

Report No. 623

**INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF ANTI-DUMPING
DUTIES APPLICABLE TO IMPORTS OF CLEAR FLOAT GLASS ORIGINATING
FROM SAUDI ARABIA AND UNITED ARAB EMIRATES BY SWITCHING SUPPLY
TO EGYPT (COUNTRY HOPPING INVESTIGATION): FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents
its **Report No. 623: INVESTIGATION INTO THE ALLEGED CIRCUMVENTION OF
ANTI-DUMPING DUTIES APPLICABLE TO IMPORTS OF CLEAR FLOAT GLASS
ORIGINATING FROM SAUDI ARABIA AND UNITED ARAB EMIRATES BY
SWITCHING SUPPLY TO EGYPT (COUNTRY HOPPING INVESTIGATION):
FINAL DETERMINATION**



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CHIEF COMMISSIONER

PRETORIA

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1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 71 of 2002 (the ITA Act) and the International Trade Administration Commission Anti-Dumping Regulations (ADR) read with the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement).

1.2 Regulation 60 of the ADR states as follows:

60.1 "Other than circumvention contemplated in subsections 2(a) (*which refers to improper declaration*) and (d) (*which refers to absorption of the anti-dumping duty*), circumvention shall be deemed to take place if one or more of the following conditions are met:

- (a) a change in the pattern of trade between third countries and South Africa or the common customs area of SACU;
 - (i) which results from a practice, process or work;
 - (ii) for which there is no or insufficient cause or economic justification other than the imposition of the anti-dumping duty;
- (b) remedial effects of the anti-dumping measure are being undermined in terms of volumes or prices of the products under investigation; and
- (c) dumping can be found in relation to normal values previously established for the like or similar products.

ADR 60.2 provides a list of types of circumvention that should be treated separately, and country hopping is one of the types of circumvention.

ADR 60.8 states that "*Country hopping shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payment or the initiation of an anti-dumping investigation switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory*".

1.3 APPLICANT

The Application was lodged by PFG Building Glass (Pty) Ltd (the Applicant), being the sole manufacturer of the product under investigation in the SACU.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that subsequent to the imposition of the provisional duties on imports of clear float glass of a thickness of 3mm to 6mm originating in or imported from Saudi Arabia (Saudi) and the United Arab Emirates (UAE), Guardian Africa which was identified as a major importer in the original investigation, shifted sourcing of clear float glass (the subject product) from Saudi Guardian International Float Glass Co, Ltd in Saudi and Guardian Zoujaj International Float Glass Co. LLC in the UAE to its related company in Egypt. Hence the allegation of country hopping.

1.5 ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with ADR 21.

1.6 INVESTIGATION PROCESS

The Commission initiated the Country Hopping Investigation, pursuant to Notice No. 456 of 2019, which was published in *Government Gazette* No. 42657 on 23 August 2019.

Prior to the initiation of the investigation, the trade representatives of the country concerned was notified of the Commission's intention to investigate, in terms of ADR 27.1. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential version of the application.

The Commission considered all information and comments submitted by interested parties. All responses and comments received from interested parties are contained in the Commission's public file for this investigation and are available for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission.

However, some of the salient comments received from interested parties and the Commission's consideration of these comments are specifically included in this report.

Taking the information available into account, the Commission found that circumvention in a form of country hopping is taking place; dumping of the subject products originating in or imported from Egypt and manufactured by Guardian Egypt is taking place and based on the information considered in the original investigation, that the SACU Industry is experiencing material injury and a threat of material injury. The Commission therefore considered making a final determination to recommend to the Minister of Trade and Industry that an anti-dumping duty of 27.26% be imposed on clear float glass originating in or imported from Egypt and manufactured by Guardian Egypt.

Essential facts letters were sent to all interested parties, informing them of "essential facts" which were being considered by the Commission, and inviting interested parties to comment. Comments to the essential facts letter were received from the Applicant, importer, exporter and Arab Republic of Egypt Ministry of Trade and Industry.

After considering all the information and comments on the "essential facts letter" the Commission made a final determination that circumvention in a form of country hopping is taking place; dumping of the subject products originating in or imported from Egypt and manufactured by Guardian Egypt - Egyptian Glass SAE (Guardian Egypt) is taking place; and based on the information considered in the original investigation, that the SACU industry is experiencing material injury and a threat of material injury. The Commission therefore decided to recommend to the Minister of Trade and Industry that an anti-dumping duty of 27.26% be imposed on clear float glass originating in or imported from Egypt and manufactured by Guardian Egypt.

1.7 INVESTIGATION PERIOD

This investigation period for dumping was from 1 April 2019 to 30 June 2019.

Comments by Guardlan Africa Corp and Guardlan Egypt (Importer and exporter) on the selected period of investigation for dumping

The importer and the exporter stated that on page 2 of the Notice of Initiation it is provided that the period of investigation in respect of the allegations of dumping is 1 April 2019 to 30 June 2019, being three months in duration.

They further stated that in terms of section 1 of the Anti-Dumping Regulations published under section 59 of the International Trade Administration Act 71 of 2002 (The Anti-Dumping Regulations) the investigation period for dumping is defined as the period for which it is assessed whether dumping took place. This period shall normally be 12 months, and may be more but no case less than 6 months.

The importer and the exporter indicated that it is prescribed by the Anti-Dumping Regulations that the minimum period in respect of which an investigation into alleged dumping may be initiated is 6 months, the period of which an investigation provided for by ITAC in the Notice of Initiation only amounts to 3 months.

Comments by Arab Republic of Egypt Ministry of Trade and Industry on the selected period of investigation for dumping

The Ministry indicated that considering the period between March to June 2019 indicates a slight increase which does not represent a strong ground for Anti-Circumvention investigation. In addition to that the period of import analysis from March to June 2019 is a very short period and cannot be used to determine dumping, injury and causality.

Commission's consideration

Section 1 of the Anti-Dumping Regulations, as explained below, governs normal Anti-Dumping investigations and not Anti-Circumvention reviews, which are governed by separate provisions.

As stated in the relevant Government Gazette (Notice 449 of 23 August 2019) ("the Initiation Notice"), the International Trade Administration Commission of South Africa (the Commission) initiated the anti-circumvention review based on an application alleging that circumvention through country hopping from Saudi and the UAE to Egypt of the subject product was taking place. The notice specified that the anti-circumvention review was being conducted in terms of Sub-Part V (Anti-Circumvention Reviews) of the ADR.

ADR 61 provides as follows for anti-circumvention reviews involving country hopping:

Country hopping shall be deemed to take place if, following the imposition of Anti-Dumping duties or provisional payments or the initiation of an anti-dumping investigation, the importers or exporters of the product subject to an Anti-Dumping duty switch to a supplier related to the supplier against which an Anti-Dumping investigation has been or is being conducted and such new supplier is based in another country or customs territory.

The unique nature of anti-circumvention reviews is underscored by ADR 62. Thus, although section 1 defines the investigation period for dumping as being, "normally 12 months ... but in no case less than 6 months", ADR 62 derogates from this general provision. Specifically, ADR 62.3 provides as follows:

Provided an Anti-Circumvention complaint is lodged with the Commission within one year after the publication of the Commission's final determination in the original investigation, the Commission may use for any circumvention alleged under sections 61.2(b), (c), (e), (f) or (g) the normal values previously established in such investigation to determine the margin of dumping for purposes of the preliminary determination and the imposition of provisional payments.

In other words, normal values for dumping margin calculations can be determined in an alternative manner despite the language of ADR 1. Other

provisions of Sub-Part V of the ADR also demonstrate that a different type of investigation than an anti-dumping investigation is envisioned in the ADR. For example, in certain instances, injury information does not have to be updated (ADR 62.2). Further, in an anti-circumvention review based on a claim of country hopping, an application can be brought even shortly after initiation of an anti-dumping investigation, should circumstances permit. For these reasons, special provisions around the information, which the Commission should consider in making a preliminary determination, is contained in Sub-part V of the ADR.

Factual considerations also point to the unique circumstances surrounding anti-circumvention reviews involving country hopping. In the instant review, the investigation period of 1 April 2019 to 30 June 2019 reflects that country hopping only commenced on or after the institution of provisional duties on 22 March 2019. As there were no export of the subject product from Egypt to South Africa (Common Customs Area) prior to that date, extending the investigation period for dumping backwards in excess of 3 months would be purposeless as there would be no sales with which to determine a normal value. Additionally because the application was submitted to ITAC on 20 June 2019, the period of investigation could also not have been increased beyond 3 months. Accordingly, the use of a normal period of investigation of 12 months (or not less than 6 months) would have been irrational.

Finally, as indicated in the Initiation Notice, the Commission has already made a prima facie determination that circumvention in the form of country hopping is taking place. The purpose of requesting information from importers and exporters from Egypt is to determine whether the subject product, exported from Egypt through country hopping, was exported at dumped prices.

1.8 COMMENTS

The Commission considered comments received from interested parties with regard to the application and procedure. Non-confidential versions of these comments are available in the public file.

***Comments by Arab Republic of Egypt Ministry of Trade and Industry
Violation of article 1 and 5.3 of the Anti-Dumping Agreement***

The Ministry indicated that article 5.3 of the Anti-Dumping Agreement stipulates that "The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of the investigation."

The Ministry Indicated that according to The Panel in Guatemala – Cement II, in examining the claim that Guatemala's investigating authority based its initiation decision on insufficient evidence in violation of Article 5.3. The Panel commented that the fact that an application satisfied Article 5.2 does not demonstrate that there was sufficient evidence to justify initiation under Article 5.3: "Article 5.2 requires that the application contain sufficient evidence on dumping, injury and causation, while Article 5.3 requires the investigating authority to satisfy itself as to the accuracy and adequacy of the evidence to determine that it is sufficient to justify initiation."

The Ministry further indicated that Egypt understands that circumvention is a trade strategy used by the exporters/importers of products subject to Anti-Dumping duties to avoid the payment of such duties through certain activities, one of these activities is exporting the subject goods through third country/countries which is the case applicable in this investigation.

The Ministry indicated that despite of the above it would like to highlight that there are no uniform rules under the umbrella of the WTO concerning Anti-Circumvention investigation as negotiators were unable to agree on specific text, and decided to refer this matter to the committee of Anti-Dumping practices.

Response by the Applicant

The Applicant stated that it is common cause that the World Trade Organization Agreement on Implementation of Article VI of GATT, 1994 lacks uniform rules concerning Anti-Dumping Circumvention investigations.

However the WTO members have the right and policy scope to cater for or engage in such investigations provided it is regulated.

The Applicant further indicated that South African AD Regulations under Sub-part V-“Anti-Circumvention Reviews”, provides for Anti-Dumping Circumvention investigations to be conducted by the Commission in the case of Country hopping, as defined in the Regulation 60.8 in which it state that:

“Country hopping shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation, switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory”.

Anti-Dumping investigations conducted by the Commission are regulated by the ITA Act the AD Regulations. This does not imply that GATT 1994 and the AD Agreement are irrelevant in the Anti-dumping investigations in South Africa, but considering section 233 of the constitution, these agreement serve as an interpretative aide to domestic legislation.

Commissslon's consideration

Section 1 of the Anti-Dumping Regulations: As explained, this provision governs normal Anti-Dumping investigation and not Anti-circumvention reviews, which are governed by separate provisions.

It is important to note that since there are no uniform rules at the WTO concerning Anti–Circumvention investigation, authorities rely on their respective domestic regulations.

ADR 61, provides as follows for Anti-Circumvention reviews Involving country hopping:

Country hopping shall be deemed to take place if, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping

investigation, the importers or exporters of the product subject to an anti-dumping duty switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and such new supplier is based in another country or customs territory.

Finally, as indicated in the Initiation Notice, the Commission has already made a prima facie determination that circumvention in the form of country hopping is taking place. The purpose of requesting information from importers and exporters from Egypt is to determine whether the subject product, exported from Egypt through country hopping, was exported at dumped prices.

1.9 PARTIES CONCERNED

1.9.1 SACU Industry

The SACU industry consists of one manufacturer of the subject product, PFG Building Glass (Pty) Ltd (the Applicant).

1.9.2 Exporters/Foreign Manufacture

The following exporter/manufacturer from Egypt was identified as interested party in this investigation:

- Guardian Egypt - Egyptian Glass SAE

1.9.3 Importers

The following SACU importers responded to the Commission's importer questionnaires:

- Guardian Africa Corporation (Pty) Ltd

1.10 RELATEDNESS

Guardian Glass Holdings is one of the world's largest producers of the subject products. Guardian Glass is headquartered in the United States of America and operates production facilities throughout North America, Europe, South America, Africa, Middle East, and Asia and numerous sales offices across the world.

The research conducted by the Commission revealed that Guardian Egypt is related to Saudi Guardian, Guardian Zoujaj, and Guardian Africa as they are all affiliates and partners to Guardian Glass Holdings. Guardian Egypt in its exporter's questionnaire response has confirmed its relationship to Guardian Glass Holdings.

- 1.11** Desktop verifications were conducted for Guardian Africa and Guardian Egypt and the information was found to be accurate.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product of this application is clear float glass of a thickness of 3mm to 6mm ("subject product").

2.1.2 Country of origin/export

The subject product originates in and is imported from Egypt and is manufactured by Guardian Egypt.

2.1.3 Possible tariff loopholes

Float glass (70.05) can easily be imported and cleared as drawn glass (7004.90.90), as has happened before when anti-dumping duties on float glass were circumvented by being cleared as drawn glass, and this is why it was regarded as imperative to impose anti-dumping duties on drawn glass as well when such duties are imposed on float glass, as has been the practice following previous investigations.

Description of Drawn Glass and Blown Glass, in Sheets, whether or not having an absorbent or reflecting Layer, but not otherwise worked classified as follows:

Customs classification

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of duty				
				General	EU	EFTA	SADC	MERCUSOR
70.04		Drawn glass and blown glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked:						
7004.90		Other glass:						
	7004.90.90	Other	m ²	10%	free	free	free	10%

2.1.4 Tariff classification

The subject product is currently classifiable as follows:

Table 2.1.4

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of duty				
				General	EU ¹	EFTA ²	SADC ³	MERCUSOR ⁴
70.05		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:						
	7005.29.17	Of a thickness exceeding 2.5 mm but not exceeding 3 mm (excluding solar glass and optical glass)						
	7005.29.23	Of a thickness exceeding 3 mm but not exceeding 4 mm (excluding solar glass and optical glass)	m ²	10%	free	free	free	10%
	7005.29.25	Of a thickness exceeding 4 mm but not exceeding 5 mm (excluding solar glass and optical glass)	m ²	10%	free	free	free	10%
	7005.29.35	Of a thickness exceeding 5 mm but not exceeding 6 mm (excluding solar glass and optical glass)	m ²	10%	free	free	free	10%

1 European Union

2 European Free Trade Association

3 Southern Africa Development Community

4 Southern Common Market (Argentina, Brazil, Paraguay and Uruguay)

Duties in place

The following anti-dumping duties are currently applicable:

Item	Tariff heading	Description	Imported from or originating in	Rate of anti-dumping duty
213.03	7005.29.05	Solar glass of a thickness exceeding 2.5 mm but not exceeding 3 mm	Indonesia	45%
213.03	7005.29.05	Solar glass of a thickness exceeding 3 mm but not exceeding 4 mm (excluding that manufactured by PT Muliaglass Industrino and PT Abdi Rakyat Bakti)	Indonesia	10%
213.03	7005.29.05	Solar glass of a thickness exceeding 4 mm but not exceeding 5 mm (excluding that manufactured by PT Muliaglass Industrino and PT Abdi Rakyat Bakti)	Indonesia	12.51%
213.03	7005.29.05	Solar glass of a thickness exceeding 5 mm but not exceeding 6 mm	Indonesia	30,5%
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm (excluding solar glass and optical glass)	India	720c/m ²
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm (excluding solar glass and optical glass)	Indonesia	45%
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm (excluding solar glass and optical glass)	Indonesia	45%
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm (excluding solar glass and optical glass)	China	802c/m ²
213.03	7005.29.23	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 3 mm but not exceeding 4 mm (excluding solar glass and optical glass)	India	886c/m ²

213.03	7005.29.23	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, of a thickness exceeding 3 mm but not exceeding 4 mm (excluding solar glass and optical glass) (excluding that manufactured by PT Muliaglass Industrino and PT Abdi Rakyat Bakti)	Indonesia	10%
213.03	7005.29.23	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, of a thickness exceeding 3 mm but not exceeding 4 mm (excluding solar glass and optical glass)	China	802c/m ²
213.03	7005.29.25	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, of a thickness exceeding 4 mm but not exceeding 5 mm (excluding solar glass and optical glass) (excluding that manufactured by PT Muliaglass Industrino and PT Abdi Rakyat Bakti)	Indonesia	12,51%
213.03	7005.29.25	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 4 mm but not exceeding 5 mm (excluding solar glass and optical glass)	China	802c/m ²
213.03	7005.29.35	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 5 mm but not exceeding 6 mm (excluding solar glass and optical glass)	India	1387c/m ²
213.03	7005.29.35	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, of a thickness exceeding 5 mm but not exceeding 6 mm (excluding solar glass and optical glass)	Indonesia	30,5%
213.03	7005.29.35	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, of a thickness exceeding 5 mm but not exceeding 6 mm (excluding solar glass and optical glass)	China	802c/m ²
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm	UAE	16.8%
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm	UAE	16.8%

213.03	7005.29.23	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 3 mm but not exceeding 4 mm	UAE	16.8%
213.03	7005.29.23	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 3 mm but not exceeding 4 mm	UAE	16.8%
213.03	7005.29.25	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 4 mm but not exceeding 5 mm	UAE	16.8%
213.03	7005.29.25	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 4 mm but not exceeding 5 mm	UAE	16.8%
213.03	7005.29.35	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, of a thickness exceeding 5 mm but not exceeding 6 mm	UAE	16.8%
213.03	7005.29.35	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, of a thickness exceeding 5 mm but not exceeding 6 mm	UAE	16.8%
213.03	7005.29.17	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 2.5 mm but not exceeding 3 mm	Saudi Arabia	23.9%
213.03	7005.29.23	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 3 mm but not exceeding 4 mm	Saudi Arabia	23.9%
213.03	7005.29.25	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but otherwise not worked, of a thickness exceeding 4 mm but not exceeding 5 mm (excluding solar glass and optical glass)	Saudi Arabia	23.9%
213.03	7005.29.35	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, of a thickness exceeding 5 mm but not exceeding 6 mm (excluding solar glass and optical glass)	Saudi Arabia	23.9%

2.2 SACU PRODUCT

The SACU product is described as clear float glass with a thickness of 3mm to 6mm. It is noted that the subject of the review is stipulated as being clear float glass.

2.3 LIKE PRODUCT ANALYSIS

In determining the likeness of products, the Commission uses the following criteria:

Table 2.3 like product determination

	Imported product	SACU product
Raw materials	Soda ash, silica sand, limestone, dolomite, electricity and gas.	Soda ash, silica sand, limestone, dolomite, electricity and gas.
Production process	Clear float glass is produced by floating molten glass onto a liquid tin bed and then cooling it. This is the latest technology used by manufacturers of flat glass in most countries around the world, and particularly throughout Europe, the Far East, the Middle East and the United States of America.	The production process in SACU is essentially the same as overseas as raw materials such as sand, limestone, soda, dolomite, feldspar and salt-cake are mixed and the heated at a temperature of over 1 500 °C. When the materials are melted, they form a viscous liquid called quiescent melt.
Physical appearance	Clear glass of various thicknesses is produced by the float process. The technical characteristics and appearance are a uniform thickness without the need for further grinding or polishing.	Clear glass of various thicknesses is produced by the float process. The technical characteristics and appearance are a uniform thickness and bright polished surfaces, without the need for further grinding or polishing.
Tariff classification		<p>7005.29.17 of a thickness exceeding 2.5 mm but not exceeding 3 mm (excluding solar glass and optical glass)</p> <p>7005.29.23 of a thickness exceeding 3 mm but not exceeding 4 mm (excluding solar glass and optical glass)</p> <p>7005.29.25 of a thickness exceeding 4 mm but not exceeding 5 mm (excluding solar glass and optical glass)</p> <p>7005.29.35 of a thickness exceeding 5 mm but not exceeding 6 mm (excluding solar glass and optical glass).</p>

Application or end use	<p>To be sold in its existing form to glass merchants for general end use applications, such as residential glazing, architectural glazing (industrial and commercial), picture framing and furniture manufacture.</p> <p>A basic input for further processing to enhance the basic product into toughened (heat strengthened), laminated, mirror and automotive glass products for onward sale for use in the automotive, building, Industrial and furniture markets.</p>	<p>To be sold in its existing form to glass merchants for general end use applications, such as residential glazing, architectural glazing (industrial and commercial), picture framing and furniture manufacture.</p> <p>A basic input for further processing to enhance the basic product into toughened (heat strengthened), laminated, mirror and automotive glass products for onward sale for use in the automotive, building, Industrial and furniture markets.</p>
Substitutability	<p>The SACU float glass products are fully substitutable with the imported Egyptian products.</p>	<p>There are no differences between the imported float glass product and the SACU like product.</p> <p>They are identical in all aspects. The SACU float glass product is fully substitutable with the Egyptian imported product.</p>

After considering all the above factors, the Commission made a final determination that the SACU product and the imported products are "like products", for purposes of comparison in this investigation.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

The application was submitted by PFG Building Glass (Pty) Ltd (the Applicant), the sole manufacturer of the subject product in the SACU market.

The Commission made a final determination that the application can be regarded as being made “by or on behalf of the domestic industry”.

4. CIRCUMVENTION

4.1 COUNTRY HOPPING

ADR 60.2(e) identify country hopping as one of seven types of circumvention and define (ADR 60.8) country hopping as taking place *“if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory.”*

Analysis of imports post the imposition of the provisional duties in March 2019

The following tables show the import statistics of the subject products from Egypt, Saudi and UAE for the period pre and post the imposition of the provisional duties in March 2019:

Imports: 3mm HS 7005.29.17

m ²	July18	Aug18	Sept18	Oct18	Nov18	Dec18	Jan19	Feb19	Mar19	Apr19	May19	June19
Egypt	0	0	0	0	0	0	0	0	0	119 688	40 986	9 760
Saudi	41 844	21 237	19 986	19 605	32 791	0	6 430	6 038	0	0	0	0
UAE	87 877	64 986	69 830	109 082	131 790	39 276	139 822	114 561	111 266	0	0	0
Other countries	124 338	153 034	199 941	195 900	218 586	138 446	0	17 682	28 568	81 410	34 104	53 689
Total	254 059	239 267	289 759	324 587	383 167	177 722	146 252	138 281	139 834	201 096	75 090	63 449

Source: SARS

Imports: 4mm HS 7005.29.23

m ²	Jul18	Aug18	Sept18	Oct18	Nov18	Dec18	Jan19	Feb19	Mar19	Apr19	May19	Jun19
Egypt	0	0	0	0	0	0	0	0	0	26 423	9 779	0
Saudi	23 941	37 932	59 984	27 839	13 255	30 967	24 531	2 358	4 938	0	0	0
UAE	2 465	4 930	20 772	37 557	31 238	4 930	22 933	0	2 358	0	0	0
Other countries	761 422	93 102	73 674	65 288	987 367	75 002	19 979	81 730	59 125	110 234	45 886	34 424
Total	787 828	135 964	154 430	130 684	1 031 860	110 899	67 443	84 087	66 420	136 657	55 665	34 424

Source: SARS

Imports: 5mm HS 7005.29.25

m ²	July18	Aug18	Sept18	Oct18	Nov18	Dec18	Jan19	Feb19	Mar19	Apr19	May19	June19
Egypt	0	0	0	0	0	0	0	0	0	1 920	3 798	3 843
Saudi	4 096	4 102	5 851	1 993	0	0	12 178	1 929	0	0	0	0
UAE	0	0	7 527	11 558	8 926	0	1 983	0	7 687	0	0	0
Other countries	7 688	12 612	21 125	24 897	15 575	8 936	8 421	11 738	8 314	2 161	25 789	3 709
Total	11 784	16 714	34 503	38 448	24 501	8 936	22 582	13 667	16 001	4 081	29 587	7 552

Source: SARS

Imports: 6mm HS 7005.29.35

m ²	Jul18	Aug18	Sept18	Oct18	Nov18	Dec18	Jan19	Feb19	Mar19	Apr19	May19	June19
Egypt	0	0	0	0	0	0	0	0	0	3 126	14 241	0
Saudi	3 786	0	0	1 738	24 384	0	469	0	0	0	0	0
UAE	4 862	3 215	0	4 862	7 621	1 607	4 554	0	1 143	0	0	0
Other countries	8 286	11 145	14 158	15 323	9 868 975	5 579	8 199	17 293	9 459	8 468	20 456	7 796
Total	16 934	14 360	14 158	21 923	9 900 980	7 186	13 223	17 293	10 602	11 594	34 697	7 796

Source: SARS

Comments by Arab Republic of Egypt Ministry of Trade and Industry

Imports Analysis

The Ministry stated that Article 3.2 of the Anti-Dumping Agreement stipulates: "with regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."

The Ministry further stated the analysis of imports from Egypt after the imposition of the provisional duties, it was not clear in the essential facts reports the source, which the commission obtained its data for such analysis.

Commission's consideration

With regards to a change in trade pattern, the Commission noted that the information indicates that imports from Saudi and the UAE were replaced by imports from Egypt after the imposition of the provisional duties in March 2019, with zero imports from Egypt prior the imposition of the provisional duties and zero imports from Saudi and UAE thereafter. Furthermore, the Commission

noted the relatedness between Saudi Guardian, Guardian Zoujaj, Egyptian Glass and Guardian Africa. The Commission is therefore of the view that country hopping is taking place.

The Commission made a final determination that the circumvention in the form of country hopping is taking place.

5. DUMPING

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the f.o.b. export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the ADR and no anti-dumping duty will be imposed.

In order for a manufacturer/exporter's domestic sales to be used for normal value calculation, a 5% threshold test is performed to determine whether the domestic sales constitute 5% or more of the volume of exports of the subject product sold to SACU.

The Commission made a final determination that the sales made below costs should be excluded from the calculation of the weighted average normal value, if such sales are more than 20 per cent in volume of the total sales.

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To enable a proper comparison with the normal value, the export price should be at the ex-factory level and at the same level of trade.

5.1 METHODOLOGY IN THIS INVESTIGATION FOR GUARDIAN EGYPT COMPANY IN EGYPT

5.1.1 Normal Value

The Commission accepted information submitted by Guardian Egypt in its response to the Commission's questionnaire for purposes of its final determination. Guardian Egypt produces clear float glass and sells it on the domestic market in Egypt. The actual invoice sales were used to calculate the normal value.

Adjustments to the normal value

The following adjustments were claimed to arrive at the ex-factory normal value:

(a) Cost of payment terms

Guardian Egypt indicated that cost of payment term is calculated by taking the annual interest rate charged and convert it to a daily rate (divide by 365 days), then multiply by the number of days in the payment, and lastly multiply by the net invoiced value.

Commission's consideration

It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Guardian Egypt to calculate the cost of payment terms were displayed on the invoices. The adjustment was considered in the calculation of normal value as it was requested and substantiated in the exporter's response to the Commission's questionnaire and also affected price comparability at the time of setting the prices.

The Commission made a final determination to allow adjustment for cost of payment terms adjustment as it was demonstrated to have affected the price comparability at the time of the setting of prices.

(b) Adjustment for packaging cost

Guardian Egypt indicated that the packaging for the domestic and export market is different and for export market the company provides additional protection during long shipments. Domestic customers receive their glass on their own returnable racks at their own cost, while the company incurred costs of packaging for export market.

Commission's consideration

The exporter indicated that the costs for packaging are different for domestic and export market. It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the

time of setting prices.

The Commission made a final determination to allow adjustment packaging cost adjustment as it affected price comparability at the time of setting the price.

(c) Domestic outside sales team (Shown as "Commission")

Guardian Egypt Indicated that an outside sales team is employed by the company in Egypt to handle sales and marketing for the domestic market. The costs of this team are segregated in its general ledger with department code "902". The exporter also indicated that these costs primarily include employment costs, and travel & entertainment, but can also include some supplies and miscellaneous costs as well.

Commission's consideration

The adjustment did not affect price comparability at the time of setting the prices and these costs were not directly related to the sale under consideration.

The Commission made a final determination not to allow adjustment for domestic outside sales team (shown as "Commission") as it did not affect price comparability at the time of setting prices.

(d) Adjustment for Technical Support (Agreement with regional head office in Bahrain)

Guardian Egypt indicated that it has a support services agreement that which was concluded with Guardian Glass Holdings S.P.C, in terms of which the following services are rendered for the benefit and or use of Guardian Egypt: procurement, sales and marketing assistance, research and development, engineering services, assistance in strategic and support functions. The cost of this service is a certain amount of net sales for all sales both domestic and export.

Commission's consideration

The adjustment did not affect price comparability at the time of setting the

prices and this cost was not directly related to the sale under consideration.

The Commission made a final determination not to allow adjustment for domestic technical support as it did not affect price comparability at the time of setting prices.

Export price

The Commission accepted the information submitted by Guardian Egypt in its response to the Commission's questionnaire for purposes of its final determination.

The information submitted by Guardian Egypt in its response to the Commission's questionnaire revealed that the importer in SACU (Guardian Africa) is a related party to Guardian Egypt. They are both affiliate and partner to Guardian Glass Holdings. This confirmed the effect of the relatedness on export prices. Therefore, the export price was constructed from the point of sale by Guardian Africa to its first independent buyers, deducting all costs to the ex-factory level of Guardian Egypt and allowing for a reasonable profit.

Commission's consideration

ADR Part A defines "related parties" as follows: "Related parties" are parties deemed to be related for purposes of an anti-dumping investigation, and sales may be considered not to be at arm's length, if :-

- (a) one directly or indirectly owns controls or holds five per cent or more of the equity shares of the other;*
- (b) one has the power to directly or indirectly nominate or appoint a director to the management of the other;*
- (c) one is an officer or director of the business of the other;*
- (d) they are legally recognised partners in business;*
- (e) one is employed by the other;*
- (f) they are both directly or indirectly controlled by a third person;*
- (g) together they directly or indirectly control a third person;*
- (h) they appear to be related by virtue of their conduct;*

- (i) they are blood relatives or are related by marriage, common-law partnership or adoption; or*
- (j) if their relationship is otherwise of such a nature that trade between them cannot be regarded to be at arm's length.*

Therefore, should it be found that the exporter in the country under investigation is related to the importer in the SACU, or if a compensatory agreement exists between the parties, the basis of the export price will be the price at which the subject product is resold by the importer to an unrelated party in SACU. This price will then be constructed backwards by subtracting all relevant costs and profits to arrive at an ex-factory price in the country of origin.

Dumping Margin

The dumping margin calculated for each product 3mm to 6mm of clear float glass was weighted with the export volumes to determine a weighted average dumping margin. A weighted average dumping margin of **27.26%** was calculated for Guardian Egypt.

Comments by Arab Republic of Egypt Ministry of Trade and Industry on the dumping

The Ministry stated that Article (2-3) of the Anti-Dumping agreement stipulates that "In case where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between exporter and the importer or a third party, the export price may be constructed on the basis of the prices at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine."

The Ministry stated that the determination for normal value and export price could be reasonably assessed under a new Anti-Dumping investigation not

through anti-circumvention investigation. According to Article 18.1 of the Anti-Dumping Agreement stipulates: "No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement."

The Ministry stated that although the Commission stated in the essential facts report that Guardian Africa is a related party to Guardian Egypt, and accordingly export price was constructed, it was not clear to them how the Commission verified this relationship and its effectiveness on the reliability on the export price.

The Ministry further stated that to ensure consistency with the Anti-Dumping Agreement, the investigation against imports should follow normal procedures in analyzing dumping and injury causality had been conducted. In the present case, there was no basis for extending existing anti-dumping duties to imports of the product under investigation from Egypt.

Commission's consideration

The research conducted by the Commission revealed that Guardian Egypt is related to Saudi Guardian, Guardian Zoujaj, and Guardian Africa as they are all affiliates and partners to Guardian Glass Holdings. Guardian Egypt in its exporter's questionnaire response has confirmed its relationship to Guardian Glass Holdings.

Due to the fact that the importer and exporter are related, the export price has to be calculated taking into account the importers sales to the first independent buyer, deducting all cost up to the ex-factory level of the exporter.

Section 1 of the Anti-Dumping Regulations. As explained, this provision governs normal Anti-Dumping investigation and not Anti-Circumvention reviews, which are governed by separate provisions.

Comments by Guardian Africa Corp and Guardian Egypt (Importer and exporter) on the dumping

The importer and the exporter stated that in calculating the dumping margins in the original anti-dumping investigation against Saudi and UAE, the Commission incorrectly calculated the export price by deducting the material and manufacturing costs of the subject product.

The importer and the exporter further stated that the country-hopping investigation is premised on the dumping margins which the Commission determined in the original anti-dumping investigation. Due to the fundamental errors identified in the methodology of calculation adopted by the Commission in that investigation, there was no basis for the country-hopping investigation to have been initiated.

Commission's consideration

In the original investigation, Guardian Africa erroneously showed export price as Cost Insurance and Freight (CIF) and did not split these costs on the cost build-up schedule, hence there was an error from the Commission when it calculated the constructed export price. The costs attributable to the importer to arrive at ex-factory export price have been since corrected. The final anti-dumping duties in this investigation had been implemented on 7 February 2020.

SUMMARY - DUMPING

The Commission made a final determination that the dumping of the subject product originating in or imported from Egypt and manufactured by Guardian Egypt is taking place.

6. MATERIAL INJURY

In the original investigation it was determined that the SACU industry experienced material injury and a threat of material injury.

The Commission's ADR 62.2 states as follows: *"provided an anti-circumvention complaint lodged with the Commission prior or within one year of the publication of the Commission's final determination, the SACU industry shall not be required to update its injury information"*.

Comments by Arab Republic of Egypt Ministry of Trade and Industry

The Ministry stated that Article 3.4 of the Anti-Dumping Agreement stipulates "The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry. Including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity, factors affecting domestic prices, the magnitude of the margin of dumping, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance".

Article 3.5 of the Anti-Dumping Agreement stipulates "The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports."

The Ministry further stated that regarding the determination on the imposition of dumping margin imposed on the Egyptian exports based on data obtained from both UAE and Saudi. The Ministry would like to assure that such margin

does not fairly reflect the pricing of to the Egyptian exports of the subject product to the SACU market. Moreover, "the Commission", has the right to initiate a new anti-dumping investigation based its determination on actual data obtained from the Egyptian producers and exporters in order to conclude an anti-dumping margin according to Article VI of the WTO agreement in this regard.

Commission's consideration

In the original investigation it was determined that the SACU industry experienced material injury and a threat of material injury.

The Commission's ADR 62.2 states as follows: "provided an anti-circumvention complaint lodged with the Commission prior or within one year of the publication of the Commission's final determination, the SACU industry shall not be required to update its injury information".

Based on the above, the Commission decided that, based on the information considered in the original investigation that the SACU industry is experiencing material injury and a threat of material injury with regard to the subject products.

7. SUMMARY OF FINDINGS

7.1 CIRCUMVENTION – COUNTRY HOPPING

The Commission made a final determination that the circumvention in the form of country hopping is taking place.

7.2 DUMPING

The Commission made a final determination that, the dumping of the subject product originating in or imported from Egypt and manufactured by Guardian Egypt is taking place. The dumping margin calculated for each product 3mm to 6mm of clear float glass was weighted with the export volumes to determine a weighted average dumping margin. A weighted average dumping margin of **27.26%** was calculated for Guardian Egypt.

7.3 MATERIAL INJURY

The Commission made a final determination that, based on the information considered in the original investigation that the SACU industry is experiencing material injury and a threat of material injury with regard to the subject products.

8. FINAL DETERMINATION

Based on the information available and taking all comments into account, the Commission made a final determination that:

- Circumvention in the form of country hopping is taking place;
- Dumping of the subject products originating in or imported from Egypt and manufactured by Guardian Egypt is taking place; and
- Based on the information in the original investigation, the SACU industry is experiencing material injury and a threat of material injury with regard to the subject products.

The Commission decided to recommend to the Minister of Trade that the following anti-dumping duty be imposed on clear float glass originating in or imported from Egypt and manufactured by Guardian Egypt:

Tariff heading	Tariff subheading	Description	Statistical unit	Final Duty
				Guardian Egypt
70.05		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:		
7005.29		Of a thickness of not less than 3mm but not exceeding 6mm	m ²	27.26%