

Report No. 722

INVESTIGATION INTO THE ALLEGED DUMPING OF WINDSCREENS FOR VEHICLES CLASSIFIABLE UNDER TARIFF SUBHEADING 7007.21.20 ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA ("CHINA") TO BE USED IN THE SOUTHERN AFRICAN CUSTOMS UNION MARKET AS REPLACEMENT GLASS IN THE AFTERMARKET: FINAL DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its
**Report No. 722: INVESTIGATION INTO THE ALLEGED DUMPING OF WINDSCREENS
FOR VEHICLES CLASSIFIABLE UNDER TARIFF SUBHEADING 7007.21.20
ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA
("CHINA") TO BE USED IN THE SOUTHERN AFRICAN CUSTOMS UNION MARKET
AS REPLACEMENT GLASS IN THE AFTERMARKET: FINAL DETERMINATION**



**AYABONGA CAWE
CHIEF COMMISSIONER**

PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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INVESTIGATION INTO THE ALLEGED DUMPING OF WINDSCREENS FOR VEHICLES CLASSIFIABLE UNDER TARIFF SUBHEADING 7007.21.20 ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA ("CHINA") TO BE USED IN THE SOUTHERN AFRICAN CUSTOMS UNION MARKET AS REPLACEMENT GLASS IN THE AFTERMARKET

SYNOPSIS

Shatterprufe, a division of PG Group (Proprietary) Limited ("the Applicant") submitted an application to the Commission to investigate the alleged dumping of windscreens for vehicles originating in or imported from the People's Republic of China ("China") to be used in the Southern African Customs Union ("SACU") market as replacement glass in the aftermarket ("ARG"). The investigation was initiated through Notice No. 1161, published in *Government Gazette* No.47061 on 22 July 2022.

The investigation was initiated after the Commission considered that the Applicant submitted *prima facie* information to indicate that the subject product was being imported at dumped prices and causing material injury and a threat of material injury to the SACU industry.

Upon initiation of the investigation, the known producers/exporters of the subject product in China were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

After considering all interested parties' comments, the Commission made a preliminary determination that the subject product originating in or imported from China is being dumped onto the SACU market causing material injury and a threat of material injury to the SACU industry.

As the Commission was of the view that the SACU industry would continue to experience material injury during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for the South African Revenue Service (“SARS”) to impose provisional measures on the subject product for period of 6 months.

Provisional measures were imposed on the subject product originating in or imported from China through Notice No. 3021 of 2023 and published in *Government Gazette* No. 48013 dated 10 February 2023.

The Commission’s reasons for its preliminary determination are contained in its Preliminary Report No. 707 (Preliminary Report). The report was made available to interested parties for comment.

Based on the details as contained in the Commission’s preliminary report, comments received and exporter’s verified information, the Commission made a final determination before “essential facts” that it was considering making a final determination that the subject product was being dumped on the SACU market and that, as a result, the SACU industry was suffering material injury.

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.

After considering all interested parties’ comments on the “essential facts letter”, the Commission made a final determination that the subject product originating in or imported from China was being dumped onto the SACU market, causing material injury and a threat of material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following definitive anti-dumping duties be imposed on windscreens for vehicles to be used in the SACU market as replacement glass in the aftermarket originating in or imported from China:

Tariff subheading	Manufacturer/exporter	Final Duty
HS 7007.21.20	Dongguan Kong Wan Automobile Glass Limited	28.39%
	BSG Auto Glass Co., Ltd	0%
	Xinyi Automobile Glass (Shenzhen) Co., Ltd	12.92%
	Dongguan Benson Automobile Glass Co., Ltd	12.92%
	Fuyao Glass Industry Group Co., Ltd	0%
	All the other manufacturers (excluding Dongguan Kong Wan Automobile Glass Limited and BSG Auto Glass Co., Ltd, Fuyao Glass Industry Group, Xinyi Automobile Glass (Shenzhen) Co., Ltd, Dongguan Benson Automobile Glass Co., Ltd)	129.15%

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 2002 (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 APPLICANT

The application was lodged by Shatterprufe, a division of PG Group (Proprietary) Limited (“the Applicant”) one of four main manufacturers in the SACU industry.

1.3 ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with ADR 21 on 23 June 2022.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from China was being dumped on the SACU market, thereby causing material injury and a threat of material injury to the SACU industry. The basis of the alleged dumping was that the goods are being exported to SACU at prices less than the normal value in the country of origin.

The Applicant further alleged that as a result of the dumping of the subject product from China it was suffering material injury in the form of:

- (i) Price suppression;
- (ii) Price depression;
- (iii) Declining sales volume;
- (iv) Declining market share;
- (v) Declining profits and losses;
- (vi) Production decline;

- (vii) Declining productivity;
- (viii) Declining return on investment;
- (ix) Declining utilisation of production capacity;
- (x) Impact on cash flow;
- (xi) Impact on inventory levels; and
- (xii) Slowdown in growth.

1.5 INVESTIGATION PROCESS

A properly documented application was submitted by the Applicant on 13 May 2022. The information submitted by Shatterprufe was verified on 31 May 2022. The verification report was sent to Shatterprufe on 03 June 2022. The information requested during verification submitted on 01 June 2022.

The Commission initiated an investigation into the alleged dumping of windscreens for vehicles to be used in the SACU market as replacement glass in the aftermarket originating in or imported from China, pursuant to Notice No. 1164 of 2022, which was published in *Government Gazette* No. 47061 on 22 July 2022.

Prior to the initiation of the investigation, the trade representative 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.

1.6 INVESTIGATION PERIODS

The investigation period for dumping is from 1 January 2019 to 31 December 2021. The injury investigation involves evaluation of data for the period 1 January 2019 to 31 December 2021.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of four manufacturers of the subject product, the Applicant being one of four main manufacturers in the SACU industry.

1.7.2 Responses by Foreign Manufacturers/Exporters/Importers

Interested Parties Responses

Importers	Properly Documented
Windscreen Distributors (Pty) Ltd	Yes
Grandmark (Pty) Ltd	Yes
Wholesale Motor Glass (Pty) Ltd	Yes
Commercial Auto Glass	Yes

On 14 September 2022, Windscreen Distributors (Pty) Ltd (“Windscreen Distributors”) submitted its response to the Commission’s importers questionnaire and a deficiency letter was sent on 03 October 2022. On 05 October 2022, a request for extension was received from Windscreen Distributors. This request was rejected as ADR 31.2 does not provide for extension of time to address deficiencies. On 10 October 2022, a response was received to the Commission’s deficiency letter. The updated response from Windscreen Distributors was found to be deficient.

On 01 November 2022, Windscreen Distributors was advised that the response was regarded as deficient and that the Commission may decide not to consider its information for purposes of the preliminary determination.

The Commission made a preliminary decision not to consider Windscreen Distributors’ information for purposes of its preliminary determination.

On 24 February 2023, Windscreen Distributors submitted its response to the Commission’s importer questionnaire. Verification of Windscreen Distributors’ information was conducted on 16 March 2023.

On 09 May 2023, Windscreen Distributors was requested to resubmit its information on B2.1, B2.2 and B3.1 in a categorized format of the subject product. The deadline to submit such information was 16 May 2023. On 15 May 2023, Windscreen Distributors resubmitted its information and indicated the following:

The requested categorisation of shipments on the cost build-up B2.2 is overly complex. Import and clearing charges are incurred on the whole shipment as per

the shipment cost build-ups. This means costs will need to be apportioned to shipments as per the provided categories. While costs have already been apportioned to subject products in the cost build-ups in the Commission's possession, it further indicated that splitting the cost build-ups into categories and apportioning costs to categories of different products would be an immensely complex and time-consuming undertaking that will take months. It requested the Commission to consider this and use the verified average cost build-ups.

Windscreen Distributors further stated that in its process of categorizing the information, it identified a few errors, which made it necessary to make a few updates to annexure B2.1 already in the Commission's possession. It stated that it had identified that there were a few invoices that contained laminated door glasses and sunroof glasses and that these items had inadvertently been included in the data. The products were removed from the response.

Commission's consideration

The Commission considered, Notes to chapter 70 of the Tariff classification from SARS that states as follows:

1. This Chapter does not cover the following:

(d) Front windscreen (windshield), rear windows and other windows, framed, for vehicles of chapter 86 to 88; and

(e) Front windscreen (windshield), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices, for vehicles of chapter 86 to 88.

Based on the above notes, all windscreens for vehicles with accessories such as heating devices or other electrical or electronic devices that fall under chapters 86 to 88 were disregarded when determining the price disadvantage. The Commission could not calculate the landed cost on plain windscreens, the subject product, as information resubmitted by Windscreen Distributors in the cost build included

windscreens with accessories which are not cover under tariff subheading 7000.21.20. and only provided the categories on B2.1.

The Commission made a final determination not to take the information submitted by Windscreen Distributors into consideration for purposes of its final determination.

On 12 September 2022, Commercial Auto Glass submitted its response to the Commission's importers questionnaire and a deficiency letter was sent on 3 October 2022. On 10 October 2022, a response was received to the Commission's deficiency letter. Verification of Commercial Auto Glass's information was conducted on 20 October 2022. During verification, it was found that the allocation methodology used to calculate the cost elements in the cost build-up was incorrect. The selected sample invoices could not be verified and tied back to sales provided in its response. Furthermore, the importer acknowledged that it miscalculated the information and thus provided incorrect sales information. The importer requested that it be granted an opportunity to submit this information. The importer was informed that its information would be presented to the Commission for its consideration. The importer was further informed that the Commission may decide not to take the response into consideration for the purposes of its preliminary determination.

The Commission made a preliminary decision not to consider Commercial Auto Glass's information for purposes of its preliminary determination as the information in its questionnaire response could not be verified.

On 24 February 2023, Commercial Auto Glass submitted an updated version of its response to the Commission's importers questionnaire. After going through the updated response, The Commission was of the opinion that Commercial Auto Glass' information was eligible for verification. The Commission proposed verification for Commercial Auto Glass on 03 March 2023. The importer agreed that it would be available for verification. However, on 02 March 2023, Commercial Autoglass stated that it would not be available for verification. The importer stated that some of the information that will be required during the verification, i.e. sales

invoices and proof of payments, were recently archived in a third party storage facility and attempts to obtain these documents in time for verification will be impossible. The historical information cannot be downloaded from the new system being used by the company. Commercial Auto Glass stated that these issues had not been foreseen when the date of 3 March was confirmed, however, and that this had only been identified when the importer started preparing for the verification. Commercial Auto Glass requested to be granted an alternative date. The importer was advised that the extension required by it to conduct verification would unduly delay the finalisation of this investigation. The importer was then advised that should verification not take place the Commission may decide not to consider the information submitted by Commercial Auto Glass for purposes of its final determination. On 03 March 2023, verification did not take place.

In light of the above, the Commission made a final determination not to take the information submitted by Commercial Auto Glass into consideration for the purpose of its final determination.

On 12 September 2022, Wholesale Motor Glass (Pty) Ltd (“Wholesale Motor Glass”) submitted its response to the Commission’s importers questionnaire and a deficiency letter was sent on 04 October 2022. On 11 October 2022, a response was received to the Commission’s deficiency letter. The updated response from Wholesale Motor Glass was found to be deficient.

On 09 November 2022, Wholesale Motor Glass was advised that the response was regarded as deficient and that the Commission may decide not to take its information into consideration for purposes of the preliminary determination.

The Commission made a preliminary decision not to consider Wholesale Motor Glass’ information for purposes of its preliminary determination.

On 24 February 2023, Wholesale Motor Glass submitted its response to the Commission’s importer questionnaire. Verification of Wholesale Motor Glass’ information was conducted on 05 May 2023.

The Commission made a final determination to take the information submitted by Wholesale Motor Glass into consideration for purposes of its final determination.

On 12 September 2022, Grandmark (Pty) Ltd (“Grandmark”) submitted its response to the Commission’s importer questionnaire and a deficiency letter was sent on 04 October 2022. On 10 October 2022, a response was received to the Commission’s deficiency letter and it was found that the importer had addressed all deficiencies raised. Verification of Grandmark’s information was conducted on 25 October 2022.

During verification, the Investigating team could not verify the cost built-up, which was submitted in the response. The importer was requested to explain how the bank charges and insurance costs were allocated to the first shipment in the cost build-up. The importer requested an hour to go through its information and attempt to establish how the allocation was calculated. The request was granted and after an hour the importer requested an additional hour. As a result of failure to provide the information requested during verification and failure to explain the information provided in the importer’s response, the verification was terminated.

The importer was informed prior to verification that all documentation relating to import transactions as well as the calculations of the landed cost during the period of investigation should be readily available during verification.

The importer was also informed that the decision to end the verification will be presented to the Commission for its consideration and it may decide not to take the response into consideration for the purposes of Commission’s preliminary determination.

The Commission made a preliminary decision not to consider Grandmark’s information for purposes of its preliminary determination.

Comments by Grandmark (Pty) Ltd on the Commission's preliminary determination

Grandmark stated that the Commission, in its preliminary determination, failed to consider its information because it claims it could not be verified. It also stated that Although it is grateful to note the far more productive engagement with the Commission at the verification meeting of 7 March 2023 and anticipates that the Commission will consider Grandmark's information to have been adequately verified, that verification had not been determined at the time of the submissions contained herein being due. Grandmark stated that it is constrained at this juncture to assert that the Commission did not act fairly or rationally in terminating the initial verification meeting and ought not to have rejected all of the information.

Grandmark further indicated that, the verification meeting on 25 October was terminated at the insistence of the investigating officers, despite Grandmark's ongoing attempt, in real time during the scheduled verification meeting, to provide all documentation and explanations requested. After it received the verification report on 25 October 2022, it wrote to the Commission on 31 October 2022 detailing the series of events, and further providing a full extensive break down of the documentation provided. The submission was received by the Commission on 31 October 2022 but was not considered before the Commission released its preliminary finding. Although it was hopeful that the concerns around the initial verification meeting might be rendered academic if the Commission, following the productive meeting on 7 March 2023, considers the information duly verified, absent that, Grandmark submitted that the Commission's decision to not verify Grandmark's information would be unfair and irrational, impacting on the probity of the findings in the preliminary determination as well as the imposition of the preliminary duty on exports from its exporter to Grandmark.

Response by Applicant to Grandmark's response

The Applicant stated that Grandmark's claim that its information could not be verified is not a claim, but a statement of fact by the Commission. Grandmark had ample time to adequately prepare for the verification, but failed to do so. Therefore, the

Commission cannot be accused of being unfair, acting irrational, be unwilling or failed to consider information, when Grandmark is at fault.

The Applicant further stated that based on the information at its disposal, the supplier of Grandmark's subject product from China is most likely Xinyi Automobile Glass (Shenzhen) Co., Ltd ("Xinyi"), wherein its information could also not be verified. The effect is that even if Grandmark's information would have been verified, in the absence of its manufacturer's/exporter's (most likely Xinyi) verifiable information, the Grandmark information could still not be considered for the Commission's preliminary determination regarding the "lesser duty" rule.

Commission's consideration

The Commission noted that ADR 18.4 provides that "where a party fails to supply relevant substantiating evidence required by investigating officers during a verification; fails to explain any calculations contained in its submissions; or otherwise fails to cooperate during the investigation process; the Commission may terminate the verification proceedings and the Commission may disregard any or all information submitted by the party in question". The importer failed to provide the information requested during verification with regards to its calculations and failed to explain the information provided in the importer's response. As a result the verification was terminated. On this basis, the Commission then decided not to consider the information provided by Grandmark for its preliminary determination based on ADR 18.4.

Grandmark's updated response to the Commission's importer questionnaire was submitted on 12 September 2022 and was verified on 07 March 2023.

The Commission made a final determination to consider information submitted by Grandmark.

Exporters	Properly Documented	Deficient
Fuyao Glass Industry Group Co. Ltd	Yes	
Dongguan Kong Wan Automobile Glass Limited	Yes	
BSG Auto Glass Co. Limited (BSG)	Yes	
Dongguan Benson Automobile Glass Co., Ltd	Yes	
Xinyi Automobile Glass (Shenzhen) Co., Ltd	Yes	
Apex Motor Glass Company Limited		Yes

On 30 August 2022, Apex Motor Glass Company Limited submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 09 September 2022. On 16 September 2022, an updated response was received to the Commission's deficiency letter. The updated response was scrutinised and it was found to be deficient as the exporter did not provide a non-confidential version of its response.

On 29 November 2022, Apex Motor Glass Company Limited was advised that the response was regarded as deficient and that the Commission may decide not to take its information into consideration for purposes of the preliminary determination.

The Commission made a preliminary decision not to consider Apex Motor Glass Company Limited's information for purposes of its preliminary determination.

Following the Commission's preliminary determination, no response was received from Apex Motor Glass Company Limited to address its deficiencies.

The Commission decided not to take the information submitted by Apex Motor Glass Company Limited into consideration for purposes of its final determination, as it is still deficient.

On 12 September 2022, Fuyao Glass Industry Group Co. Ltd ("Fuyao Glass") submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 14 October 2022. On 08 October 2022, the Commission received a request for an extension from Fuyao Glass. The Commission did not provide this

extension as ADR 31.2 does not provide for extension on deficiencies. On 21 October 2022, a response was received to the Commission's deficiency letter. The updated response was scrutinised and it was found to be deficient as the exporter did not provide English transcripts for information relating to its financial statements provided in Chinese.

On 10 November 2022, Fuyao Glass was advised that the response was regarded as deficient and that the Commission may decide not to take its information into consideration for purposes of the preliminary determination.

The Commission made a preliminary decision not to consider Fuyao Glass's information for purposes of its preliminary determination.

Fuyao Glass' updated response to the Commission's exporter questionnaire was submitted on 21 October 2022 and was verified during the period 27 March 2023 to 26 April 2023.

The Commission decided to take the information submitted by Fuyao Glass into consideration for purposes of its final determination.

On 14 September 2022, Dongguan Kong Wan Automobile Glass Limited ("Dongguan Kong Wan") submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 05 October 2022. On 11 October 2022, a response was received to the Commission's deficiency letter. Verification of Dongguan Kong Wan's information was conducted from 29 November to 02 December 2022.

The Commission made a preliminary decision to take Dongguan Kong Wan's information into consideration for purposes of its preliminary determination.

The Commission decided to take the information submitted by Kong Wan into consideration for the purpose of its final determination.

On 14 September 2022, BSG Auto Glass Co. Limited (“BSG”) submitted its response to the Commission’s exporter questionnaire. A deficiency letter was sent on 05 October 2022. On 11 October 2022 a response was received to the Commission’s deficiency letter. Verification of BSG’s information was conducted on 05 and 06 December 2022.

The Commission made a preliminary decision to take BSG’s information into consideration for purposes of its preliminary determination. However, the Commission decided to take the information submitted by BSG into consideration for the purpose of its final determination.

On 14 September 2022, Dongguan Benson Automobile Glass Co., Ltd (“Benson”) submitted its response to the Commission’s exporter questionnaire. A deficiency letter was sent on 07 October 2022. On 14 October 2022, an updated response was received to the Commission’s deficiency letter. Verification of Benson’s information was conducted from 14 to 17 November 2022. During verification investigators could not reconcile Benson’s total production costs to the management accounts provided in its response to the Commission’s exporter questionnaire. Benson indicated that the set of management accounts it was presenting to the investigators was different to those provided in its response.

Benson was advised that it is not the Commission’s practice to accept any new information during verification, but to verify information submitted in a party’s response to ascertain the accuracy of such information.

On 08 December 2022, Benson was advised that the information would be presented to the Commission for its deliberation, upon which it may decide not to take the response by Benson into consideration for the purposes of Commission’s preliminary determination.

The Commission made a preliminary decision not to consider Benson's information for purposes of its preliminary determination.

On 24 February 2023, Benson submitted its response to the Commission's exporter questionnaire. Verification of Benson's information was conducted from 20 to 21 April 2023.

The Commission decided to take the information submitted by Benson into consideration for purposes of its final determination.

On 14 September 2022, Xinyi Automobile Glass (Shenzhen) Co., Ltd ("Xinyi") submitted its response to the Commission's exporter's questionnaire and a deficiency letter was sent on 13 October 2022. An updated response to the Commission's deficiency letter was received on 21 October 2022. Verification of Xinyi's information was conducted from 21 to 24 November 2022.

During verification, the investigators were able to reconcile the total cost to financial statements. Cost elements were selected from the cost built-up to reconcile them to monthly management accounts. Xinyi indicated that the amounts of the cost elements were based on allocations and could not provide and reconcile the allocations. The exporter acknowledged that the information provided to investigators for allocations of cost elements was incorrect and requested that it be granted an opportunity to update the information. Furthermore, it was found that new management accounts were provided during verification.

The investigating team did not accede to the request as it is not the Commission's practice to accept new information during verification, but to verify information submitted in a party's response to ascertain the accuracy of such information.

A decision was taken to terminate the verification and Xinyi was informed that the decision to end the verification will be presented to the Commission for its deliberation, upon which it may decide not to take the information submitted by Xinyi into consideration for the purposes of Commission's preliminary determination.

The Commission made a preliminary decision not to consider Xinyi's information for purposes of its preliminary determination.

Comments by Xinyi Automobile Glass (Shenzhen) Co., Ltd ("Xinyi") on the Commission's preliminary determination

Xinyi stated that new management accounts were not provided during verification. The production cost reports utilised to allocate the cost of sales to the different cost items and categories of the subject product are reported to management, but are not included in the management accounts. The figures in these reports were used as part of the calculation of cost of sales, which were reported in the management accounts. Xinyi submitted, therefore, that there was no change in the management accounts during verification.

Response by Applicant to the Commission's verification report

The Applicant stated that in the verification report it is recorded that Xinyi did indicate that the amounts of the cost elements were based on allocations and could not provide and reconcile the allocations and that Xinyi acknowledged that the information provided to investigators for allocations of cost elements were incorrect. The Applicant indicated that Xinyi requested that it be granted an opportunity to update this information. In the Xinyi Correspondence 1 document, Xinyi confirmed that a correction that was required to the cost allocation did impact on the total cost of two categories of the subject product. The Applicant submitted that such calculation of cost of sales would have impacted on the cost allocation calculations for the subject product as a whole and therefore would most likely have had an impact on the accuracy of the management accounts and information submitted.

The Applicant further indicated that in Xinyi's correspondence it was stated that production cost reports utilised by Xinyi to allocate the cost of sales to the different cost items and categories of the subject product are not included in the management accounts. The Applicant accordingly accepts the Commission's statement in the Commission response, which Xinyi was not able during the verification to demonstrate that the cost build-up reconciles to the provided management

accounts, as critical information that should have been provided as part of the management accounts appeared to be amiss from the Xinyi response. Xinyi's information was submitted and accepted by the Commission, however, could not be verified by the Commission as being correct. A request is made to the Commission for the update of incomplete management accounts, as well as other annexures to the Xinyi response, pertaining to information that could not be reconciled during verification.

The Applicant stated that the request by Xinyi is not only opportunistic but also highly irregular as it had sufficient time to submit the Xinyi response to the Commission (which was accepted by the Commission as proper documented responses that could be verified), as well as properly prepare for the Commission's verification, which it failed to do. It must be noted that the policy of the Commission is not to verify deficient responses. Thus, the Xinyi response was not deficient it could just not be verified. The Applicant stated that it wishes to reiterate that the Commission proceeded with the arranging of the verification of the information provided as part of the Xinyi response. On the basis that the Xinyi response was not deemed or regarded as being deficient at the time, but accepted as being properly submitted, and the Commission wishes to ascertain themselves of the accuracy of the submitted information, which Xinyi could not substantiate. The International Trade Administration Commission Anti-Dumping Regulations³ ("AD Regulations") are very clear in section 31.3, which reads as follows:

"The Commission will not consider submissions that are deficient after the deadline contemplated in subsection 2 for the purpose of its preliminary finding. (own emphasis). The ADR therefore does not make provision, in the event that the Commission could not verify the accuracy of the information during verification, that it gives a party a second opportunity for the information to be verified during the investigation period, not even after the preliminary determination.

The Applicant indicated that verification was terminated based on the fact that the Commission indicated that it was unable to verify the information Xinyi provided,

thus qualifying the Xinyi 'properly documented' response as non -verifiable- NOT deficient. Therefore, it is clear that Xinyi should not be allowed the opportunity to now update its response as stated in the Xinyi request, after the Commission's verification had taken place as a result of Xinyi inability to support its information during verification. Notwithstanding the fact that the AD Regulations do not provide for this irregular action, but there is also a risk that most likely new information could be provided. It is noted that in the Xinyi verification report it was stated that the Xinyi response "may be regarded as deficient" for the purpose of the Commission's preliminary determination. The Applicant submits that the Commission listed incorrectly the Xinyi response together with the exporters whose responses were factually deficient, whilst it should have rather clearly stated that the Xinyi response was "Non-verifiable", which was the reason why the response cannot be considered for the Commission's preliminary determination, nor can it be considered for the final determination as Xinyi was caught out in that the information could not be verified as correct.

The Applicant further stated that there was also no deficiency letter issued by the Commission to Xinyi after 08 December 2022, as contemplated in section 31 of the AD Regulations, thus this was not a deficiency. The true facts are that the Xinyi response could not be verified and thus Xinyi should not be allowed another opportunity to further update the Xinyi response, following the verification that had occurred. From the Xinyi extension request and the Commission response, Xinyi requested the Commission for an extension to update the Xinyi response and it is the Applicant understanding from the Commission response that the Xinyi deadline to respond to the Report was 24 February 2023, which is an erroneous approach by the Commission.

Commission's consideration

The Commission disagreed with the Applicant's contention that parties who were verified before the preliminary determination are being granted an additional opportunity to rectify unverifiable information. It is not uncommon, during domestic industry, importer and exporter verifications, to find, inter alia, capturing errors,

misallocation errors, small accuracy errors and sometimes difficulty finding supporting documentation that has already been archived. These errors are usually immaterial and pertain to single transactions in a pool of a large number of transactions. This thus has little if any impact on the submission of the party being verified.

In Xinyi's case, it was stated in the verification report that the Commission was able to reconcile the total cost to financial statements, and this was therefore verified. The amounts of the some of the cost elements, which were based on allocations, could not be reconciled. The Commission made a decision not to take Xinyi's verified information into consideration as it had not submitted a detailed manufacturing statement/ production cost reports to the Commission prior to verification. The cost allocation impacted the total cost of two categories of the subject product and that the total cost of other categories of the subject product remained unchanged. The production cost reports are utilized by Xinyi to allocate the cost of sales to the different cost items and categories of the subject product that are reported to management accounts. There were no changes made in the management accounts. The Commission conducted a second verification of Xinyi's information to confirm that the information regarding allocation of costs, was correct.

Annexure II of the ADA provides that "all information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made".

This annexure further provides that "if evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefore, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation".

The Commission decided to accept Xinyi's information for purposes of its final determination. The Commission further made a decision to calculate an individual dumping margin for Xinyi for the purposes of its final determination.

1.8 PRELIMINARY DETERMINATION

After considering all responses and comments by interested parties, the Commission made a preliminary determination that windscreens for vehicles to be used in the SACU market as replacement glass in the aftermarket originating in or imported from China was dumped onto the SACU market, causing material injury and a threat of material injury to the SACU industry.

As the Commission decided that the SACU industry would continue to experience material during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for SARS to impose provisional measures on the subject product for a period of 6 months.

Provisional measures were imposed on the subject product originating in or imported from China through Notice No. 3021 of 2023 and published in *Government Gazette* No. 48013 dated 10 February 2023.

The Commission's reasons for its preliminary determination were contained in its Preliminary Report. The report was made available to interested parties for comment. Comments received from the Applicant, importers, exporters and other interested parties, were taken into account by the Commission in making its final determination.

Essential facts letters were sent to all interested parties, informing them of "essential facts" which were being considered by the Commission and invited interested parties to comment. Comments on the essential facts letter were received from the Applicant, Fuyao Group, Xinyi Automobile Glass (Shenzhen) Co., Ltd and Dongguan Benson Automobile Glass Co., Ltd. Dongguan Kong Wan Automobile Glass Limited, Grandmark International (Pty) Ltd and Wholesale Motor Glass (Pty)

Ltd. Comments from Grandmark International were not taken into account by the Commission for purposes of its final determination as they were submitted after the deadline.

All responses and comments received from interested parties are contained in the Commission public file for this investigation and were made 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 included in this report.

Comments by Grandmark (Pty) Ltd on the Commission's preliminary determination

Grandmark indicated that in the Application, the Applicant motivated for an anti-dumping duty of only 9,66% to 10,69%. However, the Commission's preliminary determination suggested a far higher tariff of 26.67%. The imposition of a dumping duty of 26.67% on the subject product will result in Grandmark having to increase its prices to its disadvantage and to the detriment of consumers. Should the duty remain applicable there is a real possibility that Grandmark will be unable to obtain product that could compete with the Applicant, which would have repercussions for Grandmark's employees and players in the downstream aftermarket industry. It stated that the Commission was unable to verify 8 out of 10 submissions, including its submission and that the Commission imposed a significantly lower preliminary duty in regard to the two suppliers in respect of which information was verified. The Commission in its report relies ostensibly on data only provided by the Applicant for the years 2019- 2021 without acknowledging the impact of the Covid-19 pandemic on such data.

Grandmark further stated that the Commission's decision to impose a residual duty of 26.67% appears overly mechanistic and based on insufficient information, especially in circumstances where verified information suggests a lower duty. Grandmark indicated that it is confident that if the Commission were to calculate its

exporter's export pricing using Grandmark's 'landed price' as a base and to use its exporter's calculated normal value. There would be no evidence of dumping by its exporter. Even in the event that its exporter's data cannot be verified, a comparison of Grandmark's verified import costs will demonstrate that imports of the subject product do not correspond to the lowest verified export price used by the Commission to determine the preliminary duty. Grandmark stated that it submits that the Commission should, having regard to data and evidence provided by Grandmark and which ought to be verified based on Grandmark's good faith engagement and disclosure to the Commission, revise its determination to either exclude its exporter from the duties, or significantly reduce the duty applicable to that supplier.

Grandmark stated that the best evidence available to the Commission regarding the export price are the invoices provided by its exporter to Grandmark. The prices reflected in these invoices are the clearest and most accurate indication of the price actually paid by (Grandmark) for the subject product. It submitted its invoices received from its exporter to the Commission. The Commission did not consider such invoices for the purpose of the preliminary determination. The initial challenges faced by it is to provide information relating to certain elements of its cost build-up (the ostensible reason for the Commission's unwillingness to verify the totality of Grandmark's information) should not have detracted from the validity of the invoices provided by it. The Commission's failure to consider the invoices for the purpose of determining the export price is a material omission. It means that the Commission could not have accurately calculated the export price for the purpose of its determination of whether dumping is taking place. The conclusion that dumping is taking place and the concomitant calculation of the relevant export duty applicable to its exporter on the basis of the highest export price and lowest value when the Commission had access to actual export pricing bears no rational connection to the reality faced by Grandmark in procuring product.

Grandmark further stated that with the SARS Commissioner having imposed a 26% provisional anti-dumping duty, on the imports procured by Grandmark, it has no choice but to adjust its price to its customers or fail to remain sustainably in business. During the investigation period, Grandmark's unweighted average profit margin for subject products was between 20% and 25%. The imposition of a tariff of 26% can therefore not be absorbed by Grandmark. To remain viable in the market, it would need to raise its prices, which might not be accepted by customers, and would be to the detriment of the end-consumers. It stated that it has not undertaken an extensive cost comparison exercise between its prices and those prices charged by the Applicant, however, Grandmark's success in the market to date is a testament to the fact that it exercises a pricing constraint over Applicant. The imposition of a 26% import duty could possibly eradicate this constraint. The Applicant is the sole local manufacturer of the subject product. Imposing high import duties would not protect the industry but rather a single participant who would be granted undue influence and cement its dominance in the market. This would be to the obvious detriment of the rest of the aftermarket value chain, many of whom are small businesses. It would remove the competitive constraint importers impose upon it to the detriment of the aftermarket industry and the end-consumer. The duty currently imposed will almost certainly affect Grandmark's sustainability and may result in it having to cut costs in order to remain in the market. This may result in a loss of jobs.

Response by Applicant to interested parties' comments

The Applicant indicated that based on the investigation conducted at the time and the verification of information presented by cooperating interested parties and also the verified Applicant's Application, the Commission may immediately request the imposition of a provisional payment on the basis of the facts available in accordance with the AD Regulations. Grandmark is clearly misguided with its view that the Commission's findings are "overly mechanistic and based on insufficient information". The Applicant indicated that it wishes to point out that the reason the responses of eight interested parties could not be verified, was based on the failure of such parties to present verifiable responses and supporting information to the

Commission. It stated that for Grandmark, as a defaulting party whose information could not be verified, to then criticise the Commission for relying on the best information available is rather vain. It stated that It is common cause that parties who choose to cooperate with the Commission's investigation would benefit from such choice, in that a lower Anti-Dumping duty could be imposed on that party if found to be dumping, in excess of the de minimis level or can completely be exempted. However, the facts that are verified by the Commission will be determining the outcome.

The Applicant further stated that based on the information at its disposal, the supplier of Grandmark's subject product from China is most likely Xinyi Automobile Glass (Shenzhen) Co., Ltd ("Xinyi"), which manufacturer's information could also not be verified. The effect is that even if Grandmark's information would have been verified, in the absence of its manufacturer's /exporter's (most likely Xinyi) verifiable information, the Grandmark information could still not be considered for the Commission's preliminary determination regarding the "lesser duty" rule.

The Applicant indicated that it wishes to confirm the need for having the provisional payment of Anti-Dumping duty the Commission imposed, based on prima facie evidence, as was submitted to the Commission that material injury was being suffered, which injury was to continue whilst the Commission was completing its investigation, unless the provisional measures were imposed. Grandmark is reminded that only dumped imports from China are affected by the provisional measures and that the SACU consumer market is not deprived from sourcing any other imported ARG market windscreens at competitive prices. The misconceptions held by Grandmark on the subject of market dominance and the position of the Applicant have already been addressed. The only competitive constraint that applies is that of the dominant position held by the dumped imports from China in the SACU market, which is fuelled by the increasing dumped volumes of the subject product, is addressed while the Commission continues with its investigation.

Commission's consideration

The information submitted by Xinyi was considered to be deficient for purposes of the Commission's preliminary determination and the information submitted by Grandmark could not be verified. The Commission decided not to take both parties information into consideration for the purpose of its preliminary determination. ADR 17 states that the Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully. This was not the case with Xinyi and Grandmark.

1.10 FINAL DETERMINATION AND RECOMMENDATION

After considering all comments received on the Commission's "essential facts letter", the Commission made a final determination that the subject product originating in or imported from China was being dumped onto the SACU market causing material injury and a threat of material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that definitive anti-dumping duties on windscreens for vehicles to be used in the SACU market as replacement glass in the aftermarket originating in or imported from China be imposed as follows:

Tariff subheading	Manufacturer/exporter	Final duty
HS 7007.21.20	Dongguan Kong Wan Automobile Glass Limited	28.39%
	BSG Auto Glass Co., Ltd	0%
	Xinyi Automobile Glass (Shenzhen) Co., Ltd	12.92%
	Dongguan Benson Automobile Glass Co., Ltd	12.92%
	Fuyao Glass Industry Group Co., Ltd	0%
	All the other manufacturers (excluding Dongguan Kong Wan Automobile Glass Limited, BSG Auto Glass Co., Ltd, Fuyao Glass Industry Group Co., Ltd, Xinyi Automobile Glass (Shenzhen) Co., Ltd, Dongguan Benson Automobile Glass Co., Ltd)	129.15%

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product of this application is laminated safety glass suitable for the incorporation in vehicles, generally referred to as windscreens for vehicles, to be used in the SACU ARG market.

Comments by Windscreen Distributors (“WD”) to Commission’s Preliminary Determination

In response to the Commission’s preliminary determination, WD stated that Laminated windscreens are considerably different and come with different features. This is also reflected in manufacturing cost and selling prices. The price of a laminated windscreen for a vehicle range between R500 to more than R15 000 depending on features and type of vehicle model. WD also stated that the Applicant failed to indicate the physical differences of the subject products. This is a fatal flaw in the application and will lead to erroneous conclusions. The Applicant essentially creates the impression that all products under investigation are the same yet that is not the case.

Commission’s consideration

The Commission noted that although the windscreens come with “different features reflected in manufacturing cost and selling price, it was clear during the verifications that windscreens imported from China and those sold on the domestic market are like products for purposes of comparison as required by the ADR.

Comments by the Applicant to the Commission’s essential facts letter *In response to the Commission’s essential facts letter, the Applicant stated that the product brochure, as contained in the Fuyao’s exporter response, is noticeably limited to only high-end products, which was strategically done in support of the narrative that Fuyao Glass Industry Group Co., Ltd (“Fuyao Group”) was using to*

steer the Commission in a certain direction. Fuyao Group's strategy to try and separate itself from other ARG manufacturers in China does not represent an accurate picture of the market and its position therein and we believe that the presentation confuses the Commission's understanding of the supply situation. The Applicant also indicated that Fuyao Group acknowledged in its response to the Exporter Questionnaire that it is dumping product in the SACU market. "The selling point of this segment (Wired Heated Glass) is to melt snow in the windscreen in the cold zone or for humidifying purposes in the humid area. Such features are useless in the tropics zone like the SACU market. The Applicant further stated that certain types of vehicles with such original product features of its windscreen are also commonly sold in SACU. The ARG thereof is also with certain requirements but the features of wired heated are never a selling point in the SACU, as it does in the Chinese market. In other words, the consumers of this segment of ARG in the SACU will not pay the additional price for this feature" (own insertion and emphasis). From the aforementioned, it is clear that the subject product is exported to SACU, but at a lower (dumped) price than what it is sold in China otherwise there will not be a demand in SACU. The Applicant has also noted that the Fuyao Group made considerable effort to focus on its claim that the laminated ARG is not a standard product, but a customized product. The Applicant pointed out that the subject produced in China and in SACU are manufactured in accordance with the respective vehicle models and product models. It is known that windscreen production has a significant setup cost i.e., the changeover of tools for bending and cutting recipes results in huge change-over costs. Since as stated by Fuyao, the volumes are so much higher in China, it follows that the lower volumes in SACU will incur lower economy of scale benefits and therefore make the product more expensive to manufacture for the SACU region, although this is not seen in the imported products' pricing from the Fuyao Group. Further, the Fuyao Group only presented information concerning its higher value products with accessories or add on features, as well as products for vehicle models from 2018 to 2022. Surely, the Fuyao Group has not excluded itself from the ARG market prior to 2018. It might be possible that one or more of the other four Fuyao Group manufacturers, apart from or in addition to Fujian Wanda could have a product for ARG market products for vehicles prior to

2018. The Applicant wishes to draw the Commission's attention to the fact that higher value-added product is also manufactured and sold in SACU, as well as imported from China with accessories, now classifiable under tariff subheading 8708.22. These imports from China have recently taken the SACU market by storm and are ironically declared at lower import prices than windscreens without these features. It is further stated that even if there could be differences in products, it is trite that the Commission could compare similar windscreen prices sold in both markets. Whether or not the same vehicle models exist in China as in SACU or that are parallel thereto, The Applicant submits that there are comparable windscreens. The Applicant further stated that Fuyao Glass admitted in its Exporter Questionnaire response that it has a "complicated "Automotive Glass Product Coding Rules" and establishes a "Company product code" for each type of laminated ARG. Theoretically, the same company product code produced and sold in the domestic market and the one produced and sold in the SACU, and the third countries' markets, are identical products. There are 6910 company product codes in the domestic sale list and 1409 company product codes in the SACU sale list. However, there is NO overlap in company product codes in the two markets". The Applicant stated that the Commission should note that as it is clear that Fuyao Glass carefully worded the above statement, referring to "product codes" – of course, when a product is exported, which is identical or a like product to the product sold on the domestic market a different company product code can be attached to the exact same product – thus the referral to "theoretically". The Applicant requested the Commission to revisit the issue of comparability.

Commission's consideration

The Commission noted that apart from the above arguments by the Applicant, the subject product originating or exported from China are like products to those manufactured in the SACU market for purposes of comparison in terms of the ADR. This was confirmed by the information obtained by the Commission on Fuyao Glass' verification. The Commission also noted the Applicant's allegation that it might be possible that one or more of the other four Fuyao Group manufacturers, apart from or in addition to Fujian Wanda could have a product for ARG market products for

vehicles prior to 2018 is not significant for purpose of the determination of dumping. The investigation period for dumping is 1 January 2021 to December 2021. The Commission noted that from all the five producers of ARG in China, Fujian Wanda is the biggest producer of ARG products with a major proportion compared to the other producers. It is correct for the Commission to have considered sales from Fujian Wanda to an independent customer to determine domestic sales in China. The Commission agrees with the Applicant's contention that circumvention will take place under tariff sub-heading 8708.22. However, the only alternative for the Commission would be to "monitor imports and self-initiate the circumvention investigation based on the prima facie information obtained.

2.1.2 Country of origin/export

The subject product originates in and is exported from China.

2.1.3 Possible tariff loopholes

The Applicant indicated that it is possible that the subject product could be imported under HS tariff subheading 7007.11 as toughened (tempered) safety glass, suitable for the incorporation in vehicles, which attracts a 15 percent ad valorem ordinary customs duty to circumvent the payment of 30 percent ad valorem ordinary customs duty on the subject product.

The Applicant further indicated that it is also possible that subject product that should be classified as per the tariff subheading 7007.21.20 can be imported under HS Tariff subheading 8708.22 as parts and accessories of the motor vehicles of headings 87.01 to 87.05 to circumvent the payment of duty.

2.1.4 Tariff classification

The subject product is currently classifiable as follows:

Table 2.1.4

HS Tariff subheading	Description	Statistical unit	Rate of duty					
			General	EU/UK	EFTA	SADC	MERCOSUR	AfCFTA
70.07	Safety glass, consisting of toughened (tempered) or laminated glass:							
7007.2	- Laminated safety glass:							
7007.21	-- Of size and shape suitable for the incorporation in vehicles, aircraft, spacecraft or vessels:							
7007.21.20	- - - Windscreens for vehicles	kg	30%	15%	15%	free	30%	24%

Comments by Windscreen Distributors to Commission's Preliminary Determination

In response to Commission's preliminary determination, WD stated that it is concerned that the Commission imposed a duty of 26.67%. This is a significantly high duty. Notably, this anti-dumping duty is in addition to the 30% general Customs duty applicable on tariff subheading 7007.21.20. It also stated that this means laminated windscreens imported by WD are now subjected to total duties of 56.67%. The anti-dumping duty threatens sustainability of not only Windscreen Distributors but other import businesses. Moreover, cost and price increases that will occur in response to the anti-dumping duty further threatens survival of fitment businesses downstream, especially the many small players. WD also stated that it is disturbing that the Commission did not consider the negative implications of the COVID-19 pandemic lockdowns on the domestic manufacturers. This was an unprecedented situation in the SACU's history. Importantly, this coincided with the injury assessment period. WD further stated that the existing significantly high general Customs duty of 30% already incentivises the applicant's affinity to anti-competitive practices to the detriment of competitors and users of the subject products. The applicant has a history of engaging in anticompetitive conduct with another investigation yet to be finalised by the Competition Commission. An anti-dumping duty will result in less import competition and serve to entrench the applicant's dominant position in the market.

Commission's consideration

The Commission noted that although the Applicant has a 30% and 26% general customs and anti-dumping duties, this does not take away the fact that the subject product sold by WD on the SACU market competes with those sold by Applicant and at dumped prices. The Commission also took note that by imposing the anti-dumping measures, this will prevent further injury to the SACU domestic industry.

2.1.5 Negligibility test

The following table shows the alleged dumped imports as a percentage of the total imports:

Table 2.1.5: Import Volumes

Aftermarket Replacement Glass (ARG)						
	Volumes		%		%	
	2019	2019	2020	2020	2021	2021
Alleged dumped imports	6 786 783	90.54%	6 539 507	89.34%	7 951 097	91.21%
Other imports	709 373	9.46%	780 094	10.66%	766 378	8.79%
Total	7 496 157	100%	7 319 601	100%	8 717 475	100%

The Commission made a final determination that imports from China are above the negligibility level.

2.2 SACU PRODUCT

The SACU product is described as laminated safety glass suitable for the incorporation in vehicles, generally referred to as windscreens for vehicles, to be used in the SACU ARG market.

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	Raw glass, poly-vinylbutyral and ceramic paste. Various add-ons such as trims, mirror bosses, brackets, rubber spaces and locators.	Raw glass, poly-vinylbutyral and ceramic paste. Various add-ons such as trims, mirror bosses, brackets, rubber spaces and locators.
Production process	<p>Vehicle windscreens are manufactured from laminated glass, by combining two or more glass sheets bonded with one or more layers of PVB, EVA or TPU interlayers and subjected to heat and pressure, in order to ensure perfect adhesion between the constituent elements.</p> <p>The windscreen manufacture process comprises of the following steps:</p> <p><u>Cutting:</u> The glass is cut, the edges are grinded and drilled. It is then washed and dried.</p> <p><u>Printing:</u> An enamel border is printed on the glass, as well as the logo and the glazing typology.</p> <p><u>Forming:</u> Laminated windshields: The two sheets of glass are put on a</p>	<p>Vehicle windscreens are manufactured from laminated glass, by combining two or more glass sheets bonded with one or more layers of PVB, EVA or TPU interlayers and subjected to heat and pressure, in order to ensure perfect adhesion between the constituent elements.</p> <p>The windscreen manufacture process comprises of the following steps:</p> <p><u>Cutting:</u> The glass is cut, the edges are grinded and drilled. It is then washed and dried.</p> <p><u>Printing:</u> An enamel border is printed on the glass, as well as the logo and the glazing typology.</p> <p><u>Forming:</u> Laminated windshields: The two sheets of glass are put on a</p>

	<p>skeleton (pairing) and then heated in a furnace at 600°C. Forming is done by gravity and pressing if necessary. The glass is then cooled and separated.</p> <p><u>Lamination:</u> After washing and drying, a cover of polymer interlayer is inserted between the two sheets of glass in a clean room.</p> <p><u>Autoclaving:</u> The glass system is degassed at 140°C for a definitive adhesion of the glass and the interlayer.</p> <p><u>Final Inspection:</u> All glass units are inspected, excess vinyl trimmed off and packed.</p> <p><u>Pre-assembly of added values:</u> Various components (rain & light sensors, profiles...) are glued on the glazing according to the customer's requirements.</p>	<p>skeleton (pairing) and then heated in a furnace at 600°C. Forming is done by gravity and pressing if necessary. The glass is then cooled and separated.</p> <p><u>Lamination:</u> After washing and drying, a cover of polymer interlayer is inserted between the two sheets of glass in a clean room.</p> <p><u>Autoclaving:</u> The glass system is degassed at 140°C for a definitive adhesion of the glass and the interlayer.</p> <p><u>Final Inspection:</u> All glass units are inspected, excess vinyl trimmed off and packed.</p> <p><u>Pre-assembly of added values:</u> Various components (rain & light sensors, profiles...) are glued on the glazing according to the customer's requirements.</p>
Physical appearance	Clear or tinted glass of various thicknesses is produced by the float process. The technical characteristics and appearance are a uniform	Clear or tinted glass of various thicknesses is produced by the float process. The technical characteristics and appearance are a uniform

	<p>thickness and bright polished surfaces, without the need for further polishing. For example, a float glass sheet of 2mm and another 2mm glass sheet thickness are then used in the cutting to size for the lamination and manufacture of the windscreens.</p> <p>The composition of glass is normally as follows:</p> <p>Silica (SiO₂) 72% IronOxide(Fe₂O₃) 0.09% Alumina (Al₂O₃) 0.3% Magnesium Oxide 4.5% Sodium Oxide 13.7% Potassium Oxide 0.5% Sulphur Trioxide 0.25% Calcium Oxide (CaO) 8.8%</p> <p>Polyvinyl butyral is a clear, colourless, amorphous thermoplastic obtained by condensation reaction of polyvinyl alcohol and butyraldehyde. The resin is known for its excellent flexibility, film-forming and good adhesion properties as well as outstanding UV resistance.</p>	<p>thickness and bright polished surfaces, without the need for further polishing. For example, a float glass sheet of 2mm and another 2mm glass sheet thickness are then used in the cutting to size for the lamination and manufacture of the windscreens.</p> <p>The composition of glass is normally as follows:</p> <p>Silica (SiO₂) 72% IronOxide(Fe₂O₃) 0.09% Alumina (Al₂O₃) 0.3% Magnesium Oxide 4.5% Sodium Oxide 13.7% Potassium Oxide 0.5% Sulphur Trioxide 0.25% Calcium Oxide (CaO) 8.8%</p> <p>Polyvinyl butyral is a clear, colourless, amorphous thermoplastic obtained by condensation reaction of polyvinyl alcohol and butyraldehyde. The resin is known for its excellent flexibility, film-forming and good adhesion properties as well as outstanding UV resistance.</p> <p>Ethylene-vinyl acetate,</p>
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	<p>Ethylene-vinyl acetate, also known as poly (ethylene-vinyl acetate), is the copolymer of ethylene and vinyl acetate. The weight percent of vinyl acetate usually varies from 10 to 40, with the remainder being ethylene.</p> <p>Thermoplastic polyurethane is a class of polyurethane plastics with many properties, including elasticity, transparency, and resistance to oil, grease, and abrasion. Technically, they are thermoplastic elastomers consisting of linear segmented block copolymers composed of hard and soft segments.</p> <p>As an example, a laminated windscreen would consist of a 2mm thick float glass sheet, a 0.76mm interlayer film and another glass sheet of 2mm glass thickness. Based on the thickness of these glass sheets and inner layer, it would present a final product that would present was windscreen of 4.76mm laminated glass. As the</p>	<p>also known as poly (ethylene-vinyl acetate), is the copolymer of ethylene and vinyl acetate. The weight percent of vinyl acetate usually varies from 10 to 40, with the remainder being ethylene.</p> <p>Thermoplastic polyurethane is a class of polyurethane plastics with many properties, including elasticity, transparency, and resistance to oil, grease, and abrasion. Technically, they are thermoplastic elastomers consisting of linear segmented block copolymers composed of hard and soft segments.</p> <p>As an example, a laminated windscreen would consist of a 2mm thick float glass sheet, a 0.76mm interlayer film and another glass sheet of 2mm glass thickness. Based on the thickness of these glass sheets and inner layer, it would present a final product that would present was windscreen of 4.76mm laminated glass. As the</p>
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	thickness of the glass sheets and the film(s) vary, so will the thickness of the manufactured laminated glass product.	thickness of the glass sheets and the film(s) vary, so will the thickness of the manufactured laminated glass product.
Tariff classification	7007.21.20	7007.21.20
Application or end use	Windscreens for vehicles are used as components in the primary production process of motor vehicles, serving part of original equipment. Windscreens for vehicles are also used in the ARG market, when OE windscreens are damaged and need to be replaced.	Windscreens for vehicles are used as components in the primary production process of motor vehicles, serving part of original equipment. Windscreens for vehicles are also used in the ARG market, when OE windscreens are damaged and need to be replaced.
Substitutability	The SACU windscreen products are fully substitutable with the subject products imported from China.	The SACU windscreen products are fully substitutable with the Subject products imported from China.

Comments by the Applicant during Oral Presentation

The Applicant stated that it is of the view that laminated windscreens for vehicles classifiable under HS 7007.21.20, to be used in the South African Customs Union (“SACU”) Aftermarket Replacement Glass (“ARG”) market, in basic form it is two sheets of float glass that are cut to size, with an inner layer of vinyl that will be the bonding agent to join the two sheets. The combination of which is heated and shaped to the required specific ration, to provide the laminated final product. The vinyl interleaving also provides the integrity of the windshield to withstand glass fragmentation and hold the windscreen together upon impact.

The Applicant stated that the same windscreens production process is used for motor cars, buses and lorries. The tariff classification does not differentiate in what

type of vehicle it will be used. Even though the windscreen sizes will differ for a motor car and a bus, and the price will differ because of the volume of the material used, the statistical unit of the tariff is in kilogram. Some fittings may be applied, which are of minuscule weight within the context of the windscreen.

The Applicant stated that windscreen is a component fitted at the front of a vehicle; not at the back, sides or top of a vehicle. Some manipulative responding parties have tried to extend the scope of a 'windscreen', which literally means "to act as a screen against the wind in your face when you are driving", to other automotive glass items which it is not. At a fitment centre level, requesting a 'windscreen' is clearly and correctly understood as being the automotive glass part at the front of a vehicle.

The Applicant further stated that that as of 01 January 2022, a specific provision under "Parts and accessories" of certain motor vehicles HS 8708.22 was created for 'framed front windscreens (windshields), rear windows and other windows, as well as "front windscreens (windshields), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices". Windscreens that are "framed" or contain "heating, electrical or electronic devices" are identified to be split from windscreens classifiable under HS 7007.21.20. The majority of the windscreens, which is subject to this investigation remain classifiable under HS 7007.21.20.

Commission's consideration

The Commission agrees with the Applicant that the product under investigation, classifiable under tariff subheading 7007.21.20, is defined in the tariff book as laminated safety windscreen for vehicles. The Commission is also in agreement with the Applicant in that windscreen only refers to the front window of a vehicle and not the side, back or upper/sunroof windows. During the course of the of the investigation, in an effort to further understand the subject product, the Commission found that side tempered glass, classifiable under tariff subheading 7007.21.20 is used for the back, side and commonly for upper/sunroof windows.

Having noted the above, and having verified exporters and importers of the subject product, the Commission believed that although the subject product is windscreens for vehicles, there is a large number of models. A windscreen for a passenger vehicle cannot be placed in the same category as that of a truck or a bus etc.

The Commission also considered decisions taken by the Canadian International Trade Tribunal and the USA International Trade Administration in their investigations for windscreens for vehicles originating in or imported from the China to be used as replacement glass in the aftermarket. Although it is not clear in their reports exactly how the model differentiation was done, these countries imposed a weighted final duty. This reiterates that although there is only one windscreen, the Commission cannot ignore the fact that there is more than one model of windscreens.

The Applicant states that “as of 01 January 2022, a specific provision under “Parts and accessories” of certain motor vehicles HS 8708.22 was created for “framed front windscreens (windshields), rear windows and other windows, as well as “front windscreens (windshields), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices””. The period of investigation for dumping is from 01 January to 31 December 2021. 2022 falls out of the scope of this investigation.

The Applicant also stated that the Commission’s attention is drawn to the fact that it pointed out in its application that it was also possible that the subject product classifiable under HS 7007.21.20 can be imported under HS 8708.22, as parts and accessories of the motor vehicles, to circumvent the payment of duty, both provisional payment and the final duty. Windscreen imports from China classified under HS 7007.21.20 have decreased in 2022, but to get the full picture of the windscreen imports from China, the Commission needs to take cognisance of the factual data that apply to HS 7007.21.20 and HS 8708.22 as provided in the table below:

SACU Imports from China (kg)	HS 7007.21.20	HS 8708.22	Combined
January 2022	513 597	16 188	529 785
February 2022	491 304	104	491 408
March 2022	581 367	290 543	871 910
April 2022	258 098	212 044	470 142
May 2022	133 690	155 008	288 698
June 2022	431 835	304 829	736 664
July 2022	149 069	461 509	610 577
August 2022	252 031	441 234	693 265
September 2022	122 538	578 705	701 243
October 2022	66 813	561 767	628 579
November 2022	17896	446 289	464 186
December 2022	99 802	696 813	796 615

The Applicant stated that it is clear that since the creation of HS 8708.22 that has a lower customs duty than HS 7007.21.20, Chinese imports shifted from HS 7007.21.20 to HS 8708.22, which was accelerated by the imposition of the provisional payment.

Commission's consideration

The Commission did not agree with the Applicant's contention that the subject product was being circumvented in the first half of 2022 and that an increase was accelerated in the second half of the year when provisional duties came into effect. The investigation was only initiated at the end of July in 2022 and provisional measures were imposed in January of 2023. However, when the Commission analysed SARS import data for the periods January to April 2022 and January – April 2023, import volumes under tariff subheading 8708.22, it was found that the import volumes had doubled from 518 879.77kg in 2022 to 1 550 747.95kg for the same period in 2023. SARS import data also indicated that for the periods January to April 2022 and January – April 2023, import volumes under tariff subheading 7007.21.20, import volumes dropped by more than half from 1 844 365.99kg to 385 291.13 kg. Although the Commission cannot deny the possibility of circumvention, it cannot be concluded with absolute certainty that this increase is the result of

circumvention. At this stage the Commission may elect not to, without proof of circumvention, change the scope of the investigation. In the presentation it submitted the, Applicant has indicated that it intends on applying for anti-circumvention measures.

Response by Applicant to comments made by Windscreen Distributors (“WD”)

In response to WDs allegations, the Applicant stated that as set out in its application, the primary components of the subject product are two cut panes of glass sheets that are formed and thermochemically bonded together by one or more layers of clear or tinted sheet interlayers, pasted or inserted between the sheets. Even though the unit prices and weight of the Subject Product products might differ, WD is reminded that the South African Revenue Service statistical unit for the importation of the Subject product is kilogram and not an item or a unit. Additional fittings or trimmings maybe be added, as per specification or preference, but these aspects would amount to value additions to a product that is still a piece of laminated safety glass for automotive use as a windscreen in its simplest form, classifiable under tariff subheading 7007.21.20. Thus, there is no situation of a fatal flaw as per WD’s skew view.

Commission’s consideration

The Commission considered that during exporters’ verification, it was found that the subject product manufactured by the Applicant and that supplied to WD by Fuyao Glass are like products. Even though the unit prices and weight of the subject product might differ with that of the Applicant, the Commission took note that the subject product imported from China and that produced by the Applicant are like products for purposes of comparison in terms of the ADR.

Comments by Applicant to the Commission’s essential facts letter

The Applicant stated that all windscreens that were imported for use in the Southern African Customs Union (“SACU”) as replacement glass in the aftermarket (“ARG Market”), were imported and classified under tariff subheading 7007.21.20. Tariff

subheading 8708.222 was created and only came into effect on 01 January 2022, in line with the World Customs Organisation (“WCO”) Harmonised 2022 adjustments, to make a clear distinction between certain motor vehicle windows and other motor vehicle parts which are classifiable under tariff subheading 8708.29. Accordingly, for the purpose of the Commission’s investigation no separation is to be made for ARG market windscreens that are now classifiable under tariff subheading 8708.22, as tariff subheading 8708.22 did not exist during the POI and such differentiation would only apply after the fact.

The Applicant further stated that the Commission is advised that according to the International Trade Centre, Trade statistics for international business development, global exports from the People’s Republic of China (“China”), of front windscreens (windshields), rear windows and other windows specified, classifiable under China tariff clarification 8708.22.90 did not exist prior to 20223. When the categorisation of windscreens that would be classifiable under tariff subheading 8708.22 is assessed, it would predominately relate to heated windscreens, for which there is no need in the SACU climate. This is a fact also expressed by one of the manufacturers in China. The Applicant stated that such an Original Equipment (“OE”) windscreen would have been fitted by the manufacturer of the new vehicle with a heated windscreen and the customer that might decide to have the same ARG market replacement, but could opt for a windscreen without it. Further, tariff clarification 8708.22 is a basket code for a selection of automotive glass parts and not windscreens only, with the “other electrical or electronic devices” being referred to, applying to the other automotive glass parts, e.g., radio antennas that are fitted in some side windows. The Applicant indicated that the overwhelming bulk of the ARG Market windscreens that have been exported from China to SACU during the POI, as well as thereafter, would be product that were and still should be classified under tariff subheading 7007.21.20. It is

The Applicant stated that in its submission the increases in windscreen imports that might have occurred under tariff subheading 8708.22 after the POI, are most likely the result of a strategy to circumvent the payment of customs duties that apply to

tariff subheading 7007.21.20. It is noted that the Commission in the Letter makes reference to the term “without accessories”, which in some instances were made without any additional comment to provide context to the use of the term. Further, the Commission did not clearly define what is meant by “accessories”, which term does not appear in either tariff subheading 7007.21 or 8708.22.20 or notes thereto, in relation to windscreens. It wishes to point out to the Commission that manufacturers in China do not only sell windscreens as glass without accessories into the China market or into the SACU market. An attempt to adjust the ARG Market normal value of a like product to the level of “plain windscreen”, without “accessories” or fittings, will result in an unrealistically low normal value consideration. The Applicant submitted that subjugating the evaluation to a “plain windscreen”, the Commission is not accounting for the true cost of the product. Firstly, A “plain windscreens” can be packed very tightly and one can get more windscreens in a container than when there are accessories added to the windscreen. This would automatically drop the cost of transport and packaging by an estimated 30 percent per item. Secondly, the value add of components or accessories that materially adds value to a windscreen and by excluding these aspects, the Commission is only comparing a smaller segment of the subject product that is sold in SACU (which are the lowest cost by nature). This does not present a true reflection of the competitive platform that existed.

It further stated that the Commission stated that it disregarded all windscreens for vehicles with “accessories” such as heating devices or other electrical or electronic devices that fall under chapters 86 to 88, when determining the normal value and export price. It wishes to point out that the Commission made a critical error in doing so, as the basis for such a differentiation did not exist during the POI. The Notes to Chapter 70 that the Commission refers to in the Letter only became applicable after the POI. It requested the Commission to review its normal value calculations and for its final determination to not differentiate between ARG market windscreens on classifications that only became applicable in 2022.

Commission's consideration

The Commission disagree with the Applicant stating that “The Notes to Chapter 70 that the Commission refers to in the Letter only became applicable after the POI”. It should be noted that on 1 January 2023, following amendments from the world customs organisation, SARS created a new tariff subheading under tariff heading 87.08 (parts and accessories of motor vehicles of headings 87.01 to 87.05) that caters specifically for front windscreen (windshield), rear windows and other windows that are either framed and/or incorporate electrical and suitable for incorporation on motor vehicles. Tariff subheading 8708.22 was transposed from tariff subheading 8708.29. The creation of tariff subheading 8708.22 did not re-classify windscreens that were previously classifiable under tariff subheading 7007.21, which are plain windscreens without accessories. The notes on chapter 70 were applicable even before the new tariff subheading was created.

Taking the above into consideration, the Commission made a final determination that the SACU product and the imported products are “like products”, for purposes of comparison in this investigation, in terms of the relevant provisions of the ADR.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

The application was submitted by Shatterprufe, a division of PG Group (Proprietary) Limited (“the Applicant”), one of four main manufacturers in the SACU industry, representing the majority of production in the SACU.

Comment by the Applicant during Oral Presentation

The Applicant stated that with highly active commercial transport, passenger commute and personal travel segments in the SACU market, it is important to have a healthy and sustainable domestic automotive glass manufacturing sector that can offer high quality products on a reliable basis and not only be dependent on imports. It stated that it is not opposed to the importation of windscreens as a practice, on the basis of fair trade. However, it pointed out that it is in the interest of the South African economy and the SACU consumers that the region does have domestic windscreen manufacturing facilities, which produce high quality products, for the ARG and also the Original Equipment (“OE”) market, without which the consumer market will be at the mercy of exporters. It stated further that the ARG market is compromised as a result of dumped imports and that this will have a direct impact on the sustainability of supply to the SA motor industry. The Applicant further indicated that it is common cause that the SA Government recognized the importance of the SA Automotive industry and included mechanisms to encourage OE Manufacturer’s (“OEM’s”) to deepen localisation. Should the SACU auto glass industry fail, because of dumped imports, all OEM automotive glass would have to be imported.

Commission’s consideration

The Commission considered that the information submitted by the Applicant and verified clearly confirmed that the subject product is being dumped into the SACU market, thereby causing material injury to the domestic industry.

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

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR CHINA

GENERAL

Comments by the Applicant during Oral Presentation

The Applicant stated that from the investigation it is clear that there are various parties involved in objecting to the investigation, with the responses of some not being considered for the Commission's preliminary determination. These parties' information that was not considered can be divided into two groups: Cooperating parties of which information was accepted, but was not verifiable; and Cooperating parties of which information is/was deficient.

The Applicant also stated that it is especially important that a clear distinction is made between these two parties. Cooperating parties of which information was accepted, but that is not verifiable. Secondly, when an interested party submits a response questionnaire and the Commission accepts the response, it means that the response is not deficient. The next step would be for the Commission to determine the accuracy of the response – meaning the Commission will verify the information. This verification normally takes place prior to the making of a preliminary determination, to ensure that the Commission based its decision on verified information. If the submitted information is verified as correct, the Commission will base its preliminary finding on this verified information, as well as its final determination. Cooperating parties of which information was accepted, but that is not verifiable. If the information is verified as incorrect or could not be verified, e.g. submitted information could not be tied back to the financial records, such information could not be verified – thus it is not deficient, it is not verifiable – meaning a party could have supplied incomplete or inadequate information to support its case, hoping the Commission would not pick up that the information is flawed. The Commission then rejects the information and makes a determination on the best information available. Meaning that a party will fall under the residual

duty regime. A party of which information could not be verified or was verified to be incorrect, does not get a second bite at the cake. Such party had the opportunity and supplied incorrect or incomplete data that did not tie back to the supporting data of the company. Therefore, such party cannot supply a “new” information, be verified again and demand that the Commission must take that information into consideration after the preliminary determination.

Commission’s consideration

The Commission noted that ADR 32 states that in the event of one or more of the exporters in a particular country cooperate whilst other exporters or producers do not cooperate, the Commission for purposes of non-cooperating producers may base its preliminary decision on the best available information. As there are exporters in China who did not respond to the Commission’s investigation are subject to the residual anti-dumping as explained in the submission.

It should also be noted that the Commission accepted no new information during verification. All exporters who were verified by the Commission submitted properly documented responses as required by the ADR.

ADR 35.5 states that parties that have submitted responses as contemplated in ADR 31 and have addressed deficiencies prior to the deadline indicated in subsection 1, shall be deemed to be cooperating parties and the Commission shall consider their information in its final finding, subject to the provision of ADR 36.1 and the requirement to finalise the investigation timely. In light of the above, it should be noted that all exporters who were verified by the Commission adhered to the deadline as stated in the ADR as they have submitted properly documented responses for purpose of final determination.

Comments by Applicant on the Essential facts letter

The Applicant indicated that it reiterates its arguments that were submitted in the oral representation and again stress that Dongguan Benson Automobile Glass Co., Ltd (“Benson”) and Xinyi Automobile Glass (Shenzhen) Co., Ltd (“Xinyi”), should

not have been offered second verification opportunities. It is evident that the information of Benson and Xinyi which could not be verified during the respective first verifications did not relate to merely “capturing errors, misallocation errors, small accuracy errors” or just difficulty in finding supporting documentation. No, it was substantial notwithstanding the attempt of the Commission in the Letter to try and play it down as trivial. It is clear that it was so substantial that the Commission could not verify the submitted information as it could not be substantiated. The policy of the Commission is that the data must be substantiated during verification – supporting documentation can be submitted after verification in some instances, definitely not a second verification, but the company must be able to explain and supply substantiating information during verification – after all, the Company supplied the numbers and thus must have documents available, especially if they are aware that the Commission will be verifying. It is submitted that by allowing the third parties to, after a couple of months or even weeks, supply information to substantiate issues that could not be verified initially, creates the opportunity for parties without principles to fabricate “evidence”. The Applicant further indicated that it is not attacking the integrity of Benson or Xinyi or the Commission, but wishes to point out to the Commission that it is creating a dangerous precedent going forward which can and will affect future investigations. The Commission is requested for its final determination, to not accept the Benson and Xinyi information for purposes of its final determination and to accordingly not calculate individual dumping margins for the two companies.

Commission’s consideration

The Applicant reiterated the same comments made on the Commission’s preliminary determination. The Commission on the essential facts letter addressed this issue.

The Commission disagreed with the Applicant’s contention that parties who were verified before the preliminary determination are not being granted an additional opportunity to rectify unverifiable information. It is not uncommon, during domestic industry, importer and exporter verifications, to find, inter alia, capturing errors,

misallocation errors, small accuracy errors and sometimes difficulty finding supporting documentation that has already been archived. These errors are usually immaterial and pertain to single transactions in a pool of a large number of transactions. This thus has little if any impact on the submission of the party being verified.

In the case of Xinyi Automobile Glass (Shenzhen) Co., Ltd (“Xinyi”), it was stated in the verification report that the Commission was able to reconcile the total cost to financial statements, and this was therefore verified. The amounts of the some of the cost elements, which were based on allocations, could not be reconciled. The Commission made a decision not to take Xinyi’s verified information into consideration as it had not submitted a detailed manufacturing statement/ production cost reports to the Commission prior to verification. The cost allocation impacted the total cost of two categories of the subject product and that the total cost of other categories of the subject product remained unchanged. The production cost reports are utilized by Xinyi to allocate the cost of sales to the different cost items and categories of the subject product that are reported to management accounts. There were no changes made in the management accounts. The Commission conducted a second verification of Xinyi’s information to confirm that the information regarding allocation of costs was correct, this information was found to be correct.

In the case of Dongguan Benson Automobile Glass Co., Ltd (“Benson”), it was stated in the verification report that the various elements of the cost build-up as well as the total costs were verified against its accounting systems and the supporting documentation thereof was received and verified. The Commission made a decision not to take Benson’s verified information into consideration as it had not submitted a detailed manufacturing statement/ production report to the Commission prior to verification. The Commission conducted a second verification of Benson’s information to confirm that the information regarding allocation of costs was correct, this information was found to be correct.

Annexure II of the ADA provides that “all information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made”.

This annexure further provides that “if evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefore, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation”.

The Commission decided to accept Xinyi and Benson’s information for purposes of its final determination. the Commission further made a decision to calculate an individual dumping margins for Xinyi and Benson for purposes of its final determination.

Volumes on the domestic market

Section 8.3 of the ADR provides that:

“Domestic sales of the like product shall normally be considered a sufficient volume to determine a normal value if such sales constitute five per cent or more of the sales volume of the product to the SACU. Sales representing less than 5 per cent of export sales to the SACU may nevertheless be deemed sufficient where such sales are of sufficient magnitude to provide a proper comparison.”

Commission’s consideration

In light of the above, the Commission made a final determination that sales representing less than 5 per cent of export sales to the SACU be considered not a sufficient volume to determine a normal value. The Commission further made a final determination to use the constructed normal value method in such instances.

Reasonable Profit

When constructing a normal value, the normal value is based on the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit.

A reasonable profit in terms of the provisions of Article 2 of the Anti-Dumping Agreement states the following:

“The amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.”

Commission's consideration

The Commission made a final determination to use a reasonable profit for constructing normal value in accordance with Article 2 of the ADA.

Notes

Notes to Chapter 70 of the Tariff classification from SARS states as follows:

1. This Chapter does not cover the following:

- (i) Front windscreen (windshield), rear windows and other windows, framed, for vehicles of chapter 86 to 88; and
- (ii) Front windscreen (windshield), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices, for vehicles of chapter 86 to 88.

Based on the above notes, all windscreens for vehicles with accessories such as heating devices or other electrical or electronic devices that fall under chapter 86 to 88 were disregarded when determining the normal value and export price.

Comments by Applicant on the Commission’s essential facts letter

The Applicant stated that, the Commission referred to the Notes to Chapter 70. It must be noted that these Notes were only added on 01 January 2022 to Schedule 1 Part 1 of the Customs and Excise Act, which was after the POI, coinciding with the creation of tariff subheading 8708.22.

Commission’s consideration

The Commission disagreed with the Applicant stating that “The Notes to Chapter 70 that the Commission refers to in the Letter only became applicable after the POI”. It should be noted that on 1 January 2023, following amendments from the world customs organisation, SARS created a new tariff subheading under tariff heading 87.08 (parts and accessories of motor vehicles of headings 87.01 to 87.05) that caters specifically for front windscreen (windshield), rear windows and other windows that are either framed and/or incorporate electrical and suitable for incorporation on motor vehicles. Tariff subheading 8708.22 was transposed from tariff subheading 8708.29. The creation of tariff subheading 8708.22 did not re-classify windscreens that were previously classifiable under tariff subheading 7007.21, which are plain windscreens without accessories. The notes on chapter 70 were applicable even before the new tariff subheading was created.

4.2 METHODOLOGY IN THIS INVESTIGATION FOR DONGGUAN KONG WAN

4.2.1 Calculation of the normal value

The Commission accepted the information submitted by Dongguan Kong Wan in its response to the Commission’s questionnaire for purposes of its final determination. During the period of investigation, Kong Wan did not sell any bus windscreens in its domestic market. However, it sold basic passenger laminated windscreens without accessories and truck windscreens. It was found that domestic sales for truck windscreens constituted more than 5 percent of the volume of export

sales to SACU. Further to that, domestic sales were made above cost. Domestic sales were used to determine the normal value for truck windscreens.

As there were no domestic sales of bus windscreens were made in the domestic market, the normal value for bus was constructed. The domestic sales volumes for basic passenger laminated windscreens without accessories only constituted less than 5 percent of the export sales volume to SACU. As a result, the normal value for basic passenger laminated windscreens without accessories was also constructed. No adjustments were taken into consideration for bus windscreens as well as basic passenger laminated windscreens without accessories as the normal value was constructed.

The Commission took note that Kong Wan did not make any profits as stated in its audited financial statements for 2020 and 2021. The industry consisting of Xinyi, Benson and the Fuyao Group. An industry weighted average profit was calculated. As Kong Wan is smaller than its industry counterparts, the Commission is considered using the profit realised by the exporter with the lower profit of the five exporters in terms of sales volumes of the subject product, during the POI for dumping.

In light of Article 2 of the ADA, the Commission is considering making a final determination that the profit stated above represents a reasonable profit for constructing normal value.

No adjustments were taken into consideration as the normal value was constructed.

4.2.2 Calculation of export price

During the period of investigation, Kong Wan exported bus windscreens, truck windscreens and passenger basic laminated windscreens without accessories. The Commission made a final determination that export price be based on SACU export sales of bus windscreens, truck windscreens and passenger basic laminated windscreens without accessories.

In its response, the exporter stated that its related party, Peaceful City International (“PC”), situated in Hong Kong, was responsible for the distribution of the product under investigation to the SACU, as well as other third countries. During verification, upon further investigation, the exporter stated that it sells the product under investigation to its related distributor PC. PC then sells this product to importers of the subject product. PC adds its own profit margin to the price it acquires the product from Kong Wan.

Adjustments to the export price

The following adjustments were claimed by the exporter in order to arrive at the ex-factory export price:

Inland delivery and port charges

The exporter claimed adjustments on the export price for inland delivery and port charges. As the adjustments have demonstrated to have affected the price comparability at the time of the setting of prices, they were taken into account for purposes of calculating the ex-factory export price.

Cost of payment terms

Dongguan Kong Wan reported cost of payment terms in its response between PC and the first independent buyer. The exporter indicated that it is not their company’s practice to indicate payment terms on the invoice. The exporter explained that it calculates the payment terms in days by calculating the difference between the invoice date and bank notice date. The exporter explained that there is no company policy in place with regards to payment terms.

Commission’s consideration

The Commission made a final determination not to allow the cost of payment terms adjustment as this cost was not substantiated with documentary proof. Dongguan Kong Wan could not demonstrate that this affected price comparability at the time of setting prices.

4.2.3 Dumping Margin

The dumping margin for Kong Wan was determined to be 28.39 percent.

Comments by Applicant on the Commission's preliminary determination

The Applicant stated that Kong Wan did not sell more than 5 percent of the volume of the subject product that was exported during the dumping period of investigation ("DPOI"), in the Chinese ARG market that the normal value needed to be constructed. It is also noted that the Commission did not take any adjustments into consideration, which is supported. Further, the confirmation is needed that the "operating cost" refers to the cost build-up that the Commission did verify.

The Applicant also stated that for the dumping period of investigation 01 January 2021 to 31 December 2021. Commission made no mention of its consideration of the impact of the Kong Wan dual distribution channels to "Traders" and "End-users", which in the Applicant's view will have an impact on the SG&A expenses, affecting the net ex-factory value and possibly the Commission's constructed normal value. It is further noted that in calculating a "reasonable profit" that the Commission still used the actual operating profit (which is in question) in the costing and "financial statements". It stated that it requests the Commission to clarify and confirm that the Commission's investigators did satisfy themselves that the operating profit depicted in the financial statements relates to sales on the domestic market that exceed 5 percent of their export sales, as the OE profits cannot be used to calculate a reasonable profit for the ARG products. It is noted that the Commission's preliminary determination concerning Kong Wan's export price cost adjustments, of the sales made to Peaceful City, the related sole exporter of the Subject Product, were limited to inland delivery and port charges, which costs were accepted as impacting on price comparability at the time of setting prices.

The Applicant further stated that the Commission preliminary determination to not allow an adjustment for payment terms is noted. It would like to state that despite an exporter's ability to claim adjustments on the export price, the Commission is entitled to make its own adjustments to the exports price, based on any findings

during the Commission's verification process that an adjustment must be made, especially as the exporter claimed an adjustment for payment terms. The Applicant submitted that it will be in the interest of an exporter to keep its export price as high as possible, in order to reduce the likelihood of dumping or the margin thereof. In the report, the Commission did not make mention of any additional cost aspect that was identified during verification that would require an adjustment to be made to the export price, e.g., bank charges and additional packaging costs for export product. Further, very important that the export price from Kong Wan to Peaceful City could not be verified as Peaceful City did not cooperate and submitted an exporter questionnaire to the Commission. It stated that it wishes to point out that as Peaceful City is a related company, the export price must be constructed backwards from the first point of resell to an independent buyer by Peaceful City to Kong Wan, as set out in regulation 10.1 of the ADR.

The Applicant pointed out that it submits that the actual export price of Kong Wan cannot be verified as Peaceful City did not cooperate by supplying verifiable information to allow the reconstruction of the export price as a result of a related party involvement. The reason for this is that as a result of the related party issue the export prices offered and paid cannot just be taken on face value, as profits can be masked and taken at different companies when related party issues are at hand. Further, very important, the substantiation of Peaceful City data cannot be done or submitted by Kong Wan, as it must have been done by Peaceful City, but which did not cooperate with the Commission in the investigation. The Commission was therefore requested, that as it is clear that Kong Wan actual export price cannot be verified because of Peaceful City (a related party) not participating in the investigation and that in the absence of its export price information and verifiable costing information, the Commission cannot determine the actual export price of Kong Wan. It therefore, submitted that for the purpose of its final determination, that the Commission makes a finding that as the export price cannot be accurately determined as Peaceful City did not cooperate, that the Commission not calculate a specific dumping duty for Kong Wan and subject the exports to the residual duty. The Applicant submitted that the Kong Wan domestic pricing structure and

associated SG&A costs for the two distribution channels to “Traders” and “End-users” would most likely differ and the Commission, for its final determination.

Commission’s consideration

The Commission noted that Kong Wan and PC submitted a joint response, as they are related parties. Further to that, Kong Wan only manufactures and sells the subject product in the domestic market. Hence all information regarding production and domestic sales was extracted from Kong Wan’s Accounting systems and the exports, both to the SACU and third countries were received from PC. PC does not manufacture the subject product but only sells it in the export market. PC is merely a distributor of the subject product to export markets. Kong Wan’s and PC’s joint non-confidential response is available in the public file and the Applicant is aware that Kong Wan and PC submitted a joint response.

For purposes of the preliminary determination, the Commission used the verified operating profits as contained in in the cost build up. This reasonable profit has been amended to reflect the selling profit as verified in the cost build. The difference between the two profits is that the latter takes into account SGA expenditure.

Comments by Kong Wan on the Commission’s preliminary report

Kong Wan stated that as indicated by the Commission in the preliminary determination, the constructed normal value of Kong Wan should be based on the constructed cost of production, plus the selling, general and administrative expenses and a reasonable profit. The formula is as follows: $CNV = COP + SG\&A + a \text{ reasonable profit}$. The Commission decided that the reasonable profit above should be the gross operating profit (operating revenue less operating cost). Clearly by using the gross operating profit, the Commission counted the SG&A twice in calculating the constructed normal value of Kong Wan.

Kong Wan stated that this method is not correct and the constructed normal value of Kong Wan has consequently been increased by this error. Kong Wan requested that the Commission use net operating profit rather than the gross operating profit

to calculate the constructed normal value. The reasonable net operating profit could be calculated by excluding both the non-operating income and the non-operating expenses from the profit calculation. In the preliminary determination, the Commission decided not to use the net operating profit by the reasoning that the profit methodology contains the non-operating income and the non-operating expenses. Kong Wan fully understands this concern. To calculate the net operating profit more accurately, Kong Wan suggests excluding both the non-operating income and the non-operating expenses from the profit calculation.

Kong Wan further stated that since the net operating profits for year 2021 and 2020 are negative, the net operating profit rate for year 2019 could be used to calculate the constructed normal value. Kong Wan requested the Commission to use this updated net operating profit rate to calculate its constructed normal value. The production quantity in KG used in the calculation of dumping margin. In the calculation table of dumping margin for Kong Wan, it is shown that the production volumes used for constructing the normal value. However, in Annexure D3.1(a) submitted as minor corrections during the online verification, the production volume has been revised. Kong Wan requested the Commission to use this revised production volume to calculate the constructed normal value.

Kong Wan stated that in the calculation table of dumping margin for Kong Wan, the dumping margin in % is calculated as follows: Dumping margin in % = unit dumping margin/unit EXW export price. The method is incorrect for the reason that the anti-dumping duty is levied on the landed value rather than the ex-works value of the products. Since all export sales to SACU are on FOB basis, the dumping margin in % could be calculated as a percentage of FOB export price as below: Dumping margin in % = unit dumping margin /unit FOB export price. In view of the above, Kong Wan has re-calculated the dumping margin.

Commission's consideration

The Commission considered the comments stated by Kong Wan and the reasonable profit has been amended to reflect the net operating profit/ selling profit.

Kong Wan realised losses in both 2020 and 2021. Kong Wan suggested that the Commission make use of the profit percent realized by it in 2019. The Commission disagree with this methodology as the POI for dumping is 2021. Further, there are three exporters subject to this investigation that realized profits in 2021 ranging between lower and a higher percent and a weighted industry profit. The Commission elected to use the lower profit realized by Benson to construct Kong Wan's normal values where applicable. The Commission is of the opinion that since Kong Wan is one of the smaller industry players in terms of export sales to the SACU it should not be subject to the high industry average profit margin.

The Commission made a final determination to use Benson's profit to construct Kong Wan's normal value where applicable.

Comments by Kong Wan to the Commission's essential facts letter *Kong Wan stated that it noted that the Commission used the domestic sale of truck windscreens to determine the normal value for truck windscreens exported to SACU. The exporter stated that it re-checked the contract of this sale and found that the truck windscreens in this transaction were made-to-order products. They are not ordinary truck windscreens but Solaco truck windscreens.*

Kong Wan attached a contract of the Domestic Sale of Solaco truck windscreens. The exporter stated that the remark in the contract indicates that these truck windscreens contain Solaco films. This a special order in the domestic market. Since the classifications provided by the Commission do not include truck windscreen Solaco, it just classified the products in the above transaction into truck Windscreens" in its response dated May 16 2023.

Kong Wan stated that the average export price of truck windscreens to SACU and the average domestic price of truck windscreens-Solaco are different and that the difference in products cannot be compared with each other. There were no sales of truck windscreens in the domestic market. The normal value for truck

windcreens should be constructed. Kong Wan respectfully requested the Commission to construct the normal value for truck windcreens.

Commission's consideration

After analyzing the contract provided by Kong Wan in which it is explicitly stated that that the truck windcreens sold in the domestic market contained Solaco film, The Commission decided to re-calculated the normal value for truck windcreens sold by the exporter in its domestic market. The normal value was calculated using the constructed method. The Commission made a final determination to exclude the Solaco truck windcreens erroneously included by Kong wan in its updated response.

Kong Wan stated that it noted in the dumping margin calculations provided to it that the Commission deducted PC International SGA (the SGA expenses of PC International) from the export price of PC International. However, the Commission neither disclosed the reason of adding this new adjustment in Kong Wan's essential facts nor explained its calculation method. The SG&A of a trader are not normal adjustment items to export price provided in Article 2.4 of ADA, but the adjustment items to constructed export price provided in Article 2.3 of ADA. According to Article 2.3, when the export price is unreliable because of an association or compensatory arrangement between the exporter and the importer, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer. Allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. According to the Commission's previous practice, when the exports are made through a related trader / importer based in SACU, the constructed export price can be used and the above-mentioned adjustments such as trader's SG&A and trader's profit are guaranteed. When the exports are made through a related trader based in the exporting country, the constructed export price will not be used. PC International is a trader related to it.

During POI, Kong Wan sold the product concerned to PC International on FOB basis and PC International resold the same to the importer in SACU also on FOB basis. The inland delivery charges and port charges were borne by Kong Wan and PC International did not bear any selling expenses directly related to the products. In such situation, the price between PC International and the importer in SACU (the first independent buyer) should be regarded as export price. Accordingly, the inland delivery charges and port charges should be deducted from the export price as adjustments. In such situation, the constructed export price should not be used and it is not correct for the Commission to deduct PC SGA from the export price of PC International.

Kong Wan stated that it dumped the product under investigation at 16.66%.

Commission's consideration

Kong Wan claimed adjustments for cost of payment terms, delivery costs and port handling charges. Kong Wan sells to export markets through a related company, being PC international, a company specifically founded to facilitate Kong Wan's export sales of windscreens. As a result, there are SG&A expenses incurred by PC international.

Kong Wan, for purposes of submitting a complete response also provided the Commission with PC International's financial statements for the 3 years beginning January 2019 and ending in December 2021. As PC international's sole purpose is to facilitate Kong Wan's sales to export markets, it is clear that the SG&A expenses relate directly to all export sales and the SG& A should be allocated accordingly and considered for purposes of determining a reasonable export price.

The Commission made a final determination before essential facts to allow delivery and port charges as well as the SG&A expenses as they were substantiated, verifiable, they were directly related to the sale under consideration and were demonstrated to have affected price comparability at the time of setting prices.

The Commission made a final determination to allow adjustments for SG&A expenses as they were substantiated, verifiable, directly related to the sale under consideration and demonstrated to have affected price comparability at the time of setting prices.

In light of the above comments by Kong Wan, the normal value, export price and dumping margin has been recalculated to exclude domestic sales for trucks.

The dumping margin calculated for each category was weighted with the export volumes to determine a weighted average dumping margin. A weighted average dumping margin of 28.39 percent was calculated for Kong Wan.

Comments by the Applicant to the Commission's essential facts letter

The Applicant stated that it noted that the Commission refers to the term "without accessories", without providing a proper qualification of the term in relation to Kong Wan as the referral to "without accessories" could also be interpreted to the advantage of the exporters to windscreens that do not have locating pins, mirror button, spacers etc. The Applicant state that to exporters do not sell only glass without accessories into the SACU market and so this cannot be accepted. Comparative windscreens with accessories are exported into SA at dumped prices.

The Applicant stated that windscreens with accessories cannot be disregarded when a normal value is constructed for the POI, as it will present a much lower distorted value.

Commission's consideration

It is not the Commission's practice to include products that are not the subject product in its investigation. The product under investigation is basic laminated windscreen classifiable under tariff subheading 7007.21.20. The Applicant has, during the investigation emphasized that the subject product is basic laminated windscreens and stated that interested parties had previously included models that should not form part of this investigation to confuse the Commission. In the oral presentation made in the Commission meeting on 13 June, The Applicant stated

that as of 01 January 2022, a specific provision under “Parts and accessories” of certain motor vehicles was created as HS 8708.22, for “framed front windscreens (windshields), rear windows and other windows, as well as “front windscreens (windshields), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices”. Windscreens that are “framed” or contain “heating, electrical or electronic devices” are identified and are to be split from windscreens classifiable under HS 7007.21.20.

As stated in this submission, windscreens with heating/ electronic devices/accessories were previously classified under 8708.29 and were transposed to 8708.22 these products do not form part of 7007.21.20 and should not be subject to this investigation. It would be unlawful and go against the Commissions practice to impose a duty on products that do not form part of the scope of this investigation.

The Commission made a final determination that all products falling outside the scope of 7007.21.20 should not be considered for purposes of determining a dumping margin for Kong Wan.

The Applicant stated that the Commission stated that the “industry” consisting of Xinyi, Benson and the Fuyao group” and on that basis an industry weighted average profit was calculated. However, The Commission then continues to suggest that there is consideration to not use this industry profit. Instead, the Commission considered using the lowest profit of an exporter for the normal value construction. the profit for a single company is very much company specific, irrespective of the size of a business. Accordingly, the Commission is requested that for its final determination, it uses the calculated industry weighted average profit for the purpose of constructing a normal value, as it would be an average industry margin and will be more representative of a reasonable generic profit.

The Applicant stated that it has taken note of the Commission adjustments of inland freight and port charges for the purpose of making its final determination. However, no mention is made of costing aspects such as payment terms, bank charges and additional packaging costs for export product. The Commission has the investigative power to not only use adjustments claimed by an exporter, but to also include any other applicable costs that affected the price comparability at the time of setting the prices.

The Applicant stated that it requests the Commission to review its limited consideration in this investigation and to also consider additional costs for adjustment to the export prices for its final determination.

Commission's consideration

In terms of Article 2 of the ADA, a reasonable profit may be:

the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

Kong Wan produced and sold less than Benson, Xinyi and the Fuyao group “the industry”, however, Benson was the exporter that produced and sold the least of the three exporters.

In its final determination before essential facts the commission made a decision to accept Benson's profit as fair basis for Kong Wan's profit. Kong wan made losses in 2020 and 2021 and it made a profit in 2019. The industry average profit is far higher than the profit Kong Wan made during the POI. Further to that officials noted that Kong Wan is significantly smaller in production and sales than the industry. Article 2 of the ADA gives the Commission authority the discretion to utilize a profit it deems reasonable to the extent that this reasonable profit does not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin The

investigators are of the opinion that the industry profit would not be a reasonable profit for purposes of determining a normal value for Kong Wan.

The Commission made a final determination to use Benson's profit as a reasonable profit for purposes of constructing Kong wan's normal value.

The Applicant stated that it noted the Commission's adjustments of inland freight and port charges for the purpose of making its final determination. However, no mention is made of costing aspects such as payment terms, bank charges and additional packaging costs for export product. The Commission has the investigative power to not only use adjustments claimed by an exporter, but to also include any other applicable costs that affected the price comparability at the time of setting the prices.

The Applicant stated that it requests the Commission to review its limited consideration in this investigation and to also consider additional costs for adjustment to the export prices for its final determination.

Commission's consideration

In terms of ADR 11.2, Adjustments should be requested in interested parties' original response to the relevant questionnaires and must be –

- (a) Substantiated*
- (b) Verifiable*
- (c) Directly related to the sale under consideration; and*
- (d) Clearly demonstrated to have affected price comparability at the time of setting prices.*

In terms of the provision above it is clear that the Commission may consider adjustments that have been requested in Kong Wan's initial response to the exporter questionnaire. The Commission may allow adjustments that have been substantiated and verifiable. However, if during the verification of the exporter, the officials find such adjustments that are verifiable, the Commission may decide to

adjust the Export price for such adjustments. This is however not the case with Kong Wan. No information to substantiate banking charges and additional packaging costs were found during verification. In light of the above, the Commission should make a decision not to take these adjustments into consideration for purposes of its final determination.

Cost of payment terms were claimed by Kong Wan, however, as these adjustments were not properly substantiated the Commission made a decision not to take this adjustment into consideration for the purpose of its final determination.

4.3 METHODOLOGY IN THIS INVESTIGATION FOR BSG

4.3.1 Calculation of the normal value

The Commission accepted information submitted by BSG in its response to the Commission's questionnaire for purposes of its final determination. During the period of investigation, BSG did not sell the product subject in its domestic market. As such, the Commission made a final determination that the normal value be constructed. The constructed normal value was calculated based on the actual production costs and adding SG&A expenses. Delivery expenses were excluded from this calculation to get to a net-ex factory constructed normal value. A reasonable profit was then added to this total production cost. The constructed normal values for BSG was determined based on plain windscreens, which include passenger windscreens without accessories and construction vehicles.

Comments by Applicant on the Commission's preliminary determination

The Applicant indicated that it noted that in the BSG response a statement is made that "All the windscreens for vehicles sold in the domestic market are not used in the aftermarket replacement glass ("ARG") market." (own emphasis). A further statement was made in the BSG response that "These products are laminated glasses used to manufacture cars by car factories". It is thus derived that all windscreens that BSG produces are only for the original equipment ("OE") market and that BSG does not sell the subject product in the domestic China ARG market

that differs from the situation of Kong Wan, which does sell in the domestic market, but the percentage disqualify the use of those prices to determine normal value.

The Applicant further indicted that as BSG does not trade in the subject product in the domestic ARG market, no normal value can be determined on the domestic Chinese market, based on domestic sales. As a result of the higher volume of OE products, which results in lower domestic prices (that was conveniently not commented on in the BSG response), the Commission must construct the normal value for the ARG products, as contemplated in section 32(2)(b)(ii)(aa) of the International Trade Administration Act, No. 71 of 20024 (“ITA Act”), on any reasonable basis. This constructed value must be based on actual cost of production, plus a reasonable Selling, General and Administrative (“SG&A”) cost and a reasonable profit. It must be pointed out that the SG&A cost for product sold in the OE market cannot be used for ARG market construction purposes, as the market situation in China will differ regarding the SG&A and therefore using the cost for the OE, the constructed value will be skewed.

Commission’s consideration

When calculating the constructed normal value for BSG, the Commission used the total cost for the product under investigation, windscreens for vehicle for ARG market.

The Commission took note that BSG did not make any profits as stated in its audited financial statements for 2020 and 2021. The industry consisting of Xinyi, Benson and the Fuyao group. An industry weighted average profit was calculated. As BSG is smaller than its industry counterparts, the Commission decided to use the profit realised by Benson with the lower profit of the five exporters in terms of sales volumes of the subject product, during the POI for dumping.

Comments by BSG Auto Glass Limited Co Ltd (“BSG”) on the Commission’s preliminary determination

BSG stated that According to the Generally Accepted Accounting Principles (GAAP), the income statement of a company is usually prepared as follows:

<i>Account in Income Statement</i>	<i>No.</i>
<i>Operating Revenue</i>	<i>1</i>
<i>Operating Cost</i>	<i>2</i>
<i>Gross Operating Profit</i>	<i>3 = 1 -2</i>
<i>Selling Expenses</i>	<i>4</i>
<i>G&A Overheads</i>	<i>5</i>
<i>Financial Expenses</i>	<i>6</i>
<i>Net Operating Profit</i>	<i>7 = 3 - 4 - 5 -</i>

BSG stated that it was indicated in the preliminary determination that the constructed normal value of BSG should be based on the constructed cost of production, plus the selling, general and administrative expenses and a reasonable profit. The formula is $CNV = COP + SG\&A + a \text{ Reasonable Profit}$. The Commission decided that the reasonable profit above should be the gross operating profit (operating revenue less operating cost). If so, we could obtain the following formulas:

- 1) $CNV = COP + SG\&A + \text{Gross Operating Profit}$*
- 2) $\text{Gross operating profit} - SG\&A = \text{Net Operating profit}$
 $\text{Gross operating profit} = SG\&A + \text{Net Operating profit}$*
- 3) $CNV = COP + SG\&A + SG\&A + \text{Net Operating profit}$*
- 4) $\text{Adjusted CNV} = COP + SG\&A + SG\&A + \text{Net Operating profit} - \text{Port Charges}$*

BSG further stated that it is clearly shown that by using the gross operating profit, the Commission counted the SG&A twice in calculating the constructed normal value of BSG. This method is not correct and the CNV of BSG has consequently been increased by this error. Therefore, BSG respectfully requests the Commission to use the net operating profit rather than the gross operating profit to calculate the

constructed normal value. The correct formula should be $CNV = COP + SG\&A + Net\ Operating\ Profit$.

BSG indicated that in the preliminary determination, the Commission decided not to use the net operating profit by the reasoning that the profit methodology contains the non-operating income and the non-operating expenses. BSG fully understands this concern. To calculate the net operating profit more accurately, BSG suggests excluding both the non-operating income and the non-operating expenses from the profit calculation. The updated calculation for net operating profit rate for year 2019 to 2021 is provided. It further indicated that since the net operating profits for year 2021 and 2020 are negative, the net operating profit rate for year 2019 could be used to calculate the constructed normal value. BSG requested the Commission to use this updated net operating profit rate to calculate its constructed normal value.

Comments by Xinyi Automobile Glass (Shenzhen) Co., Ltd (“Xinyi”) on the Commission’s preliminary determination

Xinyi indicated that it disagrees with the Commission's preliminary determination to determine reasonable profit on the basis of operating profit (operating revenue less operating costs) in the calculation of constructed normal value. In the cost build-up, operating profit is the difference between the price and the production cost of the goods, without taking into account selling, general and administrative expenses. By contrast, selling profit (EBIT) is the difference between the price and the total cost (including production cost and selling, general and administrative expenses) of the goods.

Xinyi further indicated that EBIT takes into account other non-operating income and non-operating expenses, it also takes into account the selling, general and administrative expenses, which are not taken into account in the calculation of operating profit. If constructed normal value is calculated as the sum of production cost, selling and general expenses and reasonable allowance for profit, then basing the reasonable allowance for profit on operating profit will result in an inflated constructed normal value (since selling, general and administrative

expenses will be included twice). Xinyi submitted that the reasonable allowance for profit be based on net profit or, as an alternative, revenue less production cost and selling, general and administrative expenses.

Comments by Applicant on the Commission's preliminary report

The Applicant stated that it is in support of Commission's preliminary determination concerning a reasonable profit, which was made in line with the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. The Applicant indicated that it wishes to point out that the financial situation and day-to-day operational functioning for each company will differ from another. The Commission's consideration to determine a reasonable profit for its preliminary determination, using operating profit as the basis, the Commission was requested to address this aspect and provide clarification by elaborating how and for what the "operating revenue" and "operating costs" were used as was pointed out in the referred Applicant's letter dated 13 March 2023. The Applicant requested the Commission to clarify and confirm what the operating profit depicted in the financial statements relates to, as no sales were made into the ARG market, based on the BSG Response and thus the reasonable profit, if the financials are used would relate to the OE products, which would reflect lower profit margins as the OE normal values are normally lower, resulting from the volume of sales.

The Applicant stated that BSG does not trade in the subject product in the domestic ARG market, no normal value can be determined on the domestic Chinese market, based on domestic sales. As a result of the higher volume of OE products, which results in lower domestic prices (that was conveniently not commented on in the BSG Response), the Commission must construct the normal value for the ARG products, as contemplated in section 32(2)(b)(ii)(aa) of the International Trade Administration Act, No. 71 of 20024 ("ITA Act"), on any reasonable basis. This constructed value must be based on actual cost of production, plus a reasonable Selling, General and Administrative ("SG&A") cost and a reasonable profit. It must be pointed out that the SG&A cost for product sold in the OE market cannot be

used for ARG market construction purposes, as the market situation in China will differ regarding the SG&A and therefore using the cost for the OE, the constructed value will be skewed.

Commission's consideration

In light of Article 2 of the ADA, the Commission made a final determination that the profit of another producer Benson as stated above represents a reasonable profit for constructing normal value.

4.3.2 Calculation of export price

The Commission accepted the information submitted by BSG in its response to the Commission's questionnaire for purposes of its final determination. During the period of investigation, BSG sold the subject product to the SACU market. The Commission made a final determination that export price be determine based on plain windscreens which include passenger laminated without accessories and construction vehicle of SACU sales.

Adjustments to the export price

The following adjustments were claimed by the exporter in order to arrive at the ex-factory export price:

Inland delivery and port charges

During verification, it was found that BSG incurred inland freight and port charges.

Commission's consideration

In order to bring prices to the ex-factory level for purposes of comparison, it is the Commission's practise to allow for properly substantiated adjustments with regard to inland freight and port charges.

The Commission made a final determination to allow the inland delivery and port charges adjustments as they were demonstrated to have affected price comparability at the time of setting the price.

Cost of payment terms

For purpose of determining the cost of payment terms, the BSG explained that it calculates the payment terms in days by calculating the difference between the invoice date and bank notice date. BSG also explained that there is no company policy in place with regards to payment terms and that payment terms are not indicated on the invoice.

Comments by Applicant on the Commission's preliminary determination

The Applicant stated that it noted that in the Commission's preliminary determination concerning BSG's export price cost adjustments were limited to inland delivery and port charges, which costs were accepted as impacting on price comparability at the time of setting prices. It stated that from the BSG response, the indication is that it does not have a policy in place concerning payment terms and the Commission made a preliminary determination to not allow an adjustment for payment terms. The Applicant submitted that this cannot be the case, as there must be some form of policy in place to restrict the salesperson from granting excessive payment terms to clients. However, the Commission can make this adjustment (as well as other adjustments), although the payment terms were not given or substantiated, the delay in payment (difference between invoice date and bank notice date) from the importer to BSG, resulted in BSG receiving less money that was invoiced. Hence, it should be a requirement that the Commission makes the adjustment.

Commission's consideration

The Commission made a final determination not to allow the cost of payment terms adjustment as it was not properly substantiated, not verifiable, and it was not demonstrated that this affected price comparability at the time of setting prices.

Bank charges

BSG indicated that bank charges claimed by it represent the charges incurred by the company. It stated also that it calculates this adjustment by calculating the difference between the invoice amount and payment amount received by it.

Commission's consideration

The Commission made a final determination not to allow the adjustment as BSG could not demonstrate that this affected price comparability at the time of setting prices.

4.3.3 Dumping Margin

The weighted average dumping margin was based on the dumping margins calculated for each category, weighted with the export volumes for each of the category. A weighted average dumping margin of 1.88 percent was calculated for BSG.

Comments by BSG Auto Glass Limited Co Ltd ("BSG") on the Commission's preliminary determination

BSG stated that in the calculation table of dumping margin for BSG, the dumping margin in % is calculated as $\text{Dumping margin in \%} = \text{unit dumping margin} / \text{unit EXW export price}$. The method is incorrect for the reason that the Anti-Dumping duty is levied on the landed value rather than the ex-works value of the products. Since all export sales to SACU are on FOB basis, the dumping margin in % could be calculated as a percentage of FOB export price as $\text{Dumping margin in \%} = \text{unit dumping margin} / \text{unit FOB export price}$.

Commission's consideration

The Commission noted that BSG is correct by pointing out that the dumping margin should be calculated as a percentage of FOB export price, this was corrected on the revised calculations. The Commission made a final determination to calculate the dumping margin as a percentage of FOB export price. The dumping margin for BSG calculated to be 1.88% which is less than 2% as such it is regarded as de minimis. Based on that, The Commission made a final determination that BSG not be subject to any dumping duty.

Comments by the Applicant on the Commission's essential facts letter

The Applicant stated that it does not have an alternative, but to accept the Commission's recording that during the POI, BSG did not sell the subject product in the Chinese domestic ARG market (although information on the BSG website contradicts this comment, it indicates exports and domestic market presence of ARG sales activity. As a result,) and as a result no normal value can be determined based on sales in the domestic market. The Applicant stated that it agrees and is in agreement with the Commission that the normal value be constructed, but further stated that the Commission should not exclude windscreen with accessories for its calculations.

The Applicant noted that the Commission stated that the constructed normal values for BSG were determined based on "plain windscreens", without accessories. It is interpreted that accessories would relate to heating, electrical or electronic devices. However, the Commission did not define nor qualify what is meant by "plain windscreens", as this term has a very distinct meaning and finds application in the windscreen industry.

Commission's consideration

It is not the Commission's practice to include products that are not the subject product in its investigation. The product under investigation is basic laminated windscreen classifiable under tariff subheading 7007.21.20. The Applicant has, during the investigation emphasized that the subject product is basic laminated windscreens and stated that interested parties had previously included models that should not form part of this investigation to confuse the Commission. In the oral presentation made in the Commission meeting on 13 June, The Applicant stated that as of 01 January 2022, a specific provision under "Parts and accessories" of certain motor vehicles was created as HS 8708.22, for "framed front windscreens (windshields), rear windows and other windows, as well as "front windscreens (windshields), rear windows and other windows, whether or not framed, incorporating heating devices or other electrical or electronic devices".

Windscreens that are “framed” or contain “heating, electrical or electronic devices” are identified and are to be split from windscreens classifiable under HS 7007.21.20.

As stated in this submission, windscreens with heating/ electronic devices/accessories were previously classified under 8708.29 and were transposed to 8708.22 these products do not form part of 7007.21.20 and should not be subject to this investigation. It would be unlawful and go against the Commissions practice to impose a duty on products that do not form part if the scope of this investigation.

The Commission made a final determination that all products falling outside the scope of 7007.21.20 should not be considered for purposes of determining a dumping margin for BSG.

The Applicant stated that it is however in agreement that the constructed value must be based on the actual cost of production, plus the Selling, General and Administrative (“SG&A”) cost and a reasonable profit. The Applicant noted that BSG did not make any profits as stated in its audited financial statements for 2020 and 2021. The Applicant stated that it questions this as it finds it rather unlikely that BSG as an OE market-oriented supplier in China, was not able to realize a profit. As in the case of Kong Wan, the Commission states that the “industry consisting of Xinyi, Benson and the Fuyao group” and that an industry weighted average profit was calculated, but then continue that there is consideration to not use this profit. Instead, the Commission now considers using the lowest profit of one of the five exporters for the normal value construction.

As in the case of Kong Wan, the Applicant reiterated that profit for a single company is very much company specific, irrespective the of size of a business. Accordingly, the Commission was requested that for its final determination, the calculated industry weighted average profit is used for the purpose of constructing a normal value, as it would be an average industry margin, and will be more representative

of a reasonable generic profit or the Commission can also use the profit of BSG prior to 2020 and 2021.

Commission's consideration

In terms of Article 2 of the ADA, a reasonable profit may be:

the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

BSG produced and sold less than Benson, Xinyi and the Fuyao group "the industry", however, Benson was the exporter that produced and sold the least of the three exporters.

In its final determination before essential facts the Commission made a decision to accept Benson's profit as fair basis for BSG's profit. BSG made losses in 2020 and 2021 and it made a lower profit in 2019. The industry average profit is far higher than the profit BSG made during the POI. Further to that the Commission noted that BSG is significantly smaller in production and sales than the industry. Article 2 of the ADA gives the Commission authority of discretion to utilize a profit it deems reasonable to the extent that this reasonable profit does not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin. The Commission is of the opinion that the industry profit would not be a reasonable profit for purposes of determining a normal value for BSG.

The Commission made a final determination to use Benson's profit as a reasonable profit for purposes of constructing BSG's normal value.

The Applicant stated that Commission should review its limited consideration and to also consider additional costs, such as bank charges, payment terms and additional packaging costs for export product for adjustment, for its final determination as applicable costs affecting price comparability at the time of setting

the prices. It stated that as a general rule the packaging costs of exported product is significantly more than domestically sold product, due to the containerization and shipment over large distances by sea.

Commission's consideration

In terms of ADR 11.2, Adjustments should be requested in interested parties' original response to the relevant questionnaires and must be –

- (a) Substantiated*
- (b) Verifiable*
- (c) Directly related to the sale under consideration; and*
- (d) Clearly demonstrated to have affected price comparability at the time of setting prices.*

In terms of the provision above it is clear that the Commission may consider adjustments that have been requested in BSG's initial response to the exporter questionnaire. The Commission may allow adjustments that have been substantiated and verifiable. However, if during the verification of the exporter, the Commission find such adjustments that are verifiable, the Commission may decide to adjust the Export price for such adjustments. This is however not the case with BSG. No information to substantiate shipping costs and additional packaging costs were found during verification. In light of the above, the Commission should make a decision not to take these adjustments into consideration for purposes of its final determination.

Cost of payment terms and bank charges were claimed by BSG, however, as these adjustments were not properly substantiated the Commission made a decision not to take this adjustment into consideration for the purpose of its final determination.

4.4 METHODOLOGY IN THIS INVESTIGATION FOR XINYI

4.4.1 Calculation of the normal value

The Commission made a final determination to determine the normal values based on plain windscreens which include bus windscreens, passenger windscreens without accessories, truck windscreen.

In terms of ADR8.2, domestic sales, or export sales to a third country may be considered to be not in the ordinary course of trade if the Commission determines that such sales –

- (a) Took place at prices below total costs, including cost of production and administrative, selling, general and packaging costs, provided such sales took place;
 - (i) In substantial quantities equalling at least 20 percent by volume of the total domestic sales during the investigation period; and
 - (ii) Over an extended period of time, which the period shall normally be a year, but in no case less than 6 months.
- (b) Were made to a related party or
- (c) Do not reflect normal commercial quantities.

ADR9.1 stipulates that:

Where the foreign producer sells the product under investigation on its domestic market through a related party -

- (a) the normal value shall be determined as the resale price to the first independent buyer, provided the adjustments as envisaged in section 32(3) of the Main Act should still be made.
- (b) where such product is not subsequently resold or not resold in the condition sold to that related party, the normal value shall be determined
 - (i) with reference to sales to independent buyers only; or
 - (ii) where there are no such sales to independent buyers, on any other reasonable basis.

All domestic sales were made through related companies. From the information provided for first independent buyer the costs incurred for adjustments, movements and SG&A expenses incurred by the related parties to the first independent customers were not provided and as result a reliable normal value contemplated in ADR 9.1 could not be established. ADR 9.1 states that when sales in the domestic market are made through a related party, the normal value is determined based on the resale price of the first independent customer, provided the adjustments as envisaged in section 32(3) of the Main Act should still be made.

The Commission made a final determination not to consider the first independent buyer information provided by Xinyi for determining the normal value.

The Commission further made a final determination that sales made by Xinyi in the domestic market are not in the ordinary course of trade as per ADR8.2(b).

Since it could not be determined whether the domestic sales are made in the ordinary course of trade and as a result such sales could not be utilised for normal value determination. The Commission made a final determination that the normal value be constructed based on the actual production costs and adding the selling, general and admin expenses excluding delivery expenses of port charges and freight to get to a net-ex factory constructed normal value and add the reasonable profit to the total production cost.

The Commission made a final determination to use the weighted average of all profitable categories of the product for a reasonable profit.

Comments by the Applicant to the Commission's essential facts letter

The Applicant stated that it noted the Commission's considerations to make a final determination, not to consider the first independent buyer information provided by Xinyi for determining the normal value and that the sales made by Xinyi in the domestic market are not in the ordinary course of trade and therefore could not be utilised for normal value determination, are noted. It also stated that it has

further noted that the Commission's consideration to make a final determination that the normal value of Xinyi be constructed as set out in the Letter. The Applicant pointed out that it noted that Xinyi did not provide the Commission with information concerning a first independent buyer, the costs incurred for adjustments, movements and SG&A expenses incurred by the related parties to the first independent customers. The Applicant stated that it wishes to point out that despite being offered two opportunities to present such information to the Commission, it is now actually clear that Xinyi's deliberately withheld the information, preventing the Commission from using it in determining of a normal value. It is submitted that the Commission must not have reverted to a costing, but should have rejected the response of Xinyi as it has been deficient throughout. The Applicant further stated that Xinyi's response is still in a state of deficiency, well after the publication of the Report. The Applicant therefore submitted that this should even now be more reason to make Xinyi subjected to a residual dumping duty.

Commission's consideration

The Commission took note that although the exporter submitted properly documented response, the fact that it was unable to provide the Commission with additional information on the first independent buyer within its domestic market, resulted in the calculation of a constructed normal value as detailed below. The Commission made a final determination to use the constructed method to determine the normal value.

4.4.2 Calculation of export price

The Commission made a final determination to determine the export price based sales to SACU of plain windscreens which include bus windscreens, passenger windscreens without accessories and truck windscreens. It was found that the SACU sales transaction also included sales to Benson an exporter, who is also a related party to Xinyi. Xinyi indicated that these sales to Benson are made on an arms-length basis (despite being made to an affiliated party) and that these sales are included in the list of SACU sales to ensure that Xinyi has fully disclosed all

sales to the Commission. Xinyi also included sales to Guangdong Trade Centre Zambia an importer in Zambia. When calculating the export prices these sales were disregarded when determining the export price.

Adjustments to the export price

The following adjustments were claimed by the exporter in order to arrive at the ex-factory export price:

Cost of payment terms

The cost of payment terms between Xinyi and its customers were as a result of negotiations. This meant that there is no specific company policy in place and different customers are granted different terms based on the outcome of the negotiations with Xinyi. The payment terms as well as the actual payment period applicable to a customer/transaction were recorded at the point that the purchase order is loaded into the ERP system. The adjustment for payment terms was calculated by multiplying the total Value (invoice currency) (excluding VAT) by the number of days of payment terms divided by 365 and then multiplied by the interest rate of payment terms. These payment terms could only be verified against their purchases order system.

Comments raised by the Xinyi during Oral Presentation

Xinyi stated that the verification report indicated that there is no specific company policy in place." Xinyi would like to clarify that payment terms are agreed with customers before the conclusion of the sale and as such are known at the time of setting prices. The verification report stated that "[t]he payment terms could only be verified against their purchases order system." Xinyi would like to note that payment terms were consistently verified against the credit information recorded in the customer relations management system. The terms of trade are therefore set and known to Xinyi and the customer at the time of setting of prices. Xinyi submitted that the adjustment for cost of payment terms was requested in its original response to the relevant questionnaires and was (i) substantiated; (ii) verifiable; (iii) directly related to the sale under consideration; and (iv) clearly demonstrated to have affected price comparability at the time of setting prices.

The Commission made a final determination not to allow the cost of payment terms as could not demonstrate that this affected price comparability at the time of setting prices.

Delivery charges

The adjustment for inland freight was calculated by dividing the total delivery charges for export sales by the total quantity of export sales and then multiplied by the quantity of the export sale in each transaction. This ensures that the total value for export sales is adjusted to account for the total delivery charges for export sales.

Comments raised by the Xinyi during Oral Presentation

Xinyi stated that it incurred the inland freight expenses with respect to SACU during the investigation period. The extent of the adjustment has been indicated separately for each transaction. It submits that the adjustment for delivery charges was requested in its original response to the relevant questionnaires and was (i) substantiated; (ii) verifiable; (iii) directly related to the sale under consideration; and (iv) clearly demonstrated to have affected price comparability at the time of setting prices.

The Commission made a final determination to allow the adjustment for delivery charges as it was substantiated, verifiable, directly related to the sale under consideration and demonstrated to have affected price comparability at the time of setting of prices.

Comments by the Applicant to the Commission's essential facts letter *The Applicant stated that it noted the Commission's intention to make a final determination that the export price to be determined based on the sales of "plain windscreens" without accessories to the SACU market, some of which were made via Benson that is an affiliated party, is noted. The Applicant also stated that it requested the Commission to review its limited consideration of only delivery charges as an adjustment and to also consider additional costs, such as bank charges and additional packaging costs for export product for adjustment, for its final*

determination as applicable costs affecting price comparability at the time of setting the prices.

Commission's consideration

ADR 11.2 (c) states that "Adjustments should be requested in interested parties' original response to the relevant questionnaire and must be –

(a) substantiated;

(b) verifiable;

(c) directly related to the sale under consideration; and

(d) clearly demonstrated to have affected price comparability at the time of setting prices.

In terms of the provision above it is clear that the Commission may consider adjustments that have been requested in Xinyi's initial response to the exporter questionnaire. The Commission may allow adjustments that have been substantiated and verifiable. However, if during the verification of the exporter, the officials find such adjustments that are verifiable, the Commission may decide to adjust the export price for such adjustments. This is however not the case with Xinyi. No information to substantiate bank charges and additional packaging costs were found during verification.

4.4.3 Dumping Margin

The weighted average dumping margin was based on the dumping margins calculated for each category, weighted with the export volumes. A weighted average dumping margin of 3.23% was calculated for Xinyi.

4.5. METHODOLOGY IN THIS INVESTIGATION FOR BENSON

4.5.1 Calculation of the normal value

Benson sold windscreens subject to this investigation to both related and unrelated parties. In terms of ADR9.2, “*where a party has domestic sales through both related and unrelated parties, the Commission may decide to use those sales to unrelated parties.*” Seeing as Benson made sales to unrelated parties, The Commission elected to place reliance on sales made to unrelated parties. During the period of investigation, Benson sold bus windscreens, basic passenger laminated windscreens without accessories, and truck windscreens.

It was found that 94 per cent of bus windscreen sales were made below cost; however, the remaining sales constituted 105 percent of the export sales volumes to the SACU. For this reason, the remaining domestic sales were used to determine the normal value for bus windscreens.

Less than one per cent of the domestic sales of basic passenger laminated windscreens without accessories were sold below cost, as such, all domestic sales were taken into consideration in determining the normal value.

It was found that more than 80 percent of truck windscreens sales were made below cost; further to that, the remaining sales constituted less than 5 percent of the export sales volumes to the SACU. For this reason, the normal value for truck windscreens was constructed. To determine a reasonable profit, the selling profit (sales less production costs less SGA) was used as provided in Benson’s cost build-up. No adjustments were taken into consideration for bus windscreens as the normal value was constructed.

Comments by the Applicant to the Commission’s essential facts

The Applicant stated that it noted the Commission’s considerations in determining the normal value concerning the respective sales of the windscreen ARG market categories are noted and supported. It also stated that it noted the Commission’s consideration in allowing the adjustments for delivery charges for purposes of its

final determination, which do not relate to windscreen for the category of busses, as this normal value was constructed.

Commission's consideration

Bus windscreens normal value was based on domestic sales and not constructed as per the Applicants response to the essential facts letter.

Adjustments to the normal value

The following adjustments were claimed by the exporter to its normal value:

Cost of payment terms

During verification, Benson stated that it did not have a policy for payment terms. It stated that payment terms are negotiated telephonically. In its response to the Commission's verification letter, Benson stated that it indicated that the invoices are not always updated to reflect the applicable payment terms, which are reflected in the customer relations management system. It further stated that payment terms are sometimes negotiated telephonically and sometimes via email. Regardless of the medium of communication used, the terms of trade are set and known to Benson and the customer at time of setting of prices.

Benson also stated that a billing delay is accounted for in establishing the payment days as recorded in the customer relations management system. This includes circumstances where customers are given days billing delay. These are the terms agreed with the customer at the time of the setting of the price. If the time of billing is different, this does not change the terms that were agreed at the time the price was set.

Commission's consideration

The Commission noted that of the sample of cost of payment adjustment verified, some of these were incorrect and others were correct. Benson was found not to be consistent in its application of the billing days. The Commission made a final determination not to allow the cost of payment terms adjustment as payment terms

are not applied consistently and there is no policy in place indicating payment terms. Benson could not demonstrate that this affected price comparability at the time of setting prices.

Domestic delivery

Benson incurred domestic delivery costs. This adjustment was properly substantiated.

Commission's consideration

The Commission made a final determination to allow this adjustment as Benson was able to substantiate this adjustment. Further to that, it is the Commission's practise to allow for properly substantiated adjustments with regard to domestic delivery.

4.5.2 Calculation of export price

The Commission made a final determination that the export price be determine based on export sales to SACU of bus windscreens, basic passenger laminated windscreens without accessories, and truck windscreens.

Adjustments to the export price

The following adjustments were claimed by the exporter to its export price:

Cost of payment terms

During verification, Benson stated that it did not have a policy for payment terms. It stated that payment terms are negotiated telephonically. In its response to the Commission's verification letter, Benson stated that it indicated that the invoices are not always updated to reflect the applicable payment terms, which are reflected in the customer relations management system. It further stated that payment terms are sometimes negotiated telephonically and sometimes via email. Regardless of the medium of communication used, the terms of trade are set and known to Benson and the customer at time of setting of prices.

Benson also stated that a billing delay is accounted for in establishing the payment days as recorded in the customer relations management system. This includes circumstances where customers are given days billing delay. These are the terms agreed with the customer at the time of the setting of the price. If the time of billing is different, this does not change the terms that were agreed at the time the price was set.

Commission's consideration

The Commission noted that of the sample of cost of payment adjustment verified, some of these were incorrect and others were correct. Benson was found not to be consistent in its application of the billing days. It is proposed that the Commission makes a final determination not to allow the cost of payment terms adjustment terms adjustment as payment terms are not applied consistently and there is no policy in place indicating payment terms. Benson could not demonstrate that this affected price comparability at the time of setting prices.

Inland delivery

Benson incurred inland delivery costs. This adjustment was properly substantiated.

Commission's consideration

The Commission made a final determination to allow this adjustment as Benson was able to substantiate this adjustment. Further to that, it is the Commission's practise to allow for properly substantiated adjustments with regard to inland delivery.

Comments by the Applicant to the Commission's essential facts

The Applicant stated that should review its limited consideration of only inland delivery as an adjustment and to also consider additional costs, such as bank charges and additional packaging costs for export product for adjustment, for its final determination as applicable costs affecting price comparability at the time of setting the prices.

Commission's consideration

ADR 11.2 (c) states that "Adjustments should be requested in interested parties' original response to the relevant questionnaire and must be –

- (a) substantiated;*
- (b) verifiable;*
- (c) directly related to the sale under consideration; and*
- (d) clearly demonstrated to have affected price comparability at the time of setting prices.*

In terms of the provision above it is clear that the Commission may consider adjustments that have been requested in Benson's initial response to the exporter questionnaire. The Commission may allow adjustments that have been substantiated and verifiable. However, if during the verification of the exporter, the officials find such adjustments that are verifiable, the Commission may decide to adjust the Export price for such adjustments. This is however not the case with Benson. No information to substantiate bank charges and additional packaging costs were found during verification.

4.5.3 Dumping margin

The dumping margin calculated for each category was weighted with the export volumes to determine a weighted average dumping margin. A weighted average dumping margin of 18.32 percent was calculated for Benson.

Comments by Benson on the Commission's preliminary report

Benson stated that it disagreed with the Commission's preliminary determination to determine reasonable profit on the basis of operating profit (operating revenue less operating costs) in the calculation of constructed normal value. In the cost build-up, operating profit is the difference between the price and the production cost of the goods, without taking into account selling, general and administrative expenses. By contrast, selling profit (EBIT) is the difference between the price and the total cost (including production cost and selling, general and administrative expenses) of the goods. Therefore, whilst EBIT takes into account other non-operating income and

non-operating expenses, it also takes into account the selling, general and administrative expenses, which are not taken into account in the calculation of operating profit.

Benson stated that if constructed normal value is calculated as the sum of production cost, selling and general expenses and reasonable allowance for profit, then basing the reasonable allowance for profit on operating profit will result in an inflated constructed normal value (since selling, general and administrative expenses will be included twice). Benson concluded that the reasonable allowance for profit should be based on net profit or, as an alternative, revenue less production cost and selling, general and administrative expenses. Benson admitted to dumping the subject product at a margin of dumping of 5.14%.

Commission's consideration

The Commission agreed that the profit less production costs and SGA is the most appropriate to use. The profit has been adjusted to reflect all relevant costs.

4.6 Dumping margin Xinyi and Benson

According to the definition of related parties in provision 1 of the ADR, Xinyi and Benson are related parties. These parties are fellow subsidiaries as Xinyi Group (Glass) Company Limited controls them both. They are also related by virtue of their conduct, in terms of buying and selling goods from each other.

On the basis of the above, The Commission made a final determination that the companies indicated above (Xinyi and Benson) are related in terms of ADR1 and that be considered as single entity in terms of panel ruling in the case (Korea-anti-dumping duties on imports of certain paper from Indonesia). The Commission further made a final determination that a single final dumping margin as determined below be imposed on these exporters to minimise the risk of circumvention of the applicable anti-dumping duty.

Comments by Xinyi and Benson to the Commission's essential facts letter

The interested parties indicated that they disagree with the Commission's proposed final determinations that (i) Benson and Xinyi Automobile Glass (Shenzhen) Co., Ltd ("Xinyi") be considered as single entity and (ii) single final dumping margin of 14.95% be imposed on Benson and Xinyi to minimise the risk of circumvention of the applicable anti-dumping duty. Benson and Xinyi have separate management, sales, and financial teams and make operational decisions, and in particular sales decisions regarding the SACU market, independently of each other. Benson and Xinyi also have no customers in common in the SACU region. There is no reason to treat Benson and Xinyi as a single entity.

The interested parties indicated that they welcome the Commission's calculation of separate price disadvantage figures for Benson and Xinyi, but disagrees with the Commission's use of the weighted average dumping margin for Benson and Xinyi in its application of the lesser duty rule. The interested parties indicated that in the event that the Commission makes a final determination to apply a single dumping margin to Benson and Xinyi, it would be incorrect, then the lesser duty rule should be applied separately to Benson and Xinyi, before the weighted average dumping margin is determined.

Commission's consideration

The Commission considered that Benson and Xinyi indicated that they are related companies. The relationship of these companies is characterised by the following:

- *Benson and Xinyi which are both producers have a same shareholder with 100% and 97.15% ownership in Benson and Xinyi respectively;*
- *There are sales between these companies, and they invoice each other for these sales.*
- *Both producers sell the same ARG windscreens of the subject products.*

Both Benson and Xinyi sell their goods to each other thereafter sell what was sourced from each other to independent customers. According to the definition of

related parties these parties are related and should be treated as one, and they are also related by virtue of their conduct, in terms of buying and selling goods from each other. The Commission made a final determination that a single final dumping margin as determined below be imposed on these exporters to minimise the risk of circumvention of the applicable anti-dumping duty.

With regards to the lesser duty rule applicable to both Benson and Xinyi, the Commission recalculated the weighted average dumping margin based on the lesser duty applied to the companies individual dumping margins.

The new dumping margins which apply to Xinyi and Benson are as follows:

Company name	Exported volumes	Dumping Margin	Dumping Factor
Xinyi	500 831	3.23%	0,77%
Benson	1 597 503.76	15.96%	12,15%
Total	2 098 334.76		12,92%

4.7 METHODOLOGY IN THIS INVESTIGATION FOR FUYAO GLASS INDUSTRY GROUP

4.7.1 Calculation of normal value

Fuyao Group consists of five domestic manufactures, namely Fujian Wanda, Fuyao Zhengzhou, Fuyao Shanghai, Fuyao Changchun and Fuyao Chongqing. Of the five producers, Fujian Wanda was found to have produced 78% of the total production by the Fuyao group. The sales information for Fujian Wanda was selected as representative of The Fuyao Group's domestic sales. In the domestic market, Fujian Wanda sold the subject product related parties, namely, Glass Distributors and Fuyao Glass. Glass Distributors and Fuyao Glass then sell the subject product to independent customers.

ADR9.2 provides that:

“Where a party has domestic sales through both related and unrelated parties, the Commission may decide to use those sales to unrelated parties.”

Fujian Wanda sold 96 per cent of the product subject to this investigation to Fuyao Glass and only 4 percent to Glass Distributors. For this reason, only domestic sales by Fuyao Glass to independent buyers will be considered to determine the Fuyao groups normal value.

During the period of investigation, Fuyao Glass sold construction machinery windscreens, bus windscreens, basic passenger laminated windscreens without accessories, and truck windscreens. All sales of the subject product constituted more than 5% of the export sales to the SACU and as a result domestic sales were used to determine the normal value.

Adjustments to the normal value

The following adjustments were claimed by the exporter to its normal value:

Cost of payment terms

Fuyao Glass' cost of payment terms were verified on its invoices to independent buyers. Fuyao Glass was able to demonstrate that the cost of payment terms affected *price comparability at the time of setting prices*.

Commission's consideration

The Commission made a final determination to allow the cost of payment terms adjustment as Fuyao Glass was able to demonstrate that this affected price comparability at the time of setting prices.

Domestic delivery

Fuyao Glass incurred domestic delivery costs. This adjustment was properly substantiated.

Commission's consideration

The Commission made a final determination to allow this adjustment as Fuyao Glass was able to substantiate this adjustment. Further to that, it is the

Commission's practise to allow for properly substantiated adjustments with regard to domestic delivery.

Packaging

During verification, it was found that there were packaging costs that were incurred for sales by Fujian Wanda to Fuyao Glass. Fujian Wanda indicated that the packaging for the domestic market and export market are different. Domestically they sell windscreens for vehicles in full steel pallet and full wooden case. The packaging costs incurred were verified from the accounting system and found to be correct. This adjustment was properly substantiated.

Commission's consideration

The Commission made a final determination to allow this adjustment as Fuyao Glass was able to substantiate this adjustment. Further to that, it is the Commission's practise to allow for properly substantiated adjustments with regard to packaging costs.

4.7.2 Calculation of export price

Fuyao glass made sales to Fuyao Hong Kong, a related distributor and a subsidiary in the Fuyao group. Fuyao Hong Kong is based in Hong Kong and distributes the sales of the subject product to the SACU market.

The export price was determined by calculating the price back from Hong Kong's net ex-factory price to Fuyao glass' ex-factory price. Fuyao Hong Kong's selling price was adjusted for cost of payment terms and the selling expenditure incurred by Fuyao Hong Kong. Fuyao Hong Kong indicated that the interest rate applied in the calculation of the cost of payment terms was sourced from Global Libor interest rate for the period 1 January 2021 to 31 December 2021. It was explained that the days that was applied throughout the sales schedule was incorrect. Payment terms were indicated in the invoices and it was found that payment terms in the sales schedule and the invoices do not correspond. The cost of payment for each

transaction was calculated by taking the credit days divided by 360 days multiplied interest rate then multiplied by the value.

Fuyao Hong Kong claimed adjustments for exchange rates gains on freight charges and logistic surcharges. These were disallowed as they did not affect the price comparability when setting the prices.

Inland delivery charges

Fuyao Glass indicated that it incurred inland delivery charges. The inland delivery charges incurred were verified from the accounting system. The total inland delivery costs were allocated to individual transactions using a ratio then multiply by volumes. The ratio was determined by taking inland delivery charges cost divide by the total area.

Commission's consideration

As the adjustment was properly substantiated, The Commission made a final determination to allow the inland delivery charges to calculate ex-factory export price for Fuyao Glass.

Packaging

Fuyao Glass indicated that the packaging for the domestic market and export market are different. For export market they sell windscreens for vehicle in full carton. The packaging costs incurred were verified from the accounting system. The total packaging cost were allocated to individual transactions using a ratio. The ratio was determined by taking cost of packing materials for exported and divide by total kg to get the packaging cost per kilogram.

Commission's consideration

The Commission noted that the packaging cost adjustment affected the setting of the price and was fully substantiated. The Commission made a final determination to allow the adjustment for purposes of calculating the ex-factory export price for Fuyao Glass.

Storage charges

Fuyao Glass indicated that it incurred storage charges. The storage charges incurred were verified from the accounting system. The total storage costs were allocated to individual transactions using a ratio then multiply by volumes. The ratio was determined by taking storage charges cost divide by the total kilograms.

Commission's consideration

The Commission noted that storage charges affected the setting of the price and was fully substantiated. The Commission made a final determination to allow the adjustment for purposes of calculating the ex-factory export price for Fuyao Glass.

Port charges

Fuyao Glass indicated that it incurred port charges and were verified in port charge invoices. To get the port charge per individual transactions, the total port charge per invoice was divided by total Kg.

Commission's consideration

The Commission noted that port charges affected the setting of the price and was fully substantiated. The Commission made a final determination to allow the adjustment for purposes of calculating the ex-factory export price for Fuyao Glass.

4.7.3 Dumping margin

Comments by the Applicant to the Commission's essential facts letter

The Applicant stated that the product brochure, as contained in the Fuyao response, is noticeably limited to only high-end products, which was strategically done in support of the narrative that Fuyao Glass Industry Group Co., Ltd ("Fuyao Group") was using to steer the Commission in a certain direction. The Fuyao Group's strategy to try and separate itself from other ARG manufacturers in China does not represent an accurate picture of the market and its position therein and the Applicant believes that the presentation confuses the Commission's understanding of the supply situation. Further, in effect, the Fuyao Group acknowledged in their response

to the exporter questionnaire that they are dumping product in the SACU market. "The selling point of this segment (Wired Heated Glass) is to melt snow in the windscreen in the cold zone or for humidifying purposes in the humid area. Such features are useless in the tropics zone like the SACU market. Certain types of vehicles with such original product features of its windscreen are also commonly sold in SACU. The ARG thereof is also with certain requirements but the features of wired heated are never a selling point in the SACU, as it does in the Chinese market. In other words, the consumers of this segment of ARG in the SACU will not pay the additional price for this feature.

The Applicant also stated that from the aforementioned it is clear that the subject product is exported to SACU, but at a lower (dumped) price than what it is sold in China otherwise there will not be a demand in SACU. It has also noted that the Fuyao Group made considerable effort to focus on its claim that the laminated ARG is not a standard product, but a customized product. The Applicant stated that the subject produced in China and in SACU are all done in accordance with the respective vehicle models and product models. It is known that windscreen production has a significant setup cost i.e., the changeover of tools for bending and cutting recipes results in huge change-over costs. Since as stated by Fuyao, the volumes are so much higher in China, it follows that the lower volumes in SACU will incur lower economy of scale benefits and therefore make the product more expensive to manufacture for the SACU region, although this is not seen in the imported products' pricing from the Fuyao Group.

The Applicant further stated that the Fuyao Group only presented information concerning its higher value products with accessories or add on features, as well as products for vehicle models from 2018 to 2022. Surely, the Fuyao Group has not excluded itself from the ARG market prior to 2018. It might be possible that one or more of the other four Fuyao Group manufacturers, apart from or in addition to Fujian Wanda could have a product for ARG market products for vehicles prior to 2018. It stated that it wishes to draw the Commission's attention to the fact that higher value-added products are also manufactured and sold in SACU, as well as

imported from China with accessories, now classifiable under tariff subheading 8708.22. These imports from China have recently taken the SACU market by storm and are ironically declared at lower import prices than windscreens without these features. It is further stated that even if there could be differences in products, it is trite that the Commission could compare similar windscreen prices sold in both markets. Whether or not the same vehicle models exist in China as in SACU or that are parallel thereto, the Applicant stated that it submits that there are comparable windscreens.

The Applicant stated that Fuyao Glass further stated in its Annexure F of the exporter questionnaire stipulated that it has a “complicated “Automotive Glass Product Coding Rules” and establishes a “Company product code” for each type of laminated ARG. Theoretically, the same company product code produced and sold in the domestic market and the one produced and sold in the SACU, and the third countries' markets, are identical products. There are 6910 company product codes in the domestic sale list and 1409 company product codes in the SACU sale list. However, there is NO overlap in company product codes in the two markets”.

The Applicant stated that it cautions the Commission, as it is clear that Fuyao Glass carefully worded the above statement, referring to “product codes” – of course, when a product is exported, which is identical or a like product to the product sold on the domestic market a different company product code can be attached to the exact same product – thus the referral to “theoretically”.

The Applicant stated that it notes that the essential facts letter states that the Fuyao Group consists of five domestic manufactures, with Fujian Wanda Automobile Glass Industry Co., Ltd (“Wanda”) being found to produce 78 percent of the total production by the Fuyao Group. The Commission did not differentiate what the Wanda production contribution of the windscreens for the respective ARG and OE markets are. In the Fuyao Group questionnaire response to the Commission, it is indicated that all five of the manufacturers are involved in the production of ARG products and in the response, the five manufacturers’ information were submitted

separately for each ARG producer, allowing the Commission to verify the normal values. However, it appears that as a result of the statement that Fujian Wanda produced 78 percent of the total production of the Fuyao Group, Fujian Wanda was erroneously selected as “representative of the Fuyao Group’s domestic sales” and only Fujian Wanda was verified.

The Applicant stated that this is highly irregular. It is common cause that the issue regarding the verification of the information of the manufacturers has nothing to do with being “representative”, but to allow the Commission to satisfy itself of the accuracy of the information that was submitted. The Commission deals with five entities, different companies, each with separate cost, price and profit structures although related, which companies can sell at different prices on the domestic market or export. Therefore, each company that submitted information must be verified as some might, or some might not be dumping, and then a weighted dumping margin can be calculated for the Group.

The Applicant stated that it is noted from the Commission’s verification report dated that only Fujian Wanda’s information was verified by the investigation officers. It is thus clear that the decision to use only Fujian Wanda’s information was made by these investigators, which is again highly irregular as they have no decisive power. All five companies’ data ought to have been verified and their information submitted to the Commission. If, none of the other four companies exported to South Africa, the Commission would have been able to satisfy itself of the situation (by verification) and then these companies would not be interested parties to this investigation and as a result must be subject to the residual dumping duty.

The Applicant also stated that as the above companies responded based on expert advice from their consultant, it is clear that not only Fujian Wanda manufactures for the ARG export market, but also the other companies. Further, as Fuyao is a public listed company the financials clearly indicate the difference between the companies where Fujian Wanda is the most profitable manufacturing company, while the other manufacturers are not that profitable which might be as a result of the fact that these

other companies sold at loss (dumped prices). It is submitted that all five companies must be completely verified and dumping margins must be calculated. We therefore request the Commission to ensure that this is done prior to making the final determination.

The Applicant further stated that Fujian Wanda sells to two related companies Glass Distributors and Fuyao Glass, which then sells to “independent” customers in the domestic market. The Commission then states that the AD Regulations, “ADR 9.2” provides that: “Where a party has domestic sales through both related and unrelated parties, the Commission may decide to use those sales to unrelated parties” (own emphasis). The Commission then claims that Fujian Wanda sells 96 percent of the subject product to Fuyao Glass and only 4 percent to Glass Distributors, and “for this reason ...” the Commission is considering using the “domestic sales by Fuyao Glass to independent buyers ...”. The Applicant submitted that the decision and reference to ADR 9.2 are flawed and does not allow the Commission to use only Fuyao Glass sales to independent customers, as Fujian Wanda does not sell to “both related and unrelated parties” but only related parties being Glass distributors and Fuyao Glass that then on sell to independent parties. It is submitted that the ADR 9.1 is applicable as its states that: “Where the foreign producer sells the product under investigation on its domestic market through a related party – (a) the normal value shall be determined as the resale price to the first independent buyer, provided adjustments as envisaged in section 32(3) of the Main Act should still be made; ...” Clearly, the Commission must verify and use all domestic sales to the first independent parties, meaning Fuyao Glass and Glass Distributors, to determine the normal value, and not only selected sales or companies. The Commission is therefore requested to also include the sales to Glass Distributors and their sales to independent parties.

The Applicant stated that it submits that as it is clear that the modus operandi of the Commission with regard to the calculation of the normal value is flawed, as not all the Fuyao Group manufacturers of ARG product were verified and also not all the domestic sales to independent parties were used to determine normal value, the

Commission must reapply its mind and use all the subject sales on the domestic market. If the other related manufacturers of the Fuyao Group did not export to SACU during the POI, directly or via related party, these manufacturers would not be interested parties and must be subject to the residual dumping duty.

Commission's consideration

The Commission do not agree with the Applicants contention to verify all producers in the Fuyao Group. Although in ideal circumstances it would be ideal to verify all manufacturers in the group, this is not justified in these circumstances.

In terms of provision 20 of the ADR "All investigations and reviews shall be finalised within 18 months after initiation."

Fuyao's information was not taken into consideration for purposes of the Commission's preliminary determination as this information was deficient and could not be verified. This was the case with 4 other interested parties. These parties, including Fuyao re-submitted their updated responses. This means that majority of the interested parties were verified after the preliminary determination after the six-month mark. given the timelines, it was impractical to verify 5 manufacturers of the same group when there was one clear major producer of the subject product, namely Fujian Wanda manufacturing almost 80% of the subject product sold by the Fuyao group.

It is the practice of the Commission, where there are a lot of responses to verify a representative sample of importers and exporters. The case of the Fuyao group is no different. Fujian Wanda is representative of the manufacturers of the subject product in the Fuyao Group. Further to this it is impractical to delay the finalisation of this investigation to verify four manufactures constituting 22 percent of total production. Verifying the other four producers at this stage would not only be unduly burdensome to the Commission but would also delay the timeframe within which this investigation must be concluded.

The Commission elected to rely on verified information, being that of Fujian Wanda. The Commission made a final decision to place reliance solely on Fujian Wanda's information for purposes of determining The Fuyao Groups normal value.

With regard to sales from Fujian Wanda to Glass distributors, again the Commission believe that 96 percent of total sales from Fujian Wanda is representative of all sales made by Fujian Wanda. As the sales made by Glass distributors was only four percent, these sales are not expected to change the trajectory of Fuyaos dumping margin from a negative 31 percent to a positive margin. The Commission recalculated the normal value to include the sales from Fujian Wanda to Glass distributors, thus recalculating the dumping margin. The dumping margin remained negative.

The Applicant stated that it is also evident that export sales are conducted via related parties. The Commission stated that "Fuyao Glass made sales to Fuyao Hong Kong, a related distributor..." and that the "Commission is considering that the export price be determined by calculating the price back from Hong Kong's net ex-factory price to Fuyao Glass (sic) ex-factory price." This approach of the Commission is seriously flawed. The glass that is sold to SACU via Fuyao Hong Kong is not manufactured by Fuyao Glass, but Fujian Wanda, which was left out in the backward construction of the export price from the first point of sale to an independent party. It is therefore submitted that the Commission must recalculate the export price to determine the ex-factory export of Fujian Wanda and not Fuyao Glass. Clearly, this would result in a substantially lower export price, which will most likely confirm that the products have been dumped on the SACU market. It follows logically that once the Commission has correctly verified and used ALL the domestic sales information as requested, and addressed the correct calculation of the export price and made adjustments, such as bank charges and additional packaging costs for export product that a substantial dumping margin will be calculated.

Commission's consideration

In terms of ADR 11.2, Adjustments should be requested in interested parties' original response to the relevant questionnaires and must be –

- (a) *Substantiated*
- (b) *Verifiable*
- (c) *Directly related to the sale under consideration; and*
- (d) *Clearly demonstrated to have affected price comparability at the time of setting prices.*

In terms of the provision above it is clear that the Commission may consider adjustments that have been requested in the Fuyao Group's initial response to the exporter questionnaire. The Commission may allow adjustments that have been substantiated and verifiable. However, if during the verification of the exporter, the officials find such adjustments that are verifiable, the Commission may decide to adjust the Export price for such adjustments. This is however not the case with Fuyao Group. No information to substantiate bank charges and additional packaging costs were found during verification.

The Commission agree with the Applicant that the Fuyao Group's export price should have been worked back to Fujian Wanda's ex-factory price. The ex-factory price and the dumping Margin has been recalculated

The dumping margin was recalculated for each category was weighted with the export volumes to determine a weighted average dumping margin. The Fuyao group was still found not be dumping at -20.32%

4.8 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER MANUFACTURERS/EXPORTERS FROM CHINA (RESIDUAL DUMPING MARGIN)

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other any manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation.

On this basis, the Commission made a final determination to calculate a residual dumping margin using the highest verified normal value and the lowest verified adjusted export price for each the subject product.

Normal value

The Commission made a final determination to use the highest verified unadjusted normal value to calculate the residual dumping margin.

Export price

The Commission made a final determination to use the lowest verified unadjusted export price to calculate the residual dumping margin.

Dumping Margin

The residual dumping margin of 129.15% was calculated for all other manufacturers/exporters from China.

4.9 SUMMARY – DUMPING

For the purpose of its final determination, the Commission found that the subject product originating in or imported from China is being dumped onto the SACU market as the following dumping margins were calculated:

Tariff subheading	Manufacturer/exporter	Final Duty
HS 7007.21.20	Dongguan Kong Wan Automobile Glass Limited	28.39%
	BSG Auto Glass Co., Ltd	0%
	Xinyi Automobile Glass (Shenzhen) Co., Ltd	12.92%
	Dongguan Benson Automobile Glass Co., Ltd	12.92%
	Fuyao Glass Industry Group Co., Ltd	0%
	All the other manufacturers (excluding Dongguan Kong Wan Automobile Glass Limited, BSG Auto Glass Co., Ltd, Fuyao Glass Industry Group Co., Ltd, Xinyi Automobile Glass (Shenzhen) Co., Ltd, Dongguan Benson Automobile Glass Co., Ltd)	129.15%

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to the Applicant who constitutes more than 50 percent of the total domestic production of the subject product.

The Commission made a preliminary determination that this constitutes “a major proportion” of the total domestic production, in accordance with the ADR.

5.2 IMPORT VOLUMES AND EFFECT ON PRICES

5.2.1 Import volumes

The following table shows the volume of allegedly dumped imports in kilograms for the subject product:

Table 5.2.1: Import volumes

Aftermarket Replacement Glass (ARG)						
	Import Volume (Kg)		Import Volume (Kg)		Import Volume (Kg)	
	Volumes	%	Volumes	%	Volumes	%
	2019	2019	2020	2020	2021	2021
Alleged dumped imports	6 786 783	90.54%	6 539 507	89.34%	7 951 097	91.21%
Other imports	709 373	9.46%	780 094	10.66%	766 378	8.79%
Total	7 496 157	100%	7 319 601	100%	8 717 475	100%

The information in the table indicates that imports from China for the subject product increased over the period 2019 to 2021, with imports reaching their highest import market share of 91.21 percent in 2021.

5.2.2 Effect on Domestic Prices

5.2.2.1 Price depression

Price depression takes place where the Applicant industry’s ex-factory selling price decreases during the investigation period.

The table below showed the Applicant industry's ex-factory selling price per kg:

Table 5.2.2.1: Price depression

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Ex-factory selling price (R/kg)	100	93	95

*The information above was indexed using 2019 as base year

The Applicant stated that the selling price for the ARG subject product decreased from 2019 to 2020, as a result of pressure from the dumped Chinese products on the SACU industry in an attempt to regain lost market share by the SACU Industry. However, due to increasing costs since 2019, the Applicant could not continue to depress its selling price and did slightly increase its selling price in 2021, to recover cost, but to a level that was still below the 2019 price level.

Commission's consideration

From the above information, the Commission noted that it is clear that the Applicant experienced price depression over the period 2019 to 2021.

5.2.2.2 Price undercutting

The following table compares the Applicant ex-factory prices with the landed cost of the imported product:

Table 5.2.2.2: Price undercutting

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Ex-factory selling Price	100	93	95
Alleged Dumped products:			
Import price (fob)	25.82	27.43	25.80
Import Price (landed(R/kg))	36.04	38.14	36.01
Price undercutting(R/kg)	Yes	Yes	Yes
Price undercutting %	[CONFIDENTIAL] (between 50 and 65 index points)	[CONFIDENTIAL] (between 45 and 60 index points)	[CONFIDENTIAL] (between 45 and 60 index points)

*The information above was indexed using 2019 as base year

The information in the above table shows that the Applicant was experiencing price undercutting over the investigation period due to depressed selling prices.

The Applicant stated that when comparing 2021-imported price from China with the unsuppressed selling price, an even greater price undercutting situation is clearly evident, which emphasized the extent of the material injury and further threat thereof, due to the dumped imports from China, into a much clearer context.

Commission's consideration

The Commission noted that the Applicant has experienced price undercutting during the period of investigation.

Response by the Applicant to comments made by Windscreen Distributors (WD)

In response to WDs comment, the Applicant stated that the communication with clearing agents are occurring on frequent basis, which in relation to the Commission's investigation has commenced even prior to January 2021. Quotation information was provided for clearing costs from China in January 2021. WD has incorrectly stated that clearing month and year is "21 January 2021", whilst the date reflected is in fact "30 January 2021". The Applicant also stated that during August 2021, the correspondence pertained to a conformation of the January 2021 quotation provided, which was confirmed as being valid for laminated glass. WD's questioning of the authenticity is thus unfounded and the undercutting calculation on the basis of quotation is accordingly valid. WD's claim that the Applicant's indexing of price undercutting percentage does not give a reasonable understanding of the information submitted in confidence is denied, as WD is capable of determining the trend as being a decreasing one. The Applicant submitted that the indexing is thus adequate.

Commission's consideration

From the information submitted by the Applicant for prima facie and preliminary determination, it was decided that the Applicant has suffered price undercutting. It

was also decided by the Commission that the application was properly documented as required by the ADR and sufficient information was provided by the Applicant to allow interested parties to comment on the non-confidential application.

The Commission made a final determination that the Applicant's information met the requirements of the ADR and that it had submitted sufficient information to allow interested parties to comment.

5.2.2.3 Price suppression

Price suppression is the extent to which increase in the cost of production of the product concerned, cannot be recovered in selling prices.

The following table shows the Applicants' average costs of production and its actual average selling prices for the subject product:

Table 5.2.2.3: Price Suppression

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Ex-factory selling price (R/kg)	100	93	95
Cost of production (R/kg)	100	113	115
Gross Profit	100	60	61
Gross Profit %	100	64	64
Cost of production % selling price (%)	100	121	121

***The information above was indexed using 2019 as base year**

The Applicant stated that there was an increase in price suppression for the ARG subject product over the period 2019 to 2021, causing it to suffer material injury. This is evident in that the cost to price ratio increased year-on-year from 2019 to 2021. The Applicant also stated that the cost of production as a percentage of the selling prices for the ARG subject product represents a very prominent increasing trend, with the cost to price ratio, especially over the period May to September 2021, being the most prominent.

Commission's consideration

The price suppression experienced by the Applicant increased by 21 index points from 2019 to 2021. The table above indicates that production cost increased from 2019 to 2021.

Response by Applicant to comments made by Windscreen Distributors

In response to WD's comments that the Applicant did not provide the Commission with indexed versions of E3.1.1 and E3.2.1 as part of the application, the Applicant stated that the fact that price depression is suffered and caused by the pressures being exerted by the dumped subject product imports from China, has already been commented on and confirmed to the Commission. It stated also that the 2022 price increase information that WD is referring to applies to a period after the POI and is accordingly irrelevant for the Commission's investigation from a material injury perspective. It stated that WD's speculation that in 2021 price increases were avoided is not true, as the applicant's subject product price did increase from 2020 to 2021. The Applicant stated that it also wishes to state that it was already selling at suppressed and depressed prices in 2019. The Applicant was prevented from increasing its prices to the required level to achieve a full cost recovery because of the dumped Subject Product imports from China, which were increasingly taking up SACU market share from the Applicant. Had the Applicant effected price increases at the levels required, it would have lost even more SACU market share to the dumped Subject Product imports from China. The Applicant finds it rather puzzling why WD would choose to use the indexed cost build-up data that it had presented as part of its tariff increase application, which is separate matter from this investigation of the Commission, instead of the indexed correct cost build-up data that was provided as part of its Application. As the cost build-up document that WD has chosen to base arguments on is not part of the Commission's investigation, all such arguments are to be regarded as irrelevant and must be rejected by the Commission.

Commission’s consideration

The Commission noted that the information submitted by the Applicant was properly documented as required by the ADR. Non-confidential index of the Applicant was indexed properly so as to allow interested parties to comment. The Commission also took note that the injury suffered by the Applicant is a result of the dumped imports from China.

5.3 Consequent Impact of the dumped imports on the Industry

5.3.1 Actual and potential decline in sales

The following table shows the Applicants’ sales volume of the subject product:

Table 5.3.1: Sales volume

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Sales volume (Kg)	100	75	90

**The information above was indexed using 2019 as base year*

The Applicant stated that there was a decreasing trend for the subject product over the period of investigation, indicating that it is suffering material injury. It also stated that it decreased its selling prices in 2020, which was done to regain lost SACU market share, and this was neither sufficient nor sustainable to prevent the decreasing sales volume trend. As profitability declined and costs were increasing, the Applicant was forced to increase its price in 2021, albeit with a small margin from the 2020 price but far lower than what was required. It also stated that its sales volume of the subject product decreased by 10 index points, from 100 in 2019 to 90 in 2021.

Commission’s consideration

Sales volume of the Applicant decreased by 10 index points over the period from 2019 to 2021.

5.3.2 Profit

The following table shows the Applicants' profit margins for the subject products:

Table 5.3.2: Profit

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Kg Sold	100	75	90
Total Gross profit (R)	100	45	55
Total Net Profit	100	28	32
Total Gross profit per kg (R/kg)	100	60	61
Total Net Profit per kg (R/kg)	100	37	36

***The information above was indexed using 2019 as base year**

The Applicant indicated that its net profit (Rand/kg) for the ARG subject product showed a year-on-year reduction over the period of investigation from 100 index points in 2019 to 37 index points in 2020 and to a further decrease to 36 index points in 2021. This year-on-year reduction presents as a decreasing profit trend, with a net profit (Rand/kg) margin reduction of 64 index points occurring from 2019 to 2021, which clearly indicates that the Applicant is suffering material injury. It stated that the gross profit (Rand/kg) and value shows a decreasing trend over the period of investigation, clearly indicating material injury.

5.3.3 Output

The following table outlines the Applicants' domestic production volume of the subject product:

Table 5.3.3: Output

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Kg	100	67	92

***The information above was indexed using 2019 as base year, due to confidentiality**

The Applicant stated that the dumped imports from China have placed the SACU industry under constant pressure and as result of the loss in sales volume that occurred over the period of investigation, it was forced to reduce its production for the subject product to prevent stock build-up (volume and value) as far as possible.

It also pointed out that production decreased from 100 index points in 2019 to 67 index points in 2020, followed by an increase in 2021 to 92 index points, but the volume still remained below that of 2019.

5.3.4 Market share

The following table shows the SACU Industry market share for the subject product.

Table 5.3.4: Market share

Aftermarket Replacement Glass (ARG)	Kg	2019	%	2020	%	2021	%
Applicant	kg	100	100	75	83	90	84
Estimate of other SACU Producers	kg	-	0	-	0	-	0
Total SACU		100	100	75	83	90	84
Manufacturer:							
Alleged dumped imports	kg	6 786 783	100	6 539 507	107	7 951 097	109
Other imports	kg	709 373	100	780 094	122	766 378	100
Total imports	kg	7 496 157	100	7 319 601	108	8 717 475	108
Total Market	kg	100	100	90	100	108	100

*The information above was indexed using 2019 as a base year

The Applicant indicated that a decreasing trend exists for ARG subject product of the total SACU market share, based on its sales volume. The Applicant's SACU sales volume market share decreased from 100 index points in 2019 to 83 index points in 2020 and in 2021 it slightly increased to 84 index points.

Commission's consideration

The Commission noted that the Applicant's market share decreased in 2019 from 100 index points to 84 index points in 2021.

5.3.5 Productivity

Using the production and employment figures sourced from the Applicant, productivity in respect of the subject product is as follows:

Table 5.3.5: Productivity

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Total production volume (kg)	100	67	92
Number of employees (Production) (units)	100	84	96
Kg per employee	100	80	95

*The information above was indexed using 2019 as base year

The Applicant stated that its productivity experienced a decrease from 2019 of 100 index points to 80 index points in 2020, before increasing in 2021 to 95 index points per employee, but remained below the 2019 level. This presents a decreasing productivity trend for the period of investigation. The reduction in production employment for the period 2019 to 2020, ensured that the productivity did not decline below 71 index points. Direct production employees for the ARG product category decreased from 100 index points in 2019 to 84 index points in 2020 and then increased to 96 index points in 2021 when production increased slightly.

5.3.6 Return on investment

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of assets. The following table provides the Applicants' profit after interest and tax expressed as a percentage of its net value of assets:

Table 5.3.6: Return on investment

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Net profit (R)	100	28	32
Total Investment (R)	100	104	108
Net assets (product concerned)	100	115	143
Return on Total Investment (%)	100	27	30
Return on net assets (%)	100	24	22

*The information above was indexed using 2019 as base year

The Applicant indicated that its return on investment on the subject product is based on the profit. It indicated that the return on net assets as a percentage shows a decrease from 100 index points in 2019 to 24 index points in 2020, with the further decrease in 2021 occurring to 22 index points for the return on net assets.

Commission’s consideration

The Commission noted that the return on investment on the subject product decreased significantly from 2019 to 2021 by 78 index points.

5.3.7 Utilisation of production capacity

The following table provides the Applicants’ capacity and production for the subject product.

Table 5.3.7: Utilisation of production capacity

	2019	2020	2021
Total Installed Capacity (kg)	100	114	126
Actual Production (kg) (including non-SACU & OEM)	100	78	96
Capacity utilisation %	100	68	76

***The information above was indexed using 2019 as base year**

The information in the table indicates that the Applicant’s capacity utilisation increased from 100 index points in 2019 to 114 index points in 2020, followed by further increase in 2021 to 126 index points. However, capacity utilisation showed a decreasing trend over the period of investigation, from 100 index points in 2019, to 68 index points in 2020, before increasing in 2021 to 76 index points, but still remaining below the 2019 level, indicating that it is experiencing material injury.

Response by Applicant to comments made by Windscreen Distributors (“WD”)

In response to the WD’s claims that it is aware that the models that are concerned are not manufactured in SACU, the Applicant wishes to point out that the SACU industry has the capacity and capability to manufacture subject product and like products that cover a substantial number of models, estimated at more than 95 percent of the SACU vehicle range. It is noted that WD did provide a list of items allegedly not manufactured in SACU, but failed to provide any insight thereto by elaborating further on the country of origin of these items, the actual import volumes concerned during the period of investigation (“POI”) into SACU or the further distribution thereof from SACU.

Commission’s consideration

From the information submitted by the Applicant for prima facie and preliminary determination, it was decided that the Applicant has sufficient capacity to manufacture any type of product model for the SACU industry. The Commission made a final determination that the Applicant has sufficient capacity to supply the local market.

5.3.8 Factors affecting domestic prices

The Applicant stated that there are no other known factors, which could affect the domestic prices negatively.

5.3.9 Actual and potential negative effects on cash flow

The following table reflects the Applicant’s cash flow situation with regard to the product under investigation.

Table 5.3.9: Cash flow situation

Aftermarket Replacement Glass	2019	2020	2021
Cash flow: incoming (R)	100	75	88
Cash flow: outgoing (R)	100	69	117
Net cash flow (R)	100	94	6

***The information above was indexed using 2019 as base year**

The information in the table shows that the Applicant’s net cash flow declined over the investigation period. Net cash flow indicates a year on-year decline, which is indicative of a declining trend over the period 2019 to 2021. It stated that this is because of the price depression and price suppression it experienced over the investigation period.

5.3.10 Inventories

Table 5.3.10: Inventories

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Volume (kg)	100	81	124
Value (R)	100	94	151
Value per unit	100	117	122

*The information above was indexed using 2019 as base year, due to confidentiality

The Applicant indicated that total subject product inventory volume experienced an increasing trend for the period of investigation. The inventory volume decreased from 100 index points in 2019 to 81 index points in 2020, followed by an increase in 2021 to 124 index points. The Applicant’s total subject product inventory value also experienced a similar increasing trend for the POI.

The Applicant stated that for the recent 12-month period, an increasing trend also exists, with volume increasing on a month-to-month basis, with January to August 2021 being the most prominent. It indicated further that the increasing monthly inventory trends are indicative of the fact that it is suffering material injury as produced product cannot be sold in SACU, notwithstanding the cutback in production as a result of the dumped imports from China.

5.3.11 Employment

The following table provides the Applicants’ employment figures for the subject product

Table 5.3.11: Employment

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Direct labour (units) : production	100	84	96
Indirect labour (units) : production	100	87	97
Total labour (units) : production	100	84	97

*The information above was indexed using 2019 as base year

The Applicant stated that the decreasing employment trends (based on allocation) that occurred over the period of investigation are indicative of the material injury it suffered. It stated that the dumped imports from China that took up its sales volumes forced it to manage employment cycles and not appoint new personnel, which impacted on the changes that occurred.

5.3.12 Wages and salaries

The following table provides the Applicant's wages paid:

Table 5.3.12: Wages & salaries

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Direct Wages: Production	100	85	100
Indirect Wages: Production	100	84	90
Total wages: Production	100	84	96
Wages per employee Direct	100	102	104
Wages per employee Indirect	100	97	93

*The information above was indexed using 2019 as base year

The Applicant indicated that it experienced an increasing trend for direct production wages over the period of investigation, whilst a decreasing trend applies to indirect production wages, with the wages per employee for direct and indirect workers following the same trends. It stated that the decreasing trends are indicative of it suffering material injury.

5.3.13 Growth

The following table indicates the growth of the SACU market as provided by the Applicant:

Table 5.3.13: Growth (kg)

Aftermarket Replacement Glass (ARG)	2019	2020	2021	2019/2021 % Change
Applicant Sales	100	75	90	(10)
Alleged dumped imports	6 786 783	6 539 507	7 951 097	17.16%
Other imports	709 373	780 094	766 378	8.04%
Total imports	7 496 157	7 319 601	8 717 475	16.29%
Total SACU Market	100	90	108	(9)

*The information above was indexed using 2019 as base year

The Applicant stated that it experienced negative growth of 10 index points over the period of investigation. It also stated that imports from China of the subject product experienced substantial growth of 17.16 percent over the period of investigation. It stated that imports from China decreased from 6,786,783kg in 2019 to 6,539,507kg in 2020 and in 2021 the volume increased to 7,951,097kg. Imports from other countries that hold the minority import volume market realised a smaller positive growth for the period of investigation.

5.3.14 Ability to raise capital or investments

The Applicant provided the following information with regard to the SACU industry's ability to raise capital or investments:

Table 5.4.14: Ability to raise capital or investments

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Total capital/investment in the subject product	100	104	108
Capital expenditure during year on subject product	100	240	192

*The information above was indexed using 2019 as base year

The Applicant indicated that its capital expenditure for windscreens presents an increasing trend for the period of investigation. It also stated that a significant investment was made in capacity and capability expansion at the Ga-Rankuwa plant to allow for the business to supply a new business platform launched in July 2021. This investment resulted in improved local content levels for the industry in South Africa. Funding was secured via loans at a Group level from banking institutions.

The Applicant further stated that capital intensive operations cannot be sustained given the levels of injury it has suffered over a prolonged period. The recent investments it made although initially funded by bank loans, have to be partially serviced by the other Group divisions as it is not generating cash. The consequence of not receiving any assistance would be that it will no longer be able to continue in a manner where it cannot fund its own capital investment requirements which may lead to the business ultimately closing down.

Comments by WD to Commission preliminary determination and Application

WD stated that the injury assessment period 2019 – 2021 fails to consider the negative implications of the COVID-19 pandemic lockdowns. It is undeniable that this negatively affected the domestic manufacturers. The applicant cannot just wish away this economically devastating occurrence as if it did not happen, yet it affected the industry. However, the applicant simply attributes all the alleged material injury to the alleged dumped imports. Such a view is not truthful. WD also stated that the material injury the Applicant might be experiencing is being caused by other SACU manufacturers and not the alleged dumped imports. The Applicant products are generally expensive compared to windscreens of other manufacturers. The applicant used to sell a cheaper locally manufactured alternative with the brand name “SafeVue”. This brand has been discontinued in favour of having one brand “the Applicant”. This deliberate business decision likely also contributed to loss of sales. Moreover, PFG Building Glass, a related entity to the applicant, sell float glass to other local manufacturers of the subject products who then undercut the Applicant prices in the market.

Commission's consideration

The Commission noted that the injury suffered by the Applicant is as a result of dumped imported products from China. It was also noted that sufficient evidence was submitted by the Applicant to indicate that the SACU industry was suffering material injury during the investigation period. From the information verified by the Commission, it was found that the subject product was being dumped on the SACU market.

5.4.16 SUMMARY – MATERIAL INJURY

Commission's Consideration

Based on the information above, it is evident that the Applicant is experiencing volume injury in terms of a decline in sales volume and output decreased over the period of investigation. The information also indicates that the Applicant is experiencing price undercutting, price depression and price suppression. Net profit and cash flow also declined over the same period of investigation.

The table also reflects that the Applicant's market share declined over the period 2019 to 2021, whereas the volume of imports from China increased over the same period. Productivity, employment, capacity utilisation also decreased, and inventories increased over the period 2019 to 2021.

The Commission made a final determination that the SACU industry is experiencing material injury.

6. THREAT OF MATERIAL INJURY

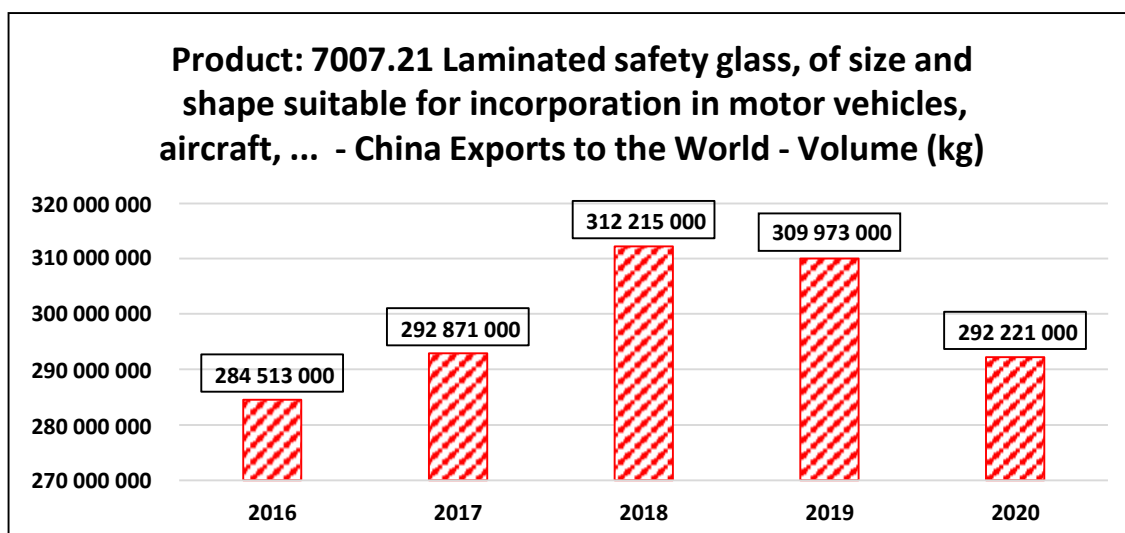
6.1 Freely disposable capacity of the exporters

The Applicant provided the following information in substantiating the above:

The Applicant stated the actual capacity of factories in China are not known but in light of the contracting global automotive market, global exports from China of automotive glass as per the International Trade Centre, Trade statistics for international business development (“**Trade Map Data**”), suggests that there is substantial disposable capacity in China. The Trade Map Data does not however, provide information to the same level as “windcreens for vehicles”, but does to the level of HS “7007.21 Laminated safety glass, of size and shape suitable for the incorporation in motor vehicles, aircraft ...”.

The Applicant stated that from the Trade Map Data below until 2020, there was an export volume increase from 2016 to 2018 of 27,702,000kg (9.74 percent), with the reduction from 2018 to 2020 being 19,994,000kg (6.40 percent), indicating the existence of freely disposable capacity.

HS 7007.21 Laminated safety glass, of size and shape suitable for the incorporation in motor vehicles, aircraft ...



Source: <https://www.trademap.org/Index.aspx>

There are numerous automotive glass operations, specialising a variety of products such as laminated glass, many of which has large safety glass manufacturing capacities, capable of producing as much as 1,600,000 square meters annually.

The Applicant further stated that it is known that there are at least 71 laminated glass windscreen manufacturers and suppliers in China, any number of which is capable of supplying the products to the SACU market. It also stated that the Chinese laminated windscreen glass industry's production capacity is well in excess of its domestic market needs and exports are the logical option to channel its trade surplus and prevent unnecessary stock build up, with the African continent and especially the SACU offering lucrative export opportunities.

Although the Applicant does not have detailed information on the current conditions in China, the worldwide supply catch-up on the float glass demand post the COVID-19 crisis, has reached normality and this will result in an oversupply in the downstream value added laminated automotive glass products, due to the fall out of manufacturers having optimised production volumes and now sit with immediate surplus product.

6.2 Significant increase of dumped imports

The Applicant stated that as long as import prices of the subject product is offered at prices that undercut the domestically produced SACU product selling price, the demand for the imported Chinese product will continue to increase.

The Applicant also stated that imports from China of the subject product experienced an increasing trend over the period of investigation, with the increase from 2019 of 6,786,783kg to 7,951,097kg in 2021, presenting a growth of 17.16 percent. Imports from other countries experienced a positive growth from 2019 to 2021 of only 8.04 percent. The imports from China for the period of investigation represent 90.41 percent of the total import market. The average Chinese import price (R/kg) during the period of investigation undercutting margin of the other countries' import price was 86.20 percent.

It stated that a real threat exists in that the subject product imports from China will increase even further in the remainder from 2022 onwards, if there is no definitive action taken against the dumped subject product from China into the SACU market.

In light of the above, the Applicant stated that it expects that the SACU industry will be faced with a bigger onslaught from China, which would further increase the material injury suffered by Shatterprufe to a level that could severely impair and even lead to the closure of the laminated windscreens plants for vehicles in SACU.

It provided the following information to substantiate this analysis:

Aftermarket Replacement Glass (ARG)						
	Import Volume (Kg)		Import Volume (Kg)		Import Volume (Kg)	
	Volumes	%	Volumes	%	Volumes	%
	2019	2019	2020	2020	2021	2021
Alleged dumped imports	6 786 783	90.54%	6 539 507	89.34%	7 951 097	91.21%
Other imports	709 373	9.46%	780 094	10.66%	766 378	8.79%
Total	7 496 157	100%	7 319 601	100%	8 717 475	100%

Commission's consideration

The Commission considered that it is evident from the information provided by the Applicant that there is an increase of the alleged dumped imports over the investigation period.

6.3 Prices of imports which will have a significant depressing or suppressing effect on domestic prices

The Applicant indicated that price depression in 2020 compared to 2019, as well as in 2021, compared to 2019 did impact on its profitability, causing it to suffer material injury. With the increase in the dumped imports from China, the SACU industry is faced with the threat of further material injury that will be suffered, should no action be taken to prevent the further dumped imports from China.

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Ex-factory selling price (R/kg)	100	93	95

*The information above was indexed using 2019 as base year

The Applicant also stated that its cost to price ratio was very high throughout the period of investigation, with an increasing price suppression trend that existed for the period 2019 to 2021. The dumped Chinese imports of the subject product were exerting pressure on it to also sell at suppressed prices during the period of investigation.

Aftermarket Replacement Glass (ARG)	2019	2020	2021
Ex-factory selling Price	100	93	95
Alleged Dumped products:			
Import price (fob)	25.82	27.43	25.80
Import Price (landed(R/kg))	36.04	38.14	36.01
Price undercutting(R/kg)	Yes	Yes	Yes
Price undercutting %	[CONFIDENTIAL] (between 50 and 65 index points)	[CONFIDENTIAL] (between 45 and 60 index points)	[CONFIDENTIAL] (between 45 and 60 index points)

*The information above was indexed using 2019 as base year

The increase in dumped imports from China over the 2019 to 2021 period caused the SACU industry to suffer material injury, with the real threat of further import increases causing a continuation of material injury.

6.4 Exporter's inventories of the subject product

The Applicant indicated that a float glass plant cannot be stopped and has started to cater for an increase or decrease in demand. It also stated that this will continue to operate and if there is a global slowdown, or if markets are closed through the implementation of a trade remedy mechanism, inventories will increase while products are also sold at lower prices on the export market and sometimes below cost of production to recover the cost of production.

The Applicant stated that a similar situation exists concerning laminated automotive glass products such as windscreens, which is a downstream valued added float glass product, as many of the float glass manufacturers also have lamination and automotive operations. The fact that the subject product is being exported from China to South Africa at dumped prices substantiates the likelihood that significant inventories exist in China and that these factories are trying to recover invested cost in the value-added laminated products, especially when there is over-supply in the market.

6.5 State of the economy of the country of origin

The Applicant stated that the income generated by state-owned enterprises accounted for about 40 percent of China's Gross Domestic Product ("GDP") of USD14.4 trillion in 2019, with domestic and foreign private businesses and investment accounting for the remaining 60 percent. As of the end of 2019, the total assets of all China's SOE's, including those operating in the financial sector, reached USD78.08 trillion. Ninety-one (91) of these SOE's belong to the 2020 Fortune Global 500 companies. Direct foreign investment in China, which totalled about USD1.6 trillion as of the end of October 2016, directly and indirectly contributed about one-third of China's GDP and a quarter of jobs there. As of the end of June 2020, Foreign Direct Investment ("FDI") stock in China reached USD2.947 trillion, and China's outgoing FDI stock stood at USD2.128 trillion. Total foreign financial assets owned by China reached USD7.860 trillion, and its foreign financial liabilities USD5.716 trillion, making China the second largest creditor nation after Japan in the world. The Applicant also stated that China is currently the second largest economy in the world by nominal GDP, and an official forecast has indicated that China is set to overtake the United States as the world's biggest economy by 2028, half a decade sooner than expected.

The Applicant indicated that the Chinese Government began its economic reforms in 1978 under the leadership of Deng Xiaoping. It has four of the top ten most competitive financial centres (Shanghai, Hong Kong, Beijing, and Shenzhen) in the 2020 Global Financial Centres Index, more than any other country. China also has

three out of the ten world's largest stock exchanges—Shanghai, Hong Kong and Shenzhen by market capitalization and trade volume. As of October 12, 2020, the total market capitalization of Mainland Chinese stock markets, consists of the Shanghai Stock Exchange and Shenzhen Stock Exchange, topped USD10 trillion, excluding the Hong Kong Stock Exchange, with about USD5.9 trillion. As of the end of June 2020, foreign investors had bought a total of USD440 billion in Chinese stocks, representing about 2.9 percent of the total value, and indicating that foreign investors scooped up a total of USD156.6 billion in the stocks just in the first half of 2020.

The Applicant also pointed out that the total value of China's bond market topped USD15.4 trillion, ranked above that of Japan and the United Kingdom and second only to that of the United States of America with USD40 trillion, as of the beginning of September 2020. As of the end of September 2020, foreign holdings of Chinese bonds reached USD388 billion, or 2.5 percent, of the total value, notwithstanding an increase by 44.66 percent year on year.

The Applicant stated that according to the 2019 Global Wealth Report by Credit Suisse Group, China surpassed the US in the wealth of the top 10 percent of the world's population: China had 100 million wealthy people (each owning a net wealth of over USD110,000) and the US 99 million. At USD 63.8 trillion as of end of 2019, representing a 17-fold increase from USD3.7 trillion in 2001, the total amount of China's household wealth stood behind only that of the US with USD105.6 trillion. The economy, as of 2019, ranked as the second largest in the world by nominal GDP and as of 2017 the largest in the world by purchasing power parity. China has the world's fastest-growing major economy, with growth rates averaging 10 percent over 30 years.

It indicated that as of 2019, China's public sector accounted for 63 percent of total employment. According to the IMF, on a per capita income basis, China ranked 73rd by GDP (Purchasing Power Parity) per capita in 2019. China's GDP was USD14.4 trillion (99 trillion Yuan) in 2019. The country has natural resources with an estimated

worth of USD23 trillion, 90 percent of which are coal and rare earth metals. China also has the world's largest total banking sector assets of around USD45.838 trillion (309.41 trillion CNY) with USD42.063 trillion in total deposits and other liabilities. It has the second largest inward foreign direct investment at USD141 billion in 2019 alone, and the second largest outward foreign direct investment, at USD136.91 billion for 2019 alone, following Japan at USD226.65 billion for the same period. As of 2020, China is home to many of the largest companies in the Fortune Global 500 and 129 are headquartered in China. It has the world's largest foreign-exchange reserves worth USD3.1 trillion, but if the foreign assets of China's state-owned commercial banks are included, the value of China's reserves rises to nearly USD4 trillion.

Currently, China is the world's largest manufacturing economy and exporter of goods. It is also the world's fastest-growing consumer market and second-largest importer of goods. China is a net importer of services products. It is the largest trading nation in the world, plays a prominent role in international trade, and has increasingly engaged in trade organizations and treaties in recent years. China became a member of the World Trade Organization in 2001. It also has free trade agreements with several nations, including ASEAN, Australia, New Zealand, Pakistan, South Korea and Switzerland. The provinces in the coastal regions of China tend to be more industrialized while regions in the hinterland are less developed. As China's economic importance has grown, so has attention to the structure and health of the economy. China's largest trading partners are the US, EU, Japan, Hong Kong, South Korea, India, Taiwan, Australia, Vietnam, China, and Brazil. With 778 million workers, the Chinese labour force is the world's largest as of 2020. It ranks 31st on the Ease of doing business index and 28th on the Global Competitiveness Report. China ranks 14th on the Global Innovation Index and is the only middle-income economy, the only newly industrialized economy, and the only emerging country in the top 30. By the end of July 2020, China's 5G users had already surpassed 88 million, accounting for over 80 percent of users worldwide—far ahead of the previously projected 70 percent share for the whole of 2020. By the end of this year, the number of 5G base stations in China is expected to reach nearly

one million, by far the biggest tally globally.

6.7 Give any other information relevant to your allegation that the infliction of material injury is imminent.

The Applicant stated that the global float glass market trends, which is very relevant for this investigation as laminated glass in the form of windscreens for vehicles are value added products, with float glass being the primary input product and that the changes in the global float glass market have a direct influence on the laminated glass market.

It also stated that a float plant is highly capital intensive, typically costing around EUR70 million to EUR200 million depending on size, location and product complexity. Once operational, a float glass furnace is designed to operate continuously, 365 days per year, throughout its lifetime of between 15 and 18 years. Float lines are normally capable of several “lifetimes” following major repair or upgrade programmes (EUR30 million to EUR50 million). The economics of the continuous-flow float operation require a high capacity utilisation rate. Energy and raw material costs are significant, representing almost two thirds of the production costs. Glass is relatively heavy, making distribution costs significant; they typically represent around 10 percent to 15 percent of total costs. The Applicant further stated that production of float glass worldwide can be considered fairly standardised. Products from reputable producers are, for all practical purposes, homogenous, of comparable quality and are near perfect substitutes. The product can be considered very price elastic between suppliers in the sense that purchasers will tend to buy from the cheapest supplier.

During the 1990’s and early 2000’s, a large number of new float glass plants were commissioned internationally, including many new plants in the Asian region (particularly Indonesia, Thailand, India and China. Recently additional plants have been established in, inter alia, North Africa, in Saudi Arabia, Malaysia and elsewhere in the Middle East. This created substantial additional new capacity and the global

industry has since then been characterised by some excess capacity, especially in Asia.

The global float glass industry has undergone a dramatic transformation over the last decade in response to a rollercoaster of economic fluctuations and a breakdown of barriers to market entry. Looking ahead, these forces will continue to redefine the world of glass, as shifting markets and new players exert their influence.

Flat Glass Market size is estimated to grow from USD92.90 billion in 2016 to USD142.05 billion by 2022, at a compound annual growth rate of 7.30 percent during the forecast period. The base year considered for the study is 2016 and the market size is projected between 2017 and 2022. The increase in the use of flat glass in the construction & infrastructural and automotive applications is expected to drive the market in the coming years.

The global laminated glass market is projected in a study to register a Compound Annual Growth Rate (“CAGR”) of more than 5 percent during the forecasted period (2021-2026).

The automotive industry has seen a slowdown in the past three years. According to the International Organization of Motor Vehicle Manufacturers (OICA), automotive production witnessed a 15.8 percent decline from 92,175,805 units in 2019 to 77,621,582 units in 2020. Also, sales of automobiles have declined in 2020 from 90.42 million units in 2019 to 77.97 million units in 2020. The decline is mainly attributed to the reduced production in the major automotive hubs such as United States, China, Japan, and Germany. In 2020, these countries witnessed a decline of 19 percent, 2 percent, 17 percent, and 24 percent respectively compared to 2019.

Due to the COVID-19 pandemic, the automobile production has been halted for a specified period, harming the short-term prospects of automotive glass producers. For instance, automobile production in 2020 has witnessed a decline of 15.8 percent

compared to 2019. However, with the restart of automotive production activities, the demand for automotive glass is coming back on track.

Notwithstanding the COVID-19 and decline in the motor industry, there was a sharp increase in imports over the POI for the Subject Product, with decreasing pricing trend for the POI (See Annexure G 2.1 and Annexure G 2.3). Although, the monthly import volumes over the last 12 months present a decreasing trend, the data should be viewed in context. As a result of the January 2021 import volume from China of 1,070,943kg, being 71.22 percent higher than the February to December 2021 average of 625,469kg, the 12-month base value was extremely high. The period of July to December 2021 presents an overall increasing trend to 928,091kg, which is just 13.34 percent lower than the January 2021 import volume from China. These high volumes in the 12-month period is clearly indicative that a much bigger threat of further material injury exists with regard to the imports from China. These strong and real import volume movements are testimony of the export capacity and import impact from China and imminent threat posed by it.

The automotive glass market was valued at USD19 billion in 2020, and it is expected to reach USD23 billion by 2026, registering a CAGR of about 5 percent during the forecast period 2021 to 2026. Asia-Pacific is expected to grow at the highest CAGR during the forecast period. Emerging economics and the strong presence of manufacturers in Japan, China, and India will boost the market in this region. Rapid changes in regulations to make transportation more advancing on the technology front and the ever-increasing population of this region will create more opportunities in the automotive glass market. China is the biggest producer of automobiles in the world. The abundance of economic resources to assemble and manufacture automotive parts in India and China, the presence of established glass manufacturing players, increasing R&D capacities, and the presence of several new production plants in China to cater to the growing needs for electric cars are adding to the global automotive glass market growth in the region.

Commission's consideration

The Commission considered that the information provided by the Applicant indicate that there is an existence of freely disposable capacity from China and that the alleged dumped imports increased by 17.16% over the period of investigation, which indicates that a threat of material injury to the SACU industry exists.

The Commission made a final determination that there is sufficient information to indicate that there is a threat of material injury to the SACU industry.

6.8 SUMMARY ON THREAT OF MATERIAL INJURY

The Commission made a final determination that the SACU industry is experiencing a threat of material injury.

7. CAUSAL LINK

7.1 GENERAL

In order for the Commission to impose final measures, it must be satisfied that there is sufficient evidence to indicate that the material injury experienced by the SACU industry is as a result of the dumping of the subject product.

7.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase of volume of the subject imports from China and the extent to which the market share of the domestic industry has decreased since the commencement of injury, with a corresponding increase in the market share of the dumped product.

The following table compares the market share of the SACU Industry with that of the alleged dumped imports:

Table 7.2.1: Market share

Percentage market share held by:	2019	2020	2021
Applicant	100	83	84
Total Alleged dumped imports	100	108	108
Total Market	100	100	100

**The information above was indexed using 2019 as base year, due to confidentiality*

The Applicant indicated that a decreasing trend exists for the ARG subject product in terms of the total SACU market share, based on its sales volume, as well as from a market share percentage perspective. The Applicant SACU sales volume market share decreased from 100 index points in 2019 to 83 index points in 2020 and in 2021, it increased to 84 index points, but remained below the 2019 volume.

Commission's consideration

The Commission noted that the Applicant's market share declined by 16 index points for the period 2019 to 2021.

The following table shows the volume of imports:

Table 7.2.2: Import volumes

Aftermarket Replacement Glass (ARG)								
	Volumes		%		Volumes		%	
	2019	2019	2020	2020	2021	2021		
Alleged dumped imports	6 786 783	90.54%	6 539 507	89.34%	7 951 097	91.21%		
Other imports	709 373	9.46%	780 094	10.66%	766 378	8.79%		
Total	7 496 157	100%	7 319 601	100%	8 717 475	100%		

The Applicant indicated that the subject product imports ARG market share of China increased over the period 2019 to 2021, with imports reaching their highest import market share of 91.21 percent in 2021.

Imports from China increased from 175,217,699kg in 2019 to 179,372,873kg in 2020, with a further increase following in 2021, to 205,103,841kg. The persistent Chinese Subject Product import volume increases over the POI amounted to a 17.16 percent increase, which caused the SACU industry to suffer material injury. The trend is likely to further continue, posing a definite threat of further material injury, unless remedial action is taken to address the situation.

Commission’s consideration

The Commission is of the view that the information in the table above indicates dumped imports increased over the period 2019 to 2021.

7.3 EFFECT OF DUMPED IMPORTS ON PRICES

The following table shows the price effects of the Applicant:

Table 7.3.1: Price depression, price suppression and Price undercutting

Aftermarket Replacement Glass	2019	2020	2021
Ex-factory selling price in SACU (Price depression)	100	93	95
Cost of production % selling price(suppression)	100	121	121
Price Undercutting	[CONFIDENTIAL] (between 50 and 65 index points)	[CONFIDENTIAL] (between 45 and 60 index points)	[CONFIDENTIAL] (between 45 and 60 index points)

***The information above was indexed using 2019 as base year**

7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Material injury indicator	Analysis
	(2019 – 2021)
Price suppression:	Decrease
Price depression:	Decrease
Sales volumes:	Decrease
Market share (Applicant)	Decrease
Profit:	Decrease
Productivity	Decrease
Return on investment	Decrease
Utilisation of production capacity	Decrease
Cash flow	Decrease
Inventory	Increase
Growth	Decrease

7.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

7.5.1 Examination of China under Article 3.5

Variable	Year			Change (%)
	2019	2020	2021	2019/2021
Prices of imports not sold at dumping prices (fob price) (R/kg)	207.47	150.52	215.96	4.09%
Volume of imports not sold at dumping (Kg)	709 373	780 094	766 378	8.04%
Contraction in demand:				
Growth rate for the subject product industry (Kg)	3 578 753	2 677 335	3 221 925	(9.97%)

Changes in the patterns of consumption	The Applicant stated that the SACU total market for the subject product experienced an increasing trend during the period of investigation.
Trade-restrictive practices of foreign and domestic producers	None that Applicant is aware of.
Developments in technology	The Applicant stated that there were no known recent developments in technology that would place it at a disadvantage.

<p>Export performance of the domestic industry</p>	<p>The Applicant stated that it manufactures the subject product to supply the domestic market, but does export to countries outside SACU.</p> <p>It stated that the primary injury material data it supplied in the Application relates only to the information of the SACU market for the ARG subject product segment (not export data). It stated also that the material injury for the ARG product, split from the products for the OE segment, as the ARG market is the market that is targeted by the Chinese imports. Data that could not be split between ARG and OE is the actual installed and utilisation capacity for the product concerned, detail on the employee shift system, inventory and capital and investment, as the data is company based. However, as the ARG market is substantial, the material injury that the ARG product is suffering would be reflected in the trend of these material injury indicators.</p>
<p>Productivity of the domestic industry</p>	<p>The Applicant stated that it believes that its productivity compares favourably with its competitors. However, as a result of the dumped imports its productivity is negatively affected as these imports impact on its production.</p>

Comments by MyGlass on the Commission’s preliminary determination

*MyGlass stated that on 23 March 2016, the Commission conducted a search and seizure (dawn raid) operation at the Gauteng premises of PG Glass, Glasfit, the Applicant and Digicall as part of its investigation of alleged collusion. The Applicant supplies PG Glass and Glasfit with automotive glass while Digicall processes and administers automotive glass related insurance claims on behalf of PG Glass and Glasfit. Six firms active in the manufacturing and distribution of glass products for the building and construction industry were found to have been involved in a cartel by a Competition Commission investigation. In its latest ruling on anti-competitive practices in the building and construction industry, the commission alleged that National Glass, Northern Hardware and Glass, Furman Glass, McCoy’s Glass, AF-FSL Glass and Glass South Africa, which is part of the PG Group, were involved in price-fixing, market allocation and the fixing of trading conditions for float, laminated and toughened glass in the Gauteng, Free State and Western Cape regions through various arrangements and agreements. The **six firms, which are active in the***

manufacturing and distribution of glass products, faced allegations of price fixing, market allocation and the fixing of trading conditions for float, laminated and toughened glass in the Gauteng, Free State and Western Cape regions. This was done through various arrangements and agreements amongst the respondents.

MyGlass further stated that the commission asked the Competition Tribunal to impose an administrative penalty of 10% (ten percent) of annual turnover on each of the firms. None of the implicated firms has entered into any settlement agreement yet with the commission. However, It stated that Makhaya said the commission had invited all the parties involved to settle and gave the opportunity to enter into settlement negotiations, and this offer would remain open until the tribunal issued an order. Stewart Jennings, the chief executive of the PG Group, said it “cherished competitive behaviour and was insistent that in all ways it complied with competition legislation”. It indicated that he admitted that there was devious behaviour in the group a long time ago that it did not condone, but it was co-operating with the commission. In its investigation the commission found that between 1995 and 2007 cartel members had telephone conversations and held various “boys’ club” meetings where they fixed minimum selling prices, the percentage by which minimum prices would increase and the date for the implementation of the fixed prices. The cartel members further agreed not to undercut one another by providing competitive prices to customers that “belonged” to each other and in 2005 they agreed to introduce a distribution or transport levy of 3% of the price charged to customers. The “boys’ club” meetings were held at hotels, pubs, sports clubs and on boat trips to Zimbabwe. It is not surprising that one of the largest of these very same firms who has been involved in price fixing, and has been found to be operating contrary to the Competition Act, is now approaching the International Trade Administration Commission to block out the competition and is seeking to compensate itself via the backdoor.

MyGlass indicated that the Applicant, a division of PG Group (Pty) Ltd submitted an application to the Commission to investigate the alleged dumping of windscreens for vehicles originating in or imported for the People’s Republic of China to be used

in the Southern African Customs Union market as replacement glass in the aftermarket. This investigation was initiated through Notice No. 1161, published in Government Gazette No. 47061 on 22 July 2022. It is strangely coincidental that this was initiated by PG immediately after the Competition Commission asked the Competition Tribunal to impose an administrative penalty of 10% Commission ten percent) of annual turnover on the six firms implicated in price fixing as outlined above.

MyGlass further indicated that the allegations by the Applicant that the imports which are being dumped on the SACU market is causing material injury and a threat of material injury, has not been substantiated by evidence. Most international OEM'S use Fuyao as an approved supplier, these vehicles are imported into RSA with Fuyao glass fitted as original. Is it the Applicant's intention that all these imported vehicles that come standard with OEM glass, be replaced with the Applicants glass? The Commission needs to take into consideration the cost to the CONSUMER, the loss of jobs and the number of glass fitment centres that will fold as a result of this price hike. Insurance Companies are able to provide a lower insurance premium to the CONSUMER as a result of the lower replacement costs. The only reason the Applicant provides is that it was suffering from price suppression, declining sales volumes, market share, declining profits and losses etc. The Applicant fails to provide reasons for these allegations, and chooses to blame it on dumping. Applicant fails to inform this Commission that it was a subject of price fixing and is now using this Commission to fix its prices once again.

It stated that the Applicant fails to inform the Commission that it was the dominant player in the market, and had a monopoly. The Applicant chooses to maintain this monopoly at the expense of the CONSUMER. The Applicant fails to inform this Commission that It is only in the last Ten years that two other Black Owned Businesses have entered this market and are penetrating it against all costs, and one such is MyGlass. it stated that MyGlass has made this business open to previously excluded individuals, and the increase will kill many of these businesses. More jobs and business opportunities for emerging entrepreneurs have been

created since imports began arriving in South Africa, than in the entire history of the Industry. This was so because wholesale prices were controlled leaving the monopolies to dominate the market. With sanctions being lifted, imports created so many new opportunities than ever before. Thousands of entrepreneurs use/used imported glass as a means of deriving gainful employment.

MyGlass indicated that this industry, until imports came into this country was closely guarded, many entrepreneurs have used imported glass to create jobs within the industry and up skill people, again which never happened in the Industry's history. The Applicant has currently imposed a 12% (twelve percent) hike on all its glass effective 27 March 2023, with the agenda that the Applicant is now pushing, this will significantly increase the glass prices. What the Applicant should be doing instead of seeking to impose a tax on imports, decrease its prices. The Applicant is not paying import and custom duties like China. The Applicant seeks to continue its hold, and increase profits without looking at other alternatives. It indicated that Sanctions served as a protection mechanism for "The Group", now that glass is available at international related prices it appears that Applicant wants more protection in an attempt to gain more dominance. There is already currently a 30% import duty in place.

MyGlass further indicated that COVID - 19 brought with unprecedented number of job cuts and business closures. The strictest lockdown in the world as a result of COVID was undertaken by China. Before the assumption that there is an 18.36% dumping, one should investigate why China is in a position to offer its glass to SACU at such lower rates. It stated that as it reads on a daily basis that China is providing special incentives to its businesses who export, to enable it to support the economy. It makes its businesses competitive worldwide. The Applicant is a private company, is it its intention to continue to increase profits for itself at the cost of the CONSUMER and SOCIETY at large. With regards to the Commission's consideration on return on investments during the period 2019 to 2021, one needs to consider the impact COVID had on business in general and this Industry in particular. When businesses reopened in April 2020, we all know that most

companies chose for employers to work from home. Nationally there was a decline in claims and the industry was impacted and not just the Applicant. The CONSUMER has been battered as a result of COVID and the Applicant should be considering reducing its price to win back market share, rather than seeking to impose a substantial increase on import duties. It stated that should the commission choose this route it will have dire consequences for this industry, consumers and the Country at large. The only winner will be Applicant's shareholders. It indicated that it urges the commission not to increase import duty.

Response by Applicant to My Glass' comments

The Applicant stated that it noted that the bulk of the information that was 'presented' in the MG letter appears to be derived from an article that was published on 09 April 2013, whilst the remainder came from a Competition Commission media release dated 23 March 2016. However, it stated that to clarify, the 'dawn' event of 2016, the Competition Commission has not as yet decided to pursue the matter by referring the matter to the Tribunal for investigation or to bring the matter to an end by non-referring the complaints. Extensive investigations were conducted of these affiliate businesses and no evidence of wrongdoing has been found. Engagement with the Competition Commission is still ongoing and the referred investigation is not finalized. It stated that in light of the fact that the referred investigation is still ongoing, the MG comment of a firm "[t]hat has been found to be operating contrary to the Competition Act ..." (own emphasis) is overeager and premature, which is to be ignored by the Commission, as it is untrue.

The Applicant further stated that the referred 2016-investigation, does not fall within the period of investigation ("POI") of the Commission's investigation at hand, nor does it have any bearing to the subject matter of the investigation. The Commission is accordingly requested to disregard all of the 2013 and 2016 information, as it is irrelevant to the Commission's investigation.

The Applicant indicated that for the edification of MG, the legislative and regulatory provisions that provided the basis for the Applicant's Application to be submitted, for the investigation of an unfair practice of dumping, is catered for within the realm of

the World Trade Organization (“WTO”). The Application is not a means “to block out the competition” as was incorrectly alleged in the MG letter. Nowhere in the history of the WTO has the imposing of an Anti-Dumping duty lead to fair competition being ‘blocked out’, nor will it be the case concerning the Commission’s investigation. It stated that should definitive Anti-Dumping duties be imposed, entities such as MG would still have the opportunity to import or buy imported subject product and continue with its trade activities. All that will be affected is the dumped exports from China and the SACU domestic industry that would be offered an opportunity to compete fairly. The Applicant requested the Commission to instruct MG to provide substantiated clarification and further requested that this MG comment be disregarded until such time as clarification is provided by MG.

The Applicant stated that in the MG letter it was indicated that “It is strangely coincidental that this was initiated immediately after the Competition Commission asking the Competition Tribunal to impose an administrative penalty of 10% Commission ten percent) of annual turnover on the six firms implicated in price fixing as outlined in above.” (sic) (own emphasis) The Applicant stated that it wishes to point out that this one sentence can be described as a proverbial of errors as addressed below:

- The Applicant submitted an Application to the Commission on 08 April 2022 and the Commission initiated the investigation on 22 July 2022. Neither “PG” or the Applicant did the initiation.*
- The Applicant is not aware of any ‘10 percent penalty request’ that MG claims to have occurred in proximity of either the Application submission or investigation initiation dates.*
- It would appear that MG, in eagerness to pursue its agenda and the creation of an irrelevant narrative, failed to pay attention to rather relevant information. As pointed out above, MG’s information concerning the Competition Commission’s investigation is based on publications dated in 2013 and 2016. In the article of 09 April 2013, it was recorded that “The commission has asked the Competition Tribunal to impose an*

administrative penalty of 10 percent of annual turnover on each of the firms.” Thus, it would appear that the “strange coincidental” timing that is referred to in the MG letter are in fact remote occurrences that are approximately 9 years apart!

- *There are no entities identified in the paragraph 2.5 of the MG Letter.*

The Applicant stated that it is not in a position to respond in meaningful manner to the rather confusing comments by MG and requests the Commission to instruct MG to provide clarification as to what it was trying to convey and further requests that these comments be disregarded until such time as the MG clarification is provided.

The Applicant stated that it has provided the Commission with substantiated prima facie evidence that the dumped subject products from China are causing material injury to, as well as poses a threat of material injury to the SACU industry. MG rather vaguely states that “most international” original equipment manufacturers use Fuyao as an approved supplier and that these vehicles are imported to South Africa with Fuyao glass fitted as an original equipment part. Concerning the MG comments of the replacement of an original equipment part with an ARG market product, it stated that it points out that customers are offered a large scope in product choice;

- it is not only The Applicant that manufactures the subject product. In addition to the subject product offered by the SACU industry, customers can buy the subject product from several importers that sourced it from numerous countries. As pointed out above, the aim of the Applicant’s Application is for action to be taken against the unfair trade caused by the dumping of the subject product from China, which is causing material injury to and poses a threat of material injury to the SACU industry, not fair trade.

The Applicant stated that MG loosely uses key phrases such as “cost to the consumer” and “the loss of jobs”, as well as state that a “[n]umber of glass fitment centres will fold as a result of this price hike” in an attempt to catch the Commission’s attention, but has not provided a single piece of information of value in relation to these words’ use. The Applicant stated that it requests that these

comments be disregarded by the Commission, as it lacks meaning and substantiation and is presented as pure speculation. Another topic that was just flung in without any meaningful context, is that of 'insurance premiums' it stated that it requests that this 'mention' is also disregarded on the basis of it lacking relevance with the context of the Report and the Commission's investigation.

The Applicant indicated that MG stated that the "only reason" The Applicant provided (in the Application) that it was suffering from is the following: "price suppression, declining sales volumes, market share, declining profits and losses etc." (own emphasis). The Applicant stated that it points out that these are in fact multiple injury indicators (not just one), with other indicators also been substantiated in the Application and acknowledged in the Report. Despite MG's ignorance, The Applicant did provide the Commission with substantiation that there is a causal link between the material injury suffered and the dumping of the subject products from China. The existence of the causal link was also confirmed in the preliminary finding by the Commission. The MG remarks that the Commission is used by the Applicant "to fix its prices once again" appears to be slanderous and strategically made with ill intent, to try and discredit the Commission. It is obvious that MG is way out of its comfort zone in trying to present arguments of substance, as well as expresses a clear inability to grasp the WTO principles that are applicable to the Commission's investigation. Applicant denies the false MG remarks and the Commission is requested to disregard these opportunistic MG remarks.

The Applicant stated that the Commission is aware, the subject product imports from China holds the dominant position in the SACU ARG market, in each respective year of the Commission's POI; - not the Applicant as MG claimed. Based on the SACU market situation where the Chinese import volumes have dominance, with the Applicant being forced to sell the subject product at suppressed and depressed prices, it is impossible for the Applicant to act in a monopolistic way as claimed by MG. The facts before the Commission confirm that the Applicant is a price taker and not a price setter. The Applicant stated that it denies these untruthful comments by MG and the Commission is requested to disregard it.

The Applicant stated that *this situation exists, despite the fact that the subject product imports from China are subject to an ordinary customs duty of 30 percent ad valorem, it still managed to undercut the domestic industry's ARG selling prices and increase its uptake of the SACU sales volume market share. It stated that it confirms that as the existing ordinary customs duty rate for the subject product imports from China is at the maximum bound rate level, there is no scope to increase it.*

The Applicant stated that there is nothing of substance that MG concerning COVID-19 that warrants a response from the Applicant. The dumping of the subject product from China into SACU is not an assumption, but a matter of fact as the Report attests to. In response to the MG question why China is in a position to offer its glass to SACU at such lower rates, the answer is a rather obvious one; - the subject product is being dumped! It indicated that MG stated that it reads "[o]n a daily basis ... China is providing special incentives to its businesses who export, to enable it to support the economy." The Applicant requests the Commission to instruct MG to provide the substantiation for this information that it has access to, which enable the Chinese businesses to be "competitive worldwide" as this can be very useful for a countervailing investigation against China. The Applicant stated that it confirms the juristic status of itself being a 'division' of a private company is clearly stated in the Application. For the edification of MG, "import and customs duties" are the same form of duty; - the correct term of which is ordinary customs duty. Concerning MG's comments that the intention of a private company, "[i]s to continue to increase profits for itself at the cost of the CONSUMER and SOCIETY at large.", the Commission is reminded that the three directors associated with MG are the sole directors of five 'glass' private companies.

Comments raised by the Applicant during Oral Presentation

The Applicant stated that parties saw historic competition related events as a sensational mechanism to try and deflect the merit of SACU industry's Application. Competition issues have no place in a trade remedy investigation – the Competition Commission deals with it and thus the comments raised have no factual bearing or

relevance to the Commission's investigation and should be disregarded. It indicated that it has been accused of being in a position of dominance in the SACU market, primarily based on its SACU market distribution footprint. Such an accusation is not correct and the dominance in the SACU lies with the Chinese imports of the subject product to SACU. Chinese imports are holding the bulk of the SACU market share and which increasing volumes are undercutting the SACU industry's suppressed and depressed selling prices, clearly indicating that the Applicant is a price taker; - not in a position of dominance.

Commission's consideration

The Commission is of the view that with regards to the COVID-19 restrictions in 2020, the SACU industry experienced a decline in sales volume and all imports including the alleged dumped imports also declined. However, the dumped imports were not significantly affected as they were reduced by 3.64% and the SACU industry sales volumes significantly declined. This indicates that the COVID-19 restrictions had a minimal impact on the alleged dumped imports when compared to SACU industry sales volumes. The restrictions were for 3-4 months, which affected the entire global supply chain for longer periods, and left backlogs in shipping and clearing goods, however, these did not deter the alleged dumped imports as their decline was insignificant.

After COVID-19 restrictions in 2021, the SACU industry sales volume and all imports including the alleged dumped imports increased. However, the alleged dumped imports increased by a higher percentage of 22% when compared to undumped imports which increased by 1.8% and the SACU industry sales volumes increased in the same period. After COVID-19 restrictions, the alleged dumped imports increased to an even higher percentage of total imports to SACU market when compared to pre-COVID conditions.

Over the POI, the SACU industry sales volumes declined whilst the alleged dumped imports and other imports increased by 17.16% and 8.04% respectively. Based on the analysis above, it is evident that the alleged dumped imports were prevalent before COVID-19 restrictions and after these restrictions they increased to an even higher percentage of total imports to SACU market when compared to pre-COVID-19 conditions. This occurred when PRC had stricter COVID-19 restrictions than any other country. These imports enter the market at lower FOB prices when compared to the average FOB prices of other imports from other markets. Even though it is raised that the impact of COVID is still being felt today, the focus of this investigation is the impact of imports in the period from 01 January 2019 to 31 December 2021.

With regards to the investigation conducted by the Competition Commission in 2016 for the alleged price fixing, which occurred from around 1995 to 2007, this is not the same period which is the focus of this investigation. Furthermore, the Commission does not have a mandate to investigate price fixing allegations as it is within the ambit of the Competition Commission

The Applicant provided prima facie information which indicated there is dumping of the subject product and as a result the SACU industry is experiencing material injury and a threat of material injury. An anti-dumping investigation envisages to level the playing field between the alleged dumped imported products and the SACU produced products and not to create and/or defend a monopoly. The Competition Commission may investigate the allegations of monopoly.

The Commission therefore made a final determination that there is sufficient information to indicate that there is a causal link between the alleged dumping of the subject product, the material injury and a threat of material injury experienced by the SACU industry.

7.6 SUMMARY ON CAUSAL LINK

The Commission made a final determination that there is sufficient information to indicate that there is a causal link between the alleged dumping of the subject product, the material injury and a threat of material injury suffered by the SACU industry.

8. SUMMARY OF FINDINGS

8.1 NEGLIGIBILITY

The Commission made a final determination that imports from China are above the negligibility level of 3 percent.

8.2 LIKE PRODUCT

The Commission made a final determination that the SACU product and the imported product from China are “like products”, for purposes of comparison, in terms of the ADR.

8.3 INDUSTRY STANDING

The application was submitted by Shatterprufe, a division of PG Group (Proprietary) Limited (“the Applicant”), one of four main manufacturers in the SACU industry, representing the majority of production in the SACU.

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

8.4 DUMPING CHINA

The Commission made a final determination that the subject product originating in or imported from China was exported at dumped prices to the SACU market during the period of investigation.

The following dumping margins were calculated:

Tariff subheading	Manufacturer/exporter	Final Duty
HS 7007.21.20	Dongguan Kong Wan Automobile Glass Limited	28.39%
	BSG Auto Glass Co., Ltd	0%

	Xinyi Automobile Glass (Shenzhen) Co., Ltd	12.92%
	Dongguan Benson Automobile Glass Co., Ltd	12.92%
	Fuyao Industry Glass Group Co. Ltd	0%
	All the other manufacturers (excluding Dongguan Kong Wan Automobile Glass Limited, Fuyao Industry Glass Group Co. Ltd and BSG Auto Glass Co., Ltd, Xinyi Automobile Glass (Shenzhen) Co., Ltd and Dongguan Benson Automobile Glass Co., Ltd)	129.15%

RESIDUAL ANTI-DUMPING DUTY

The residual dumping margin was calculated using the highest verified unadjusted normal value, and the lowest unadjusted export price.

The residual dumping margin of 129.15% was calculated for all other manufacturers/exporters from China.

8.5 MATERIAL INJURY

The Commission made a final determination that the SACU industry is experiencing material injury in the form of:

Material injury indicator	Analysis
	(2019 – 2021)
Price suppression:	Decrease
Price depression:	Decrease
Sales volumes:	Decrease
Market share (Applicant)	Decrease
Profit:	Decrease

Productivity	Decrease
Return on investment	Decrease
Utilisation of production capacity	Decrease
Cash flow	Decrease
Inventory	Increase
Growth	Decrease

8.6 THREAT OF MATERIAL INJURY

The Commission made a final determination that a threat of material injury to the SACU industry exists.

8.7 CAUSAL LINK

The Commission made a final determination that there is a causal link between the dumping and the material injury and threat of material injury experienced by the SACU industry.

9. FINAL DUTY

9.1 Lesser Duty Rule

The “lesser duty” is the anti-dumping duty imposed at the lesser of the margin of dumping or margin of injury, and which is deemed to be sufficient to remove the injury caused by the dumped imports. The Commission always considers the lesser duty rule but the application of the lesser duty rule is not mandatory.

Price disadvantage

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed and undepressed ex-factory selling of the SACU product. It is the Commission’s practice that the price disadvantage is only considered when both the exporter and the corresponding importer fully cooperated in the investigation. Properly documented responses were received from certain exporters and its correlating importers of the subject product.

The Commission made a final determination to apply the lesser duty rule for purposes of its final determination, in instances where the price disadvantage is lower than the dumping margin calculated. This will only apply to the parties where corresponding importers participated fully, as listed below:

The price disadvantage for Benson was calculated based on weighted average landed cost of Wholesale Motor Glass (cooperating importer). The price disadvantage was then expressed as a percentage of the FOB export price and calculated to be 15.96%.

The price disadvantage for Xinyi was calculated based on weighted average landed cost of Grandmark (cooperating importer). The price disadvantage was then expressed as a percentage of the FOB export price and calculated to be 241%.

The rates of duty to be imposed were concluded to be the following, being the lesser of the price disadvantage and the dumping margin expressed as a percentage of the fob export price:

Duties to be imposed

The rates of duty to be imposed were concluded to be the following, being the lesser of the price disadvantage or the dumping margin expressed as a percentage of the fob export price:

Tariff subheading	Manufacturer/exporter	Final duty
HS 7007.21.20	Dongguan Kong Wan Automobile Glass Limited	28.39%
	BSG Auto Glass Co., Ltd	0%
	Xinyi Automobile Glass (Shenzhen) Co., Ltd	12.92%
	Dongguan Benson Automobile Glass Co., Ltd	12.92%
	Fuyao Industry Glass Group	0%
	All the other manufacturers (excluding Dongguan Kong Wan Automobile Glass Limited and BSG Auto Glass Co., Ltd, Fuyao Glass industry Group, Xinyi Automobile Glass; Dongguan Benson Automobile Glass Co., Ltd)	129.15%

10. FINAL DETERMINATION

The Commission made a final determination that there is sufficient information to indicate that:

- dumping of the subject product originating in or imported from China is taking place;
- the SACU industry is experiencing material injury and a threat of material injury, caused by the dumped imports of the subject product originating in or imported from China; and
- there is a causal link between the dumped imports of the subject product originating in or imported from China, and the material injury and threat of material suffered by the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on windscreens for vehicles to be used in the Southern African Customs Union market as replacement glass in the aftermarket classifiable under tariff sub-headings 7007.21.20 originating in or imported from China:

Tariff subheading	Manufacturer/exporter	Final Duty
HS 7007.21.20	Dongguan Kong Wan Automobile Glass Limited	28.39%
	BSG Auto Glass Co., Ltd	0%
	Xinyi Automobile Glass (Shenzhen) Co., Ltd	12.92%
	Dongguan Benson Automobile Glass Co., Ltd	12.92%
	Fuyao Glass Industry Group Co., Ltd	0%
	All the other manufacturers (excluding Dongguan Kong Wan Automobile Glass Limited, BSG Auto Glass Co., Ltd, Fuyao Glass Industry Group Co., Ltd, Xinyi Automobile Glass (Shenzhen) Co., Ltd, Dongguan Benson Automobile Glass Co., Ltd)	129.15%

The Commission made a further recommendation that the anti-dumping duties on windscreens for vehicles to be used in the Southern African Customs Union market as replacement glass in the aftermarket be listed in the “rebate item” column in Schedule No. 2, and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC.