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Director
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**Public File**

Dear Director

**Investigation No. 632 – Iron ore Railway Wheels – Statement of Essential Facts**

## I. Executive Summary

Commonwealth Steel Company Pty Ltd ("Comsteel") welcomes the Commissioner's proposed recommendation that the Minister for Industry and Science ("the Minister") declare:

- in accordance with subsection 269ZHG(1)(b), that they decide to secure the continuation of the anti-dumping measures in relation to iron ore railway wheels ("the goods") exported from the People's Republic of China ("China").

Comsteel supports the Commissioner's proposed recommendation to continue the anti-dumping measures on dumped exports of the goods from China. The findings in Statement of Essential Facts No. 632 ("SEF 632") confirm that the Chinese exporter Baowu Group Masteel Rail Transit Materials Technology Company Limited ("MTM") continues to export the goods at dumped prices and should the measures be allowed to expire it is likely that the dumping will enable MTM to secure increased market share resulting in a recurrence of material injury to the Australian industry that the measures are intended to prevent.

In light of the continued dumping and material injury, Comsteel strongly urges the Commissioner not to waiver from the findings and recommendations in SEF 632 and confirm in Final Report 632 to the Minister that he take steps to ensure the anti-dumping measures on iron ore railway wheels exported from China are not allowed to expire on 16 July 2024, and secure the continuation of the measures for a further five-year period.

## II. Basis for recommendations

The Commissioner has determined that the dumping duty notice should continue in force after 16 July 2024 and has the effect in relation to exporters from China as if the Minister had fixed different specified variable factors relevant to the determination of duty.

Additionally, the Commissioner has determined that following 16 July 2024 the dumping duty notice ceases to apply to exporters of the goods from France.

Comsteel concurs with the Commissioner's proposed recommendations that are made on the basis of the available evidence and that the Commissioner is preliminarily:

- *satisfied* that the expiry of the measures applying to the goods exported to Australia from China would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent;
- *not satisfied* that the expiry of the measures applying to the goods exported to Australia from France would lead, or be likely to lead, to a continuation of, or a recurrence of the dumping and the material injury that the measures are intended to prevent.

The proposed recommendation concerning different variable factors for China will result in a change the current effective rates of interim duties applying to the goods. The following Table 1 summarizes the current measures and the proposed measures.

**Table 1: Current and proposed dumping margins – China**

| Country | Exporter | Current Margin (%) | Proposed Recommended Margin (%) |
|---|---|---|---|
| China | Baowu Group Masteel Rail Transit Materials Technology Company Limited ("MTM") | 17.5 | 13.3 |
| | All other exporters | 17.5 | 13.3 |

The determined dumping margins during the investigation period are significant and demonstrate that it is likely dumping and material injury to the Australian industry will continue into the future (particularly if the measures are allowed to expire).

III. WTO Dispute Settlement Report 603 (DS603)

On 26 March 2024 the World Trade organisation published Dispute Settlement Report No. 603 (hereafter referred to as "DS603" or the "Report") concerning China's challenges to certain anti-dumping/countervailing proceedings with respect to three different products – wind towers, deep drawn stainless steel sinks (stainless steel sinks) and railway wheels.

DS603 identified certain shortcomings with Australia's decision to impose anti-dumping measures on iron ore railway wheels exported to Australia as detailed in Anti-Dumping Commission Report No. 466 published in July 2019. These include:

- that the Anti-Dumping Commission ("ADC") had no basis for departing from Masteel's records for cost of production when constructing normal value;
- the Commission failed to provide a reasoned and adequate explanation as to why uplifted costs reflected Masteel's circumstances in China (i.e. Masteel's cost of production);
- The Commission determined a profit for Masteel that was not based upon the exporter's domestic sales; and
- due to the inconsistencies involving the departure for Masteel's records for production costs, explanation on uplifting costs and calculation of profit, the Commission recommended the collection of duties in excess of amounts properly determined.

Comsteel has noted that in SEF 632 the Commission has corrected the inconsistencies identified in DS603 in determining the correct normal values (consistent with Anti-Dumping Agreement Articles 2.2 and 2.2.1.1) for the sole Chinese exporter of the goods, MTM, in the current investigation (Invest No. 632).

## IV. Like Goods

Comsteel agrees with the Commissioner's determination that the "*the locally manufactured railway wheels are like goods to the goods the subject of the measures*".

In arriving at this finding, the Commissioner has relied upon information from interested parties during the investigation and is satisfied that Comsteel manufactures like goods to the imported goods.

## V. Dumping Assessment

The Commissioner has determined normal values, export prices and dumping margins for the sole cooperating Chinese exporter, MTM. It is noted that the MTM Exporter Verification Report was only placed on the Electronic Public Record ("EPR") late on 16 April 2024. Comsteel reserves the right to make further representations in respect of the MTM verification report once it has been fully reviewed.

### *(a) Export price*

The Commissioner has concluded that MTM sold the goods to customers in Australia in arms-length sales that were made in the ordinary course of trade (i.e. not at a loss, no other supplementary reimbursements by the exporter). Export price has been determined in accordance with section 269TAB(1)(a) of the *Customs Act*.

The Commissioner determined export sales on the basis of invoiced values between the exporter and the importer.

### *(b) Normal value – non arms-length sales*

In the current inquiry (contrary to the findings in Invest 466), the Commission has established that MTM has sold like goods on the domestic market in China. MTM's domestic sales, however, were not considered by the Commission to be 'arms-length' transactions. The non arms-length determination is premised upon:

- MTM and its domestic customer are both state-owned entities and share the same majority shareholder;
- MTM and its domestic customers have a preferential pricing agreement for products including domestic like goods;
- the agreement included terms not reflective of genuine commercially-negotiated terms, specifically for price-setting factors and price reductions;
- in practice, MTM's domestic customer received price reductions in a manner that did not follow the agreed terms and did not reflect arrangements negotiated at 'arms-length'.

In the absence of domestic sales made in the ordinary course of trade ("OCOT") the Commission has determined normal values for MTM in accordance with 269TAC(2)(c) on the basis of a constructed cost methodology.

Comsteel notes that in Invest 466 there was an absence of domestic sales in China by the Chinese exporter. In the current investigation, the domestic sales by MTM were not in the ordinary course of trade and could not be used under section 269TAC(1) to establish normal values.

It is further noted that In SEF 632 the Commissioner has had a greater regard for information sourced from MTM for determining normal value, particularly for assessing MTM's production costs (under subsection 269TAC(2)(c)).

*(c) Steel billet benchmark*

In constructing MTM's normal value, the Commission has examined MTM's purchase the price for steel billet. The Commissioner contrasted the steel billet price from the raw material affiliate company Maanshan Iron & Steel Co Ltd ("MIS") to MTM and found that when contrasted with the selected benchmark steel billet price, the benchmark price:

- cost more to make;
- attracts a higher sales price; and
- is physically and chemically distinct.

Appendix B4 of SEF 632 discusses the selected benchmark price for steel billet. The Commissioner has determined that "***a constructed benchmark price to be the best alternative information available, to determine a Chinese market price for steel billet***".

The Commission obtained a range of steel billet pricing information from MEPS International Ltd and Bloomberg. The selected benchmark is the selling price for steel billet originating from the Republic of Turkiye ("Turkiye") due to it being among the top 10 steelmaking countries, having GDP per capita (and other factors) similar to China, labour costs in Turkiye are lower than in China, and that an analysis of steel producers in Turkiye confirms that steel producers are privately owned and that the market is subject to normal factors of competition.

The Commission has adjusted the selected Turkiye steel billet price to reflect the grade of "special steel billet" supplied by MIS to reflect the costs of producing the grade of steel billet in China (i.e. from information sourced from MIS and MTM). The adjustments made by the Commission address the inconsistencies identified in DS603 and align the benchmark steel billet price to reflect a price in MTM's records unaffected by the relationship between the Chinese supplier (MIS) and customer (MTM).

The Commission has concluded that the domestic market for railway wheels in China is subject to "significant government influence" including in the forms of:

- Policies, directives, and direct market intervention to affect company mergers;
- The role and operation of State-Owned Enterprises ("SOEs");
- Direct and indirect financial support;
- Taxation arrangements.

The Government of China ("GOC") influences have resulted in "*structural imbalances and conditions of excess production and capacity, with prices likely to be affected by loss-making firms*". The identified factors were found by the Commission in Invest 632 to have "*directly affected the market conditions in the Chinese steel sector during the inquiry period, with an economic downturn leading to 'surplus production and sluggish demand'*".

The Commission further observed that MIS, as one of the largest steel producers in China, both contributed to and was directly affected by these conditions. The Commission noted that "*MIS reported loss-making during the inquiry period, as conditions of oversupply and weak demand meant that costs were not passed on in selling prices.*"

Specifically, the conditions in China directly affected the market for railway wheels "*as MTM benefited from raw material prices at below costs rates. MTM's reported costs, based on its prices paid to MIS, did not capture the actual costs applicable for production in the domestic market*." The Commission thus found that the selling price for steel billet from MIS to MTM was not at arms-length (when contrasted with a benchmark steel billet price).

It is important to recognise that the Commission concluded that "*the conditions in the Chinese steel and steel input markets directly affected the domestic market for railway wheels in China. The situation affected the*

*Chinese market for the goods, primarily through the distortion of steel billet costs, the principal raw material input for the goods*" (accounting for approx. 70 per cent of production costs[1]).

The Commission was satisfied that the MTM's steel billet prices were not reflective of ordinary market conditions and did not reflect "*properly functioning profit and price signals*".

The Commission then contrasted the steel billet benchmark (Turkiye) with MTM's purchase price for steel billet from its parent MIS. The Commission concluded that the difference (i.e. the latter being lower than the former) confirmed the billet purchase price was influenced by the market conditions in China (i.e. the GOC distortions) and was therefore lower than it otherwise would be as it did not reflect normal market prices and profit.

Following adjustments (based upon MTM's cost of steel billets) to the Turkiye benchmark, the Commission is satisfied that steel billet benchmark included in MTM's cost of production reflects a steel billet price unaffected by GOC distortions.

*(d) Normal value – constructed*

The Commission constructed the normal value for MTM using the adjusted benchmark in MTM's cost of production for the goods in China during the investigation period.

The Commission determined the selling and general administrative expenses (sourced from MTM) and applied to the adjusted cost of production. For profit, the Commissioner has used a level of profit obtained from MTM's *domestic* sales for a broader category of goods. The Commission has therefore addressed a further concern in DS603 in respect of the determination of profit based upon MTM's domestic sales.

*(e) Dumping margin*

The Commission has contrasted MTM's actual export prices with the constructed normal value for MTM across the investigation period.

A dumping margin for the subject goods exported to Australia on a weighted average basis has been calculated at 13.3 per cent.

VI. <u>MG-Valdunes SAS - France</u>

The Commission confirmed that there had been no exports of railway wheels to Australia since 2018. The variable factors applicable to MG-Valdunes SAS ("Valdunes") have not been examined due to the absence of imports during the review period.

In light of the proposed recommendation to not continue the measures on exports from France, the Commission has not assessed the cooperative status of the French exporter Valdunes.

Comsteel understands that the Commission's position on the likelihood of future exports from France is based upon the view that Valdunes has not made applications for pre-approval to supply the four iron ore producers in Australia and that Valdunes is in insolvency administration which the Commission has interpreted as indicating that purchasers would be unlikely to seek supply from a producer with ongoing supply concerns.

Comsteel highlighted in its application that Valdunes is owned by Baowu Group of companies – the parent company that also owns MTM and MIS. Comsteel remains concerned that allowing the measures applicable to Valdunes to expire potentially provides an avenue for the Baowu Group to supply railway wheels into Australia.

[1] Statement of Essential Facts No. 632, Section A5.1, P.91.

## VII. Likelihood of dumping and material injury recurring

The Commissioner is satisfied that exports from China (specifically from MTM) will continue and that the exports will be at dumped prices. The Commissioner was also satisfied that the Australian industry's selling prices were undercut and that the Australian industry has responded to the price undercutting.

The Chinese exporter MTM has continued to export railway wheels to Australia at dumped prices – whilst anti-dumping measures have been in operation. The variable factors that were applied by the Minister in July 2019 were based upon the 2017/18 period when steel prices were substantially lower than current levels (having increased significantly in 2020/21). MTM has continued to export railway wheels and has secured a 70 per cent market share of the iron ore railway wheels market. In the absence of the measures (as indicated by the Commission) it is likely that MTM would use the price advantage from the dumping to further increase market share, resulting in further lost sales for the Australia industry that would ultimately lead to reductions in profit and profitability.

Comsteel considers that the measures are critical to the future production of railway wheels by Comsteel in Australia.

The findings on dumping and the likelihood of further material injury to the Australian industry from future exports from China is well understood in the Commission's analysis contained in SEF 632. The future threat of material injury from continued Chinese exports at dumped prices cannot be understated. Comsteel is in full agreement with the Commission's findings and recommendations and urges the Commissioner not to waiver from the findings and recommendations to the Minister to continue the measures against China as detailed in SEF 632.

In respect of France, Comsteel acknowledges the Commissioner's proposed recommendation to the Minister that they not take steps to secure the continuation of the measures on future exports of the goods from France. Comsteel is apprehensive of this proposed recommendation given the ownership of Valdunes and the potential for the Baowu Group to re-commence exports of the goods to Australia from its affiliate in France.

## VIII. Non-injurious price and form of measures

The Commission calculated a non-injurious price ("NIP") for railway wheels supplied by the Australian industry during the investigation period. The Commission concluded that the NIP was above the assessed normal value for MTM and has therefore not recommended a NIP to the Minister.

It is further proposed by the Commissioner that the form of measures to apply to future exports of railway wheels from China be based upon the combination method. The measures that have applied since July 2019 have also been determined based upon the combination method. Comsteel supports anti-dumping measures in this form (i.e. combination method) as it limits circumvention opportunities for parties involved in the export transactions.

## IX. Conclusion and Recommendations

The Commission's inquiry has confirmed that exports of iron ore railway wheels to Australia from China during the investigation period were at dumped prices of 13.3 per cent. The dumping of Chinese exports has continued while anti-dumping measures have been in force.

The Commissioner is correctly satisfied that the Australian industry would likely experience a recurrence of dumping and material injury from Chinese exports of railway wheels that the measures are intended to prevent. The Commissioner has recommended the measures on China be continued.

For France, the Commissioner is satisfied that Valdunes is in insolvency administration and would need to reapply for supplier pre-approval to supply, hence no future threat of injury from this supplier is evident and the applicable measures on France be allowed to expire. Comsteel remains apprehensive about the recommendation to not secure the continuation of the measures on France due to the Chinese ownership of Valdunes by the Baowu Group.

If you have any questions concerning this submission, please do not hesitate to contact the undersigned.

Yours sincerely,

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