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## Public File

### Continuation 617 – Steel pallet racking exported from the People’s Republic of China, and Malaysia

#### 1. Introduction

Dematic Pty Limited (**Dematic**) is an Australian manufacturer of adjustable steel pallet racking (**pallet racking and/or the goods**), and was the applicant company that requested the above-noted continuation inquiry (**CON 617**) – refer ADN No. 2023/021. Dematic makes the following submission in relation to the recent notification by the Anti-Dumping Commission (**the Commission**) that it does not intend to determine new variable factors as part of the inquiry.<sup>1</sup>

#### 2. Favourable Malaysian normal value adjustments should be disallowed

The Commission’s recently published ADN states that whilst it is in receipt of certain exporter questionnaire response, it nonetheless does not intend to determine new variable factors for Chinese and Malaysian exporters. Specifically, the Commission explains in the ADN that:<sup>2</sup>

*The commission does not intend to determine new variable factors in this case because:*

- *the 3 entities that provided REQs within the legislated period, combined, represent less than 10% of imports of the goods by value during the inquiry period, and*
- *Schaefer Malaysia provided its REQ 26 days outside the legislated period (which included an extension of 19 days).*

The Commission’s REQ Status file note of 14 June 2023 confirms the identity of these exporters, being:

- the Malaysian exporter EMT Systems Sdn Bhd;
- the Malaysian exporter Eonmetall Systems Sdn Bhd; and
- the Chinese exporter Zhejiang ShangHong Shelf Co., Ltd / Yuhua Trading (HK) Limited.

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<sup>1</sup> Refer ADN 2023/043.

<sup>2</sup> Ibid.

None of the above were considered cooperative or residual exporters in INV 441, and thus the effect of the Commission's intention not to determine new variable factors is such that these respondent exporters will not receive their own *ad valorem* dumping margins.

In relation to the high-volume Malaysia exporters, however, Dematic submits that *ad valorem* variable factors should be amended to account for the lack of cooperation provided during the current inquiry.

For the reasons outlined in its 18 July 2023 submission, Dematic submits that [**confidential text deleted** – *previous submission representations*]. This position is supported by Article 6.8 of the *Anti-Dumping Agreement*<sup>3</sup> which provides that preliminary and final determinations (affirmative or negative) may be made on the facts available if an interested party, *inter alia*, does not provide the necessary information within a reasonable period. It is also supported by the Commission's original findings in INV 441.

[**confidential text deleted** – *Dematic's commercially sensitive assessment of Malaysian exporters, and implications for the continuation inquiry*].

### 3. The combination duty method should now be considered

In its early submission to INV 441, Dematic petitioned that the most effective (and preferred) form of measure to be applied to the dumped exports from China and Malaysia was the combination form of measures.<sup>4</sup> This method would ensure that the level of measures applied would reflect the variable factors found during INV 441, and would not be readily circumvented.<sup>5</sup>

In response to Statement of Essential Facts No. 441 in which the Commission proposed that it would recommend the *ad valorem* form of measure, Dematic disagreed and argued that:<sup>6</sup>

*The Commission does recognise the potential disadvantage of the ad valorem method. That is, the ability of exporters to reduce export prices to abrogate the intended effects of the measures.*

*Dematic is concerned that, in light of the size of the dumping margins determined for exporters in China, subject exporters will reduce export prices to absorb the impact of the anti-dumping measure. The likelihood of absorption of duties is further increased by the existence of related exporter and importer entities from both China and Malaysia.*

*Dematic urges the Commission to exercise caution in recommending measures be applied on an ad valorem basis. The Commission's own commentary in relation to the combination method confirms that this form "is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market." The Commission then further states that this form of measure is "less suitable" where there are numerous models and types of goods.*

*Dematic does not wish to see the Commission forgo the intended effect of the measures that can be achieved via the combination form of measures, in preference for the more easily-administered ad valorem measures that can result in the exporter reducing export prices to avoid the intended effect of the measures.*

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<sup>3</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

<sup>4</sup> INV 441, folio no. 30.

<sup>5</sup> *Ibid.*

<sup>6</sup> Dematic's response to Statement of Essential Facts No. 441, folio no. 82, p. 5.

The Commission nonetheless recommended, and the Minister imposed, the *ad valorem* form of measure for China and Malaysia at the conclusion of INV 441, citing its suitability given the variability of prices across beam, upright and brace components of steel pallet racking.<sup>7</sup>

Dematic is reticent to speculate but seeks to emphasise that circumvention of the measures may have transpired since originally imposed given the substantial number of Australian Border Force (**ABF**) Compliance activities that have identified trade remedy revenue understatements in relation to steel pallet racking. Between October 2020 and the Autumn of 2022, the ABF disclosed on six occasions in the *ABF Goods Compliance Update* that steel pallet racking was the focus of targeted trade remedy compliance and verification activities. The prevalence of this focus on steel pallet racking was second only to aluminium extrusions.<sup>8</sup>

The Commission's *Guidelines on the Application of Forms of Dumping Duty* (published November 2013) (**the Guidelines**) recognises the circumvention implications in the application of the *ad valorem* method. In relevant part:<sup>9</sup>

*Another potential disadvantage of the ad valorem duty method stems from the fact that where prices are lowered the importer pays less duty. In some cases this may lead to circumvention because the export price may be deliberately lowered in order to minimise the effects of the duty. However, any artificial lowering of export prices can be detected through monitoring of the measures and be subject to an anti-circumvention inquiry.*

*It should be noted, however, that the Commission examined the incidence of such behaviour in countries commonly using an ad valorem duty. The Commission found that there had only been a limited number of reviews to examine circumvention behaviours after the imposition of an ad valorem duty i.e. price manipulation under ad valorem duties is not a widespread problem.*

The Guidelines are the foundation on which the Commission determines the form of duties recommended to the Minister. They are, however, dated in their cited instances/evidence of circumvention when the *ad valorem* measures is applied. Dematic submits that the ABF's compliance activities highlight potential circumvention (the many instances of which were not foreseen in the Guidelines), and that the Commission should therefore move to impose the combination form of measure.

In further support of this, the Commission has recently amended the form of measure applicable to a certain Chinese exporter of *Certain Utility Scale Wind Towers* (**wind towers**). In the original wind towers investigation<sup>10</sup> and the subsequent first continuation inquiry,<sup>11</sup> the Commission imposed the *ad valorem* form of measures against Chinese and Korean exports on the basis that there was substantial variation in the prices of wind towers exported to Australia, and that this was primarily a result of differences in the tower specifications. The Commission concluded that these specifications changed from project to project, which meant there was a high variability in prices over time.<sup>12</sup>

In a later wind towers Accelerated Review (No. 603), the Commission amended the form of measure for the subject exporter to a floor price. The subject exporter had not exported the goods to Australia during the inquiry period – the Commission therefore concluded that the floor price duty method was the most suitable method of collecting interim dumping duties. The floor price was set equal to the exporter's normal value.<sup>13</sup>

Notwithstanding the volume of export trade by the Chinese applicant exporter to Accelerated Review No. 603, the Commission determined that a change to the form of measure was appropriate for wind tower subject goods/like goods

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<sup>7</sup> Report No. 441, p. 91.

<sup>8</sup> Refer Dematic's application for the continuation of measures, p. 7-9.

<sup>9</sup> Guidelines on the Application of Forms of Dumping Duty, November 2013, p. 14.

<sup>10</sup> Investigation No. 221: Wind towers exported from China and South Korea.

<sup>11</sup> Continuation No. 487: Wind towers exported from China and Korea.

<sup>12</sup> Continuation No. 487: Wind towers exported from China and Korea. Final Report, p. 53.

<sup>13</sup> Accelerated Review No. 603: Wind towers exported from China. Refer p. 23.

that exhibit high variability in pricing. As earlier concluded by the Commission, pallet racking exhibits this same variability.

Dematic therefore submits that the Commission should conclude similar for pallet racking, and impose floor prices under the combination duty method. Calculating contemporary floor prices could be achieved by indexing forward the ascertained normal values from INV 441 by reference to the percentage price movement of an appropriate hot-rolled coil steel and galvanised steel price benchmark, these being the main raw material feed components for the goods.<sup>14</sup>

Should you have any queries in relation to this submission, please don't hesitate to contact either myself on the above-signed, or Dematic's trade advisor Mr Chad Uphill on 0412 377 603.

Yours sincerely,



**Alan Lamb**  
Company Secretary  
Dematic Pty Ltd

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<sup>14</sup> The Commission has adopted this form of methodology in other steel-related trade remedy inquiries. See, for example, Review No. 521 (galvanized steel) and the determination of variable factors for Indian and Malaysian exporters.