

**AUSTRALIAN CUSTOMS SERVICE
CUSTOMS ACT 1901 - PART XVB**

**TRADE MEASURES BRANCH
REPORT NO. 21**

**Clear Float Glass
exported from
Indonesia**

10 May 2000

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Authority (now abolished)
Asahimas	PT Asahimas Flat Glass Tbk
Asahi	Asahi Glass Company Ltd, Singapore Branch
CEO	Chief Executive Officer of the Australian Customs Service
CFG	clear float glass
C&F	cost and freight
CTS	cut to size
Customs	Australian Customs Service
DDP	delivered duty paid
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FIS	free into store (see also DDP)
FOB	free on board
FRS	factory run size
goods	the goods the subject of the application
GSS	glazing stock size
Industrindo	Mulia Industrindo
Minister	Minister for Justice and Customs
Muliaglass	PT Muliaglass
NIFOB*	non-injurious free-on-board price (pre 1/1/93 measures)
NIP*	non-injurious price (post 31/12/1992 measures)
OGA	Overseas Glass Agencies Pty Ltd
PAD	preliminary affirmative determination
Pilkington	Pilkington (Australia) Limited
Rodamas	PT Rodamas
s.	section, sub-section or paragraph of the <i>Customs Act 1901</i> (unless otherwise stated)
SEF	statement of essential facts
TRACE	Customs commercial database
TMRO	Trade Measures Review Officer
USP	unsuppressed selling price
WTO	World Trade Organisation

* The terms NIP and NIFOB are synonymous. NIFOB is an expression that had been used prior to the establishment of a new dumping duty collection system on 1 January 1993. NIP is a term introduced into the legislation on that date. In this report, the distinction is made between the terms in order to highlight that measures are applied differently depending on whether they were originally imposed pre or post 1 January 1993.

1 SUMMARY

This report presents the results of the Australian Customs Service (Customs) investigation into the alleged dumping of clear float glass (CFG) exported to Australia from Indonesia.

The investigation was initiated on 7 December 1999. It was initiated following the lodgement, by Pilkington (Australia) Limited (Pilkington), of an application for anti-dumping measures on CFG exported to Australia from Indonesia. The application claimed that these exports were dumped and causing injury to the Australian industry producing like goods.

The Australian market for CFG is supplied by local production and by imports from a number of countries, including Indonesia. Pilkington is the sole manufacturer of CFG in Australia. Thus Customs considers Pilkington to be the Australian industry producing CFG.

Customs estimates that the Australian market for CFG is worth between \$80 million and \$100 million per annum. About 300 people are employed in Pilkington's CFG production in Australia.

Customs found the Australian industry suffered material injury in the form of price depression, price suppression, price undercutting, reduced profits and profitability, unsatisfactory return on investment and workforce reductions.

Customs found that one exporter, P.T Asahimas Flat Glass Tbk (Asahimas) had not dumped the goods. On 23 March 2000 Customs requested the Minister for Justice and Customs (Minister) make determinations and directions in respect of the normal values and export prices of CFG exported by Asahimas. Customs made this request in order that the Chief Executive Officer of the Australian Customs Service (CEO) would be able to terminate the investigation as far as it related to that exporter. The determination by the Minister in respect of the export price and normal value of exports by Asahimas was still under consideration at the time that this report was due. Customs now recommends that the Minister decide not to impose anti-dumping duty in respect of that exporter and publish a notice to this effect.

Customs found dumping of a single nominal thickness of CFG (3mm) by one exporter from Indonesia, P.T Muliaglass (Muliaglass). Customs considers, however that these imports, represent a significant proportion of total imports of CFG between 3mm and 12mm (around 16%).

Customs is satisfied that dumped exports of 3mm CFG from Indonesia have caused material injury to the Australian industry. Customs is also satisfied that exports in the future from Indonesia may be at dumped prices.

On making these findings, Customs wrote to Muliaglass suggesting the terms of a price undertaking that Customs would be willing to recommend that the Minister accept. Muliaglass subsequently offered a price undertaking in those terms. Customs recommends that the Minister accept the price undertaking. In order to accept the undertaking the Minister must suspend her consideration of whether or not to publish a dumping duty notice.

2 INTRODUCTION

2.1 PURPOSE OF INVESTIGATION

Part XVB of the *Customs Act 1901* (the Act) and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) provide recourse for Australian industries that believe they are being injured by dumping. The purpose of the investigation is to submit a factual report to the Minister recommending whether anti-dumping action should be taken against exports of the goods the subject of the application (the goods) to Australia from the nominated countries.

Dumping, simply defined, occurs when goods are exported to Australia at prices lower than their normal value in the country of export. Anti-dumping measures may be imposed where dumping has caused, or threatens to cause, material injury to an Australian industry producing like goods.

A glossary of terms to this report contains more information about the legislation.

2.2 THE INVESTIGATION PROCESS

Where a person applies under s. 269TB for the imposition of anti-dumping measures, it must provide reasonable evidence to support its claims. Customs has 20 days to review the application and will either reject the application or accept the application and initiate an investigation.

If Customs initiates an investigation, interested parties are invited to participate. Interested parties are advised of the investigation through an Australian Customs Dumping Notice (ACDN), a public notice in a national newspaper or by direct contact. Submissions from importers, exporters and other interested parties are due within 40 days of initiation of the investigation.

At any time not earlier than 60 days after initiation, Customs may make a preliminary affirmative determination (PAD) if there appear to be sufficient grounds for the publication of a dumping duty notice. If Customs makes such a determination, it may require and take securities under s. 42 of the Act. Customs must have regard to the application, any submission received and any other relevant information in making a PAD. If Customs decides to take securities it must give public notice of that decision. Provisional measures, in the form of securities, provide the Australian industry with a temporary remedy from the effects of dumping pending the Minister's decision.

Customs must issue a statement of essential facts (SEF) on or before 110 days after the initiation of the investigation. This statement outlines the facts on which Customs proposes to base its report to the Minister. The Minister may extend this deadline under certain circumstances. Interested parties then have 20 days to respond and lodge submissions on matters of concern.

Customs is not obliged to consider submissions in response to the SEF which are received more than 20 days after the statement was placed on the public record.

Customs must conduct its investigation and report to the Minister within 155 days of initiation unless the Minister has extended the deadline for the issue of the SEF. The

report must recommend whether dumping duty notices should or should not be published and recommend the amount of any dumping duty. If measures are imposed, Customs is responsible for the administrative arrangements.

The recommendations to the Minister are based on:

- the application;
- submissions to which Customs had regard when formulating the SEF;
- the result of on-site verifications in Australia and overseas;
- the SEF;
- submissions made in response to the SEF; and
- other relevant matters.

The Minister's decisions are notified in the Gazette, through an ACDN and by a public notice in a national newspaper.

Interested parties have 30 days after the publication of the Minister's decision in which to ask the Trade Measures Review Officer (TMRO) to review that decision. Following commencement of the review, parties have 30 days to lodge submissions in response to the grounds of appeal. The TMRO must make recommendations to the Minister within 60 days of the public notification of the review.

2.3 BACKGROUND TO THIS INVESTIGATION

On 17 November 1999 Pilkington, lodged an application requesting that the Minister publish a dumping duty notice in respect of CFG exported to Australia from Indonesia. The application alleged that dumped imports from Indonesia were causing material injury to the Australia industry in the form of:

- price depression;
- price undercutting;
- loss of market share;
- price suppression;
- loss of sales revenue and reduced profitability;
- unsatisfactory return on investment; and
- workforce reductions.

Customs examined the application, *prima facie*, then initiated the investigation on 7 December 1999.

The initiation was formally notified in the *Australian Financial Review* and by ACDN No. 99/050. A copy this ACDN is at attachment 3.

On 15 March 2000 Customs placed on the public record a report of its investigation of allegations of dumping by Asahimas. The report concluded that the exporter had not dumped the goods. On 23 March 2000 Customs requested that the Minister make a direction and determinations that would allow the CEO to terminate the investigation as far as it related to exports by Asahimas. By the date that this report was due to be submitted the directions and determinations recommended by Customs were still under consideration by the Minister.

On 27 March 2000 (110 days after initiation), Customs, as required by s. 269TDAA, placed on the public record a SEF on which it proposed to base its recommendations to the Minister. The SEF can be found on Customs Internet site at <http://www.customs.gov.au/notices/sef/sef21.htm>. Interested parties were given 20 days to respond to this statement. Customs received a number of responses and these were considered in compiling this report and recommendations.

This investigation was conducted concurrently with a review of non-injurious free-on-board prices (NIFOBs) in respect of these measures currently applying against CFG exported from China and certain exporters in the Philippines and Thailand (see Trade Measures Report No. 23).

2.4 PREVIOUS INVESTIGATIONS AND REVIEWS

Customs and the Anti-Dumping Authority (ADA) have conducted numerous dumping investigations into, and reviews of, CFG from a number of countries. These are summarised at Attachment 4.

2.5 ANTI-DUMPING MEASURES CURRENTLY APPLYING TO CFG

Anti-dumping measures currently apply to:

- all exports from China;
- exports from the Philippines by Asahi Glass Co Ltd or Republic Asahi Glass Corporation; and
- exports from Thailand by Bangkok Float Glass Co Ltd.

As was stated above, the investigation into CFG exported from Indonesia was run concurrently with a review of NIFOBs in respect of these measures.

3 THE GOODS SUBJECT TO INVESTIGATION

The goods the subject of the investigation are CFG in nominal thicknesses of 3 mm to 12 mm. The standard nominal thicknesses within this range are 3, 4, 5, 6, 8, 10 and 12 mm.

The actual thickness may vary from the nominal thickness. Pilkington's standard tolerances for CFG of these thicknesses are set out at Attachment 5. Using the upper and lower limit of these standard tolerances, the actual thickness range of the CFG under investigation is between 2.8 and 12.3 mm. However, the nominal thickness is used to identify particular substances. Therefore, CFG with a nominal thickness of 2.8 mm, for example, is not under investigation.

CFG is supplied in a variety of sizes, including factory run sizes (FRS), glazing stock sizes (GSS) and cut to size (CTS). The definition of these sizes is at Attachment 5. CFG is produced primarily for use in the building and associated industries. It can be further processed into toughened, laminated, mirrored and architectural glass.

The goods the subject of the application 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 DCS rate is 4%. Indonesia is subject to the DCS rate.

4 THE AUSTRALIAN INDUSTRY AND MARKET

4.1 LIKE GOODS

Pilkington and other manufacturers around the world, including Indonesian manufacturers use the same process to make CFG. Customs believes Pilkington's CFG is identical and considers the CFG produced in Australia to be like goods to CFG imported from Indonesia.

That said, Customs must also determine whether it will treat CFG of nominal thicknesses of between 3mm and 12mm as a single homogenous product or as a number of distinct and separate products. Is CFG with, say, a nominal thickness of 3 mm like goods to CFG with a nominal thickness of 4 mm? This is important when considering questions in relation to dumping and to material injury.

Customs concluded, for the purpose of determining dumping and injury in this investigation, that CFG of each nominal thickness are not like goods to CFG with different nominal thicknesses.

In coming to this conclusion Customs took into consideration that different thicknesses of CFG:

- are generally not interchangeable; and
- are directed to different market segments.

Customs found that the standard thickness for general glazing is 3 mm CFG. Other thicknesses are required in other applications. For example furniture manufacturers require thicker glass. Other industries are also geared for standard thicknesses: for example, aluminium fabricators are geared to provide window frames for domestic windows where the use of CFG with a nominal thickness of 3 mm is standard.

For the purpose of defining like product for this investigation, Customs does not consider that sheet size distinguishes CFG within a nominal thickness.

4.2 THE AUSTRALIAN INDUSTRY

Pilkington is the sole manufacturer of CFG in Australia. It has two production plants, one in Dandenong, Victoria, and the other in Ingleburn, NSW. Customs considers that Pilkington is the Australian industry producing CFG. Customs has not treated companies that further process CFG, or cut it to size and on-sell it, as part of the Australian industry.

Pilkington sells CFG to independent glass merchants and processors. It sells CFG directly from its factory to larger customers, and to smaller customers through its own distribution network.

Pilkington also internally transfers CFG for further processing into laminated, toughened, mirrored, architectural and other flat glass products.

The process and technology used to make CFG is in most respects the same in Indonesia as it is in Australia. The main raw materials used in the production of CFG

are sand, soda ash and dolomite. These materials are mixed and then melted in a furnace. The float process involves moving a continuous ribbon of molten glass from the furnace over a bath of molten tin. The top surface finds a natural level. The bottom surface conforms to the flat surface of the molten tin. The speed at which the glass is moved across the bath governs its thickness. The glass is cut into factory run or other stock sizes while on the line. It is then removed from the line and stored.

From the information supplied by Pilkington and from an inspection of the Dandenong plant, Customs considers the goods are wholly or partly manufactured in Australia and that there is a substantial process in the manufacture of the goods carried out in Australia. Accordingly, the requirements of ss. 269T(2), (3) and (4) have been met.

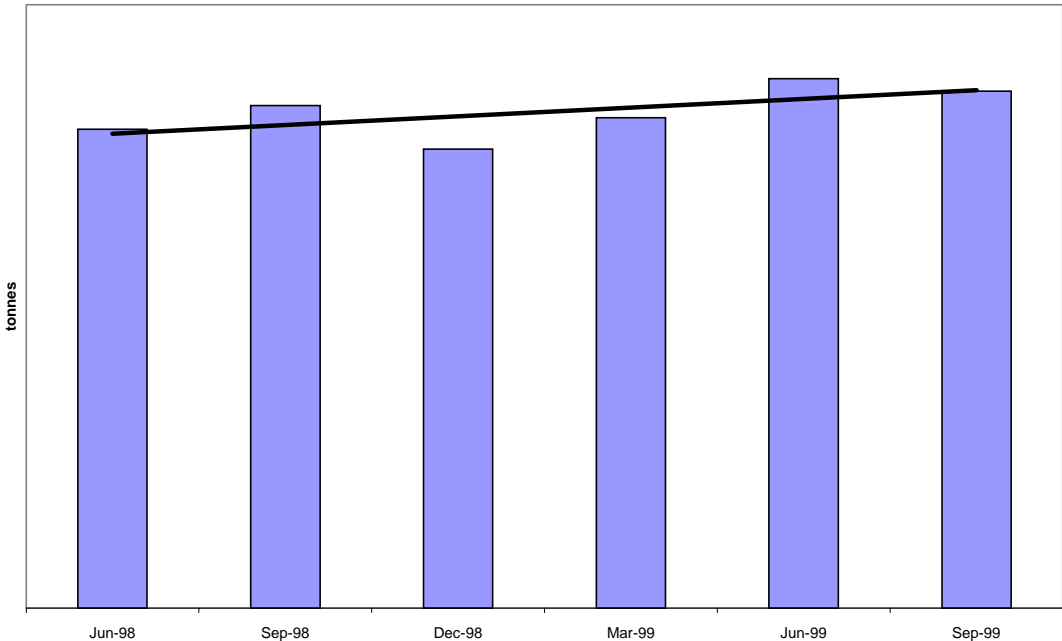
The goods under consideration are not close processed agricultural goods as set out in ss. 269T(4A) and (4B).

4.3 MARKET SIZE AND COMPOSITION

In calculating the size and composition of the Australian market Customs uses, where possible, verified sales data obtained from the Australian industry, importers and exporters. In this investigation, Customs used sales and import information obtained from the Australian manufacturer, importers, exporters and from Customs commercial database, TRACE.

Graph 1 below shows Customs assessment of the Australian market for CFG with nominal thicknesses of 3 to 12 mm for each quarter from June 1998 to September 1999. It shows an increasing trend.

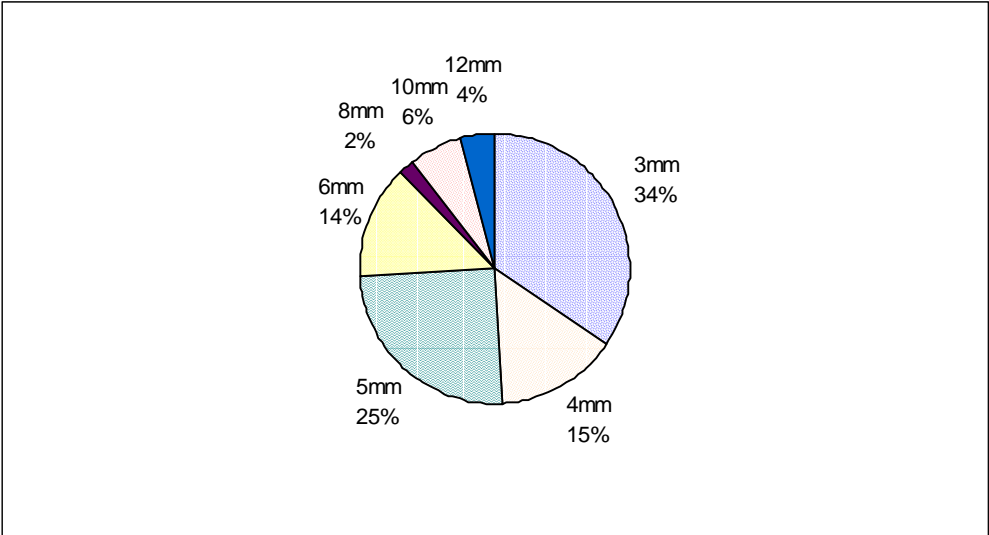
Graph 1: Total Australian market for 3 to 12 mm CFG



In respect of the goods under investigation, the vast majority of sales on the Australian market is CFG with nominal thicknesses of 3 to 6 mm. Customs found

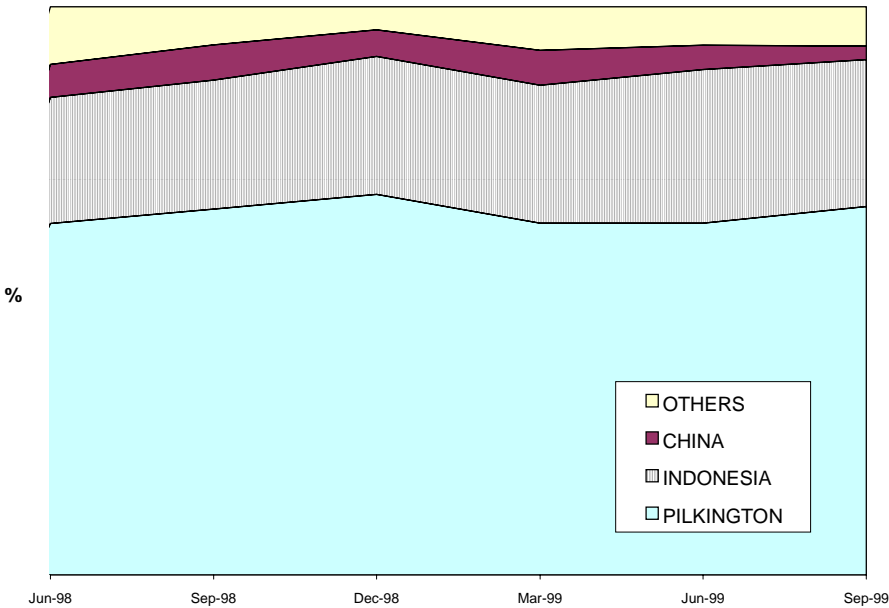
that CFG with nominal thicknesses 8 to 12 mm only accounted for about 12% of the market. Graph 2 shows the Customs assessment of the Australian market for CFG for the year ending 30 September 1999, showing the relative proportion of each nominal thickness.

Graph 2: 3 to 12 mm CFG – market shares by product 12 months to 30 September 1999



Graph 3 shows Customs assessment of the market shares held by the Australian industry and by imports from the June quarter of 1998 to the December quarter of 1999. The market share held by the Australian industry has remained relatively stable over the period. The share held by imports from Indonesia has increased and the share held by imports from China has decreased.

Graph 3: 3 to 12 mm CFG Australian market shares



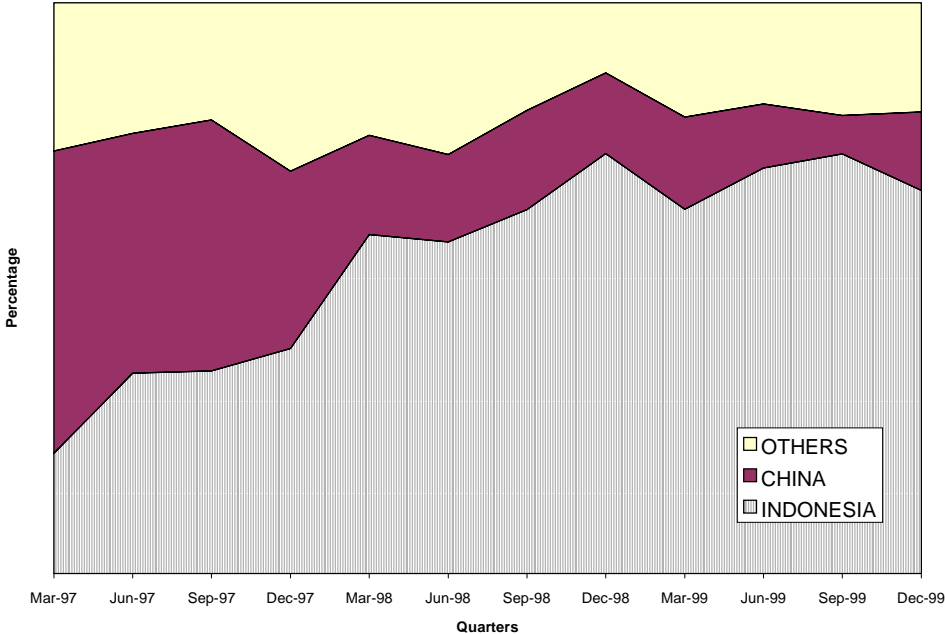
Customs notes that CFG may be directed into the production of further processed glass products such as patterned glass, glass panels, architectural glass and automotive glass. Customs has taken into account total CFG production of the Australian industry and total CFG imports in assessing injury.

However, in constructing a market for the goods, Customs has excluded internal transfers by the Australian industry for CFG to be used exclusively for further processing into products such as architectural and automotive glass. Transfers to state distribution centres have been included. The main reason for constructing markets in anti-dumping investigations is to assess market penetration by imports. Customs has excluded internal transfers used for further processing in this case as it considers that competition from imports of CFG occurs principally in the merchant market for CFG.

Customs also examined the market share of each thickness of CFG held by Pilkington. It found that its market share is fairly consistent across each of the thicknesses of CFG being investigated.

Customs examined trends in import shares from the March quarter of 1997 to the December quarter of 1999. Its assessment of import shares is shown at graph 4. This shows that the share of CFG imports held by China declined significantly from the March quarter of 1997 to the March quarter of 1998. In the same period the share of imports of CFG from Indonesia increased significantly.

Graph 4: 3 to 12 mm CFG import shares



Customs found that the vast majority of exports of CFG from Indonesia to Australia were exported from two manufacturers, Muliaglass and Asahimas. In 1999 these two companies accounted for more than 90% of imports from Indonesia and about two thirds of all imports.

Muliaglass CFG is imported by Overseas Glass Agencies Pty Ltd (OGA). OGA is an indent trader that does not hold stocks of CFG. The goods are delivered from Indonesia, often via Singapore, to OGA's customers in Australia.

Asahimas CFG is sold directly to Australian customers by the Singapore branch of Asahi Glass Co Ltd of Japan (Asahi). Until October 1999 Australian customers would normally order CFG through an agent of Asahi, Kenbrock Glass Australia Pty Ltd. Customs was informed that Asahimas is now setting up its own selling agency in Australia.

4.4 STRUCTURE OF AUSTRALIAN MARKET

In Trade Measures Report No. 6, Customs described the Australian market as consisting of three separate levels of trade.

At the first level, customers buy CFG either directly from Pilkington in containers or 20 tonne truck loads. Alternatively, customers at this level may buy containers of imported CFG, either by importing the goods themselves or by purchasing them from an importer. Customers at this level include large glass merchants that may also be glass processors and fabricators.

The second level of sales is made by these larger glass merchants to smaller merchants, processors and fabricators. CFG sold at this level is commonly sold by the 'case'. A 'case' is the package size used by the manufacturer. Traditionally it was a wooden frame. The quantity of glass in a 'case' varies with thickness, width, height and between manufacturers.

At the third level identified by Customs, case buyers resell CFG to other smaller merchants, processors and fabricators. Domestic glaziers may also be supplied at this level.

Customs found this accurately represents the market structure. It accepts, however, that the functions performed at each level of trade are similar and that it may not always be clear at what level a particular company is trading.

4.5 VIEWS OF INTERESTED PARTIES

In the course of the investigation Customs visited the Australian industry, and a number of importers, merchants and end users of CFG. In all, Customs visited 13 companies in Australia in the course of the investigation. At these visits Customs sought the views of the parties on the condition of the Australian market. A summary of the comments made is given below.

Glass supply shortage

Some of the interested parties commented that the Australian market for CFG at the present time is characterised by high demand and limited supply. A number of interested parties stated there was currently a world shortage of CFG. This shortage, it was said, was due to an unusually high number of CFG plants around the world currently undergoing maintenance. Another party pointed to the earthquakes in 1999 in Taiwan, Japan, Turkey and Greece as contributing to the world shortage.

One party claimed a number of CFG plants in Asia are now in need of cold repairs which will lead to future shortages.

The high demand for glass in the Australian market was thought by some interested parties to be due mainly to increased activity in the building industry prior to the introduction of the goods and services tax in July 2000.

One interested party provided a copy of a circular distributed by Pilkington that confirmed there has been a sharp increase in the global demand for glass. It stated that demand has increased in Australasia and Pilkington has imported CFG in order to satisfy local requirements. A copy of this circular is at Confidential Attachment 6.

Recent price increases

Several interested parties commented on recent price rises both by importers of Indonesian CFG and Pilkington. Customs was told that Muliaglass increased its prices in November 1999 and it obtained price lists that confirmed this price rise. Interested parties also made Customs aware that Asahi increased prices in November 1999.

Customs also received information that Pilkington increased its prices in December 1999.

Pilkington's circular, referred to above, indicates it will increase its prices from 1 April 2000. The company that provided this circular also advised Customs that Asahi and Muliaglass had indicated that there would be significant price rises in the first half of the year 2000.

Customs obtained information pertaining to the prices for Muliaglass CFG for exports to be delivered after 1 May 2000.

Local advantage of Pilkington

Several interested parties commented that there was significant advantage in buying CFG from Pilkington rather than from importers. The main advantage was in fast and reliable delivery. Purchasers of Pilkington's CFG generally appreciated that buying locally meant that they could effectively manage inventory. By purchasing primarily from Pilkington, end-users/manufacturers are able to reduce storage space, or use it for more profitable purposes such as further processing. In addition, less funds are tied up in stock.

One company estimated it would be willing to pay in the order of 5 to 10% more for Pilkington product for these reasons.

Another company observed that the local premium would be higher in times where interest rates are high, thus increasing the cost of funds tied up in stock.

However, other interested parties stated that price was the most important factor. The view was put that Pilkington is both a supplier and competitor to these parties and they are unable to compete with Pilkington unless they obtain an appropriate price. The cost of stock holding can be managed by negotiating favourable terms.

Pilkington argued strongly that a price premium for locally produced CFG does not exist.

Quality issues

From comments made by interested parties there seems to be little or no difference in the quality of CFG produced in Australia compared to CFG produced by Muliaglass or Asahimas. One party believed that Pilkington's CFG is slightly 'greener' in colour than imported CFG. Another company commented that Muliaglass CFG, in particular, is slightly 'softer' and easier to work with than domestically produced CFG.

Pricing for different sizes

One company expressed concerns that OGA was offering CTS glass at the same price as FRS or GSS glass. The company claimed that such a pricing structure undermines businesses that are geared to cut FRS and GSS to supply CTS glass in the market.

A customer of OGA told Customs that purchasing Muliaglass CTS glass was particularly economical as it required no further processing before being sold into the glass 'case' market. The same purchaser expressed a wish to buy more CTS glass from OGA but that greater quantities were not available from the supplier.

Price leaders

Most interested parties who commented on this issue considered Muliaglass (through OGA) was the current price setter in the market.

The view was put to Customs that while Muliaglass CFG prices were generally lower than CFG from other suppliers, the long lead times and unreliability of delivery of Muliaglass CFG may involve considerable costs. One party put the view that because of the reliability, shorter delivery times and professionalism of Asahi, it is setting price levels in the market, although its prices are higher than that of Muliaglass. One party thought that Pilkington was the price leader in the domestic market.

Several merchants who on-sell glass believe Pilkington is the price setter in that market.

5 THE DUMPING INVESTIGATION

5.1 INTRODUCTION

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the country of export. This section outlines Customs findings as to whether the goods have been dumped.

Customs nominated an investigation period of 1 October 1998 to 30 September 1999. It advised parties of this in the ACDN notifying initiation of the investigation. The notice explained that Customs would examine exports to Australia during that period to determine whether dumping had occurred.

In its application, Pilkington identified four producers of CFG in Indonesia. From information extracted from TRACE Customs determined that two of these producers, Muliaglass and Asahimas, accounted for more than 90% of exports from Indonesia to Australia during the investigation period. Another, PT Tensindo, accounted for less than 0.5%. Customs was unable to identify any exports from the fourth nominated producer. The TRACE extractions revealed that the balance of CFG was exported by agents in Indonesia, Singapore and Hong Kong.

5.2 EXPORT PRICES

Export prices are determined under s. 269TAB.

5.2.1 Asahimas

Asahimas provided a detailed submission in response to the questionnaire sent by Customs. Customs visited Asahimas to verify the information that it supplied.

Customs identified several hundred shipments of CFG from Asahimas to Australia during the investigation period.

Customs found Asahimas is the producer and packs the CFG for export. The CFG is shipped to Australia, normally via Singapore, although there are some direct services. Asahimas is identified as the shipper on the bill of lading. Customs considers that Asahimas is the exporter.

Customers in Australia placed orders with Asahi through its Australian selling agent. This agency was terminated during the investigation period and Asahi employed its own direct sales staff and opened an office in Australia. Customers now order through Asahi's Australian office. Asahi orders the goods from Asahimas. Asahimas sells the glass to Asahi, the price being free on board (FOB) in US dollars. Asahi sells the glass to Australia, the price being delivered duty paid (DDP) in Australian dollars. Asahi pays all post exportation charges, including ocean freight and all landing charges in Australia. The Australian customers pay Asahi for the goods and Asahi pays Asahimas.

Asahi is listed as the importer on Customs entries. However, for the purpose of Part XVB of the Act, the importer is the beneficial owner of the goods. In this case, the goods are exported following a contract being entered into between Asahi and the

Australian customer. Customs considers that Asahi customers are therefore the beneficial owners of the goods when they arrive in Australia and hence are the importers.

Under these arrangements the importer does not purchase the goods from the exporter. Therefore ss. 269TAB(1)(a) and (1)(b) are not relevant for determining the export price of the goods.

Customs considers it has sufficient relevant information and has recommended that the Minister determine export prices under s. 269TAB(1)(c) using the invoiced DDP price less ocean freight, marine insurance, duty and landing charges in Australia. The Australian agent's selling commission and Asahi's margin are included in the export price as they relate to activities prior to exportation.

Export price calculations are shown at Confidential Attachment 7.

5.2.2 Muliaglass

Muliaglass also provided a submission in response to Customs questionnaire. The submission included details of all sales to Australia during the investigation period. There were several hundred shipments. Customs visited Muliaglass to verify the information contained in the submission.

Muliaglass manufactures and packs the goods and is identified as the shipper on shipping documentation. Customs considers that Muliaglass is the exporter of CFG to Australia. All Muliaglass' sales to Australia are to its Australian agent, OGA. From information gathered from Muliaglass and OGA Customs is satisfied that the sales transactions between Muliaglass and OGA arms length.

Customers in Australia who wish to buy CFG from Muliaglass place an order through OGA. OGA contacts Muliaglass and a selling price to OGA is determined. Muliaglass then sells the glass to OGA on a cost and freight (C&F) basis, and ships the glass, usually through Singapore, to a port in Australia that OGA nominates. The destination port is normally the one closest to OGA's customer. OGA pays all post exportation charges to the customers' store. The Australian customer pays OGA, in Australian dollars, an amount representing the free into store (FIS) cost plus OGA's profit. OGA pays Muliaglass.

OGA is described as the importer on Customs entries. It arranges clearance and dispatch to its customer. Although OGA does not take physical possession of the goods, Customs considers it to be importer. Customs has determined export prices under s. 269TAB(1)(a) based on the invoiced C&F price less all post exportation expenses.

Export price calculations are shown at Confidential Attachment 7.

5.2.3 Other suppliers

No other exporters provided submissions to Customs. Customs has determined export prices for all other suppliers under s. 269TAB(3) using information obtained from TRACE.

Export price calculations are shown at Confidential Attachment 7.

One importer provided copies of three invoices from an agent exporting glass manufactured by Asahimas. This importer purchases glass that has been further processed in that edges have been rounded and polished and the glass is used as a component in its furniture manufacturing operations. Customs does not consider this glass to be like goods to the CFG subject to investigation.

5.3 NORMAL VALUES

Normal values are determined under s. 269TAC. Subsection 269TAC(4), dealing with the ascertainment of normal values in a non-market economy, does not apply in this case. Regulation 182 to the Act specifies that Indonesia is not an economy in transition and ss. 269TAC(5D) to (5H) do not apply. In addition, Customs found no reason that would render the situation in the domestic market unsuitable for determining normal values.

5.3.1 Asahimas

Asahimas sells CFG to a related company, PT Rodamas (Rodamas), which owns 40% of Asahimas' shares. However, Asahimas negotiates directly with the dealers and the sales and the distribution functions are undertaken by Asahimas. Delivery is made directly from Asahimas to the dealers: the cost of delivery is included in the price. Sales to the dealers are invoiced through Rodamas on an invoice generated in Asahimas' sales office. The price to the dealer from Asahimas includes a margin for Rodamas.

Rodamas has no physical involvement in the sale of CFG. It is a trading company in its own right and distributed CFG manufactured in Japan prior to the commissioning of Asahimas' first float line. At that time Indonesian law required that domestic sales be made through a domestic distributor. Asahimas advised Customs that this requirement no longer existed, but decided not to change its established domestic selling arrangements.

Rodamas receives a margin for its role in the sale of CFG. Customs considers that the price is influenced by a commercial relationship between the buyer and seller and that, in accordance with s. 269TAA(1)(b), sales from Asahimas to Rodamas are not arms length transactions. Normal values cannot be determined under s. 269TAC(1) using these sales.

Asahimas provided details of all domestic sales from Rodamas to dealers. Asahimas only included sales to dealers, but as sales direct to users accounted for less than 1% of sales further information was not sought. Customs observed that customers receive various discounts and rebates, but these are known at the time of the sale. Sales by Rodamas are arms length transactions in accordance with s. 269TAA.

Customs also found that a sufficient volume of these arms length transactions were in the ordinary course of trade and has determined normal values under s. 269TAC(1). The net invoice price was used to determine the value of domestic sales.

Domestic prices have been adjusted in accordance with s. 269TAC(8) to account for verified differences between domestic and export sales in credit terms, distributor margins, packing, domestic freight, fumigation charges and the Australian selling agent's commission.

While the arrangements with the Australian selling agent has been terminated, sales on order at the time of the termination and not yet delivered remained subject to the commission. The commission applies to all exports over the investigation period.

Normal value calculations are shown at Confidential Attachment 8.

5.3.2 Muliaglass

Muliaglass sells CFG domestically through its parent company, Mulia Industrindo (Industrindo). Muliaglass is 100% owned by Industrindo. Domestic customers place an order with Industrindo for FIS delivery. Industrindo places an order with Muliaglass. Muliaglass dispatches the CFG to the domestic customer. The domestic customer pays Industrindo. Industrindo pays Muliaglass, but retains a percentage margin for its involvement in the transaction. All Industrindo's customers are dealers or end users.

Muliaglass only sells CFG domestically to Industrindo. Customs considers that the price is influenced by a commercial relationship between the buyer and seller and that, in accordance with s. 269TAA(1)(b), sales from Muliaglass to Industrindo are not arms length transactions. Normal values cannot be determined under s. 269TAC(1) using these sales.

Industrindo provided details of all domestic sales to its customers. However, Muliaglass, through Industrindo, operates a bonus scheme and the payment of the bonus is dependant on the customer purchasing a certain amount of glass. Penalties for late settlement of accounts apply and are offset against these bonuses. Customs found that bonuses, although payable, have not been paid since 1998.

In the Indonesian market there has been no certainty about customers reaching sales targets so rebates could not be quantified at the time of sale. Also the Asian financial crisis made late payments and subsequent penalties likely, and these also could not be quantified at the time of sale. Customs consider the sales to be non arms length in accordance with ss. 269TAA(1)(c) and 269TAA(1A)(c).

Muliaglass provided data on its cost to make and sell CFG. Customs verified this data and was satisfied that sufficient information was available to "construct" a normal value based on Muliaglass' cost to make and sell CFG plus an amount for profit.

However, s. 269TAC is hierarchical and it directs, in the first instance, that normal values be based on a domestic arms length price that is in the ordinary course of trade. Only if this option is not available may Customs consider other options such as using a constructed normal value. Customs does have verified information of arms length domestic prices that are in the ordinary course of trade – those of Asahimas' distributor, Rodamas (section 5.3.1 refers).

Customs found that domestic sales by Rodamas were suitable to determine normal values for Muliaglass. Customs has determined normal values for Muliaglass under s. 269TAC(1), having regard to Rodamas' selling prices.

Rodamas' domestic prices have been adjusted in accordance with s. 269TAC(8) to account for verified differences between domestic and export sales in credit terms, distributor margin, packing, domestic freight and port charges.

Normal value calculations are shown at Confidential Attachment 8.

5.3.3 Other suppliers

Customs has determined normal values for other suppliers using Rodamas' domestic selling prices. No adjustments have been made to this price as no relevant information was available.

Normal value calculations are shown at Confidential Attachment 8.

5.4 DUMPING MARGINS

A dumping margin is the amount by which the export price is less than the normal value. It is expressed as a percentage of the export price. The margin may be established on the basis of a comparison of either:

- weighted averages of comparable normal values and export prices; or
- normal values and export prices on a transaction by transaction basis; or
- individual export prices and normal values over part or parts of the investigation period, and weighted average export prices and normal values over another part, or other parts of the investigation period; or
- a weighted average of normal values and individual export price transactions (if the export price differs significantly between purchasers, regions, or time periods).

The method used to work out dumping margins in this investigation was to compare weighted average export prices with weighted average normal values over the investigation period.

The dumping margins that Customs assessed for CFG exported from Indonesia are set out in the table below.

Table 1: Dumping margins

Asahimas

CFG nominal thickness	Dumping margin
3 mm	-13%
4 mm	-26%
5 mm	-25%
6 mm	-16%
8 mm	-29%
10 mm	-28%
12 mm	-27%

Muliaglass

CFG nominal thickness	Dumping margin
3 mm	6%
4 mm	-14%
5 mm	-15%
6 mm	-3%
8 mm	-11%
10 mm	-22%
12 mm	-13%

Other suppliers

CFG nominal thickness	Dumping margin
3 mm	-19%
4 mm	-21%
5 – 6 mm	-16%
8 – 10 mm	-21%
12 mm	-1%

Dumping margin calculations are shown at Confidential Attachment 9.

5.4.1 Negligible dumping margins

Section 269TDA(1) requires the CEO to terminate an investigation, in relation to an exporter, where there has been:

- no dumping by the exporter, or
- where all of the exporter's dumping margins are negligible; that is, where all margins worked out under s. 269TACB, when expressed as a percentage of the export price or weighted average of export price, are less than 2%.

Customs found that CFG exported from Indonesia to Australia by Asahimas has not been dumped. Prior to making a SEF, Customs requested that the Minister make

determinations and directions in respect of the normal values and export prices of CFG exported by Asahimas. Customs requested that the Minister then refer the matter back to the CEO to consider the appropriateness of a decision to terminate the investigation in respect of that exporter on the grounds of negligible dumping margins. The determinations and directions were still under consideration by the Minister at the time that Customs made this report.

Customs now recommends that the Minister decide not to impose dumping duties in respect of that exporter and publish a notice to this effect.

5.4.2 Negligible volume of dumped goods

Section 269TDA(3) provides that:

if the volume of goods exported to Australia, over a reasonable examination period (whole or substantial part of the investigation period), from a particular country, that have been dumped is negligible, the CEO must terminate the investigation so far as it relates to that country.

This section defines a negligible volume of dumped goods as that which, when expressed as a percentage of the total Australian import volume, is less than 3%.

Customs found that the volume of dumped goods exported from Indonesia constituted approximately 16% of total Australian import volume over the investigation period.

The calculation of dumped volumes is at Confidential Attachment 10.

6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 APPLICANT'S CLAIMS

In its application, Pilkington claimed injury in the form of:

- price depression;
- price undercutting;
- loss of market share;
- price suppression;
- loss of sales revenue and reduced profitability;
- unsatisfactory return on investment; and
- workforce reductions.

6.2 CUSTOMS ASSESSMENT

6.2.1 Volume effects

Loss of market share

The Australian industry claimed in its application that it had lost market share to imports of CFG from Indonesia. Customs calculated the market share for CFG of the nominated thicknesses held by the Australian industry for the period from April 1998 to September 1999. Its assessment of the market shows that the market share held by the Australian industry has been relatively stable. It found no consistent trend toward lower market shares held by the Australian industry.

The industry claimed in its application that:

The deterioration in price levels has meant what might otherwise be perceived as a small drop in market share in percentage terms has had a significant impact on profitability as displaced production is directed elsewhere at lower prices.

Customs has not been able to quantify to what extent (if at all) the Australian industry's inability to increase its share of the Australian market is a function of a "deterioration in price levels".

Customs notes that the industry is now producing float glass at full capacity. Customs also notes that production levels in previous years have not been appreciably lower than current production levels.

Details of Customs analysis of the Australian market and market shares is at Confidential Attachment 11.

6.2.2 Price effects

Price undercutting occurs when a company sells goods at a price below that achieved by its competitors. Price depression occurs when an industry, for some

reason, lowers its prices. Price suppression occurs when the margin between an industry's costs and prices is reduced.

Price undercutting

Customs used data obtained from Pilkington on total sales to establish an average quarterly FIS price of each thickness of CFG. Customs used data obtained from Asahimas to establish quarterly average prices for CFG sold by Asahi; Asahi's DDP price is equivalent to a FIS price. Customs used data collected from OGA and from customers of OGA that were visited to establish quarterly average FIS prices for CFG exported by Muliaglass.

Customs compared these average quarterly prices. Customs found price undercutting on each thickness of CFG in the nominated range. Table 2 below sets out differences in average prices achieved by Pilkington compared to the lower of Asahi or OGA average prices.

Table 2: Range of average price undercutting of Pilkington's CFG by Indonesian imports as a percentage of Pilkington average price

CFG Thickness	Maximum price undercutting
3 mm	21%
4 mm	14%
5 mm	6%
6 mm	10%
8 mm	27%
10 mm	8%
12 mm	7%

Customs also compared prices of imported CFG to domestically produced CFG to specific customers. As far as possible Customs compared prices achieved under similar sales conditions, in the same state and to the same customers. Customs found that prices of CFG exported from Indonesia undercut prices achieved by Pilkington for all thicknesses and in most quarters.

Details of Customs analysis of price undercutting is at Confidential Attachment 12.

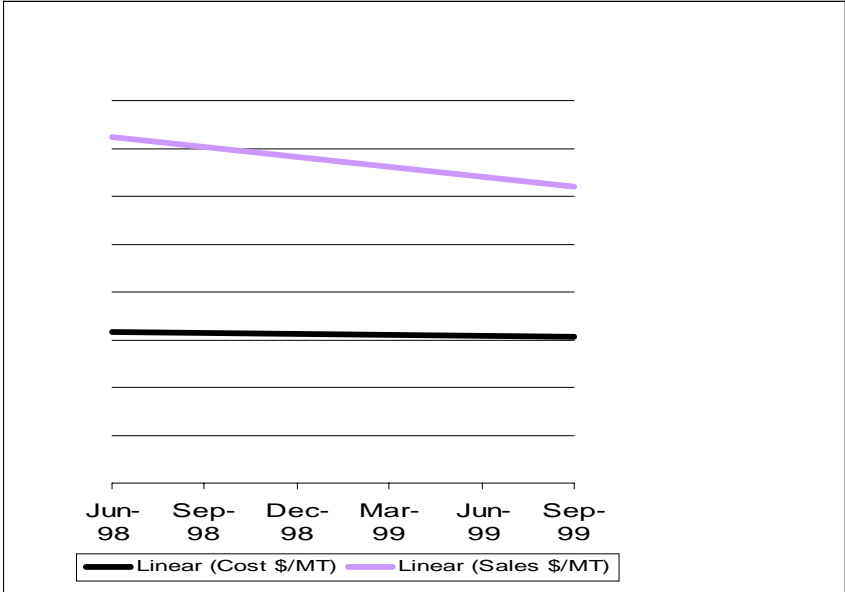
Price depression and price suppression

Customs used information verified during its visit to Pilkington to analyse unit costs and prices of CFG manufactured and sold by Pilkington. The information verified at the company differed slightly from that provided in the application.

Graph 5 below shows the trends in Pilkington's unit costs and unit sales revenue from the June quarter of 1998 to the September quarter of 1999. It shows a trend toward falling unit sales revenue, with costs also falling but at a slower rate.

Customs concludes that Pilkington prices have been both depressed and suppressed.

Graph 5: Pilkington's unit costs and unit sales trends



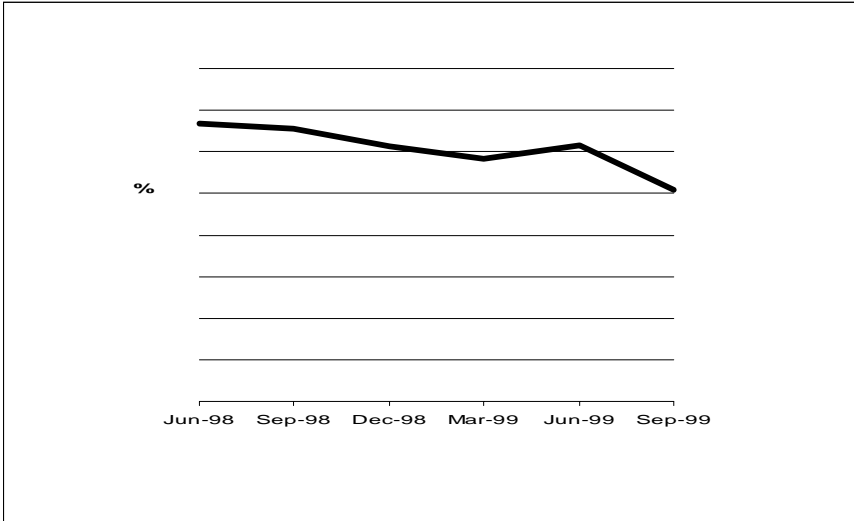
Details of Customs analysis of price depression and price suppression is at Confidential Attachment 13.

6.2.3 Profits and profitability

Profitability is measured as net profit expressed as a percentage of sales revenue. Customs found that Pilkington's profitability for 3 to 12 mm CFG fell from the June quarter of 1998 to the September quarter of 1999.

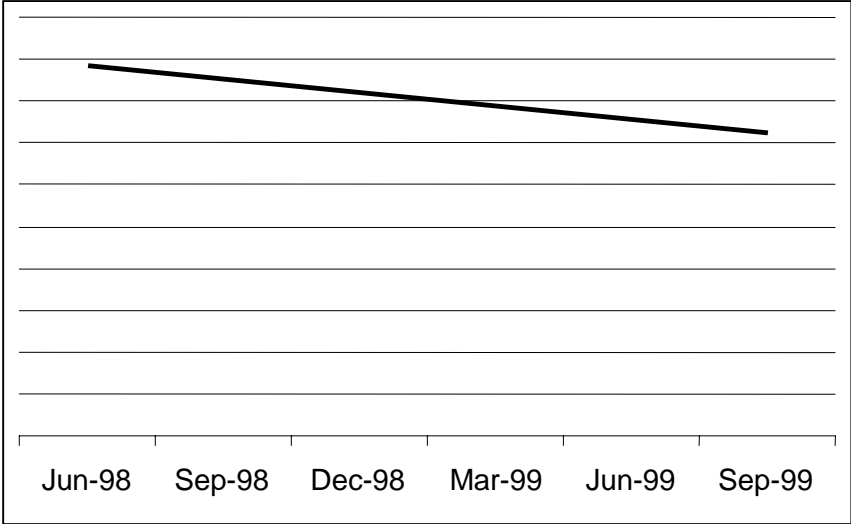
Customs assessment of the Australian industry's profitability for 3 to 12 mm CFG is at graph 6 below.

Graph 6: CFG 3 to 12 mm Pilkington profitability



Customs also looked at Pilkington’s total profits on sales of 3 to 12 mm CFG over the same period. Despite increasing sales volumes, the profit achieved on these products declined over the period (see graph 7 below).

Graph 7: Pilkington 3 to 12mm CFG trend in profit before interest and tax.



Customs concludes that Pilkington’s profits and profitability have fallen.

Details of Customs analysis of profits and profitability is at Confidential Attachment 14.

6.2.4 Unsatisfactory return on investment

Pilkington claimed in its application that it must achieve certain performance targets in order to qualify for investment consideration by its parent company. The ability to qualify for investment funds, Pilkington claimed, is crucial to enable the company to continue operations.

Pilkington stated that achieving group performance targets was critical in keeping the Ingleburn plant open. The Ingleburn plant is due for major maintenance at the latest by early 2001. If it cannot justify to its parent company that the continued operation of the plant is a good investment, the plant may have to be closed rather than maintained. It claimed that the costs of such a closure would be around A\$60 million (including costs such as redundancies, site vacation and asset writedowns).

In its application, Pilkington stated that the cost of a full rebuild of a float plant would be around A\$50 to 70 million. According to Pilkington, based on its current performance, it could not justify a full rebuild.

Customs has observed that Pilkington is not achieving group performance targets at the present time and did not achieve those targets during the last financial year.

6.2.5 Workforce reductions

Pilkington highlighted in its application a decline in employment levels in its glass division over recent years. Employee numbers declined by 19% from April 1997 to April 1999.

As outlined above, if performance targets are not reached Pilkington may not be able to obtain the investment capital required to undertake major maintenance work soon to be required at the Ingleburn plant. This could lead to the plant being closed and to further workforce reductions.

6.3 CONCLUSION

Customs is satisfied that the Australian industry has suffered:

- price undercutting;
- price depression;
- price suppression;
- reduced profits and profitability;
- unsatisfactory return on investments; and
- workforce reductions.

Customs is not satisfied that the Australian industry has suffered:

- reduced market share.

Customs is satisfied that the industry has suffered injury and, in the opinion of Customs, the injury is material.

7 HAS DUMPING CAUSED MATERIAL INJURY?

As noted in previous sections, Customs concluded that some importations of CFG have been dumped and that the Australian industry has suffered material injury.

Customs must also determine if that injury has been caused by dumping or by other causes.

7.1 SCOPE OF CUSTOMS CONSIDERATIONS

Thicknesses found to be dumped

Customs found that Muliaglass was only dumping CFG with a nominal thickness of 3 mm. In looking at whether material injury has been caused by dumping Customs has, therefore, confined its consideration to the effects of the imports from Muliaglass of this thickness on the industry producing 3 mm CFG.

CFG with a nominal thickness of 3 mm constitutes over a third of the sales of CFG of between 3 and 12 mm in thickness on the Australian market. It is the glass thickness commonly used for domestic glazing.

Injury period

Pilkington claimed that material injury caused by dumped Indonesian CFG has been ongoing over several years. It claimed that the injury intensified when measures against Indonesia were discontinued in May 1997. It further claimed that there was an increase in the volume of imports, accompanied by a significant reduction in prices, when an application for a dumping duty notice against CFG from Indonesia was terminated in 1998.

Pilkington claimed that the Australian market should be examined from mid 1997 for the purpose of injury analysis.

Customs analysis of the market indicates that imports from Indonesia increased significantly in early 1998. Customs also notes that in May 1998 the ADA found that Muliaglass CFG was not dumped. Therefore, Customs considers that any injury to the Australian industry up until the time of this terminated investigation was not caused by exports of CFG at dumped prices by Muliaglass.

Customs accepts that material injury to the Australian industry may have been caused by imports of CFG from Indonesia from the middle of 1997. However, in looking at possible injury by *dumped* Indonesian imports Customs disregarded any imports of Indonesian CFG up until the middle of 1998.

Like goods not covered by the application

Subsection 269TEA(2) states that this report must, to the extent that it is practicable to do so, also extend to any like goods not covered by the application but imported into Australia between initiation of the investigation and 20 days after the SEF is placed on the public record.

Customs has examined TRACE data in respect of imports of CFG up until 15 April 2000 (20 days after the SEF was placed on the public record). Customs found that the pattern of imports had not notably changed from before the time that the investigation was initiated. During the March quarter of 2000 imports of CFG from Indonesia represented approximately 62% of all imports of that product.

TRACE showed that Muliaglass had the lowest average unit prices in most statistical code categories of any supplier over that period.

7.2 VOLUME EFFECTS

Customs found that Pilkington's market share of 3 mm CFG was consistent with the combined market share calculated by Customs for all thicknesses between 3 and 12 mm. That is to say, the market share of 3 mm CFG held by Pilkington has remained relatively stable from the June quarter 1998 and the September quarter 1999.

Pilkington claims that, due to dumped Indonesian CFG, it was unable to maintain sales volume in the Australian market. Pilkington claim that because of this it was forced to sell product less profitably overseas. Pilkington presented anecdotal evidence of this, but their claims were not substantiated.

The data provided by Pilkington shows that its domestic sales volume of CFG increased by over 20% from the June quarter of 1998 to the September quarter 1999. The volume of sales of 3 mm CFG by Pilkington has increased marginally during this time.

Customs considers dumped goods have not caused:

- a reduction in sales volume of CFG by the Australian industry; and
- an inability of the Australian industry to increase or maintain Australian market share for CFG.

Details of Customs analysis of the Australian market and market shares for 3 mm CFG is at Confidential Attachment 15.

7.3 PRICE EFFECTS

Customs found that:

- price undercutting by imports was evident for each thickness of CFG between 3 mm and 12 mm;
- price undercutting was, on average, most severe for 3 mm thickness CFG, the highest volume selling thickness on the Australian market;
- price depression was most severe for 3 mm CFG;
- Customs calculates 3 mm thickness CFG constitutes over a third of Australian market sales;
- price depression of 3 mm CFG coincides with increased volumes in the Australian market of imports of CFG from Indonesia;
- profitability of 3 mm CFG has decreased more significantly than it has for any other thickness of CFG (the profitability of 3 mm CFG declined by over

7 percentage points from the June quarter of 1998 to the September quarter of 1999 compared with a fall of around 3 percentage points for all relevant thicknesses over the same period); and

- Pilkington's ability to achieve performance targets was inhibited by the presence of dumped 3 mm CFG.

Details of Customs analysis of Pilkington's production costs, sales value and profitability for 3 mm CFG is at Confidential Attachment 16.

7.4 OTHER FACTORS

During the investigation some interested parties pointed to a world oversupply of glass influencing the price of CFG in the Australian market.

Customs found that there was a trend toward falling prices for each thickness of CFG from 1995 to the end of 1999. Customs accepts that this decline in prices for CFG may have been due to a global oversupply of CFG.

This does not alter Customs view that material injury was caused to the Australian industry by the exportation of 3 mm CFG from at dumped prices. In Customs view, this injury has not been caused by factors other than dumping.

7.5 CONCLUSION

Customs found that the dumping margin for Muliaglass 3 mm CFG is 6%. Customs considers this margin to be significant. Customs is satisfied that dumping has caused material injury to the Australian industry.

8 WILL DUMPING CONTINUE?

The Minister may impose measures on future imports of like goods if the goods subject to an investigation were found to be dumped and causing material injury to Australian industry. In order to impose measures the Minister must also be satisfied that future exports may also be dumped.

OGA and Muliaglass, in response to the statement of essential facts, reasserted that dumping was caused by Muliaglass' inability to obtain closed container types. They claimed that orders that specified a closed container were sold at closed container prices but were supplied in more expensive open top containers. The price from Muliaglass to OGA was C&F and Customs deducted the actual freight cost to arrive at an FOB price. Muliaglass and OGA argued that the deduction of higher open top container freight costs from closed container C&F prices caused lower FOB prices and thus higher dumping margins. Muliaglass and OGA have claimed that the problem of non-availability of closed containers has now ceased. Therefore, they argue, Customs has erred in its conclusion that dumping will continue.

Customs is not able identify the container type ordered compared to those sent for every shipment of CFG exported to Australia by Muliaglass. Customs is thus unable to quantify the actual impact of any such discrepancy on the dumping margin.

The claim by Muliaglass and OGA that the closed container availability problem no longer exists was not backed by verifiable evidence. Moreover, Customs is unable to determine whether the cause of dumping was Muliaglass' inability to obtain closed containers. Thus, Customs cannot be satisfied that even in the absence of a closed container availability problem, that in the future the goods would not be dumped.

Muliaglass has provided Customs with evidence that it has recently raised export prices significantly. However, such evidence even if verified would not, of itself, lead Customs to conclude that dumping from that company has ceased. While export prices may have risen, Customs cannot assume that normal values have not similarly increased at the same time. Anecdotal evidence given to Customs regarding a world/Asian glass shortage and the recovery of the Indonesian economy would suggest that domestic prices of CFG in Indonesia have also increased.

Customs is satisfied that exports of 3 mm CFG in the future from Muliaglass may be at dumped prices.

9 SUBMISSIONS IN RESPONSE TO THE SEF

9.1 OGA AND MULIAGLASS

Muliaglass claimed that the finding of dumping against 3mm CFG was “directly attributable to the financial crisis in Indonesia and on the availability of the designated container necessary to ship the goods to the Australian market”. It claimed further that “had this been taken into consideration, the positive finding on CFG 3mm would have been negative.”

Customs concedes that it is theoretically possible that the dumping margin on 3mm CFG was due to Muliaglass’ inability to obtain the designated container types. However, Customs does not have sufficient information to ascertain whether this is actually the case.

Moreover, Customs notes that even if it could quantify the number of shipments made in other more expensive container types, it does not alter the dumping calculation. Muliaglass’ inability to obtain the designated containers and the financial crisis in Indonesia conceivably could explain *why* the goods were dumped, but it does not alter the position of Customs that the goods were exported at dumped prices.

9.2 PILKINGTON

Pilkington argued that Customs did not make appropriate adjustments to domestic prices in Indonesia in determining normal values. Customs reviewed the arguments presented and found no evidence to suggest that the adjustments made were inappropriate or that other adjustments should have been made.

Pilkington also argued that in establishing a non injurious price (NIP) that is less than the normal value and resulting in a lesser amount of duty being collected, Customs

must have regard to the requirement that such a lesser amount can only be collected if it is sufficient to remove material injury. In the present case where substantial price undercutting has been identified, the full margin of dumping should be collected in order to alleviate the injury attributable to dumping.

Pilkington’s assertion that the NIP is reflective of a lesser duty amount sufficient to remove material injury is, however, not quite correct. Customs approach is to seek to ascertain an amount sufficient to remove material injury *caused by dumping*. The fact that price undercutting has occurred does not preclude Customs from seeking to establish such a price.

10 ANTI-DUMPING MEASURES

10.1 INTRODUCTION

Customs is satisfied that 3 mm CFG exported by Muliaglass from Indonesia has caused material injury to the Australian industry producing like goods. Customs is not recommending, however, that an interim dumping duty be imposed on future exports of like goods exported by Muliaglass.

Customs considers that it is appropriate that the Minister accept a price undertaking offered by the exporter in respect of future exports of 3 mm CFG.

10.2 DEVELOPING COUNTRIES

Article 15 of the World Trade Organisation (WTO) Dumping Agreement concerns special treatment for developing countries. It states:

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

Indonesia is declared a developing country under Part 2 of Schedule 1 to the *Customs Tariff Act 1995*.

The alternative remedies to dumping duties available under the Dumping Agreement and Australia's legislation are price undertakings.

10.3 PRICE UNDERTAKINGS

As an alternative to imposing dumping duty, the Minister may accept a price undertaking from the exporter. An undertaking is an agreement by the exporter to conduct future trade in a manner that will avoid causing material injury to the Australian industry. The Minister may accept an undertaking from an exporter at any time after the CEO has made PAD in respect of goods the subject of an anti-dumping application. By accepting an undertaking, the Minister defers her consideration of whether to publish a dumping duty notice, and the investigation is suspended as far as it relates to the goods exported by that exporter.

In considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase, to which the price undertaking relates, is limited to an amount such as the total price of the goods is not more than the NIP (s.269TG(5)).

10.4 NON-INJURIOUS PRICE

Customs will calculate a NIP where it finds, in an anti-dumping investigation, that dumping has caused material injury to an Australian industry producing like goods. The NIP is normally calculated in order to determine the level of dumping duty that

needs to be applied to dumped imports to remove the injury suffered by the Australian industry.

In this case, Customs has recommended that the Minister accept a price undertaking offered by the exporter. By accepting an undertaking, the Minister will suspend her consideration of whether to impose dumping duty. The calculation of the NIP is, however, still a relevant consideration as to whether the level of the proposed undertaking is appropriate.

The NIP is defined in s. 269TACA, as follows:

"The non-injurious price of goods exported to Australia is the minimum price necessary:

(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the 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 at Article 9.1 of the WTO Anti-Dumping Agreement which states that:

"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."

Customs monitors compliance of the undertaking based on the FOB price of the goods. Therefore, Customs calculates the NIP in FOB terms for the country of export. Although the method of calculating a NIP is not defined in the legislation, it is generally derived from the Australian industry's unsuppressed selling price (USP).

10.4.1 Unsuppressed selling price

A 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 calculate the USP.

- One option is to determine a price for locally produced goods when the Australian market was not affected by dumping.
- Another option is to use 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. In estimating this profit, Customs looks to the market for guidance.
- A third option is to use the lowest price for undumped imports. To recommend this option, Customs must be satisfied the market is unaffected by dumping.

Customs considered each of these options as discussed below.

Industry's price unaffected by dumping

Measures against CFG from certain countries (including Indonesia) were first put in place in 1992. As was outlined earlier in this report, since that time there has been a number of reviews and investigations (see Attachment 4).

Having studied this history, Customs considers that the most recent period that the Australian market could be used to determine an USP would date back to 1998, around the time that an investigation into alleged dumping of CFG by Muliaglass was terminated. At this point in time, measures were in place against China, Thailand, Singapore (country of origin China, Indonesia, Malaysia, the Philippines or Thailand) and certain exporters from the Philippines. Each of these measures had been in place for several years and measures on exports from China, the Philippines and Thailand were continued in September 1997.

In the 1997 continuation inquiry (concluded in September 1997) the ADA found that: "information provided by Pilkington did not indicate that Asahimas has been exporting CFG at dumped prices (ADA report 177 p.24)".

In November 1997, Pilkington lodged an application for anti-dumping measures to be imposed against exports from Indonesia by Muliaglass only. The investigation was terminated on 28 February 1998 after Customs found that the goods were not dumped. In May 1998 the ADA confirmed Customs decision to terminate the investigation on the basis that CFG exported from Indonesia was not dumped.

Customs is of the opinion that Pilkington's prices at this time were not affected by dumping. Imports in the market at this time were either subject to measures or were not dumped.

Industry's cost plus profit

Pilkington has argued that Customs should use the industry's cost to make and sell CFG and then add a profit to derive a USP.

Customs notes that Pilkington's costs to make and sell CFG in the last four years have decreased. It also notes that in the last 18 months the industry's costs have been relatively stable. Customs is satisfied that the data provided by Pilkington for this current application would be suitable to determine unit costs to make and sell each thickness of CFG.

Customs considered several options for an amount of profit that could be added to these costs.

One option was to use the profit that Pilkington requires in order to meet the performance target set by Pilkington's parent company. Customs does not consider this to be an appropriate profit amount to derive a USP as it may not necessarily be a measure of an achievable price level for Pilkington in a market not affected by dumping.

Another option is to use a profit that Pilkington obtained for CFG when the market was not affected by dumping. As was mentioned above, Customs is of the opinion that in the period from the middle of 1997 to the early part of 1998 prices were

unaffected by dumping. Customs notes that since that time Pilkington has reduced costs to make and sell CFG considerably. For this reason, the profits that Pilkington could reasonably expect in mid 1997 to early 1998 may be less than they might now expect.

Another method sometimes employed to derive a rate of profit is to base it on the current long-term bond rate. Customs does not favour this approach in this case as such a profit rate does not reflect the expectations of investors in manufacturing industries, with its associated technical, financial and market related risks.

Profit may also be derived from independent sources (such as the Australian Bureau of Statistics) as to profits achieved by the relevant industry sector. In Customs view this would probably be the most appropriate way to arrive at a profit figure for such a purpose. However, Customs has not recommended, in this case, that the USP be derived from the industry's costs plus an amount for profit.

Lowest price for undumped CFG

This was the method used to derive a USP in order to calculate the current NIFOBs in respect of exports of CFG from China, the Philippines and Thailand in the 1999 review of anti-dumping measures (see Trade Measures Report No.6). For each of these countries, the USP used was the landed price in Australia of CFG exported from Indonesia.

In using these prices Customs assumed:

- that the exports of CFG from Indonesia were not dumped; and
- that the prices of undumped exports of CFG from Indonesia were not affected by the price of dumped goods in the market.

At the time of the 1999 review, measures were in place against all sources that had been found to be dumped. Customs therefore assumed that the market was not affected by dumping. In the current investigation, it found that the exports of 3 mm CFG from Indonesia were dumped, and that the prices for this product have been affected by dumping.

While Customs has found that exports by Asahimas of 3mm CFG to Australia have not been dumped, it considers that Asahi's prices for this product may be affected by dumped imports. It cannot use a price that Asahi achieved on 3 mm CFG to derive a USP.

At least as far as it concerns the calculation of a NIP for 3 mm CFG, Customs does not consider that it can use current prices by undumped sources in order to derive a USP.

Conclusion

Customs has information in respect of prices for 3 mm CFG exported to Australia from Indonesia in mid 1997. These goods were found by Customs in a 1998 investigation not to be dumped. In addition, as was explained above, Customs is of the opinion that the market at this time was unaffected by dumping.

Customs recommends that this information be used to determine a USP for 3 mm CFG in this case.

10.4.2 Calculation of non-injurious price

The USP is equivalent to the landed duty paid into store cost of imports for end users. To calculate the NIP, post exportation costs such as overseas freight, costs incurred in Australia and an amount for importer's profit are deducted from the USP. 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
SG&A expenses	8
Profit	10
Total	36
Non-injurious price	64

Deductions from USP

In this investigation Customs obtained verified data from Muliaglass and OGA on the post exportation charges relating to exports of CFG from Muliaglass. From a USP (which is a FIS price) Customs deducted the following in order work out a NIP:

- ocean freight and insurance;
- Customs charges;
- landing charges;
- cartage;
- bank charges;
- insurance; and
- OGA's expenses and profit.

Details of the ascertained NIP are at Confidential Attachment 17.

10.5 THE UNDERTAKING OFFERED BY MULIAGLASS

Customs made a PAD that there were reasonable grounds to publish a dumping duty notice in respect of exports of 3 mm CFG by Muliaglass. The decision was notified in the *Australian Financial Review* of 19 April 2000.

On 27 April 2000, Customs wrote to Muliaglass indicating that it would be prepared to recommend that the Minister accept an undertaking by Muliaglass to export 3 mm CFG at price not less than the NIP calculated by Customs.

On 5 May 2000, Muliaglass wrote to Minister offering a price undertaking in such terms.

The undertaking offered by Muliaglass contained the following conditions:

- the undertaking takes effect from the date of the Minister's acceptance thereof and applies to 3 mm CFG exported after that date;
- the undertaking may need to be changed from time to time and it may be necessary to enter into a new undertaking;
- the exporter may be required, from time to time, at the request of the Australian government anti-dumping administration, to provide information in relation to the undertaking, and to allow the verification of that information;
- the undertaking expires five years from the acceptance of the undertaking; and
- the exporter must advise the Australian government anti-dumping administration immediately of any proposal to change the exporter name and/or ownership.

In considering what would be an appropriate price level above which the exporter should undertake to export the goods, Customs has looked to the NIP.

Customs also made an estimate of the current normal value. Customs did this by applying the dumping margin (6%) to Muliaglass' listed FOB export price for deliveries after 1 May 2000. These prices were verified to orders placed by OGA for consignments of CFG from Muliaglass. Customs took the approach of using the most recent price information available for this purpose, as it is aware that prices have been increasing. Given these increasing prices, Customs does not consider that the normal value information gathered in relation to the investigation period is directly relevant to the consideration of an undertaking price pertaining to future shipments of 3mm CFG.

Customs found that the NIP was slightly lower than the estimated current normal value. The undertaking price level, that Customs has recommended that the Minister accept, is therefore at the level of the NIP.

After the Minister accepts the exporter's undertaking offer, the exporter must ensure that future export prices are not less than the level agreed upon in the undertaking. Customs monitors the export prices of the goods subject to the undertaking. If at any time the goods are exported at a price lower than that agreed to in the undertaking, consideration will immediately be given to imposing dumping securities on the goods pending the resumption of the investigation.

In facilitating the resumption of an investigation after a breach of an undertaking, the Minister may require the CEO to conduct the investigation subject to conditions, as the Minister considers appropriate. In determining these conditions, the Minister must have regard to:

- the procedures that had been completed when the undertaking was accepted; and
- the length of time that has elapsed since the acceptance of the undertaking.

11 RECOMMENDATIONS

Subsection 269TG(1) specifies that the Minister can impose a dumping duty in respect of dumped goods that have already been exported to Australia. This action is normally limited to goods on which securities have been taken. Customs has not collected securities in this case.

Subsection 269TG(2) specifies that the Minister can impose a dumping duty in respect of future exports to Australia. Duties under this subsection may be imposed where goods that have already been exported to Australia have been found to be dumped, and it is likely that dumping of like goods will occur in the future.

Following a recommendation from the CEO concerning the imposition of dumping duty, if the Minister decides not to impose duty on goods, s. 269TL requires that the Minister must give public notice to this effect.

Subsection 269TG(4) allows the Minister to defer the decision whether to publish a dumping duty notice, if an exporter offers, and the Minister accepts, an undertaking that the exporter will conduct future trade to Australia in like goods so as to avoid causing or threatening material injury to an Australian industry producing like goods.

Customs has recommended that the Minister accept a price undertaking from Muliaglass in respect of 3mm CFG and thereby suspend her consideration of whether to impose dumping duty on like goods exported by that exporter.

Customs found that, other than 3 mm CFG exported by Muliaglass, the goods subject of the application were not dumped. Customs will therefore recommend that the Minister decide not to impose dumping duty in respect of those goods or like goods and make a declaration under s. 269TL to that effect.

Customs recommends that the Minister be satisfied that:

- pursuant to s. 269TAAD(1), certain sales of like goods sold for home consumption in Indonesia by Muliaglass were in substantial quantities at a price less than their cost and it is unlikely that the costs will be able to be recovered within a reasonable period;
- pursuant to s. 269TAB(3), sufficient information has not been furnished or is not available to enable export prices for CFG from exporters other than Asahimas and Muliaglass to be ascertained under preceding subsections of s. 269TAB; and
- pursuant to s. 269TACB(4), the weighted average export price of CFG with a nominal thickness of 3 mm during the investigation period was less than the weighted average of the corresponding normal values over that period for Muliaglass.

Customs recommends that the Minister:

- pursuant to s. 269TAAD(4) determine the amount to be the cost of production of like goods of CFG for Rodamas and the amount to be the SG&A costs associated with the sale of those goods;

- pursuant to s. 269TAB(1)(c) determine, having regard to all the circumstances of exportation, export prices of CFG for Asahimas;
- pursuant to s. 269TAB(3) determine, having regard to all relevant information, export prices of CFG for exporters other than Asahimas and Muliaglass;
- pursuant to s. 269TAC(8) Act, direct that the price payable for like goods for Asahimas and Muliaglass be adjusted to ensure that normal values can be properly compared with export prices;
- pursuant to s. 269TACB(1) determine, by comparison of the weighted average export price and the weighted average normal values, that CFG from Indonesia was or was not dumped;
- accept the price undertakings offered by Muliaglass;
- pursuant to s. 269TG(4), suspend consideration of whether or not a declaration should be made under s. 8 of the Dumping Duty Act in relation to future exports of CFG with a nominal thickness of 3 mm from Muliaglass;
- pursuant to s. 269TG(4), publish the legal instruments under s. 269TG(6);
- agree that, on the ground of confidentiality, the price undertaking attached to the legal instruments under s. 269TG(6) not be published;
- pursuant to s. 269TL(1), issue a public notice that she has decided, after having regard to Customs' recommendations, not to declare that s. 8 of the Dumping Duty Act applies to CFG exported to Australia from Indonesia by companies other than Muliaglass; and
- pursuant to s. 269TL(1), issue a public notice that she has decided, after having regard to Customs' recommendations, not to declare that s. 8 of the Dumping Duty Act applies to CFG with a nominal thickness of 4 to 12 mm exported to Australia from Indonesia by Muliaglass;

To give effect to these recommendations, Customs recommends that the Minister sign the legal instruments and schedules listed at attachment 1.

The evidence relied upon is summarised at attachment 2.

12 GLOSSARY

Arms length

Section 269TAA 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:

- there is a consideration other than price; or
- 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 (unless it is an established, normal business practice to do so).

Export sales may also be determined as not at arms length if the importer is selling at a loss.

Ascertained export price, normal value and non-injurious price

Where a decision is taken to impose provisional or final dumping measures, it is necessary to ascertain what is or would be the normal value, the export price and the non-injurious export price (in the case of final measures) of those goods. The details of these ascertained prices must be published in the formal notice of the positive finding unless the release of such details contains information regarded by an interested party as confidential. The ascertained export price should not be confused with the actual export price.

See also *normal value, export price, non-injurious price* and *interim duty*.

Australian industry

Section 269T(4) states there is an Australian industry in respect of 'goods of a particular kind' if there is a person or persons who produces like goods in Australia. Where the like goods are close processed agricultural goods, the Australian industry will include producers of raw agricultural products.

Goods are not considered to have been produced in Australia (other than unmanufactured raw products) unless the goods are wholly or partly manufactured in Australia. To be considered wholly or partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Applications must be supported by a sufficient part of the Australian industry. Section 269TB(6) defines a sufficient part of the Australian industry as domestic producers whose collective output is more than 50% of the total production of those that have commented on the application. Supporters of the application must also account for 25% or more of the total production.

See also *close processed agricultural goods* and *like goods*

Close processed agricultural goods

Refer s. 269(4), (4A), & (4B). Close processed agricultural goods are defined as goods that are derived substantially or completely from raw agricultural goods where the raw goods are devoted substantially or completely to the processed goods. There must also be either a close price relationship between the goods, or a significant part of the production costs of the processed goods is constituted by the cost of the raw goods. Producers of close processed agricultural goods form part of the Australian industry in respect of considerations of material injury.

Dumping

Dumping occurs when goods are exported to Australia at a price that is below the "normal value" of the goods. Normal value is usually the domestic price of the goods in the country of export.

Australia's anti-dumping and countervailing legislation is found in Part XVB of the Act and the Dumping Duty Act. The legislation reflects Australia's rights and obligations as a signatory to the WTO Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures and with the Government's industry and economic policies.

Australia's legislation does not seek to establish whether dumping was or is predatory, and in some sense unfair. Rather, the objective is simply to identify the price differentiation if it exists, any material injury caused thereby, and to provide a mechanism to remove the injurious effect of subsequent imports.

Dumping duty

Dumping duty is distinct from import duties. Dumping duties may apply to imports covered by measures in accordance with s. 269TG(1) as well as all future imports under s. 269TG(2). Public notice is given if a dumping duty is to be imposed.

Dumping margin

The dumping margin is the difference between the export price and the normal value. Dumping margins are usually calculated for each individual exporter and can be expressed as a value or as a percentage of the export price.

Dumping margins can be determined using different methodologies depending on the circumstances of the investigation. Under s. 269TACB export prices are compared with normal values to arrive at dumping margins as follows:

- the weighted average export price over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
- using the above method in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
- the export price in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or

- a combination of methods referred to above in respect of part or parts of the investigation

If the number of exporters who have provided a submission is so large that it is impractical to calculate individual dumping margins for each of the exporters, statistical sampling may be used to calculate dumping margins for those exporters with the largest volume of exports to Australia. The dumping margins established under this approach might then be used for the remaining exporters and applied as residual margins for that country.

Export price

Export prices are determined under s. 269TAB.

Usually the export price is determined under s. 269TAB(1)(a) using the actual price paid by the Australian importer, less post exportation charges, where:

- 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
- the 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) cannot be met, s. 269TAB(1)(c) 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).

See also *arms length*

Final measures

Final 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 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.

Initiation report

A report recommending or rejecting an application on the basis that reasonable grounds do or do not exist for the publication of a notice. The report will set out the reasons as to whether or not, *prima facie*, the application meets the provisions of s. 269TC.

Interim dumping/countervailing duty

Under the interim duty scheme, introduced on 1 January 1993, an amount of dumping/countervailing duty is collected on every importation of the goods. That duty is known as interim dumping/countervailing duty. Interim duty does not apply to goods that became subject to final anti-dumping and countervailing measures before 1 January 1993.

Interim duty (in the case of final measures) is the sum of: the difference between the ascertained normal value (or the ascertained non-injurious price if that is lower) and the ascertained export price of the goods, plus the amount by which the actual export price is less than the ascertained export price. The interim duty may be levied on an ad valorem basis (ie. x% of the export price), as a price per unit of quantity (eg. \$y per tonne) or as a combination of the two.

See also *ascertained normal value, export price and non-injurious price*.

Investigation

Customs role in the dumping and subsidisation investigation is to:

- consider applications for the publication of dumping duty and countervailing duty notices;
- make recommendations to the Minister on whether sufficient grounds exist or that there are not sufficient grounds for the publication of dumping duty and/or countervailing duty notices; and
- where appropriate, require and take securities in respect of any dumping duty/countervailing duty that may become payable.

The legislation imposes time limits within which an 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, 60+ days after notifying the initiation of the investigation to reach a preliminary affirmative determination (if appropriate), 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 investigation. 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 of the investigation. Interested parties are also provided with an opportunity to lodge

submissions in response to the statement of facts on which the CEO bases his recommendation to the Minister.

Investigation period

A period defined in the initiation notice over which importations of the goods under consideration are examined. The investigation period is relevant to the application of provisions dealing with such matters as the determination (for normal value purposes) of whether sales are in the ordinary course of trade, and in calculations to establish whether dumping or subsidy is negligible.

Like goods

Section 269T(1) 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.

Material injury

The Minister may impose measures to relieve the affect of dumping up to the level of the dumping margin, when it has been proven that dumping has caused or is threatening to cause material injury to the Australian industry. Section 269TAE lists factors that may be regarded in determining whether the Australian industry has suffered material injury caused by dumping and subsidisation.

The factors include:

- the size of the dumping margin/s in respect of the goods exported to Australia and/or particulars of any countervailable subsidy received in respect of goods exported to Australia;
- the quantity of goods under consideration exported to, and consumed in Australia during a particular period and the consequential effect on the quantity of like goods produced or manufactured in Australia by the Australian industry and sold or consumed in Australia;
- the export price of the goods under consideration and the price paid for the goods sold in Australia and the consequential effect on the price paid for like goods produced or manufactured by the Australian industry and sold in Australia; and
- the effect that the exportation of goods under consideration to Australia in those circumstances has on the relevant economic factors in relation to the Australian industry.

Non-injurious price

Dumping duties may be applied where it is established that dumped imports have caused or threaten 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 NIFOB or

NIP is calculated for this purpose. The NIFOB and the NIP provide 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.

The terms NIFOB and NIP have essentially the same meaning. The term NIFOB is not specifically defined in legislation but has application to anti-dumping measures imposed before 1 January 1993. The NIP was defined in legislation when the interim duty scheme was introduced on 1 January 1993.

Although the method of calculating a NIP is not prescribed in the legislation, Customs generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in the absence of the price effects of dumped/subsidised imports. This price is known as the unsuppressed selling price. From this, the costs incurred in importation are deducted until a notional selling price at an FOB level is ascertained.

Normal value

Section 269TAC provides the methods to be used when determining the normal value of goods exported to Australia.

Usually, the normal value is determined under s. 269TAC(1) and is the price paid for like goods in the domestic market of the exporting country provided:

- the goods are exported to Australia;
- the sale is in the ordinary course of trade;
- the sale is for home consumption in the country of export;
- the exporter's domestic sales are arms length ;
- the volume of sales in the domestic market of the exporting country is such as to permit a proper comparison with sales to Australia - generally an acceptable volume is taken to be 5% or more of the volume of the goods exported to Australia; and
- the situation in the exporters domestic market is such that the sales are suitable for determining a normal value.

If the exporter's domestic sales do not satisfy all of the above criteria, the same tests are applied to sales by other sellers of like goods on the domestic market of the exporting country.

Normal value cannot be determined under s. 269TAC(1) where:

- domestic sales that would be relevant for determining a price are absent or of low volume;
- the market situation in the country of export is such that it renders domestic sales as unsuitable for use in determining normal value; or
- it is not practical to obtain information in relation to sales by other sellers of like goods on the domestic market within a reasonable period.

Section 269TAC provides alternative methods for determining normal values where the criteria of s. 269TAC(1) are not satisfied.

Section 269TAC(2)(c) provides that except where s. 269TAC(2)(d) applies, the normal value of the goods is the sum of:

- the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the SG&A expenses associated with the sale; and
- an amount of profit.

In circumstances where a normal value cannot be determined from domestic selling prices because sales are found to be not in the ordinary course of trade, a profit component is not included.

Section 269TAC(2)(d) provides that, where normal value cannot be determined under the provisions of s. 269TAC(1), and the Minister so directs, the normal value of the goods is the price paid for like goods sold in the ordinary course of trade in arms length transactions for exportation to an appropriate third country.

Customs seeks evidence relating to both sections in order to decide which is the most suitable method for determining normal value.

Where it is satisfied that sufficient information has not been supplied or is not available to determine normal values under any of the preceding provisions, the normal value is determined under s. 269TAC(6) having regard to all relevant information.

Section 269TAC(4) 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, SG&A 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.

Sections 269TAC(8) and 269TAC(9) provide for adjustments to be made to the normal value to account for differences where the domestic and export sales prices:

- relate to sales occurring at different times;
- are not in respect of identical goods; or
- are modified in different ways by taxes or terms or circumstances of the sales.

Section 269TAC(10) enables the normal value to be determined in the country of origin instead of the country of export when it is considered appropriate by the Minister.

Notice

A notice is a dumping duty or countervailing duty notice. It is a legal document signed by the Minister or her delegate, giving effect to the provisions of the Act and the Dumping Duty Act.

Ordinary course of trade

Section 269TAAD 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.

Preliminary affirmative determination

A determination made by Customs not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application. If Customs makes a PAD it gives public notice in a national newspaper and an ACDN.

Customs may, at the time of the PAD or at any later time during the investigation, require and take securities in respect of interim duty that may become payable if Customs is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues. If Customs decides to take securities it gives public notice in a national newspaper and an ACDN.

Provisional measures - securities

Generally, provisional measures are applied in order to prevent further injury, or threat of injury, to the Australian industry after the PAD is made until a final finding is reached (when interim measures may be put in place). Provisional measures may also be collected in other circumstances, for example, a breach of undertaking or where interim duty is payable on goods as a result of an accelerated review.

Securities will be calculated as the sum of:

- (a) the amounts equal to the ascertained dumping margin; and
- (b) the amounts, if any, by which the actual export price is less than the ascertained export price.

Sections 42 to 45 of the Act provide the legal authority for Customs to require and take provisional measures in the form of securities, and to refuse delivery of these goods until such time as the required security is given. Securities are collected on an individual shipment basis and in the case where securities have been imposed to protect the Australian industry during the remainder of an investigation, continue to be collected until a recommendation is made to the Minister.

Where the Minister accepts the recommendation to impose duties, current securities are converted to an interim duty liability. If the interim duty liability for the period of the final finding is less than the amount of securities collected, any additional securities are refunded.

Public file

A file maintained by Customs, in accordance with s. 269ZI, containing non-confidential information pertaining to anti-dumping and countervailing investigations. The file is available for viewing and copying by all interested parties by contacting Trade Measures Office Management staff at Customs House, 5 Constitution Avenue, Canberra ACT 2601, telephone (02) 6275 6057.

Scope

Customs cannot recommend to the Minister whether anti-dumping action can be taken unless it has satisfactorily addressed the integral questions: have the goods been dumped, what has been the recent economic performance of the industry and has dumping caused material injury.

Securities

See *provisional measures*

Statement of essential facts

A statement placed on the public record at or before day 110 in the investigation process that sets out the facts on which the CEO will base his recommendation to the Minister. The statement will invite interested parties to lodge submissions in response to the issues raised.

Trade Measures Review Officer

Various sections of the Act refer to Customs decisions that are appealable. Applicants may ask the TMRO to review Customs decisions in the case of:

- an application that is not accepted for investigation;
- termination of investigations; and
- a negative preliminary decision under s. 269Z.

The TMRO may confirm Customs initial decision or remit the matter to Customs for investigation. The TMRO does not perform an investigative function.

Interested parties may also ask the TMRO to review certain ministerial decisions, such as:

- the publication of a dumping duty notices; and
- a decision not to impose duty.

13 LIST OF ATTACHMENTS

- 1 List of legal instruments for the Minister's signature
 - 2 Statement of facts and evidence relied upon
 - 3 ACDN advising initiation of the investigation
 - 4 History of investigations and review into CFG
 - 5 Pilkington's CFG tolerances and standard sizes
 - 6* Pilkington circular
 - 7* Export prices
 - 8* Normal values
 - 9* Dumping margins
 - 10* Dumped volumes
 - 11* The Australian market and market shares
 - 12* Price undercutting
 - 13* Price depression and price suppression
 - 14* Profits and profitability
 - 15* The Australian market and market shares for 3 mm CFG
 - 16* Pilkington's production costs, sales value and profitability for 3 mm CFG
 - 17* Calculation of NIP
- * Confidential attachments not included in the report that is available to the public

ATTACHMENT 1

LIST OF LEGAL INSTRUMENTS FOR THE MINISTER'S SIGNATURE

A schedule determining certain costs, export prices and whether dumping has or has not occurred.

A schedule directing that the price paid in respect of domestic sales of CFG in Indonesia be adjusted to make those prices comparable with relevant export prices.

A notice pursuant to s. 269TL(1) deciding that certain goods have not been dumped.

A notice pursuant to s. 269TG(4) accepting a price undertaking from PT Muliaglass.

ATTACHMENT 2

EVIDENCE RELIED UPON

Section 269TEA(5) requires that the report set out the material findings of fact on which the recommendations are based and also provide particulars of the evidence relied upon to support those findings.

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

Section of report	Evidence relied upon
Sections 3, 4, 5, 6, 7, 8, 9, 10 and 11.	<ul style="list-style-type: none">• the application;• submissions to which Customs had regard when formulating the SEF;• the result of on-site verifications in Australia and overseas;• any submission made in response to the SEF;• Customs database; and• any other relevant matter.

Australian Customs Dumping Notice
No.99/050

CUSTOMS ACT 1901 - PART XV B

**INITIATION OF AN INVESTIGATION INTO THE ALLEGED
DUMPING OF CLEAR FLOAT GLASS FROM INDONESIA**

The Australian Customs Service has initiated an investigation into an application lodged by on behalf of Pilkington (Australia) Limited, for a dumping duty notice in respect of clear float glass (CFG) exported to Australia from Indonesia.

The application alleges that CFG has been exported to Australia at prices less than the normal values and that the dumping has caused material injury to the Australian industry through:

- price depression;
- price undercutting;
- loss of market share;
- price suppression;
- loss of sales revenue and reduced profitability;
- unsatisfactory return on investment; and
- workforce reductions.

The public version of the application, available to interested parties on request, contains the basis of the alleged dumping.

The goods under investigation are CFG in the nominal thickness range of 3 to 12 mm. CFG is 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 DCS rate is 4%. Indonesia is subject to the DCS rate.

A notice under subsection 269TC(4) of the *Customs Act 1901* advising initiation of this investigation was published in the *Financial Review* on 7 December 1999. Interested parties are invited to provide written submissions in response to that notice.

The investigation period is 1 October 1998 to 30 September 1999. Customs will examine exports of CFG to Australia during that period to determine whether dumping has occurred. For injury analysis, Customs will examine details of the Australian market from 1 April 1997. Section 269TEA recognises that situations exist where regular importing patterns change after the initiation notice has been issued and provides that importations up to 20 days after the statement of essential facts must be taken into account.

In reaching its findings Customs must consider whether:

- the export price of CFG that has already been exported to Australia is less than the normal value of those goods; and
- the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and

- because of that, material injury to the Australian industry producing like goods has been caused and is likely to continue.

Interested parties are advised to lodge submissions no later than the close of business on Monday 17 January 2000. Parties should address their submission to:

The Director
Dumping Operations 3
Trade Measures Branch
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Interested parties may be granted an extension of time for lodgement of a submission, provided the request is in writing and is reasonable and practical given the circumstances. Parties responding by 17 January 2000 will have an opportunity to lodge a supplementary submission in reply to matters raised by other parties. The due date for any supplementary submissions is 31 January 2000.

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

Submissions lodged 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.

The attention of interested parties is also drawn to the World Trade Organization Anti-Dumping Agreement, Article 6.5.2, which 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.

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:

Trade Measures Branch
Customs House

5 Constitution Avenue
CANBERRA ACT 2601

To access the public record, contact Mr Phil Hilyard on telephone (02) 6275 6057.

The dates specified in this notice for lodging submissions must be observed to enable Customs to report to the Minister within the legislative timeframe. A preliminary affirmative determination may be made not less than 60 days from the date of initiation. Provisional measures may be imposed after the preliminary determination has been made.

A statement of essential facts will be placed on the public record by 27 March 2000 (or by such later date as the Minister may allow in accordance with s. 269ZHI). The statement will set out the material findings of fact on which Customs intends to base its recommendation to the Minister. That statement will invite interested parties to respond, within 20 days, to the issues raised therein.

Submissions received in response to the statement will be taken into account in compiling the report and recommendation to the Minister. The report to the Minister is due on 10 May 2000, 45 days after the statement of essential facts is issued.

Enquires about this notice should be directed to Chris Vincent, on telephone (02) 6275 6729, fax (02) 6275 6990 or e-mail chris.vincent@customs.gov.au. Customs dumping notices are available on the Internet at <http://www.customs.gov.au/notices/index.htm>.

(Paul O'Connor)
National Manager, Trade Measures
FOR CHIEF EXECUTIVE OFFICER
CANBERRA, ACT

7 December 1999

ATTACHMENT 4

History of investigations and review into CFG

Customs report	Customs finding	ADA recommendations
92/8 May 92	Positive finding against Belgium, China, France, Germany, Indonesia, the Philippines & Thailand. Negative finding against Malaysia & Thailand (countervailing) and Malaysia (dumping).	Measures imposed against specific exporters in Belgium, Germany, Indonesia, the Philippines & Thailand and all exporters in China; no action against France (report no. 81 of September 92). Confirms negative finding against Malaysia (report no. 78 of July 92). No review sought in respect of Thailand.
93/06 April 93	Negative finding against flat glass products, including CFG, from Belgium, China, Germany, Hong Kong, Indonesia, Korea, Malaysia & Thailand.	Confirms negative finding (report no. 104 of July 93).
93/08 April 93	Positive finding against additional exporter from Thailand	Measures imposed against additional exporter (report no. 109 of August 93).
Review 93/05 November 93	Review of NIFOBs for Belgium, China, Germany, Indonesia, the Philippines & Thailand.	
94/03 March 94	Positive finding against Singapore and certain thicknesses from an additional exporter in Indonesia. Negative finding against Hong Kong, certain thicknesses from an additional exporter in Indonesia and Malaysia.	Measures imposed against Singapore (for CFG with country of origin China, Indonesia, Malaysia, the Philippines and Thailand); negative finding against certain thicknesses from an additional exporter in Indonesia (report no. 134 of July 94). Confirms negative finding against certain thicknesses from an additional exporter in Indonesia (report no. 128 of June 94). No review sought in respect of Malaysia and Hong Kong.
Review 95/03 July 95	Review of normal values and NIFOBs for Belgium, China, Germany, Indonesia, the Philippines & Thailand.	
Review 96/12 May 96	Review of normal values for Indonesia (Asahimas).	
Review 97/06 April 97	Review of normal values for China.	
		Measures continued against China but not against other sources (report no. 177 of September 97). The Minister did not accept the ADA's recommendations and measures against the Philippines and Thailand were also continued (ACDN no. 97/076).
	Investigation into exports from Indonesia by Muliaglass terminated.	Confirms Customs decision (report no. 186 of May 98)
Review 98/07 July 98	Review of NIFOBs for China.	
		Measures against Thailand, other than Bangkok Float Glass, not continued (report no. 191 of August 1998).
Report 6 May 99	Review of NIFOBs for China, the Philippines, Singapore & Thailand.	

Measures against Singapore expired in August 1999.

ATTACHMENT 5

CFG tolerances

Nominal thicknesses (mm)	Acceptable tolerances (mm)	
	Minimum	Maximum
3	2.8	3.2
4	3.8	4.2
5	4.8	5.2
6	5.8	6.2
8	7.7	8.3
10	9.7	10.3
12	11.7	12.3

CFG sizes

Size	Description
Factory run size	Also known as jumbo size. Surface area equal or greater than 6 square metres for 3 mm thickness; and equal or greater than 7.5 square metres for other thicknesses.
Glazing stock size	Surface area equal or greater than 3 square metres and less than 6 square metres for 3 mm thickness; and equal or greater than 3 square metres and less than 7.5 square metres for other thicknesses.
Cut to size	Covers all other glass sizes regardless of thickness; i.e. less than 3 square metres in area.