PUBLIC RECORD

125 St Georges Terrace
Perth, Western Australia 6000
Australia
T +61 8 6321 0000
bhp.com

13 October 2023

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

Dear Director,

ANTI-DUMPING NOTICE NO 2023/048
Initiation of a Continuation Inquiry No 632 into Anti-Dumping Measures

We refer to the Anti-Dumping Commission's (Commission) initiation of a Continuation Inquiry (No 632) into anti-dumping measures for railway wheels imported from the People's Republic of China (China) and France, pursuant to the Notice No 2023/048 dated 14 August 2023 (Notice), in particular '*Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys'* (Goods).

We understand that the Continuation Inquiry followed an application made by Commonwealth Steel Company Pty Ltd (Comsteel) to continue Anti-Dumping measures beyond the 5-year term which will expire on 16 July 2024 (Application).

In summary, BHP Group Limited's (BHP) position is that the Commissioner should recommend that the Minister reject Comsteel's Application for the continuation of anti-dumping measures because:

(a) The Goods produced by Comsteel are not "like goods" to the Goods produced by MG-Valdunes SAS (Valdunes) and Maanshan Iron & Steel Co., Ltd (Masteel) because:

   a. the Comsteel Goods do not meet the specifications required for use by BHP and accordingly BHP would not use the Goods;

   b. the Comsteel Goods are materially inferior in terms of quality; and

   c. there are safety concerns with using Comsteel's Goods;

(b) The Commissioner could not reasonably find that quality or performance was not a factor that caused injury to the Australian Industry where:

   a. BHP has ceased purchasing Comsteel's goods for the reason that they do not meet the required specification for the safe operation on BHP's rail network;

   b. BHP will not purchase Comsteel's Goods so long as they fail to meet BHP's required specification and safety concerns;

   c. xxxx

1. Background

1.1 Comsteel's Application

In its Application pursuant to section 269ZHD(2)(b) of the *Customs Act 1901* (Cth) (Act), Comsteel have alleged that anti-dumping measures should be continued on the basis that:

a. since the imposition of the anti-dumping measures in 2019, exports to Australia from China have continued, while exports from France have ceased;

b. due to the common ownership between the relevant producing companies and exporters in both countries, exports from France may resume if measures applying to Goods exported from France, but not China, were discontinued;

c. Masteel, has continued to supply the Goods from China to Australia;

d. the Goods exported from China to Australia in the year ending 30 June 2023 were dumped above negligible values, which will likely apply to future exports from China to Australia;

e. the Steel Industry Profitability data from the CRU Group shows a 20% decline in the profitability and price of steel since 2018 due to the softening domestic demand in China for steel products, resulting in Chinese producers pricing exports at prices intended to secure increased sales volume, which increases the likelihood of exporting at dumped prices;

f. if the anti-dumping measures were to expire, the Australian industry will experience a recurrence of material injury; and

g. Comsteel continues to experience price pressures in 2023 from dumped exports from China, resulting in unsuccessful tender supply outcomes and lost sales volumes.

BHP understand that Comsteel have relied on information from the maintenance of distribution links, the value of exports of Goods from China and France, customer feedback and their own estimates of current export prices and normal values.

1.2 Commissioner's Consideration

In the *Anti-Dumping Commission Report No 466* (REP 466) dated 16 June 2019 (Original Investigation), the Minister for Industry and Science (Minister) decided to accept Comsteel's application pursuant to the initially imposed public notice.

In response to Comsteel's Application to extend the anti-dumping measures, the Commissioner has taken the following considerations from the period between 1 July 2022 to 30 June 2023 in determining whether dumping has occurred (Inquiry Period):

a. information outlined in the Original Investigation, whereby the Commissioner found that procurement decisions made by the purchasers of Goods were predominantly based on price (Ground 1).

b. information obtained from the Australian Border Force (ABF) import data base from REP 466, whereby the Commissioner noted:

   i. exporters from China have continued to export Goods to Australia in substantial volumes since the imposition of the anti-dumping measures in 2019, which confirms that manufacturers in China have maintained distribution links into the Australian market;

   ii. it is likely that the export of Goods to Australia from France ceased following the imposition of securities in 2018 (and subsequently the rate of dumping duty) on the basis that the rate imposed on those Goods were considerably higher than the rate imposed on Goods exported from China; and

   iii. accordingly, there appear to be reasonable grounds to support Comsteel's assertion that exports from France may resume if the measures expire (Ground 2).

c. financial information provided by Comsteel (including their own estimations), whereby the Commissioner noted:

i. data from the Original Investigation and publicly available information relating to a Chinese exporter's selling and administrative expenses and profit indicate that Comsteel's estimations are reasonable; and

ii. it is likely that dumping has continued and may continue or recur if the measures were to expire (Ground 3),

(collectively Grounds 1 to 3 are referred to as "the Grounds").

The Commissioner has noted that based on Comsteel's Application (and other relevant information set out in the Notice), they are satisfied that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Upon finalisation of their considerations, the Commissioner will advise the Minister on whether the anti-dumping measures should:

a. remain unaltered; or

b. cease to apply to a particular exported or to a particular kind of goods; or

c. have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or

d. expire on the specified expiry day.

1.3 Characteristics of Goods Subject to Anti-Dumping Measures

The Notice states the Goods 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 with a multi-wear rim"*.

2. BHP's Position

In accordance with section 269ZHF(2) of the Act, the Commissioner cannot recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping (and/or subsidisation) and the material injury that the anti-dumping measure is intended to prevent.

For the reasons set out below, BHP is of the firm view that the continuation of the anti-dumping measures in respect of the Goods imported from China and France to Australia is not warranted nor justified because the Grounds advanced in support of the Application and the facts do not satisfy this test.

BHP's summary response to Comsteel's Application and its reasoning for the continuance of these anti-dumping measures is provided below:

As to Ground 1, the evidence does not support the contention that procurement decisions made by the purchasers of Goods is predominantly based on price:

a. As a starting point, any Goods used by BHP must meet its Specifications. If the Specifications are not met, then BHP cannot acquire the Goods at any price. Comsteel's Goods do not meet BHP's specifications and accordingly BHP will not be able to use them irrespective of price. Since the ADC Report in 2019, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx;

b. In terms of specifications, safety is a fundamental and primary determining factor for BHP in procuring ore car wheels. Comsteel's application to continue anti-dumping measures is solely focussed on price. xxxx

security. BHP ceased importing goods from France and continued with their current manufacturer Masteel for operational reasons; and

j. Comsteel's allegation that BHP ceased purchasing Goods from France due to prices being significantly higher is not supported by any evidence. This decision was not based on the anti-dumping measures imposed on those goods, but on other factors. BHP maintains their continued prioritisation on safety and quality following the anti-dumping measures.

As to Ground 3:

k. BHP requires transparency on "Confidential Attachment 2" pursuant to Comsteel's Application, on the basis that:

   i. BHP considers there to be inadequate justification in classifying pivotal data relied upon by Comsteel and by the Commission;

   ii. any financial data relating to a BHP supplier ought to be visible for consideration, and offer BHP the opportunity to give it appropriate consideration and respond; and

   iii. in light of the above, any comment on "Confidential Attachment 2" in Comsteel's Application should not be given any weight unless verified.

   If such information is not made available to BHP, BHP will be unable to properly test the assertions made by Comsteel as to the constructed normal values. Accordingly, such information should be made available to BHP or the inquiry terminated. To deny access to BHP to this information is to deny it procedural due process;

l. a price-breakdown analysis between Comsteel and the international suppliers engaged by BHP sees only marginal differences (which also magnifies the commercial opportunity for Comsteel to optimise their manufacturing process);

m. a softening of China's property market will have little impact, on the basis that other domestic industries requiring steel have increased to compensate for this change;

n. xxxx

2 the loss of approximately 28% of the Australian market in 2017 (BHP purchases) was not caused by dumping but was in fact, caused by product quality issues.

Safety Concerns and Monitoring

Acquiring Goods that can demonstrate high quality throughout their operational life, particularly at lower diameters where the risk of cracking increases, is critical. In the heavy haul rail environment that BHP operates, the equipment used on the rail network undergoes significant stresses. Accordingly, it is critical that careful assessments are taken in selecting a supplier that can guarantee goods of high quality and performance to reasonably mitigate safety and operational risks. As discussed further below, Comsteel's Goods do not meet this high quality and performance standard.

Rail wheel performance is continuously monitored to detect variations in wear behaviour (attributable to track or vehicle maintenance procedures, or changes in wheel material characteristics). Detection and management of rolling contact fatigue damage in older Goods in particular is critical to maintaining fleet availability. Specifications and designs are progressively upgraded to ensure that new components will provide adequate performance both in the short term, and as they approach condemning limits.

The continuous-improvement approach to the management of the Goods has been successful in reducing catastrophic failures and train delays and provides a basis for further developments to support network axle load increases. This comes at an additional cost to BHP where the Goods do not meet BHP's specifications. BHP requires suppliers to demonstrate that their railway wheels can effectively perform under heavy haul operational loads (and demonstrate an ability for Goods to adapt to any network changes), which includes wheel characteristics of adequate strength and hardness levels to minimise tread hollowing, as well as freedom from discontinuities that may initiate a defect.

Since the implementation of the anti-dumping measures in 2019, xxxx

BHP has several public crossings along its railway. In the event that a mainline derailment were to occur as a result of inadequate ore car wheels within the vicinity of a public crossing, the outcome could be catastrophic, potentially leading to fatalities.

BHP are committed to mitigating catastrophic and fatal risks. In 2018, BHP ceased purchasing the relevant Goods from Comsteel, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. BHP is actively running down the stock of Comsteel's Goods which are currently in BHP's trailway system. BHP continues to purchase other goods from Comsteel with which BHP does not have safety concerns.

Standards and Controls: 2019 Specification

BHP's prioritisation on safety has consistently guided strategic decisions. In 2019, BHP updated their ore car wheel specification (xxxxxxxxxxxxxxxxxxx), which provides higher standards in relation to steel cleanliness, particularly at smaller ore car wheel rim diameters. It also included additions to testing location requirements around the circumference of the ore car wheels. New and existing suppliers are expected to meet any new specifications, and if required, improve their technology and manufacturing operations to meet BHP's demands.

This specification was introduced to reduce the likelihood of receiving low quality Goods in BHP's existing 40T operations, and to ensure compliance requirements were aligned with the industry standards (as detailed in the AAR M-107-wheel specification). The updated specification provides greater focus on controlling non-metallic inclusion size and distribution on BHP heavy haul ore car wheels.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. Until such time as Comsteel can demonstrate that their Goods meet BHP's ore car wheel specification (as per the specification above), BHP will not acquire Comsteel's Goods regardless of price. BHP continues to acquire Masteel's Goods as they have demonstrated that they meet BHP's required specification.

Controls have been implemented to ensure these specifications are met, which include (but are not limited to):

a. material cleanliness criteria to reduce the risk of subsurface defect formation;

b. residual stress requirements to retard crack growth;

c. mechanical properties to ensure compatibility with rail types and meet minimum requirements for wear;

d. extensive field trials of ore car wheels provided by all suppliers (including previously engaged suppliers) at new and minimum allowed diameters;

e. <u>requirement for suppliers to complete a suite of tests and provide evidence of compliance to BHP specification; and</u>

f. the same extensive evaluation process imposed on new (and returning) suppliers (i.e. service trials).

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. These costs and time are not otherwise required for Masteel or Valdunes Goods. As mentioned above, BHP is actively running down the stock of the Comsteel Goods which are currently in BHP's trailway system xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. BHP does not intend to replace those Goods with Goods from Comsteel.

Conclusion

In conclusion, BHP's unyielding commitment to safe railway operations, the safety of its personnel and the public, and Goods which meet specifications to satisfy this, are the primary driving factor for BHP's purchase decisions.

The Commissioner could not reasonably find that the expiration of measures would lead to material injury to the Australian industry, due to the difference in quality xxxxxxxxxxxxxxxxxxxxxxxxxxxxx associated with Comsteel produced Goods. It is BHP's expectation that suppliers, such as Comsteel, must exhibit a tangible commitment to meeting its specifications and upholding high-quality and performance standards to avert catastrophic outcomes, just as BHP employs a strategic approach towards continuous improvement in

managing ore car wheel quality. Regrettably, since the implementation of measures in 2019, xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, thereby negatively impacting their operations and the Australian industry at large. The substantial and potentially fatal risks associated with subpar ore car wheel quality necessitate steadfast diligence from both BHP and its suppliers. Thus, so as to maintain impeccable safety and operational standards, BHP will continue to align its procurement practices with suppliers that demonstrably adhere to the highest quality and safety norms, ensuring a fortified alignment with BHP's stringent and uncompromising standards.

The genuine source of material injury, if there be any, can be sourced to the Goods' performance issues, not economic factors such as price. xxxxxxxxxxxxxxxxxxxx

implemented by BHP, BHP have not experienced any incidents which have posed a safety risk to BHP's personnel.

It is important to note that since BHP ceased purchasing Goods from Comsteel in 2019, there have been no reported quality concerns or incidents with any of the alternative Goods suppliers notwithstanding the absence of additional controls.

xxxx

quality, xxxx

Table 1. Steel Demand Forecasts
SRO April 2023, finished steel products

Regions	million tonnes			y-o-y growth rates, %		
	2022	2023 (f)	2024 (f)	2022	2023 (f)	2024 (f)
European Union (27) & United Kingdom	151.8	151.3	159.8	-7.9	-0.4	5.6
Other Europe	39.2	42.1	44.6	-2.6	7.4	6.0
Russia & other CIS + Ukraine	53.3	51.5	49.3	-8.7	-3.5	-4.3
USMCA	132.9	135.0	138.1	-3.1	1.6	2.3
Central and South America	45.4	46.0	47.0	-10.5	1.4	2.3
Africa	40.6	40.5	42.1	3.6	-0.2	4.0
Middle East	51.3	52.4	54.1	3.8	2.2	3.2
Asia and Oceania	1 267.0	1 303.6	1 319.1	-2.6	2.9	1.2
World	**1 781.5**	**1 822.3**	**1 854.0**	**-3.2**	**2.3**	**1.7**
World excl. China	860.6	883.0	914.7	-3.0	2.6	3.6
Developed Economies	375.5	380.3	392.6	-6.2	1.3	3.2
China	920.9	939.3	939.3	-3.5	2.0	0.0
Em. and Dev. Economies excl. China	485.0	502.8	522.2	-0.3	3.6	3.9
ASEAN (5)	72.6	77.1	81.4	-0.3	6.2	5.7
MENA	69.8	70.2	72.5	4.9	0.6	3.4

Source: World Steel Association

In their Application, Comsteel have attributed their reported -20% decline in the profitability and price of steel since 2018 to the softening domestic demand in China for steel products (see Table 2 below).

	Industry Data (Value)				Industry Data (% change)			Industry Ratios			
Year	Revenue ($m)	IVA ($m)	Establishments (Units)	Enterprises (Units)	Employment (Units)	Exports ($m)	Imports ($m)	Wages ($m)	Total Assets ($m)	Domestic Demand ($m)	Crude Steel Output (Million Tons)
2022	207,176	31,979	655	542	484,001	26.4	87.4	6,701	276,252	207,237	1,005
2023	213,806	30,316	653	541	488,357	26.9	86.1	6,859	287,302	213,865	N/A
2024	220,434	31,468	652	540	492,264	27.9	89.0	7,024	298,219	220,495	N/A
2025	227,047	32,569	651	539	495,710	28.8	91.7	7,164	309,254	227,110	N/A
2026	233,404	33,579	650	538	498,684	29.7	94.5	7,300	320,077	233,469	N/A
2027	239,706	34,519	649	537	501,564	30.5	97.1	7,432	330,640	239,773	N/A
2028	245,699	35,451	648	536	503,866	31.3	99.4	7,558	341,220	245,767	N/A

Table 2: China's Iron & Steel Industry Outlook Source: Ibis World

(b) <u>Analysis on Masteel's Financials</u>

A financial analysis on Masteel provides as follows:

h. xxxx

XXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXX	XXXXXX	XXXXX

Table 1.2: XXXXXXXXXXXXXXXXXXXX

xxxx

BHP would be pleased to provide any additional information or documents which the ADC requires to clarify or support any of the matters outlined above.

Yours sincerely

BHP