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PUBLIC RECORD

BY EMAIL

Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra, ACT 2601
AUSTRALIA

Attention: Director Operations, International Trade Measures Branch

Dear Joanne Reid

RE: RESUMED INVESTIGATION – CLEAR FLOAT GLASS
FROM THE PEOPLE'S REPUBLIC OF CHINA, INDONESIA & THAILAND

1. Further to our submission of 26 July 2011, we received advice on that day that because of the issues around the Electronic Public Record (which were mentioned in our submission of 26 July 2011) the publication date of the Statement of Essential Facts was to be changed from Friday 29 July to Monday 8 August 2011. The Jeld-Wen submission dated 1 July 2011 was obtained from the EPR on Monday 25 July 2011.

2. The Jeld-Wen submission is a lengthy document (30 pages). Our comments follow the main points in Jeld-Wen's submission as set out on page 3 of that submission. Subsequent to these main points other comments have been made on the contents of the Jeld-Wen submission. Comments have not been made on every statement in the Jeld-Wen submission and the absence of comment on a particular claim by Jeld-Wen should not be read as agreeing to that particular claim. Should Australian Customs and Border Protection need input from Viridian on any matters relating to the Jeld-Wen submission and its meeting with Jeld-Wen or on any matters relating to the resumed investigation, then Customs is encouraged to make contact with Viridian.

3. Some of the issues raised by Jeld-Wen in its submission have been addressed in our submission of 26 July on Jeld-Wen's covering letter.

4. For convenience we include the relevant bullet point (or extracts) of the main points commencing on page 3 of the Jeld-Wen submission followed by a comment.

5. The Jeld-Wen submission noted:

- Viridian's production capacity falls well short of the total market demand for float glass, which has to be filled by imports. Consequently, the availability of competitively-priced imports of glass provides a circuit-breaker on what otherwise would be an unconstrained local producer.

On page 16 of the Jeld-Wen submission it is noted that: "Viridian's two float lines combined could produce 200,000 tonnes annually based on an 'optimum' level of plant capacity utilisation". In fact the Application for Dumping Duties document (March 2010) referred to the production capacity of Dandenong being increased from 120,000 tonnes to 165,000 tonnes after the refurbishment and that the Ingleburn plant had a capacity of 105,000 tonnes. Applying Jeld-Wen's 90 percent adjustment gives a total production capacity of 243,000 tonnes. Viridian's assessment of the total market of 3-12mm clear float glass (1 July 2011 submission) is below this estimated capacity.

6. The Jeld-Wen submission notes:

- We assert that while CFG volumes declined in the period 2007 – 2010, the share of overall float glass volumes accounted for by Tint, Coated Float and Processed Glass expanded. Most of the reduction in volumes of CFG occurred in YEM2008 and YEM2009 – before the commencement dumping investigation period.(sic)

Table 2 of the Viridian 1 July submission shows that the total market for 3-12mm CFG grew by 3 percent in YEM2008, declined by 3 percent in 2009 and showed a further decline of around 25-30 percent in YEM2010. Tint and coated float volumes have not substituted for the reduction in CFG volumes.

7. The Jeld-Wen submission noted:

- The reduction in the share of CFG in the overall float glass market reflected predominantly the shift away from CFG to more energy-efficient float glass.

Production figures provided to Customs demonstrate that this statement is not correct.

8. The Jeld-Wen submission notes:

- The expansion by Independent Glass Processors of glass processing capacity also had the effect of increasing competition faced by Viridian Downstream, the processing and distribution division of Viridian.

At the same time, some of these independent glass processors became customers of Viridian upstream.

9. The Jeld-Wen submission notes:

- Viridian was a beneficiary of the structural change occurring in the building market occasioned by the growth in demand for more Energy Efficient Glass. Further, the growth in Viridian's market share of Energy Efficient Glass would have offset the reduction in the volume and share of CFG supplied to the building market. It is likely that Viridian's share of the total float glass market in YEM2010 would have been higher than in YEM2007.

The demand for energy efficient glass has been overstated. As explained to Customs at the meeting on 7 July the volumes of coated glass in YEM2010 were not substantial. Jeld-Wen's misplaced understanding of Viridian's business leads it to conclude that: "There is no evidence that dumped imports contributed to any reduction in Viridian's volumes of CFG". Viridian's evidence contradicts this point of view.

10. Jeld-Wen's submission notes:

- The imposition of dumping duties on Clear Float Glass can be expected to increase demand for lower-cost imported windows and Secondary Processed Glass upon which dumping duties do not apply.

If this is the case then Australian manufacturers of these products can approach the International Trade Measures Branch for advice in using the provisions of the Customs Act to address unfair trade.

Having considered the main points in Jeld-Wen's submissions we now examine other comments in the Jeld-Wen submission.

11. The Jeld-Wen submission notes:

> Significantly, Customs was instructed by Blackburn Croft & Co Ltd to disregard changes in demand for processed glass and Customs acceded to this request in their letter to Blackburn Croft & Co Ltd of 25 October 2010. (page 6)

This is not correct. During the original investigation Customs sought to obtain information on the sales of Viridian downstream.

In our letter of 20 October 2010 (supplied with our submission of 1 July 2011) it was pointed out to Customs that the information requested was extensive but could be supplied. It was suggested that Customs should also consider examining Viridian's unrelated customers. It was also pointed out that the CFG industry had similar distribution characteristics as identified in the aluminium extrusions investigation.

12. The Jeld-Wen submission notes on page 7:

> Based on ABS import data provided later in this submission, prices for CFG have continued to increase both during and since the investigation period and the likelihood of dumping is no less remote than it was in 2007 when measures were lifted.

Customs has been provided with evidence during the original investigation and the resumed investigation (see attachments to the TMRO application) that contradict this statement.

13. The Jeld-Wen submission notes on page 8:

> The CSR Financial Reports for YEM2008, YEM2009 and YEM2010 were mute on the issue of dumped imports of CFG, notwithstanding according to Blackburn Croft & Co Ltd the profits and profitability of Viridian had been affected materially by the dumping of CFG imports from China, Indonesia and Thailand.

Whether or not mention of dumping in a parent company's statutory reports is not determinative of the existence of dumping. The total Viridian business is not the subject of the dumping investigation but merely that part of the business producing 3-12mm clear float glass as per the description of like goods.

14. The Jeld-Wen submission makes a number of observations under the heading "Market Share and Internal Transfers" commencing on page 8. These observations are not accompanied by any analysis which contradicts the information available to Customs. On page 9 of the Jeld-Wen submission it is stated:

> It must be borne in mind that, over this period, there was a general market contraction, through lower construction demand. Viridian experienced its share of the market contraction. So, while Viridian may argue that sales reduced overall, this belies the true position – according to ABS statistics, imports are basically stable, and there must have been a significant increase in external sales, due to the proliferation of Independent Glass Processors. As recognized by Customs in its Termination Report, this increase in external sales was offset by a greater and more significant reduction in internal transfers.

Table 2 in the 1 July 2011 Viridian submission shows that in YEM2010 Viridian's external sales showed a small increase and that internal transfers reduced significantly. At the same time, imports of 3-12mm CFG from the three countries declined by around 20 percent (which was less than the reduction in total market volumes) in YEM2010 after growing by around 15 percent in YEM2008 and YEM2009. According to the calculations in Table 2 the volume market share of imports grew in YEM2010 as did the volume market share of Viridian. Growth in Viridian's external sales reflected a strategy to increase volumes and the movement of some customers from Viridian downstream to Viridian upstream as those customers began processing large volumes of 3-12mm clear float glass.

The reason for the reduction in internal transfers in YEM2010 does not relate to performance and issues in Viridian downstream (see Customer Survey resupplied 12 July 2011) and (as shown in Viridian's 1 July 2011 submission) cannot be fully attributable to "changes in operational arrangements within Viridian" (Termination Report page 40).

15. The Jeld-Wen submission notes on page 10:

> A significant amount of CFG produced by Viridian's upstream division was shielded from direct import competition because Viridian downstream is locked into sourcing its CFG from Viridian upstream.

This contradicts the finding in the original investigation and as explained in the Termination Report on page 37:

As the transfers of CFG from Viridian upstream to Viridian downstream are reasonably representative of market prices, the data related to internal transfers, including values and volumes, are reliable for the purposes of injury assessment to Viridian upstream.

Those "market prices" have contributed to the adverse price effects experienced by Viridian upstream and attributed to dumped imports.

16. On page 11 of the Jeld-Wen submission reference is again made to our letter of 20 October 2010 which was also mentioned on page 6 and has been commented on above. The Jeld-Wen submission extracts the following paragraph from Customs' letter of 25 October 2010:

> I understand that Viridian does not contend that CFG exported to Australia at dumped prices, which was further processed and/or incorporated into fabricated products, caused injury indirectly to Viridian upstream as a consequence of competition between Viridian downstream and its competitors.

Jeld-Wen's extracted paragraph does not contain the last sentence of the relevant paragraph in Customs' letter of 25 October which had the following sentence:

> I note also that Viridian has not presented evidence to Customs and Border Protection along these lines.

Our letter of 20 October 2010 pointed out to Customs the practical difficulty of assembling the information prior to the SEF and also whether or not the information would in fact assist Customs in its analysis. Viridian's understanding was that the material injury that could be addressed by a dumping remedy stopped at the sale of unprocessed glass by the industry producing like goods.

17. On page 11 of the Jeld-Wen submission it is noted:

> Instead, Viridian upstream sales of CFG to independent glass processors increased between YEM2009 and YEM2010 (see Blackburn Croft & Co Ltd letter to Customs dated 20 January 2011, para 7.1.7).

In a business characterised by high fixed costs it is essential that volumes are retained where possible. This explains the small increase in external sales in YEM2010 but as explained to Customs, it came at a cost. (See Table 7 showing revenue effects in the 1 July 2011 submission.)

18. Jeld-Wen's submission on page 14 notes:

> In contrast, Viridian downstream made across the board reductions in price in the first half of YEM2010, which were undertaken to hold onto its customer base of window and door fabricators, glass merchants and shower screen firms that were deserting Viridian downstream for independent glass processors due to costly delivery and service failures in the Viridian downstream business.

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Also, it should be noted that in YEM2010 Viridian made significant price reductions to its external and internal customers as a result of the competition from dumped imported clear float glass. The similarity of pricing for major customers was shown on page 37 of the Termination Report. In addition, at the meeting on July 7, 2011 Viridian explained to Customs the delicate balancing of prices to its major customers.

19. The Jeld-Wen submission notes on page 16:

> That sales of CFG from Viridian Upstream to Independent Glass Processors increased at the same time as imports of CFG were increasing suggests that the source of additional demand for CFG by Independent Glass Processors was not related to import prices. After all, if the local CFG market was being undercut by imports of CFG, it is difficult to explain why the demand by Independent Glass Processors for CFG from Viridian was expanding at the same time.

Table 2 of the 1 July 2011 submission (which was also in the TMRO application) shows that Viridian's external sales volume increased while imports from China, Indonesia and Thailand declined by around 20 percent in YEM2010. Although the total volume market for 3-12mm CFG recorded a bigger reduction. One of the main reasons for Viridian's external sales volumes increasing was meeting the prices of imported float glass to retain and secure new customers.

20. Jeld-Wen refers to the following paragraph extracted from the Termination Report:

> Viridian has increased its prices of CFG by up to 5% which corresponds to a period where the Australian dollar is still broadly regarded as being relatively strong. Viridian states that this price increase was primarily driven by the need to recover increased costs, particularly energy costs. This indicates that Viridian appears to have the ability to increase prices of CFG into the Australian market in the absence of anti-dumping measures (p.61).

This comment prompted the inclusion of the following in the TMRO Review Application:

15.2 In the Termination Report the heading in the SEF ("Will dumping and material injury continue?") was replaced by a heading "Has Dumping Threatened Material Injury to the Australian Industry?" Under the sub heading "Assessment" Customs and Border Protection reached the following conclusion in the Termination Report:

> Viridian provided evidence that export prices of CFG from China have reduced since the initiation of the investigation (see Viridian's submission in response to the SEF). Even so, as of 1 November 2010, Viridian has increased its prices of CFG by up to 5%, which corresponds to a period where the Australian dollar is still broadly regarded as being relatively strong. Viridian states that this price increase was primarily driven by the need to recover increased costs, particularly energy costs.
> This indicates that Viridian appears to have the ability to increase prices of CFG into the Australian market in the absence of anti-dumping measures.
>
> There is no evidence to suggest that there is a threat of material injury to the Australian industry that is foreseeable and imminent unless dumping measures were imposed.

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15.3 Prior to the SEF being published (5 November 2010), Viridian, after several months of negotiating with customers, put in place a price increase to cover increased costs. This was the first price increase put in place by Viridian following a series of price reductions which were dictated by the presence of dumped imports. Evidence of these price reductions in YEM 2009 and YEM 2010 was provided to Customs as part of the verification visit in May 2010 and in subsequent submissions. (Confidential Attachment F)

15.4 Customs and Border Protection has made a significant comment based on a price increase which occurred outside of the injury analysis period which ended in YEM 2010. Customs and Border Protection has not considered the price reductions in YEM 2009 and YEM 2010 and has not examined other injury factors at the time of the price increase in November 2010.

15.5 It is therefore incorrect for Customs and Border Protection to reach a general conclusion that "...Viridian appears to have the ability to increase prices of CFG into the Australian market in the absence of anti-dumping measures." If this was correct Viridian would have increased prices in YEM 2009 and YEM 2010 and not decreased prices.

The TMRO noted:

Review by the TMRO

108. I note the observation in *Pilkington Australia Ltd v Minister of State for Justice & Customs*[80] that the Act only *mandates* an investigation by reference to the investigation period – in this instance the year ending March 2009 (sic). It is within Customs and Border Protection's *discretion* to have regard to an injury analysis period preceding that period, as I have already noted above. Customs and Border Protection is not required to have regard to the increased imports occurring beyond March 2010.

109. However, I consider that if it was appropriate to have regard to the price increase as relevant, then it would have been likewise appropriate to have regard to whether there have been increased imports.

21. Presumably the TMRO meant to not only mention import volumes but also import prices. The conditions surrounding the price increase have not been examined by Customs.

22. Viridian must manage its business independent of the duration or outcome of a dumping investigation. In early July 2011 Viridian announced a major restructuring of its business (resulting in redundancies and plant rationalisation) as was explained to Customs at the meeting in Canberra on 7 July 2011.

23. On page 26 Jeld-Wen makes a comment about exchange rates. Jeld-Wen's comments were also noted in our submission dated 26 July 2011. Jeld-Wen notes that the price of imported CFG could have declined by nearly 30 percent over the period of investigation because of the movement in the AUD/USD rate.

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24. Using the historical average daily exchange rate published by the Reserve Bank of Australia the AUD was purchasing USD 0.8519 in YEM2010 compared with USD 0.7632 in YEM2007. This is an 11.6 percent strengthening of the AUD. Over the dumping investigation period (YEM2010) the AUD increased by 7.4 percent against the USD.

25. On page 10 of Jeld-Wen's submission reference was made to internal transfers not being subject to import competition, and yet on page 27 Jeld-Wen refers to an extract from the Termination Report:

> It is apparent that the methodology for determining transfer values ... are linked to import parity.

26. Presumably Jeld-Wen in its argument on page 27 has now agreed with Viridian's comments and Customs' findings that internal transfers are impacted by the price of dumped clear float glass. This has resulted in adverse revenue and volume effects on the industry producing 3-12mm clear float glass.

Yours sincerely

J J Croft