



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

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CUSTOMS ACT 1901 - PART XVB

**STATEMENT OF ESSENTIAL FACTS**  
**NO.466**

**ALLEGED DUMPING OF CERTAIN RAILWAY WHEELS  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND  
FRANCE**

**AND**

**ALLEGED SUBSIDISATION OF CERTAIN RAILWAY WHEELS  
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

11 October 2018

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**2 ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
The applicant	Commonwealth Steel Company Pty Ltd
BHP	BHP Billiton Ltd
CCCME	China Chamber of Commerce for Import and Export of Machinery and Electronic Products
CFR	Cost and freight
China	The People's Republic of China
COGS	Cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Comsteel	Commonwealth Steel Company Pty Ltd
CON 466	Consideration Report No. 466
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EAF	Electric arc furnace
EBIT	Earnings before interest and tax
EC	European Commission
EDITA	Earnings before interest, tax, depreciation and amortisation
FOB	Free On Board
FMG	Fortescue Mining Group
GAAP	Generally accepted accounting principles
GOC	Government of the People's Republic of China
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
The Guidelines	<i>Guidelines on the Application of the Form of Dumping Duty 2013</i>
IDD	Interim dumping duty
LTAR	Less than adequate remuneration
Masteel	Maanshan Iron & Steel Co Ltd
Material Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>
Minister	Minister for Industry, Science and Technology
MOFCOM	Ministry of Commerce of the People's Republic of China

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NDRC	National Development and Reform Commission
NIP	Non-injurious Price
OECD	Organisation for Economic Co-operation and Development
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
R&D	Research and development
Rio Tinto	Rio Tinto Ltd
ROI	Return on investment
Roy Hill	Roy Hill Holdings Pty Ltd
SASAC	State-owned Assets Supervision and Administration Commission
SCM	Agreement on Subsidies and Countervailing Measures
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
SIE	State invested enterprise
SOE	State owned enterprise
USP	Unsuppressed Selling Price
Valdunes	MG-Valdunes
VAT	Value added tax
WTO	World Trade Organization

## 3 SUMMARY AND RECOMMENDATIONS

### 3.1 Introduction

This Statement of Essential Facts (SEF) Number 466 has been prepared in response to an application by Commonwealth Steel Company Pty Ltd (Comsteel) seeking the publication of a dumping duty notice in respect of certain railway wheels (railway wheels or the goods) exported to Australia from the People's Republic of China (China) and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Comsteel alleges that it has suffered material injury caused by railway wheels exported to Australia from China at dumped and subsidised prices, and from France at dumped prices.

This report sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister) regarding this investigation, subject to any submissions received in response to this SEF.

### 3.2 Proposed recommendation to the Minister

Based on the findings in this SEF, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Minister that a dumping duty notice be published in respect of railway wheels exported to Australia from China and France.

Also, subject to any submissions received, the Commissioner proposes to terminate the investigation into the application for the publication of a countervailing duty notice in respect of China.

### 3.3 Application of law to facts

#### 3.3.1 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) of the *Customs Act 1901* (the Act)<sup>1</sup> for the purpose of making a report to the Minister.

#### 3.3.2 Application

Comsteel alleges that the Australian industry producing railway wheels has suffered material injury caused by railway wheels exported to Australia from China and France.

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<sup>1</sup> Unless otherwise specified all legislative references are to the *Customs Act 1901*.

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The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Having considered the application, the Commissioner decided not to reject the application and, on 18 April 2018, initiated an investigation. Public notification of the initiation of the investigation was also made on 18 April 2018.

*Consideration Report No. 466 (CON 466) and Anti-Dumping Notice (ADN) No. 2018/59* provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 3.3.3 Preliminary Affirmative Determination

In accordance with subsection 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice or it appears that there will be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, 17 June 2018) and the Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

On 18 June 2018, the first working day after day 60 of the investigation, the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to exports of the goods from China and France and made a PAD to that effect. Following the making of the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any interim dumping duty that may become payable in respect of the goods exported from China and France and entered for home consumption in Australia on or after 19 June 2018.

ADN No.2018/99 contains more information on the Commissioner's reasons for making a PAD.

### 3.3.4 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed under subsection 269ZHI(3),<sup>2</sup> place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.

On 27 July 2018, the Commissioner, under subsection 269ZHI(3) of the Act, extended the deadline to publish the SEF, and provide his final report and recommendation.

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<sup>2</sup> On 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI of the Act to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

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On 18 September 2018, the Commissioner approved a further extension to the deadline to publish the SEF, and provide his final report and recommendation.

As a result of the further extension, the Commissioner is required to place the SEF on the public record by 11 October 2018.

### 3.3.5 Final report

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Minister on or before 26 November 2018,<sup>3</sup> unless the investigation is terminated earlier or a further extension of time to provide the final report is granted.

## 3.4 Findings and conclusions

The Commissioner's assessments and conclusions in this SEF are based on available information at this stage of the investigation. A summary of the findings is provided below.

### 3.4.1 The goods and like goods (Chapter 5)

The Commissioner considers that locally produced railway wheels are 'like' to the goods that are the subject of the application.

### 3.4.2 Australian industry (Chapter 6)

The Commissioner has found that there is an Australian industry producing like goods and that the goods are manufactured in Australia. The Commissioner has also found that the Australian industry producing the like goods consists of Comsteel.

### 3.4.3 Australian market (Chapter 7)

The Australian railway wheel market is supplied from local production by Comsteel and by imports from China and France.

### 3.4.4 Dumping assessment (Chapter 8)

The Commissioner's assessment of dumping margins is set out below, in Table 1.

Country	Exporter	Dumping Margin
China	Maanshan Iron & Steel Co Ltd	19.0%
China	Uncooperative and all other exporters	19.0%
France	MG-Valdunes	37.2%
France	Uncooperative and all other exporters	37.2%

**Table 1: Dumping Margin Summary**

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<sup>3</sup> Under section 269TEA



### **3.4.5 Subsidy assessment (Chapter 9)**

The Commissioner's assessment of subsidy margins is set out below, in Table 2.

<b>Country</b>	<b>Exporter</b>	<b>Subsidy Margin</b>
China	Maanshan Iron & Steel Co Ltd	0.6%
China	Uncooperative and all other exporters	0.6%

**Table 2: Subsidy Margin Summary**

### **3.4.6 Economic condition of the Australian industry (Chapter 10)**

The Commissioner considers that the Australian industry has experienced injury in the forms of:

- loss of sales volume;
- loss of market share;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers; and
- reduced revenue.

### **3.4.7 Causation assessment (Chapter 11)**

The Commissioner considers that the Australian industry has suffered material injury in the forms listed in 3.4.6 as a result of railway wheels exported to Australia from China and France at dumped prices.

### **3.4.8 Will dumping and material injury continue? (Chapter 12)**

The Commissioner is of the view that, in the future, exports of railway wheels from China and France may be at dumped prices and that continued dumping of the goods from China and France may continue to cause material injury to the Australian industry.

### **3.4.9 Non-injurious price (Chapter 13)**

The Commission has calculated non-injurious prices (NIPs) for exports of railway wheels from China and France that are considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped goods.

The Commission has assessed the NIP from an unsuppressed selling price (USP) based on Comsteel's weighted average cost to make and sell railway wheels in 2017 plus the percentage profit achieved by Comsteel on the sale of railway wheels in 2016.

For all exports from both France and China, the NIP is above the normal value.

### **3.4.10 Proposed form of measures (Chapter 14)**

The Commissioner proposes to recommend to the Minister that measures be imposed using the combination fixed and variable duty method.

## 4 BACKGROUND

### 4.1 Initiation

On 5 March 2018, Comsteel lodged an application under subsection 269TB(1) of the Act. The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Comsteel alleged that the Australian industry had suffered material injury caused by exports of the goods to Australia from China and France at dumped prices and from China at subsidised prices. Comsteel alleged that the industry had been injured through:

- loss of sales volume;
- loss of market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced return on investment (ROI);
- reduced attractiveness to reinvest; and
- reduced employment numbers.

Subsequent to receiving further information, the last of which was received on 23 March 2018, and having considered the application, the Commissioner decided not to reject the application. On 18 April 2018, the Commissioner initiated an investigation into the alleged dumping and subsidisation. Public notification of initiation of the investigation was made on 18 April 2018. ADN No. 2018/59 provides further details relating to the initiation of the investigation.

In respect of the investigation:

- the investigation period<sup>4</sup> for the purpose of assessing dumping and subsidisation is 1 January to 31 December 2017; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and/or subsidised goods is from 1 January 2014.

### 4.2 Previous cases

There have been no previous Australian dumping or subsidisation investigations involving railway wheels.

### 4.3 Preliminary affirmative determination

On 18 June 2018, the Commissioner made a PAD that there appeared to be sufficient grounds for the publication of a dumping duty notice. The Commissioner was also satisfied that it was necessary to require and take securities in relation to exports of

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<sup>4</sup> Subsection 269T(1)

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railway wheels from China and France to prevent material injury to the Australian industry occurring while the investigation continued. Securities were imposed using the combination fixed and variable duty method with the following fixed rates:

Country	Exporter	Fixed rate
China	Maanshan Iron & Steel Co Ltd	17.0%
China	Uncooperative and all other	17.0%
France	MG-Valdunes	28.2%
France	Uncooperative and all other	28.3%

**Table 3: Rates of fixed dumping securities**

In a letter to the Commissioner, dated 2 July 2018,<sup>5</sup> Maanshan Iron & Steel Co Ltd (Masteel) noted that, to require and take securities, the Commissioner must be satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

Masteel questioned how, if the injury suffered by Comsteel was in the form of the loss of supply contracts, the taking of securities could prevent injury to the Australian industry. Rio Tinto's submission of 5 September 2018<sup>6</sup> supported Masteel's view that the Commissioner had not adequately explained why he was satisfied that it was necessary to require and take securities to prevent material injury to Comsteel while the investigation continues.

The submission put forward by Masteel and Rio Tinto seems to be that, because the sale of railway wheels is generally contract based, once such contracts are lost by the Australian industry, no further injury can occur or at least cannot be prevented by the taking of securities. This submission seems to rely on the proposition that all such contracts are exclusive, allow no variation to their terms or operation under any circumstances and are not subject to renegotiation in the course of the investigation.

The Commission's understanding of the contractual arrangements currently in place in the Australian market do not exclude the possibility of customers purchasing railway wheels from the Australian industry. The Commission is aware of competitive processes undertaken by Australian customers to purchase railway wheels in the months following the making of the PAD and decision to require and take securities. As a result, the Commissioner was satisfied that the taking of securities was necessary to prevent material injury to an Australian industry occurring while the investigation continued. No evidence has been submitted to cause the Commissioner to conclude otherwise.

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<sup>5</sup> Masteel submission of 2 July 2018 – document No.19 on EPR

<sup>6</sup> Rio Tinto submission of 5 September 2018 – document No.47 on EPR

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### 4.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Minister. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **31 October 2018**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

The Commissioner must report to the Minister by **26 November 2018**.

Submissions should preferably be emailed to [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au).

Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Investigations 4  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2601  
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the Anti-Dumping Commission's web site [www.adcommission.gov.au](http://www.adcommission.gov.au).

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available online at [www.adcommission.gov.au](http://www.adcommission.gov.au)

Documents on the Public Record should be read in conjunction with this SEF.

### 4.5 Submissions received from and meetings with interested parties

The Commission has received submissions from interested parties during the course of the investigation. All submissions were considered by the Commissioner in reaching the findings contained within this SEF except for:

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- Comsteel's submission of 2 October 2018;
- issues first raised by Valdunes in its submission of 2 October 2018 relating to the calculation of its dumping margin;
- a submission made by the CCCME received by the Commission on 4 October 2018; and
- a submission made by the CCCME received by the Commission on 9 October 2018

In the Commissioner's opinion, having regard to these submissions would prevent the timely placement of this SEF on the public record. Issues raised in these submissions will be addressed in the context of responses to the SEF.

A list of the submissions received and meetings with interested parties is at **Non-confidential Appendix 1**.

## 5 THE GOODS AND LIKE GOODS

### 5.1 Preliminary finding

The Commissioner considers that the Australian industry, comprised of Comsteel, manufactures railway wheels that are like goods to the goods under consideration.

### 5.2 Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are 'like' to the imported goods. Subsection 269T(1) defines like goods as:

*Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

### 5.3 The goods

The goods the subject of the application (the goods) are:

*Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys.*

*Axles and other components are excluded from the goods coverage.*

In its application, Comsteel provided the following further information in relation to the goods:

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The railway wheels are manufactured in accordance with the relevant user defined specifications and drawings, and are used on rail carriages used to transport iron ore. The users of these type of railway wheels are:

- BHP Billiton Ltd (BHP);
- Rio Tinto Ltd (Rio Tinto);
- Fortescue Mining Group (FMG); and
- Roy Hill Holdings Pty Ltd (Roy Hill).

The railway wheels used in all user applications have the following typical characteristics:

- 38 inch or 966 mm to 970 mm diameter and of similar overall dimensional tolerances and shape;
- manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties as defined in the user specifications;
- manufactured using a forging and rolling process in accordance with defined standards;
- suitable to operate at axle loads above 36 metric tonnes; and
- a multi-wear rim.

In a submission dated 4 June 2018, the Chinese Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) claimed that the goods under consideration were more specific than the definition set out in italics above. The CCCME claimed that the goods under consideration were necessarily defined as the railway wheels ‘meeting the exacting specifications of each Australian end user’. It claimed that framing the goods under consideration according to a broader description, not incorporating the precise specifications, rendered the application for anti-dumping measures and the Commission’s consideration report defective. It claimed that the Commissioner should have rejected the application on this basis.

In an email received by the Commission on 9 June 2018, the Chinese railway wheel exporter, Masteel similarly submitted that railway wheels meeting the generic description of the goods could not have caused material injury to the Australian industry and that no such wheels had been exported to Australia from China. In a submission dated 11 September 2018,<sup>7</sup> BHP supported this argument, stating that as generic wheels for use in a generic iron ore railway system do not exist, this ‘fundamental conceptual error constitutes a fatal flaw in the investigation, which justifies its termination’.

The Commission does not agree with the positions advanced by CCCME, Masteel and BHP in respect of the description of the goods under consideration in this investigation. In the Commission’s view, there is no requirement in the legislation for the scope of the goods covered by the application to be defined by reference to the detailed specifications of the models previously exported to Australia. Such an interpretation would mean slight specification changes to imports would take them outside the scope of any investigation or anti-dumping measures, rendering the legislative scheme ineffective and unworkable.

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<sup>7</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

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The Commission's view is that the description of the goods set out in italics above is a reasonable and accurate description of the goods the subject of the application.

### 5.4 Tariff classification

The goods are classified to tariff subheading 8607.19.00 (statistical code 20) in Schedule 3 to the *Customs Tariff Act 1995*.

### 5.5 Like goods

In its submission of 11 September 2018,<sup>8</sup> BHP claimed that it did not consider Comsteel wheels to be like goods to the wheels imported from China and France. It based this view on claims that:

- the Chinese and French wheels use a different production process (continuous casting) compared to Comsteel (ingot casting) to produce the relevant goods;
- the impact of the different production processes is that the Comsteel wheels have different physical characteristics to the Chinese and French wheels, in that they have a higher frequency of non-metallic inclusions (that is, they differ in terms of purity and chemical composition);
- the differences in physical characteristics results in the imported wheels being of a different quality to the domestic wheels; in particular, Comsteel wheels are more prone to cracking after a period of use in BHP's railway operations and do not meet the performance requirements mandated by BHP's specifications;
- the difference in quality means that the Comsteel wheels do not function in an identical manner to the Chinese and French wheels when used in BHP's railway operations, which has required BHP to implement costly mitigation measures to address the difference in functional performance.

In its submission of 2 October 2018, an exporter of railway wheels to Australia from France, MG-Valdunes (Valdunes), stated that BHP had raised significant and credible elements of fact in support of its claim that the railway wheels produced by Comsteel were not like goods to those produced and exported by Valdunes. It said that the unique and specific design of the wheels sold to Australia was confirmed by the Commissioner's finding that Valdunes' wheels produced for domestic consumption did not offer any similar or like characteristics to those designed and produced for the Australian market.

Comsteel rejected BHP's assertions, stating that it had tendered and supplied wheels meeting BHP's specification since 1996. Comsteel claimed that the railway wheels it supplies are fit-for-purpose. It claimed it had been a long established supplier of Australian-made wheels to the iron ore industry in Australia and that the goods its manufactures are internationally recognised as of high quality and performance.

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<sup>8</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR



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From the information gathered by the Commission and that provided by interested parties, there is no conclusive evidence that the production process used by Comsteel results in the production of wheels that were significantly different to the wheels imported from China and France in the investigation period. The cause of the cracking of a number of Comsteel wheels experienced by BHP is a matter of dispute between the parties. Investigations by independent parties do not conclude that quality of the Comsteel wheels was the cause of the problems. Indeed, BHP pre-approve suppliers to supply railway wheels meeting its own specification requirements and there is no evidence to suggest that wheels supplied by Comsteel in the investigation period did not meet these specifications.

Notwithstanding the claims relating to the quality of the Comsteel wheels (discussed in detail in the causation section of this SEF), the Commission is satisfied that the railway wheels manufactured by Comsteel during the investigation period meet the definition of like goods.

The Commission finds that the locally produced goods closely resemble the goods under consideration and are like goods given that:

- the primary physical characteristics of the imported and locally produced goods are similar – being of similar shape and dimension, and being made from similar alloy steel;
- the imported and locally produced goods are commercially alike as they are sold to common customers;
- the imported and locally produced goods are functionally alike as they have the same or similar end-use – to be affixed to railway cars to transport iron ore; and
- despite possible differences in the production process for the primary steel, the imported and locally produced goods are manufactured in a similar manner – through the forming, rolling and treating of steel sections cut from an ingot or billet.

Comsteel produces other types of steel wheels for railway applications. These include wheels for passenger and general freight carriages and locomotives. The Commission's view is that these other types of wheels are not like goods to the goods under consideration as:

- the primary physical characteristics of the other wheels produced by Comsteel are different - being of different design and dimension;
- the other wheels produced by Comsteel are not commercially alike as they are sold to different customers in different sectors of the rail market; and
- the locally produced goods are not functionally alike as they have different end-uses.

Although the other steel wheels produced by Comsteel are manufactured using a similar production process, on balance the Commission considers that when assessed against its like goods framework,<sup>9</sup> such wheels are not like goods to the goods under consideration in this investigation.

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<sup>9</sup> See Chapter 2 of the Commission's Dumping and Subsidy Manual, available on the Commission's website.

## 6 THE AUSTRALIAN INDUSTRY

### 6.1 Preliminary finding

The Commissioner finds that there is an Australian industry producing like goods and that the goods are manufactured in Australia. The Commissioner also finds that the Australian industry producing the goods consists of one manufacturer, Comsteel.

### 6.2 Legislative framework

The Commissioner must be satisfied that the like goods are produced in Australia. Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 6.3 Production process

The Commission conducted an inspection of Comsteel's production facilities at Waratah in New South Wales and viewed the production processes undertaken.

Comsteel uses scrap metal as the main raw material to produce billet and ingot in its 60MT electric arc furnace (EAF). To produce ingot for railway wheels, certain alloys are added to the scrap steel to achieve the desired metallurgy. The molten steel from the EAF undergoes a vacuum degassing process before being poured into ingot moulds.

The ingots produced in the steelmaking process are sawn into 'cheeses' and then heated in a rotary furnace. The cheeses are pre-formed in a slab press and then forged in the forging press. The wheel is then rolled using edge and pressure rollers before being 'dished' and centre hole-punched in a final press.

The wheel is heated and rim quenched and then tempered in a tempering furnace. The wheel is shot blasted, hardness tested and machined to its final specifications.

The wheel undergoes various tests for surface defects and internal inclusion defects before being stamped and packaged for shipment.

### 6.4 Conclusion

In its application, Comsteel claimed to be the sole Australian producer of railway wheels. The Commission is not aware of any other Australian producer of the goods and no submissions or other information has been received to indicate that there are any other producers in Australia.

Following the Commission's verification of Comsteel's manufacturing processes in Australia, the Commission is satisfied that railway wheels are manufactured in Australia by Comsteel.

Accordingly, the Commissioner is satisfied, in accordance with subsections 269T(2) and 269T(4), that there is an Australian industry producing railway wheels in Australia and that this industry consists of Comsteel.

## **7 AUSTRALIAN MARKET**

### **7.1 Preliminary finding**

The Commissioner has found that the Australian market for railway wheels is supplied by Comsteel and imports from China and France. The Commission estimates that the size of the Australian market during the investigation period was approximately 21,500 units.

### **7.2 Background**

The Australian market for railway wheels is supplied by Comsteel and imports from China and France.

The goods are used on iron ore carriages which run on proprietary railways owned by iron ore mining companies in the Pilbara region of Western Australia. During the investigation period, the proprietors of the railways were BHP, Rio Tinto, FMG and Roy Hill.

Specifications for railway wheels differ slightly between the Australian customers to reflect differences in railway track designs and load requirements of the ore carriages. There are no market substitutes for railway wheels in Australia.

Demand for railway wheels is driven by the commissioning of new ore carriages and the replacement of wheels on existing carriages. The typical lifespan of a railway wheel is between 8 and 12 years. During their operation, the wheels experience deterioration and damage. During their life, the wheels require periodic machine re-profiling to remove damaged material.

The integrity of the wheels is important to the safe and efficient operation of the railways. Wheel failures have the potential to cause train derailments. While the railway lines on which the wheels operate are private, they come into contact with populated areas such as at level crossings.

Purchases of the railway wheels by the mining companies have traditionally been made by end users from pre-qualified suppliers through contract or tender arrangements. Supply arrangements typically establish pricing and supply quantities for a fixed period and/or a quantity against which periodic orders are made. Delivery terms are typically to specified storage or workshop facilities either in Perth or the Pilbara region.

### **7.3 Market size**

There was minimal demand for railway wheels in Australia in 2014 and 2015 due to a decline in iron ore prices, which placed cost pressures on iron ore producers. Demand increased significantly in 2016 and again in 2017 as iron ore prices rose and the iron ore miners increased their spending on maintenance programs, including the purchase of replacement railway wheels.

## **8 DUMPING INVESTIGATION**

### 8.1 Preliminary finding

The Commissioner has found that exports of railway wheels from China and France have been dumped and the volume of dumped goods from each country is not negligible.

The dumping margins are shown in the following table.

Country	Exporter	Dumping Margin
China	Maanshan Iron & Steel Co Ltd	19.0%
China	Uncooperative and all other exporters	19.0%
France	MG-Valdunes	37.2%
France	Uncooperative and all other exporters	37.2%

**Table 4: Dumping Margin Summary**

### 8.2 Introduction and legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

Subsection 269TAB(1)(a) provides that, subject to certain conditions, the export price of any goods exported to Australia is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods or any other matter arising after exportation. Where the conditions in subsection 269TAB(1)(a) are not met, such as when the export transactions are not arms length, the export price is determined under subsection 269TAB(1)(b) or subsection 269TAB(1)(c).

Subsection 269TAC(1) provides that, subject to certain conditions, the normal value of the goods is the price at which like goods are sold in the domestic market of the country of export. However, subsection 269TAC(1) cannot be used to calculate the normal value of the goods if one of the circumstances in subsections 269TAC(2)(a) or (b) is present. Where one or more of these circumstances are present, the normal value of the goods is to be calculated under either subsection 269TAC(2)(c) or (d).

Subsection 269TAC(2)(c) provides for the normal value to be a constructed amount, being the sum of the cost of production or manufacture of the goods in the country of export, and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export instead of being exported, the selling, general and administrative (SG&A) costs and the profit on that sale.

If the Minister directs that it applies, subsection 269TAC(2)(d) provides that the normal value is the price of like goods sold in the ordinary course of trade in arms length transactions from the country of export to an appropriate third country.

Dumping margins are determined under section 269TACB.

### 8.3 Cooperation by exporters to Australia

At the commencement of the investigation, the Commission contacted known exporters of the goods to Australia from China and France and invited them to complete an exporter questionnaire. The exporter questionnaire and associated spreadsheets were also placed on the Case Page for investigation 466 on the Commission's website.

The exporter questionnaire sought information regarding the exporters' commercial operations, the goods exported to Australia, like goods sold on the domestic market and to third countries, economic and financial details, and relevant costing information. The Commission received exporter questionnaire responses from the following exporters:

- Masteel of China; and
- Valdunes of France.

Both exporters provided questionnaire responses that the Commission considered were deficient and that it considered could be quickly and easily rectified in a further response. Accordingly, both exporters were given, and took up, the opportunity to rectify the deficiencies in accordance with subsection 6(a) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Non-cooperation Direction).

Non-confidential exporter questionnaire responses for Masteel and Valdunes are available at the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

### 8.4 Uncooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an 'uncooperative exporter', where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

In relation to making determinations that an exporter is an uncooperative exporter, the Commissioner has regard to both subsection 269T(1) and the Non-cooperation Direction.

During the investigation, the Commission established that Masteel and Valdunes were the only exporters of railway wheels to Australia in the investigation period. Nevertheless, under subsection 8(b) of the Non-cooperation Direction, the Commissioner has determined all exporters 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).

### 8.5 Dumping assessment – China

#### 8.5.1 Masteel

##### Verification of information

The Commission visited Masteel's premises in China to verify the information provided in its exporter questionnaire response. A report covering the visit findings is available on the public record.

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### Export prices

For certain exports to Australia by Masteel during the investigation period, the Commission considers that Masteel was both the exporter and importer in relation to the transactions. For these sales to Australia, the goods were exported to Australia by the importer and therefore the export price cannot be established under subsection 269TAB(1)(a) or subsection 269TAB(1)(b) of the Act.

The Commission has, having regard to all the circumstances of the exportation, determined export prices for these exports under subsection 269TAB(1)(c), using the price paid or payable by the customer in Australia, less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

For other exports to Australia by Masteel during the investigation period, the Commission's view is that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- the purchase of the goods by the importer was an arms length transaction.

The Commission established export prices for these transactions under subsection 269TAB(1)(a) of the Act, using the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

### Normal Values

The Commission considers that Masteel did not sell like goods to the goods under consideration in China in the investigation period.

The Commission's view is that, because of the absence of sales of like goods in China that would be relevant for determining a price under subsection 269TAC(1) of the Act, the normal value for exports from China should be established under subsection 269TAC(2)(c) of the Act, being the sum of:

- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.

Subsection 43(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation) requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or

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manufacture of like goods, the cost of production must be worked out using the exporter's records.

The Commission's view is that the costs relating to purchases of the steel raw material for railway wheels during the investigation period contained in Masteel's records do not reasonably reflect competitive market costs. Details of the Commission's consideration is at **Non-confidential Appendix 2**.

Having determined that costs incurred by Masteel for steel raw materials do not reasonably reflect competitive market costs, the Commission considered options for establishing competitive market costs in China for the purposes of constructing normal values under s269TAC(2)(c) of the Act.

### *Private domestic prices*

**Non-confidential Appendix 2** sets out the Commission's findings that various Government of China (GOC) plans and policies distort the prices of domestic steel raw materials used to make railway wheels. Therefore, the Commission considers that private domestic prices for these steel raw materials in China do not reflect suitable competitive market costs free from government influences that would enable the Commission to establish competitive costs for the production of railway wheels.

### *Import prices*

The Commission considered the relevance of steel billet import prices in China to establish competitive market prices. Specifically, the Commission considered information provided by the GOC in its response to the questionnaire for the purpose of considering import prices as suitable competitive market costs.

The Commission considers that import prices are not specific to the grades of steel used in the production of railway wheels and are, in any case, likely to be affected by government influences on domestic prices and may not accurately reflect competitive market costs.

### *External benchmarks*

The Commission considers that the most appropriate methodology is to replace Masteel's steel material input costs with the costs incurred by the French railway wheel producer, Valdunes. The Commission used these costs as the Commission's assessment is that these costs represent competitive market costs of the particular grade of micro alloyed steel used in the production of the goods under consideration. Competitive benchmarks for this type of steel are not readily available from reported pricing services. The costs of the French producer are also verified costs that are available to the Commission.

### *Costs of production in China*

To ensure that the costs used to establish the normal value is an amount that represents the costs of production in China, the Commission considered whether it is appropriate to adjust the steel input costs of the French manufacturer to take into account the comparative differences between the positions of the producers in China and France.

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Comsteel submitted that the Commission had at its disposal verified costs from Valdunes, a cooperative exporter in a country free from government influence (on the assumption that the steel feed is sourced locally and not from China at an influenced price).

Rio Tinto submitted<sup>10</sup> that, if the Commission used third country information as a benchmark, it should make adjustments to account for Masteel's comparative advantages. Rio Tinto claimed that the Commission should seek sufficient information from Valdunes and Masteel regarding their comparative advantages and disadvantages and make corresponding adjustments.

It is important to recognise that the Commission has replaced Masteel's steel cost with a competitive market cost, but that all other costs incurred in the production of railway wheels are those recorded in Masteel's records.

The Commission also considered whether it would be appropriate to adjust the benchmark to reflect any comparative differences that might be present in the Chinese market. The Commission concluded that such an adjustment would not be possible particularly given the significant involvement of the GOC in relevant markets. The Commission also observes that no information or evidence on the subject was provided during the investigation. To calculate any differences, including those due to any comparative advantages or disadvantages, with any degree of accuracy would require the Commission to isolate and subtract the effect of GOC's significant involvement in the Chinese steel market. The Commission considers that it would not be possible to isolate and quantify the effect of GOC involvement in the relevant markets and to determine comparative advantages or disadvantages.

In *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885*, Nicholas J considered the treatment of a more general adjustment to benchmark prices, namely for a claimed Chinese comparative advantage in production of HRC. Nicholas J accepted the view of the ACBPS that such an adjustment was not practical, reasonable or warranted in that case and that the more reasonable approach was to use a benchmark that reflected an average price of HRC that did not include any adjustment for comparative advantage.

In the recent *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC20*, the Full Federal Court also found that the legislation did not include a mandatory requirement to adjust foreign pricing information for comparative advantages and disadvantages, as long as the matter is given due consideration.

In relation to other differences that may exist in the comparative steel input costs, the Commission notes that Valdunes' steel input cost is based on the purchase of the steel from an unrelated party. While this purchase price may include some element of profit and selling expenses, the Commission does not have any information upon which to estimate the level of these amounts. The Commissioner will consider any information

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<sup>10</sup> Submission date 5 September 2018 – EPR No.47



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provided in response to this SEF on the appropriate level of adjustment to the steel costs used to replace the costs from Masteel's records.

As the Commission's view is that Masteel does not sell like goods in China, it has not been able to work out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission has worked out an amount for SG&A under subsection 44(3)(a) of the Regulation by identifying the actual amounts of SG&A costs incurred by the exporter in the production and sale of the same general category of goods in China.

The Commission calculated an amount for profit under subsection 45(3)(a) of the Regulation. The Commission calculated an amount of profit by identifying the actual amounts realised by Masteel from the sale of the same general category of goods (other types of railway wheels sold by Masteel) on the domestic market of China.

### Adjustments

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to subsection 269TAC(9) as follows:

Adjustment type	Application
Domestic packaging expenses	<b>Deduct</b> the cost of domestic packaging expenses
Export packaging expenses	<b>Add</b> export packaging expenses
Export inland transport expenses	<b>Add</b> export inland transport expenses
Export handling and other expenses	<b>Add</b> export handling and other expenses
Export bank charges	<b>Add</b> export bank charges
Export credit expenses	<b>Add</b> export credit expenses

**Table 5: Summary of adjustments**

### Dumping Margin

The Commission calculated the dumping margin in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin has been calculated as **19.0 per cent**.

Export price, normal value and dumping margin calculations for Masteel are at **Confidential Appendix 3**.

#### **8.5.2 Dumping assessment – Other exporter rate**

As the Commissioner is satisfied that no other Chinese exporters exported railway wheels to Australia in the investigation period, the Commissioner has established a rate for all other exporters at the same rate as established for the co-operating exporter, Masteel.

The dumping margin has been calculated as **19.0 per cent**.

## 8.6 Dumping assessment – France

### 8.6.1 Valdunes

#### Verification of information

The Commission visited Valdunes' premises in France to verify the information provided in its exporter questionnaire response. A report covering the visit findings is available on the public record.

#### Export prices

The Commission considers that, in respect of Valdunes' Australian export sales during the investigation period, that:

- the goods have been exported to Australia otherwise than by the importer; and
- the purchases of the goods by the importer were arms length transactions.

The Commission found that the goods have been purchased by the importer from the exporter, and therefore the export price has been calculated using subsection 269TAB(1)(a) of the Act using the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

#### Normal Values

The Commission found that, in the investigation period, Valdunes did not sell like goods to the goods under consideration in France.

The Commission's view is that, because of the absence of sales of like goods in France that would be relevant for determining a price under subsection 269TAC(1) of the Act, the normal value for exports from France should be established under subsection 269TAC(2)(c) of the Act, being the sum of:

- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.

The Commission was satisfied that Valdunes keeps records relating to the goods and the records are in accordance with generally accepted accounting principles in France and reasonably reflect competitive market costs associated with the production or manufacture of the goods. In accordance with subsection 43(2) of the Regulation, the Commission has worked out the cost of production using the information set out in Valdunes' records.

During the verification process, Valdunes proposed that certain costs set out in its records either overstated the costs it actually incurred in relation to sales of railway wheels to Australia, or understated the costs of selling the same general category of goods on the domestic market. The Commission did not accept that Valdunes had provided a sufficient

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basis to move away from the information set out in its records and derived from its normal accounting practices.

As Valdunes does not sell like goods in France, the Commission has not been able to work out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission has worked out an amount for SG&A under subsection 44(3)(a) of the Regulation by identifying the actual amounts of SG&A costs incurred by Valdunes in the production and sale of the same general category of goods (other types of railway wheels sold by Valdunes on the domestic market).

The Commission calculated an amount for profit under subsection 45(3)(a) of the Regulation. The Commission calculated an amount of profit by identifying the actual amounts realised by Valdunes from the sale of the same general category of goods (other types of railway wheels sold by Valdunes) on the domestic market of France.

### Adjustments

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to subsection 269TAC(9) as follows:

<b>Adjustment type</b>	<b>Application</b>
Domestic credit expenses	<b>Deduct</b> domestic credit expenses
Export inland transport and handling expenses	<b>Add</b> export inland transport and handling expenses
Export commission expenses	<b>Add</b> the cost of export commission
Export credit expenses	<b>Add</b> export credit expenses

**Table 6: Summary of adjustments**

### Dumping Margin

The Commission calculated the dumping margin in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin has been calculated as **37.2 per cent**.

Export price, normal value and dumping margin calculations for Valdunes are at **Confidential Appendix 3**.

### Submission

In its submission of 2 October 2018, Valdunes referred to the rigorous standards imposed by the World Trade Organization's Anti-Dumping Agreement (Agreement) for the investigation of dumping. In particular, Valdunes noted Articles 2.2.1.1 and 2.2.2 of the Agreement dealing with elements of the construction of normal values.

Valdunes stated that the Commission had misapplied or misinterpreted several costing elements of the normal value by having:

1. over-adjusted any necessary uplift of variances from standard costs to actual costs in the calculation of constructed normal value based on CTMS;
2. denied downward adjustments proposed by Valdunes of its accounting SGA costs as incurred by Valdunes in the ordinary course of business;

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3. overstated the CTMS for export sale selling expenses by allocating general costs as well as adding into the constructed normal value a commission expense incurred in Valdunes' sales to Australia, thus double counting that charge;
4. understated certain domestic credit costs, and
5. overstated any applicable export credit costs in regards to Valdunes' sales to Australia.

In relation to points 1 and 2 above, the Commissioner was not satisfied that the methodology proposed by Valdunes to reallocate certain costs was an appropriate basis for allocating the costs to the goods exported to Australia, nor was it consistent with Valdunes' normal accounting practice.

Valdunes did not raise points 3, 4 or 5 when given an opportunity to comment on the draft dumping calculations. In view of the timing of Valdunes' submission, the Commissioner will evaluate these points in its consideration of responses to this SEF.

### 8.6.2 Dumping assessment –Other exporter rate

As the Commissioner is satisfied that no other French exporters exported railway wheels to Australia in the investigation period, the Commissioner has established a rate for all other exporters at the same rate as established for the co-operating exporter, Valdunes. The dumping margin for all other exporters from France is **37.2%**.

### 8.7 Volume of dumped imports

Pursuant to subsection 269TDA(3) of the Act, the Commissioner must terminate an investigation if satisfied that the total volume of goods that have been, or may be, dumped is negligible. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period.

The Commission has based its estimate of the total volume of goods imported into Australia over the investigation period on verified information provided by the importers and exporters to Australia. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from each nominated country was greater than three per cent of the total import volume and is therefore not negligible.

## **9 SUBSIDY INVESTIGATION**

### **9.1 Preliminary finding**

The Commissioner finds that countervailable subsidies have been received in respect of railway wheels exported to Australia from China during the investigation period. The Commissioner finds that, in relation to the only known exporter of the goods from China in the investigation period, the subsidy margin was negligible.

Subject to responses to this SEF, the Commissioner proposes to terminate the investigation into the application for a countervailing duty notice.

### **9.2 Investigated programs**

In its application, Comsteel alleged that the Chinese exporter of railway wheels, Masteel, benefited from 88 countervailable subsidies. These alleged subsidies related to programs for the provision of goods, grants, value added tax (VAT) exemptions, preferential taxation schemes, equity programs and preferential loan schemes. In its consideration of the application, the Commission identified a further three programs that Masteel appeared to benefit from.

As a result of its assessment of the information provided in the application, the Commission investigated all 88 alleged subsidy programs as well as the three additional programs identified during the application consideration process.

To assess these programs further in relation to railway wheels exported to Australia, the Commission included questions relating to each program in a questionnaire which was forwarded to the GOC.

During examination of information provided in Masteel's exporter questionnaire response, and at verification visit by the Commission, the Commission was provided with information that indicated benefits were received under several additional subsidy programs that were not included in the 91 programs already being examined by the Commission.

On 7 August 2018, the Commission requested information from the GOC on the additional subsidy programs. On 21 August 2018, the GOC provided a response stating that it understood the financial contributions received by Masteel were, in their totality, negligible and referring the Commission to Masteel for further information on the programs.

### **9.3 Summary of countervailable programs**

After assessing all relevant information available, the Commissioner has found that countervailable subsidies have been received in respect of railway wheels exported to Australia from China, under 32 countervailable subsidy programs.

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The findings in relation to each investigated program are outlined in the below table.

<b>Program Number</b>	<b>Program Name</b>	<b>Program type</b>	<b>Countervailable subsidy received (Yes/No)</b>
1	Billet provided by government at less than adequate remuneration	Provision of goods	No
2	Coking coal provided by government at less than adequate remuneration	Provision of goods	Yes
3	Coke provided by government at less than adequate remuneration	Provision of goods	No
4	Electricity provided by government at less than adequate remuneration	Provision of goods	No
5	Preferential Tax Policies for High and New Technology Enterprises	Preferential tax policies	No
6	Preferential Tax Policies in Western Regions	Preferential tax policies	No
7	Land Use Deduction	Preferential tax policies	No
8	Tariff and VAT Exemptions on Imported Materials and Equipment	Preferential tax policies	No
9	VAT refund on comprehensive utilization of resources	Preferential tax policies	No
10	One-time Awards to Enterprises Whose Products Qualify for "Well-Known Trademarks of China" and "Famous Brands of China"	Grants	No
11	Matching Funds for International Market Development for small and medium size enterprises (SMEs)	Grants	No
12	Superstar Enterprise Grant	Grants	No
13	Research and Development (R&D) Assistance Grant	Grants	No
14	Patent Award of Guangdong Province	Grants	No
15	Innovative Experimental Enterprise Grant	Grants	No
16	Special Support Fund for Non-State-Owned Enterprises	Grants	No
17	Venture Investment Fund of Hi-Tech Industry	Grants	No
18	Grants for Encouraging the Establishment of Headquarters and	Grants	No

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	Regional Headquarters with Foreign Investment		
19	Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan	Grants	No
20	Water Conservancy Fund Deduction	Grants	No
21	Wuxing District Freight Assistance	Grants	No
22	Huzhou City Public Listing Grant	Grants	No
23	Huzhou City Quality Award	Grants	No
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grants	No
25	Wuxing District Public List Grant	Grants	No
26	Anti-dumping Respondent Assistance	Grants	No
27	Technology Project Assistance	Grants	No
28	Transformation technique grant for rolling machine	Grants	No
29	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grants	No
30	Key industry revitalization infrastructure spending in 2010	Grants	No
31	Provincial emerging industry and key industry development special fund	Grants	No
32	Environmental protection grant	Grants	No
33	Environmental Protection Fund	Grants	No
34	Intellectual property licensing	Grants	No
35	Financial resources construction - special fund	Grants	No
36	Reducing pollution discharging and environment improvement assessment award	Grants	No
37	Grant for elimination of out dated capacity	Grants	No
38	Grant from Technology Bureau	Grants	No
39	High and New technology Enterprise Grant	Grants	No
40	Independent Innovation and High-Tech Industrialization Program	Grants	No
41	Environmental Prize	Grants	No
42	Jinzhou District Research and Development Assistance Program	Grants	No
43	Debt for equity swaps	Equity programs	No

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44	Equity infusions	Equity programs	No
45	Unpaid dividends	Equity programs	No
46	Preferential loans and interest rates	Preferential loans	No
47	Compensation for land purchasing and storage	Grants	No
48	Technological transformation fund for Phase II Silicon Steel Project	Grants	Yes
49	Subsidy for land use rights in the new zone (Block No. 31836 & 31837)	Grants	No
50	Subsidy for developing emerging strategic industries in Anhui Province	Grants	No
51	New-zone Thermal Power Plant CAPP system engineering	Grants	Yes
52	EMU Steel wheel production line project	Grants	Yes
53	Cold-rolled sheet project	Grants	No
54	Relocation compensation for transportation company	Grants	No
55	Exhaust gas power generation projects of - Steel blast furnace- 1# - 4# coke dry quenching	Grants	No
56	Dezincification engineering of zinc dust and mud rotary hearth furnace for 3rd iron plant	Grants	No
57	National subsidy for slag muck processing and recycling engineering (AD201050406)	Grants	No
58	Subsidy for construction by Wuhu Technique	Grants	No
59	6# full burning blast furnace gas boiler works	Grants	No
60	Municipal environmental protection subsidies for desulfurisation engineering of 3rd iron plant's sintering flue gas	Grants	No
61	5# and 6# coke dust removal project	Grants	No
62	Fix assets subsidy for thin plate project	Grants	Yes
63	Flue gas curtailment project for 1st iron plant's blast furnace	Grants	No
64	Subsidy for technology advancement from open-hearth furnace to converter for 1st steel plant	Grants	No
65	Rolled wheel works	Grants	No

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66	Pulse clarifier anti-pollution	Grants	No
67	Environmental funds for desulfurisation project of 3rd iron plant's flue gas (BOT)	Grants	Yes
68	National environmental fund for flue gas treatment by 3rd steel plant (A1201150304)	Grants	No
69	Subsidies for environmental protection funds of smoke desulfurisation plant	Grants	No
70	No. 3 general factory thermoelectricity plant 135MW generators	Grants	No
71	New zone coking-field project	Grants	No
72	Comprehensive utilisation of water resources	Grants	No
73	Subsidy for Masteel new-zone CDQ project	Grants	No
74	Subsidy for material modification of high-speed wheel and axle	Grants	Yes
75	Environmental protection subsidy for the thermal power plant Denitrification	Grants	No
76	Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 2# sintering machine	Grants	No
77	Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 3# sintering machine	Grants	No
78	Interest subsidy for rail industrialisation project of Masteel	Grants	No
79	Development and reform subsidy	Grants	No
80	Development fund of efficient and economical construction steel technology	Grants	No
81	Technology development fund by Ministry of science and technology	Grants	No
82	Intelligent manufacturing fund for Ma-steel Rail Transportation	Grants	No
83	Subsidy for Maanshan railway industry	Grants	Yes
84	Comprehensive utilisation of gas for power generation of a thermal power plant	Grants	Yes

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85	Environmental subsidy for biochemical water upgrade project of coke old area upgration project of coke old	Grants	No
86	Government subsidy for desulphurisation and denitrification of gases project of a thermal power plant	Grants	No
87	Government subsidy for dust elimination of hot metal pouring on converter roof	Grants	No
88	Others	Grants	Yes
89	Environmental subsidy funds for flue gas desulfurisation and 135mW thermal power	Grants	Yes
90	Hot rolled sheet program	Grants	No
91	Exhaust heat power generation by sintering belt cooler of 3 <sup>rd</sup> iron plant	Grants	No
92	Repayment of Administration for Port & Shipping of Ma'anshan	Grants	Yes
93	International Market Development Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
94	Import Subsidies Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
95	Overseas Network Construction Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
96	Fourth Quarter Incentive Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
97	Industrial Investment Comprehensive Compensation Funds of 2017 from Economic and Information Commission of Ma'anshan	Grants	Yes
98	National Industrial Transformation Financial Subsidy of 2017 (First Major Technical Equipment Insurance Project)	Grants	Yes
99	Provincial 115 Industry Innovation Team Funds from Finance Bureau of Ma'anshan	Grants	Yes

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100	The Second Tranche of Provincial Foreign Trade Policy of 2016 from Business Bureau of Ma'anshan	Grants	Yes
101	Industrial Policy Funds of 2017 from Finance Bureau of Ma'anshan	Grants	Yes
102	Industrial Policy Funds from Finance Bureau Corporate Section of Ma'anshan	Grants	Yes
103	Environmental Assistance from Environmental Protection Bureau of Ma'anshan	Grants	Yes
104	Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan	Grants	Yes
105	Trade Friction Public Service Fund Subsidies of 2016 from Business Bureau of Ma'anshan	Grants	Yes
106	Provincial Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan	Grants	Yes
107	Technical Special Fees	Grants	Yes
108	Export Credit Subsidy	Grants	Yes
109	Annual Transformation Development Financial Aid Fund of 2017	Grants	Yes
110	Employees' Distributive Resettlement Expenses for resolving excess capacity	Grants	Yes
111	Subsidy for hot-rolled 1580 project	Grants	Yes
112	Subsidy for 4# blast furnace project	Grants	Yes

**Table 7 – Subsidy programs investigated**

## 9.4 Subsidy margins

### 9.4.1 Masteel

The Commission found that Masteel received countervailable subsidies under 32 programs.

### 9.4.2 Exporters other than Masteel

The Commission is satisfied that Masteel was the only exporter of railway wheels to Australia in the investigation period. The Commission has established a subsidy margin for exporters other than Masteel at the same level as established for Masteel.

### 9.4.3 Subsidy margins

Table 8 below shows the Commission's subsidy margin calculations:

<b>Exporter</b>	<b>Subsidy margin</b>
Masteel	0.6%
Uncooperative and All Other Exporters	0.6%

**Table 8 – Preliminary subsidy margins**

The Commission's findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Non-confidential Appendix 4**.

The calculation of subsidy margins is at **Confidential Appendix 5**.

### 9.4.4 Proposed termination of subsidy investigation

Subsection 269TDA(2) requires that the Commissioner must terminate a countervailing investigation in relation to an exporter if countervailable subsidisation for that exporter is determined to be negligible.

In relation to goods exported from China (a Developing Country<sup>11</sup>), countervailable subsidisation is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than 2 per cent.<sup>12</sup>

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. Subject to responses to this SEF, the Commissioner proposes to terminate the subsidy investigation in relation to Masteel and to all exporters from China generally.

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<sup>11</sup> Under the *Customs Tariff Act 1995*

<sup>12</sup> Subsection 269TDA(16)

## 10 ECONOMIC CONDITION OF THE INDUSTRY

### 10.1 Preliminary finding

Based on an analysis of the information contained in the application and information obtained and verified during this investigation, the Commissioner considers that Comsteel has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price suppression
- reduced profits;
- reduced profitability;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers;
- reduced revenue.

### 10.2 Introduction

Comsteel claims that it has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced ROI;
- reduced attractiveness to reinvest; and
- reduced employment numbers.

### 10.3 Approach to injury analysis

The Commission relied on Comsteel's verified data in performing its analysis of the economic conditions of the Australian industry since 1 January 2014, the start of the injury analysis period. The verified data includes production, cost and sales data for railway wheels on a quarterly and annual basis for the injury analysis period.

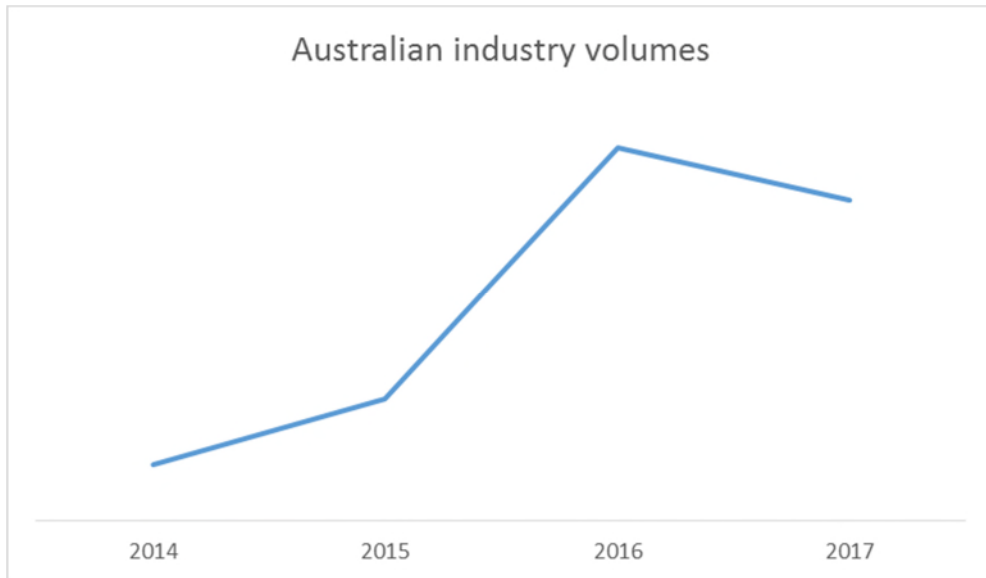
Unless otherwise stated, the Commission's analysis of Comsteel's data relates only to its domestic sales of railway wheels. No export sales, sales of wheel sets, or wheels that are not like goods to the goods subject of this investigation were included in the Commission's analysis.

### 10.4 Volume effects

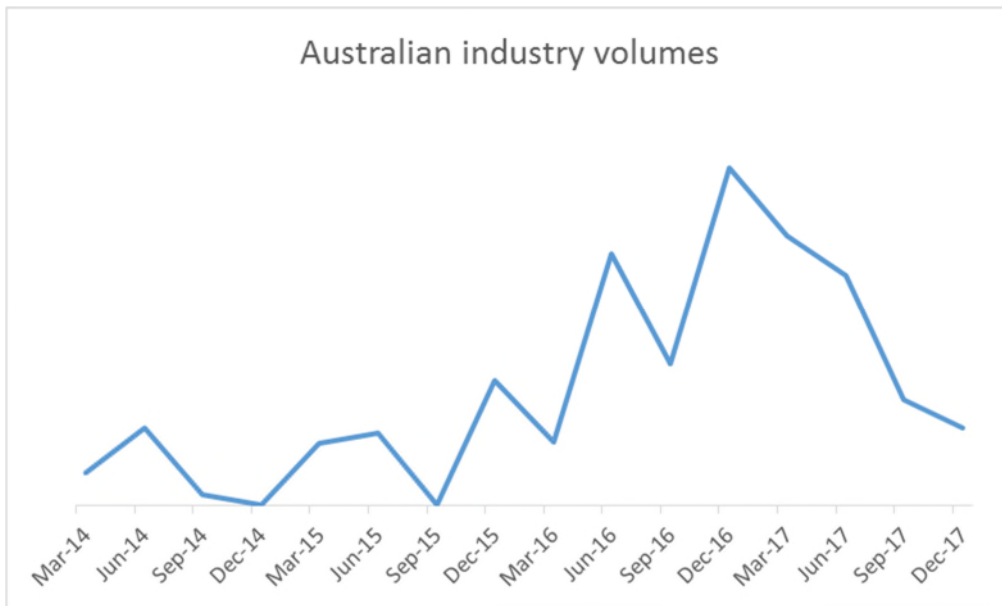
#### 10.4.1 Sales volume

Figure 1 and Figure 2 below depict the volume of railway wheels sold by Comsteel in the injury analysis period.

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**Figure 1: Annual volume of railway wheels sold by Comsteel**



**Figure 2: Quarterly volume of railway wheels sold by Comsteel**

The majority of sales of the goods during the investigation period were a result of tender processes by railway wheels customers. Comsteel was unsuccessful in the tender processes it participated in and was not invited to participate in Rio Tinto's tender to source a proportion of its requirements from an overseas supplier. Comsteel continued to supply a proportion of Rio Tinto's replacement railway wheel requirements in the investigation period.

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The following are the tender processes that were relevant to the supply or potential supply of railway wheels in Australia during the investigation period:

Customer	Awarded date	Result
BHP Billiton	November 2016	Awarded to a supplier of dumped goods
BHP Billiton	September 2017	Awarded to a supplier of dumped goods
Rio Tinto	mid-2017	Awarded to a supplier of dumped goods
FMG	mid-2017	Awarded to a supplier of dumped goods
Roy Hill	October 2017	Awarded to a supplier of dumped goods

**Table 9: Tender processes relevant to sales or potential sales in the investigation period<sup>13</sup>**

Comsteel supplied information in relation to its unsuccessful bids and claimed that it had lost sales in the investigation period to the allegedly dumped imports from France and China.

In its submission of 26 July 2018, the Ministry of Commerce of the People's Republic of China (MOFCOM) claimed that Comsteel had experienced remarkable growth since 2014, with its sales volume increasing over sixfold in the period 2014 to 2016. MOFCOM stated that this level of growth was not sustainable and that the minor dip in 2017 was a natural correction in a growing market. In its submission of 11 September 2018<sup>14</sup>, BHP claimed that Comsteel has experienced a 500% increase in sales revenue during the injury period and consequently has not established that it has suffered material injury.

The Commission does not agree with MOFCOM's or BHP's assessment. The Commission considers that the Australian market for railway wheels increased significantly in 2016 and 2017, following subdued demand in 2014 and 2015. The fall in Comsteel's sales volumes in 2017 as depicted in Figures 1 and 2 above is, in the Commission's view, an indicator of injury and cannot be classified as a minor correction or a reflection of the ebb and flow of business.

Based on the verified information, the Commission's view is that Comsteel has suffered injury in the form of reduced sales volumes.

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<sup>13</sup> Some of these tender processes and subsequent negotiations were for an extended period.

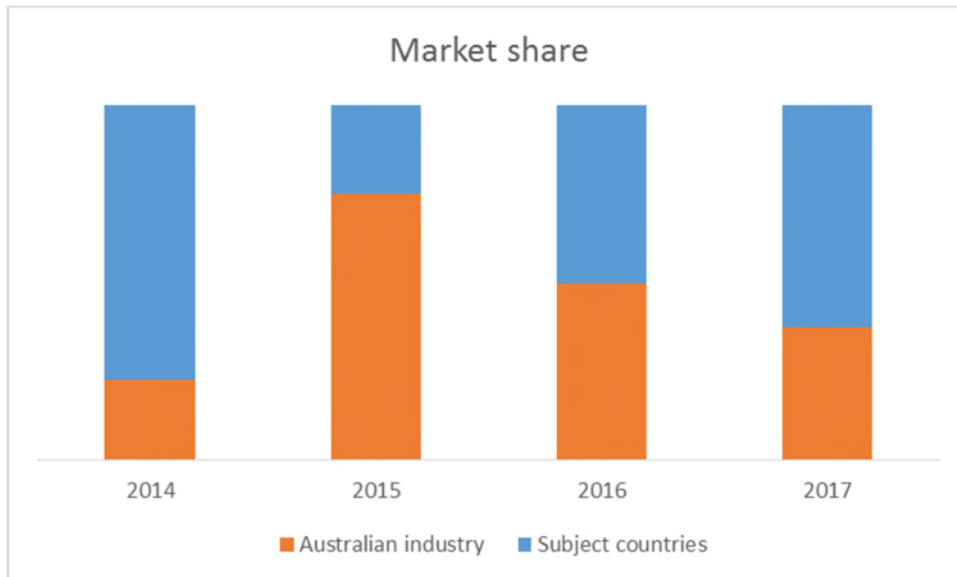
<sup>14</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

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Details of the tender processes set out in Table 9 above is at **Confidential Appendix 6**.

### 10.4.2 Market share

Figure 3 below demonstrates the proportion of the Australian market that was supplied by Comsteel and imports from China and France. The Commission is not aware of imports from other countries during the injury analysis period.



**Figure 3: Shares in the Australian railway wheels market**

Figure 3 depicts the loss of market share by the Australian industry between 2015 and 2017 and the growth of the Chinese and French exporters' market shares during that time.

The Commission considers that Comsteel has experienced injury in the form of a loss of market share.

### 10.4.3 Conclusion – volume effects

Commission considers that there is evidence to support Comsteel's claim that it experienced injury in the form of lost sales volume and lost market share.

## 10.5 Price suppression

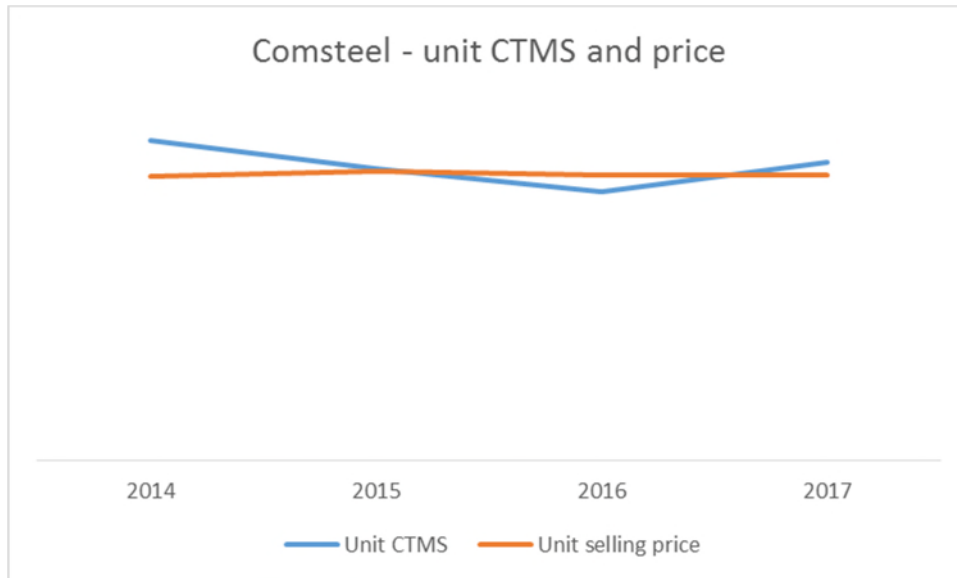
Comsteel claimed that it experienced injury in the form of price suppression in the investigation period.

Price suppression occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Figure 4 demonstrates that during the investigation period, Comsteel experienced an increase in its cost to make and sell (CTMS), resulting in a per unit loss position. Comsteel has not increased its unit selling price to account for the increase in unit CTMS.

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**Figure 4: Comparison of Comsteel Unit CTMS and Unit Sales Revenue**

In its submission dated 11 September 2018<sup>15</sup>, BHP claimed that the evidence demonstrates that Comsteel's price did not fluctuate in accordance with costs or with higher demand for its products, as evidenced in 2015 when Comsteel experienced higher sales volumes in comparison with 2014. The Commission agrees that Comsteel's price has remained relatively stable during the injury analysis period. In the period between 2014 and 2016, Comsteel experienced increased volumes resulting in increased profit and profitability. In the period between 2016 and 2017, however, Comsteel experienced reduced volumes and increased costs resulting in reduced profit and profitability. It is reasonable to assume that a business will seek to increase its selling price in order to offset the impact of increasing costs on its profit margins. Comsteel's inability to increase prices has resulted in injury in the form of price suppression.

#### **10.5.1 Conclusion – price effects**

The Commissioner considers that there is sufficient evidence to support the claim that the Australian industry suffered injury in the form of price suppression.

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<sup>15</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

## 10.6 Profits and profitability

Figure 6 demonstrates Comsteel's profit and profitability during the injury analysis period.

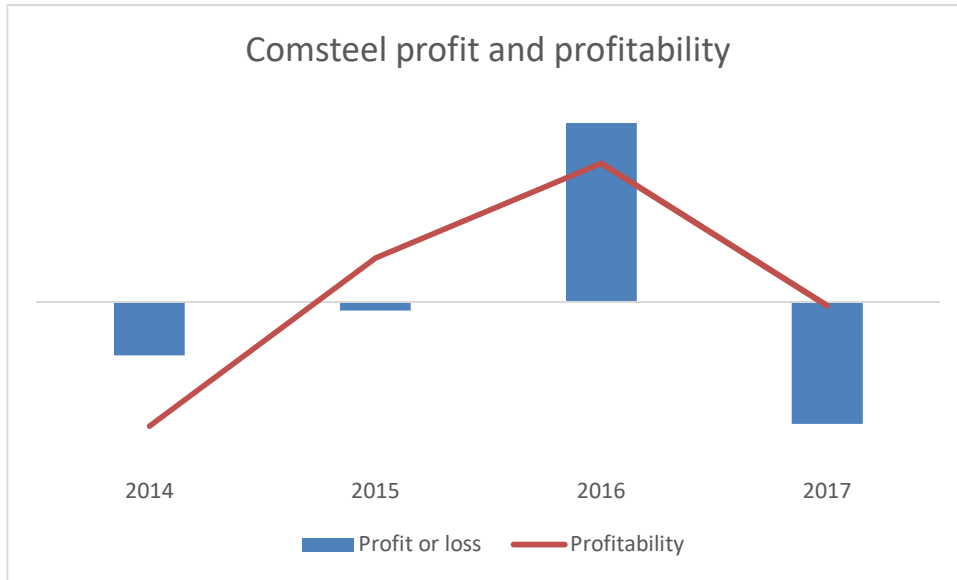


Figure 6: Comsteel profit and profitability

The profit and profitability follows a similar trend to volumes (as depicted in Figures 1 and 2), with an improvement in Comsteel's net profit position with increased volumes between 2014 and 2016, followed by a deterioration to a net loss position with reduced volumes in the investigation period. In its application Comsteel explained this correlation was due to fixed costs being averaged across lower volumes resulting in a deterioration of its net profit position during the investigation period.

The combination of Comsteel's inability to increase prices and falling volumes have impacted Comsteel's profits during the investigation period, moving from profit-making in 2016 to a loss-making position in the investigation period.

In its 11 September 2018 submission<sup>16</sup>, BHP claimed that there does not appear to be a correlation between Comsteel's profit position and its volumes or share of the railway wheels market in 2017. In the Commissioner's assessment, Comsteel's verified sales revenue and sales volumes reduced from 2016 to 2017, accounting for the reduced profit position evident in figure 6 above.

### 10.6.1 Conclusion – profit effects

Comsteel's falling volumes and its inability to increase prices to account for higher costs have impacted Comsteel's profits during the investigation period. The Commissioner considers that the Australian industry has suffered injury in the form of reduced profits and profitability during the investigation period.

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<sup>16</sup> EPR document No.50

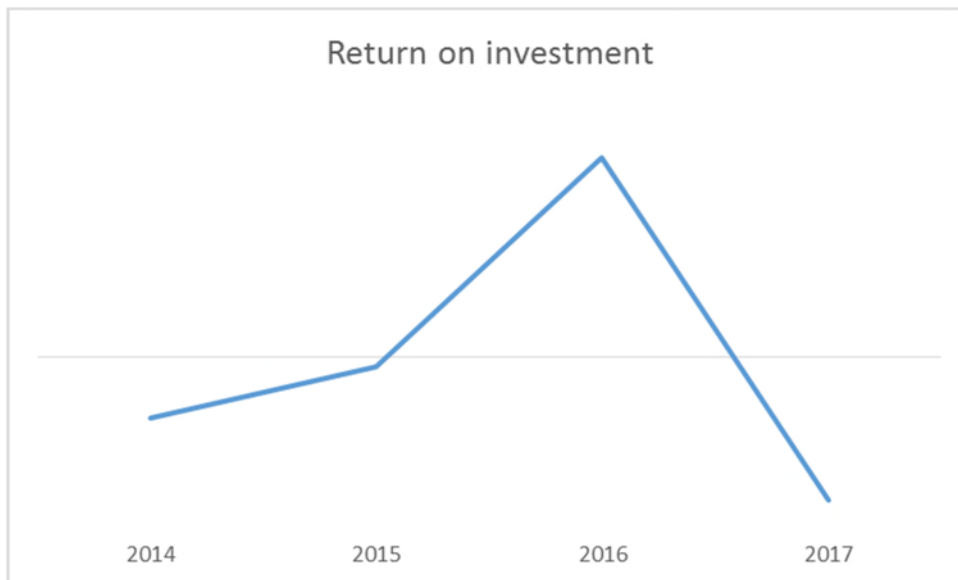
## 10.7 Other economic factors

In its application, Comsteel claimed that it had experienced injury in the form of other injury factors regarding:

- reduced ROI;
- reduced attractiveness to reinvest; and
- reduced employment numbers

### 10.7.1 ROI

The Comsteel application calculates ROI based on net profit or loss as a proportion of assets used in the production of the goods. The Commissioner examined evidence of Comsteel being unsuccessful on bids based on price, resulting in reduced volumes affecting profits and profitability. Reduced profit resulted in a reduced ROI. Figure 7 below demonstrates a sharp decline in ROI between 2016 and 2017.



**Figure 7: Comsteel ROI in Railway wheels division**

Based on the information provided, the Commissioner finds that Australian industry has experienced injury in the form of reduced ROI.

### 10.7.2 Reduced attractiveness to reinvest

Comsteel clarified during the verification visit with the Commission that reduced attractiveness to reinvest relates to the reluctance of its new parent entity to further invest capital in the railway wheels business when it is unable to secure tenders for future supply. Comsteel claimed that this was due to imports at dumped prices. The Commission requested evidence to support the claim that Comsteel has been unable to secure further capital investment due to its inability to secure tenders for future supply, which it was unable to provide. The Commissioner has been unable to identify injury in the form of reduced attractiveness to reinvest.

### 10.7.3 Employment

Employment within the railway wheels business followed a general downward trend during the injury analysis period. Between 2014 and 2015, Comsteel's Rail Division reduced employment numbers by 30 percent. During the investigation period employment numbers were reduced by 10 percent. Comsteel claimed that the reductions in employment numbers in the investigation period were due to retrenchments caused by reduced sales volumes resulting from the loss of railway wheel contracts.

Employment numbers provided by Comsteel were for the Rail Division which the Commissioner understands includes employees manufacturing all types of wheels produced by Comsteel. The Commissioner's analysis of Comsteel's production volumes indicated that production of wheels that are not like goods had remained consistent over the injury analysis period and that the decline in total wheel production was primarily attributed to the decline in the production of like goods.

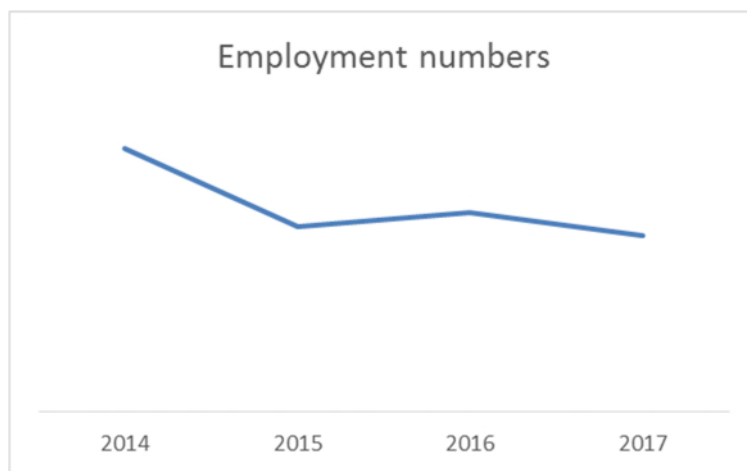


Figure 8: Comsteel employees in Railway wheel division

In its submission of 11 September 2018<sup>17</sup>, BHP claimed that the reductions in employment numbers are not in keeping with Comsteel's revenue and market share. The Commissioner notes that Comsteel's fall in employment levels between 2016 and 2017 is consistent with declining sales volumes, market share and revenue in the same period.

Due to retrenchments as a consequence of reduced sales and production volumes of railway wheels in the investigation period, the Commissioner finds that the Australian industry has experienced injury in the form of reduced employment numbers.

### 10.7.4 Capacity utilisation

While Comsteel's capacity has remained stable during the injury analysis period, capacity utilisation has been negatively impacted during the investigation period.

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<sup>17</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

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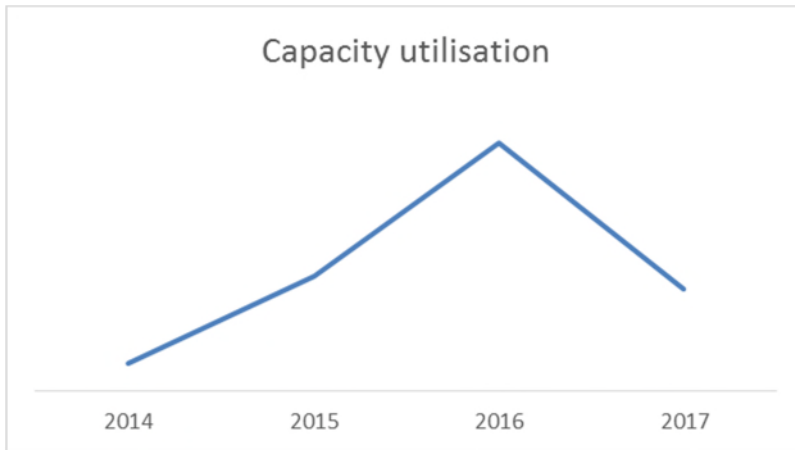


Figure 9: Comsteel capacity utilisation of Railway wheels division

In its submission of 11 September 2018<sup>18</sup>, BHP claimed that there is no basis for concluding that Comsteel's capacity was 'under-utilised' as some of its production was for its export sales in the injury analysis period. The Commissioner reviewed sales in the injury analysis period and found that the reduced capacity utilisation was partly due to the reduced export volumes, and partly due to reduced sales volumes on the domestic market.

Lower volumes have resulted in injury to the Australian industry in the form of reduced capacity utilisation.

### 10.7.5 Revenue

Figure 10 demonstrates an increase in revenues between 2014 and 2016, and then reduced revenues in the investigation period. Reduced sales volumes (refer section 10.4) and an inability to increase prices (section 10.5) has resulted in injury in the form of reduced revenue.

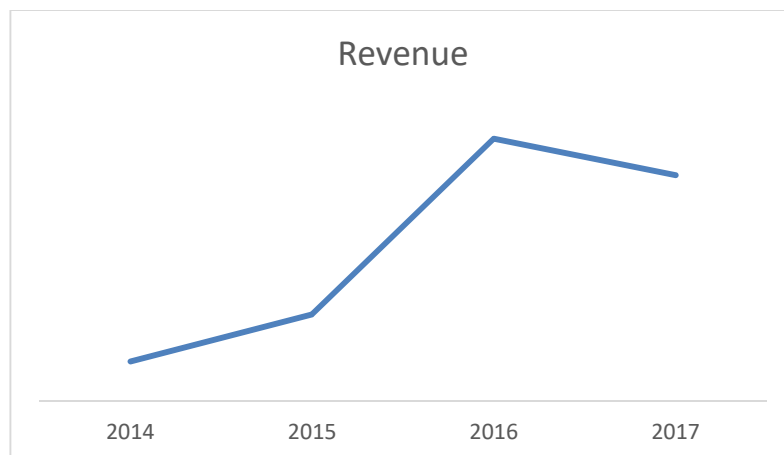


Figure 10: Comsteel revenue from railway wheels

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<sup>18</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

## 10.8 Other indicators

The Commissioner also reviewed the following economic factors:

**Assets** – assets are used collectively for the Rail Division, and a proportion has been allocated as relevant to the production of railway wheels. The value of assets did not demonstrate injury in the form of reduced asset values.

**R&D** - the information provided is not apportioned for the production of like goods and was not used by the Commissioner to draw any conclusions concerning injury in the form of reduced R&D investment.

**Capacity** – Comsteel's capacity to produce the goods has remained stable during the injury analysis period.

**Productivity** – measured using 'overall equipment effectiveness'. Productivity has remained stable during the injury analysis period.

**Wages** – Average wages have increased during the injury analysis period, which may be partly a result of reduced employment numbers in the same period. No injury in the form of reduced wages was found.

### 10.8.1 Conclusion – other injury factors

The Commissioner considers that there is evidence that Comsteel has suffered injury during the investigation period in the form of:

- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers;
- reduced revenue.

The Commissioner was unable to ascertain that there has been injury in the form of reduced attractiveness to reinvest.

## 10.9 Finding

Based on an analysis of the information contained in the application and obtained and verified during the Commission's visit to Comsteel, the Commissioner's view is that Comsteel has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers;
- reduced revenue.

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Data forming the basis of the Commissioner's assessment of the Australian market and Australian industry's performance is at **Confidential Appendix 7**.

## 11 HAS THE DUMPING CAUSED MATERIAL INJURY?

### 11.1 Preliminary finding

The Commissioner found that dumped exports of railway wheels from China and France have caused material injury to the Australian industry.

In investigating the cause of injury to the Australian industry the Commissioner had regard to the factors that influenced the Australian customers' purchasing decisions. Following visits to Australian industry and importers and reviewing relevant evidence, the Commissioner is satisfied that the procurement decisions by Comsteel's customers were predominantly based on price. Comsteel was consequently lost sales in competition with dumped imports at prices. Where customers claimed the influence of factors other than price, the Commission reviewed these claims extensively and a summary is at section 11.12 and is further detailed in **Confidential Appendix 9**.

### 11.2 Legislative framework

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors, to which the Commissioner has had regard, that may be taken into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Subsection 269TAE(2A) requires that regard be had to whether any injury to an industry is being caused by a factor other than the exportation of the goods and provides examples of such factors.

### 11.3 Cumulative effects of exportations

Subsection 269TAE(2C) sets out the requirements for assessing the cumulative effects of goods exported to Australia from different countries. In relation to a dumping investigation, where exports from more than one country are the subject of investigations resulting from applications under section 269TB that were lodged on the same day (as is the case in this investigation), the cumulative effects of such imports may be assessed if:

- the margin of dumping established for exporters in each country is not negligible; and
- the volume of dumped imports from each country is not negligible; and
- cumulative assessment is appropriate having regard to the conditions of competition between the imported goods and between the imported goods and like goods that are domestically produced.

The dumping margins determined by the Commissioner and the volumes of dumped imports from China and France are not negligible. The Commissioner has assessed the conditions of competition between the goods exported from China and France and like goods produced by the Australian industry. Railway wheels exported from China and France have competed against each other in tenders in Australia. The Commissioner is



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aware of customers in Australia switching between exports from China and France. Similarly, domestically produced goods have competed against exports from China and France for sales in Australia, including in tender processes.

The Commissioner's view is that it is appropriate to consider the cumulative effects of the dumped imports from China and France.

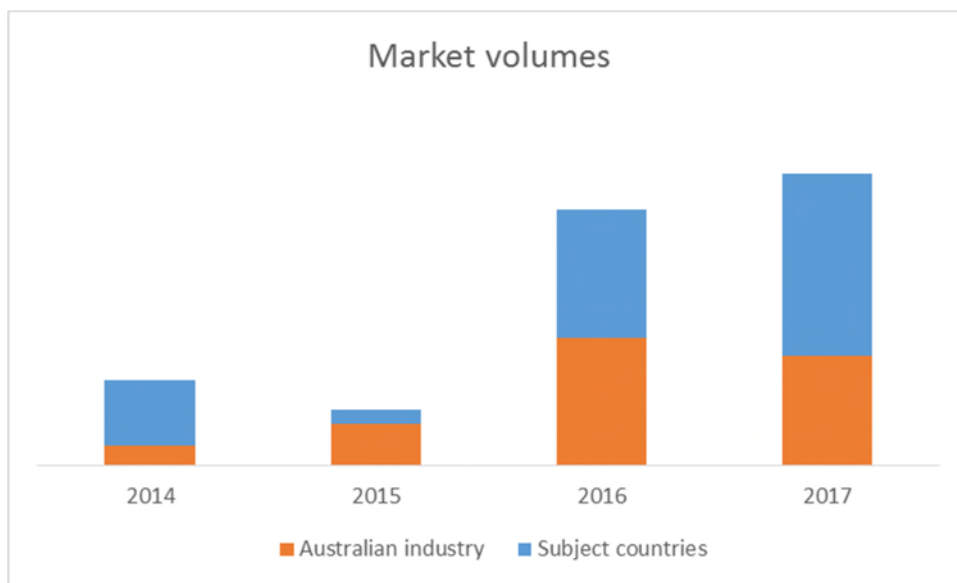
### 11.4 Size of the dumping margins

Subsection 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia.

The dumping margins outlined above for China and France (19.0 percent for China and 37.2 percent for France) are above negligible levels (i.e. above two percent). The Commissioner considers that the magnitude of dumping provided exporters from China and France with the ability to offer railway wheels to importers or end users at significantly lower prices than would otherwise have been the case.

### 11.5 Volume effects

Figure 11 depicts the sales volumes in the Australian market from 2014 to 2017.



**Figure 11: Volumes of the Australian market for railway wheels**

Figure 11 demonstrates that the size of the railway wheel market in Australia increased significantly in 2016 and rose again in 2017. However, while volumes from countries subject of this investigation have increased in the investigation period compared to 2016, Australian industry's volumes declined in the investigation period.

Table 9 (refer section 10.4.1) details the tenders that impacted on sales or potential sales of railway wheels in Australia in the investigation period. Comsteel was unsuccessful in winning any of the tenders and, in one case, was not invited to participate in the tender. Comsteel provided the Commissioner with feedback it had received following tenders it

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participated in, advising that it had been unsuccessful as its price was well above its competitors. BHP advised the Commission, and the evidence shows, that the late 2016 tender which determined its supplier in the investigation period, was determined on an evaluation of prices offered by pre-qualified suppliers. In the Commissioner's view, this provides a clear causal link between the dumping and material injury to the Australian industry in the investigation period.

The successful competitors in all of these tenders were suppliers of dumped goods. Apart from the tender processes, Comsteel's only Australian customer is Rio Tinto, which continues to source a proportion of its requirements from the Australian manufacturer.

In its submission of 5 June 2018, Rio Tinto claimed that the volatility in iron ore commodity markets in recent years had caused diversified miners such as Rio Tinto to pursue productivity improvements including exploring opportunities to increase the operational life of railway wheels. It claimed that the successful implementation of these measures had resulted in a material incremental reduction in Rio Tinto's demand for new or replacement railway wheels. Rio Tinto submitted that the erosion of Comsteel's expected sales volumes that had occurred as a result of these productivity measures could not be entirely attributed to the presence of imported railway wheels in the Australian market.

In its submission of 26 July 2018, MOFCOM claimed that it would be expected that the sales of railway wheels would taper off in 2016 and 2017, reflecting a slowing growth in iron ore sales and following a significant influx of railway wheels purchased by the mining companies as iron ore sales rose.

The Commission compiled an accurate picture of the Australian market for railway wheels using verified information from Comsteel, exporters of the goods to Australia, importers and end users. The Commissioner is satisfied that the market for railway wheels in Australia increased in the investigation period compared to 2016 and that Comsteel's loss of sales volumes and market share in the investigation period was not the result of a general decline in the demand for railway wheels.

The Commissioner considers that the magnitude of dumping provided exporters from China and France with the ability to offer railway wheels to importers or end users at significantly lower prices than would otherwise have been the case. Having considered other possible causes of injury to the Australian industry (discussed at 11.12 below) the Commissioner is satisfied that dumping caused volume injury suffered by the Australian industry in the investigation period.

### **11.6 Price effects**

Comsteel claims that its prices were undercut by allegedly dumped import prices of railway wheels from China and France.

Comsteel provided evidence of price pressure in order to establish a causal link between the dumped imports and the injury suffered as a result of price undercutting. Comsteel provided communications from customers informing Comsteel that it has been unsuccessful in tender bids due to lower prices from overseas sources.

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The Commissioner used information obtained from Comsteel, Masteel, Valdunes and importers/end users of railway wheels to undertake a price undercutting analysis. This analysis was undertaken comparing the cost of the imports from China and France delivered to Perth (adding importation costs if necessary) with Comsteel's prices at the same terms. This analysis shows that, in 2017, the dumped imports from China and France undercut Comsteel's selling prices by significant margins. Successful bids by suppliers of the dumped imports from China and France also significantly undercut Comsteel's offer prices for like goods. The Commission's price undercutting analysis is at **Confidential Appendix 8**.

The communications provided by Comsteel, and information obtained from the importers/end users of railway wheels in Australia support Comsteel's claim that it has suffered injury in the form of price suppression, as it has experienced pressure to maintain or reduce pricing at a time when it was experiencing rising unit costs (as demonstrated in Figure 4 above). The Commission considers that the injury in the form of price suppression experienced by the Australian industry was caused by dumped imports.

In its submission of 24 July 2018, the CCCME stated that it was unclear whether some or all of the price undercutting was due to the allegedly dumped exports from China and France or whether it was due to high, monopolistic pricing by the Australian manufacturer. It claimed that the Commissioner should consider whether Comsteel's prices were artificially inflated by Australian government policies and regulations, the cost of inputs to manufacture, electricity prices, leasing costs, transport costs, financing costs, labour costs and the effects of Australian unions on labour costs and occupational health and safety costs.

The CCCME also claimed that the Commissioner should consider Comsteel's historical monopolistic position in the Australian market and whether this has made the like goods it produces globally uncompetitive.

Australia's anti-dumping system is designed to allow Australian industries to compete with imports, free from the injurious effects of dumping and subsidisation. The system does not provide relief for an Australian industry that cannot compete with imports that are not at dumped and/or subsidised prices. The Commissioner does not consider that the matters raised by the CCCME are relevant to its task of assessing whether dumping and/or subsidisation have caused material injury to the Australian industry producing like goods.

### 11.7 Profit effects

Comsteel alleged that injury to profit and profitability occurred through loss of profits through lost sales volumes due to unsuccessful bids.

Given that Comsteel:

- lost volumes during the investigation period to dumped imports; and
- due to price pressure from the dumped imports, was unable to increase its prices in line with unit cost to make and sell increases;

the Commission's assessment is that there is a causal link between injury suffered by Comsteel in the form of reduced profits and the dumped imports from China and France.

### 11.8 ROI

As stated in section 10.7.1, Comsteel experienced injury in the form of reduced ROI during the investigation period. Comsteel provided evidence to support its claim that it lost sales volumes due to lower priced import offers to customers/end users. Comsteel's profit position was impacted by lower volumes due to the impact of the dumped imports. These factors in turn have resulted in reduced ROI. The Commissioner's view is that dumped imports have caused injury to the Australian industry in the form of reduced ROI.

### 11.9 Capacity utilisation

Figure 9 demonstrates Comsteel's capacity utilisation rates during the injury analysis period.

As Comsteel is able to use its capacity to manufacture other wheels that are not like goods, the Commissioner analysed volumes of other wheels produced in the period, which remained stable while volumes of railway wheels (like goods) declined.

The under-utilisation of Comsteel's facilities in the investigation period can be partially attributed to reduced sales volumes to BHP. Comsteel was a pre-approved supplier for the 2016 tender and the successful supplier was chosen based on price. This is the tender that governed the majority of BHP's railway wheel purchases in the investigation period. The loss of this tender in competition with dumped imports resulted in injury to the Australian industry in the form of reduced capacity utilisation.

### 11.10 Employment numbers

The reduction in employment numbers during the investigation period coincides with reduced capacity utilisation and total production volumes in Comsteel's Rail Division.

The Commissioner's analysis of Comsteel's production volumes indicates that production of wheels that are not like goods to the goods under consideration remained reasonably consistent over the injury analysis period and that the decline in total wheel production was primarily caused by the decline in the production of like goods, which had in turn been caused by the loss of tenders to overseas suppliers. Consequently, the Commissioner accepts that the decline in employment levels was due to the loss of volumes in the railway wheels business.

Australian industry suffered injury in the form of reduced employment numbers due to the dumped imports.

### 11.11 Revenue

The Commissioner's view is that Comsteel's loss of revenue in the investigation period was caused by the loss of sales to the dumped goods.

## 11.12 Factors other than dumping causing injury

In its submission of 27 July 2018, Masteel claimed that purchasing decisions are not made based solely on price and that other factors must be considered. The Commissioner considered the importance of various non-price factors, with particular consideration to the factors that affected the decision of customers to purchase railway wheels from a particular supplier.

### 11.12.1 Comparative advantages of the Chinese manufacturer

In its submission of 5 June 2018, Rio Tinto claimed that the absence of competition in the Australian industry (with Comsteel being the only Australian producer of like goods) may have resulted in Comsteel's business practices becoming outdated. It suggested that this may have caused or at least contributed to the alleged injury suffered in the investigation period by Comsteel being unprepared, unwilling or too slow to adapt to the changing dynamics in global trade and competition.

Rio Tinto pointed to the much larger plant capacity of the Chinese producer, Masteel, compared to Comsteel. It noted that the scale of the Chinese producer could be expected to enable a more efficient production process and lower fixed costs per unit.

Rio Tinto also claimed that Masteel had made significant investments in robotics technology and automation, whereas it was unaware of any noteworthy investments in automation technology by the Australian manufacturer, Comsteel. Rio Tinto stated that, prior to purchasing railway wheels from Masteel, it had raised issues surrounding automation with Comsteel with the objective of seeking to assist Comsteel improving its efficiencies and the quality of its products.

Further, Rio Tinto submitted that there was likely to be a substantial difference between the cost of railway wheel production in China and Australia due to the following factors:

- the likelihood that the cost of raw materials (including scrap) in Australia is significantly higher than the cost of materials available to Masteel;
- the likelihood that the structure of Comsteel's supply chain, including its reliance on third party suppliers, is significantly less cost efficient than Chinese manufacturers who benefit from vertically integrated supply chains;
- Comsteel's lack of economies of scale and purchasing power compared to large volume manufacturers such as Masteel;
- the higher cost of labour overheads in Australia;
- higher power costs in Australia;
- lower customs duties applying to imports of the goods from China due to the Chinese-Australia Free Trade Agreement;
- favourable foreign exchange rate movements; and
- less onerous environmental regulation in China compared to Australia.

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In its submission of 24 July 2018<sup>19</sup>, the CCCME raised similar issues in claiming that China producers have a comparative advantage in the production of railway wheels.

In its submission of 11 September 2018<sup>20</sup>, BHP claimed that the overseas suppliers, Valdunes and Masteel, have invested in superior technology which results in a higher quality product.

In assessing material injury, the Commissioner had regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).<sup>21</sup> Among other things, the Material Injury Direction makes it clear that, material injury from dumping can occur notwithstanding that there is also injury from other sources, however, injury caused by factors other than dumping must not be attributed to dumping.

As noted in section 8 above, the Commissioner's assessment is that exports of railway wheels to Australia from China and France in the investigation period were dumped by significant margins. The Commissioner is satisfied that the procurement decisions by Comsteel's customers were predominantly based on price. It is the purpose of the anti-dumping system to address material injury caused to an Australian industry by the dumping and/or subsidisation of exports to Australia. The Commissioner is satisfied in this case that the dumping has caused material injury to the Australian industry.

### 11.12.2 Comsteel not collaborating effectively with its customers

In its submission of 26 July 2018, MOFCOM noted Rio Tinto's claim that it had raised process-based inefficiencies with Comsteel and had offered to assist Comsteel in improving efficiencies and quality. MOFCOM stated that it struggled to see how an allegation of injury and causation could be made against the importers based on the alleged price of the imports, when Comsteel appears to have been unwilling to achieve the better efficiencies and product quality that the customers demand.

The submission seems to argue that an Australian industry is not entitled to a remedy for material injury caused by dumping if it has not conformed to its customers' requests to achieve greater efficiencies and lower pricing. While noting that Comsteel defends its record as a manufacturer seeking to improve its performance and efficiencies, the Commissioner does not consider that this is an issue relevant to the question of whether dumping has caused material injury to the Australian industry. Issues relating to product quality are discussed at section 11.12.4 below.

### 11.12.3 Reciprocal commercial arrangements

Rio Tinto submitted that it considered it to be strategically important to forge strong and enduring business relationships with Chinese entities through reciprocal commercial

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<sup>19</sup> CCCME submission dated 24 July 2018 – Document 027 on the EPR

<sup>20</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

<sup>21</sup> Available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

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arrangements. In 2017, Rio Tinto's sales to China represented a significant proportion of the company's consolidated sales revenue.

The Commissioner notes that Comsteel has been a longstanding supplier of railway wheels to Rio Tinto, notwithstanding Rio Tinto's commercial arrangements with China. The Commissioner was not provided with any documentary evidence to show that this consideration was a factor in Rio Tinto's decision to purchase the dumped goods.

### 11.12.4 Quality and wheel failures

During the investigation, two major users of railway wheels in Australia, Rio Tinto and BHP, raised issues related to cracked wheels produced by the Australian manufacturer, Comsteel. The two other customers or potential customers of railway wheels in Australia in the investigation period, FMG and Roy Hill, did not make any submissions to the Commission on the quality of the Australian railway wheels in comparison to the imported wheels.

#### Rio Tinto submissions

During the Commission's visit to Rio Tinto, Rio Tinto advised that all the railway wheels it purchases meet the micro-alloy AAR D specification and were quite similar. It stated that both Masteel and Comsteel wheels adequately met the specifications required by Rio Tinto, although the Masteel wheels were exhibiting a slightly better wear rate than the Comsteel wheels.

Also during the visit, Rio Tinto stated that it had experienced nine incidents of Comsteel wheel failures in 2016 involving the cracking or shattering of wheel rims. Rio Tinto said that it had worked with Comsteel to minimise the risk of further problems by removing the wheels from service earlier.

In its submission of 5 June 2018<sup>22</sup>, Rio Tinto claimed 'there are real differences between Comsteel's railway wheels and those imported from overseas which Rio Tinto submits have contributed in the past to, and still contribute towards, the rationale of its product selection, and any injury which the Australian industry has allegedly suffered'<sup>23</sup>.

Rio Tinto stated that it had experienced issues with Comsteel's railway wheels in respect of 'shattered rim events' that occurred in 2016 and resulted in an investigation and testing of Comsteel wheels manufactured in 2006 and 2007. The company stated that it was still managing the risk of shattered rims affecting the Comsteel wheels by removing 'at risk' wheelsets annually. Rio Tinto stated that it had not encountered any similar event with wheels purchased from Masteel.

In its supplementary submission of 11 June 2018, provided to the Commission with documentation associated with Rio Tinto's 2017 tender process, Rio Tinto stated that it continued to have a meaningful relationship with Comsteel and had benefited from changes Comsteel had made to its supply model at Rio Tinto's request. Rio Tinto maintained, however, that Comsteel, who enjoyed for an extended period a monopolistic position in the market, was ultimately unable to adapt to its changing needs, including in

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<sup>22</sup> [Document 009 on the EPR](#), p31

<sup>23</sup> [Document 009 on the EPR](#), p26

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relation to pricing and non-pricing requirements such as safety concerns about packaging and shattered rims.

In a submission dated 5 September 2018, Rio Tinto stated that the non-price issues, including the Comsteel wheel failures, were legitimate factors that contributed significantly to Rio Tinto's decision to purchase railway wheels from an alternative supplier. It stated that these factors were relevant to the ultimate tender outcome and remained relevant to Rio Tinto's ongoing procurement decision-making and that these issues were, therefore, material causes of injury to the Australian industry not related to dumping or subsidisation.

Rio Tinto stated that it might not have reconsidered the sourcing of its railway wheels if the shattering of the rims had been an isolated event. It stated that it had experienced a number of shattered rim events in relation to Comsteel's wheels since the beginning of 2016. Rio Tinto rejected Comsteel's assertion that the failures were due to Rio Tinto neglecting its maintenance schedule adherence due to budget and operational pressures.

Rio Tinto stated that it relied on the analysis contained within the Marais Report<sup>24</sup> to inform its decision to move away from Comsteel as its preferred supplier.

Rio Tinto also stated that it agreed with BHP's submission that using scrap steel in an ingot casting process (as is used by Comsteel) will always be inferior to the continuous casting process using iron ore feedstock as used by Masteel<sup>25</sup>.

Rio Tinto further claimed that due to the identified defects with Comsteel's wheels, it was required to remove a large number of wheels from service and continuously monitor the wheels in operation at considerable cost to the business. It claimed that this was also a material factor in its decision to source future supply from an alternative supplier.

Rio Tinto repeated that it had had no rim shattering events with Masteel's wheels of a similar service life. It provided data recently collected by Rio Tinto to show that condemned Masteel wheels of a similar age to the Comsteel cracked wheels had not suffered from cracking.

Rio Tinto provided:

- the Marais Report, dated 10 July 2017, prepared by a consulting engineering company into the cracked wheels,
- correspondence with Comsteel regarding the problems;
- a powerpoint presentation dated January 2017 on the options for measures to counter the shattered rim problems;
- three reports into three of the cracked wheels undertaken by independent consultant ALS Industrial; and
- a spreadsheet summarising data on Masteel wheels scrapped over a three week period.

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<sup>24</sup> 'Review of reports on ore wagon wheel rim cracking', Marais Consulting engineers, 10 July 2017, Report number MCE 17/R001, Annexure H to Document 009 on EPR

<sup>25</sup> The Commission established that Masteel actually uses a combination of scrap and molten iron produced from iron ore to produce steel for its railway wheels.



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The Commissioner also had regard to Rio Tinto's 'Sourcing Strategy for Wagon Wheel Supply' and Recommendation to Award – Award of 2 Year Ore Car Wheel Supply Contract'.

### Comsteel response

Comsteel stated in its submission of 10 July 2018 that it was aware of and participated in the investigation of cracked wheels in 2016 undertaken by Rio Tinto and an independent investigator engaged by Rio Tinto. Comsteel claimed that certain factors relating to wheel failure were inherent in the loading and operation of the carriages and that these factors needed to be mitigated by regular maintenance and a discipline for maintenance intervals as the wheels reached the end of their useful life.

Comsteel claimed that maintenance issues were contributors to the Rio Tinto wheel failures and that the failures were prevalent due to the backlog of maintenance resulting from a rapid growth in its fleet numbers and delay in installing onsite workshop capacity. It said that budget and operational pressures experienced by Rio Tinto had further reduced maintenance schedule adherence. It claimed that it discussed a management plan to ensure thin-rimmed high-risk wheels were mitigated whilst deferring maintenance through to the following financial year due to Rio Tinto's budget constraints.

Comsteel stated that it had assisted Rio Tinto in identifying reasons for the wheel failures and recommended suitable strategies to ensure regular maintenance or non-destructive testing to prevent further incidents.

In relation to Rio Tinto's claim that it had not experienced the same problem with Masteel's wheels, Comsteel believed that Masteel wheels of a similar age would have been made of a different steel grade that is more sympathetic to subsurface fatigue but has a shorter life due to its wear characteristics.

### BHP submissions

During the Commission's visit to the company, BHP claimed that its original decision to seek an alternative supplier in the late 1990s was due to quality concerns with wheels supplied by Comsteel. BHP advised that these quality issues were so serious that Comsteel was suspended as a supplier of railway wheels. BHP advised that the quality issues were eventually addressed but it took over 2 years before Comsteel was re-qualified to supply wheels. This claim was again reiterated in its submission of 12 September 2018<sup>26</sup>.

BHP advised that it conducts a qualification process for suppliers which includes regular audits of manufacturing processes and quality. It stated that all suppliers must be qualified before they are invited to bid in a tender process. To pre-qualify, manufacturers are required to complete a suite of tests and provide evidence of compliance with BHP's specification requirements. BHP also audits suppliers of critical components periodically.

For its railway wheel tender process that commenced in September 2016 (which determined the supplier of the majority of BHP's wheel purchases in the investigation

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<sup>26</sup> BHP submission dated 18 September 2018 – Document 050 on the EPR

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period) Comsteel, Masteel and Valdunes were pre-qualified suppliers and were invited to bid. Valdunes was the successful bidder in this tender. BHP found that while Comsteel could deliver the required volumes, it could not compete on price.

In September 2017, BHP commenced another tender process for the purchase of railway wheels for the remainder of the 2017/18 financial year. Again, Comsteel, Masteel and Valdunes were invited to tender, although Valdunes was subsequently excluded from consideration because it had changed its steel input sourcing and the new arrangement was being reviewed by BHP before the French supplier's pre-qualification could be reinstated. Masteel was the successful tenderer, offering the lowest pricing.

BHP claimed that it had experienced eight Comsteel wheel failures since January 2016. BHP claimed that five of these broken wheels were the result of 'subsurface defects', where small inclusions in the steel grow through cyclic loading until they break out onto the tread and rims surface. BHP submitted that the presence of these inclusions was the result of Comsteel's feedstock and manufacturing process. BHP claimed that the ingot-casting method used by Comsteel to produce its feedstock required a high degree of care to ensure acceptable steel quality.

BHP claimed that the modern alternative process of continuous casting used by Masteel and Valdunes allowed the segregation of impurities to be much more controllable and ensured that the material quality, particularly the material that will end up in the rim of the wheel, was of high quality. According to BHP, the continuous casting process reduces the amount of inclusions (impurities) in the steel. BHP claimed that this has resulted in a better quality of wheel and a longer lifespan for wheels manufactured by Masteel and Valdunes. BHP rejected the claim by Comsteel in its application that its wheels have a longer life in comparison to Masteel wheels, and provided the Commission with its own analysis of wear rates that it claimed demonstrates a high wear rate for Comsteel wheels. BHP further advised the Commission that it had worked with Comsteel to improve the manufacturing process and that due to the way Comsteel wheels are made they believe there is not much more that can be done to improve quality.

BHP claimed that the only issues it has had with Masteel wheels were due to thermal cracking which is due to heat from braking, and that this type of failure had occurred with all wheels across the fleet including those supplied by Comsteel and other suppliers. BHP noted that the Masteel wheels had been in service on its railway for only 7 years but that the Valdunes wheels had been used since the mid-1990s and had not suffered similar problems.

BHP outlined the mitigation strategies it had introduced to reduce the risk of derailment due to broken or cracked wheels.

In a further submission dated 25 July 2018, BHP provided a chronology of its tenders and the incidents of wheel failure.

The Commission asked BHP if the wheel failures were a factor in the decision to not award the tendered wheel volumes to Comsteel. During the visit by the Commission, BHP advised that the tender evaluation processes in 2016 and 2017 had focussed on the comparative price of the products offered by the pre-qualified suppliers. Following the Commission's visit to BHP, the company clarified that quality and the wheel failures had not been a key consideration in its 2017 tender process only because Comsteel were not

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in contention for the award, because their pricing was not competitive. BHP further revised its advice on this point in a submission dated 25 July 2018 but advised that this clarification was confidential (discussed further in **Confidential Appendix 9**).

In its submission of 11 September 2018<sup>27</sup>, BHP further claimed that injury to the Australian industry was due to changes in the pattern of consumption of its goods as a result of the quality difference between Masteel and Comsteel.

BHP provided:

- reports of the metallurgical examination of eight cracked Comsteel wheels by ALS Industrial, a company providing metallurgical testing services; and
- email correspondence between Comsteel, BHP and ALS Industrial (all dated in early 2018) relating to the cracked wheels.

The Commissioner also had regard to information provided by BHP in response to a request for any documents relating to the assessment of the tenders conducted by BHP in late 2016 and 2017 relating to the procurement of railway wheels. This information was:

- Invitation for Request for Quotation form for BHP's 2017/18 financial year requirements;
- contract change forms for the award of the tenders to Valdunes and Masteel;
- BHP's Request for Quotation response analysis for the two tenders.

### Comsteel's response

Comsteel rejected BHP's claim that it was suspended as a supplier in the 1990s, claiming that it continuously supplied railway wheels to BHP throughout the decade. It provided records of supply purporting to show that it supplied BHP in each year of the 1990s<sup>28</sup>.

Comsteel stated that its change to using 'fluted' ingots in its production process in 1996 was driven by a change in BHP's specification that was developed in conjunction with the Institute of Rail Technology, BHP and Comsteel. Comsteel claimed that it had always met the BHP specification, which included a lowering of the ultrasonic inclusion size from the 1.6mm specified in the relevant AAR standard, to 1.0mm to assist in reducing subsurface fatigue.

In relation to the wheel failures experienced by BHP in 2016, Comsteel claimed that, like Rio Tinto, BHP accepted higher risk maintenance and operating tactics to delay expenditure, in order to improve its cash flow position. Comsteel claimed that BHP deferred maintenance to its ore car fleet due to major workshop capacity investments being deferred.

Comsteel claims that BHP first raised the wheel failures as a quality issue on 28 June 2018 and shortly after wrote to Comsteel advising that it would be issuing Comsteel with a 'non-conformance report'. Comsteel claimed that BHP was seeking to

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<sup>27</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR

<sup>28</sup> Comsteel submission dated 14 August 2018 – Confidential Attachment 1 – EPR No.36

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cast an element of doubt over Comsteel's previously unquestioned supply capability in order to discredit Comsteel's reputation as a supplier of quality goods and avoid dumping duties. Comsteel provided copies of correspondence with BHP surrounding contract discussions in 2018, noting that the correspondence did not raise any quality issues and focused on price<sup>29</sup>.

Comsteel rejected any suggestion that the issues experienced by BHP were the result of its manufacturing process. It disagreed with BHP's claim that the continuous casting method used by Masteel produced a lower level of impurities. It claimed that the ingot technology it employed was preferred by the world's premium wheel manufacturers, which manufacture high specification wheels for high speed passenger trains. Comsteel provided test results from an independent industry body showing similar steel cleanliness results for a number of manufacturers, including Chinese producers using continuous cast processes<sup>30</sup>.

Comsteel claimed that evidence available to it showed that BHP had experienced wheel cracking involving the wheels of other manufacturers and that this supported the view that operational issues had caused the wheels to crack<sup>31</sup>.

Comsteel submitted that it had continued to develop and implement a program of continuous improvement for railway wheels, refining ingot design, raw material inputs, refractories, steel making practices and forging dies to produce wheels with less impurities. It stated that it had, at all times, supplied BHP with wheels conforming to BHP's own specification.

### MOFCOM comments

In its submission of 26 July 2018, MOFCOM noted Comsteel's lack of success in tenders conducted by Rio Tinto and BHP and the quality issues raised by both companies in relation to Comsteel's wheels.

### Masteel comments

In its submission of 23 August 2018, Masteel observed that any issues Comsteel has with its customers will not be remedied by the imposition of antidumping duties and that it is not a matter for the Commissioner.

### Valdunes comments

In its submission of 2 October 2018, Valdunes claimed that manufacturing railway wheels using the continuous casting process results in the elimination of 'inclusions' (impurities) that taint steel produced using Comsteel's ingot casting method. In response to Comsteel's claim that it was unlikely that BHP had any wheels made using the continuous casting process that were of the same age or had experienced the same operating conditions as its wheels, Valdunes reminded the Commissioner that it had been pre-qualified by BHP for close to thirty years. Valdunes supported BHP's claim that BHP was

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<sup>29</sup> Comsteel submission dated 14 August 2018 – Confidential Attachments 4, 5 & 6 – EPR No.36

<sup>30</sup> Comsteel submission dated 14 August 2018 – Confidential Attachment 2 – EPR No.36

<sup>31</sup> Comsteel submission dated 14 August 2018 – Confidential Attachment 3 – EPR No.36

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the only party in a position to provide the Commission with reliable evidence as to the quality, functionality and commercial substitutability of the railway wheels in the context of its railway operations.

Valdunes referred to the alleged suspension of Comsteel as a supplier to BHP in the mid-1990s and BHP's claims that its experience with wheel breakages had shown that changes to Comsteel's manufacturing processes had been unsuccessful in improving steel cleanliness.

### The Commissioner's assessment

During the investigation, the Commission extensively examined the claims of interested parties surrounding the quality of the railway wheels made in Australia. It is common ground between Comsteel, Rio Tinto and BHP that a number of Comsteel's wheels in operation on Rio Tinto's and BHP's railways suffered cracking, including prior to tender processes that determined sales in Australia in the investigation period.

The Commissioner also understands that it is also common ground that, while the wheels that failed represented a very small proportion of the Comsteel wheels in service, wheel failures of the kind that occurred are a serious matter for the mining companies in terms of safety and the efficient operation of the railways. The seriousness with which the companies view such events is demonstrated by the exacting wheel specification and design requirements imposed by the mining companies, their scrutiny and approval of potential suppliers, the monitoring of the condition of the wheels and the extensive investigation into wheel failure events.

The Commissioner's focus was to identify any evidence showing that the decisions of Rio Tinto and BHP to purchase the dumped goods in the investigation period were caused, or predominantly caused, by factors other than price, and, in particular, concerns about the quality of the Australian-made wheels. The Commissioner does not consider that events in the mid-1990s, disputed by BHP and Comsteel, are relevant to whether dumping caused material injury to the Australian industry in the investigation period, some 20 years later.

In relation to BHP, it is worth noting that the company employs a system whereby it pre-approves suppliers prior to procurement or tender processes. BHP advised that, for its railway wheel tender process conducted in late 2016, Comsteel was a pre-approved supplier and the successful supplier was chosen on price. This is the tender that governed the majority of BHP's railway wheel purchases in the investigation period. The Commissioner considers that the loss of these sales by Comsteel represented, of itself, material injury to the Australian industry and that there is no question that this injury was caused by dumping and not other factors.

The Commissioner examined a considerable amount of material provided by Rio Tinto, BHP and Comsteel on the wheel failures. It examined this material not seeking to determine the cause of the wheel failures (which is in dispute between the parties and not an issue for the Commission to resolve) but to assess whether the material supported claims, for which there appeared to be no contemporaneous documentary evidence, that the dumped goods were purchased because of their superior quality and not because of their dumped price.

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As much of the relevant material was provided to the Commission in confidence, a discussion of that material is at **Confidential Appendix 9**. In summary, the Commissioner found that there was a lack of evidence to support the claim that quality concerns were the cause of injury suffered by the Australian industry in the investigation period. As set out in **Confidential Appendix 9**, the available evidence indicates that price was the key factor in the purchasing decisions.

Reports provided by Rio Tinto and BHP documenting independent investigations into the wheel failures do not reach any negative conclusions about the standard of the Comsteel wheels and appear to support the view that a number of factors, including maintenance practices and wheel condemnation policies, have the potential to cause or contribute to wheel failures. There was no evidence to support claims that Comsteel's steel manufacturing process was inherently inferior to that of the overseas suppliers, or that this was a factor in the decisions of the mining companies to purchase the dumped goods.

The Commission asked both Rio Tinto and BHP to provide any contemporaneous evidence, if necessary in the form of internal communications or records, demonstrating that the wheel failures had influenced their purchasing decisions. Neither provided evidence in response to these requests. In a teleconference with the Commission, Rio Tinto claimed that its regard to these factors could be logically inferred from its general concerns about innovation and quality. The Commissioner does not agree with this view. Despite criticisms of Comsteel's wheel quality, wear rates and packaging, Rio Tinto continues to purchase railway wheels from Comsteel.

Taking into account the evidence available to the Commissioner on factors influencing the decision to purchase dumped railway wheels in the investigation period, the Commissioner is not satisfied that wheel quality or performance was a factor that caused injury to the Australian industry.

### 11.12.5 Packaging and efficiency

In its submission of 5 June 2018, Rio Tinto claimed that one of the quality issues it considered to be significant in its procurement decision-making is the packaging efficiency of the goods. Rio Tinto stated that it considered Masteel's packaging to be superior to Comsteel. It claimed that the Masteel packaging approach reduced manual handling, double handling and forklift movement, resulting in a safer working environment.

Rio Tinto provided evidence of two injuries incurred in the last 12 months associated with the unpacking of Comsteel's wheels. Rio Tinto claimed that it had on numerous occasions made genuine attempts to engage and work collaboratively with Comsteel to improve its packaging. The company stated that Comsteel had, to date, failed to create what Rio Tinto considers to be a suitable packaging solution to eliminate or mitigate the safety risks or more generally improve its packaging processes.

### Comsteel response

Comsteel claimed that Rio Tinto first raised wheel packaging concerns with them in December 2017, eight months after Rio Tinto's decision to use an additional source of supply for its wheel requirements. Comsteel submitted that it worked with Rio Tinto to resolve the safety issues with changes to daily procedures and work safe methods.

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Comsteel claims to have met with Rio Tinto representatives in April 2018, and that during that meeting Rio Tinto accepted Comsteel's response to the packaging safety concerns. Comsteel stated that it had worked with Rio Tinto in an urgent and systematic manner to resolve the concerns. Comsteel refuted Rio Tinto's claim that the injury Comsteel had experienced was due to packaging issues and not due to the dumping of the railway wheels.

### Valdunes' comments

Valdunes stated that, like Rio Tinto, it had been concerned with packaging safety and efficiency throughout the market it services and that it was always developing innovative, safer and more efficient packaging solutions.

### The Commissioner's assessment

The available evidence does not indicate to the Commissioner that issues with packaging caused the injury experienced by Comsteel in the investigation period. Alternative forms of packaging do not feature in documentation relating to Rio Tinto's decision to source imported railway wheels. The timing of the emergence of the issue indicates to the Commissioner that it was more likely a reaction to the packaging of the dumped goods rather than a primary reason that the imported goods were purchased.

#### 11.12.6 Wheel life and wear rates

Rio Tinto and BHP each submitted that the wear rate for Comsteel's wheels is higher than wheels supplied by overseas suppliers. Rio Tinto provided an internal report comparing wear rates for Comsteel wheels and two types of Masteel wheels, showing that one type of Masteel wheel demonstrated the lowest wear rates.

Notwithstanding the claims of lower wear rates of imported wheels, the available evidence does not show that wear rates were a factor that caused injury to the Australian industry. Relative wear rates of the wheels do not appear to have been a factor driving purchasing decisions that affected sales of wheels by Comsteel in the investigation period.

#### 11.12.7 The impact of the iron ore market

The quantities of iron ore mined and the price of iron ore are factors that have the potential to impact on the demand for railway wheels. As more iron ore is sold and hauled, more railway wheels are required for maintenance of an increasing number of carriages. Lower iron ore prices, such as those experienced by Australian mining companies in 2014 and 2015, resulted in cost pressures on Australian iron ore producers. During this time, customers reduced maintenance spend, consumed contingent wheel stocks and used second-hand redundant wheels in general maintenance.

In 2016, rising iron ore sales quantities and prices saw railway wheel demand increase significantly compared to 2014 and 2015. Total annual demand rose again in 2017, compared to 2016. The Commissioner's view is that the iron ore market is not a factor that has caused injury to the Australian industry producing like goods in the investigation period.

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### 11.12.8 Production and sale of other types of wheels

Railway wheel manufacturing involves significant fixed costs and changes in overall throughput have the potential to significantly impact on unit costs across all production, including like goods. The Commissioner examined Comsteel's production volumes of wheels that are not like goods to the goods under consideration and found that the production volumes were reasonably consistent through the injury analysis period. The Commissioner's view is that production volumes of other goods did not contribute to injury to the Australian industry producing like goods.

### 11.12.9 Sales of wheel sets

In some cases, Comsteel supplies customers with a 'wheel set', consisting of a new or reconditioned axle and two wheels. The Commissioner does not consider that a wheel set is a like good but recognises the sale of wheels in sets has the potential to impact on sales of like goods. For example, an increase in demand for 'wheel sets' could reduce the demand for sales of loose wheels.

Comsteel provided information to the Commissioner on its sales of wheel sets over the injury analysis period. Based on this information, the Commissioner's view is that the pattern of sale of wheel sets by Comsteel is not a factor that caused injury to the Australian industry in the investigation period.

### 11.12.10 Exports by Comsteel

In the injury analysis period, Comsteel exported like goods to be fitted to new iron ore railway carriages, with the new carriages subsequently imported into Australia. The demand for such exports by Comsteel is irregular, being dictated by the mining companies' new iron ore carriage requirements and Comsteel being successful as the supplier of wheels for the new carriages built overseas.

In its submission dated 11 September 2018<sup>32</sup>, BHP claimed that injury experienced by Comsteel as a result of the decline in the performance of its export business cannot be causally linked to the imported wheels.

The Commissioner investigated this factor as it is evident that any loss of export volumes is a factor in increasing unit costs as fixed production costs are spread over a small number of units. It should be noted, however, that the Commissioner's analysis of the Australian industry's sales volumes does not include export sales. The Commissioner is of the view that the pattern of exports experienced by Comsteel is not a factor that diminishes the injury that has been caused by the dumped imports.

### 11.12.11 Conclusion – factors other than dumping causing injury

Following the analysis of evidence provided to support each of the non-price factors examined above, the Commissioner is satisfied that the procurement decisions by Comsteel's customers were predominantly based on price. Comsteel was unsuccessful in competition with imports at dumped prices. In the absence of dumping Comsteel would

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<sup>32</sup> BHP submission dated 11 September 2018 – Document 049 on the EPR



have been more price competitive. It is the purpose of the anti-dumping system to address material injury caused to an Australian industry by the dumping of exports to Australia. The Commissioner is satisfied in this case that the dumping has caused material injury to the Australian industry.

### 11.13 Materiality of injury caused by dumping

In assessing the materiality of injury caused by dumping, the Commissioner had regard to the size of the market and the volumes that Comsteel has been unable to secure in competition with dumped imports. In addition, the Commissioner found that the lost sales volumes resulted in adverse effects on Comsteel's profit and profitability, ROI, employment numbers and revenue.

As stated above, the Commissioner is satisfied, on the available evidence, that the dumping in and of itself caused material injury to the Australian industry in the investigation period and that any customers' consideration of non-price factors does not detract from this finding.

The Commissioner considers that Comsteel suffered lost sales volumes in relation to all of the sourcing decisions taken by Australian consumers for railway wheels purchased in the investigation period. The Commissioner is satisfied that Comsteel's loss of the BHP tender to the dumped goods in late 2016 was, in itself, a source of material injury to the Australian industry because of the volume of railway wheels represented by the tender. BHP advised the Commission and the evidence shows that the late 2016 tender, which determined its supplier in the investigation period, was determined on an evaluation of prices offered by pre-qualified suppliers. In the Commissioner's view, this alone provides a clear link between the dumping and material injury to the Australian industry in the investigation period. In addition, the Commissioner is satisfied that Comsteel also lost sales volume in relation to the other supply contracts relevant to supply of railway wheels in the investigation period, and these further lost sales volumes only add to the materiality of the injury caused by dumping.

The Commissioner's view is that the injury experienced by Australian industry is not immaterial, insubstantial or insignificant.<sup>33</sup>

### 11.14 Preliminary findings

Based on the Commissioner's verification of Australian industry's injury claims and the dumping margin calculations, the Commissioner considers that there are sufficient grounds for the publication of a dumping duty notice.

The Commissioner considers there is sufficient evidence to establish that there are grounds to support Australian industry's claim that injury caused by the dumping of the goods has been experienced in the forms listed in section 10.9 above.

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<sup>33</sup> Ministerial Direction on Material Injury 2012, ADN 2012/24

## 12 WILL DUMPING AND MATERIAL INJURY CONTINUE?

### 12.1 Preliminary finding

The Commissioner is satisfied that exports of railway wheels from China and France in the future may be at dumped prices, and that continued dumping may continue to cause material injury to the Australian industry.

### 12.2 Introduction

Subsection 269TG(2) provides that where the Minister is satisfied, among other things, that dumping may continue and because of that material injury to an Australian industry producing like goods has been caused or is being caused, anti-dumping measures may be imposed on future exports of like goods.

### 12.3 Will dumping continue?

#### 12.3.1 Quantitative analysis

The Commissioner's dumping analysis found dumping margins of between 19.0 per cent and 37.2 per cent for exporters of railway wheels to Australia during the investigation period.

The Commissioner notes that railway wheels continue to be imported from the nominated countries.

The Commissioner examined import volumes from the ABF import database occurring during and following the end of the investigation period. The Commissioner observes that:

- import volumes from China increased significantly between 2015 and 2017;
- import volumes from France recommenced in 2017; and
- import volumes from the subject countries continued in 2018.

The Commissioner further observes that the weighted average FOB export price from China calculated using the ABF import database dropped during the investigation period.

#### 12.3.2 Qualitative analysis

In addition to the quantitative analysis above, the Commissioner notes the following:

The market for railway wheels has grown since 2015 with further growth expected as investments of railway wheels purchased 8-12 years previously come to the end of their useful life. The Commission's analysis of tender documentation has demonstrated that procurement decisions are based predominantly on price (in comparison with dumped imports), causing Australian industry to suffer injury in a growing market. In the absence of duties, it is expected that Australian industry will continue to suffer injury through loss of tenders in comparison with dumped imports.

Based on the magnitude of dumping margins found, the quantitative analysis and the qualitative analysis, the Commissioner considers that dumping will continue if anti-dumping measures are not imposed.

#### 12.4 Will material injury continue?

The Commissioner reviewed the Australian industry's performance over the injury analysis period and made a finding that railway wheels exported to Australia at dumped prices from the nominated countries caused material injury to the Australian industry.

The Commissioner considers that the continuation of price competition from dumped imports from the nominated countries is likely to have a continuing adverse impact (e.g. price undercutting and loss of sales volumes) on the Australian industry, particularly if volumes from the nominated countries were maintained or increased.

#### 12.5 Commissioner's assessment

Based on the available evidence, the Commissioner considers that exports of railway wheels from the nominated countries in the future may be at dumped prices and that such continued dumping may cause further material injury to the Australian industry.

## 13 NON-INJURIOUS PRICE

### 13.1 Preliminary finding

For exports from China and France, the NIP is above the normal value and therefore the lesser duty rule does not come into effect.

### 13.2 Determination

The Commissioner calculated NIPs for exports of railway wheels from China that are considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped goods.

The Commissioner assessed the NIP from an USP based on Comsteel's weighted average CTMS in 2017 plus the profit percentage achieved by Comsteel on its sales of railway wheels in Australia in 2016.

For all exports from China and France, the NIPs are above the normal values and therefore the lesser duty rule does not come into effect.

### 13.3 Introduction

Interim dumping duty (IDD) may be applied where it is established that dumped imports have caused material injury to the Australian industry producing like goods. The level of IDD imposed by the Minister cannot exceed the margin of dumping.

Where the Minister is required to determine IDD and the NIP of the goods is less than the normal value of the goods, the Minister must have regard to the 'lesser duty rule' in accordance with subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), unless one of the exceptions in subsection 8(5BAA) of the Dumping Duty Act applies.

The NIP is relevant to the application of the lesser duty rule.

### 13.4 Calculation of the NIP

Under subsections 269TACA(a) and 269TACA(b), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance to the Australian industry caused by the dumping of the goods.

The Commissioner generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commissioner's preferred approach to establishing the USP, as outlined in chapter 23 of the Manual, observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped imports.

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Having calculated the USP, the Commissioner then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

### **13.4.1 Exceptions to the application of the lesser duty rule**

Pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is not required to, but may still, have regard to the lesser duty rule where one or more of the following circumstances apply:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.

Pursuant to subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act the Minister is not required to, but may still, have regard to the lesser duty rule where one or more of the following circumstances apply:

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises; or
- c) a countervailable subsidy has been received in respect of the goods and the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies for the compliance period.

### **13.5 Submissions received**

Comsteel submitted<sup>34</sup> that the USP should be determined using its average selling prices in the calendar years from 2014 to 2016. It claimed that although domestic selling prices of the goods were influenced by import prices in 2016, Comsteel experienced injury in the form of lost sales due to the undercutting of its prices.

### **13.6 The Commissioner's assessment**

The Commissioner notes that Comsteel's raw material costs increased between 2016 and 2017. The Commissioner considers that in a market unaffected by dumping, Comsteel should have been able to increase its prices to reflect this raw material cost increase and that the USP should therefore be calculated as the Australian industry's CTMS in 2017 plus the percentage profit achieved by Comsteel in 2016, when the market was unaffected by dumping.

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<sup>34</sup> Comsteel submission of 14 June 2018 EPR No.24

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The Commissioner compared the NIPs with the calculated weighted average normal values of exporters from China and France. The Commissioner determined that the NIPs were not less than the normal values. As a result, the NIP should not be the operative measure for exports from China and France, and regard should not be had to the lesser duty rule.

Accordingly, the Commissioner proposes to recommend that measures be imposed in relation to railway wheels exported to Australia from China and France at the full dumping margins.

The Commissioner's calculation of USP and NIP is at **Confidential Appendix 10**.

## 14 PROPOSED MEASURES

### 14.1 Preliminary finding

The Commissioner recommends to the Minister that measures be imposed in respect of dumping duty for China and France using the combination duty method (i.e. the combination of fixed and variable duty).

### 14.2 Form of measures available

In relation to IDD, the methods that the Minister may utilise to work out the duty are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- combination of fixed and variable duty method;
- floor price duty method;
- fixed duty method (\$X per tonne); and
- ad valorem duty method (i.e. a percentage of the export price).

### 14.3 Submissions received

Comsteel submitted<sup>35</sup> that the combination method of anti-dumping measures represents the most effective method of addressing the injurious effects of dumping. It stated that this method takes account of the dumping margins determined during the investigation period, as well as the ascertained export price determined for the exporter across the investigation period.

Comsteel stated that the floor price method was not a sufficient deterrent against dumping, particularly in a rising market and that measures based upon the ad valorem method are readily circumvented as the exporter can reduce the export prices to Australia to absorb the impact of the measures.

In its submission of 24 July 2018, the CCCME claimed that the Commissioner was under a statutory obligation to investigate whether it was in the public interest for the Minister to impose anti-dumping measures. The CCCME submitted that it would not be in the public interest to impose measures in this case as it claimed Comsteel's ultimate parent company is a US-based private equity firm located in the Cayman Island, a well-known tax haven.

The CCCME claimed that the Commissioner should pay due consideration to the negative impacts of anti-dumping measures on downstream industries and the general public in Australia and decide whether it is in Australia's national interest to afford tariff protection to maintain a monopoly position of the Australian industry and tax benefits for the Australian industry and its parent company at the cost of downstream industries and the Australian economy.

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<sup>35</sup> Comsteel submission of 14 June 2018 EPR No.24

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Comsteel claimed that it was a long-established manufacturer of quality railway wheels in Australia. It submitted that it would not be in the national interest for overseas supply to replace the Australian manufacture of the goods that are recognised internationally as high quality, combined with the local investment in infrastructure and employment.

### 14.4 Commissioner's assessment

The Commissioner, in considering which form of measures to use, has had regard to the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013* (the Guidelines), relevant factors in the railway wheel market and submissions received from interested parties.

The Guidelines set out issues to be considered when determining the form of duties. The various forms of dumping duty available all have the purpose of removing the injurious effects of the dumping however certain forms of duty will better suit particular circumstances. The Guidelines list the key advantages and disadvantages of each form of duty.

The floor price method can limit the negative effect of price increases in the goods that are associated with the ad valorem duty method. It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under the ad valorem duty method which would decrease the amount of duty paid. A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. This duty method may not suit the situation where there are many models or types of good with significantly different prices.

The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Conversely, the combination duty method is less suitable in circumstances where there are many model types of the goods with a wide price range or where a falling market exists.

The ad valorem duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect, is common in other jurisdictions, is similar to other types of Customs duties, is suitable where there are many models or types or where the market prices of goods fluctuate over time. The ad valorem duty method may also require fewer duty assessments and reviews than other duty methods. However, the ad valorem duty method has a potential disadvantage in that export prices might be lowered to abrogate the intended effects of the duty.

The Commissioner considers that, in the railway wheels case, the combination duty method is the most appropriate form of duty. The various models of the goods are similar and do not exhibit a wide price range and a falling market does not presently exist.

Australia's anti-dumping legislation does not provide for the consideration of the public interest when assessing whether dumping or subsidisation has caused material injury to the Australian industry. The Commissioner acknowledges the issues raised by the CCCME but does not consider that these constitute reasons for not recommending that anti-dumping measures are appropriate in this case. Notwithstanding its ownership profile, Comsteel meets the legislative definition of an Australian industry and is therefore entitled to a remedy to injurious dumping.



## **15 REVISION TO SECURITIES**

### 15.1 Background

On 18 June 2018, the Commissioner made a PAD and decided to require and take securities as follows:

<b>Country</b>	<b>Exporter</b>	<b>Fixed rate</b>
China	Maanshan Iron & Steel Co Ltd	17.0%
China	Uncooperative and all other	17.0%
France	MG-Valdunes	28.2%
France	Uncooperative and all other	28.3%

**Table 10: Fixed rates of dumping securities**

### 15.2 Amendment to securities

Based on the assessment set out in the SEF, the Commissioner proposes to revise the level of securities required and taken under section 42 of the Act in respect of interim duty that may become payable in relation to the goods exported to Australia from China and France.

The revised securities will be imposed at the rates specified in Table 1 of this SEF and will apply to railway wheels exported to Australia from China and France and entered for home consumption in Australia on or after 12 October 2018.

**16 APPENDICES**

<b>Non-confidential Appendix 1</b>	List of submissions and meetings
<b>Non-confidential Appendix 2</b>	Competitive market costs
<b>Confidential Appendix 3</b>	Export prices, normal values and dumping margins
<b>Non-confidential Appendix 4</b>	Assessment of subsidy programs
<b>Confidential Appendix 5</b>	Calculation of subsidy margin
<b>Confidential Appendix 6</b>	Details of tender processes
<b>Confidential Appendix 7</b>	Commissioner's assessment of Australian market and Comsteel's performance
<b>Confidential Appendix 8</b>	Price undercutting analysis
<b>Confidential Appendix 9</b>	Wheel quality and failures analysis
<b>Confidential Appendix 10</b>	Calculation of USP and NIP
<b>Non-confidential Appendix 11</b>	Public bodies
<b>Non-confidential Appendix 12</b>	Assessment of adequate remuneration for coking coal in China

<b>NON-CONFIDENTIAL APPENDIX 1 – LIST OF SUBMISSIONS AND MEETINGS</b>
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Submissions

Date	Interested party	EPR document no.
25/05/2018	European Commission	6
29/05/2018	BHP	34
4/06/2018	CCCME	8
6/06/2018	Rio Tinto	9
9/06/2018	Masteel	13
9/06/2018	Masteel	14
11/06/2018	RTIO	15
14/06/2018	Comsteel	24
2/07/2018	Masteel	19
10/07/2018	Comsteel	20
18/07/2018	Comsteel	25
18/07/2018	Comsteel	26
23/07/2018	Comsteel	28
24/07/2018	CCCME	27
25/07/2018	BHP	32
26/07/2018	GOC	29
27/07/2018	Masteel	31
31/07/2018	Masteel	38
2/08/2018	BHP	33
14/08/2018	Comsteel	36
16/08/2018	Comsteel	40
17/08/2018	Masteel	39
20/08/2018	Masteel	37
23/08/2018	Masteel	43
23/08/2018	GOC	44
31/08/2018	Comsteel	46
4/09/2018	Comsteel	48
5/09/2018	RTIO	47
11/09/2018	BHP	49
12/09/2018	BHP	50
20/09/2018	CCCME	54
24/09/2018	Comsteel	56
25/09/2018	CCCME	55
28/9/2018	Comsteel	57
2/10/2018	Valdunes*	59
2/10/2018	Comsteel*	60
4/10/2018	CCCME*	61
8/10/2018	Comsteel*	63
9/10/2018	CCCME*	62

\* not taken into account for the purposes of this SEF

Meetings

Date	Interested party	EPR document no.
13/08/2018	Comsteel	35
4/09/2018	Masteel and CCCME	52
17/09/2018	Rio Tinto (via teleconference)	58

## NON-CONFIDENTIAL APPENDIX 2 – ASSESSMENT OF COMPETITIVE MARKET COSTS

### A2.1 Introduction

The Commissioner found that Masteel, the only known Chinese exporter of railway wheels to Australia in the investigation period, did not sell like goods in China in the investigation period. Pursuant to subsection 269TAC(2), where the Minister is satisfied that because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection 269TAC(1) the normal value is (unless the Minister directs that subsection 269TAC(2)(d) applies):

- (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.

Subsection 269TAC(5A) requires, inter alia, that amounts determined to be the cost of production or manufacture of goods under subsection 269TAC(2)(c)(i) must be worked out in such manner, and taking account of such factors, as the regulations provide for the purposes of subsection 269TAAD(4)(a).

Regulation 43 of the Regulation sets out the manner in which the Minister must, for paragraph 269TAAD(4)(a) and therefore for subsection 269TAC(2)(c)(i), work out an amount to be the cost of production or manufacture of like goods in a country of export and factors that the Minister must take account of for that purpose.

Regulation 43(2) states that if:

- (a) an exporter or producer of like goods keeps records relating to the like goods; and
- (b) the records:
  - (i) are in accordance with generally accepted accounting principles in the country of export; and
  - (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.

The Commissioner is satisfied that the records of Masteel are kept in accordance with generally accepted accounting principles in China.

As per the Dumping and Subsidy Manual, a situation that could affect whether recorded costs reasonably reflect competitive markets costs is when a major input is influenced by governmental action.

*When examining whether the input is supplied at a normal competitive market price the Commission may enquire whether the government had influenced the price of any major cost inputs. Government influence can be the supply of inputs by government-owned enterprises, or may arise in other circumstances (...)<sup>36</sup>*

*Where the government influence is found to extend to all supplies of that major cost input in the market and thus there is no suitable market price in the country of export, the other country surrogate methods are possible<sup>37</sup>.*

This Appendix discusses whether the records of Masteel reasonably reflect competitive market costs of the production of railway wheels.

## **A2.2 Comsteel's claims**

In its application, Comsteel claimed that a particular market situation applies in respect of steel billets used in the manufacture of railway wheels caused by the GOC's influence in the iron and steel market which renders sales of railway wheels in that market unsuitable for determining normal values under subsection 269TAC(1) of the Act.

Although the Commissioner found that there wasn't a market for railway wheels in China in the investigation period, Comsteel's claims are potentially relevant to whether Masteel's records reasonably reflect competitive market costs.

In its application, Comsteel referred to the Commissioner's previous findings in relation to steel billets in China where the Commissioner found that a particular market situation exists that rendered domestic selling prices for the value-added product unsuitable for the determination of normal value. Comsteel in particular referred to the following investigations and reports where a particular market situation was found by the Commissioner:

- Investigation No. 300 (2016) Steel Reinforcing Bar;
- Investigation No. 301 (2016) Rod in Coils;
- Investigation No. 322 (2016) Steel Reinforcing Bar;
- Investigation No. 331 (2016) Rod in Coils; and
- Investigation No. 384 (2018) Alloy Round Bar.

Comsteel argues that the findings of these investigations in relation to a market situation in China are relevant to the like goods the subject of its application, as it believes the distortions identified by the Commissioner are still present in the Chinese market impacting steel raw material used in the manufacture of railway wheels in China.

Moreover, Comsteel highlights the state invested nature of the Masteel Group of which Masteel is a member.

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<sup>36</sup> *Dumping and Subsidy Manual p46*

<sup>37</sup> *Dumping and Subsidy Manual p47*

Comsteel claimed that the prevailing domestic selling prices of railway wheels in China are not suitable for the determination of normal values under subsection 269TAC(1) and requests the Commissioner to refer to a benchmark cost for steel billet free of government distortions.

These claims conclude with Comsteel's submission that:

- the cost of steel incurred by Chinese exporters are not reasonably reflective of competitive market costs;
- consequently, steel costs incurred by Chinese exporters of the goods should be replaced by the Commissioner with a substitute cost.

### **A2.3 GOC questionnaire responses**

The GOC submitted that railway wheels are mechanical products made of steel and are a far downstream product from iron and steel and the basic products of that industry. It claims that there was nothing unusual or special about the GOC's consideration of the steel sector, as a very important part or a 'pillar' of China's economy. The GOC advised that it continues to publish aspirational policy documents reflecting the importance of the sector to China.

The GOC advised that less than 25 per cent of China's crude steel, iron ore, raw coal and coke producers are SIEs. The GOC noted:

- amendments to the *Company Law* in 2014 that liberalised the regime governing the activities of all enterprises doing business in China;
- Article 37 of the *Company Law* that states a shareholder is to be responsible for making decisions regarding the operations and investments of a company;
- since 2014, it had refined the transparency of market entities by requiring businesses, including SIEs, to disclose their annual reports;
- amendments to laws in 2014 have better positioned Chinese businesses to defend their legitimate rights through the courts;
- it had further advanced its policy of adjusting the structure of State capital and assets in the economy by welcoming and facilitating the investment of more private capital into SIEs;
- it had opened the Chinese market to foreign investment to an even greater extent than before, including through Free Trade Agreements;
- it had repealed a great number of licensing/approval processes for doing business in a range of sectors and business lines;
- since 2015, it has pro-actively promoted electricity market reform;
- it has strengthened the power of law enforcement departments to seize and confiscate facilities and equipment of enterprises which violate the law, or even directly limit production or stop production for those enterprises that fail to observe statutory emission standards;
- it has enacted laws that further liberalises investment in the coal industry.

The GOC submitted that the raw material inputs industries and the industry that transforms those raw materials are highly competitive in their market behaviour. It claimed

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that it did not somehow control or directly influence price or costs of the railway wheel industry in any distortive or non-market sense.

The GOC stated that, from 31 October 2014, the administration of any new investment plan in the steel industry was further deregulated, from an approval system to a registration system. However, on and from July 2014 the GOC has advised proponents of new or expanded facilities that it would not consider the registration of new steel capacity investments in the absence of evidence that capacity of the same or similar scale had departed the industry. It stated that this measure had been introduced because of the serious excess capacity in the steel industry, and the pressures that this has placed on China's environment and infrastructure.

The GOC advised that its involvement concerning market entry and investment are primarily related to issues such as the size and design of facilities, environmental protection, and the efficient use of energy and natural resources. It claimed these initiatives were not designed to artificially affect prices, whether by reducing them or increasing them. Efficient energy and resource utilisation is geared towards sustainable development, which is an important macro-economic and long-term policy consideration for any responsible government.

The GOC disagreed with Comsteel's claims that the prices of inputs used to manufacture these products are distorted, or not market-derived. It said it was a simple fact that prices differ between markets and that China is the largest steel producer in the world and, therefore has a significant comparative advantage in the production of steel products. The GOC submitted that prices of steel products in China are not artificially low, and they are certainly not dictated or decided by the GOC.

The GOC claimed that it does not regulate the pricing of railway wheels and/or iron ore, coking coal, coke, scrap steel, and/or steel billet. Rather, prices for railway wheels, iron ore, billet, coking coal, coke and scrap steel are all determined commercially, in the market place, in transactions between buyers and sellers.

The GOC provided import and export data for iron ore, coking coal, coke, scrap steel, steel billet and railway wheels. It also provided information on the taxes and tariffs applying to these products in China and confirmed that an export quota applies to coking coal. It stated that since October 2013 the GOC has restricted any further increases of steel production capacity in order to address industrial sustainability and environmental problems that are exacerbated by overcapacity.

## **A2.4 Submissions**

### **A2.4.1 Comsteel**

Comsteel noted that 45.54 per cent of Masteel is owned by Magang (Group) Holding Company Limited, which in turn is 100 per cent owned by the GOC State-owned Assets Supervision and Administration Commission (SASAC). It claimed that, as such, Masteel is an SIE that operates under the influence and guidance of the GOC's SASAC.

Comsteel claimed that the following extracts from Masteel's Annual Report for 2017 confirmed the GOC's continued intervention on the Chinese steel industry and Masteel's adoption of the GOC's policies and programs for the iron and steel industry:

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- ‘structural reform is further implemented in the steel industry at supply side. As a result, great achievements have been made in cutting over-capacity and “ground steel strip” has been completely banned’;
- ‘the Company responded to the government’s policy to cut overcapacity in the iron and steel industry, heightened overall production efficiency, and shut off one blast furnace and one converter, involving 62,000 ton iron refining capacity and 64,000 iron steel refining capacity’; and
- ‘The iron and steel industry will reduce another 30 million ton capacity in 2018. However, investment in the iron and steel industry has grown recently, driven by a rebound in profit. More cases of new capacity installation, capacity swap and changing converters into electric furnaces are seen and make overcapacity worse. Countermeasure: As a highly responsible entity, the Company will support capacity reduction by government at all levels and the industry association resolutely, enforce capacity reduction and optimize the supply of the iron and steel industry. In 2018, the Company is going to decommission two shaft furnaces and two converters, involving 1,000,000 ton iron smelting capacity and 1,200,000 ton steel smelting capacity’.

### A2.4.2 The GOC

In its submission of 23 August 2018, the GOC claimed that previous findings by the Commissioner of ‘particular market situation’ and/or competitive market costs were heavily reliant on the view that distortion has been a consequence of the GOC adjusting the level of export tariffs, export quotas, import tariffs and VAT rebates applicable to inputs in the steel industry. It asserted that the findings placed a heavy reliance, in particular, on the influence of export taxes.

The GOC stated that since early particular market situation findings in Australian anti-dumping cases, the Chinese economy, its markets and its market regulation have changed considerably. The GOC observed that:

- the export tariff on coke, which was 40% in 2011 and 2012, has been removed;
- the export quota on coke has been removed;
- the export tariff rate for coking coal has been reduced from 10% to 3%.
- the operational import tariff for coking coal has been 3% since 15 October 2014;
- the operational export tariff on coking coal has been 3% since January 2015; and
- no raw materials relating to steel production, excluding coking coal, are subject to export quotas.

The GOC acknowledged that, during the investigation period, export tariffs remained in place for other input materials, namely iron ore (10 per cent), scrap steel (40 per cent) and steel billet (10 per cent). The GOC stated that it is not suggesting that free trade has been achieved with respect to all steel inputs.

In respect of the steel raw material inputs, the GOC stated the following:

- iron ore – China is the largest importer of iron ore in the world. The imported price of iron ore is in line with international market prices, strongly reflecting international supply and demand;



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- steel billet – although an export tariff of 10 per cent remains on steel billet, Masteel manufactures steel billet to produce railway wheels and does not buy or sell steel billet; and
- scrap steel – this input material used by Masteel was subject to a higher export tariff during the investigation period but is only one of numerous inputs into the production process and cannot justify a finding that the price of railway wheels is distorted.

The GOC also highlighted ongoing liberalisation of Chinese industries through changes to numerous GOC policies relating to company, environmental and competition laws.

### **A2.5 The Commissioner's assessment**

#### **A2.5.1 Background**

The only known Chinese exporter of railway wheels to Australia in the investigation period, Masteel, manufactures railway wheels from a combination of the major inputs coking coal (or coke), iron ore and scrap steel.

The Commissioner considered available information to determine if Masteel's records reasonably reflect competitive market costs associated with the production or manufacture of the goods.

#### **A2.5.2 Information relied upon**

The Commissioner had regard to:

- Comsteel's application for the publication of dumping and countervailing duty notices on railway wheels exported to Australia from China and France;
- the GOC's response to the Commission's government questionnaire;
- submission's by interested parties;
- previous investigations undertaken by the Commission in relation to the Chinese steel industry;
- a recent report by the USA anti-dumping administration into China's status as a non-market economy;
- A recent report by the European Commission into significant distortions in the economy of China;
- Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission published by the Commission in August 2016; and
- information obtained through the Commission's research and analysis.

#### **A2.5.3 GOC influence in the Chinese steel market**

The Commissioner considers the GOC's involvement within and influence over the steel industry to be a primary cause of the prevailing structural imbalances within the steel industry in China. This involvement includes the issuing of planning guidelines and directives along with the provision of direct and indirect financial support.

Over the past decade the Chinese steel industry experienced significant investment and expansion of production capacity. The OECD reports that between 2006 and 2015,

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Chinese steelmaking capacity more than doubled, from 488 million metric tonne (mmt) to 1,150 mmt<sup>38</sup>. While the Commissioner notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commissioner holds that both types of producers have received significant assistance from the GOC.

The OECD Economic Survey of China for 2017 states that China's adjustment towards lower but higher-quality growth urgently requires a reduction of overcapacity and a shift towards more efficient and less energy-intensive production through market-oriented mechanisms<sup>39</sup>. It states that a number of industries are affected by excess capacity, including steel and coal. It says that the overcapacity reduces corporate profits, weighs on enterprise investment and absorbs resources that could be used more efficiently elsewhere, thereby constraining potential growth. The OECD also notes that measures to eliminate capacity taking into account different levels of technology, energy efficiency, emissions and other criteria are, however, challenging to operationalise.

In drawing conclusions regarding the GOC's involvement in the distortion of Chinese steel markets, the Commissioner also recognises the GOC's recent attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commissioner considers them to be further evidence of the extent of distortions and GOC's involvement within and influence over the broader steel industry in China. Examples of these capacity management measures include the tightening of bank lending to smaller mills; industry consolidation through mergers and acquisitions; and use of stricter environmental requirements to forcibly shut down capacity.

Specific initiatives announced in recent years to address these imbalances include the Central Government's 'supply-side reform' initiative, 'Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry'; and 'The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry'. The 'Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry', proposes that SOE capacity be reduced by 100 to 150 million tonnes by 2020, via the banning of new steel projects and elimination of 'zombie mills'<sup>40</sup>. In 2016 the central government also pledged a RMB 100 billion fund for employee compensation, social security payments, and plant closure incentives in the coal and steel sectors<sup>41</sup>. The 'Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry' strictly forbids the registration of new production capacity in any form and demands that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline<sup>42</sup>.

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<sup>38</sup> Recent developments in steelmaking capacity, OECD 2018

<sup>39</sup> OECD Economic Surveys: China 2017 p62

<sup>40</sup> Liu. H & Song. L., 2016, pp338-339. AME Group, 2016. Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p9.

<sup>41</sup> Duke, 2016, p29.

<sup>42</sup> KPMG, 2016. The 13th 5 Year Plan: China's Transformation and Integration with the World Economy, p29. Sourced from 'State Council Guiding Opinions on Reducing Overcapacity in the Iron and Steel Industry', State Council, 4 February 2016.

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In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commissioner's view that to date these attempts to address existing structural imbalances have had limited success. Constraints on the effectiveness of these initiatives not only relate to the extent of the imbalances but also the difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing down mills relates to their role as major employers, sources of tax revenue and providers of social services within their respective regions. Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and GDP oriented performance measures which encourage over investment in capacity<sup>43</sup>.

The effectiveness of the GOC's attempts to address overcapacity have also been constrained by its desire to promote the replacement of older mills with new larger and more efficient mills. It is the Commissioner's view that while this initiative is likely to improve the industry's structure over the longer term, its current impact has been to increase production and exacerbate the existing structural imbalances. The difficulties faced by the GOC in achieving these objectives are also reflected in the reality that many smaller mills need to be shut down to offset the commissioning of new larger mills and the difficulties in ensuring that once mills are closed, they are not brought back on line as market conditions improve<sup>44</sup>.

An example of these issues can be seen in the context of Baosteel (now China BAOWU Steel Group) which while indicating in 2016 that it would mothball 2.5 million tonnes of capacity as part of its plan to address overcapacity, also commissioned 9 million tonnes of new capacity at its Zhanjiang facility. The GOC's attempts to remove unprofitable capacity from the industry have also been constrained by the significant presence of 'zombie mills' which under normal competitive market conditions would be shut down due to either poor profitability or insolvency. The challenges posed by these issues is also evident in commentary by the CISA which expects the 'shake out' of the industry to take at least a decade and that Chinese mills were in no hurry to consolidate despite the government's attempts to encourage mergers and acquisitions<sup>45</sup>.

Key mechanisms through which the Commissioner considers that the GOC has distorted conditions within the Chinese steel industry, including the demand for and markets for major raw materials, are:

- the role and operation of SOEs.
- industry planning guidelines and directives.
- the provision of direct and indirect financial support.
- taxation and tariff policies.

### Role and operation of SOEs

The Commissioner understands that Chinese SOEs represent 49% of total Chinese steel

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<sup>43</sup> Duke, 2016, p38.

<sup>44</sup> Liu. H & Song. L, 2016, p357.

<sup>45</sup> Platts, 2016. Global Market Outlook, Steel Business Briefing. March 2016 p15.

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production<sup>46</sup>. It is the Commissioner's view that these entities continue to receive significant direct and indirect financial support from central, provincial and local levels of government as a means to increase tax revenues, expand employment and maintain social stability.

While the Commissioner does not consider the presence of these entities alone causes markets to be distorted, it does consider that their presence increases the likelihood that the GOC's plans and directives will be adhered to. The Commissioner also considers that the support provided to these entities by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting on supply and pricing conditions within the domestic Chinese market. Examples of these support mechanisms include: government subsidies; support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees); and loans from state-owned banks.<sup>4748 49</sup>

The Commissioner considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated efforts by the central government to reduce the scale of steel production. It is also the Commissioner's view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices.

The significance of SOEs to the broader Chinese economy, including the steel industry, is also reflected in the State Council of China's recent '*Guidance on the promotion of central enterprises restructuring and reorganisation*'. In introducing this guidance, the State Council notes the important role of 'central enterprises' in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The guidance also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

While there is limited transparency about the operations of Chinese state-owned corporations, the Commissioner understands that these companies can receive loans at less than commercial rates, that dividend policies can be set to pursue government objectives and that extended periods of loss-making may be tolerated—all of which

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<sup>46</sup> European Commission (2017). *Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations*, SWD(2017) 483 final/2, Brussels, p. 358,

<sup>47</sup> Liu. H & Song. L, 2016, p348.

<sup>48</sup> Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016*, p. 47.

<sup>49</sup> World Bank, *China 2030: Building a Modern, Harmonious, and Creative Society*, Report No. 96299 (March 2013), p. 25.

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reduce the normal commercial pressures for companies to operate efficiently and for poorly performing firms to cut back or cease operations.<sup>50</sup>

Analysis by the Organisation for Economic Co-operation and Development (OECD) indicates that some SIEs in the steel industry continue to receive preferential lending from state owned banks, despite the significant overcapacity within the sector.<sup>51</sup>

SOE decisions about levels of production are often based on broader political goals as opposed to market signals.<sup>52</sup>

In this context, it is relevant to note that SASAC, through its ownership of Magang (Group), holds 45.54% of Masteel's shares. As reported by the European Commission<sup>53</sup>, *one of the tasks of SASAC was to transform SOEs into large national champions. Originally such companies were expected to be competitive only on the Chinese market, but global competitiveness has increasingly become the target.*

Furthermore, the Party Committee of SASAC is tasked to *monitor the implementation of the principles and policies of the Party and of the State within Company (...)* *To persist in combining the principle of the Party supervising the performance of officials with the legitimate selection by the board of directors of the managers and the legitimate use of human resources by the managers.*

The European Commission concludes that 'the overall objective of the SASAC Regulation, as provided for in Article 1 of the said Regulation is wider than just preserving the interest of the State as an investor. Article 1 specifies that the Regulation serves the main purpose to 'establish a State-owned assets supervision and management system that suits the needs of socialist market economy, better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy [...]'.<sup>54</sup>

### Industry planning guidelines and directives

The Commissioner considers that the GOC's involvement within the Chinese steel industry, through its planning guidelines and directives also materially contributed to its overcapacity, oversupply and distorted structure during the investigation period. The extent of this involvement is reflected through the numerous planning guidelines and directives regarding the industry's structure and composition, listed below. The World

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<sup>50</sup> Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016*, p. 47.

<sup>51</sup> Kowalski, P. and Rabaioli, D. (2017). *Bringing together international trade and investment perspectives on state enterprises*, OECD Trade Policy Papers, No. 201, OECD, p. 18.

<sup>52</sup> European Union Chamber of Commerce in China, *Overcapacity in China: An Impediment to the Party's Reform Agenda* (2016), p. 10.

<sup>53</sup> European Commission (2017). *Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations*, SWD(2017) 483 final/2, Brussels, p. 19, [http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf).

<sup>54</sup> European Commission (2017). *Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations*, SWD(2017) 483 final/2, Brussels, p. 91, [http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf).

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Steel Association estimates that more than 320 steel-related policies and measures were implemented by the GOC between 1990 to 2016, of which about half were aimed at capacity control.<sup>55</sup> In noting that some of the listed documents are now dated, the Commissioner considers that this further demonstrates long term involvement of the GOC within the Chinese steel industry and hence it's central role in contributing to the structural imbalances and distorted prices, including for steel raw material inputs.

- National Steel Industry Development Policy (2005).
- Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).
- 2011-2015 Development Plan for the Steel Industry (2011).
- Steel Industry Adjustment Policy (2015 Revision).
- Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry (2016).
- The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry of Gain Profit and Development (2016).
- The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)

In addition to the planning guidelines and directives listed above, the GOC's involvement within the steel industry is also demonstrated through broader industrial restructuring and reorganising directives listed below.<sup>56</sup>

- Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009).
- Guiding Opinions on Pushing Forward Enterprise Mergers & Acquisitions (M&A) and Reorganisation in Key Industries (2013).
- Guiding opinions on Resolving Serious Excess Capacity Contradictions (2013).
- Directory Catalogue on Readjustment of Industrial Structure (2013 Amendment).
- Guidance on the promotion of central enterprises restructuring and reorganisation (2016).

Chinese industry is often governed by government policy directives. For example, the *Standard Conditions of Production and Operation of the Iron and Steel Industry* ('the standard conditions') serve as 'the basic conditions for production and operation of... [the industry]'. It sets out the requirements of steelmakers, for example in relation to product quality and production requirements. Firms are incentivised to comply with the standard conditions, as doing so provides the basis for policy support. In contrast, firms that do not conform are required to reform, and if they still fail to conform, must gradually exit the market.<sup>57</sup>

The Commissioner notes that in its submission, the GOC explains: 'On and from 31 October 2014 the administration form of any new investment plan in the steel industry

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<sup>55</sup> DBS Asian Insights, China's steel sector supply reform, April 2017 p4.

<sup>56</sup> These directive are targeted at multiple industries including the Chinese steel industry.

<sup>57</sup> *Announcement on the Standard Conditions for the Iron and Steel Industry* (Revised 2015).

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was further deregulated, from an approval system to a registration system. However, on and from July 2014 the GOC has advised proponents of new or expanded facilities that it would not consider the registration of new steel capacity investments in the absence of evidence that capacity of the same or similar scale had departed the industry. This has been advised in consideration of the serious excessive capacity in the steel industry, and the pressures that this has placed on China's environment and infrastructure".

The Commissioner sees this information as evidence of the involvement of the government in the market and its capacity to influence the number of participants and production volumes, which in turn has distorted the markets for major steel inputs.

"Another example is the National Mineral Resource Plan (2016-2020), which provides 'indicative targets' for the level of production of one set of resources (including oil, gas, coal, iron ore, and various nonferrous metals) and "binding targets" for the level of production of tungsten and rare earths"<sup>58</sup>.

As recently as 2016, the GOC presented a framework for granting or denying market entry in 12 product categories of which one is some primary materials including iron ore and nonferrous metals (*State Council Notice on Announcing the Catalogue of Government Approved Investment Projects 2016 Edition*)<sup>59</sup>.

The 13th Five Year Plan for Mineral Resources (2016 – 2020), of which iron ore is widely considered, identifies that one of the problems in the sector is '[relatively numerous] *government interventions in resource allocation [and] market principles applicable to mining rights are not comprehensive, the modern mining market system is not yet complete [...]*'<sup>60</sup>.

This plan highlights for iron ore: '*Stabilize the domestic supply capacity, set up iron ore bases and ensure guidance of local resources to concentrate them towards large-sized mining groups in Anben, Jidong, Panxi, Baobai, Xinzhou-Luliang, Ningwu and Lucong; build a number of new large-sized mines; promote a fair tax burden; reduce the burden on iron ore enterprises; not build new open air iron ore mines with a yearly production below 200 000 tonnes or underground iron ore mines with a yearly production below 100 000 tonne*'<sup>61</sup>

### *Relevance and enforceability of planning guidelines and directives*

In assessing the relevance of these planning guidelines and directives, the Commissioner notes the importance of the GOC's national five year plans which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commissioner notes, but does not agree with the GOC's view that they are for guidance and not enforceable.

Mechanisms through which the Commissioner considers the GOC is able to enforce these guidelines and directives include the presence and role of SOE's within the broader

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<sup>58</sup> *United States Department of Commerce (US DOC), China's Status as a Non-Market Economy, 2017. Page 121*

<sup>59</sup> *United States Department of Commerce (US DOC), China's Status as a Non-Market Economy, 2017. Page 132*

<sup>60</sup> 13th FYP for Mineral Resources, Section I-2.

<sup>61</sup> European Commission (EC), Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations, 2017.

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steel industry, the role of the National Development and Reform Commission (NDRC) and explicit enforcement mechanisms. In regards to SOEs, their significant share of total Chinese steel production and propensity to follow government guidance and directives ensures the GOC is able to influence broader trends in industry capacity and steel production.

Similarly, the NDRC through its dual role of developing planning guidelines and directives and approving large scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council notice on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines, includes: revoking of pollutant discharge permits; restrictions on the provision of new credit support; restrictions on the approval of new investment projects; restrictions on the issuing of new and cancelling of existing production licenses.

Further evidence of this is presented in Masteel's Annual Report for 2017 which states:

“As a highly responsible entity, the Company will support capacity reduction by government at all levels and the industry association resolutely, enforce capacity reduction and optimize the supply of the iron and steel industry”.

This statement is evidence that GOC's policies and directives are not of an abstract, guiding nature but rather seen as part of SIE's accountabilities.

### *Summary of themes, objectives and implementation*

Key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry are listed below.

#### **2011-2015 Development Plan for the Steel Industry (2011)**

- Increased mergers and acquisitions to create larger, more efficient steel companies.
- Chinese Government restrictions of steel capacity expansions.
- Upgrading steel industry technology.
- Greater emphasis on high-end steel products.
- Relocation of iron and steel companies to coastal areas.
- Minimum capacity requirements to reduce the number of small steel producers.
- Increased controls on the expansion of steel production capacity.
- Accelerating the development of higher value steel products.

#### **Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)<sup>62</sup>**

- Top ten companies accounting for 60% of production.
- Three to five major steel corporations with core competency and international impact.
- Six to seven steel corporations with regional influence.
- Encouraging steel corporations to participate in foreign steel companies' M&A.

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<sup>62</sup> <http://rhg.com/notes/beijings-2015-industry-consolidation-targets-problem-or-solution>



**Steel Industry Adjustment Policy (2015 Revision)**

- Upgrading product mix.
- Rationalising steel production capacity.
- Adjustments to improving organisational structures.
- Energy conservation, emission reductions, environmental protection.
- Production Distribution.
- Supervision and administration.
- Guiding market exit.
- Methods of, orientation and oversight of mergers and reorganisations.
- Consolidate number of steel companies.
- Lift capacity utilisation rates to 80% by 2017.

**Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy**

- Promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion.
- Intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.

**State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation**

- SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach.
- State-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position.
- Related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, nonferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

**The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)**

- Removal of 100 to 150 million tonnes of capacity between 2016 and 2020.
- Raising of capacity utilisation rates to 80% by 2020.
- Further industry consolidation leading to 10 largest producers accounting for 60% of production by 2020.

Direct and indirect financial support

Chinese banks appear to be guided by government policies, as well as national economic and social development needs.<sup>63</sup>

Subsidies and tax concessions reduce the operating costs of Chinese steel enterprises, confer a competitive advantage through the ability to offer steel products at lower prices, and increase the profitability of steel production.<sup>64</sup>

The OECD has pointed to price influences in the Chinese energy market. A 2015 report notes that energy prices “do not reflect the true social and environmental cost of production, making for a widespread misallocation of resources”.<sup>65</sup>

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include: preferential loans and directed credit; equity infusions and /or debt-to equity swaps; access to land at little or no cost; government mandated mergers, permitting acquisition at little or no cost; and direct cash grants for specific steel construction projects.<sup>66</sup>

Similar programs previously identified by the Commissioner’s countervailing investigations concerning the Chinese steel industry are listed below.<sup>67</sup> While these investigations do not correspond with the current investigation period, it is the Commissioner’s view that these programs have directly contributed to conditions within the Chinese steel industry during this period by providing direct financial support to recipient steel producers. This type of financial support not only inflates the profitability of recipient firms encouraging an expansion of supply but also support otherwise unprofitable producers, delaying their timely exit from the industry.

- Anti-dumping Respondent Assistance.
- Environmental Prize.
- Environmental Protection Grant.
- Export Brand Development Fund.
- High and New Technology Enterprise Grant.
- Independent Innovation and High-Tech Industrialisation Program.
- Innovative Experimental Enterprise Grant.
- Matching Funds for International Market Development for Small and Medium Enterprises.
- One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known. Trademarks of China’ and ‘Famous Brands of China’.
- Preferential loans.
- Preferential Tax Policies for High and New Technology Enterprises.

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<sup>63</sup> Article 34 of the Law of the People's Republic of China on Commercial Banks (2003).

<sup>64</sup> Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016*, p. 45.

<sup>65</sup> OECD, *OECD Economic Surveys: China* (Paris: OECD Publishing, March 2015), p. 31.

<sup>66</sup> Duke, 2016, p26.

<sup>67</sup> Relevant investigations include ADC 316 and ADC 322

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- Preferential Tax Policies for Western Development “Go West” strategy.
- The provision of goods at less than adequate remuneration.
- Research & Development (R&D) Assistance Grant.
- Special Support Fund for Non-State-Owned Enterprises (NSOE).
- Superstar Enterprise Grant.
- Technology Project Assistance.
- Training Program for Rural Surplus Labour Force Transfer Employment.
- VAT and tariff exemptions on imported equipment.
- VAT Refund on Domestic Sales by Local Tax Authority.
- Venture Investment Fund of Hi-Tech Industry.
- Water Conservancy Fund Deduction.

### Taxation arrangements

Previous investigations by the Commissioner found evidence of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke, iron ore and scrap steel.<sup>68</sup> The Commissioner found that these measures would keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market, increasing domestic supply and reducing domestic prices to a level below what would have prevailed under normal competitive market conditions.

Specifically export tariffs on raw materials relevant to the production of railway wheels:

1. Iron ore - 10%
2. Scrap steel - 40%

The Commissioner is aware that the GOC has made significant efforts to reduce these mechanisms. In its submission dated 23 August 2018, the GOC highlights:

- “the export tariff on coke, which was 40% in 2011 and 2012, has been removed;
- (...) the export quota on coke has been removed; and (...) the export tariff rate for coking coal has been reduced from 10% to 3%.<sup>69</sup>

The Commissioner notes that the GOC on its questionnaire response indicated that the Ministry of Commerce and the General Administration of Customs are administering an export quota applied to coking coal.

The Commissioner notes that scrap steel, iron ore and coking coal are important raw materials in the manufacture of railway wheels and while government tariff and quota measures have declined in recent years, they remain factors that are likely to distort the markets for these materials in China.

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<sup>68</sup> Anti-Dumping Commission, 2013, Report Number 198: Dumping of Hot Rolled Plate Steel Exported from the People’s Republic of China, Republic of Indonesia, Japan, The Republic of Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel Exported from The People’s Republic of China, pp. 41-43.

<sup>69</sup> Submission of the GOC dated 23 August 2018 – EPR document no. 44

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While there have been important efforts to rectify these distorting mechanisms, the Commissioner considers that during the investigation period the above mentioned mechanisms had an influence in markets relevant to the production of railway wheels.

### **A2.5.4 Assessment of whether Masteel's records reasonably reflect competitive market costs**

Based on the preceding analysis, the Commissioner concludes that the GOC's involvement and influence over the steel industry in China has created distortions that mean Masteel's records relating to the production of steel do not reflect competitive market costs. The GOC was able to exert this influence through its directives and oversight, subsidy programs, taxation arrangements and the significant number of SOEs.

The Commissioner also concludes that because of the significance of this influence, the domestic price for major steel production inputs was substantially different to what it would have been in the absence of these interventions. The Commissioner determined that Masteel's records do not reasonably reflect competitive market costs and, therefore, the Minister is not required to work out the cost of production or manufacture of the goods under Regulation 43(2).

## NON-CONFIDENTIAL APPENDIX 4 – ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES

### A4.1 Introduction

This appendix sets out the Commissioner's assessment of the subsidy programs investigated in relation to railway wheels exported from China. The Commissioner noted that the application presented reasonable grounds for the consideration of a countervailing duty notice in respect of alleged subsidy programs.

After assessing all relevant information available, the Commissioner considered evidence for 112 programs. The findings in relation to each program investigated are outlined in this appendix.

### A4.2 Relevant legislation

Subsection 269T(1) of the Act defines a 'subsidy' as follows:

**subsidy**, in respect of goods exported to Australia, means:

- (a) a financial contribution:
    - (i) by a government of the country of export or country of origin of the goods; or
    - (ii) by a public body of that country or a public body of which that government is a member; or
    - (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;
- that involves:
- (iv) a direct transfer of funds from that government or body; or
  - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
  - (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
  - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
  - (viii) the purchase by that government or body of goods or services; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body; if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Section 269TAAC defines a countervailable subsidy as follows:

- (1) For the purposes of this Part, a subsidy is a **countervailable subsidy** if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
  - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
  - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

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- (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
  - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
  - (b) eligibility for the subsidy is automatic; and
  - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
  - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
  - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
  - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
  - (d) the manner in which a discretion to grant access to the subsidy has been exercised;
- determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
  - (b) the length of time during which the subsidy program has been in operation.

Section 269TACC directs how the Minister determines whether a financial contribution or income or price support confers a benefit, and is therefore a countervailable subsidy. Section 269TACD provides how the amount of this benefit is determined.

### **A4.3 Information relied upon**

In addition to the information contained in Comsteel's application, the Commissioner had regard to Masteels's response to the exporter questionnaire and information gathered and verified with the exporter as well as responses from the GOC to the Government Questionnaire and Supplementary request for information. The GOC declined to provide detailed information requested by the Commissioner on programs 5 to 112, claiming that the benefit reported to have been received by Masteel under these programs is negligible in comparison to Masteel's total revenue.

## A4.4 Subsidy programs considered

Table 9 below summarises the programs identified during the course of the investigation:

Program Number	Program Name	Program type	Countervailable subsidy received (Yes/No)
1	Billet provided by government at less than adequate remuneration	Provision of goods	No
2	Coking coal provided by government at less than adequate remuneration	Provision of goods	Yes
3	Coke provided by government at less than adequate remuneration	Provision of goods	No
4	Electricity provided by government at less than adequate remuneration	Provision of goods	No
5	Preferential Tax Policies for High and New Technology Enterprises	Preferential tax policies	No
6	Preferential Tax Policies in Western Regions	Preferential tax policies	No
7	Land Use Deduction	Preferential tax policies	No
8	Tariff and VAT Exemptions on Imported Materials and Equipment	Preferential tax policies	No
9	VAT refund on comprehensive utilization of resources	Preferential tax policies	No
10	One-time Awards to Enterprises Whose Products Qualify for “Well-Known Trademarks of China” and “Famous Brands of China”	Grants	No
11	Matching Funds for International Market Development for small and medium size enterprises (SMEs)	Grants	No
12	Superstar Enterprise Grant	Grants	No
13	Research and Development (R&D) Assistance Grant	Grants	No
14	Patent Award of Guangdong Province	Grants	No
15	Innovative Experimental Enterprise Grant	Grants	No
16	Special Support Fund for Non-State-Owned Enterprises	Grants	No
17	Venture Investment Fund of Hi-Tech Industry	Grants	No
18	Grants for Encouraging the Establishment of Headquarters and	Grants	No

**PUBLIC RECORD**

	Regional Headquarters with Foreign Investment		
19	Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan	Grants	No
20	Water Conservancy Fund Deduction	Grants	No
21	Wuxing District Freight Assistance	Grants	No
22	Huzhou City Public Listing Grant	Grants	No
23	Huzhou City Quality Award	Grants	No
24	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grants	No
25	Wuxing District Public List Grant	Grants	No
26	Anti-dumping Respondent Assistance	Grants	No
27	Technology Project Assistance	Grants	No
28	Transformation technique grant for rolling machine	Grants	No
29	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grants	No
30	Key industry revitalization infrastructure spending in 2010	Grants	No
31	Provincial emerging industry and key industry development special fund	Grants	No
32	Environmental protection grant	Grants	No
33	Environmental Protection Fund	Grants	No
34	Intellectual property licensing	Grants	No
35	Financial resources construction - special fund	Grants	No
36	Reducing pollution discharging and environment improvement assessment award	Grants	No
37	Grant for elimination of out dated capacity	Grants	No
38	Grant from Technology Bureau	Grants	No
39	High and New technology Enterprise Grant	Grants	No
40	Independent Innovation and High-Tech Industrialization Program	Grants	No
41	Environmental Prize	Grants	No
42	Jinzhou District Research and Development Assistance Program	Grants	No
43	Debt for equity swaps	Equity programs	No

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**PUBLIC RECORD**

44	Equity infusions	Equity programs	No
45	Unpaid dividends	Equity programs	No
46	Preferential loans and interest rates	Preferential loans	No
47	Compensation for land purchasing and storage	Grants	No
48	Technological transformation fund for Phase II Silicon Steel Project	Grants	Yes
49	Subsidy for land use rights in the new zone (Block No. 31836 & 31837)	Grants	No
50	Subsidy for developing emerging strategic industries in Anhui Province	Grants	No
51	New-zone Thermal Power Plant CAPP system engineering	Grants	Yes
52	EMU Steel wheel production line project	Grants	Yes
53	Cold-rolled sheet project	Grants	No
54	Relocation compensation for transportation company	Grants	No
55	Exhaust gas power generation projects of - Steel blast furnace- 1# - 4# coke dry quenching	Grants	No
56	Dezincification engineering of zinc dust and mud rotary hearth furnace for 3rd iron plant	Grants	No
57	National subsidy for slag muck processing and recycling engineering (AD201050406)	Grants	No
58	Subsidy for construction by Wuhu Technique	Grants	No
59	6# full burning blast furnace gas boiler works	Grants	No
60	Municipal environmental protection subsidies for desulfurisation engineering of 3rd iron plant's sintering flue gas	Grants	No
61	5# and 6# coke dust removal project	Grants	No
62	Fix assets subsidy for thin plate project	Grants	Yes
63	Flue gas curtailment project for 1st iron plant's blast furnace	Grants	No
64	Subsidy for technology advancement from open-hearth furnace to converter for 1st steel plant	Grants	No
65	Rolled wheel works	Grants	No

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**PUBLIC RECORD**

66	Pulse clarifier anti-pollution	Grants	No
67	Environmental funds for desulfurisation project of 3rd iron plant's flue gas (BOT)	Grants	Yes
68	National environmental fund for flue gas treatment by 3rd steel plant (A1201150304)	Grants	No
69	Subsidies for environmental protection funds of smoke desulfurisation plant	Grants	No
70	No. 3 general factory thermoelectricity plant 135MW generators	Grants	No
71	New zone coking-field project	Grants	No
72	Comprehensive utilisation of water resources	Grants	No
73	Subsidy for Masteel new-zone CDQ project	Grants	No
74	Subsidy for material modification of high-speed wheel and axle	Grants	Yes
75	Environmental protection subsidy for the thermal power plant Dentrification	Grants	No
76	Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 2# sintering machine	Grants	No
77	Subsidies for environmental protection funds of smoke desulfurisation project No.2 iron general factory 3# sintering machine	Grants	No
78	Interest subsidy for rail industrialisation project of Masteel	Grants	No
79	Development and reform subsidy	Grants	No
80	Development fund of efficient and economical construction steel technology	Grants	No
81	Technology development fund by Ministry of science and technology	Grants	No
82	Intelligent manufacturing fund for Ma-steel Rail Transportation	Grants	No
83	Subsidy for Maanshan railway industry	Grants	Yes
84	Comprehensive utilisation of gas for power generation of a thermal power plant	Grants	Yes

**PUBLIC RECORD**

85	Environmental subsidy for biochemical water upgrade project of coke old area upgration project of coke old	Grants	No
86	Government subsidy for desulphurisation and denitrification of gases project of a thermal power plant	Grants	No
87	Government subsidy for dust elimination of hot metal pouring on converter roof	Grants	No
88	Others	Grants	Yes
89	Environmental subsidy funds for flue gas desulfurisation and 135mW thermal power	Grants	Yes
90	Hot rolled sheet program	Grants	No
91	Exhaust heat power generation by sintering belt cooler of 3 <sup>rd</sup> iron plant	Grants	No
92	Repayment of Administration for Port & Shipping of Ma'anshan	Grants	Yes
93	International Market Development Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
94	Import Subsidies Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
95	Overseas Network Construction Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
96	Fourth Quarter Incentive Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department	Grants	Yes
97	Industrial Investment Comprehensive Compensation Funds of 2017 from Economic and Information Commission of Ma'anshan	Grants	Yes
98	National Industrial Transformation Financial Subsidy of 2017 (First Major Technical Equipment Insurance Project)	Grants	Yes
99	Provincial 115 Industry Innovation Team Funds from Finance Bureau of Ma'anshan	Grants	Yes

**PUBLIC RECORD**

100	The Second Tranche of Provincial Foreign Trade Policy of 2016 from Business Bureau of Ma'anshan	Grants	Yes
101	Industrial Policy Funds of 2017 from Finance Bureau of Ma'anshan	Grants	Yes
102	Industrial Policy Funds from Finance Bureau Corporate Section of Ma'anshan	Grants	Yes
103	Environmental Assistance from Environmental Protection Bureau of Ma'anshan	Grants	Yes
104	Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan	Grants	Yes
105	Trade Friction Public Service Fund Subsidies of 2016 from Business Bureau of Ma'anshan	Grants	Yes
106	Provincial Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan	Grants	Yes
107	Technical Special Fees	Grants	Yes
108	Export Credit Subsidy	Grants	Yes
109	Annual Transformation Development Financial Aid Fund of 2017	Grants	Yes
110	Employees' Distributive Resettlement Expenses for resolving excess capacity	Grants	Yes
111	Subsidy for hot-rolled 1580 project	Grants	Yes
112	Subsidy for 4# blast furnace project	Grants	Yes

## **A4.5 Commissioner's Assessment**

### **CATEGORY ONE: PROVISION OF GOODS**

#### **Program 1 - Billet provided by the Government of China at less than adequate remuneration**

- Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of steel billet by the GOC at an amount reflecting less than adequate remuneration (LTAR).

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body. S.269TAAC describes the specificity requirement for a subsidy to be considered countervailable.

## **SEF 466 - Railway wheels – China and France**

## PUBLIC RECORD

The Commissioner's assessment of whether SIEs are public bodies for the purposes of the definition of 'subsidy' in subsection 269T(1) is discussed in **Non-Confidential Appendix 11**.

- Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

- WTO notification

The Commissioner is not aware of any WTO notification of this program.

- Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving steel billet at LTAR.

- Is there a subsidy?

The only known exporter of railway wheels to Australia from China does not purchase steel billet for the production of railway wheels. Based on the information above, the Commissioner has no relevant information on which to conclude that the only Chinese railway wheel exporter received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 1 is countervailable.

### **Program 2 - coking coal provided by the GOC at less than adequate remuneration**

- Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of coking coal by the GOC at an amount reflecting less than adequate remuneration (LTAR).

During the investigation the Commissioner established that Masteel bought coking coal from SIEs.

The Commissioner's assessment of whether SIEs constitute a public bodies in the meaning of subsection 269T(1) is discussed at **Non-Confidential Appendix 11**.

This assessment concludes that Chinese SIEs that produce coking coal are 'public bodies' for the purposes of section 269T, and the remainder of this section continues on the basis of this finding.

The Commissioner's assessment of what constitutes 'adequate remuneration' for coking coal in China is contained in **Non-Confidential Appendix 12**.

- Legal basis

## **SEF 466 - Railway wheels – China and France**

## PUBLIC RECORD

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

- WTO notification

The Commissioner is not aware of any WTO notification of this program.

- Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving coking coal at LTAR.

- Is there a subsidy?

The Commissioner requested detailed information from Masteel regarding its purchases of coking coal and these were assessed for adequate remuneration.

In accordance with subsection 269TACC(5), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration while having regard to the prevailing market conditions in China (as discussed in **Non-Confidential Appendix 12**).

In accordance with subsection 269TACC(6)(d), a benefit was calculated as the difference between adequate remuneration (the benchmark reference) and the purchase price paid for coking coal incurred by Masteel when acquiring these raw material from an SIE.

The Commissioner notes that the export prices used to determine the benchmark price are at FOB terms, while the purchase price paid was on delivered terms. Given the absence of information to make any adjustments to reflect this difference, the Commissioner considers it is reasonable to compare the delivered purchase prices as reported by Masteel to the FOB export prices provided by the GOC.

Based on this analysis, the Commissioner identified that coking coal acquired from SIEs has been provided at LTAR. As such, the available evidence supports the finding of a benefit of a countervailable subsidy.

### **PROGRAM 3: COKE PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION**

- Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of coke by the GOC at less than adequate remuneration (LTAR).

## PUBLIC RECORD

- Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

- WTO notification

The Commissioner is not aware of any WTO notification of this program.

- Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving electricity at LTAR.

- Is there a subsidy?

During the investigation, the Commissioner established that Masteel did not purchase coke from SIEs.

### **Program 4 - Electricity provided by the Government of China at less than adequate remuneration**

- Background

Comsteel alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of electricity by the GOC at an amount reflecting less than adequate remuneration (LTAR).

- Legal basis

The Commissioner has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

- WTO notification

The Commissioner is not aware of any WTO notification of this program.

- Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving electricity at LTAR.

- Assessment

After assessing information presented by the GOC and the exporter, the Commissioner does not have evidence that Masteel benefited from a preferential electricity rate that can be considered specific in the terms of S.269TAAC.

## **CATEGORY TWO: PREFERENTIAL TAX POLICIES**

### **SEF 466 - Railway wheels – China and France**

## PUBLIC RECORD

### Programs 5 to 9 inclusive

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit in the form of preferential tax policies.

### CATEGORY THREE: GRANTS

#### Programs 10 to 42 and 47 to 112 inclusive

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit in the form of a grant other than for the following programs.

The Commissioner found that, during the investigation period, Masteel received a benefit under the following grants programs:

Program Number	Program Name
48	Technological transformation fund for Phase II Silicon Steel Project
51	New-zone Thermal Power Plant CCPP system engineering
52	EMU Steel wheel production line project
62	Fix assets subsidy for thin plate project
67	Environmental funds for desulfurisation project of 3rd iron plant's flue gas (BOT)
74	Subsidy for material modification of high-speed wheel and axle
83	Subsidy for Maanshan railway industry
84	Comprehensive utilisation of gas for power generation of a thermal power plant
88	Others
89	Environmental subsidy funds for flue gas desulfurisation and 135mW thermal power
92	Repayment of Administration for Port & Shipping of Ma'anshan
93	International Market Development Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
94	Import Subsidies Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
95	Overseas Network Construction Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
96	Fourth Quarter Incentive Funds from Bureau of Commerce of Ma'anshan received by Overseas Business Department
97	Industrial Investment Comprehensive Compensation Funds of 2017 from Economic and Information Commission of Ma'anshan
98	National Industrial Transformation Financial Subsidy of 2017 (First Major Technical Equipment Insurance Project)



**PUBLIC RECORD**

<b>99</b>	Provincial 115 Industry Innovation Team Funds from Finance Bureau of Ma'anshan
<b>100</b>	The Second Tranche of Provincial Foreign Trade Policy of 2016 from Business Bureau of Ma'anshan
<b>101</b>	Industrial Policy Funds of 2017 from Finance Bureau of Ma'anshan
<b>102</b>	Industrial Policy Funds from Finance Bureau Corporate Section of Ma'anshan
<b>103</b>	Environmental Assistance from Environmental Protection Bureau of Ma'anshan
<b>104</b>	Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan
<b>105</b>	Trade Friction Public Service Fund Subsidies of 2016 from Business Bureau of Ma'anshan
<b>106</b>	Provincial Foreign Trade Policy Funds of 2016 from Business Bureau of Ma'anshan
<b>107</b>	Technical Special Fees
<b>108</b>	Export Credit Subsidy
<b>109</b>	Annual Transformation Development Financial Aid Fund of 2017
<b>110</b>	Employees' Distributive Resettlement Expenses for resolving excess capacity
<b>111</b>	Subsidy for hot-rolled 1580 project
<b>112</b>	Subsidy for 4# blast furnace project

**Table 9: Subsidy Programs Investigated**

The Commissioner sought information from the GOC to establish the legal basis of these programs. The GOC considered that further information about these financial contributions was 'not necessary or efficient in light of the de minimis nature of any support Masteel may have received pursuant to them'.

The Commissioner was unable to identify any specific legal basis for these programs (i.e. no specific law, regulation, or other GOC document has been identified that provides for their establishment).

- WTO notification

The Commissioner is not aware of any WTO notification of these programs.

- Eligibility criteria

As per the legal basis section above, the GOC considered that further information about these financial contributions was not necessary or efficient in light of the de minimis nature of any support Masteel may have received pursuant to them.

The Commissioner was therefore unable to identify any specific eligibility criteria for these programs.

Masteel advised the Commissioner that access to the grants programs was restricted to either the industry in which Masteel operated or the companies in the local region.

## **PUBLIC RECORD**

- Is there a subsidy?

Due to the nature of these grants, it is considered that a financial contribution under these programs would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including railway wheels).

This financial contribution is considered to confer a benefit to recipient manufacturers of railway wheels via funds from the GOC or other levels of the Chinese government.

These programs would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under section 269T.

In regards to specificity, the Commissioner considers these programs are specific within the meaning of Section 269TAAC of the Act since only companies operating in key industries or in the production of key products are eligible to receive them. This conclusion was reached based on all available information, specifically Masteel's response to the exporter questionnaire stating that eligibility to receive these grants was conditional on being within the industry to which the business belongs or in the particular region.

- Amount of subsidy in respect of the goods

In calculating the amount of subsidy, the Commissioner has referred to the financial records of the company, specifically non-business income and the amount received for these programs was allocated against a proportion of turnover relative to exports to Australia.

### **CATEGORY FOUR: EQUITY PROGRAMS**

#### **Programs 43 to 45 inclusive**

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit in the form of equity programs.

### **CATEGORY FIVE: PREFERENTIAL LOAN PROGRAMS**

#### **Program 46**

The Commissioner found that the sole Chinese exporter of railway wheels during the investigation period, Masteel, did not receive a benefit in the form of preferential loan programs.

## NON-CONFIDENTIAL APPENDIX 11 – PUBLIC BODIES

### A11.1 Background

Article 1 of the Agreement on Subsidies and Countervailing Measures (SCM) provides that a subsidy exists where two distinct elements are present: there must be a financial contribution by a government, or income or price support; and this must confer a benefit.

The Commission's dumping and subsidy manual states:

A financial contribution is a transaction through which something of economic value is transferred by the government – this may include for example money, goods, and services. The government's actions are the focus when examining whether there has been a financial contribution.

In establishing whether a financial contribution by a government exists, an important question is how broad is the concept of 'government'? It includes not only the 'government' per se, but also:

- any 'public body' within the country of export or origin of the goods; and
- any 'private body' entrusted or directed by the government to carry out a financial contribution as defined (in defining a subsidy, section 269T seeks to incorporate the above provision).

The definition of a subsidy in section 269T of the Act refers to a 'government' and to a 'public body'. The term 'government' is taken to include government at all different levels – national and sub-national. The definition also refers to a 'private body' which the government or a public body entrust or directs to carry out a governmental function.

Section 269TACC(2) states that a direct financial payment received from any of the following is taken to confer a benefit:

- (a) a government of a country;
- (b) a public body of a country;
- (c) a public body of which a government of a country is a member; or
- (d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

The applicant has asserted that SIEs are public bodies (for the purposes of section 269T), relying upon previous reports made by the Commission (322 Reinforcing Bars exported from China and 331 Rod in Coils exported from China).

The purpose of this investigation is to assess whether for the purposes of this investigation SIEs involved in the provision of raw materials to Masteel can be considered public bodies.

## **A11.2 Previous Considerations**

The term ‘public body’ is not defined in the legislation or the SCM. It has been considered by the Commissioner in previous investigations and has been the subject of a number of WTO Appellate Body findings. To inform the Commissioner’s assessment of this issue in the present investigation the following documents are considered to be relevant:

- INV 177 – the Commissioner’s finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- INV 203 – the Commissioner’s reinvestigation of certain findings in INV 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- INV 193 – the Commissioner’s findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively ‘coated steel’) exported from China. The Commissioner found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- INV 237 – the Commissioner’s finding in relation to the subsidisation of silicon metal exported from China;
- INV 238 – the Commissioner’s finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to INV 193 – the ADRP disagreed with the Commissioner’s finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP’s finding in relation to this issue;
- DS 379 – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS 436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS 437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS 437, while this decision is recent the Commissioner considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS 437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commissioner agrees with the views of the Panel in this dispute, and the Appellate Body in DS 379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commissioner does not advocate such an approach in the present investigation.

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):<sup>70</sup>

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<sup>70</sup> Appellate Body report DS379 at [318]

## PUBLIC RECORD

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commissioner, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether SIEs should be considered to be public bodies.

### A11.3 Submissions by the GOC

In its response to the GOC questionnaire, the GOC stated that SIEs operating in China were not public bodies because they do not exercise governmental authority. The GOC noted the WTO jurisprudence that:

- the key question in determining whether an entity is a public body is whether that entity possesses, exercises or has been vested with government authority;
- the exercise of functions by an entity that may also be undertaken by a government body will not serve as evidence that that entity is a public body, other than the power to regulate, control, or supervise individuals, or otherwise restrain their conduct through the exercise of lawful authority; and
- the existence of mere formal links between government and the entity, such as government ownership, does not establish that an entity is a public body.

The GOC stated that WTO jurisprudence also confirmed that the percentage of government shareholding in an SIE did not mandate a finding that such entities are or are not public bodies.

The GOC referred to DS379 in which the WTO Appellate Body indicated that control of an entity by a government, in itself, is not sufficient to establish that an entity is a public body. It also referred to DS436 and the Appellate Body's explanation that an investigating authority must avoid focusing exclusively or unduly on any single characteristic and must not take the view that government ownership alone is sufficient to establish that a company is a public body.

The GOC wished to emphasise that its position on public bodies had been officially supported on numerous occasions by the Anti-Dumping Review Panel and its predecessor, the Trade Measures Review Officer.

In relation to coking coal, the GOC stated that it had no information before it to suggest that the input producers in China are anything other than independent business entities, operating on a commercial basis, that make decisions independently with respect to their day-to-day commercial operations without any interference or influence from any government agencies and subject to the Company Law of the People's Republic of China.

## A11.5 The Commissioner's assessment

The Commissioner considers that the ADRP's decision to direct a reinvestigation of the findings in INV 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS 379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS 437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS 379. It stated that:

'In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".'

The Commissioner considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS 436, also released after the ADRP's findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

The Dispute Settlement Body stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';
- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and
- 'in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the "meaningful" control of the government.'

The *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises* (Interim Regulations) set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

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- Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
- Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;
- Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commissioner is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of coking coal identified by Masteel to be SIEs. Additionally, as part of the government questionnaire, the GOC was requested to respond to a number of questions concerning entities that produce raw materials, including:

- a list of all manufacturers of upstream raw materials suppliers and the percentage of GOC ownership in each (A4);
- whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A4);
- for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4).

The GOC advised that it was unable to provide information in response to these questions. In the absence of this information the Commissioner has proceeded on the basis of all the facts available and made assumptions as the Commissioner considered reasonable.

The Commissioner had regard to the findings by the European Commission (EC) in a report entitled *Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence* (EC Report).

The EC Report was prepared for the purposes of Article 2(6a)(c) of *Regulation (EU) 2016/1036*. Article 2(6a)(c) provides that where the EC has well-founded indications of the possible existence of significant distortions in a certain country or a certain sector in

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that country, the EC must publish a report describing the market circumstances in that country or sector.<sup>71</sup>

The EC Report found that the GOC no longer directs SIEs to “adapt to the new market-oriented [...] background” and “promote market-oriented allocation of public resources”.<sup>72</sup> Rather the GOC’s current primary goal with respect to SIEs is make the sector larger and stronger; this includes strengthening the sector’s control and influence “in order to better serve the strategic goals of the country”.<sup>73</sup> The GOC has decided to maintain SIEs as a means for pursuing policy objectives and not primarily commercial considerations<sup>74</sup> and to selectively create large SIEs to serve the GOC’s strategic industrial policies rather than focussing on their own economic performance.<sup>75</sup> The GOC has continued controlling SIEs<sup>76</sup> and planned reforms focus on better controlling state-owned assets.<sup>77</sup>

The GOC is retreating from the market reforms for SIEs that it previously promoted, even as recently as 2013.<sup>78</sup> On that basis, the Commissioner considers that previous findings that SIEs are public bodies are pertinent to this investigation and are likely to understate the GOC’s involvement with SIEs.

The Commissioner considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that supply coking coal to Masteel should be considered public bodies.

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<sup>71</sup> EC Report at page 2.

<sup>72</sup> EC Report at page 106 citing the GOC’s 13th Five Year Plan.

<sup>73</sup> EC Report at page 106 citing the GOC’s 13th Five Year Plan.

<sup>74</sup> EC Report at page 107-8; the EC Report at page 362 stated that some forms of GOC support in the steel sector were “permanent” and “structural”.

<sup>75</sup> EC Report at page 108-9.

<sup>76</sup> EC Report at page 108.

<sup>77</sup> EC Report at page 106 citing the GOC’s 13th Five Year Plan.

<sup>78</sup> EC Report at page 106 citing the GOC’s 2013 3rd Plenum Decision.



## NON-CONFIDENTIAL APPENDIX 12 - ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA

### A12.1 Background

After determining that SIEs that supplied coking coal in China are ‘public bodies’ for the purposes of the Act,<sup>79</sup> the Commissioner sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal in accordance with subsection 45(2) of the Regulations. The Commissioner then calculated the benefit received under subsidy program 2 (purchases of coking coal from SIEs at less than adequate remuneration).

In establishing the benchmark for the alleged countervailable subsidy benefits received by Masteel for coking coal, the Commissioner has relied upon information contained in the application, information provided by the GOC as part of its response to the Government questionnaire and other publicly available data.

### A12.2 Adequate remuneration for coking coal

The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- private domestic prices;
- import prices; and
- external benchmarks.

#### A12.2.1 Private domestic prices

The Commissioner found that domestic prices of upstream raw materials (including coking coal) are influenced by the GOC and therefore not suitable as a benchmark.

The Commissioner considers that private domestic prices of coking coal in China are not suitable for determining a competitive market price free from government influences.

#### A12.2.2 Import prices

The Commissioner found that import prices were not suitable as a benchmark due to the likelihood that import prices were equally affected by the government influences on domestic prices.

#### A12.3.3 External benchmarks

Having eliminated the first two options discussed above, the Commissioner considered

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<sup>79</sup> Assessment of SIEs to be Public Bodies is within Non-confidential Appendix 11

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other options to establish a benchmark price for coking coal.

As a result of the Commissioner's investigation into Aluminium Zinc Coated Steel (Investigation 193) the Commissioner used the Chinese export price in the investigation period to establish the benchmark price for coking coal. In assessing the data collated from various sources in Investigation 193, the Commissioner found there to be a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities. The coking coal exported from China was considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters, and the export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration.

The Commissioner did not receive any submissions during the investigation on the most appropriate benchmark for coking coal. The Commissioner has followed the methodology established in Investigation 193 and used information provided by the GOC on the Chinese export price for coking coal in the investigation period as a benchmark to assess whether Masteel has been provided with coking coal by SIEs at less than adequate remuneration.