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By email

Dear Director

Review of AD/CV measures - aluminium road wheels from China

Statement of Essential Facts No 263

We are instructed to make the following comments on behalf of the Government of China (“the GOC”) in relation to the views expressed by the Anti-Dumping Commission (“the Commission”) in the abovementioned Statement of Essential Facts (“SEF 263”), published on the public record in this matter on 30 July 2015.

The GOC and other interested parties have been given only 20 days to comment on views of the Commission where those views have been under consideration and preparation by the Commission since the initiation of this review 11 months ago. In particular, the failure to alert the relevant Chinese exporters to the margin and subsidy outcomes proposed by the Commission and to some of the information obtained and used by the Commission to work out these outcomes until the publication of the SEF is of extreme concern to the GOC.

SEF 263 improperly interprets and improperly applies those provisions of the *Anti-Dumping Agreement* (“ADA”) and of the *Subsidies and Countervailing Measures Agreement* (“SCMA”) that the Commission believes are relevant to its considerations. It proposes to maintain Australia’s discriminatory treatment against the importation of aluminium road wheels (“ARW”) from China, and more generally against the Chinese primary aluminium and aluminium alloy industries, in contravention of China’s rights under the WTO Agreements and under Australian law.

In relation to its consideration of whether a “particular market situation” exists in the Chinese markets such that domestic sales of ARW do not permit a proper comparison with export sales, SEF 263 improperly interprets the meaning and requirements of Article 2.2 of the ADA and mischaracterises GOC policies, regulations and other documents. The GOC rejects the proposition that it cannot express and implement the economic, social and environmental aspirations of the Chinese people in its governance of China without being thought of as “distorting” price determination in its domestic markets.

The information submitted to the Commission by the GOC leaves no doubt that China’s aluminium, aluminium alloy and ARW markets are highly competitive. The GOC does not dictate or interfere with price discovery in the markets concerned.

Domestic sale prices of ARW are appropriate for normal value determination, and cannot be discarded. Further, aluminium and aluminium alloy cost surrogation in the calculation of normal values for Chinese ARW exporters is not available to the Commission when the financial records of

the exporters concerned simply record the actual costs incurred in their production of ARWs, and are fully audited to that effect. Further again, the surrogated amount that is proposed by SEF 263 is illogical and is not itself market-based. Market price indicators for aluminium in the prime alternative exchange (the London Metal Exchange) were lower during the review period to those quoted on the major exchange operating in China (the Shanghai Futures Exchange). The putative findings arrived at in SEF 263 are accordingly illogical. They are themselves a distortion of the aluminium market price information available to the Commission in respect of the review period, and the aluminium cost calculation and its methodology presents as if it were in the nature of “adverse facts available” rather than being based on “positive evidence”.

The blanket treatment of Chinese State-invested enterprises as “public bodies” that is again proposed in this SEF – indeed the description of any of these commercial enterprises as a “public body” – ignores the laws and the facts that apply to their governance and operations. No evidence of the vesting or exercise of governmental authority by Chinese State-invested enterprises is apparent in the evidence that has been presented by the GOC. To the contrary, China has strongly and carefully demarcated government functions from commercial activities, and has done so in a fully transparent and rules-based manner.

The GOC has been fully cooperative and comprehensive in its responses to the Commission’s inquiries, however now finds that the information and the submissions that it has provided have not been properly accepted or considered. The recurrent theme running through the SEF is that the GOC’s information and submissions are to be resisted. By contrast, it appears to the GOC that the slightest assumption, and any second and third hand reportage, submitted by the Australian industry or by interests associated with the Australian industry has been accepted by the Commission either without question or only with the application of illogical reasoning. The GOC also finds that SEF 263 arrives at conclusions on the basis of undisclosed and untested opinions from persons whose expertise and loyalties are unknown.

The GOC disagrees with the findings of SEF 263. We are instructed to advise that the GOC reserves its rights, entirely and in all jurisdictions, in relation to any decision that may now be made by the Minister based on recommendations flowing from SEF 263.

Yours sincerely



Daniel Moulis
Principal

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