

16 August 2018

Mr Michael Kenna
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Public File

Dear Mr Kenna

Re: Investigation No. 466 - Certain Railway Wheels exported from France and the People's Republic of China – Submission by CCCME of 24 July 2018

I. Background

I refer to the submission on behalf of the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ("CCCME") of 24 July 2018.

The submission includes a number of contentions that are incorrect and/or unsubstantiated.

II. Material injury from dumped exports

It is submitted on behalf of CCCME that the "claimed injury" as experienced by Commonwealth Steel Company Pty Ltd ("Comsteel") during 2017 "was unlikely caused by the allegedly dumped imports" and not supported by any evidence.

Comsteel rejects the assertions of CCCME. Comsteel has provided the Anti-Dumping Commission ("the Commission") with supporting information evidencing material injury sustained during the investigation period. The CCCME claims that the material injury experienced by the industry cannot be attributed to the dumped exports from China and France are not supported by the available evidence – there being no other material cause of injury (other than lost sales volumes to the dumped exports and price-effect injury from the dumping) that was apparent throughout the investigation period.

It is noted that CCCME contends that the imposition of measures are not in the 'national public interest'. Comsteel is a long-established manufacturer of the goods in Australia and is rated as a high quality railway wheels internationally. The potential loss of Australian manufacture of goods that are recognized internationally as of high quality combined with the local investment infrastructure and employment to offshore supply, would not be in the national interest.

III. Preliminary Affirmative Determination

CCCME disputes the Commissioner's decision to publish a Preliminary Affirmative Determination ("PAD") and impose provisional measures. It is further challenged whether the Commissioner can be "satisfied" as to whether the necessary legislative pre-conditions have been met for publishing a PAD.

Comsteel supports the Commissioner's decision to publish a PAD. Whereas CCCME may contend that the publication of the PAD will not prevent further material injury from occurring, this is not the case. CCCME is not fully apprised of the contractual arrangements between Comsteel and its customers on the Australian market and it cannot be assumed that there are no future contractual discussions following on from the date immediately following the publication of the PAD.

The PAD and imposition of provisional measures are justified to prevent further injury occurring, including any new contractual negotiations.

CCCME also argues that the Commissioner's PAD is flawed as it relies upon the Commissioner's preliminary finding that a particular market situation for iron ore railway wheels exists in China. The Commissioner's preliminary view is that competitive market conditions for raw material input steel have been materially distorted by the policies and actions of the Government of China ("GOC"). The Commissioner's preliminary finding is based upon "*previous findings of the Commission in relation to particular market situation determinations, competitive market costs and countervailable subsidy determinations for Chinese steel product*". CCCME continues its criticism of the Commissioner and states:

"The relevance of previous findings is, of course, questionable at best and no explanation or evidence has been provided that previous findings are relevant to this investigation. It is unclear how you [i.e. the Commissioner] could be "preliminary satisfied" based on historical information that may or may not be current and may or may not apply to this investigation. This has not been addressed by you in the PAD."

Contrary to CCCME's assertions, PAD 466 (refer ADN 2018/99) details the Commissioner's reliance upon earlier investigation outcomes into the Chinese steel industry involving the following reports:

- Report No. 384 – alloy round steel bar (anti-dumping investigation);
- Report No. 331 – rod in coils (subsidy investigation);
- Report No. 322 – steel reinforcing bar (subsidy investigation);
- Report No. 301 – rod in coils (anti-dumping investigation);
- Report No. 300 – steel reinforcing bar (anti-dumping investigation).

The above Reports identified raw material inputs that had been the subject of interference by the GOC and distorted domestic prevailing domestic prices. The so-called currency of these earlier findings has been reinforced by the recent Full Bench of the Federal Court decision involving *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC 20* that affirmed the Commissioner's particular market situation finding involving raw material hot rolled coil used in the production of hollow structural sections exported from China. A further reinforcement of the Commissioner's preliminary finding in PAD 466 can be found in the more recent judgment of the Federal Court involving grinding balls exported from China¹ where the Parliamentary Secretary Assisting the Minister for Industry, Innovation and Science concluded that the domestic market in China for grinding balls was also subject to a particular market situation (noting that grinding balls are manufactured from grinding bar that is formed from steel billet – the initial steel-input product used in the manufacture of iron ore railway wheels).

The Commissioner's preliminary PAD finding is therefore well-supported by recent decisions, including that of the Federal Court of Australia.

IV. Further conjecture on injury and causation

The CCCME submission seeks to argue that the injury from dumping cannot be caused by exports from China as imports from France had commenced in 2017 – suggesting a shift in the source of dumped and injurious exports. However, this line of argument conveniently ignores the fact that Chinese exports accounted for the greatest proportion of exports to Australia during 2017. CCCME then attacks Comsteel's position as the sole Australian manufacturer of like goods that has "maintained a monopoly position" including the maintenance of "a high price" to "exploit the profit and profitability of the end users". The profit and profitability of Comsteel for the goods under consideration have been significantly eroded across the injury period and do not reflect the position as portrayed by CCCME.

Comsteel notes the comments by CCCME about exports of the goods to China in 2015 and 2016. But for the identified export sales, Comsteel's production and sales to China in these years would

¹ Refer *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science (No 2) [2018] FCA 1135, NSD 952 of 2017, 3 August 2018.*

have supported depressed margins in both of 2015 and 2016 had the export volume not been manufactured in Australia by Comsteel.

CCCME again reverts to a discussion accusing Comsteel of monopolistic behavior and not being competitive in a global market. Comsteel rejects the CCCME contentions as they conveniently ignore the reality that the export prices at which Comsteel has been competing with during 2017 are at dumped (and subsidized) levels and have caused injury to Comsteel. The CCCME submission ventures into a speculative discussion about government regulation, power costs, quality and performance standards to suggest that these factors may be the cause of apparently higher production costs and prices in Australia versus China, without providing any supporting evidence to the speculative comments.

Comsteel considers that it is a supplier of high quality, competitively-priced goods to the Australian industry. The quality of the process, systems, equipment and technology used to manufacture the goods in Australia has been validated by multiple external independent agencies, including but not limited Association of American Railways, RISAS (British, including EN accreditation) and ISO9001. Prior to the commencement of the dumping from China and France in 2017, Comsteel was competitive with comparably-priced exports from Valdunes S.A. of France (prior to its takeover by Masteel). CCCME's comments therefore do not withstand scrutiny.

Comsteel notes the acknowledgment by CCCME that Comsteel's sales decreased in 2017 and this impacted profit and profitability. CCCME's comments, however, that the injury experienced by Comsteel cannot be linked to the dumping and subsidization from China is not supported by the increased volumes from China in the 2017 year.

In terms of the materiality of the injury sustained by Comsteel, CCCME alleges that Comsteel has not evidenced how the injury is "extensive and material". Comsteel has identified in its application the decline in the volume of sales of the goods. Figure A-9.1 in Comsteel's application highlights the widening of the gap between Comsteel's domestic sales (falling sharply during 2017) and the expanding market for maintenance wheels. On the basis of volume-effect injury in 2017 the loss of all but a one-third share of the Rio Tinto Iron Ore contract to supply is significant.

In 2012, a Ministerial Direction on material injury was issued (refer ADN No. 2012/24). The Ministerial Direction addresses injury sustained by an industry in an expanding market, namely:

"I note that anti-dumping or countervailing action is possible in cases where an industry has been expanding its market rapidly, and dumping or subsidisation has merely slowed the rate of the industry's growth, without causing it to contract. In cases where it is asserted that an Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. I direct that it is possible to find material injury where an industry suffers a loss of share in a growing market without a decline in profits. As in all cases, a loss of market share cannot alone be decisive. I direct that a loss of market share should be considered with a range of relevant injury indicators before material injury may be established."

Whilst it is acknowledged that Comsteel's profit and profitability has declined in 2017, it is relevant that the Australian market for the goods is expanding and Comsteel – on the basis of volumes secured in 2017 – is not supplying increased volumes from the growing demand in that market (i.e. not enjoying any rate of growth in sales volumes).

Comsteel therefore submits that the circumstances premised in the Ministerial Direction are consistent with the iron ore railway wheels market – an expanding market where the Australian industry has experienced a loss of market share and has not captured increased sales volumes.

Comsteel, therefore, reiterates that it has suffered material injury during 2017 that can be directly attributed to increasing exports of dumped goods from China and France.

V. Causation

CCCME contends that Comsteel has failed to discharge its burden of proof on the issue of “causation”. Comsteel strenuously rejects this suggestion. Comsteel has demonstrated that there is an absence of injury from any other factors other than the dumping (and subsidization) during the investigation period.

CCCME attempts to argue that Chinese-manufactured goods benefit from a ‘comparative advantage’ in raw material and labor costs. The former is due to the government influence on raw material inputs and the latter is not a significant factor as the production process for the goods is not labour-intensive.

CCCME has not substantiated a case which contradicts Comsteel’s position that the material injury experienced in 2017 has been caused by the dumped and subsidized exports from China, and the dumped exports from France.

VI. Subsidies

The CCCME submission suggests that the Chinese exporter Masteel “maintains a higher capacity and efficiency and more advanced technology” in respect of the goods than Comsteel. CCCME seeks to detail certain production facilities as ‘advanced’ and that Masteel engages in R&D activities resulting in reinvestment (including replication of the two programs of investment in 2013 and 2017 – see P.19 of submission). It is noted by Comsteel however that the subsidy programs for which benefits have been received from the Government of China (“GOC”) as listed in Masteel’s 2016 Annual Report are potentially linked to the two “investments” referred to by CCCME. The Masteel 2016 railway subsidies listed include:

- Program 52 – EMY steel wheel production line;
- Program 65 – Rolled wheel works;
- Program 74 – Subsidy for material modification of high-speed wheel and axle;
- Program 78 – Interest subsidy for rail industrialization project of Masteel;
- Program 82 – Intelligent manufacturing fund for Masteel Rail Transportation;
- Program 83 – Subsidy for Maanshan railway industry.

The “investment” in railway wheels by Masteel appears to be well-supported by GOC assistance.

VII. Conclusion

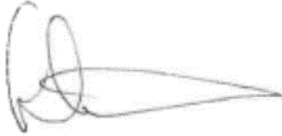
The CCCME representations do not detract from Comsteel’s submission that the exports of the goods from China (and France) are at dumped prices that have caused and, continue to threaten, injury to the Australian industry that is material.

CCCME has attempted to defect the cause of injury experienced by Comsteel to a range of other factors that are of minimal substance when contrasted with the direct impact of the dumped export volumes on the Australian industry.

Comsteel anticipates that the Commission will examine the full impact of the dumping and subsidization of Chinese exports on the Australian industry and correctly conclude that material injury has occurred and, is threatened. Anti-dumping measures on the exported goods from China and France are necessary to prevent any further injury from the injurious exports.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4974 0346 or Comsteel's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Lindsay Reid', written in a cursive style.

Lindsay Reid
General Manager