



15 December 2023

The Director, Investigations 4
Anti-Dumping Commission
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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. as far as BHP is aware, Comsteel has made no attempt to improve the quality of their Goods or invest in its manufacturing process to meet BHP's specifications and to remedy the safety issues. In the time since the 2019 ADC Report, Comsteel has not sought to engage with BHP to demonstrate that its Goods do meet BHP's Specifications in order to allow BHP to acquire them; and
 - d. notwithstanding the imposition of the anti-dumping measures implemented in 2019, for the reasons outlined above, BHP continues to procure from overseas suppliers the Goods which do meet its specifications and safety concerns, and are of superior quality.
- (c) There is insufficient evidence to support the allegation that Masteel is exporting its Goods at a loss employing a dumping strategy to secure a greater market share in Australia. There are deficiencies in the calculations of normal values and the dumping margin.

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**).

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- 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

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- h. In contrast, Masteel's Goods meet BHP's specifications and BHP have accordingly continued procuring Goods from Masteel following the imposition of the anti-dumping measures;
- i. From BHP's perspective, there is no reasonable ground to support the assertion that the export of Goods to Australia from France ceased following the imposition of securities in 2018 due to the rate of 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. Masteel's profit margins have consistently been over 10% since 2019 (even when their other segments reported losses, which is strongly indicator that they are not exporting Goods at a price lower than their cost; and
- o. Australia comprises less than xxxx [commercially sensitive] of Masteel's total market for Goods exported (i.e. it is not necessary for Masteel to secure sales volumes in Australia at a "dumped" price to secure revenue).

For these reasons, BHP does not agree with Comsteel's position that international suppliers would obtain a price advantage over the Australian industry by dumping, but for the enforcement of the anti-dumping measures. Further, BHP repeats the concerns it expressed in its submission of 31 October 2018 regarding the manner in which the normal value has been constructed for Masteel's goods. Rio Tinto has also commented on the calculation of normal value and the deficiencies of the process in their submissions dated 2 October 2023.

2.1 Decision Review: Quality and Safety

(a) Network Requirements: BHP's Commitment to Safety

BHP's commitment to the safe operation of its railway network is paramount in safeguarding both operational risks and efficiency, and more importantly the safety of its personnel and the general public. It

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is BHP's position that the Commissioner's findings in the ADR's 2019 Report concerning BHP's tender decision in 2016 are incorrect because:

- 1 wheel quality or performance was a factor that caused injury to the Australian Industry (if it did suffer injury). This is because quality concerns were an important factor considered by BHP in deciding whether or not to purchase the Goods; and
- 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, Comsteel have not engaged with BHP to demonstrate that their Goods can meet BHP's specifications and these performance requirements. Accordingly, Comsteel have put themselves in a position where injury to their operations has been self-inflicted by a failure to demonstrate an improvement in quality and safety to be able to meet specifications. In these circumstances, it is not appropriate or lawful to impose additional obligations upon BHP, or other companies, to mitigate inadequacies with the products provided by Comsteel when there are alternative companies available which meet the standards required.

Goods that show signs of defect, such as premature cracking or excessive wear that exceed industry standards, are directly linked to inadequate performance, which poses significant risks. This was demonstrated during BHP's engagement with Comsteel in 2016 to 2018, in which xxxxxxxxxxxxxxxxxxxxxxxx [defective goods incidences reported to Comsteel]. There have been no incidents related to poor wheel performance or quality associated with the Goods supplied by Masteel.

The risks associated with inadequate ore car wheel quality are extremely serious, with repercussions to both the network's infrastructure (derailment) and to people's safety:

- a. cracks in broken ore car wheels propagating through to the wheel hub and effectively separating the wheel (or sections of the wheel) from the axle. This can cause the wheel to travel off the rail, as it is no longer constrained through the flanges. The formation of a crack in a railway wheel has a "virus" like impact, in that it can cause mainline train derailment, damage to the rail tracks, damage to the bearings etc. which is extremely arduous to manage);
- b. impact loads resulting from discontinuities in the wheel's running surface (from shelling / missing wheel sections), which can break the rail. This can lead to the ore car wheels no longer being constrained within the rails; and

the only argument for the alleged 28% loss of the Australian market can only be attributed to the inadequate quality of their goods.

BHP considers it likely that the anti-dumping measures have incentivised Comsteel to focus on their commercial pricing advantage over Masteel (in that Masteel saw a 17.4% increase in price pursuant to the anti-dumping measures in 2019), rather than focus on improving the quality of their Goods. The anti-dumping measures have had a counter-intuitive effect as they simply result in Australian' users such as BHP to purchase foreign manufactured goods at higher prices.

Notwithstanding Comsteel's ongoing engagement with BHP for the supply of a different product to the Goods, being Loco wheels and axels for use in BHP's network,² Comsteel has not demonstrated to BHP any intention or willingness to improve the quality of their Goods, nor demonstrate to BHP that their Goods meet BHP's required specification. Comsteel are familiar with BHP's network, the importance of safety and that it was ultimately the inadequate quality of their Goods that resulted in BHP's decision to cease purchasing their Goods (as addressed in BHP's submissions to the Original Investigation). However, in their Application pursuant to this Notice, Comsteel have not addressed BHP's prior raised concerns with quality, nor have they attempted to rebut this position or engage with BHP to show that its Goods meet BHP's specifications. This indicates to BHP that Comsteel, despite being aware of the inadequate quality of their Goods, have not taken any measures to improve them, and are as a result, effectively failing to mitigate their own risk of material injury. Comsteel simply suggests that the quality issues are ones that are not real. They are real issues and BHP have necessarily continued to source the Goods from alternative suppliers notwithstanding the anti-dumping tariff imposed on such Goods.

2.2 Decision Review: No Anti-Dumping / Market Insight

BHP repeats the concerns with the assessment of the statutory integers that led to a conclusion that the Goods have been 'dumped'. Rio Tinto has also expressed concern in its recent submission about errors in the methodology to calculate the normal value of the goods.

For BHP to undertake a proper analysis of Comsteel's dumping analysis in its application to continue the measures BHP requests that the information asserted to be confidential in that application be disclosed, to the extent it is not confidential to Comsteel itself. BHP cannot understand how Comsteel's analysis of a constructed normal value could be confidential to Comsteel. BHP is unable to properly test the assertions made by Comsteel as to the constructed normal values (in particular Appendix 2 to the Comsteel application) and this information should be made available to BHP, or alternatively, the inquiry should be terminated, and anti-dumping measures removed.

(a) Market Economic Outlook: Steel Industry & Iron Ore Market

In their Application, Comsteel have attributed their reported -20% decline in the profitability and price of steel since 2018 as due to the softening domestic demand in China for steel products (see Table 1.1 below). These assertions are purely speculative and incorrect for the following reasons:

- a. none of the Iron Ore producers have cut back on production and sale of Iron Ore to China;
- b. Australian domestic companies operate on a smaller scale, and do not have the competitive advantage of some overseas manufacturers resulting in a price disadvantage, driven by a higher cost base; and
- c. as illustrated below (see Table 1), the Chinese demand is showing signs of stability or increasing demand.

² BHP have determined that these products supplied by Comsteel are of adequate quality.

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According to industry reports,³ the Chinese Iron and Steel industry revenue is forecast to increase at an annualised 3% over the next five years (until 2027). Consolidation is expected in the Chinese steel industry in the coming years, and productivity is anticipated to see a slight increase as a result.

While there is an expected increase in annualised revenue, forecast industry output is expected to decline. Chinese steel consumption in the Chinese market is not expected to decline. Even in the current economic climate where construction has slowed, it is anticipated that China’s demand for steel will continue to grow in other steel intensive manufacturing industries (refer Table 1 below).

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).

Year	Industry Data (Value)			Industry Data (% change)				Industry Ratios			
	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) Analysis on Masteel’s Financials

A financial analysis on Masteel provides as follows:

- h. Australia comprises less than xxxxxx [commercially sensitive] of their total market for Goods exported, with their local market in China taking a significant portion of their market share (see Table 1.2 below). For comparison 60% of Masteel sales are within China. This data suggests that it is not necessary for Masteel to secure sales volume in Australia at “dumped” price to secure revenue;

³ IBIS World, Industry Report, Industrial Machinery Manufacturing in Australia, August 2023; IBIS World, Iron and Steel Casting in Australia, October 2023; IBISworld reference CHINA INDUSTRY REPORT 3591 / MANUFACTURING, Iron & Steel Casting in China

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- b. the definition of “Goods” fails to take into account quality specifications, consequently allowing local companies to manufacture Goods of insufficient quality and penalise purchasers who choose to prioritise safety and quality;
- c. Comsteel’s Application fails to acknowledge BHP’s primary procurement consideration: quality and safety (and their history of supplying Goods to BHP of inadequate quality). Comsteel have also failed to demonstrate that its Goods meet BHP’s specifications. It has failed to improve the quality of its Goods;
- d. Comsteel’s allegations are inconsistent with BHP’s (and exporter) financial analysis, which indicates that Masteel have in fact not been “dumping” goods; and
- e. the anti-dumping measures sought pursuant to Comsteel’s Application does not remedy the risk of “material injury to the Australian industry” that the Act intends to prevent. It is likely that Comsteel are contributing to the cause of any material injury to the Australian industry, and to a significant degree.

An extension of the Anti-Dumping measures pursuant to the Notice ought to be rejected.

Supporting local businesses is a core value to BHP. However, if that business fails to produce a safe commodity, BHP cannot reasonably engage with that business in relation to that commodity until improvements are made. Secondly, but this is a secondary consideration, those Goods must be at a competitive price point against their peers. It appears that Comsteel’s monopolistic market power following the implementation of the anti-dumping measures has disincentivised them to invest in innovation and technology to improve product quality and to streamline manufacturing costs. Until Comsteel can deliver on these improvement opportunities, they will remain uncompetitive.

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