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Non-Confidential

By Email

Mr Dale Seymour
Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

Dear Commissioner,

RE: Dumping investigation into certain railway wheels exported from the People's Republic of China

As you know, I act for Maanshan Iron and Steel Co., Ltd (**Masteel**), amongst others, in relation to this investigation.

I refer to the Preliminary Affirmative Determination (**PAD**) that you made on 18 June 2018 in relation to the above-mentioned investigation.

I have several concerns with the PAD. These are set out below.

1. Section 269TD (1) of the Customs Act 1901

As you no doubt would be aware, to make a PAD you must be satisfied that *“there appears to be reasonable grounds for the publication of a dumping duty notice”*.

The question, therefore, is at the time of making the PAD were there *“reasonable grounds for the publication of a dumping duty notice”* of which you could be satisfied. Either there were grounds and those grounds were reasonable on which to base your satisfaction or there were not. If the latter is the case, then the publication of the PAD cannot be justified. It is submitted that there were no *“reasonable grounds”* on which you could have been satisfied for the publication of the PAD.

For there to be grounds for the publication of a dumping duty notice, there must be a finding of the goods under consideration being exported to Australia at dumped prices and such dumped prices were causing material injury to an Australian industry producing like goods. And, of course, any such *“grounds”* must be *“reasonable”*, absent which there is no justification for making a preliminary affirmative determination.

The first issue is the question of *“dumping”*.

The calculation of a dumping margin in the PAD has apparently been based on a finding that there exists a “*particular market situation*” in the Chinese steel industry. Whether that is or is not the case and given that it is based on historical findings that may or may not still apply and may not apply to this particular industry, it is, in any event, an irrelevant consideration. No explanation is provided or other justification why this is relevant or how such historical information or findings, assuming that they are sustainable, have any relevance to this investigation. You have not explained this in the PAD.

As you would no doubt be aware from Masteel’s response to the exporter questionnaire and, for that matter, its website, Masteel produces its own steel for its own use. There is no relevant “*market*” for Masteel in relation to its steel because it produces its own steel. Consequently, a “*particular market situation*” can have no relevance to Masteel’s production of steel for its own railway wheels. This seems to have escaped you.

Further, Masteel produces its own steel requirements from raw materials it sources primarily from overseas sources such as Australia. Is it the Commission’s or your contention that the Government of China through its policies and regulations influences/determines the prices of raw materials sourced from other countries so that those prices are not market prices, including raw materials from Australia?

This is neither examined nor discussed in the PAD. In other words, you have not considered this in making the PAD. Why?

2. Preventing Injury

As you would be aware, the publication of a preliminary affirmative determination of itself has no consequence. However, the publication of such a determination does permit the taking of securities for any interim dumping duties that may become payable if antidumping measures are imposed where you are “*satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues*”.

This raises the additional question of what “*injury*” could such securities prevent while the investigation continues? This is not addressed in the PAD. That is, specifically, what injury could conceivably be prevented and how by the taking of securities? Why have you not addressed this in the PAD?

As you note in the PAD, the injury incurred by the Australian industry was the apparent loss of contracts for the supply of the goods under consideration being awarded to parties other than the Australian industry. Consequently, how would or could the imposition of securities prevent that injury from occurring since it has already occurred? This is not explained in the PAD. Why did you not consider this?

It could be contended that the taking of securities would prevent future tenders for the supply of the bespoke railway wheels to any of the four end-users being awarded to overseas suppliers based on dumped prices.

This assumes that contracts for the supply of railway wheels for their Pilbara operations are awarded by the four end-users in question are or were based solely or primarily on price. The question is whether this in fact the case. If not, then the taking of securities, and for that matter the imposition of antidumping measures, will not prevent any injury. Why has this not been addressed by you in the PAD?

Rather, it simply will result, if antidumping measures are imposed, in an impost on the Australian end-user industries and their customers affecting their competitiveness, both domestically and globally, and providing additional revenue for the Federal Government. Is this the object of the antidumping regime? Is this in Australia's national/public interest?

In this context, it is to be noted that the PAD does not provide any detail whether and, if so, when any tenders would be let and when they would be awarded for the supply of the bespoke railway wheels that they require and on what criteria. This would seem fundamental to your being satisfied that the taking of securities was "*necessary*" to prevent injury from occurring while the investigation continued.

It also is important to note these are bespoke railway wheels that meet the exacting requirements of the four Australian end-users in the Pilbara and are not commodity products purchased "*off the shelf*". That is, they are supplied under contracts with the end-users awarded on the basis of the criteria set by the end-users. For example, does the Australian Federal Government purchase capital items, such as fighter jets, warship and submarines, "*off the shelf*" based solely or primarily on price? Why does the Commission think that Australian companies would not to do the same and take into account a variety of criteria in making a purchasing decision? It does not seem logical or commercially sensible.

3. Conclusion

In light of the above, there is no logical, legal or economic justification for the PAD nor the imposition of any securities.

If you are of a different view, and the PAD itself does itself justify it being made and the imposition of securities, then I would welcome you detailed reasons for making it by **cob 6 July 2018**, failing which I will assume that you agree that there is no justification for the making of the PAD nor the imposition of securities.

Please note that we are still reviewing the dumping margin calculations and may make further submissions on such calculations.

This memo may be placed on the public file. Please let me know if you have any questions.

Kind regards



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cc. Senator the Honourable Zed Seselja
Assistant Minister for Science, Jobs and Innovation

Senator the Honourable Kim Carr
Shadow Assistant Minister for Innovation, Industry Science and Research