

EMAIL RECEIVED ON 9 JUNE 2018 FROM PERCIVAL LEGAL,
CONSULTANTS FOR MAANSHAN IRON AND STEEL CO LTD

Non-Confidential

Hi Mick,

Thank you for your email and our telephone discussion regarding the issue raised below. As noted in your email, Masteel has advised in its response to the exporter questionnaire that "Masteel does not sell *"like goods"* on the Chinese domestic market, and that the wheels it does sell do not have characteristics that *"closely"* resemble the goods under consideration". This issue also has been addressed in the submission by CCCME in relation to Comsteel's application and the Commission's acceptance of that application.

In the application, the goods under consideration are described as;

"Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys (railway wheels).

Axles and other components are excluded from the goods coverage."

Section 269TB(1) of the *Customs Act 1901* stipulates that when an application for the imposition of antidumping duties may be filed and your attention is drawn to paragraph (a) of that subsection. It directs attention to what has been exported to Australia and what is likely to be exported to Australia. It is self-evident from Comsteel's application that what has been exported to Australia and what is likely to be exported to Australia are railway wheels that meet the four Australian end-users' specifications for their railway wheels requirements. Nothing else. They are the only goods that may have caused or could cause material injury.

A railway wheel that meets the above generic description cannot of itself cause material injury because it would not be acceptable to the four end-users in Australia unless they met those end-users specifications. That is, railway wheels meeting the above generic description but not meeting Australian end-user requirements could not have caused material injury to Comsteel because they would not be acceptable to the Australian end-users and, in any event, no such railway wheels have been exported from China to those Australian end-users. If such railway wheels that do not meet the identified Australian end-users requirements in Comsteel's application, please provide details.

Failure to meet those specifications, as we discussed, could result in the wheels failing, which, given the number of cars in an iron ore wagon train, would cause significant damage and loss. This has not been addressed in Comsteel's application and its description of the *"goods under consideration"*. This is a major failing and defect in the application and query why it was not addressed by the Commission in its consideration of the application.

Further, Comsteel's application identifies that it produces and supplies *"identical goods"* to the four end-users as those exported from China to those four end-users and to no one else. They are the *"like goods"* for the Australian industry and there is no justification to expand the range of goods for the *"Australian industry producing like goods"* beyond *"identical goods"*.

Section 269TC(4) of the *Customs Act 1901* requires that an application for the imposition of antidumping measures must contain information that the form requests. In this regard section A-3-1 is relevant, which requires information that fully describes the imported product(s) the subject of the application including physical, technical or other properties. Comsteel's application meets this requirement in specifying the railway wheels actually exported from China and they are the "*goods under consideration*" and not some generic description of railway wheels that presumably could be used for a multitude of purposes by a variety of end-users who have not been identified as recipients of railway wheels from either the Australian industry or by imports.

This also is relevant for the material injury and causation analysis in that only the goods meeting the Australian end-users' specifications constitute the Australian market for the "*goods under consideration*". There is no other market for such wheels in Australia and, arguably, each end-user is a separate market given its individual specifications for the railway wheels it requires for its iron ore business in the Pilbarra. This is evident from Comsteel's application.

In other words, the application by Comsteel is fundamentally flawed in describing the "*goods under consideration*" by some generic description as opposed to what has been actually exported to Australia for the Australian market for such goods. Why did the Commission accept such a flawed application? Further the description of the "*goods under description*" is a problem resulting from the acceptance of Comsteel's application despite its flaws, including its description of the "*goods under consideration*". The question is how does the Commission propose to remedy this problem. The Commission's urgent advice on this is requested.

Masteel does not manufacture or sell "*identical*" railway wheels in China to those exported to Australia. It also does not manufacture or sell railway wheels in China that have "*characteristics closely resembling*" those exported to Australia. If it did, then those wheels could be supplied to the Australian end-users and obviously that is not the case and could not be the case. Accordingly, whatever characteristics the railway wheels manufactured and supplied to the Chinese domestic market by Masteel may have, they do not have "*characteristics that closely resemble*" to those exported to Australian end-users because, if they did, then they could be exported to, and be accepted by, those end-users, which clearly is not the case.

Kind regards

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