

4 September 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 – Chinese Ministry of Commerce submission

I. Introduction

I refer to the submission of 23 August 2018 on behalf of the Ministry of Commerce of the People's Republic of China (referred to as "GOC" submission). The GOC submission rejects the Preliminary Affirmative Determination ("PAD") finding that a particular market situation for iron ore railway wheels ("the goods") exists in China. The GOC also questions the preliminary finding of the Anti-Dumping Commission ("the Commission") that steel input costs used in the manufacture of the goods are distorted by the GOC's influence in that sector and are not reflective of competitive market costs.

Commonwealth Steel Company Pty Ltd ("Comsteel") seeks to address matters raised by the GOC.

II. Disagreement with PAD

The GOC contends that the Commission has erred in referencing matters relied upon "not directly before the Commission" in finding raw material input costs are distorted and not determined on a competitive basis. The GOC references the Commission's reliance on supportive (recent) findings in other jurisdictions (refer footnote of PAD 466). The Commission's PAD (published on 18 June 2018) considered available information before it that enabled the Commission to conclude, on a preliminary basis, that the Chinese exporter Maanshan Iron and Steel Co., Ltd ("Masteel") costs were not determined in a competitive manner. The referenced information enabled the Commission to publish a timely PAD and to impose provisional measures to prevent further material injury to the Australian industry.

The Commission afforded the GOC two timeline extensions to provide a complaint Government Questionnaire response. Given the extensions granted to the GOC to complete its Questionnaire, the information completed in the GOC's response could not be considered for inclusion in the PAD.

The GOC argues that the "approach" followed by the Commission in the PAD is "not an approach permitted by the *WTO Anti-Dumping Agreement*", and further that "The Australian regulation, if applied in this way, must be held to be inconsistent with Article 2.2 of that Agreement".

The GOC then seeks to threaten the Commission with "*possible WTO dispute settlement proceedings*".

In its submission dated 16 August 2018, Comsteel recalled the basis for the Commission's reliance on recent investigations involving steel industry products where it previously determined that the raw material steel inputs used in the manufacture of further value-added goods (i.e. rod in coil, steel reinforcing bar) had been established as having been distorted by the GOC's plans and policies applicable to the Chinese steel industry.

More relevant to the “Australian regulation” as referenced by the GOC, includes the two recent Federal Court decisions that have affirmed the Commission’s stance that steel input costs in China are materially distorted by the GOC. The relevance of the Commission’s findings (and reliance on earlier decisions was outlined by Comsteel¹:

“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 [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] exported from China 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.”

As indicated in Comsteel’s 16 August submission, the Commission’s PAD is well supported in the two recently announced Federal Court decisions under Australia’s legislative provisions.

III. GOC’s claim no evidence of distortion

The GOC contends that the Commission has not relied upon contemporaneous information in determining that steel input costs used by Masteel are materially distorted. Comsteel rejects this assertion and points to the Commission’s determination of normal value for Masteel that includes referencing a benchmark cost for raw material steel used in the manufacture of the goods by Masteel.

The inclusion of the raw material steel input of the French supplier M G Valdunes in Masteel’s production costs is validation that Masteel’s costs are materially distorted as demonstrated by the preliminary 17.0 per cent dumping margin determined for Masteel.

The GOC seeks to remind the Commission that “*An investigating authority must carry out its own investigation and make its own determinations based on positive evidence*”. The Commission has relied upon contemporary information for its preliminary assessment of normal values for Masteel – it has used steel input costs for the same investigation period as incurred by the French manufacture of the goods.

Comsteel submits that the Commission has conducted its normal value assessment (as reflected in the PAD) consistent with the Australian Regulations and that this methodology has been affirmed by the Federal Court on two separate occasions.

IV. GOC taxes on inputs no longer apply

The GOC submission argues that the Commission’s PAD is reliant upon earlier decisions of some “five or six years ago” when “*certain export tariffs, export quotas, import tariffs and VAT rebates applicable to inputs in the steel industry*” applied.

The GOC notes that in respect of steel billet – a steel input in the manufacturer of the goods in this investigation – continues to be the subject of a 10 per cent export tariff. Similarly, a 3 per cent export tariff on coking coal remain in place, as does the variable rates for VAT on exported goods, including the zero rate on raw material steel products which increases to the maximum 17 per cent VAT rebate for export on elaborately manufactured steel products.

The continued variations on export taxes and VAT rebates discourages exports of steel raw material inputs (including steel billet and hot rolled coil) and encourages exports of further value-added (or finished) products. The GOC’s role in determining the level of the applicable taxes is influential in the distortion of the domestic selling prices for raw material steel inputs.

¹ Refer Comsteel submission, 16 August 2018 (EPR Document 40).

Comsteel reiterates its position that the GOC's plans and policies continue to distort steel input costs in China and the production costs of producers (i.e. Masteel) are not determined on a competitive basis.

V. Steel industry inputs

The GOC argues that the Comsteel has made "misinformed allegations" concerning the raw material inputs used in the manufacture of the goods being sold at less than adequate remuneration under Australia's subsidy provisions.

In support of its claims the GOC questions Masteel's categorization as a State-Invested Enterprise ("SIE"):

"Maanshan does not provide steel billet to itself. It produces steel billet. The GOC is informed that Maanshan is not provided with steel billet at all. Instead, it is a steelmaker that purchases raw materials for steel making in the open market. These inputs – iron ore, coking coal and coke – are not products of the iron and steel industry. They are certainly not steel billet. There is no evidence, whether out of date or present, to suggest those inputs are supplied at less than adequate remuneration. They are substantially purchased on international markets at highly contested prices."

The references by the GOC do not address the plans and policies referred to be the Commission that distort the steel input prices used in the manufacture of the goods. Nor do the GOC's comments address the acknowledgments of Masteel that it complies with the GOC's reforms and directives as reflected in Section IV of the Chairman's Statement in the 2017 Maanshan Iron and Steel Annual Report².

The influences of the GOC through its range of export tariffs, VAT rebates and quotas materially impact the raw material input costs in steel making in China to the extent that the selling prices for the steel inputs (i.e. steel billet) are lower than they otherwise would be. In this current investigation the Commission has validated that the steel input costs in China are at prices substantially lower than is the selling price for the same (or similar) input in France by a producer/exporter of the goods. The Commission has, in its PAD, determined a 17 per cent dumping margin applicable to Masteel's exports to Australia.

The GOC's assertions concerning the impact of the plans of the policies as not influencing steel input prices is not borne out in prevailing steel input prices.

VI. Recommendations

The GOC seeks to dispute the Commission's determination in PAD 466 that steel input prices in China are not influenced by the plans and policies enacted by the GOC. The GOC further alleges that the Commission has relied upon historic information and findings by other administrations to conclude that a particular market situation for the goods applies in China.

Comsteel rejects the representations of the GOC. The Commission has relied upon contemporary information in determining normal values and dumping margins in PAD 466. The information relied upon by the Commission relates to the Chinese exporter's costs across the investigation period and the French exporter's steel input costs for the investigation period. It is therefore inaccurate to assert the Commission has relied upon data that is 'five to six years old'.

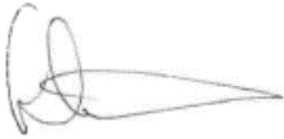
The Commission's methodology for determining Chinese normal values for the goods is consistent with the recent Federal Court decisions that have affirmed the methodology used. The Commission's approach is therefore consistent with Australia's legislative provisions as detailed in the Regulations.

Comsteel anticipates that the Commission will affirm the methodology followed in PAD 466 as the basis for findings and recommended outcomes in Statement of Essential Facts No. 466.

² Refer Comsteel submission dated 24 July 2018 (EPR Document 28).

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