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Ms Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel

Dear Ms. Fisher,

Review of Certain Decisions Regarding the Minister's Decision to Impose Anti-Dumping Measures on Steel Pallet Racking exported from China and Malaysia

I refer to your notice published on 28 June 2019 of the Review Panel's intention to conduct a review of certain decisions made by the Minister in imposing antidumping measures on steel pallet racking exported from China and Malaysia and inviting interested parties to make submissions within 30 days of the date of your notice.

One Stop Pallet Racking Pty Limited obviously is an interested party and an applicant for the review. It makes the submissions set out below.

1. *Material Injury & Causation – Like Goods*

Given that the description of the goods under consideration in the applicant's application and in the Anti-Dumping Commission's report to the Minister is to a good that cannot and does not exist - see previous submission. It follows that not only can there be an Australian producing goods identical to or having characteristics closely resembling a good that does and cannot exist but also a non-existent good cannot cause material injury because it does not exist.

This seems to have escaped the Anti-Dumping Commission's attention in its report to the Minister.

Further, One Stop Pallet Racking Pty Limited does not import goods that answer the description of the goods in the Australian industry's application. Imports of pallet racking systems from China by One Stop Pallet Racking Pty Limited are not adjustable not have dimensions that are adjustable. This has been put to the Anti-Dumping Commission. This addressed in One Stop Pallet Racking Pty Limited's previous submissions.

It is apparent that the Australian Industry's application does not comply with section 269TB of the *Customs Act 1901* as it does not accurately describe the consignment of goods imported by One Stop Pallet Racking Pty Ltd and the Australian industry does not produce "like goods" (as previously submitted) to those consignments.

2. **Material injury & Causation – Price Undercutting**

Section 7 of the Anti-Dumping Commission's report to the Minister sets out the Anti-Dumping Commission's findings on injury to the Australian industry. Section 8 of the Anti-Dumping Commission's report to the Minister sets out the Anti-Dumping Commission's analysis on whether the alleged dumped exports from China and Malaysia caused the injury apparently incurred by the Australian industry.

Fundamental to that causation analysis was whether the alleged dumped exports from China and Malaysia undercut the prices of pallet racking systems produced by the Australian industry.

Absent price undercutting, then the exports from China and Malaysia could not have caused the injury apparently incurred by the Australian industry.

Article 3.2 of the WTO Anti-Dumping Agreement provides that with regard to the effect of dumped imports on prices:

“... the investigating authorities shall consider whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member ...”.

This is important because the other forms of injury (e.g. reduced sales volumes, price depression, price suppression, etc.) are dependent upon price undercutting by the alleged dumped exports. No price undercutting by the alleged dumped exports, then there can be no injury, let alone material, caused by dumping.

As noted by One Stop Pallet Packing, the pallet racking systems it imports do not undercut the prices of the pallet racking systems supplied by the Australian industry into the Australian market. However, the position is the other way around. The Australian industry's prices undercut those of One Stop Pallet Racking. This was evident in the information provided to the Anti-Dumping Commission and in its application to the Review Panel.

At section 8.7 of its report to the Minister, the Anti-Dumping Commission stated that:

“The Commissioner considers that the magnitude of dumping allowed the goods imported from China and Malaysia to be significantly cheaper than otherwise would have been the case. This has allowed the goods imported from China and Malaysia to be supplied at dumped prices that regularly undercut the prices of the Australian industry when tendering for the supply of steel pallet racking in the investigation period.”

This statement is instructive because the Anti-Dumping Commission only “*considers*” that the magnitude of dumping allowed goods imported from China and Malaysia to be significantly cheaper. In other words, the use of the word “*considers*” means that the Anti-Dumping Commission had no evidence to support the above statement. It simply does not know. It is mere speculation.

The other reason why this statement is important is that imports of pallet racking systems from China and Malaysia are supplied into the Australian project market by importers. It is the importer who determines the terms and conditions, including price, on which pallet racking systems are supplied to end-users in Australia, not the exporter.

In terms of price, the importer would seek to recover its importation costs, SG&A and set a profit for the supply. The question that follows is whether and, to what extent, the alleged dumped prices of exports obtained by an importer for supply to end-users in the Australian market flowed through to the prices to end-users.

The Anti-Dumping Commission made no such analysis in reaching its finding that the magnitude of dumping allowed the goods imported from China and Malaysia to be *“supplied at dumped prices”*.

Given the absence of any such analysis, the Anti-Dumping Commission could not conclude that goods imported from China and Malaysia were being supplied into the Australian market at *“dumped prices”*, particularly when they were supplied into the Australian market by importers. It is a fundamental misunderstanding of the operation of the antidumping regime by the Anti-Dumping Commission where the focus is on exports by exporters and not by sales into the Australian market by importers.

Further, there is no evidence or any suggestion of any *“hidden dumping”*. Supplies of pallet racking systems by importers, including by One Stop Pallet Racking, have been profitable and not at a loss with such loss to be reimbursed by the exporter.

Also, Article 3.5 of the WTO Anti-Dumping Agreement provides that a *“determination of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities”*.

No such *“examination”* was undertaken.

In addition, Article 3.1 of the WTO Anti-Dumping Agreement requires that a determination of injury must be based on positive evidence, including an objective examination of both the volume of dumped imports and the effect of dumped imports on prices in the domestic market for like products.

This was not undertaken by the Anti-Dumping Commission because the supply of pallet racking systems imported from China and Malaysia and supplied into the Australian market were not by exporters in those countries but by importers in Australia, including by One Stop Pallet Racking. Consequently, the Anti-Dumping Commission did not know and could not know whether imported pallet racking systems from China and Malaysia supplied to end-users in the Australian market, including those imported by One Stop Pallet Racking were being supplied at *“dumped prices”*. As indicated above, there is no suggestion of *“hidden dumping”* nor any evidence that *“hidden dumping”* was occurring.

3. Material Injury & Causation – Sales Volumes

In Section 7.4.1 of the Anti-Dumping Commission's report to the Minister, the Anti-Dumping Commission noted in the table in that section that Dematic's sales volumes fell progressively after Year End September 2015. Coincidentally, this was when the contract ended for a major customer of Dematic, Woolworth's Masters Stores, and just before it was decided that Masters would close its DIY warehouse stores Australia-wide.

Once it was decided that Masters would be closing all warehouse stores Australia-wide, Colby, Dematic's distributor in Australia, was offered to buy all of Masters near new pallet racking. However, Colby elected not to do so. Accordingly, many second-hand suppliers took up the opportunity and purchased the pallet racking systems from Masters and then sold it against Dematic/Colby supplies at a significant reduction in price compared to Dematic/Colby products.

It is not surprising that having lost a major customer and competing against near-new steel pallet racking systems that Dematic's sales volumes decreased. Obviously, this would have impacted on its sales revenues, costs, profits and profitability.

APC Storage experienced nothing similar, as can be verified in the sales revenue graph produced by the Commission and set out in its report and set out above. APC increased sales volumes and revenues during this period. Presumably this was because it was unaffected by imports of steel pallet racking from China and Malaysia (i.e. no price undercutting) nor the impact of the closure of Woolworth's Masters Stores.

The changes in the Australian market and their consequent effect on Dematic are set out in section 10 of One Stop Pallet Racking's submission to the Anti-Dumping Commission dated 26 November 2018.

Also, the graph in section 7.4.1 of the Anti-Dumping Commission's report to the Minister may not reflect the change in market conditions. That is, sales leading up to the end of the Masters' contract would have significantly increased as Dematic were supplying 63 Masters' outlets and 5 distribution centres. Accordingly, when the Masters contract ended sales volumes would have decreased accordingly, as would have manufacturing volumes adversely affecting costs due to the reduced volumes.

In addition, Dematic/Colby would be competing against near new steel pallet racking systems that second hand suppliers had purchased with the demise of Masters as noted above. This also would have adversely impacted on sales volumes, revenues and profits. Basically, Dematic/Colby would be competing against their near new products being supplied by second hand distributors at significantly discounted prices. This does not seem to have been properly taken into account by the Anti-Dumping Commission.

Further, Dematic won a contract during the period under investigation to supply steel pallet racking systems to New Cold Advanced Logistics, the largest supplier of groceries in the Southern Hemisphere. This would indicate that dumping was not a factor in Dematic being awarded the contract.

4. ***Alleged Dumping***

The Anti-Dumping Commission in its report to the Minister found that:

- exports from China were at dumped prices ranging from 33.7% to 110.3%; and
- export from Malaysia were at dumped prices ranging from 4.6% to 4.8%.

The disparity in dumping margins is surprising, particularly when China is a low- cost country and Malaysia is a higher cost country.

What is the difference between the export prices between exports from China and those from Malaysia and do they reflect this disparity in dumping margins?

Also, why would Chinese exporters sell pallet racking systems to Australian importers at 33.7% to 110.3% less than that they sell like goods in China? It makes no commercial sense. It is more likely that pallet racking systems sold in China would be below export prices to Australia.

Why are the dumping margins in China so high? Quite simple. The Anti-Dumping Commission determined that a so-called “particular market” situation existed in relation to a raw material for the manufacture of pallet racking systems, namely

“The Commissioner has found that the GOC influenced conditions within the steel markets during the investigation period. The GOC was able to exert this influence through its directives and oversight, subsidy programs, taxation arrangements and the significant number of state owned enterprises and state invested enterprises operating in the market.

The Commissioner’s assessment and analysis of the available information indicates that the GOC materially influenced conditions within the Chinese HRC market and the Chinese steel markets generally, during the investigation period and because of that influence, the domestic prices for Chinese steel pallet racking were substantially different to those that would prevail in normal competitive market conditions.

The Commissioner considers that the GOC influences in the Chinese steel industry have created a ‘market situation’ in the steel pallet racking market, such that sales of steel pallet racking in China are not suitable for determining normal value under subsection 269TAC(1).”
(Underlining added)

The issue here is that the Anti-Dumping Commission does not know whether HRC prices have actually been influenced by the Government of China, the extent of any influence on HRC prices and the extent to which this has flowed through, if at all, to the domestic selling prices of pallet racking systems in China. This is all based on conjecture and speculation and not supported by empirical, objective evidence.

Further, governments in all countries, including Australia, have policies and regulations that affect and influence prices of a variety of products, including steel products in Australia, for a variety of reasons. Australian producers of steel products presumably would be surprised that sales of their

steel products were not at competitive market prices due to government influence. What is the difference in China?

On this basis the Anti-Dumping Commission calculated a constructed normal value base on so-called benchmark prices for HRC from Korea and Taiwan. They were not benchmark prices. They were simply prices in other jurisdictions, which had developed economies. Those jurisdictions economies were not comparable to that in China nor were their HRC prices.

The effect of this approach by the Anti-Dumping Commission was to artificially inflate normal values for Chinese exporters.

The fact that the same HRC was used to make pallet racking system exported to Australia was disregarded. No adjustments were made to the constructed normal value to ensure a “fair comparison” between the constructed normal value and the export prices to Australia to ensure a fair comparison.

Article 2.4 of the WTO Anti-Dumping Agreement stipulates that:

“A fair comparison shall be made between the export price and the normal value.”

Such a “*fair comparison*” was not undertaken by the Anti-Dumping Commission to take account of differences between the export price and the normal value. This would and should have required a downward adjustment to the normal value to take account of the differences in the cost of HRC in the constructed normal value and in the export price of exports to Australia.

The result was that there was no “*fair comparison*” between the constructed normal value and the export price and this led to the high dumping margin for exports of steel pallet racking systems from China.

5. Conclusion

In light of all of the foregoing and previous submissions, this investigation should be terminated.

If you have any questions or would like to discuss, happy to do so.

Kind regards



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