



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**STATEMENT OF ESSENTIAL FACTS
NO. 479**

**ANTI-CIRCUMVENTION INQUIRY INTO THE SLIGHT
MODIFICATION OF GOODS EXPORTED TO AUSTRALIA**

**CLEAR FLOAT GLASS EXPORTED TO AUSTRALIA
FROM THE KINGDOM OF THAILAND**

November 2018

CONTENTS

1. SUMMARY AND RECOMMENDATIONS..... 4

1.1 INTRODUCTION 4

1.2 LEGISLATIVE FRAMEWORK 4

1.3 FINDINGS AND CONCLUSIONS 5

1.4 PROPOSED RECOMMENDATION 5

1.5 RESPONDING TO THIS SEF 6

2. BACKGROUND 8

2.1 INITIATION OF THE INQUIRY 8

2.2 ORIGINAL NOTICE 8

2.3 CURRENT MEASURES 8

2.4 CONDUCT OF THE INQUIRY 9

2.5 SUBMISSIONS RECEIVED FROM INTERESTED PARTIES 11

2.6 PUBLIC RECORD 11

3. THE GOODS SUBJECT TO THE ORIGINAL NOTICE..... 12

3.1 DESCRIPTION 12

3.2 TARIFF CLASSIFICATION 12

3.3 TARIFF CONCESSION ORDERS 13

4. THE CIRCUMVENTION GOODS..... 14

4.1 THE CIRCUMVENTION GOODS 14

4.2 TARIFF CLASSIFICATION OF THE CIRCUMVENTION GOODS..... 14

4.3 IDENTIFYING THE CIRCUMVENTION GOODS 14

4.4 CONCLUSION 15

5. HAS A CIRCUMVENTION ACTIVITY OCCURRED? 16

5.1 FINDING 16

5.2 LEGISLATIVE FRAMEWORK 16

5.3 ARE CIRCUMVENTION GOODS EXPORTED TO AUSTRALIA FROM THAILAND? 16

5.4 BEFORE THAT EXPORT, THE CIRCUMVENTION GOODS ARE SLIGHTLY MODIFIED..... 19

5.5 THE USE OR PURPOSE OF THE CIRCUMVENTION GOODS IS THE SAME BEFORE, AND AFTER, THEY ARE SO SLIGHTLY MODIFIED 33

5.6 HAD THE CIRCUMVENTION GOODS NOT BEEN SO SLIGHTLY MODIFIED, THEY WOULD HAVE BEEN THE SUBJECT OF THE NOTICE 34

5.7 SECTIONS 8 OR 10 OF THE DUMPING DUTY ACT DOES NOT APPLY TO THE CIRCUMVENTION GOODS 34

5.8 CONCLUSION – A CIRCUMVENTION ACTIVITY HAS OCCURRED 34

6. PROPOSED ALTERATION TO THE NOTICE 35

6.1 LEGISLATIVE FRAMEWORK 35

6.2 APPLICANT’S PROPOSED ALTERATIONS..... 35

6.3 COMMISSION’S PROPOSED RECOMMENDATION..... 35

7. PROPOSED DATE OF EFFECT 39

7.1 LEGISLATIVE PROVISIONS 39

7.2 PROPOSED DATE OF EFFECT OF CHANGES TO ORIGINAL NOTICES..... 39

8. APPENDICES AND ATTACHMENTS..... 40

PUBLIC RECORD

ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
CFG	clear float glass
China	People's Republic of China
the circumvention goods	slightly modified clear float glass from Thailand
the combination method	combination fixed and variable duty method
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CNC	computer numerically controlled
CON 479	<i>Anti-Dumping Commission Consideration Report No.479</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the goods	the goods the subject of the notice
Guardian	Guardian Industries Corp. Ltd.
IDD	interim dumping duty
Indonesia	Republic of Indonesia
Logan Glass	Fossbridge Pty Ltd (trading as Logan Glass)
the Minister	Minister for Industry, Science and Technology
mm	millimetre
the notice	Dumping duty notice published under section 269TG(2) of the Act
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 335	<i>Anti-Dumping Commission Report No.335</i>
REQ	Response to Exporter Questionnaire
TCO	Tariff Concession Order
Thailand	the Kingdom of Thailand
SEF	statement of essential facts
sq.m	square metre
UAE	United Arab Emirates
Viridian	CSR Viridian Ltd
Walshs Glass	DBSJ Investments Pty Ltd (trading as Walshs Glass)

1. SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) relates to the Commissioner of the Anti-Dumping Commission's (the Commissioner) anti-circumvention inquiry into whether a circumvention activity has occurred in relation to a dumping duty notice (the notice) published under subsection 269TG(2) of the *Customs Act 1901* (the Act). The inquiry relates to the notice applying to clear float glass (CFG or the goods) exported to Australia from the Kingdom of Thailand (Thailand).¹

The anti-circumvention inquiry follows an application by CSR Viridian Ltd (Viridian). Viridian allege that a circumvention activity has occurred for the purposes of subsection 269ZDBB(6), in relation to the notice, in the circumstances prescribed by section 48 of the *Customs (International Obligations) Regulation 2015* (the Regulation) through the slight modification of goods exported to Australia. Viridian claims that the goods have been slightly modified so as to avoid the notice. The slight modification is alleged to have occurred through additional edge working to the goods, along one or more sides (the circumvention goods).

This SEF sets out the facts on which the Commissioner proposes to base his recommendations regarding the inquiry to the Minister for Industry, Science and Technology (the Minister), subject to any submissions received in response to this SEF.

1.2 Legislative framework

Division 5A of Part XVB sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting an anti-circumvention inquiry in relation to the goods covered by an application for the purpose of making a report to the Minister.

Subsection 269ZDBB(6) provides that a circumvention activity, in relation to a dumping duty notice, occurs in the circumstances prescribed by the Regulation.

Section 48 of the Regulation prescribes the slight modification of goods exported to Australia as a circumvention activity for the purposes of subsection 269ZDBB(6).

Subsection 269ZDBF requires that, in relation to an inquiry of this nature, the Commissioner must place a SEF on the public record within 110 days after publication of the notice initiating the inquiry (or such longer period as is allowed), on which the Commissioner proposes to base a recommendation to the Minister.

In accordance with subsection 269ZDBH, the Minister, after considering the Commissioner's report and any other information that the Minister considers relevant, must declare by notice, that for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act):

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

PUBLIC RECORD

- the original notice is to remain unaltered; or
- the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

1.3 Findings and conclusions

The Commissioner's findings and conclusions in this SEF are based on available information concerning the goods and the circumvention goods at this stage of the inquiry. A summary is provided below and there is greater detail in the remainder of this report.

The Commissioner has found that the following applies:

- the circumvention goods are exported to Australia from a foreign country in respect of which the notice applies (Thailand);
- before that export, the circumvention goods are slightly modified;
- the use or purpose of the circumvention goods is the same before, and after, they are slightly modified;
- had the circumvention goods not been so slightly modified, they would have been subject to the notice; and
- sections 8 and 10 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

The degree of modification has been examined in light of the non-exhaustive list of criteria outlined in subsection 48(3) of the Regulation. The Commissioner has compared the goods and the circumvention goods and determined that the circumvention goods have been slightly modified through additional edge working to the goods, along one or more sides.

Accordingly, the Commissioner considers that a circumvention activity, in the form of slight modification of goods exported to Australia from Thailand, has occurred in relation to the notice.

1.4 Proposed recommendation

Based on the preliminary findings and conclusions, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend that the Minister alter the notice as it applies to Thailand.²

The Commissioner proposes to recommend that, in relation to Thailand:

- the notice be altered to change the description of the goods covered by that notice to include the circumvention goods. It is recommended that this revision have retrospective effect from the day of publication of the notice about the conduct of this inquiry, which was 18 June 2018. As a result of this recommendation, should it be accepted by the Minister, importers of the circumvention goods would be

² It is noted that the notice also applies to exports of the goods from the People's Republic of China and the Republic of Indonesia (Indonesia). However, the circumvention findings in this report relate only to Thailand. No alteration to the notice in respect of China and Indonesia is recommended.

PUBLIC RECORD

subject to interim dumping duty (IDD) in respect of the circumvention goods entered for home consumption on and after 18 June 2018. To give effect to the respective alteration to the notice, imports of the circumvention goods entered for home consumption on and after 18 June 2018 to the date of the Minister's declaration in relation to this inquiry, should one be made, would be subject to IDD based on the variable factors and form of measure currently specified on the notice;

- the notice be altered to specify different variable factors. It is recommended that this revision have prospective effect from the day of the Minister's declaration. As a result of this recommendation, should it be accepted by the Minister, all exporters from Thailand would be subject to the variable factors currently applicable to the category of 'uncooperative and all other exporters' from Thailand; and
- the form of measures applicable to all exporters from Thailand be changed from the *ad valorem* duty method to the combination fixed and variable duty method (combination method). It is recommended that this revision have prospective effect from the day of the Minister's declaration, should one be made by the Minister.

1.5 Responding to this SEF

This SEF sets out the facts on which the Commissioner proposes to base a recommendation to the Minister, unless the inquiry is terminated earlier. The SEF informs interested parties of the facts established to date and allows them to make submissions in response. It is important to note that this SEF may not represent the final views of the Commissioner.

In making recommendations in a final report to the Minister, the Commissioner must have regard to submissions received in response to the SEF within 20 days of the SEF being placed on the public record.³ Responses to this SEF should be provided to the Commissioner no later than 26 November 2018.⁴

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after 26 November 2018, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the final report to the Minister.

The final report is due to the Minister on or before 18 December 2018.

Submissions should preferably be emailed to investigations3@adcommission.gov.au.

Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

The Director - Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

³ Subsection 269ZDBG(2)(a)(iv).

⁴ The due date is 25 November 2018, however as this falls on a Sunday, the effective due date is taken to be the next working day, 26 November 2018.

PUBLIC RECORD

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at www.adcommission.gov.au.

2. BACKGROUND

2.1 Initiation of the inquiry

On 21 May 2018, Viridian, a member of the Australian industry for like goods, lodged an application requesting the conduct of an anti-circumvention inquiry relating to the notice applying to CFG exported to Australia from Thailand.

In its application, Viridian considers it appropriate to alter the notice because an exporter of the goods from Thailand has slightly modified those goods in such a way that the importation of those goods into Australia does not attract anti-dumping duty.

Viridian's application alleges that, in the absence of the slight modification of the goods, in the form of edge working the CFG sheet along one or two sides, the circumvention goods would ordinarily be declared as CFG and would therefore be subject to the notice.⁵

Having received further information in the application, on 18 June 2018, the Commissioner decided not to reject the application and initiated an anti-circumvention inquiry into the alleged slight modification of CFG exported to Australia from Thailand.

ADN No. 2018/93 and *Consideration Report No. 479* provide further details relating to the initiation of the inquiry and are available on the public record.

2.2 Original notice

Anti-dumping measures in the form of a dumping duty notice apply to CFG from China (other than by Xinyi Ultrathin (Donguan) Co. Ltd (Xinyi)), Indonesia and Thailand. The measures were first imposed on 17 October 2011 following consideration of *Trade Measures Branch Report 159C* (REP 159C) by the then decision maker, the Attorney General.⁶

The calculation of the amount of IDD to be collected was established using the combination method, comprising a fixed rate of duty (based on the margin of dumping found for each thickness of CFG) and a variable rate of duty (based on the confidential ascertained export price for each thickness of CFG). The statistical quantity recorded in the Department of Home Affairs Integrated Cargo System is square metres (m²), and so the fixed and variable components are calculated by reference to m².

2.3 Current measures

Following the completion of a continuation inquiry which commenced on 22 February 2016, the Commission published a notice on 8 September 2017 regarding the decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science to accept the recommendations in *Anti-Dumping Commission Report No. 335* (REP 335), which included:

⁵ The Commission notes that the number of edges which have been worked does not constrain the assessment of what would constitute a slight modification.

⁶ REP 159C <http://www.adcommission.gov.au/cases/Pages/ArchivedCases/EPR159c.aspx>.

PUBLIC RECORD

- securing the continuation of anti-dumping measures on the goods exported from China, Indonesia and Thailand for a further five years from 18 October 2017; and
- altering the notice as if different specified variable factors had been fixed in relation to all exporters subject to the measures generally.

ADN No. 2016/86, in notifying the findings of REP 335 specified a rate of IDD for CFG exported from Thailand by:

- Guardian Industries Corp Ltd (Guardian) of 8.8 per cent; and
- Uncooperative and all other exporters from Thailand of 25.8 per cent.

The IDD collected in relation to Thailand is calculated using the ad valorem duty method.

2.4 Conduct of the inquiry

As part of this inquiry, the Commissioner established an inquiry period commencing 1 January 2013 (the inquiry period) for the purposes of assessing whether a circumvention activity has occurred.

2.4.1 Statement of essential facts

The initiation notice advised that the SEF would be placed on the public record by 6 October 2018. However, as advised in ADN No. 2018/150, the Commissioner approved an extension of time for the publication of the SEF until 5 November 2018.⁷

2.4.2 Final report

The Commissioner's final report and recommendations in relation to this inquiry must be provided to the Minister on or before 18 December 2018, unless the inquiry is terminated earlier.

2.4.3 Australian industry

The Commissioner is satisfied that the applicant seeking an alteration of the notice, Viridian, represents a portion of the Australian industry producing like goods to the goods covered by the measures.

The Commission conducted a visit to Viridian's CFG production line and glass processing premises in July and August 2018. The report made in relation to the visit is available on the public record.⁸

2.4.4 Importers

The Commission identified approximately 50 importers in the Australian Border Force (ABF) import database that imported glass from Thailand under tariff subheading

⁷ The due date is 3 November 2018, which falls on a Saturday. As a result, the effective due date is the following business day, being 5 November 2018.

⁸ Case 479 Public Record Item No.6

PUBLIC RECORD

7006.00.00, which is relevant to the circumvention goods, in the period between 1 January 2017 and 30 June 2018.

The Commission forwarded importer questionnaires to all of the importers identified and placed a copy of the importer questionnaire on the Commission's website. The questionnaire included three parts, Part A, B and C. Part A was requested to be returned by 27 June 2018. 11 importers initially indicated their intent to further participate with the inquiry by completing Part A.

The Commission assessed the Part A responses, taking into account various factors such as the total value of goods imported and location of the importer. The Commission then advised five importers that they were not required to participate any further. The remaining six importers were invited to complete Part B and C of the questionnaire. The Commission subsequently received four completed responses.

The Commission arranged importer visits to Fossbridge Pty Ltd (trading as Logan Glass) (Logan Glass) in Brisbane, Queensland, and DBSJ Investments Pty Ltd (trading as Walshs Glass) (Walshs Glass) in Perth, Western Australia. A copy of the visit report relating to Logan Glass is available on the public record.⁹

Following the visit to Walshs Glass, Walshs Glass informed the Commission that it did not wish to have a report relating to its visit placed on the public record. Walshs Glass did not specify its reasons to the Commission such that the requirements of section 269ZJ, relating to the requirement for the Commissioner to maintain a public record, could not be satisfied. As a result, the Commission has not published a visit report in relation to Walshs Glass. The information that the Commission has had regard to from Walsh Glass questionnaire response has been limited to commercial documents obtained in relation to its imports from Guardian.

Information contained in questionnaire responses received from Cooling Bros. Glass Company Pty Ltd and Bronze and Silver Glass Pty Ltd has also been relied on for the inquiry, however the Commission did not undertake a visit to these importers.

The Commission requested that the ABF arrange targeted inspections of suspected circumvention goods imported into Australia from Thailand under tariff subheading 7006.00.00, statistical code 49, of the Tariff Act. Together with ABF Cargo Examination officers, staff from the Commission attended cargo inspections in relation to two importers located in Geelong, Victoria and Sydney, New South Wales respectively. To ensure that the ABF operations remain confidential, the Commission has not published the identity of the importers subject to the cargo inspections. However, full details about each cargo inspection is provided at **Confidential Appendix 1 and 2**. The information obtained from each cargo inspection has been utilised in this report in a non-confidential manner.

2.4.5 Exporter

On 21 June 2018, the Commission forwarded an exporter questionnaire to Guardian. Guardian was identified by the Commission as the predominant exporter of the goods and

⁹ Case 479 Public Record Items No.9

PUBLIC RECORD

the circumvention goods from Thailand. A copy of the questionnaire sent to Guardian is available on the Commission's website.

In its 25 July 2018 submission, the same day on which its response to the exporter questionnaire (REQ) was initially due, Guardian indicated that it would '*be happy to provide further information to the Commission, and facilitate a site visit*'.¹⁰ After receiving an extension of 14 days to the original REQ due date, Guardian subsequently allowed the revised due date of 8 August 2018 to lapse and did not submit an REQ.¹¹

2.5 Submissions received from interested parties

The Commission received two submissions from interested parties prior to publication of this SEF. These two submissions have been considered by the Commissioner in reaching the conclusions contained within this SEF. All submissions received are available on the public record.

Public Record Item No.	Entity	Date Received
4	Guardian Industries Corp. Ltd	25/07/2018
7	Guardian Industries Corp. Ltd	21/09/2017

Table 1 – Submissions received from interested parties

2.6 Public record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available in hard copy by request in Melbourne or online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this SEF.

¹⁰ Case 479 Public Record Item No.4

¹¹ Case 479 Public Record Item No.5

3. THE GOODS SUBJECT TO THE ORIGINAL NOTICE

3.1 Description

The goods the subject of the original notice are CFG in nominal thicknesses of 3 to 12 millimetres (mm).

The tolerances for each of these thicknesses are set out in Table 2.

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

Table 2 – Thickness tolerances for CFG

The goods have the following characteristics:

- transparent;
- flat; and
- rectangle or square in shape.

Glass with the following characteristics is not the goods the subject of the original notice:

- coated, coloured, tinted or opaque;
- absorbent, reflective or non-reflective layer;
- wired;
- bent, edge-worked, engraved, drilled, enamelled or otherwise worked;
- framed or fitted with other materials;
- toughened (tempered) or laminated;
- acid etched; or
- low iron.

3.2 Tariff classification

The goods are currently classified under tariff subheading 7005.29.00, statistical codes 3, 4, 5, 6 and 9, as described in Schedule 3 to the Tariff Act specified below.

PUBLIC RECORD

Tariff subheading	Statistical code	Description
7005.29.00: Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.	3	Exceeding 3 mm but not exceeding 4 mm
	4	Exceeding 4 mm but not exceeding 6 mm
	5	Exceeding 6 mm but not exceeding 10 mm
	6	Exceeding 10 mm
	9	Not exceeding 3 mm

Table 3 – Tariff subheading 7005.29.00 Goods Description

3.3 Tariff Concession Orders

There are two Tariff Concession Orders (TCOs) linked to tariff classification 7005.29.00, detailed below:

TCO	Description
TC 9209312	Float Glass, clear, iron content equal to or less than 0.02 per cent in sheets, non-wired, without an absorbent or reflecting layer, not being cast, rolled, drawn or blown glass.
TC 8533852	Glass, having a thickness of not less than 13.5mm

Table 4 – Tariff Concession Orders applying to CFG

Glass subject to the TCOs above are not the goods. The glass applicable to TC 9209312 is a low iron glass, and TC 8533852 has a nominal thickness exceeding the accepted maximum specified tolerance of glass with a thickness of 12 mm (as noted in section 3.3 above).

4. THE CIRCUMVENTION GOODS

4.1 The circumvention goods

The goods subject to the anti-circumvention inquiry (the circumvention goods) were described by the applicant in its application as:

Clear float glass (CFG) in nominal thicknesses of 3 to 12 millimeters (mm) (i.e. the goods currently the subject of the original anti-dumping notice) which has been edged worked along at least one side of the CFG sheet.

With the exception of the worked edge, it has been alleged that the circumvention goods are identical to the goods subject to the anti-dumping measures.

4.2 Tariff classification of the circumvention goods

The circumvention goods are allegedly being imported into Australia from Thailand under tariff subheading 7006.00.00, statistical code 49 of Schedule 3 to the Tariff Act. The following table provides the details regarding goods classified under 7006.

Tariff Subheading	Statistical Code	Unit	Description
7006.00.00	49	Not Specified	<i>Glass of 7003¹², 7004¹³ or 7005¹⁴, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials</i>

Table 5 – Processed glass tariff subheading statistical code descriptions

4.3 Identifying the circumvention goods

The tariff subheading under which imports of the circumvention goods are classified (7006.00.00) includes a range of glass products. Glass products within this tariff subheading, other than the circumvention goods, are not within the scope of this inquiry, i.e. cast and rolled glass and drawn and blown glass.

Tariff subheading 7006 includes glass products of tariff subheading 7005 (applicable to the goods) which have been subjected to various forms of processing. As part of this inquiry, the Commission narrowed its examination of processed glass to edge-worked glass products within tariff subheading 7006.00.00, on the basis that this is the type of processing which Viridian has alleged is applied to the circumvention goods from Thailand.

¹² Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.

¹³ Drawn glass and blown glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.

¹⁴ Refer to section 3.1.

PUBLIC RECORD

Further, it is noted that the term 'edge-worked' in the goods description for tariff subheading 7006 includes a range of edge working processes that are utilised in the glass industry. During the inquiry, the Commission visited Viridian's glass processing facility in order to further evaluate its claims and to define the circumvention goods being exported to Australia from Thailand in a precise manner.

In a report on the visit to Viridian, the Commission established that the type of edge working Viridian describes in its application is commonly referred to as an 'arris' or 'rough arris'.¹⁵ The term 'seamed' is also used in relation to the same process. The Commission further established that an arrised edge is the result of removing sharp edges from the surface and cut edges of glass.

Viridian considered that applying an arris is a basic form of edge working and is distinct from other types of edge working, e.g. grinding and polishing operations. Table 6 below outlines the different types of edge working undertaken by Viridian.

Edge working		
Types of glass edge work	Detail	Application
Clean cut	As cut edges, edges are sharp	General glazing concealed edges
Rough arriss	Sharp edges are removed. Minimum edge work for toughened glass	General glazing concealed edges
Flat grind or flat smooth	Machine smoothed edges	Silicon butt joints
Flat polish	Machine polished	Exposed edges and furniture
Mitre	Machine edge – 45mm or 67.5mm	Angled silicon glazing
Bevel	Machine edge 4mm – max 25mm 5mm – max 30mm 6mm to 19mm – max 35mm	Decorative finish for windows, furniture and mirrors – exposed edges also require flat polishing

Table 6 – Viridian Glass Edge Types¹⁶

4.4 Conclusion

The Commission has established that the edge working applied to the circumvention goods specifically relates to 'arris', 'rough arris' or 'seamed' CFG.

For the purpose of this inquiry, the Commission's analysis of tariff subheading 7006.00.00 (statistical code 49) has been narrowed to examine imports from Thailand which are edge-worked in this manner.

¹⁵ Case 479 Public Record Item No.6

¹⁶ <https://www.viridianglass.com/-/media/viridian-glass/files/downloads/brochures/glass-processing.pdf>

5. HAS A CIRCUMVENTION ACTIVITY OCCURRED?

5.1 Finding

Having regard to the circumstance outlined in subsection 48(2) of the Regulation, the Commission finds that a circumvention activity has occurred in relation to the notice as it applies to Thailand.

5.2 Legislative framework

For the purpose of subsection 269ZDBB(6), a circumvention activity involving the slight modification of goods requires a circumstance in which all of the following, as set out in subsection 48(2) of the Regulation apply:

- a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice applies;
- b) before that export, the circumvention goods are slightly modified;
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
- e) section 8 or 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), as the case requires, does not apply to the export of the circumvention goods to Australia.

For the purpose of whether a circumvention goods is slightly modified, the Commission has also compared the circumvention goods and the goods the subject of the notice, having regard to any factor considered relevant and the factors described in subsection 48(3) of the Regulation as addressed in the following.

5.3 Are circumvention goods exported to Australia from Thailand?

The Commission analysed tariff subheading 7006.00.00 (statistical code 49) and observed that a range of glass products, including the circumvention goods, were imported from Thailand.

The Commission ascertained that the circumvention goods were exported to Australia from Thailand by having regard to the following:

- ABF import database statistics;
- documentary evidence obtained from cooperating importers;
- targeted examinations of selected consignments from Thailand; and
- submissions made by Guardian from Thailand.

5.3.1 ABF import database

The Commission examined the manner in which imports from Thailand were described in the ABF import database in relation to tariff subheading 7006.00.00 (statistical code 49), using the field titled 'goods description'.

PUBLIC RECORD

The goods descriptions included a number of common terms and various levels of detail.

The Commission's examination revealed that importations declared under tariff subheading 7006.00.00 included goods descriptions consistent with the circumvention goods discussed in section 4.4. Common terms included '*float clear arris*', '*arris edge*', '*float glass arris*', '*seamed*' and '*edge-worked float glass*'.

The Commission also observed numerous importations with goods descriptions that included the number of edges and on which side of the glass sheet an arris edge had been applied. Examples include '*float clear 3.00 mm arris edge 1 face 1 short 2440 x 3660 mm*'. The Commission considers that the ABF import database establishes that the circumvention goods were exported to Australia from Thailand.

However, numerous goods descriptions simply referenced the tariff subheading description, e.g. '*Glass of 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enamelled or otherwise worked*', or at an even more basic level, the goods were simply described as '*worked glass*'.

Notwithstanding the lack of detail in certain goods descriptions, the Commission established that 99 per cent of importations under tariff subheading 7006.00.00 from Thailand were exported by Guardian. Further analysis indicated that, from the start of 2016, when the dramatic rise in goods imported under tariff subheading 7006 was observed, the term '*float glass arris edge*' appeared in 65 per cent of consignment descriptions.¹⁷ The remaining quantity did not contain sufficiently detailed descriptions to conclude the nature of the goods, e.g. '*Glass of 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enamelled or otherwise worked*'.

To supplement the evidence from the ABF import database, the Commission selected a number of importations from Guardian where the goods descriptions were lacking in detail and included these as part of the importer verification and ABF targeted inspection processes.

5.3.2 Importer verification

The Commission obtained commercial invoices at **Confidential Attachment 2** relating to importations declared by three importers in the period 1 January 2017 to 31 April 2018.

The description of the goods on the invoices included terms which referred to the items as '*Float Clear....Arris Edge 1 Face 1 Short...*' or '*Float Clear....Arris Edge 1 Face 1 Long..*'.

The Commission considers the reference to the terms 'float', 'clear' and 'arris edge' in the product descriptions on the commercial invoices confirmed that the shipments were of CFG with an arris edge. The commercial invoices examined also confirmed that the nominal thickness of the glass was within the range of nominal thickness referred to in the goods description for the goods subject to the original notice. The importer who was visited also confirmed that the arris edge was not the result of polishing or grinding and if such treatment was required this would be stipulated on the commercial invoices.

¹⁷ Confidential Attachment 1 – Worksheet '*Description Analysis*'

5.3.3 ABF consignment examination

The Commission engaged the assistance of the ABF's cargo examination process to undertake targeted examinations of consignments of suspected circumvention goods from Thailand that were described as CFG with edge working in cargo manifests.

Two examinations were jointly attended by staff from the Commission and ABF at the premises of two importers, from New South Wales and Victoria. The cargo examinations provided the Commission with an opportunity to inspect imports of the circumvention goods in the state in which they were imported and provided a secondary avenue in which the Commission could examine documentary evidence to ascertain the characteristics of the circumvention goods being imported.

As noted in section 5.3.1, the Commission identified a large number of declarations in the ABF import database that were accompanied with descriptions that did not allow precise identification of the consignment. Consignments which described goods in this manner formed part of the cargo examination. The cargo examination process enabled the Commission to accurately identify these goods.

In summary, the commercial documentation obtained through the cargo examination process was found to refer to the same terms as those identified on the commercial documentation provided by importers.¹⁸ The goods in the consignments subject to the cargo examination were also within the nominal thickness range listed in the goods description for the goods subject to the notice.

5.3.4 Exporter submissions

In its 25 July 2018 submission to the inquiry, Guardian informed the Commission that it has been selling edge-worked CFG from 2004 and describes its '*long sales history of edge-worked CFG*'.¹⁹ In a later submission on 21 September 2018, Guardian advised that it would be ending the export of '*arris-edged CFG*' from Thailand by the end of 2018 and refers to its early 2018 decision to phase out its supply of '*arris-edged CFG*' from Thailand.²⁰ Unlike its first submission, which does not specify the type of edge working in reference to its exports of edge-worked CFG, Guardian's second submission does specify the term '*arris*' in discussing its plans to cease exportation of those particular goods. When coupled with the Guardian commercial invoices obtained through importer questionnaire responses and the ABF consignment examinations, the Commission is satisfied that Guardian has exported the circumvention goods from Thailand.

5.3.5 Conclusion

The Commission's analysis confirms that the circumvention goods were exported to Australia from Thailand during the inquiry period.

¹⁸ Consignment Inspection Reports at Confidential Appendix 1 and 2 refer.

¹⁹ Case 479 Public Record Item No.4

²⁰ Case 479 Public Record Item No.7

PUBLIC RECORD

Pursuant to subsection 48(2)(a) of the Regulation, the Commission is satisfied that circumvention goods are exported to Australia from Thailand, a foreign country in respect of which the notice applies.

5.4 Before that export, the circumvention goods are slightly modified

In the previous section, the Commission established that circumvention goods are exported to Australia from Thailand. However, under subsection 48(3) of the Regulation, it is necessary to determine whether, before that export, the circumvention goods were slightly modified for the purposes of subsection 48(2)(b) of the Regulation. In doing so, the Commissioner must compare the circumvention goods and the goods the subject of the notice, having regard to any factor that the Commissioner considers relevant, which may include the 13 factors listed in subsection 48(3) of the Regulation.

In evaluating whether the circumvention goods are slightly modified when compared to the goods the subject of the notice, the Commission's assessment has had regard to the following factors listed in subsection 48(3) of the Regulation.

5.4.1 Each good's general physical characteristics²¹

Viridian's application submitted that the goods and the circumvention goods are manufactured using the same initial production processes. It claims that there is little difference between each good, describing that the edge working on the circumvention goods is achieved by processing the CFG in an edge machine to create '*a slight edge on the CFG*' along one or two sides of the sheet of CFG.

To establish each goods general physical characteristics, the Commission has relied on:

- ABF import database goods descriptions;
- commercial documentation and shipping documents subject to examination during the inquiry;
- manufacturing process documentation; and
- site inspections at Viridian, importers who cooperated with the inquiry, and the ABF cargo inspection process.

As a result of a visit to Viridian's CFG production line and related glass processing business, the Commission established that applying an arris edge involved removing the original edge produced by the CFG production process using abrasive belts.²²

The diagrams at Figure 1 and 2 below compare the cross section profiles of CFG (the goods) as it appears directly after being produced on the CFG production line and CFG with an arris edge (the circumvention goods).

²¹ Subsection 48(3)(a) of the Regulation.

²² Case 479 Public Record Item No.6

PUBLIC RECORD

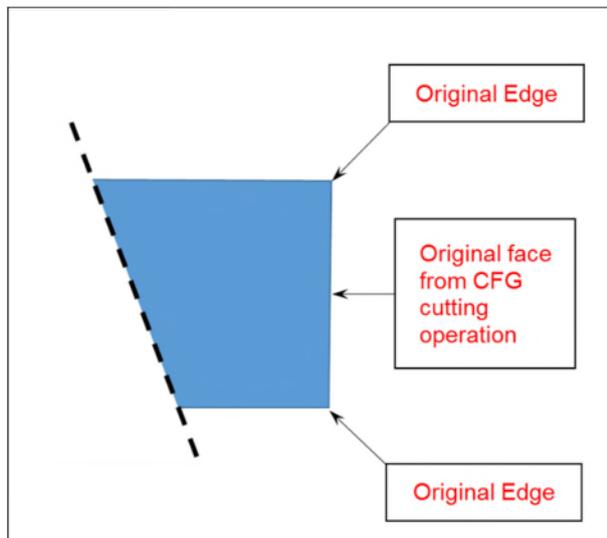


Figure 1 – CFG edge profile

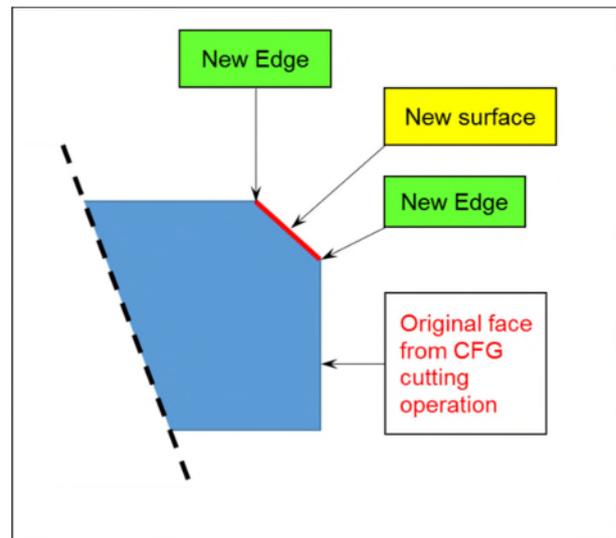


Figure 2 – CFG edge profile with arris

The only difference between the two profiles in Figures 1 and 2 is the addition of an arris edge. This is consistent with the observations of import declarations and commercial invoices for the circumvention goods exported from Thailand which contained the term 'arris'. The Commission notes that the diagram at Figure 2 is schematic and does not seek to represent the amount of material that might be removed as a result of the arris process.

In order to ascertain the extent of the modification that results from the application the arris, the Commission would have preferred to examine the production process at a Thai exporter's manufacturing facility. However, since no exporters of the circumvention goods from Thailand cooperated with the inquiry, the Commission has had regard to the observations made in relation to a visit to Viridian and considers this as a suitable proxy.

During the visit to Viridian, the Commission examined examples of its CFG products that were processed to include an arris edge. The Commission identified two principal methods that could be used to apply an arris edge to CFG. Figure 3 below shows an example of CFG with an arris edge that was applied using a fully automated computer numerically controlled (CNC) process. In contrast, Figure 4 shows an arris edge which resulted from a manual application using held belt sanding equipment. In either example, the arris edge of the glass shows similarities to the image at Figure 2. Viridian also provided documents at **Confidential Attachment 3** relating to its manufacturing quality control process which indicated the amount of material to be removed, particularly if the glass was to be heat treated. The diagrams on the quality control documents were also in accord with the images below and the Commission's diagram at Figure 2.

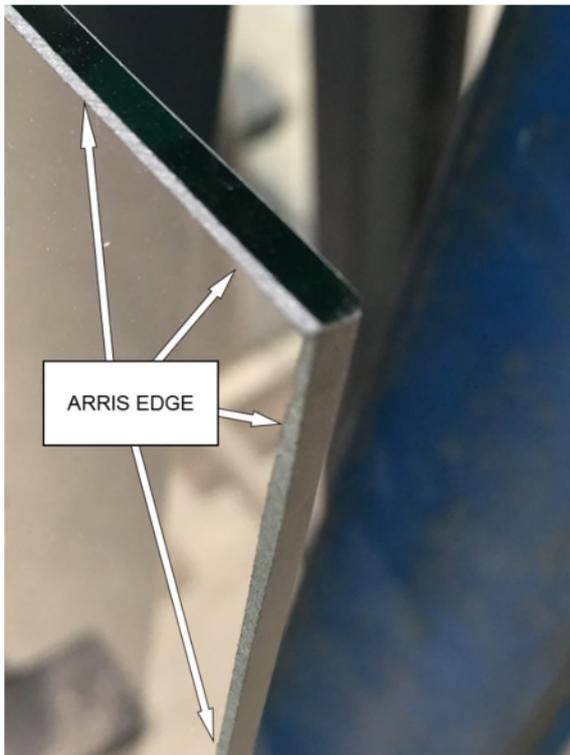


Figure 3 – Arris edge from CNC process

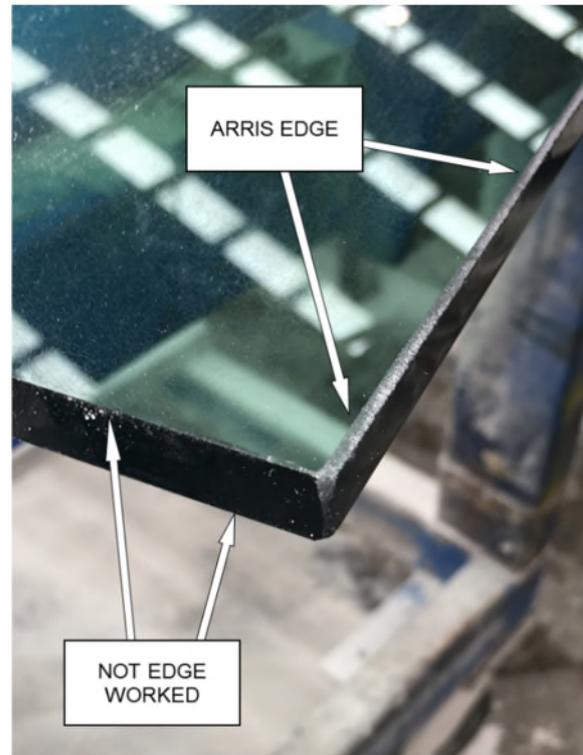


Figure 4 – Arris edge applied manually

During the visits to importers of the circumvention goods, either for verification or as part of the ABF cargo examinations, the Commission examined circumvention goods which had been imported from Guardian in Thailand. The Commission staff in attendance worked with company representatives to ascertain which of the edges of the circumvention goods had the arris edge.

Whilst the importers were able to point out which edge had the arris, the Commission staff observed that the amount of material which had been removed was so minimal that no visual differences could be distinguished between those edges which were indicated as having the arris compared to the edges which did not. The Commission also noted that the arris edge on the circumvention goods was as prominent as was observed at Viridian, particularly from Viridian's CNC process. The presence of a white powdery residue, which the Commission was informed by importers was the result of the edge working process, was the only physical difference that was obvious to the Commission between arrised edges and non-arrised edges on the circumvention goods.

Notwithstanding that the Commission could not visually distinguish any differences in the appearance of the edges, the commercial documentation which accompanied the circumvention goods being examined indicated the presence of an arris edge.

Noting the above, in order to define the features which make up the general physical characteristics of the circumvention goods the Commission has analysed the product descriptions on the commercial invoices for the sample of importations subject to verification.

The commercial invoices subject to examination at the importer visits undertaken by the Commission revealed that the circumvention goods were described as either:

PUBLIC RECORD

- 'Float Clear [thickness] Arris Edge 1 Face 1 Short [glass dimensions]'; or
- 'Float Clear [thickness] Arris Edge 1 Face 1 Long [glass dimensions]'.

The Commission's analysis of the circumvention goods being exported to Australia at section 4 found that the circumvention goods were of CFG. This finding is consistent with the terms 'Float Clear' in the product descriptions on the commercial invoices examined during verification and with what has been identified in goods descriptions in the ABF import data (Confidential Attachments 1 and 2 refer).

The reference to the term 'long' and 'short' is simply a reference to which side of the CFG had the arris edge. The reference to '1 Face 1 Short' or '1 Face 1 Long' on commercial invoices refers to the number of edges and which sides, i.e. either the long or short side, have the arris edge. Figures 5 and 6 below depict the circumvention goods in either '1 Face 1 Short' or '1 Face 1 Long' configuration. The Commission notes that to arris all edges and faces of the glass would require 12 edges to arris. However, on the basis of the Commission's examination, only one edge on the circumvention goods has an arris.

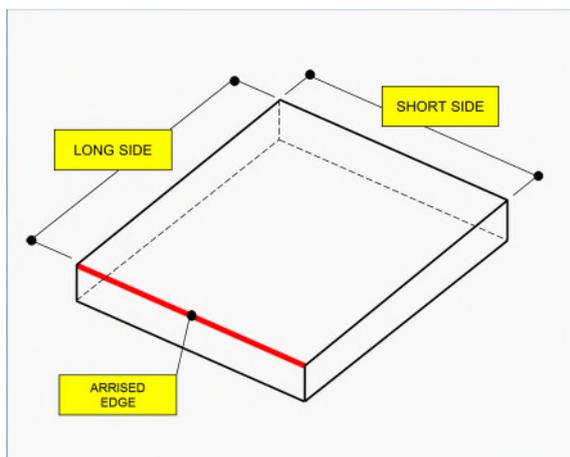


Figure 5 – 1 Face 1 Short

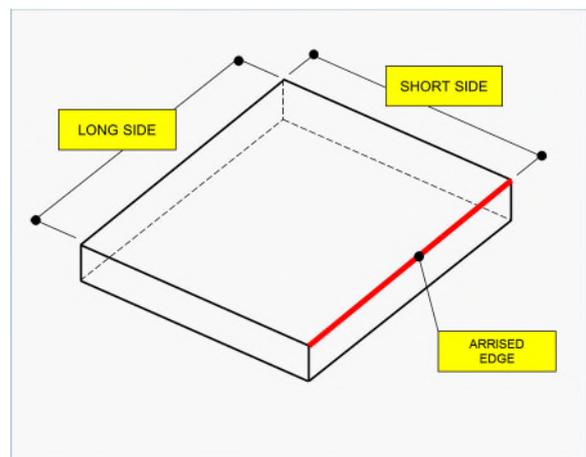


Figure 6 – 1 Face 1 Long

After relying on the analysis of the general physical characteristics of the circumvention goods, the Commission can compare the differences between the circumvention goods and the goods subject to the notice. Table 7 below outlines the differences in the key features present in each good's general physical characteristics.

PUBLIC RECORD

Feature	The goods	Circumvention goods	Differences
Derived of CFG	Yes	Yes	None
Nominal thickness between 3 and 12 mm	Yes	Yes	None
Transparent	Yes	Yes	None
Flat	Yes	Yes	None
Rectangular or square in shape	Rectangular	Rectangular	None
Number of edges	12	12	None
Number of edges with edge working	0	1 or more*	visual differences could not be distinguished, defer to documentation to validate difference
Type of edge working	None	Rough arris	visual differences could not be distinguished, defer to documentation to validate difference.

Table 7 – Key physical feature comparison

As outlined in Table 7, the only difference in the general physical characteristics of the circumvention goods and the goods the subject of the notice, is the presence of one or more arris edges on the CFG sheet (out of a possible 12 edges). This Commission considers that this supports that there was a slight modification of goods.

5.4.2 Each good's end use²³

The circumvention goods exported to Australia from Thailand are used as the main raw material input into downstream glass products such as:

- Windows;
- Balcony and pool fencing;
- Architectural glass; and
- Toughened glass.

In importer questionnaire responses and in discussions with importers at verification visits, the Commission established that the circumvention goods and the goods the subject of the notice are processed using the same equipment and are handled in the same manner. One importer advised the Commission that it removed the existing arris edge following importation as part of its processing activities, whilst a second importer did not consider the arris on the edge as it was supplied by the exporter to be adequate for its

²³ Subsection 48(3)(b) of the Regulation

PUBLIC RECORD

downstream toughening processes. A third importer sought to incorporate the existing arris edge on the circumvention goods into its finished downstream processed glass products where this was practicable. All importers conveyed the same opinion regarding glass toughening in so far that the circumvention goods were not suitable for glass toughening in the state in which the goods were imported and further edge working was required before toughening.

The Commission was also advised by some importers that they have switched back to importing CFG without edge working or sourcing CFG from local suppliers. The Commission interprets this as indicating that the importer's intended end use for each good is identical and that there is no difference in each good's end use. This supports that there is a slight modification of goods.

5.4.3 The interchangeability of each good²⁴

The cooperating importers indicated in their questionnaire responses that each good was interchangeable. Through verification, the Commission confirmed that each good was used by importers for the same purposes.

One importer stated that it would attempt to retain the arrised edge at the downstream cutting stage of processing and could program its arrissing equipment to take account of the arris that was already on the circumvention goods. However, the same importer stated that it could use either the goods the subject of the notice and the circumvention goods, interchangeably. This particular importer no longer imports the circumvention goods and sources CFG with no edge working from local suppliers.

Other importers stated that the arris edged applied by the exporter is removed entirely before downstream processing is applied. As a result, the application of the arris by the exporter was irrelevant.

Based on the evidence available, the Commission considers that each good is entirely interchangeable. This supports that there is a slight modification of goods.

5.4.4 Differences in the processes used to produce each good²⁵

Given that exporters of the circumvention goods from Thailand did not cooperate with the inquiry, the Commission has relied on available information to ascertain the differences in the production process used to produce the circumvention goods and the goods the subject of the notice.

Whilst Guardian has not cooperated with this inquiry, it did cooperate with *Continuation Inquiry No.335* conducted in 2016 and in the original *Investigation No.159* conducted in 2010. In both cases, the Commission and the then Australian Customs and Border Protection Service (ACBPS) established that Guardian was a producer of CFG and CFG which was edge-worked with an arris.²⁶ It was also established that Guardian was

²⁴ Subsection 48(3)(c) of the Regulation

²⁵ Subsection 48(3)(d) of the Regulation

²⁶ Case 159 Public Record Item 88, p.15

exporting edge-worked CFG, a point it reiterates in a submission made to the Commission in the early stages of this inquiry.²⁷

As outlined in Guardian's verification report for *Investigation No. 159*, Guardian's accounting records included both arrised edged glass and 3 to 12 mm CFG in the same the broader category of 'float' glass products.²⁸ Together with the statements in Guardian's 21 September 2018 submission to this inquiry,²⁹ which clearly indicates it has exported '*arris-edged CFG*' to Australia, the Commission is satisfied that the circumvention goods and the goods the subject of the notice are initially produced using identical processes, i.e. the float process, and are likely cut into the desired sizes at the same point after exiting the float line.

The Commission considers that the only difference between the processes used to produce each good is the application of the arris edge to the circumvention goods at some point after these goods have exited the float glass production line. Since Guardian did not cooperate with this inquiry the Commission is not able to ascertain how and when the arris edge is applied to the circumvention goods.

As outlined previously at section 5.4.1, the Commission could not visually distinguish any differences in the appearance of the edges of the goods and the circumvention goods. The Commission can only conclude that there is a minimal degree of processing involved in applying the arris edge to the circumvention goods. Whether the arris is applied before or after cutting is inconsequential as both the circumvention goods and the goods the subject of the notice will be cut in some way before travelling to a stacking or packing station of some kind.

The Commission concludes that, on the available evidence, only minor differences are likely to exist between the processes used to produce each good. This supports that there is a slight modification of goods.

5.4.5 Differences in the cost to produce each good³⁰

Referring again to the Commission's analysis of the production process differences at section 5.4.4, the Commission considers that the circumvention goods are produced through the application of one additional process compared to the goods the subject of the notice. Further, the Commission considers that the one additional process, the application of an arris edge, is likely to involve a minimal level of complexity.

At question F-1 of the REQ forwarded to Guardian, the Commission requested information relating to the incremental cost of production to achieve the arris edge. However, on the basis that Guardian did not cooperate with the inquiry, the Commission is unable to determine the difference in production costs. As an alternative, the Commission has had regard to the information obtained from the selection of importers who participated with the inquiry. None of the importers indicated that they incurred a

²⁷ Case 479 Public Record Item No.4

²⁸ Case 159 Public Record Item No.88, p.55

²⁹ Case 479 Public Record Item No.7

³⁰ Subsection 48(3)(e) of the Regulation

PUBLIC RECORD

price increase in their purchases of the circumvention goods over what they previously paid for the goods the subject of the notice.

On the basis that the circumvention goods do not attract a price premium for the edge working, the Commission considers it reasonable that the incremental cost to produce the circumvention goods is either not recognised by the exporter, or in the case that it is, the cost increase is so small that it has no material effect on price. This supports that there is a slight modification of goods.

5.4.6 Customer preferences and expectations³¹

The reasons given by importers for switching to the importation of the circumvention goods included shorter delivery lead time and the expectation that the quality and price of the circumvention goods were comparable to the CFG that those importers were sourcing from other countries. The Commission's analysis of ABF import data indicates that the majority of the importers of the circumvention goods were sourcing CFG from one of Guardian's related party glass manufacturers in the United Arab Emirates (UAE) prior to the start of 2016.

As part of its inquiries, the Commission received mixed responses as to whether importers had a preference for having an arris applied to the circumvention goods by the exporter from Thailand. In particular, the question was asked as to what value was provided by the exporter arrissing only one edge.

A common theme which arose from importers was the need to arris the edges of the CFG if it is to be toughened in a furnace. Another stated advantage related to safety. Certain importers claim that the arris on the glass enabled safe transportation of the glass and handling of the glass during processing. One importer also expressed the view that having the edge with the arris saved on processing costs as at least one edge did not require an arris during downstream processing. In its 25 July 2018 submission, Guardian expressed similar views in relation to safety and toughening.³²

In response to the points raised in relation to safety, toughening and processing costs, the Commission notes the following:

- the Commission has established that importers of the circumvention goods also sourced CFG with no edge working and used both goods for the same purpose;
- the Commission doubts that safety is a genuine motivation for importers on the basis that importers also sourced CFG with no edge working. It was not demonstrated to the Commission how the arris on one edge, which is not readily identifiable or necessarily accessible, produces an improved safety outcome for importers;
- importers who claim process cost savings also source glass which is not edge-worked and one importer advised that the arris applied by Guardian was not adequate for its downstream processing;

³¹ Subsection 48(3)(g) of the Regulation

³² Case 479 Public Record Item No.4

PUBLIC RECORD

- toughening requires all edges to be arrised and it was demonstrated to the Commission that multiple edges would need to be arrised to a minimum standard to deliver a quantifiable cost-saving benefit;
- Guardian's claims that it has been trading in edge-worked CFG since 2004 is not supported by the ABF import data because importers who switched to importing the circumvention goods from Thailand were not previously importing those goods until 2016 or onwards. The Commission therefore questions why the current preference for the circumvention goods was not prevalent prior to 2016; and
- if delivery lead time was a strong preference then the Commission also questions why in the period spanning 2013, 2014 and 2015, the predominant supplier of CFG was from the UAE which has longer lead times compared to Thailand.

To add to the last point, whatever preferences importers of the circumvention goods may have had regard to, will be irrelevant in the future. This is because Guardian advised in its 21 September 2018 submission that, as of the end of 2018 it will cease exporting the circumvention goods to Australia.³³ The Commission considers that, in the absence of a supply of the circumvention goods from Thailand, patterns of trade may revert back to the state which was observed prior to 2016. Sections 5.4.8 and 5.4.9 provide further discussion about channels of trade and distribution and patterns of trade.

In summary, the Commission does not consider that the arguments raised in relation to the preferences and expectations of importers of the circumvention goods are persuasive and considers that there are little or no differences in the customer preferences and expectations between each good. This is especially in the context that, prior to importing the circumvention goods, only goods subject to the notice were available. The Commission considers that the key benefit which arises from importing the circumvention goods is avoiding the payment of anti-dumping duties. This supports that there was a slight modification of goods.

5.4.7 The way in which each good is marketed ³⁴

In discussion with importers who were visited by the Commission, it was established that there was no specific marketing campaign or similar activity by the exporter from Thailand which sought to promote the sale of the circumvention goods in substitution of the goods the subject of the notice. However, comments were made suggesting that the exporter initiated the edge working on the circumvention goods independent of any specific customer driven requirements. The Commission is satisfied that there is no difference in the way each good has been marketed. This supports that there was a slight modification of goods.

5.4.8 Channels of trade and distribution for each good ³⁵

In lieu of receiving a REQ from exporters of the circumvention goods from Thailand, the Commission assessed responses from cooperating importers to evaluate whether there were any differences in the channel of trade and distribution relating to each good.

³³ Case 479 Public Record Item No.7

³⁴ Subsection 48(3)(h) of the Regulation

³⁵ Subsection 48(3)(i) of the Regulation

The Commission's examination of ABF import data revealed that the same exporter, Guardian, was largely responsible for exportation of the circumvention goods and the goods the subject of the notice in the period 1 January 2013 to the publication date of the notice initiating this inquiry. The Commission identified that Guardian's exports represented 100 per cent of the exports of the goods the subject of the notice. In relation to the same period, the Commission found that 99 per cent of the total value of the circumvention goods exported to Australia from Thailand were also from Guardian.³⁶ The remaining one per cent of circumvention goods was exported to Australia by three other exporters in four consignments.

Of the four consignments, three were exported in 2013 and one in 2017. The Commission found that the consignment exported in 2017 clearly described the goods in the consignment as being arris edge clear float glass. The exporter of these goods was not found to have exported the goods the subject of the notice. In relation to the other three consignments, the goods description was not sufficiently detailed to ascertain the precise nature of the goods.

The Commission considers that the observations made in relation to Guardian are a suitable basis to consider that the channels of trade and distribution for each good are identical. This supports that there was a slight modification of goods.

5.4.9 Patterns of trade for each good ³⁷

The Commission has analysed the patterns of trade for each good by comparing the value of the circumvention goods imported from Thailand under tariff subheading 7006 to the value of imports of CFG covered by the tariff subheading relevant to the goods the subject of the notice and goods from other countries which are not covered by the notice.³⁸

The analysis of the ABF import data at Figure 7 below shows that imports of goods from Thailand the subject of the notice (data series 7005.29.00 (Subject)) accounted for approximately one percent of the combined value of all imports of glass classified under tariff subheadings 7005 and 7006 during the inquiry period.³⁹ Prior to 2016, goods which were not the subject of the notice imported from Thailand under tariff subheading 7005, represented the majority of imports and the value of these imports remains relatively steady.

In contrast, goods from Thailand imported under tariff subheading 7006 represented the overwhelming majority. The pattern in trade persisted into 2017 and 2018.⁴⁰ Referring to the analysis at section 5.3, the Commission established that approximately 85 per cent of

³⁶ Refer to Confidential Attachment 1

³⁷ Subsection 48(3)(j) of the Regulation

³⁸ Tariff subheading 7006 does not require imports classified under this subheading to be declared in any particular unit of measure. As a result, the analysis is limited to a comparison based on import value in Australian dollars which is common across all tariff subheadings the subject of the analysis.

³⁹ Confidential Attachment 1 – Worksheet 'Thai Imports' Table 1

⁴⁰ 2018 period ending 31 May 2018.

PUBLIC RECORD

the total value of goods imported from Thailand under tariff subheading 7006 are the circumvention goods.⁴¹

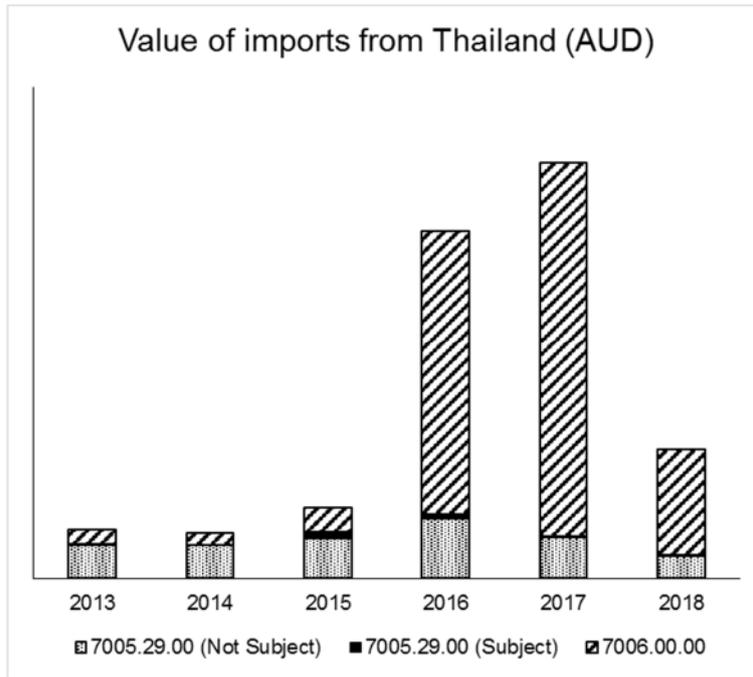


Figure 7 – Pattern of trade analysis - Thailand

Due to the increase of imports of the circumvention goods from Thailand from the start of 2016 onwards, at Figure 8 below the Commission has examined goods imported from other countries (both subject and not subject to the notice) under tariff subheading 7005.29.00 and compared this to imports of the circumvention goods from Thailand under tariff subheading 7006. The purpose of this analysis is to evaluate whether the imports of the circumvention goods are in substitution of imports of goods the subject of the notice from other countries or countries where imports of CFG are not subject to measures.

The analysis at Figure 8 shows that imports from other countries throughout the inquiry period remain steady in terms of both the value and proportion. The key feature in the data shows the change in the pattern of trade where the majority of imports of CFG in 2015 were the UAE and imports of the circumvention goods from Thailand were minor in comparison. Switching to 2016 sees an inversion in the 2015 pattern of trade where imports of the circumvention goods from Thailand are in the majority and appear to be in substitution for CFG from the UAE. The Commission also observed that the exporter of CFG from the UAE is related to the exporter of the circumvention goods from Thailand.⁴²

⁴¹ Confidential Attachment 1 – Worksheet ‘Thai Imports’ Table 2

⁴² Confidential Attachment 1 – Worksheet ‘Pattern of Trade Analysis’ Table 1

PUBLIC RECORD

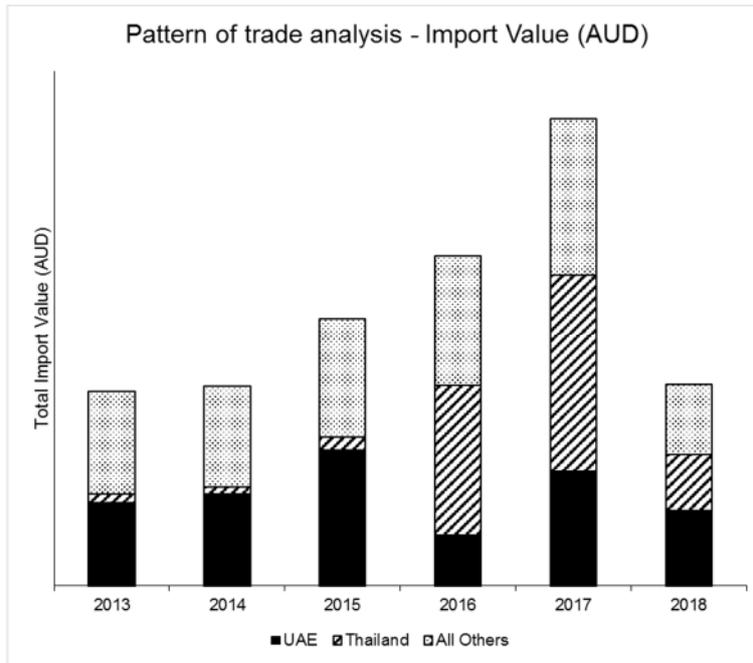


Figure 8 – Pattern of trade analysis all countries

At Figure 9 below, the Commission also compared the value of CFG imported from the UAE to the value of the circumvention goods imported from the same related supplier in Thailand, i.e. a related party of Guardian. The data illustrates the switch to importing of circumvention goods by those importers who previously imported CFG from the UAE.⁴³

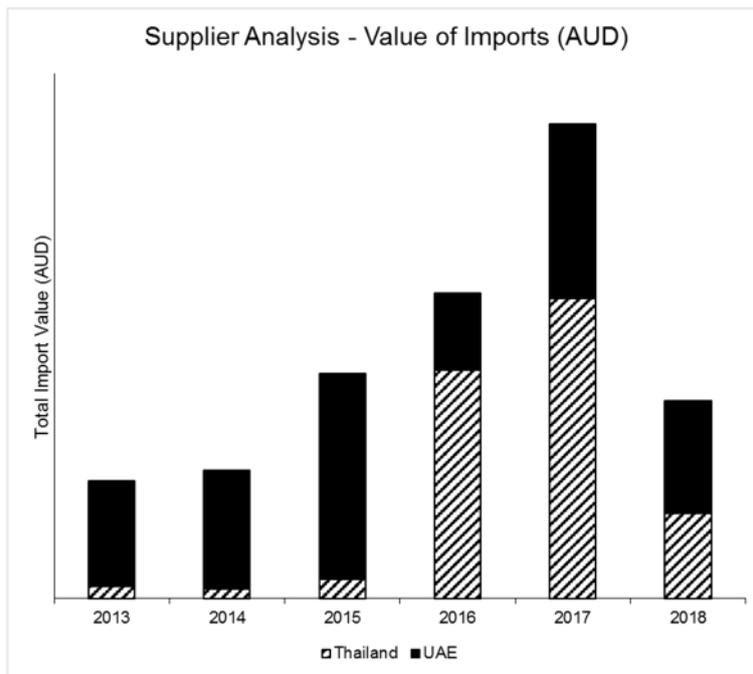


Figure 9 – Pattern of trade analysis – Related party exporters from Thailand and UAE

⁴³ Confidential Attachment 1 – Worksheet ‘Supplier Analysis’ Table 1

PUBLIC RECORD

In documents obtained in relation to commercial invoices for imports from the UAE and Thailand, the only difference observed in relation to the description of the products was the inclusion of details relating to the arris edge on CFG from Thailand. The Commission considers that the switch from importing CFG from the UAE, which appear to be equivalent to the goods the subject of the notice, to importing the circumvention goods from the same related party suppliers, is indicative of the high levels of interchangeability between the goods and the circumvention goods discussed at section 5.4.3.

5.4.10 Changes in the pricing of each good⁴⁴

In the absence of a REQ from Guardian, the Commission has assessed changes in the pricing of each good by having regard to data received from cooperating importers and the ABF import database.

In discussions with importers during the inquiry, the Commission established that the addition of the arrised edge on the circumvention goods did not attract a price premium compared to the goods the subject of the notice.

The Commission sought to validate the comments made by importers through an analysis of commercial invoices at **Confidential Attachment 2** by comparing the price of the circumvention goods to the goods the subject of the notice. Exports within the scope of the analysis occurred in the period 1 December 2016 to 31 April 2018. Where it was possible to do so, the Commission also obtained commercial invoices for CFG exported from the UAE by one of Guardian's related parties.

With regard to the analysis of prices in the ABF import database, the Commission notes that there is no specified unit of measure for the statistical quantity unit of the tariff subheading under which imports of the circumvention goods are classified. As a result, the Commission's analysis of the price of the circumvention goods is limited to the sample of importations selected for verification. In addition, the analysis of the goods the subject of the notice from Thailand was problematic on the basis that prices exhibited abnormalities which is suggestive that the goods description on the consignments were not accurate, possibly a result of the consignment being a mix of different glass products.

The Commission compared the prices of the circumvention goods to the goods the subject of the notice by having regard to goods exported by comparable suppliers (from Thailand and the UAE), goods description, delivery terms and invoice currency. The Commission observed that the unit price, in square metres, for the circumvention goods was less than or comparable to the price of the goods the subject of the notice. The Commission also observed that the price of the circumvention goods was comparable to the price of CFG from the UAE. The Commission's findings support the statements made by the importers who cooperated with the inquiry, i.e. that there was little or no change in pricing for each good. This supports that there was a slight modification of goods. The data relied on for the analysis of this modification factor is provided at **Confidential Attachment 4**.

⁴⁴ Subsection 48(3)(k) of the Regulation

5.4.11 Changes in the export volumes for each good ⁴⁵

To analyse changes in the export volumes for each good, the Commission would ordinarily rely on data in the ABF import database. However, as previously noted, there is no specified unit of measure for the statistical quantity unit of the tariff subheading under which imports of the circumvention goods are classified. As a result, the Commission’s analysis of export volumes using ABF data is not possible.

However, using trade data Viridian purchased for the purpose of preparing its application (**Confidential Attachment 5**), the Commission has assessed the volume of processed glass exported to Australia from Thailand.

The Commission analysis of the trade data provided by Viridian shows that by the end of 2017, the average monthly volume of the circumvention goods exported to Australia was approximately 300 times larger than it was at the start of the inquiry period in 2013. Processed glass exports increased dramatically within a two month period from 1 December 2015 to 31 January 2016 whereby the average monthly volume increased 18 times. The monthly volumes then continued to persist at a similar level throughout the remainder of 2016 and into 2017 and 2018. On the basis of information available, the Commission considers that the changes in the export volumes for each good, supports that there was a slight modification of goods.

5.4.12 Tariff classifications and statistical codes for each good⁴⁶

The Commission has established that imports of the circumvention goods are classified under a different tariff subheading compared to the goods the subject of the notice. The addition of the arris edge on the CFG requires import declarations to classify the circumvention goods under tariff subheading 7006.00.00 (49) of the Tariff Act.

5.4.13 Summary of findings and conclusion

The table below summarises the Commission’s findings in relation to the factors determining whether the circumvention goods are slightly modified.

Factor under s.48(3) of the Regulations	Description	Differences between the goods and the circumvention goods
(a)	Each good’s general physical characteristics	Slight
(b)	Each good’s end use	None
(c)	The interchangeability of each good	None (completely interchangeable)
(d)	Differences in the processes used to produce each good	Slight
(e)	Differences in the cost to produce each good	Slight

⁴⁵ Subsection 48(3)(l) of the Regulation

⁴⁶ Subsection 48(3)(m) of the Regulation

PUBLIC RECORD

Factor under s.48(3) of the Regulations	Description	Differences between the goods and the circumvention goods
(f)	The cost of modification	Slight ⁴⁷
(g)	Customer preferences and expectations relating to each good	Little, if any
(h)	The way in which each good is marketed	None
(i)	Channels of trade and distribution for each good	None, the same exporter is responsible for the trade and distribution of each good
(j)	Patterns of trade for each good	Importers of the circumvention goods previously imported CFG from related party suppliers of the circumvention goods
(k)	Changes in the pricing of each good	None
(l)	Changes in the export volumes for each good	Significant increase in the circumvention goods in substitution for the good the subject of the notice
(m)	Tariff classifications and statistical codes for each good	Each good imported under different tariff classifications

Table 8 – Summary of differences

Having regard to the factors outlined in subsection 48(3) of the Regulation, the Commission considers that the circumvention goods have been slightly modified before exportation. Accordingly, the requirement of subsection 48(2)(b) of the Regulation is satisfied.

5.5 The use or purpose of the circumvention goods is the same before, and after, they are so slightly modified

At section 5.4.2 the Commission assessed that there was no difference between the end use or purpose of the circumvention goods and the goods the subject of the notice. The Commission assessment at section 5.4.3 also concluded that both the circumvention goods and the goods the subject of the notice were readily interchangeable. This was further supported by the finding on patterns of trade at section 5.4.9 where importers who imported CFG were found to have switched to importing the circumvention goods with little to no effect on how either good was to be used.

The Commission considers that the end use or purpose of the circumvention goods are the same before and after the slight modification. Accordingly, the requirement of subsection 48(2)(c) of the Regulation is satisfied.

⁴⁷ The Commission considers that the discussion at subsection 48(3)(e) of the Regulation is sufficient to address the factor relating to the cost of modification.

5.6 Had the circumvention goods not been so slightly modified, they would have been the subject of the notice

The goods description and tariff subheadings which are relevant to the imports of the circumvention goods brings about the situation that the circumvention goods are specifically excluded from the current measures applying to CFG.

The Commissioner considers that without the slight modification to the circumvention goods, the circumvention goods would have been the subject of the notice. Accordingly, the requirement of subsection 45(2)(d) of the Regulation is satisfied.

5.7 Sections 8 or 10 of the Dumping Duty Act does not apply to the circumvention goods

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively.

The Commission is satisfied that the circumvention goods are not subject to the original dumping duty notice under subsection 269TG(2) and that section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia. As there are no countervailing duties applicable to exports of CFG from Thailand, section 10 of the Dumping Duty Act is not a consideration. The requirement of subsection 48(2)(e) of the Regulation is satisfied.

5.8 Conclusion – a circumvention activity has occurred

Based on the available information, the Commission considers that:

- a) the circumvention goods are exported to Australia from a foreign country (Thailand) in respect of which the notice applies;
- b) before that export, the circumvention goods are slightly modified;
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
- e) section 8 of the Dumping Duty Act, as this case requires, does not apply to the export of the circumvention goods to Australia.

Having regard to the circumstance outlined in subsection 48(2) of the Regulation, the Commission finds that a circumvention activity has occurred in relation to the notice as it applies to Thailand.

6. PROPOSED ALTERATION TO THE NOTICE

6.1 Legislative framework

Section 269ZDBH details the Minister's powers in relation to an anti-circumvention inquiry.

Subsection 269ZDBH(1) provides that the Minister may declare alterations to the notice. Without limiting subsection 269ZDBH(1), subsection 269ZDBH(2) provides that the alterations may be of the following kind:

- a) the specification of different goods that are to be the subject of the original notice;
- b) the specification of different foreign countries that are to be the subject of the original notice;
- c) the specification of different exporters that are to be the subject of the original notice;
- d) in relation to existing exporters that are the subject of the original notice--the specification of different variable factors in respect of one or more of those exporters;
- e) in relation to exporters that are to be the subject of the original notice--the specification of variable factors in respect of those exporters.

6.2 Applicant's proposed alterations

Viridian's application proposes that the original notice be extended to cover the circumvention goods described in the following.

Clear float glass in thicknesses of 3-12mm (inclusive) that has been worked in sheets equal to or greater than the dimensions 1500mm x 1500mm and imported under tariff subheading 7006.00.00 (statistical code 49).

Viridian also explain that typical sizes of CFG in stock sheets imported for further processing would be in the range 2100mm x 4000mm. Specifying the size of edge-worked CFG sheet is initially proposed to reduce the risk of worked glass that is genuinely worked such as window louvre blanks being subject to duties.

6.3 Commission's proposed recommendation

Having regard to the finding in Chapter 5, that a circumvention activity involving the slight modification of goods exported to Australia has occurred, the Commission proposes to recommend that the original notice relating to CFG from Thailand be altered as follows:

- to amend the description of the goods subject to the notice such that it extends to include the circumvention goods exported from Thailand; and
- to specify a different form of measures and variable factors in respect to all exporters from Thailand.

6.3.1 Goods description

The Commission’s analysis of imports of the circumvention goods established that the majority of these goods were exported to Australia by Guardian from Thailand in sizes that are commonly produced by CFG manufacturers. The Commission also established that descriptions of the circumvention goods included terms that indicate edge working, in the form of an arris edge.

There were very few importations which referred to other kinds of edge working which are considered outside of the scope of this inquiry. Where arris edge working was referenced the Commission observed that this was not accompanied with other terms that described how the edge was achieved, e.g. polishing, and the importers who cooperated with the inquiry confirmed that the arris on the circumvention goods was the target of Viridian’s complaint. Likewise, the number of edges with the arris appeared to be consistent one edge, either on the long or short side.

As a result, the Commission considers it appropriate to recommend that the goods description in the original notice made under subsection 269TG(2) be altered to read as follows:

The goods the subject of the original notice are clear float glass (CFG) in nominal thicknesses of 3 to 12 millimetres (mm).

The tolerances for each of these thicknesses are set out in table below.

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

The goods have the following characteristics:

- transparent;
- flat; and
- rectangle or square in shape.

With respect to exports from Thailand, CFG with edge working in the form of an ‘arris’, ‘rough arris’ or ‘seamed’ edge (removal of the sharp edges of the glass), on any number of sides or faces is the goods.

With the exception of the above reference to edge-worked glass from Thailand, glass with the following characteristics is not the goods the subject of the original notice:

- coated, coloured, tinted or opaque;

PUBLIC RECORD

- absorbent, reflective or non-reflective layer;
- wired;
- bent, edge-worked, engraved, drilled, enamelled or otherwise worked;
- framed or fitted with other materials;
- toughened (tempered) or laminated;
- acid etched; or
- low iron.

6.3.2 Specification of different variable factors

The Commission has considered whether the variable factors currently applicable to the notice in respect of Thailand remain appropriate. The variable factors were last ascertained for a period of 1 January 2015 to 31 December 2015 and were in respect of the goods only.

At the outset of this inquiry, the Commission sent an exporter questionnaire to Guardian, who was identified as the major exporter of both the goods the subject of the notice and the circumvention goods from Thailand. A completed exporter questionnaire from Guardian would have enabled the Commission to ascertain exporter specific variable factors in relation to Guardian's exports of the goods and the circumvention goods.

Due to Guardian not cooperating with the inquiry, the Commission has been unable to determine and verify exporter specific variable factors in relation to Guardian's exports of the goods and the circumvention goods.

The Commission therefore has determined variable factors of export price and normal value for all exporters from Thailand for this inquiry, including Guardian, having regard to all relevant information, pursuant to subsections 269TAB(3) and 269TAC(6).

In assessing what is relevant information the Commission has had regard to its analysis of the patterns of trade at section 5.4.9. Here the Commission identified that prior to 2016, the export value of the goods the subject of the original notice from Thailand, were in relative terms, minor when compared to the total value of CFG imports. However, the Commission observed a rise in the value of imports of the circumvention goods from the start of 2016 and this trend rapidly emerged over the course of an 8 week period. The continued trend in the pattern of trade observed up to the initiation of this inquiry suggests that the circumvention activity was systemic and likely to continue unabated had the inquiry not been initiated.⁴⁸ An analysis of the patterns of trade in the period since initiation shows that imports of the circumvention goods from Guardian in Thailand have continued at the same levels to that which were present prior to initiation.

Despite advice from Guardian that it has altered its business plans and will cease exporting either CFG or edge-worked CFG to Australia by the end of 2018, the Commission has no documentary evidence to support its proposition and considers it reasonable to conclude that if the opportunity was to become available, Guardian may recommence engaging in such circumvention behaviour as has been outlined in this SEF.

⁴⁸ Confidential Attachment 1 – Worksheet 'Thai Imports' Table 3

PUBLIC RECORD

The Commission has found that a circumvention activity has occurred over a sustained period.

Taking these things into account, the Commission considers that the current ascertained variable factors applicable to Guardian are no longer relevant. It is appropriate for the variable factors applicable to the goods the subject of the notice and the circumvention goods from Thailand to be the same for Guardian as they are for other exporters from Thailand. The Commission recommends that the variable factors for the goods and the circumvention goods from Thailand be ascertained to be those determined for uncooperative and all other exporters from Thailand in *Continuation Inquiry No.335*.

6.3.3 Form of measures

The Commission's *Guideline on the Application of Forms of Dumping Duty* outlines that the combination duty method is suitable in situations to assure the effectiveness of the measures where there is a likelihood of price manipulation or circumvention.⁴⁹ The finding of a circumvention activity in this inquiry is considered by the Commission to be sufficient justification to employ the combination duty going forward.

⁴⁹ Commissions Guideline on the Application of Forms of Dumping Duty, p.7, available at www.adcommission.gov.au

7. PROPOSED DATE OF EFFECT

7.1 Legislative provisions

Subsection 269ZDBH(1)(b) requires that, when making a declaration that an original notice is to be altered, the Minister's declaration must specify the date from which those changes take effect.

Subsection 269ZDBH(8) provides that, when specifying a date in a declaration under (1)(b), the Minister is not able to specify a date earlier than the date of publication of the public notice of initiation of an anti-circumvention inquiry.

7.2 Proposed date of effect of changes to original notices

To ensure any alteration to the original notice provides an effective remedy to the injurious effects caused by circumvention behaviour, it is necessary to alter the original notice in such a way that the changes are applied both retrospectively and prospectively.

The Commissioner proposes to recommend that, in relation to Thailand:

- the notice be altered to change the description of the goods covered by that notice to include the circumvention goods. It is recommended that this revision have retrospective effect and take effect from the day of publication of the notice about the conduct of this inquiry, i.e. 18 June 2018.⁵⁰ As a result of this recommendation, importers of the circumvention goods would be subject to IDD in respect of the circumvention goods entered for home consumption on and after 18 June 2018. For the period between 18 June 2018 and the Minister's declaration in relation to this inquiry, should one be made, the variable factors and form of measure, applicable to the collection of IDD are those currently specified on the notice;
- the notice be altered to specify different variable factors with prospective effect from the day of the Minister's declaration, should one be made. As a result of this recommendation, all exporters from Thailand would be subject to the variable factors currently applicable to the category of 'uncooperative and all other exporters' from Thailand; and
- the form of measures applicable to all exporters from Thailand be changed from the ad valorem duty method to the combination method. It is recommended that this revision have prospective effect from the day of the Minister's declaration, should one be made.

⁵⁰ The retrospective element to the proposed date of effect of the change to the notice recognises the finding that a circumvention activity was found to have been occurring since at least 2016. Applying the notice retrospectively ensures that anti-dumping duty is collected in relation to goods which would have been the subject of the notice had it not been the case that these goods were slightly modified to avoid payment of such duty.

8. APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Trade Data Analysis
Confidential Attachment 2	Guardian Commercial Invoices
Confidential Attachment 3	Australian Industry Quality Instructions
Confidential Attachment 4	Export Price Data
Confidential Attachment 5	Export Volume Analysis (Thailand)
Confidential Appendix 1	Consignment Inspection Report - Victoria
Confidential Appendix 2	Consignment Inspection Report - NSW