



International Trade Administration Commission of South Africa

Report No. 20

Investigation into the alleged dumping of clear float glass originating in or imported from Indonesia: Final determination

The International Trade Administration Commission herewith presents its **Report
No. 20 INVESTIGATION INTO THE ALLEGED DUMPING OF CLEAR FLOAT
GLASS ORIGINATING IN OR IMPORTED FROM INDONESIA: FINAL
DETERMINATION**


CHIEF COMMISSIONER

PRETORIA

04/09/ 2003

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF CLEAR FLOAT GLASS ORIGINATING IN OR IMPORTED FROM INDONESIA: FINAL DETERMINATION

SYNOPSIS

General

The International Trade Administration Commission (the Commission) was established on 1 June 2003 in terms of the International Trade Administration Act, 2002 (Act 71 of 2002) (the ITA Act), which replaced the Board on Tariffs and Trade Act 1986 (Act 107 of 1986) (the Board Act). As regards anti-dumping matters the Commission superseded the Board on Tariffs and Trade (the Board) in all respects. For sake of simplicity all references in this report are to the Commission. All references in this report referring to the Commission, and which relates to the period prior to 1 June 2003, should be understood to be a reference to the Board, and all references to the ITA Act which relates to the period prior to 1 June 2003, should be understood to be a reference to the Board Act.

On 9 January 2002, the Commission formally initiated an investigation into the alleged dumping of clear float glass (the subject product), originating in or imported from Indonesia. Notice of the initiation of the investigation was published in Notice No. 31 of 2002 of *Government Gazette* No. 23015 dated 9 January 2002. The petition was lodged on behalf of the Southern African Customs Union (SACU) industry by PFG Building Glass (Pty) Ltd (PFG Glass), which claimed that the dumped imports were causing it material injury and a threat of material injury.

The investigation was initiated after the Commission considered that there was sufficient evidence to show that the subject product was being imported at dumped prices, causing a threat of material injury to the SACU industry.

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

After considering all parties' comments and representations, the Commission made a preliminary determination, that those exporters who provided information and whose information was verified, had not exported at dumped prices during the period of investigation. The Commission also considered those imports of the subject product originating in Indonesia from exporters who did not provide any information that could be verified, and made a preliminary determination that as they did not show any increasing trend, they did not cause a threat to the SACU industry. Consequently the Commission did not find it necessary to recommend the imposition of provisional payments.

The investigation was initiated on a threat of material injury only. As the Commission did not make an affirmative finding of a threat of material injury, the Commission made a preliminary determination to recommend to the Minister of Trade and Industry that the investigation be terminated.

A copy of Report No. 4142, setting out the Commission's preliminary determination, was sent to all interested parties for comment.

On 7 February 2003 a preliminary termination notice was published in Notice No. 306 of 2003 of *Government Gazette* No. 24326.

On 30 July 2003, the Commission considered all the comments received from interested parties in response to its preliminary determination and concluded that no information received warranted it to deviate from its preliminary findings. The Commission therefore made the following final determination:

1. No dumping was found in respect of the exporters who co-operated in the investigation.
2. Dumping was found in respect of other exporters in Indonesia.
3. Sufficient evidence was not found to support the allegation of a threat of material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the investigation be terminated.

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 PETITIONER

The petition was lodged by PFG Building Glass (Pty) Ltd (PFG Glass), being the only producer of the subject product in the Southern African Customs Union (SACU).

1.3 DATE OF ACCEPTANCE OF PETITION

The petition was accepted by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 25 July 2001. The trade representative of the country concerned was advised accordingly.

1.4 ALLEGATIONS BY THE PETITIONER

The Petitioner alleged that imports of the subject product, originating in or imported from Indonesia were being dumped on the SACU market, thereby causing material injury or threat of material injury to the SACU industry. The basis for the allegation of dumping was that the goods are being exported to South Africa at prices less than the normal value in the country of origin.

The Petitioner alleged that as a result of the dumping of the products from Indonesia, the SACU industry was suffering material injury in the form of:

- price undercutting
- price depression
- price suppression
- decrease in profits
- potential decline in return on investments
- negative effect on cash flow
- decline in employment
- inability to raise capital
- inability to show growth
- increase in inventory levels

The Petitioner further alleged that as a result of the dumping of the products from Indonesia, there is a threat of material injury to the SACU industry as there is:

- (i) A significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation of float glass;
- (ii) Sufficient freely disposable capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports; and
- (iii) Imports entering at prices that result in price depression and / or price suppression on the domestic prices.

1.5 INVESTIGATION PROCESS

The Commission formally initiated an investigation into the alleged dumping pursuant to Notice No. 31 of 2002, which was published in *Government Gazette* No. 23015 on 9 January 2002.

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 Article 5.5 of the Anti-Dumping Agreement. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential summary of the petition.

The information submitted by the exporters of the subject product was verified from 10 to 22 June 2002 and the information received from the importers of the subject product was verified on 9 and 16 April 2002.

1.6 INVESTIGATION PERIOD

The investigation period for dumping is from 1 November 2000 to 31 October 2001. The injury investigation involves evaluation of data for the period 1 January 1998 to 31 December 2000.

1.7 PARTIES CONCERNED

1.7.1 SACU Industry

The SACU industry consists of the following producer of the subject product:

- (a) PFG Building Glass (Pty) Ltd – the Petitioner.

Information submitted by the Petitioner was verified by the investigating officers prior to the initiation of the investigation.

1.7.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified as interested parties:

- (a) PT Tensindo, Indonesia
- (b) PT Mulia Glass, Indonesia
- (c) PT Abdi Rakyat, Indonesia
- (d) PT Asahimas Flat Glass TBK, Indonesia
- (e) C.V.Karuna Intan Mandiri, Indonesia
- (f) Ashaimas Float Glass Co. Ltd, Hong Kong
- (g) PT Bali Permai Crafindo, Indonesia

Full and complete information, which was subsequently verified, was submitted by:

- (a) PT Tensindo, Indonesia
- (b) PT Mulia Glass, Indonesia
- (c) PT Abdi Rakyat, Indonesia

1.7.3 Importers

The following SACU importers were identified as interested parties:

- (a) Alpine Wholesalers
- (b) Macedonia Investments
- (c) Ice World Investments
- (d) Rustica Investments
- (e) National Glass Distribution
- (f) Aldino Trading
- (g) Grasshopper

Full and complete information, which was subsequently verified, was submitted by:

- (a) National Glass Distribution
- (b) Aldino Trading
- (c) Macedonia Investments

Petitioner's comments regarding the preliminary determination

PFG states that the application for remedial action was brought on both material injury and threat of material injury. The fact that the Board only initiated on threat does not mean that PFG have not suffered material injury. They argue that sufficient evidence was put to the Commission in their application that material injury was being suffered and that the Commission had imposed dumping duties in 1998 against a number of countries on Glass of which those imports of low prices were hurting PFG. Immediately after that imposition imports from Indonesian of low prices started flowing into the SACU, which inflicted immediate injury to PFG especially in the coastal areas of KwaZulu Natal where PFG had to drop prices to stay in the market.

Commission's response to PFG

Initiation notice 31 of 2002, published on the 09 January 2002 states " The Petitioner submitted sufficient evidence and established prima facie case to enable the Board to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, threat of material injury, and causality" According to procedure and time limits all interested parties were given thirty days to comment on the initiation notice. PFG had the opportunity to raise the matter on material injury, and by not doing so the Board conducted the investigation on the basis of threat of material injury.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as:

Clear float glass of a thickness from 3 mm to 6 mm originating in or imported from Indonesia.

The Petitioner, however, requested that the anti-dumping duty, if any, also be imposed on 2 mm to 3 mm in order to prevent circumvention.

The Petitioner states that the anti-dumping duty, if imposed on glass of a thickness exceeding 2,5 mm but not exceeding 3 mm, generally referred to as 3 mm, could be circumvented by declaring glass of a thickness of 2,8 mm as glass not exceeding 2,5 mm and selling it in the retail market as 3 mm.

2.1.2 Tariff classification

The subject product is currently classifiable as follows:

Tariff Heading	Description	Referred to as	Duty
70.05.29.17	Of a thickness exceeding 2,5 mm but not exceeding 3 mm (excluding optical glass)	3 mm	10%
70.05.29.23	Of a thickness exceeding 3 mm but not exceeding 4 mm (excluding optical glass)	4 mm	10%
70.05.29.25	Of a thickness exceeding 4 mm but not exceeding 5 mm (excluding optical glass)	5 mm	10%
70.05.29.35	Of a thickness exceeding 5 mm but not exceeding 6 mm (excluding optical glass)	6 mm	10%

2.1.3 Other applicable duties and rebates

The subject product is subject to the following anti-dumping duties:

Tariff heading	Description	Imported from	Anti-dump Duty
70.05.29.17	Of a thickness exceeding 2,5 mm but not exceeding 3 mm (excluding optical glass)	India Israel China	720c/m ² 146c/m ² 359c/m ²
70.05.29.23	Of a thickness exceeding 3 mm but not exceeding 4 mm (excluding optical glass)	India Israel China	886c/m ² 155c/m ² 401c/m ²
70.05.29.25	Of a thickness exceeding 4 mm but not exceeding 5 mm (excluding optical glass)	Israel China	374c/m ² 728c/m ²
70.05.29.35	Of a thickness exceeding 5 mm but not exceeding 6 mm (excluding optical glass)	China India Israel	668c/m ² 1387c/m ² 413c/m ²

No rebate provisions exist in terms whereof the subject product can be imported with rebate of the duty.

2.1.4 Import Statistics

Article 5.8 of the Anti-Dumping Agreement provides as follows:

"There shall be immediate termination in cases where the authorities determine that ... the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."

The import statistics, as contained in paragraph 5.3 of this report, indicate that the volume of allegedly dumped imports from Indonesia accounted for 28 per cent of the total imports of the like product during the period of investigation for dumping.

2.1.5 Country of origin/export

The subject product is exported from Indonesia.

2.1.6 Application/end use

The subject product is used in the building industry, for glazing and furniture.

2.1.7 Production process

Raw material comprising of silica sand, soda ash, limestone, and dolomite is heated in a furnace to molten glass, which is run onto a liquid tin bed and cooled.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is clear float glass of a thickness from 3 mm to 6 mm. The product is classified under several tariff headings for customs purposes.

2.2.2 Application/end use

The SACU product is used for general applications such as residential glazing, architectural glazing (industrial and commercial), picture framing and furniture manufacture.

It is also used as a basic input for further processing into toughened (heat strengthened), laminated and mirror products for onward sale by the processor for use in the automotive, building, industrial and furniture markets.

2.2.3 Tariff classification

The SACU product is currently classifiable as follows:

Tariff Heading	Description	Referred to as	Duty
70.05.29.17	Of a thickness exceeding 2,5 mm but not exceeding 3 mm (excluding optical glass)	3 mm	10%
70.05.29.23	Of a thickness exceeding 3 mm but not exceeding 4 mm (excluding optical glass)	4 mm	10%
70.05.29.25	Of a thickness exceeding 4 mm but not exceeding 5 mm (excluding optical glass)	5 mm	10%
70.05.29.35	Of a thickness exceeding 5 mm but not exceeding 6 mm (excluding optical glass)	6 mm	10%

2.2.4 Production process

Raw material comprising of silica sand, soda ash, limestone, and dolomite is heated in a furnace to molten glass which is run onto a liquid tin bed and cooled.

2.3 LIKE PRODUCTS

2.3.1 General

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine at the outset whether the products produced by the SACU industry are like products to those originating in or imported from Indonesia.

Footnote 9 to Article 3 of the Anti-Dumping Agreement provides as follows:

"Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."[own underlining].

Article 4.1 of the Anti-Dumping Agreement provides as follows:

"For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products..."[own underlining].

Article 2.6 of the Anti-Dumping Agreement provide as follows:

"Throughout this Agreement the term 'like product' ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."[own underlining].

2.3.2 Analysis

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

- (a) raw material used;
- (b) physical appearance and characteristics;
- (c) tariff classification;
- (d) method of manufacturing; and
- (e) customer demand and end use.

(a) Raw material

The raw materials used in both the imported and domestic products are the same, being silica sand, soda ash, limestone and dolomite.

(b) Physical appearance and characteristics

The physical appearance and characteristics of both the imported and domestic products are the same.

(c) Tariff classification

The tariff classification of the imported and domestic products are the same.

(d) Method of manufacturing

The imported and domestically produced products are manufactured using the same methodology.

(e) Customer demand and end use

The customer demand and end use of both the imported and domestic products are the same for the purpose of comparison.

Taking the above into consideration, the Commission made a final determination that the SACU products and the imported products are "like products", for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

Article 5.4 of the Anti-Dumping Agreement provides as follows:

"An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry."

The Petitioner is the only manufacturer of clear float glass in the SACU.

4. DUMPING

4.1 DUMPING

Section 1 of the ITA Act provides a definition of the term "dumping". The Act provides as follows:

"'dumping' means the introduction of goods into the commerce of the Republic or the common customs area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of the goods."

4.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

"'normal value' means -

- (i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
- (ii) In the absence of information on a price contemplated in subparagraph (i), either –
 - (aa) 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; or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative."

Section 32(4) of the ITA Act further provides as follows:

"If the Commission, when evaluating an application concerning dumping, concludes that

the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country.”

4.3 EXPORT PRICE

Export prices are determined in accordance with section 32(2) of the ITA Act, which provides as follows:

“‘export price’, subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale”.

Sections 32(5) and 32(6) of the ITA Act further provides as follows:

- “(5) The Commission must, despite the definition of “export price” set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis.
- (6) Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-
 - (a) there is no export price as contemplated in the definition of dumping;
 - (b) there appears to be an association or compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
 - (c) the export price actually paid or payable is unreliable for any other reason.”

4.4 ADJUSTMENTS

Article 2.4 of the Anti-Dumping Agreement provides as follows:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

Both the ITA Act and the Anti-Dumping Agreement provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

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

4.6 METHODOLOGY IN THIS INVESTIGATION FOR INDONESIA

4.6.1 Normal Value

Type of economy

Indonesia is considered to be a country with a free market economy and therefore the definition of section 32(2)(b) of the ITA Act applies.

4.6.2 PT Mulia Glass

4.6.2.1 Normal value definition

Like products to those exported to the SACU were sold in the domestic market in Indonesia in the ordinary course of trade. In accordance with section 32(2)(b)(i) of the ITA Act, invoiced sales values to retailers were used as the basis for determining the normal values.

Adjustments to normal values

The following adjustments were claimed by the exporter and allowed by the Commission.

(a) Terms of sale

The exporter provides credit terms from date of dispatch in the domestic market. For the purposes of calculating the ex-factory price the invoiced price was adjusted by the cost of credit to the exporter. The cost of credit to the exporter was verified.

(b) Transport cost

In the domestic market the exporter operates a system of regional pricing. For purposes of calculating the ex-factory price, the invoice price was adjusted by the cost of delivery in Jakarta. The delivery cost for Jakarta was verified.

4.6.2.2 Export price

Sales invoices from the exporter to a distributor in the SACU were used to calculate the export price. The export price was verified.

Adjustments to export prices

The following adjustments were made to the export price for purposes of calculating the ex-factory export price:

(a) Sea freight and Insurance

The cost of sea freight and insurance was deducted from the invoiced export price. The cost of sea freight and insurance was verified.

(b) Terms of sale

The exporter provides credit terms from date of dispatch to the importer. The cost of credit to the exporter was deducted from the invoiced export price. The cost of credit to the exporter was verified.

4.6.2.3 Margin of Dumping

The Commission found that no dumping was taking place.

4.6.3 PT Tensindo

4.6.3.1 Normal value definition

Like products to those exported to the SACU were sold in the domestic market in the ordinary course of trade. In accordance with section 32(2)(b)(i) of the ITA Act, invoiced sales values to retailers were used as the basis for determining the normal values.

Adjustments to normal values

The following adjustments were claimed by the exporter and allowed by the Commission.

(a) Terms of sale

The exporter provides credit terms from date of dispatch in the domestic market. For the purposes of calculating the ex-factory price the invoiced price was adjusted by the cost of credit to the exporter. The cost of credit to the exporter was verified.

(b) Transport cost

In the domestic market the exporter operates a system of regional pricing. For purposes of calculating the ex-factory price, the invoiced price was adjusted by the cost of delivery in Semarang. The delivery cost for Semarang was verified.

4.6.3.2 Export price

Sales invoices from the exporter to a distributor in the SACU were used to

calculate the export price. The export price was verified.

Adjustment to export price

The following adjustment was made to the export price for purposes of calculating the ex-factory export price:

Sea freight and insurance

Sea freight and insurance was deducted from the invoiced export price. The cost of sea freight and insurance was verified.

4.6.3.3 Margin of Dumping

The Commission found that no dumping was taking place.

4.6.4 PT ABDI RAKYAT BAKTI (ARB)

4.6.4.1 Normal value definition

Like products to those exported to the SACU were sold in the domestic market in Indonesia in the ordinary course of trade. In accordance with section 32(2)(b)(i) of the ITA Act, invoiced sales values to retailers were used as the basis for determining the normal values.

Normal values were calculated from the weighted average domestic price in May 2001 based on sales invoices, being the transactions closest to the time of export. No adjustments were made in respect of the domestic price as none were claimed by the exporter. Sales of 4 mm and 6 mm are very limited in the domestic market. Prices are not representative and are comparatively high. There were only a few transactions and of low volume, which did not meet the 5 per cent of export sales criterion. The normal value for 4 mm was thus calculated based on the average price of 3 mm

and 5 mm. Normal value for 6 mm was calculated based on the normal value of 5 mm and making an adjustment for the extra thickness.

4.6.4.2 Export price

Sales invoices from the exporter to a distributor in the SACU were used to calculate the export price. The export price was taken to be the price from ARB to Royal (an agent) on an f.o.b. basis as close as possible to May 2001, the month used to calculate the normal value.

Adjustment to export price

An adjustment was made to the export price for the purpose of calculating the ex-factory export price. As the export price to Royal (an agent) was on an f.o.b. basis, a container handling fee per container was payable. This was deducted from the ex-factory invoiced price.

4.6.4.3 Margin of Dumping

The Commission found that no dumping was taking place.

4.6.5 Other manufacturers or exporters

Since there are other manufacturers and exporters of the subject product in Indonesia, a residual margin of dumping was calculated. The residual dumping margin is calculated on the basis of facts available according to Article 6.8 of the Anti-Dumping Agreement

"In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph".

The highest domestic selling price is compared to the lowest export price for all the thicknesses of float glass exported to the SACU market. The domestic selling price of PT Mulia Glass for 3 mm thickness without adjustments was used. The price of the other thicknesses were calculated using the 3 mm as the basis of the calculations.

4.6.5.1 Margin of Dumping

Thickness	3 mm	4 mm	5 mm	6 mm
Margin of dumping expressed as a percentage of export price	53%	55%	52%	51%

Petitioner' comments regarding the preliminary determination

PFG states that from paragraph 5.3.1 of the Commission's preliminary report, the import price into the SACU of Indonesian product in 2000 was only some 45% of the price of normally priced imports, which themselves were in all likelihood exported to the SACU at very marginal prices. In this regard the fob import prices (from the South African import statistics) for clear float glass from Indonesia of around R789 per ton, when worked back to the calculated net ex-factory Indonesian export price gave rise to the dumping margins set out in PFG's petition. If there was no dumping it follows that the Indonesian domestic prices of the substances were the same or less than those net export prices. PFG finds hard to believe that the Indonesian domestic industry could profitably maintain these price levels.

An implication of the findings of the Commission that the residual dumping margin of over 50%, is that the domestic price in Indonesia of product supplied by the firms that were dumping in the SACU could be up to 50% higher than the price of glass supplied by the firms that were found by the Commission not to be dumping. PFG is of the opinion that such large price differentials in the highly competitive domestic Indonesian market are not realistic. This increases PFG's

concern about the Indonesian domestic prices established by the Commission.

PFG raises the concern that the bulk of the Indonesian domestic market for float glass is gray tinted glass and not clear float glass as investigated by the Commission. If gray tinted glass is the product largely sold in the Indonesian domestic market, then for the purposes of calculating dumping margins, the Commission should use gray tinted glass, as it will be representative of Indonesian domestic selling prices. In PFG's opinion the gray tinted product should be used as the "like" product as it is, amongst others, a like product, and the one to be used as similar to the exported glass.

PFG also questioned whether the Commission had fully considered the domestic market conditions in Indonesia.

Commission's response to PFG comments

The dumping margin calculations are based on actual export and domestic prices for specific companies that responded and that were subsequently verified. The margins are true reflections of actual sales transactions between willing buyers and sellers in the market. The residual margins are calculated taking the highest domestic price and comparing it to the lowest export price for a particular thickness of a product. The results of these calculations are the residual margins reflected in the report, comparing a low cost producer PT Tensindo situated in Semarang with a high cost producer PT Mulia Glass based in Jakarta.

The petition was brought on clear float glass and was therefore initiated as such. The Commission's scope of investigation is limited to clear float glass. Sales of clear float glass in Indonesia were found to be sufficiently representative to permit a proper comparison of normal value and export price.

The Commission did consider the domestic market conditions in Indonesia, including the fact that because of its geography and poor infrastructure, domestic sales are mainly regional and not national, resulting in very little domestic

competition.

4.7 SUMMARY - DUMPING

On the information supplied, the Commission made a final determination that no dumping of the subject product originating in or imported from PT Tensindo, PT Mulia Glass and PT Abdi Rakyat of Indonesia was taking place. The Commission, however, made a final determination that other manufacturers or exporters of the subject product originating in or exported from Indonesia were dumping into the SACU at the following margins:

Thickness	3 mm	4 mm	5 mm	6 mm
Margin of dumping expressed as a percentage of export price	53%	55%	52%	51%

5. THREAT OF MATERIAL INJURY

5.1 DETERMINATION OF THREAT OF MATERIAL INJURY

Article 3.7 of the Anti-Dumping Agreement provides the following:

"A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of threat of material injury, the authorities should consider, inter alia, such factors as:

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (ii) sufficient freely disposable, or imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of the product being investigated."

5.2 GENERAL

For the purposes of initiation of the investigation, the Commission found insufficient evidence to indicate that the Petitioner, and therefore the SACU industry, had suffered material injury. The Commission, however, found there was *prima facie* evidence of a threat of material injury.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

With reference to Article 3.1(a) of the Anti-Dumping Agreement, Article 3.2 of the Anti-Dumping Agreement provides as follows:

"With regard to the volume of the dumped import, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."

In anti-dumping investigations, the Commission normally uses audited import statistics from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table shows the combined volume of allegedly dumped imports as well as total imports of the subject product measured in tonnes since 1998:

IMPORTS	1998			1999			2000		
	Tons	Rand/ Ton	% Vol	Tons	Rand/ Ton	% Vol	Tons	Rand/ Ton	% Vol
INDONESIA									
By Petitioner	0	0	0	3 395	1 106	12	3 330	1 589	12
*Allegedly dumped imports	25	0	0	2 743	808	10	7 461	789	28
SUB-TOTAL	25	0	0	6 138	973	22	10 791	1 036	40
Other countries	28 470	0	100	21 950	1 388	78	15 960	1 751	60
TOTAL IMPORTS	28 495	1 386	100	28 088	1 297	100	26 751	1 462	100

*Imports that were alleged by the Petitioner to have been dumped. The Commission found that no dumping was taking place from those exporters that co-operated with the investigation. The Commission calculated a residual dumping margin for the other exporters, but did not have information before it to determine the volume of dumped imports in all the years covered in the investigation.

The volume of the allegedly dumped imports increased from 25 tons in 1998 to 2 743 tons in 1999 and increased further to 7 461 tons in the year 2000. This represented an increase from 0 per cent to 28 per cent of total imports in the year 2000. Other imports, some of which became subject to anti-dumping duties imposed in November 1998, showed a significant decline over the same period.

The Petitioner states that it imported the product for the following reasons:

"To fill a gap in the stock profile at PFG as sales by PFG exceeded production in certain sizes. Generally as the sole manufacturer PFG will import to make up any shortfalls in production so as to maintain our customer base; and it is normal practice in the industry worldwide to import certain ranges that are uneconomical to produce for their domestic markets. PFG operates its plant at optimal levels and imports certain ranges that are not economical to produce locally as well as to meet certain peak seasonal demand."

The following tables show the import volumes per annum in square metres by thickness:

(A) Clear Float Imports (70-05-29-17) 3.0 mm

Source:	1998		1999		2000	
	m ²	% Vol	m ²	% Vol	m ²	% Vol
Indonesia						
Petitioner	0	0	264 596	11	193 715	9
*Alleged dumped imports	3 540	0.31	262 009	11	831 890	40
Sub Total	3 540	0.31	526 965	23	1 025 604	50
Other Countries	1 133 191	99.69	1 813 260	77	1 041 414	50
Total Imports	1 136 731	100	2 340 225	100	2 067 018	100

*Imports that were alleged by the Petitioner to have been dumped. The Commission found that no dumping was taking place from those exporters that co-operated with the investigation. The Commission calculated a residual dumping margin for the other exporters, but did not have information before it to determine the volume of dumped imports in all the years covered in the investigation.

(B) Clear Float Imports (70-05-29-23) 4.0 mm

Source:	1998		1999		2000	
Indonesia	m ²	% Vol	m ²	% Vol	m ²	% Vol
Petitioner	0	0	106 884	15	143 315	20
*Alleged dumped imports	0	0	62 377	9	94 218	13
Sub Total	0	0	169 261	23	237 533	33
Other Countries	551 312	100	562 324	77	484 940	67
Total Imports	551 312	100	731 585	100	722 473	100

*Imports that were alleged by the Petitioner to have been dumped. The Commission found that no dumping was taking place from those exporters that co-operated with the investigation. The Commission calculated a residual dumping margin for the other exporters, but did not have information before it to determine the volume of dumped imports in all the years covered in the investigation.

(C) Clear Float Imports (70-05-29-25) 5.0 mm

Source:	1998		1999		2000	
Indonesia	m ²	% Vol	m ²	% Vol	m ²	% Vol
Petitioner	0	0	11 513	9	24 916	17
*Alleged dumped imports	0	0	8 203	6	27 626	19
Sub Total	0	0	19 716	15	52 542	37
Other Countries	93 060	100	109 563	85	89 984	63
Total Imports	93 060	100	129 279	100	142 526	100

*Imports that were alleged by the Petitioner to have been dumped. The Commission found that no dumping was taking place from those exporters that co-operated with the investigation. The Commission calculated a residual dumping margin for the other exporters, but did not have information before it to determine the volume of dumped imports in all the years covered in the investigation.

(D) Clear Float Imports (70-05-29-35) 6.0 mm

Source:	1998		1999		2000	
Indonesia	m ²	% Vol	m ²	% Vol	m ²	% Vol
*Petitioner	0	0	11 160	21	16 734	15
*Alleged dumped imports	0	0	7 598	14	15 145	14
Sub Total	0	0	18 758	35	31 879	29
Other Countries	106 972	100	34 970	65	76 905	71
Total Imports	106 972	100	53 728	100	1 8 794	100

*Imports that were alleged by the Petitioner to have been dumped. The Commission found that no dumping was taking place from those exporters that co-operated with the investigation. The Commission calculated a residual dumping margin for the other exporters, but did not have the information before it to determine the volume of dumped imports in all the years covered in the investigation.

The tables above show that the most common thickness imported is 3 mm, where the allegedly dumped imports increased from an insignificant 3 540 square metres in 1998 to 831 890 square metres in the year 2000, amounting to 40 per cent of total imports of this size. The 4 mm, 5 mm and 6 mm sizes also had significant increases in the allegedly dumped imports.

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a) of the Anti-Dumping Agreement, Article 3.2 of the Anti-Dumping Agreement further provides as follows:

"With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

Price undercutting

Price undercutting is the extent to which the landed cost of the imported product is lower than the ex-factory selling price per unit price of the SACU product.

The landed cost of the subject product originating in Indonesia was calculated taking into account the f.o.b. price, insurance, freight, duty and other clearing charges based on the records of importers.

The following table shows the margin of price undercutting as a percentage of the Petitioner's price for each thickness:

Thickness	%
3 mm	24
4 mm	38
5 mm	37
6 mm	46

The table shows that the allegedly dumped product was undercutting the Petitioner's price on all the thicknesses.

The Commission found that this factor could be indicative of a threat of material injury as the price undercutting could have a significant depressing or suppressing effect on domestic prices.

Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the SACU industry's domestic selling price:

	1998	1999	2000
Price per tonne	100	109	121

The table was indexed due to confidentiality using 1998 as a base year.

The table shows that the price per tonne increased by 21 index points from 1998 to the year 2000. The Petitioner noted that these price increases come off a severely depressed base in 1997 and 1998 as a result of previous dumping.

The Petitioner stated that 1996 could be regarded as the last reasonably normal year in terms of pricing when the price was the equivalent of 116 index points per ton on average.

The Commission found that this factor was not indicative of a threat of material injury.

Price suppression

Price suppression is the extent to which increases in the cost of production of the product concerned cannot be recovered in selling prices. To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

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

Rand/Tonne	1998	1999	2000
Cost of production	100	106	109
Selling price	100	109	121
Cost of production as % of selling price	100	97	90

The table was Indexed due to confidentiality using 1998 as a base year.

The information in the table above shows that the Petitioner was able to recover its increase in production cost in its selling prices. As a result, it did not experience price suppression since its 1998 financial year.

The Commission found that this factor was not indicative of a threat of material injury.

5.3.3 Consequent Impact of the Dumped Imports on the Industry

With reference to Article 3.1(b), Article 3.4 of the Anti-Dumping Agreement provides the following:

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

5.3.3.1 Actual and potential decline in sales

The following table shows the Petitioner's sales volume of the subject product:

	1998	1999	2000	2001 (FORECAST)	2002 (FORECAST)
Volume (tonnes)	100	102	108	106	106

The table was indexed due to confidentiality using 1998 as a base year.

The forecast sales volume for 2002 show a decrease of 2 index points compared to the year 2000. The Petitioner claims that it managed to maintain volumes through timely discounting.

The Commission found that this factor was not indicative of a threat of material injury.

5.3.3.2 Profit

The following table shows the Petitioner's profit before interest and tax:

	1998 R'000	1999 R'000	2000 R'000	2001(Forecast) R'000	2002(Forecast) R'000
Total in value	100	188	285	261	106
Per unit(R/tonne)	100	184	265	246	100
as % of selling price	100	169	219	187	81

The table was indexed due to confidentiality using 1998 as a base year.

The Petitioner forecast a decline in profits as a result of discounting of selling prices in order to meet the competition from the alleged dumped imports.

The Commission found that this factor was not indicative of a threat of material injury.

5.3.3.3 Market share

The following table shows the market share for the subject product:

Tonnes	1998	1999	2000	2001 (Forecast)	2002 (Forecast)
Total market:	100	97	97	98	100
% share held by:					
- petitioner	55	58	61	59	58
-*allegedly dumped imports	-	5	13	17	21
- other imports	45	37	26	24	21

The table was partly indexed due to confidentiality using 1998 as a base year.

*Imports that were alleged by the Petitioner to have been dumped. The Commission found that no dumping was taking place from those exporters that co-operated with the investigation. The Commission calculated a residual dumping margin for the other exporters, but did not have information before it to determine the volume of dumped imports in all the years covered in the investigation.

The allegedly dumped imports gained market share from zero to 13 per cent at the expense of other imports, which declined from 45 per cent in 1998 to 26 per cent in the year 2000. The Petitioner claims that it managed to maintain market share by pro-active discounting but has been unable to

regain the 82 per cent market share held prior to the previous round of dumping. It forecasts a decline in market share for 2001 and 2002.

The Commission found that this factor was not indicative of a threat of material injury.

5.3.3.4 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 Petitioner's profit before interest and tax (PBIT) and net value of assets:

	1998 R'000	1999 R'000	2000 R'000	2001(Forecast) R'000	2002(Forecast) R'000
PBIT	100	188	285	261	106
Net value of assets	100	102	108	119	125
RONA	100	184	263	216	84

The table was indexed due to confidentiality using 1998 as a base year.

The Petitioner's return on net assets has improved by 163 index points from 1998 to the year 2000. According to the Petitioner, the required return to meet minimum shareholder requirements and to generate funds for periodic investment in plant renewal and upgrading is the equivalent of 313 index points. The Petitioner forecasts a decline in return on investments as a result of discounting selling prices.

The figures reflecting price suppression, price depression and profits do not support the claim of discounted selling prices.

The Commission found that this factor was not indicative of a threat of material injury.

Petitioner's comments regarding the preliminary determination

PFG is of the view that it is suffering material injury and a threat of further material injury as a result of the low cost imports from Indonesia. It claims that it does not understand the Commission's findings that the SACU industry did not suffer material injury or a threat of material injury during the period investigated. The Commission had found that the factors of price depression and price suppression were not indicative of a threat of material injury.

PFG claims that in its petition it had submitted evidence of how dumped imports from Indonesia caused price depression and price suppression in 1996/7, with prices reaching a low point in 1998. It further claims that the SACU prices lagged behind the producer price index increases over the entire period since 1996.

PFG questions why profits were not found to be indicative of a threat of material injury. It claims that in the petition, it was demonstrated that since 1996, profits have not reached acceptable levels as a result of the residual effects of previous rounds of dumping and as a result of renewed low price imports from Indonesia. It claims that this issue had not been addressed at all in the preliminary report.

PFG further claims that because the Commission based its findings on an increase in returns since 1998, return on investment was also found not to be indicative of a threat of material injury. It argues that the returns have been below levels needed to sustain new investment throughout the period and that the low prices from Indonesia exacerbated the situation. It claims that the Commission's reasoning was not adequately dealt with in the report. In PFG's opinion, 1998 data should have been adjusted to reflect undepressed/unsuppressed price levels. It says that it is obvious that if profits and returns on investment, etc, in later years are measured against a historic low base, the results will be distorted. It is therefore of the opinion

that it would be more appropriate to assess the effects of the low priced imports from Indonesia against "normal" profits/returns/selling prices.

PFG further states that the Commission's findings concerning material injury are again simply statements without substantiating evidence or motivation. In order to provide specific comments on the Commission's findings, PFG claims it requires more information concerning material injury evidence considered and the reasoning by the Commission in making its findings.

Commission's response to PFG's comments

Initiation Notice 31 of 2002, published on 09 January 2002 states "The Petitioner submitted sufficient evidence and established a prima facie case to enable the Board to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, threat of material injury, and causality." The Commission, in its preliminary determination, found that no dumping had taken place from those exporters who had co-operated in the investigation and whose information was verified. The Commission also found, based on the highest domestic price in Indonesia and the lowest export price from Indonesia to the SACU, that there was a substantial residual margin of dumping from those exporters who did not co-operate with the investigation and whose information was not verified. Based on the import statistics of the SARS, the collective exports of the non co-operating exporters did not show an increasing trend. The Commission therefore found that no threat of material injury existed.

5.3.3.5 SUMMARY ON THREAT OF MATERIAL INJURY

On the information submitted by the responding exporters, the Commission did not find dumping. Other imports of the subject product showed a significant decreasing trend. The Commission, therefore, did not find that there was a threat of material injury to the SACU industry.

6. CAUSAL LINK

6.1 CAUSAL LINK AND THREAT OF MATERIAL INJURY

The Commission did not consider causal link as no threat of material injury was found.

7. SUMMARY OF FINDINGS

7.1 Dumping

The Commission made a final determination that no dumping of the subject product originating at or imported from PT Tensindo, PT Mulia Glass and PT Abdi Rakyat of Indonesia was taking place. The Commission, however, made a final determination that other manufacturers or exporters of the subject product originating in or exported from Indonesia were dumping into the SACU at the following margins:

Thickness	3 mm	4 mm	5 mm	6 mm
Margin of dumping expressed as a percentage of export price	53%	55%	52%	51%

7.2 Threat of material injury

The Commission found no threat of material injury to the SACU industry.

7.3 Causal link

The Commission did not consider causal link as no threat of material injury was found.

8. DETERMINATION AND RECOMMENDATION

The Commission found that:

- i) The subject product originating in or imported from Indonesia was not being dumped into the SACU market by the exporters who co-operated during the investigation;
- ii) A margin of dumping existed in respect of the other exporters and
- iii) The SACU industry did not suffer a threat of material injury.

The Commission, therefore, recommends to the Minister of Trade and Industry that the investigation into the alleged dumping of clear float glass originating in or imported from Indonesia, be terminated.