

**Non-Confidential**

**By Email**

**Mr Mick Kenna  
Assistant Director  
Investigations 4  
Anti-Dumping Commission  
55 Collins Street  
Melbourne VIC 3000**

Dear Mr Kenna

***RE: Dumping and Subsidy Investigation into Certain Railway Wheels Exported from the People's Republic of China***

As you know, we act for the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (**CCCME**) in relation to the dumping and subsidy investigation into certain railway wheels exported from the People's Republic of China (**China**).

This is the first of a number of submissions. This submission addresses a number of deficiencies with the application by the Australian industry for the imposition of antidumping measures on exports of certain railway wheels exported from China. Subsequent submissions will address other issues relating to material injury and causation claims made by the Australian industry.

**1. Introduction**

Commonwealth Steel Company Pty Limited (**Comsteel**) filed an application with the Australian Anti-Dumping Commission (**Commission**) for the imposition of antidumping measures on iron ore railway wheels exported from China to Australia (**Application**).

The Application has numerous defects as enumerated below. It is surprising that the Commission accepted such a defective application without investigating further or requiring additional information before accepting the Application.

No doubt the Commission will investigate and address these defects before preparing its Statement of Essential Facts as they have not been addressed in the Commission's Consideration Report in relation to this investigation.

**2. Goods under Consideration & Like Goods – Section A-3.1 of the Application**

The Application states that the “goods under consideration” are:

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

The Application also states that the goods under consideration does not include “axles and other components”.

However, in the same section of the Application, Comsteel states that:

***“The ore-carriage railway wheels are manufactured in accordance with the relevant user defined specifications and drawings. (bold emphasis added)***

*The users of these type of railway wheels are:*

*• BHP Iron Ore; • Rio Tinto Iron Ore; • Fortescue Metals, and • Roy Hill.*

*The railway wheels used in all user applications have the following typical characteristics:*

*• 38inch or 966mm to 970mm diameter and of similar overall dimensional tolerances and shape; • Manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties as defined in the user specifications; • Manufactured using a forging and rolling process in accordance with defined standards; • Suitable to operate at axle loads above 36 metric tonnes; and • A multi-wear rim ore car wheel.*

*The wheels are manufactured in accordance with the following user specifications:*

- 1. BHP Billiton Iron Ore specification – Spec 076-M-0048 Revision 10 or latest revision - Railroad Rolling Stock Multi-wear Ore Car and Locomotive Wheels (refer Confidential Attachment A-3.1.1 - Please note that the subject of this submission is the 966mm Ore Car wheels referenced in this specification only).*
- 2. Rio Tinto Pilbara Iron specification – PRC-RS-C-007 Revision 3.0 or similar as modified for the individual manufacturer (refer Confidential Attachment A-3.1.2).*
- 3. Fortescue Mining Group TPI specification – R-SP-RM-0004 Revision 5 - Specification for 970mm Multiwear Ore Car Wheels (refer Confidential Attachment A-3.1.3).*
- 4. Roy Hill Specification - 100RH-3520-ME-DRG-0480 and 3520-ME-00019Purchase\_Requirements\_Of\_Wheels or similar as modified for the individual manufacturer (refer Confidential Attachment A-3.1.4).”*

What this means is that where a manufacturer of railway wheels that do not meet the description of the goods under consideration as set out above (i.e. to the individual specifications set by an end-user), it will not be and cannot be a supplier of railway wheels to those end users.

The threshold question, therefore, is what are the “*goods under consideration*” and whether Comsteel produces “*like goods*”?

As the Commission would be aware, the definition of “*like goods*” for the purposes of Part XVB of the *Customs Act 1901* is:

*“... in relation to the goods under consideration, means 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”. (Section 269T(1) of the Customs Act 1901)*

In this regard it is important to note that Article 2.6 of the WTO Anti-Dumping Agreement defines “*like good*” as:

*“a product which is identical, i.e. alike in all respects to the product under consideration or, **in the absence of such a product**, another product which, although not alike in all respects, has characteristics closely resembling those of the products under consideration”. [emphasis added]*

Recall that Comsteel claims that the “*goods under consideration*” are:

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

This is not an accurate description of the railway wheels being exported from China to the end-users in Australia. As Comsteel notes in the Application, the railway wheels exported to the end-users in Australia are railway wheels meeting the exact specifications of each of the end-users. These are the “*goods under consideration*”. They are not ‘commodity products’, but ‘bespoke products’, which are not substitutable from one Australian end-user to another or anyone else, as acknowledged by Comsteel in the Application.<sup>1</sup>

Accordingly, an accurate description of the “*goods under consideration*” should have been and must be railway wheels meeting the specifications of each Australian end-user. That is what has been exported to Australia from China by the relevant exporter(s) and what the Application is solely concerned about. The “*goods under consideration*” does not extend to any other goods however described, including those under a broader, generic description as proposed by Comsteel.

Furthermore, Comsteel, in its Application, has stated that:

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<sup>1</sup> Note: an accurate description of the “*goods under consideration*”, as opposed to some generic description would mean that applications for exemptions could not occur. It is only generic descriptions of the goods under consideration and, consequently, like goods that permits applications for exemptions from antidumping measures. This reveals a defect in the antidumping regime in Australia. That it is not the generic description of the goods under consideration causing material injury to the Australian industry but the specific, bespoke goods being exported to Australia that satisfy Australian end-user specifications. These are and must be the goods under consideration and upon which the investigation must be based.

*“The products manufactured by Comsteel fully conform to the user defined specifications as described in this application.”*

Clearly, Comsteel manufactures railway wheels that are *“identical”* to those exported to Australian end-users from China as they fully meet the specifications of each end-user and, therefore, are the *“like goods”* to the *“goods under consideration”*. This should have been reflected in Comsteel’s Application in terms of the *“goods under consideration”* and the investigation must be confined to such *“like goods”*.

Whether the *“like goods”* claimed by Comsteel in its Application have *“characteristics closely”* resembling those exported from China is irrelevant as Comsteel manufactures *“identical”* goods. Therefore, the section of the Application addressing whether the railway wheels manufactured by Comsteel *“closely resemble”* those exported from China should be disregarded as irrelevant. For the same reason, any other sections of the Application based upon railway wheels having characteristics *“closely”* resembling the *“goods under consideration”* are inherently flawed and must be either disregarded or supported by further evidence which specifically addresses the *“goods under consideration”*.

In short, the Application is based on a false premise that the *“goods under consideration”* are generic products described as *“forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys”* and the *“like goods”* to those being exported from China are railway wheels manufactured by Comsteel that meet this description. This obviously is not correct.

Consequently, the Commission’s Consideration Report, which accepted the Application based on the incorrect *“goods under consideration”*, is also defective and the Application should have been rejected.

In its investigation, which should not have been initiated, the Commission must properly identify the *“goods under consideration”* and not some generic product and, consequently, rely only evidence which specifically addresses the *“goods under consideration”*.

That is, the Commission should have identified the railway wheels meeting the exacting specifications of each Australian end-user have been exported to Australia and at allegedly dumped prices and caused material injury to Comsteel’s production and sale of identical products not some generic description of goods that may or may not have not been exported to Australia from China. Whether such generic have or have not been exported from China to Australia and whether at dumped prices or not and whether they have caused or not caused material injury to Comsteel is irrelevant to this investigation. They must be disregarded because, according to the Application, they are not causing material injury to Comsteel whetherer at dumped prices or not. They are not the *“goods under consideration”*.

In addition, Comsteel’s Description of the Goods in Section A-3.1 explicitly excluded *“axels and other components”* from the scope of the *“goods under consideration”*. However, in

other sections of the Application, these excluded goods were somehow included in the injury and causation analysis. For example, see the note to the Table in A-4.6 of the Application (“The Australian industry’s sales **includes** sales of the goods separately and those included in “sets” (i.e. with axles)”.) Similarly, in Section A-5.3 Comsteel has noted that “*some transfers of the goods that are used in the manufacture of complete wheel sets that incorporate railway wheels*” have been included in its analysis. This is evident throughout the Application. In other words, Comsteel’s Application includes not only “*like goods*” but also goods that are not “*like goods*”, which is inherently wrong for the reasons given above but also it, consequently, misrepresents its injury purportedly caused by the “*goods under consideration*” by including goods in its injury claims that Comsteel has specifically excluded in its Application.

### 3. Australian market - Section A-4 of the Application

At Section A-4 of the Application, Comsteel identifies the Australian market for the goods under consideration as:

*“The Australian market for heavy haul iron ore products is limited to the four principals in the Pilbara region – BHP Iron Ore, Rio Tinto Iron Ore, Fortescue Mining Group and Roy Hill.”; and*

*“The market for forged 38-inch, high hardness micro alloy ore car wheels is contained totally within the privately owned and operated iron ore railways in the Pilbara region of Western Australia.”*

This description of the market is inaccurate and misleading in a number of respects as set out below:

(a) the goods under consideration, according to the Application, are:

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

However, as noted in the Application, each end user requires railway wheels that satisfy its specific requirements and not some generic description and, consequently, the Australian market, at one level, is restricted to the four end users identified above;

(b) further, as each end user has its own specific requirements for railway wheels, railway wheels that meet one end user’s requirements do not meet another’s requirements, each end-user arguably constitutes a market in itself as the railway wheels for one end-user are not substitutable nor competitive with those for another end user. Each end-user’s exact specifications for railway wheels must be met in order to supply that end-user with railway wheels. This is self-evident from Comsteel’s Application and recognised by itself in its Application.

Comsteel recognises in its Application that railway wheels supplied to the four end users are “*replacement wheels*” for those wheels that have reached their end life (i.e. for maintenance) and railway wheels for the construction of railway wagon cars (i.e. capital equipment), with such cars being manufactured overseas and not in Australia. Accordingly, some of the wheels are apparently destined for export markets (i.e. capital equipment) and, therefore, not relevant to this investigation and must be excluded from the investigation.

Railway wheels manufactured in China and supplied for the manufacture of railway cars in China are not the “*goods under consideration*”, even if identical to the goods under consideration, because they are not being exported to Australia as such but as components of a railway cars – that is, it is the railway car, not the railway wheels as a separate component to the railway car, that is being exported into Australia: see section 269T(5) of the *Customs Act 1901*.

It also is improper, as the Commission would be aware, to include railway wheels manufactured in Australia by the domestic industry and destined for an export market in an injury and causation analysis.

#### **4. Australian market (Cont’d)**

In Section A-4.6 of the Application, the Table submitted by Comsteel purportedly “*depicts the trends in sales volumes of the goods for the Australian industry and imports, and the overall Australian market for heavy haulage railway wheels*”.

The Table is confusing and misleading. Comsteel acknowledges that 2014 and 2015 “*reflected lower volumes than the normal ebb and flow for the industry*”. The drop in iron ore prices over this period was caused by the slowing of the Chinese economy, the tightening of credit in China restricting the Chinese steel mills to purchase ore, concerns over the US increasing interest rates and the oversupply of iron ore. These are other factors/causes that make these two years unsuitable for inclusion in the Injury Examination Period and for use as the base period to attempt to depict the trends in sales volumes of the goods for the Australian industry, imports and the overall Australian market for heavy haulage railway wheels.

To avoid confusion and to better reflect the actual trends in sales volumes and alleged injury in the normal ebb and flow of the industry, 2016 should be used as the base year. As it stands, the inclusion of the years 2014 and 2015 does not allow a reasonable understanding of the trends in sales volumes of the goods for the Australian industry, imports and the overall Australian market for heavy haulage railway wheels. Further, it results in a misleading analysis of the injury allegedly being caused to the Australian industry by imports of heavy haulage railway wheels from China.

There is a serious problem with these calculations in this Table, and for similar reasons in other tables in the Application. This makes it impossible to understand Comsteel’s injury

claims and adversely affects, contrary to the relevant rules in the WTO Anti-Dumping Agreement, the rights of interested parties to respond to claims made by the domestic industry. It appears that the Commission, in accepting the Application, did not question the inconsistency and inaccuracy of the claims above.

Further, it is surprising why such defective claims were accepted by the Commission as being sufficient to initiate this investigation. By doing so, the Commission seems to have not duly respected the rules set out in Article 5.3 of the WTO Anti-Dumping Agreement.

## 5. Dumping

The CCCME is not in a position to comment on Comsteel's claims of dumping in its Application as exporters' production costs and domestic and export selling prices are confidential to them. No doubt this will be addressed directly by the exporters the response to the exporter questionnaires.

However, CCCME disagrees with the claim that a so-called "*particular market situation*" exists in relation to the production and/or sale of railway wheels in China and with the methodology used by Comsteel in calculating 'normal values', which is speculative at best.

Contrary to Comsteel's mere assertion that a "*particular market situation*" exists in the Chinese industry that produces railway wheels, CCCME understands that abundant evidence will be provided in MaSteel's responses to the exporter questionnaire that there are no government measures in the railway wheel sector in China in terms that may affect the domestic sales or the export sales of such wheels. CCCME understands that MaSteel's responses to the exporter questionnaire will demonstrate clearly and convincingly that Ma Steel, being an established public company listed on both Shanghai Stock Exchange and Hong Kong Stock Exchange, complies with the relevant laws and regulations in the relevant jurisdictions as well as the listing rules of the stock exchanges. Further, that the decision-making of MaSteel is independent from, and is not subject to, any influence by the Government of the People's Republic of China (**GOC**). Therefore, there is simply no evidence in Comsteel's Application to establish that a "*particular market situation*" exists in the railway wheel sector in China.

Importantly, CCCME understands that producers of railway wheels in China not only use inputs to manufacture produced in China but also inputs to manufacture produced in other countries, such as Australia. Unless, Comsteel is claiming that a "*particular market situation*" exists in Australia, which would be relevant to its costs of production and claims of material injury, then Comsteels' claim of a "*particular market situation*" must be rejected.

It seems that Comsteel's claim relied heavily on the alleged influence of the GOC in the steel industry in China. Specifically, Comsteel has relied upon previous investigations by the Commission (e.g. 300, 301, 322,331 and 384) and has stated that:

*“In Reports 322 (reinforcing bar exported from China) and 331 (rod in coil exported from China) the Commissioner determined that steel billets sold in China by state invested enterprises (SIEs) who were public bodies were at less than adequate remuneration. The Masteel group of companies is an integrated iron and steel majority state-owned enterprise and is therefore subject to the influences of the Government of China (“GOC”). Maanshan Iron and Steel was founded in 1958 and is a member of the Masteel group) of companies (“Masteel Group”).”*

CCCME notes that claims of a “*particular market situation*” existing in the steel industry in China in previous investigations have been repeatedly and consistently opposed by the GOC. Arguments advanced by the GOC have been rejected by the Commission without any substantive, probative evidence that costs and prices in that industry have actually been influenced by the GOC. Nor has Comsteel in its Application explained why the findings in those investigation are relevant to this investigation or what, if any, influences the GOC has had on Masteel Group or any other producer of the “*goods under consideration*”. Again, it is mere speculation unsupported by any probative evidence and merely compounds the errors made in previous investigations.

As Comsteel stated, the main raw materials for the production of the “*goods under consideration*” are steel billet. In claiming there is a “*particular market situation*” in China’s steel industry, Comsteel did not establish how the alleged situation has actually affected the price of steel billet, assuming the steel billet is actually purchased by producers of the “*goods under consideration*” in China and, if that price was actually distorted, how that distortion in the price of the raw materials has actually affected the sale price of the “*goods under consideration*” in the Chinese market. Thus, Comsteel has failed to provide any evidence relating to “*particular market situation*” that is specific to this investigation.

This requires consideration of where producers of the “*goods under consideration*” source their inputs to manufacture, such as inputs for the manufacture of steel billets that are used in the manufacture of railway wheels and, if those inputs to manufacture sourced from countries in addition to China, such as Australia, whether a “*particular market situation*” applies in those other countries. If a “*particular market situation*” exists in Australia, then its impacts on Comsteel’s cost to make and sell must be assessed by the Commission, as well as Comsteel’s injury and causation claims. If not, Comsteel’s claim that a “*particular market situation*” has affected the domestic price of railway wheels must be disregarded.

In addition, it is important for the Commission to note that Australia’s antidumping practice must comply with the WTO antidumping rules and jurisprudence. In the recent *EU – Biodiesel* case (DS473), the WTO Appellate Body has explicitly ruled that the existence of a distortion in the market as a result of a government measure is not in itself a sufficient basis for investigating authorities to disregard the cost records of the producers/exporters subject to investigations, and therefore that the use of surrogate production cost on that basis is contrary to Articles 2.2.1.1 and 2.2 of the WTO Anti-Dumping Agreement. CCCME understands that it is entitled to make further submissions in the following stages



of the investigation and will elaborate its position as to why the Commission must use the cost of steel billet recorded by MaSteel in this investigation.

## 6. Price undercutting

Comsteel has claimed in the Application price undercutting by imports from China and France of between 13% to 30% due to dumping, presumably of the “*goods under consideration*” and no other goods.

However, Comsteel has claimed that dumping margins are 19.3% (China) and 25.8% (France). No subsidy margins have been included in the Application and, presumably, receipt of subsidies by exporters, if any, have not contributed to the alleged price undercutting. If it is claimed that it has, then why was this omitted from the Application and why was the Application accepted by the Commission without requiring further information and evidence in this regard?

It, therefore, is difficult to reconcile the alleged dumping margins for each country with the allegation of price undercutting from such countries, assuming that those figures are accurate, which is unlikely. However, there appears to have been no attempt to reconcile the level of price undercutting with the alleged dumping margins by Comsteel. Why not?

Also, whether the levels of price undercutting and dumping margins are equivalent across all end users has not been addressed and, if not, why not? There is no analysis by Comsteel in its Application in this regard but instead a simplistic assumption that the level of price undercutting and dumping margins are uniform across all end users but without providing any evidence to support such claims or why the alleged price undercutting ranges from 13% to 30%.

This raises the question of whether export prices from China and France are the same or similar, whether they vary over time, whether Comsteel’s prices remain constant or vary over time and how this compares with export prices from China and France and export prices from other countries (if any).

Comsteel notes in its Application that sales volumes of the allegedly dumped imports from China in 2017 was 1716.7 and ‘other imports being 1312.5’, which when added together does not equal 1669.1. What are these ‘other imports’, from where and did their prices undercut those of Comsteel and how did they compare with the export prices of the “*goods under consideration*”? This is not addressed in the Application. Why not?

Further, Comsteel notes in its Application that:

*“Exports of the goods the subject of this application are primarily sourced from China and France and supplied by the Magang Group of companies (i.e. by Masteel in China and Valdunes in France).”*

However, Comsteel's Application identifies "*other imports*" accounting for 1312.5 in Table A-4.6, which suggests that the "*like goods*" to the "*goods under consideration*" are imported from sources other than the exporters identified by Comsteel in substantial quantities. If so, the question arises what effect these imports have had on Comsteel and why. This does not seem to have been addressed in the Application.

## 7. Subsidies

The issue of subsidies will be addressed in a subsequent submission.

However, the CCCME would like to note at this time that it is concerned that the questions posed by the Commission in Section C of the exporter questionnaire have not been posed by the Commission to an Australian industry in the application form for the imposition of antidumping measures. Why not?

Does the Commission not believe that a "*particular market situation*" can exist in Australia where governments of Australia, public bodies and unions obviously influence an Australian industry's costs to produce and sell and its domestic prices through subsidies or otherwise? Any such influence would seem to be a "*relevant economic factor*". This must be addressed by the Commission – that is, what influences have such entities had on the Australian industry's cost to make and sell and domestic selling prices, either upwards or downwards, and why these are not "*benchmarked*" against those of similar industries in Asia and what effect this has on the material injury and causation analysis?

No doubt the Commission will undertake such an analysis.

## 8. Conclusions

It is the CCCME's view that the Application accepted by the Commission falls far short of the requirements under the WTO Anti-Dumping Agreement and the WTO Agreement on Subsidies and Countervailing Duties for the initiation of dumping and subsidy investigations. The Application should have been rejected by the Commission in the absence of the provision of additional information by Comsteel that satisfied those requirements.

It is of concern to CCCME that Chinese exporters are being put to the costs and expense of participating in dumping and subsidy investigations that should not have been initiated by the Commission due to deficiencies in applications by an Australian industry.

The Commission, therefore, must require Comsteel to address these deficiencies in its Application and provide information and probative evidence that support its claims, instead of relying on mere allegation, assumptions and speculation.

Further, when such information and evidence is provided by Comsteel in a public version that allows a reasonable understanding of that information and evidence, it must be made available to interested parties to enable those parties to respond in a considered fashion.

If you have any queries regarding the foregoing, please do not hesitate to contact me.

Kind regards

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A' at the start.

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