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By Email

Mr Patrick Quiggin
Assistant Director
Investigations 4
Anti-Dumping Commission55 Collins Street
Melbourne VIC 3000

Dear Mr Quiggin

RE: Dumping and Subsidy Investigation – Exports of Certain Railway Wheels from the People's Republic of China

I refer to the decision of the Anti-Dumping Commission (*Commission*) to terminate the subsidy investigation (ADN No. 2019/12 refers).

Given the termination of the subsidy investigation because subsidy levels were negligible, such subsidies could not have caused material injury to the Australian industry despite the Applicant's claims. Accordingly, an assessment is required of what injury claimed by the Applicant of those subsidies caused and such injury must be excluded from the injury analysis. I note that the Statement of Essential Facts nor the Termination Report contains any assessment of the injury (if any) caused by the alleged subsidised imports. It, therefore, is unclear to what extent the injury referred to in the Statement of Essential Facts was caused by alleged dumped imports and what was caused by alleged subsidised imports. It, of course, would be unlawful to attribute injury caused by subsidisation to be attributed to dumping.

In this regard, I draw the Commission's attention to Articles 11.1, 11.2 and 11.3 of the WTO Agreement on Subsidies and Countervailing Measures (*Subsidy Agreement*). It is self-evident from the Statement of Essential Facts and the Termination Report that these provisions of the Subsidy Agreement were not complied with by the Applicant in its application. It simply provided a "shopping list" of alleged subsidies with no evidence that Masteel received such subsidies, the amount of any such subsidies and the nature of injury caused by any such subsidiaries. The Applicant's application in relation to subsidies should have been rejected.

It is not sufficient to simply list in a "shopping list" of subsidies alleged to have been received by an exporter. And, as is evident from, the Commission's findings, any subsidies received by Masteel were negligible. This should have been addressed in the Application and the Consideration Report as opposed to relying on mere speculation.

Further, the assessment of a "*particular market situation*" needs to be reassessed. The Commission has focused on the Chinese steel industry and the alleged influences of the Government of China on that industry. However, the Commission has not addressed the fact and apparently ignored the evidence that Masteel manufactures its own steel from inputs to manufacture sourced not only from China but also from Australia and Brazil. Accordingly, Section 2.5 of the Statement of Essential Facts is largely irrelevant as it does not address the facts and evidence applying to Masteel's manufacture of steel and railway wheels. Further, given the *de minimis* subsidies, they could not have contributed to a "*particular market situation*".

Also, in calculating a constructed normal value, I refer to our previous submission of 31 October 2019, which seems to have been ignored, and the WTO jurisprudence relevant to a constructed normal value:

> "*In EU – Biodiesel, the Appellate Body has ruled that this requires investigating authorities to 'adapt the information used in their calculation in order to ensure that it represents the cost of production in the country of origin'*."

This apparently has not been considered in the constructed normal value for Masteel.

These issues need to be corrected. If you are of a different view, please let me know.

Finally, I note that in Section 4 of the Termination Report it is stated that:

> "*The Commission notes that for goods exported by the sole Chinese exporter of railway wheels to Australia in the investigation period, Masteel, the subsidy margin is negligible. Furthermore, for goods exported by uncooperative and all other exporters is the subsidy margin is also negligible.*"

A similar statement was made in the Statement of Essential Facts:

> "*During the investigation, the Commission established that Masteel and Valdunes <u>were the only exporters</u> of railway wheels to Australia in the investigation period. Nevertheless, under subsection 8(b) of the Non-cooperation Direction, the Commissioner has determined <u>all exporters</u> who did not provide a response to the exporter questionnaire or request a longer period to provide a response within the legislated period to be uncooperative exporters pursuant to subsection 269T(1).*" (underling added)

Has the Commission's determined that Masteel and Valdunes were the only exporters of the goods under consideration to Australia correct and, if not, who were the other Chinese exporters? To be an "*exporter*" an entity must actually "*export*" the goods under consideration to Australia.

As previously requested, would the Commission please identify who are these other Chinese "*exporters*" and what railway wheels they have actually "*exported*" to Australia when the Commission has acknowledged that the sole "*exporter*" of railway wheels to Australia from China is Masteel.

If Masteel is the sole "*exporter*" of railway wheels from China, then there are no other "*exporters"* of railway wheels from China. In this regard, I direct your attention to Article 9.2 of the WTO Antidumping Agreement and presumably the Commission will comply with its international obligations under that Article. That is, it will identify who these "*other exporters*" are and what railway wheels they have exported to Australia relevant to this investigation.

Or is the Commission of the view that an "*exporter*" is an entity that does not actually "*export*" the goods under consideration from the country in question?

Does this mean that any entity is an "*exporter*" regardless of whether or not it actually "*exports*" the goods under consideration to Australia or whether it actually manufactures the goods under consideration that are exported to Australia by a third party or it just includes any entity regardless of whether or not it has "*exported*" the goods under consideration to Australia or whether it actually manufactures the goods under consideration or whether it was provided with an exporter questionnaire and, if so, on what basis, it includes any entity regardless of whether it does not export or manufactures the goods under consideration exported to Australia? Does it simply include all entities in China and, if so, why?

To reiterate, to be an" *exporter*" an entity actually needs to "*export*" the goods under consideration from the country in question. If the Commission is of a different view, I would welcome details of its views.

Please contact me if you have any questions.

Kind regards

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