

AUSTRALIAN CUSTOMS SERVICE

**DUMPING BRANCH
CUSTOMS ACT 1901 - PART XVB**

DUMPING REVIEW FINDING No. 97/06

CLEAR FLOAT GLASS FROM CHINA

18 April 1997

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1. SUMMARY & RECOMMENDATIONS

Summary

Anti-dumping measures were first imposed against clear float glass exported to Australia from China in 1992. Since then several reviews of the measures have been undertaken.

In October 1996, George Fethers & Co Ltd (Fethers) requested a review of the normal values. Customs initiated the review on 15 November 1996. The review concerns normal values only.

Customs verified price and cost information provided by two producers of CFG in China. In the case of Guangdong Float Glass Co., Ltd (GFG) the selling prices were suitable for determining normal values. For Dalian Float Glass Co., Ltd, sales were unprofitable - for this company normal values were based upon sales by GFG.

As Customs was unable to obtain verified information from other exporters, their normal values were based on the verified costs of GFG and DFG.

Recommendations

Customs recommends that:

- normal values for CFG exported from China by GFG and DFG be re-ascertained under s. 269TAC(1) of the Act, based upon GFG's sales, with adjustments under s. 269TAC(8).
- the normal values for other exporters be re-ascertained under s. 269TAC(6).

Graham Cruttenden
Delegate of the Chief Executive Officer
15 April 1997

2. ABBREVIATIONS

Act	Customs Act 1901
ACDN	Australian Customs Dumping Notice
ADA	Anti-Dumping Authority
Asahimas	P T Asahimas Flat Glass Co. Ltd (Indonesia)
CFG	clear float glass
Customs	Australian Customs Service
DFG	Dalian Float Glass Co (China)
Fethers	George Fethers & Co Trading Proprietary Limited
FOB	free-on-board
GFG	Guangdong Float Glass Co (China)
Minister	Minister for Science and Small Business
Pilkington	Pilkington (Australia) Limited
PPG	PPG Industries Inc. (USA)
SYP	Shanghai Yaohua Pilkington Glass Co Ltd.

3. INTRODUCTION

This report concerns a review of the normal values applying to clear float glass exported from China.

Anti-Dumping Action

Australia's anti-dumping legislation is contained in the *Customs Tariff (Anti-Dumping) Act 1987*, Part XVB of the *Customs Act 1901*, and the *Anti-Dumping Authority Act 1987*.

Dumping occurs when the exported goods are priced lower than their 'normal value' in the country of export. Anti-dumping action is justified where it is established that dumped imports have caused, or threaten to cause, material injury to the Australian industry producing like goods.

Where satisfied that the material injury has been caused by the dumping, the Minister may sign a notice declaring that a dumping duty is to apply - a s. 269TG(1) notice in the case of injury caused by past imports, and a s. 269TG(2) notice if the injury is likely to continue. Another notice signed by the Minister under s. 8(5) of the *Customs Tariff (Anti-Dumping) Act* imposes the amount of the duty.

In the case of measures imposed before January 1993, the normal value may serve as the minimum export price ie. exports priced at or above the normal value pay no anti-dumping duty. (Where the Minister determines that a lesser amount suffices to remove the injury caused by the dumped imports - known as the non-injurious price - that lesser amount applies, not the normal value).

Normal values applying before 1 January 1993, as in the case of CFG, are reviewed under s. 269TAD of the *Customs Act*. This section provides that normal values may be re-ascertained at any time when a relevant factor has altered.

Normal Values

The normal value is compared to the export price in order to determine whether dumping is occurring. By international agreement, anti-dumping action is permissible only when the dumping causes material injury to the industry in the export market producing the same, or like goods.

In most cases the normal value of goods is the price paid in the domestic market of the exporting country, either by the exporter, or by another seller of like goods. Where a normal value cannot be based upon a selling price, the Act sets out a number of alternatives - these provisions are explained in Appendix 2.

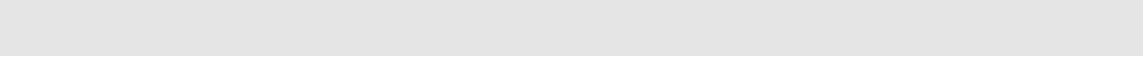
The Goods

Clear float glass (CFG) has a wide range of uses, including further processing into products such as laminated glass, mirrors and toughened glass.

The anti-dumping measures apply to three categories of glass - Jumbo sizes, General Stock sizes, and Other sizes. In each category the glass thickness is identified (3mm, 4mm, 5mm, 6mm, 8mm, 10mm, and 12mm), meaning that 21 different normal values and non-injurious prices apply.

The ACDN at Appendix 1 defines the three categories of CFG.

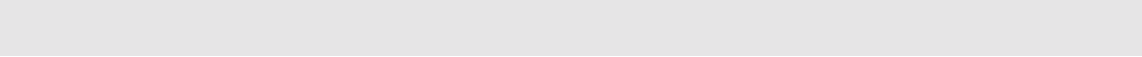
CFG is classified to heading 7005.29.00 in Schedule 3 of the *Customs Tariff Act 1995*.



4. BACKGROUND TO THE MEASURES

In December 1991, Pilkington sought action against CFG from Belgium, China, Germany, France, Indonesia, Malaysia, Philippines, and Thailand. Customs' Preliminary Finding Report No. 92/8 of May 1992 refers. ADA Report No. 81 of September 1992 recommended that anti-dumping action be taken against exporters from several countries, including China. The Minister accepted the recommendations.

Customs reviewed the measures in 1993 and 1995. Section 6 provides details of these reviews.



5. THE REVIEW

Origin of the Current Review

In October 1996 Customs received a request from Fethers for a review of normal values.

The request followed the re-ascertainment of the normal values for Indonesia in Customs Review Finding No. 96/12, September 1996.

Review Details

Initiation of the review was advertised in the *Australian Financial Review* and in the *Commonwealth Of Australia Gazette* on 15 November 1996, inviting responses by 25 December 1996. The initiation notice and ACDN No. 96/064 are at Appendix 1.

Submissions were received from Central Trading (Hong Kong), ITC (Australia) on behalf of Pilkington (Australia) Limited; and Hudson Trade Consultants on behalf of George Fethers & Company Pty Ltd (Melbourne), PPG Industries (USA), Guangdong Float Glass (China), and Dalian Float Glass (China).

Customs visited the following companies in China:

Guangdong Float Glass, on 6,7 and 9 January 1997;
Dalian Float Glass, on 13,14, and 16 January 1997;
Shanghai Yaohua Pilkington, on 21 January 1997.

Central Trading, Hong Kong, was visited on 13 January 1997.

6. NORMAL VALUES

The ADA's Findings

In Report No. 81, 1992, the ADA noted that several producers in China exported to Australia, the largest being Guangdong Float Glass (GFG). The ADA considered a submission which argued that it was appropriate to assess normal values in China as GFG operated in a special economic zone and that it was not subject to the government controls.

The ADA received advice from other government agencies to the effect that the government exercised control over the economy as a whole through measures such as production controls, and that it substantially influenced the price of many products, including inputs to production. The ADA noted that it was not appropriate to consider the operation of a firm in a region in isolation of the economy of China as a whole.

Information on the production and sale of a number of countries was considered under s. 269TAC(4).

- one importer submitted that prices in the USA be used to assess normal values for China as both countries had a large number of glass producers. The ADA noted, however, that there were significant differences in economic development between the USA and China, and that prices in the USA should not be used. Similarly, prices in European countries were excluded.
- data relating to Thailand, Indonesia and the Philippines was considered. The ADA concluded that Indonesia was the closest to China in terms of economic and social development. Rebates paid in Indonesia meant that the domestic sales were found to be not at arms length.

Therefore, the cost to make and sell provided by PT Asahimas Flat Glass Co Ltd (Indonesia) was used to assess the normal value for China, under s. 269TAC(4)(e).

Subsequent Reviews by Customs

Following consideration of a request by Pilkington, in November 1992 Customs announced a review of normal values of CFG from Indonesia and from China. The normal values for China were subsequently updated, based upon cost to make and sell information provided by Asahimas, Indonesia. Cost information was used in the review because rebates had continued to be paid, precluding the use of domestic selling prices in Indonesia.

In calculating the normal value Customs used a constant percentage rate of profitability for each thickness of glass. The profitability rate was obtained from Asahimas' profit outcome on sales of all types of glass. (The Indonesian normal values, as distinct from the normal values for China, had been determined using the costs to make and sell plus the profitability realised on sales of each thickness - for 5mm glass the profitability rate used was zero). Adjustments were made to the normal value for China for inland freight and for a distributor fee.

In mid-1993, another review of the normal values was undertaken after Pilkington demonstrated that errors had been made in the earlier review concerning, inter alia, the profitability rates. The normal value re-assessed for China no longer incorporated the overall profitability, but the profitability for each thickness that had been used in calculating the Indonesian normal values. This meant that for China 5mm glass included zero profit, whereas a positive rate had applied previously. Customs assessed the normal value for China under the provisions of s. 269TAC(6).

Pilkington successfully appealed this decision to the Federal Court. The Court found that Customs had erred in not making the finding under s. 269TAC(4) that sufficient information had not been furnished or was not available - a finding that should have been made before proceeding to s. 269TAC(6). Customs then re-assessed the normal values for 5mm CFG from China - a report of 11 November found that the price payable for like goods manufactured in Australia and sold by Pilkington provided an adequate basis for ascertainment of the normal value for 5mm CFG from China. This resulted in a significantly higher normal value for that thickness.

The normal values and non-injurious prices for several countries, including China, were next reviewed in 1995 (Customs review Report No. 95/3 refers). As no exporters in Asia cooperated, Fethers proposed that Customs visit the GFG plant. However, Customs advised Fethers that the provisions of s. 269TAC(4) related to the country as a whole, and that while the economy was in a state of transition, the central planning in China meant that Customs would conduct its inquiries on the basis that the provisions of s. 269TAC(4) applied.

Fethers then advised that PPG in the USA would co-operate in the review. Pilkington argued that the USA was a poor surrogate for China given the differences in glass use per capita, differences in market applications and that sheet glass is a significant part of the market in China.

Customs acknowledged that the USA was not an ideal surrogate as it had been ruled out by both Customs and the ADA in previous investigations. However, in view of the lack of cooperation, Customs verified information provided by PPG in the USA and concluded that the normal values for China were best assessed under s. 269TAC(4)(e), using the cost of production in the USA plus the selling, general and administrative costs associated with the sales in the USA.

An amount of profit was added based upon the sales to selected customers in the USA purchasing comparable volumes to GFG's Australian customers. The normal value included adjustments for export packaging, export inland freight and FOB charges. A consequence of the review was that the disparate normal value for 5mm glass from China no longer applied.

Assessment of Current Normal Values

The basis for establishing normal values of goods exported to Australia is set out in s. 269TAC of the Act - for example the selling price, or cost of production, in the country of export.

Section 269TAC(4) provides that where the Minister is satisfied that it is inappropriate to ascertain normal values under the other sections of the Act because "the Government of the country of export:

- (a) has a monopoly, or a substantial monopoly of the trade of the country; and
- (b) determines or substantially influences the domestic price of goods in that country."

the normal value may be assessed by having regard to price or cost information in another country (which may include the selling price in Australia of Australian made goods).

Pilkington made a detailed submission arguing that the provisions of s. 269TAC(4) should apply to China. Included were:

- a copy of the October 1995 Country Economic Brief for China prepared by the Department of Foreign Affairs and Trade (DFAT);
- summaries from the August 1996 Country Economic Brief for China prepared by DFAT;
- a draft of a publication prepared by DFAT titled "China Resurgent";
- extract from findings of the USA Department of Commerce
- extracts from reports by the Canadian and New Zealand authorities concerning the status of China, in particular investigations.

Upon initiation Customs wrote to exporters of CFG in Indonesia and in Thailand, inviting participation. None cooperated.

The request for the review followed recent investigations by Customs and the ADA, for which information was being obtained in China for normal value purposes (see glyphosate acid, laminated glass, and toughened glass panels). Customs decided that it was appropriate to visit the exporters in China in this case also. The reasons

for this changed policy have been provided, in some detail, in the reports of these other cases, and are not repeated here.

Guangdong Float Glass Co. Ltd

GFG lodged a detailed submission ("the submission") with the Australian Customs Representative in Tokyo . Verification of the information contained within the submission was conducted at GFG's factory at Shekou on 6 and 7 January 1997. A further meeting with GFG's representatives was conducted on 9 January 1997.

Located in the Shekou Industrial Zone of Shenzhen, GFG is a Sino-foreign joint venture owned by Penvvasia Ltd and four related companies of the China Merchants Steam Navigation Co. Ltd. One of the largest joint ventures in China, the total investment of GFG approaches the equivalent of US\$100m. Starting production in 1987, GFG was the first Chinese manufacturer to import the advanced float glass technology and produce float glass of international quality.

Since its inception in 1987 GFG has continuously manufactured CFG, utilising the PPG float glass technology. GFG regularly produces CFG in a range of thicknesses from 3mm to 12mm, for export and domestic consumption.

GFG's Product Specification Booklet confirms that the goods exported to Australia are identical to products sold on the domestic market and to other export markets. The only physical variation is in sizes (ie dimensions), the number of pieces (lites) per package and packaging.

An examination of recent sales transactions revealed that GFG had made sales of each thickness, at or above cost, in sufficient quantities for those transactions to be used as the basis for normal values. These sales are listed in Confidential Appendix 4.

The domestic sales were "at factory gate". To enable a proper comparison with export prices, adjustments were made for:

- fumigation;
- inland freight; and
- credit terms.

No adjustment was made for packing (which is the same for both domestic and Australian customers) or FOB charges (which are post export, as the CFG is exported through Hong Kong).

The normal value calculation for GFG is at Confidential Appendix 4.

Dalian Float Glass Co., Ltd.

DFG lodged a detailed submission with the Australian Customs Representative in Tokyo. Verification of the information contained within the submission was carried out at DFG's factory at Dalian on 13 and 14 January 1997. A further meeting with DFG's representatives was conducted on 16 January 1997.

Located in the Development Industrial Zone of Dalian, DFG is a Sino-foreign equity joint venture, jointly established by PPG Industries, Inc. of the United States; Asahi Glass Co., Ltd of Japan; Dalian Glass Industries General Manufacturing; and International Finance Corporation. DFG has a total investment of approximately US\$134m.

DFG produces CFG in a range of thicknesses from 2mm to 12mm for export and domestic consumption.

An extract from DFG's "Product Quality Specification" brochure confirmed that the specifications of the goods exported to Australia are identical to those sold upon the domestic market.

DFG's daily production capacity is rated at 600 metric tons of CFG. However, over recent months it has been running at a reduced capacity due to the depressed state of the domestic market. DFG described the current state of the domestic market as "extremely competitive". This is largely due to a rapid increase in capacity in China. As a result, prices declined throughout 1996. DFG produced a graph detailing average selling prices for the period mid 1995 to late 1996. The graph highlighted the relationship between the commissioning of new float lines by DFG's competitors in August 1995 and January 1996 and the pronounced reduction in domestic selling prices. DFG said the decline in the selling price of CFG has now stabilised, but the future remains uncertain as an additional seven new float lines began to be "heated up" for commissioning in November and December of 1996. Their eventual impact upon market prices is unknown.

The 1996 Income Statement indicates DFG was operating at a loss on a year to date basis ending October 1996. Reduced sales volume has had a significant impact on unit fixed costs.

All domestic sales were unprofitable. Customs therefore based the normal value on GFGs profitable sales, using the "other seller" provision of s. 269TAC(1).

To make the normal values properly comparable with export prices adjustments were made to GFG's selling prices using data obtained from DFG's submission and during the verification visit. The adjustments made were in respect of inland freight and FOB charges, fumigation costs, and a credit adjustment.

There are no differences between the glass for domestic and Australian customers, so no allowances were made in respect of packaging, storage and handling.

The normal value calculation for DFG is at Confidential Appendix 5.

Shanghai Yaohua Pilkington Glass Co Ltd

SYP provided limited information to Customs. Customs therefore deemed the information to be unreliable. As a result, it could not be used to determine whether sales were in the ordinary course of trade. Accordingly, it was not possible to determine the normal value in accordance with s. 269TAC(1), whether by reference to its own or GFG's sales.

Customs also decided it could not use unreliable cost information provided by SYP to determine a normal value under s. 269TAC(2).

The normal value was determined in accordance with s. 269TAC(6). The normal value was based on the average of the verified costs and adjustments from GFG and DFG. The weighting between "Jumbo", GSS and Other sizes, as established by the ADA, was used to derive the normal values from the GFG and DFG figures.

The calculations are summarised in Confidential Appendix 6.

Other Exporters

No other exporters provided information to Customs. Customs therefore recommends that normal values for any remaining exporters be established at the same level as SYP.

Suitability of Sales

Pilkington argued that Customs had not examined the extent to which the government influences float glass prices in China. As a result, it submitted that the requirements of s. 269TAC(2)(a)(ii) had not been properly considered.

This section provides that the normal value may not be ascertained under s. 269TAC(1) where the Minister is satisfied that the situation in the market of the exporting country "is such that sales in that market are not suitable for use in determining a price".

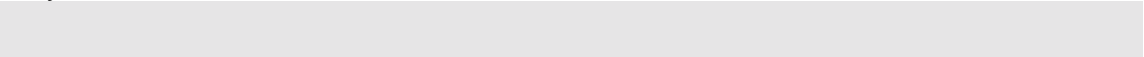
Pilkington argues that the State-operated enterprises dominate glass manufacture in China and, as a consequence, have a depressing effect on prices. The state enterprises are said to have allowed an excess capacity to exist. A pricing co-ordination committee was said to indirectly affect the prices which producers such as GFG can achieve.

In its report Customs included an overview of the domestic market. The market was said to be extremely competitive as a result of increasing float glass capacity, leading to price reductions in 1996. Prices were noted to have stabilised more recently, although new lines were being added.

Pilkington also informed Customs that a number of glass producers in China had formed a cartel to try to stabilise prices - included is the Luoyang Float Glass Group which is the largest glass producer in China.

Customs notes that conditions of excess capacity may affect prices in any country. That a cartel may have influenced prices in the opposite direction makes it impossible to draw conclusions about any net effect. The State operated enterprises are understood to be comprised largely of sheet glass producers, and there is a quality difference between this type of glass and the float glass produced by the companies having foreign equity such as GFG and DFG.

In assessing the normal values under s. 269TAC(1), using prices which it found had been in the ordinary course of trade and at arms length, Customs took the decision that there was no factor that it could identify which had so distorted those prices that they were unsuitable for a normal value.



7. FINDINGS

Customs finds that the selling prices for clear float glass are suitable for a normal value for GFG and DFG. For other exporters Customs finds that costs are suitable for a normal value. As these amounts differ from the current normal value levels, Customs recommends that the Minister re-ascertain the normal values for China.

The review did not include examination of the non-injurious prices and these remain unchanged at the previously ascertained levels.

Legislative Provisions

Normal Value

In most circumstances the normal value of goods is the price paid for the goods in the domestic market of the country of export. Usually, prices are based on sales by the exporter, but they may also be based on sales by other sellers on the domestic market in the country of export. The sales must be 'arms length' and in the 'ordinary course of trade'. The relevant provision is s. 269TAC(1).

Sales are not considered to be arms length if the price is affected by any relationship or special consideration between the buyer and seller. This could be when the price is influenced by a commercial or other relationship; when the buyer receives a reimbursement or rebate after the sale; or when there is a consideration payable for the goods other than the price.

Similarly, domestic market sales are excluded from normal value consideration if they are not profitable, that is, not in the ordinary course of trade. Testing for ordinary course of trade includes comparisons between the selling price and the cost to make and sell the goods over the same period. Sales are regarded as not being in the ordinary course of trade when a substantial quantity of goods are sold below cost over an extended period, and the cost is unlikely to be recovered within a reasonable period of time.

Where there are no relevant or suitable domestic sales, s. 269TAC of the Act provides alternative methods to establish normal values. The method selected is determined by the circumstances of each case.

Paragraph 269TAC(2)(c) provides for the normal value to be constructed from the cost to make and sell the exported goods. This method combines the production costs of the goods with the delivery charges and any other costs incurred as if the goods had been sold on the domestic market. Profit may also be included if sales in the domestic market are profitable.

Alternatively, s. 269TAC(2)(d) provides for the normal value to be based on export prices to a country other than Australia (known as third country sales). Acceptance of these sales is conditional on such sales being representative, at arms length and in the ordinary course of trade.

Section 269TAC(4) of the Act provides a number of methods for determining normal values where the Government of the country of export has a monopoly, or substantial monopoly of the trade of the country, and determines or substantially influences the domestic price of goods in that country. Normal values are determined using one of the following methods depending on what is appropriate and reasonable in the circumstances of the case:

- the price of like goods in a third country produced either for home consumption or for export to another appropriate country and sold in the ordinary course of trade, such sales being arms length transactions;
- the normal value is ascertained from the cost of production or manufacture, administrative, selling and general costs associated with the sale of like goods in a third country and the profit on that sale, or
- a value equal to the price payable for like goods produced or manufactured in Australia.

Finally, a normal value may be established under s. 269TAC(6), which provides for the normal value to be based on whatever relevant information is available.

Whichever of the methods is used to establish a normal value, there are often differences between the normal value and the export price which affect comparison. To enable a fair comparison between the export price to Australia and the normal value, s. 269TAC(8) and (9) provide for adjustments (or 'due allowances') to be made to the normal value. These adjustments may account for differences in the timing of sales, product specifications, packaging and other differences in the terms or circumstances of the sales.

Arms Length

Section 269TAA of the Act sets out the circumstances when a transaction is to be treated as non arms length. A transaction cannot be considered to be arms length if:

- there is a consideration other than price;
- the price is influenced by a relationship between the importer and exporter; or
- the buyer will be reimbursed, compensated or receive a benefit in respect of the price.

Export sales may be determined to be not arms length if the importer is selling at a loss, as provided for under s. 269TAA(3) and (4).

Review Procedures

Where a review request is received, supported by evidence of a changed factor, Customs will:

- notify the review in a newspaper and in the *Commonwealth Of Australia Gazette*, and write to known interested parties advising of the review (the letter includes the non-confidential copy of the request for the review, and of the Customs dumping notice);
- invite interested parties to make a submission within 40 days;

- conduct inquiries in order to verify data;
- examine previous reports and findings in order to understand the previous methodology. This methodology is preferred unless it is found that it is no longer appropriate because of changed circumstances;
- report to the Minister, recommending whether the measures need to be revised; and
- publicly notify the Minister's decision and publish a review report.

APPENDICES

Appendix 1	Initiation Notice and ACDN 96/064
Appendix 2	Legislative Provisions
Appendix 3	Sources of Evidence Relied Upon
Confidential Appendix 4	Sales and Normal Values for GFG
Confidential Appendix 5	Normal Values for DFG
Confidential Appendix 6	Normal Values for Other Exporters

APPENDIX 1

Initiation Notice and ACDN No. 96/064

CONFIDENTIAL APPENDIX 4

**List of Sales by GFG
Normal Values for GFG**

CONFIDENTIAL APPENDIX 5

Normal Values for DFG

CONFIDENTIAL APPENDIX 6

Normal Values for Other Exporters from China

APPENDIX 3

The Evidence Relied Upon by Customs

In this report, in relation to findings of fact, the evidence relied upon by Customs is as follows:

Section 6 Assessment of Current Normal Values

Evidence provided to Customs by Guangdong Float Glass Co Ltd, by Dalian Float Glass Co Ltd, in the course of the normal value verification and included in attachments to the Customs normal value report for those companies, and the following letters and submissions:

20 February 1997	Fethers re normal values in China
20 February 1997	PPG re quality specification
24 February 1997	GFG re prices for different sizes
24, 25 February 1997	PPG listing sales by customer, December 1996
25 February 1997	Pilkington re normal values
28 February 1997	Pilkington re normal values
18 March 1997	PPG re costs, level of trade, quality
24, 25 March 1997	PPG re domestic sales