

# **The Australian Workers' Union Submission to The Senate Economics Legislation Committee**

## **Inquiry into the Customs Amendment (Anti- Dumping) Bill 2011**

**31 March 2011**

## Executive Summary

The Australian Workers' Union (AWU) has been looking after the best interests of our members for over 125 years. The AWU is Australia's oldest, and largest blue collar union. The AWU celebrated its 125<sup>th</sup> anniversary at our Biennial National Conference in February 2011.

Among the many issues dealt with by the National Conference, predatory trading practices by some of Australia's trading partners, (in particular China) were discussed at length. Resolutions were debated and passed demanding a firm response by the Australian Government to illegal dumping and subsidies by other nations.

The AWU is committed to free trade. Over the last 30 years, coinciding with the reforming Hawke/Keating Governments' this Union has played its part in ensuring the benefits of trade liberalization. This is shared by AWU members, along with the nation as a whole in increased investment and job creation, and national income.

The benefits of free trade including gains from trade are not in doubt. Reciprocity of access to foreign markets has also been a key driver to enhancing the competitiveness of many of the trade exposed industries represented by the AWU including steel, aluminium, plastics, paper, petrochemical, agribusiness and horticultural industries. And just as alongside other activities in the market place, rules to trade apply (or indeed should).

History has taught us that laissez faire economics is resisted strongly because it only offers sub-optimal outcomes for the majority. The question we ask ourselves therefore is "does trade on any terms constitutes free trade"? On the contrary, it does not. It is really merely unregulated trade, subject to the economic might of the dominant trading partner, with the balance of interests favouring that country, rather than its partner.

This submission will establish that for industries represented by the AWU there is a lack of regulatory action and oversight covering a range of practices aimed at undercutting and squeezing out Australian domestic suppliers of the goods in question.

Whether talking steel, aluminium fabrication, glass, plastics or agric-products, Australia, with its low tariff barriers and accommodating policy stance, sits ripe for exploitative trade practices aiming to dominate local markets by dumping and subsidising imports.

The AWU is not prepared to stand idly by and watch otherwise competitive and profitable local industries succumb to rampant trade malpractices employed by others. Australian exporters are world competitive (by definition) and need to adapt to the pressures associated with the two-speed economy (including higher exchange rates and interest rates). However, the sector should not also be expected to simply absorb the added costs of illegal trade practices cutting into remaining margins even further.

The sustainability of Australia's manufacturing sector is under threat. Government can help by adopting a strict "rule of law" approach to illegal trade practices, consistent with our World Trade Organization entitlements. This defends in the national interest local industry (and ultimately local consumers) against trade practices which do not comply.

## **Introduction**

This submission responds to the invitation received from the Senate's Economics Legislation Committee on 16 March 2011 to comment on the Inquiry into the Customs Amendment (Anti-Dumping) Bill 2011.

The submission sets out the AWU's concerns regarding the current anti-dumping and countervailing system; why reform is needed and the AWU's preferred policy positions; responds to the elements of the Bill; and includes a number of case studies.

## **Australia's Anti-dumping and Countervailing System**

There are some who question whether Australia should aspire to be a country which continues to make things if certain manufactured imports are the recipient of supportive policies at country-of-origin including subsidies, inferior standards and lax regulation.

Some are in the media.<sup>i</sup> Others are in the Cabinet.<sup>ii</sup>

But whatever their source, these views assume that simply because an imported good enters Australia cheaper than a locally manufactured good can be made (as a consequence of wide ranging subsidies and poor standards in the country of origin) - it is therefore by definition, a "better good" (in terms of consumer welfare) for Australian consumers.

"It's the market" they say. The AWU does not share that view.

In fact, it has more to do with complicit government policies in Australia than the market. Short term "gains from trade" yield over the long term as local competition is wiped out.

These views also contend that because imports are subsidised at the country-of-origin that Australia would be negligent to not appropriate the implied savings offered by foreign taxpayers.

The AWU also does not share that view. The AWU will not fall into the trap which equates defence of otherwise competitive industry and workers from injury from illegal dumping and subsidies with a “new mercantilism”. That does a disservice to our commitment to free trade on terms which carry a mutual obligation on our trading partners to apply WTO consistent trade laws. It also does a disservice to local industry and workers which together have weathered structural adjustment related to the unwinding of tariffs and which face future challenges.

The Australian steel industry is a good example. Crucially, for this industry along with the auto sector and textiles, clothing and footwear, structural adjustment in the 1980s was accompanied by an industry plan. That point seems to get forgotten in the debate. The point is today we have neither tariff protection nor a plan for the steel industry in this country<sup>iii</sup> which means that it is truly trade exposed in every sense of the term.

The laws of “comparative advantage” are also reflected in the laws of international trade.

We must measure and compare “like for like” and not be willing to simply walk away from local Australian producers who retain fundamental competitive advantages (including proximity to raw material inputs, productive and skilled labour and services).

Arguments over “gains from trade”<sup>iv</sup> cannot justify undermining international trade law, and simply (and easily) turning a blind eye to illegal trade practices. This serves only to undercut (undefended) local producers, their workers, families and communities.

Our concern is that at their best, these views are both naïve and complacent.

Our unilateral disposition to waive our rights serves to confirm that Australia is an easy target for dumped and subsidised product because while we busy ourselves defending the “primacy of markets” and competition, country-of-origin dumped product is busy going about undermining the competitiveness of our traded goods sector. They aim to injure our local producers and in so doing are flouting international trade laws.

Neville Chamberlain famously waved his “piece of paper” in the face of the might of Nazi Germany without comprehending that like trade, reciprocity and access is a two-way street, to be enforced and sanctioned by the rule of law. Winston Churchill understood that, but to Chamberlain’s enduring disgrace, too little was done by authorities, too late to avert the calamity of war.

But, as a lucky country, and unlike Poland or Czechoslovakia before World War Two, Australia has leverage and legal recourse to international fora, in particular the WTO.

As outlined in this submission, Australia should be unashamed in protecting its national interest. Mirroring the history of AWU over 125 years, strength of purpose in the face of adversity brings its own rewards.

The AWU acknowledges the important role played by the Independent Senator for South Australia, Senator Nick Xenophon for being prepared to “blow the whistle”, and bringing to light the range of dumping practices<sup>v</sup> which are illegally disadvantaging Australian traded goods manufacturers. Other Independent MPs, including Bob Katter MP are also lending vital support.

The AWU: fully supports the amendments proposed in Senator Xenophon’s Bill; offers the following comments on the current anti-dumping and countervailing system; outlines the priorities for the AWU in the campaign; and comments on aspects of the Bill itself including areas for possible enhancement.

In passing, there are important comparisons with the current debate about retail dominance in the domestic marketplace. It is clear that Australians should not accept large retailers engaging in loss leading behaviour aimed at maximizing market share and driving out the competition in dairy, and now the local beer suppliers. It is exactly the same principle we are promoting concerning dumping. In other words, predatory practices should not be tolerated locally or internationally. That is why we need the rule of law to be applied rigorously in all cases.

### **AWU concerns with the current Anti-Dumping and Countervailing System**

Australian agricultural and manufacturing industries are under competitive pressure from a rising exchange rate on the back of the mining boom, at a time when domestic and overseas markets are still recovering from the global financial crisis.

That is something that industry needs to deal with and many are doing so in cooperation with unions and government aimed at harnessing productivity improvements and taking advantage of market opportunities wherever possible.

Many do not know how our farmers, manufacturers and other exporters are being injured by illegal dumping and the impact of subsidies in places like China in an array of products which include our steel, aluminium, glass, forestry and agriculture among others.

We make products from these materials and they support thousands of jobs in manufacturing and agriculture, forestry and fisheries sectors, employing around 1.4 million Australians, 7 times the total number of employees in Australia’s mining sector.<sup>vi</sup>

The AWU commissioned an AusPoll survey on these issues.<sup>vii</sup> The survey indicated that while many people were unaware of dumping practices, when people are made aware of what is happening they overwhelmingly expect something will be done about it. So does industry and so does the AWU.

That is why our Dumping Campaign was the major theme of the AWU's 125th Anniversary National Conference which put a fair go at the centre of the national debate.<sup>viii</sup> The AWU's National Secretary kicked off the campaign during his opening address to delegates.<sup>ix</sup> Our statement of principles is here.<sup>x</sup>

The AWU passed a number of important resolutions on this issue<sup>xi</sup> because we are not prepared to stand by as local manufacturers are taken to the brink by illegal trading practices. This is because our members will suffer along with the economy.

The AWU is also taking its Campaign beyond the Conference, including a presentation to the Foreign Correspondents Association to convey the message abroad that AWU members will not tolerate dumping any longer.<sup>xii</sup> The AWU will also shortly be hosting a Roundtable with key industry representatives in conjunction with the AMWU and CFMEU.<sup>xiii</sup> Workers affected by dumping are signing up to our Campaign.<sup>xiv</sup>

This inquiry is another very important milestone in the journey for a better deal for Australia's traded goods sector.



## China's free trade cheating threatens our jobs

**AUSTRALIAN workers have suffered too many lost jobs, closed factories and abandoned communities to sit idly by while other countries flout the global free trade rules to gain a lead in some of the most important manufacturing sectors of the future.**

There is widespread evidence that China is engaging in a range of illegal practices to stimulate and protect its domestic producers of green technology, from wind and solar energy products to advanced batteries and energy-efficient vehicles.

These practices are enabling China to emerge as a dominant supplier of certain green technologies. They also have facilitated the transfer of manufacturing and research and development investment into China, costing otherwise efficient Australian companies and workers the green profits and high-skilled jobs of the future. Many of these practices are direct violations of the obligations China undertook when it joined the World Trade Organisation.

The Australian Workers Union wants the federal government to understand that manufacturing workers take the brunt of deliberate Chinese government policies that are not based on supply and demand, not based on WTO rules, but rather on a model of state capitalism aimed at winning dominant market share, by subsidising below the normal costs of production and giving other assistance at the expense of international competitors.

The AWU represents workers in numerous sectors harmed by China's policies, including steel, aluminium extrusion, glass and timber products. That's why the union's national conference voted yesterday to back a campaign to promote Australian companies, capabilities and jobs. We worry about the future of work opportunities for our 135,000 members.

The AWU believes competitive Australian manufacturers could grab the economic opportunities available from the growing clean energy economy. But if Australia is to win an important slice of this new green economy, we must ensure we have an equal opportunity to compete and where all nations observe the global free trade rules. Sadly, our manufacturers are not competing on a level playing field.

Many Australians, including politicians, are not aware certain countries are cheating when they play the free trade game. Last month, as a curtain-raiser to Australia Day, we released research that clearly showed people were not aware some foreign companies are using Australia as a dumping ground for their products - and killing off efficient Australian competitors.

We know we need to educate the public, and the politicians, before we ask the federal government to act to preserve Australia's manufacturing future. Australian jobs and companies are at a tipping point because Chinese companies are not playing by the rules in the global free trade game.

Our union has always been committed to free trade. We believe it is good for Australia - but only if everyone plays by the WTO's rules. Those who cheat on the rules are threatening the commitment that ordinary Australians have to an open economy. We need to act to stop the cheats so that the fruits of free trade can flow.

The fate of manufacturing jobs rests with the creation and enforcement in Australia of a strong anti-dumping regime. Unfortunately, the evidence is clear that our anti-dumping system is simply weak - and other nations take advantage of our weakness.

If our economy is to thrive and keep creating sustainable manufacturing jobs for our children and grandchildren we need to tell China that if it wants to be welcomed as part of the global market it must stop cheating on the WTO rules. Unfortunately, China continues to adopt many dumping and subsidy practices that are in direct violation of the obligations it signed up to when it joined the WTO. But our government is not prepared to blow the whistle.

Many of these practices have been challenged by other jurisdictions, including the US, Canada and the European Union. The WTO has defended their right to take action because they clearly disadvantage industries and workers. In recent months both the US and Canada have begun to adopt a more aggressive position on China's disregard for WTO rules. If they can act against dumped products then Australia should follow that lead.

If our country adopted a much stronger stance on dumping, we would require China to reform these unfair and predatory practices or subject itself to retaliation. To make this happen we need a change in attitude in Canberra and the Customs culture. At this stage we know Canberra doesn't agree with our position.

We should not worry about claims that a strong anti-dumping regime is simply a new form of protectionism threatening free trade. Free trade is in reality being threatened by China's flouting of the WTO rules. If we don't act now then products that once were dumped in the US and Canadian market will be redirected to naive Australia - and we'll suffer even more.

*Paul Howes is the National Secretary of the Australian Workers' Union, The Australian, 17 February 2011.*

## Concerns in a Nutshell

Dumping occurs when goods are sold at an export price in Australia which is below their normal price in the originating market, or below their cost of production. The difference is the dumping margin. In practice, producers in these countries benefit from direct and indirect subsidies which give export industries in those countries a huge boost over local producers in Australia. These policies are supported by Governments in these countries to boost their own industries at the expense of our own.

It is difficult and in the end impossible to compete when illegal practices are being used with nations like China with deep pockets when there is little to no effective enforcement of the free trade rules which provide scope for competitors to match each other on equivalent terms.

An excellent summary of the range of subsidies available to Chinese steel producers is contained in a 2006 paper titled, *The China Syndrome: How Subsidies and Government Intervention created the world's largest steel industry*, prepared for the American Iron & Steel Institute, Steel Manufacturers Association, the Specialty Steel Industry of North America, and Committee on Pipe and Tube Imports.<sup>xv</sup>

The Chinese Government intervenes directly and extensively in the steel industry. The Chinese government has implemented its policy of support for the steel industry by providing the industry with massive subsidies and other forms of assistance, including:

- Transfers of ownership interests on terms inconsistent with commercial considerations;
- Conversion of debt to equity in steel companies;
- Grants to pay for energy and raw materials;
- Debt forgiveness and inaction regarding non-performing loans;
- Tax incentives, including a variety of income tax exemptions and reductions for Foreign Invested Entities, firms in Special Economic Areas, and firms that produce for export;
- Targeted infrastructure development, including government subsidies to build and finance industrial parks;
- Control over raw material prices and exports, including import licensing schemes to control the price of iron ore and export restrictions on coke;
- Manipulation of the value of the Chinese RMB to make Chinese exports artificially cheap;
- Preferential loans and directed credit, including "policy loans" to favored state-owned enterprises on non-commercial terms;
- Import barriers, including high tariffs and other practices that discriminate against foreign equipment and technology; and
- Barriers to foreign investment.



Many of these forms of assistance – including export subsidies, domestic content subsidies, and selective preferential bank financing – appear to violate China's WTO obligations under the Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement"). Many of the subsidies also violate the commitments China made in its WTO accession agreement, wherein China committed to eliminating immediately all subsidies prohibited under Article 3 of the Subsidies Agreement<sup>xvi</sup>

It is one thing to try and compete on price, when tariffs are effectively zero already as is the case in the Australian steel industry, but quite another to say that local producers need to match subsidised competitors who also have little or no regulatory burden associated with what they produce. You cannot have it both ways, can you?

Australian producers abide by OH&S and with a few exceptions, decent wages and conditions. The same cannot be said for many of our trading partners particularly in our region, whose workers face daily risks of injury and death and poor wages relating to the work they do in unregulated workplaces.

So, despite higher productivity, and often better quality and choice, our own otherwise competitive manufacturing cannot sustain its competitiveness.

That is inefficient for our long term economic growth because it draws resources away from otherwise competitive sectors towards upstream mining activities (and thereby adding more fuel to the two-speed economy) or adds to the non-traded goods sector, in particular services which will never earn a cracker in terms of exports and which dilutes our traded goods sector as a proportion of the total economy.

This makes us more dependent on overseas imports which, in the absence of local competition will escalate in price. We become the one trick pony economy – constantly playing the resources game until it runs out.

We can and should do more about lifting productivity - in particularly in the way industry invests and manages their businesses - but at the same time we must as a matter of urgency also do much more to address illegal dumping and subsidies because it is beyond the control of industry.

Of any WTO member, China faces the most anti-dumping actions because of dumping of product below "normal value" and for recourse to export subsidies.

Our aim is simple. China and other countries must play by the international rules governing trade, investment and labour standards. Australia must enforce its rights to apply effective anti-dumping and countervailing measures to prevent injury and loss to Australian industry and workers.

WTO rules allow a government to introduce import tariffs if domestic companies lose or threaten to lose substantial sales from dumping. WTO Members may also, where a domestic industry is injured by imported products benefiting from countervailable subsidies, also apply countervailing duties.

In Australia there are two initial tests to meet in order to establish dumping: 1) prove that the 'dumper' is selling below 'normal' or the cost they sell in their own market; and 2) Demonstrate injury to the dumped industry sector.

In Australia, the latter is often easier to establish than the former.

In steel, Chinese fully fabricated prices are approximately half what Australian suppliers can produce it for. The Australian Steel Institute estimate the price of steel bought domestically in the Chinese market is approx 30 – 40% cheaper than anywhere else in the world. With its managed exchange rate, the Yuan is undervalued by approx. 20 – 40%, affording yet another advantage.

The reason why China has lower domestic prices for its fabricated products than Australia is not because it is better at making steel than Australia. It is because its state owned enterprises sell the steel and aluminium to their fabricators at less than the cost it takes to produce it, or its normal cost of production.

The inputs for the steel manufacturing process are similar worldwide and we know our Australian manufacturers are world competitive. This is well documented. Our productivity rate is at least twice that of South East Asian suppliers.

The subsidization of the Chinese steel industry may be for their domestic purposes, but of course exporters take advantage of the subsidised domestic steel price as well.

And this is where the application of Australia's Anti-dumping and Countervailing System is letting down local manufacturers in two main respects.

First, we recognised China in 2004 as a market economy as part of its WTO accession as a pre-condition to FTA negotiations. This is despite the fact the Chinese government remains intimately involved in the market through its State Owned Enterprises, particularly steel production, and refuses to open large parts of its economy to international competition such as its service industry. As noted recently by a young Australian scholar, "accommodation (of China) does not necessitate abandonment of Australia's core values."<sup>xvii</sup>

Second, we have failed to implement range of existing available WTO trade remedies to deal with subsidies under our own local laws.

On both counts, other countries are doing things differently and are well ahead, and notwithstanding a recent decision by the WTO's Appellate Body which found partly

against US anti-dumping and countervailing actions against China on technical grounds. (See box).

Unlike Australia, the US, Canada and the EU have not recognised China as a market economy and are therefore entitled to use a proxy or surrogate price for establishing normal costs of production in China when normal values cannot be easily assessed in China because of the lack of relevant market data. Often India is used, and in the EU's case, prices applicable in the US are used. These regimes are all WTO compliant under China's accession terms.

On the other hand, because of MFN status, Australia must use Chinese domestic prices. This has resulted in only limited and partial application of relatively small dumping duties in some cases.

For example, recently, we have been very concerned at the decision to offer only minimal support for aluminium extruders facing dumped and subsidised product from China particularly given the increased competitive challenge already being posed by the rising dollar and competitive devaluations elsewhere.

This is revealed by the wide disparity between outcomes in terms of dumping margins for our own producers compared to those enjoyed by US and Canadian producers.

In one illustrative case, the same product from the same Chinese manufacturer, (e.g. Guang Ya Aluminium Industries Co) faces a 6 per cent dumping margin in Australia compared to 40 per cent in Canada and 60 per cent in the US.

Our own markets, industries and relative production costs in the US, Canada and Australia are not that different. But what is different is the way the other jurisdictions are facing up and responding to the challenge from China and addressing illegal practices via their dumping regimes.

There are 2 main outcomes from this differentiation in approach between Australia and other advanced economies with major trade flows with China: 1) There is a competitive benefit to US, Canadian and EU manufacturers relative to Australia's. This damages export opportunities for Australian suppliers; and

2) There is greater likelihood of diversion of dumped product away from Canada, US and EU to Australia as the weakest enforcer of a dumping regime. This is damaging to import competing suppliers.

And the net result is more "hollowing out" of local manufacturing industry compounding competitiveness challenges they already face.

The EU has recently imposed anti-dumping measures (higher import tariffs) on the basis of clear evidence that unfair dumping of Chinese products has taken place with state distortion of raw material prices. The US and Canada are taking similar action in other cases.

The bottom line is Australia could be doing far more to assist local producers deal with the impacts of illegal dumping by taking a proactive stance. The AWU has a number of suggestions which I will touch on today.

The second main weakness in Australia's system is under the Australian system, certain subsidy measures are simply not considered. These include subsidies relating to:

- research activities;
- to disadvantaged regions (even if involving a specific subsidy for particular firms);
- to enable firms to adapt to new environmental requirements; and
- for a variety of agriculturally related purposes, such as pest and disease control, training, marketing and promotion, inspection and advisory services.

WTO member countries are now able to take countervailing action against these subsidies if they cause or threaten material injury. However, Australia has chosen not to update the Customs Act 1901 to reflect the changed status of these subsidies and continues to treat them as not countervailable.

Australia also applies measures to a relatively narrow and diminishing range of basic industrial chemicals, and plastics, base metal products, paper products and processed agricultural products – the bulk of which are inputs to further manufactured products. However, more recently dumping has been occurring in additional “finished” goods such as:

- Solar panels
- Rail track
- Wind towers
- Mining infrastructure (conveyors, crushes, separators and washers),
- LNG Trains modules, (including heavy engineering components like crushes etc); and
- Industrial commercial buildings (structural steel frames).

We do not distinguish between dumping and countervailing duties on export subsidies enough – whereas as the US will run separate investigations on each and apply margins on each, but not run these in parallel as we try and do.

And we do not allow unions to petition for investigations.

It should also be noted that the AWU along with other affected unions including the AMWU and CFMEU found the Productivity Commission's final report on Australia's Anti-Dumping and Countervailing System to be wholly inadequate. The joint union submission: Maintaining and Improving the Integrity of Australia's-Dumping System (August 2010) is here.<sup>xviii</sup>

**The AWU wants the following addressed to reform our Dumping System:**

**A properly resourced and independent agency – responding proactively to dumping and subsidy complaints**

Oversight of the Anti-Dumping System is inadequate due to lack of resources, bifurcated responsibilities, insufficient legislative coverage and weak governance. A vital part of the governance structure is the work of the Trade Measures Remedies Office (TMRO) which hears appeals following Ministerial determination. But there are too few investigations (the TMRO has many other competing responsibilities); complex and costly engagement by industry; combining dumping and subsidy (countervailing duty) investigations; ad hoc and inconsistent responses; limited assessment of injury on industry from either dumping or subsidies; and, where injury has been established, limited duty margins applied. Appeals are often unsuccessful. Other jurisdictions take much more seriously. In the US and Canada, there is a quasi-judicial body to assess injury on domestic industry. Bodies are properly funded and resourced. They have clear charters. They apply large penalties when cases of dumping or countervailing duties have been proven.

**Improved culture of Customs and compliance with Customs decisions**

The AWU does not believe that Customs has a strong enough culture aimed at assisting local industry rather than importers. This is the converse of the posture adopted by counterpart overseas agencies. In Australia, experience has been that the benefit of the doubt in dumping cases is given to importers. Until this culture changes (linked to machinery of government changes in Customs and funding raised above), little is likely to change. The AWU is also concerned at Customs' ability to ensure compliance with its decisions, when they find against dumped and subsidised imports. This raises a culture of limited intervention by Customs rather than application of the full weight of the law.

**Chinese exports by state owned enterprises treated like other state owned enterprises in other developed economies consistent with China's market economy status**

Australia's current approach to dumping is Australia's recognition of China as a market economy as a pre-condition of FTA negotiations restricts the ability of local authorities to apply surrogate or proxy prices in dumping cases when normal values cannot be easily assessed in China because of the lack of relevant market data. This has resulted in only partial application of relatively small dumping duties in some cases.

We need to turn this weakness to advantage. The US has applied duties on Canadian softwood timber because it believes the Canadian softwood industry receives various subsidies as state owned assets such as stumpage fees and lead to accusations of Canada supplying the US market below the costs of production. In fact, the US has run both dumping and countervail subsidy investigations. In 2006 both countries agreed to a limit on new Canadian timber subsidies through 2013 under the 2006 Softwood Lumber Agreement. Disputes are heard by the London Court of International Arbitration. Australia and China could strike similar deals.



### **Reflect WTO rights in Australia's anti-dumping and countervailing system as trade defences rather than industry protection**

As a member of the WTO, Australia has more generous anti-dumping and countervailing rights potentially available to it than currently enacted domestically in the Customs Act 1901. Currently, the Customs Act does not empower Customs to consider a suite of subsidies enjoyed by overseas suppliers which assist in undercutting local producers and exporters in Australia, including in emerging sectors such as renewable energy. The Subsidies and Countervailing Measures (SCM) Agreement confirms that WTO Members may, where a domestic industry is injured by imported products benefiting from countervailable subsidies, apply countervailing duties. This includes the ability to take action, including countervailing duties on subsidies such as (a) research activities, (b) assistance to disadvantaged regions or (c) adaptation to new environmental requirements.

### **Amend the Customs Act to acknowledge that unions should have the right to petition for investigations**

The Customs Act limits petitions for investigations to industry accounting for not less than 25 per cent of the total production or manufacture of like goods in Australia. This is a punitive measure which restricts many smaller affected businesses from bringing anti-dumping cases. One way of addressing this is to empower relevant, representative unions such as the AWU to join actions along with affected employers as the AWU will meet the 25 per cent rule across industry, for example in steel and aluminum sectors, the AWU will be represented in at least 25 per cent of affected businesses. Unions have rights to petition and join investigations in the US under relevant statutes. It is anomalous that Australian unions - in many cases much closer to affected businesses - should be treated any differently.

### **Strong local content requirements**

Stronger local content requirements would serve to limit subsidized imports taking market share from local suppliers. The absence of minimum local content requirements and/or full and fair opportunity to bid, serves to undercut local suppliers in procurement projects. The lost opportunity which this represents to the nation is measured in the tens of millions of dollars. Lost local supply opportunities in procurement means lost investment and jobs. Making minimum local content a requirement of major projects would produce the double bonus of removing incentives for subsidized product to undercut the local supply chain.

## **Priorities from the AWU's Don't Dump on Australia campaign**

The AWU has the following 6 goals which are guiding our Dumping Campaign:

### **1) A properly resourced and independent anti-dumping agency – responding proactively to dumping and subsidy complaints**

Oversight of Australia's Anti-Dumping and Countervailing System by Customs is inadequate due primarily to a lack of resources, bifurcated responsibilities within Customs and Border Protection, insufficient legislative coverage and weak governance.

A vital part of the governance structure is the work of the Trade Measures Remedies Office (TMRO) in the Department of the Attorney General which hears appeals following Ministerial determination.



But there are too few investigations; complex and costly engagement by industry; combining dumping and subsidy (countervailing duty) investigations; ad hoc and inconsistent responses; limited assessment of injury on Australian industry from either dumping or subsidies; and, where injury has been established, very limited duty margins being applied. Appeals are often unsuccessful.

The AWU would like to see the following reforms to Customs' governance and to the TRMO:

- Trade Measures reporting directly to the CEO of Customs driving higher prioritization and resourcing with its own status as an independent Bureau;
- Trade Measures to be staffed by industry representatives in addition to public servants;
- Related to above, upskill Customs to include greater industry knowledge and skills;
- Make the TRMO a quasi-judicial appointment and at deputy secretary level at least; and
- Mandate cooperation between international trade administrations and international tax systems enabling for example, the ATO and Customs to share information on potential tax evasion practices infiltrating Australia's anti-dumping and countervailing system. Customs would also share and receive information with counterparts in Canada, the EU and US.

## **2) Improve the culture of Customs and compliance with Customs decisions**

The AWU does not believe that Customs has a strong enough culture aimed at assisting local industry rather than importers. This is the converse of the posture adopted by counterpart overseas agencies in the US, Canada and EU which give local industry the benefit of the doubt.

In Australia, experience has been that the benefit of the doubt in dumping cases is given to importers. Until this culture changes (linked to machinery of government changes in Customs and funding raised above), little is likely to change.

The AWU is also concerned at the ability of Customs to ensure compliance with Customs decisions, when they find against dumped and subsidised imports. Again, this raises a culture of limited intervention by Customs rather than application of the full weight of the law.

## **3) Chinese exports by state owned enterprises treated like other state owned enterprises in other developed economies despite China's market economy status**

Despite its MFN status, the US has applied duties on Canadian softwood timber because it believes the Canadian softwood industry receives various subsidies as state owned assets such as stumpage fees and lead to accusations of Canada supplying the US market below the costs of production.

In fact, the US has run both dumping and countervail subsidy investigations in recent years. In 2006 both countries agreed to a limit on new Canadian timber subsidies through 2013 under the 2006 Softwood Lumber Agreement. Disputes are heard by the London Court of International Arbitration.

Australia and China could strike similar deals in affected sectors – such as steel, aluminium extrusion and upstream glass - aimed at limiting the impact of subsidies available to Chinese extruders via primary aluminium supplied by state-owned enterprises.

Trade relations are based on reciprocity. If progress is not made, we should revert to review China's market economy status for the purposes of anti-dumping investigations.

#### **4) Reflect WTO rights in full in Australia's anti-dumping and countervailing system as trade defences rather than industry protection**

The Anti-Dumping Agreement sanctions anti-dumping duties as a trade remedy and recognises that Members may employ different methodologies/ practices in applying them.

Similarly, the Subsidies and Countervailing Measures (SCM) Agreement confirms that WTO Members may, where a domestic industry is injured by imported products benefiting from countervailable subsidies, apply countervailing duties.

As a member of the WTO, however, Australia has more generous anti-dumping and countervailing rights potentially available to it than currently enacted domestically in the Customs Act 1901. This point was raised in DFAT's submission to the recent inquiry into Australia's anti-dumping and countervailing system undertaken by the Productivity Commission.

Currently, the Customs Act does not empower Customs to consider a suite of subsidies enjoyed by overseas suppliers which assist in undercutting local producers and exporters in Australia, including in emerging sectors such as renewable energy.

This includes the ability to take action, including countervailing duties on subsidies such as (a) research activities, (b) assistance to disadvantaged regions or (c) adaptation to new environmental requirements, since non-actionable limitations lapsed in 1999 under the SCM Agreement. There are a range of agricultural related subsidies as well.

Other jurisdictions are able to prosecute anti-dumping and countervailing duties investigations based on the injury caused or likely to be caused by these policies.

Australia in other words is unable to avail itself of rights and entitlements that other WTO members enjoy today because of the existing limitations imposed by the Customs Act. This is contrary to the national interest in preserving and promoting the efficient allocation of resources.

It is unclear how limiting dumping and countervailing actions promotes stronger competition or economic efficiency while domestic resources are misallocated through access to dumped or subsidized imports. Economic dynamics dictate that loss of local manufacturing capacity through such action renders the economy more exposed to higher long run costs in the supply of the goods concerned.

The overly restrictive nature of the Customs Act limits the ability of Customs to initiate and undertake comprehensive investigations of either dumping or subsidies. This puts Australia at a disadvantage relative to other jurisdictions, able to do so.

The WTO also allows Australia to apply stiffer penalties when dumping or subsidies have been proven to remove the injury or risk of injury to domestic industry. This “degree of freedom” has not been fully exploited by the local anti-dumping and countervailing regime

#### **5) Amend the Customs Act to acknowledge that unions should have the right to petition for investigations**

Currently, the Customs Act limits petitions for investigations to industry accounting for not less than 25 per cent of the total production or manufacture of like goods in Australia.

This is a punitive measure which restricts many smaller affected businesses from bringing anti-dumping cases.

One way of addressing this is to empower relevant, representative unions such as the AWU to join actions along with affected employers as the AWU will meet the 25 per cent rule across industry, for example in steel and aluminum fabrication sectors, the AWU will be represented in at least 25 per cent of affected businesses.

Unions have the right to petition and join investigations in the US under relevant statutes<sup>xix</sup> and is anomalous that Australian unions - in many cases much closer to affected businesses - should be treated any differently.

#### **6) Strong local content requirements**

Stronger local content requirements would serve to limit subsidized imports taking market share from local suppliers. The absence of minimum local content requirements and/or truly fair, full and reasonable opportunity to bid as is currently the case in Australia serves to undercut local suppliers in procurement projects.

The lost opportunity which this represents to the nation is measured in the tens of millions of dollars. Lost local supply opportunities in procurement means lost investment and jobs. Making minimum local content a requirement of major projects would produce the double bonus of removing incentives for subsidised product to undercut the local supply chain. Victoria has a robust local content model which recognises major projects of strategic significance to the state.

Labour standards should also form a part of assessment of local content requirements. This is a particular area of disadvantage for Australian producers abiding by local laws which recognize the principles of acceptable occupational health and safety standards in the workplace and fair remuneration. These principles do not apply in some other jurisdictions supplying the local market thereby placing local suppliers at a structural competitive disadvantage which more than outweighs local productivity advantages.

By way of illustrative example, Australian Fabricators quoted Rio Tinto /Alcan Yarwun 2 expansion in Gladstone at 'best possible' Australia rates and were told they lost by 40 – 50 per cent. According to the Australian Steel Institute, local industry stresses all of this work could have been done in Australia. These imports often below cost prices are costing Australian steel jobs from the mill gate to the fabricator and all the other in between.

## **WTO Appellate Body Decision on US AD and CVD investigations against China – 11 March 2011**

These matters go to issues of definition and law as interpreted by the WTO. The US is currently considering its position and believes the Appellate Body has “overreached” itself.

### **Background**

On 11 March 2011 The WTO's Appellate Body upheld 2 of a WTO Panel's decisions of October 2010 (supporting the US case) and found against another 2. The 2 findings against the US relate to the definition of state owned enterprises as public bodies for the purposes of granting countervailable subsidies; and double counting of duties for both AD and CVD investigations where they may overlap and result in “double remedies”. However, the US is free to treat China as a non-market economy for the purposes of its investigations (use of proxy countries and data etc); and that specific subsidies to a company or group of companies were countervailable.

It is unclear what the US intends doing about implementing the Appellate Body's decisions. It is under active consideration. The US believes that the Appellate Body has overreached its mandate.

The US has a number of choices (see below). The Appellate Body's decision may also have implications for how future AD and CVD investigations are undertaken by WTO members:

For example, removing double counting for duties addressing dumping and those addressing countervailable subsidies where duties may overlap and result in “double remedies” rather than “appropriate amounts” (note: this should not be occurring anyway);

The definitional treatment of state-owned enterprises as public bodies for the purposes of assessing subsidies (Commerce was required to establish that an entity performs government functions, or is vested with and exercises government authority, in order for that entity to be capable of bestowing a countervailable subsidy); and

The fact that this decision would not affect Australia's ability to undertake separate AD and CVD investigations against China as a market – rather than non-market economy for both dumping and countervailing duties respectively (they are currently combined). As background, it has not been unusual for both antidumping and countervailing duty cases to be filed against market economy countries. Such actions have never resulted in a challenge to the permissibility of simultaneous investigations where a market economy is involved.

As far as the AWU's Campaign is concerned, we have always supported application of the rule of law by all parties to the WTO. This applies equally to the US as it does to China and Australia. However, the purpose of the Don't Dump on Australia Campaign is to do just that. Ensure the rule of law is being fully implemented and enforced and to raise the profile of these issues domestically. This is not the case in Australia currently.

None of the reforms to Australian law sought by the AWU would be affected by this decision. We want more support for our changes. We want more focus on trade malpractices by China, including subsidies by their state-owned enterprises in a WTO consistent manner. We want to exercise our full rights in such cases. This case illustrates how far it is possible to go in defence of local industries and workers and tests the limits of those defences and how they should be amended. It is a long way ahead of Australia currently.

As far as the US is concerned, we understand that it is considering its options in response to the Appellate Body's decision. It has 30 days. It is too early to say what if any changes may be required to US Laws or to the laws of the WTO itself by members opposing the Appellate Body's assessment and in the context of Doha Round negotiations. In practice, it may be possible for the US to accommodate the Appellate Body's decisions by for example, providing the additional information proving the definition of public bodies as interpreted by the Appellate Body for the purposes of the case. For example, it may well be that the existing records in the four cases already contain much of the information that would respond to whether the programs reflect government functions. Alternatively, Commerce may choose in new investigations or in administrative reviews of any existing order to collect additional information that would go exactly to the points in question.



## **Customs Amendment (Anti-Dumping) Bill 2011**

We support the amendments contained in the Bill in particular the rights of unions as a party to complaints and reversing the onus of proof on exporters to importers. These reforms are huge strides in the right direction.

Other items included such as a mandated review of changes and unions as both affected and interested parties are strongly supported. Resourcing is critical and needs to be addressed as the ability to secure funding will be used to qualify government support for any of the proposed amendments:

We would still like to see further changes aimed at enhancing the coverage and scope of the Customs Act to respond to a range of subsidies, which are covered under the WTO but not in our own legislation. Compliance is another important issue. Cooperation between authorities should also be mandated.

### **Resourcing:**

It would be desirable to insert a budget linked clause which ensures that the amendments give priority within Customs to necessary funding from reallocation within Customs, machinery of government changes or supplementation to implement the changes fully.

Allowance in the budget should be made for the inclusion of industry experts in investigations to assist career bureaucrats within Customs.

The Minister for Home Affairs should be empowered to obtain budget supplementation as required in order to meet the Bill's objectives, ideally in time for the 2011-12 Budget.

### **Governance:**

The AWU supports legislating to ensure the Trade Measures Branch (which undertakes the investigations) reports directly to the CEO of Customs. This removes layers of bureaucracy and assists with accountability. The aim is to give greater autonomy and independence of action (from other parts of Customs and Border Protection) through higher prioritisation and resourcing. Machinery of government changes may assist, making the current Branch an expanded Division / Bureau.

In fact a name change to the Trade Measures Bureau would assist in carving out the functions of the Trade Measures Branch within Customs and promote its independence.

The CEO should be required to report on the work of the new Division / Bureau and included in his accountabilities reporting to Parliament.

### **Appeals:**



The AWU would support legislating to increase status of the TRMO to Deputy Secretary level (consistent with statutory powers). Currently the TRMO is drawn from the ranks of AGs at Assistant Secretary level. The current incumbent needs the support of higher status within the bureaucracy, consistent with his role and responsibilities. Note the TRMO responsibility is not his only work, which raises the issue of staff and resourcing. Raising the status of the TRMO would help to address this.

It is also worthwhile on assessing the ability to make TRMO a quasi-judicial appointment to promote independence in line with the intent of amendments.

### **Union as affected or interested party:**

The AWU fully supports the intent of the amendments such that unions can seek an inquiry on behalf of smaller manufacturers who may not dominate 25 per cent of the market (there are a range of smaller employers for whom the current rules prohibit bringing a complaint). Trade unions should be able to do so on their behalf.

### **Coverage:**

An important aspect of the reform agenda as highlighted in this submission is including subsidies which are currently excluded from examination since non-actionable derogations under Article 8 of the SCM Agreement lapsed in 1999 on:

- Research activities;
- Assistance to disadvantaged regions; and
- Adaptation to new environmental requirements.

The WTO's Agriculture Agreement (AA) is also relevant regarding action against certain agricultural support (derogations on action has also now lapsed).

Section 269TAAC(6) of the Customs Act 1901 (Cth) has not been updated to reflect the fact that Article 13 of the AA (the 'peace clause') and Article 8 of the SCM Agreement have now lapsed.<sup>xx</sup>

As an aside, it is noted that while the Minister for Trade's own Department has articulated these points of difference, the Minister has to our knowledge never supported debating their take up by Australia.

Allowance should also be clearly made for separate investigations of dumping and countervailing duties as required.

### **Compliance:**

Ensure Customs is monitoring compliance with decisions through mandatory review of decisions and abiding implementation by industry.

### **Cooperation:**

Mandate cooperation and information sharing among domestic government agencies (e.g. the ATO and Customs) facilitating inquiries and allow information sharing with counterpart organisations in other jurisdictions which have valuable intel related to companies and products (e.g. counterpart agencies in the US, Canada and EU).

### **Review:**

The review of the implementation of the amendments within 2 years with a view to further amendment as required (also accounting for international developments and WTO). This is aimed at ensuring operational effectiveness and up-to-date Customs Act and is fully supported.

### **Conclusion**

Unilaterally limiting dumping and countervailing actions does not promote stronger competition or economic efficiency because domestic resources are misallocated, corrupted by dumped or subsidised imports. Economic dynamics dictate that loss of local manufacturing capacity through such action renders the economy more exposed to higher long run costs in the supply of the goods concerned.

Australia is currently unable to avail itself of rights and entitlements that other WTO members enjoy today because of the existing limitations imposed by the Customs Act. This is contrary to the national interest in preserving and promoting the efficient allocation of resources.

Amendments proposed by the Bill go part way in addressing current weaknesses in domestic law. In particular, reversing the onus of proof and enshrining the rights of unions to be a party to investigations and complaints are warmly welcomed. Other reforms included in this submission build on these important initiatives.

The debate on these issues is not over. Our campaign is unfinished. However, the important step which this Bill takes in defence of Australia's export and import competing sectors is wholly embraced.

The AWU welcomes this opportunity to comment on the amendments and stands ready to assist the committee in its further deliberations on these vital issues in the interest of our collective national prosperity. The Bill is commended for bipartisan support.

## Case Study 1: Capral Limited

### Background

- Capral has a 75 year history in Australia, starting out as Alcan Australia in 1936.
- Capral is the largest Australian based aluminium extrusion manufacturer
- Capral has traditionally supplied the widest range of profiles (currently more than 20,000 unique shapes), which combined with product development and technical support, has assisted the development of many Australian downstream industries.
- Capral's focus has been to invest and grow world class manufacturing facilities that could meet increasing domestic demand, primarily from the domestic building and construction industry. Major initiatives have included investment in modern, more flexible plant and machinery and in 2005 the acquisition of the second largest Australian extruder (Crane) to achieve economies of scale and specialisation with fast response to customer orders.
- Imports from China have been making inroads to the Australian market in recent years, with high Australian market share growth from a small number of Chinese extruders, including PanAsia, Kam Kiu, Tai Ao and New Zhongya, all of whom have pursued high export growth strategies.
- Capral as the largest Australian based manufacturer with the widest product range was an early target for importers, starting with price undercutting quotations to mid-sized Original Equipment Manufacturers (OEMs) and large distributor customers, leading to loss of sales margins, loss of sales, loss of production volumes/factory loading and loss of employment.



## Products

- Capral is a major supplier of aluminium extrusions to downstream industries such as window and door manufacture (residential and commercial), home improvement, marine, transport, automotive and industrial fabrication, with products sold direct to large end-users or through distributors and metal service centres.
- Aluminium extrusions are sold in a variety of alloys and finishes (Mill, Painted or Anodised). Some extrusions include fabrication (cut-to-length, drilling, punching, etc).
- Along with Aluminium Extrusions, Capral's Distribution network also sells Rolled/Sheet aluminium products, Stainless steel mesh and hardware items (eg: locks).
- Capral brands include Artisan, Amplimesh, Genesis, Platinum, Juralco, AGS and Aqua Style.

## Capral Locations

- Capral has a national footprint, with manufacturing facilities in all major states and distribution facilities in all states and territories.

## Impact of Chinese Imports on Australian employment

- Over the past 10 years, Chinese dumped and subsidised aluminium extrusions have grown from a very low base to a dominant supply position in the Australian market, capturing around 33% market share.
- The Chinese growth has led to a significant under utilisation of Australian extrusion press capacity. There is also an increasing under utilisation of Australian value adding facilities (paintlines, anodising lines and fabrication machines), as the Chinese continue to grow market share.
- Unfair Chinese imports have had a significant impact on Australian employment. In 2008 Capral employed 1,350 Australians. This number has now fallen to 900, a reduction of 33% or 450 direct jobs and overall, around 1,800 Australian jobs.

## Penrith (NSW) Example

- Capral has an Extrusion facility in Penrith, NSW. The facility has two extrusion presses and is currently only operating at around 50-60% of installed capacity, with one of the presses completely idle.
- Continued imports of dumped and subsidised imports will threaten the future of the Penrith plant, putting at risk around 65 direct jobs and 260 Australian jobs.

## Bremer Park (QLD) Example

- Capral's main Extrusion facility is located in Bremer Park, Qld. The facility has 4 Extrusion presses, 3 paintlines, 1 anodising line and various fabrication machines.
- The world class Bremer facility, in which Capral has invested more than \$120 million over the past 7 years, is operating at around 60-70% of installed capacity.

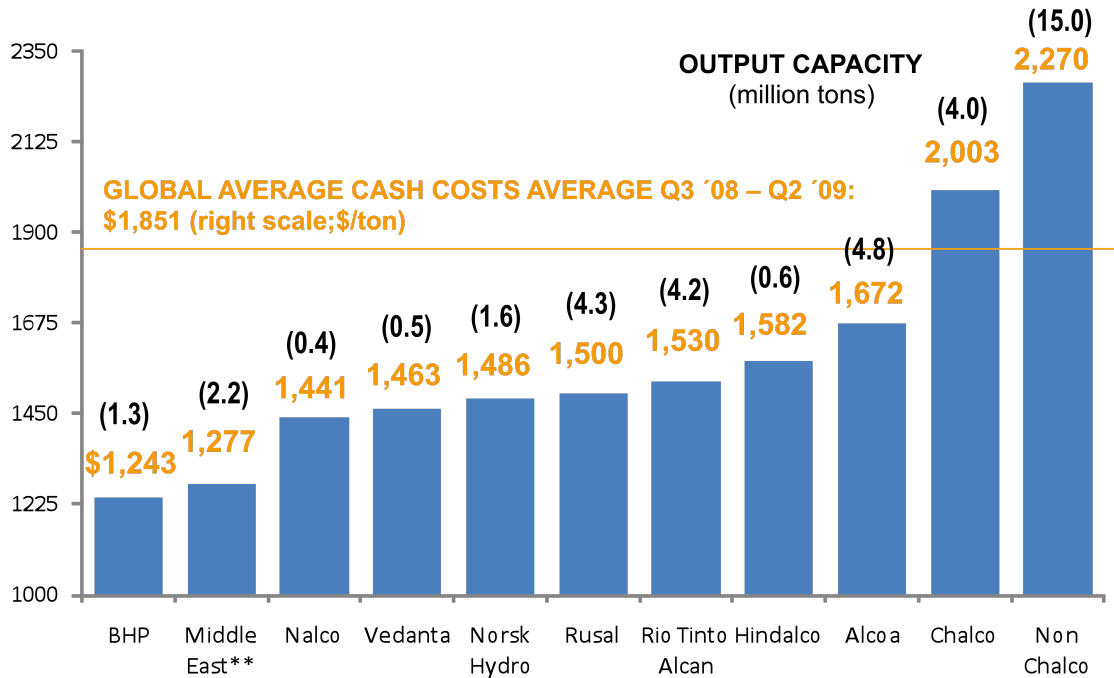
- Continued imports of dumped and subsidised imports will threaten the future of the Bremer plant, putting at risk around 300 direct jobs and 1200 Australian jobs.

### **Competitiveness of Australian industry**

- The Australian Extrusion manufacturing industry can compete fairly with non-dumped and non-subsidised Chinese imports.
- China has no natural advantage in the production of aluminium or aluminium extrusions. In fact, China has an overall cost disadvantage, given that:
  - around 60-70% of total aluminium extrusion cost is the aluminium raw material cost - and Chinese smelters are recognised as the highest cost producers of aluminium in the world (refer Diagram 1 - 'Global Aluminium Output Cash Costs' graph below);
  - Aluminium extrusion production is a capital intensive process, with labour being a relatively minor proportion of total cost;
  - The international aluminium community recognises that in relation to key aluminium extrusion cost drivers (such as productivity and waste levels), Chinese extruders are lower than world (and Australian) benchmarks;
  - Chinese extrusion exporters incur additional costs not borne by Australian producers in the form of shipping, insurances, non-recoverable China VAT surcharges, Australian import duties, etc.
- The Chinese aluminium extrusion exporters have only been able to grow significant market share in Australia as a result of being able to purchase primary aluminium from Chinese smelters at a price around 20% cheaper than the rest of the world.

### **Diagram 1**

## GLOBAL ALUMINUM OUTPUT CASH COSTS AVERAGE Q3 '08- Q2 '09



Source: HARBOR intelligence best estimates

\*does not include capital depreciation, working capital charges nor return on capital = \$389 per mton on average

\*\* Middle East includes Aluminum Bahrain, Almahdi Aluminum, Iralco and Dubal

### Note:

Chinese smelters are 'Chalco' and 'Non-Chalco'.



## **Case Study 2: CSR Viridian**

### **Background**

Viridian is the major glass manufacturer and processor in Australia, producing glass products for the residential and commercial building industry. The business has 2 divisions, the upstream Primary Products business which produces and distributes the glass products in bulk, and the processing business which produces customer specific glass for window fabricators, installers etc.

Viridian is a division of CSR, one of Australia's leading manufacturers in Australia and distributes a range of building materials including Gyprock plasterboard, Bradford insulation, and Monier rooftiles. CSR employs around 4,000 people across its operations in Australian and New Zealand.

Viridian's upstream business is the sole manufacturer of float glass in Australia, accounting for around 50% of glass volumes sold in Australia. It operates from 2 large scale factories in Dandenong, Victoria, and Ingleburn, NSW, and employs 360 people, producing float glass, laminated glass, mirrors, and toughened door panels.

In 2008 a major \$140m re-investment was completed 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 in the southern hemisphere, allowing windows to reduce heat loss significantly.

### **Anti-Dumping Case**

Viridian instigated an anti dumping case in 2010 for clear float glass against imports from China, Indonesia and Thailand. The findings from the customs investigators confirmed dumping from China of 11 - 26%, from Indonesia at 3.3 - 22%, and from Thailand at 3.5 - 12%. However, the enquiry was eventually terminated because material injury to Viridian from dumping could not be confirmed.

Viridian is appealing against this termination on the basis that price suppression has occurred due to dumping and hence inadequate returns made.

### **Anti-Dumping issues and Productivity Commission review**

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 antidumping 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, such as in China, where the glass industry had the benefit of a range of subsidies on input costs of electricity, fuel and soda ash, which in 2009 were estimated to be running at 34% of total costs of glass manufacturing and have amounted to \$US4.8b over 4 years.

CSR supports the anti-dumping processes employed by Customs, which have been developed and refined over the years. It is timely to now examine the level of resources available to the investigating teams. This can allow for a deeper understanding of the industry, including the collection of sufficient data from importers or overseas manufacturers. In the recent Viridian case, 90% of companies contacted in China did not co-operate with the Customs' investigation.

The use of industry experts, accounting experts and other skilled resources, which have not been available to Customs, would also allow a better understanding of the supply chain, the values created and profit derivation, would lead to more robust outcomes, rather than looking at simple price measures and comparisons.

The existing processes allow more than adequate opportunity for all parties to explain their position during the investigation and there is no justification for any public interest test.

### **Case Study 3: Keppel Prince Engineering – Portland, Victoria**

#### **Activities:**

**Keppel Prince Engineering specialises in the construction, fabrication and maintenance of industrial structures and equipment with a strong presence in the renewable energy sector.<sup>1</sup>**

Wind tower fabrication using steel manufactured by BlueScope Steel (Port Kembla) and solar panel installer of imported solar panel with potential to manufacture components locally.

#### **Issue:**

Keppel Prince is a major employer in Portland in the construction of wind towers and is also engaged in the installation of imported solar panels but for which it has capability to manufacture locally. Keppel Prince is losing market share to imported wind towers. Keppel sources steel from Port Kembla so this is a double loss to the AWU which has members at both Keppel and BlueScope. Each tower comprises 4000 tonnes of steel.

#### **Wind towers**

Keppel Prince is a major producer of wind towers including constructing towers for a wind farm in the Victorian rural town of Wauobra. Since 2001 the company has been Australia's largest producer of wind towers and wind farms and has been expanding renewable energy solutions into wave, solar and hydro energy.

Keppel Prince has voiced concerns that local renewable energy jobs may be lost through the importation of wind energy towers from South-East Asia.

Keppel-Price contracts manager Dan McKinna was reported in the Portland Observer<sup>2</sup>: A consignment of towers from Asia – is to be delivered in August or September (2010) - through Port Kembla, in New South Wales, for a wind farm on the east coast. He said this threat to Australian jobs could not be ignored.

"It's okay if we at Keppel Prince lose jobs to another Australian company, but to lose them overseas is a tough pill to swallow." He said it was ironic that the towers, made from 4000 tonnes of steel, would be delivered right in the shadow of the factory at Port Kembla, where Keppel Prince would have sourced the steel to make the towers in Portland (BlueScope).

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<sup>1</sup> **Wind towers, wind farms and solar power**

<sup>2</sup> PORTLAND OBSERVER *Monday June 28 2010 ,Overseas wind towers costing Portland jobs*  
By STEVE ROBERTSON).

## Solar Panels

As part of the Portland Sustainability Group's bulk solar purchase, Keppel Prince will soon begin site inspections for homeowners who have agreed to pay as little as \$2200 to buy a Chinese-made solar panel and have it installed on their roof.

Keeping the cost of panels and their installation low is a special rebate credit being offered by the Commonwealth Government until the end of the financial year. For example, on the basic 1520 watt panel, the cost for the homeowner is reduced from \$7703 to \$2200, thanks to the rebate.

The solar project is expected to increase the workforce at Keppel Prince by more than 100 over 12 months.

Lack of local content requirements means the incentives being generated for the installation of solar panels by residents and businesses is seeing an increase in imports of cheap Chinese panels, installed by Keppel Prince. There have been strong suspicions of dumping of solar panels at below normal value in the Australia market and the US is currently considering a case brought against green technology imports by relevant unions in the US.<sup>3</sup>

Because of intense price competition, local manufacturer Keppel Prince in Portland is also now resorting to importing solar panels and installing them but has left open the prospect of local manufacture. See <http://www.spec.com.au/?sp=2&id=11643>

Separately, Chinese manufacturer Suntech has admitted to subsidising exports of solar panels at below cost to the US in order to win market share.

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## Endnotes

<sup>i</sup> See for example, commentary by Michael Stutchbury, Don't complain of low prices, The Australian, 8 March 2011, <http://www.theaustralian.com.au/business/opinion/dont-complain-of-low-prices/story-e6frg9p6-1226017287370>

<sup>ii</sup> See for example the speech by the Hon Craig Emerson MP, Minister for Trade, **The future of trade policy in an uncertain world. Address to the Lowy Institute, Sydney, 10 December 2010**, [http://www.trademinister.gov.au/speeches/2010/ce\\_sp\\_101210.html](http://www.trademinister.gov.au/speeches/2010/ce_sp_101210.html)

<sup>iii</sup> For further background see the AWU's New Steel Plan, 2009, [http://www.awu.net.au/273\\_6.html](http://www.awu.net.au/273_6.html)

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<sup>3</sup> (Compiled from Portland Observer, 5 January 2011, *STEVE ROBERTSON, Solar Panels Project Powers Ahead*)

<sup>iv</sup> The Hon Craig Emerson MP, Minister for Trade, **The future of trade policy in an uncertain world. Address to the Lowy Institute, Sydney, 10 December 2010,**  
[http://www.trademinister.gov.au/speeches/2010/ce\\_sp\\_101210.html](http://www.trademinister.gov.au/speeches/2010/ce_sp_101210.html)

<sup>v</sup> Customs Amendment (Anti-Dumping) Bill 2011, 2nd Reading Speech

<sup>vi</sup> ABS Cat No. 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, Nov 2010

<sup>vii</sup> Don't Dump on Australia – union conducts poll, January 2011,  
[http://www.awu.net.au/623974\\_5.html](http://www.awu.net.au/623974_5.html)

<sup>viii</sup> Don't Dump on Australia- An AWU campaign defending good jobs, February 2011,  
[http://www.awu.net.au/628783\\_5.html](http://www.awu.net.au/628783_5.html)

<sup>ix</sup> National Secretary, Paul Howes, Opening Speech to AWU National Conference, 14 February 2011,  
[http://www.awu.net.au/733640\\_2.html?H\[A\]733640](http://www.awu.net.au/733640_2.html?H[A]733640)

#### **x Dumping in Australia – Statement of Principles**

The hollowing out of Australia's manufacturing industry will result from our anti-dumping system turning a "blind eye" to dumping practices which undercut the competitiveness of local manufacturing.

The AWU sets out the following high level principles as a statement of intent aimed at maintaining the competitiveness of the Australian economy, in particular our manufacturing sector, by preventing material injury resulting from dumping and subsidised imports at prices which are not truly cost reflective:

- 1) Australia should ensure that local laws fully reflect existing WTO entitlements to use anti-dumping duties and countervail measures as legitimate trade remedies in instances of dumping.

Because anti-dumping duties and countervail measures have been interpreted as anti-competitive by the Productivity Commission, the *Customs Act* currently fails to reflect the full suite of WTO anti-dumping rights available to Australia as WTO member.

The *Customs Act* continues to exclude certain forms of support for agricultural products from countervail action as well as a range of subsidies for non-agricultural goods (research and development, environmental upgrades, subsidies for regions which are economically disadvantaged).

This "unilateralist" approach puts local producers at a competitive disadvantage to those jurisdictions which have a more vigorous - but nevertheless WTO consistent - anti-dumping regime (e.g. Canada) resulting in diversion of dumped product from these markets to the "softer" Australian market.

It also denies Australia negotiating leverage in extracting greater access to other markets in the context of both bilateral and multilateral trade negotiations in particular in circumstances where recourse to antidumping rights are increasing in our trading partners, including China and India.

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- 2) Australia should join with other like minded countries to ensure consistency in approach regarding application of anti-dumping and countervailing measures aimed at promoting a “united front” against the onslaught of dumped product.

This would also assist the development of a “world price” for affected goods which can be used to benchmark prices in anti-dumping cases and in calculating duties in preference to a multiplicity of methods for calculating dumping margins.

- 3) The AWU is committed to free and fair trade. Both free and fair trade means all exporters - both developed and developing - should be abiding by both WTO and ILO obligations in order to avoid promoting anti-competitive trade and exploitative labour practices.

Australia’s anti-dumping and countervailing system should be based upon an assessment of both the trade and labour practices of export subsidising countries.

- 4) Australia should be entitled to implement (and defend against) anti-dumping action based upon a complete assessment of triple bottom line impacts in particular with a focus on benefits to regional Australia.

Because of deficiencies in local laws, (see above) Australia is unable to account for the full impact of dumping by other countries claiming in addition to their economic impacts, regional/social and environmental justification for subsidised prices (which may also serve to limit or prevents access for Australian producers).

Australia however still needs to defend the triple bottom line benefits in our own country from the anti-dumping system!

In other words, protection and the likelihood of proving injury are both reduced because not all subsidies are assessed. Therefore, the total level of subsidisation is not accounted for in calculations of anti-dumping duties on subsidised imports.

The corrosive impacts of dumping on regional manufacturing communities must be prevented directly through the application of anti-dumping duties and countervail measures rather than being tacitly accepted through ‘after-the-fact’ structural adjustment which effectively “internalizes” the costs of dumping imposed on Australia.

The sustainability of regional communities is already constrained as a result of a lack of water, proximity and access to services and population aging. The competitiveness of these communities need not be further constrained by an incomplete response to predatory dumping practices.

- 5) Australian manufacturing unions should be entitled to join anti-dumping cases along with local manufacturers similar to the rights of US unions to join petitions to the International Trade Commission.



The AWU supports the ability of affected unions to join with industry in petitioning Government for the investigation of dumping claims administered by the Australian Customs and Border Protection Service.

Manufacturing unions are a major affected stakeholder in dumping cases and have a legitimate right to be an initiating party to dumping investigations. Unions are well placed to offer their own evidence and expertise to facilitate hearings and inquiries.

- 6) The increase in the exchange rate should be accounted for in price differentials between locally produced goods and subsidised imports.

Appreciation in the exchange rate as consequence of the mining boom is resulting in the “two-speed” economy which is disadvantaging the competitive of local manufacturing. Through no fault of their own, local manufacturers are contending with both a higher dollar in addition to dumping eroding competitiveness further.

In these instances, it is legitimate for the Government to close the gap between the appreciation in the exchange rate and the “normal value” of the manufactured goods through a stabilization fund supported by the proceeds of the mining boom.

This exchange rate related benefit would be in addition to addressing material injury resulting from subsidised imports but be transparent, separate and distinct.

At a time when our own industry is still recovering from the GFC and when other nations either artificially maintain a low exchange rate (China) or are actively manipulating competitive devaluations (Korea, Japan and Brazil) it is appropriate for Australia to resort to compensatory measures aimed at maintaining competitiveness of most affected local industry without manipulating our own exchange rate.

<sup>xi</sup> News relating to resolutions, <http://www.awu.net.au/84944.html>

<sup>xii</sup> Paul Howes, Dumping, subsidies and the Australian economy, 2 March 2011  
[http://www.awu.net.au/228726\\_2.html?HJA|228726|](http://www.awu.net.au/228726_2.html?HJA|228726|)

<sup>xiii</sup> [http://www.awu.net.au/335625\\_5.html](http://www.awu.net.au/335625_5.html)

<sup>xiv</sup> **Qld workers sign up to campaign against free trade cheats**, 20 March 2011  
[http://www.awu.net.au/723396\\_5.html?H|0|723396|723396\\_52](http://www.awu.net.au/723396_5.html?H|0|723396|723396_52)

<sup>xv</sup> **THE CHINA SYNDROME:  
HOW SUBSIDIES AND GOVERNMENT INTERVENTION CREATED THE WORLD'S LARGEST  
STEEL INDUSTRY**, *Prepared for:* The American Iron & Steel Institute, The Steel Manufacturers  
Association, The Specialty Steel Industry of North America, The Committee on Pipe and Tube  
Imports, [http://www.ssina.com/news/releases/pdf\\_releases/chinese\\_steel\\_subsidies\\_paper.pdf](http://www.ssina.com/news/releases/pdf_releases/chinese_steel_subsidies_paper.pdf)

<sup>xvi</sup> As above, pp2-3

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<sup>xvii</sup> Christian Jack, Prime Minister's Australia-Asia Endeavour Award Scholar from the University of Queensland, quoted in Australia-China Connections, 2 December 2010

<sup>xviii</sup> <http://www.customs.gov.au/webdata/resources/files/SUB10-CFMEUAWUandAMWU.pdf>

<sup>xix</sup> Eg In the United States, specific provision is made for unions to initiate or join in petitions under Title VII of the US Tariff Act 1930 and Sections 301 and 201 of the Trade Act 1974.

<sup>xx</sup> (See DFAT submission to PC inquiry for details). DFAT, 'Submission', Productivity Commission Inquiry into Australia's Anti-Dumping and Countervailing System, available online at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0010/90199/sub022.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0010/90199/sub022.pdf). Refer to sections 3.11-3.15 in particular