



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

CUSTOMS ACT 1901 - PART XVB

**STATEMENT OF ESSENTIAL FACTS
NO.159C**

CLEAR FLOAT GLASS

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

RESUMED INVESTIGATION

9 August 2011

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of the Australian Customs and Border Protection Service
China	People's Republic of China
CTMS	cost to make and sell
Customs and Border Protection	the Australian Customs and Border Protection Service
Customs Regulations	<i>Customs Regulations 1926</i>
FOB	free on board
Injury analysis period	From 1 April 2006
Investigation 159	the original investigation into clear float glass exported to Australia from China, Indonesia and Thailand.
Investigation 159C	this resumed investigation into clear float glass exported to Australia from China, Indonesia and Thailand
Investigation period	1 April 2009 to 31 March 2010
SEF	statement of essential facts
SEF159	SEF for Investigation 159
SEF159C	SEF for Investigation 159C
TER159A	Termination Report 159A, in relation to the termination of the investigation as it relates to Xinyi
TER159B	Termination Report 159B, in relation to the termination of the investigation due to a finding of negligible injury caused by dumping
the Act	the <i>Customs Act 1901</i>
the Delegate	the Delegate of the CEO of Customs and Border Protection for the resumed investigation
the goods	the goods the subject of the application
The Minister	The Attorney-General
TMRO	Trade Measures Review Officer
Viridian	CSR Viridian Limited
Viridian Downstream	Viridian's Downstream processing and distribution business
Viridian Upstream	Viridian Upstream's manufacturing and processing business
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 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 statement of essential facts (SEF) sets out the facts on which the delegate of the CEO for the resumed investigation (Investigation 159C) proposes to either again terminate the investigation, or base their recommendations to the Attorney-General (the Minister) in relation to the original application.

1.1 Authority to make decision

Division 2 of Part XVB 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 covered by an application for the purpose of making a report to the Minister.

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

Note: this resumed investigation has been assigned a different delegate of the CEO to Investigation 159.

1.2 Preliminary findings and proposed recommendations

Customs and Border Protection has reconsidered the findings of Investigation 159 and made further enquiries of interested parties.

Following this reassessment, the delegate makes the following preliminary findings:

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

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- Viridian suffered injury in the investigation period in the form of:
 - lost volume;
 - price depression on 4, 5 and 6 mm clear float glass;
 - price suppression on 3, 4, 5 and 6 mm clear float glass; and
 - lost profit and profitability on 3, 4, 5 and 6 mm clear float glass;
- Clear float glass was exported to Australia from China, Indonesia and Thailand during the investigation period at dumped prices;
- the injury to Viridian in the form of lost sales volume was not caused by dumping but by a contraction in the market during the last quarter of YEM2010;
- at least part of the observed price suppression was due to the refurbishment of the Dandenong plant. Unit costs increased in the investigation period due to lower volume, which is not considered to be due to dumping;
- the Australian dollar increased by 30% over the investigation period, contributing to the reduction in import prices. While it is not possible to quantify this effect precisely, it is not insignificant. It is possible it accounts for anywhere between 8% and 100% of the undercutting margin, depending on the country of origin and thickness;
- a comparison of the undumped prices to Viridian's external prices shows 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;
- an estimate of the revenue loss caused by the price depression shows that if the entirety was attributed to dumping the estimated revenue loss would be 5%. Given the impacts of the strengthening Australian dollar and the global financial crisis that contributed to that price depression, any part due to dumping is less than 5% and not material;
- because the lost volume was not caused by dumping, and if price injury caused by dumping is not considered material, consequently the lost profits and profitability caused by dumping would not be considered material; and
- material injury is not threatened to the Australian industry because of the exportation of clear float glass from China, Indonesia and Thailand into the Australian market.

Customs and Border Protection seeks comments from interested parties on the preliminary findings expressed herein. Subject to those submissions, if the delegate is of the view that dumping did not cause material injury to the

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Australian industry the resumed investigation will be terminated². Alternatively, the delegate will prepare a report for the Minister recommending the implementation of anti-dumping measures.

² under s.269TDA(14)

2. BACKGROUND TO THE RESUMED INVESTIGATION

2.1 Initiation – Investigation 159

On 18 February 2010, Viridian lodged an application³ for the publication of a dumping duty notice in respect of certain clear float glass⁴ 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 SEF 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 SEF 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 SEF to 5 November 2010⁵. ACDN No. 2010/26 was issued on 23 July 2010 notifying of the Minister's decision. Interested parties were also separately notified.

The investigation period⁶ for the purpose of assessing any dumping margins⁷ 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 SEF159

On 5 November 2010, Customs and Border Protection published its SEF for Investigation 159 (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 Ultrathin (Donguan) Co., Ltd (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

³ Section 269TB

⁴ 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

⁵ Section 269ZHI

⁶ Section 269T(1)

⁷ Subsection 269TC(4)(bf)

of clear float glass exported to Australia from China (except Xinyi), Indonesia and Thailand.

Several submissions from interested parties were received in response to SEF159. Viridian also made submissions on SEF159 and provided supplementary information. These submissions are outlined in Section 2.3 of Termination Report No. 159B (TER159B) and were considered by Customs and Border Protection in preparing the report.

2.3 Termination of part of the investigation so far as it relates to Xinyi

Customs and Border Protection terminated the investigation so far as it related to Xinyi on 2 December 2010. 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.

2.4 TER159B

Customs and Border Protection published TER159B in 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 clear float glass exported to Australia from China (except Xinyi), Indonesia and Thailand during the investigation period the dumping margins are between 3.3 percent and 26.4 percent;
- The volume of dumped goods is 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 can 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 has been caused by dumping is negligible; and
- material injury is not threatened to the Australian industry because of the exportation of the goods into the Australian market.

The termination 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. The TMRO subsequently accepted the application.

Following consideration of Viridian's application for review, the TMRO revoked the decision to terminate the investigation. The TMRO's decision was published in *The Australian* newspaper on 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 resumed investigation requiring Customs and Border Protection to publish this SEF (SEF159C).

2.6 Responding to SEF159C

SEF159C sets out the essential facts on which the delegate proposes to terminate the dumping investigation⁸.

SEF159C represents an important stage in the resumed investigation. It informs interested parties of the facts established and allows them to make submissions in response.

It is important to note that SEF159C may not represent the final views of Customs and Border Protection.

Interested parties have 20 days to respond to SEF159C, and the Delegate will consider these responses in making a final determination. Responses should be received by Customs and Border Protection no later than **29 August 2011**.⁹

Submissions in response to SEF159C should be emailed to tmops2@customs.gov.au. Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 2
Trade Measures Branch
International Trade Remedies Branch
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Submissions containing confidential information must be clearly marked accordingly and a non-confidential version of any such submission is required for inclusion on the Investigation 159C Public Record.

⁸ section.269TDA(14)

⁹ Under s.269TEA(4), if it is determined that a final report should be prepared for the Attorney-General in this case, the Delegate is not obliged to have regard to any submission made in response to this SEF received after 29 August 2011 if to do so would, in the opinion of the Delegate, prevent the timely preparation of Customs and Border Protection's final report.

A guide for making submissions to Customs and Border Protection is available at the Customs and Border Protection web site:

<http://www.customs.gov.au/>

then follow links to:

Anti-Dumping > Reference Material > Guidance for Submissions.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of Customs and Border Protection visit reports and other publicly available documents. It is available by request in Canberra (phone (02) 6275 6547 to make an appointment), or electronically online at:

<http://adpr.customs.gov.au/Customs/>.

Documents on the Public Record (for both Investigation 159 and Investigation 159C) should be read in conjunction with this SEF, particularly SEF159 and TER159B.

2.7 Previous cases

There are currently no anti-dumping measures on clear float glass.

There have been a number of previous dumping investigations, reviews and continuation inquiries in relation to clear float glass, 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;

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- 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. TMRO'S FINDINGS IN RESPECT TO TER159B AND APPROACH TO INVESTIGATION 159C

3.1 TMRO's findings

The TMRO published a report outlining the reasons for the decision to revoke Customs and Border Protection's decision to terminate the investigation into certain clear float glass exported to Australia from China (except Xinyi), Indonesia and Thailand.¹⁰

Customs and Border Protection has assessed the conclusions and directions of the TMRO, published in his report, throughout the resumed investigation.

3.2 Approach to the resumed investigation

Customs and Border Protection has identified that the TMRO has only referred certain matters (raised by Viridian in its application for review of the termination decision) for reconsideration during the resumed investigation.

However, as this investigation is a resumed investigation and not a reinvestigation, Customs and Border Protection considers that it is not limited only to reassessing those matters referred back by the TMRO. Rather, Customs and Border Protection is able to re-examine all aspects of the original investigation's findings insofar as they relate to the decision to terminate the investigation.

Noting the above, Customs and Border Protection has received submissions from interested parties during the resumed investigation that address not only those matters identified by the TMRO to warrant further consideration, but 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 1** to this SEF.

Consequently, the approach of this SEF is to address those matters referred back to Customs and Border Protection by the TMRO for reconsideration. Customs and Border Protection has also reviewed the submissions, information gathered, and determinations made during Investigation 159 where considered warranted, and discusses these throughout this SEF.

Chapters 3 (goods and like goods), 4 (Australian industry) and 5 (Australian market) of TER159B should be read in conjunction with this report. No findings in these chapters have changed as a result of the resumed investigation.

¹⁰ Trade Measures Review Officer, Certain Clear Float Glass from the People's Republic of China, Indonesia and Thailand, 21 March 2011.

4. DUMPING MARGINS

4.1 TMRO's view

The TMRO did not comment on Customs and Border Protection's approach in investigation 159 to determining dumping margins.

4.2 Customs and Border Protection's approach in investigation 159

TER159B Customs and Border Protection found that clear float glass was exported to Australia from China, Indonesia and Thailand in the investigation period with the following dumping margins.

Table 7: Dumping Margins

	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%

Source: TER159B section 6.7

4.3 Customs and Border Protection's assessment in the resumed investigation

Guardian Industries Corp Ltd (Guardian) requested a meeting with Customs and Border Protection 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 a sales commission in its calculation of the dumping margin.

As the TMRO did not recommend Customs and Border Protection review the dumping margins, and no new substantive information was received on this issue in the resumed investigation, Customs and Border Protection has not re-examined the methodology used, or the resulting dumping margins found in TER159B.

5. ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

5.1 Preliminary findings

Viridian suffered injury in the investigation period in the form of:

- lost volume;
- price depression on 4, 5 and 6 mm clear float glass;
- price suppression on 3, 4, 5 and 6 mm clear float glass; and
- lost profit and profitability on 3, 4, 5 and 6 mm clear float glass.

5.2 General approach to injury analysis

5.2.1 Internal processing volume

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

Viridian Upstream has two float glass manufacturing facilities in Dandenong, Victoria and Ingleburn, New South Wales producing clear float glass and tinted glass. Viridian Upstream manufactures clear float glass in bulk sizes for transfer to Viridian Upstream's internal processing business, sale to external customers (processors/fabricators) and internal transfer to the Viridian Downstream business.

Viridian Upstream's processing business produces primary products such as laminated glass (at the Clayton facility, Dandenong and Ingleburn), coated glass, mirror and toughened glass (at Dandenong and Ingleburn).

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.

Viridian Upstream's external customers compete with Viridian Downstream in the market.

The TMRO asked Customs and Border Protection to give particular attention to whether any decline in internal transfer volume, after taking into account the volume diverted to internal processing, was material injury attributable to dumping. In the resumed investigation, Customs and Border Protection has therefore re-considered whether internal processing volume should be included in the calculation of the size of the Australian clear float glass market.

Customs and Border Protection found that:

- Viridian diverted volume from external sales to internal transfers and from internal transfers to internal processing during the injury analysis period;
- A high proportion¹¹ of clear float glass produced by Viridian was diverted to internal processing during the investigation period;
- Viridian Upstream has been producing coated glass from clear float glass since the June 2009 quarter at its Dandenong plant. In the resumed investigation, Viridian provided Customs and Border Protection with the volume of clear float glass diverted to the coating facility; and
- Tinted glass is produced on the same float lines as clear float glass. Viridian stated that the volume of tinted glass it has produced over the past two to three years has remained stable.

Customs and Border Protection in the resumed investigation therefore considers that the volume of clear float glass diverted to internal processing (including the volume diverted to the coating facility) should be included in market volume. The inclusion of internal processing and internal transfer volumes means that any volume movements between the Viridian Upstream and Downstream businesses (e.g. volume movements resulting from the acquisition of Don Mathieson & Staff Glass Pty Ltd (DMS)) are taken into account. Tinted glass volumes have not been included in the calculation of market volume as tinted glass is not produced from clear float glass.

5.2.2 Internal transfer values

As a result of the resumed investigation, Customs and Border Protection is now of the view that internal transfers are not sales which establish prices for the purpose of price analysis. The reason being internal transfers are not sales in the legal sense and it is doubtful whether internal transfers are sales in the ordinary sense. References to prices¹² are considered to be references to prices paid under contracts of sale and not to internal transfers which involve moving money from one account of Viridian to another.

Customs and Border Protection is now of the view that it is not precluded from having regard to internal transfers¹³ data for any reasonable purpose in assessing material injury e.g. assessing Viridian's volume and market size.

In the resumed investigation, in assessing Viridian's prices the delegate has decided not to include internal transfer values as they have lower probative value than equivalent data of external sales in relation to material injury factors. Particularly in relation to factors such as price suppression and loss of profits that are claimed to have been caused by dumping.

¹¹ confidential attachment 1

¹² section 269TAE

¹³ section 269TAE

5.2.3 Analysis of price

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.

5.3 Volume Effects

5.3.1 Market size

TMRO's view

The TMRO stated:

36. I was unable to follow how Customs and Border Protection attempted to derive a reliable estimate of the proportion of the loss of market share that was due to the removal from the calculation of the glass that Viridian Upstream processed, and the proportion of the volume loss that might be left over and might be attributable to dumping, or to other factors. If the information on internal processing had been factored in, it could well be that the analysis would demonstrate that some of the loss of volumes was attributable to dumping, or to other factors. Such an analysis would have assisted in determining whether dumping has caused material injury in the form of lost market share."

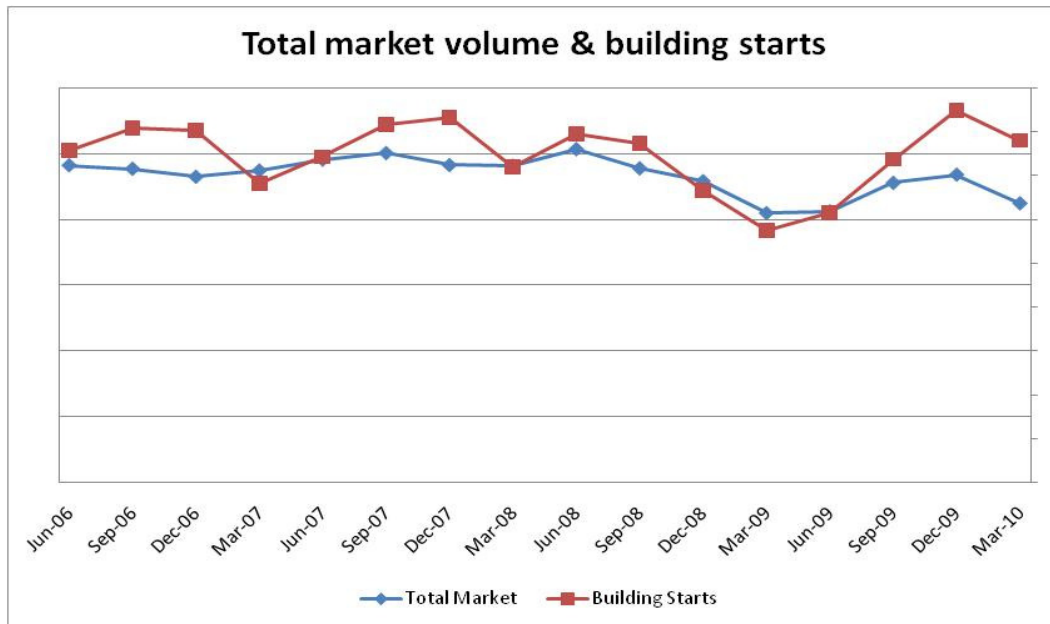
The TMRO asked Customs and Border Protection to give particular attention to:

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 clear float glass 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 material injury

Customs and Border Protection's approach in investigation 159

It is generally agreed among industry members that a key driver for demand for clear float glass is residential and commercial building construction. The following diagram shows the quarterly total clear float glass market volume in square metres over the injury analysis period against the number of building starts¹⁴.

¹⁴ Source: ABS Cat No. 8752.0 Building Activity, Australia: Table 33 number of dwelling unit commencements by sector, Australia; number of dwelling units commenced by quarter; total (sector of ownership; total building; total (type of work)

Diagram 1: Australian market volume and number of building starts

Source: confidential attachment 1: market summary

Note:

1. the number of building starts is shown against a secondary axis to better illustrate trends.
2. The clear float glass market volume includes total Viridian's internal processing volume.

Customs and Border Protection found that the movements in Australian clear float glass market volume correspond approximately to movements in the number of building starts e.g. the decline in Australian clear float glass market volume in the second half of 2008 corresponds with a similar decline in the number of building starts during the same period.

Customs and Border Protection considered that transfers of clear float glass from Viridian Upstream to Viridian Downstream were relevant for the purposes of injury assessment to Viridian Upstream (section 7.3.2¹⁵). Customs and Border Protection's approach was therefore to take Viridian Upstream internal transfers of clear float glass into account in its assessment of market volume. Customs and Border Protection considered that the transfer of clear float glass to Viridian Upstream internal processing should not be included (section 5.1¹⁶). Therefore Customs and Border Protection did not capture the progressive transfer of laminating activities from Viridian Downstream (formerly the DMS business) to Viridian Upstream in its assessment of market volume.

Based on this approach Customs and Border Protection found that:

7.4.1¹⁷ Viridian has experienced injury in the form of a loss in total sales and internal transfer volume. It also lost sales to specific customers but did not experience injury in the form of lost sales volume to its overall external sales

¹⁵ TER159B

¹⁶ TER159B

¹⁷ TER159B

volume. Viridian's lost volume was primarily related to its internal transfers to Viridian Downstream, which in turn can be explained by changes in operational arrangements within Viridian.

Customs and Border Protection's assessment in the resumed investigation

Customs and Border Protection in the resumed investigation, as explained in section 5.2.1, has included internal processing volume in its volume analysis. Trends in market volume have been examined on a quarterly and annual basis over the injury analysis period.

Table 1: Percentage change in market size (m2) during injury analysis period

	Aust market	Viridian volume	China, Indonesia, Thailand import volume	Other import volume
YEM2008 ¹⁸	+3%	+3%	+3%	-1%
YEM2009	-5%	-7%	+3%	-23%
YEM2010	-5%	-4%	-9%	-3%
Injury Analysis period	-7%	-7%	-3%	-27%

Source: confidential attachment 1: market summary

Note: Viridian's volume includes internal processing volume

Table 1 shows, in particular that:

- In YEM2008 the total market increased as did both Viridian's volume and import volume from the countries subject to investigation. Viridian's volume and import volume from these countries increased at the same rate as the total market;
- In YEM2009, the total market decreased, as did Viridian's volume, while import volume from the countries subject to investigation 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 the countries subject to investigation. Viridian's volume decreased at a lower rate than the total market whereas import volume from China, Indonesia and Thailand 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 China, Indonesia and Thailand. Viridian's volume decreased at the same rate as the total market.

YEM2009 was affected by a sharp decline in the residential and commercial building construction markets following the global financial crisis (Diagram 1 refers). Viridian's volumes and import volumes reacted at different times to the

¹⁸ YEM: year ending March

decline in the market as reflected in relative changes in volume in YEM2009 and YEM2010. YEM2009 was also affected by the economic stimulus package which was announced by the Australian Government in October 2008. The package, which was aimed at arresting the declining economic situation in Australia following the onset of the global financial crisis, seems to have impacted on the Australian clear float glass volumes in YEM2009 and into YEM2010 through the generation of some building activity. However the market continued to be affected by the decline in the residential and commercial building construction markets in YEM2010 as illustrated in Diagram 1.

The following table shows quarterly changes in market volumes during the investigation period (YEM2010).

Table 2: Percentage change in market size (m2) during the investigation period

	Aust market	Viridian volume	China, Indonesia, Thailand import volume	Other import volume
Jun 2009 qtr	1%	-1%	13%	-43%
Sep 2009 qtr	11%	8%	4%	312%
Dec 2009 qtr	3%	-1%	23%	-14%
Mar 2010 qtr	-9%	-4%	-22%	-43%

Source: confidential attachment 1: market summary

Note: (1) Viridian's volume includes internal processing volume.
(2) Changes in 'other import volume' are calculated from a low base

Table 2 shows in particular that during the investigation period volume from all sources declined significantly in the March 2010 quarter.

Preliminary finding on volume

Viridian lost volume during the investigation period.

5.3.2 Market Share

TMRO's view

The TMRO's view on market share is included in paragraph 5.3.1 of this report.

Customs and Border Protection's approach in investigation 159

Customs and Border Protection's approach was to analyse Viridian's total market share as it related to external sales and internal transfers to Viridian Downstream over the injury analysis period (section 7.4.2¹⁹).

Based on the above approach, Customs and Border Protection found that:

¹⁹ TER159B

'7.4.2 Viridian has experienced injury in the form of lost market share in relation to the total of its external sales and internal transfers. However, Viridian has not experienced lost market share as far as it relates to its sales to its external customers. Viridian's lost market share was related to its internal transfers to Viridian Downstream'.

Customs and Border Protection's assessment in the resumed investigation

In the resumed investigation Customs and Border Protection examined the market shares held by Viridian, imports from China, Indonesia and Thailand and imports from other countries on a quarterly and annual basis over the injury analysis period.

Table 3: Percentage change in market shares during injury analysis period

	Viridian	China, Indonesia, Thailand imports	Other imports
YEM2008	0%	0%	0%
YEM2009	-1%	2%	-1%
YEM2010	1%	-1%	0%
Injury Analysis period	0%	1%	-1%

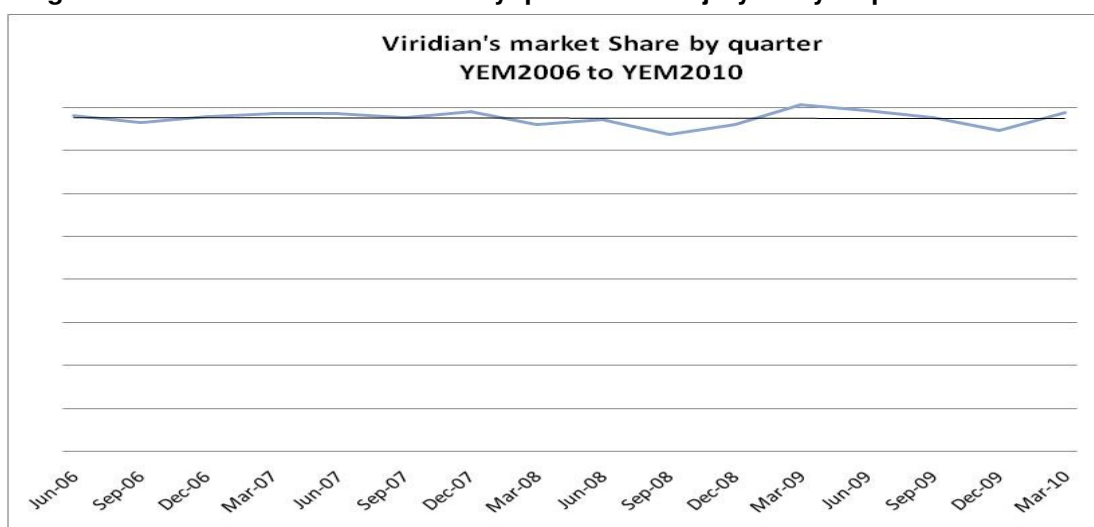
Source: confidential attachment 1: market summary

Note: Viridian's market share includes internal processing volume

Table 3 shows that throughout the injury analysis period Viridian has maintained market share despite a slight decline in YEM2009.

Viridian's market shares by quarter over the injury analysis period are shown in the following diagram.

Diagram 2: Australian market shares by quarter over injury analysis period



Source: confidential attachment 1: market summary

Note: Viridian's market share includes internal processing volume

An examination of market shares by quarter shows that:

- The loss of market share in YEM 2009 was primarily due to a loss of market share in the September 2008 quarter which coincides with the start of the decline in the residential and commercial building construction markets. This decline in the market had an immediate effect on Viridian’s volume but appears to have had a delayed effect on import volume;
- Viridian’s market share in the March 2009 quarter was the highest recorded over the injury analysis period which is reflected in the changes in Viridian’s market share shown in Table 4; and
- Viridian’s market share decreased slightly in the December 2009 quarter but either remained steady or increased in the other three quarters of the investigation period.

Changes in market shares over the injury analysis period are shown in the following table.

Table 4: Percentage change in Market shares during the injury analysis period

	Viridian	China, Indonesia, Thailand 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: market summary

Note: Viridian’s market share includes internal processing volume

Table 4 shows that Viridian lost market share to imports from the countries subject to investigation in the September and December 2009 quarters and regained the lost market share in the March 2010 quarter.

Preliminary findings on market share

Viridian lost market share in YEM2009. Viridian did not lose market share during the investigation period.

5.4 Price Effects

5.4.1 Price Depression

TMRO’s view

The TMRO stated:

61. I consider Viridian’s price changes during the investigation period do not appear to be consistent with Customs and Border Protection’s observation that ‘the graph indicates that the quarterly weighted average sales price was reasonably stable during the injury analysis period. Rather, I consider that the downward price

changes are inconsistent with the otherwise slight upward trend observed over the analysis period.

62. I am therefore in doubt as to whether Customs and Border Protection has properly considered the degree of the downward trend in prices in making their assessment that there had not been price depression. Further reasoning is required as to why Customs and Border Protection has decided to discount this slight downward trend during the year ending March 2010 investigation period.

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

123.b. in relation to price depression: whether there has been price depression (in YEM2010) and if so whether this constitutes material injury that might be attributable to dumping or any other factors.

Customs and Border Protection's approach in investigation 159

Customs and Border Protection's approach was to assess price effects using the combined quarterly weighted average unit prices and internal transfer values over the injury analysis period (paragraph 7.5.1²⁰).

Based on the above approach, Customs and Border Protection found that:

7.5.2 The graph shows that Viridian's weighted average unit price for its external customers and combined sales price and transfer value trended slightly upwards in the injury analysis period. However the unit prices for external sales and internal transfer values trended downwards within the investigation period. Weighted average unit prices for external sales in the investigation period were higher than in the YEM 2007 while weighted average internal transfer values in the investigation period were lower than in the YEM 2007 the quarterly weighted average sales price was reasonable stable during the injury analysis period.

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, whether measured for external sales prices, internal transfer values, or a combination of external sales and internal transfers.'

Customs and Border Protection's assessment in the resumed investigation

Customs and Border Protection in the resumed investigation examined Viridian's external sales price trends during the injury analysis period.

²⁰ TER159B

Table 5: Percentage changes in Viridian's external sales price during the injury analysis period

	YEM 2008	YEM 2009	YEM 2010	Total change
mm	\$/m2	\$/m2	\$/m2	\$/m2
3	2%	14%	1%	17%
4	4%	9%	-4%	9%
5	4%	14%	-2%	16%
6	4%	8%	-3%	9%

Source: confidential attachment 2: price analysis

Table 5 shows that despite the decline in the Australian clear float glass market in YEM2009 and YEM2010:

- prices increased overall for 3, 4, 5 and 6 mm clear float glass over the injury analysis period;
- prices for 3, 4, 5 and 6 mm clear float glass increased in YEM2008 and YEM2009; and
- prices decreased in YEM2010 for 4, 5 and 6 mm clear float glass.

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

Table 6: Percentage change in Viridian's external sales price during the investigation period

	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: price analysis

Table 6 shows that over the investigation period external sales prices for 3, 4, 5 and 6 mm clear float glass declined in the September 2009 quarter and prices for 4, 5 and 6 mm thickness declined further in the March 2010 quarter. The quarterly external sales price for 3 mm clear float glass did not change overall during the investigation period.

Preliminary finding on price depression

Viridian suffered price depression on 4, 5 and 6 mm clear float glass in the investigation period.

5.4.2 Price Suppression

TMRO's view

The TMRO noted:

72. It appears that the applicant does not seek to challenge the conclusion that the industry had suffered injury in the form of price suppression, but rather challenges the finding that the suppression is not caused by dumping and challenges the causation analysis introduced in the Termination Report, for example making reference to the arguments made under that ground (11.10)

73. This analysis is discussed further under the heading 'Materiality of injury'.

In the section on 'materiality of injury' the TMRO stated:

98. ...the determination of injury in relation to price suppression noted only that some of the injury could be attributed to competition. There is no indication what proportion of the injury could be attributed to competition or whether a part that could be attributed to dumping was a material part of the injury. It would have been helpful if the Report provided an indication whether the part of the price effect injuries that might be attributable to dumping was material.

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

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 is material.

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.

Customs and Border Protection's approach in investigation 159

Customs and Border Protection's approach was to compare Viridian Upstream's quarterly weighted average unit price and cost to make and sell over the injury analysis period. Customs and Border Protection noted that Viridian's costs for YEM2009 were affected by its Dandenong plant refurbishment which affected costs between June 2008 quarter and March 2009 quarter.

Customs and Border Protection 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.

Customs and Border Protection's assessment in resumed investigation

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:

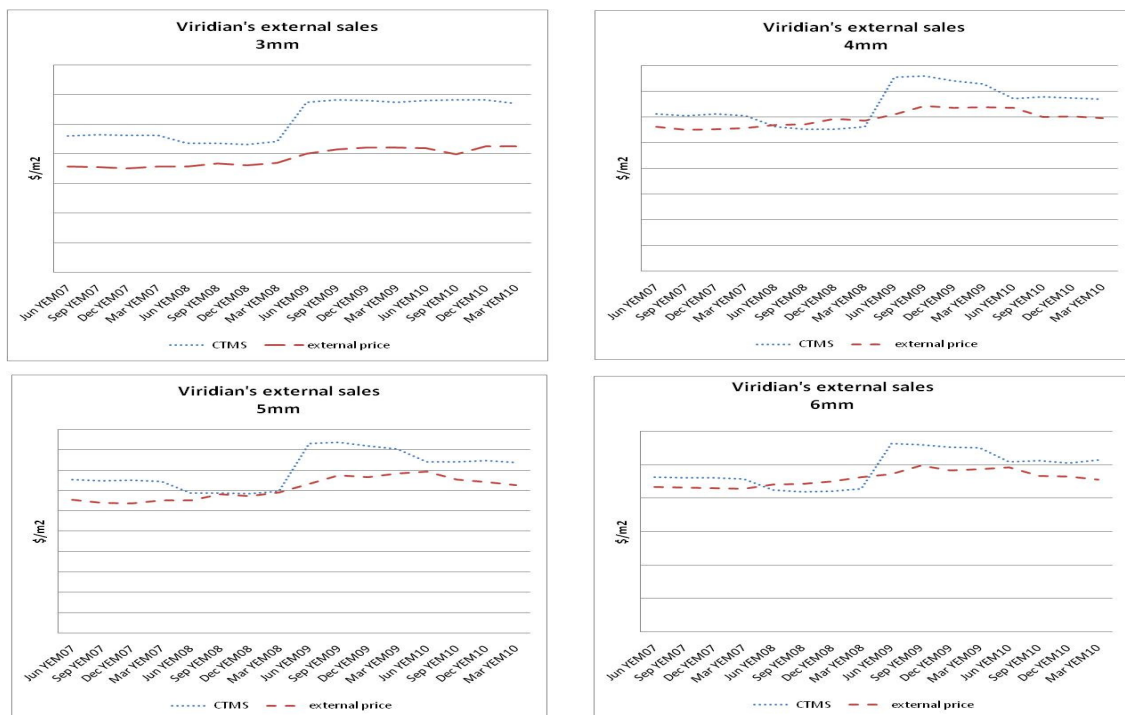
PUBLIC RECORD

- As YEM2007 and YEM2008 volumes could not be produced and sold by Viridian in YEM2009 and YEM2010;
- given the state of the Australian clear float glass market i.e. the market declined significantly in YEM2009 and YEM2010; and
- given the following changes in Viridian's business since YEM2007:
 - Refurbishment of the Dandenong plant in YEM 2009 (May-Nov 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 plant 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 arguments 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 external price and CTMS over the injury analysis period.

Diagram 3: Viridian's weighted average price to external customers and unit CTMS by thickness and by quarter over the injury analysis period



Source: confidential attachment 2: price analysis

Customs and Border Protection notes that:

- the cost trends in 3mm clear float glass are different to the cost trends for 4 to 6 mm clear float glass. This is due to the decline in volume of 3 mm clear float glass in YEM2009 and YEM2010 and Viridian's method of allocating the negative variances resulting from reduced volume in those years; and
- unit costs for the different thicknesses did not return to pre-refurbishment levels in YEM2009 and YEM2010. This was due to reduced volumes in YEM2009 and YEM2010.

Diagram 3 shows that Viridian's unit cost was higher than Viridian's external sales prices for all thicknesses throughout the injury analysis period except 4 and 6 mm clear float glass in YEM2008. YEM2008 was an unusual year for Viridian Upstream as it increased production during the year to build up stocks in preparation for a planned shutdown of the Dandenong float line for refurbishment in YEM2009. This resulted in abnormally low unit costs in YEM2008 and abnormally high unit costs in YEM2009.

Preliminary finding on price suppression

Viridian suffered price suppression on the sale of 3, 4, 5 and 6 mm clear float glass throughout the injury analysis period except for 4 and 6 mm in YEM2008.

Viridian's external sales prices on 3, 4, 5 and 6 mm clear float glass were suppressed during the investigation period.

5.5 Profits and profitability

5.5.1 TMRO's view

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 YEM2007. 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 YEM2008, a year also unaffected by the Dandenong plant refurbishment. I consider that further reasoning is required.

5.5.2 Customs and Border Protection's approach in investigation 159

Customs and Border Protection in the investigation 159 examined profits and profitability on external sales and internal transfers. Customs and Border Protection noted:

7.6 The graph shows that Viridian Upstream incurred losses in the YEM2007, which improved to profitable results during the following year. In the YEM2009, which included the Dandenong plant refurbishment, Viridian experienced its largest losses in the injury analysis period. Viridian's losses continued in the investigation period and, although at an improved level when compared with the previous year, the losses remained at levels similar to that of YEM2007.

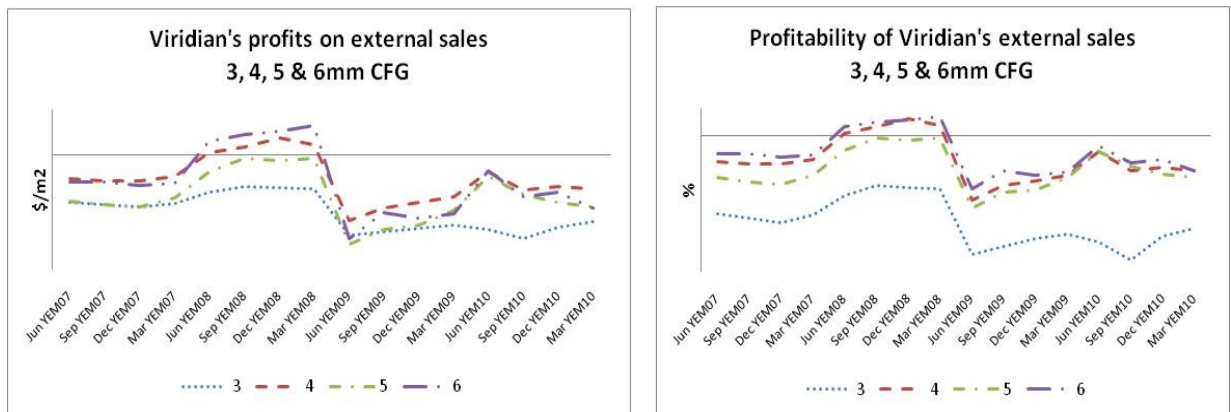
Customs and Border Protection found:

7.6.1 Viridian has experienced injury in the form of lost profits (and lost profitability) in relation to both its external sales and internal transfers.

5.5.3 Customs and Border Protection's assessment in resumed investigation

Customs and Border Protection in the resumed investigation has examined profits and profitability on external sales of 3 to 6 mm clear float glass on a quarterly and annual basis over the injury analysis period.

Diagram 4: Viridian's profits on external sales during the injury analysis period



Source: confidential attachment 4: profit analysis

Diagram 4 shows that:

- Viridian's external sales of 4 and 6 mm clear float glass were profitable during YEM2008 but otherwise were generally unprofitable throughout the injury analysis period; and
- Viridian's external sales of 3 and 5 mm clear float glass were unprofitable throughout the injury analysis period.

While the TMRO has questioned why Customs and Border Protection did not compare the losses in the investigation period with the profits in YEM2008, as illustrated in Diagram 4, Viridian's performance (particularly in relation to 4, 5 and 6 mm clear float glass) improved in YEM2008 as production was increased in preparation for the shutdown of the Dandenong float line.

Customs and Border Protection noted that Viridian's performance in relation to 3 mm clear float glass was affected by the pricing arrangements Viridian has with its largest customer of 3 mm clear float glass.

5.5.4 Preliminary finding on lost profits and profitability

Viridian lost profits and profitability on sales of 3, 4, 5 and 6 mm clear float glass throughout the injury analysis period except 4, and 6 mm thickness in YEM2008.

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Viridian lost profit and profitability on external sales of clear float glass during the investigation period.

6. HAS DUMPING CAUSED MATERIAL INJURY?

6.1 Preliminary findings

Customs and Border Protection makes a preliminary finding that dumping has not caused material injury to Viridian. Viridian's loss of volume was due to a contraction in the market. While Viridian experienced injury in the form of price depression and suppression, a comparison of the undumped prices with Viridian's prices shows that the level of undercutting would have made it difficult for Viridian to compete with undumped imports without reducing or suppressing its price. In addition, the appreciation of the Australian dollar has made imports more competitive.

6.2 TMRO's view

The TMRO's view was:

79. Customs and Border Protection does not appear to have made a further analysis of whether the entirety of the price effect was being caused by competition, whether a part was being caused by dumping and whether any such part was material.

80. ...I note that Customs and Border Protection's analysis stated that it had discounted an amount from Viridian's present prices (for a price premium) and that despite this, the price of imports, even if corrected for dumping, would still undercut Viridian's prices.

82. Irrespective of whether or not the Applicant could achieve a price premium, I do consider that the real issue is whether that part of the injury that might be caused by dumping was material. This remains an issue even if part of the injury is attributable to other factors such as competition.

86. It would be helpful if the report provided reasoning to articulate whether the part of the price effect injuries that are caused by other factors such as competition was the sole cause of the injury or whether any part caused by dumping was material or immaterial. I do not mean that this should be done in a quantitative way, but rather a qualitative indication would have helped an understanding of the reasons underlying the price undercutting analysis.

96. The analysis does not seem to distinguish the factors that might have caused the various injury elements and whether a material part of the injury might be attributable to dumping. It is not clear from the reasoning whether Customs and Border Protection took into account those factors it describes as also having contributed to price effects, namely that:

"The global financial crisis and weak market conditions would have affected market prices of clear float glass. 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 clear float glass." (TER 159B page 55)"

100. Customs and Border Protection appears to have seen the only relevant enquiry to be in relation to price suppression, and for that reason to be relevantly answered by determining what the costs would have been had Viridian continued to operate as it had prior to the period in which the Dandenong plant refurbishment occurred. While

the analysis concentrates on the injury in relation to price suppression, and attempts to model what would have happened in the YEM2009 and YEM2010 if Viridian had operated as it did during YEM2007 and YEM2008, there is no discussion of relevant changes, particularly volume changes, as described in the application at pages 4-6.

112. I therefore consider it relevant to establish what proportion of undercutting is caused by factors such as competition, and to establish whether a remaining material portion of undercutting may be attributed to any dumping.

113. While Customs and Border Protection appears to have used the undumped price comparison in order to separate factors such as competition from price effects caused by dumping it is not clear that Customs and Border Protection still considered whether dumping was a material part of the injury in determining whether injury had been negligible. This is reflected in the difference between the Statement of Essential Facts and the Termination Report. The Statement of Essential Facts says that the 'magnitude of the dumping margins has contributed to the ability of clear float glass exporters from China, Indonesia and Thailand to significantly undercut Viridian's prices. In order to maintain volumes in a price sensitive and transparent market, Viridian did not increase prices despite increased costs. Therefore the dumping prevented price increases, which would have occurred, to a significant degree' (TER Introduction 159B page 59).

114. The Termination Report says, however that "On the other hand, analysis of the [free-into-store] export price of clear float glass from Indonesia found that the magnitude of the price undercutting is such that if the goods were imported at undumped prices, it would still undercut Viridian's prices, even after taking into account a reasonable level of price premium. This indicates that factors other than dumping are also contributing to the price suppression experienced by Viridian." (TER 159B pages 49-50)

115. It appears that Customs and Border Protection may have considered that other factors such as the Dandenong Plant refurbishment influenced changes in volumes and were therefore the major contributor to the injury. However, I do consider that, as noted in the discussion on price undercutting at paragraphs 84-86, it would have been helpful if the Report provided reasoning to articulate whether any part caused by dumping was material or immaterial irrespective of whether an undumped price would still undercut prices.

6.3 Customs and Border Protection's approach in investigation 159

Customs and Border Protection in the investigation 159 considered that:

8.7.3 The prevailing market prices for clear float glass in Australia, have been to some degree adversely affected by clear float glass exported to Australia from China, Indonesia and Thailand at dumped prices and this has contributed to the prevention of Viridian price increases, which might otherwise have occurred.

8.10 ...the price pressure from dumped clear float glass 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 clear float glass. 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 clear float glass.

.....An undumped clear float glass price has also been calculated to assist in determining whether dumping has materially suppressed Viridian's prices. Specifically a weighted average FOB export price has been increased by the relevant dumping margin before adding an amount for ocean freight, marine insurance, importation costs and inland freight. This brings imported clear float glass to an undumped FIS price. This price, plus a reasonable premium, was then compared to Viridian's weighted average selling price.

This analysis found that Viridian's weighted average selling price is higher than the undumped FIS import price with any reasonable premium.

.....This analysis indicates that even if clear float glass exports from each of the countries were undumped, the resulting prices in Australia would have remained competitive. In these circumstances, it is likely that Viridian would have experienced similar levels of price suppression that could not be attributed to dumping.

All of the analyses above indicate that the degree of price suppression and consequently lost profit and profitability if any to Viridian that has been caused by dumping is negligible.

6.4 Customs and Border Protection's assessment in the resumed investigation

6.4.1 Introduction

In making a determination whether material injury to an Australian industry has been caused by dumped imports, any injury caused by a factor other than the exportation of the goods must not be attributed to the exportation of those goods²¹. The investigation must be terminated so far as it relates to that country where injury, if any, to an Australian industry that has been caused by that dumping is negligible²².

Customs and Border Protection found in the resumed investigation that: Viridian had suffered the following forms of injury:

- lost volume of clear float glass in YEM2009 and in the investigation period (YEM2010);
- price depression in relation to external sales prices of 4, 5 and 6 mm clear float glass;
- price suppression in relation to external sales prices of 3, 4, 5 and 6 mm clear float glass; and

²¹ 269TAE(2A)

²² 269TDA(13)

- lost profits and profitability on external sales of 3, 4, 5 and 6 mm clear float glass.

6.4.2 Lost volume

Viridian's lost volume in YEM2009 was proportionally greater than the decline in the total Australian market and proportionally lower in YEM2010. Overall Viridian's lost volume was the same as the decline in the total market volume.

Viridian's lost volume in YEM2009 coincides with the onset of the global financial crisis which was felt from the September 2008 quarter.

The volume of imports from China, Indonesia and Thailand increased in YEM2009 in contrast with the decline in Viridian's volume and the decline in the total Australian market but then decreased in YEM2010 at a proportionally greater rate than Viridian's volume and total market volume.

Based on these observations Customs and Border Protection concludes that Viridian's loss of volume during the investigation period was due to the overall decline in the total Australian market, and not due to dumping.

6.4.3 Price effects

Price depression and suppression

Viridian's external sales prices for 3, 4, 5 and 6 mm clear float glass increased in YEM2008 (by between 2 and 4%) and YEM2009 (by between 8 and 14%) and declined in the investigation period (YEM2010) by between 2% and 4% (except for 3 mm clear float glass increased by 1% in YEM2010).

Over the injury analysis period prices increased by between 9% and 17% for 3 mm to 6 mm clear float glass (Table 5 refers).

Customs and Border Protection note that Viridian increased its prices in YEM2009 at a time when the clear float glass market was being affected by the decline in the residential building and commercial construction markets.

Viridian's external sales prices for 3, 4, 5 and 6 mm clear float glass were suppressed throughout the injury analysis period (including the investigation period) except for 4 and 6 mm in YEM2008. Other than in YEM2008 for 4mm, 5mm and 6mm glass, Viridian has not been able to recover its costs throughout the injury analysis period.

The price suppression observed from a comparison between Viridian's margins in YEM 2010 to YEM2007 (a year unaffected by dumping) is at least partly caused by an increase in costs following the Dandenong refurbishment. While overall the refurbishment may have resulted in savings, unit costs in the investigation period increased due to lower volume. It has earlier been found that the reduced volume was not caused by dumping.

Price undercutting

Customs and Border Protection’s approach in investigation 159 was to conduct a price undercutting analysis at a macro and micro level, comparing Viridian’s selling prices for external sales with the selling prices in Australia for clear float glass imported from China, Indonesia and Thailand calculated at the FIS level which best represents the point at which Viridian’s prices compete with imported clear float glass. The FIS prices for imported clear float glass were calculated using the verified CIF export price, plus the verified into-store costs of the most efficient importer (paragraph 8.7.2²³).

In the resumed investigation, Customs and Border Protection has followed a similar approach as in investigation 159 i.e. Customs and Border Protection conducted a price undercutting analysis at the micro and macro levels in relation to sales of 3 to 6 mm clear float glass. Customs and Border Protection has used only verified data during this analysis.

The levels of price undercutting found at the macro level in the resumed investigation are shown in the following table. Verified FIS export prices were compared to Viridian’s average FIS external sales prices.

Table 8: the price undercutting margin during the investigation period

	3 mm	4 mm	5 mm	6 mm
China	4%	13-17%	14-19%	18-20%
Indonesia	11-22%	13-25%	15-24%	19-28%
Thailand	4%	8%	8%	9%

Source: confidential attachment 3: price undercutting

Table 8 shows that:

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

At the micro level Customs and Border Protection in the resumed investigation compared Viridian’s sales prices to its major external customers with these customers’ FIS export prices from China, Indonesia and Thailand (confidential attachment 3 – price undercutting).

Customs and Border Protection found significant levels of price undercutting and agrees 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 clear float glass from China and Indonesia than for exports from Thailand.”

²³ TER159B

At the micro level, certain Viridian customers were identified as also sourcing clear float glass 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 clear float glass exported to Australia at dumped prices."

Customs and Border Protection was advised during the resumed investigation that import FIS prices were being used by certain customers in negotiations with Viridian.

6.4.4 Lost profits

Viridian's external sales of 3, 4, 5 and 6 mm clear float glass were sold at a loss throughout the injury analysis period, except for 4 and 6 mm in YEM2008 when unit costs were reduced because of increased production due to a build-up of stock levels in preparation for a planned shutdown of the Dandenong float line. The level of Viridian's losses in YEM2009 and YEM2010 were affected by reduced volume, which as discussed above was due to the overall decline in the market.

6.4.5 Other causes

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

- (1) Global financial crisis and the decline in market conditions;
- (2) Operational issues within Viridian;
- (3) Dandenong plant refurbishment;
- (4) Higher fixed costs due to lower volumes;
- (5) Australian industry is a high cost producer;
- (6) The value of the Australian dollar; and
- (7) Shift in demand to more energy efficient glass such as coated and tinted glass.

CSR Limited reported in its Preliminary final report for the year ended 31 March 2010 in respect to the Building Products segment:

"As advised at the half year, 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.

Viridian reported a loss of \$1.6 million on revenue of \$379.7 million, with underlying trading performance improving in the second half.

Volumes in Upstream manufacturing (Primary Products) improved slightly from a recovery in market share following the completion of the rebuild and refurbishment of the float glass 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 glass more price competitive.

There are indications 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.

(1) Global financial crisis and the decline in market conditions;

CSR Limited's financial reports for YEM2008-YEM2010 (and YEM2011) 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 has argued that although the market downturn has contributed to its volume and price injury, dumped clear float glass imports have also caused material injury to Viridian.

Customs and Border Protection noted that trends in the Australian clear float glass market closely follow trends in the residential and commercial building construction markets.

(2) Operational issues within Viridian

Interested parties claimed during investigation 159 and again during the resumed investigation that systematic service failures in the processing and distribution business (Viridian Downstream) have forced customers to switch to independent glass processors and spread their source of clear float glass between Viridian Upstream and import.

As the extract from the CSR YEM2010 report shows, CSR acknowledged that the downstream business was suffering from performance issues.

Customs and Border Protection does not have sufficient evidence to adequately analyse the performance of Viridian downstream, although considers the statements by CSR indicate that the poor performance of Viridian downstream may have contributed to Viridian's loss of volume. As stated previously, Customs and Border Protection considers that Viridian's lost volume was due to the overall decline in the clear float glass market.

(3) Dandenong plant refurbishment

Viridian's Dandenong plant was shutdown from May to November 2008 (YEM 2009) with full production resuming in March 2009. The refurbishment 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 resulted in higher than normal unit costs in YEM2009.

During investigation 159, Viridian provided details of additional costs and savings in YEM2010 arising from the Dandenong plant refurbishment. Customs and Border Protection found that the data indicated that any additional costs were offset by the savings resulting from the refurbishment (paragraph 8.9.2).

(4) Higher fixed costs due to lower volumes

The decline in the market affected Viridian's volumes and thereby unit costs in YEM2009 and YEM2010.

Customs and Border Protection is satisfied that lower volumes due to market conditions contributed to Viridian's unit costs in YEM2009 and YEM2010 not returning to pre-refurbishment levels.

(5) Australian industry is a high cost producer;

In investigation 159 Customs and Border Protection found that Viridian was not the lowest cost producer when compared to costs verified in relation to exporters from China, Indonesia and Thailand. Customs and Border Protection found that the degree of any unit manufacturing cost difference that exists between Viridian and the exporters provides one or more overseas manufacturers with an advantage.

Interested parties during the resumed investigation have advised that clear float glass is an internationally traded product and is therefore traded within a narrow band of prices.

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.

(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 clear float glass more price competitive. This has also been referred to by CSR Ltd in its 2010 financial report as quoted above.

Customs and Border Protection noted in the resumed investigation that the Australian dollar appreciated against the US dollar by 33% during the investigation period.

Viridian has argued that an appreciating Australian dollar exacerbates the effects of the dumping margin. Interested parties have referred to import parity pricing operating in the Australian clear float glass market. CSR Ltd in its report on first half results for the period ended 30 September 2010, stated:

"Primary Products manufacturing continues to be impacted by the high Australian dollar/US dollar exchange rate. While Viridian's market share versus imports has been relatively steady, the higher Australian dollar impacts the import parity price of upstream glass products with an associated impact on margins for locally produced products".

Customs and Border Protection in the resumed investigation conducted an analysis to quantify the effect of the appreciating Australian dollar during the investigation period on the level of price undercutting. Unit sale prices for 3, 4, 5 and 6 mm clear float glass were adjusted based on the three year Australian

dollar/US dollar average exchange rate prior to the investigation period. 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.

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 price of clear float glass from China, Indonesia and Thailand recorded in the Customs and Border Protection import database. The original price undercutting margin has been adjusted to remove the relative effect of the currency appreciation.

Table 9: Price undercutting margin adjusted for changing value of the Australian dollar during the investigation period

		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: exchange rate adjustment

Table 9 shows that:

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

Based on the above Customs and Border Protection considers that the appreciation of the Australian dollar has contributed to the decrease in import prices from the countries subject to investigation, however there was still a not insignificant level of undercutting.

(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 clear float glass volume.

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.

Viridian also claimed during the resumed investigation that independent glass processors have also invested in new plant and equipment in expectation of this shift in the market. As a result, Viridian Upstream has picked up these processors as new external customers at the expense of Viridian Downstream.

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

6.5 Materiality of injury caused by dumping

As discussed above in section 6.4, injury to the Australian industry in the form of lost volume was not caused by dumped imports.

Viridian has, however, been under price pressure from dumped imports of clear float glass. Other factors, as discussed above, have also contributed to injury suffered by the Australian industry over the injury analysis period.

6.5.1 Unsuppressed selling price

In order to further assist in determining whether dumping is materially suppressing Australian industry's prices, an unsuppressed selling price (USP)²⁴ for the investigation period is calculated. The USP is compared to the Australian industry's weighted average sales price. If it is found that the Australian industry's sales price is above the USP this indicates that dumping may not have caused price suppression to the Australian industry.

²⁴ A USP is the price at which the Australian industry can reasonably sell in a market unaffected by dumping.

Customs and Border Protection follows a hierarchy of methods in calculating a USP, specifically:

- a. Australian industry's weighted average sales price in a period unaffected by dumping; and
- b. weighted average of most recent verified Australian industry CTMS; and
- c. prices of undumped imports into Australia.

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In TER159B, Customs and Border Protection calculated a USP²⁵. This price was then compared to Viridian's actual weighted average sales price achieved for each thickness in YEM2010 (section 8.10 of TER159B).

This analysis found that for all thicknesses, Viridian's YEM2010 prices were actually higher by between 3 and 9% than the corresponding USP indicating that dumping may have caused negligible price suppression to Viridian (8.10 refers).

In the resumed investigation Customs and Border Protection has re-considered the method for calculating the USP. Customs and Border Protection considered the circumstances surrounding the Australian clear float glass market during the injury analysis period and found:

- The Australian clear float glass market was significantly affected by the global financial crisis; and
- Viridian's operational structure has changed significantly during the injury analysis period.

It is therefore reasonable to expect that Viridian's external sales prices have been affected by these circumstances and it is therefore not preferable to use the market approach in establishing a USP.

Customs and Border Protection in the resumed investigation has 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
- lost volume was found not to have been caused by dumping.

In constructing a USP Customs and Border Protection considered that a profit margin of zero should be added to the CTMS as historically Viridian has not achieved a profit on sales, even in 2007 which was a year unaffected by dumping.

The resulting USP in the resumed investigation is higher than the USP calculated in TER159B (confidential attachment 7: USP & NIP refers).

Customs and Border Protection compared the USP to Viridian's weighted average external prices for 3, 4, 5 and 6 mm clear float glass over the investigation period (YEM2010).

Customs and Border Protection found that Viridian's YEM2010 external sales prices were lower by between 9% and 39% (excluding 3mm thickness, between 9% and 12%) than the corresponding USP indicating that Viridian's external

²⁵ USPs were calculated using method 1 (the selected method of calculating adjusted unit fixed manufacturing costs (8.10)).

sales prices are suppressed to the extent that Viridian sales prices did not cover Viridian's cost to make and sell.

Customs and Border Protection compared Viridian's margins in the investigation period to those in YEM2007, which was a period unaffected by dumping. The comparison of Viridian's selling prices and the cost to make and sell showed that during the investigation period the loss-making margin on Viridian's external sales was around the same as that in YEM2007.

Therefore, the fact that Viridian's selling prices in the investigation period were below the unsuppressed selling price does not necessarily lead to the conclusion that the suppression is caused by dumping.

6.5.2 Undumped price analysis

Comparison of undumped price to external sales price

Customs and Border Protection calculates notional undumped prices for exports from countries found to have been exported at dumped prices to assist in determining whether those dumped prices have materially suppressed the Australian industry's prices.

In this case exports from China, Indonesia and Thailand were found to have been exported at dumped prices. Customs and Border Protection has therefore calculated undumped prices for all verified exporters by adding the dumping margins calculated for each exporter to their FOB export prices for 3, 4, 5 and 6 mm clear float glass, then added import costs to calculate FIS undumped export prices for each exporter.

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

Table 11: difference between undumped FIS export prices and Viridian's FIS external sales prices during the investigation period

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

Source: confidential attachment 5: undumped prices

Table 11 shows that Viridian's FIS external sales price was greater than the undumped FIS export prices by the margins shown in the table.

Customs and Border Protection considers that this tends to support the view that even if imports were at undumped prices, the Australian industry might not have been able to raise its prices given the margin between its selling prices and imports. As illustrated in the earlier price analysis, Viridian attempted to increase its price in YEM2009, however reduced prices in the following year.

Price premium

G James, a purchaser of both imports and the Australian industry's goods, stated that it afforded the Australian industry 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 any price premium on the undumped price analysis.

Customs and Border Protection calculated a price premium by comparing Viridian's weighted average external sales prices with FIS import prices achieved in relation to Viridian customers that also purchased imported clear float glass from Thailand and China, which accounted for 22% of all import volume. Customs and Border Protection considered the difference (the undercutting margin) to be the price premium achieved by Viridian on external sales of each thickness over the investigation period. The premium was calculated to be around 6%.

Further analysis was conducted to include Indonesia; however it was found that only 3 Viridian customers also imported from Indonesia, Thailand and China. Due to the variations in glass thickness purchased from Viridian and imports and the Viridian volume of this subset of the market being less than 7%, it was not possible to determine a meaningful average premium calculation including Indonesia.

Customs and Border Protection added the 6% price premium to the undumped FIS prices for each thickness to calculate a price Viridian might expect to achieve if all of Viridian's price suppression was caused by dumped imports.

Table 12: Difference between undumped FIS export prices adjusted for a price premium and external sales prices over the investigation period

	China	Indonesia	Thailand
3 mm	n/a	1%	-5%
4 mm	1%	8-17%	-1%
5 mm	3%	10-18%	2%
6 mm	6%	7-9%	4%

Source: confidential attachment 9: premium analysis

Table 12 shows that the undumped FIS export prices adjusted for a price premium are below Viridian's actual weighted average external sales prices for 3, 4, 5 and 6 mm clear float glass from China and Indonesia and for 5 and 6 mm thickness from Thailand.

This analysis tends to support a conclusion that Viridian might not have been able to raise its prices in the absence of dumping given the differences shown above.

6.5.3 Estimate of materiality of revenue loss

Customs and Border Protection considers the undumped price analysis above tends to support a finding that dumping has not caused price injury to the Australian industry. However, Customs and Border Protection has attempted to estimate the revenue that would have been generated if Viridian's selling prices had not been depressed.

Viridian increased its selling prices in YEM2009, but reduced them in YEM2010. Customs and Border Protection therefore found that Viridian experienced price depression in the investigation period. Customs and Border Protection estimated the revenue that would have been generated if Viridian had achieved the YEM2009 prices in the investigation period.

When expressed as a percentage of Viridian's total revenue for like goods over the investigation period the amount of lost potential revenue was around 5%²⁶. This represents the maximum lost potential 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. This supports a finding that any part of the price depression caused by dumping was less than 5%.

Customs and Border Protection considers that a comparison of Viridian's actual selling prices with the USP is not appropriate as a measure of materiality of injury caused by dumping because the USP is based on Viridian's cost to make and sell, a price level which the industry has historically never achieved even in a period unaffected by dumping.

6.6 Preliminary Findings on whether dumping has caused injury

The TMRO has 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.

²⁶ Confidential attachment X

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Customs and Border Protection makes the following findings:

- the injury to Viridian in the form of lost sales volume was not caused by dumping but by a contraction in the market during the last quarter of YEM2010;
- at least part of the observed price suppression was due to the refurbishment of the Dandenong plant. Unit costs increased in the investigation period due to lower volume, which as stated above is not considered to be due to dumping;
- the Australian dollar increased by 30% over the investigation period, contributing to the reduction in import prices. While it is not possible to quantify this effect precisely, it is not insignificant. It is possible it accounts for anywhere between 8% and 100% of the undercutting margin, depending on the country of origin and thickness;
- a comparison of the undumped prices to Viridian's external prices shows 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;
- an estimate of the revenue loss caused by the price depression shows that if the entirety was attributed to dumping the estimated revenue loss would be 5%. Given the impacts of the strengthening Australian dollar and the global financial crisis that contributed to that price depression, any part due to dumping is not material; and
- because the lost volume was not caused by dumping, and if price injury caused by dumping is not considered material, consequently the lost profits and profitability caused by dumping would not be considered material.

Customs and Border Protection considers that clear float glass was exported to Australia from China, Indonesia and Thailand during the investigation period at dumped prices, however the above findings tend to support a conclusion that dumping did not cause material injury to the Australian industry.

Customs and Border Protection seeks comments from interested parties on the findings set out herein. If, following submissions, the delegate is of the view that the injury caused by dumping was negligible the investigation will be terminated. In the alternative, the delegate will prepare a report to the Minister recommending the imposition of anti-dumping measures.

7. HAS DUMPING THREATENED MATERIAL INJURY TO THE AUSTRALIAN INDUSTRY?

7.1 Findings

Material injury is not threatened to the Australian industry because of the exportation of clear float glass from China, Indonesia and Thailand into the Australian market.

7.2 Legislative framework

The Minister may publish a dumping duty notice where the Minister is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- because of that, material injury to the Australian industry producing like goods is threatened, or the establishment of an Australian industry producing like goods may be materially hindered²⁷.

In determining whether or not material injury is threatened to an Australian industry, the Minister must take account only of such changes in circumstances as would make that injury foreseeable and imminent unless dumping measures were imposed²⁸.

7.3 WTO Anti-dumping Agreement

Where an Act purports to give effect to an international agreement, that agreement may be looked at in order to resolve any uncertainty or ambiguity. Subsection 269TAE(2B) gives effect to Article 3.7 of the WTO Anti-Dumping Agreement. That provision is more detailed than subsection 269TAE(2B), and gives some guidance as to what factors may be included in a threat assessment.

The WTO Anti-Dumping Agreement states in Article 3.7 that:

“A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

- a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped

²⁷ Section 269TG

²⁸ Subsection 269TAE(2B)

exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

- whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated.”

In respect of injury being foreseen or imminent, the footnote to this article states that:

“One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.”

7.4 Assessment

The threat of material injury caused by dumping was considered in the original investigation. No material has been presented in the resumed investigation to depart from the view expressed in TER159B.

Viridian provided evidence that export prices of CFG from China reduced following the initiation of the investigation. Even so, as of 1 November 2010, Viridian had increased its prices of CFG by up to 5%, which corresponds to a period where the Australian dollar is still broadly regarded as being relatively strong. Viridian states that this price increase was primarily driven by the need to recover increased costs, particularly energy costs. This indicates that Viridian appears to have the ability to increase prices of CFG into the Australian market in the absence of anti-dumping measures.

There is no evidence to suggest that there is a threat of material injury to the Australian industry that is foreseeable and imminent unless dumping measures were imposed.

8. NON-INJURIOUS PRICE

8.1 Preliminary finding

If necessary, the non-injurious price (NIP) can be established by reference to the Australian industry's selling prices at a time unaffected by dumping and indexed to its CTMS, less relevant post-exportation costs.

8.2 TMRO views

The TMRO did not comment on non-injurious price.

8.3 Customs and Border Protection's approach in investigation 159

Customs and Border Protection approach was:

10.6 ...a USP (unsuppressed selling price) for the investigation period at which Viridian might reasonably sell clear float glass in a market unaffected by dumping was calculated. This calculation forms the basis at which a USP was established. That is, using Viridian's weighted average unit price of clear float glass for each thickness in YEM2007, then indexing it by the percentage difference between:

The weighted average CTMS in Yem2007; and

an adjusted CTMS over the investigation period for each thickness.

10.7 The NIP (non-injurious price) has been calculated by deducting from the USP verified weighted average importation costs, ocean freight costs and importer's SG&A costs over the investigation period.

8.4 Customs and Border Protection's assessment in the resumed investigation

The calculation of a non-injurious price provides a mechanism to give effect to the lesser duty provision contained in the WTO Anti-Dumping Agreement and subsection 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*. The non-injurious is the price that would be sufficient to remove the injury caused to the Australian industry by dumping.

The unsuppressed selling price calculated in section 6.5.1, based on Australian industry's cost to make and sell, represents a selling price unaffected by any adverse factors. That is, it is expected that in the normal course of events an industry would seek to recover its costs. However, the Australian industry has not recovered its costs throughout the injury analysis period, including in YEM 2007 which was a period unaffected by dumping. Factors other than dumping therefore appear to have impacted on the Australian industry's ability to sell at a price that fully recovers costs. Basing a non-injurious price on Australian industry's cost to make and sell would likely remove more than the effects of dumping.

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Customs and Border Protection considers the original investigation's approach in basing the USP on the Australian industry's selling price at a time unaffected by dumping, ie YEM2007, to be a reasonable approach. For the reasons outlined at section 6.5.1 above, in order to index the YEM2007 selling price to YEM2010 it is considered reasonable to use the Australian industry's costs in YEM2010, without adjustment.

The non-injurious price NIP can be calculated by deducting from the USP verified weighted average importation costs, ocean freight costs and average importer SG&A costs and profit over the investigation period.

Customs and Border Protection seeks the view of interested parties on the above approach, in the event that the delegate decides to recommend the Attorney-General publish a dumping duty notice.

APPENDIX 1 – LIST OF SUBMISSIONS MADE TO INVESTIGATION 159C
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Entity	Date received	Nature of submission	File reference
Viridian	290711	<i>Further response to JELD-WEN's submission of 010711</i>	<i>2010/045929-05 folio 10-17</i>
Viridian	260711	<i>Response to JELD-WEN's submission of 010711</i>	<i>2010/045929-05 folio 7-9</i>
JELD-WEN	260711	<i>Response to Viridian's submission of 010711</i>	<i>2010/045929-05 folio 5-6</i>
Viridian	220711	<i>Submission on G James visit report</i>	<i>2010/045929-05 folio 3-4</i>
Glassworks	120711	<i>Submission on resumption of investigation</i>	<i>2010/045929-05 folio 1-2</i>
Viridian	150711	<i>Response to Muliaglass' submission of 300611</i>	<i>2010/045929-04 folio 174-176</i>
Viridian	150711	<i>Response to ROM with Guardian</i>	<i>2010/045929-04 folio 171-173</i>
JELD-WEN	010711	<i>Submission on resumption of investigation</i>	<i>2010/045929-04 folio 141-170</i>
Muliaglass	110711	<i>Submission on Viridian Presentation dated 300611</i>	<i>2010/045929-04 folio 113-140</i>
Viridian	010711	<i>Submission on resumed investigation</i>	<i>2010/045929-04 folio 72-112</i>
Muliaglass	300611	<i>Submission on resumption of investigation</i>	<i>2010/045929-04 folio 53-57</i>
PT Asahimas & AGC	290611	<i>Submission on resumption of investigation</i>	<i>2010/045929-04 folio 50</i>