Australian Government
Australian Customs and
Border Protection Service

R E P O R T

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH
REPORT TO THE MINISTER No. 159C

INVESTIGATION INTO THE ALLEGED DUMPING OF CERTAIN CLEAR FLOAT GLASS

EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA, INDONESIA AND THAILAND

23 September 2011

CONTENTS

ABBREVIATIONS

ABS	Australian Bureau of Statistics
the Act	*Customs Act 1901*
ACDN	Australian Customs Dumping Notice
AGC Asia Pacific	AGC Flat Glass Asia Pacific Pte Ltd
CEO	Chief Executive Officer
CFG	Clear float glass
China	The People's Republic of China
CIF	Cost, insurance and freight
CSG	Guangzhou CSG Glass Co., Ltd
CTM	Cost to make
CTMS	Cost to make & sell
Customs and Border Protection	Australian Customs and Border Protection Service
DCS	Developing Country Status
the delegate	Delegate of the CEO of Customs and Border Protection
DMS	Don Mathieson & Staff Glass Pty Ltd
FIS	Free-into-store
FOB	Free On Board
the goods	the goods the subject of the application
Guardian	Guardian Industries Corp. Ltd
Investigation 159	Investigation No. 159 (original investigation)
Investigation 159C	Investigation No. 159C (resumed investigation)
JELD-WEN	JELD-WEN of Australia Pty Ltd
Landson Qingdao	Landson Alliance (Qingdao) Co. Ltd
the Minister	the Attorney-General
NIP	Non-injurious price
PT Asahimas	PT Asahimas Flat Glass Tbk
Rodamas	PT Rodamas Co. Ltd
SEF 159	Statement of Essential Facts No. 159
SEF159C	Statement of Essential Facts No. 159C
SG&A	Selling, general & administrative expenses
Tariff Act	*Customs Tariff Act 1995*
TCOs	Tariff Concession Orders
TER159A	Termination Report No. 159A
TER159B	Termination Report No. 159B
TMRO	Trade Measures Review Officer
USP	Unsuppressed selling price
VAT	Value added tax
Viridian	CSR Viridian Limited
Viridian downstream business	Viridian downstream processing and distribution business
Viridian upstream business	Viridian upstream manufacturing and processing business
YEM	Year-Ending-March
Xinyi	Xinyi Ultrathin (Donguan) Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

This resumed investigation is in response to:

- an investigation following an application by CSR Viridian Limited (Viridian) for publication of a dumping duty notice in relation to certain clear float glass (CFG) exported to Australia from the People's Republic of China (China), Indonesia and Thailand;
- a decision by a delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) to terminate that investigation (Investigation 159) in accordance with s.269TDA(14) of the *Customs Act 1901*;[1]
- an application by Viridian to the Trade Measures Review Officer (TMRO) for review of that termination decision; and
- a decision by the TMRO to revoke the termination decision.

This report sets out the recommendations to the Attorney-General (the Minister) in relation to the resumed investigation.

1.1 Recommendation

The delegate recommends to the Minister that he decide to publish a dumping duty notice in respect of certain clear float glass exported to Australia from China, Indonesia and Thailand.

If the Minister accepts this recommendation, to give effect to the decision, the Minister must sign the relevant notices and schedules, under subsection 269TG(2) and section 8 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act).

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to the goods the subject of the application.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection (the delegate).

1.2.2 Application

On 18 February 2010, Viridian lodged an application requesting the publication of a dumping duty notice in respect of certain CFG exported to Australia from China, Indonesia and Thailand. Additional information was received on 10 March 2010 and 26 March 2010. The delegate was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

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[1] A reference to a legislative Division, Section or Subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

1.2.3 Initiation

On 19 April 2010, notification of initiation of the investigation was published. The delegate was satisfied that the initiation requirements had been met. Consideration Report No. 159 refers.

1.2.4 Statement of Essential Facts

On 5 November 2010, Statement of Essential Facts No. 159 (SEF159) was placed on the public record. SEF159 proposed a recommendation to the Minister that a dumping duty notice be published in respect of CFG exported to Australia from China, Indonesia and Thailand.

Interested parties were invited to lodge submissions in response to SEF159 by 25 November 2010.

1.2.5 Termination of an investigation

The CEO must terminate the dumping investigation so far as it relates to an exporter to Australia of the goods the subject of the application when the CEO is satisfied[2] that:

- There has been no dumping by the exporter; or
- There has been dumping by the exporter but the dumping margin is less than 2%.

The CEO must also terminate an investigation so far as it relates to a country when the CEO is satisfied that:

- There has been dumping of the goods the subject of the application from that country of export; but
- The injury, if any, to an Australian industry is negligible.

If the CEO decides to terminate a dumping investigation, the CEO must give public notice of that decision[3].

On 2 December 2010, the delegate terminated the investigation so far as it related to Xinyi Ultrathin (Donguan) Co., Ltd. (Xinyi). The delegate was satisfied that there has been dumping, but the dumping margin for Xinyi, when expressed as a percentage of the weighted average export price, was less than 2%. Termination Report No. 159A (TER159A) refers.

On 21 December 2010, the delegate terminated the investigation in relation to all other exporters from China, Indonesia and Thailand (TER159B refers). The delegate was satisfied there has been dumping but the injury, if any, to the Australian industry that has been, or may be, caused by that dumping was negligible[4].

1.2.6 Review by the TMRO

An application for review of a reviewable decision may be lodged with the TMRO[5]. Reviewable decisions include decisions by the CEO to terminate an investigation[6]. An

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[2] Section 269TDA
[3] Subsection 269TDA(15)
[4] Subsection 269TDA(13)
[5] Section 269ZY
[6] Section 269TDA

application for review of a termination decision may be made by the applicant and must be made within 30 days after the applicant was notified of the reviewable decision[7]. If an application for review of a termination decision is not rejected, the TMRO must make a decision by either affirming or revoking the decision[8].

If TMRO revokes the decision the CEO must publish a statement of essential facts[9] as soon as possible. Following publication of the statement of essential facts the investigation of the application resumes.

Viridian made an application to the TMRO in respect of the CEO's decision to terminate the original investigation (TER159B). The TMRO revoked the decision to terminate. Customs and Border Protection therefore resumed the investigation and published a statement of essential facts (SEF159C) on 9 August 2011. The final report to the Minister is due on 23 September 2011.

1.3 Findings and conclusions

The following findings and conclusions have been made based on all available information.

1.3.1 The goods and like goods (Chapter 4)

CFG manufactured by Viridian are like goods to the goods the subject of the application.

1.3.2 Australian industry (Chapter 5)

The like goods were wholly manufactured in Australia by Viridian and there is an Australian industry consisting of Viridian.

1.3.3 Dumping (Chapter 7)

In relation to CFG exported to Australia from China, Indonesia and Thailand during the investigation period (other than from Xinyi):

- the goods were dumped with dumping margins between 3.3% and 26.4% ; and
- the volume of dumped goods is not negligible.

1.3.4 Injury (Chapter 8)

The Australian industry suffered injury during the investigation period in the form of:

- lost sales volume;
- price depression;
- price suppression;
- lost profit and profitability; and
- lost sales revenue.

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7 Section 269ZZP
8 Section 269ZZT
9 Under Section 269TDAA

1.3.5 Has dumping caused material injury? (Chapter 9)

The injury to the Australian industry during the investigation period in the form of lost sales volume was due to the overall decline in the Australian market, and not due to dumping.

The Australian industry suffered price depression and suppression, reduced profits and profitability as a result of price pressure from dumped exports from the countries under consideration.

Other factors, such as the global financial crisis and the subsequent decline in building activity, operational issues within Viridian, the Dandenong plant refurbishment, the Australian industry being a high cost producer, the value of the Australian dollar and a shift in demand to more energy efficient glass have contributed to the injury suffered by the Australian industry during the investigation period.

However, notwithstanding these other factors, Customs and Border Protection is satisfied that the injury to the Australian industry caused by dumping from the countries under consideration is material. It is reasonable to conclude that the Australian industry's prices were depressed and/or suppressed by at least the extent of the dumping margins found, and the financial impact of this injury alone is material to the Australian industry.

1.3.6 Will dumping and material injury continue? (Chapter 10)

There is no information to suggest that dumping from the countries under consideration will not continue. It is reasonable to conclude that this dumping would continue to cause injury to the Australian industry.

1.3.7 Non-injurious price (Chapter 11)

The non-injurious price (NIP) can be established by reference to the Australian industry's cost to make and sell during the investigation period.

2 BACKGROUND

2.1 Initiation – Investigation 159

On 18 February 2010, Viridian lodged an application[10] for the publication of a dumping duty notice in respect of certain CFG[11] exported to Australia from China, Indonesia and Thailand. Additional information in support of the application was received on 10 and 26 March 2010.

Following consideration of the application and additional information, Customs and Border Protection decided not to reject the application. Public notification of initiation of Investigation 159 was made on 19 April 2010 (refer to Australian Customs Dumping Notice (ACDN) 2010/14).

The initiation notice advised that the statement of essential facts for the investigation would be placed on the public record by 7 August 2010. However, the delegate was satisfied that the prescribed 110 days to place the statement of essential facts on the public record for the investigation was likely to be insufficient and requested an extension.

The Minister extended the deadline for the publication of the statement of essential facts to 5 November 2010[12]. ACDN No. 2010/26 was issued on 23 July 2010 notifying of the Minister's decision. Interested parties were also separately notified.

The investigation period[13] for the purpose of assessing any dumping margins[14] was set as 1 April 2009 to 31 March 2010. The injury analysis period, for the purpose of determining whether material injury has been caused to the Australian industry was from 1 April 2006.

2.2 Statement of essential facts 159

On 5 November 2010, Customs and Border Protection published SEF159.

Customs and Border Protection found that dumping had taken place with margins and at volumes that were not negligible (except for one Chinese exporter, Xinyi).

Customs and Border Protection also found that the Australian industry had suffered injury in the form of lost sales volume; lost market share; price suppression; lost profit and profitability; reduced return on investment; and reduced sales revenue.

The delegate indicated that the injury was caused by dumping and proposed to recommend to the Minister that a dumping duty notice be published in respect of CFG exported to Australia from China (except Xinyi), Indonesia and Thailand.

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[10] Section 269TB

[11] Clear float glass in nominal thicknesses of 3, 4, 5, 6, 8, 10 and 12mm classified to 7005.29.00 statistical codes 2, 3, 4, 5 and 6

[12] Section 269ZHI

[13] Section 269T(1)

[14] Subsection 269TC(4)(bf)

Several submissions from interested parties were received in response to SEF159. Viridian made submissions and provided supplementary information. These submissions were considered by Customs and Border Protection in preparing TER159B.

2.3 Termination Report 159A

Customs and Border Protection terminated part of the investigation so far as it related to Xinyi on 2 December 2010. The delegate was satisfied that there was dumping, but the dumping margin for Xinyi, when expressed as a percentage of the weighted average export price, was less than 2%[15]. TER159A refers.

2.4 Termination Report 159B

Customs and Border Protection published TER159B on 21 December 2010 setting out its findings and conclusions in relation to exports from China (except Xinyi), Indonesia and Thailand and reasons for the decision to terminate the investigation.

In TER159B, Customs and Border Protection found:

- In relation to CFG exported to Australia from China (except Xinyi), Indonesia and Thailand during the investigation period the dumping margins were between 3.3% and 26.4%;
- The volume of dumped goods was not negligible;
- The Australian industry has suffered injury in the form of lost sales volume, lost market share, price suppression, lost profit and profitability, reduced return on investment and reduced sales revenue;
- injury in the form of lost sales volume and lost market share was primarily related to its internal transfers from Viridian Upstream to Viridian Downstream which in turn could be explained by changes in operational arrangements within Viridian;
- the degree of price suppression and consequently lost profit and profitability, if any, to Viridian that was caused by dumping was negligible; and
- material injury was not threatened to the Australian industry because of the exportation of the goods into the Australian market.

The termination of investigation 159 was publicly notified in *The Australian* newspaper on 22 December 2010. TER159B was placed on Customs and Border Protection's website on 21 December 2010.

2.5 Appeal to the TMRO and revocation of termination

On 20 January 2011 Viridian lodged an application with the TMRO requesting a review of the termination decision made in TER159B. The TMRO subsequently accepted the application.

Following consideration of Viridian's application, the TMRO revoked the decision to terminate the investigation in relation to exports from China (except Xinyi), Indonesia and Thailand. The TMRO's decision was published in *The Australian* newspaper on

[15] S.269TDA(1)

22 March 2011. The report outlining the TMRO's reasons for the decision was made available on the Australian Attorney-General's web site.

The effect of the TMRO's revocation is a requirement for Customs and Border Protection to resume the investigation in relation to exports from China (except Xinyi), Indonesia and Thailand.

2.6 Statement of essential facts 159C

A statement of the facts on which the delegate proposed to base his recommendation to the Minister regarding the publication of a dumping duty notice following a resumption of investigation 159 was placed on the public record on 9 August 2011 (SEF159C). Interested parties were invited to make submissions in response to SEF159C within 20 days i.e. 29 August 2011.

Submissions were received from the following interested parties by the due date:

- JELD-WEN of Australia Pty Ltd (JELD-WEN);
- Guardian Industries Corp Ltd (represented by Norton Rose International); and
- Muliaglass.

Submissions were also received from Viridian (represented by Blackburn Croft & Co), JELD-WEN and the Government of Thailand after the due date.

Non-confidential versions of the submissions were placed on the public record. In formulating this report, regard was had to all of the submissions received.

2.7 Previous cases

There are currently no anti-dumping measures on CFG.

There have been a number of previous dumping investigations, reviews and continuation inquiries in relation to CFG, as detailed below:

- Trade Measures Report No. 124 of 2007 – Continuation inquiry into clear float glass exported from the People's Republic of China. Measures were not continued;
- Trade Measures Report No. 109 of 2006 – Review of variable factors for China;
- Trade Measures Report No. 106 of 2006 – Continuation inquiry into clear float glass exported from Indonesia. Measures were not continued;
- Trade Measures Report No. 60 of 2002 – Continuation inquiry into clear float glass exported from China, Philippines and Thailand. Measures were continued for China (except Luoyang Glass). Measures on certain exporters from Philippines and Thailand were not continued;
- Trade Measures Report No. 49 of 2002 – Review of variable factors for China and certain exporters in Indonesia, the Philippines and Thailand;
- Trade Measures Report No. 23 of 2000 – Review of variable factors for China and certain exporters in the Philippines and Thailand;
- Trade Measures Report No. 21 of 2000 – Investigation into clear float glass exported from Indonesia. Measures imposed in June 2001 on one thickness of clear float glass exported by one exporter;

- Trade Measures Report No. 6 of 1999 – Review of variable factors for China;
- ADA 191 of 1998 – Measures on exports from Thailand, other than Bangkok Float Glass not continued;
- Customs review finding 98/07 of 1998 – Review of variable factors for China;
- ADA 186 of 1998 – Investigation into exports from Indonesia by PT Muliaglass terminated;
- ADA .177 of 1997 – Existing measures continued until November 2002 for China, a certain exporter from the Philippines and Bangkok Float Glass of Thailand. Measures for Belgium, Germany and Indonesia not continued;
- Customs review finding 97/06 of 1997 – Review of variable factors for China;
- Customs review finding 96/12 of 1996 – Review of variable factors for PT Asahimas of Indonesia;
- Customs review finding 95/03 of 1995 – Review of variable factors and normal values for Belgium, China, Germany, Indonesia, the Philippines and Thailand;
- Customs 94/03, ADA 128 and 134 of 1994 – Measures imposed on exports from Singapore with country of origin China, Indonesia, Malaysia, the Philippines or Thailand. Negative finding for exports by PT Muliaglass from Indonesia;
- Customs 93/08, ADA 109 of 1993 – Measures for Thailand extended to cover an additional exporter;
- Customs preliminary finding 93/06, ADA 104 of 1993 – Negative findings on exports from Korea and Malaysia; and
- Customs preliminary finding 92/08, ADA 78 and 81 of 1992 – Measures imposed against all exporters from China and certain exporters from Belgium, Germany, Indonesia, the Philippines and Thailand. Negative finding for exports from France and Malaysia.

3 THE TMRO'S FINDINGS AND APPROACH TO THE RESUMED INVESTIGATION

3.1 TMRO's findings

The TMRO published a report outlining the reasons for his decision to revoke the termination decision made in TER159B.

The TMRO asked Customs and Border Protection to give particular attention to the following areas:

> *Para 123(a). in relation to market share: the portion of any decline in market size/volume that was due to diversion to internal processing by Viridian Upstream (i.e. consumption of CFG without being recorded as an internal transfer, and removal from the data set on internal transfers), whether any decline in internal transfers left over might be attributable to dumping or any other factors, and if so whether that amounted to a material injury;*
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> *Para 123(b). in relation to price depression: whether there was price depression and if so whether this constitutes material injury that might be attributable to dumping or any other factors;*
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> *Para 123(c). in relation to price suppression: the proportion of undercutting due to competitive prices or any other factors and the proportion of the price suppression that might be attributable to dumping and if any such part of the injury is material; and*
>
> *Para 123(d). in relation to the attempt to adjust for the Dandenong plant refurbishment, the analysis should also take into account changes to the industry that might affect volumes and prices, the impact of other factors, and whether any part of the remaining injury was material.*

3.2 Approach to the resumed investigation

The TMRO referred only certain matters for reconsideration during the resumed investigation. However, as this is a resumed investigation and not a reinvestigation, the resumed investigation is not limited only to reassessing those matters referred back by the TMRO. The resumed investigation is able to re-examine all aspects of the original investigation's findings insofar as they relate to the decision to terminate the investigation.

Submissions from interested parties were received during the resumed investigation that address not only those matters identified by the TMRO to warrant further consideration, but also other approaches and findings made during Investigation 159 itself.

A complete listing of these submissions considered within the resumed investigation can be found at **Appendix A** to this report.

Consequently, the approach adopted in this resumed investigation was to address those matters referred back to Customs and Border Protection by the TMRO for reconsideration and matters raised in submissions, information gathered, and determinations made during Investigation 159 as well as during the resumed investigation.

4 THE GOODS AND LIKE GOODS

4.1 Findings

CFG manufactured by the Australian industry is a like good to CFG exported to Australia from China, Indonesia and Thailand.

4.2 The goods

The goods the subject of the application are CFG in nominal thicknesses of 3 to 12 millimetres (mm).

The acceptable tolerances to these thicknesses are shown below.

Table 1

Nominal thicknesses (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 goods the subject of the application fall under tariff classification 7005.29.00 and have the following characteristics:

- transparent;
- flat; and
- rectangle or square in shape.

Glass with the following characteristics is not the goods the subject of the application:

- coating, colour, tint or opaqueness;
- absorbent, reflective or non-reflective layer;
- wired;
- bent, edge-worked, engraved, drilled, enamelled or otherwise worked;
- framed or fitted with other materials;
- toughened (tempered) or laminated;
- acid etched; or
- low iron.

CFG sold in Australia (both Australian made and imported) is of international quality – sometimes referred to as western quality - which is characterised by the amount of distortions and imperfections in the glass. International quality CFG can also be separated into different grades. Some customers and end-users require a higher quality of glass beyond the 'normal' international quality, such as CFG for laminating.

4.2.1 Tariff classification

The tariff classification of the goods the subject of the application is 7005.29.00, statistical codes 2, 3, 4, 5 and 6, in Schedule 3 of the *Customs Tariff Act 1995*. The general rate of duty is 5 percent and the Developing Country Status (DCS) is 4 percent. China and Indonesia are subject to the DCS rate and imports from Thailand are free of duty.

4.2.2 Tariff Concession Orders

There are three Tariff Concession Orders (TCOs) linked to tariff classification 7005.29.00 as detailed below.

Table 2

TCO	Description
TC 9209312	Float Glass, clear, iron content equal to or less than 0.02 per cent in sheets, non-wired, without an absorbent or reflecting layer, not being cast, rolled, drawn or blown glass.
TC 9322713	Glass, pyrolitically coated with transparent electrically conducting layer
TC 98533852	Glass, having a thickness of not less than 13.5mm

Glass subject to the TCOs above are not the goods as glass applicable to TC 9209312 is a low iron glass, TC 9322713 has a coating, and TC 98533852 has a nominal thickness of more than 12 mm.

4.3 Like goods

Viridian is the sole manufacturer of CFG in Australia at it's Dandenong and Ingleburn plants.

CFG manufactured by Viridian closely resembles the goods exported to Australia from China, Indonesia and Thailand for the reasons set out below.

4.3.1 Physical likeness

CFG produced by Viridian has a physical likeness to the goods exported to Australia from China, Indonesia and Thailand.

Viridian manufactures CFG in thicknesses of between 3 to 12 mm.

The quality of CFG produced by Viridian is 'international quality', which is the same quality as the goods exported to Australia from China, Indonesia and Thailand.

4.3.2 Commercial likeness

CFG produced by Viridian has a commercial likeness to the goods exported to Australia from China, Indonesia and Thailand.

Viridian competes directly with overseas manufacturers of the goods and its customers are able to easily switch suppliers of CFG.

The CFG market is price sensitive and CFG is a homogenous product.

4.3.3 Functional likeness

CFG produced by Viridian has a functional likeness to the goods exported to Australia from China, Indonesia and Thailand.

Both the CFG manufactured by Viridian and the goods exported to Australia from China, Indonesia and Thailand can be further processed into laminated, double glazed, soft coated, or toughened, and can be used for the same end-uses, such as for windows or door panels.

4.3.4 Production likeness

CFG produced by Viridian has a production likeness to the goods exported to Australia from China, Indonesia and Thailand.

The manufacture of CFG uses a float process, which was first invented by Pilkington in 1952. The float process of manufacturing CFG that Viridian uses is essentially the same as the production process of the goods exported from China, Indonesia and Thailand.

5 AUSTRALIAN INDUSTRY

5.1 Findings

The like goods were wholly manufactured in Australia by Viridian and there is an Australian industry consisting of Viridian.

5.2 Introduction

For goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia[16]. In order for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia[17].

5.3 Manufacturing process

Viridian's manufacturing process of CFG is as follows:

- raw materials of CFG (sand, dolomite, limestone, salt cake, soda ash and carbon) are delivered to Viridian's facility, and are stored in silos for feeding into the production process;
- the raw materials are blended in specific proportions and mixed with 'cullet' (crushed glass made from scraps) into the raw material mixture (known as 'batches', which generally consist of 30% cullet and 70% of the combined other raw materials);
- the batch is then transported on a conveyor belt to the float line;
- the batch is fed into a furnace already containing molten glass, which is heated at 1,500ºC;
- the batch melts and is incorporated into the molten glass;
- the molten glass mixture from the furnace then gradually flows onto a bath of molten tin, forming a continuous ribbon;
- the ribbon floats along the molten tin bath, and the temperature of the molten glass is reduced to 600ºC where it begins to solidify;
- the glass ribbon is lifted off the tin onto rollers and gripped at the side edges by additional rollers;
- the rollers convey the glass along the production line, with the speed of the rollers controlled to create various desired thicknesses of glass;
- the glass is then released from the edge rollers and undertakes an annealing process where the ribbon is gradually cooled in a lehr to prevent stresses in the glass;
- the glass is then inspected by a computerised system to detect faults before the edges (which are perforated from where the edge rollers gripped the glass) are cut off and the glass cut to the desired size; and

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[16] Subsection 269T(2)
[17] Subsection 269T(3)

- the finished glass is then automatically lifted off the line and stacked onto frames for packing and dispatch.

This constitutes at least one substantial process in the manufacture of CFG being carried out in Australia.

6 AUSTRALIAN MARKET

6.1 Findings

The Australian CFG market is closely related to the Australian further processed glass market. The Viridian upstream business manufactures CFG for further processing by the Viridian upstream business, transfer to the Viridian downstream business for further processing or sale to external customers for further processing.

CFG glass is also imported by the larger processors of CFG and end-users.

The Australian CFG market therefore consists of CFG manufactured by the Viridian upstream business and imported CFG.

6.2 Structure of the Australian industry

Viridian operates an upstream manufacturing and processing business (Viridian upstream business) and a downstream processing and distribution business (Viridian downstream business).

The Viridian upstream business has two float glass manufacturing facilities: Dandenong (Victoria) and Ingleburn (New South Wales) that produce CFG and tinted glass. Viridian's upstream business manufactures CFG in bulk sizes for transfer to Viridian upstream's internal processing business, sale to external customers (processors/fabricators) and internal transfer to Viridian's downstream business.

The Viridian upstream processing business produces primary products from CFG such as laminated glass (at the Clayton facility, Dandenong and Ingleburn), mirror and toughened glass (at Dandenong and Ingleburn). Viridian upstream also produces coated glass, which is not manufactured from CFG.

The Viridian downstream business operates over 20 processing and distribution sites in all states of Australia converting bulk glass into finished products. Output from the Viridian downstream business is primarily sold to the market through glass product distributors and resellers.

6.3 Market structure

The Viridian upstream business supplies CFG to the Viridian downstream business and to external glass processors/fabricators. Glass processors/fabricators can also be supplied by exporters of CFG. Therefore, Viridian Upstream faces direct competition with exporters in supplying CFG to glass processors/fabricators.

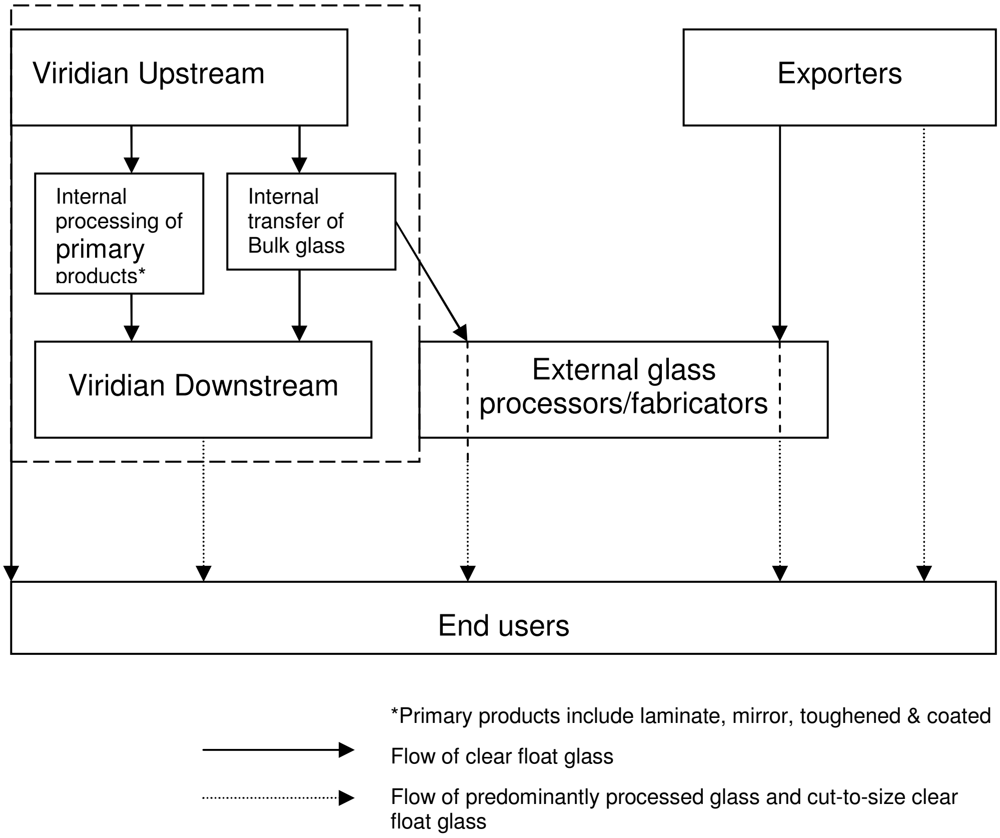
External customers of the Viridian upstream business compete with the Viridian downstream business in the market.

Some of the larger end-users are supplied directly by Viridian's upstream business and exporters.

The majority of CFG produced by the Australian industry and imported is further processed in some way (e.g. laminated, toughened) before end use.

The following diagram illustrates the market structure of CFG in Australia.

Diagram 1



6.4 Market condition

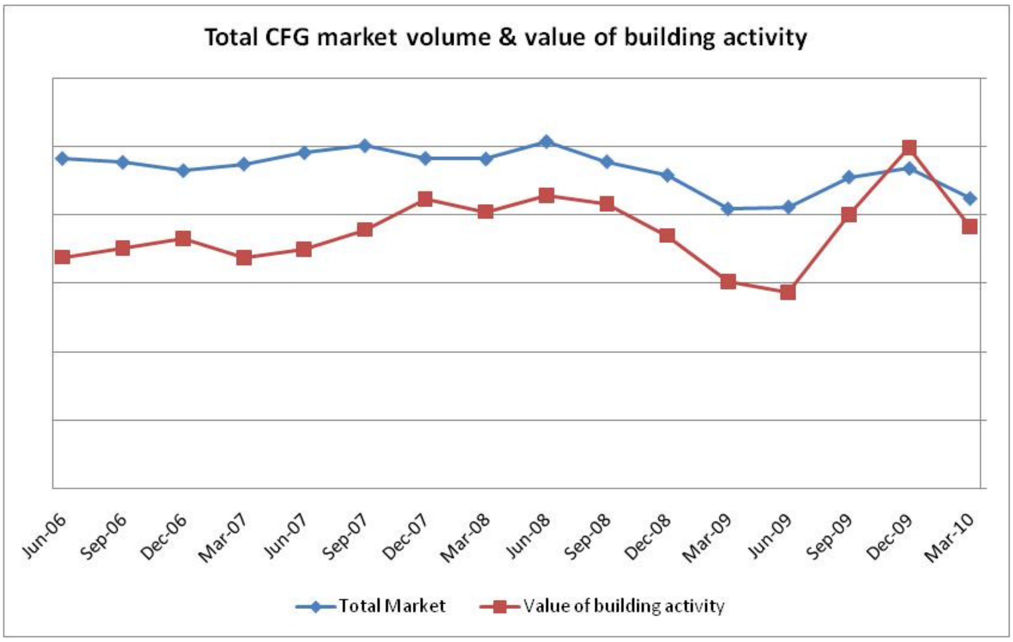
It is generally agreed among industry members that a key driver for demand for CFG is residential and commercial building construction. Customs and Border Protection, in SEF159C, used ABS Cat No. 8731.0 'Building Approvals' Table 06 'the number of dwelling units approved' series A422070J as a measure of residential and commercial building construction.

In response to SEF159C, JELD-WEN claimed that the number of building starts is the number of dwelling commencements and does not include commercial building activity.

Customs and Border Protection contacted the Australian Bureau of Statistics (ABS) and was advised the best measure of residential and commercial building activity was ABS Cat No. 8752.0 'Building Activity' Table 40 'Value of building work by sector' series A2059098W 'Completion value Commenced during quarter; Total (Sector of ownership); Total building'.

The following diagram shows the quarterly total CFG market volume in square metres over the injury analysis period against the value of building activity (residential and commercial) in Australia (**confidential attachment 1** refers).

Diagram 2



Note:

1. the value of building activity is shown against a secondary axis to better illustrate trends.
2. The CFG market volume includes Viridian's internal processing volume (section 8.3.2 refers).

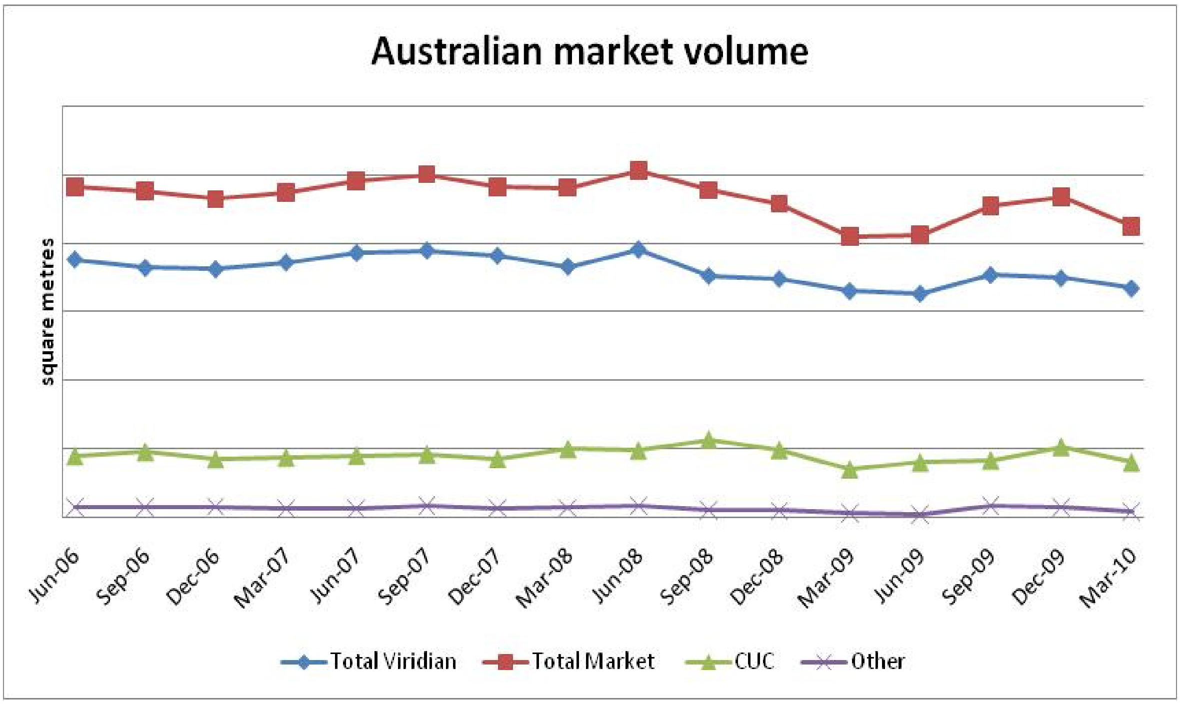
Diagram 2, shows that:

- the movements in the Australian CFG market correspond approximately to movements in the value of building activity (except for the spike in the value of building activity in the last two quarters of 2009 and into 2010);
- the market condition of the residential and commercial building construction industry was relatively stable (as was the CFG market) during the first half of the injury analysis period, building activity weakened during 2008 before steadily recovering by the end of the 2009 and into early 2010; and
- The CFG market also weakened in the second half of 2008 but did not recover at the same rate as the residential and commercial building construction industry.

6.5 Market size

The following diagram shows the quarterly total CFG market volume, Viridian's total volume (section 8.3.2 refers) and the volume of imports from the countries under consideration and other countries in square metres during the injury analysis period (**confidential attachment 1** refers).

Diagram 3



Note:

(1) Viridian's total volume includes internal transfer and internal processing volumes

(2) Import data excludes imports by Viridian which has been included in Viridian's volume

Diagram 3 shows that:

- the Australian CFG market declined from the second half of 2008 which corresponds to the decline in the residential and commercial building construction industry (Diagram 2 refers);
- there was a lagged response by imports from countries under consideration to the decline in residential and commercial building construction industry i.e. imports from countries under consideration did not begin declining until the December 2008 quarter;
- import volumes from countries under consideration increased in the December 2009 quarter with a recovering market, although the recovery appears to be temporary given the decline in the March 2010 quarter; and
- there was only a small volume of imports from other countries throughout the injury analysis period i.e. during the investigation period, imports of CFG from the countries under consideration represented approximately 90% of all CFG imports into Australia.

6.6 Change in AS1288

On 16 January 2006, Standards Australia released AS1288-2006 (Australian Standard Glass in buildings – Selection and installation) to supersede AS1288-2004. The new standards, among others, resulted in the use of 3 mm glass being limited to a maximum area of 0.85m^2. The building industry was given 12 months to comply with this change.

The change in AS1288 resulted in lower demand for 3mm CFG in the market as the construction industry moved away from 3mm CFG to other thicknesses or types of glass. One of Viridian's major customers, however, continued to purchase significant quantities of 3 mm CFG throughout the injury analysis period (including the investigation period).

6.7 Submissions

In response to SEF159C, Viridian referred to discrepancies between ABS data, which it claimed it had relied on in making its application to Customs and Border Protection and to the TMRO, and the import data used by Customs and Border Protection in its analysis of the Australian market.

Customs and Border Protection understands that there are generally differences in ABS data and the data stored in the Customs and Border Protection import database despite the ABS obtaining its import data from Customs and Border Protection. Customs and Border Protection understands the ABS runs the data through certain routines in preparing it for publication.

In the case of CFG, Customs and Border Protection identified a range of errors in the data from Customs and Border Protection's import database. (The errors were generally the result of Customs broker input error related to incorrect tariff classification). Customs and Border Protection removed these errors as part of a data cleansing process before the data was analysed. These errors were not removed from the ABS data therefore there are differences in the ABS data and the data used by Customs and Border Protection in its analysis of the Australian CFG market.

7 DUMPING INVESTIGATION

7.1 Findings

In relation to CFG exported to Australia from China (except Xinyi), Indonesia and Thailand during the investigation period:

- the dumping margins for China range from 11.4% to 26.4% ;
- the dumping margins for Indonesia range from 3.3% to 22.4%;
- the dumping margins for Thailand range from 3.5% to 11.8%;
- the volume of dumped goods is not negligible; and
- the volume of imported CFG from the countries under consideration at dumped prices represents around 80% of the total import volume.

7.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The dumping margin[18] is the difference between the export price[19] and normal value[20].

The investigation period, for the purpose of assessing any dumping margins, was set as 1 April 2009 to 31 March 2010.

The investigation must be terminated so far as it relates to a particular exporter if the dumping margin is less than 2%[21].

The TMRO did not comment on the approach to determining dumping margins adopted in Termination Report 159B.

In response to SEF159C, JELD-WEN submits that *'Customs ought to have taken the opportunity to revisit the estimates of dumping margins…published in the Termination Report 159'.* JELD-WEN claimed that it had consistently taken issue with the methodology employed by Customs and Border Protection to estimate dumping margins and, in particular, the reliability of the desk top audit.

During the resumed investigation Customs and Border Protection did not receive any new substantive information relating to its calculation of dumping margins. Therefore Customs and Border Protection did not review the dumping margins calculated in TER159B during the resumed investigation.

TER159B describes the investigation process and findings made in relation to CFG exported to Australia from China (except by Xinyi), Indonesia and Thailand. These findings are repeated below.

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18 Section 269TACB
19 Section 269TAB
20 Section 269TAC
21 Subsection 269TDA(1)

7.3 Chinese Exporters

Exporter questionnaires were sent to all suppliers of CFG from China that were identified in the Customs and Border Protection import database as having supplied CFG to Australia during the investigation period.

Completed exporter questionnaires were received from Xinyi, Guangzhou CSG Glass Co., Ltd (CSG), and Landson Alliance (Qingdao) Co. Ltd (Landson Qingdao). A verification visit was conducted at Xinyi and a desk audit was conducted of the data supplied by CSG. Landson Qingdao decided to limit its involvement in the investigation and its exporter questionnaire was not verified.

Non-confidential versions of the completed exporter questionnaire responses, Xinyi's verification visit report and the CSG desk audit report were made available on the public record.

7.3.1 Xinyi

The dumping margin established for CFG exported to Australia from China by Xinyi during the investigation period, when expressed as a percentage of the weighted average export price, was less than 2%. Therefore, the investigation so far as it related to Xinyi was terminated[22].

7.3.2 CSG

Export prices for CSG were calculated under s269TAB(1)(a), being the price paid or payable by the importer less, as appropriate, expenses that represented a charge for any matter arising after exportation.

Normal values for CSG were established under subsection 269TAC(1) using sales between CSG and its domestic customers. The normal value incorporated adjustments[23] for inland transport, handling costs, quality and the value-added-tax (VAT) to ensure it was fairly comparable to export prices.

A dumping margin for the investigation period for CSG was calculated by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(a).

Due regard was had to the appropriate model and period matching. The product dumping margin indicates that CFG exported by CSG from China to Australia during the investigation period was exported at dumped prices, with a dumping margin of 11.4%.

7.3.3 Other exporters from China

The volume of CFG exported to Australia from Chinese exporters that did not cooperate in this investigation represented approximately 90% of the total volume of CFG exported to Australia from China during the investigation period.

The export price for other Chinese exporters was determined under subsection 269TAB(3), having regard to all relevant information being the verified weighted

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[22] Subsection 269TDA(1)
[23] Subsection 269TAC(8)

average export price of the goods exported to Australia from China by CSG over the investigation period.

The normal values for other Chinese exporters was determined under subsection 269TAC(6), having regard to all relevant information being the verified weighted average normal value in China for CSG over the investigation period for like goods without any favourable adjustments.

A dumping margin for the investigation period for other Chinese exporters was calculated by comparing the weighted average export price of CSG for the investigation period, with the weighted average normal value in China for CSG over the investigation period for like goods without any favourable adjustments in accordance with subsection 269TACB(2)(a).

The product dumping margin indicates that CFG exported by other exporters from China to Australia during the investigation period was exported at dumped prices, with a dumping margin of 26.4%.

7.4 Indonesian Exporters

Exporter questionnaires were sent to all suppliers of CFG from Indonesia that were identified in the Customs and Border Protection import database as having supplied CFG to Australia during the investigation period.

Completed exporter questionnaires were received from PT Asahimas Flat Glass Tbk (PT Asahimas) and PT Muliaglass. Verification visits were conducted at PT Asahimas and PT Muliaglass. Non-confidential versions of the completed exporter questionnaire responses and verification visit reports are available on the public record.

7.4.1 Pt Asahimas Flat Glass Tbk

Pt Asahimas manufactured and exported CFG to Australia during the investigation period through AGC Flat Glass Asia Pacific Pte Ltd (AGC Asia Pacific). As the goods were found to have been not purchased by the importer from the exporter, export prices were established under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation, being the price paid or payable by the importer to AGC Asia Pacific less, as appropriate, expenses that represent a charge for any matter arising after exportation.

PT Asahimas sold like goods on the domestic market during the investigation period through a related company, PT Rodamas Co. Ltd (Rodamas). The normal value was established under subsection 269TAC(1) using sales between Rodamas and its customers, except for 4mm CFG in the June 2009 quarter where the normal value was constructed under section 269TAC(2)(c) using the sum of its cost of production and an amount for the selling, general & administration expenses (SG&A) and profit.

The normal value incorporated adjustments[24] for domestic selling expenses, inland transport, fumigation and credit terms to ensure it was fairly comparable to export prices.

A dumping margin for the investigation period was calculated by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(a).

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[24] Subsection 269TAC(8)

Due regard was had to the appropriate model and period matching. The product dumping margin indicates that CFG exported by PT Asahimas from Indonesia to Australia during the investigation period was exported at dumped prices, with a dumping margin of 3.3%.

7.4.2 PT Muliaglass

Export prices for PT Muliaglass were calculated under s269TAB(1)(a), being the price paid or payable by the importer less, as appropriate, expenses that represented a charge for any matter arising after exportation.

Normal values for PT Muliaglass were established under subsection 269TAC(1) using sales between PT Muliaglass and its domestic customers. The normal value incorporated adjustments[25] for credit terms, packaging, inland freight, free-on-board (FOB) charges, commission and Muliaglass Australia Representative Office expenses.

A dumping margin for the investigation period was calculated by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(a).

Due regard was had to the appropriate model and period matching. The product dumping margin indicates that CFG exported by PT Muliaglass from Indonesia to Australia during the investigation period was exported at dumped prices, with a dumping margin of 8.1%.

7.4.3 Other exporters from Indonesia

The volume of CFG exported to Australia from Indonesian exporters that did not cooperate in this investigation represented less than 5% of the total volume of CFG exported to Australia from Indonesia during the investigation period.

The export price for other exporters from Indonesia was determined under subsection 269TAB(3), having regard to all relevant information being the verified weighted average export price of the goods exported to Australia from Indonesia by PT Muliaglass over the investigation period.

Normal values for other exporters from Indonesia were determined under subsection 269TAC(6), having regard to all relevant information being the verified weighted average normal value in Indonesia for PT Muliaglass over the investigation period for like goods without any favourable adjustments.

A dumping margin for the investigation period has been calculated by comparing the weighted average export price of PT Muliaglass for the investigation period, with the corresponding normal value of PT Muliaglass (excluding favourable adjustments) in accordance with subsection 269TACB(2)(a).

The product dumping margin indicates that CFG exported by other exporters from Indonesia to Australia during the investigation period was exported at dumped prices, with a dumping margin of 22.4%.

[25] Subsection 269TAC(8)

7.5 Thai Exporters

Exporter questionnaires were sent to all suppliers of CFG from Thailand that were identified in the Customs and Border Protection import database as having supplied CFG to Australia during the investigation period.

A completed exporter questionnaire was received from Guardian. A verification visit was conducted at Guardian. The non-confidential versions of the completed exporter questionnaire response and verification visit report are available on the public record.

7.5.1 Guardian Industries Corp. Ltd

Export prices for Guardian were calculated under s269TAB(1)(a), being the price paid or payable by the importer less, as appropriate, expenses that represent a charge for any matter arising after exportation.

Normal values for Guardian were established under subsection 269TAC(1) using sales between Guardian and its domestic customers. The normal values incorporated adjustments[26] for credit terms, packaging, inland freight, marketing expenses, export expenses, export commission and export tax credits to ensure it was fairly comparable to export prices.

A dumping margin for the investigation period was calculated by comparing the quarterly weighted average export prices with the corresponding quarterly weighted average normal values in accordance with subsection 269TACB(2)(a).

Due regard was had to the appropriate model and period matching. The product dumping margin indicates that CFG exported by Guardian from Thailand to Australia during the investigation period was exported at dumped prices, with a dumping margin of 3.5%.

Guardian requested a meeting following the resumption of the investigation. Guardian claimed, among other things, that the dumping margin of 3.5% found by Customs and Border Protection was close to de minimis and was only found as a result of Customs and Border Protection including an export commission in its calculation of the dumping margin.

As the TMRO did not comment on the methodologies used by Customs and Border Protection to calculate dumping margins in Termination Report 159B, and no new substantive information was received on this issue in the resumed investigation, the methodology used to calculate the dumping margin for Guardian has not been re-examined in the resumed investigation.

7.5.2 Other Exporters from Thailand

The volume of CFG exported to Australia from Thai exporters that did not cooperate in this investigation represents a small proportion of the total volume of CFG exported to Australia from Thailand during the investigation period.

Export prices for other exporters from Thailand have been determined under subsection 269TAB(3), having regard to all relevant information. The export price for other exporters of CFG from Thailand has been calculated by reference to the verified

[26] Subsection 269TAC(8)

weighted average export price of the goods exported to Australia from Thailand by Guardian over the investigation period.

Normal values for other exporters from Thailand have been determined under subsection 269TAC(6), having regard to all relevant information being the verified weighted average normal value in Thailand for Guardian over the investigation period for like goods without any favourable adjustments.

A dumping margin for the investigation period has been calculated by comparing the weighted average export price of Guardian for the investigation period, with the corresponding normal value of Guardian in accordance with subsection 269TACB(2)(a).

The product dumping margin indicates that CFG exported by other exporters from Thailand to Australia during the investigation period was exported at dumped prices, with a dumping margin of 11.8%.

7.6 Summary

In summary, the dumping margins for exports of CFG from China (except by Xinyi), Indonesia and Thailand are as follows:

Table 3

	Dumping Margin (% of Export Price)
China	CSG: 11.4% Other exporters: 26.4%
Indonesia	PT Asahimas: 3.3% PT Muliaglass: 8.1% Other exporters: 22.4%
Thailand	Guardian: 3.5% Other exporters: 11.8%

The volume of CFG exported to Australia from China, Indonesia and Thailand at dumped prices during the investigation period was each greater than 3% of the total Australian CFG import volume.

The dumping margin calculations are at **confidential attachment 6**.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Findings

The Australian industry suffered injury in the investigation period in the form of:

- lost sales volume;
- price depression;
- price suppression;
- lost sales revenue; and
- lost profit and profitability.

8.2 Introduction

The period from 1 April 2006 has been examined for the purposes of examining trends in the economic condition of the Australian industry (the injury analysis period). The period from 1 April 2009 to 30 March 2010 has been examined for the purpose of whether dumping has caused material injury to the Australian industry (the investigation period).

8.3 General approach to injury analysis

8.3.1 Metric tonnes versus square metres

Customs and Border Protection found in TER159B that when analysing individual thicknesses of CFG, either in terms of volume or price, the use of metric tonnes or square metres gives identical results.

The ability to use metric tonnes or square metres is limited by the availability of data. The Customs and Border Protection import database only records import shipments of CFG in square metres.

Statistical codes, however, allow some separation of thicknesses as shown in the table below.

Table 4

Statistical Code	Thickness
2	3mm
3	4mm
4	5 & 6mm
5	8 & 10mm
6	12mm+

Table 2 shows that the thickness of CFG in specific shipments can be readily identified for 3 and 4mm by the use of statistical codes 2 and 3 respectively. However statistical code 4 includes both 5 and 6mm CFG. Statistical code 5 includes both 8 and 10mm and statistical code 6 includes 12mm and over.

Volume analysis has been conducted on a per square metres across all thicknesses (i.e. 3 to 12mm). As calculating a weighted average price per square metre across all thicknesses is not meaningful, price analysis has been conducted on a per square metre basis of specific thicknesses. As most external sales of CFG during the investigation period were of 3, 4, 5 and 6 mm CFG, price analysis is focused on these specific thicknesses. Individual import transactions, where the statistical code recorded was 4, were further examined for the purpose of determining whether the transaction related to 5 or 6mm CFG.

8.3.2 Internal transfer and internal processing volumes

The treatment of external sales and internal transfers to the Viridian downstream business for the purposes of an injury assessment was considered in TER159B and in SEF159C.

In Termination Report 159B internal transfers were treated in the following way:

- Internal transfers within the Viridian upstream business (i.e. internal processing) were not included in the analysis of the economic performance of the Australian industry producing CFG; and
- Internal transfers between the Viridian upstream and Viridian downstream businesses were included in both volume and price analysis.

During the resumed investigation, in SEF159C:

- the volume of CFG diverted to the Viridian upstream internal processing business (including the volume diverted to the coating facility) as well as internal transfers to the Viridian downstream business were included in the volume analysis; and
- price analysis was based on external sales only.

In response to SEF159C, Viridian stated that it did not agree with the above approach adopted by Customs and Border Protection in including internal processing volumes. Viridian claimed that Customs and Border Protection has incorporated those previously excluded internal transfer volumes into the definition of the industry producing like goods. Viridian claimed in particular that the definition of the goods specifically excludes coated glass.

As described in section 6.1 of this report, the Viridian upstream business manufactures CFG for transfer to the Viridian upstream internal processing business, sales to external customers and internal transfer to the Viridian downstream business.

During the resumed investigation, Customs and Border Protection has undertaken CFG volume analysis at the Viridian upstream total business level in response to comments by the TMRO. In this way the transfer of volumes between the Viridian upstream and downstream businesses resulting from changes in operating arrangements both within Viridian, and between Viridian upstream and its customers, are accounted for. Customs and Border Protection has included only volumes of CFG manufactured by the Viridian upstream business.

Customs and Border Protection has re-considered its position in relation to coated glass, which was included in internal processing volumes in SEF159C. As the coating process occurs on-line, the manufacturing process results in the production of coated glass and not CFG. As coated glass is not the goods the subject of the application, coated glass volumes have been excluded from the volume analysis in this report.

Tinted glass volumes have also been excluded as the manufacturing process results in the production of tinted glass, which is not the goods the subject of the application.

Volumes of CFG manufactured for processing into primary products have been included as they are processed off-line from CFG and represent a significant proportion of the total Viridian upstream business (i.e. greater than 30%).

8.3.3 Internal transfer values

Customs and Border Protection in TER159B found that '*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*'.

Customs and Border Protection stated in SEF159C that it is now of the view that internal transfers are not sales which establish prices for the purpose of price analysis as internal transfers are not sales in the legal sense and possibly also in the ordinary sense.

Viridian stated in its response to SEF159C that it disagreed with Customs and Border Protection's view that internal transfer values "*have lower probative value*" as extensive analysis in the original investigation indicates this is not the case.

Customs and Border Protection has re-considered this issue. The Dumping and Subsidy Manual provides guidance on related party transactions (commencing on page 11). The manual states

> *'in a transaction where goods are transferred between business divisions within the one legal entity, the goods remain the property of the legal entity both before and after the transaction is completed. These transactions are not considered sales. In the context of s.269TAE, which refers to terms such as price, paid, sold, sales Customs and Border Protection considers these terms to be references to price and sales in a conventional sense. This has implications for the assessment of injury to the Australian industry producing like goods. In assessing volume and production related injury indicators, transactions between related parties are considered reliable and suitable. However, transaction values between related parties may be unreliable and inappropriate for assessing injury indicators associated with price effects…..Therefore it is policy to examine the degree to which related party transactions involving the Australian industry are suitable for the material injury assessment'.*

After considering the above guidance provided by the manual, Customs and Border Protection is still of the view that internal transfer values are not reflective of true market prices, however internal transfer volumes are suitable in assessing volume and production related injury indicators.

8.4 Volume effects

8.4.1 The TMRO

The TMRO asked Customs and Border Protection to give particular attention to volume[27] i.e.:

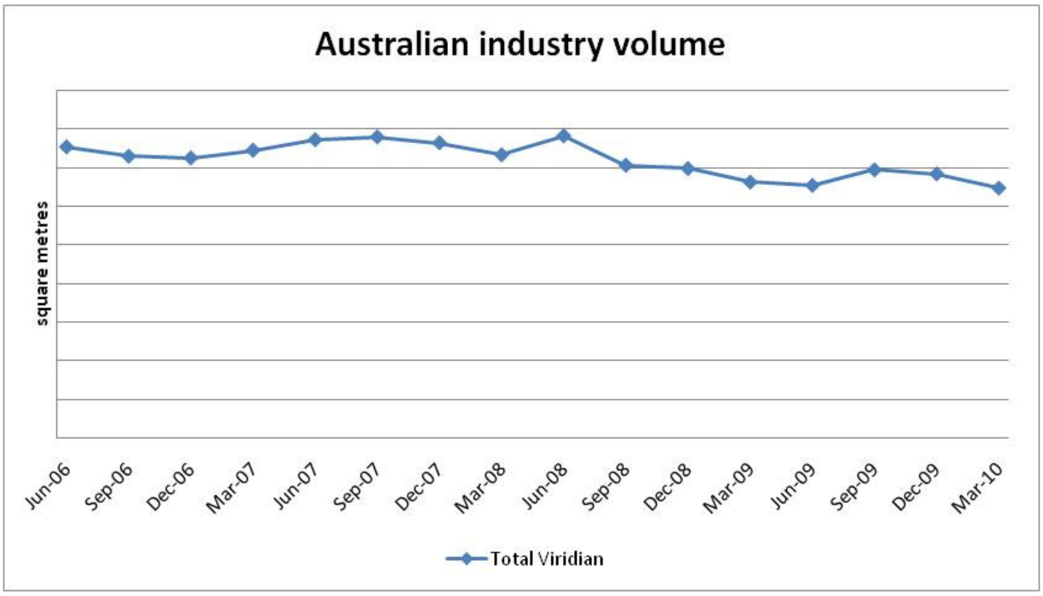
> *"123(a). in relation to market share: the portion of any decline in market size/volume that was due to diversion to internal processing by Viridian Upstream (i.e. consumption of CFG without being recorded as an internal transfer, and removal from the data set on internal transfers), whether any decline in internal transfers left over might be attributable to dumping or any other factors, and if so whether that amounted to a material injury."*

As stated above (in section 8.3.2), internal processing volume, as well as internal transfer volume, has been included in Viridian's total volume. The portion of any decline that was due to the diversion of volume to internal processing has therefore been accounted for.

8.4.2 Lost sales volume

The following graph shows the sum of Viridian's quarterly external sales, internal transfer and internal processing volumes (including imports) of CFG over the injury analysis period.

Diagram 4



Source: confidential attachment 1

Diagram 4 shows that Viridian's total volume peaked in the September 2007 quarter then trended downwards to the March 2010 quarter (except for a spike in the June 2008 quarter and a temporary recovery of volume in September 2009 and December 2009 quarters.

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27 TMRO 21 March 2011 "Certain clear float glass from the People's Republic of China, Indonesia and Thailand

Customs and Border Protection noted that the spike in the June 2008 quarter corresponds with a build up of stock prior to the planned shutdown of the Dandenong plant for refurbishment and the temporary recovery in the September 2009 and December 2009 quarters correspond with a recovery in the residential and commercial building construction market (diagram 1 refers).

Trends in market volume (in square metres) on an annual basis during the injury analysis period are shown in the following table.

Table 5

m2	Aust market	Viridian volume	countries under consideration import volume	Other import volume
YEM[28]2008	3%	3%	3%	-1%
YEM2009	-5%	-7%	3%	-23%
YEM2010	-6%	-6%	-9%	-3%
Injury Analysis period	-9%	-9%	-3%	-27%

Source: confidential attachment 1

Note: changes in 'other import volume' are calculated from a low base

Table 5 shows, in particular that:

- In YEM2008 the total market increased as did both Viridian's volume and import volume from countries under consideration. Viridian's volume and import volume from countries under consideration increased at the same rate as the total market;
- In YEM2009, the total market decreased, as did Viridian's volume, while import volume from countries under consideration increased. Viridian's volume decreased at a greater rate than the total market;
- In YEM2010, the total market decreased as did both Viridian's volume and import volume from countries under consideration. Viridian's volume decreased at the same rate as the total market whereas import volume from countries under consideration decreased at a greater rate than the total market; and
- Over the injury analysis period, the total market decreased as did both Viridian's volume and import volume from countries under consideration. Viridian's volume decreased at the same rate as the total market.

As stated by CSR Ltd in its 2009 annual report and illustrated in Diagram 1, YEM2009 was affected by a sharp decline in the residential and commercial building construction markets. Table 4 indicates that Viridian's volumes and import volumes reacted at different times to the decline in the market as reflected in relative changes in volume in YEM2009 and YEM2010.

The market continued to be affected by the decline in the residential and commercial building construction markets in YEM2010 as stated by CSR Ltd in its 2010 annual report and illustrated in Diagram 1.

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28 YEM: year ending March (Viridian's financial year is 1 April to 30 March)

The following table shows quarterly changes in market volumes (in square metres) during the investigation period.

Table 6

m2	Aust market	Viridian volume	countries under consideration import volume	Other import volume
Jun 2009 qtr	1%	-1%	13%	-43%
Sep 2009 qtr	9%	6%	4%	312%
Dec 2009 qtr	3%	-2%	23%	-14%
Mar 2010 qtr	**-10%**	**-5%**	**-22%**	**-43%**
YEM 2010	2%	-2%	19%	212%

Source: confidential attachment 1

Note: changes in 'other import volume' are calculated from a low base

Table 6 shows in particular that during the investigation period:

- the market size decreased in the March 2010 quarter;
- volumes from all sources declined significantly in the March 2010 quarter; and
- Viridian's volume declined in every quarter except the September 2009 quarter whereas volumes from the countries under consideration as well as the Australian CFG market grew in every quarter except the March 2010 quarter.

Summary – Lost sales volume

The Australian industry lost volume during the investigation period.

8.4.3 Lost market share

The following diagram shows the Australian industry's market share (including imports) by quarter during the injury analysis period.

Diagram 5

Source: confidential attachment 1

Diagram 5 shows that Viridian's market share:

- was relatively stable over the first half of the injury analysis period then fluctuated over the second half of the injury analysis period; and
- was at its lowest level in the September 2008 quarter and it's highest in the March 2009 quarter ending in the March 2010 quarter above the average for the injury analysis period.

Changes in market shares on an annual basis are shown in the following table.

Table 7: Changes in market shares over injury analysis period

%	Viridian	countries under consideration imports	Other imports
YEM2008	0%	0%	0%
YEM2009	-1%	2%	-1%
YEM2010	0%	0%	0%
Injury Analysis period	-1%	1%	-1%

Source: confidential attachment 1

Table 7 shows that overall Viridian did not lose any market share in the investigation period. Viridian's slight loss of market share in YEM2009 is evident in Diagram 4.

Changes in Viridian's market share over the investigation period are shown in the following table. These changes are based on the Australian industry's market share in March 2009 quarter.

Table 8: Changes in Market shares in YEM2010

m2	Viridian	countries under consideration imports	Other imports
Jun 2009 qtr	-1%	2%	-1%
Sep 2009 qtr	-2%	-1%	3%
Dec 2009 qtr	-3%	4%	-1%
Mar 2010 qtr	4%	-3%	-1%

Source: confidential attachment 1

Table 8 shows that Viridian lost market share to imports from countries under consideration from the June 2009 quarter to the December 2009 quarter but regained market share in the March 2010 quarter. This is evident in Diagram 4.

Summary – lost market share

The Australian industry did not lose market share during the investigation period.

8.5 Price effects

8.5.1 Introduction

Price effects may be in the form of:

- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented.

Customs and Border Protection in the resumed investigation has examined volumes and prices on a per square metre basis thereby making an overall price analysis of all thicknesses not meaningful. Customs and Border Protection noted that over the injury analysis period most external sales of clear float glass were 3, 4, 5 and 6 mm clear float glass. Customs and Border Protection has therefore focussed its price analysis on 3, 4, 5 and 6 mm clear float glass.

8.5.2 Price depression

Introduction

The TMRO asked Customs and Border Protection to give particular attention to price depression i.e.:

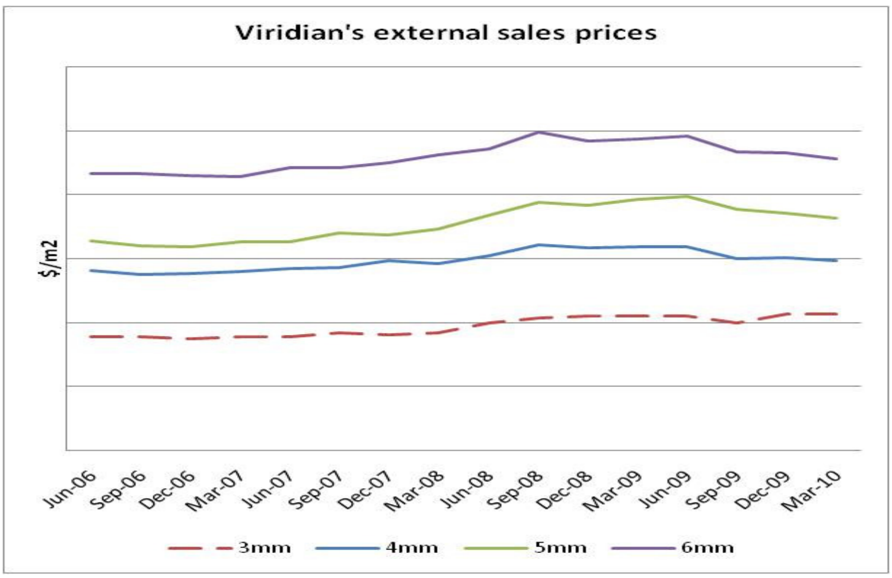
> *"123(b). in relation to price depression: whether there was price depression (in the investigation period) and if so whether this constitutes material injury that might be attributable to dumping or any other factors".*

In TER159B, Customs and Border Protection assessed price effects using the combined quarterly weighted average unit prices and internal transfer values over the injury analysis period. Customs and Border Protection found that "*while Viridian may have experienced price depression to specific customers, it has not experienced injury in the form of price depression overall during the injury analysis period*".

Analysis

Customs and Border Protection in the resumed investigation examined trends in Viridian's external sales prices for 3, 4, 5 and 6mm CFG during the injury analysis period.

Diagram 6



Source: confidential attachment 2

Diagram 6 shows that Viridian's weighted average external sales prices for 3, 4, 5 and 6mm CFG:

- trended upwards to September 2008 quarter;
- were relatively stable between September 2008 and June 2009 quarters; then
- trended downwards (except 3mm CFG) during the investigation period. External sales prices for 3mm CFG remained relatively stable during the investigation period except for a dip in the September 2009 quarter.

The percentage changes in Viridian's external sales prices on an annual basis for 3, 4, 5 and 6mm CFG during the injury analysis period are shown in the following table. The observed trends above are reflected in the table.

Table 9

	YEM 2008	YEM 2009	YEM 2010
mm	**$/m2**	**$/m2**	**$/m2**
3	+2%	+14%	+1%
4	+4%	+9%	-4%
5	+4%	+14%	-2%
6	+4%	+8%	-3%

Source: confidential attachment 2

Table 9 shows that Viridian's external sales prices for 3, 4, 5 and 6mm CFG increased in YEM2008 and YEM2009 then declined (except for 3mm CFG) during the investigation period. The external sales price for 3mm CFG increased by a further one percentage point during the investigation period.

The percentage changes in Viridian's external sales prices by quarter over the investigation period are shown in the following table.

Table 10

	Jun 09 qtr	Sep 09 qtr	Dec 09 qtr	Mar 10 qtr
mm	**$/m2**	**$/m2**	**$/m2**	**$/m2**
3	-1%	-5%	+6%	0%
4	0%	-6%	0%	-1%
5	+1%	-5%	-2%	-2%
6	+1%	-5%	0%	-2%

Source: confidential attachment 2

Table 10 shows that over the investigation period external sales prices for:

- 3mm CFG declined in June 2009 and September 2009 quarters. The decline was however matched by an increase in the December 2009 quarter;
- 4 and 6mm CFG declined in the September 2009 and March 2010 quarters; and
- 5mm CFG declined in September 2009, December 2009 and March 2010 quarters.

Summary - price depression

The Australian industry suffered price depression during the investigation period.

8.5.3 Price suppression

Introduction

Customs and Border Protection's approach in TER159B was to compare Viridian's quarterly weighted average unit price and cost to make and sell (CTMS) over the injury analysis period. Customs and Border Protection noted that Viridian's costs for YEM2009 were affected by the planned shutdown of its Dandenong plant for refurbishment, which affected costs between the June 2008 and December 2008 quarters. Customs and Border Protection therefore adjusted unit costs in YEM2009 and YEM2010 based on volumes in YEM2007 and YEM2008. Based on this approach Customs and Border Protection found that prices did not increase at the same rate as costs increased during the latter half of the injury period, therefore Viridian experienced injury in the form of price suppression.

Analysis

In the resumed investigation, Customs and Border Protection considered whether unit costs in YEM2009 and YEM2010 should be adjusted as in TER159B. Customs and Border Protection considered a submission made by Viridian (dated 1 July 2011) that unit costs should not be adjusted for the following reasons:

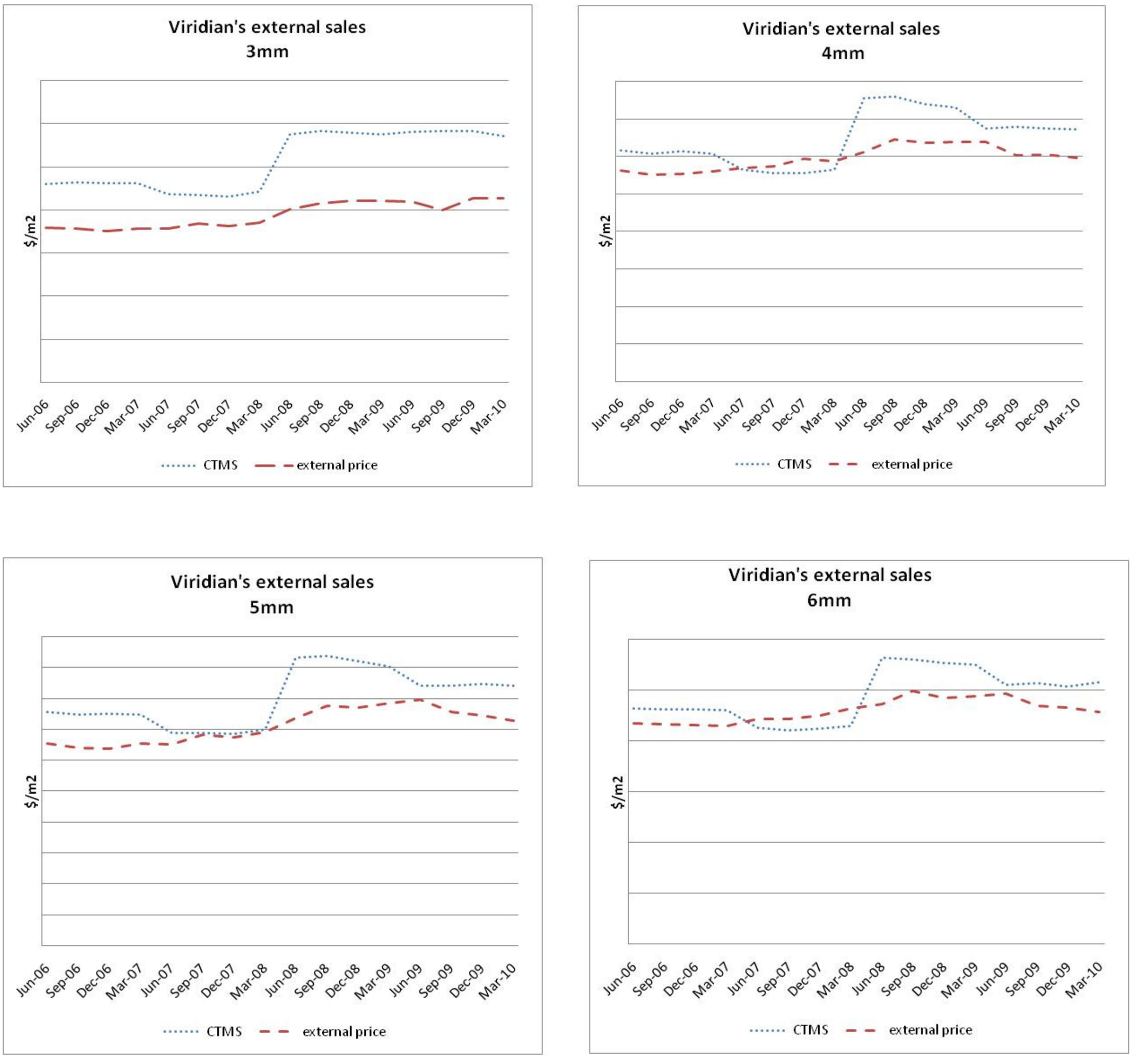
- YEM2007 and YEM2008 volumes could not be produced and sold by Viridian in YEM2009 and YEM2010;
- the state of the Australian CFG market i.e. the market declined significantly in YEM2009 and YEM2010; and
- the following changes in Viridian's business have occurred since YEM2007:
  - Refurbishment of the Dandenong plant in YEM 2009 (May to November 2008) resulted in a stock build-up from increased production and imports in YEM2008 and YEM2009 to ensure continuity of supply to customers during the period the plant was shutdown;
  - Acquisition of the DMS business in October 2007 (YEM2008) resulted in DMS, previously an external customer of Viridian Upstream, becoming part of the Viridian Downstream business; and
  - There has been an increase in the number of customers of Viridian Upstream that were previously customers of Viridian Downstream.

Customs and Border Protection in the resumed investigation agrees with the above submissions made by Viridian and has therefore not adjusted the YEM2009 and YEM2010 costs for the purpose of assessing price suppression.

In the resumed investigation Customs and Border Protection examined the trends in Viridian's quarterly weighted average external unit price and CTMS over the injury analysis period.

The following diagrams show Viridian's quarterly weighted average unit external sales price and CTMS over the injury analysis period for 3, 4, 5 and 6mm CFG.

<u>Diagram 7</u>



Source: confidential attachment 2

Diagram 7 shows that:

- The unit CTMS trends for 4, 5 and 6mm CFG are similar;
- the unit CTMS trends for 3mm CFG are different to the other thicknesses. Customs and Border Protection in TER159B found that the unit CTMS for 3mm CFG was affected by Viridian's method of allocating the negative variances resulting from reduced volume in YEM2009 and YEM2010;
- unit CTMS for all thicknesses increased significantly during the period of the Dandenong plant shutdown;
- unit CTMS for all thicknesses did not return to pre-refurbishment levels in YEM2009 and YEM2010. This was found in TER159B to be due to reduced volumes in YEM2009 and YEM2010;
- Viridian's unit CTMS was higher than Viridian's external sales prices for all thicknesses throughout the injury analysis period except for 4 and 6mm CFG in

YEM2008. YEM2008 and YEM2009 were extraordinary years as they were affected by the shutdown of the Dandenong plant. The shutdown resulted in increased production in YEM2008 (to build up stocks prior to the shutdown) and therefore lower unit costs in YEM2008 while reduced production in YEM2009 during the shutdown period resulted in higher than normal unit costs in YEM2009; and

- Viridian's unit external sales prices for 3, 4, 5 and 6mm declined during the investigation period at a greater rate than unit CTMS.

The above diagram shows that throughout the investigation period external sales prices for 3, 4, 5 and 6mm CFG were below their unit CTMS.

Summary - price suppression

The Australian industry suffered price suppression during the investigation period.

8.6 Profit effects

8.6.1 Introduction

The TMRO commented:

> *"77. Customs and Border Protection does seem to have attempted to compare the losses during the investigation period with a year in which the losses were unaffected by the Dandenong refurbishment – namely, the year ending March 2007. Customs and Border Protection has not fully explained its reasons for not comparing the losses in the investigation period with the profits made in the year ending March 2008, a year also unaffected by the Dandenong refurbishment. I consider that further reasoning is required."*

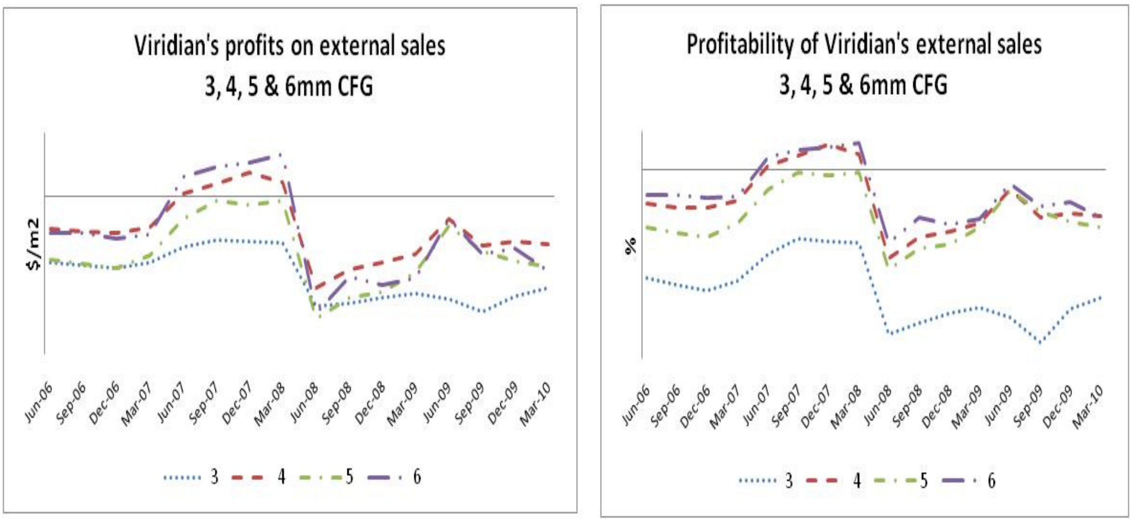
Customs and Border Protection's approach in TER159B was to analyse trends in Viridian's profits and profitability on combined external sales and internal transfers by quarter during the injury analysis period. Customs and Border Protection found that Viridian incurred losses in YEM2007, profitable results in YEM2008, its largest losses in YEM2009 and losses in YEM2010 which were at a similar level to the in YEM2007.

8.6.2 Analysis

In the resumed investigation, Customs and Border Protection has analysed trends in Viridian's profits and profitability on external sales of 3, 4, 5 and 6mm CFG.

The following diagram shows Viridian's quarterly profit and profitability on external sales of 3, 4, 5 and 6mm CFG during the injury analysis period.

Diagram 8



Source: confidential attachment 4

Diagram 8 shows that:

- There are similar trends in profits and profitability on external sales of 4, 5 and 6mm CFG;
- During YEM2008 Viridian's external sales of 4 and 6mm CFG were profitable and nearly at break even for 5mm CFG. Otherwise, sales of 3, 4, 5 and 6mm CFG were unprofitable throughout the injury analysis period; and
- Viridian's external sales of 3mm CFG were the least profitable throughout the injury analysis period.

The Australian industry lost profits and profitability on sales of 3, 4, 5 and 6mm CFG throughout the injury analysis period except 4, and 6mm thickness in YEM2008.

The TMRO has questioned why Customs and Border Protection did not compare the losses in the investigation period with the profits in YEM2008. Although YEM2008 was a period unaffected by dumping, it was an extraordinary year as illustrated in Diagram 7. Viridian, in preparation for the shutdown of the Dandenong float line, increased production during YEM2008 which had the affect of reducing unit costs and thereby increasing unit profits and profitability.

8.6.3 Summary – lost profits and profitability

The Australian industry lost profits and profitability during the investigation period.

8.7 Other economic factors

8.7.1 The TMRO

The TMRO did not comment on other injury factors.

8.7.2 Analysis

Customs and Border Protection's findings in TER159B in relation to 'Other economic factors' are repeated below.

Reduced return on investment

Viridian upstream's return on investment increased in YEM2008, then fell in YEM2009 to a level below that of YEM2007. It then increased in YEM2010 to a level above that of YEM2007 but below YEM2008.

Assets

The value of assets used in the production of CFG by Viridian upstream increased between YEM2007 and YEM2009 then fell in YEM2010 but was still above YEM2007 and YEM2008.

Capital investment

Capital investment for the production of CFG by Viridian upstream increased between YEM2007 and YEM2009 then decreased in YEM2010 to a level below YEM2007.

Research and Development (R & D)

The expenditure on R & D for CFG by Viridian upstream increased between YEM2007 and YEM2009.

Sales revenue

Sales revenue from CFG for Viridian upstream decreased between YEM2007 and YEM2010.

Capacity

The production capacity of CFG by Viridian upstream increased between YEM2007 and YEM2008, then decreased in YEM2009 and YEM2010.

Capacity utilisation

The capacity utilisation of CFG by Viridian upstream increased between YEM2007 and YEM2008, then decreased in YEM2009 before increasing again in YEM2010.

Employment

The number of workers associated with the production of CFG employed by Viridian upstream increased between YEM2007 and YEM2010.

Productivity

The productivity of Viridian upstream decreased between YEM2007 and YEM2008, then increased in YEM2009 and YEM2010.

Stocks

The amount of CFG stock held by Viridian upstream increased between YEM2007 and YEM2008, then decreased in YEM2009 before increasing again in YEM2010.

8.7.3 Summary of other economic factors

The Australian industry has suffered injury in the form of lost sales revenue.

9 HAS DUMPING CAUSED MATERIAL INJURY?

9.1 Findings

Dumping has caused material injury to the Australian industry for the following reasons:

- CFG was exported to Australia from the countries under consideration during the investigation period at dumped prices with dumping margins of between 3.3% and 26.4%;
- the price pressure experienced by Viridian from dumped exports from the countries under consideration caused Viridian to lower its prices during the investigation period to maintain volume, which resulted in price depression and suppression;
- the Australian industry's injury during the investigation period in the form of price depression and price suppression caused by dumped exports from the countries under consideration resulted in reduced profits and profitability;
- an analysis of customers that were common to both the Australian industry and importers during the investigation period showed that the Australian industry was able to achieve an average price premium of around 8% over the dumped imports. Customs and Border Protection is satisfied this premium could be maintained. Although the undumped export prices from the countries under consideration were still below the Australian industry's selling prices during the investigation period, an increase in the export prices by at least the extent of the dumping would have enabled Viridian to raise its prices to some degree resulting in an improvement in Viridian's revenue and profitability; and
- while other factors have contributed to the injury suffered by the Australian industry during the investigation period, the injury to the Australian industry that was caused by dumping of the exports from the countries under consideration is material.

9.2 Introduction

A dumping duty notice may be published where material injury has been caused by dumped exports[29]. In making a determination whether material injury to an Australian industry has been caused by dumped exports, any injury caused by a factor other than the exportation of the goods must not be attributed to the exportation of those goods[30].

In TER159B, Customs and Border Protection in determining the effect of the exportation of CFG to Australia from the countries under consideration considered the cumulative effect of those exportations[31] as the goods are alike, have similar specifications and end-uses and compete in the same markets.

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29 Section 269TG
30 Sub-section 269TAE(2A)
31 Sub-section 269TAE(2C)

Customs and Border Protection also found in TER159B that it is common for CFG from each of the countries under consideration to compete directly with Viridian's CFG. The degree of product differentiation is not significant. In addition, it is common for purchasers of CFG to source from more than one supplier, including a combination of imports and local CFG. Many of Viridian's customers therefore have the ability to compare Viridian's prices with prices of CFG exported from the countries under consideration. It was therefore reasonable to expect that competitive price offers may have an effect on the volumes and/or prices of competitors.

As no new substantive information has been provided to the contrary, Customs and Border Protection has considered the cumulative effect of the dumped exports from the countries under consideration in the resumed investigation.

9.3 Dumping

It was established that:

- exporters from China have exported CFG to Australia at dumped prices during the investigation period. The dumping margins calculated for Chinese exporters are between 11.4% and 26.4%;
- exporters from Indonesia have exported CFG to Australia at dumped prices during the investigation period. The dumping margins calculated for Indonesian exporters are between 3.3% and 22.4%;
- exporters from Thailand have exported CFG to Australia at dumped prices during the investigation period. The dumping margins calculated for Thai exporters are between 3.5% and 11.8%; and
- CFG exported at dumped prices represents more than 80% of the total exports of CFG during the investigation period.

9.4 Injury

The Australian industry was found to have suffered the following forms of injury during the investigation period:

- lost volume;
- price depression;
- price suppression;
- lost profits and profitability; and
- lost sales revenue

9.5 Volume effects

9.5.1 Introduction

Customs and Border Protection found in TER159B that injury to Viridian in the form of lost sales volume and lost market share was primarily related to its internal transfers to Viridian downstream business which can be explained by changes in operational arrangements within Viridian.

In SEF159C, Customs and Border Protection made a preliminary finding that the Australian industry's loss of volume during the investigation period was due to the overall decline in the total market and not due to dumping.

9.5.2 Analysis

In response to SEF 159C Viridian claimed 'there is no evidence for Customs to make such a definitive statement about volume loss…There is no evidence available to Customs to indicate there has not been some volume loss, although this is a qualitative/ subjective assessment'.

Customs and Border Protection's preliminary finding in SEF159C was based on an analysis of overall volume trends in the market. Customs and Border Protection found that Viridian upstream's overall CFG volume moved in line with the market during the investigation period. After considering Viridian's submission, Customs and Border Protection remains of the view that lost volume was not due to dumping.

9.6 Price effects

9.6.1 Introduction

The TMRO asked Customs and Border Protection to give particular attention to price suppression:

> *"(para 123c) in relation to price suppression: the proportion of undercutting due to competitive prices or any other factors and the proportion of the price suppression that might be attributable to dumping and if any such part of the injury is material"; and*
>
> *"in relation to the attempt to adjust for the Dandenong plant refurbishment, the analysis should also take into account changes to the industry that might affect volumes and prices, the impact of other factors, and whether any part of the remaining injury was material."*

Customs and Border Protection concluded in TER159B that:

- the prevailing market prices for CFG in Australia have been, to some degree, adversely affected by CFG exported to Australia from the countries under consideration at dumped prices and this has contributed to the prevention of Viridian price increases which might otherwise have occurred;
- the price pressure from dumped CFG has contributed to Viridian being prevented from increasing its prices, resulting in some degree of price suppression and consequently lost profit and profitability;
- other factors have also caused Viridian to experience price suppression and lost profit and profitability. The global financial crisis and weak market conditions would have affected market prices of CFG. In addition, the comparative cost advantages of one or more exporters relative to Viridian's costs and the strength of the Australian dollar contributed to the competitiveness of the imported CFG.

Customs and Border Protection in TER159B calculated an undumped CFG price to assist in determining whether dumping had materially suppressed Viridian's prices. Customs and Border Protection compared this price, plus a reasonable premium, to Viridian's weighted average selling price. This analysis found that Viridian's weighted average selling price was higher than the undumped FIS price with any reasonable premium indicating that even if CFG exports from the countries under consideration were undumped, it is likely Viridian would still have experienced similar levels of price suppression that could not be attributed to dumping.

Customs and Border Protection found that the degree of price suppression and consequently lost profit and profitability if any to Viridian that had been caused by dumping was negligible.

9.6.2 Analysis

In SEF159C, Customs and Border Protection found that Viridian's external sales prices for 4, 5 and 6mm CFG declined during the investigation period. Customs and Border Protection also found:

- Viridian's external sales prices for 3, 4, 5 and 6mm CFG were suppressed during the investigation period; and
- The price suppression in the investigation period was at least partly caused by an increase in costs following the Dandenong refurbishment. Customs and Border Protection found that while the refurbishment may have resulted in savings overall, unit costs in the investigation period increased due to lower volume, which was found not to be caused by dumping.

In SEF159C, Customs and Border Protection found the following levels of price undercutting during the investigation period.

Table 11

	3mm	4mm	5mm	6mm
China	4%	13-17%	14-19%	18-23%
Indonesia	11-22%	13-25%	15-24%	19-28%
Thailand	4%	8%	8%	9%

Source: confidential attachment 3

Table 11 shows that:

- Viridian's external sales prices were undercut by exports from all countries under consideration during the investigation period; and
- The levels of price undercutting were greater for China and Indonesia than for exports from Thailand.

In SEF159C, Customs and Border Protection also compared Viridian's sales prices to its major external customers with the FIS export prices from countries under consideration to these customers (**confidential attachment 3 refers**). Customs and Border Protection found significant levels of price undercutting and agreed with the findings in TER159B that:

> *"At the macro level, the comparison of these prices from all three countries with Viridian's prices indicated that the imported goods were consistently undercutting Viridian's price. The levels of price undercutting were significant, although the magnitude of undercutting was greater for exports of CFG from China and Indonesia than for exports from Thailand.*

At the micro level, certain Viridian customers were identified as also sourcing CFG from the verified exporters during the investigation period. The price undercutting analysis was conducted by comparing each particular customer's quarterly weighted average purchase price from Viridian and the exporter. This analysis also found that Viridian's prices have been consistently and significantly undercut by CFG exported to Australia at dumped prices."

Customs and Border Protection was advised during the resumed investigation by G James Australia Pty Ltd, a major customer of Viridian and importer of CFG, that its price from Viridian is linked to import prices. Customs and Border Protection has given weight to this statement because the data obtained during the investigation supports it. JELD-WEN, in response to SEF159C, stated that the market for clear float glass is price sensitive and transparent.

In response to SEF159C, Viridian claimed that '*pricing arrangements to major customers reflect the desire to obtain volumes and a contribution margin to the recovery of fixed costs in a high fixed cost business. Major customers have access to highly competitive prices of imported glass and if Viridian did not compete with those prices to obtain the relevant volumes then the overall profitability of each thickness would be detrimentally affected*'.

After considering the above analysis and observations, Customs and Border Protection has formed the view that the significant price undercutting by exports from the countries under consideration has resulted in price pressure being experienced by Viridian. This price pressure in turn has contributed to the price depression and suppression experienced by Viridian during the investigation period.

9.6.3 Conclusion

Customs and Border Protection concludes that the price pressure experienced by Viridian from dumped exports from countries under consideration caused Viridian to lower its prices during the investigation period to maintain volume, which caused price depression and suppression.

9.7 Profit effects

9.7.1 Introduction

In TER159B Customs and Border Protection found that the presence of CFG exported from the countries under consideration at dumped prices had contributed to price suppression. Consequently, Viridian had lost profits and profitability to some degree as a result of the CFG exported from the countries under consideration at dumped prices.

In SEF159C, Customs and Border Protection made a preliminary finding that Viridian's external sales of 3, 4, 5 and 6mm CFG were sold at a loss throughout the injury analysis period (except for 4 and 6mm in YEM2008). The level of Viridian's losses in the investigation period was affected by reduced volume, which was due to the overall decline in the market and not due to dumping.

9.7.2 Analysis

Customs and Border Protection concluded in section 9.6.3 that the Australian industry had suffered injury during the investigation period in the form of price depression and price suppression caused by dumped exports from the countries under consideration. The price depression and suppression suffered by the Australian industry contributed to reduced profits and profitability.

9.7.3 Conclusion

The Australian industry's injury during the investigation period in the form of price depression and price suppression caused by dumped exports from the countries under consideration contributed to reduced profits and profitability.

9.8 Other causes

9.8.1 Introduction

The following other causes of injury to Viridian were identified in TER159B and by interested parties in submissions in the resumed investigation:

- Global financial crisis and the decline in building activity;
- Operational issues within Viridian;
- Dandenong plant refurbishment;
- Australian industry is a high cost producer;
- The value of the Australian dollar; and
- Shift in demand to more energy efficient glass such as coated and tinted glass.

Some of these factors were commented on by CSR Limited in its 2010 annual report.

> *"…earnings in the Viridian glass business continue to be impacted by weaker market conditions in residential and commercial markets across Australia/New Zealand, particularly in the downstream business.*
>
> *Volumes in upstream manufacturing (primary products) improved slightly following a recovery in market share following the completion of the rebuild and refurbishment of the glass float facility at Dandenong. This managed to offset generally lower market activity and the continuing high Australian dollar for much of the year which makes imported float glass more price competitive.*
>
> *There are indicators that float glass prices have stabilised post the global financial crisis and during a period of excess capacity in Asia.*
>
> *The performance of the downstream business has not been satisfactory. Earnings were impacted by significantly reduced volumes on lower levels of market activity together with reduced market share in core east coast markets.*
>
> *Customer service as measured by Delivery in Full On-Time was not an acceptable standard leading to a loss of market share."*

In response to SEF159C JELD-WEN claimed that the reduction in bulk CFG volumes supplied by Viridian upstream over the injury analysis period could be explained by a shift in market demand towards thermally efficient glass; a decline in building activity in the aftermath of the global financial crisis; and loss of customer base from Viridian downstream to competitors due to chronic service failures.

9.8.2 Global Financial Crisis and the decline in building activity

As shown in section 6.3, the residential and commercial building construction industry experienced a contraction from the September 2008 quarter before showing some signs of recovery from the June 2009 quarter.

Several interested parties have argued that the global financial crisis and the resulting decline in building activity have caused the injury experienced by Viridian, rather than CFG exported to Australia from the countries under consideration at dumped prices.

In TER159B Customs and Border Protection noted that between the September 2008 quarter and June 2009 quarter, Viridian's prices to its external customers remained relatively stable at the highest levels of the injury analysis period.

CSR Limited's financial reports for YEM2008 to YEM2010 attribute the decline in earnings of its glass business (Viridian) to, among other things, the effects of the decline in building activity in residential and commercial markets.

Viridian argued in its application to the TMRO that, although the market downturn has contributed to its volume and price injury, dumped CFG exports have also caused material injury to Viridian.

In the resumed investigation, Customs and Border Protection notes that trends in the Australian CFG market closely follow trends in the residential and commercial building construction markets.

9.8.3 Operational issues within Viridian

Interested parties claimed during investigation 159 and again during the resumed investigation that systematic service failures in Viridian's downstream processing and distribution business have forced customers to switch to independent glass processors and spread their source of CFG between Viridian Upstream and import.

In TER159B, Customs and Border Protection found that it was difficult to quantify the degree to which the customer service issues with Viridian downstream business have affected the performance of Viridian's internal transfers. Nonetheless, the view that the Viridian downstream business suffers from customer satisfaction issues has not been refuted by Viridian in any of its submissions. In fact CSR Ltd acknowledges in it's 2010 annual report that the performance of the downstream business has not been satisfactory due to reduced volumes on lower levels of market activity together with reduced market share due to customer service not being at an acceptable standard.

In the resumed investigation, Customs and Border Protection has found that the volume of internal transfers was affected during the injury analysis period by a number of factors including the transfer of volume between the Viridian upstream and the Viridian downstream business due to the acquisition of the DMS business, the relocation of the DMS business from the Viridian downstream to the Viridian upstream business, the shifting of some customers from Viridian downstream to the Viridian upstream business and other factors such as service issues within the Viridian downstream business.

Customs and Border Protection did not collect information relating to the performance of the Viridian downstream business other than data relating to internal transfers. This investigation was focussed on the performance of the Viridian upstream business. That said however, the statements made by CSR in its annual report are an indicator that the poor performance of the Viridian downstream business contributed to a reduction in Viridian upstream's internal transfer volume.

9.8.4 Dandenong plant refurbishment

Viridian's Dandenong plant was shutdown from May to November 2008. The planned shutdown resulted in increased production in YEM2008, to build-up stock prior to the shutdown, which resulted in lower unit costs in YEM2008 while reduced production in YEM2009 during the shutdown period resulted in higher than normal unit costs in YEM2009.

In TER159B, Customs and Border Protection found that details of additional costs and savings in YEM2010 arising from the refurbishment indicated that '*the net results from these calculations are not of a nature or extent that would require an adjustment to its YEM2010 costs for the purpose of a meaningful comparison to prices and/or previous years' costs"*.

In the resumed investigation Customs and Border Protection did not receive further information that would cause it to deviate from its previous finding. Customs and Border Protection has taken the impact of the shutdown of the Dandenong plant on Viridian's unit costs into account in its analysis of price suppression.

9.8.5 Australian industry is a high cost producer

Interested parties have submitted that Viridian is a globally inefficient manufacturer of CFG lacking economies of scale, citing section 269(2A)(f) which states that injury to an industry being caused by the export performance and productivity of the Australian industry must not be attributed the dumped goods.

In particular, some of the claims made were that Viridian:

- is an inefficient producer by global standards due to producing several types of products on one single float line at each of its plants;
- has high fixed costs;
- has undergone a costly refurbishment at its Dandenong plant; and
- has a poorly maintained and elderly plant at Ingleburn that is overdue for refurbishment.

In SEF159B, Customs and Border Protection compared Viridian's manufacturing costs per unit (including fixed costs) with verified costs of exporters from the countries under consideration. Customs and Border Protection found that Viridian was the highest cost producer among that group. It is reasonable to expect that the result is at least in part due to Viridian's relative position with respect to economies of scale and product mix produced on any one float line (with associated changeover times and losses).

Customs and Border Protection's view is that while being a high cost producer should not prevent an Australian industry from being able to compete in a market unaffected by dumping, it would make it more difficult for the Australian industry to compete on price. This is reflected in the level of price undercutting and profits found.

9.8.6 The value of the Australian dollar

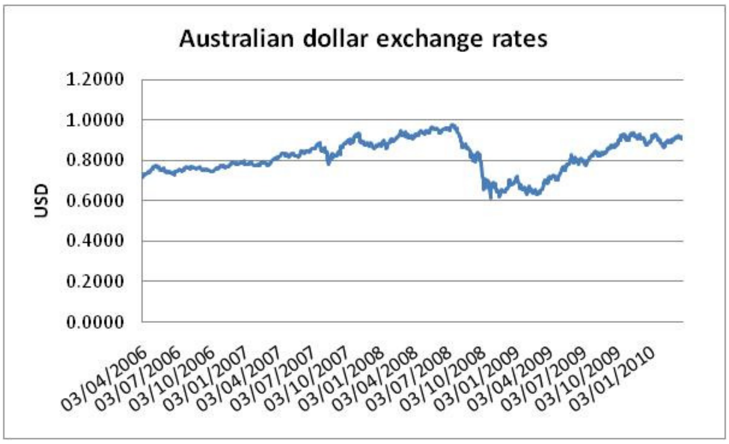
Interested parties have claimed during investigation 159 as well as during the resumed investigation that the appreciating Australian dollar during 2009 and 2010 has made imported CFG more price competitive. This was also referred to by CSR Ltd in its 2010 financial report as quoted above.

Viridian has argued that an appreciating Australian dollar exacerbates the effects of the dumping margin. Viridian also argued that the exchange rate effects are vastly overstated as a significant proportion of CFG exported to Australia from countries under consideration is sold in Australian dollars.

Several interested parties submitted in investigation 159 (and claimed in the resumed investigation) that as CFG is traded globally in US dollars, the export transactions to Australia are affected by exchange rate movements irrespective of whether the transaction is in Australian dollars. Interested parties have also referred to import parity pricing operating in the Australian CFG market.

Customs and Border Protection noted in the resumed investigation that the Australian dollar appreciated against the US dollar by 33% during the investigation period[32]. The appreciation in the Australian dollar against the US dollar during the investigation period is clearly shown in the diagram below.

Diagram 9



Source: confidential attachment 8

In response to SEF159C, JELD-WEN claimed that a 30% appreciation of the Australian dollar during the investigation period made imports more price competitive and restricted Viridian's ability to raise prices.

Customs and Border Protection in the resumed investigation attempted to quantify the effect of the appreciating Australian dollar during the investigation period on the level of price undercutting. Customs and Border Protection used verified transaction data from its import database relating to exporters from the countries under consideration. Unit

[32] This is based on the RBA exchange rate of US$0.6883 on 1 April 2009 (the start of the investigation period) and US$0.9159 on 31 March 2010 (the end of the investigation period). The average RBA exchange rate during the investigation period was US$0.8519.

export prices for 3, 4, 5 and 6mm CFG were adjusted based on the relevant Reserve Bank of Australia (RBA) exchange rate applicable on the date of arrival and the three year Australian dollar/US dollar average exchange rate prior to the investigation period[33]. A three year period was used to reflect a fair value of the exchange rate fluctuations and the impact of the global financial crisis on the prices (**confidential attachment 8** refers).

The relative proportion of undercutting attributable to the appreciation of the Australian dollar during the investigation period was calculated using the following formula.

$$x = \frac{P - \left(P \times 1 - \left(\frac{(E_{Day} - E_{Set})}{E_{Set}} \right) \right)}{U}$$

Where:

x = Percentage of Undercutting attributable to currency fluctuation

P = Unit Price per square meter

E_{day} = Exchange Rate on the day of importation,

E_{Set} = Average Exchange rate of the three years prior to the Investigation Period

U = Undercutting Amount

The following table summarises the effect of changes in the value of the Australian dollar during the investigation period on export prices of 3, 4, 5 and 6mm CFG for verified exporters from countries under consideration recorded in the Customs and Border Protection import database. The original price undercutting margin has been adjusted to remove the estimated effect of the currency appreciation during the investigation period.

Table 12

		Adjusted Undercutting Margins			
Thickness		**3mm**	**4mm**	**5mm**	**6mm**
China	Unadjusted	6%	15%	18%	22%
	Adjusted	1%	11%	13%	17%
Indonesia	Unadjusted	19%	22%	21%	24%
	Adjusted	17%	20%	19%	22%
Thailand	Unadjusted	4%	8%	8%	9%
	Adjusted	0%	4%	3%	5%

Source: confidential attachment 8

Table 12 shows that:

- Adjusted price undercutting margins for China were found to be between 1 and 17%;

[33] The RBA Australian dollar/US dollar average exchange rate over the period YEM2007 to YEM2009 was US$0.8090.

- Adjusted price undercutting margins for Indonesia were found to be between 17 and 22%; and
- Adjusted price undercutting margins for Thailand were found to be between 0 and 5%.

Viridian made a submission in relation to the above analysis following SEF159C. Customs and Border Protection recognises that it is not possible to precisely quantify the effects of the appreciation of the Australian dollar during the investigation period on the export prices of CFG from the countries under consideration. Customs and Border Protection has, however, adjusted export prices to remove the estimated effect of the currency appreciation during the investigation period as a guide to illustrate that it has had some impact.

Based on the above analysis, Customs and Border Protection considers that the appreciation of the Australian dollar has contributed to the decrease in import prices from the countries under consideration. The adjusted undercutting margins are reduced but are still significant, particularly for exporters from China and Indonesia.

9.8.7 Shift in demand to more energy efficient glass such as coated and tinted glass

Interested parties have claimed that Viridian has moved to producing more high value added energy efficient glass at the expense of CFG volume as an integral plank of Viridian's business strategy.

In the resumed investigation, Customs and Border Protection noted that Viridian, as part of the Dandenong plant refurbishment, installed a coating line which it said was intended to take advantage of the shift towards higher value added energy efficient glass. Customs and Border Protection also noted that CSR Ltd in its 2009 Shareholders Review commented on its strategy in relation to the Viridian glass business when it acquired the then Pilkington Australasia in 2007:

> *"The acquisition of the glass business (Pilkington Australasia) was part of a longer term strategy to build our Building Products division, and particularly our product offering targeting improved energy efficiency."*
>
> *"…further Government regulation will require that new residences have a 6 star or equivalent rating by 2010. Insulation, energy efficient glass and several of our other systems are ideally suited to meet these requirements."*

Customs and Border Protection is satisfied that any shift to the production of energy efficient and safety glass is accounted for by including internal processing volumes in the calculation of market volume and market shares (section 8.3.2 refers).

9.8.8 Conclusion

Customs and Border Protection concludes that other factors have contributed to the injury suffered by the Australian industry during the investigation period.

9.9 Materiality of injury caused by dumping

9.9.1 Introduction

The TMRO expressed concern that Customs and Border Protection did not distinguish the factors that might have caused the various injury elements and whether a material part of the injury might be attributable to dumping. The TMRO said it was not clear whether Customs and Border Protection took into account these factors it describes as having contributed to price effects, namely the global financial crisis and weak market conditions, competitive cost advantages of one or more exporters relative to Viridian's costs and the strength of the Australian dollar (para 16 of the TMRO's report refers).

Customs and Border Protection found in TER159B that:

> *"…the price pressure from dumped CFG has contributed to Viridian being prevented from increasing its prices, resulting in some degree of price suppression and consequently lost profit and profitability suffered by Viridian.*
>
> *Other factors have also caused Viridian to experience price suppression and lost profit and profitability. The global financial crisis and weak market conditions would have affected market prices of CFG. In addition to comparative cost advantages of one or more exporters relative to Viridian's costs and the strength of the Australian dollar contributed to the competitiveness of the imported CFG."*

To assist in determining whether dumping materially suppressed Viridian's prices in the investigation period, in TER159B Customs and Border Protection calculated unsuppressed selling prices (USPs) and compared Viridian's selling prices to notional undumped free-into-store (FIS) prices from countries under consideration.

The USPs and notional undumped prices were compared to the Australian industry's weighted average sales prices to assist in assessing whether Australian industry's prices are lower than prices that may have been achieved in the absence of dumping.

In TER159B, Customs and Border Protection calculated a USP using Viridian's weighted average unit price of CFG for each thickness in YEM 2007, then indexing it by the percentage difference between:

- the weighted average CTMS in YEM 2007; and
- an adjusted CTMS over the investigation period for each thickness.

This price was then compared to Viridian's actual weighted average sales price achieved for each thickness in YEM2010. This analysis found that for all thicknesses, Viridian's YEM2010 prices were above the corresponding USP indicating that dumping may have caused negligible price suppression to Viridian.

In TER159B, Customs and Border Protection found that Viridian's weighted average sales prices were above the undumped FIS import prices, even after taking into account a reasonable price premium. Customs and Border Protection found that even if exports of CFG from the countries under consideration were at undumped prices, Viridian's prices would still be undercut i.e. it is likely Viridian would have experienced similar levels of price related injury that could not be attributed to dumping.

Customs and Border Protection therefore concluded that the degree of price suppression and consequently lost profits and profitability, if any, to Viridian that was caused by dumping was negligible.

9.9.2 Analysis

Customs and Border Protection has found that dumping caused injury to the Australian industry during the investigation period, but other factors contributed to that injury.

Customs and Border Protection notes a WTO Appellate Body ruling which stated that to ensure that other known factors are not attributed to dumped imports, 'an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effect of the dumped imports.' However the Appellate Body emphasised that the particular methods and approaches by which WTO members choose to carry out this process are not prescribed by the Anti-Dumping Agreement[34].

Disentangling the effects that a range of factors have had on an industry is not an exact science. Nonetheless, Customs and Border Protection is of the view that the effects of other known factors need to be isolated from the dumped imports to ensure that injury caused by these other factors is not attributed to the dumped imports. It is important to bear in mind, however, that dumped imports need not be the sole or even the principal cause of injury. What must be established is that the injury that can be attributed to dumping is material.

In the resumed investigation, Customs and Border Protection has assessed the materiality of the injury caused by dumping in two ways. Customs and Border Protection calculated notional undumped export prices for comparison with Viridian's prices, and also examined the effects of a notional price premium i.e. the additional margin a local supplier might expect to receive above the price of a similar imported product.

Undumped price analysis

In the resumed investigation, Customs and Border Protection calculated undumped prices for all verified exporters by adding the dumping margins calculated for each exporter to their free-on-board (FOB) export prices for 3, 4, 5 and 6mm CFG, then adding import costs to calculate FIS undumped export prices for each exporter.

Customs and Border Protection then compared the undumped FIS export prices to Viridian's sales prices to external customers during the investigation period and found Viridian's external sales prices were higher by the margins shown below.

Table 13

	China	Indonesia	Thailand
3mm	n/a	6%	1%
4mm	6%	13-22%	5%
5mm	9%	15-22%	8%
6mm	12%	12-23%	9%

Source: confidential attachment 5

[34] *AB-2001-2 United States – Anti-Dumping measures on certain hot-rolled steel products from Japan*

Table 13 shows that Viridian's FIS external sales prices were greater than the undumped FIS export prices by the margins shown in the table. In SEF159C, Customs and Border Protection considered that this tends to support the view that even if CFG exports from countries under consideration were at undumped prices, Viridian might not have been able to raise its prices given the margin between its selling prices and imports.

Price premium

In the resumed investigation Customs and Border Protection has considered the effects of including a price premium on the materiality of the price related injury suffered by Viridian during the investigation period.

During the resumed investigation G James, a major purchaser of both imported and local CFG, claimed that it was prepared to pay Viridian a price premium to take account of various benefits of buying from a local source. While not able to quantify the premium precisely, G James estimated that premium during the investigation period to be around 5%. G James stated that the premium had reduced during the investigation period due to the impacts of the global financial crisis and the strengthening of the Australian dollar.

Customs and Border Protection examined the effect of a price premium on the undumped price analysis. Customs and Border Protection calculated a price premium by comparing Viridian's weighted average external sales FIS prices with the weighted average FIS import price achieved in relation to Viridian's largest customers that also purchased imported CFG from Thailand and China[35]. Customs and Border Protection considered the difference (the undercutting margin) to be the price premium achieved by Viridian on external sales over the investigation period. The premium was calculated to be 8% (**confidential attachment 9** refers).

Customs and Border Protection calculated the effect of a price premium on the undercutting margin by adding the 8% premium to the undumped FIS prices calculated for each thickness during the investigation period. The undumped FIS export price plus premium is the price Viridian might expect to achieve in the absence of dumping.

Table 14

	China	Indonesia	Thailand
3mm	n/a	-1%	-7%
4mm	-1%	6-16%	-3%
5mm	1%	8-16%	0%
6mm	5%	5-17%	2%

Source: confidential attachment 9

Table 14 shows the resulting undercutting margin after the FIS export price has been adjusted for the dumping margin and price premium at the macro level. The table shows that the adjusted FIS export prices are still below Viridian's weighted average

[35] This accounted for 22% of total import volume

external sales prices for 4, 5 and 6mm CFG from all countries under consideration except for 4mm thickness from Thailand.

In SEF159C Customs and Border Protection found that this analysis tended to support a conclusion that Viridian might not have been able to raise its prices in the absence of dumping given the differences shown in the table above.

In response to SEF159C, Viridian provided an analysis of the tables (11 and 12) presented in SEF159C. Viridian claimed that there was a significant improvement in the average level of price undercutting after taking into account an undumped price for China and Thailand and an improvement in the undumped 3mm and 6mm thicknesses for Indonesia and all thicknesses from Indonesia with an undumped price plus premium. Viridian claimed that a remedy to remove the dumping would lessen the price undercutting by raising the floor price to an undumped level.

Viridian claimed that had a remedy been imposed in December 2010 following the original investigation the premium would have been applied on an uplifted floor price which would have resulted in an improvement in Viridian's revenue and profitability.

After taking into account Viridian's submission Customs and Border Protection is of the view that it is reasonable to conclude that although the undumped prices plus a premium were below Viridian's selling prices during the investigation period, an increase in the export prices by at least the extent of the dumping would allow Viridian to increase its price to reduce the injury caused by price depression and suppression. Even if, as JELD-WEN claims in its submission to SEF159C, Viridian is the price setter in the market, this would support a view that Viridian would attempt to increase its price if the effects of dumping were removed.

Customs and Border Protection re-examined the effects of including a price premium on the materiality of the price related injury suffered by Viridian during the investigation period at the micro level i.e. at the specific customer level (**confidential attachment 3** refers).

Customs and Border Protection found that the undercutting margin was significantly reduced for Viridian's major customers following adjustments to the dumped export prices from countries under consideration. This analysis supports a finding that Viridian would be able to raise its prices at least to those customers, which represent around 60% of its external sales volume.

9.9.3 Estimate of materiality of revenue loss

In the resumed investigation, Customs and Border Protection has attempted to estimate the materiality of the price injury caused by dumping in two ways:

- calculating the financial impact of all of Viridian's external selling prices being depressed during the investigation period (macro analysis); and

- calculating the financial impact of increasing Viridian's prices to those customers that dual source from Viridian and imports, by the extent of the dumping margin (micro analysis).

Financial impact of price depression – macro analysis

Customs and Border Protection found that Viridian's external sales prices increased in YEM2009 and declined in some quarters of YEM2010. Customs and Border Protection therefore found that Viridian experienced price depression on 4, 5 and 6mm CFG in the investigation period. Customs and Border Protection estimated the revenue that would have been generated (and hence the notional revenue loss) if Viridian had maintained the price it achieved in the first quarter of YEM2010 throughout the investigation period (**confidential attachment 10**).

Customs and Border Protection assessed the notional revenue loss by calculating the difference between the quarterly weighted average external sales price in each quarter of the investigation period and the weighted average external sales price in the March 2009 Quarter for 3, 4, 5 and 6mm CFG. The difference in price was then multiplied by the external sales quantity for the quarter to calculate a notional loss of revenue. The notional revenue loss was then compared to the total sales revenue for each thickness over the investigation period.

When the total notional lost revenue is expressed as a percentage of Viridian's total external revenue from CFG the amount of potential lost revenue is around 3%[36] over the investigation period. This represents the maximum potential lost revenue if all the price depression was entirely attributable to dumping. As discussed above, the strengthening of the Australian dollar and the global financial crisis also impacted on Viridian's external sales price during the investigation period and therefore would have had some effect on revenue.

In SEF159C, Customs and Border Protection formed the view that this supports a finding that any part of the price depression caused by dumping was less than 5% and therefore given the impacts of the strengthening Australian dollar and the global financial crisis that contributed to that price depression, any part due to dumping was not material.

In response to SEF159C, Viridian claimed that even a 5% increase in revenue is substantial in a commodity based business. Viridian claimed that it is a simplistic generalisation to say that the presence and adverse impacts of dumped imports is overridden because of demand falling in the market. Viridian referred to the impact a 5% increase in revenue would have on Viridian's gross margin, which was substantially more than 5%. Customs and Border Protection considers this submission has merit and agrees that an assessment by reference to revenue loss only is insufficient. When the impact on gross margin is taken into account, even if some of the price depression and suppression is due to other factors the part due to dumping would be material.

Financial impact of price depression – micro analysis

Customs and Border Protection conducted further analysis by assessing the notional revenue loss at the micro level, i.e at the customer level, based on Viridian's largest customers who also import from the countries under consideration (**confidential attachment 3**). These customers represented around 60% of Viridian's external sales

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36 SEF159C stated the amount as 5%. The calculation has been revised during the preparation of the final report.

and 24% of imports from the countries under consideration during the investigation period.

Customs and Border Protection increased Viridian's selling prices to those customers during the investigation period by the extent of the relevant dumping margins. Customs and Border Protection then multiplied the increase by the quantity Viridian sold to each customer during the investigation period. Customs and Border Protection calculated the notional loss of revenue to these customers to be around 8%.

As discussed above, taking into account Viridian's submission about the importance of contribution margin to a business, the impact of the micro analysis shows that the price injury caused by dumping is material.

9.9.4 Summary - whether dumping has caused material injury

The TMRO directed Customs and Border Protection to consider, in a qualitative way, whether any part of the injury to the Australian industry was caused by dumping given the other factors at play. If so, Customs and Border Protection should consider whether that part of the injury caused by dumping is material. The direction of the TMRO to make a qualitative assessment recognises the difficulty in apportioning injury to dumping when there are other contributors to injury.

The analysis of the market and prices during the investigation period shows that low priced imports impacted the Australian industry's ability to maintain and/or increase prices. While it might be established that low priced imports have caused injury to the Australian industry, Customs and Border Protection must find that dumping was the cause of that injury.

Customs and Border Protection has found that CFG was exported to Australia from the countries under consideration during the investigation period at dumped prices. The Australian industry experienced injury in the form of lost volume but this was due to a contraction in the market during the last quarter of YEM2010 rather than dumping. Customs and Border Protection also found that at least part of the observed price depression and suppression was due to the refurbishment of the Dandenong plant and the appreciation of the Australian dollar, the effects of which were not insignificant. In SEF159C a comparison of the undumped prices to Viridian's external prices showed that even without dumping, and affording Viridian a premium above import prices, Viridian may have experienced suppressed or depressed prices to the same degree in order to be competitive in the market.

In SEF159C Customs and Border Protection stated that it was seeking comments from interested parties on the findings in the report. Customs and Border Protection stated:

> "*If following submissions, the delegate is of the view that the injury caused by dumping was negligible the investigation will be terminated. If, the alternative, the delegate will prepare a report to the Minister recommending the imposition of anti-dumping measures*."

Submissions were received from interested parties in response to SEF159C that caused Customs and Border Protection to re-consider its preliminary findings.

The analysis of the market and prices during the investigation period shows that low priced dumped exports from countries under consideration impacted the Australian industry's ability to maintain and/or increase prices thereby causing reduced profits and profitability. Customs and Border Protection accepts the claim by Viridian that:

> "…*a remedy to remove the dumping would lessen the price undercutting by raising the 'floor' price to an undumped level. This undumped pricing would likely increase the market value for both imports and the Australian industry*".

Customs and Border Protection considers it reasonable to conclude that the margin between Viridian's prices and import prices would continue if import prices increased by at least the extent of the dumping margin.

Customs and Border Protection also noted the claim by Viridian that the impact of the price depression in YEM2010 on revenue caused by dumped exports from the countries under consideration and other factors is significant when the impact on contribution margin, in addition to the impact on revenue alone, is considered. Further, the Ministerial Direction issued in December 1991[37] concerning injury stated that four specific aspects of injury should be addressed when considering whether injury is material. One of these aspects is the greater impact of injury during periods of economic downturn. The Australian industry is more susceptible to injury caused by dumping during these periods.

Customs and Border Protection acknowledges that other factors have contributed to the injury suffered by the Australian industry during the investigation period. However, after considering the evidence and observations presented by interested parties in the original and resumed investigations Customs and Border Protection is satisfied on reflection that the injury to the Australian industry caused by dumping from the countries under consideration during the investigation period is of itself material.

[37] Dumping and Subsidy Manual June 2009 page 11, Section 4.2 'Policy'

10 WILL DUMPING AND MATERIAL INJURY CONTINUE?

10.1 Findings

Customs and Border Protection makes the finding that exports of CFG from the countries under consideration in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

10.2 Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping, anti-dumping may be imposed on future exports of like goods if the Minister is satisfied that the dumping and material injury may continue.

10.3 Customs and Border Protection's assessment

10.3.1 Might dumping continue?

Customs and Border Protection found that exports of CFG to Australia from the countries under consideration during the investigation period were dumped by a margin of between 3.3% and 26.4%.

No information has been presented which would indicate that dumping may not occur in the future. Customs and Border Protection considers that the export price of CFG that may be exported to Australia from the countries under consideration in the future may be less than the normal value of the goods.

10.3.2 May material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a finding that CFG exported at dumped prices has caused material injury to the Australian industry producing like goods.

Customs and Border Protection considers that a continuation of the price pressure from dumped imports from the countries under consideration is likely to have a continuing adverse impact on the Australian industry. Customs and Border Protection considers that this impact may be particularly evident in price depression and/or suppression and consequently lost profits and profitability.

Based on the available evidence, Customs and Border Protection makes a finding that exports of CFG from the countries under consideration in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

11 ANTI-DUMPING MEASURES

11.1 Findings

An USP has been calculated using industry's cost to make and sell during the investigation period. The calculated non-injurious prices (NIPs) were compared with export prices and it the NIPs exceeded the export prices. This adds support to the finding that dumped exports have caused injury to the Australian industry.

11.2 Introduction

Duties may be applied where it is established that dumped imports have caused or threatened to cause injury to the Australian industry producing like goods. The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but a lesser duty must be applied if it is determined that it is sufficient to remove the injury.

The NIP provides the mechanism whereby this lesser duty provision is given effect. It is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export[38].

11.3 Unsuppressed selling price methodology

Customs and Border Protection generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry selling prices – industry CTMS plus profit; or
3. selling prices of un-dumped imports.

Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

In considering whether lesser duties are sufficient to remove the injurious effects of dumping, Customs and Border Protection has considered what might be an appropriate price for CFG that the Australian industry could be expected to achieve in a market unaffected by exports at dumped prices.

In Termination Report 159B, Customs and Border Protection calculated a USP using Viridian's selling prices in YEM2007. In the resumed investigation, Customs and Border Protection has re-considered the method for calculating the USP. Customs and

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38 The non-injurious price is defined in section 269TACA

Border Protection considered the circumstances surrounding the Australian CFG market during the injury analysis period and found:

- The Australian CFG market was significantly affected by the global financial crisis; and
- Viridian's operational structure has changed significantly.

It is reasonable to expect that Viridian's external sales prices have been affected by these circumstances and it is therefore not preferable to use Viridian's sales prices in establishing a USP. Customs and Border Protection has therefore used a constructed method for establishing the USP. Customs and Border Protection considered it reasonable to use Viridian's CTMS in YEM2010 for the following reasons:

- the cost structure and volumes are what Viridian achieved in the most recent period following the global financial crisis and the refurbishment of the Dandenong plant; and
- while Viridian's costs during the investigation period were impacted by lost volume, this was found not to have been caused by dumping.

In constructing a USP, Customs and Border Protection considered that no profit margin should be added to the CTMS as historically Viridian has not achieved a profit on sales (even in YEM2007, which was a year found to be unaffected by dumping).

The calculation of the unsuppressed selling price is at **confidential appendix 7**. No interested parties commented on the USP in submissions to SEF159C.

11.4 Non-injurious price

The level of trade of the USP in terms of imports is the delivered into-store cost to the importers that would otherwise purchase CFG from the Australian industry. The NIP has been calculated by deducting from the USP, amounts for:

- importer into-store costs;
- overseas freight and marine insurance;
- port and clearance charges in Australia.

The calculation of the non-injurious price is at **confidential appendix 7**.

11.5 Interim dumping duties

The delegate recommends that the interim dumping duty be expressed as an amount per square metre of CFG.

12 RECOMMENDATIONS

The delegate is satisfied that the export of CFG from the countries under consideration at dumped prices caused material injury to the Australian industry producing like goods.

The delegate recommends that the Minister impose anti-dumping measures on CFG exported to Australia from China, Indonesia and Thailand.

The delegate recommends the Minister be satisfied:

- in accordance with s.269TAB(3), sufficient information has not been furnished, or is not available, to enable the export price of certain clear float glass exported to Australia from China (except by Xinyi Ultrathin (Donguan) Co., Ltd and Guangzhou CSG Glass Co., Ltd) to be ascertained under s.269TAB(1)(a), (b), or (c);
- in accordance with s.269TAB(3), sufficient information has not been furnished, or is not available, to enable the export price of certain clear float glass exported to Australia from Indonesia (except by PT Asahimas Flat Glass Tbk and PT Muliaglass) to be ascertained under s.269TAB(1)(a), (b), or (c);
- in accordance with s.269TAB(3), sufficient information has not been furnished, or is not available, to enable the export price of certain clear float glass exported to Australia from Thailand (except by Guardian Industries Corp. Ltd) to be ascertained under s.269TAB(1)(a), (b), or (c);
- in accordance with s.269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of certain clear float glass exported to Australia from China (except by Xinyi Ultrathin (Donguan) Co., Ltd and Guangzhou CSG Glass Co., Ltd) to be ascertained under s.269TAC(1), (2), or (5C);
- in accordance with s.269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of certain clear float glass exported to Australia from Indonesia (except by PT Asahimas Flat Glass Tbk and PT Muliaglass) to be ascertained under s.269TAC(1), (2), or (5C);
- in accordance with s.269TAC(6), sufficient information has not been furnished or is not available to enable the normal value of certain clear float glass exported to Australia from Thailand (except by Guardian Industries Corp. Ltd) to be ascertained under s.269TAC(1), (2), or (5C); and
- in accordance with s.269TG(2) the amount of the export price of certain clear float glass already exported to Australia from China (except by Xinyi Ultrathin (Donguan) Co., Ltd), Indonesia and Thailand is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia from China (except by Xinyi Ultrathin (Donguan) Co., Ltd), Indonesia and Thailand in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused.

The delegate of the CEO recommends the Minister determine:

- in accordance with s.269TAB(3), the export prices for all exporters from China (except Xinyi Ultrathin (Donguan) Co., Ltd) having regard to all relevant information;

- in accordance with s.269TAB(3), the export prices for all exporters from Indonesia (except PT Asahimas Flat Glass Tbk and PT Muliaglass) having regard to all relevant information;

- in accordance with s.269TAB(3), the export prices for all exporters from Thailand (except Guardian Industries Corp. Ltd) having regard to all relevant information;

- in accordance with s.269TAC(6), normal values for all exporters from China (except Xinyi Ultrathin (Donguan) Co., Ltd) having regard to all relevant information;

- in accordance with s.269TAC(6), normal values for all exporters from Indonesia (except PT Asahimas Flat Glass Tbk and PT Muliaglass) having regard to all relevant information; and

- in accordance with s.269TAC(6), normal values for all exporters from Thailand (except Guardian Industries Corp. Ltd) be determined having regard to all relevant information.

The delegate of the CEO recommends the Minister direct:

- in accordance with s.8(5) of the Dumping Duty Act, that the element of interim dumping duty payable on clear float glass the subject of a notice under s.269TG(2) be ascertained by reference to a measure of the quantity of those particular goods.

The delegate of the CEO recommends the Minister compare:

- in accordance with s.269TACB(2)(a), the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The delegate of the CEO recommends the Minister declare:

- in accordance with s.269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China (except by Xinyi Ultrathin (Donguan) Co., Ltd), Indonesia and Thailand after the date of publication of the notice.

13 ATTACHMENTS

Confidential Attachment 1	Australian market volume analysis
Confidential Attachment 2	Viridian's external sales price analysis
Confidential Attachment 3	Price undercutting analysis
Confidential Attachment 4	profits and profitability analysis
Confidential Attachment 5	Undumped price analysis
Confidential Attachment 6	Calculation of dumping margins
Confidential Attachment 7	Calculation of USPs and NIPs
Confidential Attachment 8	Analysis of impact of exchange rate
Confidential Attachment 9	Analysis of impact of a premium
Confidential attachment 10	Analysis of revenue loss due to price depression

14 APPENDIX A - SUBMISSIONS

Entity	Date received	Nature of submission	File reference
PT Asahimas & AGC	29/06/11	*Submission on resumption of investigation*	*2010/045929-04 folio 50*
Muliaglass	30/06/11	*Submission on resumption of investigation*	*2010/045929-04 folio 53-57*
Viridian	01/07/11	*Submission on resumed investigation*	*2010/045929-04 folio 72-112*
JELD-WEN	01/07/11	*Submission on resumption of investigation*	*2010/045929-04 folio 141-170*
Muliaglass	11/07/11	*Submission on Viridian Presentation dated 300611*	*2010/045929-04 folio 113-140*
Glassworks	12/07/11	*Submission on resumption of investigation*	*2010/045929-05 folio 1-2*
Viridian	15/07/11	*Response to Muliaglass' submission of 300611*	*2010/045929-04 folio 174-176*
Viridian	15/07/11	*Response to ROM with Guardian*	*2010/045929-04 folio 171-173*
Viridian	22/07/11	*Submission on G James visit report*	*2010/045929-05 folio 3-4*
Viridian	26/07/11	*Response to JELD-WEN's submission of 010711*	*2010/045929-05 folio 7-9*
JELD-WEN	26/07/11	*Response to Viridian's submission of 010711*	*2010/045929-05 folio 5-6*
Viridian	29/07/11	*Further response to JELD-WEN's submission of 010711*	*2010/045929-05 folio 10-17*
JELD-WEN	02/08/11	*Response to Viridian's submission of 260711*	*2010/045929-05 folio 18-21*
JELD-WEN	02/08/11	*Response to Viridian's submission of 260711*	*2010/045929-05 folio 26-29*
JELD-WEN	05/08/11	*Response to Viridian's submission of 290711*	*2010/045929-05 folio 30-31*
JELD-WEN	29/08/11	*Response to SEF159C*	*2010/045929-05 folio 82-89*
Guardian	29/08/11	*Response to SEF159C*	*2010/045929-05 folio 90-91*
Muliaglass	29/08/11	Response to SEF159C	*2010/045929-05 folio 80-81*
Viridian	05/09/11	Response to SEF159C	*2010/045929-05 folio 92-103*
JELD-WEN	13/09/11	*Response to Viridian's submission of 050911*	*2010/045929-05 folio 106-112*
JELD-WEN	14/09/11	*Response to Viridian's submission of 050911*	*2010/045929-05 folio 113-122*
Thai Government	16/09/11	*letter*	*2010/045929-05 folio 123*