

17 April 2024

The Director - Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

via e-mail

Re: SEF for Case 632 - Railway wheels from China, France - Continuation – Dumping

Dear Director,

Thank you for publishing the Statement of Essential Facts for Case 632. We would like to take the opportunity to respond to the SEF, as we are concerned with the proposed recommendations and the methodology that facilitated the proposal.

That Dumping has occurred

We are concerned with the comments made in the SEF in establishing that Dumping is occurring, and that material injury has or will reoccur.

Of particular note is the comment at 7.1, *“Exports from China would be dumped because the goods were dumped during the original investigation and were dumped during the inquiry period”*.

48 hours before the SEF was published, the WTO Panel for DS603 tabled its report¹ finding that the ADC had violated various articles of the Anti-Dumping Agreement, and recommending Australia bring measures into conformity. Respectfully, to issue a report days later that Case 632 is justified to continue as “the goods were dumped during the original investigation” is to disregard the active review and findings from the WTO dispute settlement panel. For a decision that Dumping will lead to continuation or recurrence of Dumping – it should first be known that Dumping had occurred in the first place.

The calculations

The SEF has taken a similar approach to the original case, insofar as discounting major costs from China and replacing them with a 3rd party country. We acknowledge there has more research done into pricing in this review case, however we repeat our concerns around the original case not having properly established dumping, the WTO dispute resolution panel disagreeing with Australia’s process in establishing dumping on rail wheels, and the use of costs that are not being experienced by the actual party under review.

The domestic sales / Normal Value of the goods has been discounted due to 269TAA, based on information in a verification report that is not currently available. The subsequent calculations appear to manufacture a case that dumping exists, and that multiple companies are losing money on the supply of goods across years. We take issue with the immediate discount of MIS to MTM billet

¹ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/603R.pdf&Open=True>

supply being disregarded from the calculation as a not 'arms length' transaction, and any justification only being referenced in a Confidential Appendix without summary.

In the calculation of production or manufacture costs, there is no allowance in the legislation to disregard MTM's actual cost of inputs to production and pick out inputs to re-calculate at a rate that the ADC prefers for an outcome. The price of inputs being used are not prices that MTM are experiencing. There is, however, an obligation that the cost of production is in the country of export² which is not being met by introducing input prices from Türkiye.

Respectfully, the conclusion reached in relation to the steel billet inputs into the rail wheels continues to be at odds with Australia's obligations under the WTO Anti-Dumping Agreement, and the Customs Act provisions. The ADC have taken a stark approach of ruling out input materials purely on the basis of "is this a related party transaction?" or "do these costs reasonably reflect competitive market costs?" - rather than the required assessment of "do the costs reflected in the exporters' records reasonably reflect the costs associated with the production and sale of the goods in question".

The assessment needs be on the basis of whether the figures under review **reflect MTM's cost of production**, not whether the figures under review reflect a global standard acceptable cost of production or competitive cost of production from other markets. The disregard of MTM's actual costs of production is a departure from the requirements of S269TAC and WTO Anti-Dumping Agreement article 2.2.1.1. Both provisions specifically call out the requirement of an analysis of costs in the country of origin/export, or a reference to the price paid or to be paid to produce within the country of origin. The ADC have stated at B3.1 that they are satisfied MTM records are kept in accordance with GAAP, which allows MTM's costs to be used in line with Article 2.2.1.1.

The remainder non-confidential items are referencing evidence in a verification report that is not yet available for review.

Australian industry vulnerability

We are concerned at the content of Chapter 5, in the review on the state of the Australian industry.

Energy prices have effectively followed (inversely) the same map of profitability of Comsteel as a producer in Australia³, suggesting harm is being experienced due to the excessive energy costs in Australia – with New South Wales being consistently one of the highest cost-base regions to operate within Australia in this regard. This would also explain Comsteel's decision to mothball their own electric arc furnace, albeit a statement was made in the verification report that they will continue to manufacture in Australia without the furnace⁴.

We are concerned that this was not discussed in Chapter 5 when reviewing the condition of the industry. The energy costs (which would be considerable, when running a furnace) were not considered in regards to the portion of injury or harm to Comsteel's profitability and ROI that their cost of business would have rather than the assigned harm from foreign imports.

Similarly, the decision to stop forging in Australia and the future impact that would have on reduced costs, increased profitability, quality, or any other metric would be significant – and was not at all

² 269TAC (2)(c)(i)

³ <https://www.aer.gov.au/system/files/2024-01/Q4%202023%20Wholesale%20markets%20quarterly%20report.pdf>

⁴ https://www.industry.gov.au/sites/default/files/adc/public-record/2024-01/632_-20_-report_-_australian_industry_-_comsteel_-_australian_industry_verification_report.pdf

referenced in the SEF or compared to importations. We respect that there is a review period, but when forecasting the harm of future imports, we believe this is a significant change that Australian industry is undertaking and should necessarily be included in this review rather than years later in another continuation review.

Conclusion

We assume that the ADC has been an active participant in the WTO's DS603 panel review process, however, do not see the outcomes being applied in this directly relevant case. The SEF also appears protectionist on the Australian industry review, not having gone into a comprehensive review for other possible reasons for harm and only focusing on the importations.

We appreciate your timely publication of the SEF, but hold a contrary view it's findings and hold that dumping has not and is not occurring in reflection of the WTO DS603 findings.