

Date: 29 July 2024

By Email

Ms Jaclyne Fisher OAM
Panel Member
Anti-Dumping Review Panel
10 Binara Street,
Canberra ACT 2601

Dear Ms Fisher,

RE: ADRP Review No 169 –Exports of steel pallet racking and parts thereof– Application for Review of Ministerial Decision in Continuation Inquiry 617

I refer to ADRP Review No. 169 being a review of the Minister’s decision in Continuation Inquiry 617 to continue the anti-dumping measures on exports of steel pallet racking and parts thereof from the People’s Republic of China and Malaysia (**reviewable decision**), which reviewable decision was published on 9 April 2024 in Anti-Dumping Duty Notice No. 2024/019 (**Continuation Notice**).

This submission is made in support of the applications by my client, One Stop Pallet Racking Pty Ltd. (**Applicant**), for the review by the Anti-Dumping Review Panel (**ADRP**) of the reviewable decision on the grounds set out in the applications (**Applications**). This submission is by way of supplement to the Applications in support of the grounds and reasons for the grounds in the Applications. To the extent that any ground or associated reasons are not addressed in this submission is not to be taken that that ground or those reasons in support of a ground are to be and may be disregarded. Nothing in this submission detracts from the grounds and associated reasons in support the grounds in the Application.

Preliminary matters

1. In the Continuation Notice the Minister stated that he had ‘*considered Continuation Report 617*’ and had ‘*decided to accept the recommendations and reasons for the recommendations, including all the material findings of fact and law therein*’ in making the reviewable decision. Accordingly, the reviewable decision was based exclusively on the findings of fact and law and recommendations in Continuation Report 617.
2. It is evident from Continuation Report 617 that the Anti-Dumping Commission (**Commission**) failed to inquire into matters it was required to inquire into in a continuation inquiry and in respect of those matters it did inquire into, that it failed to properly inquire into them. This, in substance, is each of grounds in the Applications and those grounds collectively.

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3. Such failures in the conduct of the continuation inquiry adversely affected material findings of fact and law and the recommendations based on those findings. This had the effect that the findings and recommendations in Continuation Inquiry 617 did not permit the Minister to be satisfied of those matters he was required to be satisfied in order to continue the anti-dumping measures with the consequence that the reviewable decision was not the correct or preferable decision, as contended in the Applications.

Statutory requirement

4. As the Panel Member would be aware, a statutory requirement for the continuation of anti-dumping measures is that the Minister be satisfied that:

“... the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent”.

5. Key terms in that statutory requirement are the words ‘*continuation*’ and ‘*recurrence*’. For an event, such as ‘*dumping and the material injury caused by that dumping*’ to ‘*continue*’ or ‘*recur*’, it must have occurred at some prior point in time. Further, it must have occurred in relation to the good or goods to which the anti-dumping measures to be continued apply.
6. The initial question, therefore, is what is the good or are the goods to which the anti-dumping measures the subject of the continuation inquiry apply and, therefore, the subject of the reviewable decision?

Ground One (The Goods)

Ground One (Identification of the goods)

7. The goods to which the anti-dumping measures applied and, therefore, the subject of the reviewable decision were the goods specified in the original dumping duty notice imposing the anti-dumping measures, which was Anti-Dumping Notice No. 2019/45 published on 8 May 2029 (copy **attached**), and continued unaltered by the reviewable decision published in Anti-Dumping Duty Notice No. 2024/019 on 9 April 2024 (copy **attached**), are:

“Steel pallet racking, or parts thereof, assembled, or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following – beams, uprights (up to 12 metres) and brace (with or without nuts and bolts)”,

exported to Australia from People’s Republic of China and Malaysia.¹

¹ Further information concerning the goods under investigation was provided and accompanied the description of the goods. It is of uncertain application to the description of the goods in the dumping duty notice and in its terms. For example, does the reference to Australian Standard AS4804-2012 mean that only

8. Accordingly, for the anti-dumping measures to be continued on exports of the above-mentioned goods, the Minister must have been satisfied that the expiration of the anti-dumping measures would lead to or be likely to lead to either:
 - (i) continuation of dumping of such exports and thereby cause or threaten to cause material injury to the Australian industry or industries producing like goods to such exports; or
 - (ii) if dumping and/or material injury of such exports had ceased to occur, recurrence of dumping of such exports and thereby cause or threaten to cause material injury to the Australian industry or industries producing like goods to such exports.
9. As set out in Ground One of the Applications, the goods the subject of the anti-dumping measures continued by the reviewable decision did not consist of a single good or models of a single good. Rather, they consisted of a range of goods with each good comprised within that range of goods being a separate, distinct and unique article of commerce when individually exported to Australia. One good and, arguably the principal good was, of course, pallet racking, that is, complete pallet racking storage systems, whether assembled or unassembled, of dimensions that can be adjusted. The remaining goods were 'parts' of such systems. Such 'parts' were not individually identified other than the three structural components, but would include constituent components necessary for the production of the complete systems and ancillary parts and components that facilitated the operation of the complete systems.
10. In the case of 'parts', that is, 'parts' of steel pallet racking storage systems, they, of course, lost their separate identity as an individual article of commerce being exported to Australia when exported as a constituent component of a complete the complete pallet racking system. That is, its identity as a separate article of commerce was subsumed within the identity of the complete pallet racking system exported to Australia of which it is component. However, when exported to Australia separately as an individual, unique article of commerce, eah 'part' retains its identity as such upon its important into Australia.
11. It is each particular good comprised in the range of goods in the description that is exported to and enters into the commerce of Australia (i.e., imported) and then competes with the like good(s) produced in Australia on price that requires consideration in a continuation inquiry. It is only each such good, when competing with the like good produced in Australia on price, that can cause material injury to the Australian industry producing that like good because the price at which it is competition is a dumped price, either directly or indirectly. Hence it is the application of the anti-dumping measures to exports of each such good that requires consideration to determine whether the expiry of the measures to each such good will lead or be likely to lead to the continuation of dumping of that good or the material

pallet racking storage systems that satisfy that standard are the only such systems to which the anti-dumping measures apply? That would not seem to have been the intent.

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injury caused by that good to an Australian industry producing a like good to that good that was required in Continuation Inquiry 617.

12. Hence the importance of determining which particular goods comprised in the description of the goods being exported from the subject countries and imported into Australia for the purposes of a continuation inquiry. Again, it is in respect of each of those particular good that the determination of whether the expiry of the anti-dumping measures applying to each of those goods will lead or likely lead to the continuation or recurrence of dumping and the material injury that the measures are intended to prevent. It is only in respect of each such good to which the anti-dumping measures apply that this determination is to be made so as to warrant the continuation of the anti-dumping measures in respect of exports of that good from the subject countries to Australia.
13. No analysis was undertaken in Continuation Inquiry Report 617 as to whether the expiration of the anti-dumping measures applying to exports of each good comprised in the range of goods to which the anti-dumping measures applied would lead to or be likely to lead to either:
 - (i) the continuation of dumping of exports of each such good and thereby cause or threaten to cause material injury to the Australian industry or industries producing like goods to each such good; or
 - (ii) if dumping and/or material injury of in respect of each such good or any of such goods had ceased to occur, the recurrence of dumping of in respect of those particular goods and thereby cause or threaten to cause material injury to the Australian industry or industries producing like goods to the relevant good.

No findings were made in Continuation Inquiry Report 617 in this regard.

14. Indeed, it was acknowledged by the Anti-Dumping Commissioner in Investigation Report 441 that the only 'parts' of pallet racking that were investigated for the purposes of dumping, material injury and causation were the three structural components of pallet racking storage systems, namely, beams, uprights and braces. This, of itself, acknowledges that those 'parts' not investigated were separate, different goods from those investigated and from complete pallet racking storage systems, as well as being different and separate articles of commerce from each other. This was subsequently reinforced by the exemption of such 'parts' from the dumping duties that were imposed upon them due to their not being sold in Australia, either individually or collectively. Either the goods comprised in the description of the goods under consideration comprised a single good and were treated as such for the purposes of, initially, the original dumping investigation, and subsequently, the continuation inquiry or they were each separate, different goods, each with its own identity as a separate and unique article of commerce requiring separate inquiry for the purposes of the continuation inquiry.

15. In other words, there was no determination supported by evidence in the original investigation, for example, that exports of 'parts', with the possible exception of beams, braces and uprights, had been exported at dumped export prices. Hence there was arguably no basis for the Minister to have been satisfied that the expiry of the anti-dumping measures would lead or likely lead to the continuation or recurrence of dumping of those 'parts' or the material injury that the measures are intended to prevent because there was no finding that those 'parts' were being dumped, let alone causing or threatening to cause material injury because of dumping. They were not investigated.
16. There was no evidence in Continuation Inquiry Report 617 that this approach had changed. That is, that the likelihood of the expiration of the anti-dumping measures would lead to the continuation or recurrence of dumping of exports of each particular 'part' of pallet racking systems and the material injury caused by such exports that the measures are intended to prevent.
17. Further, while exports of complete pallet racking storage systems and exports of beams, uprights and braces from the subject countries may have been inquired into in Continuation Inquiry 617, there was no finding that exports of each of them was being dumped, nor any inquiry into each of them to make such a determination. The four goods (i.e., complete pallet racking systems, braces, uprights and beams) were comingled as they apparently were in the original investigation and treated as if they were a 'single good'.² This resulted in a finding that, as such, the expiration of the anti-dumping measures would lead or likely lead to the continuation or recurrence of dumping of that 'single good' and the material injury to the Australian industry producing that 'single good' that the measures were intended to prevent.
18. This, of course, was misconceived. The required investigation in the original investigation should have been whether the export price of each such good being exported to Australia from the subject countries was less than their respective normal values and, if so, the margin of dumping for each such good. It would then be necessary to determine whether the dumping of each such good at those dumping margins was causing or threatening to cause material injury to the Australian industries producing like goods to each of those four goods. This did not occur in the original investigation. It also did not occur in Continuation Inquiry 617 as evidenced by the analysis and findings in Continuation Report 617.
19. While the review of the reviewable decision is not a review of the then Minister's decision to imposed anti-dumping measures in the original investigation, because the Commission has relied upon the findings of dumping in investigation 441 in Continuation Inquiry 617, those findings in the original dumping investigation are relevant to the reviewable decision.

² It is not clear from Investigation Report 441 how the dumping determination of a 'single good' was given the apparent comingling of the four goods seemingly investigated for such determination. For example the template Exporter Questionnaire used to obtain information from exporters appears to only solicit information on parts and components of pallet racking systems and not of the complete pallet racking systems themselves.

Indeed, it is on those findings of dumping of 'steel pallet racking and parts thereof' on which the reviewable decision was based. In so doing the errors in the original investigation in identifying the goods to be investigated were incorporated into and formed the basis of the finding in the continuation inquiry on which the Minister relied in making the reviewable decision.

20. Further, it is evident from the analysis and findings in Continuation Inquiry 617 that the required inquiries into whether the expiration of the anti-dumping measures applying to exports of each good comprised in the range of goods to which the anti-dumping measures applied would lead to or be likely to lead to the continuation or recurrence of dumping of exports of each such good and thereby cause or threaten to cause material injury to the Australian industry or industries producing like goods to each such good that the measures are intended to prevent. Because of this, the findings and recommendations in Continuation Report 617 did not provided a basis for the Minister to be satisfied of the matters that he was required to be satisfied of in order to continue the anti-dumping measures on the goods to which the anti-dumping measures applied.
21. Hence the reviewable decision was not the correct or preferred decision. Rather, the correct or preferred decision in the absence of the Minister being so satisfied, the correct and preferred decision was that the Minister permit the measures to expire.

Ground One (Adjustable dimensions as required)

22. It is a fundamental requirement of a law imposing a tax, which includes a legal instrument imposing a tax such as dumping duty notice, to be clear, precise and accurate. The dumping duty notice imposing the dumping duties here failed in this regard. Not only is the reference to 'parts' imprecise as to not identifying any particular good or goods constituting the 'parts' of pallet racking the subject of the tax and being an open-ended description, but also the reference in the description to the pallet racking being of '*dimensions that can be adjusted as required*' is, at best, ambiguous. No action was taken in Continuation Inquiry 617 to remove that ambiguity.
23. It would seem logical that the first step in assessing what are the 'like goods' to the goods under investigation for the purposes of the continuation inquiry would be to identify what are the dimensions of complete pallet racking storage systems. This does not appear to have been undertaken in Continuation Inquiry 617. Nor was it undertaken in the original investigation, Investigation 441. Rather, it was assumed that what was intended was not the usual dimensions of a physical structure, namely, its width x height x depth, but the adjustable height of shelving in a pallet racking storage system. Precisely what dimension(s) of the pallet racking storage system were adjusted upon altering the height of the shelving in the storage system was not identified. The only possible dimensions of something that could be so adjusted is the storage space above and below the shelf whose height is adjusted, presumably to accommodate the height of a loaded pallet. That is, it is the

internal storage space above and below the shelf that is being adjusted, not the dimensions of the pallet racking storage system itself, which remain unchanged and necessarily so in order to enable the height of the shelf to be raised or lowered.

24. If this is what was intended, then it could have been readily accommodated with appropriate clear and concise language in the description of the subject goods. It wasn't. Instead, the ambiguous language was persisted with that referred explicitly to something different from that which was apparently intended. However, no evidence as to precisely what was intended provided. Accordingly, what was actually intended by the addition of the phrase in question was not established. Arguably, given its retention throughout the original investigation and the continuation inquiry, the ordinary construction according to the clear, ordinary meaning of the words used was what was intended.
25. In other words, the description that was persisted with was pallet racking storage systems whose dimensions (i.e., width x height x depth) could be adjusted as required, whereas the pallet racking systems being exported from the subject countries to Australia and the like goods produced in Australia to such exports were different. They were complete pallet racking storage systems, whose dimensions (i.e., width x height x depth) were required to be fixed not merely to enable the height of the shelving to be adjustable but to ensure the structural strength and integrity of the pallet racking storage systems, being a load bearing structure required to hold loaded pallets of varying considerable weight at significant heights in the system. Notwithstanding this difference, the findings in Continuation Inquiry Report 617 were erroneously based on the latter, not the former.
26. The inclusion of the word 'adjusted as required' would indicate that the dimensions of the pallet racking storage systems, as imported, could be adjusted to meet changed requirements such as changes in the height of the loaded pallets to be stored in the system. It also suggest that other changes to the loaded pallets could be similarly accommodated. For example, a change in the width and/or length of the loaded pallets to be stored in the pallet racking system. However, such changes could not be so accommodated because the width and/or depth of individual bays cannot be adjusted by lengthening or shortening beams and braces. Such changes would necessitate dis-assembling the pallet racking system and replacing the beams and braces with ones of the required length with, presumably, other different dimensions (e.g., thickness of the steel, etc.), along with different uprights of different dimensions (e.g., thickness, width, etc.) so as to ensure that structural integrity and strength of the pallet racking system was maintained in accordance with applicable standards. Hence the reasons why any such changes require the oversight of a duly qualified and experienced structural engineer. However, to make such changes is, in effect, to produce a pallet racking system that is different from the one that previously existed and not merely to adjust the dimensions of the existing system without replacing any of the structural components.

27. The failure to address this ambiguity in the description has resulted in the inquiries and resultant findings in the Continuation Inquiry continuing to be based on pallet racking storage systems whose dimensions are not adjustable as required but fixed with the resultant inevitable flow-on effects into the findings of dumping, material injury and causation for the purposes of the continuation inquiry. For this reason as well, the reviewable decision was not the correct or preferred decision. Rather, the correct or preferred decision in the absence of the Minister being satisfied that expiry of the anti-dumping measures would lead or be likely to lead to the pallet racking storage systems described in the dumping duty notice, that is, pallet racking storage systems of dimensions that can be adjusted as required, as opposed to those with fixed dimensions, the continuation of dumping of such systems and the material injury to the Australian industry producing like goods to those systems, the correct and preferred decision was that the Minister permit the measures to expire.

Ground Two (Composition of Australian industry)

28. In Continuation Inquiry 617, the Commission continued to confine its inquiries regarding the Australian industry producing like goods, that is, producing steel pallet racking and parts thereof, to those entities who produced one or more of the components to pallet racking systems (e.g., structural components). That is, it excluded other entities who, while not producing one or more of such components, did produce the designs for the bespoke pallet racking systems and/or undertook the assembly and installation of the complete pallet racking systems. Such a narrow approach to the composition of the Australian industry continued to be misconceived. It excluded those entities responsible for the production of the complete end product the subject of the anti-dumping measures, that is, pallet racking storage systems, regardless of whether they produced a component of such systems.
29. It is absurd to suggest that neither the design nor the assembly and installation of pallet racking storage systems are not processes in the production of such systems nor substantial processes. Without those processes the end-product would not exist. For example, to suggest that an entity that designs and assembles passenger motor vehicles or aeroplanes or laptops or mobile phones is not a producer of the end-product because it does not produce one or more components of the end-product is not a producer of the end-product is absurd. Logically it would mean that there is no producer of the end-product unless there is one entity that produces one or more of the components of the end-product, as well as designing and assembling the end-product. That would be a surprising outcome, but is the outcome of the approach taken here for the purposes of Continuation Inquiry 617.
30. Further, not only do the design and constituent components of pallet racking storage systems but also the assembly and installation of such systems must meet Australian and/or international standards such as Australian Standard AS4084-2012 but also be certified as meeting such standards and is fit for purpose by a duly qualified and experienced independent certifier that recognises that these are complex load bearing physical

structures whose strength and structural integrity is paramount. Hence the misconception that design, assembly and installation are not substantial processes in the production of complete pallet racking storage systems.

31. In addition, in its consideration of the composition of the Australian industry in Section 3.6 of the Continuation Inquiry Report, the Commission, having stated that a pallet racking storage systems is *“a structure typically made from cold-formed or hot rolled steel structural members and includes components such as plates, rods, angles, shapes, sections, tubes, and the like”*³, determined that there was an Australian producing like goods, namely, complete pallet racking storage systems. However, no consideration was given to whether ‘parts’ of pallet racking storage systems were produced in Australia, notwithstanding that in the original investigation, Investigation 441, it was determined that ‘parts’ of pallet racking other than the three structural components were not in fact produced in Australia. The assumption apparently was that the only relevant industry was the Australian industry producing pallet racking storage systems. If so, why were ‘parts’ of pallet racking systems, including beams, uprights and braces, included in the goods to which the anti-dumping measures applied? This was not addressed in Continuation Inquiry 617.
32. Despite their being no Australian industry or industries apparently producing like goods to ‘parts’ of pallet racking systems (the three structural components excepted) and no inquiry into ‘parts’ of pallet racking systems, the Commission recommended the continuation of the anti-dumping measures to exports of such ‘parts’ from the subject countries, which recommendation the Minister accepted in making his reviewable decision.
33. The treatment of ‘parts’ in Continuation Inquiry 617 highlights the failure to properly address to which particular goods in the description of the goods to which the anti-dumping measures applied that the expiration of the anti-dumping measures would lead or be likely to lead to the continuation or recurrence of dumping of each of those particular goods and the material injury to each Australian industry producing like goods to each good. Hence there was no proper basis for the Minister to be satisfied of what he was required to be satisfied of in order to make the reviewable decision in respect of each of the goods comprised in the range of goods to which the anti-dumping measures applied. In such circumstances the correct and preferred decision was that the Minister permit the measures to expire.

Ground Three (Dumping)

34. In Continuation Inquiry 617 the Commission elected not to inquire into whether exports of pallet racking and parts thereof were being dumped during the inquiry period. That is, it elected not to inquire into whether dumping was continuing or had ceased. The reason given was that there was no obligation to alter the variable factors in a continuation inquiry.

³ Continuation Inquiry Report 617 at page 22.

35. Whether or not there is an obligation to alter the variable factors in a continuation inquiry is not relevant to the requirement in a continuation inquiry to determine whether the expiry of the anti-dumping measures would lead or likely lead to a the continuation or recurrence of dumping. If it is not known whether dumping ceased following the imposition of the anti-dumping measures and why or, if dumping had not ceased but was continuing, why was it continuing and to what extent. These are relevant considerations in a continuation inquiry regardless of any decision to alter the variable factors. How can it be known whether the expiry of the measures would lead or likely lead to the continuation or recurrence of dumping if the effect (if any) of the imposition of the measures is not known?
36. Instead of inquiring into whether dumping was continuing to occur, the Commission relied upon a variety of other factors to support its contention that dumping would ‘continue or recur’. The reference to the likelihood of dumping ‘continuing or recurring’ in Continuation Report 617 of itself acknowledged that the Commission did not know and had no evidence that dumping of the subject exports was occurring and, therefore, likely to continue or, alternatively, had ceased and, therefore, was likely to recur, let alone in respect of which goods to which the measures applied.
37. Further, the criteria that the Commission relied upon was itself insufficient to indicate or predict that the expiration of the anti-dumping measures would lead or likely lead to the continuation or recurrence of dumping and the material injury that the measures are intended to prevent. For example, the Commission referred to the absence of dumping duty assessments by importers as a tacit acknowledgement that dumping was continuing to occur. This, of course, ignores the fact that:
- importers may not be in a position to know whether dumping was occurring due to not having access to confidential information of exporters to make such an assessment;
 - the cost and expense of applying for a dumping duty assessment, as well as when such applications can be made and the time involved in undertaking such an assessment and the necessary involvement of relevant exporters;
 - the outcome of the dumping determination in a duty assessment does not entail an alteration to the variable factors in the anti-dumping measures;
 - the on-sale by importers of the subject goods into the Australian market at duty inclusive prices remained competitive and profitable and, therefore there was no commercial imperative to apply for a dumping duty assessment;
 - interim dumping duties paid by an importer would have been recovered in the prices paid by the importer’s customers for the subject exports on-sold into the Australian market by the importer; and
 - any refund of interim dumping duty paid would constitute a windfall profit for the importer at the expense of its customers.

38. Further, the Commission relied upon the fact that it had found dumping in the original investigation, Investigation 441. However, this ignores a number of salient facts, including:
- (i) since the original investigation and, in particular, the investigation period in the original investigation circumstances had materially changed. Not only had there been a pandemic in the intervening period that disrupted global trade, economies and supply chains but also the Australian economy and the Australian market for pallet racking due, in part, to the increasing on-line purchase of goods but also, in the case of the Australian economy, it had not returned to pre-pandemic conditions as forecast; and
 - (ii) the Australian market for pallet racking storage systems had materially changed in the intervening period as evidenced by Figure 1 in Continuation Report 617 (at page 64). It discloses the market significantly increasing over the intervening period with the Australian industry's market share remaining relatively constant in the increasing market, while that of Malaysian exports substantially increased, that of Chinese exports substantially decreased to the point of non-existence and that from other overseas sources substantially increased; and
 - (iii) that 'parts' of pallet racking systems, other than the three structural components produced in Australia, were not included in the dumping assessment in the original investigation and that the dumping determination in the original investigation apparently somehow comingled the three structural components with complete pallet racking systems to produce a single dumping determination with a single dumping margin determination or the dumping determination was based solely on the three structural components as the template Exporter Questionnaire used to obtain data from exporters only sought information on components of pallet racking and not the complete pallet racking system; and
 - (iv) notwithstanding the change in market share since the original investigation, the Commission's inquiry into whether dumping would continue or recur in Section 6.7 of Continuation Report 617 focused almost exclusively on exports from China and, in particular, the 'cost' of hot-rolled coil steel (HRC) in China notwithstanding that Chinese exports had become practically non-existence, whereas Malaysian exports not only had increased despite the anti-dumping measures but now possessed a majority market share in the Australian market as disclosed in Figure 1 in Continuation Inquiry Report 617; and
 - (v) given the increasing market share of exports of the subject goods from Malaysia since the anti-dumping measures were imposed and the almost non-existent exports from China, it is unclear and unexplained why the focus of the analysis in Continuation Inquiry Report 617 was on exports from China with minimal analysis of exports from Malaysia. Given the disparity in exports from the two countries since the imposition of the anti-dumping measures which was not reflected in the analysis of exports from the two countries, it is not apparent how similar findings of fact and recommendations could reasonably be made in respect of each.

39. In light of factors such as the above, inquiry into whether dumping was occurring during the inquiry period in Continuation Inquiry 617 would seem to be relevant consideration in predicting what would occur or likely occur following the expiration of the anti-dumping measures. It is difficult to see how any rational, evidence based objective prediction could be made by an investigating authority without such an inquiry, even if reliance was on indirect sources of relevant information on pricing in the domestic market in the exporting countries as well as import prices to Australia.
40. It is evident that the likelihood dumping continuing or recurring following expiry of the anti-dumping measures was not afforded proper consideration in Continuation Inquiry 617. Accordingly, as contended in the Application the findings in Continuation Inquiry Report 617 did not provide a proper basis for the Minister to be satisfied of the matters he was required to be satisfied of in order to make the reviewable decision.

Ground Four (Material Injury & Causation)

41. The Commission's finding in Continuation Inquiry 617 that the expiry of the anti-dumping measures be likely to lead to a recurrence of the material injury that the measures are intended to prevent consisted of the following:

"The commission considers that expiry of the measures would be likely to lead to a continuation of or a recurrence of material injury that the measures are intended to prevent. This finding is based on the following factors:

- *Price being a major factor in purchasing decisions.*
- *Evidence of Australian industry losing tenders based on price.*
- *Likelihood that the Australian industry will come under increased pricing pressure from both Chinese and Malaysian exporters if measures expire.*
- *Reduced prices from dumped exports would likely reduce the Australian industry's sales volumes, market share, profits and profitability."*

42. As referred to in the Applications, there was no analysis of price undercutting by the Commission in Continuation inquiry. This is obviously not only relevant but critical to whether, following the expiry of the anti-dumping measures, price undercutting would occur in the Australian industry by the subject exports due to dumping (assuming dumping to be occurring) and that this would likely result in the price effects of price depression and/or price suppression or the volume effects of reduced sales volumes for the Australian industry causing reduced sales revenues and, therefore, reduced profits. Without such an analysis it is difficult how it could be possible to predict, based on past facts, what the expiry of the anti-dumping measures would likely have to the recurrence of material injury being caused or threatened to the Australian industry from dumping. This was not addressed in Continuation Report 617.

43. It is noted that it is not infrequently contended that increases in costs, such as the imposition of dumping duties and consequent liability to pay interim dumping duties on imports, affects and is reflected in the pricing behaviour of importers as evidenced by their increasing their prices to their customers when on-selling into the Australian market. This is then contended as evidence that a reduction in costs will elicit a response in the pricing behaviour of importers upon a decrease in their costs, such as expiry of liability to pay interim dumping duties, which pricing behaviour response is apparently to reduce prices to when on-selling into the Australian market. However, this presupposes that the behavioural response of importers, particularly pricing behaviour, to an increase in costs is a reliable and accurate predictor of the behavioural response of importers, particularly pricing behaviour, to a decrease in their costs.
44. Notwithstanding the material difference in nature of an increase in costs to a decrease in costs and the material differences that each has on the conduct of a business such as importer's business, it is assumed that the pricing behaviour on the occurrence of the former is an accurate predictor of the pricing behaviour in response to the occurrence of the latter. Unsurprisingly, no evidence is advanced to support such an assumption.
45. An increase in costs imposes restraints and constraints on an entity in the conduct of its business restricting the options available to it due to the reduces revenues available to invest in its business. A decrease in costs has the opposite effect. A decrease in costs, immediately upon its occurrence without any other change, increases the profits of the company as there are less costs to be recovered by sales revenues. Consequently, this increases the business opportunities for the relevant entity in the conduct of the business as it has reduced costs to recover and more sales revenues available to invest in the business. Consequently, what pricing behaviour would result from a decrease in costs would depend on the nature and extent of the decreasing costs, the business of the entity concerned and the effect of the reduced costs on that entity's business, as well as prevailing market conditions. These are all relevant considerations affecting the behavioural response (i.e., pricing behaviour) to a reduction of costs. While a reduction in prices would be both a possible and plausible option for an importer, taking into account the considerations mentioned reduces the probability of it occurring simply in response to a reduction in costs.
46. In addition, it must be noted that there are valid reasons why dumping would not continue to occur following the expiry of the measures and these appear not to have been considered in Continuation Inquiry 617. For example, the method of working out the interim dumping duty payable by importers, the combination fixed and variable duty method, of itself is a disincentive for exporters to increase their export prices to their Australian customers. To do so would simply increase the amount of interim dumping duty payable by their customers, which could result in reduced export sales. Continuing to export at dumped export prices could remain commercially beneficial to the exporter. It also could remain commercially beneficial to the importers if they could increase their prices into the Australian market (i.e. to duty inclusive prices) so as to recover any interim dumping duties paid from their

customers while remaining price competitive and profitable. Hence the combination fixed and variable duty method may provide no incentive for exporters to increase their export prices to Australia so that their export prices were un-dumped.

47. The floor price duty method, on the other hand, would have had the opposite effect. It encourages exporters to increase export prices to the un-dumped floor price. To not do so results in the importer being liable to pay interim dumping duty to the extent the export price is less than the floor price. Hence the floor price duty method provides exporters to increase export prices so that their importing customers avoid payment of any interim dumping duty, while at the same time achieving the policy objective of exports entering into the commerce of Australia at un-dumped prices. In such circumstances, importers also would recover the increased prices from their customers when on-selling into the Australian market. If those increased prices into the Australian market are both competitive and profitable, there would be no compelling commercial or financial reason to reduce prices on the expiration of the measures. It would require some other factor to provide that reason.
48. Further, there is no compelling reason why export prices between exporters and importers could not be altered to the benefit of both that eliminated dumping and the issues associated with it but retaining the competitiveness and profitability of the prices of both following the expiry of anti-dumping measures.
49. In any event, matters such as these were not considered by the Commission in its analysis of the likelihoods material injury recurring due to dumping following the expiration of the anti-dumping measures.
50. There is no evidence in Continuation Report 617 of these issues being addressed. For these and the reasons set out in the Applications to this Ground, it is not apparent how the Minister could have been satisfied based on the findings in Continuation Report 617 that the expiry of the anti-dumping measures would lead or be likely to lead to the material injury that the measures are intended to prevent.

Conclusion

51. As set out in the Applications and discussed above, the reviewable decision was not the correct or preferred decision. It was not the correct or preferred decision because the findings and recommendations in Continuation Inquiry Report 617 did not provide a basis upon which the Minister could have been satisfied of the matters he was required to be satisfied of in order to make the reviewable decision in respect of the range of goods to which the anti-dumping measures applied. Rather, the correct and preferable decision was to permit the anti-dumping measures to expire on their due expiry date.
52. If contrary to the foregoing it is considered that the decision to continue the anti-dumping measures, then, as contended in the Application, consideration should have been given in making the reviewable decision to alter the variable factors and, specifically, to apply a non-

injurious price. For this reason as well, the reviewable decision was not the correct or preferred decision.

If you have any questions, please let me know.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A' at the start.

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ANTI-DUMPING NOTICE NO 2024/019

Customs Act 1901 – Part XVB

Steel pallet racking

Exported from the People’s Republic of China and Malaysia

Findings of the Continuation Inquiry No 617

Public Notice under subsection 269ZHG(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 3 April 2023, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to steel pallet racking exported to Australia from the People’s Republic of China (China) and Malaysia is justified.

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No 617* (REP 617).

I, ED HUSIC, the Minister for Industry and Science, have considered REP 617 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of facts and law therein and have decided that the anti-dumping measures applying to steel pallet racking exported to Australia from China and Malaysia should continue from 9 May 2024.

Under subsection 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I **declare** that I have decided to secure the continuation of the anti-dumping measures currently applying to steel pallet racking exported to Australia from China and Malaysia.

I **determine**, pursuant to paragraph 269ZHG(4)(a)(i) of the Act, that the dumping duty notice continues in force after 8 May 2024 (the specified expiry day).

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 617 has been placed on the public record, which may be examined at the Anti-Dumping Commission Office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the client support team on telephone number +61 6213 6000 fax number +61 3 8539 2499 or email clientsupport@adcommission.gov.au.

Dated this 8th day of APRIL 2024



ED HUSIC
Minister for Industry and Science

PUBLIC RECORD



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

Customs Act 1901 – Part XVB

Investigation number 441

Steel Pallet Racking

**Findings in relation to a dumping investigation exported from
China and Malaysia**

*Public notice under subsections 269TG(1) and 269TG(2)
of the Customs Act 1901*

Anti-Dumping Notice (ADN) 2019/45

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an investigation into the alleged dumping of steel pallet racking (the goods) exported to Australia from the People's Republic of China (China) and Malaysia.

The goods:

The goods the subject of the investigation are:

Steel Pallet racking, or parts thereof, assembled or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following - beams, uprights (up to 12m) and brace (with or without nuts and bolts).

Further information

The goods are adjustable static racking structures capable of carrying and storing product loads, and components used to make static racking structures.

Adjustable racking is a structure typically made from cold-formed or hot rolled steel structural members and includes components such as plates, rods, angles, shapes, sections, tubes and the like. Welding, bolting or clipping are the typical methods to assemble them. It may be racking installed within a building.

A typical storage configuration comprises upright frames perpendicular to the aisles and independently adjustable, positive locking beams parallel to the aisle, spanning between the upright frames, and brace designed to support unit load actions.

The racking layout and components used are designed to get the best efficiency for the shape and volume of the items stored. The applicable Australian Standard is AS4084-2012.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 441* (REP 441). REP 441 outlines the investigation carried out and recommends the publication of a dumping duty notice in respect of the goods exported from China and Malaysia.

The method used to compare export prices and normal values to determine whether dumping has occurred and to establish the dumping margins was to compare the weighted average of export prices with the weighted average of corresponding normal values over the investigation period pursuant to subsection 269TACB of the *Customs Act 1901* (the Act). The export prices were established under subsection 269TAB of the Act. The normal values were established under subsection 269TAC of the Act.

Particulars of the dumping margins determined and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Exporter	Dumping Margin	Method to establish dumping margin
China	Dexion (Shanghai) Logistics Equipment Co., Ltd (Dexion China)	33.7%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period. Refer to REP 441 for further details.
	Changzhou Tianyue Storage Equipment Co., Ltd	78.6%	
	SSI Schaefer System International (Kunshan) Co. Ltd.	72.7%	
	Jiangsu Jracking Industry Ltd and Danyang Hengcheng Metal Products Co., Ltd (Jracking Group)	60.1%	
	Residual Exporters	77.0%	
	Uncooperative exporters (other than Jracking Group and Dexion China)	110.3%	
Malaysia	Schaefer Systems International Sdn Bhd	4.6%	
	Uncooperative exporters	4.8%	

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 441.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods would or might have been caused if securities had not been taken. Therefore under subsection 269TG(1) of the Act, I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods; and
- (ii) subject to section 45 and subsection 269TN(2) of the Act, like goods that were exported to Australia for home consumption on or after 19 June 2018, which is when the Commonwealth took securities following the Commissioner's Preliminary Affirmative Determination published on 18 June 2018 under section 269TD of the Act, but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to an Australian industry producing like goods has been caused. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China and Malaysia.

The considerations relevant to my determination that dumped goods from China and Malaysia have materially injured the Australian steel pallet racking industry are the size of the dumping, the effect of dumped imports from China and Malaysia on prices in the Australian market and the consequent impact on the Australian industry including:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- declining asset value;
- reduced capital investment;
- reduced return on investment;
- reduced employment and wages;
- reduced capacity;
- reduced capacity utilisation; and
- reduced cash flow.

In making my determination, I have considered whether the Australian industry is being injured by a factor other than the exportation of dumped goods, and I have not attributed injury due to any other factor other than the exportation of those dumped goods.

In accordance with subsection 8(7)(a) of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) I am satisfied that other than beams, uprights and braces of the steel pallet racking, are not offered for sale in Australia by the Australian industry members, and therefore I exempt from interim dumping duty and dumping duty all components or parts of steel pallet racking, other than beams, uprights and braces. Refer to Exemption Notice No.1 of 2019 for further information.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, consideration of non-injurious prices and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures and securities are applied to 'goods on the water' is available in ACDN 2012/34, available at www.adcommission.gov.au.

REP 441 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 2 6276 1462 or email at investigations4@adcommission.gov.au.

Dated this 6th day of May 2019



KAREN ANDREWS
Minister for Industry, Science and Technology