified no evidence that would suggest that Viridian is more likely to experience material injury as a result of other factors.*⁴⁴

7.4 Guardian respectfully submits that:

- (a) such evidence was supplied to the ADC;

⁴⁰ Final Report at [8.4.3], [8.7].

⁴¹ Final Report at [8.4.2.1].

⁴² Final Report at [8.4.3].

⁴³ EPR014 at [5.10]–[5.13]; EPR022 at [4.4](d).

⁴⁴ At [8.7].

- (b) no consideration of that evidence appears in the Final Report as part of the ADC's assessment of the likelihood of future material injury;
- (c) even insofar as the ADC had considered that evidence, it has wrongly rejected that evidence because it was not satisfied that the Applicant *'is more likely to experience material injury as a result of other factors'*. The Act requires the ADC to exclude all injury attributable to other factors rather than to consider whether, as a whole, injury is *'more likely'* to be attributable to factors not listed in s 269TAE(2A) than to those listed in s 269TAE(2A); and
- (d) the ADC's consideration of future material injury impermissibly attributes injury to import volumes regardless of whether those volumes are volumes of dumped goods.⁴⁵

7.5 The ADC addresses Guardian's submissions as to the attributability to exports of injury at [6.5.1] of the Final Report. It concludes:

- (a) in respect of Guardian's contention that the Applicant's loss of market share is attributable to its limited primary production capacity where, due to Australia's east coast construction boom, demand for CFG is increasing — that *'the value of new housing activity has been flat since 2011 and increased in 2014 and 2015'*.⁴⁶ The source of the ADC's data is unclear. The data to which this quote refers appears not to be seasonally adjusted. Moreover, there is no reason to confine the ADC's consideration of the Australian construction industry to the value of new housing activity. At [5.4] the Final Report appears to accept the Applicant's contention that, since its downstream related customers find it difficult to compete for the supply of apartment or office building projects, the ADC should focus on housing construction trends rather than other construction trends. In this respect the ADC has impermissibly attributed to exports a future injury to the Applicant's market share that will in fact be caused by the uncompetitiveness of its downstream related customers⁴⁷ or changes in patterns of consumption.⁴⁸ Guardian objected to this reasoning in its response to the SEF.⁴⁹
- (b) in respect of Guardian's contention that large quantities of low-priced imports from Xinyi, rather than from Guardian, are the source of any potential price suppression or depression — that goods not subject to measures are not priced as low as goods subject to measures.⁵⁰ This does nothing to consider whether Xinyi imports in particular have a depressive or suppressive price effect. A small discrepancy in landed prices between aggregated imports subject to measures and aggregated imports not subject to measures is insufficient to dispel the evidence supplied to the ADC that the greatest threat to CFG prices is Xinyi.⁵¹

⁴⁵ Final Report at [8.4.3]; see s 269TAE(2A)(a) of the Act.

⁴⁶ Final Report at [6.5.1] referring to Fig 1 at [5.4].

⁴⁷ See s 269TAE(2A)(f) of the Act.

⁴⁸ See s 269TAE(2A)(c) of the Act.

⁴⁹ EPR034 at [4.4](a).

⁵⁰ Final report at [6.5.1] referring to [8.4.2.3].

⁵¹ The ADC has also compared the FOB prices of aggregated imports subject to measures and aggregated imports not subject to measures for this purpose. FOB prices are relevant to calculating dumping margins but do not assist in assessing price suppression or depression. Moreover, as explained at EPR034 at [5.3]–[5.4] in respect of the SEF, Figs 13 and 14 have no y-axis and it is therefore impossible to say whether they support the view that there is

- (c) in respect of the Applicant's annual reports, which demonstrate that the primary threats to the Applicant's business, on its own assessment, are not attributable to CFG imports — that:
 - (i) *'profit is not the only way that an industry may experience injury due to dumping' and '[d]umping may also cause other types of injury to the Australian industry'.⁵² This statement does not explain why the ADC found that future injury to the Applicant's profit would be attributable to dumping without further consideration of its annual reports, which reveal that injury to its profit is substantially attributable to other factors. Moreover, Guardian's reliance on the Applicant's annual reports to establish alternative causes of injury was never confined to injury by way of price effects;⁵³ and*
 - (ii) *'The Commissioner is not limited to considering the statements in the Australian industry's annual reports about the factors that have contributed to its performance. Accordingly, the fact that dumping is not mentioned in those annual reports does not, of itself, prevent the Commissioner from making a different finding.' This conclusion is perplexing. Evidence does not cease to be probative merely because it does not, absolutely and by itself, prove the proposition in support of which it is advanced. When [6.5.1] and [8.7] are read together, it appears that the ADC has concluded that since Guardian's evidence does not necessarily bind the ADC to make the finding in support of which it is advanced, that evidence does not exist.*
- (d) in respect of the impact of the Applicant's downstream business on its upstream business — that *'downstream markets are outside the scope of this inquiry'.⁵⁴ The Applicant's downstream business is relevant by virtue of s 269TAE(2A)(d) of the Act. We also note that the Final Report has regard for downstream markets when considering CFG demand at [5.4]. A consistent approach should be taken to the relevance of downstream markets to the Inquiry.*

8. Xinyi

- 8.1 The Original Investigation was terminated in respect of Xinyi and Xinyi's exports are therefore not subject to anti-dumping measures.
- 8.2 Interested parties made submissions concerning Xinyi throughout the Inquiry.⁵⁵ The substance of these submissions was that:
 - (a) Xinyi's exports are voluminous;
 - (b) Xinyi's export volumes have nearly doubled since anti-dumping measures were imposed on other exporters;
 - (c) Xinyi is the lowest-priced exporter; and

a significant discrepancy between aggregated imports subject to measures and aggregated imports not subject to measures except by reference to Confidential Attachment 1.

⁵² Final report at [6.5.1].

⁵³ EPR014 at [5.12].

⁵⁴ Final Report at [6.5.2].

⁵⁵ EPR014 at [5.7](c); EPR015; EPR033; EPR036; EPR040; EPR042; EPR043.

- (d) Xinyi and the Applicant are in a strategic partnership by which the Applicant directly or indirectly imports Xinyi's goods to supplement its inadequate production capacity.
- 8.3 As a result, anti-dumping measures would be futile so long as Xinyi is not subject to measures, Xinyi's prices being significantly lower than those of other exporters.
- 8.4 The evidence supplied by Guardian in support of the aforesaid submissions comprised:
- (a) the Applicant's concession in the Application that it imports CFG from strategic partners;⁵⁶
 - (b) the calculations set out at EPR036 which show that:
 - (i) Xinyi's import volumes are very large; and
 - (ii) the Applicant relies on large quantities of imported CFG (however obtained); and
 - (c) the verification of Guardian's conclusions in a submission made by Australian Independent Glass (**AIG**) at EPR042.
- 8.5 In addition, we note that in September 2015, the Applicant published an investor presentation advertising a 'strategic agreement for Asian supply'. That presentation is **attached**.
- 8.6 In respect of [8.4(b)] above, we note that the Final Report states at [5.2.1] that the data supplied by Guardian⁵⁷ is deficient. As Guardian is unable to refine its data by reference to import declarations, there are inevitable limits to the utility of its data set. But Guardian's complaint is that the ADC did not test the conclusions drawn by Guardian from its data against the ADC's data - which it should have. It is very likely that an analysis of the ADC's data set in the manner set out in EPR036 would reach the same conclusions as those drawn in EPR036.
- 8.7 In respect of [8.4(c)] above, the Final Report states that AIG's submission was '*not supported with any evidence*'.⁵⁸ AIG's submission is itself evidence advanced in support of Guardian's submissions. It is evidence in that it is an account of the first-hand experience of a local Australian importer. We also refer to [7.5(b)] above.
- 8.8 The ADC found that:
- (a) '*Viridian's imports of CFG during the inquiry period from all sources accounts for less than 1 per cent of the total import volume. The volume of CFG imported by Viridian during the inquiry period represents less than 0.5 per cent of Viridian's domestic sales volume*'⁵⁹ and there is no evidence that the Applicant supplements its production capacity with imports from Xinyi;⁶⁰

⁵⁶ At p 12.

⁵⁷ See EPR036.

⁵⁸ At [6.5.3].

⁵⁹ Final Report at [5.6.1].

⁶⁰ Final Report at [6.5.3].

- (b) no strategic partnership exists between Xinyi and the Applicant;⁶¹ and
 - (c) there is no evidence that CFG prices from Xinyi are the lowest on the market and the cause of price suppression or depression.⁶²
- 8.9 The finding at [8.8(a)] above was based on the ADC's data. It did not consider the Applicant's purchasing of Xinyi's CFG from third parties. We note that Xinyi's submission to the Inquiry expressly declined to comment on whether the Applicant purchases Xinyi's CFG from third parties.⁶³
- 8.10 The finding at [8.8(b)] above was based solely on the finding that '*[n]one of the goods imported by Viridian were exported by Xinyi.*'⁶⁴ 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.
- 8.11 While the findings at [8.8] above are contrary to the weight of the 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 if it had inquired into Xinyi as it ought to have done.
- 8.12 The ADC's findings in respect of Xinyi are unsatisfactory. The ADRP ought to investigate Xinyi and the Applicant's use of imported CFG, as Guardian has urged since the beginning of the Inquiry.
9. **Construction of s 269ZHF of the Act**
- 9.1 The ADC has misapplied or misconstrued s 269ZHF(2) of the Act in two important respects.
- 9.2 **First**, the ADC has recommended the continuation of measures in circumstances where it was only satisfied that it was possible that dumping and material injury would continue or recur if measures should expire. Section 269ZHF(2) requires that the Commissioner be satisfied that it is likely — meaning that there is more than a fifty per cent chance — that dumping and material injury would continue or recur.
- 9.3 The ADC has accepted that the word '*likely*' in s 269ZHF(2) of the Act means '*more than a 50 per cent chance*' in response to Guardian's submissions.⁶⁵
- 9.4 Despite this, the language of the SEF which caused Guardian to raise this issue remains in the Final Report. That language shows that the ADC was only ever satisfied, and could only have ever been satisfied, that it was possible that dumping and material injury would continue or recur if measures should expire. The specific features of the Final Report that show this are identified at [5.18]–[5.21] above.
- 9.5 **Secondly**, s 269ZHF(2) of the Act prevents the Commissioner from recommending that measures be continued unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the

⁶¹ Final Report at [5.6.1].

⁶² Final Report at [6.5.3].

⁶³ EPR041.

⁶⁴ Final Report at [5.6.1].

⁶⁵ Final Report at [8.6.3].

dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

- 9.6 Guardian contends that the qualifying words '*that the anti-dumping measure is intended to prevent*' preclude the Commissioner from recommending that measures be continued where the dumping or material injury is only likely to be of a kind in respect of which no anti-dumping measures could initially have been imposed. Where the volume of dumping or material injury is negligible, s 269TDA of the Act requires the Commissioner to terminate an initial anti-dumping investigation. Therefore, future negligible dumping or material injury cannot be dumping or material injury '*that the anti-dumping measure is intended to prevent*'.
- 9.7 Guardian put this construction to the ADC in detail.⁶⁶ Guardian considered that it was critical to ensure that this point was clarified since the ADC's own findings showed that Guardian had only dumped minute quantities of CFG.⁶⁷ All the evidence showed that the prospect of Guardian dumping larger quantities of CFG in Australia in the future was remote.
- 9.8 The ADC rejected Guardian's construction of s 269ZHF.⁶⁸ First, it considered that s 269TDA had no application, direct or indirect, in a continuation inquiry. Secondly, it followed that the Commissioner did not need to be satisfied before exercising his power under s 269ZHF that past dumping was negligible in its margin, volume or injuriousness.
- 9.9 In Guardian's submission the ADC's first conclusion is incorrect but the second is correct. Guardian does not, and has not, contended that the Commissioner could not recommend that measures be continued merely because its past dumping was negligible, without any reference to future dumping. Instead, its submission is that the Commissioner could not be satisfied that future dumping from Thailand would not be negligible and accordingly could not order that measures be continued.
- 9.10 The restrictive modifying clause in s 269ZHF, '*that the anti-dumping measure is intended to prevent*', has been called '*the final criterion*' upon which the Commissioner's power is contingent.⁶⁹
- 9.11 The ADC provided five main reasons in the Final Report for rejecting Guardian's construction of the final criterion:
- (a) **(References between provisions of Part XVB)** The ADC states in the Final Report that neither ss 269TAE nor 269 TDA refer to ss 269ZHF or 269ZHG, or vice versa.⁷⁰
 - (b) The final criterion necessarily incorporates considerations extraneous to Div 6A of the Act. There is no requirement for ss 269TDA or 269TAE to refer to s 269ZHF where s 269ZHF by its own terms incorporates ss 269TDA and 269TAE. Indeed, the Federal Court of Australia held in *Siam Polyethylene* at [49] that the final criterion imports the meaning of threatened material injury provided by s 269TAE(2B) of the Act.

⁶⁶ EPR014 at Part 6; EPR025; EPR027; EPR029 at Parts 1 and 2; EPR034 at Part 3.

⁶⁷ Final Report at [8.3.6]

⁶⁸ SEF at [8.4.4]; Final Report at [8.5].

⁶⁹ *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838 (*Siam Polyethylene*) at [33].

⁷⁰ At [8.6.1]-[8.6.2].

- (c) **(The Full Federal Court decision)** In its submissions, Guardian relied on the decision in *Siam Polyethylene* that the final criterion restricted the Commissioner's power in a continuation inquiry by reference to provisions of Part XVB of the Act concerning initial anti-dumping investigations.⁷¹
- (d) The ADC noted in its Final Report that '*in Minister of State for Home Affairs v Siam Polyethylene Co Ltd [2010] FCAFC 86, the Full Federal Court cast doubt over the single judge's analysis in Rares J's judgment in Siam (No 2) about the applicability of the provisions in section 269TAE to a continuation inquiry.*'⁷²
- (e) The Full Federal Court *dicta* alluded to in the Final Report are entirely in *obiter*. The Court emphasised at [108] that '*the resolution of such issues may be left for a future occasion*' and '*it is...unnecessary to express any more concluded view as to the relevance of s 269TAE when exercising the functions conferred by s 269ZHF or s 269ZHG.*' Rares J's judgment in *Siam Polyethylene* therefore represents the true state of the law concerning the final criterion. Only a superior court, and not the ADC, is competent to overrule the Court's construction.
- (f) In any event, even if all the *dicta* in the Full Federal Court's judgment are accepted, they amount only to a view that s 269ZHF may not attract the qualifications of s 269TAE in all continuation inquiries.⁷³
- (g) **(Nature of a continuation inquiry)** The ADC states in the Final Report that '*the Commissioner's statutory task in a continuation inquiry is different to that of an investigation*'⁷⁴ and Div 6A of Part XVB of the Act '*has a distinct statutory purpose*'.⁷⁵ The final criterion, however, clearly incorporates at least some of the Act's provisions outside Div 6A. Otherwise it would have no meaning at all.
- (h) **(International law)** The Final Report states at [8.6.2] that Guardian's construction of the final criterion is inconsistent with:
 - (i) the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*;⁷⁶ and
 - (ii) international jurisprudence. This is apparently a reference to a World Trade Organisation Panel decision cited by the Applicant.⁷⁷
- (i) Guardian made submissions giving cogent reasons why these considerations were substantially irrelevant to the question at hand.⁷⁸ Those reasons were not referred to or considered in the Final Report. Instead, the ADC essentially adopted the submissions of the Applicant.

⁷¹ EPR025; EPR029 at Part 1; EPR034 at Part 3.

⁷² At [8.6.1].

⁷³ *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86 at [106].

⁷⁴ At [8.6.1].

⁷⁵ At [8.6.2].

⁷⁶ EPR029 at Part 2.

⁷⁷ At [8.5.2]; see EPR028 and EPR038.

⁷⁸ EPR029 at Part 2.

- (j) **(Differences between Div 2 and Div 3 of Part XVB)** The ADC in its Final Report sought to confine the decision in *Siam Polyethylene* to the interaction between Divs 3 and 6A of Part XVB of the Act, whereas s 269TDA is in Div 2 of that Part.⁷⁹
 - (k) As Guardian has submitted, there is no logical reason to confine the reach of the final criterion to Div 3 of Part XVB.⁸⁰ Indeed, the reasoning in *Siam Polyethylene* applies *a fortiori* to s 269TDA in Div 2, the application of which, unlike s 269TAE in Div 3, is not expressly limited to ss 269TG and 269TJ, or any other section. The Final Report refers to, but does not engage with, this submission.
 - (l) It would be surprising if s 269ZHF(2) incorporated elements of Div 3 but not Div 2 of Part XVB since s 269TAE of the Act incorporates by express reference the provisions in s 269TDA concerning negligibility.
- 9.12 Any doubt concerning the correct construction of the final criterion is resolved by the Explanatory Memorandum for the 1998 amendments to the Act. It states that s 269ZHF *'prohibits the CEO from recommending the continuation of anti-dumping measures unless he or she is satisfied the factual grounds that must be present prior to the taking of anti-dumping measures, set out in Division 3, have been satisfied.'* Section 269TDA of the Act presents another factual precondition *'that must be present prior to the taking of anti-dumping measures'*. This explanatory memorandum belies at least the first and third reasons for rejecting Guardian's construction listed in [9.11] above.
- 9.13 Guardian accepts the view expressed in the Final Report that, on Rares J's construction of the final criterion, the Commissioner is still required to assess the future likelihood of dumping and material injury, and that *'[r]esults about past injury to the Australian industry are not necessarily determinative of future injury, and are not sufficient on their own to satisfy the Commissioner's consideration of future events.'*⁸¹
- 9.14 Due to the ADC's misinterpretation of s 269ZHF, the Final Report does not exclude the possibility that Thai CFG exporters would be likely to cause dumping and material injury if measures be allowed to expire, but that the dumping or the material injury would only be negligible. Indeed, it is probable, given the evidence before it, that the ADC was only ever satisfied that Guardian's future dumping or material injury would be negligible. Unfortunately, given the ADC's construction of the Act, the ADC believed that this sufficed to allow the Commissioner to recommend that measures be continued.
10. **Non-injurious price**
- 10.1 The ADC's use of a constructed unsuppressed selling price (**USP**) rather than a conventionally calculated USP to determine the NIP has resulted in an inflated NIP for the reasons given at EPR034 Part 6.
- 10.2 For the same reasons as given at [6.11] above, the ADC ought to have collected data from importers to enable it to calculate an accurate USP based on known FOB prices plus importers' costs.

⁷⁹ At [8.6.2].

⁸⁰ EPR 029 at [1.6].

⁸¹ At [8.6.1].

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10.3 The ADC's calculation of the NIP is also vitiated by errors in the assessment of material injury for the reasons given at Parts 5.21 and 7 above.

11. **Conclusion**

11.1 Guardian contends that the Parliamentary Secretary has erred in accepting the ADC's recommendation in making the decision. The ADRP is requested to review the recommendations in the Final Report and accepted by the Parliamentary Secretary in the decision and to revoke the decision.

Yours sincerely



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NON-CONFIDENTIAL**Email**

30 September 2016

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Canberra ACT 2601
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Dear Ms Scarano

Guardian Industries Corp Ltd (Guardian)
Addendum to application for review — Anti-Dumping Notice 2016/85

1. We refer to your e-mail of 30 September 2016 concerning the application for review made by Guardian on 23 September 2016 (**Application**). The purpose of this addendum is to clarify the responses given in the Application to questions 11 and 12 of the application form and confirm that none of the Application is confidential.
2. **Questions 11 and 12**
 - 2.1 In the above-captioned anti-dumping notice the Minister adopted the recommendations of the Anti-Dumping Commissioner in Report No 335, in particular, that "*[t]he Commissioner recommends that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures applicable to CFG exported from China, Indonesia and Thailand*" (**Reviewable Decision**).
 - 2.2 For the purposes of s 269ZZE(2)(c) of the *Customs Act 1901* (Cth) (**Act**) and question 11 of the application form, Guardian believes that the Minister should not have adopted the Anti-Dumping Commissioner's recommendation but instead should have allowed anti-dumping measures to expire in respect of clear float glass exported from Thailand. To this end the Minister should have published an anti-dumping notice, in conformity with s 269ZHG(1)(a) of the Act, declaring "*that the Minister has decided not to secure the continuation of the anti-dumping measures concerned in so far as they relate to Thailand*" (**Proposed Decision**).
 - 2.3 For the purposes of s 269ZZE(2)(e) of the Act and question 12 of the application form, the Proposed Decision differs materially from the Reviewable Decision because the Reviewable Decision has the effect of continuing the relevant anti-dumping measures in respect of Thai clear float glass exports while the Proposed Decision does not.
3. **Confidentiality**
 - 3.1 Guardian confirms that the Application does not contain any commercially sensitive information and may be treated as non-confidential in its entirety.

Yours sincerely



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