Percival Legal

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By Email

Mr Mick Kenna
Assistant Director
Investigations 4
Anti-Dumping Commission55 Collins Street
Melbourne VIC 3000

Dear Mr Kenna

RE: Dumping and Subsidy Investigation – Exports of Certain Railway Wheels from the People's Republic of China – Submission by Masteel in response to Dumping & Subsidy Margin Calculations

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

I refer to the Commission's confidential dumping and subsidy margin calculations that you forwarded to me on 11 September 2018. I understand that that the Commission simply wishes me to check the mathematical calculations in the margin calculations. If the methodology adopted by the Commission in making such calculations is incorrect, then all of the margin calculations will be incorrect. So, as a first step, the methodology needs to be addressed. This is addressed below.

However, I would note that packaging costs have been included int CTMS spreadsheet and, consequently, if this included the "Less domestic packing than Add export packing" in the sheet of (a) Normal Value Calculation" it will result in double counting. This should be rectified.

I also note that it took the Commission approximately 10 weeks to prepare the dumping and subsidy margins after the verification visit but the Commission provides only a week for Masteel to respond to its calculations without providing any evidence of the methodology on which such calculations were based. This is a denial of natural justice and failure to provide transparency as required by WTO Anti-Dumping Rules and Australian legislation and administrative law principles. If you are of a different view, please let me know, Otherwise, please rectify these deficiencies.

1. Market Competitive Costs

In you your email to me, you advise that Masteel's records do not reflect "*competitive market costs*" for its inputs to manufacture, mainly coking coal. No reasons or evidence are given to support these assertions.

The assertion that Masteel's records do not reflect "*competitive market costs"* has been expressed by the Commissioner in his correspondence to me in the following terms:

> "*For the purposes of the PAD, I considered that Masteel's records did not reasonably reflect competitive market costs associated with the production or manufacture of like goods. <u>This was</u>*

<u>based on the Anti-Dumping Commission's understanding of the Chinese steel industry based on previous investigations and recent analysis of the Chinese steel market undertaken by other jurisdictions.</u>"

This is illogical. In other words, the Commission's "*understanding*" was based on prior and other investigations but not on facts and evidence relevant to this investigation. That is, it was mere speculation based on false assumptions that have no basis in fact or relevant to this investigation. Why?

This a major failure for an investigative authority and gives rise to breach of a number of administrative law principles, such as taking into account irrelevant considerations, failure to take into account relevant considerations, making a decision based on no evidence and giving rise to a reasonable suspicion of bias. This calls into question the Commission's ability to carry out its functions in accordance with the law.

Also, there is no "*market*" for "*costs*". Markets exists to buy and sell goods and services for a "*price,*" not for "*costs*". Evidence has been provided that the raw materials Masteel purchases, it it uses to manufacture steel for its railway wheels which are purchased at competitive market prices from overseas and domestic suppliers, including from Australia, and these are accurately reflected in its records and these are reflected as "*costs*" in its accounts. These facts seem to have been ignored. No evidence has been provided that Masteel does not negotiate its inputs to manufacture at market prices. Why not.? Masteel negotiates its inputs to manufacture, both domestically and internationally,at market prices. If the Commission is of a different view, please provide us with details by **19 September 2018.**

Further, comparing export coke prices to domestically purchased coked prices ignores the different grades of coking coal being purchased locally in different quantities and the different prices they are being purchased and the market conditions in which they are being purchased . To compare such purchases with export prices of coking coal ignores all of theses matters so that there is not a like for like comparison and given that evidence shows that domestic purchases are purchased at market prices as with imported products, there is no need for a comparison with export prices.

It also ignores the various costs included in the export price. In other word, it is not a like-for-like comparison but simply inflates domestic costs to produce a dumping margin. That would seem to be contrary to WTO Anti-Dumping rules and Australian legislation.

Simply comparing prices does not reveal anything. Comparing ALDI prices with other retailers does not reveal anything other than ALDI prices are less than other retailers. It does not mean that ALDI prices are not market prices. It just means they are lees than other retailers. Similarly, with prices of inputs to manufacture to Masteel unless there is evidence to the contrary, prices for its inputs to manufacture are less than other prices in the market are probably a reflection of the volume of the coking coal it purchases. Has this been considered?

As an investigating authority, it would seem reasonable for the Commission to confine itself to the facts and evidence of this particular investigation. Findings in previous investigation are irrelevant to this investigation unless they are reinvestigated in relation to this investigation.

Would you please advise and provide details as to which costs are not "market competitive costs", why they are not "market competitive costs" and what evidence supports this assertion.by **19 September 2018.**

2 Valdune's cost

I note that in the margin calculations the Commission has replaced Masteel's cost to produce railway wheel wheels with Valdune's costs. It is unclear why the Commission has done this. Obviously, Valdune's costs will be significantly higher than Mansteel's costs, as would be the case of any other manufacturer in the European Union. No adjustments have been made to recognise this. Your email to me recognised that such adjustments were necessary, but the Commission has advised that it has no information to make such adjustments.

Is it not the role of the Commission, as an investigative body, to undertake the necessary investigations to obtain such information and make such adjustments and why has it not done so? Please advise.

3 Coking Coal at less than Adequate Remuneration

I note that the commission believes that coking coal purchase by Masteel was at less than "adequate remuneration"

Is it correct that the Commission has evidence that coking coal purchase by Masteel from Australia in significant quantities was at "less than adequate remuneration" and, if so, would the Commission please provide details as to what it considers to be "adequate remuneration" and why the remuneration paid to Rio Tinto was "less than adequate" and what criteria was used to assess that such purchases were at less than adequate remuneration.

Similarly, would the Commission please advise why purchases of different grades of coking coal purchased domestically were purchased at "less than adequate remuneration", what evidence it has to support this assertion and as to what it considers to be "adequate remuneration".

I would be grateful if the Commission could provide its response by **19 September 2018**. No doubt the Commission has information to support its findings and can readily provide such information, which hopefully will not be based on historical investigations that have no relevance to this investigation.

Pease place this submission on the public file.

Kind regards

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