

## 1. About CSR Limited

CSR Limited has been operating in Australia for 155 years. The company is a leading diversified manufacturing company with operations throughout Australia and New Zealand. In 2010 trading revenues were \$3.8b with capital expenditure on plant and equipment of \$151m. The company essentially operates three manufacturing divisions, comprising Building Products, Aluminium smelting, through our shareholding in the Tomago aluminium smelter, and Sugar, now known as Sucrogen. Sucrogen has been sold to Wilmar International Limited, a listed Singaporean agribusiness. Completion of the sale awaits FIRB approval.

CSR’s Building Products’ Division acquired the Pilkington Glass Australasia business and DMS glass in 2007. This business has been renamed Viridian™ and includes the major float glass lines operating in Dandenong, Victoria and at Ingleburn, New South Wales. The company completed a \$140m re-build of the line in Dandenong and installed a coater to produce energy efficient coated glass products. This is one of only seven such facilities globally and received assistance from the Victorian State Government to make this investment. Viridian is the only manufacturer of flat glass in Australia. DMS, or Viridian downstream as it is known, focuses on downstream processing of glass. The business has an ongoing investment program to produce double glazing panels for the windows market.

Flat glass, surprisingly perhaps, is an internationally traded commodity. Imports account for about 50% of the Australian market and are supplied from countries such as Indonesia, Philippines, Thailand, Israel, Taiwan, Middle East and China. Over the years the company has had some successful remedies under anti-dumping laws and on some occasions, no success. Some decisions the company has never been able to fully understand.

CSR Limited has not yet made use of anti-dumping measures in regard to its other building products portfolio.

We welcome the opportunity to comment on the Productivity Commission Inquiry Report into Australia’s Anti-dumping and Countervailing System, No 49, 18 Dec 2009.

## 2. Introduction

CSR Limited strongly supports the existing anti-dumping provisions and believes it is an important element in ensuring the health and growth opportunities for Australian manufacturing industry. Domestic competition and predatory action is covered under our own trade practices legislation through the Australia Competition and Consumer Commission. The purpose of this to encourage competition and protect consumers. The focus of trade remedies is to provide for industry against dumping as part of the international trading framework under the WTO. Thus it is much narrower than the ACCC ambit and should not be confused with it.

We agree therefore with the findings in the report that the system should remain under the authority of Customs (ACBPS). Customs processes have been well developed and refined over the years and while any process can always be improved there is no justification for a change of agency.

As difficult as it may be from time to time, we are also of the view that the Minister should retain the existing final decision making powers.

### 3. Comments on Recommendations

#### a) Recommendation 5.1 Public Interest Test

***CSR has opposed and remains strongly opposed to the introduction of a public interest test.***

If the conclusions of the report are that the net economic cost to the community is likely to be small then we fail to understand why a major and problematic change such as the public interest test has been recommended. There is no evidence based analysis which justifies this conclusion.

The costs of running an anti-dumping case, particularly those involving developing economies, where information is not transparent, is huge and can run into the hundreds of thousands of dollars. Management decisions to move forward with large cases such as this are not taken lightly. They must weigh up the availability of evidence, make judgements about the probability of a successful outcome and often rely on past experiences with the process.

The introduction of a PI test will effectively curtail the anti-dumping system in that before embarking on a case and committing resources, an additional set of judgements will now have to be made. These judgements will be on the basis of a process that in reality is highly judgemental. It is inconsistent with the rigorous fact based processes used by Customs today. Applicants under today’s rules make a judgement about the probability of success. Under a PI test the probability that a successful application will be overturned is increased and will be very difficult to call. We suggest that this will dampen the opportunity for fair remedies for applicants as the risk will be skewed against the applicant.

In making judgements about the public interest, a government agency will have to make practical considerations about human and business behaviour. The decisions cannot be based on theoretical economic considerations for these minor subsets of the economy which are based on specific products. In our response to the PC Draft Inquiry, CSR noted that “In Senate Estimates on Oct 19, 2009, Dr Parkinson, Secretary of the Department of Climate Change in response to whether Government had modelled the small business sector or the rural sector responded that “fine detailed modelling of small geographic areas is quite problematic in Australia, and the ABS does not support efforts to do that.” Sub segments relating to a narrow window of the value chain are likely to be even more problematic.” The behaviours of that product sector may not be known until after the event. For instance, if a manufacturer has remedies reversed by the PI test – is there any guarantee that the beneficiaries of the reversal under a PI test, (usually downstream users), will pass that benefit through the supply chain to consumers? In all likelihood not. In that case we are allowing an unfair trade outcome to be passed from one part of the supply chain to another.

Several agencies have public interest tests today. This is generally applied in monopoly situations where typically a piece of monopoly public infrastructure has been privatised or where a third party seeks access to a piece of privately owned infrastructure, where that party is unwilling or unable to duplicate it. We see this in the Navigation Act for permit vessels on the coastal trade, where a public interest test applies and the National Competition Council. The effort that goes into a fair hearing and the appeals processes is as long and convoluted as the anti-dumping process itself. It is naive to think that a 30 day process will be a fair process in the context of anti-dumping where the stakes are high. In the case of the Navigation Act the Public Interest is poorly defined and not particularly transparent, but it generally relates to emergency powers, although it can be anything Government decides. The point is that these tests typically apply to monopoly assets, while the issue before us is unfair trade. A more controversial national interest test was applied by the Minister in relation to temporary protection visas for illegal immigrants.

Examination of the measures used by other agencies is revealing. For instance, the NCC prepares a draft report based on submissions received. Following the draft report more submissions are received and recommendations are made to the Minister. The Minister receives separate and independent advice from Treasury, before considering whether the information supplied is adequate to make a decision. The Minister can then call for additional advice. Subsequent to the Minister’s advice a Tribunal Appeal process administered by the ACCC can be used by an aggrieved party. In other words it is unlikely that the ACBPS could run an adequate process in the 30 days recommended. In fact it is likely to add months to the final resolution of an application. If the objective of the anti dumping process in a dynamic world of varying daily prices for inputs, outputs and services, overlaid with exchange rate variation, is to produce a rapid and efficient response, then clearly an extension of the process to include a PI test will frustrate the objective.

The Productivity Commission’s evidence of similar tests being applied elsewhere is not compelling. The Australian Government is not protective of its industry as is the EU, where business may have little to fear from the application of such a test. The EU test has typically only been used in a few cases where value add ascribed to importers is low. Australia truly believes in free (fair) trade and an open economy. The Canadian test is used to determine whether the lesser duty rule should be applied, something Australia examines as a matter of course. As we pointed out to the Productivity Commission most countries do not have a PI test, although they could. The reasons are obvious – it is too hard to fairly apply such a test and too important to leave with the TMRO as an appeal body.

The bounded tests proposed in the recommendation have several shortcomings:

Market power etc:

This is the province of the ACCC not Customs. Furthermore the application of the Lesser Duty Rule makes this unlikely.

Price below cost to make and sell:

This fails to recognise a dynamic market. The measures are only to remove injury via the determination of the injurious margin of dumping. Prices and or production volumes in

future may well rise above the cost of manufacturing by the applicant. To pre-judge what might happen based on the situation at the time of application is to adopt a measure on the basis of a point in time, when the future cannot be predicted. Presumably with measures and a selling price still below cost then over time the enterprise will fail anyway. It is not up to the ACBPS to make judgements about accelerated failure of businesses or otherwise. It appears to be based on a simple view that one factory makes one product. In reality one factory may make several related products, which in their own right might be subject to dumping. Thus denying measures for one product can reduce the overall value of the total facility.

Undumped or non subsidised “like” imported goods:

In this case the market will determine the outcome. To apply a test such as this is likely to be as complex as determining the case for the product under application. The study of competing products would need to be as rigorous as the investigation itself. Furthermore other measures such as quality and distribution channels can have a marked impact on which product succeeds in the market. This aspect of the PI test is impractical.

Market share:

This provision effectively prevents a start up company obtaining remedies and is an unjust application of the test. It is arbitrary and discriminatory and is likely to be a barrier to investment in Australia.

Overseas suppliers output covers costs:

This situation should be determined as part of the normal investigative process and not a prima facie test. If there is no domestic market to assess a normal value then the ACBPS has other methodologies it can use. A “reasonable profit margin” is impossible to determine given Customs can use a profit margin of zero to determine normal values.

In our view, the imposition of a Public Interest Test diminishes the right to fair trade remedies under the anti-dumping provisions provided for in Australian regulation. It lengthens the process to obtain remedies, increases the risk of a successful application being overturned and generally diminishes the opportunity to obtain remedies as provided for under the rules. The recommendations substantially weaken the provisions for Australian industry to obtain access to measures that are provided for under the WTO.

**b) Recommendation 6.1 Framework Changes**

No comment

**c) Recommendation 6.2 Zeroing**

CSR supports this recommendation

**d) Recommendation 6.3 Provisional Measures**

This measure is not required if a public interest test is not introduced. CSR does not support the introduction of a public interest test

**e) Recommendation 6.4 Extensions**

The extension of anti-dumping measures should not be limited to one three year term. Existing provisions for continuation for another 5 years should be retained. It is difficult to see how a full review can be undertaken at the expiry date as dumping cannot, or at least if measures were working, should not be found. Continuation reviews are based on an assumption or prior evidence that dumping is likely to continue if measures are removed. We do agree that variable factors should be updated where these are transparent.

This should not amount to the need to collect new information and turn into effectively a “new” case, requiring the sifting over and collection and verification of new market information, which is not normally transparent or readily available.

In any event an affected party can seek a review of measures as they affect a particular exporter or exporters. The Minister can undertake a review at any time. There are adequate provisions are in place so that the continuation provisions do not need to be amended.

**f) Recommendation 6.5 Collection of Duties**

Agreed if it makes the collection of duties more efficient.

**g) Recommendation 6.6 Revocation**

Agreed if it makes the collection of duties more efficient.

**h) Recommendation 6.7 Revocation for non production**

This should only apply where the production has permanently ceased. Closure for shutdowns, repairs and re-builds should not trigger these provisions.

**i) Recommendation 6.8**

No comment

**j) Recommendation 7.1 Roles and Responsibilities**

Agreed

**k) Recommendation 7.2 Appeals Arrangements**

If the continuation is limited to one 3 year period there is no need to continuation measures appellable. Decisions on whether or not to commence an investigation should not be appellable.

TMRO reports should be reviewed by cold eyes in Customs, not the original investigating officers.

**l) Recommendation 7.3 Timeliness and Resource Issues**

CSR does not support any change in time lines until such time as a review of the capacity and capabilities of the ACBPS is conducted and additional resourcing is agreed and implemented.

The ACBPS is highly knowledgeable in relation to the processes and procedures required of them in conducting an investigation. However from time to time industry is surprised by the findings of Customs, which don’t always equate with industry’s commercial understanding. This is exacerbated by the lack of transparency in Custom’s

conclusions and the inability to gain any insights as to why the ACBPS reached the conclusions it did.

While for confidentiality reasons the ACPBP might be reluctant to openly share its findings, additional confidence in the system could be gained by providing certain expertise to the investigation teams.

Specifically:

The accounting investigations of the applicants are very thorough and robust. Australian practices are well known to Customs and their teams. However when asked to investigate in other economies which have different practices, laws and commercial behaviours, overlaid with sovereign owned entities and offshore accounting/financing practices, we cannot expect and it is unreasonable to expect that the ACBPS are experts in all relevant aspects. The Government should strongly consider the need to add independent experts, for instance in accounting, finance and perhaps law if necessary, to the overseas investigation teams. Preferably these specialists are native speakers, but certainly people who are expert in the industry practices of that economy.

Similarly it is totally unreasonable to expect the investigation teams to be industry/product experts in the fields under investigation. If time allowed, it might be possible for the ACBPS to acquire more in depth knowledge of the industry under investigation, but industry does not want to see this extend timelines. CSR recommends that industry subject matter experts be available to the investigation teams, especially those examining the export markets. Typically, most industries under investigation are complex and there is little prospect of the ACBPS gaining sufficient insight in the time available for an investigation to know all the issues and nuances to allow a thorough line of investigation/interrogation. It is often too easy for an expert to baffle, confuse or mislead officers not thoroughly immersed in industry practices and behaviours. Engagement of an industry expert to consult or participate in the investigation team will enable the ACBPS to make more effective use of its limited time and to ensure some of the judgements made are consistent with what industry knows to be practice or fact. Such an expert can also verify technical data when dealing with issues of like goods, market sub sectors, sizing etc. It is unlikely Customs can build the industry knowledge and retain it over the long time frames between investigations to retain this knowledge in-house. This reinforces the need to have outside assistance. It should be done in conjunction with industry briefings of export investigation teams before they complete their planning.

**m) Recommendation 7.4 Timeliness of Decisions**

Agreed

**n) Recommendation 7.5 Resourcing**

Agreed – see resourcing comments in Recommendation 7.3 and 7.7

**o) Recommendation 7.7 Increased transparency**

Agreed.

However there are broader issues in relation to disclosure.

A legal case unfolds before the courts where all evidence is heard by all parties. CSR is certainly not advocating a court type process for anti-dumping. However we would

welcome a more extensive public file and public correspondence file that included all correspondence. This will involve a change in the way the ACBPS works and may require some additional level of resourcing. However it will be valuable to all parties to achieve the fairest outcome within the system. It provides a greater opportunity for exchange of opinions about the investigation, notwithstanding the limits on confidential information.

**p) Recommendation 7.8 Provision of Information**

Agreed

**q) Recommendation 7.9 ABS data**

Agreed

**r) Recommendation 7.10 Transitional Issues**

We do not agree that a public interest test should be introduced at all. All applications or measures in place at the time that the changes are introduced should be subject to the old rules on continuation measures.

**s) Recommendation 7.11 Review Arrangements**

Review should be 5 years after the new rules take effect – even then it will not cover experience gained with continuation cases. The agenda should be set at the time taking into account prevailing circumstances.

**t) Other**

These matters were not taken up in the Productivity Commission final report. They remain issues on the table for the future.

Profits are expected to rise when markets are growing. Profits foregone occur when markets are growing and profit fails to grow when dumped goods are capturing the growth and denying producers the improved profitability that could have been achieved through the additional production volume. There are no provisions in the Customs Act which precludes Customs taking profits foregone into account in determining material injury. Loss of additional profits which would have accrued is a legitimate claim on material injury and we request that the Ministerial Direction be updated to include a reference to loss of profit as an indicator of material injury.

**Basis for Calculating a Non-Injurious Price**

Customs committed to establishing procedures to deal with the use of price underselling in accordance with its Policy Direction. Formal recognition of the use of price underselling is required where there is evidence of price depression. Customs needs to develop these procedures.

Furthermore Customs practice ignores arguments about level of profit required to meet required rates of return or even weighted average cost of capital (WACC), relying on historical profit levels, which can be insufficient to ensure re-investment to allow the industry to maintain or improve its competitiveness. The response to the Joint Study in relation to return on investment was quite unsatisfactory. Suppressing rates of return to determine profitability or discarding this as a factor ignores a considerable cause of dumping itself. If companies continue to run without adequate rates of return they fail to invest. Marginal costing leads to lower rates of return and this should be acknowledged

in customs investigations and the shortfall taken into account. This issue would be critical if a PI test such as proposed in the Final PC report were adopted.

Updating non injurious price (NIP) levels

Price undertakings are non transparent and are open to manipulation by industry. The glass industry does not have transparent price series as say the oil industry with Platt’s Oilgram for instance. However adjustments should be made to at least reflect major shifts in currency and other known measures such as tax revisions and subsidies which can impact the unsuppressed selling price (USP) and thus the NIP.

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