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Mr John Hawkins,
The Secretary
Senate Standing Committee on Economics
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Parliament House
CANBERRA ACT 2600

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Dear Mr Hawkins,

Thank you for the opportunity to comment on the issues regarding anti-dumping from the perspective of an Australian manufacturer.CSR Limited is an ASX listed building products company with an interest in aluminium through its shareholding in the Tomago aluminium smelter. The company employs around 4,000 people across its operations in Australia and New Zealand. Some of our widely recognised brands are PGH™ Bricks, Monier™ and Wunderlich™ roofing tiles, Gyprock™ plasterboard, Bradford™ Insulation and Viridian™ Glass. CSR's float glass manufacturing and Bradford rockwool and glass wool insulation businesses are trade exposed. Insulation was not previously regarded as trade exposed, but the Energy Efficient Homes Package (Home Insulation Program) coupled with the global recession opened up import channels that previously did not exist.

The other business, which has been impacted by dumping for many years, is the production of clear float glass, laminated glass and mirror glass through CSR's Viridian Glass Division. The company operates two float lines – the larger in Dandenong, Victoria and the smaller at Ingleburn, NSW. Together these facilities employ in excess of 360 people.

Surprising as it may seem these products are commodities with imported clear float glass having about a 50% market position. Imports come from Indonesia, Taiwan, Thailand and mostly from China. A recent US study found that the production of glass in China received subsidies of up to 32% of the inputs of power, energy and raw materials to the tune of $1.2b pa. The Chinese plants are about the same size as the Viridian facilities, although China has substantially over built capacity. In 2008, CSR completed a major $140m re-investment at Dandenong, to upgrade the line and to incorporate new coating technology. This state of the art investment allowed new coated products to be produced for the growing energy efficiency market, necessary for the move to 6 and 7 star housing. This was the first coating line of its type in the southern hemisphere, to produce glass for windows to reduce heat loss significantly.

Viridian made application for anti-dumping measures against these economies to the Department of Australian Customs and Border Protection Services in 2010. When Customs completed the Statement of Essential Facts they were of the view that dumping had occurred. However the day before they were due to present their advice to the Minister, they terminated the investigation claiming they could find no material injury. An appeal to the TMRO was successful, finding that Customs needed to review their findings. CSR therefore has recent experience with anti-dumping measures and made two submissions to the Productivity Commission Inquiry into Anti-Dumping and one submission to the Customs inquiry. We also provided informal advice to a resourcing study conducted by Customs.

In relation to these matters our view was:

1. Just as the Australian Competition and Consumer Commission promotes competition and prevents predatory pricing activity, so too the WTO provides for remedies against trade distortion. This is in the form of the anti-dumping provisions which deal with unfair and uncompetitive trading practices. This was adopted by world economies in exchange for the removal of trade restrictions. CSR supports fair trade, but there needs to be a level playing field. In particular it should not be distorted by hidden subsidies.
2. We strongly believe anti-dumping investigations should remain within Customs as they are familiar with the complexities of the process.
3. The Customs manual and processes have been refined over the years and are generally sound in our opinion.
4. Decisions are not transparent in many instances. Customs are not experts in the relevant industry, although they are knowledgeable in the investigative process.
5. The Minister must have a deadline by which time decisions must be made. At present there is no obligation on the Minister to make a timely decision.
6. There is no need for a Public Interest Test of any kind. Interested parties have more than enough time to make their case to Customs, often to the detriment of the applicant, who may be given very little time to adequately respond. This may account for some of the surprising findings.
7. Measures should remain in place for at least five years given the time and cost of developing a case. Continuation measures of 5 years should be retained.

Other matters:

- The same standards applied to applicants in terms of thoroughness of data evaluation should be applied to the exporters. If the same intensity and confidence levels are not achieved through non cooperation or unwilling disclosure then the exporter should not be afforded the same levels of credibility as the applicant and the evidence discounted. A degree of credibility or margin for error should be introduced to the determinations where there is no or incomplete information.
- Exporters who fail to cooperate with the investigation should NOT be given the benefit of doubt.
- It is unclear how Customs determines profitability, addresses cost of shareholder funds, etc. The issue of risk adjusted cost of capital is often contentious.
- Sometimes Customs has difficulties in determining like goods and services. Profits foregone by exporters should be considered in determining material injury. Ministerial direction could be provided to Customs to include this in their calculations.

Furthermore, we have suggested to Customs that there is an increased need for improved resourcing for investigations. The investigating team should be required to engage an industry subject matter expert on its team, who can explain to Customs how the industry works – markets, segments, pricing, cost elements etc. The team must also have available, and be required to use, interpreters, have forensic accounting experts available and conduct more face to face interviews rather than desk top inquiries, which may be process driven and do not build industry understanding.

As for the current Bill before the Committee, "Customs Amendment (Anti-Dumping) Bill 2011 (Senator Xenophon) we are able to offer some further opinions.

1. The bill seeks to include trade union organizations as affected parties who can make applications and appeals. There is a role for a third party potentially where a manufacturer faces customers with strong buying power, where that third party can lodge an application. While this is not a situation CSR has faced specifically, it is a position the company would endorse. Whether the third party has the knowledge and resources to mount such a case remains to be seen. (The Viridian case has cost over $300,000 so far).

2. Review operation of part XVB of Customs Act as amended within 2 years.

The effort that goes into a Customs review is substantial and lengthy. The current review cycle is still incomplete. There would seem little point in a review in two years and we see no requirement for this to be legislated.

3. Presumption that dumping of itself causes material injury. Items 3,4,7

On this basis the Viridian case would have succeeded and not been terminated. While this would be favourable to manufacturers, it is not clear that these provisions would stand up under WTO rules, although we have not sought legal opinion on the matter.

4. Consideration of impact on jobs. – items 5,6.

Strengthening these provisions could provide a broader view for the Minister's consideration.

5. Application form a legal instrument

Form 801 provides for this already.

6. 90 day data.

Customs can skew data time frames in a way that disadvantages the applicant. A 90 day period could be useful for intermittent dumping cases. A consistent approach to time frames would be useful to applicants.

7. Item 11 - recent data and expert advice.

The appointment of subject matter experts is strongly endorsed by CSR. Provisions to provide updated information would be useful in some circumstances. As investigations proceed the need for additional information or the discovery of new information can be useful to the investigation.

8. Items 9, 10 – small manufacturers.

Other barriers faced by small manufacturers are the enormous cost and resources dedicated to running an application. Nevertheless they should have a greater opportunity to participate in taking action.

9. Item 12.

Desirable provision from a manufacturer's perspective. While importers are approached for input to the investigation many do not co-operate. Customs devotes a substantial effort to the applicant's business, with intense scrutiny of accounts. Importers or overseas manufacturers are less likely to provide such data and it is unlikely Customs provide the same degree of scrutiny when investigating overseas. The benefit of the doubt for uncooperative participants should lie with the applicant and importer data which is less available and transparent should be treated with caution. Most of the exporters in China in the Viridian case did not co-operate.

10. Item 13 – 60 day requirement on PAD.

PAD has limited application of 6 months for anti-dumping and 4 months for countervailing duties. Theoretically Customs can introduce a PAD early in the process, but this is not common practice. The earlier measures are introduced the less ongoing damage to the applicant/industry. It is not clear that the 60 day provision will change any outcomes.

11. Items 14, 15 Multiplier effect.

CSR does not support a Public Interest Test in any form. These provisions are adopting some of the approaches that could be used in such a test and therefore the amendment is not supported.

12. Items 19,20,21,22,23 Confidentiality

This generally occurs in practice anyway and the amendment may not be necessary..

13. Item 24.

The provision should be broadened to “industry experts”. In investigating foreign producers it may be appropriate to not use Australian experts. Generally Customs has substantial information at its disposal from Australian parties, but has less knowledge and understanding of overseas operations. In some cases independent expertise may not be available in Australia.

14. Various amendments relating to the TRMO.

The TRMO currently examines any failings in the conclusions drawn by Customs based on the evidence before them. There is no provision for TRMO to investigate the case. TMRO is in effect substituting for the AAT. Introducing a further appeals body adds uncertainty to the process and may result in less rigour. CSR does not support these amendments. Application can be made to Federal Court in relation to administrative matters, but it does not re-examine the merits of a case in our understanding.

15. Items 34, 37, 40.

New information may be provided by all parties, but must be relevant to the period under investigation and there must be strong justification as to why it was not provided before. Encouraging parties to withhold information because of these provisions is not desirable.

Yours sincerely,

Martin Jones