1. About CSR Limited

CSR Limited has been operating in Australia for 154 years. The company is a leading diversified manufacturing company with operations throughout Australia, New Zealand, China and South East Asia and employs over 6000 people. In 2008 trading revenues were $3.2b with capital expenditure of $394m. The company essentially operates three manufacturing divisions, comprising Building Products, Aluminium smelting, through our shareholding in the Tomago aluminium smelter, and Sugar.

Our 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 has just 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. The DMS business focuses on downstream processing of glass and this has been integrated into Viridian. The business has an ongoing investment program to produce double glazing panels.

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 based on decisions the company has never been able to fully understand. On occasions of major maintenance the company has imported glass.

Viridian has been a member of the Trade Remedies Task Force and supports the position taken in that submission. Our comments here are based on our own experiences and understanding of the anti-dumping processes as they have operate in Australia.

2. Introduction

CSR Limited strongly supports the anti-dumping provisions and believes it is an important element in ensuring the health and growth opportunities for the Australian manufacturing industry. Domestic competition and predatory action is covered under our own legislation through the Australia Competition and Consumer Commission. The counterpart to this in an international sense is the Anti-dumping rules established as part of the international trading framework under the WTO.

We are also of the strong view that the system should remain under the authority of Customs. There is no purpose in moving this to another authority or splitting responsibilities as some have proposed. We do not wish to see a return to the split function of Customs and the ADA, which was not effective.

Furthermore, from a broad perspective CSR believes that many of the processes and procedures used by Customs in general have been refined over the years and are generally satisfactory. While these processes have evolved over time, they do not reflect the nature of international industry in Asia Pacific and the business mores we find amongst trading partners today. These are quite different from those economies with whom Australia traded when the

rules were originally established. At that time currencies were fixed and not floating. Therefore there are still improvements that can be made. These are not necessarily procedural, but deal with adequacy of resources assigned to cases and an approach that deals with the reality of business in Asia Pacific trade today. In particular a lack of commercial perspective and insufficient resources to truly carry out a forensic analysis of the information provided by the exporters can prejudice a fair treatment of the investigation from the perspective of the applicant. Decisions in this process are not transparent and are often surprising to those knowledgeable in the industry.

Importantly the Minister, who should retain final decisions, must have deadline by which a decision must be made. The process is long enough without a minister sitting on a decision for two years as has been our experience.

3. Key issues which can improve the anti-dumping process

a) Capital Intensive Industry and intermittent dumping

Float glass lines are capital intensive facilities, with a world scale line today costing $250million. Most lines use similar technology – the Pilkington process. These factories operate for up to 17 years 24/7 every week of the year – they do not stop. Much of the new capacity has been installed in Asia, particularly the rapidly expanding markets of China, Thailand and Indonesia. A major facility with capacity beyond domestic market demand has been constructed recently in Viet Nam. This plant has been built for export only. In addition to continuous operation it is difficult to speed up or slow down production rates in manufacturing. If the product from a new facility or one suffering reduced sales in recession it is unlikely any producer will shut down capacity. The cost of restarting is huge. Either the producer will keep selling surplus product and discount into markets, especially export markets or will place the plant on recycle. The cost of recycling glass is much less than making new glass. The raw material is already contained in the recycled glass and the only out of pocket expense is the additional energy used for re-melt, also much lower than that required for virgin glass. The manufacturer therefore has a strong incentive to marginally price to keep a facility in operation. These are the scenarios under which the Australian industry sees dumping, rather than a conceived predatory pricing regime designed to capture monopoly rents. Thus the main issue in this sector is intermittent dumping rather than a predatory approach. The end result of extended intermittent dumping can still be the scaling back of Australian production. For a small market like Australia, this can have significant consequences. Persistent dumping in even small volumes can erode margins over time or erode margins in certain segments reducing the incentive for further investment or capturing market growth. Either way this reduces the incentives for re-investment, modernisation or those projects which build efficiency and throughput and keep Australian industry internationally competitive.

On the other hand there is a strong suspicion that at times, carefully constructed cases are presented to Customs as part of their investigations into anti-dumping to ensure the opportunities to dispose of goods at incremental pricing are preserved. This is known generally as exporters seeking a "managed outcome", concealing the real facts from investigation. These businesses are complex and without specific industry knowledge it is understandable that investigators could be mislead. Industry can some times point out pitfalls for investigators to take into account and officers should be cognisant of these when conducting their examinations.

b) **Failure to Adequately Address Capital Returns and Profitability**

It is not uncommon in capital intensive industry to develop pricing based on several cost models. The reason for this is that cost of product is not linear with production. In the case of float glass lines profitability may not be reached until high levels of throughput is achieved. Product costing is often examined by producers on the basis of total cost, including the weighted average cost of capital, total cash cost (the out of pocket expenses, without the cost of capital) and incremental or variable cost of product. To these costs a margin is added reflecting the profitability which can be achieved. However the lure of the incremental tonne marginally costed is compelling if it can be sold into markets at prices which don't impact the major market. Such marginally priced product is likely to back down fully costed product in the target market, which can lead to dumping claims.

In their deliberations, it is unclear how Customs determines profitability and whether sufficient attention is given to the cost of capital in their investigations. Without adequate returns to capital, industry will fail to re-invest so driving down the spiral of reduced competitiveness and ultimate closure. Transparency in the determination of profit is required from Customs so that industry can be clear it is being given fair treatment.

c) **Material Injury – Profit Foregone**

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 investigation and the shortfall taken into account.

Profits foregone occurs when markets and are growing and through increased volume profits are rising. This is denied when dumped goods are capturing the growth and denying producers that improved profitability that could have been achieved through additional volume. There are no provisions in the Customs Act which precludes Custom staking profits foregone into account in determining material injury. Loss of additional profits which would have accrued are a legitimate claim on material injury and we support the TRTF request that the Ministerial Direction be updated to include a reference to loss of profit as an indicator of material injury.

d) **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 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.

e) **The case for a two stage application**

The Act requires Customs to only determine whether a prima facie case exists to justify a full inquiry. However we have been requested to provide information which goes beyond this. Failure to do so could result in an application being rejected and so we elected to withdraw the application and re-lodge. The tactic buys Customs more time as the clock only starts once the application is formally accepted. In this case the delay was four months. In the situation where a Preliminary Affirmative Determination (PAD) is

sought considerable damage can be caused by either a new entrant to the market or where dumping is intermittent.

a. We support the concept of a less extensive initial application which can result in more timely interim measures
b. A final application which requires the same level of information as required under current arrangements.

f) **Definition of Like Goods**

A fundamentally flawed conclusion about like goods can lead to a complete failure of an antidumping case. This once again demonstrates that investigation teams need relevant industry subject matter experts with them who can tell immediately that information being proffered has substantial shortcomings. In our own experience a case was compromised by a failure to understand the differentiation in production processes and hence market positioning of products that the industry globally would see as "unlike" products, but Customs concluded otherwise. This fundamentally erroneous assumption meant that it was not possible to obtain a correct determination of normal value.

The example also illustrates the weighting given to exporters' evidence which does not have to meet the same standards of rigour as those of the Australian producer. Inclusion of an independent industry expert on the investigation team would assist avoiding fundamental flaws in assessment. It would also help advise Customs with investigations or flush out where cooperation is less than full or (mis)constructed. Customs should also consider investigating downstream users of product as to whether a market exists and how goods are positioned in that market when assessing like goods. Customs should consider the end use application, which drives pricing points and value rather than the specification.

g) **Assessment of normal values**

World scale plants are often installed ahead of market demand or in many cases are built largely for export purposes. In our experience Customs were unable to find a domestic market for one of our products. In this case, where precise data was not available, then sales by domestic sellers of like goods or the export price to countries other than Australia should be used to assess the causes of material injury.

h) **Failure to cooperate**

Exporters who fail to cooperate fully with Customs investigations should not merely be bypassed. In fact they should not be given the benefit of any doubt and should be brought into the duty net.

Superficial data should be discarded, data posted on the internet without audit or understanding of the credentials of the provider should be disallowed, and provision of misleading information by omission or on purpose should be interpreted as non-cooperation and the benefit of the doubt should be given to the producer.

i) **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.

j) **Availability of ABS data.**

Given the absence of specific industry expertise on investigation teams, it will become increasingly necessary for industry to conduct its own forensic investigations into normal values and market practice and behaviour in countries of origin. This raises the

cost of preparing a case, possibly to the order of $200,000 including own staff, consultants etc. Viridian™ is not interested therefore in raising frivolous applications. To assist industry make sound, timely judgements about dumping, the ABS data should be made available. More transparency in the whole assessment process can only make the process more efficient and effective.

This does not deal with the deliberate miss classification of entries, which may already occur to avoid dumped product being caught in an investigation. Misuse of statistics by an exporter or importer could also be further grounds for a reduction in "benefit of the doubt", if detected.

k) **Continuation of measures**

It is extremely difficult to prove the intention of an exporter subject to measures, once those measures are removed. The only viable argument is to refer to other examples in the glass industry or other industry of past behaviour when dumping measures were discontinued. Because there are no guarantees that previous behaviour will be repeated, then continuation applications are usually unsuccessful. The decisions Customs reaches is not transparent and in some cases is not at all understandable given the public knowledge regarding changed circumstances. It is almost as if the provision is set up to ensure failure.

l) **Ministerial decisions**

The Minister should retain the decision making rights in relation to the application of measures. However the investigatory process to bring a case to decision is lengthy in a dynamic market. The Minister has no obligation to make a decision by any particular time. In one case we waited two years for a Minister to make a decision. This is clearly unacceptable to any of the parties involved. **The Minister should have an obligation to reach a decision within 90 days of the issue of the Customs recommendation.**

4. Measures which should not be changed

a) **5 Year Rule**

Given the substantial cost of preparing a sound case under the Australian anti-dumping practice and procedures then the measures should remain in place for fiver years. A shorter time frame could only be considered if there was a more flexible and transparent process which enabled producers to clearly understand the changes to NIFOB and where there was a more transparent process for determining continuation. Such measures would need to be well developed and considerable consultation with industry on the changes before they could be implemented.

b) **Must remain with Customs & no joint panel, transfers to ACCC etc**

The TRTF submission deals with this issue in more detail. There is little reason to suspect that any other agency by nature of its legislated purpose is better equipped to deal with dumping than Customs. The Department of Customs has a long history in this area and it doubtful that any other agency would do a better job. Suffice that our experience with the ADA was quite unsatisfactory. This body had the task of reviewing applications and the work done by Customs. In effect they conducted a second inquiry. They would visit the local industry and go over the same ground as Customs. They did not however visit overseas manufacturers. There was a further conflict in that they were also the body any appeal went to so they were then reviewing their own work. The process added time and cost, but no value.

c) **Public interest test not supported**
The existing process is long relative to market place action. An additional process of determining public interest is likely to add more time and cost to what is now already a costly process. This is likely to make it even more difficult to bring cases forward and will deny Australian companies the rights to fair trade prescribed by the WTO and our own provisions. Furthermore Australia uses the lesser duty provisions which were not available in some other jurisdictions.
The cost of establishing public interest machinery and running it would not appear justified based on the extent of anti-dumping actions undertaken in Australia and the formidable barriers to undertaking such a case.

d) **Zeroing not supported**
The use of zeroing by the United States was first condemned by the WTO in 2004 and more recently in May 2006 at the request of the European Union, and again in August 2006 at the request of Canada. Zeroing does not count any transaction that contains a negative dumping margin.

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