

26 March 2024

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

*via e-mail*

**Re: Case 632 - Railway wheels from China, France - Continuation – Dumping**

Dear Director,

Given the volume of submissions since Rio Tinto's first submission, we would like to make the following submission to address the positions that have been put forward from October 2023 onwards.

We re-iterate our views from our submission (Case 632, EPR Document #6) and still hold the view that Dumping has not occurred on the goods in question when properly calculated, and 'harm' to Australian industry has either other sources or the Duty itself bolsters a business model.

### **1. Australian Industry's response to Rio Tinto**

Comsteel holds a view of the purpose of Australia's Anti-Dumping and/or Countervailing measures, which we would like to highlight does not reflect the purpose of the Anti-Dumping measures. They put forward that this review is specifically about injury or harm to Australian Industry, and not about whether goods are actually "dumped" from China or France.

In the 2<sup>nd</sup> point of their response to Rio Tinto and their concluding remarks, they posit that the current investigation should focus on the recurrence of injury. They put forward that the matter of calculating Dumping is 'ancillary' to the question of their business model being at risk – which we commented on in our original submission. We disagree with their opinion of the Anti-Dumping Commissions purpose.

The question of whether Dumping has occurred at all should be the core question of any investigation and is tied to Australia's international obligations in such reviews. Respectfully, It is not the purpose of the Anti-Dumping commission to uplift foreign product prices where a local firm suggests they not competitive with foreign imports.

Comsteel comment that Rio Tinto "does not reject the particular market situation ("PMS") findings in Report [466]", which they have touched on in various submissions. We do not reject the PMS findings, as the Commission correctly assessed that they do not need to consider whether a PMS exists, as there are no domestic sales for such a situation to exist and/or to conduct a review (Report 466: A2.6).

In related commentary on the PMS they continue to discuss normal values which is a key issue of both the original review, and this case. Rio Tinto largely did not dispute a lot of the items

Comsteel are putting forward as new issues, because Report 466 did not calculate the figures based on exporter records – arbitrary foreign values were substituted instead, with no appreciation for similar market costs or Australia’s obligations under the WTO Anti-Dumping Agreement.

The remainder of the response has anecdotal comments around pricing, however we would highlight that the various guidelines, agreements or legislation around dumping cases requires evidential submissions – including enough detail for observers or interested parties to make comments and/or undertake their own assessment of the submissions put forward.

## 2. Comsteel submissions broadly

In spirit with requiring evidential submissions to support the merit of this continuation, other submissions also include largely anecdotal evidence. There are various references to submitted statements from different groups (e.g. OECD Steel Committee, AISI), and broad comments around Government of China interventions. However, submissions towards the continuation do not appear to include data or solid reasons for continuation, unless they have been redacted in the confidential submissions.

While we appreciate putting forward a chorus of opinions in support of their application, the review period is contemporary and unrelated to the initial review period and new data needs be submitted to support a continuation review or commentary. A mix of contemporary statements and references to findings from 2017 which are disputed in submissions does not support a continuation being approved. In their specific PMS submission<sup>1</sup>, Comsteel has referenced some data, however these are assumedly disclosed in the D-18 / D-19 confidential submissions and in the previous investigation were assessed as not related to the goods in question.

## 3. Application merit

Similar to other non-Australian industry submissions, we are concerned with the level of redaction in both the continuation application, and further submissions. There is limited ability for industry to make informed comments – sufficient detail to allow a reasonable understanding of the information has not been included, and subsequent submissions have been similarly redacted. As pointed out by the European Commission in Submission 7, Comsteel have provide limited analysis or evidence to indicate continuation or recurrence of dumping. There is also not enough data provided in the application to suggest that any potential harm to the local industry is directly related to the foreign goods.

It is a requirement of a continuation application to establish reasonable grounds that the expiration might lead to recurrence of the material injury of which there are two guidelines provided by the ADC to accept an application for a continuation review:

***Will the dumping or subsidisation continue, or recur? And Will the material injury re-occur?***

The application does not appear to sufficiently address either point, and not in a method that allows interested parties to respond and/or a non-confidential summary has not been furnished by the ADC of the reasons to initiate the investigation.

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<sup>1</sup> [https://www.industry.gov.au/sites/default/files/adc/public-record/2024-01/632-19- submission -\\_australian\\_industry - comsteel - comsteel\\_submission\\_regarding\\_pms\\_in\\_china.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/2024-01/632-19- submission -_australian_industry - comsteel - comsteel_submission_regarding_pms_in_china.pdf)

The application has a calculated cost to make and sell for French exports, and continued to state “*Railway wheels exported from China and France have continued following the imposition of measures*”<sup>2</sup> and “*it is considered prudent that Comsteel also seek the continuation of export to Australia from France even though there has been no exports from the Valdunes facility since the measures were imposed*”. It is hard to suggest that Australian industry has suffered injury or harm, from wheels sold to Australia at a price considered dumping – when there were no sales, and no market share had been taken from local industry. This is not reasonable grounds for continuation.

In regards to China and actual product shipped during the review period, the application has fully redacted all costs associated with their evidence that dumping is occurring to avoid anyone scrutinising the claim. However notes were made that the costs are based on **Italian** billet price, and **Australian** cost to make and sell in the 2022-23 period<sup>3</sup>, which is not justification for a “normal value” calculation of Chinese exports or suggestion of dumping pricing from China.

In substantiating material injury in the continuation application, the application states<sup>4</sup> “*...By contrast, Comsteel’s sales volumes have remained stable at 2017 levels in 2018, before declining in 2020 and returning to approximately 2017 levels in 2021. Volumes in 2022 were below sales levels in 2017.*”

This is contradicted by the ADC’s Australian Industry Verification Report<sup>5</sup>, which outlines “*...Comsteel’s sales volumes have increased.... the sales volume in YE June 2023 was still higher than in the YE June 2018.*” With YE 2021 being a peak far above 2018, rather than returning to 2017 levels as put forward.

There is not much more data to make an assessment against for the application or alleged dumping pricing, as the remainder is anecdotal or redacted – or refers to Case 466 outcomes to support contemporary dumping.

#### 4. Other issues

In the Australian industry questionnaire<sup>6</sup>, and accusation is made that both Rio Tinto and BHP are avoiding dumping duties – and follow up with heavily redacted information, oddly tagged as Comsteel’s strategy with customers. Wheel sets were assessed by the ADC at the time of investigation and ruled as a non-issue. Circumvention activities however are a very serious issue in global trade, and Rio Tinto do not conduct such arrangements for the avoidance of duties, regardless of Comsteel’s accusations.

We would also put forward that one of the factors not investigated in detail (in either Case 466 or currently) is requirements under 269TAE(2A)(f) – the export performance of the Australian industry. Similar goods are used in the global market, and notably Australia is the only market that has imposed Dumping measures on China & France in relation to the goods in question. Relevant to S269TAE, Comsteel Australia does not export similar goods<sup>7</sup>. This suggests

<sup>2</sup> Case 632 – Application for Continuation (submission 1), p11

<sup>3</sup> Case 632 – Application for Continuation (submission 1), p3

<sup>4</sup> Case 632 – Application for Continuation (submission 1), p7

<sup>5</sup> Case 632 - Australian Industry - Comsteel - Australian industry verification report (Submission 20), p17

<sup>6</sup> Case 632 - Australian Industry - Comsteel - Australian industry questionnaire

<sup>7</sup> [https://www.industry.gov.au/sites/default/files/adc/public-record/2024-01/632\\_-20\\_-report\\_-\\_australian\\_industry\\_-\\_comsteel\\_-\\_australian\\_industry\\_verification\\_report.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/2024-01/632_-20_-report_-_australian_industry_-_comsteel_-_australian_industry_verification_report.pdf) p11

Comsteel are not competitive in the global market, and that any suggested harm is not directly related to the import price of goods if Australia is to be considered an open competitive market.

Relevant to this, is that Comsteel have made anecdotal references to North American submissions (i.e. AISI submissions<sup>8</sup> around price distortion). As another heavy haul rail wheel market with imports of heavy haul wheels and capable local industry, its worth observing there has been no imposition of dumping in thar market (or other wheel markets), only Australia.

## 5. Conclusion

To summarise, Rio Tinto has concerns that:

- The original calculations in Case 466 were not compliant with Australia’s obligations and the anti-dumping agreement – and Comsteel’s heavy reliance on historical data and Case 466 outcomes is similarly a concern around the legitimacy of dumping accusations;
- The substance of the continuation application was light on detail, and procedurally unfair to industry participants, on the basis of:
  - o The application detail proposing dumping prices is using various expensive markets as a benchmark in comparison to the exporter market;
  - o The injury substantiations were not justified based on data within the ADC verification;
  - o Various information is redacted, restricting interested parties’ ability to assess or respond to claims.

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<sup>8</sup> [https://www.industry.gov.au/sites/default/files/adc/public-record/2023-11/632 - 14 - submission -\\_australian\\_industry - comsteel - submission\\_by\\_comsteel.pdf](https://www.industry.gov.au/sites/default/files/adc/public-record/2023-11/632_-_14_-_submission_-_australian_industry_-_comsteel_-_submission_by_comsteel.pdf) p1