

Non-Confidential

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Date: 10 October 2018

By Email

Mr Mick Kenna
Assistant Director
Investigations 4
Anti-Dumping Commission 55 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

As you know, I act for CCCME, amongst others, in relation to this investigation.

I refer to the many submission from Comsteel lodged with the Commission throughout this investigation, the latest being dated 2 October 2018. I do not intend to address each of the issues raised by Comsteel again as they have been addressed in my previous submissions lodged on behalf of my clients and in submissions by other interested parties. It is suffice to say that the issues and submissions raised by Comsteel have little merit, have been solidly refuted by the exporters and end-users of the goods under investigation, are simply repetitive and do not address the substantive issues.

A substantive issue is whether the Commission will use antidumping measures to protect Comsteel’s monopoly on the supply of rail wheels to its mining customers in the Pilbara particularly in the absence of material injury causally link to dumping. This is not a legitimate use of anti-dumping measures and fails to recognise that the main issues, as indicated by Comsteel’s customers, concerns the quality of rail wheels and the packaging safety and efficiency concerns that Comsteel has failed to satisfactorily address. This has adversely impacted on the business operations of Comsteel’s customers along with their legal obligations to provide a safe work environment and the reason for their change to alternate sources of supply.

As the Commission has not responded to our previous submissions I reiterate the following relevant observations:

- as has been repeatedly submitted to and verified by the Commission, Masteel produces its own steel requirements and does not purchase steel billets. Consequently, there is no “particular market situation”. This is not an issue;

- the steel Masteel manufactures for its own use, including for the manufacture of railway wheels, is manufactured from a variety of grades of raw materials sourced from Australia, other overseas countries and China. These raw materials include the major inputs of iron ore and coking coal. This does not seem to have been taken into account nor assessed;
- Comsteel’s submissions are based on historical investigations that have no relevance to this investigation. Comsteel has made no case as to why past investigations are relevant to this investigation and ignores the relevant facts that Masteel does not purchase steel billet but manufactures its steel requirements itself from imported raw materials, inter alia, from Australia. The facts and the evidence supporting those facts speak for themselves;
- this investigation has nothing to do with price discrimination between export prices and domestic prices of the goods under consideration. The price differences between domestically made and imported rail wheels do not arise from the alleged “dumping” but from the non-price issues of quality differences and occupational, health and safety legal concerns. For the same reason, the alleged “injury” is not caused by allegedly dumped imports but by Comsteel’s own non-price issues such as product quality and safety issues as Comsteel’s customers have identified in their submissions to the Commission and Comsteel’s failure to satisfactorily rectify those quality issues;
- the investigation so far has failed to address the issues associated with the relevant fact of “tender dumping”, a copy of the Anti-Dumping Authority’s report on this issue has been forwarded to you, a copy of which is also attached. It is evident from that report that any injury that may have occurred would have occurred from the awarding of a tender. No further injury can be caused to Comsteel after the tender was not awarded to it and the application of anti-dumping measures cannot rectify the injury incurred by the loss of the tender. Further, there is no evidence that future tenders would be awarded at dumped prices. In this context there is no justification for the imposition of anti-dumping measures under WTO rules or Australian anti-dumping legislation. In this regard we draw the Commission’s attention to Article 3.7 of the WTO Anti-Dumping Agreement in relation to any future tenders. Has this Article been considered?
- anti-dumping measures will not address these issues. These will only be addressed by Comsteel improving its manufacturing operations and consequently the quality and safety of its products. Antidumping measures will only disincentivize Comsteel from undertaking the necessary improvements and allow Comsteel to maintain its monopoly position, which will adversely impact on the users of rail wheels and ultimately cause a “material injury” to the Australian industry as a whole and act against the public interest.
- I note that in the dumping margin calculation, the Commission has substituted Valdunes steel ingot prices in its constructed normal value calculations. This is surprising. The Commission has not indicated that it has any issues with Masteel’s costs to produce steel for its own use. The Commission’s verification team was satisfied that Masteel’s costs were ‘complete, relevant and accurate’. If Masteel’s costs to manufacture steel for its own use, including manufacturing railway wheels are complete, relevant and accurate but the Commission has identified a problem, in its view, with Masteel’s coking coal costs, why has the Commission substituted Valdunes steel ingot prices and on what legal basis. Grateful if you could explain and provide details by cob tomorrow. No doubt you would have the information to comply with this request and have no difficulty in complying with the request within the timeframe.

- In relation to the above issue, we draw the Commission’s attention to Australia’s international obligation to comply with WTO rules and jurisprudence. To this end we refer the Commission to the WTO Appellate Body’s ruling in the *EU – Biodiesel* matter where it ruled unambiguously that investigating authorities must use the production costs actually incurred by producers or exporters for the calculation of a constructed normal value, even though the costs are considered to be “distorted”. Further, the Appellate Body ruled that the Reasonably Reflecting Test (refer Article 2.2.1.1 of the WTO Anti-Dumping Agreement) is confined to an assessment of whether the records suitably and sufficiently reflect the actual costs incurred and does not allow for consideration of the reasonableness of the costs themselves. Accordingly, the Appellate Body ruled against the EU’s replacement of the costs of soybeans actually incurred by Argentine producers on the ground that these costs were distorted and artificially lowered (see our submission of 4 October 2018 for more on this matter).

For these reasons, any injury incurred by Comsteel is not related to dumping or international price discrimination but is related to the quality and safety of its products and the impact that this has on its customers and the Australian economy generally. Accordingly, in these circumstances the investigation should be terminated as the application has no merit.

Please contact me if you have any questions. I note that you have not responded to any of the questions posed in my previous submissions to you. Is this consistent with Departmental standards?

Please place this memo on the public file.

Best

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cc. Ms Karen Andrews MP, The Honourable Minister for Industry, Science and Technology