

***Rio Tinto Submission | AD Statement | Case 632 Railway Wheels*****I. Rio Tinto's Interest and Executive Summary***i. Rio Tinto's Interest*

Anti-dumping measures have been imposed following a historical review, succeeding a finding that dumping had been taking place on Chinese railway wheels. However, these findings were based on a substituted value reflecting against foreign input pricing – indicating a failure to use relevant in-country pricing to determine whether dumping had occurred.

As a significant importer and historic end-user of iron ore railway wheels, Rio Tinto invested significant time and resources in providing written submissions throughout the original investigation. Rio Tinto has an interest in the pricing of these railway wheels from international suppliers against the monopolistic Australian market.

Rio Tinto considers that the market prices that are being paid from China are not dumping prices for a variety of reasons, including contemporary pricing and quality, and Australian supplier sourcing. These will be addressed in detail below.

*ii. Executive Summary*

Rio Tinto submits that there is no dumping and/or harm to Australian industry taking place in relation to the supply of railway wheels from China, for the following high-level reasons:

- The arguments that had been submitted by the Australian industry Applicant, Comsteel, were lacking in evidence that established a causal link between the alleged dumping and the injury so claimed;
- The calculation of values used by the Commission were not in-line with Anti-Dumping Agreement obligations, namely that costs *in the country of origin* are used as a basis, along with an exporters actual verified costs, and cost exclusions;
- Factors influencing reduced price can be more readily attributed to non-dumping considerations, and the Commission should not substitute a commercially and geographically distant market as evidence supporting for dumping occurring;
- Contemporary pricing, and other recent reviews into Chinese steel inputs, would confirm that even if dumping were occurring at the original investigation – it would no longer be the case;
- The domestic wheels and internationally supplied wheels are not directly substitutable goods, given concerns for safety, quality and lifespan of the two different products;

## II. Summary of Submissions

Article VI:1 of the *GATT 1994* and Article 3 of the *Agreement on the Implementation of Article VI of the GATT* (i.e., the WTO Anti-Dumping Agreement) prescribe the requirements of, and the factors to be considered in, making a determination of “injury” and “causation”. Rio Tinto submits that the Applicant’s submissions fail to adequately address these considerations, and instead posits the following:

- There is no clear evidence that the goods from the subject countries have been dumped. If any injury is deemed to have occurred, this cannot be the result of commercial dumping but instead due to other factors. Economies of scale and heavy investment into modernising Chinese steel production and processing establishes a competitive price that Australian manufacturers struggle to match, save for the imposition of selective dumping duties. Lack of investment or differences in genuine costs to make and produce should not spur a dumping case to support a domestic business model.
- The Australian industry has incurred independent criticism for the quality performance of their railway wheels compared to those exported from China. The original investigation failed to adequately investigate the life-expectancy of the wheels in comparison to unit costs – which would have demonstrated Comsteel’s true market position, for more expensive product. Rio Tinto submits that, had this been taken into consideration, the Commission would not have considered that any injury has taken place due to alleged dumping. Since 2015, Comsteel’s data suggests they only provide to the domestic Australian market and have no export sales which may be further indication that their heavy haul wheels are not competitive.
- Comsteel enjoys a competitive market position, being the only domestic producer of the like goods. Their claims that they would be competitive on a price point had there been no dumping and that the imported goods are only experiencing growth due to dumping, is based purely on conjecture with no causal link establishing the existence of dumping. The Commission addressed this in a confidential appendix, drawing cascading conclusions that Comsteel would have had a lower price than Chinese imports if not for alleged dumping, leading to increased sales volumes; the increased sales would have resulted in a lower fixed cost per unit, allowing for Comsteel to be yet more competitive than China; and finally that Comsteel had the ability to even further lower their cost base below China if they felt the need to invest in supply chain and automation improvements (8.13.1 of REP 466). It is a broad conclusion to draw that Comsteel are better on every commercial data point with their product, over a much larger scale operation in a country with a lower cost-base, before Comsteel even compete on an improved supply chain.
- There are no current dumping measures in place for the subject railway wheels in other jurisdictions, although heavy axle-load rail wheels are in use outside Australia. The fact that these regimes are not subject to anti-dumping measures supports the consideration that any injury or loss of business may lie with the local business model, and not with the foreign supplier side of the calculation. This is further demonstrated as Comsteel had limited export sales of the goods in question in 2014 but proceeded to have no export sales over the future period, and reduced sales as local companies sought the higher quality, efficient wheels from the international market.

Comsteel argued multiple injurious factors caused by the export of the goods from China and France, citing the following reasons:

- Loss of sales volume and revenue | The Australian market for wheels increased significantly in 2016/17, and Comsteel's sales did not increase in line with the market. This was ruled to be an "injury" due to dumping price impacts.
- Loss of market share | In 2015, the Australian industry held a more significant market share compared to importers. However, this had reduced dramatically by 2017, with the Australian industry holding less than 50% of the market share.
- Price suppression | Comsteel alleged an increase in its cost to make and sell ("CTMS"), which they allege had not been passed on to their customers due to competing with the prices of the dumped wheels from China and France.
- Reduced ROI | A corollary of the price suppression and reduced sales volume is a reduction in the ROI. Comsteel had been unsuccessful on bids based on price, affecting profitability and leading to a reduced ROI.

However, Rio Tinto submits that the above "injuries" are better explained due to particular processing costs in the country of export coupled with superior product performance, rather than any actual dumping that has been taking place – and considers this a normal feature of globalism and competition, after importers opened their procurement to the international market. Whilst the Australian industry have allegedly suffered injuries in the above forms, these are not directly attributable to dumping. The ADC and Comsteel have failed to consider the impacts other economic and non-price factors in reviewing the current Australian industry position, and discarded costs directly related in goods to establish a fact pattern of dumping. The existing dumping measures should be revoked on the basis that there is no dumping taking place for railway wheels exported from China.

### III. "Particular Market Situation", Appropriate Costs and Normal Value

There has been some discourse since the original REP 466 case around the correct interpretation of the phrase, "particular market situation" and the use of an alleged dumping exporters' actual costs, appreciating however the Commission did not resolve that there is a particular market situation in this case, although it was put forward by the applicant. In order to correctly assess the level of injury present to any domestic injury, domestic market sales necessarily have to be considered – i.e., those prices and/or production costs in the country of origin. While the Commission assessed that there is no domestic market for like goods, they continued to use blended domestic costs in an assessment of Comsteel's business, who also did not have broken-out product line costs. Establishing a causal link between domestic and international costs and pricing to ascertain whether dumping has occurred is at the heart of the review process, and a failure to adequately assess these prices skews the establishment of such a link.

This discount of Chinese production costs is not in line with Australia's obligations under Articles 2.2 and 2.2.1.1 of the WTO Anti-Dumping Agreement. These production costs were verified by an exporter visit report from the Commission, and were considered complete, relevant and accurate, along with being audited financial statements. In 6.5.1 of the REP 466 Final Report, these costs of production were discounted as the Commission considers the Government of China's ("GOC") influence in the input market.

Where there are no sales of like goods domestically, Article 2.2 obliges the use of the "cost of production in the country of origin". Further, Article 2.2.1.1. requires this be the cost of production using the exporters' own records. In contrast – for REP 466, the figures and uplifts used in this case have not resulted in using the cost of production *in China*. Further, in the analysis of production costs in A2.6.5 of REP 466, it looks that the Commission is comparing the Masteel cost of production

in China, against the commercial and profitable selling cost of another steelmaker in a 3<sup>rd</sup> country to Valdunes, and then the adjusted FOB price against A36 Slab sales in Latin America.

A3.2 of the report goes on to demonstrate that the selected benchmark used against Chinese rail wheels is in fact three quarters of a year of French billet sales, and one estimated quarter of expected French billet prices for the review period. The Commission then annualises these European billet costs, and uplifts Masteel's billet manufacturing cost by using this European purchased billet approach. This approach seems intent on bringing Masteel's cost to produce up to the cost to purchase inputs competitively, rather than calculating the cost of internal production in China.

In addition to the above comments around the price not being relevant to the Chinese market, the Commission decided not to adjust the European billet prices by a profit amount after assuming that bankruptcy of the steelmaker inferred that their billet line of sales were not profitable. This likely has artificially inflated the value being imposed against the Chinese market by assuming that all product lines from the manufacturer had no product margins, and the bankruptcy was not due to other factors (e.g. under-utilised product lines in other areas may be a reason for the entity to go bankrupt, while this line of billet could still be sold at a profit for that product line). The SG&A expenses used make reference to ArcelorMittal, which we assume is their European operations relevant to the French billet purchase – a cost-base not relevant to determining the “cost of production in (China)” required by Article 2.2.

In failing to use the production costs in the country of origin – in this particular case, China – instead, values from an unrelated third-party in Europe were substituted to establish a causal link between the pricing and injury to the Australian domestic industry. Abandoning the exact costing from China has been justified on the basis that the competitive market costs could not be verified – notably in the context of potential government influence on prices/major cost inputs.

Comsteel claimed that a “particular market situation” applies in respect of the steel billets used in the manufacture of the subject railway wheels, caused by the GOC influence in the iron and steel market. It was suggested that this influence renders the sales of railway wheels in that market “unsuitable for determining normal values under subsection 269TAC(1) of the Act.<sup>1</sup> Again, this was in particular reference to the state-invested nature of the Masteel Group, of which Masteel is a member.

In establishing a Chinese market price, Chinese billet from the market would be sourced from a mass-produced and in-demand system (see: Competitive Market, below). With China being the largest steel producer in the world, they have a significant comparative advantage in the production of steel products, namely costs and local steel input and processing. In contrast, the Australian industry would have a reverse “particular market situation” insofar as Comsteel's input materials are from a higher cost-base, likely with decentralised inputs where source material would need a much longer supply chain and using less globally in-demand and higher priced Australian inputs.

It is prudent to note that, whilst there was concern surrounding the preferential position of Masteel within China's domestic market, there were no concerns raised against Comsteel's monopolistic position with their own costs.

Going down the path of 3<sup>rd</sup> market cost substitutions, in turn disallowing exporters to provide the actual cost of fabrication in the country of origin and solidly developing a pathway to ensure an outcome of dumping pricing, is not in line with the obligations of the WTO Anti-Dumping Agreement

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<sup>1</sup> Rep 466 – Railway Wheels – China and France, p. 76.

and should not form the basis for the imposition of dumping measures. The Commission did not calculate the costs on the basis of records kept by the exporters, did not make a fair comparison between markets, and did not properly determine the amounts for profits in their substituted comparisons in accordance with the Anti-Dumping Agreement – artificially inflating the calculated Normal value of the goods, and thus the dumping margin between values is artificially created.

#### **IV. Competitive Market**

In the present investigation, the principal argument for disregarding China's domestic costs was based on the allegation that China is not a competitive market. Existing literature seems to focus on GOC intervention in market costs and grants at various government levels, which means that it is not possible to have a competitive market due to downwards influences on price.

In REP 322, the Commission held that the Chinese Government sustained a central role in the development and modernisation of the Chinese steel industry; in turn, it was held that the GOC materially contributed to the expansion of the industry and resultant low pricing. In investigating whether a particular market situation exists as a result of government influence, s 269TAC(4) directs the Commission to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions.

In this investigation, it was held that a benchmark price for coking coal (major steel input) was needed, as the domestic prices of coke in China were found to have been distorted by the GOC – although the GOC disagreed with this benchmark on the basis that it had no connection to the true prevailing market conditions for coking coal in China. Following a finding that the cooperative exporters of rebar were vertically integrated and produced their own billets, the Commission concluded that they could not reliably determine the volume and value of production of billets in China. In the present investigation it should be noted that any such arguments for Government influence are likely to fail on the same consideration points – noting that steel and associated inputs are in fact determined by publicly available indices, free of any GOC influence.

Certainly, when reviewing the available literature in its entirety, more compelling arguments are made for the reduced costs of Chinese steel products due to economies of scale, technical progress, and superior equipment and investment over any particular governmental influence. Certainly, China's rapidly growing economy had underpinned an increasing demand for steel products – this then contributed to the rapid growth and expansion of the steel industry. Chinese steel products are competitive on world markets primarily due to economies of scale, technical progress, and improvements in equipment; this means that steel production processes are more efficient in terms of energy, water, and other resource consumption.

As China continued to undergo its significant structural transformation and trade globalisation, it was the private enterprises in downstream industries that experienced the most rapid growth. This resulted from the leveraging of China's cheap and available labour, as well as China's accession to the WTO in 2001, which also attributed to a sharp increase in economic growth in the country. Certainly, China's accession to the WTO was compounded by an increasing integration into the global economy, in turn causing China to be confronted by significant international competition – and one way to maintain competitiveness in such an environment is to innovate.

This process of rapid economic "catch-up" and innovation has, however, been underpinned by various "distortions", such as price distortions in favour of industrial products to really drive production and investment in the domestic industry. These distortions can in fact be seen as positive or negative, as they are keyed to the economy's development stage at any given time. The

distortions are more severe early in the development phase, becoming less extreme as the market (including costs of production, selling prices, etc.) stabilises; excessive distortions that are in place for too long then begin to inhibit the efficient allocation of resources and hinders innovation and growth sustainability. Striking a delicate balance as China transforms to a global market leader creates a particular market situation as its domestic steel industry ebbs and flows to match macroeconomic growth policies.<sup>2</sup>

Leveraging international opportunities and adapting to new rising labour costs are two of the leading factors in China's innovative economy. As a corollary, Chinese exports are increasing in both volume and quality, with the market share of Chinese exports relative to other countries increasing steadily even after controlling the unit value. Again, this is a unique challenge when viewed in light of a shrinking workforce (attributable to historic family planning policies) combined with increased output demand – China faces a particular market situation in its attempts to transition to a more innovation-driven growth model that necessarily differs to other established, higher-performing economies.<sup>3</sup>

In recent years, the focus in the restructuring of China's steel industry has been mainly on reducing the quantity of production and increasing the industry's overall technical standards – within a lens cognisant of the dual ownership structure of China's steel industry – divided roughly between state-owned and private companies. This investment in closing small-scale production sites, energy saving, and emission reduction technologies has coincided with a fall in steel production, with trickle-down effects on the prices of raw materials that are fundamental to steel production i.e., coking coal and iron ore. This investment demonstrates a commitment to improving business practices and industrial automation; investment on a scale which has not been mirrored in the Australian industry, who have limited competition.

The above factors present a much more compelling basis for competitive market costs from domestic Chinese production. Reducing the overall operating costs in the country of origin would necessarily lead to competitive pricing in the international market – leaving limited room for government influence to dictate pricing indices which would in turn result in dumping.

#### **V. Australian Industry Injury**

In their application, Comsteel flagged that they would be more competitive (i.e., cheaper) on a price point comparison had there not been any dumping by China. There is, however, no factual basis that exists which would definitively show that Comsteel would ever be cheaper than Chinese manufacturing. As indicated above, the Chinese steel manufacturing industry has undergone significant investment to lower processing costs and have invested in more efficient energies and technologies, meaning that Australian manufacturers cannot confidently compete with these lower prices. Cheaper manufacturing/processing costs will necessary lead to lower sales prices, in comparison to expensive overhead manufacturing/processing costs in Australia that necessarily drive prices higher. There is therefore no factual basis that demonstrates that dumping has contributed to the lower prices by Masteel when it is clear that the more efficient processing is a key cost determinant between the two manufacturers.

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<sup>2</sup> China's New Sources of Economic Growth: Human Capital, Innovation and Technological Change Volume 2, eds. Ligang Song et al. (2017)

<sup>3</sup> Ibid.

The statements proposed by Comsteel in their application, details of the Commission's report into Australian injury, and subsequent submissions were also potentially misleading, failing to accurately identify relevant statistics such as employment and ROI linked to the goods in consideration. For example, Comsteel claimed a reduced ROI across its entire business, using net profit/loss as a proportion of assets used in the production of the goods. However, these figures do not appropriately reflect their sales position for the goods under consideration; and meanwhile, Masteel is required to calculate for this particular product line (i.e., ore car wheels) only – meaning that no causal link is actually established here relating to profit, price, and volume. Using different assessment bases cannot allow for any meaningful conclusions to be drawn surrounding the existence of dumping; it is not appropriate to selectively choose different frames of reference and conveniently claim that dumping has occurred.

Comsteel also put forward arguments that there was a reduction in employment linked to the “dumped” imports from China. The Commission found that wages had in fact risen due to the reduced employment and both capacity and productivity remained stable, suggesting any retrenchments were efficiency based and not due to injury via dumping. A claim was made that reinvestment from their parent company was not forthcoming due to the dumping – however the sale and break-up of their parent company in 2016 (Arrium) suggested that Molycop (and Comsteel by extension) were the only profitable parts of that business<sup>4</sup>.

The benefit of a 17.4% increase in the cost to their competition also provides a significant competitive advantage to Comsteel – which places them way beyond the “level playing field” of matching international pricing (which is currently much cheaper than their current business model could sustain). Molycop (Comsteel's parent) has indicated their desire to use dumping as a support for their business model<sup>5</sup>, in recent years indicating they would wind up operations if not for dumping margins, while the Commission have allowed Chinese steel grinding media to have their dumping margins expire – the two positions in contrast, that the Commission have confirmed goods are not dumped, while Comsteel's response of closing operations suggesting that they are not competitive on the product in an open market.

This acts as a further incentive *not* to invest in improving current manufacturing processes and technologies; where they can remain competitive against “dumped” prices from international suppliers, there is no need to be able to match costs on an actual supply/demand basis – and means that Comsteel can continue to benefit from local sales.

The Final Report outlined that the railway wheels offered for sale by the Australian industry would have been priced lower than imports, had the imported railway wheels not been at dumped prices. As established above, this is a fundamentally incorrect conclusion to reach – available evidence indicates the opposite; there is no situation where the prices charged by Comsteel would be cheaper than Masteel, with their cheaper processing and investment in more efficient technologies. Masteel in fact provides a superior product at a more competitive price, not being beholden to the higher cost of production in Australia. as discussed in the following section (see: Quality Concerns), it is the manufacturing processes that take place in Australia that are more expensive – involving less automation and therefore more manual labour at a higher income/wages price point – and in fact contribute to product flaws that have impacted Australian supplier sourcing.

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<sup>4</sup> <https://www.sbs.com.au/news/article/arriums-molycop-sold-for-1-6-billion/6w75txvz2>

<sup>5</sup> <https://www.awu.net.au/national/news/2021/09/15245/australia-to-china-stop-cheating/>

Historical submissions in this investigation have further highlighted the reasons that contribute to lower manufacturing costs in China compared to Australia; namely, a combination of lower labour costs and higher productivity in China; economies of scale available to Chinese manufacturers; and the like. In particular, Rio Tinto flagged in their initial submission dated 5 June 2018 that economies of scale are a critical factor when considering prices in manufacturing industries where fixed costs are a substantial part of the overall unit price. This means that their relevance cannot be overlooked in determining the cost of the goods, especially when identifying valid reasons for manufacturing cost differentials. These factors, which provide legitimate and well-argued evidence as to the reasons for the noted cost differentials, lead to a more compelling cause for injury than the alleged dumping. Any other conclusion would be intentionally disregarding the available evidence and drawing selective observations.

Again, the pricing discrepancies are so inherent to the differences in the nature and scale of manufacturing in Australia and China – and are not directly attributable to dumping. In their submissions, Comsteel have provided no legitimate causal link that establishes that dumping is taking place. In reality, they stand to benefit from continuing dumping measures beyond the normal industry protections so intended by these measures.

## **VI. Contemporary Pricing**

In China, steel prices are indexed according to the Steel Index Price,<sup>6</sup> a publicly available website. The Steel Price Index reflects the average of the transaction prices of all major steel products in the Chinese market. A combination of factors contribute to “create” this pricing index, including the prices of the raw materials used in the corresponding products, production costs, and general market costs – including supply and demand considerations. In this way, the Steel Price Index provides a benchmark against which buyers and sellers can negotiate contract prices.

An additional benchmark indexation can be found in the China Iron and Steel Association (“CISA”).<sup>7</sup> This index tracks the price of major steel items from member enterprises of the CISA, representing somewhat of a more “private” market average of production costs. Again, this can also be accessed as a publicly available website.

The two abovementioned indices include current and historic pricing, allowing for the mapping of market costs across a specified time period. From a rudimentary analysis, market trends can be ascertained to provide indications of market and global conditions that may account for instances of injury – as opposed to providing evidence of dumping. Further, the prices of steel input products – namely, iron ore and coking coal – cannot be overlooked. Fundamentally, the margin cost of steel production should be a linear combination of the prices of iron ore and coking coal; with the price of steel ultimately a “mark-up” of these costs.<sup>8</sup> Being cognisant of the fluctuations in prices across all 3 commodities therefore becomes critical when assessing the “big picture” that is Chinese steel pricing, providing a very real economic “factor” that can influence injury felt by the Australian industry producing like goods more than any alleged claims of dumping.

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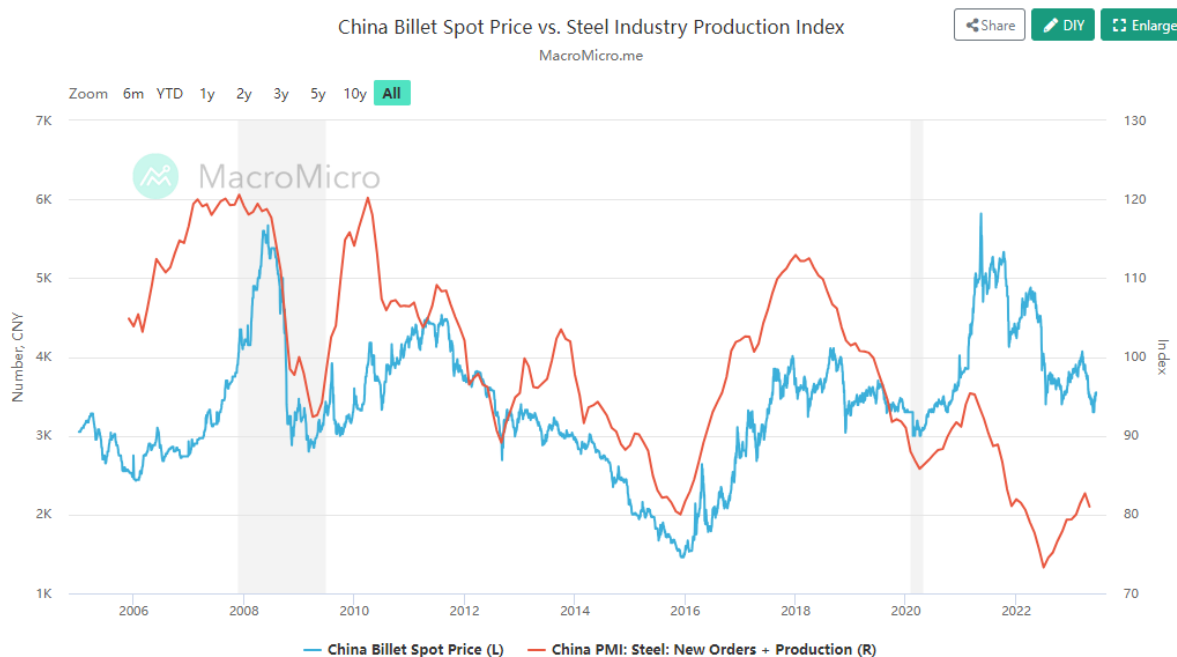
<sup>6</sup> [https://www.steelhome.cn/english/shpi/shpi\\_qzhtb.php](https://www.steelhome.cn/english/shpi/shpi_qzhtb.php)

<sup>7</sup> <http://english.chinaisa.org.cn/do/index.jsp>

<sup>8</sup> Mark Caputo, Tim Robinson and Hao Wang, “The Relationship Between Bulk Commodity and Chinese Steel Prices”, Bulletin, September Quarter 2013, [https://cama.crawford.anu.edu.au/sites/default/files/events/attachments/2013-12/the\\_relationship\\_between\\_bulk\\_commodity\\_and\\_chinese\\_steel\\_prices.pdf](https://cama.crawford.anu.edu.au/sites/default/files/events/attachments/2013-12/the_relationship_between_bulk_commodity_and_chinese_steel_prices.pdf)



Certainly, following the COVID-19 pandemic, the index point for steel products climbed significantly and reflected a general increase in costs as a result of the economic stress caused by the pandemic. Prices remained higher as the global market adjusted, and while reduced post-pandemic, prices remain at a new normal level generally higher than pre-2020. Regardless, this provides indisputable evidence that Chinese steel prices more readily follow global market trends than any arbitrary values that contribute to a greater competitive advantage for Chinese producers – such as those that may be influenced/distorted by government influence.



1: Visualisation, China Iron Steel Association - Billet spot prices

The above commentary centres solely on domestic Chinese pricing indices, but there are other global indices that reflect market prices for steel – namely Platts Metal Report. This is a publicly accessible index that delivers daily prices for the modern metals market, again allowing for a full analysis of historic pricing trends. This continues to evidence global market events influencing steel prices more so than any instances of dumping or government intervention in the present case, where the review period was during a particular low dip in billet prices.

This change in contemporary pricing is supported by the findings of REP 569 – Grinding Balls from China. This case specifically looked at billet as an input, and came to the conclusion that a contemporary dumping margin is **negative or zero percent** for named suppliers, and **negative 2.5 percent** across all other Chinese industry, in relation to the normal values.

With no dumping evidenced in available trade and pricing data, prices beginning to even out following the COVID-19 pandemic, and contemporary dumping reviews showing that steel manufacturing from China turns out a negative margin, Rio Tinto is of the opinion that there is no cause for the current dumping measures to remain in effect.

## VII. Quality Concerns

One of the resounding concerns echoed to the Commission throughout the submission made was that Comsteel were perceived to have had lower quality wheels that were inclined to crack or

shatter at an increased rate, with a shorter lifespan overall. These are not quality concerns that were experienced for Masteel's wheels.

Comsteel claimed that their ingot technology was preferred by the world's premium wheel manufacturers. The test results obtained by Rio<sup>9</sup> and BHP<sup>10</sup> from an independent testing into Comsteel's wheels confirmed that the Comsteel process is naturally prone to more issues due to scrap inputs, whereas the Chinese process is using iron ore feedstock. These tests available on the railway wheels EPR were conducted following BHP's claims of wheel failures and other incidents.

Rio Tinto's original submission dated 5 June 2018 included a specific carve out to discuss the process efficiency of Masteel's product against that of the Applicant. Notably, Masteel invested heavily into robotics technology as part of their broader industrialisation/trade modernisation effort, allowing them to automate significant portions of recurrent processes for forging and rolling wheels at a repeatable and reliable quality. Such technologies allow for the commercialisation of standard processing without incurring additional overheads that drive prices up. Further quality concerns regarding packing practices and numerous shattered wheel rim events have been cited as driving factors behind Rio Tinto's preference in sourcing Masteel products, rather than preferential purchasing due to alleged dumping or subsidisation so claimed by the Applicant.

An engineering report was submitted by Marais Consulting Engineers and ALS Industrial in the original investigation, with the findings fed into the decision for BHP's and Rio Tinto's move away from majority purchasing from Comsteel and diversified procurement as a strategy. These independent reports detailed Comsteel's manufacturing process, using melted scrap instead of ingot steel and a different method of processing the steel which could induce flaws. The findings from the Marais Report confirmed that it was the non-metallic inclusions and subsurface defects in the Applicant's railway wheels that contributed to the majority of failures identified.<sup>11</sup> So much so, that Rio Tinto had previously presented in the Further Submission dated 5 September 2018, that their wheels sourced from Comsteel had a number of shattered rim events. Certainly, the differentiated manufacturing processes from China and Australia were producing a different quality of product.

Notably, there are two different processes in question for manufacturing the subject railway wheels – which have different performance capabilities confirmed by independent reporting: the Chinese railway wheels used a continuous casting production process, whereas the Applicant's railway wheels used an ingot casting production process. These different production processes were found to induce different physical characteristics between the wheels; the Comsteel wheels, in using scrap input and an ingot casting process, have a higher frequency of non-metallic inclusions and therefore have a different purity and chemical composition compared to the Chinese railway wheels. This results in a different quality product between the imported and domestic wheels.

The Statement of Essential Facts dated 11 October 2018 outlines the production process Comsteel follows to produce their railway wheels in more detail. Comsteel's process uses inputs of scrap metal as the main raw material used to produce billet and ingot; to then produce the ingots for railway wheels, certain alloys are added to the scrap steel in order to achieve the desired metallurgy. Following vacuum degassing, the molten steel is poured into ingot moulds and further heated in a

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<sup>9</sup> Further Submission of Rio Tinto Limited, 5 September 2018

[https://www.industry.gov.au/sites/default/files/adc/public-record/466-047\\_-\\_submission\\_-\\_end\\_user\\_-\\_rio\\_tinto.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/466-047_-_submission_-_end_user_-_rio_tinto.pdf); p. 6

<sup>10</sup> [https://www.industry.gov.au/sites/default/files/adc/public-record/466-034\\_-\\_submission\\_-\\_importer\\_-\\_bhp\\_iron\\_ore.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/466-034_-_submission_-_importer_-_bhp_iron_ore.pdf); p. 2 – independent metallurgical lab involved in review.

<sup>11</sup> Further Submission of Rio Tinto Limited, 5 September 2018, p. 6.

rotary furnace. These are then pre-formed in a slab press and forged in a 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 tempered in a tempering furnace, shot blasted, undergoes hardness testing, and then is machined to its final specifications. These are all manual processes that have not been automated to the same extent as in China, meaning that the costs to produce in Australia are necessarily higher – due to higher labour costs and higher overhead costs, and production inefficiencies experienced throughout the manufacturing process described above.<sup>12</sup>

Rio Tinto cited that the non-pricing issues affecting the Applicant's Goods that also contributed to their decision to source from an alternative supplier; the issues were material causes of injury to the Australian industry that could not be attributable to any dumping or subsidisation, instead relating to certain economic factors and manufacturing cost differentials between Australia.<sup>13</sup> This remains to be the case.

However, in response to the importers providing the independent report details, Comsteel argued that the previously-mentioned shattered rim events were due to operational errors on the part of BHP and Rio Tinto<sup>14</sup>, not any structural defects in their products.

The ADC – we suggest incorrectly – considered that these events did not need to be considered in the calculation of causes of injury in the then-present dumping investigation<sup>15</sup>, despite multiple independent reviews being undertaken into these quality concerns at cost to the importing entities. Instead, the ADC concluded that Comsteel did not receive fewer orders due to the quality of their product but rather due to pricing discrepancies between Australian and Chinese manufacturers.

This is a failure to clearly articulate the true market position as it exists, as regards pricing, quality, and industry investments. Industry participants have an obligation to their employees to be safety-driven, and the discounting of independent engineering reports by Comsteel and the ADC is inappropriate in the context of investigating market positions and reasons for alleged injury. Even if a corresponding use test is applied, safety and performance in a heavy transport environment should be considered as to whether two sets of goods are suitable to have corresponding uses, or whether their performance is inappropriate for a particular use – or at a minimum, proper consideration should be given to whether a quality concern and induced risk of incident in heavy haulage would impact sales allocations.

Given that there a multitude of other factors that have clearly attributed to pricing differences, each factor should be adequately assessed in turn. When assessing procurement, the price point is not the only data point that is considered in contract awards and is not solely an appropriate measure for "injury" if a local supplier has lost market share also due to performance considerations. Certainly, a comparison should be made on the life expectancy, quality, and unit costs of these wheels. Rio Tinto submits that such a comparison would lead to a finding that the manufacturing process for Masteel's product is less inclined to induce failure; this, paired with the more energy and

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<sup>12</sup> SEF 466, [https://www.industry.gov.au/sites/default/files/adc/public-record/466-064\\_-\\_report\\_-\\_statement\\_of\\_essential\\_facts\\_sef\\_466.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/466-064_-_report_-_statement_of_essential_facts_sef_466.pdf); p. 18

<sup>13</sup> Further Submission of Rio Tinto Limited, 5 September 2018, p. 4.

<sup>14</sup> Re: Investigation No. 466 - Certain Railway Wheels exported from France and the People's Republic of China – Rio Tinto Iron Ore Submission date 5 September 2018, [https://www.industry.gov.au/sites/default/files/adc/public-record/466-056\\_-\\_submission\\_-\\_australian\\_industry\\_-\\_commonwealth\\_steel\\_company\\_pty\\_ltd\\_re\\_riotinto\\_submission.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/466-056_-_submission_-_australian_industry_-_commonwealth_steel_company_pty_ltd_re_riotinto_submission.pdf); p. 2

<sup>15</sup> SEF 466, p. 62

cost-efficient manufacturing processes in China, provides a ready explanation for pricing and market share discrepancies – completely outside the realm of any suggestions of dumping and injury.

#### **VIII. Preferential Treatment**

Comsteel enjoys considerable preferential market power in Australia, being the only domestic producer of the goods. Despite their wheels being more expensive and of independently demonstrated lower quality, they can retain their market power as local iron ore operators dedicate their resources to ensuring that the Australian industry remains in operation. This monopolistic market position, however, in turn discourages Comsteel from adapting to the changing needs of the industry – preferring instead to maintain “competitive” prices whilst lacking on other non-pricing related requirements such as the packaging, quality and other areas of their products noted in original submissions to REP 466.

In a similar vein with this effort, Rio Tinto submits that their end-of-life wheels are sold back to Comsteel to either be re-worked and/or scrapped, and assumedly used as inputs – XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [Commercial agreement details]. This is a benefit that is not afforded to Masteel, where the original case suggests they fabricate their own billet input material, rather than be provided input material already to the metal blend required in the wheels, and was not shown as a consideration when reviewing instances of dumping. This sale of end-of-life wheels is not subject to a competitive pricing process and only uses an agreed market list rate.

This approach from the Australian iron ore community is parallel to dumping, namely to protect the Australian industry. There was no mention of this preferential treatment throughout any submissions or the Final Report published by the ADC, although there was limited mention of the longstanding relationship between Comsteel as a leading supplier of railway wheels to Rio Tinto. The Commission failed to consider the effect of Comsteel’s preferential treatment in the assessment of Comsteel’s market position, and also failed to emphasise that this same treatment is not given to Masteel or MG-Valdunes. Instead, the foreign suppliers compete on a purely competitive and quality basis. This also means that they are not issued any additional capacity outside of competitive tender, which Comsteel enjoys in the domestic market.

The fact that Masteel have a superior product and more efficient manufacturing processes in country means that they are necessarily competitive on a price point. Comsteel’s claims that their prices would be competitive with Masteel had there been no dumping is conjecture at best; at worst, it is an attempt to secure a competitive position in the Australian market by applying dumping measures to their advantage.

There has been no concrete evidence of dumping; Masteel cheaper on a price point comparison because they have invested heavily in automation and improved business practices – whilst still producing the better-quality product. These factors in and of themselves do not constitute dumping; it is not demonstrated on the facts that they have dumped; they have a better quality product that can be manufactured cheaper than possible in Australia; and therefore necessarily equates to cheaper prices on the international market. Comsteel are not willing to give up their preferential market power and invest in developing their processing, and instead seek to rely on dumping measures to enforce their market dominance. Comsteel is not under any pressure to improve its business outside of foreign market influence where dumping measures continue to apply.

## IX. Conclusion

Overall, it appears on the facts that Comsteel enjoys a monopolistic market position in Australia despite having an inferior product. Further, Comsteel has no incentive to improve its business model as Masteel has, improving their production efficiencies and investing in more modern technologies. This is because the current dumping measures provide a significant price advantage for Comsteel in encouraging local users to purchase domestically, rather than sourcing internationally. Dumping measures should not be used to provide an incentive to local manufacturers; whilst the measures are intended to protect the domestic industry, they are not intended to be used to dissuade domestic users from purchasing like goods from other sources. This goes against all fair trading and competitive practice policies.

The approach to calculating out the dumping margin at the time of investigation was not in line with obligations under the Anti-Dumping Agreement, and sought to ensure costs *in the country of origin* were not used, and nor were the actual costs of the exporter. Instead, higher commercial purchase costs from a region with a higher cost-base were used, likely including profit margins, to ensure an inflated value of inputs in comparison to the efficient manufacturing output that Masteel had established for their internal operations.

Likewise, there is no compelling argument that can be made that overexaggerates the influence of the Government of China on domestic prices of steel and the associated inputs. As evidenced, prices are based on publicly available indices that combine market averages of raw materials, supply and demand, and market costs. These prices have necessarily “evened out” following the rapid growth of China’s steel industry and the price distortions that resulted from this modernisation. As discussed throughout this submission, there has been no concrete evidence put forth by the Applicant that shows that dumping has been the sole cause of injury to the Australian industry; other factors such as quality concerns, economies of scale, and contemporary pricing have contributed to the pricing discrepancies and move away from domestic manufacturers by local importers.

Rio Tinto submits that there is no dumping that is taking place for railway wheels imported from China, and as such the existing dumping measures are not warranted and should not be continued / should be revoked.