Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 – PART XVB

REPORT
NO 632

INQUIRY INTO THE CONTINUATION OF ANTI-DUMPING MEASURES ON

CERTAIN RAILWAY WHEELS

EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA AND THE FRENCH REPUBLIC

12 June 2024

CONTENTS

ABBREVIATIONS

ABF	Australian Border Force
the Act	*Customs Act 1901* (Cth)
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Anti-Dumping Agreement	*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*
AUD	Australian dollar
BHP	BHP Iron Ore Pty Ltd
Brazil	the Federative Republic of Brazil
case 569	Continuation inquiry 569
China	the People’s Republic of China
China Baowu Group	China Baowu Steel Group Corporation Limited
CIS	Commonwealth of Independent States
CNY	Chinese yuan
the commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
Comsteel	Commonwealth Steel Company Pty Ltd
CTM	cost to make
CTMS	cost to make and sell
DCR	Dumping Commodity Register
DIIS	Department of Innovation, Industry and Science
DISR	Department of Industry, Science and Resources
DS603	*Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China* (WTO dispute settlement number DS603)
the Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975* (Cth)
EAF	electric arc furnace
EC	European Commission
EPR	electronic public record
EU	European Union
FMG	Fortescue Mining Group
France	the French Republic
FY	financial year
GAAP	generally accepted accounting principles
GATT 1994	*General Agreement on Tariffs and Trade 1994*
GOC	Government of China
the Guidelines	*Guidelines on the Application of Forms of Dumping Duty*
HKEX	Stock Exchange of Hong Kong

HS	Harmonized System (of tariff codes for traded products)
ICD	interim countervailing duty
IDD	interim dumping duty
India	the Republic of India
the inquiry period	1 July 2022 to 30 June 2023
Iran	the Islamic Republic of Iran
Italy	the Italian Republic
the Manual	*Dumping and subsidy manual*
Masteel Group	Magang (Group) Holding Co Ltd
the measures	The anti-dumping measures the subject of this inquiry
Mexico	the United Mexican States
the Minister	the Minister for Industry and Science
MIS	Maanshan Iron & Steel Co Ltd
MIIT	Ministry of Industry and Information Technology
mm	millimetre
MMT	million metric tonnes
MT	metric tonne
MTM	Baowu Group Masteel Rail Transit Materials Technology Co Ltd
NIP	the non-injurious price
NDRC	National Development and Reform Committee
OCOT	ordinary course of trade
OECD	Organisation for Economic Co-operation and Development
the original investigation	Investigation 466
Pakistan	the Islamic Republic of Pakistan
the Panel	WTO Dispute Settlement Panel
railway wheels	Iron ore railway wheels, the railway wheels subject to the anti-dumping measures.
the Regulation	*Customs (International Obligations) Regulation 2015* (Cth)
REP 466	*Anti-Dumping Commission Report No 466*
REQ	response to the exporter questionnaire
Rio Tinto	Pilbara Iron Company
ROI	return on investment
Roy Hill	Roy Hill Holding Pty Ltd
Russia	the Russian Federation
SASAC	State-Owned Assets Supervision and Administration Commission
SEF	statement of essential facts
SEF 632	*Statement of Essential Facts No 632*
SG&A	selling, general and administrative
SOE	state-owned enterprise

South Korea	the Republic of Korea
the specified expiry date	the date the measures are due to expire
the subject countries	China and France
Türkiye	the Republic of Türkiye
USD	United States dollar
USP	unsuppressed selling price
Valdunes	MG-Valdunes SAS
VAT	value-added tax
WTO	World Trade Organization
YE	year end

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This final report concerns an inquiry into whether to continue the anti-dumping measures applying to certain ore carriage railway wheels exported to Australia from the People's Republic of China (China) and the French Republic (France) (collectively, the subject countries).

The measures were initially imposed on 16 July 2019 following the Investigation 466 (the original investigation). The measures currently in place for the subject countries are set out in *Anti-Dumping Notice (ADN) No 2019/30*.[1] These measures are currently due to expire on 16 July 2024, 5 years after coming into effect.

This report sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based their recommendations to the Minister for Industry and Science (the Minister). After considering this report and any other information they consider relevant, the Minister must declare a decision on whether to secure or not secure the continuation of the measures.

This report concludes, on the evidence currently available, that the Commissioner is:

- **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 material injury that the measures are intended to prevent.

Based on these findings in this report, the Commissioner recommends the Minister:

- **continue** measures on goods exported from **China**
- allow the measures to **expire** on goods exported from **France**.

The Commissioner further recommends that the dumping duty notice applying to goods exported to Australia from China to have effect as if different variable factors had been ascertained.

The Commissioner initiated this inquiry on 14 August 2023 following an application from Commonwealth Steel Company Pty Ltd (Comsteel) seeking the Minister to continue the measures.[2] The Commissioner established an inquiry period of 1 July 2022 to 30 June 2023 (the inquiry period). To assess the Australian industry's economic condition in the years before and after measures were imposed, the Commissioner has examined the

[1] EPR 466, document number 90.
[2] Comsteel is eligible to apply for a continuation of the measures because it is a person specified under section 269ZHB(1)(b)(i) of the *Customs Act 1901* (the Act) whose application under section 269TB resulted in the measures.

period from 1 July 2017. The Anti-Dumping Commission (the commission) has assisted the Commissioner to conduct the inquiry, pursuant to the commission's function specified in section 269SMD of the *Customs Act 1901* (the Act).[3]

In preparing the report, the Commissioner had regard to:

- Comsteel's application to this inquiry
- submissions received relating to this inquiry
- the statement of essential facts for this inquiry (SEF 632), published on 28 March 2024, which set out the Commissioner's preliminary findings and proposed recommendations to the Minister
- findings from the World Trade Organization (WTO)'s Dispute Settlement Panel (the Panel) regarding dispute number *Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China* (*DS603*)[4]
- other information, as specified in this report, that is considered relevant to the inquiry.

SEF 632 considered submissions received relating to this inquiry up to the time it was published, except for one submission received without sufficient time for the Commissioner to practicably and genuinely consider it. After publishing SEF 632, parties sent submissions responding to the preliminary findings and proposed recommendations. This report considers all submissions to this inquiry, including submissions that SEF 632 did not consider.

1.2 Summary of findings and recommendations

1.2.1 Overall finding

China

The Commissioner recommends that the Minister **continue** measures on goods exported to Australia from **China**, with the notice to have effect as if different variable factors had been ascertained.

Based on the available evidence, the Commissioner is **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.

The Commissioner's recommendation to the Minister concerning different variable factors for China will result in a change to the current effective rates of interim duties applying to the goods. Table 1 below details the current and recommended dumping margins.

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[3] All references to legislative sections in this report are to the *Customs Act 1901* (Cth) unless otherwise stated.

[4] Panel Report, *Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China*, WTO Doc WT/DS603/R (26 March 2024) (*DS603*).

Country	Exporter	Current (%)	Recommendation (%)
China	Baowu Group Masteel Rail Transit Materials Technology Company Limited (MTM)	17.5	13.3
	All other exporters[5]	17.5	13.3

Table 1: Current and recommended dumping margins

France

The Commissioner recommends that the Minister allow measures to **expire** on goods exported to Australia from **France**.

Based on the available evidence, the Commissioner is **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.

1.2.2 Conduct of inquiry (chapter 2)

On 14 August 2023, the Commissioner initiated this inquiry. The inquiry period is 1 July 2022 to 30 June 2023 (the inquiry period). The Commissioner initiated this inquiry after considering an application from Commonwealth Steel Company Pty Ltd (Comsteel) to continue the measures.[6]

The commission assisted the Commissioner to conduct this inquiry, pursuant to the commission's function specified in section 269SMD.

The Commissioner notified interested parties of the initiation of this inquiry in *ADN No 2023/048*, published on 14 August 2023.[7] The commission also invited the exporters and importers of railway wheels from the subject countries by questionnaire to provide information relevant to the inquiry period. The commission invited Comsteel by questionnaire to provide further information relevant to the inquiry. The commission also invited the GOC to provide a response to a government questionnaire.

Table 2 lists interested parties the Commissioner identified in this inquiry.

Category	Party names
Australian industry	The sole Australian industry member is **Comsteel**.[8]

[5] Besides MTM, the Commissioner did not identify any other Chinese entities that exported the goods to Australia in the inquiry period. The Commissioner has consequently established a rate for 'all other exporters' at the same rate as established for the co-operating exporter, MTM.
[6] Electronic public record (EPR) for case 632 (EPR 632), document number 1.
[7] EPR 632, document number 2.
[8] Comsteel also operates under the name 'Molycop'.

Category	Party names
Exporters and producers – China	The sole Chinese exporter of the goods during the inquiry period is Baowu Group Masteel Rail Transit Materials Technology Co Ltd (**MTM**). MTM's parent entity, Maanshan Iron & Steel Co Ltd (**MIS**), previously exported the goods. MIS supplied MTM with, among other things, raw material steel billet used to produce the goods and like goods.
Exporters and producers – France	The sole French exporter of the goods is MG-Valdunes SAS (**Valdunes**). Valdunes exported the goods in the original investigation period.[9]
Australian end users and importers[10]	The identified end users and importers are: • BHP Iron Ore Pty Ltd (BHP) • Pilbara Iron Company (**Rio Tinto**) • Fortescue Mining Group (**FMG**) • Roy Hill Holdings Pty Ltd (**Roy Hill**).
Foreign governments	The identified foreign governments are: • the Government of China (**GOC**) • the European Commission, representing the Government of France.

Table 2: List of known interested parties in this inquiry

The commission completed onsite verification visits in relation to the questionnaire responses of:

- Australian industry – Comsteel
- the Chinese exporter – MTM
- the Chinese exporter's related party supplier – MIS
- importers – BHP and Rio Tinto.

The GOC declined to complete the government questionnaire, providing a submission to the inquiry instead. Valdunes provided a partially complete exporter questionnaire response.

The commission also contacted other end users of the goods, FMG and Roy Hill. Neither of these end users opted to meet with the commission.[11]

On 26 April 2024, the WTO's Dispute Settlement Body adopted the report of the WTO Dispute Settlement Panel in *DS603*. In that report, the Panel found a number of aspects of the findings in *Anti-Dumping Commission Report No 466* (REP 466) were inconsistent with Australia's obligations under the *Anti-Dumping Agreement*[12] and the *General*

[9] The original investigation was case 466: see EPR 466. The original investigation period was 1 January to 31 December 2017.
[10] End users can purchase the railway wheels from Comsteel, import them or both. There are no other intermediaries or importers involved in the purchase or importation of the goods.
[11] In the original investigation, the commission met with Roy Hill, and FMG participated in an importer verification after completing an importer questionnaire and relevant attachments.
[12] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*') (*Anti-Dumping Agreement*).

Agreement on Tariffs and Trade (*GATT 1994*).[13] In preparing this report, the Commissioner has had regard to, and implemented, the Panel's findings to the extent they are relevant to this inquiry.

In preparing this report, the Commissioner has had regard to:

- the application seeking a continuation of the anti-dumping measures and the Australian industry questionnaire response from Comsteel
- importer questionnaire responses received from BHP and Rio Tinto
- exporter questionnaire responses received from MTM and Valdunes
- the supplementary questionnaire response received from MIS, the parent company of MTM
- submissions received with sufficient time for the Commissioner to consider before sending this report to the Minister
- information obtained when verifying the Australian industry, the Chinese exporter MTM, MTM's parent company MIS, and importers (noting, for the goods subject to measures, importers are also end users)
- the World Trade Organization's report
- other information as referenced in this report.

1.2.3 The goods, like goods and the Australian industry (chapter 3)

The Commissioner finds that locally produced railway wheels are 'like' to the goods the subject of the application. The Commissioner is satisfied there is an Australian industry producing those like goods. Comsteel is the sole producer in the Australian Industry.

1.2.4 Australian market (chapter 4)

In the inquiry period, the Australian market for the goods subject to the measures was supplied locally by Comsteel and by imports from China. There were no imports from France in the inquiry period.

1.2.5 Economic condition of the Australian industry (chapter 5)

The Commissioner assessed the economic condition of the Australian industry from 1 July 2017 to analyse trends in the market and assess potential injury factors. The Commissioner found that the Australian industry's economic performance initially improved after the imposition of measures before subsequently declining. The Commissioner observed periods of price suppression, price depression, reduced profit, and reduced profitability.

1.2.6 Dumping during the inquiry period (chapter 6)

China

The Commissioner has assessed variable factors for the goods exported from China and has determined that dumping occurred during the inquiry period. The dumping margins assessed for China are set out below in Table 3. The Commissioner has also determined that the variable factors for China have changed. In calculating the normal value for the

[13] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*General Agreement on Tariffs and Trade 1994*') art I(I) (*GATT 1994*).

cooperative exporter, the Commissioner had regard to the records of the steel billet manufacturer and parent entity of the exporter, to determine the cost of production in China.

Country	Exporter	Dumping margin (%)
China	Baowu Group Masteel Rail Transit Materials Technology Company Limited (MTM)	13.3
	All other exporters	13.3

Table 3: Dumping margins

France

There were no exports of railway wheels from France in the inquiry period. The Commissioner has therefore not assessed the variable factors for France in this inquiry.

1.2.7 Likelihood of dumping and material injury continuing or recurring (chapter 7)

China

The Commissioner **is satisfied** that the expiry of the measures applying to the goods exported to Australia from China would lead, or would be likely to lead, to a recurrence of dumping and the material injury that the measures are intended to prevent. This is based on the findings summarised below. Chapters 7.5 to 7.7 of this report discuss these findings in detail.

Likelihood of future exports (chapter 7.5)

If the measures expire, it would likely lead to China continuing to export the goods to Australia because the Commissioner finds that China:

- is the dominant supplier to the Australian market since 2018
- maintains distribution links to 3 of the 4 companies that purchase the goods
- maintains excess production capacity, based on information provided by the cooperative Chinese exporter, MTM.

Likelihood of future dumping (chapter 7.6)

If the measures expire, it would likely lead to exports of the goods from China being dumped because the goods were dumped during the inquiry period and relevant circumstances indicate that this dumping is likely to continue.

Likelihood of future material Injury (chapter 7.7)

If the measures expire, it would likely lead to the dumped exports from China causing material injury to the Australian industry in the form of reduced sales and market share, price depression and price suppression. The dumped exports will also cause reduced profit and profitability to the Australian industry because:

- the Australian market for railway wheels is highly concentrated, with one Australian industry supplier, one Chinese supplier and 4 purchasers during the inquiry period

- end users consider price as a significant factor in purchasing decisions, even though they may consider a range of other factors in their purchasing decisions
- dumped exports from China undercut the Australian industry's prices during the inquiry period
- dumping would continue to provide Chinese producers with a significant price advantage that would see the Australian industry suffer price injury should the Australian industry compete on price.
- if the Australian industry is unable to compete on price, then measures expiring would be likely to lead to reductions in sales volume and market share.

These factors combined are indicative of material injury that the measures are intended to prevent.

France

Based on the evidence obtained and analysis conducted in this inquiry, the Commissioner **is not satisfied** that the expiry of the measures applying to the goods exported to Australia from France would lead, or would be likely to lead, to a recurrence of dumping and the material injury that the measures are intended to prevent.

Likelihood of exports from France

The Commissioner is not satisfied that the expiry of the measures would be likely to lead to a recurrence of exports from France for the reasons outlined below. These findings are discussed in detail in chapter 7.5 of this report. A summary of the reasons behind the findings are below.

The first reason relates to a lack of exports France and market factors making future exports from France unlikely. There have been no exports of the goods from France since 2018 and there is no evidence that distribution links or pre-qualifications to supply the Australian market have been maintained since measures were imposed. Australian end users pre-qualify a producer before the end user will accept supply from the producer. The Commissioner notes that the pre-qualification process takes approximately 2 years to complete, making pre-qualification a significant barrier to entry into the market. The Commissioner considers that any French supplier, including Valdunes, the only known manufacturer of the goods in France, would be required to complete this pre-qualification process prior to being able to supply the Australian market.

The second reason relates to specific factors making the sole French exporter in the original investigation, Valdunes, unlikely to export goods in the foreseeable future. Valdunes entered insolvency administration in 2023. Another company, Europlasma, has been approved to take over Valdunes as of March 2024. Europlasma's takeover announcement indicated Valdunes' operations will likely remain unprofitable for at least 2 years. Combined with the factors detailed in reason 1 above, it is unlikely that Australian purchasers, who are seeking timeliness and reliability of supply, would see France as an ongoing viable source of supply.

Likelihood of future material injury

Because the Commissioner is satisfied that the expiry of measures is not likely to lead to recurrence of dumping in the future, the Commissioner has not considered whether material injury is likely to recur if the measures on exports from France cease to apply.[14]

1.2.8 Non-injurious price (chapter 8)

The Commissioner has assessed that the non-injurious price (NIP) is not less than the normal value. Accordingly, the NIP should not be the operative measure for exports from China and the Commissioner recommends that measures be imposed on railway wheels exported to Australia from China at the full dumping margin.

1.2.9 Form of measures (chapter 9)

In relation to China, the Commissioner considers the interim dumping duty (IDD) payable on railway wheels exported from China should be calculated using the combination fixed and variable duty method.

1.3 Recommendations to the Minister

Based on the evidence currently available, the Commissioner recommends that the Minister **declare**:

- in accordance with section 269ZHG(1)(b), that they decide to secure the continuation of the anti-dumping measures in relation to exports from China only.

Based on the evidence currently available, the Commissioner recommends that the Minister **determine**:

- pursuant to section 269ZHG(4)(a)(ii), that the dumping duty notice continues in force after 16 July 2024 but that, after that day, it ceases to apply to exporters of the goods from France
- in accordance with subsection 269ZHG(4)(a)(iii), that the dumping duty notice continues in force after 16 July 2024 but that, after that day, the notice have effect in relation to exporters in China as if the Minister had fixed different specified variable factors relevant to the determination of duty.

This report also sets out the Commissioner's recommendations at chapter 10.

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[14] Section 269ZHF(2).

2 BACKGROUND

2.1 Legislative framework

Part XVB, division 6A of the Act sets out the procedures the Commissioner must follow when considering an application for measures to continue.

2.1.1 Legislative test

Under section 269ZHF(2), the Commissioner's report to the Minister:

> *must not 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 or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*

2.1.2 Statement of essential facts (SEF)

Under section 269ZHE(1), the Commissioner must publish a statement of essential facts (SEF) on which the Commissioner proposes to base their recommendation to the Minister concerning the continuation of the measures.

Under section 269ZHE(2), the Commissioner must, in formulating the SEF, have regard to the application and any submissions relating generally to the inquiry received within 37 days of the inquiry's initiation. The Commissioner may also have regard to any other matters that they consider relevant.

Under section 269ZHE(3), the Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received by the Commissioner after the 37-day period if to do so would, in the Commissioner's opinion, prevent the timely placement of the SEF on the EPR.

The Commissioner placed SEF 632 on the public record on 28 March 2024.[15]

2.1.3 Final report

Section 269ZHF(1)(a) requires the Commissioner, after conducting an inquiry, to give the Minister a report with recommendations. The Commissioner can recommend that, for the relevant notice, one or more of the following occur. The notice can:

- remain unaltered
- cease to apply to a particular exporter or to a particular kind of goods
- has effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained
- expire on the specified expiry day.

[15] EPR 632, document number 25. The Commissioner extended the time to publish SEF 632 in ADN Nos 2023/077 and 2024/018: see EPR 632, document numbers 12, 22.

The initiation notice advised that the Commissioner would provide a report to the Minister on, or before, 16 January 2024. Following extensions approved by the Commissioner, the due date for a report to be provided to the Minister was on or before 12 June 2024.[16]

2.2 Application and initiation

On 16 May 2023, the Commissioner published a notice[17] on the commission's website inviting the following persons to apply for the continuation of the anti-dumping measures:

- the person whose application under section 269TB resulted in the anti-dumping measures,[18] or
- persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures.[19]

On 14 July 2023, Comsteel lodged an application for the continuation of the measures applying to the goods exported to Australia from China and France.[20] Comsteel is a person whose application under section 269TB resulted in the measures and is a person representing the whole of the Australian industry producing like goods covered by the measures.[21]

The Commissioner was satisfied that:

- the application complied with section 269ZHC (content and lodgement requirements),[22] and
- there appeared to be reasonable grounds for asserting that the expiry of the 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.[23]

The Commissioner therefore decided not to reject the application and published *ADN No 2023/048* initiating the present inquiry on 14 August 2023.[24]

2.2.1 Submission from the European Commission regarding application

In response to the initiation of the investigation, the European Commission submitted that the non-confidential version of Comsteel's application did not disclose sufficient information to enable a reasonable understanding of the substance of its claims.[25] Specifically, the European Commission stated the application lacked information

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[16] The Commissioner extended the time to publish SEF 632 in *ADN No 2023/077* and *ADN No 2024/032*: see EPR 632, document numbers 12, 33.
[17] *ADN No 2023/027*. Notice published in accordance with section 269ZHB(1).
[18] Section 269ZHB(1)(b)(i).
[19] Section 269ZHB(1)(b)(ii).
[20] EPR 632, document number 1. Application made under section 269ZHC.
[21] Comsteel satisfies both requirements of section 269ZHB(1)(b) because it was the original applicant for the measures and is the sole manufacturer of the goods in Australia.
[22] Section 269ZHD(2)(a).
[23] Section 269ZHD(2)(b).
[24] EPR 632, document number 2.
[25] EPR 632, document number 7.

regarding import volumes, import prices and data relating to the situation of the domestic industry.

Having considered the European Commission's submission, the Commissioner is satisfied that the application from Comsteel met the content and lodgement requirements under section 269ZHC. Detailed summaries of the information identified by the European Commission have been included in the Australian industry verification report.[26] The SEF and this report also contain the analysis identified by the European Commission as being relevant to a continuation inquiry.

2.3 Current anti-dumping measures and previous case history

The relevant Minister initially imposed the measures by public notice on 16 July 2019 following the original investigation, Investigation 466. REP 466 details the findings of that original investigation.[27]

On 26 April 2024, the Dispute Settlement Body of the WTO adopted the Dispute Settlement Panel report *DS603*. In that report, the Panel found aspects of the findings in REP 466 were inconsistent with Australia's obligations under the *Anti-Dumping Agreement* and the *GATT 1994*. In preparing this report, the Commissioner has had regard to and implemented the findings of the Panel to the extent they are relevant to this inquiry.

Table 4 summarises the measures currently applying to exports of the goods to Australia from the subject countries.[28]

Country	Exporter	Dumping notice	
		Method	Effective IDD rate
China	Maanshan Iron & Steel Co Ltd (MIS)	Combination	17.4%
	All other exporters	Combination	17.4%
France	MG-Valdunes SAS (Valdunes)	Combination	37.2%
	All other exporters	Combination	37.2%

Table 4: Current measures applying to exports of the goods

Further detail about these measures can be found on the commission's Dumping Commodity Register (DCR) webpage.[29]

2.3.1 Other cases

Since Investigation 466, the Commissioner has not conducted further cases in relation to the measures applying to railway wheels.

[26] EPR 632, document number 20.
[27] EPR 466, document number 89.
[28] EPR 466, document number 90.
[29] Click this link to access the DCR.

2.4 Conduct of the inquiry

The inquiry period for this inquiry is 1 July 2022 to 30 June 2023. The commission invited exporters and importers of railway wheels to provide information relevant to this period. To analyse the performance of the Australian industry in the years before and after measures were imposed, the Commissioner has examined the period from 1 July 2017 to 30 June 2023, being years ending (YE) June 2018 to YE June 2023.

2.4.1 Australian industry – Questionnaires and verification

The Commissioner is satisfied that the applicant, Comsteel, is the sole member of the Australian industry producing like goods to the goods the subject of this inquiry.[30] On initiation of this inquiry, the Commissioner forwarded an Australian industry questionnaire to Comsteel. A public version of Comsteel's response is available on the EPR.[31] The commission completed a verification visit to Comsteel's premises in September 2023. The verification report is available on the EPR.[32]

2.4.2 Importers – Questionnaires and verification

The Commissioner identified importers of the goods during the inquiry period, based on the Australian Border Force (ABF) import database. The Commissioner sent questionnaires to BHP and Rio Tinto, the identified importers.[33] The Commissioner received responses to the importer questionnaire from BHP and Rio Tinto. The Commission subsequently verified the information from both companies. The commission's verification reports for these visits are available on the EPR.[34]

2.4.3 Exporters – Questionnaires and verification

The Commissioner identified two relevant exporters in the ABF import database, MTM and Valdunes, and sent them both exporter questionnaires.

MTM

MTM was identified as the only supplier of the goods from China during the inquiry period. MTM's production facilities were previously held within the parent company, MIS. MIS was identified as the exporter in the original investigation (referred to in REP 466 as 'Masteel'). These changes resulted from a corporate restructure in 2019. For the purposes of this inquiry, MTM has been identified as the exporter of the goods. It is also noted that MIS sold steel billet and provided other goods and services to MTM as its parent entity during the inquiry period.

On 26 October 2023, MTM provided a response to the exporter questionnaire (REQ). The non-confidential version of the REQ is available on the EPR.[35] On 21 November 2023, the commission subsequently sent MTM's parent entity, MIS, a supplementary

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[30] See chapter 3 of this report.

[31] EPR 632, document number 3.

[32] EPR 632, document number 20.

[33] In addition to sending questionaries to the above identified importers, the Commissioner also placed a copy of the importer questionnaire on the commission's website.

[34] EPR 632, document numbers 21, 23.

[35] EPR 632, document number 9. Masteel submitted further clarification on section C of MTM's exporter questionnaire response in a submission (EPR 632, document number 15).

questionnaire. The public record version of MIS's response to the supplementary questionnaire is on the EPR.[36]

On 17 January 2024, the commission completed onsite verification visits of both MTM and MIS. Draft verification reports from these visits were provided to MTM and MIS for review at the time of publishing the SEF. Following review by MIS and MTM, the Commissioner published the verification reports for these visits on the EPR.[37]

Valdunes

Valdunes exported the goods from France during the original investigation period but did not export the good during the inquiry period and has not exported the goods to Australia since 2018.

On 21 September 2023, the commission received a REQ from Valdunes. The Commissioner identified multiple deficiencies in the REQ, including not providing a public record version of the questionnaire response. On 13 October 2023, the commission notified Valdunes of the deficiencies and requested that it rectify the deficiencies by 20 October 2023.[38] Valdunes' further response to the questionnaire was assessed as remaining deficient.[39] Consideration of Valdunes' response is further discussed in chapter 7.5.

Valdunes stated in a submission that it had not made a sale of the railway wheels subject to the measures either domestically in France, to Australia or to a third country, since February 2018.[40] The Commissioner's examination of the ABF import database confirmed that there had been no imports of the goods from France since 2018.

2.4.4 Governments – Questionnaires and verification

On 14 August 2023, the commission wrote to the GOC and the Government of France in relation to the initiation of this inquiry. The commission further invited the GOC to complete a questionnaire regarding claims from Australian industry that a particular market situation existed in respect of like goods in China. The GOC did not provide a response to the questionnaire but provided a submission in relation to the claimed particular market situation.[41] The European Commission provided a submission in response to the initiation of the inquiry and the measures applying to France.[42]

2.5 List of submissions received from interested parties

Table 5 lists the submissions that the Commissioner received relating to case 632. Non-confidential versions of these submissions are available on the EPR. The Commissioner has had regard to all the submissions in Table 5 in making their findings outlined in this report. The submissions are addressed throughout this report. The Commissioner

[36] EPR 632, document number 17.
[37] EPR 632, document numbers 26, 27.
[38] Valdunes sought and was granted an extension to provide the further response by 20 November 2023.
[39] The Commissioner provided Valdunes additional time to rectify the remaining deficiencies in this response. Valdunes did not provide a further response.
[40] EPR 632, document number 4.
[41] EPR 632, document number 10.
[42] EPR 632, document number 7.

received 3 submissions more than 20 days after publishing SEF 632.[43] The Commissioner has still considered those submissions in this report.

<table>
<tr><th>EPR 632 document number</th><th>Interested party</th><th>Date published</th><th>Considered in SEF 632?</th><th>Considered in this report (REP 632)?</th></tr>
<tr><td>4</td><td>Valdunes</td><td>22/09/2023</td><td rowspan="12">Yes</td><td rowspan="19">Yes</td></tr>
<tr><td>6</td><td>Rio Tinto</td><td>02/10/2023</td></tr>
<tr><td>7</td><td>European Commission</td><td>12/10/2023</td></tr>
<tr><td>8</td><td>BHP</td><td>18/10/2023</td></tr>
<tr><td>10</td><td>Government of China</td><td>30/10/2023</td></tr>
<tr><td>11</td><td>Comsteel</td><td>14/11/2023</td></tr>
<tr><td>13</td><td>Comsteel</td><td>20/11/2023</td></tr>
<tr><td>14</td><td>Comsteel</td><td>22/11/2023</td></tr>
<tr><td>15</td><td>Masteel</td><td>14/12/2023</td></tr>
<tr><td>16</td><td>BHP</td><td>18/12/2023</td></tr>
<tr><td>18</td><td>Comsteel</td><td>05/01/2024</td></tr>
<tr><td>19</td><td>Comsteel</td><td>05/01/2024</td></tr>
<tr><td>24</td><td>Rio Tinto</td><td>26/03/2024</td><td rowspan="7">No</td></tr>
<tr><td>28</td><td>Rio Tinto</td><td>19/04/2024</td></tr>
<tr><td>29</td><td>Comsteel</td><td>19/04/2024</td></tr>
<tr><td>30</td><td>Masteel</td><td>19/04/2024</td></tr>
<tr><td>31</td><td>Comsteel</td><td>03/05/2024</td></tr>
<tr><td>32</td><td>Comsteel</td><td>06/05/2024</td></tr>
<tr><td>34</td><td>Comsteel</td><td>31/05/2024</td></tr>
</table>

Table 5: Submissions received

Comsteel submitted that BHP's submission published on 18 October 2023 contained insufficient summaries of confidential information to enable Comsteel to obtain an understanding of the substance of BHP's claims.[44] BHP subsequently provided a revised submission which contained further summaries of the redacted information. The Commissioner placed BHP's revised submission on the EPR.[45]

2.6 Submissions about conduct of the inquiry

2.6.1 Compliance with WTO obligations

In a submission published 19 April 2024,[46] Masteel claimed that it is inappropriate to consider whether to continue anti-dumping measures resulting from the original investigation. Masteel submitted that the WTO Dispute Settlement Panel's report *DS603* found that the measures were inconsistent with obligations under the *Anti-Dumping Agreement* and the *GATT 1994*. Masteel submitted that the SEF replicated these inconsistencies and, until these matters are addressed, it is inappropriate to consider whether the anti-dumping measures should be continued. The Commissioner has had regard to, and implemented, the findings of the Panel to the extent they are relevant to the findings in this report.

[43] EPR 632, document numbers 31, 32, 34.
[44] EPR 632, document number 13.
[45] EPR 632, document numbers 8, 16.
[46] EPR 632, document number 30.

2.6.2 Considering Australia's national interest or public interest

In the same submission discussed above,[47] Masteel claimed that continuing the measures would not be in Australia's national interest. Masteel noted that, while *ADRP Report No 153*[48] found that the Australian Government had not expressly legislated a public interest test and, therefore, the Minister was not required to consider Australia's public interest in deciding about anti-dumping measures. Masteel submitted that aspects of these findings were not correct. The Commissioner has considered the relevant legislative requirements in preparing this report and recommendation to the Minister. The Commissioner is not required to consider whether measures are in the national or public interest.

[47] EPR 632, document number 30.
[48] Anti-Dumping Review Panel, *ADRP Report No 153: A4 copy paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand*, ADRP, Australian Government, July 2022, accessed 11 June 2024.

3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Summary of findings

The Commissioner finds that locally manufactured railway wheels are like goods to the goods subject to the measures. The Commissioner finds that there is an Australian industry producing like goods, produced wholly in Australia. Comsteel is the only Australian industry producer of like goods.

3.1.1 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheading of schedule 3 to the *Customs Tariff Act 1995* (Cth):[49]

Tariff Subheading	Statistical Code	Description
8607	PARTS OF RAILWAY OR TRAMWAY LOCOMOTIVES OR ROLLING-STOCK:	
8607.1	Bogies, bissel-bogies, axles and wheels, and parts thereof:	
8607.19.00	Other, including parts	
	20	Wheels, whether or not fitted with axles

Table 6: Tariff classification of the goods

3.2 Legislative framework

As part of this inquiry, the Commissioner must determine whether the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

> *goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

The definition of like goods is relevant in continuation inquiries to determine factors including the scope of Australian industry and the scope of production or sale of like goods outside of Australia.

Chapter 2 of the *Dumping and subsidy manual* (the Manual)[50] outlines the commission's framework for assessing like goods. According to the Manual, where the locally produced goods and the imported goods are not identical or alike in all respects, the Commissioner

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[49] This tariff classification and statistical code may include goods that are both subject and not subject to the anti-dumping measures. The listing of the tariff classification and statistical code is for convenience or reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

[50] Department of Industry, Science and Resources (DISR), *Dumping and subsidy manual*, Anti-Dumping Commission, DISR, Australian government, 8 December 2021 (the Manual).

assesses if the locally produced and imported goods nonetheless have characteristics closely resembling each other by considering:

- physical likeness
- commercial likeness
- functional likeness
- production likeness.[51]

The Commissioner must also consider whether the like goods produced by Australian industry are manufactured in Australia. Section 269T specifies:

- for goods other than unmanufactured raw products, goods are not to taken to be produced in Australia unless they were wholly or partly manufactured in Australia[52]
- to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.[53]

3.3 The goods

The goods subject to the anti-dumping measures in this inquiry are:[54]

> *forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys.*

In the original investigation, the applicant supplied the following additional information in relation to the goods:

> *Axles and other components are excluded from the goods coverage.*
>
> *The railway wheels are manufactured in accordance with the relevant user defined specifications and drawings, and are used on rail carriages used to transport iron ore.*
>
> *The users of these type of railway wheels are:*
>
> - *BHP Ltd*
> - *Rio Tinto Ltd*
> - *Fortescue Mining Group*
> - *Roy Hill Holdings Pty Ltd.*
>
> *The railway wheels 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*

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51 The Manual, chapter 2.3.
52 Section 269T(2).
53 Section 269T(3).
54 As defined in *ADN 2019/30* (Findings in relation to a dumping investigation for Investigation No 466): EPR 466, document number 90. SEF 632 incorrectly cited this notice as being available at 'EPR 432' instead of 'EPR 466'.

- *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*
- *a multi-wear rim.*

3.4 Submissions relating to like goods assessment

3.4.1 BHP's submissions

***Submission published 18 December 2023*[55]**

BHP submitted that the railway wheels produced by Comsteel were not like goods. Specifically, BHP claimed that Comsteel's railway wheels:

- did not meet BHP's revised specifications
- were materially inferior
- had safety concerns, tied to the quality of Comsteel's railway wheels and incidences of Comsteel's railway wheels cracking.

BHP further advised it had not purchased railway wheels from Comsteel since 2019 but was continuing to use its remaining stock of Comsteel railway wheels on its network with additional monitoring. BHP also noted that there had been no further incidents involving Comsteel's railway wheels, however BHP claimed the lack of incidents was due to the additional controls which BHP implemented to manage the safety risks.

***Statements made in verification*[56]**

During an importer verification in November 2023, BHP claimed the points below.

1. None of the Comsteel wheels previously purchased were produced in accordance with its revised 2019 40 MT railway wheel specifications (which requires higher steel cleanliness). Whilst it had not tested Comsteel's previously supplied railway wheels against this revised standard, BHP considered it likely that they would not meet the standard.
2. If it were to obtain iron ore railway wheels from Comsteel in the future, Comsteel would be required to undergo extensive testing (laboratory and field performance), as well as a trialling period (as required by all prospective suppliers of the goods) to ensure compliance with the new specifications. The specifications would be the same as those currently applying to MTM or any other supplier.
3. The lower quality of Comsteel's railway wheels increased the operational risks for BHP. Cracking led to a higher risk of catastrophic failure of a railway wheel, which could lead to damage to BHP's train network infrastructure, third party property damage, and injury or death to its workers and the general public. Catastrophic failures could also interrupt BHP's mining operations and the export of iron ore. BHP

[55] EPR 632, document number 16. This submission is a revised version of BHP's earlier submission published 18 October 2023: EPR 632, document number 8.

[56] For reference, see the commission's importer verification report for BHP: EPR 632, document number 23.

stated there had not been the same quality issues with the railway wheels supplied by MTM.

4. Because of the quality issues, Comsteel's railway wheels require additional monitoring and potentially have a shorter lifespan than the railway wheels imported from MTM. This additional monitoring and shorter lifespan also added to the operational cost of using Comsteel's railway wheels.
5. There were differences between the Australian industry's production process and overseas producers, including:
   - overseas producers having higher levels of automation in testing
   - each overseas producer having its own unique aspects of production processes.

3.4.2 Comsteel's submissions

The Commissioner notes that Comsteel disputes BHP's claims, in statements made during the Australian industry verification for this inquiry and in a submission published 31 May 2024.[57] Comsteel stated it was able to manufacture railway wheels meeting the specifications of each of the relevant Australian end user mining companies, including BHP. The Commissioner also notes Comsteel made similar statements in the original investigation.[58]

3.4.3 Consideration of submissions

The Commissioner has considered BHP's and Comsteel's claims directly in the like goods assessment below.

3.5 Like goods assessment

Where the locally produced goods and the goods subject to the measures are not alike in all respects, the Commissioner assesses whether the respective goods have characteristics closely resembling each other. Chapter 3.2 details how the Commissioner typically undertakes this assessment. The Commissioner is satisfied that the domestically produced goods are like goods to the goods under consideration for the reasons outlined below.[59] For the purposes of this finding, the Commissioner has relied on submissions received in this inquiry, information obtained during verification visits and information considered in the original investigation.[60]

Physical likeness

The primary physical characteristics of the railway wheels that Comsteel produces are similar to the primary physical characteristics of the railway wheels that are goods subject to the measures. The Commissioner notes that there are minor variations in the technical specifications of the goods between each of the mining companies.

The Commissioner has considered BHP's claims regarding the quality of Comsteel's railway wheels in the context of the like goods assessment. BHP claimed that it considers Comsteel's railway wheels would not meet its revised standards for 40 MT railway

[57] EPR 632, document numbers 20, 34.
[58] EPR 466, document number 57.
[59] As defined in section 269T(1).
[60] Documents relied on from the original investigation include the commission's verification report of Comsteel and the final report: EPR 466, document numbers 23, 89.

wheels. In examining this claim, the Commissioner notes that Comsteel's wheels had not been tested against this revised standard. BHP did not specify how it concluded that Comsteel could not produce railway wheels meeting the revised standard. Further, Comsteel submitted that it can meet the current specifications of each of the mining companies, including BHP. The Commissioner considers that there is a lack of objective evidence supporting BHP's claim regarding quality differences in Comsteel's railway wheels compared to MTM's railway wheels, and considers that both closely resemble each other.

Having regard to the above factors, the Commissioner considers that Comsteel produced railway wheels that are physically alike to the goods the subject of the measures, consistent with the finding in the original investigation.

Rio Tinto also made submissions about wheel quality issues which related to Comsteel's material injury claims. Both BHP's and Rio Tinto's claims regarding quality are considered in the Commissioner's assessment of the likelihood of material injury in the absence of measures in chapter 7.7 of this report.

Commercial likeness

In the Australian market, the railway wheels that Comsteel produces compete directly and indirectly with the goods subject to the measures. Consequently, the Commissioner considers the locally produced goods to be commercially like to the goods the subject of the measures.

Functional likeness

The railway wheels Comsteel produces are interchangeable or substitutable with the goods subject to the measures. Comsteel's railway wheels and imported railway wheels are sold to the same customers and for identical end uses. The Commissioner notes that 3 of the end user mining companies currently use both Comsteel and imported railway wheels on their respective railway networks. While BHP submitted that Comsteel's wheels require additional monitoring due to quality issues, BHP continued to use its remaining stock of Comsteel railway wheels on its network. Consequently, the Commissioner considers that the locally produced goods and the goods subject to the measures perform the same function and are used in the same end-use applications.

Production likeness

The Commissioner considers that the locally produced goods and the goods the subject of the measures are produced using similar production processes and similar raw material inputs to the goods the subject of the measures. The Commissioner notes that, whilst the specific production processes and technology used by manufacturers may vary, the production processes that Comsteel and exporters used are overall alike.

3.6 Australian industry – domestic production

3.6.1 Production process

Comsteel manufactures grinding media and various types of railway wheels, axles, and wheel sets at its site in Waratah, a suburb of Newcastle in New South Wales. Comsteel uses scrap metal as the main raw material to produce steel billet and ingot in its electric arc furnace (EAF). Comsteel adds certain alloys to the scrap steel to achieve the desired metallurgy in the ingot for railway wheels. The molten steel from the EAF undergoes a vacuum degassing process before being poured into ingot moulds. Comsteel saws the ingots produced in the steelmaking process into ‘cheeses’ and then heats them in a rotary furnace. Comsteel pre-forms the cheese in a slab press and then forges them in the forging press. Comsteel then rolls the wheel using edge and pressure rollers before it ‘dishes’ or ‘centres’ and hole-punches the wheel in a final press. Comsteel then heats the wheel before rim quenching and tempering it in a furnace. After tempering, Comsteel shot blasts the wheel, then tests and machines to its final specifications. The wheel undergoes various tests for surface defects and internal inclusion defects before being stamped and packaged for shipment.

Having regard to the above processes being undertaken by Comsteel, the Commissioner concludes that the goods can be taken to have been wholly manufactured in Australia and that they are, therefore, produced in Australia.

3.6.2 Conclusion – Australian industry

Based on the information obtained from the verification visit and the previous investigation, the Commissioner is satisfied that:

- Comsteel manufactures like goods
- the like goods were wholly manufactured in Australia and
- there is an Australian industry which produces like goods in Australia.

4 THE AUSTRALIAN MARKET

4.1 Summary of findings

The Commissioner finds that Comsteel and an exporter from China, MTM, supplied the market for the goods in Australia during the inquiry period.

In assessing the characteristics of the Australian market, the Commissioner finds:

- in the inquiry period, the Australian market comprised 4 end user customers
- in the inquiry period, each end user was supplied either through locally produced like goods, goods imported from China or by both
- for both locally produced and imported railway wheels, the manufacturer generally supplied the end user directly
- locally produced and imported railway wheels can be used interchangeably on an end user’s iron ore carriage
- end users traditionally purchased railway wheels from pre-qualified suppliers through contract or tender arrangements, a practice which continued in the inquiry period.

The Commissioner finds that no exporters from France supplied the market for the goods in Australia during the inquiry period.

4.2 Approach to analysis

The analysis in this chapter is based on verified information from Comsteel, importers and end users (BHP and Rio Tinto) and an exporter (MTM). This analysis also relies on ABF import data.

4.3 Market segmentation and end uses

Railway wheels subject to the measures are specially designed for use on iron ore railway carriages. The carriages run on proprietary railways owned by iron ore mining companies in the Pilbara region of Western Australia. The end user customers of the carriages are BHP, FMG, Rio Tinto and Roy Hill. Specifications for railway wheels differ slightly between the Australian end user customers, reflecting different railway track designs and load requirements of the ore carriages.

The integrity of the wheels is important for the safe and efficient operation of the railways. Wheel failures have the potential to cause train derailments. While the railway lines on which the wheels operate are private, they cross over public roads and enter other populated areas. There are no market substitutes for railway wheels in Australia.

4.4 Distribution arrangements

In the Australian market, there are no resellers, distributors or other intermediaries involved in the supply of railway wheels to the end user customers. For both locally produced and imported railway wheels, the manufacturer generally supplied the end user directly. On occasion, wheels could be provided to a maintenance firm contracted to complete maintenance on the iron ore carriages. Where delivery is made to the maintenance firm, the supply is typically based on the supply contract with the mining company.

4.5 Supply factors

4.5.1 Summary

Mining company end users require suppliers of the railway wheels to undertake a pre-qualification process before supplying. The pre-qualification process varies depending on the supplier and mining company and will likely take at least 2 years to complete. The locally produced and imported railway wheels can generally be used interchangeably on a customer's iron ore carriage. Mining companies may seek to obtain supply from multiple sources to ensure continuity of supply. Typically, mining customers and suppliers co-ordinate delivery dates ahead of time. This enables miners to meet their maintenance schedules and suppliers to schedule production of the railway wheels at their manufacturing facilities.

4.5.2 Submissions relating to supply factors

Summary of submissions

MTM claimed that Comsteel was a dominant monopoly supplier in the Australian market and that this effectively constituted a barrier to entry into the Australian market.[61] The GOC, Rio Tinto and BHP also claimed that Comsteel held a monopolistic market position or had monopolistic market power.[62]

Consideration of submissions

The Commissioner notes Comsteel accounted for approximately 30% of total Australian market sales between July 2021 and June 2023. The remaining 70% of sales were supplied by imports, of which almost all originated from MTM in China.[63] In other words, Comsteel is a minority supplier of the goods in Australia, is not a monopoly supplier and does not otherwise appear to operate monopolistically. Evidence indicates buyers and sellers in the market engage in competitive negotiations. Based on available evidence, the Commissioner considers that any significant barriers to entry in the Australian market are more likely attributable to the pre-qualification requirements on suppliers, rather than any market power Comsteel holds.

4.6 Demand factors

Demand is driven by the quantity of wheels that end user mining companies require to transport iron ore from their mine sites. Key factors that may influence demand are:

- demand for iron ore
- opening or closing of mine sites
- the life cycle of railway wheels and ore carriages
- programmed replacement of wheels by mining companies.

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[61] EPR 632, document number 9.
[62] EPR 632, document numbers 6, 10, 16.
[63] A small volume was imported from Italy during early 2022 with the remainder imported from China.

Below are further details of these key demand factors.

Demand for iron ore

Iron ore demand is largely driven by requirements for steel production. Increased demand for steel is likely to result in more train movements transporting iron ore. A greater number of train movements leads to higher demand for railway wheels because:

- end users require additional carriages, including wheels
- the wheels have a shorter lifespan by wearing down faster from repeated use (see below for further details about the life cycle of railway wheels).

Opening or closing of mine sites

Opening of new mines will typically result in more train movements transporting iron ore and this requires additional carriages. Closing of mines has the opposite effect on the demand for railway wheels, unless the closed site is directly replaced by a new site.

Life cycle of railway wheels

Railway wheels have a life cycle of approximately 8 to 12 years and are consumable components of the ore carriage. Additional wear and tear can lead to replacement before the end of the usual life cycle. Railway wheels may also have an extended life span where wear and tear is less than estimated. Operating parameters of the mining companies can influence these differing lifespans.

Life cycle of ore carriages

Ore carriages have a longer life span and are replaced less frequently. New ore carriages can be imported with or without railway wheels attached. The Commissioner does not consider railway wheels attached to an imported ore carriage to be like goods for this inquiry. Comsteel submitted that it sought to supply the railway wheels for new ore carriages, including those imported from overseas.[64] The volume of ore carriages imported each year is irregular and significantly fluctuates. Over the period analysed, the railway wheels installed on imported ore carriages comprised an estimated 12% of railway wheels.[65] The remaining 88% of railway wheels were separately supplied by either the Australian industry or imported.

Programmed replacement programs by mining companies

Mining companies typically have a maintenance program, which includes end-of-life wheel replacement. The specifics of a company's maintenance program influences how frequently a company places orders for railway wheels.

4.7 Market pricing

End users have traditionally purchased railway wheels from pre-qualified suppliers through contract or tender arrangements. Supply arrangements typically establish pricing

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[64] EPR 632, document number 20.

[65] This assessment is based on 8 railway wheels being required for each ore carriage. Data in relation to the importation of railway carriages was obtained from ABF import data and analysed to estimate the volume of ore carriages imported. Import data from 1 January 2018 until December 2023 was analysed.

and may also specify supply quantities for a fixed period against which the purchaser makes periodic orders. Contracts usually include price rise and fall provisions based on the initial price negotiated in the contract. The rise and fall provisions are typically based on relevant costs. Comsteel claimed that it is required to compete with import prices when negotiating its prices with the mining companies. This report discusses pricing in the context of likelihood of future material injury in chapter 7.7 of this report.

Customers typically specify delivery terms to storage or workshop facilities in Perth or the Pilbara region of Western Australia.

4.8 Market size

The Commissioner has estimated the size of the Australian market for railway wheels. The Commissioner has relied on Comsteel's domestic sales data and ABF import data. The Commissioner has considered the relevant tariff subheadings and statistical codes for railway wheels when sourcing data from ABF. The Commissioner further filtered the data to remove imports that the Commissioner has identified as not 'the goods.[66] Figure 1 below shows the Commissioner's estimate of the annual volume of railway wheels sold in the Australian market since 1 July 2013.

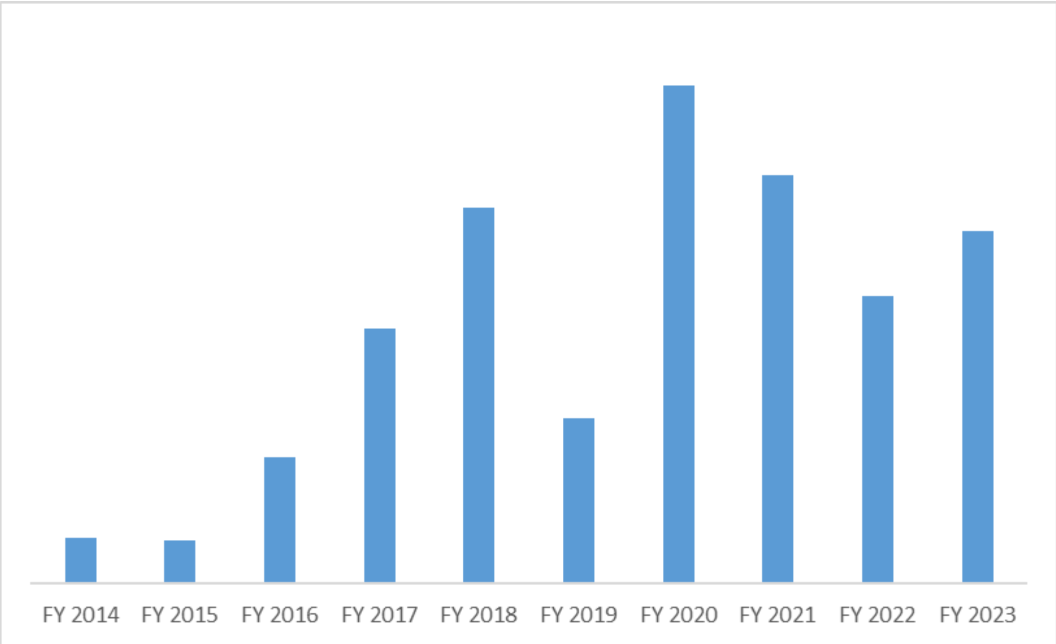

Figure 1: Size of the Australian market for railway wheels (number of wheels)

Confidential Attachment 1 contains additional Australian market analysis.

[66] To identify relevant imports, the Commissioner examined the ABF import data to identify characteristics relevant to the goods. This included examining the goods description, the value of the importation, the importer, the port of arrival and any declarations made in relation to any claimed exemptions from dumping duty based on the goods description.

4.9 Future demand for railway wheels

As noted in chapter 4.6, demand for railway wheels is aligned to the demand for iron ore, the opening or closing of mine sites and the life cycle of railway wheels and carriages. The Commissioner examined each of these factors in assessing the likely future demand for railway wheels. Having considered these factors, the Commissioner's overall assessment is that there will be ongoing future demand for railway wheels. In aggregate, the Commissioner anticipates that there will not be any significant future fluctuations in the demand for railway wheels until at least the end of 2025. The basis of this assessment is detailed below.

Demand for iron ore

BHP submitted that, in relation to the demand for iron ore, the Chinese demand for steel is likely to continue to grow in non-construction steel intensive industries and that Chinese demand is showing signs of stability or increasing demand.[67] The Commissioner also notes that the Department of Industry, Science and Resources' *Resources and Energy Quarterly: December 2023* report[68] identified continuing growth in the demand for iron ore between 2023 and June 2025. Based on this information, the Commissioner considers that there will be continuing growth in the demand for iron ore from Australian mine sites.

Mining site closures and openings

The Commissioner's analysis indicates that a range of future mine sites are being considered or are in the process of being developed. This includes a range of previously mothballed projects.[69]

Life cycle of railway wheels

The Commissioner has obtained information on anticipated future requirements for railway wheels during verification meetings.[70] This information indicates that there will be an ongoing requirement for new railway wheels as part of each mining company's maintenance programs.

[67] EPR 632, document number 16, 8.

[68] DISR, *Resources and Energy Quarterly: December 2023*, Office of the Chief Economist, DISR, Australian Government, 18 December 2023, accessed 25 March 2024.

[69] GlobalData, *Iron ore production in Australia and major projects*, Mining Technology website, 23 March 2023, accessed 25 March 2024.

[70] EPR 632, Document numbers 20, 21, 23.

5 ECONOMIC CONDITION OF THE INDUSTRY

5.1 Summary of findings

The Commissioner finds that the Australian industry's economic condition exhibited mixed results during the period of 1 July 2017 (YE June 2018) to 30 June 2023 (YE June 2023) (the period of analysis). Following the imposition of the measures in 2018, the Australian industry experienced increasing sales volumes and revenue. Despite increased sales volume and revenue, the increases in unit cost to make and sell (CTMS) were higher than unit selling prices to the extent that the Australian industry's profits and profitability were negative for YE June 2022 and YE June 2023.

The change in performance in the last two years demonstrates renewed vulnerability of the Australian industry to exports, in terms of market share. The Commissioner finds that the Australian industry continues to be susceptible to competition from imported goods in the Australian market.

Chapter 7 addresses whether the expiration of measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the measures are intended to prevent.

5.2 Approach to analysis

This chapter considers the economic condition of the Australian industry since the measures were imposed. This examination provides the basis for the Commissioner's analysis in chapter 7 of whether material injury is likely to continue or recur. The Commissioner has assessed the economic condition for the period from YE June 2018 to YE June 2023, using the verified information provided by Comsteel in this inquiry and the original investigation, and data from the ABF import database.

5.3 Findings in the original investigation

In REP 466, the Commissioner at the time found Comsteel had suffered injury in the following forms:

- loss of sales volume
- loss of market share
- price suppression
- reduced profits
- reduced profitability
- reduced return on investment
- reduced capacity utilisation
- reduced employment number
- reduced revenue
- reduced production volumes.

5.4 Volume effects

5.4.1 Sales volume

Figure 2 below charts Comsteel's sales volume across the analysis period.

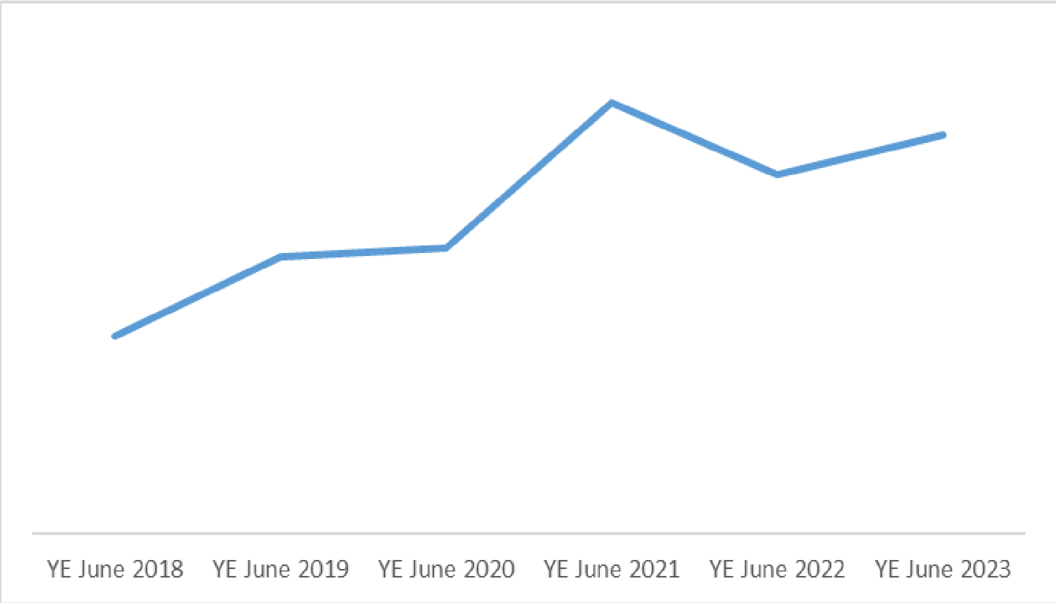

Figure 2: Sales volume (unit: wheels)

The chart indicates that Comsteel's sales volumes have increased since the imposition of measures. Whilst decreasing in the YE June 2022, Comsteel's sales volume partially recovered in the YE June 2023. Even though not as high as the peak during the analysis period, the sales volume in YE June 2023 was still higher than in the YE June 2018.

5.4.2 Market share

Figure 3 below charts Comsteel's market share across the analysis period:

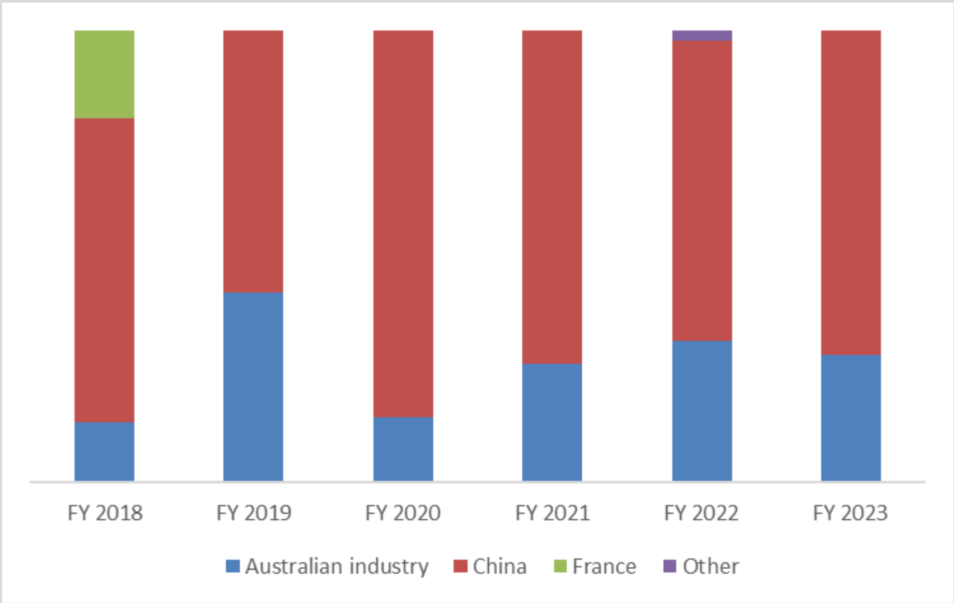

Figure 3: Australian railway wheels market (% market share by volume [unit: wheels])[71]

The chart indicates that, since the imposition of measures:

- exports from China have continued to supply the Australian market – whilst the share of the market has fluctuated, Chinese exporters have consistently been the largest supplier in the market
- exports from France have ceased supplying the Australian market
- the Australian industry's share of the market has fluctuated – the Australian industry has, on average, supplied approximately 30% of the market since the imposition of measures
- there has only been a small volume of imports from the Italian Republic (Italy), a non-subject country, in early 2022 (before the start of the inquiry period).

5.4.3 Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when a company is prevented from increasing its prices, which otherwise would have occurred. For instance, an indicator of price suppression may be where the margin between prices and costs reduces. This reduction in the margin is indicative of the supplier not being able to pass on increased costs in its prices.

Figure 4 below charts Comsteel's unit selling price and unit CTMS for the analysis period.

[71] To identify relevant imports, the Commissioner examined the ABF import data to identify characteristics relevant to the goods. This included examining the goods description, the value of the importation, the importer, the port of arrival and any declarations made in relation to an exemption from dumping duty based on the goods description.

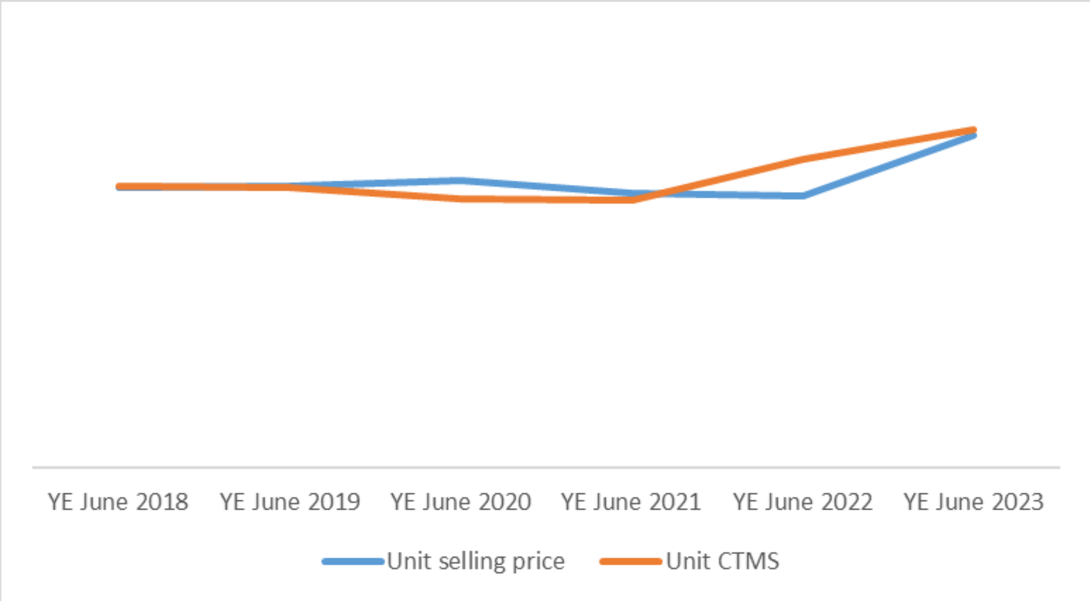

Figure 4: Unit CTMS and price (per wheel)

This chart indicates that:

- unit CTMS declined between YE June 2018 and YE June 2021
  - there was a marginal decline in YE June 2019, a greater decline in YE June 2020 and a further marginal decline in YE June 2021
  - for the same period unit prices increased between YE June 2018 and YE June 2020, before declining in YE June 2021
- in YE June 2022, unit CTMS increased, while unit prices further declined
- in YE June 2023, unit CTMS and unit price both materially increased.

Based on the available information, the Commissioner finds that Comsteel experienced price depression in YE June 2021 and price suppression in YE June 2022. Whilst Comsteel was able to increase prices in the YE June 2023, the increase was insufficient to fully recover its CTMS in the same period.

5.5 Profit and profitability

Figure 5 charts Comsteel’s profit and profitability as a percentage of revenue over the analysis period.

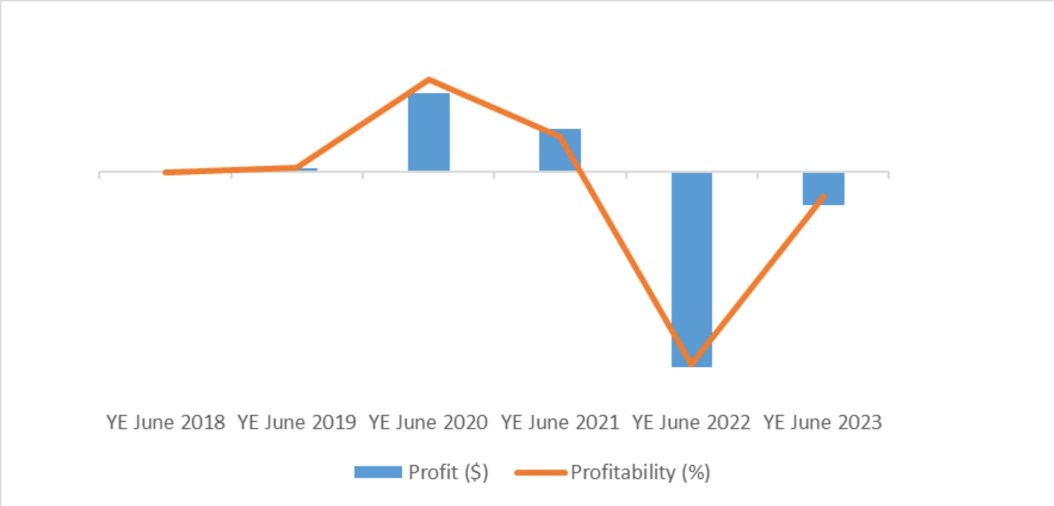

Figure 5: Profit and profitability

This chart indicates that, after measures were imposed, Comsteel initially experienced an improvement in profit and profitability. After peaking in YE June 2020, profit and profitability declined. Negative profit and profitability occurred in both YE June 2022 and 2023.

5.6 Other economic factors

5.6.1 Assets

Figure 6 below depicts the total value of Comsteel's assets, some of which are used in the production of like goods for the analysis period.

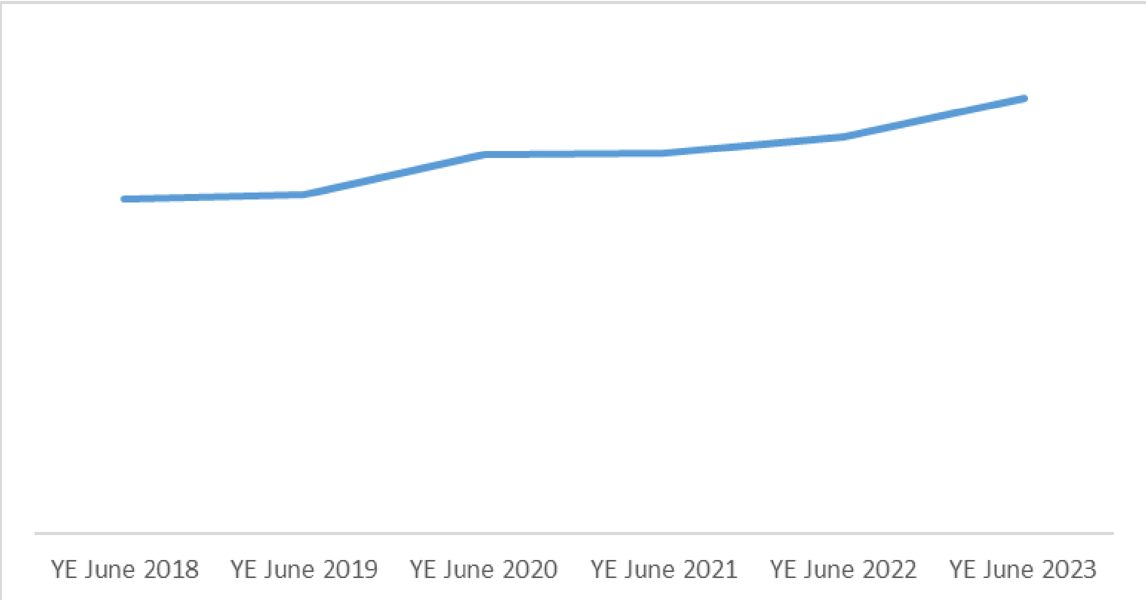

Figure 6: Assets (AUD)

Figure 6 indicates that Comsteel's total value of assets, some of which are used in the production of like goods, increased between YE June 2018 and YE June 2023.

5.6.2 Production volumes

Figure 7 below depicts Comsteel's production volumes over the analysis period.

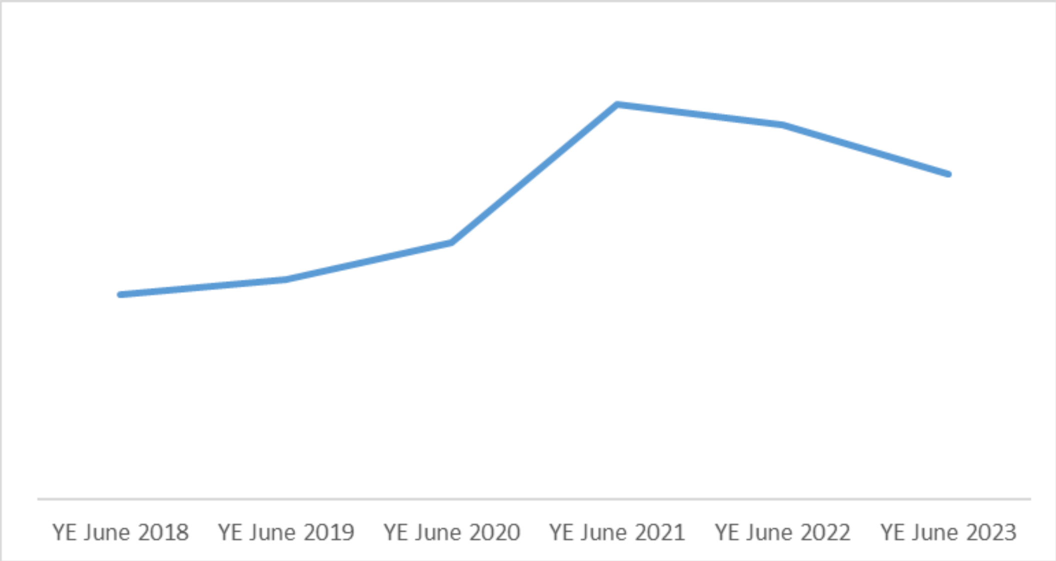

Figure 7: Production volume (unit: wheels)

Figure 7 indicates that Comsteel's production volumes increased from YE June 2018 to YE June 2021 before declining in both YE June 2022 and YE June 2023.

5.6.3 Return on investment

Figure 8 below depicts Comsteel's return on investment (ROI) over the analysis period.

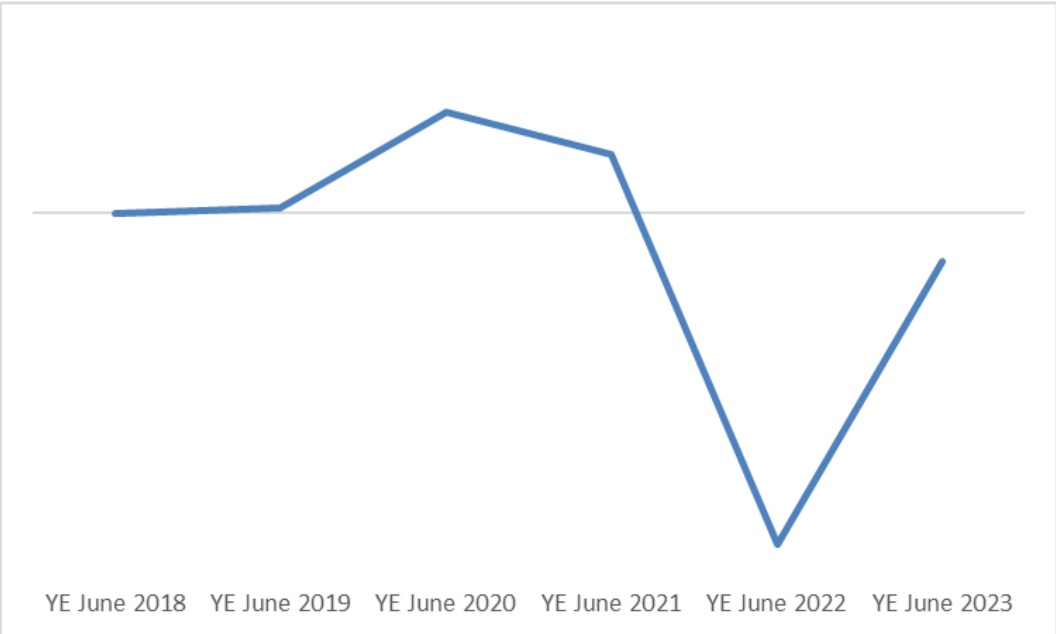

Figure 8: ROI (AUD)

Figure 8 indicates that Comsteel's ROI has increased from YE June 2018 to YE June 2020, then proceeded to decrease from YE June 2020 to YE June 2022 with an increase but still negative ROI in YE June 2023.The Commissioner has calculated ROI based on Comsteel's profit and loss position as a proportion of its net assets. While the assets are used to produce the goods and other wheels, a proportion of assets has been allocated in the analysis correlating to the production of the goods.

5.6.4 Capacity utilisation

Figure 9 below depicts Comsteel's capacity utilisation rate over the analysis period.

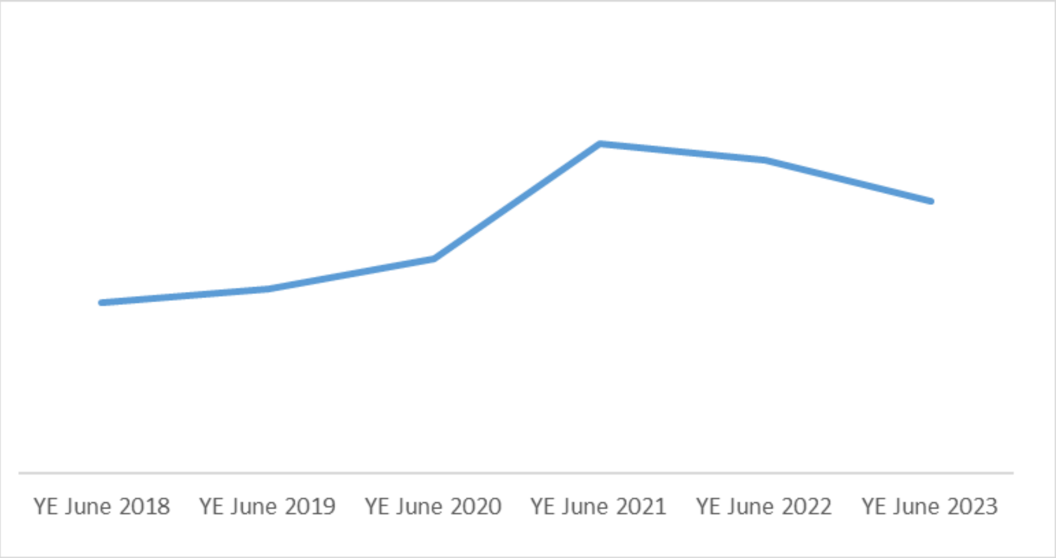

Figure 9: Capacity utilisation

Figure 9 indicates that Comsteel's capacity utilisation increased from YE June 2018 to YE June 2021 before declining in both YE June 2022 and YE June 2023.

5.6.5 Employment

Figure 10 depicts Comsteel's employment numbers over the analysis period.

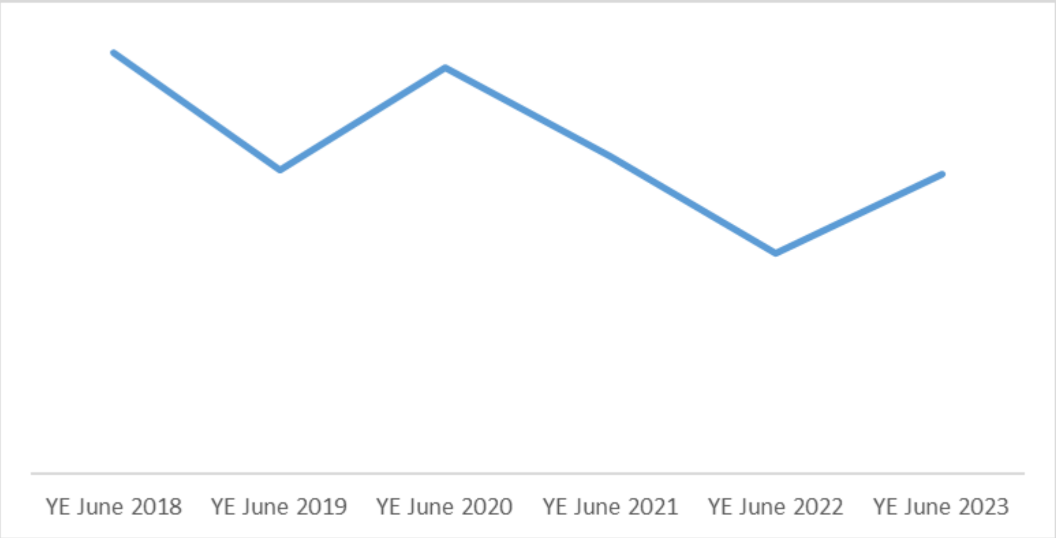

Figure 10: Total number of employees

Figure 10 indicates that employment numbers, whilst fluctuating, have declined since the imposition of measures. The increase in YE June 2023 was driven by increased labour requirements across the whole railway wheel business.

5.6.6 Revenue

Figure 11 depicts Comsteel's net sales revenue from the sale of like goods over the analysis period.

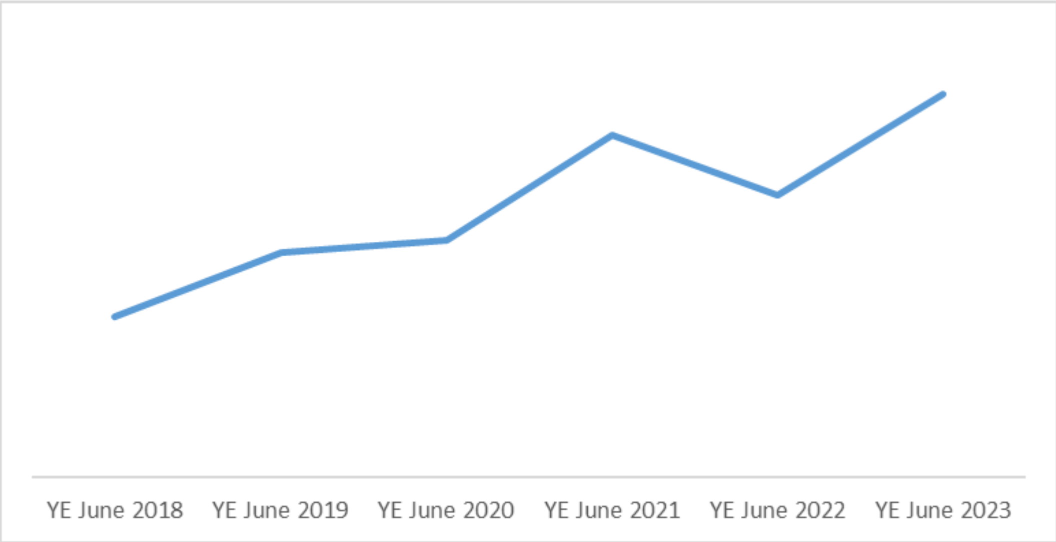

Figure 11: Net sales revenue (AUD)

Figure 11 indicates that Comsteel increased its revenue across the analysis period. Whilst a decline occurred YE June 2022, Comsteel's sales revenue recovered in the YE June 2023.

Confidential Attachment 2 contains the Commissioner's assessment of the economic condition of Australian industry.

6 DUMPING DURING THE INQUIRY PERIOD

6.1 Summary of findings

The Commissioner has examined if exports to Australia from China and France were dumped in the inquiry period. The Commissioner has assessed dumping in the inquiry period, noting this assessment provides relevant information to:

- assess if future dumping would, or would likely, occur if measures expire
- assess if the variable factors have changed.

6.1.1 China

Recommended dumping margins

The Commissioner has determined that dumping of exports from China occurred during the inquiry period. The dumping margins assessed in relation to China for the inquiry period are summarised in Table 7.

Country	Exporter	Dumping margin
China	MTM	13.3%
China	All other exporters	13.3%

Table 7: Summary of dumping margins

Summary of variable factor calculation for MTM

MTM, who exported the goods from China to Australia in the inquiry period, cooperated with this inquiry. MTM's parent entity and steel billet supplier, MIS, also cooperated by providing supplementary information.

MIS was subject to its own rate of measures following the original investigation but did not produce or sell the goods in the inquiry period. MIS stated that it transferred its railway wheel production and sale activities to MTM before the start of the inquiry period.

As outlined in chapter 6.3, the Commissioner determined MTM's dumping margin based on the following variable factors:

- **export price** – calculated under section 269TAB(1)(a), relying on MTM's sales of goods exported to Australia, sold to importers in arms length transactions
- **normal value** – calculated under section 269TAC(2)(c), made up of amounts for cost to make, cost to sell and an amount for profit, relying on:
    - MIS's records for steel billet raw material unit costs and MTM's records for all other cost to make components
    - MTM's records for cost to sell
    - MTM's records for an amount of profit, based on MTM's profit realised from the domestic sale of the same general category of goods as the like goods,

under regulation 45(3)(a) of the *Customs (International Obligations) Regulation 2015* (the Regulation).[72]

Summary of variable factor calculation for all other Chinese exporters

Aside from MTM, the Commissioner is satisfied that no other Chinese entities exported the goods to Australia in the inquiry period. The Commissioner has established a rate for all other exporters using the same rate as for the cooperative exporter MTM. The Commissioner has also used this information to find that the variable factors for all Chinese exporters have changed.

Chapter 6.4 further discusses the variable factors for all other exporters from China.

6.1.2 France

The Commissioner notes that there have been no exports from France since 2018 (see chapter 2.4.3). Because the Commissioner did not identify any exports from France during the inquiry period, the Commissioner has not assessed whether variable factors for French exporters have changed. Given that there were no exports from France during the inquiry period and the recommendation to not continue the measures in relation to France, the Commissioner has not completed an assessment of the cooperative status of exporters from France.

6.2 Background – legislative framework and key terms

Under section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of 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 the material injury that the anti-dumping measure is intended to prevent. The existence of dumping during the inquiry period can be an indicator of whether dumping is likely to occur in the future. Dumping occurs when a product from one country is exported to another country at a price less than its normal value.

Further details of the export price and normal value calculations for MTM and all other exporters are set out below.

Key term – export price

An export price is determined under section 269TAB. Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter in arms length transactions.

[72] All references to regulations in this report are to the *Customs (International Obligations) Regulation 2015* (the Regulation) unless otherwise stated.

Key term – normal value

A normal value of goods is determined under section 269TAC. Where possible, the Minister must determine a normal value under section 269TAC(1). Section 269TAC(1) states that the normal value of any goods exported to Australia is:

> *the price paid or payable for like goods sold in the ordinary course of trade*[73] *for home consumption in the country of export in sales that are arms length transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.*

Section 269TAC(2) outlines reasons for which the Minister may be satisfied that a normal value cannot be ascertained under section 269TAC(1).[74] Section 269TAC(2) also outlines how to ascertain a normal value in those circumstances.[75] This report also discusses normal value legislation in **Appendix A**.

Key term – dumping margin

Dumping margins are calculated under section 269TACB. The Commissioner usually applies the method specified in section 269TACB(2)(a) to determine the levels of dumping by comparing the weighted average export price over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of the inquiry period.

Key terms – cooperative and uncooperative exporters

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. Export prices are to be determined under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

The Commissioner generally determines an ‘all other exporters’ rate in investigations, reviews of measures and continuation inquiries, as relevant. The ‘all other exporters’ rate applies to any exporters not known, or which did not exist, at the time of the investigation. This rate applies to any new exporters. In practice, the Commissioner generally calculates one rate for uncooperative and all other exporters known as the ‘uncooperative and all other exporters’ rate or the ‘all other exporters’ rate.

6.3 Variable factors – Baowu Group Masteel Rail Transit Materials Technology Co Ltd (MTM)

The Commissioner has assessed the variable factors and dumping margin for MTM, the only cooperative exporter of the goods from China. This chapter outlines the assessment for this exporter.

6.3.1 Export price

The Commissioner finds that MTM is an exporter of the goods, as MTM:

- is the manufacturer of the goods located in the country of export

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[73] The Commissioner and stakeholders may abbreviate the ordinary course of trade as the ‘OCOT’.
[74] Sections 269TAC(2)(a) and 269TAC(2)(b).
[75] Sections 269TAC(2)(c) and 269TAC(2)(d).

- is named as the seller on commercial invoices
- arranges and pays for inland transport and port handling charges to the port of export.

For all goods that MTM exported to Australia, the Commissioner finds that MTM sold these goods in arms length transactions. The Commissioner does not consider that:

- there was consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The Commissioner has calculated an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

6.3.2 Normal value – summary

The Commissioner finds that MTM sold domestic like goods during the inquiry period, but that the sales were not arms length transactions or sold in the ordinary course of trade. Therefore, the normal value cannot be determined under section 269TAC(1).[76] Specifically, the Commissioner finds there is an absence of domestic sales of like goods relevant for determining a normal value price under section 269TAC(1), meaning section 269TAC(2)(a)(i) applies.

Because there is an absence of sales of like goods relevant to calculate a normal value under section 269TAC(1), the Commissioner has calculated a normal value under section 269TAC(2)(c) using the sum of:

- the cost of production of the goods in China
- MTM's selling, general and administrative (SG&A) expenses for domestic like goods
- an amount for profit.

For the cost of production of the goods in China, the Commissioner considers that MTM's production records for raw material costs – specifically, steel billet – did not reasonably reflect raw material costs associated with production of the goods. The reasoning for this finding and the Commissioner's approach to calculating steel billet costs is outlined in below in chapter 6.3.

For the other components in the cost of production, the Commissioner has used MTM's records. Further details regarding the above findings, including the reasons which underpin the findings), are described below.

[76] As there is an absence of sales of like goods that would be relevant for the purpose of determine a price under section 269TAC(1), as section 269TAC(2)(a)(i) refers.

6.3.3 Normal value – domestic sales were not arms length transactions

The Commissioner finds that MTM sold domestic like goods during the inquiry period but the sales were not arms length transactions. The Commissioner finds the sales were not arms length with reference to section 269TAA. Specifically, the Commissioner is satisfied the domestic sales were not arms length, on the basis that sales prices appeared to be influenced by a commercial or other relationship between the buyer and the seller.[77]

The reasons for making this finding are further detailed in the verification report of MTM[78] and **Confidential Appendix E**. In summary:

- MTM and its domestic customer are both state-owned entities and share the same majority shareholder
- MTM and its domestic customer have a preferential pricing agreement for products including domestic like goods
- the agreement included terms not reflective of terms reached in genuine commercial negotiation, 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.

Having regard to these factors, the Commissioner finds that the arrangements and practices between MTM and its domestic customer did not reflect conditions of genuine competitive bargaining and selling between independent parties.

6.3.4 Normal value – domestic sales were not in the ordinary course of trade

The Commissioner has also found that the domestic sales of like goods were not in the ordinary course of trade.

The Commissioner is reasonably satisfied that the sales were not in the ordinary course of trade because there is sufficient evidence indicating that MTM's sales price to its domestic customer were affected by the relationship between the parties. The relationship appeared to affect price-setting and price reductions between the parties. The terms and arrangements did not reflect pricing between independent entities seeking to maximise profits and considering their individual corporate interests. The Commissioner is reasonably satisfied that this agreement included terms not reflective of genuine commercial negotiation, specifically for price-setting factors and price reductions. See **Confidential Appendix E** for further detail of the arrangement.

The commission's policy in the Manual states:

> *Depending on the circumstances, profitable sales may not be in the ordinary course of trade. These circumstances may include sample sales, promotional sales made at special prices, end of season sales, low quality sales, or sales in **other unusual circumstances**.*[79] [emphasis added]

[77] Section 269TAA(1)(b).
[78] EPR 632, document number 26.
[79] The Manual, chapter 7.2.

Having regard to all the circumstances, including the factors discussed in chapter 6.3.3 and **Confidential Appendix E**, the Commissioner is reasonably satisfied that MTM's domestic sales of like goods were not in the ordinary course of trade, on the basis that they represented sales in other unusual circumstances. Although profitable, the sales are not in the 'ordinary course of trade' because they were not sold on a genuinely commercial basis. The arrangements did not reflect conditions of genuine competitive bargaining and selling between independent parties.

6.3.5 Normal value – method of constructing under section 269TAC(2)(c)

Structure of chapter 6.3.5

Chapter 6.3.5 summarises the Commissioner's analysis and findings related to the recommended method of constructing a normal value under section 269TAC(2)(c). This chapter includes the reasons for the Commissioner finding that:

- MTM's records did not reasonably reflect the costs associated with the production and sales of the goods in China due to the recorded steel billet costs
- MIS's records are suitable to ascertain the raw material (steel billet) input costs associated with the production of the goods in China
- MTM's records are suitable for ascertaining SG&A expenses
- MTM's records are suitable for calculating the profit amount used in the normal value, with this finding split into topics about:
    - the legislative background for profit calculation under section 269TAC(2)(c)
    - the Commissioner's recommendation to calculate profit under regulation 45(3)(a) with the 'same general category' as like goods being 'freight railway wheels of wheel size diameters 957 mm to 970 mm'
    - analysis of different wheel models based on product characteristics detailed in MTM's records
    - an assessment of product characteristic analysis, explaining why the Commissioner has not recommended a broader 'same general category'
    - an assessment of evidence indicating that a broader 'same general category' would include models with recorded profit margins that are not likely achievable for like goods sold in China.

Cost of production – finding MTM's records did not reasonably reflect the costs associated with the production and sales of the goods in China

Steel billet is the main component of the cost of production for the goods. MTM purchased all steel billet used to produce the goods from its related party parent company and supplier, MIS. MIS produced a category of steel billet grades called 'special steel billet', which included the grade of billet sold to MTM and consumed to produce the goods. The Commissioner notes that 'special steel' is an industry term for steel with higher strength or toughness and steel with higher proportions of microalloying elements.

The Commissioner finds that MTM's steel billet records did not reasonably reflect raw material input costs associated with production of the goods in China. Specifically, the Commissioner finds that MTM purchased steel billet from MIS in transactions that were not at 'arms length'.[80] The Commissioner assessed that the steel billet purchase price in MTM's records was influenced by the relationship between MTM and MIS, based on the available evidence.[81]

The Commissioner details this finding further in the verification report of MIS[82] and **Confidential Appendix E**. To summarise the non-confidential information:

- at least some of MIS's steel billet production facilities are co-located with MTM's wheel production facilities
- MIS and MTM had common management during the period that the parties established the steel billet pricing mechanism
- MIS's prices to MTM were set according to a different pricing mechanism than MIS's special steel billet sales to unrelated customers – prices to MTM were less variable, included various types of price reductions, and were not closely aligned to the applicable costs or market conditions
- MIS sold steel billet to MTM for railway wheels during the inquiry period at a loss – including the sales of the steel billet grade used to produce the goods, even though there are no known competitors in the Chinese market for that grade of billet.

For all other cost components for production of the goods, the Commissioner has relied on MTM's production records.

Cost of production – using in-country information to assess the cost of production in China for steel billet

After assessing the information available, the Commissioner has relied on MIS's records to calculate a steel billet raw material cost based on the cost to make and sell steel billet plus an amount for profit and delivery expenses. The Commissioner is satisfied that MIS's records are suitable to ascertain the raw material input costs associated with the production of the goods in China. The Commissioner considers that MIS's records can be used to ascertain the steel billet costs that MTM would have incurred if it had purchased billet at 'arms length'.[83]

MIS provided production cost records for 'special steel billet', being the category of steel billet that included the grade of billet used to produce the goods. The Commissioner notes that 'special steel' is an industry term for specialised steel with, among other attributes, higher proportions of microalloying elements. The Commissioner has used MIS's

[80] The findings regarding the 'non-arms length' transactions relate to MIS steel billet sales to MTM for railway wheels across all grades.
[81] Section 269TAA(1)(b).
[82] EPR 632, document number 27.
[83] The Commissioner has considered Comsteel's claims about the GOC influence in the raw materials market, as discussed in Appendix C. Because of other findings the Commissioner has made, it was unnecessary to form a view on the existence of a "particular market situation". The Commissioner has also considered whether other data sources were appropriate to calculate a Chinese market price as discussed in Appendix D. The Commissioner has not relied on those benchmarks discussed in Appendix D because the Commissioner is satisfied that MIS records were a more appropriate basis to assess the cost of production in China.

production cost records for special steel billet because MIS could not isolate production costs specific only to the grade of billet used to produce the goods.[84]

The information available indicated that the grade of steel billet used to produce the goods was a premium grade with additional costs required for production, consistent with the cost data that was utilised. The costs for the specific grade are within the range of grades that comprise 'special steel billet', and the Commissioner has not identified anything to suggest that the cost data was not an appropriate basis for the specific grade.

Based on the information available, the Commissioner is satisfied that the MIS 'special steel billet' cost data is apt to determine the cost basis for the specific grade used in the production of the goods. The Commissioner relied on MIS's domestic SG&A expense records for sales of the grade of steel billet used to produce the goods.

To work out a reasonable amount of profit for sales of the grade of steel billet used to produce the goods, the Commissioner relied on MIS's domestic sales of special steel billet grades to unrelated customers. The profit amount was the difference between the special steel domestic sales revenue and MIS's cost to make and sell special steel billet. The Commissioner notes that they have weighted unit SG&A expenses for each grade of special steel billet based on the sales revenue and quantity for that grade, which follows the commission's standard method of allocating SG&A to product models.

The Commissioner considers their calculation of production costs to be a conservative basis to ascertain the profit that would have been applicable in an arms length sale for the specific grade of steel billet, given that the specific grade is a specialised product, without any known domestic market competition.[85]

To calculate delivery expenses of the billet to MTM, the Commissioner relied on MTM's inland transport expense records for its billet purchases.

Cost to sell – selling, general and administrative expenses

As part of the constructed normal value under section 269TAC(2)(c), the Commissioner has calculated MTM's SG&A expenses for domestic like goods. This is in accordance with regulation 44(2) of the *Customs (International Obligations) Regulation 2015* (Cth) (the Regulation).

Profit – legislative background

To determine the profit for the constructed normal value under section 269TAC(2)(c), the Commissioner considered regulation 45. Regulation 45(2) requires the Minister to determine an amount for profit under section 269TAC(2)(c)(ii) using sales data in the ordinary course of trade, among other requirements. Where the Minister is unable to work out the amount by using the data mentioned in regulation 45(2), the Minister must work out an amount under one of the options specified in regulation 45(3). Under regulation 45(3)(a), one of these options is to use the 'actual amounts realised by the exporter or

[84] MIS was requested to provide cost information for the specific grades used to produce steel billet used for railway wheels. MIS was also requested to provide information in relation to cost differences between grades of steel billet used for railway wheels. MIS did not provide the information requested or evidence of cost differences for these grades.
[85] EPR 632, document number 27, p 16.

producer from the sale of the same general category of goods in the domestic market of the country of export'.

As discussed above in chapter 6.3, the Commissioner finds that MTM's domestic sales of like goods were not in the ordinary course of trade. The Commissioner therefore considers the Minister cannot work out an amount for profit under regulation 45(2). The Commissioner has therefore calculated a profit under regulation 45(3)(a), being the amounts that MTM realised from domestic sales of wheel models in the same general category as the like goods.

Profit – establishing the 'same general category of goods'

The Commissioner assessed which goods fit into the same general category as the goods subject to this inquiry. The Commissioner had regard to MTM's actual, verified cost and sales records in this assessment. The Commissioner finds the same general category consists of:

- freight railway wheels of wheel size diameters 957 mm to 970 mm.[86]

The commission's policy in the Manual states:

> *The purpose of the constructed normal value is to estimate as closely as possible, using costs and profit, what the price of the exported goods would have been had they been sold in the ordinary course of trade in the exporter's domestic market*.[87]

As part of considering the appropriate general category, the Commissioner has considered how broadly or narrowly to interpret the 'same general category of goods' as like goods. In this instance, the Commissioner considers a narrower interpretation of the same general category of goods should apply. Even with a narrower interpretation, the sales included in the same general category substantially increase the volume of sales considered for the calculation of profit, beyond the sales of like goods. In other words, the sales volume in the Commissioner's recommended general category includes materially more sales than the records for like goods alone. The Commissioner's recommended general category therefore includes a sufficiently large volume of sales for the Commissioner to be satisfied that it is a suitable dataset.

Below is a summary of the Commissioner's reasoning for preferring the recommended general category, including reasons why the Commissioner has preferred a narrower category. The Commissioner has summarised analysis of MTM's confidential information in **Confidential Appendix F**.

Profit – Analysis of different wheel models based on product characteristics

MTM produced and sold domestically a broad variety of railway wheel models, including many wheels with specifications significantly different to the characteristics of the goods. The Commissioner discusses the characteristics of the goods in chapter 3 of this report. Based on MTM's records and the information verified, the Commissioner identified the

[86] This includes the sales of like goods in the domestic market.
[87] The Manual, chapter 9.2.

key characteristics below, relevant to selecting a general category of goods for the purpose of calculating a profit under 45(3)(a):

- wheel grade – including chemical and physical specifications relating to purchaser requirements and national standards, and influenced by the grade of steel billet consumed to produce the wheels
- wheel end use – specifically, wheels used for freight rail or passenger rail vehicles
- outer diameter of the wheel (in millimetres).

The Commissioner could not reliably compare wheel models based on factors affecting grade. MTM provided limited information about which steel billet grades it used to make each wheel model. MTM also stated that it is difficult to compare steel billet grades because of the many different raw material and production factors that can materially affect the cost and price of billet. Noting the Commissioner could not reliably compare wheels models by grade, the Commissioner has primarily relied on records about wheel end use and outer diameter.

Wheel end use

MTM sold both passenger and freight railway wheels in the domestic market. The Commissioner considers it most appropriate to only include freight railway wheels in the general category of goods. Freight rail vehicles have different functional requirements compared to passenger rail – such as the speed of rail and amount of load. Consequently, freight and passenger wheels have generally different specification requirements that correspond to their different end use functions.

Wheel outer diameter

The Commissioner considers that the general category of goods should consist of the freight railway wheels with the diameter closest to the diameter of the goods sold for export. The Commissioner understands that wheel diameter generally can affect how a wheel performs under different conditions when used on railways. The domestic market for railway wheels in China includes companies that construct railway carriages for end use outside China. In that context, MTM sold models of railway wheels domestically produced to meet different national standards. Wheel diameters differ across models in part based on the relevant national standards. Each national standard also affects other price and cost factors, like raw material inputs and manufacturing specifications.

The goods description for this inquiry limits the diameter of wheels to 38 inches, or 966 to 970 mm. The diameter range for goods matching the description is only 4 mm, which illustrates how closely wheel diameter is associated with specific national standards and the other specifications subject to those standards. By contrast, the outer diameters of freight and passenger railway wheels globally ranges by several hundred millimetres.

MTM's domestic sales with the closest diameter to the goods were of 957 mm. MTM's domestic sales of other diameters were less similar to the like goods, with dimensions ranging from 450 mm to 952 mm, and 1000 mm to 1250 mm.

Profit – Assessment of wheel model characteristic analysis: a broader general category would include a high degree of variance, with products less similar to the like goods

The Commissioner considers domestic sales of the closest specifications to the goods to be the most suitable to approximate a proxy for the amount of profit that could be achieved in domestic sales in the ordinary course of trade.

Compared to sales of less similar products (sales of passenger wheels or freight wheels with diameters further from the goods description), the Commissioner found MTM's unit costs to make and unit sales prices fluctuated significantly across different models of railway wheels sold in the domestic market during the inquiry period. The Commissioner has found significant fluctuations even when comparing smaller subsets of wheel models, such as models sold for the same end use and a models with similar outer diameters.

The Commissioner has also found an inconsistent relationship overall between unit cost and unit sales price across the wheel models MTM sold domestically. Unit sales prices did not appear to closely correspond to unit production costs. Consequently, the profit margins across different models also fluctuated significantly. The high variation in profit margins across models suggests that MTM may have used different pricing factors, or weighted pricing factors differently, when setting prices for different wheel models. In that context, using a broader general category of wheel models to calculate profit does not appear to closely estimate the profit of like goods sold domestically in the ordinary course of trade.

A broader general category of goods would include a collection of models that have very different unit costs, unit selling prices, unit profit and profit margins, both when comparing across all models in a collection and comparing to models of like goods only. The Commissioner considers that a broader general category therefore would not closely estimate profit for the goods had they been sold domestically in the ordinary course of trade. By contrast, the Commissioner's recommended, narrower general category includes models with relatively consistent unit costs and unit selling prices, suggesting that the calculated profit is more suitable to calculate profit for the sales of like goods in China.

Confidential Appendix F further summarises certain confidential aspects of the Commissioner's analysis of MTM's sales and cost records for assessing the scope of general category.

Profit – Additional evidence relating to profitability of sales

The Commissioner has examined the profitability of domestic sales for models with specifications closest to the goods. The Commissioner has also identified that MTM targeted a certain rate of profit based on information provided for one sample sale of like goods.[88] The Commissioner has considered this information in a limited context, noting that the arrangement was between related parties and the Commissioner identified evidence of other factors affecting the price. As discussed above in this chapter, a broader general category would include models with a range of very different profit

[88] EPR 632, document number 26, p 29.

margins, even when limiting the category to models of the same end use and similar diameters to like goods models.

The Commissioner considers that the profit margins of some models vary so significantly from the specifications closest with the goods, and the profit likely achievable for sales of like goods, based on the information available. The available evidence does not provide a sufficient basis for justifying why a broader category would more closely estimate the profit that would be achieved for sales of like goods in the ordinary course of trade.

6.3.6 Normal value – domestic market conditions for sales of like goods

As stated in chapter 6.2, section 269TAC(2)(a)(ii) states that, where the Minister is satisfied that because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under section 269TAC(1), normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) and is to be determined by reference to section 269TAC(2)(c).

The commission received submissions claiming the situation in the Chinese domestic market was such that sales of like goods were not suitable to calculate normal value under section 269TAC(1). **Appendix C** contains a summary of the material that was before the Commissioner in relation to these submissions. As discussed above in this chapter, the Commissioner finds there is an absence of domestic sales of like goods relevant for determining MTM's normal value under section 269TAC(1) because the Commissioner is not satisfied that the relevant sales were arms length or in the ordinary course of trade. Under section 269TAC(2)(a)(i), the Commissioner has therefore not calculated a normal value under section 269TAC(1).

Having already found the domestic sales of like goods unsuitable to calculate a normal value under section 269TAC(1) because of section 269TAC(2)(a)(i), the Commissioner had no need to decide if section 269TAC(2)(a)(ii) also applies. As a result, the Commissioner did not make findings as to whether the situation in the Chinese market is such that the sales of like goods are not suitable for use in determining a normal value price under section 269TAC(1).

6.3.7 Normal value adjustments

In constructing a normal value under section 269TAC(2)(c), the Commissioner considers that certain adjustments are necessary to ensure that the normal value is properly comparable with the export price under section 269TAC(9). The Commissioner details these adjustments in the MTM verification report[89] and in **Appendix B** of this report. In accordance with section 269TAC(9) of the Act, the Commissioner finds that the following adjustments are necessary to ensure a fair comparison of normal values and export prices.

[89] EPR 632, document number 26, pp 24–25.

Adjustment type	Deduction/addition
Export inland transport	Add an amount for export inland transport
Export port handling charges	Add an amount for export port handling charges
Export credit insurance	Add an amount for export credit insurance
Export fixing and binding fee	Add an amount for export fixing and binding
Export bank charges	Add an amount for export bank charges
Export product liability insurance	Add an amount for export product liability insurance
Export credit terms	Add an amount for export credit terms

Table 8: Normal value adjustments

6.3.8 Dumping margin

The Commissioner has calculated the dumping margin in accordance with section 269TACB(2)(a), by comparing the weighted average of export prices over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of that period. The dumping margin for the goods exported to Australia by MTM for the inquiry period is **13.3%**.

The dumping margin calculations for MTM are at **Confidential Attachment 3.**

6.4 Variable factors – All other exporters from China

As the Commissioner is satisfied that no other Chinese entities exported railway wheels to Australia in the inquiry period, the Commissioner has established a rate for all other exporters at the same rate as established for the co-operating exporter, MTM. Export prices for all other exporters from China have been established under section 269TAB(3) of the Act and normal values have been established under section 269TAC(6) using relevant information provided by the cooperative exporter, MTM. The dumping margin all other exporters from China for the inquiry period has been calculated at **13.3%**.

The Commissioner's dumping margin calculations all other exporters are at **Confidential Attachment 4.**

6.5 Submissions relating to assessing variable factors

6.5.1 Assessing if MTM sold domestic like goods in arms length transactions

Legislative background

Section 269TAA(1) defines 3 circumstances where a purchase or sale of goods shall not be treated as an arms length transaction. Section 269TAA(1)(b) describes one of those circumstances. Under section 269TAA(1)(b), the purchase or sale of goods shall not be regarded as an arms length transaction where:

> *the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller.*

The Commissioner has found this situation applied for MTM's sale of like goods to its domestic customer and, therefore, those sales were not arms length transactions.

Summary of claims about arms length assessment

In its submission published on 19 April 2024,[90] Masteel submitted that MTM's domestic like goods sales were made at arms length. Masteel submitted that, if MTM's domestic like goods sales are at arms length, then the Commissioner should calculate a normal value using those sales.

More specifically, Masteel submitted that:

- MTM and its domestic customer were independent market players
- MTM's domestic customer used a competitive supply arrangement (including confidential details that Masteel redacted from the public version of its submission)
- regardless of whether MTM's domestic sales complied with Chinese revenue law, the sales reflected a market price.

Comsteel's submission published 3 May 2024 disagreed with Masteel's submission.[91]

Summary of Commissioner's response to claims about arms length assessment

The Commissioner finds that MTM's domestic like goods sales were not made at arms length based on the evidence that Masteel provided, as described in chapter 6.3.3 and at **Confidential Appendix E** of this report. In this report, **Confidential Appendix E** has been revised to incorporate additional information Masteel provided and which the Commissioner considered to make their finding about the arms length assessment.[92]

Having regard to Masteel's claims summarised above and based on available evidence, the Commissioner remains satisfied that MTM appeared not to sell domestic like goods at arms length in the inquiry period. Below details Masteel's claims further and summarises how the Commissioner considered each of Masteel's submitted claims.

Assessment of claim: whether MTM and its domestic customer acted as independent market players

Masteel submitted that the Commissioner did not conclude that the price MTM sold to its domestic customer was influenced by the relationship between the parties because they were related entities. Masteel also submitted the Commissioner did not find the nature and extent of the influence or the objective served by prices being influenced.

For context, the Commissioner found that MTM and its domestic customer are both associated parties, because they are both partly owned by the State-Owned Assets Supervision and Administration Commission (SASAC) of the State Council.[93]

Masteel submitted that MTM's domestic customer procured railway wheels using a competitive supply process. Masteel included details of this supply process that it redacted from the public version of its submission.

The Commissioner considers it is relevant evidence that the SASAC of the State Council owned both MTM and its domestic customer in the inquiry period – this evidence relates

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[90] EPR 632, document number 30.
[91] EPR 632, document number 31.
[92] The Commissioner will provide Masteel a copy of Confidential Appendix E.
[93] See chapter 1.2.2 of the commission's verification report for MTM: EPR 632, document number 26.

to the relationship between MTM and its domestic customer. That said, the Commissioner has not relied only on this evidence to find that MTM sold to its domestic customer in non-arms length transactions. The Commissioner has also considered other evidence, summarised in chapter 6.3 and **Confidential Appendix E** of this report.

The Commissioner considers that their findings in chapter 6.3 and **Confidential Appendix E** explain the nature of the price influence relevant for section 269TAA(1). Based on available evidence, the Commissioner finds that prices paid in the inquiry period were influenced by the relationship between the buyer and seller. For example, the discounts applied were subject to the customer's request, not uniformly applied and not applied in accordance with the terms or the written agreement.[94] The Commissioner does not consider that section 269TAA(1) requires additional conclusions about the extent of apparent price influence or the motivation behind that influence.

The Commissioner also considered Masteel's claims about its domestic customer's supply process. Masteel's claims on this point do not align with evidence provided about the supply of domestic like goods, as discussed in **Confidential Appendix E**. Masteel did not provide supporting evidence about its submitted claims on domestic supply process. Because Masteel's claims are inconsistent with previous evidence, the Commissioner does not consider Masteel's claim on this point is reliable.

Assessment of claim: whether MTM and its domestic customer complied with market rules despite not complying with all agreed contractual terms

In the public version of its submission, Masteel submitted that:

- strict compliance with contractual terms is not a necessary or common feature of business in most countries
- instead of compliance strictly with contractual terms, parties in some countries aim to ensure that transactions mutually benefit each party
- MTM and its domestic customer managed transactions accounting for commercial short-term and long-term benefits, including profitability
- the Commissioner did not address why non-compliance with contractual terms did not reflect arms length arrangements.

Masteel also made additional confidential submissions about this claim.

The Commissioner has assessed if MTM's like goods sales to its domestic customer were arms length based on the available facts and evidence. To assess if a relationship between parties appeared to influence the transaction price, the Commissioner considers relevant facts and evidence including:

- MTM and its domestic customer did not comply with certain terms
- the nature of the terms with which the parties did not comply
- the way in which the parties did not comply with certain terms.

The Commissioner addresses specifics about non-compliance in **Confidential Appendix E**, noting Masteel has identified certain details are commercially sensitive. The Commissioner also notes that Masteel's submission did not dispute any of the facts

[94] MTM verification report: EPR 632, document number 26, p 11.

summarised in that appendix. Instead, Masteel's submission disagrees with the Commissioner's findings based on those facts.

The Commissioner has not assumed that a hypothetical transaction must be non-arms length if the parties deviate from any contractual term. The Commissioner has not assumed that a transaction is necessarily non-arms length because the parties appeared to consider a factor other than profit. That said, the Commissioner finds it relevant to consider how the parties appeared to include profit as a factor in contractual terms and in the nature of practical commercial arrangements.

Assessment of claim: whether MTM's sales reflected a market price

Masteel submitted that regardless of the whether MTM's domestic sales complied with Chinese revenue law, the sales reflected a market price.

The Commissioner considers that finding a sale complied with domestic revenue law does not necessarily determine whether that sale is arms length under section 269TAA. The Commissioner considered the circumstances of the transactions, including contractual arrangements and other factors affecting price setting, in determining that MTM's domestic like goods sales did not reflect an arms length market price.

6.5.2 Assessing if MTM sold domestic like goods in the ordinary course of trade

In its submission published 19 April 2024,[95] Masteel submitted that SEF 632 did not explain the Commissioner's reasons for finding that MTM's domestic like goods sales were not made in the ordinary course of trade. Masteel referred to the Commissioner's finding that MTM's domestic like goods sales were made in other 'unusual circumstances'. Specifically, Masteel stated the Commissioner did not set out what sales in 'usual circumstances' would be, contrasted to sales in 'unusual circumstances'.

Comsteel's submission published 3 May 2024 disagreed with Masteel's submission on this topic.[96]

Having considered Masteel's submissions, the Commissioner finds that MTM sold like goods domestically under a pricing arrangement with its customer that reflected unusual circumstances, compared to:

- terms reached in genuine commercial negotiation between unaffiliated parties
- MTM's selling arrangements for railway wheels to other customers, noting:
    - MTM and its customers entered into customer-specific selling agreements and corresponding pricing arrangements
    - MTM's exporter questionnaire response stated it did not offer price reductions in the domestic market[97]
    - the Commissioner did not identify evidence of common arrangements with other domestic customers.

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[95] EPR 632, document number 30.
[96] EPR 632, document number 31.
[97] EPR 632, document number 9, p 62 (response to question I-3.8).

The Commissioner refers to the reasons in **Confidential Appendix E** for finding the sales were not made in the ordinary course of trade.

6.5.3 Using MIS's records to assess the cost of production in China for steel billet

In its submission published 19 April 2024,[98] Rio Tinto submitted that there is no allowance in the legislation to disregard MTM's actual cost of inputs to production and select other inputs to calculate 'a rate [of dumping duty] that the [commission] prefers for an outcome'. Rio Tinto submitted that the required assessment is whether 'the costs reflected in the exporters' records reasonably reflect the costs associated with the production and sale of goods in question'.

In its submission published 19 April 2024, Masteel submitted that the purchase price of the steel billet used to manufacture the goods should be adopted to construct the cost of railway wheels. Masteel submitted that the calculation methodology replicated inconsistencies identified by the WTO Dispute Settlement Panel report *DS603*.

Comsteel disagreed with Masteel's submission.[99]

The Commissioner considers that costs shall normally be calculated on the basis of the records kept by the exporter or producer under investigation, *if* such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

The Commissioner has decided not to rely on MTM's steel billet cost records in this inquiry, on the basis that the records kept by MTM do not reasonably reflect the costs associated with the production and sale of the product under consideration. As discussed in this chapter, the Commissioner has used in-country Chinese cost and sales data from MIS – MTM's related supplier – to determine the cost of production for steel billet in China for like goods. The calculation methodology does not replicate matters considered by *DS603*.

6.5.4 Data used to calculate the steel billet cost

Masteel submitted that the Commissioner used an incorrect amount for steel billet costs because the Commissioner did not make appropriate comparisons. Masteel redacted most of this claim from the public version of its submission.

Comsteel submitted generally that the Commissioner should disregard Masteel's claim because, contrary to Masteel's claim, the Commissioner used a correct amount for steel billet and undertook appropriate comparisons.

The Commissioner has relied on MIS's reported cost data, being the data considered to be the best available information to calculate steel billet costs.

MIS did not provide steel billet cost data in the format requested and instead stated that it could not provide cost records more specific than to the general category of special steel billet. Masteel made submissions in response to the SEF alleging that the Commissioner

[98] EPR 632, document number 28.
[99] EPR 632, document number 31.

did not make appropriate comparisons. Masteel alleged deficiencies in the methodology and data used, notwithstanding that the Commissioner relied on the data reported by MIS and information verified, and Masteel did not provide any new data to support its claims.

The information available indicated that the grade of steel billet used to produce the goods was a premium grade with additional costs required for production, consistent with the cost data that the Commissioner has used. Masteel made claims regarding the 'true costs' for the grade of steel billet but did not provide verifiable information to support its claims.[100]

The Commissioner also refers to their assessment of an amount of profit for steel billet, discussed in chapter 6.3. As discussed, the Commissioner finds that MIS steel billet sales to MTM for railway wheels were at a loss, including for the grade used to produce the goods. The findings regarding the 'non-arms length' transactions relate to MIS steel billet sales to MTM for railway wheels across all grades.

Based on the information available, the Commissioner considers it appropriate to have regard to MIS sales to unrelated customers to determine an amount for profit, to ascertain a proxy for the costs that would be borne by MTM in 'arms length' transactions. The Commissioner considers that it would be inappropriate to have regard to MIS below-cost sales of steel billet to MTM for this purpose.

6.5.5 Use of Turkish data to calculate the normal value

Comsteel, Masteel and Rio Tinto submitted that the Commissioner calculated a normal value using a Turkish benchmark.[101] The Commissioner considers they have not used a Turkish benchmark to calculate normal value in this inquiry.

The Commissioner has considered the submissions made by Comsteel, Masteel and Rio Tinto in relation to the calculation of normal value using a Turkish benchmark. The Commissioner considers they have calculated a normal value using:

- MIS's and MTM's records – for steel billet costs
- MTM's records – for all other amounts.

In using MIS's and MTM's records as described, the Commissioner has calculated a normal value using Chinese data. Accordingly, the Commissioner notes that the normal value calculated for the purpose of this inquiry does not rely on data from the Turkish benchmark. The data used to calculate the normal value was provided to Masteel for review.

The Commissioner has considered other information as part of the inquiry (for example, steel billet market prices in Türkiye) but did not use it to calculate the cost of production. The other information considered confirmed the appropriateness of the methodology

[100] MIS was requested to provide information in relation to cost differences between grades of steel billet used for railway wheels in the questionnaire and at verification. MIS submitted that it could not provide this information.
[101] EPR 632, document numbers 28–30.

adopted, which relied only on Chinese data. This report discusses the scope of this assessment in **Appendix D**.

6.5.6 Deduction for premium from the constructed steel billet costs

Masteel submitted that the Commissioner should have deducted a premium of 2% from the constructed cost of steel billets to reflect the true cost of the steel billet used to manufacture the goods.

The Commissioner has relied on information reported by MIS and MTM and verified, as described in chapter 6.3.5. This included the cost data reported by MIS for the grade of steel billet. The Commissioner considers that there is no evidence that an adjustment was required for a difference in premium.

The data used from MIS was for special steel – the category of billet grades including the particular grade of steel used in the production of the goods. As discussed at chapter 6.3.5, the information indicated that the grade of steel billet used to produce the goods was a premium grade with additional costs required for production, consistent with the cost data that was utilised.

The commission provided the data used to calculate the normal value to Masteel, for review. Masteel has not provided any additional cost data or verifiable information to substantiate a basis for a deduction to the constructed steel billet costs.

6.5.7 Method of calculating profit margin for like goods in normal value

Masteel's submissions

Calculation of actual amounts realised by the exporter or producer

In its submission published 19 April 2024, Masteel submitted:[102]

- the Commissioner cannot calculate the profit based on models of railway wheels that are not within the scope of the goods
- the Commissioner should use the constructed costs of steel billet to calculate the profit of railway wheels, the same as the Commissioner did for constructing the normal value.

Same general category of goods

In its submission published 19 April 2024, Masteel submitted the following about the general category of models used to calculate profit under section 269TAC(2)(c).[103] To summarise:

- the Commissioner selected low-volume sales and disregarded high-volume sales because, presumably, low-volume sales were more representative or consistent with the volume of domestic sales of the relevant railway wheels
- the volume at which that 'general category of goods' is sold is irrelevant

[102] EPR 632, document number 30.
[103] EPR 632, document number 30, pp 4–5.

- if the purpose of the constructed normal value is to as closely as possible estimate the price of exported goods had they been sold in the ordinary course of trade in the exporter's domestic market, and estimating this using costs and profit, then more than the volume of goods sold needs to be taken into account
- regulation 45(3)(a) requires determining profit by 'identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export'
- the Regulation does not permit the Commissioner to arbitrarily expand or narrow the scope of the general category of goods to one that the Commissioner thinks is more representative based on sales volume or some other arbitrary criteria
- the general category of goods should be 'railway wheels' or 'freight railway wheels'.

Masteel submitted that the Commissioner's approach replicated inconsistencies identified by the WTO Dispute Settlement Panel report *DS603*.

Comsteel's submissions

In its submissions published 19 April and 3 May 2024,[104] Comsteel stated that the Commissioner had used an appropriate amount of profit to calculate a normal value.

Consideration of submissions

The Commissioner notes Masteel's submissions on the following matters are seemingly contradictory:

- Masteel submitted that a narrower category of goods should be used to assess profit (limited to the scope of the goods), while also submitting for a broader 'general category of goods', including all railway wheels or freight railway wheels (including many products beyond the scope of the goods)
- Masteel submitted that the Commissioner should use the constructed costs (which incorporates MIS information), while also submitting that the Commissioner must identify the actual amounts realised by the exporter or producer (which would not incorporate MIS information), for consistency with the Panel's findings in *DS603*.

Calculation of actual amounts realised by the exporter or producer

In relation to the costs used to calculate an amount for profit, the Commissioner considers they have correctly calculated an amount for profit using MTM's actual production costs, consistent with regulation 45(3)(a) and the Panel's findings in *DS603*. The Commissioner has not accepted the changes to the cost data proposed by Masteel for the purposes of calculating an amount for profit. The Commissioner notes that the cost data proposed by Masteel does not reflect MTM's actual production costs, and therefore is not suitable for deriving the actual amounts realised by MTM as specified in regulation 45(3)(a).

[104] EPR 632, document numbers 29, 34.

Same general category of goods

In relation to the domestic sales used to calculate an amount for profit, the Commissioner has considered the appropriateness of the 'same general category' based on the information on the record, including the submissions in response to the SEF.

As set out in chapter 6.3, the Commissioner considers it appropriate to calculate profit for the 'same general category' of goods, by including all freight railway wheels of diameters between 957 mm and 970 mm. This 'same general category' incorporates all sales of like goods but is of a significantly larger volume of total sales than the volume of like goods only. It excludes passenger railway wheels, which have a different end use to the subject goods and freight railway wheels. It also excludes diameters outside of these diameters, being diameters that are further from the specifications of the goods (966 to 970 mm). Railway wheels with diameters below the diameters in the general category range from 450 mm to 952 mm, and wheels with diameters above the general category range from 1000 mm to 1250 mm.

The 'same general category' is therefore broader than the scope of the like goods. The Commissioner considers that it would be inappropriate to limit the sales to the scope of like goods, noting that sales of like goods were found to not be in the ordinary course of trade.

The Commissioner notes that Masteel seems to accept this rationale, in stating that:

> *If … 'the purpose of the constructed normal value is to estimate as closely as possible, using costs and profit, what the price of the exported goods would have been had they been sold in the ordinary course of trade in the exporter's domestic market', then more than the volume of goods sold needs to be taken into account*.[105]

The 'same general category' is narrower than the other two categories proposed by Masteel, including all railway wheels or freight railway wheels.

As set out in chapter 6.3, the Commissioner considers that it is appropriate to limit the sales to a narrower 'same general category' because:

- broader categories of goods included models with end uses, diameters and wheel grades that appear to materially affect the production cost and selling price of those models
- MTM's production cost and sales data showed unit cost and unit prices for different models of wheels varied greatly, even between models of similar diameters and the same end use
- MTM provided evidence that it aimed to achieve a certain range of profit for the like goods, not in line with the much larger range of profit margins found across models in broader general categories including:
  - a category including all models of railway wheels
  - a category including all models of freight railway wheels, being wheels with the same general end use

[105] EPR 632, document number 30, pp 4–5.

- categories of the same end use and a broader set of wheel diameters.

In response to Masteel's other submissions about the sales volume of wheel models, the Commissioner had regard to a narrower category of goods than all railway wheels or all freight railway wheels, as a narrower category of goods was considered to be more representative of the relevant railway wheels. The Commissioner did not select a general category based on sales volume. SEF 632 noted that the general category selected had a substantially higher volume of sales to express that the profit calculated using the recommended general category was not materially identical to a hypothetical profit calculated using like goods only.

The Commissioner notes that Masteel's submission did not provide any supporting information to justify why expanding the 'same general category' to a broader category such as all railway wheels or freight railway wheels would be more appropriate to calculate a proxy for the price of like goods in the ordinary course of trade in the domestic market. Masteel's submission also does not provide any supporting information to justify that the 'same general category' selected is unsuitable to determine an appropriate proxy for the price of like goods in the ordinary course of trade in the domestic market.

Having regard to the information available in this inquiry, the Commissioner considers the 'same general category' selected is the most appropriate to calculate profit, to meet the policy intent of estimating, as closely as possible, the price of like goods to the exported goods, had MTM sold them in the ordinary course of trade in China.[106]

[106] The Manual, pp 33, 39.

7 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Summary of findings

Based on the evidence obtained during this inquiry, the Commissioner is:

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

After undertaking analysis and making findings, the Commissioner is satisfied that the following would be likely to occur if the measures expire:

1. China would continue exporting the goods because:
   - it has been the dominant supplier to the Australian market since 2018, maintaining distribution links to 3 of the 4 mining companies that purchase the goods
   - based on verified production capacity information, further discussed at chapter 7.5.3, it maintains excess production capacity.

2. Exports from China would be dumped because the goods were dumped during the inquiry period and relevant circumstances indicate that this dumping is likely to continue.

3. The dumped goods from China would cause material injury to Australian industry in the form of reduced sales and market share, price depression and price suppression and reduced profit and profitability because:
   - the Australian market for railway wheels is highly concentrated, with 2 established suppliers and 4 mining companies who purchase the railway wheels
   - while railway wheels are produced to specification and the mining company may consider a range of factors in the purchasing decision, price is a significant consideration (as considered at chapter 7.7)
   - dumped exports from China undercut Australian industry prices during the inquiry period
   - dumping would continue to provide Chinese producers with a significant price advantage that would see the Australian industry suffer material price injury, should the Australian industry compete on price, or if the Australian industry is unable to compete on price, material reductions in sales volume and market share
   - the Australian industry would also suffer material injury in the form of reduced profits and profitability, as well as other factors related to price and volume injury.

4. France would not continue exporting the goods because:
   - there have been no exports of the goods from France since 2018 and there is no evidence before the Commissioner which suggests that distribution links or pre-

qualifications to supply the Australian market have been maintained since measures were imposed
  - the sole manufacturer of the goods in France has recently entered insolvency administration, which makes it unlikely that Australian mining companies seeking timeliness and reliability of supply would see France as a viable source of supply.

7.2 Background – legislative framework

Under section 269ZHF(2) the Commissioner must not recommend that the Minister take steps to secure the continuation of measures unless they are 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 the material injury that the measure is intended to prevent.

The Commissioner notes that their assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. An assessment of 'likelihood' under section 269ZHF(2) requires the Commissioner to consider whether the expiry of the measures would **more probably than not** lead to the continuation or recurrence of dumping and material injury.

In making this assessment, the Commissioner must base their conclusions and recommendations on facts,[107] as the likelihood assessment under section 269ZHF(2) requires a reasoned and adequate explanation with a positive factual basis. Accordingly, the Commissioner must arrive at a reasoned conclusion based on positive evidence.

7.3 Background – the Commissioner's approach

The Commissioner has considered several relevant factors to assess the likelihood that dumping and material injury will continue or recur, as outlined in the Manual.[108] The Commissioner's view is that the relevance of each factor varies depending on the nature of the goods and the market into which the goods are sold. In this instance, the Commissioner finds that no single factor is determinative. Rather, the Commissioner considers that when assessed in aggregate, the factors point to the conclusion that, for exports of the goods from China, the expiry of the measures would likely lead to the continuation or recurrence of dumping and material injury. The following analysis examines the various factors that the Commissioner has considered in arriving at this conclusion.

The Commissioner's analysis for this chapter is at **Confidential Attachments 5 and 6**.

7.4 Australian industry claims

In its application, Comsteel made the following claims regarding the continuation or recurrence of injury of railway wheels exported to Australia from China and France.

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[107] Anti-Dumping Review Panel, *ADRP Report No 44: clear float glass exported from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand*, ADRP, Australian government, December 2016, accessed 26 March 2024.
[108] The Manual, pp 136–138.

The Commissioner has considered the applicant's claims in the analysis below.

Summary of claims

1. Producers in China and France are active on export markets with exports from both countries increasing significantly since 2017.
2. MTM has maintained distribution links into the Australian market through the life of the measures.
3. The applicant has continued to experience rigorous price competition from Chinese imports, with significant levels of price undercutting apparent.
4. Domestic demand in China for steel products has slowed and producers are actively seeking out increasing export sales at reduced prices to maintain production utilisation rates.
5. In the absence of measures, export volumes and values to Australia from both China and France would increase.
6. While exports from France ceased following the imposition of measures, the common ownership of the Chinese producer MTM and the French producer Valdunes provides an opportunity for the parent company to shift export volumes from China to France should measures not be continued on exports from France.
7. Should the measures be allowed to expire, the advantage afforded to the dumped exports by MTM (whether it be from the facility in China, or from Valdunes' production facility in France) will cause a recurrence of the material injury that the measures are intended to prevent.
8. The material injury that will likely occur will be in the form of increased price undercutting, lost sales volumes due to the price sensitive nature of purchases in the industry, and reduced profits and profitability.
9. The expiration of the measures will seriously undermine and threaten the viability of domestic railway wheels manufacture in Australia.

7.5 Are exports likely to continue or recur?

China

The Commissioner considers that, should the measures expire, exports from China are likely to continue.

This finding is based on the following factors:

- imports into the Australian market have continued following the imposition of measures
- distribution links have been maintained and purchasers of railway wheels from China have indicated they intend to continue to source supply from China
- exporters from China maintain excess production capacity.

France

The Commissioner considers that exports from France are unlikely to recur in the future.

This finding is based on the following factors:

- Valdunes, the only known manufacturer of the goods in France, has not exported the goods to Australia since the imposition of the measures[109]
- there is no evidence that MG Valdunes has maintained distribution links to the Australian market
- given the time elapsed since Valdunes ceased supplying the Australian market, it is likely that Valdunes would need to reapply for supplier pre-qualification, a process which can take considerable time to complete
- publicly available information indicates that Valdunes has entered into insolvency administration due to its inability to pay its debts, a circumstance the Commissioner considers would limit its viability as a future supplier to the Australian market
- given that MTM is seeking to sell its interest in Valdunes and Valdunes is also in insolvency administration, the Commissioner considers that it is unlikely that MTM would shift export supply to Valdunes in the absence of measures applying to France.

For these reasons, the Commissioner is satisfied that the expiry of the measures would not be likely to lead to a recurrence of exports from France.

In making this finding, the Commissioner has assessed import volumes, maintenance of distribution links, excess production capacity and other relevant considerations, as outlined under rest of chapter 7.5 below.

7.5.1 Import volumes

The Commissioner has analysed import volumes from all sources, including the subject countries, from 1 July 2014. The Commissioner has also analysed the pattern of trade before and after the measures to assess the effect the measures had on import volumes. The Commissioner's analysis is in Figure 12 below. Figure 12, and the underlying data supporting it, indicates that:

- prior to the imposition of measures the totality of imports were sourced from China and France
- following the imposition of measures imports from France ceased, however the volume of imports from China increased
- China has remained the primary supplier of imports into the Australian market, with only a small volume of imports evident from other sources in FY 2022.

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[109] Valdunes further stated in a submission that it had not made a sale of the railway wheels subject to the measures either domestically, to Australia or to a third country since February 2018: see EPR 632, document number 4.

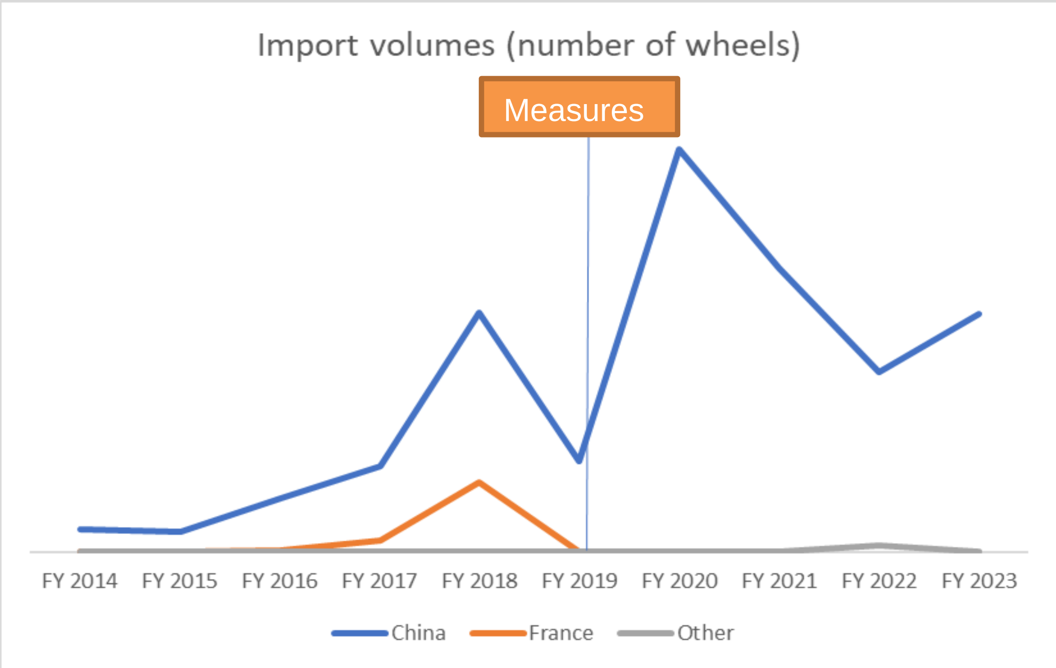

Figure 12: Import volumes (unit: wheels)

7.5.2 Maintenance of distribution links

As detailed in chapter 4.3, railways wheels were only procured by 4 entities in Australia during the inquiry period. These are the same entities that procured railway wheels during the original investigation. The Commissioner has observed no new importers of the goods from the subject countries since the imposition of measures, however noted a small volume of goods were imported from Italy, a country not subject to measures, during financial year 2022.

The Commissioner has used ABF data as well as information supplied by relevant parties during the inquiry to analyse distribution links in the Australian market.

The Commissioner observes that, following the imposition of measures, distribution links were maintained between MTM (including its parent entity, MIS, the original exporter), and its Australian mining company purchasers. Imports from France ceased following the imposition of measures, with the Australian importer of railway wheels from France sourcing the entirety of its imports instead from China after that time.

7.5.3 Excess production capacity

The Commissioner has analysed the excess production capacity for each of the exporters that submitted capacity utilisation data for the inquiry period. The Commissioner is satisfied that MTM has excess production capacity that would allow it to supply the entire Australian market.

The Commissioner notes Valdunes stated in its exporter questionnaire response that its production capacity had significantly reduced since the original investigation and it was operating with limited excess production capacity during the inquiry period.

7.5.4 Other relevant considerations – Valdunes

Information considered in SEF 632

Valdunes was a wholly owned subsidiary of MIS in the inquiry period. In a submission published on 22 September 2023, Valdunes stated that MIS was in negotiations to divest its interest in Valdunes.[110]

On 14 November 2023, MIS made an announcement pursuant to the rules governing the listing of securities on the stock exchange of Hong Kong concerning Valdunes.[111] The announcement indicated that Valdunes had been deemed to have experienced cash flow insolvency under French law due to its inability to repay its debts with its available assets. Valdunes was therefore required to file a declaration of cessation of payments with the Lille Métropole Commercial Court requesting the initiation of judicial reorganisation proceedings.

The announcement provided background and reasons for the application, noting MIS had:

> *adopted a series of measures such as strengthening management, improving production, adjusting product structure, benchmarking and identifying discrepancies, as well as exploring internal potentials, which have enabled MG-Valdunes to achieve certain phased results in terms of market development, operational improvement, and losses reduction, but have not yet achieved a substantial turnaround in its loss-making situation. Especially since 2020, the cost of European manufacturing industry has been increasing, the market demand in the global rail transportation industry has declined sharply, the prices of ocean freight and European energy have increased significantly, and MG-Valdunes' operating situation has become more severe.*[112]

On 27 November 2023, a further announcement[113] was provided to the Hong Kong stock exchange indicating that the court initiated judicial reorganisation proceedings against Valdunes on 20 November 2023. The court appointed a bankruptcy judge, a representative of creditors, an auctioneer, a real estate appraiser and a judicial administrator. The tasks of the judicial administrator include, among other things, assisting Valdunes in proceeding with all administration and finance disposal related works. Having regard to the above factors, the Commissioner considers that there is positive evidence which indicates it is unlikely that Valdunes would represent a viable source of supply for the Australian market, given its financial position and the need for the mining companies to have certainty of supply to ensure the efficient operation of their railways.

In its application, Comsteel submitted that:

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[110] EPR 632, document number 4.
[111] MIS, *Announcement on bankruptcy reorganisation application of a wholly-owned subsidiary MG-Valdunes*, HKEX News website, 14 November 2023, accessed 25 March 2024.
[112] MIS, *Announcement on bankruptcy reorganisation application of a wholly-owned subsidiary MG-Valdunes*, p 2.
[113] MIS, *Announcement on progress of the bankruptcy of MG-Valdunes, a wholly-owned subsidiary*, HKEX News website, 27 November 2023, accessed 25 March 2024.

> *due to the common ownership between the producing companies in China and France, it is considered prudent that Comsteel also seek the continuation of exports to Australia from France even though there [have] been no exports from the Valdunes facility since the measures were imposed.*[114]

Information not considered in SEF 632

In March 2024, the Europlasma Group, a French organisation, announced it was approved to take over Valdunes.[115] This announcement indicated the Europlasma Group intended to return Valdunes to profitable operation within 2 years. This announcement stated the Europlasma Group aimed to supply the domestic French railway industry but did not state an aim to export railway wheels to Australia or any other country.

The Commissioner notes the Europlasma Group's takeover indicates:

- China Baowu Steel Group Corporation Limited (the China Baowu Group) will not control Valdunes for the foreseeable future
- Valdunes is unlikely to become profitable until 2026
- if Valdunes does not become profitable by 2026, then it is unclear if Valdunes would continue operating
- With the stated focus on supply to the domestic French railway industry, it is not clear that Valdunes intends to export in the future.

Conclusion

For the reasons detailed above, the Commissioner does not consider it likely that Valdunes would represent a viable source of supply to the Australian market. As such the Commissioner is not satisfied that the expiry of the measures would be likely to lead to a recurrence of exports from France.

7.6 Will dumping continue or recur?

China

The Commissioner considers that there is positive evidence which indicates that the expiry of the measures would be likely to lead to a continuation of dumping from China.

The Commissioner's findings concerning a continuation or recurrence of dumping of exports from China is based on the finding that exports by the only exporter from China were dumped during the inquiry period, with a dumping margin of 13.3%.

The Commissioner considers that the dumping identified during the inquiry period is likely to continue, noting the key points described below.

Key points

1. The dumping margin for the inquiry period was not immaterial.

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[114] EPR 632, document number 1.

[115] Europlasma, *Europlasma's offer to take over MG-Valdunes approved by the commercial court of Lille Métropole*, Europlasma website, 20 March 2024, accessed 11 June 2024.

2. Analysis of the trend in dumping over the inquiry period indicates that dumping was consistently occurring and, when calculating a dumping margin per-sale, the margin of dumping demonstrated a general upwards trend towards the end of the inquiry period.
3. Pricing in the Australian market is subject to ongoing and long-term contractual relationships which have agreed prices. It is likely that these arrangements will continue. Export prices in the Australian market are not likely to significantly change beyond changes reflected in the rise and fall provisions of the contracts. It is likely that multiple suppliers will continue to compete to supply the goods to the Australian market.
4. Analysis of supply and demand arrangements in the Australian market do not identify any likely future significant changes in the Australian market which would materially alter pricing in the Australian market.
5. Supply in the Chinese market is subject to an ongoing and long-term supplier-customer relationship. Analysis of the supply and customer relationship in China indicates that these arrangements will continue in its current form. It is likely that a single supplier will continue supply the goods to the Chinese market.
6. Given the consistent supply arrangements in Australia and in China, the Commissioner does not consider it likely that future exports prices will move relative to normal values such that the margin of dumping determined during the inquiry period will be erased. This commission therefore considers that dumping is likely to continue in the future.

France

As noted at chapter 7.5.4 (above), the Commissioner is not satisfied that the expiry of the measures would be likely to lead to a recurrence of exports from France. Therefore, the Commissioner finds that the expiry of measures is not likely to lead to recurrence of dumping in the future.

7.6.1 Dumping margins analysis

Having regard to a verified exporter questionnaire response and other relevant information, the Commissioner is satisfied exports from China during the inquiry period were dumped. The dumping margin assessed was 13.3%.

7.6.2 Recent dumping assessments

There has been ongoing exportation of the goods from China. Since the imposition of measures there have been no applications for review of variable factors by Chinese exporters, nor any applications for duty assessments. The Commissioner's dumping assessment therefore draws on the inquiry period, that being the most current available evidence of the export price and normal value.

7.6.3 Anti-dumping actions in other jurisdictions

The Commissioner is not aware of anti-dumping measures applying to the export of railway wheels from China or France in other jurisdictions.

7.7 Will material injury continue or recur?

China

For exports from China, the Commissioner considers that the expiry of the measures on exports from China would be likely to lead to a continuation of, or a recurrence of, material injury that the measures are intended to prevent.

In arriving at this conclusion, the Commissioner has assessed factors that affect procurement decisions in the Australian market, pricing and sales volumes in the absence of measures, and other potential causes of injury to the Australian industry, as outlined in the rest of chapter 7.7 below.

The Commissioner considers that:

- the procurement decisions of mining companies will involve a range of factors, with price being integral
- dumped railway wheels from China undercut the Australian industry's prices during the inquiry period
- the Australian industry responded to this price undercutting by selling significant volumes of railway wheels at, or below, cost to make and sell
- in the absence of measures Chinese railway wheels would have an even greater pricing advantage compelling the Australian industry to further reduce prices, or if unable to do so, to likely cede sales volumes and market share.

France

In chapter 7.5 above, the Commissioner concludes that exports from France are not likely to recur should the measures cease to apply to France and therefore that the expiry of measures is not likely to lead to recurrence of dumping. Consequently, the Commissioner has not considered whether material injury is likely to recur if the measures on exports from France cease to apply.

7.7.1 Factors affecting procurement decisions in the Australian market and the commissions approach to assessing likelihood of material injury

As detailed in chapters 4.3 to 4.6, the Australian market for the goods is highly concentrated. Except for an immaterial volume of supply from Italy in financial year 2022 (noting Italy is not subject to measures), the Australian market has been entirely supplied by Comsteel and MTM and its predecessor since the imposition of measures. The Australian market continues to be comprised of only 4 mining company purchasers.

Since the imposition of measures in 2019, 2 mining companies have dual sourced railway wheels from Comsteel (Australian industry) and MTM (Chinese supply), a third mining company has relied entirely on Comsteel for its supply, while BHP has not purchased railway wheels from Comsteel.

Each purchaser has unique specifications for railway wheels. Furthermore, it is essential that the railway wheels supplied provide for the safe and efficient operation of the railways. For the purchasers of railway wheels, procurement decisions will be made by reference to a range of factors including specification requirements, quality and safety, reliability and continuity of supply and price. Within this context entry to the market for new suppliers can be onerous and time consuming which may explain why Comsteel and MTM continue to be the only suppliers in the Australian market.

As also happened in the original investigation, in this inquiry the Commissioner has received competing information regarding the quality and performance of railway wheels produced by Comsteel (as considered above), and the potential impact of those issues on the procurement decisions of purchasers. The Commissioner accepts that wheel failures are a serious matter for mining companies. The seriousness with which the companies view such events is demonstrated by the exacting wheel specification and design requirements imposed by the mining companies, their scrutiny and approval of potential suppliers, the monitoring of the condition of the wheels and the extensive investigation into wheel failure events.

In the context of its assessment of the likelihood of material injury if the measures expire, the Commissioner has considered the information provided, though not seeking to make a conclusion about the relative quality of goods in the market. Rather, the Commissioner has assessed the information seeking to determine whether the dumped goods were purchased for reasons independent of price. If the dumped goods have been purchased independent of price, then it is open for the Commissioner to conclude that price was not a relevant factor in the procurement decision and therefore dumping was not, or may not continue to be, a cause of any injury suffered to the Australian industry.

During this inquiry, BHP submitted that it will not acquire railway wheels manufactured by Comsteel irrespective of price until such time as Comsteel's goods are able to meet BHP's specification and quality concerns.[116] BHP submitted that material injury, if any exists, has been caused in the period under review by Comsteel's own failure to offer a product that can reasonably be accepted by BHP and other major users.

Rio Tinto has also submitted that the railway wheels supplied by Comsteel and MTM are not directly substitutable given concerns for safety, quality and lifespan of the respective products.[117] Rio Tinto therefore infers that injury to the Australian industry is due to quality and performance issues rather than lower priced dumped exports.

The Commissioner notes that Rio Tinto has nevertheless continued to purchase railway wheels from Comsteel. The Commissioner considers that, were the quality and performance issues raised such a threat to the safe and efficient operation of its railways, Rio Tinto would have discontinued supply from the Australian industry.

The Commissioner has received no submissions from FMG and Roy Hill in this inquiry and, therefore, has no information from those suppliers as to quality of the goods produced by Comsteel or in China.

On the basis that 3 of the 4 Australian mining companies continue to seek supply from the Australian industry, and BHP continue to utilise Comsteel railway wheels, and the Commissioner's analysis of the information provided as to quality, the Commissioner considers there is sufficient evidence to support a finding that quality and performance

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[116] EPR 632, document number 16, 8.
[117] EPR 632, document number 6.

issues are not of such significance as to allow the Commissioner to form a conclusion that pricing is not a factor in the procurement decision.

The Commissioner is therefore satisfied that price is an integral factor in procurement decisions and dumping may provide MTM a pricing advantage that it may not otherwise enjoy. The Commissioner's pricing and sales analysis detailed below proceeds on that basis. In the context of that analysis, the Commissioner considers that, while BHP is adamant it will not source from the Australian industry due to quality and performance issues, the Australian industry can nonetheless suffer future material injury due to dumped exports in relation to the remainder of its customer base.

7.7.2 Pricing analysis

The Commissioner has used information obtained from Comsteel, MTM, BHP and Rio Tinto and the ABF import database to undertake a price undercutting analysis for the inquiry period. This analysis was undertaken comparing the delivered cost (actual or constructed) of the imports from China with Comsteel's prices.

This analysis shows that dumped imports from China undercut Comsteel's selling prices by significant margins during the inquiry period. In the absence of measures, the degree of price undercutting would be even more significant. The Commissioner considers it is likely that Australian industry would need to reduce prices in response to the lower prices of exports from China.

The Commissioner has also analysed the Australian industry's profitability in relation to each purchaser of the goods since the measures were imposed.

To preserve the confidentiality and commercially sensitive nature of the information available to the commission, the specific details of the analysis cannot be detailed publicly. The record of this analysis is at **Confidential Appendix G**.

The Commissioner considers that the profitability analysis undertaken supports a finding that price suppression and depression is more likely in relation to those purchasers who have sourced railway wheels from both Comsteel and MTM. The Commissioner considers the preparedness of Australian mining companies to procure dumped exports from China has placed pressure on the Australian industry to sell at depressed and suppressed prices.

The Commissioner's price undercutting analysis is at **Confidential Attachment 6**.

7.7.3 Sales analysis

The Commissioner considers that, if the measures were allowed to expire, the Australian industry will experience a reduction in sales volume and market share.

Figure 13 below illustrates movements in the size and composition of the Australian market for the last 10 completed financial years.

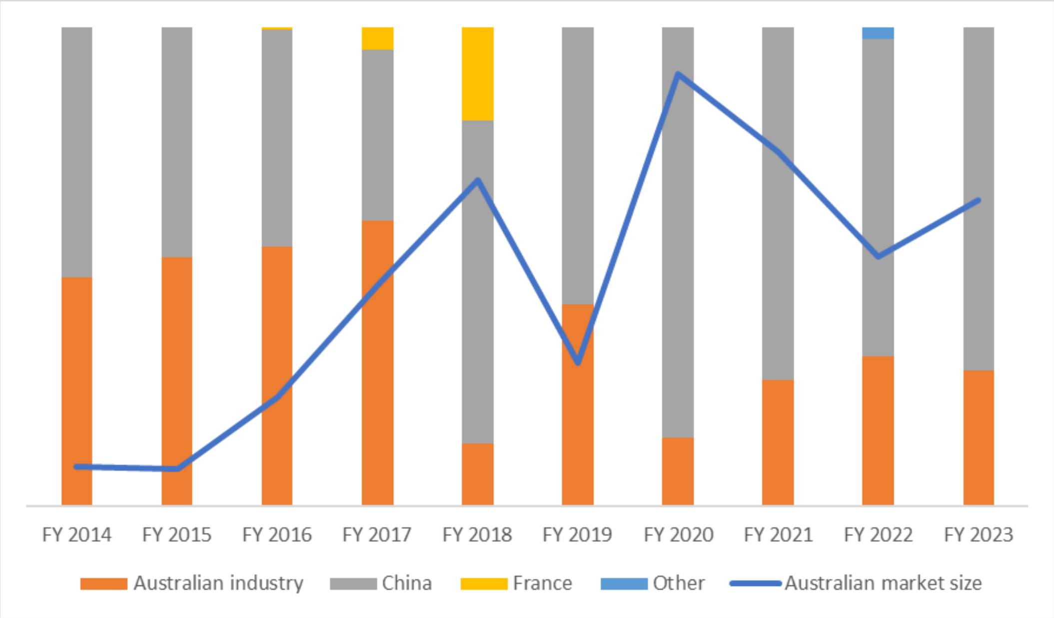

Figure 13: Australian railway wheels market size (unit: wheels) and market share (%)

Figure 13 shows that the Australian market for railway wheels grew strongly until FY 2018, after which time the size of the market has been erratic. Up until FY 2018, the Australian industry was able to capture increasing market share, however FY 2018 saw a dramatic fall in market share at the expense of imports from China and France. BHP's decision to source supply from these countries represented a major change in the dynamics of the Australian market. Following the imposition of measures in FY 2019, the Australian industry was able to regain market share, however overall market share has remained well below the peak achieved in FY 2017.

As discussed previously, BHP has asserted that, irrespective of price considerations, it will not procure railway wheels from the Australian industry until its quality and performance concerns are addressed. BHP's position diminishes the size of the market available to the Australian industry, however the Australian industry remains in direct competition with imports from China for the business of the remaining 3 mining companies. Since the imposition of measures, these 3 companies have accounted for over 50% of the volume of railway wheels sold into the Australian market from all sources. The Australian industry is therefore vulnerable to continuing volume injury in relation to a substantial segment of the Australian market.

As detailed in the pricing analysis above, it is evident that the Australian industry has experienced price depression and suppression in its efforts to maintain sales volumes when competing with dumped exports from China. The Commissioner's pricing and profitability analysis indicated that the Australian industry is supplying purchasers, who have previously purchased dumped railway wheels from China, at or below cost to make and sell. In the absence of measures the Australian industry would come under increased pressure to suppress or further reduce prices. Given the evidence of goods being sold at a loss by the Australian industry, further price reductions may not be possible. In this event, the Commissioner considers it is likely that purchasers will choose to source railway wheels from China rather than the Australian industry, contributing to material injury through reduced sales volumes and market share.

7.7.4 Other injury factors

The Commissioner has also received submissions on other reasons exports from China are not causing injury to the Australian industry.

BHP submitted that Comsteel's monopolistic market power following the imposition of the measures has disincentivised them to invest in innovation and technology to improve product quality and to streamline manufacturing costs. In BHP's view, Comsteel will remain uncompetitive until it addresses these issues.[118]

Rio Tinto submitted that:

- Comsteel enjoys a monopolistic market position and therefore has no incentive to improve its business model
- the current dumping measures provide a significant price advantage for Comsteel in encouraging local users to purchase domestically, rather than sourcing internationally
- MTM maintains a competitive advantage in the Australian market because it has cheaper processing costs and has invested in more efficient technologies that allow it to produce a superior product that is cheaper than Comsteel.[119]

Rio Tinto contended that Comsteel provided no concrete evidence that shows that dumping has been the sole cause of injury to the Australian industry and that 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.

The Commissioner notes, however, that while injury caused by other factors should not be attributed to dumping, dumping need not be the sole cause of injury to the industry. As such, the Commissioner has considered the factors raised by interested parties that may have caused, or may continue to cause, injury to the Australian industry, while nonetheless focusing on the likely injurious effects of future dumping in the absence of measures.

Both BHP and Rio Tinto refer to Comsteel as having monopolistic market power, while at the same time providing reasons why Comsteel is less competitive than its competitors. The Commissioner accepts that Comsteel is the only manufacturer of railway wheels in Australia, but does not accept that Comsteel maintains monopolistic market power given that it is in direct competition with another supplier of the goods and that supplier has held a larger market share since at least 2018 (as detailed in chapter 5.4.2). As noted above, the Commissioner's pricing and profitability analysis indicated that the Australian industry is supplying purchasers (that have previously purchased dumped railway wheels from China) at, or below, cost to make and sell. As detailed in chapter 5.5 above, railway wheels have not been a profitable enterprise for the Australian industry in recent years. These observations are not consistent with an entity exercising monopolistic market power.

[118] EPR 632, document number 16, 8.
[119] EPR 632 document number 6.

While the Commissioner does not accept BHP and Rio Tinto's characterisation of Comsteel as a monopolistic market power, Comsteel's position as the only manufacturer of the goods in Australia may provide some competitive advantages should its customers wish to support domestic industry. It is evident, however, from the forms of injury experienced by Comsteel in the original investigation (and subsequently) that some of its Australian customers are willing to take advantage of the cost savings associated with the importation of dumped goods to the economic detriment of the Australian industry.

Rio Tinto also claimed that Comsteel enjoys 'preferential treatment' in the Australian market. Specifically, Rio Tinto claimed that:

- local iron ore operators dedicate resources to ensuring Australian industry remains in operation despite producing a more expensive and lower quality product
- the Australian industry purchases Rio Tinto's end-of-life wheels without a competitive pricing process, a benefit not available to foreign suppliers
- Australian industry may be issued additional sales outside of competitive tender, a benefit not available to foreign suppliers.[120]

Rio Tinto does not quantify the magnitude of these claimed benefits and it is not clear that these practices are specifically undertaken to provide a benefit or preference to Comsteel. Based on the pricing analysis in chapter 7.7.2 of this report, the Commissioner notes the Australian industry's prices were undercut by dumped imports during the original investigation and the inquiry period. Rio Tinto's claims do not detract from the material injury likely to be caused by dumped goods.

Rio Tinto further submitted that there are several factors which support the greater cost effectiveness of the Chinese producers relative to the Australian industry, and which provide a more compelling cause for injury than the alleged dumping.[121] These factors include MTM's investments in more efficient technologies, lower labour costs and higher productivity of Chinese entities and the economies of scale available to Chinese manufacturers.

The Commissioner accepts that overseas manufacturers may enjoy a competitive advantage relative to the Australian industry due to a range of potential factors, including lower costs of labour, higher levels of productivity, greater levels of automation, more efficient business processes and/or the benefits of economies of scale. Noting that overseas manufacturers may enjoy competitive advantages, the Commissioner is nonetheless satisfied that the expiration of the measures applying to railway wheels exported to Australia from China would lead, or would be likely to lead, to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.

7.8 Submissions about potential future dumping

7.8.1 Submissions before SEF 632

Both BHP and Rio Tinto submitted that MTM is not dumping.

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[120] EPR 632, document number 6.
[121] EPR 632, document number 6.

In its submission, BHP undertook a financial analysis of MTM in support of its claim. BHP's analysis highlighted the following factors:

- 60% of MTM sales are in the domestic market compared to 4% of sales to Australia and as such it does not need to export at dumped prices to secure revenue.
- Ore car wheel and axle production comprises MTM's premium business which it operates with high profitability.
- Profits have consistently been over 10% which indicates that the goods are not being exported below cost, and therefore not dumped.[122]

Rio Tinto submitted that:

> *there has been no concrete evidence of dumping; [MTM is] 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*.[123]

As detailed in chapter 6.2, dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of the goods are determined under sections 269TAB and 269TAC respectively. The Commissioner has applied the method in section 269TACB(2)(a) to determine whether dumping has occurred and the levels of dumping by comparing the weighted average export price over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of the inquiry period.

Based on the application of the relevant legislative provisions, the Commissioner determines that the goods exported from China were dumped during the inquiry period.

It is important to note the legislative assessment of dumping involves factors beyond those referenced by BHP and Rio Tinto. The Commissioner notes that an overseas manufacturer may enjoy lower costs of labour, higher levels of productivity, greater levels of automation, more efficient business processes and/or the benefits of economies of scale relative to a domestic Australian producer. However, this fact in itself does not lead to the conclusion that a manufacturer is not exporting its products at a price less than its normal value. Similarly, an overseas manufacturer may have a profitable domestic market into which it sells most of its production, but that does not in itself mean that the manufacturer is not exporting its products at a price less than its normal value.

Based on the verified financial information provided by MTM, and for the reasons detailed in chapter 6.3.8 above, the Commissioner is satisfied that during the inquiry period MTM exported the goods at a price lower than the normal value, and therefore engaged in dumping.

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[122] EPR 632, document numbers 8, 16.
[123] EPR 632, document number 6.

For the reasons detailed in chapter 7.6, the Commissioner is further satisfied that dumping of the goods from China is likely to continue.

7.8.2 Finding that dumping has occurred

In its submission published 19 April 2024,[124] Rio Tinto submitted that there was an insufficient basis to find that dumping is occurring and that material injury has or will reoccur. Rio Tinto pointed to preliminary findings made in SEF 632 and the findings of the WTO Dispute Settlement Panel in *DS603*. Rio Tinto submitted that for a decision that dumping will lead to continuation or recurrence of dumping – it should first be known that dumping had occurred in the first place. Rio Tinto also made submissions about the calculation methodologies which are addressed in chapter 6.5 of this report.

Consideration of submissions

As set out in chapter 6, the Commissioner notes that the calculations in SEF 632 and this report are based on the relevant facts and evidence on the record in this inquiry.

The Commissioner is satisfied that the goods exported by MTM were dumped during the inquiry period, for the reasons set out in chapter 6. The Commissioner has had regard to and implemented the findings of the Panel to the extent they are relevant to the findings in this report.

The preliminary findings have been reconsidered in light of the submissions received in response to the SEF.

The Commissioner's findings concerning the continuation or recurrence of dumping of exports from China is based on the finding that exports from China were dumped during the inquiry period.

7.9 Submissions about potential future material injury

7.9.1 Factors other than dumping

Rio Tinto submitted that SEF 632 failed to consider these factors affecting the Australian industry:

- trends in Australian energy prices
- Australian industry member Comsteel's decision to stop using its electric arc furnace from 2024.

The Commissioner believes they considered these factors in SEF 632 and also consider them in this report. Energy prices comprise part of the Australian industry's cost to make and sell, which the Commissioner describes generally at chapter 5.4. The Commissioner acknowledges that Comsteel does not intend to use its electric arc furnace going forward. Given the likely nature of any future injury, the Commissioner does not consider this factor substantially affects the findings in chapter 5 about Comsteel's economic condition, or the finding in chapter 7 that dumping and material injury on exports caused by exports from China is likely to continue or recur if measures expire.

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[124] EPR 632, document number 28.

7.9.2 If measures expire on exports from China

In its submission published on the EPR on 19 April 2024,[125] Masteel submitted that SEF 632 does not support the Commissioner's recommendation to continue measures on exports from China. Masteel submitted:

- Comsteel was unprofitable for financial years ending June 2022 and June 2023
- Comsteel had a growing sales volume but a stable market share
- Masteel's customers purchased the goods at undumped prices in the inquiry period because the Commissioner calculated a lower dumping margin than the fixed rate of duty payable in the period
- Masteel's Australian customers do not make purchasing decisions solely or principally based on price.

Comsteel disagreed with Masteel's submission. Comsteel responded to Rio Tinto's submission, stating that it had experienced material injury from dumping Chinese exports since the Minister imposed measures following the original investigation.

The Commissioner emphasises that the question for a continuation inquiry is if material injury from dumped goods would, or would be likely to, continue or recur *if measures expire*. In other words, the relevant question relates to potential *future* material injury caused by dumping.

The Commissioner finds exports from China, inclusive of anti-dumping measures, undercut Comsteel's prices in the inquiry period. The Commissioner acknowledges that exports from China may have some price advantage because of factors other than dumping. The Commissioner nonetheless expects, if measures expire, then Chinese exports would have an even greater price advantage. Consequently, the amount of undercutting would likely increase and cause Comsteel to experience further material injury. As concluded in this chapter, the Commissioner considers certain factors indicating injury caused by dumping appear likely to continue or recur if measures expire. The Commissioner does not consider that Masteel's submissions adequately address these factors.

7.9.3 If measures expire on exports from France

In its submission published 19 April 2024,[126] Comsteel submitted that SEF 632 understated the likelihood that Valdunes may continue exporting goods from France. Comsteel submitted that the China Baowu Group may use Valdunes to export the goods.

The Commissioner notes this report considers information not considered in SEF 632, regarding the Europlasma Group taking over Valdunes. This report details this information at chapter 7.5.4. As discussed at chapter 7.5.4, the Commissioner considers this evidence further supports the finding that dumped exports are unlikely to recur from France if measures expire. The announcement of the Europlasma Group taking over Valdunes, also further confirms that it is highly unlikely that the China Baowu Group will use Valdunes to export the goods in the future.

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[125] EPR 632, document number 30.

[126] EPR 632, document number 31.

8 NON-INJURIOUS PRICE

8.1 Summary of findings

The Commissioner compared the NIP with the calculated weighted average normal values of the cooperative exporter from China. The Commissioner determined that the NIP was not less than the normal value. As a result, the NIP should not be the operative measure for exports from China. Accordingly, the Commissioner recommends that measures be imposed in relation to railway wheels exported to Australia from China at the full dumping margin. The Commissioner's calculation of unsuppressed selling price (USP) and NIP is at **Confidential Attachment 7**.

8.2 Background – legislative framework

The NIP is relevant to the Minister's consideration of whether to apply a lesser amount of duty (lesser duty rule). Section 269TACA defines the NIP as 'the minimum price necessary to prevent the injury, or a recurrence of the injury' caused by the dumped or subsidised goods, the subject of a dumping duty notice or a countervailing duty notice. As a matter of practice, the Commissioner generally derives the NIP from the Australian industry's USP.

Where the Minister is required to determine the IDD, sections 8(5) and (5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) (the Dumping Duty Act) apply. Where the Minister is required to determine both ICD and IDD, sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Sections 8(5B), 8(5BA) and 10(3D) of the Dumping Duty Act require the Minister to have regard to the 'lesser duty rule' when determining the ICD and IDD payable. In relation to a dumping duty notice, the lesser duty rule requires consideration of whether the NIP is less than the normal value of the goods. In respect of concurrent dumping and countervailing notices, the lesser duty rule requires the Minister to consider the desirability of fixing a lesser amount of duty such that the sum of the export price (of the goods ascertained for the purposes of the notices), the ICD and the IDD, do not exceed the NIP. However, pursuant to sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances (exceptions) apply:[127]

- the normal value of the goods was not ascertained under section 269TAC(1) of the Act because of the operation of section 269TAC(2)(a)(ii)
- there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises[128]
- if an exporter of the goods has received a countervailing subsidy in respect of the goods – the exporter's country has not complied with article 25 of the WTO

[127] Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections
10(3DA)(a) to (c) of the Dumping Duty Act concern the calculation of countervailing duty.
[128] As defined in the *Customs (Definition of 'small-medium enterprise') Determination 2013*.

Agreement on Subsidies and Countervailing Measures[129] for the compliance period.

Where any of the above exceptions apply, the Minister is not required to have mandatory consideration of the lesser duty rule but may still wish to exercise a discretion to do so.

8.3 Exceptions to the lesser duty rule

For exporters from China subject to the anti-dumping measures, the Commissioner does not consider that the relevant exceptions in the Dumping Duty Act apply because:

- the operation of section 269TAC(2)(a)(ii) did not prevent the normal value from being ascertained under section 269TAC(1)
- the Australian industry does not consist of at least 2 small-to-medium enterprises
- no countervailing measures apply to railway wheels exported from China and therefore the third exception is not relevant.

On the basis that no exceptions apply, the Minister must consider the desirability of applying the lesser duty rule for all exporters subject to the anti-dumping measures.

8.4 Unsuppressed selling price

The legislation does not prescribe a method of calculating a NIP, but there are several methods outlined in the Manual.[130] The Commissioner generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. The Commissioner refers to this price as the 'unsuppressed selling price' (USP).

The Manual provides that the Commissioner normally uses the following approaches, in order of preference, for establishing a USP, subject to the facts of the case:

- Australian industry's selling prices in a period unaffected by dumping
- a constructed USP approach, constructing the USP using the Australian industry's CTMS and adding a reasonable amount for profit
- selling prices of undumped imports in the Australian market.

In the original investigation, the Commissioner determined the USP by using the Australian industry's CTMS in 2017 plus the percentage profit achieved by Comsteel in 2016, a period when the market was unaffected by dumping.

In this inquiry, the Commissioner further considers that the presence of significant volumes of dumped imports in the Australian market affects the pricing in the Australian market. Therefore, consistent with the approach taken in the original investigation, the Commissioner has established a USP using the constructed approach, having regard to:

- the weighted average CTMS for Comsteel in the inquiry period

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[129] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Subsidies and Countervailing Measures*').

[130] The Manual, p 138.

- the percentage profit achieved by Comsteel in 2016, a period when the market was unaffected by dumping.

8.5 Non-injurious price

The Commissioner has calculated a NIP by deducting from the USP the costs incurred in transporting the goods at free on board export terms to the relevant level of trade in Australia. The deductions include overseas freight, insurance, into-store costs and amounts for importer expenses.

The Commissioner’s NIP calculation is at **Confidential Attachment 7.**

9 FORM OF MEASURES

9.1 Summary of findings

The Commissioner considers the IDD payable on railway wheels exported from China should be calculated using the combination fixed and variable duty method.

In relation to France, the form of measures has not been considered. The Commissioner recommends the measures applying to imports from France be allowed to cease.

9.2 Background – legislative framework

Regulation 5 of *Customs Tariff (Anti-Dumping) Regulation 2013* (Cth) prescribes the methods available to the Minister for working out IDD payable. The methods are:

- fixed duty method (dollars per tonne)
- floor price duty method
- combination duty method
- ad valorem duty method (that is, a percentage of the export price).

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. To remove the injurious effects of dumping, certain forms of duty will better suit the particular circumstances. More detail on the nature and operation of the various forms of duty are contained in the *Guidelines on the Application of Forms of Dumping Duty* (the Guidelines).[131]

9.3 Form of measures and effective duty rates

In considering which form of measures to use, the Commissioner has had regard to the Guidelines, as well as relevant factors in the railway wheel market. The Guidelines set out issues to be considered when determining the form of duties. All the various forms of dumping duty available have the purpose of removing the injurious effects of the dumping. That said, certain forms of duty will better suit particular circumstances. The Guidelines list the key advantages and disadvantages of each form of duty.

The floor price method can limit the negative effect of price increases in the goods that are associated with the ad valorem duty method. It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under the ad valorem duty method which would decrease the amount of duty paid. A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. This duty method may not suit the situation where there are many models or types of good with significantly different prices.

The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price

[131] DISR, *Guidelines on the Application of Forms of Dumping Duty*, DISR, Australian Government, November 2013, accessed 11 June 2024.

manipulation in the market. Conversely, the combination duty method is less suitable in circumstances where there are many model types of the goods with a wide price range or where a falling market exists.

The ad valorem duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect. This method is also:

- common in other jurisdictions
- similar to other types of Customs duties
- suitable where there are many models or types or where the market prices of goods fluctuate over time.

The ad valorem duty method may also require fewer duty assessments and reviews than other duty methods. However, the ad valorem duty method has a potential disadvantage in that export prices might be lowered to abrogate the intended effects of the duty.

Having regard to the various advantages and disadvantages associated with each method of calculating IDD payable, the Commissioner considers that, in the case of railway wheels, the combination fixed and variable duty method is the most appropriate form of duty. This is on the basis that the various models of the goods are similar and do not exhibit a wide price range and a falling market does not presently exist.

10 RECOMMENDATIONS

10.1 Section 269ZHF(2) – conclusion

Under section 269ZHF(2), the Commissioner is satisfied that the expiration of the measures applying to railway wheels exported to Australia from:

- China would **likely** lead to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent
- France would **not likely** lead to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

This report details the reasons why the Commissioner is satisfied of the above.

10.2 China

The Commissioner considers that the available evidence supports a finding that, in the absence of measures:

- exports from China would be likely to continue
- exports from China are likely to be dumped and
- material injury to the Australian industry would likely recur.

Accordingly, the Commissioner is satisfied that the expiration of the measures applying to the goods exported from China would lead, or would be likely to lead, to a continuation of the material injury that the measures are intended to prevent.

10.3 France

The Commissioner considers that, should the measures cease to apply to France, exports from France are not likely. As a result, the Commissioner is not satisfied that the expiration of the measures as they relate to exporters from France, would lead, or would be likely to lead, to a continuation or recurrence of the dumping. It follows from this finding that the Commissioner has not considered whether material injury is likely to continue or recur if the measures cease to apply to France.

10.4 Recommendations

Based on the evidence currently available, the Commissioner recommends that 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 exports from China only.

Based on the evidence currently available, the Commissioner recommends that the Minister **determine**:

- pursuant to section 269ZHG(4)(a)(ii) that the dumping duty notice continues in force after 16 July 2024 but that, after that day, it ceases to apply to exporters of the goods from France

- in accordance with subsection 269ZHG(4)(a)(iii), that the dumping duty notice continues in force after 16 July 2024 but that, after that day, the notice have effect in relation to exporters in China as if the Minister had fixed different specified variable factors relevant to the determination of duty.

11 APPENDICES AND ATTACHMENTS

Appendix A	Constructed normal values – China
Appendix B	Assessment of adjustments to normal value
Appendix C	Assessment of Chinese domestic market conditions
Appendix D	Benchmark analysis – China
Confidential Appendix E	Variable factor details
Confidential Appendix F	Normal value profit analysis summary
Confidential Appendix G	Australian industry profitability analysis
Confidential Attachment 1	Australian market
Confidential Attachment 2	Economic condition of Australian industry
Confidential Attachment 3	MTM – variable factors
Confidential Attachment 4	All other exporters – variable factors
Confidential Attachment 5	Will exports continue
Confidential Attachment 6	Will injury continue
Confidential Attachment 7	Calculation of USP and NIP
Confidential Attachment 8	Benchmark data obtained
Confidential Attachment 9	Analysis of steel billet prices

APPENDIX A CONSTRUCTED NORMAL VALUES – CHINA

A1 Establishing normal values

As discussed in chapter 6, the Commissioner finds that MTM sold domestic like goods, however, these sales were not arms length transactions. This finding was because the Commissioner found evidence that sales prices appeared to be influenced by a commercial or other relationship between the buyer and the seller. This finding is discussed in chapter 6.3 of this report.

Due to the relationship between MTM and its domestic customer, the Commissioner also separately finds that the sales were not in the ordinary course of trade.

As a result of these 2 findings, the Commissioner finds there is an absence of domestic sales of like goods relevant for determining a normal value price under section 269TAC(1). Consequently, the Commissioner considers that section 269TAC(2)(a)(i) applies to MTM for this inquiry.

Where section 269TAC(1) is not available, the commission's policy preference, as outlined at chapter 10 of the Manual, is to construct normal values under section 269TAC(2)(c), using the available cost data of exporters.

Section 269TAC(2)(d) provides an alternative, to work out the normal value of the goods using the price paid or payable for like goods sold to a third country. In this case, that option is not available as MTM did not sell like goods to third countries in the inquiry period.[132]

In summary, the Commissioner has constructed normal values under section 269TAC(2)(c) for MTM and has done so in accordance with regulations 43 to 45 of the Regulation.

A2 Applicable legislation, policy and practice

Where the Minister is satisfied that a normal value cannot be determined under section 269TAC(1), as is the case in this inquiry for MTM, section 269TAC(2)(c)(i),(ii) provides that the normal value is:

… the sum of:

(i) such amount as the [Minister] determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the [Minister] determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.

[132] MTM claimed this in its REQ. The commission has verified this claim as accurate.

As required by sections 269TAC(5A) and 269TAC(5B), the construction of normal values under section 269TAC(2)(c) must be in accordance with the Regulation.

A3 Cost of production

The Commissioner has calculated the cost of production or manufacture of railway wheels in China under section 269TAC(2)(c)(i).

The starting point for this calculation is the exporter's records.

A3.1 MTM's records

The Commissioner is satisfied that MTM kept records in relation to the production of the goods and that MTM's records are in accordance with GAAP in China.

Regulation 43(2) imposes an obligation on the Minister to use an exporter's records, where the prescribed criteria are met. The Commissioner considers that the criteria in regulations 43(2)(a) and (b)(i) are satisfied.

However, the Commissioner finds that the criterion in regulation 43(2)(b)(ii) is not satisfied. Regulation 43(2)(b)(ii) is not satisfied because the Commissioner finds that MTM's recorded costs do not reasonably reflect competitive market costs associated with the production or manufacture of the goods in China because MTM purchased steel billet from its parent entity at below cost in transactions that were not 'arms length'. In the Commissioner's view, the 'non-arms length' character of the transactions means that the costs are not reflective of those that would be incurred in a competitive market.

Specifically, the Commissioner finds that the price of steel billet reflected in MTM's cost records was not an 'arms length' price because the price appeared to be influenced by the relationship with MIS. The Commissioner has made this assessment based on information detailed in **Confidential Appendix E**.

Where the criteria in regulation 43(2) are not satisfied, the Minister is neither required to, nor prohibited from, using an exporter's records. The discretion this provides as to the proper approach to be taken is to be exercised in accordance with the requirements of the *Anti-Dumping Agreement*.

For the purposes of the assessment in article 2.2.1.1 of the *Anti-Dumping Agreement*, the Commissioner has considered whether MTM's records reasonably reflect the costs associated with the production and sale of the goods in China. As part of this consideration, the Commissioner has assessed MTM's recorded steel billet costs.

The Commissioner considers that, because of the 'non-arms length' nature of the transactions between MTM and its parent entity in relation to steel billet, MTM's records, to the extent that they relate to the costs for steel billet used for railway wheels, do not reasonably reflect the costs associated with the production and sale of those goods in China. This is because a component of the costs associated with the production and sale of those goods in China is borne by MIS, rather than MTM, and that component of the costs does not appear in MTM's records.

The Commissioner highlights that MTM's production records for like goods include the following items:

- raw materials, being steel billet
- other materials
- direct labour
- manufacturing overheads.

The vast majority of the MTM's overall costs of production relate to steel billet, representing more than 70% of its total cost of production. Steel billet costs therefore are the most significant component to consider in assessing whether MTM's records reasonably reflect the cost of production.

A3.2 Assessment of the cost of production in the country of origin

Noting the finding that MTM's records, to the extent that they relate to the costs for steel billet used for railway wheels, do not reasonably reflect the costs associated with the production and sale of the goods in China, the Commissioner has calculated the cost of production under section 269TAC(2)(c)(i) having regard to all relevant information.

The Commissioner notes that MTM does not produce steel billet. MTM's production costs for steel billet are based on its purchase prices of steel billet.

The Commissioner, following consideration of the available evidence, including the exporter's and producer's records, has considered information relating to:

a) private domestic prices of steel billet in China
b) import prices of steel billet into China
c) prices of steel billet from countries other than the country of export[133]

to assess the cost of production or manufacture of like goods in the country of export under section 269TAC(2)(c)(i).

As outlined in chapter 6.3.5 of this report, the Commissioner considers that MIS's cost data is the most suitable information to approximate an 'arms length' price for the grade of steel billet purchased by MTM. The Commissioner notes that MTM's cost data is particular to the grade of billet used to produce the goods. The available third-country market information related to other grades of billet that would not be suitable to produce the goods.

The Commissioner has considered the use of this data was fundamental to ensuring an appropriate proxy for steel billet costs in China, particularly when compared to third-country market information which was not sufficiently approximate. To address finding MTM's steel billet purchases 'non-arms length' transactions, the Commissioner has replaced the raw material component of the costs and applied other adjustments in accordance with the legislative requirements.

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[133] When considering other country cost data, the Commissioner also considers the available evidence about comparative advantages or disadvantages between exporters or producers in that country and the country of export.

The Commissioner has relied on MIS's information to ascertain a Chinese market price for the steel billet used to produce the goods, using the actual cost to make and sell data for the grade of steel billet, plus an amount for profit. The Commissioner has then used that information to adjust the steel billet costs in MTM's records, to reflect an 'arms length' purchase price of the relevant grade of steel billet in China.

APPENDIX B ASSESSMENT OF ADJUSTMENTS TO NORMAL VALUE

To properly compare an export price of the Australian export goods to the corresponding normal value for the goods exported to Australia from China, the Commissioner has considered applying each of the following adjustments.

Adjustment type	Adjustment assessment	Calculation method and evidence	Did MTM claim this adjustment?	Assessment of whether adjustment should be applied
Domestic credit terms	MTM sold to domestic and Australian customers with different credit terms overall.	Calculated based on: • average actual payment days for sampled domestic sales • the interest rate for short-term borrowings MTM incurred in the inquiry period. Evidence relied on: • accounts receivable ledger • loan agreement evidence • accounting system screenshots from domestic customer.	Yes	No The Commissioner has calculated a constructed normal value at an ex-works price that already excluded domestic direct selling expenses.
Domestic packaging	MTM used different packaging between Australian export sales and domestic sales.	Calculated based on internal packaging cost calculation report for relevant models.	Yes	No MTM recorded packaging expenses in its cost to make records. The Commissioner has calculated a constructed normal value using cost to make records for the Australian export goods, including packaging.

Adjustment type	Adjustment assessment	Calculation method and evidence	Did MTM claim this adjustment?	Assessment of whether adjustment should be applied
Domestic inland transport	MTM incurred different inland transport costs between Australian export and domestic sales.	Calculated based on actual inland freight costs incurred. Relied on transport cost agreement terms covering first half of the inquiry period.	Yes	No The Commissioner has calculated a constructed normal value at an ex-works price that already excluded domestic direct selling expenses.
Domestic product liability insurance	MTM incurred different rates of product liability insurance between Australian export and domestic sales.	Calculated based on the unit cost of product liability insurance in MTM's insurance agreement covering 11 months of the inquiry period.	Yes	No The Commissioner has calculated a constructed normal value at an ex-works price that already excluded domestic direct selling expenses.
Export credit terms	MTM sold to domestic and Australian customers with different credit terms overall.	Calculated based on: • payment days • the interest rate for short-term borrowings MTM incurred in the inquiry period. Evidence relied on: • sales source documents • proof of payment documents • loan agreement evidence.	Yes	Yes

Adjustment type	Adjustment assessment	Calculation method and evidence	Did MTM claim this adjustment?	Assessment of whether adjustment should be applied
Export packaging	MTM used different packaging between Australian export and domestic sales.	Calculated based on internal packaging cost calculation report for relevant models.	Yes	No MTM recorded packaging expenses in its cost to make records. The Commissioner has calculated a constructed normal value using cost to make records for the Australian export goods, including packaging.
Export inland transport	MTM incurred different inland transport costs between Australian export and domestic sales.	Calculated based on actual inland freight costs incurred. Relied on sample inland freight invoices and settlement detail lists.	Yes	Yes
Export port handling charges	MTM only incurred port handling expenses for Australian export sales.	Calculated based on actual port handling charges incurred. Relied on sample port handling invoices and settlement detail lists.	Yes	Yes
Export bank charges	MTM only incurred bank charges for Australian export sales.	Calculated based on actual bank charges incurred. Relied on sample bank charge details.	Yes	Yes
Export credit insurance	MTM only incurred credit insurance expenses for Australian export sales.	Calculated based on actual credit insurance expenses incurred. Relied on sample accounting system screenshots detailing credit insurance allocation.	Yes	Yes

Adjustment type	Adjustment assessment	Calculation method and evidence	Did MTM claim this adjustment?	Assessment of whether adjustment should be applied
Export fixing and binding fee	MTM only incurred fixing and binding expenses for Australian export sales.	Calculated based on fixing and binding fee agreement with logistics service provider.	Yes	Yes
Export product liability insurance	MTM incurred different rates of product liability insurance between Australian export and domestic sales.	Calculated based on the unit cost of product liability insurance in MTM's insurance agreement covering 11 months of the inquiry period.	Yes	Yes

Table 9: Assessment of adjustments

APPENDIX C ASSESSMENT OF CHINESE DOMESTIC MARKET CONDITIONS

C1 Introduction

Comsteel submitted that a particular market situation for railway wheels exists in China due to the GOC's influence in the iron and steel market. Comsteel also submitted that, because of the claimed particular market situation, normal values for Chinese exporters cannot be determined under section 269TAC(1).

This appendix sets out the Commissioner's assessment of the market conditions in relation to those claims. This appendix also details the Commissioner's analysis and examination of evidence on the record.

It was not necessary for the Commissioner to reach a concluded view on the alleged particular market situation. The discussion of the alleged market situation is set out in this appendix only as a record of the Commissioner's investigative process.

This is because the Commissioner is satisfied that, because MTM only sold domestic like goods in non-arms length transactions and not in the ordinary course of trade, there is an absence of sales of like goods in China relevant for the purpose of determining a price under section 269TAC(1). In other words, section 269TAC(2)(a)(i) applies in the circumstances. The Commissioner was therefore not required to, and has not, also assess if the particular market situation, section 269TAC(2)(a)(ii), applies.

The Commissioner has also considered aspects of the assessment in this appendix for the purpose of considering benchmarks that could be potentially used to calculate the cost of production in China for the steel billet that was used to produce the goods. As explained in **Appendix D**, the Commissioner has not relied on those benchmarks because the Commissioner is satisfied that MIS's information was a more appropriate basis to determine the cost of production in China.

C1.1 Summary of chapters in this appendix

Chapter C2 summarises stakeholder submissions.

Chapter C3 discusses the parameters the Commissioner set to assess market condition claims.

Chapter C4 discusses market conditions in the Chinese steel market generally.

Chapter C5 discusses how market conditions apply to production and sale of freight carriage wheel. This discussion includes market conditions applying to the corresponding specialised steel billet used to produce the wheels.

Chapter C6 concludes with the Commissioner finding that market conditions in the Chinese steel and steel input markets directly affected the domestic market for railway wheels in China.

C1.2 Key terms in this appendix

In this appendix:

- the **GOC** refers to all levels of government in China, unless otherwise specified
- **SOE** refers to a Chinese state-owned or state-invested enterprise.

C2 Submissions received relating to market conditions affecting the costs in China and the market situation

C2.1 Rio Tinto's submissions

Rio Tinto's submission published 2 October 2023 claimed that a more compelling argument for reduced costs for Chinese steel products related to China's economies of scale, technical progress and superior equipment and investment rather than government interference.[134] Rio Tinto also submitted that that it was private steel manufacturers rapid growth, accession to the WTO and innovation that drove China's rapid expansion and competitiveness, leaving limited room for government influence to dictate pricing indices.

Rio Tinto further claimed that contemporary pricing in China was based on the 'Steel Price Index' and the China Iron and Steel Association index, which reflect prices of steel products across the Chinese market. Rio Tinto claimed that these prices reflected averages of raw materials, supply and demand, and market costs. Rio Tinto claimed these indices provide evidence that Chinese pricing follows global market trends rather than government intervention.

In response to the Rio Tinto submission, Comsteel's submission published 14 November 2023 referenced continuing excess capacity, increasing Chinese exports and alleged continued non reporting of subsidies.[135] Comsteel further submitted that Rio Tinto's reference to steel price indexes reference prices affected by the particular market situations in each of those markets, which would be higher in the absence of the particular market situations.

C2.2 The GOC's submissions

The GOC's submission published 30 October 2023 addressed claims made by Comsteel in its application and the then-Commissioner's findings in REP 466.[136] Below summarises the GOC's claims in this submission.

The GOC claimed the Comsteel's allegations – that government distortions were not normal and ordinary and the then-Commissioner's findings in REP 466 – were:

> *contrary to the facts and realities [about which the GOC has previously provided information] indicating the absence of mandatory government intervention and the competitiveness of the Chinese market.*[137]

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[134] EPR 632, document number 6.
[135] EPR 632, document number 11.
[136] EPR 632, document number 10.
[137] EPR 632, document number 10, p 1.

Specifically, the GOC claimed relating to its market:

- Chinese raw material inputs are all determined without any mandatory intervention from the GOC – any price difference between Australian products and Chinese products are principally due to comparative advantage and investment in new equipment
- the functions of the GOC's departments and branches are no different to that of government agencies in other countries.

The GOC claimed Comsteel provided no new information in its application for the continuation inquiry to prove the GOC had been intervening in the Chinese Steel and raw material markets.

The GOC also claimed the then-Commissioner's reasoning in REP 466 was 'capricious', 'confused' and 'failed to establish a causal link' between the government influence and the restriction of competition. The GOC referenced the following findings from REP 466 as examples.

The GOC claimed it was paradoxical that REP 466 found both:

- attempts to restructure the steel industry to manage excess capacity, oversupply and environmental concerns were evidence of the GOC's influence
- the GOC's attempts to address structural imbalances had had limited success and the desire to replace old with new plants had constrained the GOC's attempts to address overcapacity.

The GOC claimed that, even if government influence existed for sake of the argument, the countervailing investigation for REP 466 had been terminated with a *de minimis* (0.6%) subsidy margin. The GOC claimed that from the *de minimis* determination, it can be concluded that the relevant policies of the GOC had little impact and had not distorted the market.

The GOC submitted that REP 466 relied on French billet purchase prices to determine that the Chinese billet prices were significantly lower than a competitive market price. The GOC claimed that relying on French billet prices for this determination was not based on positive evidence and offered no consideration of factors affecting prices. The price factors which the GOC claimed REP 466 did not consider included:

- raw materials
- production technology
- labour costs
- different supply-demand conditions.

The GOC claimed that REP 466 failed to duly consider the GOC's legitimate need to safeguard public interest for reasons including:

- upgrading industry structure and product mixes
- energy conservation
- emission reductions
- environmental protection.

The GOC stated that these legitimate needs should be considered in the analysis.

The GOC further referenced the decision to not continue measures in continuation inquiry 569 (case 569) relating to another Chinese steel product, grinding balls.[138]

C2.3 Comsteel's submissions

Submission published 22 November 2023

Comsteel disagreed with the GOC's claims in a submission published 22 November 2023.[139] Specifically, Comsteel stated:

- the American Iron and Steel Institute identified the same trade distortions that REP 466 found, as stated in the institute's submission to the Office of the United States Trade Representative in September 2023. Comsteel claimed REP 466's findings are still relevant because the GOC has not altered its trade influencing policies and practices that were evident in the original investigation.
- Referring to the GOC's claim about the *de minimis* subsidy findings in REP 466, Comsteel claimed GOC interventions suppress Chinese costs and selling prices and these effects are evidence only when contrasted to external steel input costs.
- Referring to the GOC's claims about compliance with article 2.2.1.1 of the *Anti-Dumping Agreement*, the GOC's appeal to the WTO Dispute Settlement Body was still ongoing as of November 2023.
- Referring to the GOC's claims about case 569, the continuation inquiry for grinding balls, Comsteel claimed that case 569 stood alone from the current inquiry.

Submissions published 5 January 2024

Comsteel later provided briefing and submission documents, published 5 January 2024.[140] These documents provided additional information about distortions in the Chinese market.

Comsteel claimed MTM and its parent are recognised as high-tech enterprises and consequently receive a preferential rate of company tax of 15% (compared with the general rate of 25%). Comsteel claimed the GOC applied these preferential tax rates after the original investigation, in October 2022.

Regarding MTM's company background, Comsteel noted MTM is ultimately owned by the SASAC. Comsteel claimed the GOC, through the SASAC, was involved in the transfer of equity in MTM's parent entity (the China Baowu Group) as disclosed in MIS's 2022 financial report.[141] Comsteel claimed this involvement in equity transfer confirmed the continued intervention by the GOC in the Chinese steel industry.

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[138] See further ADRP, *ADRP report no 141: grinding balls exported from the People's Republic of China*, ADRP, Australian government, accessed 28 May 2024. See also EPR 608, document number 13 and EPR 569 generally.
[139] EPR 632, document number 14.
[140] EPR 632, document numbers 18, 19.
[141] MIS, *Maanshan Iron & Steel Co Ltd 2022 Financial Report*.

Regarding MTM's related supplier MIS, Comsteel claimed MIS benefitted from a broad range of subsidies, including:

- 'Subsidy funds for number 4 blast furnace'
- 'Technological transformation fund for phase II silicon steel'
- 'Subsidy for the hot-rolled 1580 project'
- 'New-zone thermal power plant CCPP system engineering'
- 'EMU steel wheel production line project'
- 'Environmental subsidy funds for gas desulphurisation and 136 [megawatt] thermal power'
- 'Subsidy for thin plate project'
- 'Environmental funds for desulphurisation project of 3rd iron plant's flue gas ([build-operate-transfer])'
- 'Alloy bar production line refinement project of electric furnace plant'
- 'Subsidy for Maanshan railway industry'.

Comsteel claimed recent publications evidence continued distortions and GOC influences, including:

- a steel report by Orbis from October 2023 regarding Chinese steel utilisation rates
- statements from the 93rd session of the Organisation for Economic Co-operation and Development (OECD) steel committee about global steel markets and capacity challenges
- a news article from Reuters about iron ore imports into China
- analysis from CRU Group evidencing steel producers in China operating at a loss

Comsteel also claimed that MTM has not demonstrated in its REQ that the GOC's policies and practices have evidently changed since REP 466.

C2.4 The Commissioner's response to submissions

The Commissioner has considered the submissions from the GOC, Comsteel and Rio Tinto in this assessment of market conditions. This assessment also includes analysis of the findings of previous cases conducted by the commission, verified data from MIS and MTM and desktop research. This appendix details the Commissioner's analysis below.

C3 Assessing Chinese market conditions in this inquiry

The largest cost component that MTM incurred to produce the goods was steel billet. Steel billet also comprised almost all the total raw material costs incurred.

As mentioned in chapter 6.3 of this report, MTM purchased all steel billet from its parent entity MIS. MIS produced steel billet primarily from steel scrap and molten iron. MIS produced the molten iron from intermediary products, with the largest costs originating from iron ore, coking coal and alloy purchases.

The Commissioner has considered information about domestic Chinese market conditions for these product markets:

1. products of the steel industry generally – noting the Commissioner has also considered the degree to which market conditions in this industry may affect the sales price and production cost of the goods
2. steel billet used to produce railway wheels – including the grade of billet that MTM used to produce the goods
3. freight carriage railway wheels – including the like goods sold in China.

Chapter C4 of this appendix discusses market conditions in the Chinese domestic steel industry generally (addressing point 1 above). Chapter C5 of this appendix discusses how market conditions apply to production and sale of freight carriage railway wheels and the corresponding specialised type of steel billet used to produce the wheels (addressing points 2 and 3 above).

The Commissioner has considered available information relating to the steel industry and information about the Chinese railway wheel market. The Commissioner notes the GOC did not provide a response to the government questionnaire but provided a submission about the claimed 'particular market situation',[142] summarised in chapter C2.

The Commissioner sought information and evidence from the GOC, including information on GOC involvement and policies in the steel market generally and the railway steel and steel billet sectors in particular, the operation of price signals in these sectors, and GOC measures that may or may not be affecting these sectors. The GOC has not cooperated with this request for information. The Commissioner notes that the GOC was informed that, if it elected not respond to the questionnaire, the Commissioner may be required to rely on information supplied by other parties, previous findings and information before the Commissioner in previous investigations and any other available information which the Commissioner considers relevant.

C4 The GOC role in the Chinese steel market – the sector for the goods

C4.1 Overview

The Chinese economy in general has undergone significant economic structural reforms to transition towards greater liberalisation of trade and foreign direct investment inflows and outflows. However, the role of government at all levels in the Chinese economy, controlling trade and foreign direct investment liberalisation for social and economic purposes, has created a hybrid system in China where decisions of the market are heavily influenced by government as opposed to ordinary conditions of competition.

Chinese firms selling and purchasing in China's steel markets set prices and make purchasing decisions that are influenced by the directives and policies of the GOC. These conditions are created in part by the prevalence of state-owned enterprises (SOEs) that reflect the economic, social and fiscal goals of the GOC, and impact the conditions of competition and pricing for private firms.

[142] EPR 632, document number 10.

C4.2 Summary of GOC policies and initiative interventions influencing Chinese steel markets

The Chinese steel industry is important to China's national, economic and social security. Growth in this industry has been dependent on structured investment in, and funding of, fixed assets in SOE steel mills, steel production output for massive infrastructure and urbanisation projects supported by the GOC and export-oriented trade.

In order to achieve such significant steel manufacturing output and to achieve supply-side economic growth and reform, the GOC manages an array of subsidy programs,[143] soft lending and credit facilities, preferential loans, land grants and capacity controls to drive domestic output and consumption of steel.

In recent years, China's steel industry has continued to play an important role in its economic structural reform and, as such, changes in response to global issues and concerns are slow and incremental. The Commissioner understands that the GOC prefers incremental reform so as not to induce 'shock' changes and sudden reforms in its steel industry because these have the potential to risk the livelihoods of directly employed workers and workers employed in related industries.

Specific initiatives, implemented to address imbalances in the Chinese steel market broadly, include the Central Government's supply-side reform initiatives and the January 2016 *Opinions of the State Council on resolving excess production capacity and achieving development out of difficulties in the steel industry*.[144] The 2016 GOC Opinions proposed reducing SOE steel mill capacity by 100 to 150 million tonnes by 2020.[145] A joint news release from the GOC Ministry of Industry and Information Technology (MIIT) and National Development and Reform Committee (NDRC) also stated China had reduced its steel production by 3% year-on-year in 2021 and 6.5% year-on-year in 2022.[146]

In February 2016, the Central Government pledged a CNY 100 billion fund for employee compensation, social security payments and plant closure incentives in the coal and steel sectors.[147] In addition, the 2016 GOC Opinions forbade the registration of new production capacity in any form and require that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline.[148] Capacity management measures utilised by the GOC include targets to limit steel production in

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143 These subsidy programs affect individual exporters differently depending on the level of subsidy they receive.
144 State Council, *Opinions of the State Council on resolving excess production capacity and achieving development out of difficulties in the steel industry*, notice number 2016(6), index number 000014349/2016-00013, State Council, GOC, 1 February 2016, accessed 25 March 2024.
145 H Liu and L Song, 'Issues and prospects for the restructuring of China's steel industry' in L Song, R Garnaut, C Fang and L Johnston (eds), *China's new sources of economic growth: vol 1*, ANU Press, 2016, doi:10.22459/CNSEG.07.2016, p 338.
146 T Zhou, J Gosens, H Xu and F Jotzo, *China's Green steel plans: near-term policy challenges and Australia–China links in decarbonisation*, Institute for Climate, Energy & Disaster Solutions, Australian National University, 2 August 2022, p 8, accessed 25 March 2024.
147 L Brun, *Overcapacity in steel: China's role in a global problem*, Center on Globalization, Governance & Competitiveness, Duke University, 2016, doi:10.13140/RG.2.2.11923.48161, p 38.
148 State Council, *Opinions of the State Council on resolving excess production capacity and achieving development out of difficulties in the steel industry*.

2023 to the levels recorded in 2022.[149] Other examples of capacity management measures announced include tightening bank lending to smaller mills, industry consolidation through mergers and acquisitions, and use of stricter environmental regulations to forcibly shut down capacity.[150]

The Commissioner recognises the GOC's attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. Yet although these efforts are targeted at correcting current imbalances and resulting distortions, the Commissioner in fact considers them to be evidence of the extent of the GOC's involvement within and influence over the broader steel industry, including during the inquiry period. As explained further below, the Commissioner finds that these measures have not resulted in the exit of loss-making firms from the Chinese steel market.

One key concern with inoperative steel mills ordered by the GOC to cease production for periods of time, also referred to as 'zombie mills', is that they reflect capacity that is idle rather than capacity permanently removed from the market. This means that, while the temporary removal of capacity helps moves toward competitive market conditions, those same plants have potential to return to production when higher steel prices prevail, leading to further distortions.[151] An example of this situation relates to a significant amount of capacity removed in 2016, which was already idle. The real capacity permanently removed was estimated to be in the range of 12 million to 20 million tonnes per year, compared to the reported 65 million tonnes.[152] As at April 2017, it was reported that China had an estimated 339 million tonnes of overcapacity, and favourable market conditions would likely extend the lifespan of zombie companies, which delayed the GOC's steel industry reforms.[153] In February 2024, Chinese news media reported that 75 of 201 steel production companies in China were inoperative, reflecting 115 blast furnaces not operating at that time.[154]

As the Commissioner understands it, the presence of loss-making firms (including 'zombie' firms) in the Chinese steel market is the result of overcapacity which has, in turn, led to over-production that depreciates prices. Overcapacity, in turn, is a function of various aspects of GOC influence in the Chinese steel market. Furthermore, through its capacity reduction efforts, the GOC policies directly influence the steel sector in terms of both production output and prices.

In addition, local governments have not fully implemented the central directives on capacity reduction, with reports that steel mills engage in 'capacity swapping' by moving

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149 D Patton, 'Some Chinese steel mills ordered to cap output this year – sources', *Reuters*, 25 July 2023, accessed 25 March 2024.
150 S&P Global, 'Global market outlook', *Platts Steel Business Briefing*, S&P Global Insights, January 2016, p 14.
151 S&P Global, 'Global Market Outlook', *Platts Steel Business Briefing*, S&P Global Insights, January 2017, p 10.
152 S&P Global, 'Global Market Outlook', January 2017.
153 EY Lee and A Dai, 'China's steel sector: supply reform', *DBS Asian Insights*, April 2017, accessed 25 March 2024, pp 5, 9. The estimated overcapacity is based on figures Lee and Dai sourced from the GOC for crude steel capacity and capacity utilisation.
154 S Chen, 'Ten years of steel production capacity control: Why are we shouting "surplus" every year?', *China Business News*, 5 February 2024, accessed 19 March 2024.

capacity to more favourable regions, thereby maintaining or increasing the mill's capacity.[155] The Commissioner further notes that recent research articles continue to identify overcapacity in coal production. Causes identified include through local officials' GDP-oriented performance system and promotional pressure where coal-based cities tend to persistently develop coal mining and production under the restriction of a single industrial structure, resulting in more coal production.[156]

The effectiveness of the GOC's attempts to address overcapacity through mergers and acquisitions have been constrained by:

- the replacement of older mills with new, larger and more efficient mills
- closing smaller mills to offset the commissioning of new, larger mills.

While this may eventually improve the industry's structure over the longer term, its impact to date has been to increase production and exacerbate the existing structural imbalances. For example, the China Baowu Group announced in 2016 that it would decommission 2.5 million tonnes of capacity to address overcapacity. However, it also commissioned 9 million tonnes of new capacity at its Zhanjiang facility.[157] In 2019, the China Baowu Group also increased its annual steel production capacity by 20 million tonnes after an agreement to merge with Magang (Group) Holding Co Ltd (Masteel Group).[158] Noting the Commissioner has verified 2 subsidiaries of the China Baowu Group and Masteel Group in this inquiry (MTM and MIS), the Commissioner also discusses these companies in chapter C5 of this appendix.

In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commissioner's view that these attempts to address existing structural imbalances have had limited success to date and further support the Commissioner's view that the GOC, through its policies, directly influences the domestic steel sector. Constraints in the effectiveness of these initiatives not only relate to the extent of the existing imbalances in the industry, but also difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing mills relates to their role as major employers, sources of tax revenue and providers of social services within their respective regions.[159] Specific examples of these issues include the reliance of their tax systems on business revenue (including production-based value-added tax [VAT]) and gross domestic product-oriented performance measures which encourage over-investment.[160]

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155 M Xu and D Patton, 'China to tighten steel capacity swapping, boost domestic iron ore output', *Reuters*, 9 May 2019, accessed 25 March 2024; M Xu and T Daly, 'China to halt capacity swaps in steel industry from January 24', *Reuters*, 23 January 2020, accessed 25 March 2024.
156 Q Zhang, XL Etienne and Z Wang, 'Reducing coal overcapacity in China: a new perspective of optimizing local officials' promotion system', *Environmental Science and Pollution Research*, 2022, 29:90364–90377, doi:10.1007/s11356-022-22010-2.
157 S&P Global, 'Global market outlook', *Platts Steel Business Briefing*, S&P Global Insights, June 2016, p 11.
158 A Galbraith and M Meng, 'China Baowu Steel to take majority stake in rival Magang', *Reuters*, 2 June 2019, accessed 25 March 2024. Note that 'Magang' approximates the Mandarin Chinese pronunciation of 'Masteel'. In English, media outlets and other organisations refer to 'Magang' and 'Masteel' interchangeably.
159 S&P Global, 'Global market outlook', *Platts Steel Business Briefing*, S&P Global Insights, April 2016, p 16.
160 Brun, *Overcapacity in steel: China's role in a global problem*, p 29.

Although the published policies that explicitly underpin these interventions by the GOC have expired according to their original dating, the Commissioner could not find, nor has the commission received, any information to indicate that they do not continue to form the basis for the GOC's policy in regulating the steel sector. The commission requested such information in the questionnaire that it sent to the GOC, to which the GOC did not respond.

C4.3 Industry planning guidelines and directives

The central body responsible for developing and administering planning directives and providing overarching approval of large-scale investment projects within China is the National Development and Reform Commission (NDRC). It is the Commissioner's view that directives from the NDRC, as the GOC's central planning authority, are thus central to both industry-specific 'five-year plans' and the planning decisions of all levels of government more generally. More explicit enforcement mechanisms are reflected in the *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines*.[161] Mechanisms to address non-compliance include:

- revoking of pollutant discharge permits
- restrictions on financial institutions providing new credit support
- restrictions on examination and approval of new investment projects
- restrictions on approval of new land for use by the enterprise
- restrictions on issuing of new, and cancelling of existing, production licenses.

According to reports, the *Notice of the State Council on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines* states that enterprises not conforming to the industrial policy shall not be provided financial support by financial departments. More implicit enforcement mechanisms are reflected by the regulatory powers of bodies, such as the MIIT. It is the Commissioner's understanding that such bodies maintain lists of companies that are deemed to be either compliant or non-compliant with national standards on production, environmental protection, energy efficiency and safety. Those deemed non-compliant are to be closed down.[162]

It is the Commissioner's view that the effectiveness of the above-mentioned mechanisms is reflected in the responsiveness of industry groups and major companies to the GOC's various directives.

China released its 13th five-year plan for economic and social development on 15 March 2016.[163] This plan outlined China's goals, principles and targets for infrastructure, the environment, financial services, health and social and economic development for the 5

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[161] State Council, *Notice of the State Council on further strengthening the elimination of backward production capacities*, notice number (2010)7, index number 000014349/2010-00027, State Council, GOC, 6 February 2010, accessed 25 March 2024 (the GOC Guidelines).
[162] Department of Industry, Innovation and Science (DIIS), Department of Industry, Innovation and Science, *Resources and Energy Quarterly: December quarter 2015*, Office of the Chief Economist, DIIS, Australian government, December 2015, p 47, accessed 25 March 2024.
[163] National People's Congress, *The 13th five-year plan for economic and social development of the People's Republic of China (2016–2020)*, Central Compilation & Translation Press, 7 December 2016, accessed 25 March 2024 (13th five-year plan). Note this citation links to the English translation on the NDRC's website.

years to 2020. This plan had a strong emphasis on supply-side structural reform that promotes the upgrade of industrial structures, strengthening market-oriented reforms, reducing industrial capacity, inventory, financial leverage and costs, and correcting structural shortcomings.[164]

To support the Chinese steel industry's development in line with the 13th five-year plan, the MIIT developed the *Steel Industry Adjustment and Upgrade Plan (2016–2020)*.[165] This adjustment and upgrade plan proposed to raise the average annual growth rate of industrial added value from 5.4% in 2015 to 6% by 2020, raise the capacity utilisation rate from 70% in 2015 to 80% by 2020, and raise the industrial concentration in top 10 producers from 34.2% in 2015 to 60% by 2020.[166] Examples of the Chinese steel industry's response to these directives was reflected in the restructuring of the China Baowu Group. As of 2022, China Baowu Group was the largest producer of crude steel, both in China and worldwide.[167]

China released its 14th five-year plan for national economic and social development on 11 March 2021.[168] This plan outlines China's goals, principles and targets for infrastructure, the environment, financial services, health and social and economic development for the 5 years to 2025 with a strong emphasis on modernisation and decarbonisation of the manufacturing industry by promoting green developments by focusing on capping energy utilisation.[169]

There have been a number of GOC policies, plans and initiatives relevant to the China steel industry published within the last 20 years, including the *Steel Industry Development Policy* from 2005,[170] the *Blueprint for the Adjustment and Revitalisation of the Steel Industry* from 2009[171] and the *2011–2015 Development Plan for the Steel Industry* from 2011.[172] As these plans have ended, the Commissioner's view is that these were largely superseded by further policies and plans.[173]

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[164] National People's Congress, 13th five-year-plan.
[165] MIIT, *Notice of the Ministry of Industry and Information Technology on issuing the Steel Industry Adjustment and Upgrade Plan (2016–2020)*, MIIT, GOC, notice number (2016)358, 28 October 2016, accessed 25 March 2024.
[166] MIIT, *Notice of the Ministry of Industry and Information Technology on issuing the Steel Industry Adjustment and Upgrade Plan (2016–2020)*. See also L Yan, 'China issues 13th five-year plan for the steel industry', China Subsidy Exchange blog, 22 November 2016, accessed 25 March 2024.
[167] World Steel Association, *Top steel-producing companies 2022/2021*, World Steel Association website, June 2023, accessed 25 March 2024.
[168] National People's Congress, *The 14th five-year plan for national economic and social development of the People's Republic of China and long-range objectives through the year 2035*, National People's Congress, GOC, 11 March 2021, accessed 25 March 2024 (14th five-year plan). Note this citation links to the English translation on the NDRC's website (files separated by chapter number).
[169] National People's Congress, 14th five-year plan.
[170] NDRC, *Steel industry development policy*, order number (2005)35, NRDC, GOC, 8 July 2005, accessed 25 March 2024.
[171] State Council, *Blueprint for the adjustment and revitalisation of the steel industry*, index number 000014349/2009-00099, State Council, GOC, 20 March 2009, accessed 25 March 2024.
[172] State Council, *Notice of the State Council on the Industrial Transformation and Upgrade Plan (2011–2015)*, notice number (2011)47, State Council, GOC, 30 December 2011, accessed 25 March 2024.
[173] Noting that some of the listed documents are over one decade old, the Commissioner considers that this further demonstrates long-term involvement of the GOC within the Chinese steel industry.

The Commissioner summarises below some of the key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry.

1. *Steel Industry Adjustment Policy (2005, revised in 2015)*[174]

- Upgrading product mix.
- Rationalising steel production capacity.
- Adjustments to improve organisational structures.
- Energy conservation, emission reductions, environmental protection.
- Production distribution.
- Supervision and administration.
- Guiding market exit.
- Methods of orientation and oversight of mergers and reorganisations.
- Consolidate number of steel companies.
- Lifting capacity utilisation rates to 80% by 2017.

2. *Notice of the State Council on accelerating the restructuring of industries with overcapacity (2006)*[175]

- Promoting economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion.
- Intensifying the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.

3. *Guiding opinions of the General Office of the State Council on promoting the restructuring and reorganisation of central enterprises (2016)*[176]

- SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach.
- State-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non-state-owned capital to play a role, while ensuring the state-owned capital's leading position.
- Related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, non-ferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

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[174] MIIT, *Public solicitation of opinions on the 'Steel Industry Adjustment Policy' (2015 revision) (Draft for comments)*, State Council, GOC, 20 March 2015, accessed 25 March 2024. The GOC's official state news agency reported that the cited draft revision came into effect from 1 July 2015: Y Song (ed), 'The Ministry of Industry and Information Technology requires steel companies to establish a quality system for the entire production process', *Xinhua News Agency*, 27 May 2015, accessed 25 March 2024.

[175] State Council, *Notice of the State Council on accelerating the restructuring of industries with overcapacity*, notice number (2006)11, index number 000014349/2006-00043, State Council, GOC, 12 March 2006, accessed 25 March 2024.

[176] State Council, *Guiding opinions of the General Office of the State Council on promoting the restructuring and reorganisation of central enterprises*, notice number (2016)56, index number 000014349/2016-00156, State Council, GOC, 17 July 2016, accessed 25 March 2024.

4. ***Steel Industry Adjustment and Upgrade Plan (2016 to 2020)***[177]
    - Enacting supply-side reforms with removal of 100 to 150 million tonnes of capacity between 2016 and 2020.
    - Raising capacity utilisation rates to 80% by 2020.
    - Further industry consolidation through mergers, leading to 10 largest producers accounting for 60% of production by 2020.

5. ***Guiding opinions on accelerating the merger and acquisition and reorganisation in key industries (2013)***[178]

6. ***Three-year action plan to win the Blue Sky War (2018)***[179]

7. ***Work plan for stable growth of the steel industry (August 2023)***[180]

    - For 2023, maintaining supply and demand while also steadily growing fixed asset investment.
    - For 2024, growing industry value by more than 4% and improve the industry's development environment and structure.
    - Promoting corporate mergers and restructures.
    - Continuing to strengthen and improve the work of resolving excess production capacity in steel.

8. ***Guiding opinions of 3 ministries and commissions on promoting high-quality development of the steel industry (January 2022)***[181]

    - Curbing increases to steel production capacity.
    - Promoting the elimination of 'backward' production capacity (production facilities that are below industry standard).
    - Promoting corporate mergers and restructures.
    - Accelerating the promotion of improved and upgraded quality of steel products in fields including advanced rail transit and automobiles.

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[177] MIIT, *Notice of the Ministry of Industry and Information Technology on issuing the steel industry adjustment and upgrade plan (2016–2020)*. See also J Zhang, J Liu, Y Gao and C Zhao, 'Green Development Efficiency and Its Influencing Factors in China's Iron and Steel Industry', *Sustainability*, 2021, 13(2):510, doi:10.3390/su13020510.
[178] MIIT, *Guiding opinions on accelerating the merger and acquisition and reorganisation in key industries*, notice number (2013)16, MIIT, GOC, 22 January 2013, accessed 25 March 2024.
[179] State Council, *Three-year action plan to win the Blue Sky War*, notice number (2018)22, index number 000014349/2018-00096, State Council, GOC, 27 June 2018, accessed 25 March 2024.
[180] MIIT, *Work Plan for Stable Growth of the Steel Industry*, notice number (2023)131, MIIT, GOC, 21 August 2023, accessed 25 March 2024.
[181] MIIT, NDRC and Ministry of Ecology and Environment, *Guiding opinions of 3 ministries and commissions on promoting high-quality development of the steel industry*, notice number (2022)6, MIIT, GOC, 20 January 2022, accessed 25 March 2024.

In addition, broader industrial restructuring and reorganising directives of the GOC have an impact on the Chinese steel industry.[182]

In assessing the relevance of these planning guidelines and directives, the Commissioner notes the importance of the GOC's national five-year plans, which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commissioner notes, but does not agree with, the GOC's previously expressed view that they are for guidance and are not enforceable.[183] Mechanisms through which the Commissioner considers the GOC is able to enforce these guidelines and directives include the presence and role of SOEs within the broader steel industry, the role of the NDRC and explicit enforcement mechanisms. The GOC, where it is also the majority owner of an SOE, can exert its influence through the appointment of board directors and chief executives.[184]

SOEs' significant share of total Chinese steel production, and propensity to follow government guidance and directives, ensures that the GOC can influence broader trends in industry capacity and steel production. Similarly, the NDRC, through its dual role of developing planning guidelines and directives and approving large-scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council *Notice on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines*, includes a range of sanctions, such as revocation of pollutant discharge permits, restrictions on the provision of new credit support, restrictions on the approval of new investment projects, and restrictions on the issuing of new and cancelling of existing production licenses.[185]

A further example of the GOC's use of planning guidelines and policy directives to achieve its objective can be seen in the GOC's *Standard Conditions of Production and Operation of the Iron and Steel Industry*.[186] This document sets out the minimum requirements for production and operation in the Chinese steel industry. Firms are incentivised to comply with the standard conditions, as doing so provides the basis for policy support. In contrast, firms that do not conform are required to reform, and if they still fail to conform, must gradually exit the market. Based on the available evidence, the

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182 For example: State Council, *Notice of the State Council approving and transmitting several opinions of the National Development and Reform Commission and other departments on curbing overcapacity and redundant construction in certain industries and guiding the healthy development of industries*, notice number (2009)38, index number 000014349/2013-00134, State Council, GOC, 26 September 2009, accessed 25 March 2024; State Council, *Guiding opinions of the State Council on resolving serious overcapacity conflicts*, notice number (2013)41, index number 000014349/2013-00134, State Council, GOC, 6 October 2013, accessed 25 March 2024; NDRC, *Guidance catalogue for industrial structural adjustments (2024 edition)*, notice number (2023)7, NDRC, GOC, 27 December 2023, accessed 25 March 2024.

183 See the final report for dumping and countervailing subsidy investigation number 177: EPR 177, document number 416, p 123.

184 D Zhang and O Freestone, 'China's unfinished state-owned enterprise reforms', *Economic roundup issue 2, 2013*, the Treasury, Australian Government, 2013, accessed 25 March 2024.

185 See EPR 177, document number 416, p 128.

186 MIIT, *Standard conditions of production and operation of the iron and steel industry*, notice number (2010)105, MIIT, GOC, 21 June 2010, accessed 25 March 2024. The Commissioner has an English translation of this standard at EPR 177, document number 206 (titled 'Government of China – Attachment A11').

Commissioner finds that decisions about levels of production in the Chinese steel market are often based on GOC policy goals as opposed to properly functioning price signals.

In the GOC questionnaire, the Commissioner asked the GOC to provide a copy of its 13th and 14th five-year plans for national economic and social development. The Commissioner also asked the GOC to describe:

- changes to GOC policies and practices that impact the railway wheel manufacturing industry as well as the iron and steel manufacturing industry, including changes to the text or implementation of national and state five-year plans as they concern the steel industry
- changes to GOC policy regarding steel industry adjustment and revitalisation
- changes to the various measures identified by the Commissioner in earlier investigations and inquiries as implementing the goals and aims of GOC plans and policies.

The GOC did not respond to this request for information.

C4.4 Role and operation of SOEs

China publicly adopted its 14th five-year plan for economic and social development on 12 March 2021.[187] The 14th five-year plan outlines China's goals, principles and targets for infrastructure, the environment, financial services, health and socioeconomic development for the five years to 2025. The 14th five-year plan has a strong emphasis on innovation, and a weaker emphasis on the modernisation of industrial infrastructure, the supply of finance and support for small and medium enterprises, all to the end of a 'manufacturing powerhouse' strategy, and notably includes mention of 'transforming and upgrading traditional industries', including steel industries. Although the 14th five-year plan is now in place, the Commissioner also considers that the effects of the various GOC plans and policies relating to the steel industry (outlined above in this appendix) continued in the inquiry period, based on the available evidence.

The Chinese economy is commonly described as a 'socialist market economy' as it features dominant SOEs co-existing with market capitalism and private enterprise.[188] Commentary provided with the 2019 Fortune 500 list indicates that, of the 129 Chinese companies listed that year, SOEs accounted for 80% of the revenue earned – an increase of 4% on the previous year.[189]

The full extent of state ownership and control in the steel sector can be difficult to quantify, due to the ownership structure and classifications of state enterprises.[190] The Commissioner has considered data from the world steel association and information publicly available, to assess the significance of SOEs in the Chinese steel sector.

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[187] National People's Congress, 14th five-year plan.
[188] Asialink Business, *China's economy*, Asialink Business website, n.d., accessed 25 March 2024
[189] Y Zheng, 'In a first, China has more companies on Fortune Global 500 list than the US', *South China Morning Post*, 22 July 2019, accessed 25 March 2024.
[190] G Mattera and F Silva, 'State enterprises in the steel sector', *OECD Science, Technology and Industry Papers*, 9 September 2018, doi:10.1787/2a8ad9cd-en, pp 6–7 (OECD steel SOEs report).

The Commissioner estimates that, for the largest 10 Chinese steel firms by production (outlined below), greater than 70% of steel production was by Chinese SOEs. Steel production by these 6 SOEs alone accounted for greater than 30% of total crude steel production in China in 2022.

Company or group	State-owned	Crude steel production (million MT)[191]
China Baowu Group	Yes	131.84
Ansteel Group	Yes	55.65
Shagang Group	No	41.45
HBIS Group	Yes	41.00
Jianlong Group	No	36.56
Shougang Group	Yes	33.82
Shandong Steel Group	Yes	29.42
Delong Steel Group	No	27.90
Hunan Steel Group	Yes	26.43
Fangda Steel	No	19.70
Total (SOEs in China top 10)		**318.16**
Total (China top 10)		**443.77**
Total China		**1,018.00**

Table 10: The largest 10 Chinese steel firms by production (million MT)

The World Bank has found:

> *state enterprises have close connections with the Chinese government. SOEs are more likely to enjoy preferential access to bank finance and other important inputs, privileged access to business opportunities, and even protection against competition.*[192]

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[191] World Steel Association, *World steel in figures 2023*, World Steel Association website, 18 May 2023, accessed 25 March 2024.
[192] World Bank and the Development Research Center of the State Council, People's Republic of China, *China 2030:* building a modern, harmonious, and creative society, World Bank, Washington DC, 2013, doi:10.1596/978-0-8213-9545-5, p 25.

While the Commissioner does not consider that the presence of these entities alone causes market distortions, the Commissioner does consider that the presence of these entities is likely to result in adherence with the GOC's plans and directives. The Commissioner also considers that the support provided to these entities by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting supply and pricing conditions within the domestic Chinese market.[193] The corollary of the various forms of support, which are described further below,

The various ways the GOC financially supports SOEs acts to 'reduce the normal commercial pressures for companies to operate efficiently and for poorly performing firms to cut back or cease operations'.[194] In this context, a summary of evidence by the European Commission identified persistent deferred or reduced loans in China, including SOEs, in spite of GOC plans to reduce such practices.[195]

An academic study found that 'the share of loss-making enterprises was 51 per cent' in the steelmaking sector in 2015, and 'for some enterprises, the losses have even exceeded the sum of depreciation, wages and interest—yet these firms have continued production', and that 'these enterprises can in fact operate into the long term while making continuous losses' through various forms of GOC support.[196] According to this study, the selling costs for almost half of the enterprises in China's steelmaking industry exceeded their selling prices in 2015.[197] This study also found that SOEs were far more likely than private firms to be sustaining operating losses over prolonged periods.[198]

Examples of the support mechanisms that enabled SOEs to sustain ongoing operational losses include government subsidies, support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees) and loans from state-owned banks.[199] As discussed in chapter C4.2, the evidence indicates a prevalence of so-called 'zombie' firms in the Chinese steel sector – that is, firms that sustained prolonged operating losses in the steel sector and yet have not entered liquidation nor restructured. Such firms can continue operating through these kinds of support mechanisms.

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193 DIIS, *Analysis of steel and aluminium markets: report to the Commissioner of the Anti-Dumping Commission*, Anti-Dumping Commission, DIIS, Australian Government, 2016, accessed 25 March 2024, p 47 (*Commissioner's steel report*).

194 DIIS, *Commissioner's steel report*, p 59.

195 European Commission (EC), *Commission staff working document: on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations*, document no SWD(2024)91 final, EC, European Union Government, 10 April 2024, accessed 3 June 2024, pp 178–179, 308–309 (*EC report 2024)*. This report refers to 'EC report 2024' to distinguish from an earlier version of the EC report published in 2017, to which SEF 632 referred.

196 Liu and Song, 'Issues and prospects for the restructuring of China's steel industry', pp 343, 346, 349. The same has been found by various other studies: see, for example, OECD, *OECD economic surveys: China 2017*, OECD, 2017, doi:10.1787/eco_surveys-chn-2017-en, pp 40–41; EC, *EC report 2024*, pp 308–309. In the GOC questionnaire for this inquiry, the Commissioner requested contemporary information directly relevant to these issues, such as, inter alia, the 'percentage of loss-making SOEs and SIEs in the HRC steel industry over the last 5 years' and details of 'any support provided by the GOC to loss-making enterprises in the HRC steel sector'. The GOC did not provide a response to the questionnaire.

197 Liu and Song, 'Issues and prospects for the restructuring of China's steel industry', p 346.

198 Liu and Song, 'Issues and prospects for the restructuring of China's steel industry', pp 345–350.

199 Liu and Song, 'Issues and prospects for the restructuring of China's steel industry', p 348.

These loss-making firms have also faced barriers to entering bankruptcy or liquidation despite continuing to make sales at unprofitable rates, because of the particular incentive structures pertaining to SOEs. For instance, according to one of the studies considered by the commission, transfers of shares in SOEs were not valid unless approved by the SASAC which meant, in turn, that the 'inability to transfer ownership results in the ability of SOEs to generate losses for a long period without fear of bankruptcy, including the ability to engage in anticompetitive practices such as below-cost pricing without fear of falling equity prices or bankruptcy'.[200]

As another example, with respect to taxation, an academic study found that 'local governments receive the majority of their business tax revenues from a factory's production, not on profit', which incentivised local governments to deter bankruptcy.[201] Another academic study found that a 'policy of 'securing jobs' has been deeply entrenched in the running of SOEs' such that 'leaders of SOEs as well as local governments have tended to tolerate losses rather than risk dismissing staff, which would generate an alternative – and noisier – problem on the social front'.[202] Given that steel mills are typically major employers, sources of significant tax revenue and providers of health care and education services within their respective regions, there are significant incentives for provisional and local governments to resist directives from the Central Government to remove excess capacity and to provide these producers with support to enable them to continue operating.[203] The Commissioner notes the finding in chapter C4.2 that local governments have not fully implemented the central directives on capacity reduction and that the Central Government's efforts on this point have had limited success to date.[204]

Rather, the Commissioner considers the support mechanisms mentioned above have enabled certain firms in the Chinese steel sector, particularly SOEs, to be operated on non-commercial terms for extended periods, and have contributed to the rapid expansion of steel production capacity in the SOE segment, despite repeated attempts by the Central Government to reduce the scale of steel production. It is also the Commissioner's view that these support mechanisms have insulated recipient firms from ordinary price and profit signals[205] and hence have significantly contributed to the excessive investment in capacity, excess steel production, distorted prices and, at times, ongoing loss-making.

The significance of SOEs to the broader Chinese economy, including the steel industry, is also reflected in the State Council of China's *Guidance on the promotion of central enterprises restructuring and reorganisation*.[206] In introducing this guidance, the State

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[200] Brun, *Overcapacity in steel: China's role in a global problem*, p 26. The Commissioner requested contemporary information pertaining to the process for transferring shares in SOEs and the SASAC's involvement in the GOC questionnaire. The GOC has not responded.
[201] Brun, *Overcapacity in steel: China's role in a global problem*, p 29.
[202] Liu and Song, 'Issues and prospects for the restructuring of China's steel industry', pp 351–352.
[203] See also the final report for dumping investigation number 301: EPR 301, document number 38, p 58.
[204] The Commissioner also notes that the GOC did not cooperate with the present inquiry and did not respond to the request for information of direct relevance to this issue (see sections B and C of the GOC questionnaire).
[205] As explained in chapters C4.4 and C4.6 of this appendix, this dynamic is also a result of adherence to GOC policy directives by both SOEs and private firms.
[206] State Council, *State Council issues guideline on reorganization of SOEs* [media release], State Council, GOC, 26 July 2016, accessed 25 March 2024.

Council notes the important role of SOEs in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The guidance also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

In 2019, the GOC announced its intention to introduce a 3-year action plan on SOE reform, which reflects the continuation of the significance of SOEs to the Chinese economy.[207] The plan is designed to target mixed-ownership reform and strategic restructuring in sectors including coal and electricity, steel and non-ferrous metal. In recent years, SOE reform has focussed on consolidation through mergers and acquisitions, which has (arguably) increased the state's presence in the market.[208]

The Commissioner considers that, in combination with slow, incremental policy reform and the GOC's economic and fiscal stimulus packages, the role of SOEs in general involved in 'capital intensive sectors that produce intermediate but highly tradable goods with important linkages to other upstream and downstream economic activities, such as the mining, chemicals or even electronics sectors'[209] provides a buffer to the Chinese steel industry from external market forces. Put another way, the available evidence suggests that decisions relating to the terms of transactions in the Chinese steel market are insulated from price signals.[210] This results in the anomalous circumstance whereby those SOEs 'operating in upstream sectors … provide inputs to steel companies at below-market prices and in preferable terms.'[211] The Commissioner notes that the major input into the railway wheels is steel billet, supplied from a related party SOE at below cost during the inquiry period.

C4.5 Role of the GOC in private firms

In addition, the Commissioner understands that, while not expressly compulsory under law, private firms engage with the policies and objectives of the GOC by aligning their commercial interests with industry directives and where relevant, appointing party members on supervisory boards. Based on the available evidence, the Commissioner finds that the decisions of such firms in the Chinese market are often based on GOC policy goals as opposed to properly functioning price signals. The Commissioner also notes that overcapacity arising from GOC influence impacts the overall market in ways

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[207] State Council, *China's central SOEs urged to increase profitability, deepen reform* [media release], State Council, GOC, 20 July 2020, accessed 25 March 2024.
[208] H Yu, 'Reform of state-owned enterprises in China: The Chinese Communist Party strikes back', *Asian Studies Review*, 2019, 43(2):332–351, doi:10.1080/10357823.2019.1590313.
[209] Mattera and Silva, *OECD steel SOEs report*, p 5.
[210] Section C of the GOC questionnaire for this inquiry requested information relating to government involvement in setting prices in the zinc coated (galvanised) steel and HRC sectors, such as, inter alia, "[w]hat 'price regulation fund' regulations have applied to zinc coated (galvanised) steel and HRC since 1 July 2006?" The GOC did not respond to this information request.
[211] Mattera and Silva, *OECD steel SOEs report*, p 8.

that put downward pressure on prices, as do the unprofitable sales of firms (often SOEs) transacting at losses in the Chinese steel sector.[212]

C4.6 Direct and indirect financial support

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include preferential loans and directed credit, equity infusions and debt-to equity swaps, access to land at little or no cost, government mandated mergers (permitting acquisition at little or no cost) and direct cash grants for specific steel construction projects.[213] Similar programs have been previously identified by the Commissioner in respect of the Chinese steel industry. It is the Commissioner's view that these programs have directly contributed to conditions within the Chinese steel industry during the inquiry period by providing direct financial support to recipient steel producers.

These subsidies and tax concessions reduce the operating costs of Chinese steel enterprises, confer a competitive advantage through the ability to offer steel products at lower prices and increase the profitability of steel production.[214] Although subsidies affect specific exporters differently based on the level of subsidy they receive, subsidisation supports unprofitable producers, delaying or preventing their timely exit from the industry. As mentioned earlier, this is another reason that explains why sales of both upstream and downstream steel products in the Chinese market are made by suppliers that sustain ongoing operational losses and tolerate unprofitable terms. In effect, such support enables loss-making firms to continue selling steel products (including upstream steel inputs) into the market at rates that do not correspond to the cost of production for those products in China. These industry-wide effects are broader than the recipient-specific subsidisation that may be the subject of countervailing duties.

C4.7 Taxation arrangements

The Commissioner has previously identified evidence of export taxes and export quotas on several key inputs in the steel making process for steel billet including coking coal, coke, iron ore and scrap steel in REP 466.[215]

These measures keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market, increasing domestic supply and reducing domestic prices to a level below what would have prevailed under normal competitive market conditions.

C4.8 Competition in Chinese steel markets

The Commissioner considers the GOC's involvement and influence over the steel industry is a primary cause of the prevailing structural imbalances within both the broader steel industry. The issuance of planning guidelines and directives along with provisions of direct and indirect financial support creates a domestic market that benefits domestic

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212 See EC, [EC report 2024](), pp 402–403.
213 Brun, *Overcapacity in steel: China's role in a global problem*, p 25.
214 DIIS, [*Commissioner's steel report*](), p 45.
215 Discussed in REP 466: EPR 466, document number 89, pp 41–43.

producers and supports inefficient enterprises, but does not support access and therefore competition from foreign producers.[216]

The Commissioner acknowledges that China's supply side structural reform targets the structure of production, to make it more efficient and to balance the supply side of China's economy with the demand side.[217] The supply-side structural reform is a 'suite of policies [focusing] on reducing distortions in the supply side of the [Chinese] economy and upgrading the industrial sector'.[218] China's steel industry has been a key focus of these policy reforms. However, as explained in chapters C4.2 to C4.4, the Commissioner considers these attempts to address existing structural imbalances have had limited success to date.

In short, the Chinese steel market is constructed such that preferential treatments, whether focussed at SOEs or not, create a situation of 'competition for factors of production' rather than market driven competition based on price, service and value.[219]

The Commissioner therefore considers that the GOC's historic and continued involvement in the Chinese steel industry, through its policies, planning guidelines, plans and directives, materially contributed to its steel industry's overcapacity, over supply and distorted structure during the inquiry period. It is the Commissioner's view that these features have also limited foreign competition. When considered together, the state of affairs created by the GOC significantly affected the dynamics and price setting in the domestic market.

C4.9 Conclusion

Based on the evidence considered in this appendix, the Commissioner makes the following findings. These findings relate to the Chinese steel market as a whole, including both upstream and downstream steel products.

The Chinese steel market is characterised by firms, particularly SOEs, making unprofitable sales (including so-called 'zombie' firms). This circumstance arises from overcapacity attributable to GOC policy interventions, as well as other forms of GOC influence, which collectively place downward pressure on prices in the Chinese steel market.

Moreover, based on the available evidence, the sales prices of firms sustaining ongoing operational losses have affected the market as a whole, particularly given the extent of SOE involvement in steel production. The Commissioner finds that both SOEs and private firms operating in the Chinese steel market often make decisions on the terms of transactions based on GOC policy goals as opposed to properly functioning price signals.

The Commissioner recognises that the GOC has taken steps to seek to reduce overcapacity and secure the exit of unprofitable firms (including so-called 'zombie' firms),

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[216] Brun, *Overcapacity in steel: China's role in a global problem*, p 24. Support measures include stimulus programs, land and energy subsidies and soft lending policies.
[217] J Boulter, 'China's supply-side structural reform', *Bulletin*, Reserve Bank of Australia, Australian Government, December 2018, accessed 25 March 2024.
[218] J Boulter, 'China's supply-side structural reform'.
[219] Zhang and Freestone, 'China's unfinished state-owned enterprise reforms'.

but the Commissioner finds that those steps have been unsuccessful based on the available evidence.[220]

C5 The GOC role in the market for the goods

The Commissioner has found in the preceding chapter that the GOC exerts significant influence over the Chinese steel sector, including the steel billet market. This chapter further assesses the effect of that influence on steel billet prices in China and therefore on the cost of the primary steel input feed in the manufacture of the goods by Chinese producers.

C5.1 Significance of steel billet costs in the production of the goods

The Commissioner has found that billet is the major raw material input used in the production of railway wheels. Steel billet was greater than 70% of percentage of domestic and export total CTM.[221]

Given the high proportion of steel billet in the production of the goods and like goods and its influence on pricing decisions, the Commissioner considers that steel billet prices have a significant impact on both the production cost and selling price of the goods and like goods.

C5.2 The manufacturer of the goods and related parties

The exporter and manufacturer of the railway wheels during the inquiry period, MTM, is a Chinese SOE. MTM purchased all raw materials (steel billet) to produce the railway wheels from its parent entity, MIS.

MIS is a Chinese SOE within Masteel Group,[222] and one of the largest steel producers and sellers in China. MIS primarily sourced raw materials and services from Chinese SOEs, including various related parties within the China Baowu Group.

MIS ownership changed on 19 September 2019, due to the SASAC of Anhui province transferring 51% equity in the Masteel Group to the China Baowu Group.[223] Since then, Masteel Group has become one of the subsidiaries of the China Baowu Group. The China Baowu Group held 51% of the shares of Masteel Group, and the SASAC of Anhui Province held the remaining 49%. The direct controlling shareholder of MIS remained unchanged, that being Masteel Group. The China Baowu Group became an indirect controlling shareholder, and the actual controller of MIS was changed from the SASAC of

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[220] The GOC declined to provide information that would be directly relevant to the Commissioner's evaluation of this point. The Commissioner thus relied on the information available.

[221] The Commissioner notes their finding that steel billet was supplied to MTM at below cost. The percentage of total CTM would otherwise be higher.

[222] 'Magang' approximates the Mandarin Chinese pronunciation of 'Masteel'. In English, refer to 'Magang' and 'Masteel' interchangeably.

[223] MIS, *Maanshan Iron & Steel Co Ltd 2022 Financial Report*, p 134.

Anhui Province to the SASAC of the State Council[224] – MIS's primary owner was in effect the SOE SASAC both before and after this change.[225]

The China Baowu Group is a state-owned capital investment company controlled and held by the State-owned Assets Supervision and Administration Commission of the State Council. It is mainly engaged in operating state-owned assets within the scope authorized by the State Council, as well as carrying out relevant state-owned capital investment and operation.[226]

The Masteel Group is a state-owned holding enterprise and the controlling shareholder of MIS. It is mainly engaged in mining and sorting of mineral products, construction, manufacturing of construction materials, trading, storage and property management, as well as agriculture and forestry.[227]

[224] MIS, *2022 Environmental, social and governance report*, MIS website, 31 March 2023, accessed 25 March 2024, p 6.
[225] The SASAC of the State Council typically owns shares of relatively large companies in China. The SASAC of Anhui province typically owns shares of companies in Anhui province.
[226] MIS, *(1) discloseable and connected transaction – absorption and merger of Masteel Finance and (2) continuing – financial services agreement*, MIS website, 15 November 2022, accessed 25 March 2024.
[227] MIS, *(1) discloseable and connected transaction – absorption and merger of Masteel Finance and (2) continuing – financial services agreement*.

Below is an outline of MIS and MTM's corporate structure, noting that MIS wholly owned MTM during the inquiry period:[228]

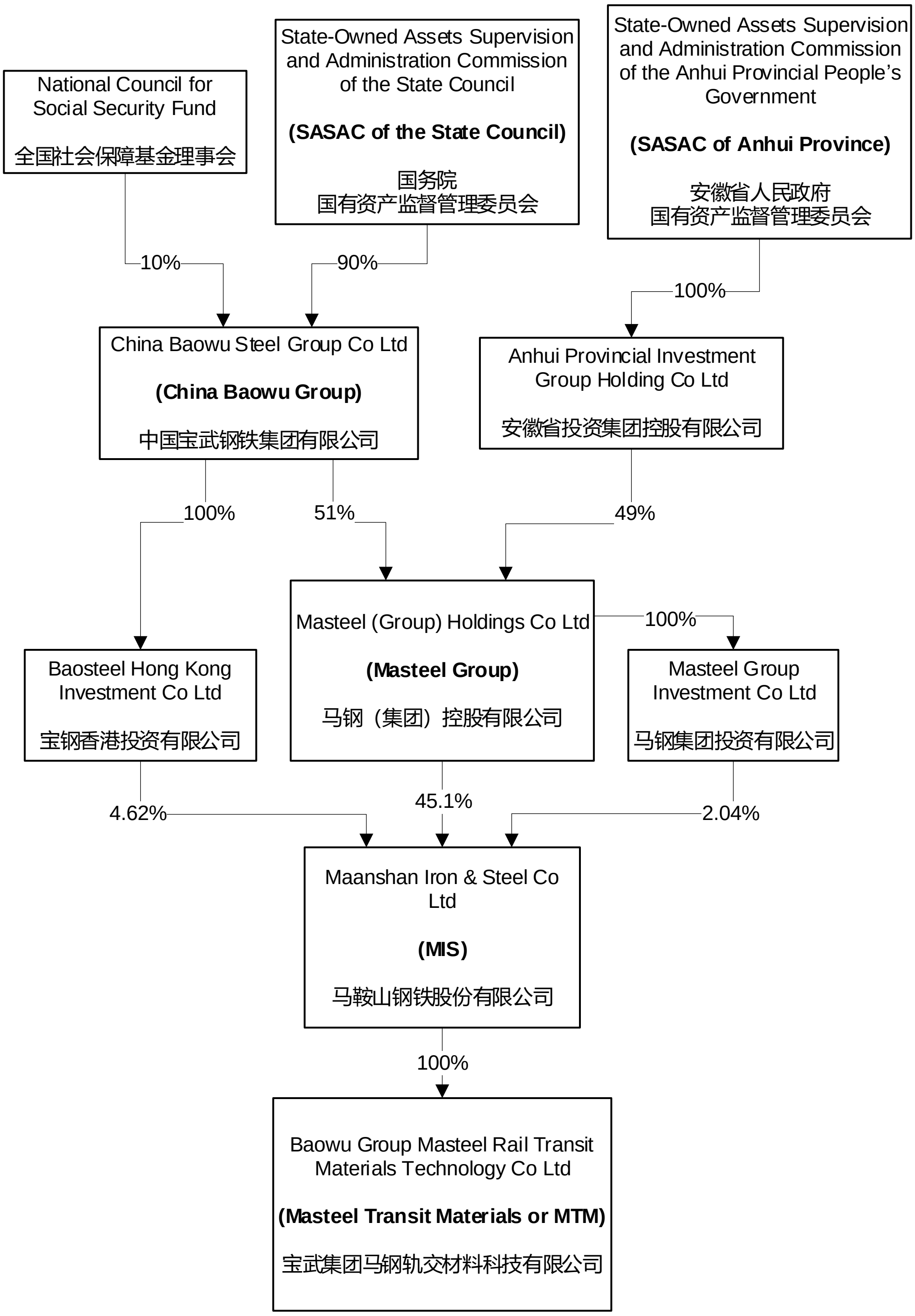

Figure 14: Corporate ownership structure of MIS and MTM

MIS senior management, including the chairman, vice chairman, general manager and deputy general managers hold management positions in controlling shareholder

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228 MIS, [Maanshan Iron & Steel Co Ltd 2022 financial report](), pp 2–4, 135.

companies, which are wholly-state owned.[229] In addition, certain senior management are reported as being directly managed by the China Baowu Group.[230]

MIS and MTM are each required to have a party committee, in accordance with their respective articles of association. The party committee is comprised of senior management and ensures implementation of national principles and policies and considers major operational and management matters before decisions are made.[231] The party committee is a key pillar for the GOC to exercise control of SOEs, through the participation in corporate decision-making.[232]

The Commissioner finds that the GOC exercises control in the market, through ownership, and its role in management and decision-making structures.

C5.3 Government initiatives, policies, planning guidelines and directives

The Commissioner has not received a response from the GOC with relevant information on national or provincial policies or programs concerning the steel industry, MIS or MTM during the inquiry period.[233]

The Commissioner understands that the steel industry is of significant national importance. The actual controlling shareholder of MIS is the SASAC of the State Council and the SASAC, with the SASAC of Anhui province an indirect shareholder.

The Anhui Government has historically enacted various policy measures to support the development of Masteel, including through close cooperation with other SOEs, and the preferential allocation of iron ore resources to Masteel.[234]

The Commissioner has identified examples of preferential prices applicable to MIS during the inquiry period, including for the supply of domestic iron ore from a related party SOE within the Masteel Group (owned by the SASAC of the State Council and the SASAC of Anhui Province).[235]

The Commissioner finds that MIS and MTM were both recognised as 'High-Tech Enterprises', with preferential taxation treatment, as their operations are in so-called high-tech fields supported by the state.[236]

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[229] MIS, *Maanshan Iron & Steel Co Ltd 2022 financial report*, pp 83–87.
[230] MIS, *Maanshan Iron & Steel Co Ltd 2022 financial report*, p 83.
[231] MIS, Articles of association, MIS website, 1 December 2022, accessed 25 March 2024, chapter 15.
[232] X Jin, L Xu, Y Xin and A Adhikari, 'Political governance in China's state-owned enterprises', *China Journal of Accounting Research*, 2022, 15(2):100236, doi:10.1016/j.cjar.2022.100236.
[233] The Commissioner notes that MTM provided the 13th and 14th five-year plans for economic and social development of Anhui Province. The documents provided are not specific to the iron and steel industry and contain only very general details such as to 'strengthen strategic emerging industries' including Ma'anshan advanced rail transit equipment.
[234] Anhui Provincial People's Government, *Notice of the People's Government of Anhui Province on issuing the plan for the adjustment and revitalisation of the steel industry in Anhui Province (cached)*, Anhui Government, GOC, Baidu website, 14 April 2019, accessed 26 March 2024. Note that the link cited is to a cached version of the Anhui Government website. Commission staff could not access the Anhui Government website despite repeated attempts.
[235] EPR 632, document numbers 26, 27.
[236] EPR 632, document numbers 26, 27.

MIS and MTM also received direct government support through various income-related and asset-related grants, including:

- technical innovation grants
- government industrial support funds
- import and export incentives
- subsidies for employment stabilisation
- grants for environmental improvement projects
- policy rewards and subsidies.[237]

Restructure to support government planning and policies

The Commissioner understands that the corporate restructure which moved MIS and MTM into the China Baowu Group was implemented as part of the GOC's national policies and planning for the Chinese iron and steel industry. Its stated purposes included implementing supply-side structural reform and to redress ongoing issues such as overcapacity.

According to the information provided and publicly available information, the transfer:

- occurred for nil consideration, being a policy-driven action rather than a normal commercial transaction
- was driven by the GOC government's overall policy and strategy in relation to the restructuring of its iron and steel industry
- occurred to consolidate the iron and steel production of MIS and the Masteel Group and achieve concentration of production capacity in furtherance of the State Policy.[238]

MIS public joint announcement, provided by MIS, contains the following details of the reasons for the transfer:

> *The Equity Transfer represents part of the initiative consistent with the policy of the PRC government to promote the development of the iron and steel industry and to implement a structural reform of the industry, by way of consolidating and reorganizing iron and steel producers to create globally competitive conglomerates. The principal objective is to consolidate and optimize the iron and steel production operations between China Baowu and the Company, thereby increasing the degree of market concentration within the iron and steel industry in the PRC and thus the overall level of competitiveness of the enlarged China Baowu group in the global markets. Such restructuring is also in line with the ongoing restructuring of state-owned asset by the PRC government.*

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[237] See, for example: MIS, *Maanshan Iron & Steel Co Ltd 2022 financial report*; MIS, *Overseas regulatory announcement on receipt of government grants*, MIS website 30 January 2024, accessed 25 March 2024.

[238] Securities and Futures Commission, *Ruling on whether the mandatory general offer obligation that would result from the proposed transfer of an interest in Magang (Group) Holding Company Limited, the controlling shareholder of Maanshan Iron & Steel Company Limited, should be waived, and, if not, the applicable offer price per H share for the purposes of the offer*, SFC, Hong Kong SAR Government, 22 July 2019, accessed 25 March 2024, pp 4–6.

> *Pursuant to a guiding opinion issued by the State Council of the PRC in September 2016, by 2025, the top ten enterprises in the iron and steel industry of the PRC should achieve a total concentrated production capacity of over 60% of the overall production capacity among the whole iron and steel industry in the PRC. Further, the top ten enterprises should include at least three to four conglomerates in the iron and steel industry of the PRC, each with a production capacity of at least 80 million tonnes. The Equity Transfer, upon Completion, will likely enable the enlarged China Baowu group to achieve the required target of at least 80 million tonnes of production capacity. It is against such background that the Equity Transfer Agreement was entered into by Anhui SASAC and China Baowu, with the support of SASAC, in order to implement and support the overall policy and strategies in relation to the long-term development of the iron and steel industry in the PRC.*[239]

The Commissioner also refers to the following public details in relation to the transfer:

> *In order to actively implement the decisions and arrangements of the CPC Central Committee and the State Council for promoting the sound development of domestic iron and steel industry, further advance national economic layout restructuring, implement supply-side structural reform and accelerate merging and reorganization in industries with overcapacity, Anhui SASAC and China Baowu entered into the Agreement on the Transfer of Equity Interests in Magang Group at Nil Consideration on 31 May 2019*.[240]

The Commissioner finds that the GOC exercises control in the market, through policies, programs, and direct intervention to influence corporate ownership structures.

C5.4 Government role in the railway wheel end user market

The Commissioner has identified that there is significant GOC and SOE involvement in the end user sector of the railway wheel market.

The GOC involvement in the end user sector of the railway wheel market includes the following entities:

- CRRC Corporation Limited (‘CRRC’ in this company name referring to China Railway Rolling Stock Corporation) – a Chinese state-owned rolling stock manufacturer created through the merger of China’s two rolling stock manufacturers into the one entity in 2015
- China State Railway Group Co Ltd – a solely state-owned enterprise under the management of the central government, established in accordance with the approval of the State Council and Chinese company law and which operates a significant portion of China’s railways[241]

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[239] Baosteel Hong Kong Investment Co Ltd and MIS, *Joint announcement*, MIS website, 23 July 2019, accessed 25 March 2024. MIS submitted that it could not provide the equity transfer agreement as it was not directly involved in the transfer but referred to this joint announcement, made to the Stock Exchange of Hong Kong (HKEX).

[240] MIS, *Overseas regulatory announcement*, HKEX News website, 26 August 2019, accessed 25 March 2024, p 28.

[241] China State Railway Group Co Ltd, *About us*, China Railway website, n.d., accessed 25 March 2024.

- China Railway Construction Corporation and China Railway Group Ltd – both SOEs involved in railway infrastructure construction.[242]

The Commissioner also notes that high speed railways and railway equipment are classified as a key industry sector for the GOC's Made in China 2025 initiative.[243] It is also noted that the domestic customer for the goods in China was a SOE under the SASAC of the State Council.

C5.5 The conditions affecting the goods during the inquiry period

The Commissioner has identified significant government influence in the market for the goods, including in the forms of:

- policies, directives, and direct market intervention to affect company mergers
- the role and operation of SOEs
- direct and indirect financial support
- taxation arrangements.

The Commissioner notes their earlier findings in this appendix that government policies led to structural imbalances and conditions of excess production and capacity, with prices more likely to be affected by loss-making firms.

These factors directly affected the market conditions in the Chinese steel sector during the inquiry period, with an economic downturn leading to 'surplus production amid sluggish demand'.[244]

MIS, as one of the largest steel producers in China, both contributed to and was directly affected by these conditions. Its annual financial report for 2022 noted that:

> *From the perspective of the steel industry, it is difficult to fundamentally change the contradiction of oversupply in the short term, and the resource, energy and environmental constraints continue, thus the external environment facing the steel industry remains complex and severe.*[245]

MIS's 2023 interim report further noted that:

> *the external environment will remain as complex and challenging, domestic demand may still fall short. Regarding the steel industry, seven ministries including the Ministry of Industry and Information Technology, have recently jointly released the 'Stable Growth Plan for the Steel Industry' to implement the decisions and arrangements made at the Central Economic Work Conference. The plan clarifies that from 2023 to 2024, efforts will be made from both sides of supply and demand to stabilize operations, expand demand, promote reforms, support enterprises, and enhance the industry's capabilities, and effective measures will be taken to*

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[242] MJ Zenglein and A Holzmann, *Evolving Made in China 2025*, Mercator Institute for China Studies website, 2 July 2019, accessed 25 March 2024.
[243] Zenglein and Holzmann, *Evolving Made in China 2025*.
[244] Y Liu, 'Plan gives steel industry hope of brighter days ahead', *China Daily*, 6 October 2023, accessed 25 March 2024.
[245] MIS, *Maanshan Iron & Steel Co Ltd 2022 financial report*, p 48.

> *stabilize the economic performance of the steel industry and accelerate high-quality development.*[246]

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.[247] The Commissioner finds that loss-making existed, notwithstanding that MIS was eligible for government support and preferential prices from certain suppliers.

These conditions directly affected the market for the goods, as MTM benefitted 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.

C6 Conclusion

The Commissioner finds 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.

The Commissioner has further considered the impact of the conditions in the Chinese steel and steel input markets on steel billet prices as they relate to the grade of steel billet used to manufacture the goods and the specific circumstances of MTM's purchases of steel billet and the adjustments made by the commission. This analysis is included in **Appendix D**.

[246] MIS, *2023 Interim Report*, MIS website, 2023, accessed 25 March 2024, p 19.
[247] MIS, *Announcement on estimated loss for annual results of 2022*, MIS website, 2023, accessed 25 March 2024; MIS, *Announcement on estimated loss in interim results of 2023*, MIS website, 2023, accessed 25 March 2024.

APPENDIX D BENCHMARK ANALYSIS – CHINA

D1 Consideration of alternative benchmarks

In the course of the inquiry, the Commissioner has also considered other information that was potentially available to calculate a Chinese market price for the steel billet used to produce the goods as part of the assessment.

The Commissioner has not relied upon any of these benchmarks to establish the cost of production in the country of origin, because the Commissioner has concluded that the adapted MIS information was a more appropriate means to assess the cost of production in China.

The purpose of this appendix is to record the consideration the Commissioner has given to potential alternatives in the course of this inquiry.

The only use made of the benchmarks discussed in this appendix in the Commissioner's ultimate assessment was as a secondary check for the Commissioner to satisfy themselves that the Chinese market price derived from MIS's information was an appropriate basis on which to determine steel billet cost. This comparative exercise is discussed in chapter D2 of this appendix.

D1.1 Steel billet benchmark

The Commissioner considers that the most appropriate level of cost for the analysis is at the steel billet level of cost for the following reasons.

Reasons

1. MTM does not produce steel billet. It acquires the steel required to manufacture railway wheels in the form of steel billets. The steel billet reflects the first point in MTM's production and cost records where the cost of the steel used in the manufacture of railway wheels is recorded.

2. Steel billets purchased by MTM were from its parent entity, MIS. These steel billets were found to have been purchased at 'non-arms length' prices. The purchase prices were below MIS's costs for these billets. The Commissioner considers that the use of a benchmark steel billet price should reflect an 'arms length' price in China that is inclusive of the costs of production, costs of sale and a market-determined level of profit.

D1.2 Assessment of sources

For the purposes of assessing an appropriate steel billet benchmark, the Commissioner considered in descending order:

a) private domestic prices in China
b) import prices into China and
c) external benchmarks.

Private domestic prices in China

The Commissioner notes they did not receive a response to the GOC questionnaire, with information about steel billet prices in the Chinese domestic market. The Commissioner also has not identified other Chinese suppliers of the grade of steel billet used to produce the goods.

The Commissioner also notes the findings in Appendix A.

The Commissioner does not have relevant information concerning Chinese market prices for steel billet that would be applicable to MTM from suppliers other than MIS, for purchases that are 'arms length' transactions and not distorted by other market factors.

Import prices into China

The commission sought information relating to imports of steel billet from the GOC in the government questionnaire. As noted earlier, the GOC declined to provide a response to the commission's questionnaire, including the information requested in relation to steel billets.

The Commissioner notes that, whilst China imports steel, these imports reflect a small proportion of China's overall domestic production of steel.

The Commissioner subsequently sourced information regarding imports of steel billet into China from TradeData International. The data provided related to imports reported under the Harmonized System (HS) for tariff codes relevant to steel billet. The relevant HS tariff codes include a broad range of semi-finished steel products which may or may not be relevant to the grade of steel billet used to manufacture the goods. In examining this information, the Commissioner was not able to identify a price that was sufficiently identifiable as a grade of steel billet relevant to producing the goods or could be readily adjusted to reflect the applicable grade of steel.

The Commissioner considers that the import price data available to the Commissioner is not suitable for establishing a benchmark price.

Prices from country other than the country of export

The Commissioner examined price data from a range of countries and regions. The Commissioner soured price data from subscription services and from data provided by Comsteel in its application for the continuation inquiry.[248]

D1.3 Benchmark country selection

Using available data sources, the Commissioner identified a range of steel billet prices originating from:

- the Federative Republic of Brazil (Brazil)

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[248] The commission obtained confidential data from Bloomberg and MEPS International Ltd. Comsteel, in its application for the continuation inquiry, included steel billet prices from Italy and included further information in a submission: EPR 632, document numbers 1, 18. MEPS provided this copyright statement about its data: *This information is copyrighted, all rights reserved. MEPS data is licensed for the exclusive use of the company's direct employees. Any unauthorised copying, forwarding, or sharing by any means will be an infringement of copyright*.

- the European Union (EU)
- the Republic of India (India)
- the Islamic Republic of Iran (Iran)
- Italy
- the United Mexican States (Mexico)
- the Islamic Republic of Pakistan (Pakistan)
- the Russian Federation (Russia) and the Commonwealth of Independent States (CIS)[249]
- the Republic of Korea (South Korea)
- Taiwan
- the Republic of Türkiye (Türkiye).

The billet prices are contained in **Confidential Attachment 8**.

The Commissioner has assessed the suitability of each of these benchmarks in relation to assessing the cost of production in China unaffected by the distortions identified in the Chinese steel market. The factors considered in this assessment were:

- the status of each country's domestic steel manufacturing industry, including recent plant developments and the relative size of the country's steel industry internationally
- the level of economic development, including an assessment of GDP per head, life expectancy, literacy rates, the World Bank human capital index and the United Nations human development classification levels
- relative labour costs
- the market-based status of each country
- other factors that may be relevant.

The data used in this analysis is summarised in Table 11 of this appendix.

Having considered these relevant factors, the Commissioner finds that Turkish domestic prices provide a suitable representative benchmark for comparative analysis with the cost of production data.[250] Specifically, the Commissioner finds:

- Türkiye is among the top 10 countries in terms of steelmaking capacity and an assessment of Türkiye's steel industry indicates that there have been multiple recent upgrades to its steel manufacturing facilities[251]

[249] Noting the CIS is an intergovernmental organisation including Russia.
[250] Prior to adjustment for any grade premiums, the Turkish benchmark price was based on grade S235JR.
[251] The Commissioner assessed the capacity of the steel manufacturing in each country using OECD data and papers on steelmaking capacity: OECD, *Steelmaking capacity*, OECD website, July 2023, accessed 22 March 2024.

- Türkiye's degree of development in relation to GDP per capita,[252] literacy rates,[253] the World Bank Human Capital Index[254] and the United Nations Human Development Index[255] are similar to China's
- analysis indicates that labour costs in Türkiye for the manufacturing sector are lower than those in China[256]
- analysis of the market for Türkiye indicates that steel producers are privately owned and the market is subject to normal factors of competition.

D1.4 Adjustments to the steel billet benchmark to reflect the cost of production in China

The Commissioner has considered whether the available evidence demonstrated that further adjustments to the Turkish benchmark were warranted to reflect any claimed comparative advantage or disadvantage applicable to Chinese steel billet producers. This was for the limited purpose of using a benchmark for *comparative assessment,* as distinct from being used for the purpose of establishing the cost of production.

Submissions in relation to comparative advantage

Rio Tinto submitted that the reduced steel prices in China were due to economies of scale, technically superior equipment and cheap available labour.[257] Rio Tinto also referenced certain government interventions in relation to the Chinese steel market. The Commissioner notes that Rio Tinto provided no evidence to support its claims in relation to economies of scale, technically superior equipment and cheap available labour.

Comsteel submitted that it disagreed with Rio Tinto's claims that economies of scale and technically superior equipment provided a competitive advantage.[258] Comsteel stated that the benefits afforded by the GOC were a more compelling explanation for the lower prices.

The GOC submitted that any price differences were due to the scale of the domestic industry as well as investment in new equipment. The GOC further claimed that the original inquiry, in selecting a French benchmark, offered no consideration of factors affecting price such as raw materials, production technology, different labour costs and differing market demand or supply situations.

The Commissioner has assessed these claims in relation to comparative advantage below.

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[252] World Bank Group, *NY.GDP.PCAP.CD – GDP per capita (current US$)* [World Bank Open Data], 21 February 2024, accessed 26 February 2024.
[253] World Bank Group, *SE.ADT.LITR.ZS – Literacy rate, adult total (% of people ages 15 and above)* [World Bank Open Data], 21 February 2024, accessed 26 February 2024.
[254] World Bank Group, *HD.HCI.OVRL – Human capital index (HCI) (scale 0-1)* [World Bank Open Data], 21 September 2020, accessed 22 March 2024.
[255] United Nations Development Programme, *Table 1. Human development index and its components* [data set], 2023, accessed 22 March 2024.
[256] See chapter D1.4 of this appendix.
[257] EPR 632, document number 6.
[258] EPR 632, document number 11.

Labour Costs

The Commissioner has examined relative costs of labour in Türkiye and China.

This analysis identified that China's average gross wages in 2022 in the manufacturing sector were:

- 97,528 CNY per year for persons employed in non-private firms[259]
- 67,352 CNY per year for persons employed in private firms.[260]

By comparison, Türkiye's average gross earnings in 2022 for persons employed in the manufacturing sector was equivalent to approximately 58,248.87 CNY per year.[261]

The Commissioner is satisfied that, based on information available, labour cost differences between China and Türkiye are such that any adjustment to the overall benchmark price would be minimal and this would not affect the overall assessment.

The Commissioner has consequently not adjusted the benchmark price to reflect any claimed comparative advantage in labour costs.

Economies of scale and technically superior equipment

The Commissioner has examined Rio Tinto's and the GOC's claims in relation to economies of scale and technically superior equipment. It is noted that neither Rio Tinto or the GOC provided evidence to demonstrate that the size of China's steel industry or the equipment used provided a comparative advantage.

The commission, in considering a benchmark country, considered the steel production capacity of each country and recent developments in each country's production facilities. This analysis identified that Türkiye was within the world's top 10 steel producers. Türkiye's steel manufacturing plants also have had recent upgrades, including the addition of 23.6 million metric tonnes of capacity between 2005 and 2023.

Based on the available evidence, the Commissioner is satisfied that they have accounted for any claimed comparative advantage resulting from economies of scale and manufacturing facilities by selecting Türkiye as the benchmark country.

Other claimed comparative advantages

In assessing comparative advantages, the Commissioner has not included factors resulting from the GOC's interventions. As consequence, Rio Tinto's claims about government interventions have not been considered for the reasons set out in **Appendix C**.

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[259] National Bureau of Statistics of China, *The average annual wage of persons employed in urban non-private units in 2022* [media release], National Bureau of Statistics of China, 10 May 2023, accessed 22 March 2024.

[260] National Bureau of Statistics of China, *The average annual wage of persons employed in urban private units in 2022* [media release], National Bureau of Statistics of China, 10 May 2023, accessed 22 March 2024.

[261] Turkish Statistical Institute, *Table 4: Monthly average paid hours, gross wages and earnings by economic activity 2022* [Structure of earning statistics, 2022, data set no 49750], Turkish Statistical Institute, 25 December 2023, accessed 22 March 2024.

In its submission published 30 October 2023, the GOC submitted that the analysis in the original investigation did not include analysis of raw materials and supply or demand conditions between China and the benchmark market.[262] For the current inquiry, the Commissioner has considered available evidence to identify if these factors between the Chinese and Turkish markets require adjustments to the benchmark for the comparative assessment. The Commissioner notes that, whilst China produces significant amounts of coal, coal production has been identified as being affected by GOC distortions in **Appendix C**. The Commissioner further notes that both Türkiye and China sell steel domestically and export steel.

The Commissioner is satisfied that these other claimed advantages, based on the information available to the commission, do not provide a basis on which to make an adjustment to the benchmark.

Conclusion – comparative advantage clams

The Commissioner has not relied on the benchmark for the purpose of assessing the cost of production in the country of origin. It was therefore unnecessary to reach a conclusion on the comparative advantage claims for that purpose. However, for the limited purpose of using this benchmark as a comparator to the Commissioner's preferred method of assessing the cost of production in the country of origin using MIS data, the Commissioner is satisfied that the benchmark is appropriately adjusted for differences affecting comparative advantages.

D1.5 Adjustments to the steel billet benchmark to reflect the grade of billet used in China to manufacture the goods

The Commissioner has further considered the requirement to make an adjustment to the steel billet benchmark to reflect the cost to produce the grade of steel in China used in the manufacture of the goods.

Comsteel, in a submission, estimated normal values in China.[263] Comsteel's estimate included adjustments to account for the additional costs in producing the steel billet grade required for the goods. These adjustments reflected the requirements for a higher grade of inputted scrap steel and the higher levels of microalloying elements.[264]

The Commissioner has examined a range of data and information to assess any relevant premium that may apply to the grade of steel used in the production of the goods in China. This included examining:

- the data and information provided by Comsteel in its application and submission regarding normal values

[262] EPR 632, document number 10, p 4.
[263] EPR 632, document numbers 1, 18.
[264] Specifically, the adjustment for higher grade of scrap steel with fewer impurities, as well as adjustments for additional microalloying for ferromanganese (FeMn), iron monosilicide (FeSi) and vanadium nitride (VN). The Commissioner adjusted the Chinese benchmark price using the unit amounts for scrap steel and microalloying elements that Comsteel provided. The Commissioner used data for grade Q235 as the base Chinese benchmark price, before adjustments. Because the Chinese benchmark base is a smaller amount than the Italian benchmark base, the same premium affects the Chinese benchmark by a larger proportion than it affects the Italian benchmark price.

- the production records of MIS in relation to the production of the grade of steel billet produced to manufacture the goods and other grades of steel
- the relative premiums between different grades of steel billet in the Chinese domestic market.[265]

The Commissioner finds that, for each of these three identified methodologies, there was a premium for the grade of steel used to manufacture railway wheels compared to the identified benchmark price. The Commissioner further finds that each of the identified premiums were broadly consistent, each being within 1% to 2% of each other.

Based on this analysis, the Commissioner has made an adjustment to the Turkish steel billet benchmark to reflect the premium for the grade of steel used to manufacture the goods. The adjustment was based on the highest identified premium identified, which was the premium between differences in Chinese steel billet grade prices.

Based on the available evidence, the Commissioner is satisfied that the adjusted Turkish steel billet benchmark is a suitable data source for comparative analysis with MIS's records.

D2 Comparing MTM's steel billet costs and the external benchmark

For the purposes of assessing MTM's steel billet costs and MIS's steel billet costs, the Commissioner compared the steel billet benchmark, after making the abovementioned adjustments, to MTM's steel billet costs. The purpose of this exercise was a secondary check to satisfy the Commissioner that the Chinese market price derived from MIS's information was an appropriate basis on which to determine steel billet cost.

This comparison is reflected in Figure 15.

[265] The Chinese base grade of steel examined was Q235 sourced from MEPS and Chinese special steel grade sourced from MySteel.

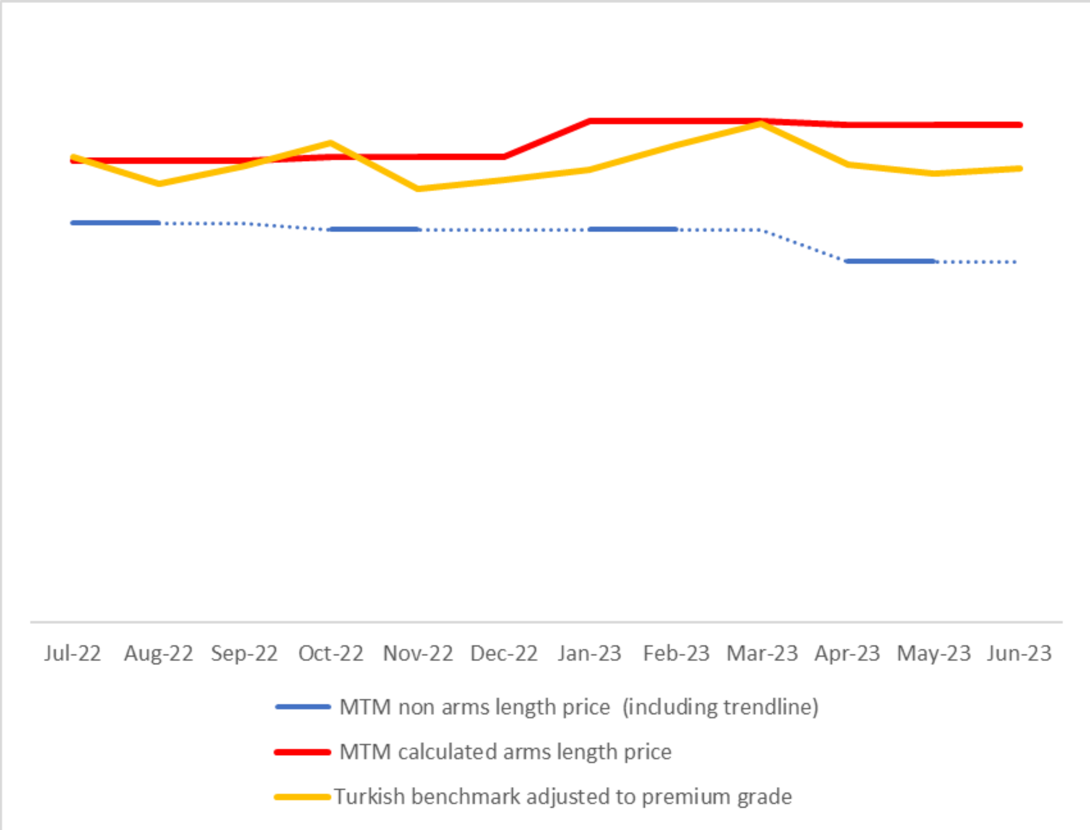

Figure 15: Benchmark prices and MTM's billet purchase prices (CNY/MT, excluding VAT)

In comparing the benchmark, the Commissioner notes that, for all months of the inquiry period, MTM's non-arms length purchase prices were below the steel billet benchmark. However, the calculated steel billet costs were above the steel billet benchmark for 10 of the 12 months.

The Commissioner consequently considers that the unit steel billet costs, calculated relying on MIS's records, reflect costs that are not artificially low, are accurate and adjust for MTM's 'non-arms length' purchase prices.

The Commissioner notes that this finding is specific to MTM for the inquiry period and reflects an adjusted domestic billet cost. The adjusted billet cost reflects an 'arms length' price between MTM and its related supplier of steel billets, MIS. The adjustments made were based on the records of MIS which reflect MIS's cost of production in China.

The Commissioner's analysis of steel billet prices is contained in **Confidential Attachment 9**.

D3 Submissions in relation to data sources considered for establishing normal values

Submissions prior to SEF

Rio Tinto, referencing the approach to determining Chinese normal values in the original investigation, submitted that articles 2.2 and 2.2.1.1 of the *Anti-Dumping Agreement* obliged the use of cost of production in the country of origin and required the use of the cost of production using the exporter's own records.[266] Rio Tinto also referenced that the use of the benchmark in Investigation 466 was based on a region with a higher cost base than China and failed to correctly account for a profit amount. Rio Tinto claimed these factors likely inflated the benchmark amount used. Rio Tinto further queried the SG&A figures and their relevancy to the cost of production in China.

The GOC submitted that, even if a constructed normal value was necessary, it should be based on a price of a like product exported to a third country or of the cost of production in the country of origin. With specified exceptions, the GOC claimed that the constructed normal value should be based on the records of the exporter.[267] The GOC referenced the requirements of article 2.2.1.1 of the *Anti-Dumping Agreement*, the WTO's Dispute Settlement Panel findings in *European Union — Anti-dumping Measures on Biodiesel from Argentina*[268] and the WTO's Appellate Body findings in *Ukraine — Anti-dumping Measures on Ammonium Nitrate*.[269]

The Commissioner notes they find MTM's records did not reasonably reflect the cost of production in China due to the 'non-arms length' purchases of steel billet. The Commissioner has consequently adjusted the billet costs of MTM so that they reasonably reflect the cost of production in China, absent the effects of the 'non-arms length' purchases of steel billet. Adjustments to the billet costs were made based on the records of MIS. Consequently, the Commissioner considers that Rio Tinto and the GOC's submissions do not impact the current assessment of normal values for this inquiry.

Submissions after SEF relating to method for selecting benchmark price

In its submission published 19 April 2024,[270] Masteel submitted that there is deficiency in choosing Türkiye to calculate a benchmark price.

Masteel referred to information from market information providers Fastmarkets, SteelHome and SteelOrbis.

Masteel submitted that Türkiye is an inappropriate comparison market for China because:

- Türkiye produces less steel than China
- some geopolitical events affected Türkiye but not China.

Comsteel disagreed with Masteel's submission, in a submission published 3 May 2024.[271]

The Commissioner had regard to the submission provided by Masteel in relation to whether Türkiye is an appropriate comparison market for China. The Commissioner discusses their reasons for selecting Türkiye as a comparison market in this appendix. In

[266] EPR 632, document number 6.
[267] EPR 632, document number 10.
[268] Panel Report, *European Union — Anti-Dumping Measures on Biodiesel from Argentina*, WTO Doc WT/DS473/R (29 March 2016).
[269] Appellate Body Report, *Ukraine — Anti-Dumping Measures on Ammonium Nitrate*, WTO Doc WT/DS493/AB/R (12 September 2019).
[270] EPR 632, document number 30.
[271] EPR 632, document number 31.

particular, the Commissioner notes they have compared sociopolitical factors and steel billet market information between China and 7 other countries and regions.

Further, the Commissioner has considered the following in SEF 632:

- the scale of Türkiye's steel production
- a comparison of trends in steel billet price fluctuations between China and other countries and regions based on steel billet market data.

Where the Commissioner identified steel billet prices diverged between China and another country, the Commissioner researched the likely cause of the difference, including considering geopolitical events. This analysis did not identify any affect.

The Commissioner has reviewed the information Masteel cited from Fastmarkets, SteelHome and SteelOrbis. The Commissioner has not changed their overall conclusion based on this information.

The Commissioner notes that Masteel referred to SteelHome's evidence being that of an 'independent expert'. SteelHome's website lists its full company name as Shanghai SteelHome Information Technology Co Ltd. MIS's 2022 and 2023 financial reports list this company as a subsidiary of the China Baowu Group, the same group that owns the Masteel companies.[272] The Commissioner has considered the information in SteelHome's report in this context of its relationship to the China Baowu Group and the Masteel companies.

Having regard to the above, the Commissioner is satisfied that all information regarding external countries has been adequately researched and analysed. The Commissioner considers Türkiye's steel billet market is an appropriate market for comparative assessment, for the limited purpose for which that was undertaken in this inquiry as outlined in this appendix.

[272] MIS, *Maanshan Iron & Steel Co Ltd 2022 Financial Report*, MIS website, 2023, pp 351, 365, accessed 7 May 2024; MIS, *Maanshan Iron & Steel Co Ltd 2023 Financial Report*, MIS website, 2024, pp 328, 331, accessed 7 May 2024.

The table below includes the benchmark countries within the top 10 steel producing countries based on production capacity. The Commissioner has included Italy even though it is outside the top 10, being the 12th largest steel producing capacity. The Commissioner has included Italy because Comsteel submitted Italian benchmark data. Aside from Italy, the Commissioner has excluded potential benchmark countries outside the top 10 steel producing countries for reasons including the relative size of their steel industries.

Country	**Country Rank**[i]	**Capacity (million metric tonnes [MMT])**[ii]	**Trends in technology and steelmaking capacity**[iii]	**GDP annually per person (USD)**[iv]	**Human Development Index**[v]	**Human Capital Index**[vi]	**Literacy rate**[vii]	**Life expectancy (years)**[viii]	**Labour costs annually per employee (CNY)**
China	1	1,173.3	• Majority of plants use blast furnaces. • Plant capacity increased from 423.8 MMT in 2005 to 1,173.30 MMT at end of 2023.	$12,720.20	0.788	0.653	97% (2020)	78	SOE: ¥ 97,528.00[ix] Private: ¥ 67,352.00[x]
South Korea	6	81.6	• Majority of plants use blast furnaces. • No new plants in last 5 years, but 28.4 MMT of new capacity was added between 2005 and 2014.	$32,422.60	0.929	0.799	99% (2018)	84	¥ 150,142.43[xi]
Türkiye	8	60.0	• Majority of plants use electric arc furnaces. • New plants being built and capacity increasing from 25.1 MMT at start of 2005 to 60 MMT at end of 2023.	$10,674.50	0.855	0.649	97% (2022)	76	¥ 58,248.87[xii]

Country	Country Rank[i]	Capacity (million metric tonnes [MMT])[ii]	Trends in technology and steelmaking capacity[iii]	GDP annually per person (USD)[iv]	Human Development Index[v]	Human Capital Index[vi]	Literacy rate[vii]	Life expectancy (years)[viii]	Labour costs annually per employee (CNY)
Brazil	10	51.6	• Majority of plants use blast furnaces. • New plants being built and capacity increasing from 36 MMT in 2005 to 51.6 MMT at end of 2023.	$8,917.70	0.760	0.551	95% (2022)	73	¥ 111,755.65[xiii]
India	2	138.4	• Majority of plants use blast furnaces. • New plants being built and capacity increasing from 52 MMT at start of 2005 to 138.4 MMT at end of 2023.	$2,410.90	0.644	0.494	76% (2022)	67	¥18,962.70[xiv]
Russia and the CIS	5	90.9	Excluded due to ongoing conflict in Ukraine and range of sanctions imposed. These factors are likely to adversely impact any assessment. The CIS was also excluded for this reason.						
Iran	7	66.8	Excluded because there was insufficient relevant data and information.						
Italy	12	34.7	• Majority of plants use electric arc furnaces. • In 2005 the capacity was 35.9 MMT, which increased to 39.2 MMT at end of 2011. The capacity then declined and reached 34.7 MMT at the start of 2017. There has been no change in capacity since 2017.	$34,766.40	0.906	0.728	99%	83	¥205,792.73[xv]

Table 11: Benchmark country comparison table

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[i]The Commissioner assessed the capacity of the steel manufacturing in each country using OECD data and papers on steelmaking capacity: OECD, *Steelmaking capacity*, OECD website, July 2023, accessed 22 March 2024.

[ii] OECD, *Steelmaking capacity*.

[iii] OECD, *Steelmaking capacity*.

[iv]World Bank Group, *NY.GDP.PCAP.CD – GDP per capita (current US$)* [World Bank Open Data], 21 February 2024, accessed 26 February 2024.

[v]United Nations Development Programme, *Table 1. Human development index and its components* [data set], 2023, accessed 22 March 2024.

[vi]World Bank Group, *HD.HCI.OVRL – Human capital index (HCI) (scale 0-1)* [World Bank Open Data], 21 September 2020, accessed 25 March 2024.

[vii]World Bank Group, *SE.ADT.LITR.ZS – Literacy rate, adult total (% of people ages 15 and above)* [World Bank Open Data], 21 February 2024, accessed 26 February 2024.

[viii]World Bank Group, *SP.DYN.LE00.IN_DS2-Life expectancy at birth, total (years)* [World Bank Open Data], 2022, accessed 20 February 2024.

[ix]National Bureau of Statistics of China, *The average annual wage of persons employed in urban non-private units in 2022* [media release], National Bureau of Statistics of China, 10 May 2023, accessed 22 March 2024.

[x] National Bureau of Statistics of China, *The average annual wage of persons employed in urban private units in 2022* [media release], National Bureau of Statistics of China, 10 May 2023, accessed 22 March 2024.

[xi]Korean Statistical Information Service, Average Surveyed Wages by Production Job Family of Manufacturing Category(daily wages) [data set], 28 October 2013, accessed 5 March 2024; World Bank Group, *FP.CPI.TOTL.ZG – Inflation, consumer prices (annual %)* [data set], 21 February 2024, accessed 26 March 2024. The Commissioner notes that it relied on daily average wages for manufacturing in 2012 and adjusted this for 2022 based on CPI.

[xii]Turkish Statistical Institute, *Table 4: Monthly average paid hours, gross wages and earnings by economic activity 2022* [Structure of earning statistics, 2022, data set no 49750], Turkish Statistical Institute, 25 December 2023, accessed 22 March 2024; Turkish Statistical Institute, *Indicators for the CPIs having specified coverages* [Consumer price index, December 2023], 3 January 2024, accessed 22 March 2024.

[xiii]Brazilian Institute of Geography and Statistics, *Empresa2021-Tabelas_2021-table 101- Employment, salary and charges of industrial companies with 30 or more employed people, according to division, groups and classes of activity-Brazil-2021* [data set], 2021, accessed 28 February 2024; Brazilian Institute of Geography and Statistics, *236 – IBGE indicators, national system of consumer price indices: INPC-IPCA* [data set], 2024, accessed 28 February 2024.

[xiv]Labour Bureau Ministry of Labour and Employment, Government of India, *Occupation Wages* [data set], 2023, accessed 27 February 2024.

[xv]National Institute of Statistics, *Hourly wages by Full-time_Part-time* [data set], accessed 8 March 2024.