



Australian Government
**Australian Customs and
Border Protection Service**

Public Record

R E P O R T

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

REPORT NO. 159

**CONSIDERATION OF AN APPLICATION
FOR A DUMPING DUTY NOTICE**

Certain Clear Float Glass

EXPORTED FROM

**THE PEOPLE'S REPUBLIC OF CHINA,
INDONESIA AND THAILAND**

April 2010

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ABBREVIATIONS

\$	Australian dollars
The Act	<i>Customs Act 1901</i>
CEO	Chief Executive Officer
CFG	Clear Float Glass
CTMS	Cost To Make & Sell
Customs and Border Protection	Australian Customs and Border Protection Service
FOB	Free On Board
CFG	clear float glass
NIP	Non-injurious Price
Viridian	CSR Viridian Limited
Tariff Act	<i>Customs Tariff Act 1995</i>
the goods	the goods the subject of the application
the Minister	the Minister for Home Affairs
China	The People's Republic of China
YEM	Year ending March
USP	Unsuppressed Selling Price

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1 SUMMARY AND RECOMMENDATIONS

This consideration is in response to an application by CSR Viridian Limited (Viridian) for a dumping duty notice in respect of certain clear float glass (CFG) exported to Australia from the People's Republic of China (China), Indonesia and Thailand.

This report provides the results of the consideration by the Australian Customs and Border Protection Service (Customs and Border Protection) to the Chief Executive Officer (CEO) of Customs and Border Protection as to whether or not to reject the application.

1.1 Recommendations

Customs and Border Protection recommends that the CEO decide not to reject the application.

If the CEO accepts this recommendation, to give effect to the decision, the CEO must sign and publish the notice at **Appendix A**.

1.2 Application of law to facts

1.2.1 Authority to make decisions

Division 2 of Part XVB of the *Customs Act 1901*¹ 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 goods covered by the application for the purpose of making a report to the Minister for Home Affairs (the Minister).

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

1.2.2 Application

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

Within 20 days of Customs and Border Protection receiving the application, or further information in support of the application without having been requested to do so², the CEO shall examine the application and decide whether or not to reject it.

The CEO must make a decision on this application by 15 April 2010.

1.2.3 Consideration of application

The CEO shall reject the application if not satisfied, after having regard to the matters contained in the application and to any other information that the CEO considers relevant, that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

² Section 269TC(2A)

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1.2.4 Findings and conclusions

Compliance with subsection 269TB(4) (Section 3 of this report)

Customs and Border Protection is satisfied that the application complies with subsection 269TB(4).

Australian industry (section 5 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appears to be an Australian industry in respect of like goods.

Reasonable grounds - Dumping (Section 6 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that:

- CFG is being exported to Australia from China, Indonesia and Thailand at dumped prices; and
- the total volume of the goods that have been dumped from China, Indonesia and Thailand individually is greater than 3% of the total Australian import volume and therefore not negligible.

Reasonable grounds - Injury (Section 7 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- reduced profit and profitability; and
- reduced return on investment.

Reasonable grounds - Causation (Section 8 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that there is causal link between dumping and material injury.

Reasonable grounds – Publication of a dumping duty notice

In view of the above findings, there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

2 INTRODUCTION

2.1 Application

On 18 February 2010, Viridian lodged an application³ for the publication of a dumping duty notice in respect of CFG exported to Australia from China, Indonesia and Thailand. Additional information was received on 10 March 2010 and 26 March 2010.

The decision whether to reject the application must be made within 20 days after the lodgement date⁴, or from the date that further information is received from the applicant⁵. Therefore, this decision must be made by 15 April 2010.

The application will not be rejected if the application complies with subsection 269TB(4), there is an Australian industry in respect of like goods, and there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (the goods).

For there to appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods, there must appear to be reasonable grounds to support the claim that CFG is being exported to Australia from China, Indonesia and Thailand at dumped prices, the Australian industry is suffering injury, and there is causal link between the dumping and material injury.

2.2 Company information

The application states that Viridian, formerly known as Pilkington, is a wholly owned subsidiary of CSR Viridian Holdings Limited. It explains that in 2007, CSR acquired Pilkington's glass manufacturing and distribution businesses in Australia and New Zealand. The application also states that CSR Viridian Holdings Limited is a wholly owned subsidiary of CSR Viridian Finance Pty Ltd, which is a wholly owned subsidiary of CSR Building Products. It further states that CSR Building Products is wholly owned by CSR Limited, an ASX listed entity.

The application includes a chart of companies associated or affiliated with CSR Viridian in Confidential Attachment A-2.6.

The application states that Viridian is the sole manufacturer of CFG in Australia. It explains that Viridian has two glass manufacturing facilities in Australia:

- Dandenong (VIC) with a capacity of 165,000 tonnes; and
- Ingleburn (NSW) with a capacity of 105,000 tonnes.

The application advises that the Dandenong plant undertook a refurbishment from May 2008 to October 2008, with production recommencing in November 2008. It explained that as a result of the refurbishment, production capacity at its Dandenong plant was increased from 120,000 tonnes to 165,000 tonnes per year. The application also advised that the Ingleburn float line is scheduled for a rebuild from 2010 onwards.

³ Section 269TB

⁴ Section 269TC(2)

⁵ Section 269TC(2A)

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2.3 Previous CFG cases

There are currently no anti-dumping measures on CFG.

There have been a number of previous dumping investigations, reviews and continuations into CFG, as detailed below:

- Trade Measures Report No. 124 of 2007 – Continuation inquiry into CFG 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 CFG exported from Indonesia. Measures were not continued.
- Trade Measures Report No. 60 of 2002 – Continuation inquiry into CFG 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 CFG exported from Indonesia. Measures imposed in June 2001 on one thickness of CFG 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.
- 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.

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3 COMPLIANCE WITH SUBSECTION 269TB(4)

3.1 Finding

Customs and Border Protection is satisfied that the application complies with subsection 269TB(4).

3.2 Introduction

To comply with the legislation, the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry⁶.

3.3 The Application

The applicant has lodged an application for the publication of a dumping duty notice in writing and in an approved form. The form has been signed in the required manner.

The applicant has provided all information required by the form, two paper copies of the confidential and public record versions of the application were submitted, as well as copies of both versions and attachments and appendices in electronic form.

The non-confidential public record version of the application is considered to contain sufficient detail to allow a reasonable understanding of the substance of the information⁷.

3.4 Supported by Australian industry

The applicant has submitted that it is the only manufacturer of CFG in Australia and therefore accounts for⁸:

- more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
- not less than 25% of the total production or manufacture of like goods in Australia.

⁶ Section 269TB(4)

⁷ Section 269ZJ

⁸ Section 269TB(6)

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4 THE GOODS THE SUBJECT OF THE APPLICATION

4.1 Description

The application describes the goods as clear float glass in nominal thicknesses of 3mm-12mm. It advises that acceptable tolerances to these thicknesses are shown below.

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 application states that it considers that the tariff classification is important in understanding the description of the goods. It clarifies that glass imported into Australia that does not fall under tariff classification 7005.29.00 is not the goods. Therefore, Customs and Border Protection is of the view that the goods must have the following characteristics to be considered as the goods:

- Transparent
- Flat
- Rectangle or square in shape

Furthermore, Customs and Border Protection is of the view that glass with the following characteristics falls outside the description of the goods:

- Coating, colour, tint or opaqueness
- Absorbent, reflective or non-reflective layer
- Wired
- Bent, edge-worked, engraved, drilled, enamelled or otherwise worked
- Framed or fitted with other materials
- Toughened (tempered), annealed or laminated
- Acid etched
- Low iron

4.2 Tariff classification

The application states that the tariff classification of the goods is 7005.29.00, statistical codes 2 through to 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.

This was confirmed by the Tariff Services Branch of Customs and Border Protection.

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4.3 Tariff Concession Orders

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

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

Customs and Border Protection considers that none of the TCOs fall under the description of 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 12mm.

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5 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

5.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appears to be an Australian industry in respect of like goods.

5.2 Introduction

If there is a person or there are persons who produce like goods in Australia, then there is an Australian industry in respect of those like goods⁹.

5.3 Manufactured in Australia

For goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia¹⁰. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia¹¹.

5.3.1 Imported materials

The application states that the CFG produced in Australia is made from high quality Australian raw materials: sand, soda ash, limestone, salt cake, dolomite and tin. It claims that more than 99.5 percent of inputs are Australian sourced and are not imported.

The application also states that due to the refurbishment of the Dandenong plant in YEM 2009, Viridian imported CFG to build-up sufficient stock to ensure it was able to continue supplying CFG to its customers.

5.3.2 Manufacturing process

As discussed in section 2.2 above, Viridian has two manufacturing plants in Australia. The application describes the CFG manufacturing process as detailed below.

The Australian produced materials form a batch of fine grained ingredients which flows into the furnace which is heated to 1500°C. The process makes glass of near optical quality. Several processes - melting, refining, homogenising – take place simultaneously in the 2000 tonnes of molten glass in the furnace. They occur in separate zones in a complex glass flow driven by high temperatures. This adds up to a continuous melting process, lasting as long as fifty hours, that delivers glass at 1100°C, free from inclusions and bubbles, smoothly and continuously to the float bath. Glass from the melter flows gently over a refractory spout onto the mirror-like surface of molten tin, starting at 1100°C and leaving the float bath as a solid ribbon at 600°C. The glass then goes through an annealing process before it is inspected and cut to order.

The application claims that the manufacture process described above is a substantial process that is carried out in Australia as the melting and refining of ingredients (as well as floating the glass on molten tin) creates an essential character to the finished clear float glass.

⁹ Subsection 269T(4)

¹⁰ Subsection 269T(2)

¹¹ Subsection 269T(3)

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5.3.3 Assessment

Having regard to the application, it appears that CFG is wholly or partly manufactured in Australia and at least one substantial process in the manufacture of glass is carried out in Australia.

5.4 Like goods

Like goods are defined as “goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”¹².

5.4.1 Locally produced CFG

The application states that the Australian industry manufactures CFG in various thicknesses (3mm-12mm) and different sizes.

5.4.2 Physical Likeness

The application states that both the CFG produced by the Australian industry and the goods have similar physical characteristics as they are both unworked, clear, not coloured, and have similar thicknesses and sizes.

5.4.3 Commercial Likeness

The application states that the goods compete directly with Australian produced CFG. It states that imported and Australian produced CFG are distributed through the same distribution channels and purchases of CFG are able to switch between the two sources.

The application claims that the goods and Australian produced CFG compete on price and that there is no significant differentiation in packaging.

5.4.4 Functional Likeness

The application states that both the imported and Australian produced CFG has the same end-use and are functionally substitutable. It explains that imported and Australian produced CFG perform the same functions, providing a material demanded by the building industry. The applicant also explains that the goods and Australian produced CFG do not have any differential qualities to the extent that price is superseded as the main purchasing driver.

5.4.5 Production Likeness

The application states that both the imported and Australian produced CFG are produced in a very similar production process and require similar raw materials.

5.4.6 Assessment

Having regard to the application, it appears that the CFG produced by the Australian industry are like goods to the goods.

¹² Subsection 269T(1)

6 REASONABLE GROUNDS – IS THERE DUMPING?

6.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that:

- CFG is being exported to Australia from China, Indonesia and Thailand at dumped prices; and
- the total volume of the goods that have been dumped from China, Indonesia and Thailand individually is greater than 3% of the total Australian import volume and therefore not negligible.

6.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice¹³, there must appear to be reasonable grounds to support the claim that the export price of the goods is less than the normal value of the goods¹⁴.

If the total volume of the goods that have been dumped is negligible, Customs and Border Protection must terminate the investigation so far as it relates to that country¹⁵. The total volume of the goods that have been dumped is taken to be a negligible volume if when expressed as a percentage of the total Australian import volume, it is less than 3%¹⁶ for a particular country and no more than 7% from all countries¹⁷.

6.3 Export price

The application based the export price on quotes for various nominal thicknesses of CFG received from exporters from China, Indonesia and Thailand between January 2009 and June 2009. It provided two quotes from China, two from Indonesia and three from Thailand. All the prices were quoted in either Australian dollars (AUD) or US dollars (USD) or both. Most of the quotes were given at cost, insurance and freight (CIF) prices except for one quote from a Chinese exporter which was at free-on-board (FOB) prices.

Based on the quoted price, the application calculated the FOB export price by:

- applying a discount to the quote if applicable;
- if USD was not quoted, converting the quoted price to USD;
- if the quote was at CIF, deducting an amount for insurance and freight;
- converting the USD price into the local currency; and
- for exports of CFG from China, deducting 5% as a VAT adjustment.

¹³ Subsection 269TC(1)(c)

¹⁴ Subsection 269TG(2)(b)

¹⁵ Subsection 269TDA(3)

¹⁶ Subsection 269TDA(4)

¹⁷ Subsection 269TDA(5)

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6.3.1 Assessment of export price

Customs and Border Protection considers that the export price quotes provided in the application to be reasonable to establish the export price of CFG exported from China, Indonesia and Thailand. However, Customs and Border Protection disagrees with several aspects of the application's calculation of the export price, which are discussed below.

Discounts

The application states that in obtaining export price information for China and Indonesia, notations have been made by the applicant on the originating copies to show that a discount applies. It explains that this information is normally not available in written form and is generally only provided during a discussion, therefore there is no supporting information for these discounts other than the notations on the relevant export price information.

The application states that the handwritten notation of these discounts is prima facie evidence that such discounts are on offer in the Australian market. It claims that the only way to verify these notations would be by seeking a declaration from one or both of the parties involved in advising and receiving knowledge of the discount. It adds that this would be an unreasonable threshold for an applicant given that there is prima facie evidence of a discount and documentary evidence of a discount is not available to the applicant as a purchase was not made by the applicant.

The application states that Customs and Border Protection must endeavour not to impose a standard against some types of evidence such as a handwritten notation of a discount while accepting evidence of other information as presented. It explains that if Customs and Border Protection does not accept handwritten notations as best information available for the purposes of initiation then Customs should query the veracity of photocopies of evidence such as emails, freight calculations and normal values. It argues that this approach would be unreasonable and go beyond the simple test of prima facie evidence.

Customs and Border Protection disagrees with the premise that hand written notations to the quotes can be regarded as sufficient prima facie evidence, and that they have the same probative value as photocopies of emails. Customs and Border Protection considers that the discounts claimed are merely an assertion by the applicant that discounts exist and are uncorroborated by sufficiently documented evidence. In addition, the size of the discount claimed by the applicant is not insignificant and Customs and Border Protection considers that it is unreasonable to apply the discount to the export price in the absence of any documented evidence.

For these reasons, Customs and Border Protection has not applied the discounts to its export price calculations.

Currency

The application states that in converting export prices from AUD to USD, the exchange rate used is as shown on the export price quote. This exchange rate referred to is the floor rate below which the supplier has the right to review the quote. The application argues that spot exchange rates have not been used as there is no actual transaction that would make using spot exchange rates meaningful.

Customs and Border Protection disagrees with the exchange rate used as it does not reflect actual exchange rates in the market at the time of the quote. For example, one quote stated that the supplier has the right to review the prices if the AUD fell below USD0.60. The application based its export price calculations on this exchange rate whereas the actual exchange rate in the market at the time of the quote was USD0.78. The application's use of the exchange rate resulted in a deflated export price.

In addition, exchange rate clauses in the quote seem to indicate that the sales are in AUD. Therefore, Customs and Border Protection has not converted the export price quotes to USD and for quotes that are in USD only, converted the export price to AUD using the market exchange rate on the day of the quote.

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VAT adjustment

In regards to the CFG export to Australia from China, Customs and Border Protection disagrees with the application's deduction to the export price of 5% for a VAT adjustment. The application has already made a VAT adjustment to the normal value so applying it to the export price calculation double counts the VAT adjustment. Therefore, Customs and Border Protection has not deducted an additional 5% from the export price of CFG exported from China.

6.4 Normal value

The application based its normal values on a report dated September 2009 that it commissioned into domestic selling prices in each country of export. The authors of the report sought quotes for CFG in nominal thicknesses of 4, 5, 6 & 10mm sold locally in China, Indonesia and Thailand. The quotes were either provided verbally over the telephone or as a written quote on the company's letterhead. The report also provided details of the terms of sale for each quote, such as delivery, packaging and any other additional costs.

The application calculated normal values based on the quoted prices shown in the report, less any VAT applicable. As Chinese exporters benefit from a 5% VAT rebate for exports of CFG, rather than full VAT amount of 17%, the application adjusted the normal value of CFG for China by increasing it by 12% of the export price.

6.4.1 Assessment of normal value

Customs and Border Protection considers that the domestic price quotes provided in the application to be reasonable to establish the normal value of CFG in China, Indonesia and Thailand. Customs and Border Protection has calculated the normal value using a similar method then converted the price to AUD.

6.4.2 Adjustments

The application has not sought any other adjustments explaining that it is expected that any adjustments would not be significant and would not affect the assessed dumping margins.

Customs and Border Protection considers this to be reasonable and has also not applied any adjustments to the normal value, other than for the VAT, for the purpose of this report.

6.5 Dumping margin

Although not explicitly stated, the application assumes that the export prices quoted between January and June 2009 are comparable to the normal values calculated using quotes obtained in August 2009. Customs and Border Protection undertook an analysis of the weighted average export prices of 3 & 4mm CFG¹⁸ during the March 2009, June 2009 and September 2009 quarters as declared in the import database and found that there was a variance in prices of up to 20% between the quarters. Customs and Border Protection considered adjusting for this variance, however there was no consistency to the variance that could allow for such an adjustment.

This analysis is at **Confidential Appendix 1**.

The application calculated dumping margins as a percentage of export prices for CFG exported from China, Indonesia and Thailand in 2009 as detailed in the table below.

mm	China	Indonesia	Thailand
3	14-125	10-36	54-74

¹⁸ Only 3 & 4mm CFG have individual statistical codes. Other statistical codes in the tariff classification can have more than one nominal thickness, therefore weighted average prices for these thicknesses cannot be accurately calculated.

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4	21-120	10-69	54-77
5	22-120	7-50	17-38
6	22-119	29-67	16-36
8	23-120	25-50	70-85
10	23-120	26-51	67-91
12	24-120	26-51	69-91

6.5.1 Assessment of dumping margin

In calculating the dumping margin, Customs and Border Protection has selected one quote for the export price and one quote for the normal value that is most comparable. For example, where possible, quotes with domestic prices inclusive of delivery¹⁹, or with cost of delivery shown, were used to calculate the normal value. However the application has only provided ex-works prices for domestic sales of Thai CFG, with no indication of delivery costs.

As the domestic price quotes are in the local currency, Customs and Border Protection has converted it to AUD using two different exchange rates:

- the spot rate on the date of the export price quote; and
- the spot rate on the date of the domestic price quote.

This resulted in different dumping margins depending on the exchange rate used.

The table below shows the results of Customs and Border Protection's dumping margin calculations as a percentage of export prices.

mm	China	Indonesia	Thailand
4	15-27	15-21	25-36
5	15-28	9-15	-5-4
6	15-28	35-41	-5-4
10	13-25	22-28	37-49

Customs and Border Protection notes the low to negligible dumping margins calculated for 5 & 6mm thicknesses of CFG exported from Thailand. However, due to the significant dumping margins calculated for 4 & 10mm thicknesses of CFG, Customs and Border Protection considers that overall, there appears to be reasonable grounds to support the claim that CFG from Thailand is being exported into Australia at dumped prices. In addition, as the Thai normal values are based on ex-works prices, it is likely that the dumping margins will be higher when considering the addition of delivery charges to the port of export.

Customs and Border Protection also calculated the dumping margin as a percentage of export prices for 4mm CFG²⁰ using export prices declared in the import database during the September 2009 quarter (the same period as the domestic price quotes). The results are shown below.

mm	China	Indonesia	Thailand

¹⁹ Customs and Border Protection considers that, in the absence of accurate delivery cost information, the cost of local delivery is be similar to the cost of delivery to the port of export.

²⁰ Only 3 & 4mm CFG have individual statistical codes that allows for calculating export price from the import database. However, as the applicant did not provide domestic price quotes for 3mm CFG, only 4mm CFG have been used for this calculation.

Public Record

4	6	47	23
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This result also supports the claim in the application that CFG is being exported to Australia at dumped prices.

Notwithstanding the different methods of calculating the dumping margins, the results seem to show dumping margins that are not insignificant. Therefore, it appears that CFG is being export to Australia from China, Indonesia and Thailand at dumped prices.

The calculations are at **Confidential Attachment 1.**

6.6 Import volumes

Information from the import database shows that there have been exports to Australia of CFG from China, Indonesia and Thailand with volumes from each country in excess of 3 per cent of the total import volume since 1 April 2006.

Therefore, Customs and Border Protection considers that there appear to be reasonable grounds to support the claim that the total volume of the goods that have been dumped is not negligible.

This analysis is at **Confidential Attachment 2.**

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7 REASONABLE GROUNDS – IS THE AUSTRALIAN INDUSTRY SUFFERING INJURY?

7.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- reduced profit and profitability; and
- reduced return on investment.

7.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice²¹, there must appear to be reasonable grounds to support the claim that there is injury to the Australian industry producing like goods²².

7.3 Approach to injury analysis

The application states that Viridian's accounting period is 1 April to 31 March. In addition, the data provided in the application are in year-ending-March (YEM) figures. Therefore, for the purpose of assessing injury, YEM data have been used in the analysis. Furthermore, as the applicant has only provided data for the 6 month period up to 30 September 2009 in the confidential appendices to the application (referred to as YTD 2010 in the application), and has claimed that there are no seasonal fluctuations in the CFG market, the YEM 2010 figure in this section has been annualised by doubling the YTD 2010 figure in order to provide indicative YEM 2010 figures. However, caution must be observed when making assessments using the YEM 2010 figure.

The application also includes data broken down into nominal thicknesses of 3,4,5,6,8,10, & 12mm. However, for the purpose of assessing reasonable grounds of injury in this section, only total aggregated figures have been used. Analysis of the individual nominal thicknesses will be undertaken during the investigation.

In this section, sales by the Australian industry include sales of imported CFG, and imports exclude CFG imported by the Australian industry.

The analysis contained in this section is at **Confidential Attachment 3**.

7.4 Background to the Australian market

The application states that CFG are mainly supplied into residential and commercial construction industries. It adds that CFG is supplied to the building industry including end-users such as window fabricators and glaziers.

²¹ Subsection 269TC(1)(c)

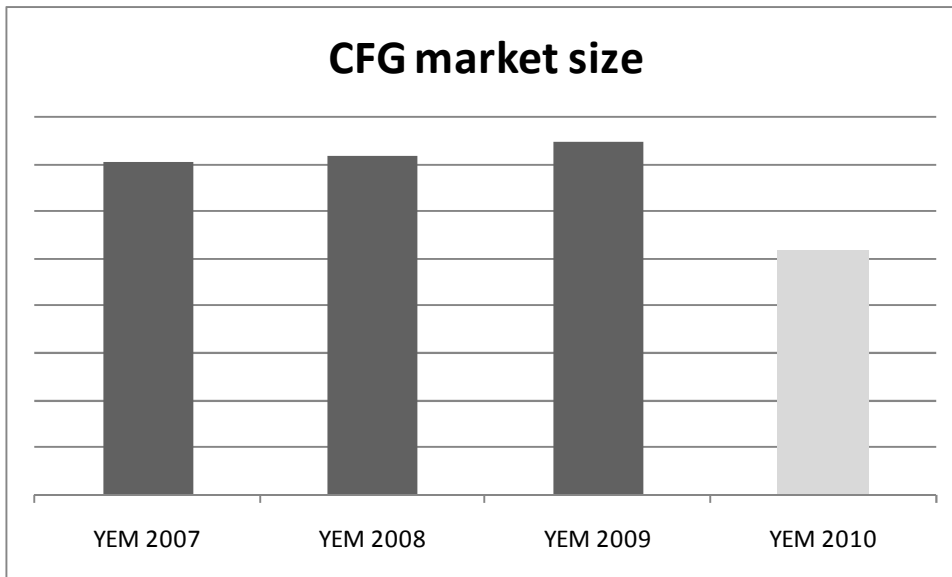
²² Subsection 269TG(2)(b)

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The application claims that there are no seasonal fluctuations in the CFG market and that imported CFG from China, Indonesia and Thailand are price setters in the Australian market.

The Australian market is supplied by Viridian, the sole producer of CFG in Australia, and imports from a number of countries. Preliminary analysis from the import database indicates that imports of CFG from China, Indonesia and Thailand account for 80-85% of CFG imports during 2009.

Based on data contained in the application and the import database, the below graph shows the preliminary analysis of the total market size of CFG in square metres.



The preliminary analysis shows that the market size of CFG was relatively stable between YEM 2007 and YEM 2009, increasing slightly. Early indication suggests that the market size of CFG has reduced significantly in YEM 2010.

7.5 The applicant's injury claims

Although not explicitly stated, the application has discussed injury suffered by the Australian industry in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- price depression;
- price undercutting²³;
- reduced profits and profitability; and
- reduced return on investment.

7.6 Commencement of injury

The application has not explicitly stated when the applicant considers that material injury from dumped imports commenced.

The application states that dumped imports have regularly been a feature of the competition faced by the Australian industry and that it was "surprised" by the outcome of the Continuation Inquiry of

²³ Price undercutting is discussed in Section 6 of the report.

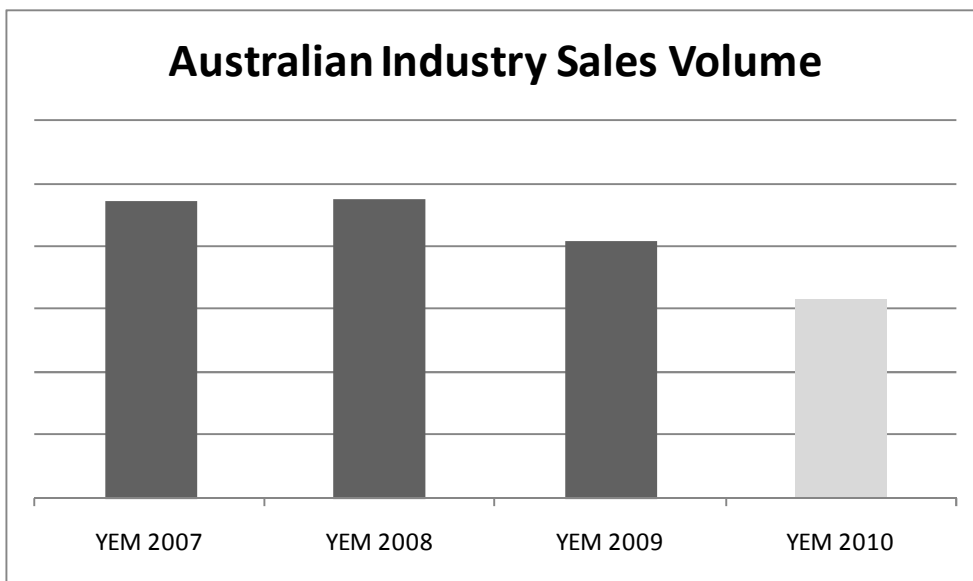
Public Record

2007 (Report 124) that found that exports of CFG from China were not exported to Australia at dumped prices and future exports of CFG from China are not likely to be at dumped prices. However, it asserts that although the Continuation Inquiry in 2007 did not find dumping from China, it now appears that dumping is occurring and possibly occurred in early YEM 2008 (Continuation Inquiry examined export from China during October 2006 to March 2007). The application states that it is not possible to accurately identify the commencement of material injury but there is anecdotal evidence that material injury commenced in YEM 2008.

7.7 Volume effects

7.7.1 Lost sales volume

The following graph illustrates the total sales volume (including imports) of CFG in square metres by the Australian industry based on the data contained in the application



The graph shows that the Australian industry's sales volume remained stable between YEM 2007 and YEM 2008 then fell in YEM 2009. The trend appears to be continuing in YEM 2010.

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of lost sales volume.

7.7.2 Lost market share

The following graph illustrates the market share of CFG in square metres broken down into:

- sales by the Australian industry, including its imports;
- imports of CFG from China, Indonesia and Thailand; and
- imports of CFG from other countries.

The graph is based on the data contained in the application and the import database. Due to the confidentiality of the information, the figures for China, Indonesia and Thailand have been aggregated.

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[The market share graph has been removed due to confidentiality]

The graph shows that the Australian industry has maintained market share between YEM 2007 and YEM 2008 then lost market share in YEM 2009. However, it appears that the Australian industry's market share have recovered in YEM 2010 but to a lower level than during YEM 2007 and YEM 2008.

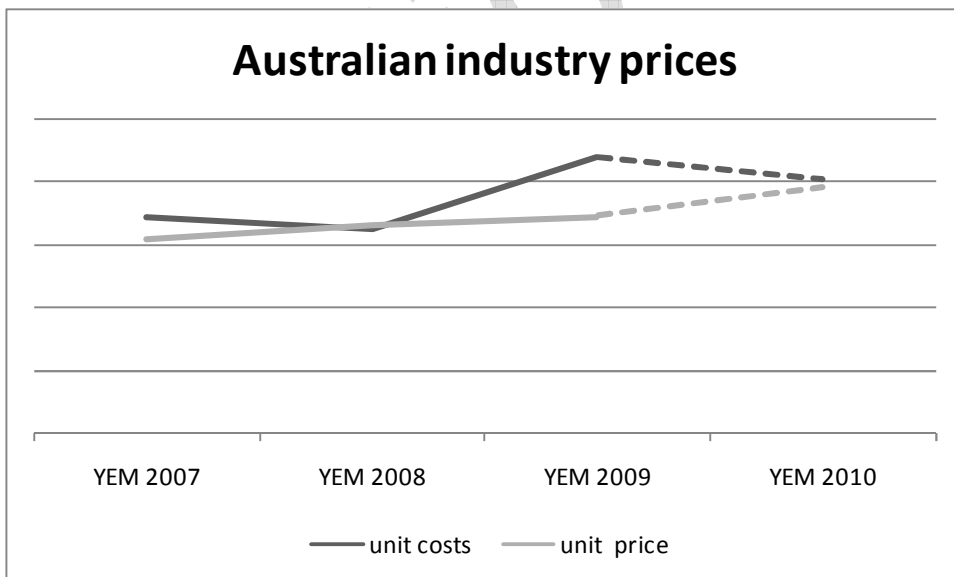
Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of lost market share.

7.8 Price effects

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.

The following graph illustrates the Australian industry's unit selling price and unit cost to make and sell based on data contained in the application.



7.8.1 Price depression

The graph shows that unit prices increased each year between YEM 2007 and YEM 2009. The trend appears to be continuing YEM 2010.

The application claims that although an analysis of total average prices does not indicate price depression, it is, however, evident when examining Viridian's price offers to its customers.

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However, the data in the application indicates that the Australian industry unit prices for each thickness have increased between YEM 2007 and YEM 2009.

Based on this analysis, there does not appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price depression.

7.8.2 Price suppression

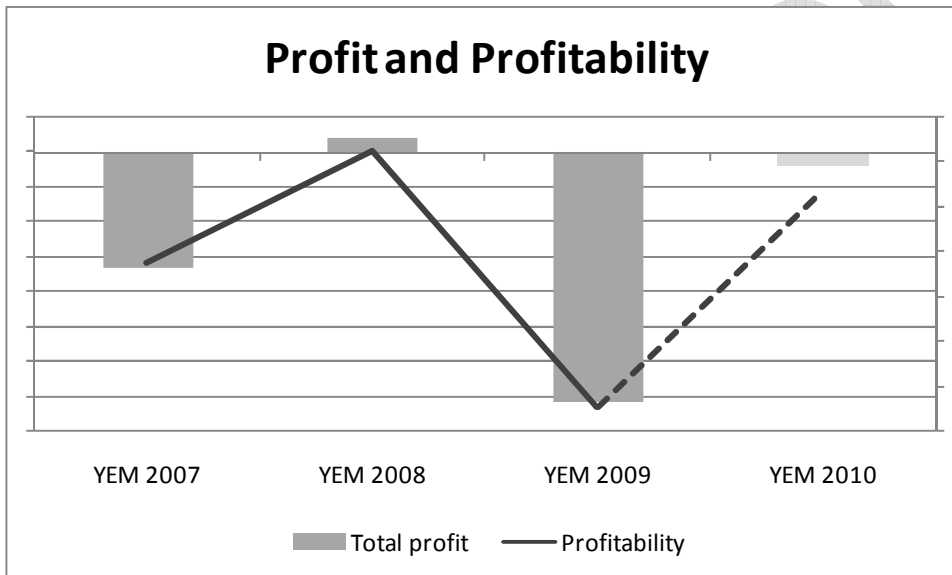
The graph suggests that the Australian industry's prices were not suppressed in YEM 2008 when compared to YEM 2007. On the other hand, unit costs spiked in YEM 2009 but unit prices did not match the increase, indicating price suppression.

Conditions seem to have improved in YEM 2010, with lower unit costs and higher unit prices. Nonetheless, the data seem to indicate that the Australian industry is still unable to fully recover its costs in YEM 2010.

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price suppression.

7.9 Profit effects

The following graph illustrates the Australian industry's total profit and profitability based on the data contained in the application.



The graph shows that the Australian industry's profit and profitability increased in YEM 2008 from a loss in YEM 2007, then fell again in YEM 2009. It appears that the Australian industry's profit and profitability have recovered in YEM 2010 though it is still making a loss.

Based on this analysis, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of reduced profit and profitability.

7.10 Conclusion of primary injury indicators

Based on the primary economic indicators above, it appears that the Australian industry suffered injury in the form of lost sales volume, lost market share, price suppression, and reduced profit and profitability in YEM 2009.

However, it seems that there is some recovery occurring in YEM 2010. Customs and Border Protection will analyse whether the Australian industry has continued to suffer injury in YEM 2010 as part of the investigation.

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7.11 Other economic factors

The application has claimed injury in the form of reduced return on investment.

Reduced return on investment

The data in the application indicates that the Australian industry's return on investment increased in YEM 2008, then fell in 2009 to a level below that of YEM 2007. It then increased in YEM 2010 to a level above that of YEM 2007 but below YEM 2008.

Assets

The data in the application indicates that the value of assets used in the production of CFG by the Australian industry increased between YEM 2007 and 2010.

Capital investment

The data in the application indicates that capital investment for the production of CFG by the Australian industry increased between YEM 2007 and 2009 then decreased in YEM 2010.

Research and Development (R & D)

The data in the application indicates that the expenditure on R & D of CFG by the Australian industry increased between YEM 2007 and 2009.

Sales revenue

The data in the application indicates that sales revenue from CFG by the Australian industry increased between YEM 2007 and 2008, then decreased in YEM 2009 and 2010.

Capacity

The data in the application indicates that the production capacity of CFG by the Australian industry increased between YEM 2007 and 2008, then decreased in YEM 2009 and 2010.

Capacity utilisation

The data in the application indicates that the capacity utilisation of CFG by the Australian industry increased between YEM 2007 and 2008, then decreased in YEM 2009 before increasing again in YEM 2010.

Employment

The data in the application indicates that the number of workers associated with the production of CFG employed by the Australian industry increased between YEM 2007 and 2010.

Productivity

The data in the application indicates that the productivity of the Australian industry decreased between YEM 2007 and 2008, then increased in YEM 2009 and 2010.

Stocks

The data in the application indicates that the amount of CFG stock held by the Australian industry increased between YEM 2007 and 2008, then decreased in 2009 before increasing again in 2010.

Conclusion

It appears that the Australian industry has suffered injury in the form of reduced return on investment.

Public Record

8 REASONABLE GROUNDS – IS THERE A LINK BETWEEN DUMPING AND MATERIAL INJURY?

8.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that there is causal link between dumping and material injury.

8.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice²⁴, there must appear to be reasonable grounds to support the claim that because of dumping, material injury to the Australian industry producing like goods has been caused²⁵.

In making a determination in relation to causal link, Customs and Border Protection must consider whether any injury to the Australian industry is being caused by a factor other than the exportation of the goods and any such injury must not be attributed to the exportation of the goods²⁶.

In determining the effect of the exportation of goods to Australia from different countries of export, Customs and Border Protection will consider the cumulative effect of those exportations only if it is satisfied that it is appropriate to consider the cumulative effect of those exportations having regard to:

- the conditions of competition between the exported goods; and
- the conditions of competition between the exported goods and the like goods that are domestically produced²⁷.

8.3 Factors other than dumping

A preliminary analysis of the application indicates that there may be factors other than dumping causing injury to the Australian industry, namely the effects of the global financial crisis and Viridian's Dandenong plant refurbishment.

The application states that the contraction in world markets, generally acknowledged to have become apparent in September/October 2008, did not immediately impact the Australian market for CFG for most of that financial year (YEM-2009). It explains that it was not until late YEM 2009 that some effects were being encountered with the major impact of reduced demand for CFG being seen from March/April 2009.

The application also states that any loss of sales volume could not be wholly attributable to the close-down during the Dandenong refurbishment as the anticipated volume effect was managed by importing CFG and a 4-5 month build up of stock prior to the refurbishment beginning in May 2008 (production recommenced in November 2008). It asserts that this stock build up in effect removed most of the volume effects of the refurbishment. The application adds that CFG from Viridian's Ingleburn plant was still produced during the Dandenong refurbishment.

²⁴ Subsection 269TC(1)(c)

²⁵ Subsection 269TG(2)(b)

²⁶ Subsection 269TAE(2A)

²⁷ Subsection 269TAE(2C)

Public Record

Customs and Border Protection considers these arguments to be reasonable and will further analyse the effects of these factors, and any other factors, on injury to the Australian industry during the investigation.

8.4 Cumulation of injury

As CFG can be considered a homogenous commodity, it is reasonable to consider that CFG exported from China, Indonesia and Thailand compete with each other. Customs and Border Protection also considers that the imported CFG and the Australian produced CFG compete with each other and have similar end users.

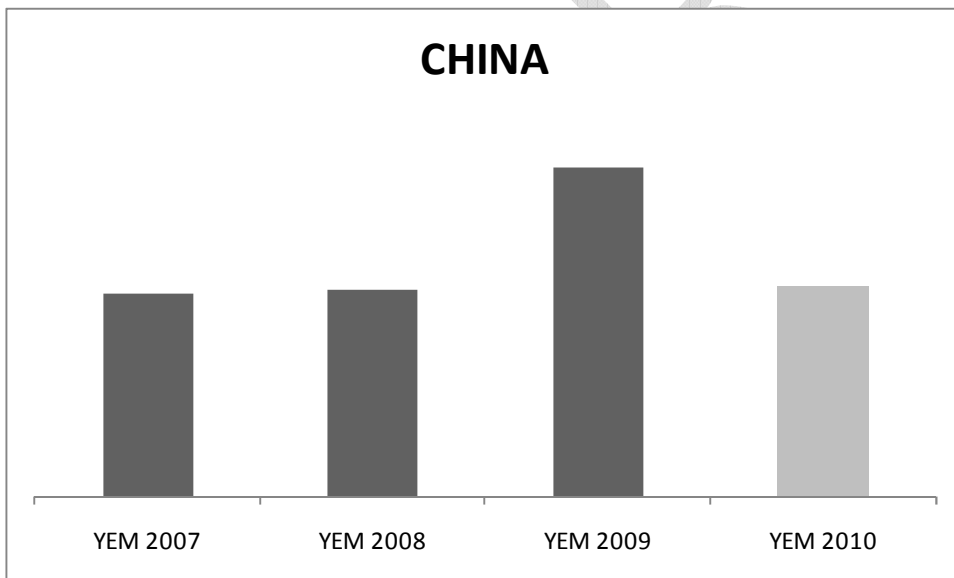
Therefore, it is appropriate to consider the cumulative effect of the allegedly dumped imports.

8.5 Volume

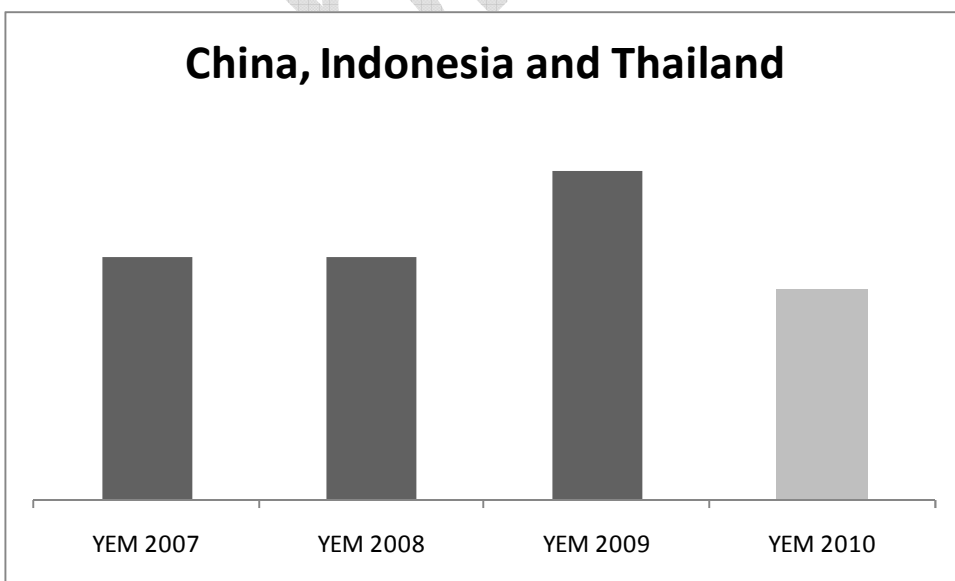
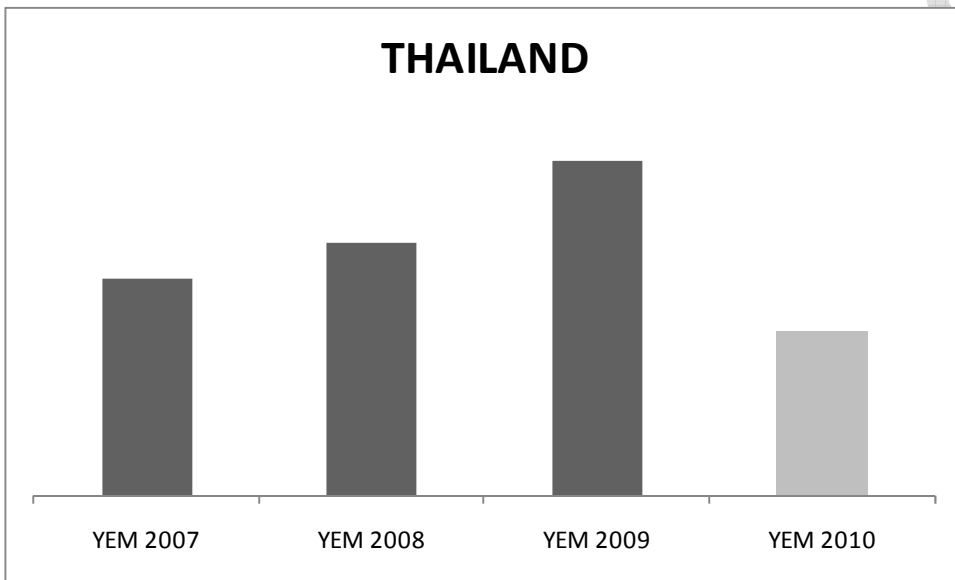
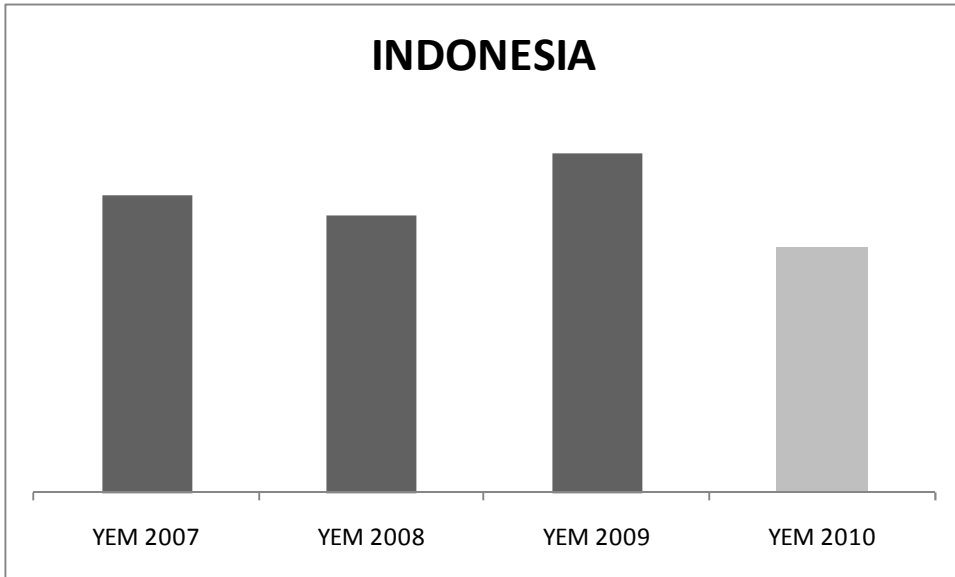
The application states that the growth in market size in YEM 2008 was totally driven by dumped imports. It explains that Viridian's sales volume increased slightly over YEM 2007 then fell in YEM 2009.

The application states that the growth in imports from China, Indonesia and Thailand, and the reduction in the Australian industry sales volume, is a strong indication of a link between the dumped imports and Viridian's loss of sales.

Customs and Border Protection undertook an analysis of import volumes of CFG from China, Indonesia and Thailand. The graphs below show the volumes of import (excluding imports from the Australian industry) in square metres for each country, and the aggregate of the three countries.



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The analysis shows increasing import volumes for China, Indonesia and Thailand for each country individually and collectively between YEM 2007 and YEM 2009. Considering that the market size of CFG was relatively stable during this time (see section 7.4 above), it appears that the imported CFG has displaced the Australian made CFG, represented by the fall in the Australian industry sales volume (see section 7.7.1 above).

8.6 Price

The applicant argues that although the data does not show that the Australian industry has suffered injury in the form of price depression, it is evident when examining Viridian's price offers to its customers. The application claims that to retain customers, Viridian has had to reduce its prices in October 2009. To support this claim, the application includes a confidential summary of prices offered to key accounts and whether Viridian has retained the business based on the new prices. It argues that the prices offered reflect competition from imported CFG.

The application included a price undercutting analysis based on June 2009 Viridian prices compared with import prices closest to that month. It claims that the price undercutting is directly linked to the dumped imports of the goods.

Customs and Border Protection notes that the data contained in the application indicate that unit revenue of CFG in total has increased each year since YEM 2007. The data also suggest that unit revenue for each nominal thickness of CFG has increased each year between YEM 2007 and YEM 2009. However, the confidential price summaries seem to indicate that the Australian industry's selling prices to certain customers have decreased. In addition, even with reduced prices to these customers, the Australian industry still lost business to some of these customers to its competitors (which sell imported CFG).

Customs and Border Protection also notes that the Australian industry's unit revenue has been suppressed – it was not able to recover the increase in costs it experienced in YEM 2009. The price summaries, together with the price undercutting analysis contained in the application seems to indicate that the Australian industry was forced to suppress its prices due to the imported CFG being exported at dumped prices.

8.7 Profit

The application states that the loss of market share in YEM 2009 had a marked effect on the profits generated by the business. It explains that there was a large increase in manufacturing variances in YEM 2009 caused by the loss in volume during that year – that is, unit costs increased as Viridian's market share fell while imports from China, Indonesia and Thailand increased market share in a total market that was not growing. The application claims that Viridian's gross margin fell in YEM 2009 as its market share was lost to China, Indonesia and Thailand imports. It also claims that in the absence of dumped imports of the goods, Viridian would have achieved higher profits through lower unit costs and increased prices.

It appears that the main driver of the Australian industry's lost profit and profitability in YEM 2009 is the significant increase in the Australian industry's unit costs caused by a large increase in manufacturing variances as stated above. Whether this was caused by the shutdown of Viridian's Dandenong plant or by dumped imports will be analysed as part of the investigation.

Customs and Border Protection notes that the projected profit and profitability in YEM 2010 is higher than YEM 2007, yet the 2007 continuation inquiry into CFG exported from China (except Louyang Glass which was exempted from the measures) found that CFG exported from China was not dumped during the inquiry period (April 2006 to March 2007).

Nonetheless, the preliminary dumping margins calculated for China, Indonesia and Thailand in this report are not insignificant. Therefore, it appears that CFG exported from China, Indonesia and Thailand has affected the Australian industry's profit and profitability.

Public Record

8.8 Comparison of export price and non injurious price

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice²⁸.

The NIP is the minimum price necessary to prevent injury to the Australian industry producing like goods²⁹.

Customs and Border Protection generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

Customs and Border Protection's preferred approach to establishing USPs observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- 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.

The applicant has not provided USP or NIP estimates as this is not required by the application form. However it is considered appropriate to compare the alleged dumped export prices to NIP estimates. If the export prices are greater than the NIP, it would suggest that dumping may not be causing material injury. If, on the other hand, the export prices are lower than the NIP, this would support a finding that dumped imports have caused material injury to the applicant producing like goods.

Customs and Border Protection has undertaken a preliminary calculation of a USP and NIP for CFG. As the applicant claims that dumping has regularly been a feature of the competition faced by the Australian industry, the USP has been calculated using the constructed method – the applicant's cost to make and sell for the 6 months to September 2009 with no profit margin. Customs and Border Protection considers that applying a zero profit margin to be a conservative calculation of the USP.

To derive the NIP, an importer's gross margin and selling, general and administration expenses of 15%, and an allocation for port charges, ocean freight, insurance and duty have been deducted from the USP.

The analysis found that even with a zero profit margin for the USP calculation, the export prices for China, Indonesia and Thailand (based on those calculated in section 6 above) were still all lower than the NIP. This finding supports the claim that dumping has caused injury to the Australian industry.

The analysis is in **Confidential Appendix 4**.

²⁸ Subsection 269TC(1)(c)

²⁹ Subsection 269TACA(a)

9 SUPPLEMENTARY ITEMS

9.1 Countervailing

The application has not claimed countervailing duties.

9.2 Threat of material injury

The application has not claimed a threat of material injury.

9.3 Close processed agricultural goods

The applicant does not consider CFG as close processed agricultural goods.

Public Record

10 INVESTIGATION

For the purposes of the investigation:

- the investigation period³⁰, for the basis of the examination of exportations to Australia of the goods³¹, is from 1 April 2009 to 31 March 2010; and
- the injury analysis period, for the purpose of determining whether material injury has been caused to the Australian industry³², will be examined from 1 April 2006.

Public Record

³⁰ Section 269T(1)

³¹ Subsection 269TC(4)(bf)

³² Section 269(T)(2AD)

Public Record

11 CONFIDENTIAL APPENDICES

Appendix A	Public notice
Confidential Appendix 1	Dumping margin analysis
Confidential Appendix 2	Import volume analysis
Confidential Appendix 3	Injury analysis
Confidential Appendix 4	NIP estimates and comparison with export prices

Public Record

Public Record

12 APPENDIX A

Customs Act 1901 – Part XVB

Certain Clear Float Glass exported from the People's Republic of China, Indonesia and Thailand

Initiation of an investigation into alleged dumping

Public notice under section 269TC

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) has initiated an investigation following an application, lodged by CSR Viridian Limited the sole manufacturer of clear float glass (CFG) in Australia, for the publication of a dumping duty notice in respect of CFG exported to Australia from the People's Republic of China (China), Indonesia and Thailand.

The goods the subject of the application (the goods) are CFG in nominal thicknesses 3-12mm. The goods are classified to tariff subheading 7005.29.00, statistical codes 02 to 06 in Schedule 3 of the Customs Tariff Act 1995, depending on the nominal thicknesses.

The application alleges that the goods have been exported to Australia at prices less than their normal value and that the dumping has caused material injury to the Australian industry through lost sales volume; lost market share; price undercutting; price suppression; price depression; reduced profits and profitability; and reduced return on investment.

The CEO specifies that goods exported to Australia during the period 1 April 2009 to 31 March 2010 will be examined to determine whether dumping has occurred. The Australian market will be examined from 1 April 2006 for injury analysis.

The date of initiation of this investigation is the date of publication of this notice.

Interested parties, as defined by subsection 269T(1) of the *Customs Act 1901* (the Act), are invited to lodge submissions concerning the publication of the dumping duty notice sought in the application, no later than the close of business on 31 May 2010, addressed to:

Director Operations 3
Trade Measures Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Or by email: tmops3@customs.gov.au

Australian Customs Dumping Notice (ACDN) No. 2010/14, containing important procedural details, and the consideration report are available at www.customs.gov.au. Both documents should be read in conjunction with this notice.

The ACDN and the consideration report are also available on the public record. Documents included in the public record are available at <http://adpr.customs.gov.au/Customs/>. Alternatively, the public record may be examined at the above office address during business hours by contacting Trade Measures Branch on 02 6275 6547.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6275 5755,

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fax number (02) 6275 6990 or email tmops3@customs.gov.au.

Geoff Johannes
National Manager
Trade Measures Branch

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