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CEO and Managing Director

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Dear Sirs

CSR Limited Response to the Productivity Commission Research Paper – Developments in Anti-Dumping Arrangements

1. Introduction

CSR Limited is an ASX 100 index company with operations throughout Australia and New Zealand. The company employs approximately 3,000 people producing high quality building products at over 70 manufacturing and distribution facilities throughout Australia. In its 2015 financial year, it contributed over $2000m to the Australian economy in the form of taxes and royalties, wages, contractor and supplier payments, capital investment and corporate social investment programs.

CSR's Viridian™ business is Australia's largest provider of architectural glass. It holds a market leading position covering most types of residential and commercial glass variants including innovative energy-efficient and special-use materials. The Viridian business provides glass processing as well as the production of float glass. Viridian's glass facility at Dandenong is the only Australian manufacturer of float glass and hard coated performance products (energy efficient glass). It has a central role in providing the Australian building industry with shorter lead times relative to imports, specialised high quality, Australian standard compliant products, flexible solutions, and extensive product warranties backed by CSR. A $150m major upgrade to the Dandenong factory was completed in 2008 to provide a world class operation. The facility is energy intensive and its products are heavily trade exposed.

CSR rationalised glass production by closing its factory in Sydney in 2013 and increasing its capacity utilisation in Dandenong. Part of the driver for this was to improve international competitiveness by accessing cheaper gas in Victoria. The Dandenong float glass factory is of international scale compared with its major import competitors in Asia. The nature of float glass manufacture is such that the furnaces operate 24/7 for about 15 years. They then need to be rebuilt. The Viridian facility is scheduled for an $80m rebuild in 2025.

Anti-dumping duties were imposed on clear float glass in various thicknesses from China, Thailand and Indonesia in 2011. A continuation review will occur in 2016. The duties have had some impact on the appropriateness of prices on float glass, however with no equivalent measures in place for other, higher value-added, forms of glass such as coated glass, laminates, double glazed units, we have observed a shift in the mix of imported products towards these more valuable glass forms. Separate cases would need to be developed for these products.

CSR has not been actively engaged in any anti-dumping cases since the float glass case and has not identified any significant issues with anti-circumvention. This case occurred before any of the recent reforms were in place. Therefore any comments made in this submission are not based on direct case experience with the new arrangements and rules. However the company is represented on the International Trade Remedies Forum by Mr Martin Jones, who has participated in various working groups as part of the reform process.

CSR as a matter of policy does not seek to operate its business in a way that it makes it dependent on anti-dumping measures. However it does seek to ensure that strong rules are in place to guard against injurious behaviour through what is essentially predatory pricing practice through both published and particularly unpublished subsidies and marginal pricing. Only those economies which have strong regimes in place will be in a position to deflect these anti-competitive measures.

2. Matters for Consideration

Prior to the formation of the Anti-Dumping Commission there were several inquiries by Customs and the Productivity Commission into anti-dumping and countervailing measures. This culminated in the Brumby Review. The combination of the establishment of the Australian Anti-Dumping Commission, a revised suite of legislation, reforms arising from the working group, further attention to anti-circumvention and additional resourcing is considered to have re-balanced the anti-dumping regime in Australia, such that manufacturers can have increased confidence about their prospects for success. Prior to that there was a low level of confidence in a successful outcome, notwithstanding the huge cost of launching a case.

However not all the reforms are yet in place and more work needs to be done. Anti-dumping for many years was seen as a static process. There was little opportunity to seek reforms and few avenues to provide feedback to the Customs process. There was no sense of continuous improvement in how cases were developed and transparency was inadequate.

Given the change in trading patterns and the propensity for certain economies to dump product in Australia, all facets of the anti-dumping regime are tested in a dynamic sense. It is important therefore that the agency and Government have access to ongoing information about not only performance of the agency, but also in the techniques being used to exploit and game Australia's processes. CSR strongly supports the mechanism of the ITRF as a way to provide this feedback.

Furthermore the ITRF working subgroups were able to make considerable progress in making the processes more effective and transparent. One of the requirements of ITRF membership should be a willingness and capacity to be involved in working groups looking at continuous improvement of the processes.

While there has been enormous progress there are further avenues for refinement, none of which should add significant cost to the administration:

- Data availability remains an ongoing issue and the limitations are increasing through other sectors. The privacy regime is to the disadvantage of Australian manufacturers where data is increasingly being suppressed. The working group was unable to find solutions to this problem, only reasons why nothing

could change. Customs had undertaken to conduct a report, but this has not occurred.

- Market situation has become increasingly important as evidenced by the food industry. There would still be interest to see the Lloyd amendments in this area be adopted in legislation by Government.
- Concerns about the use of unverified data in making decisions have been raised and concerns about opinion rather than fact in relation to demand elasticity in markets.
- It may be timely for a working group to determine which sections of the Customs Manual should be reviewed, updated and improved. This would ensure that the processes used by the ADC are up to date and relevant to the latest regulation and able to respond to new practices by exporters.
- Country hopping and the use of phoenix companies to avoid duties remains an issue for Australian based manufacturers. Despite assurances to the House of Representatives Agriculture and Industry Committee Inquiry[1] this matter remains of concern and will be monitored by industry.
- There remains contention about the application of the lesser duty rule, particularly in relation to economies that do not disclose or fail to update the WTO list of subsidies. While the rules have been amended to remove mandatory consideration by the Minister, the provisions may prove to be too narrow in the case of hidden subsidies.
- Only one anti-circumvention case has been run so far, so there is little experience to draw on in relation to the new provisions. It is difficult to draw too many conclusions based on one case.

A number of reforms have not yet been fully implemented and therefore the Review will be unable to make any conclusions about their effectiveness:

- The “pixie dust”, minor modifications anti-circumvention regulations were only made in April 2015. This has been a gaping loophole in the like products area for many years. Exporters have effectively gamed duty impositions this way without redress being readily available. It was a no regrets anti-circumvention method.
- Legislation for the merits review process was introduced in May and this had not come into effect as of the end of August. These rules should establish a system which reduces frivolous claims, while still providing redress for those who might have been seriously disadvantaged.
- The Day 60 reforms are not yet in place and await Ministerial direction. Issuance of a PAD on day 60 will be a powerful instrument for the ADC.
- The recommendations from the Standing Committee on Agriculture and Industry into anti-circumvention are yet to be adopted by Government.

Other observers have raised comments relating to resourcing and timelines:

- The ADC may have been hamstring by Government in relation to cost savings in the Public Service. The ADC should have its own budget as an authority and be in a position to hire the people it needs, rather than the first priority being conformance with a broad Government cost cutting objective.

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House of Representatives Standing Committee on Agriculture and Industry Circumvention: closing the loopholes Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures I June 2015

- Timelines has been an age old issue, which comes back to budgets, the ability to hire the skills and calibre of the people required and workload.

3. Consequences for broader economic trade and competition policy goals

The Productivity Commission examined elements of this in its last inquiry in 2009.
In particular it proposed a bounded public interest test. On the other hand the Government made provisions for easier access to remedies by SME's who are often downstream users of product covered by dumping margins, but in turn facing dumped products themselves.

CSR has not been in favour of a public interest test. It does not regard even a bounded test for public interest as workable. The biggest issue with a Public Interest Test, is that it will discourage industry from undertaking anti-dumping cases. The cost of running a case is high. Industry does not bring cases lightly and will only do so generally where the aggrieved party has a strong view about a successful outcome. However in theory at least, with appropriately resourced investigations, industry can, with the data available to it, have a reasonable idea about the prospective outcome of launching a case. It is far more difficult to make judgements about the outcome of a PI test because they are exactly that – judgments. Having a PI test at the end of an investigation reduces the prospect of success, and will provide additional discouragement for parties considering undertaking such action. This further disenfranchises smaller companies from the process.

It is questionable whether any reasonable outcome of national or public interest can be determined at a supply chain or small geographic level in the economy. Data is not readily available from the National Accounts at sub levels to make any national assessment. This is a subjective measure in anyone's estimation and not readily appellable. Suggestions by some parties that this could be determined by economic modelling are even more problematic. 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 is likely to be even more problematic.

The EU and Canada have established a PI regime, but this is not necessarily relevant to the Australian system. The fact is that ***most countries that have enacted legislation under the WTO rules DO NOT have a public interest test***. New Zealand has just announced that it plans to introduce such a test although with sectoral exemption. It is unknown yet as to how this system will operate as the legislative details and apparatus have not been finalised. Cherry picking a PI test based on those experiences out of context does not justify applicability for Australia and are not justifiable grounds for introduction of a test.

The right to take antidumping action was confirmed by Professor Gruen in his 1986 review. This should not be diminished by the added risk of a PI test for a company, having spent significant resources to mount a case. A PI test is likely to lead to a significantly diminished outcome for Australian Manufacturers as amongst other things it makes it less attractive to mount

cases. Anti-dumping is not a quick remedy for dumping. It is a long game. A PI test will lengthen the time frame for any certainty regarding remedies. CSR would be concerned that a PI test will trade off the long term for seductive arguments about immediately cheaper prices for consumers, without full consideration of the national interest and long term potentially damaging impacts.

Any manufacturer needs to understand the impact on the customer base before undertaking anti-dumping action, along with the many other considerations before making an application. Taking anti-dumping action that results in a loss of market or market position is something that has to be weighed up carefully. In an open economy like Australia, taking action doesn't necessarily mean that the additional cost of duties, if a case is found, can be absorbed or passed on to the consumer as was the case under the high tariff regimes of the past. In essence a manufacturer is making some of these economic judgements before proceeding with a case.

In a situation of gross economic distortion the Minister still has powers to act in the National Interest. CSR contends no further measures are necessary.

Yours faithfully

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CSR Limited