



**AUSTRALIAN CUSTOMS SERVICE
TRADE MEASURES BRANCH
CUSTOMS ACT 1901 - PART XVB**

Report No.49

**CLEAR FLOAT GLASS FROM INDONESIA, CHINA
THE PHILIPPINES AND THAILAND**

Review of Anti-Dumping Measures

19 MARCH 2002

CONTENTS

ABBREVIATIONS	4
1 SUMMARY	5
1.1 <i>Background</i>	5
1.2 <i>Export prices</i>	5
1.3 <i>Normal values</i>	5
1.4 <i>Non-injurious (free-on-board) prices</i>	5
1.5 <i>Responses to the statement of essential facts</i>	6
1.6 <i>Impact of the review on measures</i>	6
2 INTRODUCTION	8
2.1 <i>The measures under review</i>	8
2.2 <i>The Minister's request for a review</i>	9
2.3 <i>The goods under review</i>	9
2.4 <i>The Australian industry</i>	10
2.5 <i>The review process</i>	10
3 EXPORT PRICES	11
3.1 <i>Indonesia - Muliaglass</i>	11
4 NORMAL VALUES	13
4.1 <i>Introduction</i>	13
4.2 <i>Indonesia - Muliaglass</i>	13
4.3 <i>China</i>	16
4.4 <i>The Philippines – Republic Asahi Glass Corporation</i>	17
4.5 <i>Thailand – Bangkok Float Glass</i>	18
5 NON-INJURIOUS (FREE-ON-BOARD) PRICES	19
5.1 <i>Introduction</i>	19
5.2 <i>Unsuppressed selling price</i>	19
5.3 <i>Non-injurious (free-on-board) prices</i>	22
6 SUBMISSIONS IN RESPONSE TO THE SEF	24
6.1 <i>Pilkington</i>	24
6.2 <i>China Luoyang Glass</i>	28
7 IMPACT OF THE REVIEW ON MEASURES	30
7.1 <i>Indonesia</i>	30
7.2 <i>China, the Philippines and Thailand</i>	30
8 RECOMMENDATIONS	31
9 APPENDICES	33
9.1 <i>Non-confidential</i>	33

ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Act	<i>Customs Act 1901</i>
Asahimas	PT Asahimas
BFG	Bangkok Float Glass
C&F	Cost and freight
CEO	Chief Executive Officer of Customs
CFG	Clear Float Glass
Comport	Comport Technology
CTS	Cut to size
Customs	Australian Customs Service
DCS	Developing Country Status
FIS	Free-into-store
FOB	Free-on-board
FRS	Factory run sizes
GJames	G James Australia Pty Ltd
GSS	Glazing stock sizes
Minister	Minister responsible for Customs
Mulia Industrindo	PT Mulia Industrindo
Muliaglass	PT Muliaglass Tbk
NIFOB	Non-Injurious Free on Board
NIP	Non-Injurious Price
OGA	Overseas Glass Agencies
Pilkington	Pilkington Australia Pty Ltd
RAGC	Republic Asahi Glass Corporation
SEF	Statement of Essential Facts
USP	Unsuppressed Selling Price
WTO	World Trade Organisation

1 SUMMARY

1.1 BACKGROUND

The review covers the following exports of clear float glass (CFG) to Australia

Thickness	Exporter	Country
3mm	PT Muliaglass	Indonesia
3 to 12mm	All exporters	The People's Republic of China (China)
3 to 12mm	Bangkok Float Glass	Thailand
3 to 12mm	Republic Asahi Glass Corporation	The Philippines

- ◆ The Minister requested that Customs conduct the review as he considered that, in view of the time that had elapsed since Customs' previous inquiries, it was likely that the variable factors may have changed.
- ◆ Customs initiated the review on 31 August 2001.

1.2 EXPORT PRICES

- ◆ Customs assessed export prices for 3mm thickness CFG exported to Australia by PT Muliaglass (Muliaglass) under section 269TAB(1)(a) of the Act.
- ◆ Anti-dumping measures applying to exports from China, the Philippines and Thailand were imposed under the scheme for the collection of dumping duties in operation prior to 1 January 1993. Export prices are not ascertained for these measures.

1.3 NORMAL VALUES

- ◆ Customs assessed normal values for Muliaglass under section 269TAC(1) of the Act using selling prices of like goods in Indonesia by Muliaglass' parent company, PT Mulia Industrindo (Mulia Industrindo). Mulia Industrindo is an "other seller of like goods" in Indonesia.
- ◆ Customs assessed normal values for China, the Philippines and Thailand under section 269TAC(6) of the Act. Customs considered that sufficient information had not been furnished or was not available to ascertain normal values under subsections preceding subsection 269TAC(6).
- ◆ Customs recommends that normal values for China, the Philippines and Thailand remain at current levels.

1.4 NON-INJURIOUS (FREE-ON-BOARD) PRICES

- ◆ Unsuppressed selling prices (USPs) are used as the basis of calculating non-injurious (free-on-board) prices. Customs proposes that the USPs for

CFG be based on the lowest price in Australia of undumped imports from Indonesia as follows:

Thickness	Basis for USP
3mm	PT Asahimas free-into-store (FIS) prices to Australian glass merchants
4 to 12mm	Average of PT Asahimas FIS prices and Overseas Glass Agencies selling prices to Australian glass merchants

1.5 RESPONSES TO THE STATEMENT OF ESSENTIAL FACTS

- ◆ Customs received three responses to the statement of essential facts (SEF), two from Pilkington (Australia) Ltd (Pilkington) and one from a Chinese glass exporter, China Luoyang Glass.
- ◆ Pilkington suggested that Customs should not have used the selling prices in Australia of Indonesian CFG not covered by anti-dumping measures to establish USPs. Pilkington said it believed that the imports from Indonesia were prima facie dumped and suggested tests that could be performed by Customs to confirm that the imports were at dumped prices.
- ◆ Customs conducted the tests proposed by Pilkington and concluded that, on the information available to it, there was no evidence that the sales used to determine the USPs were based on goods exported at dumped prices.
- ◆ China Luoyang Glass also criticised the use of Indonesian selling prices in Australia to establish USPs. It pointed to differences in the economies of China and Indonesia and the impact of quality differences on price as reasons for not using Indonesian prices.
- ◆ Customs does not consider that the reasons provided by China Luoyang Glass alter the appropriateness of using Indonesian selling prices to establish USPs.

1.6 IMPACT OF THE REVIEW ON MEASURES

- ◆ The revised non-injurious price (NIP) for Muliaglass' exports of 3mm CFG from Indonesia is marginally lower than the revised normal value. Customs recommends that the undertaking level be varied to the level of the revised NIP.
- ◆ The altered undertaking level is higher than the current level.
- ◆ The following table sets out the movement between current non-injurious free-on-board prices (NIFOB) for China, the Philippines and Thailand and NIFOBs established during this review:

Thickness	China	The Philippines	Thailand
3mm	Increase	Increase	Increase
4mm	Increase	Decrease	Decrease
5mm	Increase	Decrease	Decrease
6mm	Increase	Decrease	Decrease
8mm	Increase	Increase	Increase
10mm	Increase	Increase	Decrease
12mm	Increase	Decrease	Decrease

2 INTRODUCTION

2.1 THE MEASURES UNDER REVIEW

Customs reviewed all anti-dumping measures applying to exports to Australia of CFG. The measures cover the following exports:

Thickness	Exporter	Country
3mm	PT Muliaglass	Indonesia
3 to 12mm	All exporters	China
3 to 12mm	Republic Asahi Glass Corporation	The Philippines
3 to 12mm	Bangkok Float Glass	Thailand

2.1.1 Indonesia – new measures

The measures applying to 3mm thickness CFG exported to Australia by Muliaglass arose out of an investigation concluded by Customs in May 2000.

The investigation established that only 3mm CFG exported by Muliaglass had been dumped and that exports of other thicknesses exported by Muliaglass and all CFG exported by other Indonesian exporters were not dumped.

On 28 May 2001, the Minister accepted an undertaking from Muliaglass in respect to its exports of 3mm CFG. In accordance with section 269TEB of the *Customs Act 1901* (the Act), when the Minister accepted the undertaking the investigation was suspended as far as it related to Muliaglass.

For these measures, Customs reviewed:

- ◆ the normal value and
- ◆ the NIP.

The measures covering Muliaglass fall under the post 1 January 1993 collection system (or “new measures”). Section 269ZA of the Act deals with applications and requests for review of new measures.

2.1.2 China, the Philippines and Thailand – old measures

The measures applying to exports from China, the Philippines and Thailand, were imposed in 1992. Measures imposed prior to 1 January 1993 are covered by the collection system applying at that time (often referred to as “old measures”).

For these measures, Customs will review:

- ◆ the normal values and
- ◆ the NIFOBs.

Normal values for old measures are reviewed under section 269TAD of the Act. NIFOBs are reviewed under subsections 8(5) and 8(5A) of the *Customs Tariff (Anti Dumping) Act 1975*.

The measures were last reviewed as follows:

Country	Normal values	NIFOBs
China	18 April 1997	10 May 2000
The Philippines	12 July 1995	10 May 2000
Thailand	12 July 1995	10 May 2000

Further information on Customs' investigations, and dumping generally, is provided in the glossary at **Appendix 1** to this report.

2.2 THE MINISTER'S REQUEST FOR A REVIEW

In May 2000, Customs completed an investigation into exports of CFG from Indonesia and a review of NIFOB levels applying to exports from China, the Philippines and Thailand. In May 2001, the Minister accepted Customs' recommendations made in the following reports:

- ◆ Review of NIFOBs for CFG from China, the Philippines and Thailand (Report No.23) and
- ◆ Investigation into CFG from Indonesia (Report No.21).

The Minister on 27 June 2001 requested that Customs initiate a review of the measures applying to CFG. The request was made in writing and in accordance with subsection 269ZA(3) of the Act. In his letter to Customs the Minister stated that in view of the time that had elapsed since Customs' inquiries, it was likely that the variable factors relevant to the taking of those measures may have changed.

Customs initiated the review on 31 August 2001.

2.3 THE GOODS UNDER REVIEW

The goods under review are CFG in thicknesses of between 3mm and 12mm. CFG is produced by melting sand, soda ash, dolomite and other raw materials in a furnace. A continuous ribbon of molten glass flows out of the furnace onto a bath of molten tin. The top surface finds a natural level and flatness while the bottom surface conforms to the flat surface of the molten tin. The speed at which the glass is removed from the bath governs the thickness.

CFG covered by the measures is produced in nominal thicknesses of 3, 4, 5, 6, 8, 10 and 12mm. Customs has published acceptable tolerances for each nominal thickness of CFG for the purpose of collecting anti-dumping duty. These are reproduced at **Appendix 2**.

CFG is supplied in a variety of size categories, including factory run sizes (FRS), glazing stock sizes (GSS) and cut to size (CTS). CFG is produced

primarily for use in the building and associated industries. It can be further processed into toughened, laminated, mirrored and architectural glass etc.

The goods the subject of the review are classified to subheading 7005.29.00, statistical codes 2 to 6, in Schedule 3 of the *Customs Tariff Act 1995*. The general rate of duty is 5% and the developing country status (DCS) rate is 4%. All of the countries covered by this review are subject to the DCS rate.

2.4 THE AUSTRALIAN INDUSTRY

Pilkington is the sole Australian producer of CFG. Pilkington produces CFG at its plants in Ingleburn in New South Wales and Dandenong in Victoria.

2.5 THE REVIEW PROCESS

On 31 August 2001, Customs published a notice in the *Australian Financial Review* advising that it proposed to review the measures on CFG. ACDN No.2001/052 provides further details of the review. A copy of the ACDN is at **Appendix 3**.

Customs wrote to all known interested parties requesting that they lodge submissions to the review by 10 October 2001. Customs granted short extensions to this deadline to some exporters.

On 28 November 2001, the Minister approved an extension to the period within which Customs was required to place the SEF on the public file. Customs considered that an extension was necessary due to the extensions granted to some exporters to lodge submissions and delays in organising the verification visit to the Indonesian exporter, Muliaglass. The extension was granted in accordance with section 269ZHI of the Act.

The deadline for placing the SEF on the public file was extended by 43 days, from 19 December 2001 to 31 January 2002.

The deadline for Customs to make its final report to the Minister was similarly extended to 17 March 2002. In compiling this report and recommendations, Customs examined all submissions and information received. The evidence relied upon by Customs in reaching its conclusions and recommendations in this report is listed at **Appendix 4** to this report.

Customs notified interested parties that it would consider information between 1 July 2000 and 31 August 2001 for the purposes of the review.

3 EXPORT PRICES

As explained above, measures applying to CFG exported to Australia from China, the Philippines and Thailand are old measures. Old measures do not specify an export price. Under this system, dumping duties are payable only if the actual export price is below the normal value or the NIFOB, whichever is the lower.

Measures applying to the Indonesian exporter, Muliaglass are in the form of an undertaking. The terms of the undertaking require Muliaglass to export to Australia above a specified FOB price equivalent to the lower of the normal value and the NIP. The undertaking does not require the Minister to ascertain an export price.

However, in accordance with the terms of the Minister's request, Customs has assessed export prices for exports of 3mm thickness CFG by Muliaglass.

3.1 INDONESIA - MULIAGLASS

The legal instruments in respect of current anti-dumping measures nominate Muliaglass as the exporter of the goods to Australia. Customs is satisfied that Muliaglass is still the exporter of CFG to Australia. Muliaglass invoices and receives payment from the Australian importer and arranges for the shipment of the goods.

Customs entry information shows that Muliaglass exported CFG to one importer in Australia over the period examined, Overseas Glass Agencies Pty Ltd (OGA). Both Muliaglass and OGA lodged submissions to the review, confirming that OGA is the sole agent for Muliaglass product in Australia.

During the review, Customs visited Muliaglass and OGA to verify information contained in their submissions. Interested parties can view non-confidential versions of the visit reports on the public file.

As in the initial investigation, Customs concluded that OGA was the importer of the goods. OGA arranges for Muliaglass to ship the CFG direct to OGA's Australian customer. OGA pays Muliaglass for the goods and enters into its own sale contract with the Australian customer. Although OGA does not take physical possession of the goods, Customs considers that OGA is the beneficial owner of the goods at the time of their arrival in Australia.

Customs found no evidence that the sales by Muliaglass to OGA were not arms length transactions.

Muliaglass sells to OGA on a cost and freight (C&F) basis. Customs verified the actual amount paid for ocean freight to Australia.

3.1.1 Conclusion

Customs is satisfied that:

- ◆ the goods have been exported to Australia otherwise than by the importer;
- ◆ the goods have been purchased by the importer (OGA) from the exporter (Muliaglass); and
- ◆ the purchase of the goods by the importer was an arms length transaction.

Customs concluded that the export price of CFG exported to Australia by Muliaglass should be ascertained under section 269TAB(1)(a) of the Act by deducting the ocean freight cost from the C&F invoice price.

Weighted average export prices for each month of the period examined and for the whole period are at **Confidential Appendix 5**.

4 NORMAL VALUES

4.1 INTRODUCTION

The normal value of goods exported to Australia is defined in section 269TAC of the Act.

4.2 INDONESIA - MULIAGLASS

Muliaglass provided a detailed submission to the review. Customs visited Muliaglass in Indonesia to verify information contained in the submission.

4.2.1 Sales by the exporter - Muliaglass

CFG made by Muliaglass is sold in Indonesia under an arrangement with its parent company, Mulia Industrindo. Muliaglass invoices Mulia Industrindo and Mulia Industrindo invoices the glass merchants. Mulia Industrindo receives payment from the Indonesian customers and remits the funds to Muliaglass, retaining an amount as commission. Customs concluded, and Muliaglass did not disagree, that the arrangement constituted a sale from Muliaglass to Mulia Industrindo and a further sale from Mulia Industrindo to the Indonesian customer.

Section 269TAC provides a hierarchy for establishing normal values. Subsection 269TAC(1) states that

...the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Muliaglass is the exporter of CFG to Australia. Although the arrangement between Muliaglass and Mulia Industrindo can be characterised as one within the corporate group, each is a separate legal entity and Customs must first look at sales by the exporter, Muliaglass, to see if these sales (to Mulia Industrindo) meet the requirements of subsection 269TAC(1).

As in the initial investigation, Customs concluded that the sales by Muliaglass to Mulia Industrindo were not arms length transactions. Section 269TAA of the Act states, in part, that

...a purchase or sale of goods shall not be treated as an arms length transaction if:

...(b) the price is influenced by a commercial or other relationship between the buyer.....and the seller.

In Customs view, the price between Muliaglass and its parent, Mulia Industrindo, is influenced by a commercial or other relationship between the parties.

4.2.2 Sales by other sellers

Having concluded that normal values can not be established using domestic sales by the exporter, Muliaglass, Customs must then look to sales by other sellers of like goods in Indonesia, in this case Mulia Industrindo.

At this point it is worth mentioning that at the commencement of the investigation, Customs wrote to a major Indonesian glass producer, Asahimas. Asahimas is an other seller of like goods in Indonesia. Asahimas declined Customs' invitation to provide information to the review.

Mulia Industrindo

Customs examined sales by Mulia Industrindo to see if they were suitable for establishing normal values.

4.2.2.1 Like goods

CFG sold by Mulia Industrindo on the domestic market of Indonesia is identical to CFG Muliaglass exported to Australia. They are like goods as defined in section 269T of the Act.

4.2.3 Arms length

Only sales that are arms length transactions can be used to establish normal values. Section 269TAA states

“...a purchase or sale of goods shall not be treated as an arms length transaction if:

(a) there is any consideration payable for or in respect of the goods other than their price; or

(b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.”

Mulia Industrindo sells 3mm CFG to 27 customers in Indonesia. Mulia Industrindo advised, and Customs found no evidence to the contrary, that none of the customers had any association with Muliaglass or Mulia Industrindo.

In respect to paragraphs (1)(a) and (1)(b) of section 269TAA, Customs was satisfied that

- ◆ there was no consideration payable for or in respect of the goods other than their price and
- ◆ the price charged by Mulia Industrindo was not influenced by a commercial or other relationship between the Indonesian customers, or an associate of the customers and Mulia Industrindo or an associate of Mulia Industrindo.

Customs did find that sales of CFG by Mulia Industrindo were subject to a bonus rebate scheme. Customs examined this rebate scheme to determine if it could be characterised as an arrangement rendering the transactions as non-arms length under paragraph (1)(c) of section 269TAA.

Customs concluded that the rebates, which were very small in relation to total sales value, did not cause the domestic selling prices to be treated as non-arms length. Further detail on Customs' consideration is available from the Muliaglass normal value report on the public file.

4.2.4 Ordinary course of trade

Customs compared the costs incurred by Muliaglass and Mulia Industrindo in making and selling 3mm CFG in Indonesia with selling prices in the period examined. Customs found a number of domestic sales at a price less than their cost and that it was unlikely that Mulia Industrindo would recover the cost of the goods within a reasonable period. As these sales represented less than 20 per cent of the total volume of sales over the period they are not considered to be in substantial quantities. The sales are, therefore, considered to be in the ordinary course of trade and included in the calculation of normal values.

This approach outlined above is different to the one described in the SEF. The SEF stated that the sales below cost and not recoverable within a reasonable period were not in the ordinary course of trade and were, therefore, excluded from the normal value calculations. This was not in accordance with Customs' policy on the interpretation of section 269TAAD.

The change of approach does not alter Customs' recommendations. As explained below, Customs ascertained a weighted average normal value over the last six months of the period examined. Very few sales in this period were below their cost and deemed to be irrecoverable. The weighted average normal value over this period did not change when these sales were included in the calculation.

4.2.5 Normal values

Customs was satisfied that there was a sufficient volume of like goods sold in the ordinary course of trade in sales that were arms length to establish normal values under subsection 269TAC(1) of the Act.

Customs calculated monthly weighted average normal values for 3mm CFG exported to Australia by Muliaglass.

Under subsection 269TAC(8) of the Act, Customs made adjustments to the domestic selling prices for the following factors to ensure that the normal values were properly comparable with export prices:

- ◆ domestic credit terms
- ◆ domestic inland freight
- ◆ export inland freight

- ◆ export port charges, fumigation and clearance fees and
- ◆ export credit terms.

Customs noted that the monthly weighted average normal values showed a clear increasing trend over the period examined. In view of this trend, Customs considered it reasonable that normal values in the latter part of the period examined were more likely to reflect future normal values than, for example, normal values at the beginning of the period. Accordingly, Customs ascertained a normal value for exports by Muliaglass using the weighted average normal value over the last six months of the period examined, that is, 1 March to 31 August 2001.

In a submission to Customs, Muliaglass stated that, if Customs decided to use the latter part of the review period to establish normal values, Muliaglass was concerned that a distortion will occur due to “extreme and unsustainable fluctuations in currency exchange rates”. The Indonesian Rupiah appreciated markedly against the US and Australian dollars in July and August 2001 compared to June 2001. Muliaglass requested that July and August 2001 be excluded from the calculation of normal values.

Customs considered Muliaglass’ comments but considers that its approach to establishing normal values is reasonable. Using the weighted average normal value for the last six months of the review period means that the impact of the exchange rate movements in July and August 2001 is not excessive. Also, exchange rates in the period July to December 2000 were similar to those of July and August 2001. This indicates to Customs that the exchange rates for July and August 2001 were not extraordinary. Customs found that the average exchange rate for the entire review period was similar to the average rate over the final six months.

Monthly weighted average normal values and the weighted average normal value for 1 March to 31 August 2001 are at **Confidential Appendix 6**.

4.3 CHINA

Customs identified 37 exporters of CFG to Australia from China over the investigation period. Customs wrote to all identified exporters, inviting them to participate in the review. Customs sent exporter questionnaires to the five largest exporters. These exporters represent 91% of the volume of exports of CFG from China over the period examined.

One entity associated with exports of CFG from China, Comport Technology Limited (Comport), made a submission to Customs. Comport is a Hong Kong based company. In its submission, Comport described itself as a trading house. Comport stated that it was not a manufacturer of CFG and did not sell CFG in China.

While Customs appreciates Comport making a submission to the review, the information it provided did not assist Customs in determining normal values for exports from China.

One other exporter contacted Customs on 19 December 2001 to say that it had not received the initial information sent out by Customs on 31 August 2001. The exporter told Customs that it had been alerted to the review when it received a letter from Customs concerning the extension to the timeframes for the review.

Customs regrets that the exporter did not receive the letter and associated information inviting it to participate in the review. By the time the exporter contacted Customs it was not possible for the exporter to prepare the necessary information and for Customs to verify it within the timeframe for the review.

No other exporter of CFG from China provided a submission to the review.

4.3.1 Normal values

Customs did not receive information from Chinese manufacturers of CFG or sellers of CFG on the domestic market of China to assist in establishing normal values. Therefore, Customs is satisfied that sufficient information has not been furnished or is not available to enable normal values to be ascertained under subsections 269TAC(1) or (2) of the Act. The “economy in transition” provisions set out in subsections 269(5D) to (5J) of the Act do not apply to old measures.

Subsection 269TAC(6) of the Act states

Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections,....the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

Customs considers that, in the circumstances, subsection 269TAC(6) is the appropriate provision under which to establish normal values for China.

In the absence of relevant information on which to establish current normal values, Customs recommends that the normal values currently ascertained for exports of CFG to Australia from China should remain unchanged.

4.4 THE PHILIPPINES – REPUBLIC ASAHI GLASS CORPORATION

Upon the initiation of the review, Customs wrote to Republic Asahi Glass Corporation (RAGC) inviting it to complete an exporter questionnaire. RAGC provided Customs with a limited submission. It did not complete the exporter questionnaire or provide detailed domestic selling price information. Customs assessed the submission and concluded that it did not contain sufficient information to warrant Customs visiting RAGC to verify information contained in the submission.

RAGC’s submission shows that it has not exported CFG to Australia over the period examined. Customs’ records support this claim.

4.4.1 Normal values

Customs is satisfied that sufficient information has not been furnished or is not available to enable the normal values for RAGC to be ascertained under subsections 269TAC(1) and (2) of the Act. Therefore, Customs considers that normal values should be ascertained under subsection 269TAC(6) having regard to all relevant information.

In the absence of relevant information on which to establish current normal values, Customs recommends that the normal values currently ascertained for exports of CFG to Australia from RAGC should remain unchanged.

4.5 THAILAND – BANGKOK FLOAT GLASS

Upon the initiation of the review, Customs wrote to Bangkok Float Glass (BFG) inviting it to complete an exporter questionnaire. BFG provided Customs with a limited submission. BFG did not complete the exporter questionnaire or provide detailed domestic selling price information. Customs assessed the submission and concluded that it did not contain sufficient information to warrant Customs visiting BFG to verify information contained in the submission.

BFG's submission shows that it has not exported to Australia over the period examined. Customs' records support this claim.

Customs also received a limited submission from Thai-Asahi Glass, another manufacturer of CFG in Thailand. Thai-Asahi Glass is not covered by the anti-dumping measures under review. Thai-Asahi Glass is an other seller of CFG in Thailand and its information could be used to establish normal values in Thailand. However, Customs assessed the submission and concluded that it did not contain sufficient information to warrant Customs visiting Thai-Asahi Glass to verify information contained in the submission.

4.5.1 Normal values

Customs is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under subsections 269TAC(1) and (2) of the Act. Therefore, Customs considers that normal values should be ascertained under subsection 269TAC(6) having regard to all relevant information.

In the absence of relevant information on which to establish current normal values, Customs recommends that the normal values currently ascertained for exports of CFG to Australia from BFG should remain unchanged.

5 NON-INJURIOUS (FREE-ON-BOARD) PRICES

5.1 INTRODUCTION

Dumping duties may be applied where it has been established that dumped imports have caused or threaten to cause material injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but lesser duty may be applied if it is determined that a lesser level of duty is sufficient to remove the injury.

This lesser duty provision is contained in the WTO Anti-Dumping Agreement. Australian legislation reflects the principle of this provision in subsection 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

The lesser duty provision involves the calculation of the minimum export price necessary to prevent the injury, or a recurrence of the injury or to remove the hindrance to the Australian industry. The minimum price is referred to as:

- ◆ the NIP for new measures (imposed after 1 January 1993) and
- ◆ the NIFOB for old measures (imposed prior to 1 January 1993).

The concepts of NIP and NIFOB are identical. Both are expressed as free-on-board (FOB) prices. The new version of the concept, the NIP, is defined in section 269TACA of the Act.

The method of calculating a NIP or NIFOB is not defined in the legislation, however Customs will generally derive a NIP from Australian industry's unsuppressed selling price (USP).

5.2 UNSUPPRESSED SELLING PRICE

The USP is the price at which the Australian industry would be able to sell the goods in a market unaffected by dumped imports.

There are a number of options available to establish the USP including:

- ◆ the price for locally produced goods when the Australian market was not affected by dumping and adjusting that price to the current date;
- ◆ Australian industry's cost to make and sell plus an estimated profit (if any) that the industry could achieve in a market unaffected by dumping; or
- ◆ using the lowest Australian domestic price for undumped imports, if it can be shown that those imports set the market price or that those imports influence the price.

Customs has considered these options in previous NIFOB reviews and in the investigation into exports of CFG from Indonesia concluded in May 2000. In

these cases, Customs concluded that USPs should be based on the selling prices of CFG exported from Indonesia. Customs used these prices on the basis that:

- ◆ the price of CFG in the Australian market was found by Customs to be set either by Pilkington or by Indonesian imports;
- ◆ imports of Indonesian CFG were not dumped (other than 3mm thickness CFG exported by Muliaglass); and
- ◆ the prices of Indonesian CFG in the market were not influenced by the presence of dumped product.

In its submission to Customs, Pilkington stated that

.....NIPs have [previously] been incorrectly determined on the basis of understated cost information or third country export prices which do not reflect the fully absorbed cost to make and sell and therefore represent sales at a loss. We have previously provided cost information to assist Customs in its assessment of unsuppressed selling prices as the basis for determining NIPs.....

Pilkington went on to say

[A]s Customs has previously not relied on this [cost based] methodology, we would welcome Customs' comment on whether it intends to review this and the reasons why a change might now be considered appropriate.

Customs is not aware of changes in circumstances in the Australian market that would cause it to use a different method to derive USPs. In Customs' view, USPs derived using a different method that produced figures higher than the selling prices of undumped imported CFG would not represent an achievable price by the Australian industry in the absence of dumping. Pilkington has not put forward persuasive arguments that the undumped prices from Indonesia are not suitable for establishing USPs.

For CFG with thicknesses between 4mm and 12mm, all exports to Australia from Indonesia are undumped. Therefore, free-into-store (FIS) prices to Australian glass merchants from the two major Indonesian exporters, Muliaglass and Asahimas, are relevant to determining USPs for these thicknesses.

In the case of 3mm thickness CFG, anti-dumping measures, in the form of a price undertaking, apply to exports by Muliaglass. Exports of 3mm CFG to Australia by Asahimas are not covered by anti-dumping measures. On the face of it, exports of 3mm CFG by Asahimas are suitable for establishing USPs.

An argument could be made that Asahimas' selling prices of 3mm CFG to Australian customers have been influenced by Muliaglass' selling prices in Australia. If this were true, it could produce a circular outcome to the review, with the reviewed measures being based on prices reflecting the measures currently in place.

However, Customs is not aware of any evidence that Muliaglass is any more prominent in setting prices in Australia than Asahimas. Customs entry data shows that both Muliaglass and Asahimas hold similar, and significant, shares of the Australian market. Customs' assessment of the Australian market for CFG for the period 1 January 2001 to 31 August 2001 is at **Confidential Appendix 7**.

In summary, Customs proposes to establish USPs as follows:

Thickness	Basis for USP
3mm	Asahimas FIS prices to Australian glass merchants
4 to 12mm	Average of Asahimas FIS prices and OGA selling prices to Australian glass merchants

Consistent with its approach to ascertaining a normal value for exports from Muliaglass, Customs has based the USPs on more recent sales of CFG in the Australian market, that is, in the period since March 2001.

5.2.1 Calculating the USPs

Customs commercial database shows that Asahimas exported CFG to a number of Australian importers over the investigation period. Three importers represented the majority of imports from Asahimas. Customs approached these importers seeking information to establish FIS prices from Asahimas. One importer declined Customs' invitation to provide information and another did not respond to Customs' approaches. The third importer, G James Australia Pty Ltd (GJames), agreed to provide information to Customs to assist with the review. Customs visited GJames to collect and verify information on its CFG purchases from Asahimas.

Customs observed that, for all CFG imports from Indonesia, different selling prices apply according to the type of shipping container used to transport the glass. Larger sheet sizes transported in open top or over height containers demand a higher price than smaller sizes shipped in closed containers. Customs is satisfied that the price differences to Australian customers reflect only the different freight costs between the various container types used.

As explained below at section 5.3, ocean freight is one expense deducted from the USP to calculate the NIP or NIFOB at the FOB level. Customs has ensured that the freight costs deducted from the USP are consistent with the prices used to calculate the USPs.

Customs calculation of the USPs is at **Confidential Appendix 8**.

5.3 NON-INJURIOUS (FREE-ON-BOARD) PRICES

The USP is calculated as a delivered (or FIS) price to Australian glass merchants. To calculate the NIP or NIFOB, post FOB exportation costs such as overseas freight and insurance, costs incurred in Australia and where appropriate an amount for the importer's profit, are deducted from the USP. An example of this calculation follows:

Unsuppressed selling price		100
Less post exportation costs		
Ocean freight & marine insurance	10	
Duty	5	
Port & broker charges	1	
Cartage to store	2	
SG&A expenses	8	
Profit	10	
Total		36
Non-injurious price		64

In cases where the glass merchant is the importer of the CFG, the calculation does not include deductions for selling, general and administrative (SG&A) costs or profit.

Customs noted that ocean freight costs from all countries covered by the review had declined since measures were last calculated.

5.3.1 Indonesia

Customs has deducted the following from the USP to determine the NIP for 3mm CFG exported to Australia from Muliaglass in Indonesia

- ◆ Overseas freight
- ◆ Marine insurance
- ◆ Wharf charges
- ◆ Brokers fees
- ◆ Cartage to store
- ◆ OGA's selling general and administrative expenses
- ◆ OGA profit
- ◆ Customs duty

Customs' calculation of the NIP for Muliaglass is at **Confidential Appendix 9**.

5.3.2 China

Customs noted that the majority of CFG imports over the period examined were imported directly by Australian glass merchants. This is in contrast to previous reviews when the majority of imports from China were imported by agents that resold the CFG to the glass merchants.

This change to import arrangements impacts on the costs that need to be deducted from the USP to arrive at the NIFOB.

In accordance with its policy, Customs deducted costs incurred by the lowest-cost importer, in this case a glass merchant, to arrive at the NIFOBs. Customs deducted the following costs from the USP:

- ◆ Overseas freight
- ◆ Marine insurance
- ◆ Wharf charges
- ◆ Brokers fees
- ◆ Cartage to store
- ◆ Other miscellaneous costs
- ◆ Customs duty

The calculation of the NIFOBs for China is at **Confidential Appendix 10**.

5.3.3 The Philippines

RAGC has not exported to Australia in the period examined. Customs has used ocean freight costs from Indonesia to Australia's main ports and combined this with the other into-costs incurred by the most efficient importer of glass from China. These costs have been deducted from the USP to calculate NIFOBs for RAGC.

The calculation of the NIFOBs for RAGC is at **Confidential Appendix 11**.

5.3.4 Thailand

BFG has not exported to Australia in the period examined. Customs has used ocean freight costs from Indonesia to Australia's main ports and combined this with the other into-store costs incurred by the most efficient importer of glass from China. These costs have been deducted from the USP to calculate NIFOBs for BFG.

Customs' calculation of the NIFOBs for BFG is at **Confidential Appendix 12**.

6 SUBMISSIONS IN RESPONSE TO THE SEF

Customs received three submissions in response to the SEF that was placed on the public file on 31 January 2002. Two were from Pilkington and the other from a Chinese exporter, China Luoyang Glass.

6.1 PILKINGTON

Pilkington's comments fall into two areas.

6.1.1 The USPs are based on sales that are, prima facie, dumped

As explained in section 5 of this report, Customs calculated USPs using sales in the Australian market of CFG imported from Indonesia. These goods are not covered by dumping measures. In its response to the SEF Pilkington claimed that

the effect of this proposal was to regulate prices in the Australian market by reference to the so-called lowest non-dumped price (below normal value).

Pilkington stated

[W]e are of the view that the level of USPs proposed by Customs are prima facie dumped having regard to its own examination of PT Muliaglass' costs to make and sell a tonne of CFG.

Pilkington suggested that Customs should have conducted the following test on the sales used to establish the USPs for 4mm to 12mm CFG

[B]y comparing the proposed USP to the notional cost to make and sell a tonne of clear float glass for each thickness of 4mm, 5mm, 6mm, 8mm, 10mm and 12mm (based on Customs' determination of PT Muliaglass' cost to make and sell a tonne of CFG), this would have ensured the proposed USP was in the ordinary course of trade.

In other words, Pilkington proposed that Customs should have assessed notional normal values for 4mm to 12mm CFG based on verified data on the cost to make and sell CFG in Indonesia. Customs agrees that this is possible as, using fairly standard ratios, the cost to make and sell a certain thickness of CFG can be deduced from the cost to make and sell a tonne of CFG. Customs also agrees that, in certain circumstances, the cost to make and sell could be the basis of normal values. Once adjusted to the FOB level, the USPs could then be compared to the notional cost-based normal values to assess whether, on this measure, the USPs represent dumped prices.

One point to note is that, in determining a normal value for 3mm CFG exported by Muliaglass, Customs concluded that most of Muliaglass' sales of 3mm CFG in Indonesia were profitable. If this were true of the other

thicknesses of CFG, the normal value is likely to be higher than the cost to make and sell. Therefore, the estimate of normal value proposed by Pilkington is likely to be conservative.

It is also worth noting that “ordinary course of trade” is not a term used by Customs in the context of export sales. Domestic sales in the country of export must, among other things, be made in the ordinary course of trade before they can be used to establish normal values. In certain circumstances, sales below their cost to make and sell are deemed not to be in the ordinary course of trade. Pilkington has extended this concept to export sales.

Pilkington also asked

[H]ow does the USP for 3mm based on export sales by PT Asahimas compare to the normal value determined for PT Muliaglass (based on sales by PT Mulia Industrindo)? Does this show prima facie dumping?

Muliaglass and Asahimas are major competitors in the Indonesian market. If the prices of 3mm CFG exported to Australia by Asahimas, when taken to the FOB level, were lower than the normal value of 3mm CFG for Muliaglass, it could suggest that sales in Australia of CFG exported by Asahimas were unsuitable for establishing USPs.

Pilkington claimed that

[I]n these circumstances, dumping measures should revert to the full normal value previously determined for each of the nominated exporters because the level of measures proposed by Customs is injurious to the Australian industry.

In a further submission to Customs dated 25 February 2002, Pilkington provided articles relating to the overall financial performance of Mulia Industrindo and Asahimas. Pilkington claimed that

the attached summary confirms the existence of sales at a loss during the relevant period and the level of interest charges.

A copy of Pilkington’s letter and attachments are on the public file.

Customs’ assessment

Customs agrees that sales of CFG that appear to have been imported at dumped prices should not be used to establish USPs.

The difficulty for Customs is, in the absence of an investigation or application for measures, how to assess whether the selling prices in Australia of Indonesian exports not covered by dumping measures are at prima facie dumped prices. Customs is mindful that:

- ◆ it has limited information on which to base such an assessment - the current review determined normal values for 3mm CFG exported from Indonesia by Muliaglass only – other exporters and other thicknesses of CFG exported from Indonesia are not subject to measures; and
- ◆ in May 2001, the Minister accepted Customs' findings that Indonesian imports of CFG, other than 3mm CFG exported by Muliaglass, were not dumped.

Customs considers that the tests proposed by Pilkington are reasonable to provide some level of assurance about the selling prices used to establish USPs. The tests alone do not, however, provide grounds for asserting whether the goods are dumped or not.

To conduct the comparisons proposed by Pilkington, it was first necessary to adjust the USPs to an FOB level. The USPs themselves reflect selling prices in Australia and include ocean freight and other costs incurred in delivering the goods to the Australian merchant's door. In the absence of other information, for 4mm to 12mm CFG Customs has used the NIFOBs calculated for China for this purpose. The NIFOBs for China would involve the deduction of higher ocean freight costs than imports from Indonesia and so are unlikely to overstate an FOB figure for Indonesia.

Customs compared the NIFOBs for China with the estimate of the cost to make and sell 4mm to 12mm CFG in Indonesia derived from the cost per tonne. For each thickness, the NIFOB was well above the cost to make and sell. On this test, there is no evidence that the USPs, and therefore the NIFOBs, for 4mm to 12mm CFG exported by Asahimas and Muliaglass were calculated on the basis of dumped prices.

Pilkington also asked how the USP for 3mm CFG based on export sales by PT Asahimas compared to the normal value determined for Muliaglass.

Again, the USP must be adjusted to the FOB level to allow a meaningful comparison with the normal value. In the case of 3mm CFG Customs has compared the Muliaglass normal value with:

- ◆ the NIFOB for 3mm CFG exported from China;
- ◆ the NIP for Muliaglass;
- ◆ an estimate of the average FOB price from Asahimas to GJames; and
- ◆ an estimate of the average FOB price for all exports by Asahimas to Australia taken from Customs entry data.

The comparisons showed that all of the above were higher than the normal value for Muliaglass except for the NIP for Muliaglass. The exception is

explained by the level of the verified import costs deducted from the USP to arrive at the NIP. It does not indicate that exports to Australia of 3mm CFG by Asahimas were at dumped prices.

Customs concludes that, on the information available to it, there is no evidence that the sales used to determine the USPs were based on goods exported at dumped prices.

In its letter of 25 February 2002, Pilkington appeared to be saying that the articles provided support for the view that exports of CFG to Australia by Muliaglass and Asahimas are at prices below the cost to make and sell, supporting its argument that sales of these exports in Australia should not be used to set USPs.

The first article is a market commentary on Mulia Industrindo, Muliaglass' parent company. It is clear from the article that the assessment incorporates the performance of Mulia Industrindo's subsidiaries, including Muliaglass and its ceramic tile making subsidiary, Muliakeramik. The commentary also covers the group's entire operations, that is both domestic and export sales. Notwithstanding that the scope of the commentary is far broader than CFG, Customs notes that the assessment of Mulia Industrindo includes an upgraded profit forecast for the 2001 financial year and reports of an improved operating profit performance, particularly by Muliaglass. This does not support Pilkington's assertions about sales below cost.

Also, Pilkington cites the following statement in the article as suggesting that sales at a loss are continuing

[O]perating cash flow will go to creditors in the medium term rather than to shareholders.

Customs does not believe it is possible for Pilkington to draw this conclusion. Muliaglass deferred payment of interest and capital on loans for over two years from the middle of 1998. Customs believes it is logical that the debt restructuring deal agreed to by creditors late in 2000 would initially see funds applied to the repayment of debt rather than paid as dividends to shareholders. Customs believes that the statement cannot not be read as contradicting improved profit forecasts elsewhere in the article.

The second article relates to Asahimas. It is not specific to CFG. The article describes the business of the entity as

the production, marketing, sale and export of flat glass, which includes high-quality and specialty glass, commodity glass and figured glass and fabricated glass which includes safety glass, reflective glass and mirrors.

Customs does not believe it is possible to draw any conclusions about the profitability of Asahimas' exports of CFG to Australia from the information provided by Pilkington.

The results of Customs' assessment of the tests proposed by Pilkington are at **Confidential Attachment 13**.

6.1.2 Unreliability of financial costs for Muliaglass

Pilkington claimed that

in the circumstances of PT Mulia which remains technically insolvent, the full "cost" of its overall indebtedness (both capital servicing costs and working capital interest charges) have not been satisfactorily examined in sufficient detail to enable a reasonable conclusion to be reached as to whether such sales are in the ordinary course of trade. The overall parlous financial position of PT Mulia should have indicated the fully absorbed cost to make and sell clear float glass could not be reliably determined as the interest charges paid and accrued could not be appropriately or reasonably apportioned to sales of 3mm clear float glass.

Customs' assessment

Customs verified Muliaglass' fully absorbed cost to make and sell 3mm CFG in Indonesia. This cost includes an amount for the financial costs incurred by Muliaglass in making and selling 3mm CFG. Customs has no reason to disregard the information provided by Muliaglass as unreliable. Further detail about Customs' verification of costs in Indonesia is available to interested parties from the non-confidential version of the normal value report on the public file.

6.2 CHINA LUOYANG GLASS

China Luoyang Glass stated that calculating USPs according to the selling prices in Australia of glass imported from Indonesia was very unfair and unreasonable to all exporters in China.

China Luoyang Glass said this was because:

- ◆ China had formed a market economy system after many years' reformation;
- ◆ Indonesia and China have different economic backgrounds and systems; and
- ◆ for the same products, the prices differ according to their quality.

China Luoyang Glass suggested that selling prices in Australia of glass imported from a Chinese manufacturer should be used to establish the USPs.

Customs' assessment

Customs acknowledges that there may be differences in the domestic markets for glass in China and Indonesia. However, in Customs view, this does not alter the appropriateness of using the selling price in Australia of undumped imports from Indonesia to establish USPs.

7 IMPACT OF THE REVIEW ON MEASURES

7.1 INDONESIA

The revised NIP for Muliaglass' exports of 3mm CFG is marginally lower than the revised normal value. Customs recommends that the undertaking level be varied to the level of the revised NIP.

The proposed new undertaking level is higher than the current level.

7.2 CHINA, THE PHILIPPINES AND THAILAND

The following table sets out the movement between the current NIFOBs and the NIFOBs established during this review:

Thickness	China	The Philippines	Thailand
3mm	Increase	Increase	Increase
4mm	Increase	Decrease	Decrease
5mm	Increase	Decrease	Decrease
6mm	Increase	Decrease	Decrease
8mm	Increase	Increase	Increase
10mm	Increase	Increase	Decrease
12mm	Increase	Decrease	Decrease

8 RECOMMENDATIONS

Customs recommends that:

- the Minister declare a variation of the terms of the undertaking by PT Muliaglass in accordance with the ascertained variable factors relevant to the review, as indicated in this report and set out in **Confidential Appendices 5, 6 and 9**;
- the Minister sign the attached legal instruments under s.8(5) of the *Customs Tariff (Anti Dumping) Act 1975*, amending the variable factors relevant to determining the dumping duty.

Customs recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable the normal value of clear float glass exported from China to be ascertained under the preceding subsections of s. 269TAC;
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable the normal value of clear float glass exported from the Philippines by Republic Asahi Glass to be ascertained under the preceding subsections of s. 269TAC; and
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable the normal value of clear float glass exported from Thailand by Bangkok Float Glass to be ascertained under the preceding subsections of s. 269TAC.

Customs recommends that the Minister **determine**:

- in accordance with s. 269TAC(6), the normal value of like goods to the goods exported to Australia from China by having regard to all relevant information;
- in accordance with s. 269TAC(6), the normal value of like goods to the goods exported to Australia from the Philippines by Republic Asahi Glass by having regard to all relevant information; and
- in accordance with s. 269TAC(6), the normal value of like goods to the goods exported to Australia from Thailand by Bangkok Float Glass by having regard to all relevant information.

Customs recommends that the Minister **direct**:

- in accordance with s. 269TAC(8), in assessing normal value for PT Muliaglass, Indonesia, that the price paid for like goods be adjusted for differences between export and domestic sales in credit terms, inland freight, export port charges, fumigation and clearance fees.

Customs recommends that the Minister, in accordance with s. 269ZDB(1), **declare:**

- that if, before a date specified in the declaration, the terms of the undertaking by PT Muliaglass are altered in accordance with the ascertained variable factors relevant to the review as set out in s. 269T(4E), the undertaking as so varied will be acceptable;

If the Minister decides to accept the recommendations relating to the price undertaking applying to PT Muliaglass for 3mm CFG the Minister must, according to s. 268ZDB(4), inform PT Muliaglass of the new variable factors as soon as practicable after the making of the declaration.

Customs also recommends that the Minister decide not to publish the tables attached to the notices because publication would adversely affect the business or commercial interest of interested parties.

9 APPENDICES

9.1 NON-CONFIDENTIAL

- Appendix 1 Glossary
- Appendix 2 Acceptable tolerances for nominal thicknesses
- Appendix 3 Initiation ACDN No.2001/052
- Appendix 4 Statement of evidence relied upon

9.2 CONFIDENTIAL

- Appendix 5 Export prices for PT Muliaglass – Indonesia
- Appendix 6 Normal values for PT Muliaglass
- Appendix 7 Customs' assessment of Australian market for CFG
- Appendix 8 Calculation of USPs
- Appendix 9 Calculation of NIP for PT Muliaglass
- Appendix 10 Calculation of NIFOBs for China
- Appendix 11 Calculation of NIFOBs for Republic Asahi Glass Corporation
- Appendix 12 Calculation of NIFOBs for Bangkok Float Glass
- Appendix 13 Customs' assessment of USPs according to tests proposed by Pilkington

GLOSSARY

the Act

(Part XVB of the) *Customs Act 1901*

Arms Length

Section 269TAA of the Act sets out the circumstances where a transaction is to be treated as non arms-length. A transaction cannot be considered to be arms-length if the price for the goods is affected by a commercial or other relationship; if the buyer received a reimbursement or other benefit; or if there is any consideration payable for the goods other than their price.

Ascertained amounts

Where a decision is taken to impose anti-dumping measures, it is necessary to ascertain what is or would be the normal value, export price and non-injurious price of the goods. The details of these ascertained amounts must be published in the formal notice of the Minister's decision, unless the release of such details contains information regarded by an interested party as confidential. These ascertained amounts might be amended as a result of a review.

The ascertained prices should not be confused with the actual prices.

Dumping Duty Act

Working title of the *Customs Tariff (Anti Dumping) Duty Act 1975*.

Export Price

Export prices are determined under s. 269TAB of the Act.

Usually the export price is determined under s. 269TAB(1)(a) of the Act using the invoiced price, less post exportation charges, when the importer is not the exporter, the transaction is arms length and the goods have been purchased by the importer from the exporter.

When the sales are considered not to be arms length, s. 269TAB(1)(b) and the related s. 269TAB(2) provide a method to determine the export price on the basis of the selling price by the importer, less prescribed deductions, provided the:

- subsequent sale in Australia by the importer was to a non-associated person; and
- goods have been sold in the condition in which they were imported.

Prescribed deductions include any duties or sales tax paid or payable on the goods and all other costs or charges incurred after exportation and profit.

When the conditions of s. 269TAB(1)(a) and (1)(b) of the Act are not met, and information has been satisfactorily established, s. 269TAB(1)(c) of the Act permits the export price to be determined having regard to all the circumstances of the exportation.

When sufficient information has not been furnished, or is not available, to enable the export price to be determined under the preceding provisions, the export price is determined, having regard to all relevant information, under s. 269TAB(3) of the Act.

Goods

The goods under review.

Imposition of Measures

Australia's dumping legislation is contained in Dumping Duty Act and Part XVB of the Customs Act. Dumping arises when the exported goods are priced lower than their 'normal value' in the country of export.

Where it is established that dumped imports have caused, or threaten to cause, material injury to the Australian industry producing like goods, the Minister may sign a notice declaring that a dumping duty is to apply. A notice under s. 269TG(1) applies if past exports of the goods have caused injury; a notice under s. 269TG(2) applies if the injurious dumping is likely to continue. Another notice signed by the Minister under s. 8(5) of the Dumping Duty Act imposes the amount of the duty.

The maximum amount of interim dumping duty that may apply is equal to the difference between the normal value and the export price. A lesser amount of dumping duty applies if that lesser amount suffices to remove the injury caused by the dumping. A NIP is calculated for this purpose.

Measures can take the form of dumping or countervailing duty (pre 1/1/93 measures), interim dumping or countervailing duty (post 1/1/93 measures) or an undertaking by the exporter (or in countervailing cases by the exporter or the government of the exporting country). In accordance with s. 269TM, dumping and countervailing duties and undertakings remain in force for a maximum of five years, unless revoked earlier.

Interim Dumping Duty

Under the interim duty scheme an amount of dumping duty is collected on every importation of the goods. Duties remain in place for 5 years (unless revoked earlier).

Interim dumping duty is the sum of:

- the difference between the ascertained normal value (or the non-injurious price, whichever is the lower) and the ascertained export price of the goods; and
- the amount by which the actual export price is less than the ascertained export price.

Interim dumping duty may be levied on an *ad valorem* basis (a percentage of the export price), or as an amount per unit of quantity; or as a combination of the two.

Interim duty becomes the final duty unless an importer requests a duty assessment. The final duty is the amount determined by the minister.

Investigation

Customs role in the review inquiry is to consider the application and undertake an investigation of the relevant matters. Customs recommends to the minister whether the dumping and/or countervailing notice remain unaltered, or the notice be revoked in relation to a particular exporter or to a particular kind of good or revoked generally, or that the notice apply to a particular exporter or exporters generally.

If an undertaking has been reviewed, Customs will recommend whether the undertaking remain unaltered, or varied, or the undertaking is no longer acceptable, or the undertaking is no longer required.

The legislation imposes time limits within which the review investigation is conducted:

- 20 days to examine an application and if not satisfied about certain matters reject the application;
- if an application is not rejected, 110 days to issue a statement of essential facts and 155 days to make a recommendation to the minister;

Interested parties are invited to make submissions within the first 40 days after the notification of the initiation of an inquiry. An extension to a deadline for receipt of submissions by interested parties may be extended if a request is received in writing and the request is reasonable and practicable given the circumstances. Interested parties are also provided with an opportunity to lodge submissions in response to the statement of facts on which the CEO intends to base the recommendation to the minister.

Like Goods

Section 269T(1) of the Act defines 'like goods' as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Non-Injurious Price (NIP)

Dumping duties may be applied where it is established that dumped imports have caused or threatened to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping,

but lesser duty may be applied if it is determined that it is sufficient to remove the injury.

A non-injurious price is calculated for this purpose. The non-injurious price was defined in legislation when the interim duty scheme was introduced on 1 January 1993. Section 269TACA of the Act defines the non-injurious price of the goods exported to Australia as:

"the minimum price necessary.... to prevent injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b)".

This lesser duty provision is contained in Article 9.1 of the GATT Anti-Dumping Code 1994 (Article 8.1 of the 1979 Code) which states in part:

"it is desirable that the (anti-dumping) duty be less than the margin (of dumping), if such lesser duty would be adequate to remove the injury to the domestic industry."

Section 8(5A) of the Dumping Duty Act reflects this provision in relation to the imposition of dumping duties. This section was amended to reflect the introduction of interim duties on 1 January 1993. The provisions of this section for measures in place before that date remain in force under transitional arrangements. The relevant part of the superseded section is as follows:

".... the Minister shall have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent the injury"

The legislation provides:

"The Minister must if the non-injurious price of the goods is less than the normal value of the goods have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (a) the export price of the goods of that kind so ascertained or last so ascertained; and*
- (b) that lesser duty does not exceed that non-injurious price"*

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

To calculate the non-injurious price it is usual to first establish the price of the Australian made goods in the absence of dumping. This price is known as the unsuppressed selling price. All post exportation costs, plus an amount for importer's profit results in the non-injurious price at FOB level in the country of export are deducted from the unsuppressed selling price. An example of this calculation is shown below:

Unsuppressed Selling Price	100
Less post exportation costs	
ocean freight & marine insurance	10
Duty	5
port & broker charges	1
cartage to store	2
selling, administration & distribution	8
Profit	10
Total	36
Non-injurious Price is therefore	64

The unsuppressed selling price may be obtained by various methods depending on the circumstances of the case. Examples of the bases for the calculation of unsuppressed selling prices are:

- the price for locally produced goods when the Australian market was not effected by dumping;
- the Australian industry's cost to make and sell plus an estimated profit (if any) which the industry could achieve in a market not affected by dumping;
- the selling price of undumped imports in the Australian market.

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 be in the 'ordinary course of trade'. The relevant provision is s. 269TAC(1).

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 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 an appropriate 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.

Finally, a normal value may be established under s. 269TAC(6), which provides for the use of relevant available information.

Differences may affect the comparison of a normal value to the export price. 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.

Notice

A notice is public notice that the minister has imposed a dumping duty or countervailing duty.

Ordinary Course of Trade

Section 269TAA of the Act defines sales that are not in the ordinary course of trade. Where Customs is satisfied that the price paid for like goods is less than the cost to make and sell, in arms length transactions, then the sales are taken not to have been made in the ordinary course of trade if these sales:

- have been for an extended period of time - usually considered to be a 12 month period but not less than 6 months;
- are in respect of a substantial quantity of the goods - 20% or more of the volume sold on the exporters domestic market or for exportation to a third country; and
- those costs are unlikely to be recovered within a reasonable period of time.

Public File

A file maintained by Customs, in accordance with s. 269ZI of Act, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is held on the sixth floor, Customs House, 5 Constitution Avenue, Canberra City. It is available for viewing and copying by all interested parties by contacting Trade Measures office management staff on (02) 6275 6057.

Review of Interim Dumping Duties

Interim duties may be reviewed under s. 269Z of the Act where an affected party is able to demonstrate that one or more of the variable factors relevant to the determination of the interim duty has changed.

A party may apply for a review of the rate of interim duty twelve months after the duty first applying or twelve months after the result of the last review was published. Section 269ZA(3) of the Act also provides that the Minister may request Customs to conduct a review at any time, for example, earlier than the usual twelve months.

In conducting a review Customs examines any previous reports and files in order to understand how the various factors relevant to the determination of interim duty were calculated.

After consideration of the application, submissions and other relevant information obtained during the review investigation, Customs reports to the Minister recommending whether the rate of interim dumping duty should be altered, setting out the reasons.

If the Minister accepts the review recommendations he or she signed will sign a declaration under s. 269ZDB, amending the variable factors and updating the rate of interim duty. This section also requires (subject to confidentiality requirements), that the results of the review be published in the Gazette and in a nationally circulating newspaper.

Review of dumping duties (old measures)

Duties imposed before 1 January 1993 are distinct from interim dumping duties (see above).

Review of the measures conforms to current practice in relation to procedures. However, reviews of old measures are conducted under s.269TAD (transitional provisions) and relate only to the factors of normal value.

Statement of Essential Facts

A statement placed on the public record at or before day 110 in the review setting out the facts on which the CEO will base the recommendation to the Minister. Interested parties are invited to lodge submissions in response to the statement.

Variable Factor

Section 269T(4E) define “variable factors”. The relevant factors are the normal value, export price and non-injurious price in the case of dumping duty notices. In the case of countervailing duty notices, the factors refer to the amount of countervailable subsidy and the non-injurious price.

If the goods are subject to an undertaking under s. 269TG, the factors are the normal value and the non-injurious price. Under s. 269TJ the factors are the amount of the countervailable subsidy and the non-injurious price.

CFG tolerances

Nominal thicknesses (mm)	Acceptable tolerances (mm)	
	Minimum	Maximum
3	2.80	3.50
4	3.51	4.50
5	4.51	5.50
6	5.51	7.00
8	7.01	9.00
10	9.01	11.00
12	11.01	12.30



Australian Customs Dumping Notice No.2001/052

CUSTOMS ACT 1901 - PART XV B

CLEAR FLOAT GLASS

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

INITIATION OF A REVIEW OF ANTI-DUMPING MEASURES

The Australian Customs Service (Customs) has initiated a review of the anti-dumping measures applying to the following exports to Australia of clear float glass (CFG):

Thickness	Exporting country	Exporter
3mm	Indonesia	PT Muliaglass
3mm to 12mm	Thailand	Bangkok Float Glass
3mm to 12mm	The Philippines	Republic Asahi Glass Corporation
3mm to 12mm	The People's Republic of China (China)	All exporters

The goods are classified to subheading 7005.29.00, statistical codes 2 to 6, in Schedule 3 of the *Customs Tariff Act 1995*. The general rate of duty is 5% and the Developing Country Status (DCS) rate is 4%. All of the countries covered by this review are subject to the DCS rate.

A notice advising initiation of this review was published in *The Australian Financial Review* on 31 August 2001.

Background to measures

In 1992, anti-dumping measures were imposed on imports of CFG from various countries including Indonesia, Thailand, the Philippines and China. The measures covered certain exporters from Indonesia, Thailand and the Philippines, and all exporters from China. In 1997, following an inquiry by the Anti-Dumping Authority (ADA), the measures were continued for imports from Thailand, the Philippines and China. The measures applying to the Indonesian exporter were not continued.

Customs has, on several occasions since 1992, reviewed various aspects of the measures applying to Thailand, the Philippines and China.

In December 1999, Customs initiated a new investigation into the dumping of CFG from Indonesia. In May 2001, the Minister for Justice and Customs (the Minister) accepted an undertaking from the exporter, PT Muliaglass in respect of exports of 3mm thickness CFG.

The current review

The Minister has requested that Customs initiate a review of the current anti-dumping measures applying to CFG. The Minister considers that the factors relevant to the measures may have changed.

Anti-dumping measures applying to exports from Thailand, the Philippines and China were imposed before 1 January 1993. Therefore, the measures come under the previous dumping collection system (often referred to as "old measures"). Customs will review normal values and non-injurious free-on-board prices for these measures.

In May 2001, the Minister accepted an undertaking from the Indonesian exporter PT Muliaglass in respect of exports of 3mm thickness CFG. The Minister's acceptance of the undertaking was subject to a number of conditions including that the undertaking may need to be changed from time to time. Customs will review the undertaking in accordance with this condition.

Procedures

Interested parties should lodge submissions no later than the close of business on 10 October 2001 with:

The Director
Trade Measures, Operations 5
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601
Or by fax on (02) 6275 6990.

All interested parties wishing to participate in the review must ensure that their submissions are lodged promptly. The legislation confers upon Customs the power to disregard any submissions that are received after specified periods if there is insufficient time remaining for their proper consideration.

Submissions provided in confidence must be clearly marked "confidential". In addition, two non-confidential copies of the submission must be provided.

Section 269ZJ of the *Customs Act 1901* requires that if a person claims information is confidential, or claims that publication of the information would adversely affect their business, that person:

- must provide a summary containing sufficient detail to allow a

- reasonable understanding of the substance of the information, or must satisfy the Chief Executive Officer of Customs that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Interested parties attention is drawn to the World Trade Organization Anti-Dumping Agreement, Article 6.5.2, that states:

If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

This provision is reflected in s. 269ZJ of the *Customs Act 1901*.

Non-confidential submissions, and a copy of relevant correspondence between Customs and other persons, will be made available to interested parties through the public record. The public record may be examined at the above address during business hours by contacting office management on telephone number (02) 6275 6057.

On or before 19 December 2001, (or by such later date as the Minister may allow in accordance with s. 269ZH1), a statement of essential facts will be placed on the public record, setting out the facts on which Customs proposes to base the recommendations to the Minister. Interested parties are invited to make submissions to Customs in response to the statement of essential facts within 20 days of that statement being placed on the public record. A recommendation to the Minister will be made in a report on or before 4 February 2002 (or by such later date as the Minister may allow in accordance with s. 269ZH1).

Inquiries should be directed to Mick Kenna on telephone (02) 6275 6544, facsimile (02) 6275 6990 or email michael.kenna@customs.gov.au.

Sue Pitman
National Manager
Trade Measures
31 August 2001

Statement of Evidence Relied Upon

In formulating the recommendations in this report, Customs had regard to:

Section		Evidence relied upon
3	Export prices	Information provided by: <ul style="list-style-type: none"> - the importers - the exporters - other interested parties, and - Customs' commercial database
4	Normal values	Information provided by: <ul style="list-style-type: none"> - the importers - the exporters - other interested parties, and - Customs' commercial database
6	Submissions in response to the SEF	Information provided by: <ul style="list-style-type: none"> - the Australian industry - China Luoyang Glass - Customs' commercial database