



**Application for a dumping duty notice in relation to certain railway wheels
exported to Australia from the People's Republic of China and France**

and

**Application for a countervailing duty notice in relation to certain railway
wheels exported to Australia from the People's Republic of China**

Submissions of Rio Tinto Limited

5 June 2018

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1. Introduction

1.1 Background

On 5 March 2018, the Applicant lodged the Application with the ADC. That document contains allegations that the Australian industry has suffered material injury caused by certain railway wheels being imported into Australia from France at dumped prices and from China at dumped and subsidised prices.

On 20 March 2018, the ADC notified the Applicant that the Application was deficient in certain important respects.

On 23 March 2018, the Applicant provided further information in support of the Application which ultimately satisfied the ADC that the Application should not be rejected.¹ The ADC arrived at this decision on 12 April 2018.

On 18 April 2018, the ADC published the Application, the Anti-Dumping Notice and the Consideration Report on the Public Record. The Consideration Report contains preliminary findings that, in the ADC's opinion, there appear to be reasonable grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of the Goods.²

On 24 April 2018 and 9 May 2018, Rio Tinto submitted to the ADC Parts A and B, respectively, of the Importer Questionnaire.³ This was responsive to earlier requests made of Rio Tinto by the ADC. However, Rio Tinto has since concluded that it is not an 'importer' of the Goods as defined in s 269T of the Act because it was not, during the Investigation Period, the beneficial owner of any Goods at the time of their arrival within the limits of the port in Australia at which they landed. Rio Tinto has sought clarification from the ADC on this issue and understands that the ADC does not consider it to be critical as at the date of this Submission to reach a definitive conclusion in this regard.

1.2 Interested party

Rio Tinto is cooperating with the ADC and now takes up the invitation contained in the Anti-Dumping Notice to make this Submission as an 'interested party' in this Investigation. An 'interested party' includes any person who is, or is likely to be, directly concerned with the importation or exportation into Australia of the Goods or who has been, or is likely to be, directly concerned with the importation or exportation into Australia of like goods.⁴ Rio Tinto submits that its relationship with the Goods meets this description.

1.3 Definitions

For the purpose of this Submission, all defined terms have the same meaning as set out in Schedule 1 of this Submission.

1.4 Annexures

This Submission includes Annexures A – H.

¹ The Act, s 269TC(1).

² The Consideration Report, p 5.

³ The ADC confirmed that Part C of the Importer Questionnaire was not relevant to Rio Tinto's circumstances.

⁴ The Act, s 269T(g). See also, s 269TC(4)(c).

2. Executive Summary

Rio Tinto submits that no anti-dumping duty notice, countervailing duty notice or other measure should be imposed by the ADC in relation to the Goods. It submits that the conditions for imposing measures under ss 269TG and 269TJ of the Act do not exist.

As such, Rio Tinto submits that at this stage of the Investigation there are insufficient grounds for the ADC to make a Preliminary Affirmative Determination that either interim dumping or countervailing duty is payable in relation to the Goods for the purpose of s 269TD of the Act. Moreover, Rio Tinto recommends that the Investigation be terminated pursuant to s 269TDA of the Act.

By way of executive summary, Rio Tinto makes the following submissions which are explained in greater detail throughout this Submission:

- (a) The railway wheels it purchases from Masteel are 'like goods' to the Goods under consideration in this Investigation. Despite this, Rio Tinto still contends that there are material differences in the quality of the Goods which are arguably a factor explaining any injury allegedly suffered by the Applicant.
- (b) The ADC should conduct its own thorough statistical inquiry as the Investigation progresses because the Application contains arithmetical and categorical errors and is therefore generally unreliable.
- (c) The ADC should investigate the reasons for the variation of the 'export price' of the Goods over the Investigation Period and should consider various alternative methodologies that might therefore be preferable in calculating 'export price' in this Investigation. These include:
 - (i) using individual transactions over the whole Investigation Period; or
 - (ii) comparing the respective export prices determined in relation to individual transactions during the Investigation Period with the weighted average of corresponding normal values over that same period.
- (d) The Applicant's methodology in calculating the 'normal value' of the Goods is confused and therefore inappropriate. The ADC should instead follow the procedure outlined in the Act, with a particular focus on using actual exporter data where possible (including for the correct year), and also taking into account possible downward adjustments to enable a fair comparison to be made between 'export price' and 'normal value'.
- (e) The 'export price' should at first instance be the DDP price paid by Rio Tinto for the Goods, including transport and other costs arising after exportation (subject to the concerns raised in this Submission about the reliability of ABF import information used to undertake that calculation), as these additional costs are paid by Rio Tinto.
- (f) The ADC should only use other methodologies for calculating 'normal value', such as using benchmark prices, where the ADC is satisfied that the primary methodologies are

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inappropriate and where those alternative methodologies are appropriate.

- (g) It is inappropriate for the ADC to use the Applicant's manufacturing and selling expenses for the remaining variable and fixed components of its costs of production as those costs are not reflective of competitive market prices.
- (h) The ADC should only consider calculating cumulative material injury with respect to the Goods exported from China and France where all the conditions of the Act are met and otherwise only if appropriate in the circumstances. Rio Tinto submits that cumulative injury analysis is unavailable under the Act for the purposes of this Investigation because not all relevant criteria have been satisfied or, alternatively, it is too early in the Investigation to conclude that all relevant criteria have been satisfied.
- (i) Any material injury to the Australian industry suffered during the Injury Analysis Period has not been caused by dumping or subsidisation practices in relation to the Goods.
- (j) Contrary to the Applicant's assertion, there are a myriad of factors other than alleged dumping and subsidisation which may have contributed to or caused material injury to the Australian industry during the Injury Analysis Period.
- (k) Any material injury to the Australian industry in relation to the Goods is more readily explained by:
 - (i) factors relating to the Australian industry specifically; including plant capacity, production efficiency, quality and safety issues and Australian industry costs; and
 - (ii) economic factors more broadly, including lower labour costs and higher productivity in China, economies of scale available to Chinese manufacturers, foreign exchange rates and reductions to applicable tariffs over the Injury Analysis Period.
- (l) Findings made in previous ADC investigations do not relieve the ADC of the obligation to conduct a fresh inquiry into the existence of subsidisation programs in China during the Investigation Period and their application to exporters of the Goods.

3. Background

3.1 About the Rio Tinto Group

(a) Corporate overview

The Rio Tinto Group is a leading global mining and metals group of companies. Rio Tinto's major products are aluminium, copper, diamonds, gold, industrial minerals (borates, titanium dioxide and salt), iron ore, thermal and metallurgical coal and uranium.

The Rio Tinto Group consists of Rio Tinto plc (registered in England and Wales) and Rio Tinto Limited (registered in Australia) and their various subsidiaries. The Rio Tinto Group operates under a DLC structure. Under that structure, the businesses of Rio Tinto plc and Rio Tinto Limited are managed together, the boards of directors of each company are the same, and shareholders of each company have a common economic interest in the DLC structure.

(b) Business units and divisions

The Rio Tinto Group is comprised of numerous business units or divisions, typically arranged according to function or product group; they include, among others, RTIO and RTP. RTIO is the division responsible for the Rio Tinto Group's iron ore interests in Australia. These include the Pilbara iron ore operations comprising an integrated network of 16 iron ore mines, four port facilities, a heavy haulage rail network and related infrastructure. Rail is the primary means by which RTIO transports its iron ore product from mine to port and, as such, the rail network represents a business critical asset to the Rio Tinto Group. The rail network is the largest privately-owned and operated rail system in Australia, with mainline systems of more than 1,700 kilometres traversed daily by the Rail Fleet. In 2017, the Rio Tinto Group achieved record iron ore shipments of 330.1 million tonnes from its Pilbara port facilities.⁵

RTP's primary business function is to provide a secure, sustainable and internationally-competitive supply chain (with a balance of global, national and local supply capability) for Rio Tinto's mining businesses and related operations, including RTIO. For example, Rio Tinto has implemented a program to increase opportunities for local suppliers to compete and participate in Rio Tinto's supply chain.⁶ This is achieved through increased visibility of contracts for tender, improved local engagement, assistance with building local capability, and tender processes that are designed to prefer local suppliers generally, all things being equal. In order of priority of preference, these local suppliers consist of Pilbara Aboriginal businesses, Pilbara local businesses, Western Australian businesses, and Australian businesses. Rio Tinto understands that procurement and employment practices implemented by its business (and that of its suppliers) play a significant role in the creation of sustainable employment and economic development opportunities for Rio Tinto's host communities.⁷

⁵ See http://www.riotinto.com/documents/180116_Rio_Tinto_releases_fourth_quarter_production_results.pdf.

⁶ See http://www.riotinto.com/documents/170511_Rio_Tinto_to_boost_local_procurement_in_Western_Australia.pdf.

⁷ See <http://www.riotinto.com/procurement/iron-ore-local-procurement-programme-22771.aspx>;
<http://ironoresupplier.riotinto.com/RioTintoIronoreLocalProcurementProgramme.pdf>.

3.2 The Goods – Railway wheels

The Goods are an integral component of the Rail Fleet. They represent the interface between RTIO's fixed railway assets (i.e. the rail track) and its rolling stock assets (i.e. the Rail Fleet).

Given the heavy haulage function of the Rail Fleet, coupled with the often-extreme climatic conditions under which the Rail Fleet operates, railway wheel degradation is an inevitable occurrence owing principally to wear between the track and wheels. As a result, RTIO has an ongoing requirement for the secure and reliable supply of railway wheel replacements to maintain the safe and efficient operation of the rail network. On average, railway wheels reach their condemnable limit, and require replacement, every 10 years, which is necessary to avoid critical risks such as mainline failures and derailments, which can often result in safety concerns, damage to the Rail Fleet and associated assets, and loss of revenue due to lost or delayed product reaching the market (which loss is considerable having regard for Rio Tinto's production volumes and the sales revenue derived from these assets). The timely and uninterrupted supply of the Goods is therefore essential to eliminate maintenance backlog work which is operationally difficult to recover.

To that end, and consistent with the position outlined in its Importer Questionnaire, Rio Tinto is exclusively an end-user of the imported Goods. RTP is the division responsible for sourcing the Goods for use by RTIO on its Rail Fleet. The Rio Tinto Group members principally responsible for procuring the Goods are Pilbara Iron Company (Services) Pty Ltd (ACN 107 210 248) and Pilbara Iron, both indirect wholly-owned subsidiaries of Rio Tinto Limited.

A .zip folder containing details of RTIO's Specification for the Goods, along with photographs of the Goods purchased by Rio Tinto from both the Applicant and Masteel during the Investigation Period, and their product codes, has been provided to the ADC as **Confidential Annexure 'A'** to this Submission.

3.3 Business dealings with the Applicant

Since at least 2007,⁸ Rio Tinto has had business dealings with the Applicant. Rio Tinto's current engagement with the Applicant commenced in 2013 for the supply and manufacture of Goods for use on RTIO's wagons. That relationship is a contractual one, presently governed by the Comsteel Contract, a supply agreement between the Applicant and Pilbara Iron. The Comsteel Contract will expire on [REDACTED] [Describes confidential contractual arrangement with the Applicant]. Copies and variations of the Comsteel Contract have been provided to the ADC as **Confidential Annexure 'B'** to this Submission.

The Comsteel Contract is based on RTP's pro forma supply agreement terms and conditions. The supply arrangements under the Comsteel Contract are non-exclusive and the Rio Tinto Group may procure the Goods from other third party suppliers.

The proper and orderly administration of the Comsteel Contract requires that representatives of both Rio Tinto and the Applicant engage on a regular basis to review and discuss, among other things, supply, forecasts, quality assurance issues, packaging and business updates.

⁸ Rio Tinto's available business records date back to 2007, however Rio Tinto's relationship with the Applicant may pre-date this time. That information is outside the direct knowledge of current Rio Tinto employees.

4. Submissions

4.1 The Goods description

Rio Tinto considers that the railway wheels it purchases from Masteel are 'like goods' to those which are under consideration in this Investigation (i.e. the Goods, as set out in Schedule 2 of this Submission). That is not to say that Rio Tinto considers the Applicant's Goods to be identical in all respects to those exported by Masteel. Rio Tinto elaborates on this point at section 4.5(d) of this Submission below to contend that material differences in the quality of the wheels are one factor which arguably explains any injury allegedly suffered by the Applicant during the Investigation Period.

Rio Tinto also invites the ADC to undertake its own analysis of whether the Applicant manufactures the Goods as described in its Application, particularly whether it produces non-alloy wheels meeting the dimensions of those under consideration. The Applicant manufactures a forged micro alloy wheel that meets Rio Tinto's bespoke specification. However, whether it also manufactures non-alloy wheels is outside Rio Tinto's direct knowledge.

4.2 Errors in the Application

Rio Tinto has reviewed the Application and wishes to draw the ADC's attention to two errors contained within.

First, Rio Tinto considers that the Applicant has incorrectly filled out the indexed table of sales quantities on p 14 of the Application. It contains arithmetical errors. Further, it will be observed that the data in this table includes "sales of the goods separately and those included in 'sets' (i.e. with axles)". This is contrary to the Goods description which excludes axles and other components from its coverage. Rio Tinto invites the ADC to recalculate these amounts using data it obtains from the ABS, ABF or through other appropriate alternative means during the Investigation.

Secondly, Rio Tinto submits that the ADC should disregard section C-2 of the Application which appears to have been filled out mistakenly by the Applicant. The Applicant does not rely solely on the threat of material injury in this Investigation and ought not to have completed section C-2 of the Application.

4.3 Methodology in calculating 'export price' and 'normal value'

(a) Calculation of 'export price' and 'normal value'

Dumping duties may be imposed where the 'export price' of goods brought into Australia is less than their 'normal value'.⁹

The 'export price' of those goods is determined by applying the requirements in s 269TAB of the Act, taking into account whether the purchase or sale of goods was an arm's length transaction within the meaning of s 269TAA of the Act. Generally speaking, the 'export price' will be the price paid to the exporter by the importer other than any

⁹ The Act, s 269TG(1)(a); Dumping Duty Act, s 8(2)(b).

charges incurred after exportation. This is commonly referred to as the 'FOB export price'.

The 'normal value' of those goods will generally be the sale price in arm's length transactions of 'like goods' sold in the domestic market of the country of export.¹⁰ However, this approach can be abandoned if the ADC is satisfied that it is inappropriate due to the absence, or low volume, of sales of 'like goods' in the market of the country of export during the Investigation Period¹¹ or because the situation in the country of export was such during the Investigation Period that sales in that market are not suitable for determining a 'normal value'.¹²

(b) The Applicant's approach to 'export price'

The Applicant applied ABS import statistics for exports from China and France (which are published monthly) to calculate an 'FOB export price' for the Goods.¹³ It then calculated a weighted average export price having regard to the number of wheels imported and the FOB value of those wheels.

(c) The ADC's approach to 'export price'

The ADC explained that in calculating the 'export price' it had compared the ABS data used by the Applicant with information contained in the ABF import database concerning the volume of goods imported during the Injury Analysis Period. It also noted that the ABF data had included a number of consignments under the relevant tariff classification (8607.19.00) which were not the Goods, and a number of consignments which might have been the Goods but which were inconclusive on the face of the import declaration.¹⁴

The ADC observed that some aspects of the Applicant's analysis (such as import volumes) were incorrect.¹⁵ However, it considered the Applicant's approach generally to be reasonable and estimated the 'FOB export price' of the Goods using ABF import data as a basis for its calculation. Its figures differed from those of the Applicant.

(d) Rio Tinto's submissions in relation to the calculation of 'export price'

Rio Tinto would ordinarily agree with the methodology applied by the Applicant and the ADC in calculating an 'export price' for the Goods; namely, taking the price paid for the goods by the importer other than any part of the price that represented charges incurred after exportation, and subsequently calculating a weighted average export price for the Goods.

However, Rio Tinto is concerned about the variation in the Applicant's export prices observed across the 2017 year (particularly for China where the average export price per

¹⁰ The Act, s 269TAC(1).

¹¹ The Act, s 269TAC(2)(a)(i).

¹² The Act, s 269TAC(2)(a)(ii).

¹³ The Application, p 33. The Applicant notes at p 32 that import data for December 2017 had not been published by the ABS at the time of writing.

¹⁴ Consideration Report, p 12.

¹⁵ Ibid, p 15.

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wheel in January 2017 was A\$1302.74, but only A\$824.69 in October 2017), which can be seen at p 33 of the Application, as set out below:

Table B-2.1 – Monthly A\$FOB prices for iron ore railway wheels (units)

Month	China		France	
	No.	A\$/wheel	No.	A\$/wheel
January 2017	1000	\$1302.74		
February 2017	656	\$1138.39		
March 2017				
April 2017	208	\$1113.82		
May 2017	120	\$1165.63	440	\$1205.68
June 2017			240	\$1057.38
July 2017	2780	\$991.12	240	\$1060.16
August 2017	1432	\$1068.30		
September 2017	300	\$1098.34		
October 2017	80	\$824.69		
November 2017	744	\$1013.47		
December 2017				

Source: ABS Import data – Please refer to Confidential Attachment B-2.1 for import data.

In the Consideration Report,¹⁶ the ADC assessed the Applicant's calculations in the following way:

3.3.3 The Commission's assessment

The Commission compared the calculations and supporting evidence provided by Comsteel with the ABF import database (as refined by the Commission, contained in **Confidential Attachment 2**). Whilst broadly consistent, the Commission's analysis suggests that some aspects of Comsteel's estimates (such as import volumes, partially accounted for by the absence of December 2017 from Comsteel's data set) are not correct.

For the purpose of estimating export prices for the goods exported from the subject countries, the Commission considers that Comsteel's approach (based on contemporaneous ABS information which is reasonably available to Comsteel) is reasonable. However, the Commission has relied on the ABF import data as the basis for its calculation of export price in this report.

Although the ADC used ABF information rather than ABS data, it generally considered the Applicant's approach to be reasonable.

However, as already highlighted, the ADC had also noted that some of the ABF import information it had accessed included a number of consignments under the relevant tariff classification which were not the Goods, and a number of consignments which may have been the Goods but for which the goods description in the import declaration was inconclusive.

Rio Tinto is also concerned to note that in circumstances where it is not the 'importer' of the Goods at law and purchases the Goods instead for a DDP price from Masteel, that an FOB export price is therefore not an appropriate price for assessment.

¹⁶ Ibid, p 12.

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In light of the information outlined above, Rio Tinto makes the following observations about the calculation of 'export price' thus far in the Investigation.

- (i) Rio Tinto submits that the ADC should investigate whether the variation observed in the 'export price' for the Goods in Table B-2.1 of the Application is in fact referable to other goods being mistakenly incorporated into the data which was relied upon by the Applicant for the calculation.
- (ii) Rio Tinto submits further that the ADC should consider whether an alternative methodology might be preferable in this case, such as using individual transactions over the whole Investigation Period¹⁷ or, perhaps more appropriately, by comparing the respective export prices determined in relation to individual transactions during the Investigation Period with the weighted average of corresponding normal values over that same period.¹⁸ This would be consistent with p 119 of the Manual, which states that this methodology is only to be used "where the export prices vary significantly between purchasers, regions or *over time*" (emphasis added).
- (iii) The verifiable information available to Rio Tinto regarding market prices paid for the Goods is produced in the table below:

Vendor	Masteel	Masteel
Purchase	Local buyers	RTIO
Price – US (per unit on an <i>ex-works</i> factory basis)	[redacted] [describes confidential unit price of Goods supplied by Masteel]	[redacted] [describes confidential unit price of Goods purchased by Rio Tinto]
Cost of Delivery (USD)	[redacted] [describes confidential cost of delivery of Goods supplied by Masteel]	[redacted] [describes confidential cost of delivery of Goods purchased by Rio Tinto]
Price – US (per unit on an Deliver to destination basis)	[redacted] [describes confidential price of Goods supplied by Masteel]	[redacted] [describes confidential price of Goods purchased by Rio Tinto]
Price – AUD (per unit) (assuming 1AU = 0.75USD)	[redacted] [describes confidential price of Goods supplied by Masteel]	[redacted] [describes confidential price of Goods purchased by Rio Tinto]

¹⁷ The Act, s 269TACB(2)(b).

¹⁸ Ibid, s 269TACB(3).

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	Masteel]	
Place of sale	China	Australia

Based on its market intelligence, Rio Tinto considers it possible that [REDACTED]

[REDACTED] [describes confidential information about commercial negotiations (including process) and market intelligence]. Rio Tinto would generally expect, in the circumstances, that a weighted average methodology would lead to a negative or negligible dumping margin being applied to the Goods. It is therefore surprised at the results reached by the ADC in the Investigation thus far.

- (iv) Lastly, if the ADC concludes that the Goods have been exported to Australia by the importer and that, as a result, the 'export price' should be determined having regard to 'all the circumstances of the exportation',¹⁹ Rio Tinto submits that the 'export price' should at first instance be the DDP price paid by Rio Tinto for the Goods, including transport and other costs arising after exportation (subject to the concerns raised above about the reliability of ABF import information used to undertake that calculation). These additional costs are paid by Rio Tinto either directly or indirectly and are not borne by Masteel. It is therefore appropriate in 'all the circumstances of the exportation' that they be included in the calculation of 'export price'.

(e) The Applicant's approach to 'normal value'

In determining a 'normal value' for the Goods in the Chinese and French domestic markets, the Applicant considered that, in the absence of publicly available data, it was unable to undertake the calculation contemplated by s 269TAC(1) of the Act.²⁰ It therefore used its own production costs and substituted in a cost for billet (which is used as a raw input material in the manufacture of the Goods) for each of the exporting countries.²¹ Rio Tinto considers this to have been an unreasonable methodology for the Applicant to employ. As explained further below, Rio Tinto invites the ADC to consider a more appropriate methodology for determining 'normal value' as the Investigation progresses.

In relation to **China**, the Applicant contended consistently with other recent ADC investigations that steel billet used in the manufacture of iron ore railway wheels is sold in China at less than adequate remuneration, with the result that there is a 'particular market situation' in the country of export which enables the Applicant to construct a normal value and also to "determine a benchmark cost for steel billet in accordance with r 45(2) of the Regulation".²² Rio Tinto submits that r 45 is used to determine a profit

¹⁹ Ibid, s 269TAB(1)(c).

²⁰ The Application, p 34.

²¹ The Application, p 35.

²² Ibid.

component for the purpose of s 269TAC(5B) of the Act, not the cost of production or manufacture. As such, it considers this to have been an error by the Applicant in its approach to determining a normal value.

Nevertheless, the substance of the Applicant's submission was that a benchmark cost for steel billet is appropriate in this case. That is because it submitted that neither private domestic prices nor import prices were appropriate proxies due to the absence of a competitive market in China that is free from government interference.

The Applicant then referred to an approach taken by the ADC in earlier investigations where it used a Latin American steel billet FOB export price published by S&P Global Platts. However, the Applicant did not expressly endorse that approach in this case.²³ The Applicant also considered a monthly European steel billet price, but again chose not to use that price for reasons which were not disclosed.

Instead, the Applicant used an average of domestic selling prices for steel billet using data it obtained from an undisclosed Chinese company, which related to the Chinese provinces of Hebei, Liaoning and Shanxi. A footnote to the Application contended that the unnamed Chinese company monitors both Chinese domestic steel billet prices and European domestic steel billet prices.

It is not altogether clear to Rio Tinto why the Applicant considered that this was an appropriate methodology when it had already agreed that private domestic prices for steel billet in China were not suitable for determining a competitive market price.²⁴ Rio Tinto submits that this is a confused methodology and that it would only be suitable, for example, in a scenario where s 269TAC(1) of the Act was inappropriate because of a low volume of sales in the domestic market of the country of export, but the exporter's costs of production or manufacture in that market remained otherwise satisfactory for the purpose of r 43 of the Regulation (i.e. the exporter's records were reliable and reasonably reflected competitive market costs).

Nevertheless, the Applicant followed this by using its own manufacturing and selling expenses for the remaining variable and fixed components of its costs of production.²⁵ The Applicant also used figures from Masteel's 2016 Annual Report to calculate the SG&A costs associated with the sale of the Goods in China and the profit on that sale.²⁶

In relation to **France**, the Applicant submitted that it did not have access to any domestic selling information for the Goods in the country of export and that a constructed normal value would be appropriate because it was 'understood' that the Goods were unlikely to be sold in France in the domestic market.²⁷ It therefore constructed a selling price using published European steel billet prices (sourced from the same undisclosed Chinese company) and combining them with its own SG&A costs. The Applicant also used an amount of profit achieved by Masteel (as Valdunes' parent company) for 2016 which it applied to the production costs.

²³ The Application, p 36.

²⁴ Ibid.

²⁵ As required by s 269TAC(2)(c)(i) of the Act.

²⁶ As required by s 269TAC(2)(c)(ii) of the Act.

²⁷ The Application, p 38.

The Applicant then submitted that since ABS import data is for goods at wharf (with domestic inland freight costs included as part of the 'export price') an upwards adjustment was necessary to the constructed normal value for China and France to take into account the domestic inland freight component of the eventual 'export price'.²⁸ The Applicant could not obtain information relating to inland freight and so did not include such an amount in its constructed normal value. However, it supported the ADC including such an amount, which it considered would increase the applicable dumping margin. The Applicant concluded by calculating a weighted average dumping margin for the Goods on a month-by-month basis during 2017.

In the Consideration Report, the ADC assessed for itself the above methodologies applied by the Applicant in calculating the 'export price' and 'normal value' for the Goods.

(f) The ADC's approach to 'normal value'

In relation to the 'normal value' for the Goods exported from **China**, the ADC made no conclusion but noted the Applicant's claim that a particular market situation exists in China which makes calculation of 'normal value' by the ordinary method unsuitable, and also its claim that due to GOC influence in the raw materials market, Masteel's recorded costs of production do not reasonably reflect competitive market costs. The ADC intends to examine these issues over the course of the Investigation.²⁹ However, the ADC did take issue with the Applicant's approach to calculating Masteel's SG&A costs and the profit on its sales assuming the Goods had been sold on the Chinese market. The ADC considered that 7.68% was the appropriate SG&A and finance cost (compared with the Applicant's suggested 6.77%) and that 2.6% was the appropriate amount for profit (compared with the Applicant's suggested 7.38%).

In relation to the 'normal value' for the Goods exported from **France**, the ADC considered that the Applicant's calculation approach was reasonable in the absence of French domestic pricing information. But it also decided that it was not a reasonable conclusion to assume that the Applicant's indirect costs and profit amounts in Australia would be representative of the amounts likely to apply to Valdunes in France. The ADC instead took a more conservative approach and applied the same SG&A and finance costs and profit amounts as were used to calculate the Chinese 'normal value' (i.e. the costs obtained from Masteel's 2016 Annual Report).³⁰

Ultimately, all of the above calculations led to the following preliminary dumping margins being assessed in the Application and the Consideration Report by the Applicant and the ADC respectively (expressed as a percentage of the 'export price' for the Goods):

Country	Applicant's estimate	Commission's estimate
China	19.3%	26.0%
France	25.9%	14.6%

Table 8: Estimate of dumping margins

²⁸ Ibid. This is presumably to comply with ss 269TAC(8) and 269TAC(9) of the Act.

²⁹ Consideration Report, p 17.

³⁰ Ibid, p 18.

(g) Rio Tinto's submissions in relation to the calculation of 'normal value'

Rio Tinto's primary submission is that a 'normal value' for the Goods should at first instance be determined in accordance with s 269TAC(1) of the Act. Exporter questionnaires in this matter were not due to be lodged until 25 May 2018 and data contained in any questionnaires received by the ADC may provide it with information about domestic sales of 'like goods' in the Chinese and French markets in arm's length transactions. Rio Tinto expects the ADC to undertake its own analysis of the data it receives during the Investigation.

If, after receiving data from interested parties to the Investigation (including the GOC and other relevant sources), the ADC is satisfied that due to volume considerations or a particular market situation existing in the country of export (or other reasons going to practicality), the methodology in s 269TAC(1) of the Act is unsuitable, Rio Tinto submits it is appropriate then to consider calculating a constructed normal value in accordance with s 269TAC(2)(c) of the Act. Alternatively, the ADC should consider whether it is appropriate to determine 'normal value' in accordance with s 269TAC(2)(d) of the Act by reference to the sale of 'like goods' to the Goods from China (and France) to an appropriate third country.

The Full Court of the Federal Court has recently explained in the *Steelforce* decision the correct approach to the construction of 'normal value' for the purpose of the Act in circumstances where it is inappropriate to apply the usual methodology set out in s 269TAC(1) of the Act. It emphasised that the procedure outlined in the Act must be adhered to carefully by the ADC. For example, although the Court noted that the figure in s 269TAC(c)(i) of the Act (cost of production or manufacture) is an actual figure whereas the figures in s 269TAC(c)(ii) of the Act (SG&A costs and profit) are hypothetical amounts, it also held that those hypothetical amounts are sometimes calculated by reference to real-world proxies provided for in the Regulation.³¹

Rio Tinto makes the following observations about the construction of 'normal value' thus far in the Investigation.

- (i) First, to construct a 'normal value' for the Goods during the Investigation Period, the Applicant utilised data from Masteel's 2016 annual report (specifically when calculating SG&A and profit). Although it is accepted that r 44(2) of the Regulation requires in a first attempt at calculating an amount for SG&A that the exporter's records be used, the Investigation Period relates to 2017. Rio Tinto submits that the ADC should endeavour to use Masteel's 2017 records if they are available, not data from previous years. Rio Tinto makes the same submission in relation to the calculation of the profit amount by the Applicant using r 45 of the Regulation.³² In this regard, Rio Tinto supports the ADC's finding that it was inappropriate for the Applicant to use its own SG&A and profit components as a surrogate for Valdunes' costs in France.
- (ii) Secondly, r 43 of the Regulation sets out the method for determining the cost of production or manufacture in the domestic market of the country of export. Again,

³¹ *Steelforce* at [11] per Perram J; and at [93].

³² *Ibid*, at [96] per Perram J and at [140] per Bromwich J.

the exporter's records should be used at first instance if those records are kept in accordance with generally accepted accounting principles in the country of export³³ and if those records reasonably reflect competitive market costs associated with the production or manufacture of 'like goods'.³⁴ However, there is WTO authority (and the Full Court in *Steelforce* did not rebuff this approach) which suggests that a benchmark price from a third country may be used if the actual records do not reflect competitive market costs.³⁵ Rio Tinto submits that the ADC should consider during the Investigation whether benchmarks, other than the Applicant's demonstrably confused suggestion, may be appropriate if it considers a benchmark for steel billet is required (which Rio Tinto submits it cannot conclude until after it reviews any information provided by cooperative exporters during this Investigation).

- (iii) Thirdly, Rio Tinto submits that adjustments should be made by the ADC if there is 'evidence that a particular difference affects price comparability' in accordance with s 269TAC(9) of the Act.³⁶ This assists the making of a fair comparison between 'normal value' and 'export price'. The Applicant has so far suggested a potential upwards adjustment to constructed normal value to take into account the domestic inland freight component of the eventual export price.³⁷ Rio Tinto submits that corresponding downwards adjustments should be considered by the ADC as contemplated in the Manual at pp 60 - 77, subject to information it receives from cooperating exporters and any submissions they might make in relation to this issue.
- (iv) Lastly, Rio Tinto submits that the ADC should reconsider whether it was reasonable for the Applicant to use its own manufacturing and selling expenses for the remaining variable and fixed components of its costs of production when calculating a constructed normal value for the Goods. The Applicant is an Australian domestic monopolist and its costs are not necessarily reflective of competitive market prices. Under s 269TAC(4)(e)(i) of the Act, 'normal value' may be constructed by the Minister's determination of the cost of production or manufacture of the like goods in a country determined by the Minister, but only if 'appropriate and reasonable in the circumstances of the case'. Rio Tinto submits that using the Applicant's costs of production or manufacture as a proxy for the exporter's price is clearly inappropriate and unreasonable, even if the Australian industry was a competitive market – stronger still where the Australian industry is a domestic monopolist. Equating the costs of the Australian industry with those of the country of export is incongruous with the concept of constructing 'normal value', which seeks to determine the exporter's domestic price (of which costs are a component), which may be lower than the costs of the Australian industry due to reasons of competitive advantage. Using the Applicant's costs to construct a domestic price for the Goods in the country of export may have the effect of inflating 'normal value' and therefore the applicable preliminary dumping margin in relation to the Goods. Rio Tinto submits that such an approach undermines the

³³ The Regulation, r 43(2)(b)(i).

³⁴ Ibid, r 43(2)(b)(ii).

³⁵ European Union – Anti-Dumping Measures on Biodiesel from Argentina, WTO Doc WT/DS473/AB/R (6 October 2016) .

³⁶ Manual, p 60.

³⁷ Ibid. This is presumably to comply with ss 269TAC(8) and 269TAC(9) of the Act.

purpose of the relevant legislative provisions and is therefore inappropriate in this Investigation.

4.4 Assessment of material injury

Rio Tinto submits that a cumulative analysis of material injury is not appropriate for the purposes of this Investigation.

In the Consideration Report, the ADC set out when imports from more than one country can be assessed cumulatively when determining material injury suffered by the Australian industry.³⁸ A pre-condition to adopting this analysis is that the relevant requirements of the Act are met.³⁹ Specifically, the ADC must be satisfied that:

- (a) each exportation is subject to the investigation;
- (b) all the investigations arise from applications lodged with it on the same day (or on different days but the investigation periods overlap significantly);
- (c) if the application is for dumping duties, the dumping margin for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin;
- (d) if the application is for dumping duties, the volume of goods the subject of the application that have been exported to Australia over a reasonable examination period (as defined in s269TDA(17) of the Act) is not negligible (i.e. less than 2%);
- (e) if the application is for countervailing duties, the amount of the countervailable subsidy in respect of the Goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy (i.e. less than 1%);
- (f) if the application is for countervailing duties, the volume of each of those exportations is not negligible (i.e. 3% of the total Australian import volume); and
- (g) it is appropriate in all the circumstances to consider the cumulative effect of those exportations having regard to the conditions of competition between the exported Goods and the conditions of competition between the exported Goods and the domestic Goods.

Rio Tinto's primary submission is that the above criteria are conjunctive and each must be satisfied in order for cumulative injury analysis to be a methodology available to the ADC. Rio Tinto submits that criterion (e) above has not been satisfied as French exports are not the subject of any application for countervailing duties. Therefore, Rio Tinto submits that cumulative injury analysis is unavailable under the Act for the purposes of this Investigation.

Alternatively, Rio Tinto submits that it is too early in the Investigation for the ADC to conclude that all of the above requirements have been satisfied because no reliable dumping margins can be calculated before information has been furnished on the ADC by interested parties via importer and exporter questionnaires.

³⁸ Consideration Report, p 32.

³⁹ The Act, s 269TAE(2C).

4.5 Causation

(a) Introduction

In the Application, the Applicant was asked by the ADC to discuss factors other than dumping which may have caused injury to the Australian industry. The Applicant's response is set out below:

The Australian market for iron ore railway wheels is a market experiencing growth due to the increasing need for replacement of worn wheels as haulage carriages age, combined with an increase in new heavy haulage carriages operated by new market entrants (i.e. Roy Hill) in the Australian market.

Australia is currently exporting record volumes of iron ore and this is expected to continue with increasing output from the four large iron-ore miners.

It is [the Applicant's] view that there have been ***no other factors that have contributed to injury*** sustained by [the Applicant] other than lost sales volumes caused by the dumped (and subsidised) imports from China, and dumped imports from France.⁴⁰ (emphasis added)

Rio Tinto submits that the Applicant's response is inaccurate as it has failed to identify a number of other factors which have clearly contributed in a material and meaningful way to the injury it has allegedly suffered as a result of the imported Goods being dumped or subsidised. Those factors are set out below.

(b) The Australian industry

Rio Tinto considers that the absence of competition in the Australian industry (which as described above is effectively a monopoly) may have resulted in business practices becoming outdated and which, by extension, may have caused, or at least contributed towards, the alleged injury suffered during the Investigation Period. The following information is relied upon as evidence of this contention.

(i) Plant capacity

A recent media article marking the centenary anniversary of the founding of the Applicant's business has reported that the production capacity at the Applicant's Waratah plant is currently limited to 40,000 wheel 'sets' per annum (a 'set' being comprised of an axle, two wheels and two bearings, photographs and schematics of which appear as **Public Annexure 'A'** to this Submission). This equates to a capacity of 80,000 wheels per annum. A copy of the media article referred to above appears as **Public Annexure 'B'** to this Submission.

During Rio Tinto's commercial engagement and negotiations with the Applicant in 2017, the Applicant indicated to RTP that Rio Tinto's orders as a percentage of its total railway wheel production was approximately [REDACTED] [describes confidential business information provided to Rio Tinto]. This calculation implies that the

⁴⁰ The Application, p 28.

Applicant had been operating at a total production output of [REDACTED] wheels per annum prior to Rio Tinto diversifying its supply chain.

In contrast, Masteel, as the owner of the world's largest railway wheel production line, has a production capacity of [REDACTED] [describes confidential business information provided to Rio Tinto] wheels per annum (not including capability of [REDACTED] [describes confidential business information provided to Rio Tinto] wheel 'sets').⁴¹ Masteel supplies over 90% of the domestic Chinese railway wheel market⁴² and further Rio Tinto understands, based on its discussions with Masteel, that it exports [REDACTED] [describes confidential business information provided to Rio Tinto] of its capacity to the international market. Steel forging is no different to most manufacturing, whereby critical mass enables a more efficient production process and lower fixed cost per unit. It will be observed that Masteel's plant capacity exceeds the Applicant's by a factor of almost [REDACTED] [describes confidential business information provided to Rio Tinto].

(ii) Process efficiency

Masteel has made significant investments in robotics technology to automate a substantial proportion of recurrent processes associated with forging and rolling wheels. In 2013, Masteel's Quality Assurance/Quality Control line became automated and in 2016 the painting line was refurbished to increase automation. These developments are evidenced in a PowerPoint presentation delivered by Masteel to Rio Tinto in January 2017, at slides 18 - 24 of **Confidential Annexure 'C'** to this Submission.

Masteel has advised Rio Tinto that it has the capability to build these machines in-house and owns the associated intelligence/intellectual property rights in the technology – factors that would support the commercialisation of technology, without attracting additional overheads associated with the production of the Goods.

As at the date of this Submission, Rio Tinto has observed no media articles or supplier updates from the Applicant, or otherwise seen any other publically available evidence, which would indicate that it has made any noteworthy investments in automation technology. Meanwhile, Rio Tinto considers the automation benefits enjoyed by Masteel enable it to exploit time and cost efficiencies across its production process, and an apparent lack of comparable automation by the Applicant will have placed it at a material competitive disadvantage, likely contributing to the alleged injury it has suffered during the Investigation Period.

Rio Tinto has raised many of the above issues with the Applicant prior to diversifying its supply (by purchasing Goods from Masteel) with the objective of seeking to assist the Applicant with improving its efficiencies and the quality of its products.

⁴¹ These figures were derived from a presentation given by Masteel to Rio Tinto in January 2017. The presentation appears in Confidential Annexure 'C' to this Submission and the figures can be observed at slide 5.

⁴² This statistic was obtained from Masteel's website: http://www.masteel.com.cn/en/en_pro.xhtml.

Rio Tinto encourages the ADC to investigate the differences in production processes during the Investigation (including in the course of its Australian Industry and exporter visit work program) and to consider the relative disparities in production efficiency in particular; for example, the automation of key processes by Masteel as outlined above.

(iii) Cost efficiency

Rio Tinto submits that material differences in production efficiency driven by what Rio Tinto considers to be an apparent disparity in Masteel and the Applicant's automation may directly impact the relative cost efficiency of the Goods produced by the Applicant, when compared against Masteel's product.

Similarly, there is likely to be a substantial delta between the composite costs to produce the Goods in Australia compared with equivalent costs in China. In particular, Rio Tinto considers that:

- (A) the cost of raw material inputs (including scrap) in Australia is likely to be significantly higher than material available to Masteel from suppliers in China;
- (B) the structure of the Applicant's supply chain, including its reliance on third party suppliers, is in Rio Tinto's view likely to be significantly less cost efficient than Chinese manufacturers who benefit from vertically integrated supply chains;⁴³
- (C) the Applicant's relatively smaller production capacity means that it cannot exploit the economies of scale and purchasing power enjoyed by large manufacturers, such as Masteel;
- (D) the Applicant's labour overheads associated with the production of the Goods are likely to be proportionately higher than Chinese producers due to the higher cost of labour in Australia (discussed in more detail below at section 4.5(e) of this Submission); and
- (E) higher power costs in Australia contribute to a materially higher cost base to produce the Goods in Australia (also discussed in more detail below at section 4.5(e) of this Submission).

Further, the Applicant has confirmed that it does not provide price reductions or rebates on its sales of heavy haulage railway wheels.⁴⁴ Rio Tinto considers this to be yet another example of how the lack of competition in the Australian market has contributed to Rio Tinto's decision to move towards imported products.

⁴³ The Application, p 12.

⁴⁴ The Application, p 17.

(iv) Non-price factors

Rio Tinto sells more of its own business produce to China than any other country. In 2017, those sales accounted for approximately 44% of Rio Tinto's consolidated sales revenue.⁴⁵ For example, RTIO sells approximately [redacted] [describes confidential sales volume amount] of iron ore per annum to Masteel alone. To maintain its position as a preferred customer to China in otherwise highly competitive commodity markets, Rio Tinto considers it strategically important to forge strong and enduring business relationships with Chinese entities through reciprocal commercial arrangements with a view to also balancing its trade position positively within the Chinese market.

Rio Tinto has also developed a 'Mine to Market to Mine' strategy. Put simply, this strategy involves purchasing products that themselves require iron ore as an input in the manufacturing process. Manufacturers of goods which use Rio Tinto's raw materials product, such as railway wheels (i.e. the Goods), truck trays, wagons, hydraulic cylinders, and other fabricated products, have been identified and negotiations have commenced where there has been clear commercial and risk advantage.

In summary, Rio Tinto's view is that any negative effects on the Applicant's business from the importation of Masteel's Goods is not due to dumping or the importation of subsidised Goods, but due to both the Applicant's apparent refusal or unwillingness to improve what Rio Tinto considers to be relative process and cost inefficiencies in its manufacturing business and the other non-price factors outlined in sections 4.5(b)(i) - (iv) of this Submission above. These factors, independently and cumulatively, have contributed to Rio Tinto's decision to move away from the Australian monopolistic industry and cannot be discounted or disregarded in determining the cause of any material injury which the Applicant is alleged to have suffered during the Investigation Period.

(c) The Applicant's causation claims

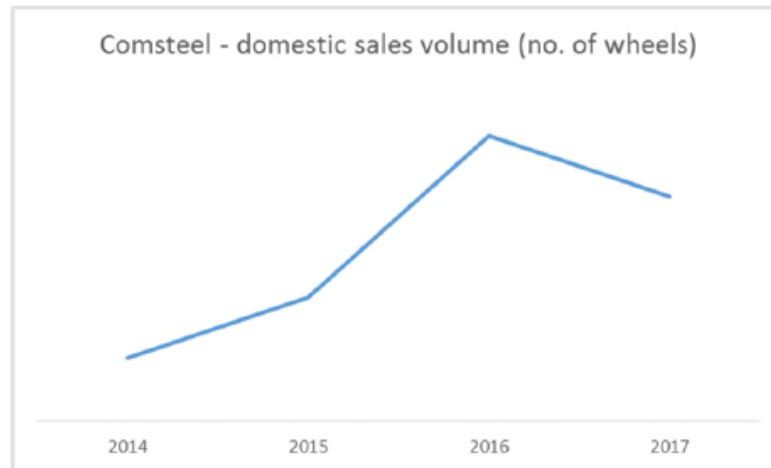
(i) Loss of sales volumes

The Applicant has alleged that dumped and subsidised imports have caused injury to the Australian industry in the form of reduced sales volumes.⁴⁶ The figure below shows the volume of the Applicant's sales over the Injury Analysis Period.⁴⁷

⁴⁵ See http://www.riotinto.com/documents/180207_2017_full_year_results.pdf, p 43.

⁴⁶ Ibid, p 23.

⁴⁷ Ibid, p.32



The ADC considered there to be reasonable grounds to support the Applicant's claims. The ADC considered that, in an expanding market, the Applicant would reasonably expect to achieve increased sales volumes, which has not occurred.⁴⁸ With respect, Rio Tinto questions the logic of this assumption, having regard to the dynamics of the Australian market for the Goods during the Injury Analysis Period.

The Applicant may have been correct to suggest that there is a correlation between increases in sales volumes in 2014, 2015 and 2016 and a recovery of activity in the iron ore industry from 2013 - 14 lows, with an associated uplift in demand for the Goods. However, the Applicant has failed to identify that volatility in iron ore commodity markets continued during 2016 - 17, causing diversified miners such as Rio Tinto to pursue productivity improvements throughout their operations. Specifically to the Investigation, these measures included exploring opportunities to increase the operational life of the Goods. Successful implementation of these measures has resulted in a material incremental reduction in Rio Tinto's demand to source new or replacement Goods.

Rio Tinto submits that it is important for the ADC to appreciate that these trends are not cyclical, and that total demand for the Goods in the coming years is unlikely to return to historical high levels. As the ADC will appreciate, in a declining market, the erosion of sales volume that the Applicant may be 'expected' to capture that has occurred as a result of a reduction in Rio Tinto's demand for the Goods (as a result of productivity measures) cannot entirely be attributed to the presence of imported Goods competing in the Australian market.

(ii) Loss of market share

The Applicant alleged that dumped and subsidised imports of Goods have caused it injury in the form of loss of market share.⁴⁹ The ADC considered there to be reasonable grounds to support that claim.⁵⁰ However, Rio Tinto submits that in an expanding market where the Applicant has suffered reduced sales volumes, loss of market share is a logically necessary result.

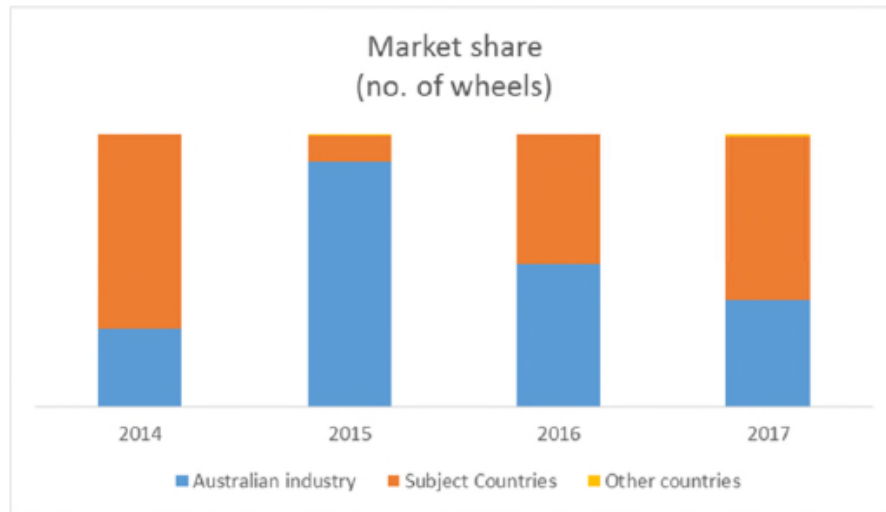
⁴⁸ The Consideration Report, p 38.

⁴⁹ The Application, p 23.

⁵⁰ The Consideration Report, p.38.

PUBLIC RECORD

The figure below shows the ADC's calculation of Australian market share during the Injury Analysis Period:⁵¹



Rio Tinto accepts that the Applicant has experienced relatively significant changes in its relative market share over the Injury Analysis Period. However, as is represented above, these trends have been both positive (reflected in the substantial gains in relative market share from 2014 - 2015) and negative. Further, while the Applicant's market share has reduced in 2017, from historical highs in 2015, it currently holds a materially greater share of the market than it did in 2014.

Rio Tinto submits that it is unreasonable for the Applicant to focus selectively on aspects of the available data that may support its narrative regarding the displacement of sales due to import competition. Rio Tinto urges the ADC to examine the "ebbs and flow" of the relative market share of the participants carefully in the context of the historical dynamics of the Australian and global markets for the Goods, with particular reference to the factors driving the level of volatility observed.

It is important that the ADC recognises that the Applicant has historically enjoyed a monopolistic position in the Australian market for the Goods by virtue of its position as the sole domestic manufacturer of them.⁵² As a result, the Applicant has been able to leverage natural comparative advantages of geographic proximity to customers, local customer support and commercial reputation in the absence of any significant domestic competition.

Rio Tinto submits that notwithstanding (and perhaps because of) this historical position of strength in the Australian market, the Applicant appears to have been unprepared, unwilling or simply too slow to adapt to changing dynamics in global trade and competition. Specifically, as has been mentioned above, the Applicant's lack of apparent preparedness to invest in modernising its operations, while

⁵¹ Ibid, p.33

⁵² See media article <https://www.theherald.com.au/story/5278698/comsteels-100th-birthday/>. This is contained in Public Annexure 'B'.

overseas manufacturers have been proactively doing so, has directly and adversely impacted the Applicant's ability to offer Goods that meet globally competitive benchmarks for pricing, quality and customer service.

Importantly, as noted above, the Injury Analysis Period covers a period of significant volatility in Australian iron ore markets which, in part, drove heightened scrutiny from end-users in relation to the consumption of the Goods. As a result of these prevailing market conditions, multiple participants within the industry looked to increase their overall levels of efficiency, both on a standalone basis and where possible, in conjunction with their suppliers.

Rio Tinto has made genuine attempts over an extended period of time to work with the Applicant to identify opportunities to reduce wastage (and associated cost) from its production processes to align with Rio Tinto's internal productivity improvement initiatives. While these concepts were discussed with the Applicant at length, Rio Tinto has not observed any indication that any meaningful measures have been implemented by the Applicant.

For example, Rio Tinto engaged with the Applicant in late 2017 with the objective of aligning the Applicant's packaging and delivery processes in relation to the supply of the Goods with that of Masteel's processes, which are commercially and operationally preferable to Rio Tinto and contribute to the attraction of Masteel as a preferred supplier of the Goods. Rio Tinto submits that significant time and effort was made to assist the Applicant to understand the requirements of this request and to source materials that would enable it to comply. Evidence of only some of Rio Tinto's engagement with the Applicant is supplied as **Confidential Annexure 'D'** of this Submission. Notwithstanding many attempts, Rio Tinto considers that the Applicant has not met its requests. The Applicant's apparent unwillingness to adopt these measures has adversely impacted on its ability to tender for Rio Tinto supply contracts successfully.

(iii) Price suppression

The Applicant claims that, due to allegedly dumped and subsidised imported Goods, its selling price for the Goods has remained stable over the last four years and does not reflect changes in its costs of production.⁵³

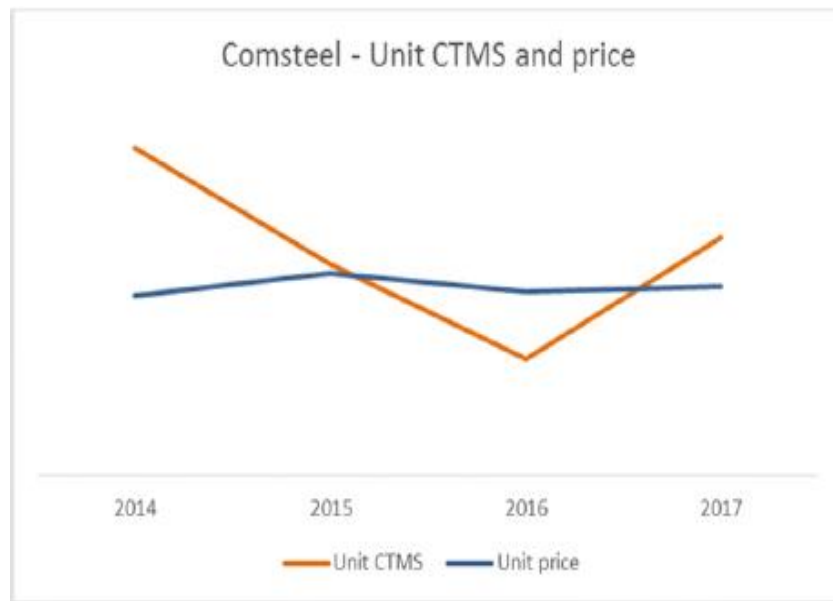
The ADC accepted that, since customers can purchase the Goods either from the Applicant or from an import supply source, prices of imports can be used to negotiate prices downwards with the Applicant.⁵⁴

The figure below represents the movement in the Applicant's unit prices and unit CTMS ('Costs To Make and Sell') over the Injury Analysis Period:

⁵³ The Application, p 26.

⁵⁴ The Consideration Report, p 39.

PUBLIC RECORD



Consistent with its observations in this Submission, Rio Tinto appreciates that the manufacture of the Goods is a cost-intensive process that directly benefits from economies of scale (both in terms of production throughput and sales volumes) in order to maintain net positive profit margins. Rio Tinto notes that this relationship is clearly reflected in the figure above, particularly when viewed alongside the model of the Applicant's sales volumes over the same period. In particular, there is an apparent correlation between the incremental reduction in unit CTMS between 2014 and 2016 and the increase in sales volumes.

However, as discussed in detail below, other factors such as high labour costs, relative production inefficiencies and increases to power costs have likely contributed to a higher cost base per unit for the Applicant as well as for the broader Australian industry. Rio Tinto submits that it is unreasonable and commercially imprudent for any producer of commoditised goods to rely on the maintenance of sales volumes and not to take proactive steps to manage the risk of corrections in market demand. Indeed, Rio Tinto believes that the Applicant's apparent failure to reduce or mitigate the impact of these issues has directly led to the situation where relatively small changes in sales volume have a disproportionate impact on the relationship between CTMS/price than would otherwise be the case.

Rio Tinto notes the implication that the Applicant was somehow prevented from increasing prices in line with movements in its CTMS during the Injury Analysis Period.⁵⁵ Rio Tinto submits that in light of the above issues it would be commercially unrealistic for the Applicant to seek to increase its price offers reactively when other factors likely affected its ability to be competitive.

In its evaluation of these issues, and particularly its analysis of the potential causal link between the ability to increase price and the presence of competition from imported Goods, the ADC should carefully consider the dynamics of the prevailing market. It should also be noted that Rio Tinto never sought an increase in the

⁵⁵ The Application, p 21.

value of the scrap wheels that it sells back to the Applicant, despite all macroeconomic indicators suggesting that the potentially achievable market price had increased.

(iv) Loss of profit and reduced profitability

The Applicant has alleged that dumped and subsidised imported Goods have caused injury to the Australian industry in the form of loss of profit and reduced profitability.⁵⁶

Given that the ADC accepted there were reasonable grounds to support the Applicant's claims of reduced sales volume and market share, it also considered that the consequential impact on the Applicant's profit and profitability needs to be investigated.⁵⁷

Rio Tinto considers the submissions made in sections 4.5(c)(i) – (iii) of this Submission above also rebut the suggestion that the Applicant's loss of profit and reduced profitability is attributable to alleged dumping and subsidy practice in relation to the Goods exported to Australia from China and France.

(v) Reduced return on investment and employment numbers

The Applicant has claimed injury in the form of reduced return on investment, reduced employment numbers and reduced attractiveness to re-invest.⁵⁸

The ADC did not accept that, without further material provided, the Applicant had demonstrated that it had suffered such injury, given that return on investment and employment numbers showed a positive trend in the investigation period.⁵⁹

Rio Tinto submits that the ADC's findings were correct in this respect.

(d) Quality issues

As explained in section 4.1 of this Submission above, Rio Tinto does not object to the suggestion that it purchases 'like goods' to the Goods under consideration in this Investigation. However, there are real differences between the Applicant's wheels and those imported from overseas which Rio Tinto submits have contributed in the past to, and still continue to contribute towards, the rationale of its production selection, and any injury which the Australian industry has allegedly suffered. Rio Tinto makes the following submissions in support of this proposition.

(i) Wheel packaging safety and efficiency concerns

Safety is paramount at Rio Tinto. It is one of the five core values⁶⁰ espoused by Rio Tinto and codified in its seminal business framework document, *The way we*

⁵⁶ The Application, p 26.

⁵⁷ The Consideration Report, p. 39.

⁵⁸ The Application, p 27.

⁵⁹ The Consideration Report, pp 35, 39.

⁶⁰ The five values are safety, teamwork, respect, integrity and excellence.

work.⁶¹ They are the guiding principles for the way Rio Tinto personnel do their work, and they set out the behaviours that Rio Tinto strives to instil within its organisation. Safety enjoys primacy amongst these principles.⁶² Generally speaking, Rio Tinto's approach to safety and health focuses on eliminating fatalities and incidents that could cause disability, reducing injuries and occupational illness, and preventing catastrophic events.⁶³

Against that backdrop, one of the quality issues that Rio Tinto has considered to be significant in its procurement decision-making is the packaging efficiency of the Goods. Rio Tinto considers that the Goods it purchases from Masteel are superior in their packaging to those supplied by the Applicant. The Masteel wheel packaging enables reduced manual handling, double handling and forklift movement within an otherwise busy machine / workshop at Rio Tinto's premises. By way of example, whereas the un-packaging of the Applicant's Goods requires 8 discrete movements, Masteel's Goods require a mere 2. It naturally follows that the fewer the movements, the reduced risk for safety incidents to arise, resulting in a safer work environment for Rio Tinto employees when dealing with Masteel's Goods.

The Masteel wheel packaging solution also removes the need for strapping to be applied to boxes containing the Goods, which the Applicant still applies as part of its own packaging offering. Rio Tinto considers the strapping to present a workplace safety issue due to the 'snapback' effect that occurs when it is removed. This effect has caused two recorded injuries to Rio Tinto employees in the past 12 months. These are regarded as very serious events at Rio Tinto and quite properly became the subject of internal concern and subsequent investigation. Incident Reports evidencing these events have been provided to the ADC as **Confidential Annexure 'E'** of this Submission. The increased ergonomics of the Masteel packaging make its Goods favoured on the shop floor from both a commercial and safety perspective compared to the Applicant's Goods.

Rio Tinto has, on a number of occasions, informed the Applicant of the concerns it has with its packaging and the injury risks associated with it. Evidence of some of Rio Tinto's engagement with the Applicant is supplied as **Confidential Annexure 'D'** of this Submission. Rio Tinto has on numerous occasions made genuine attempts to engage and work collaboratively with the Applicant to improve its packaging as demonstrated by emails 1 to 9 of **Confidential Annexure 'D'** of this Submission. However, the Applicant has to date failed to create what Rio Tinto considers to be a suitable packaging solution to eliminate or even mitigate these safety risks or more generally innovate its packaging processes. A wheel packaging presentation that was prepared internally at Rio Tinto has also been provided to the ADC as part of **Confidential Annexure 'D'** of this Submission. These attempts to improve the quality of the Applicant's packaging have resulted in a time and cost impact to Rio Tinto's business. Rio Tinto submits that this demonstrates that quality considerations have contributed to Masteel's Goods emerging as a preferred and superior product compared to the Applicant's Goods.

⁶¹ *The way we work* (http://www.riotinto.com/documents/RT_The_way_we_work_EN.pdf), pp 6 - 10.

⁶² *Ibid*, p 6.

⁶³ *The way we work* is not intended as an exhaustive statement of Rio Tinto's commitment to safety. That document is further supplemented by numerous and more detailed occupational, health and safety policies, practices and procedures.

PUBLIC RECORD

Consistent with Rio Tinto's core values and its unfaltering commitment to safety, the obvious safety benefits of Masteel's Goods invariably factored into Rio Tinto's procurement decision-making.

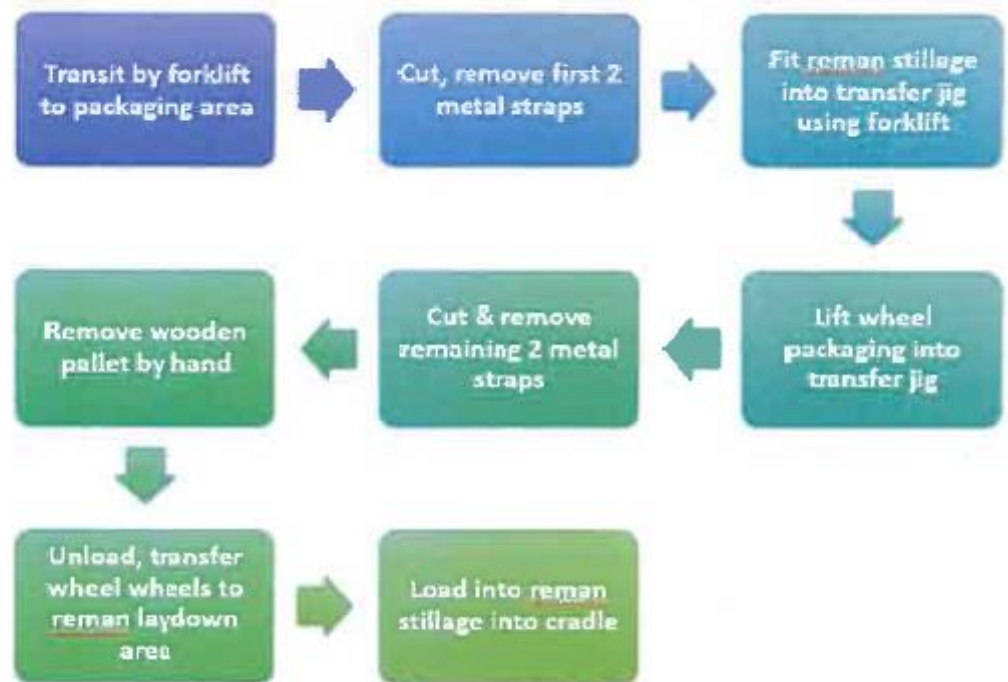
Indeed, to illustrate the emphasis Rio Tinto places on such safety matters, it is noteworthy that in early May 2018 Rio Tinto's Wagons Maintenance Team was nominated for a Rio Tinto Group Achievement award due to improvements to Rio Tinto business operations attributed to the move towards Masteel's Goods. The headline achievements in the nomination include:

- (A) a [REDACTED] % [describes confidential production cost information] cost saving generated from repackaging loose wheels and changing supplier from the Applicant to Masteel, whilst maintaining consistent quality (evidence of which has been provided to the ADC as **Confidential Annexure 'F'** of this Submission);
- (B) improved safety and reduced risk through improved packaging design, reduced manual handling and reduced forklift movements;
- (C) increased productivity achieved through improved processes;
- (D) less waste generated from refined packaging design; and
- (E) considerable buy-in and collaboration across the business.

The below graphic demonstrates the improvement in process which can be observed by the change in product:

▪ Improved Processes:

ComSteel Process – 8 steps:



MaSteel Process – 2 steps:



Further, the below image demonstrates the various benefits which the change in packaging has realised for the business:

▪ Packaging Changes:

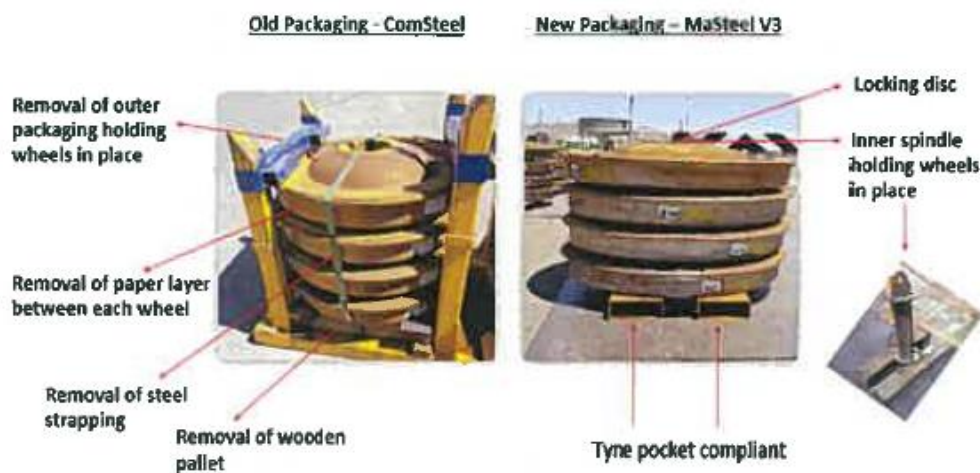
Change to MaSteel packaging – Version 3:

Benefits:

- Packaging is fed straight from supplier into reman.
- No stillage handling. The required stillage stays in the cradle permanently.
- Transfer jigs not required. Less manual handling (locking wedge/disc removed manually instead of metal straps and wooden pallet).
- Less waste material to dispose.

Improvements:

- Improved stability for transporting and handling onsite.
- Tyne pocket compliant.
- Minimal process steps.
- Can go directly into machine shop.
- Has potential to receive scrap wheels in secure way.
- Safer/easier to handle.



(ii) Wheel lifespan and wear

Rio Tinto rejects the Applicant's claim that the Goods it produces have a longer lifetime and provide greater wear resistance than those exported from China.⁶⁴ There is no evidence from the Rio Tinto network experience that supports this claim. Rio Tinto's experience is that the Applicant's Goods wear at an annual rate of [REDACTED] [describes confidential information regarding the Applicant's Goods] whereas Masteel's Goods wear at an annual rate of [REDACTED] [describes confidential information regarding Masteel's Goods]. A wheel wear comparison report for different wheel types prepared by Rio Tinto has been provided to the ADC as **Confidential Annexure 'G'** of this Submission. That report concludes that the Masteel Improved Alloy Goods have a slower rate of wheel wear than the

⁶⁴ The Application, p 12.

Applicant's Goods that were tested, and shows that Mateel's Goods also experienced fewer instances of uneven wear and wheel hollowness.

(iii) Shattered wheel rim events

Rio Tinto has also experienced issues with the Applicant's Goods with respect to rim shattering events (see image below). Shattered rim events affecting the Applicant's Goods which occurred in 2016 resulted in an investigation and testing of the Applicant's wheels manufactured in 2006 and 2007. Rio Tinto is still managing this risk of shattered rims affecting the Applicant's Goods by removing 'at risk' wheelsets annually. Evidence of these events and internal steps taken by Rio Tinto in response have been provided to the ADC as **Confidential Annexure 'H'** to this Submission. As at the date of this Submission, Rio Tinto has not encountered any rim shattering or similar event in respect of Masteel's Goods.



Rio Tinto submits that it is these operability issues affecting the Applicant's Goods, and not alleged dumping or subsidisation, which are contributing to the selection of Masteel's Goods as Rio Tinto's preferred product.

(e) Economic factors

The Applicant has alleged that the Goods have been exported to Australia at prices less than their 'normal value', that various manufacturers and importers of the Goods were in receipt of countervailing subsidies during the Investigation Period and that the subsidisation (and subsequent dumping) has caused material injury to the Australian industry.

Rio Tinto contends that the Applicant is factually incorrect in this claim. While there exists a price difference between Chinese exports and manufacturing costs in Australia, this does not arise due to distortions as a result of alleged subsidies or dumping. Instead, it is a result of the following factors:

- a combination of lower labour costs and higher productivity in China;
- economies of scale available to Chinese manufacturers;

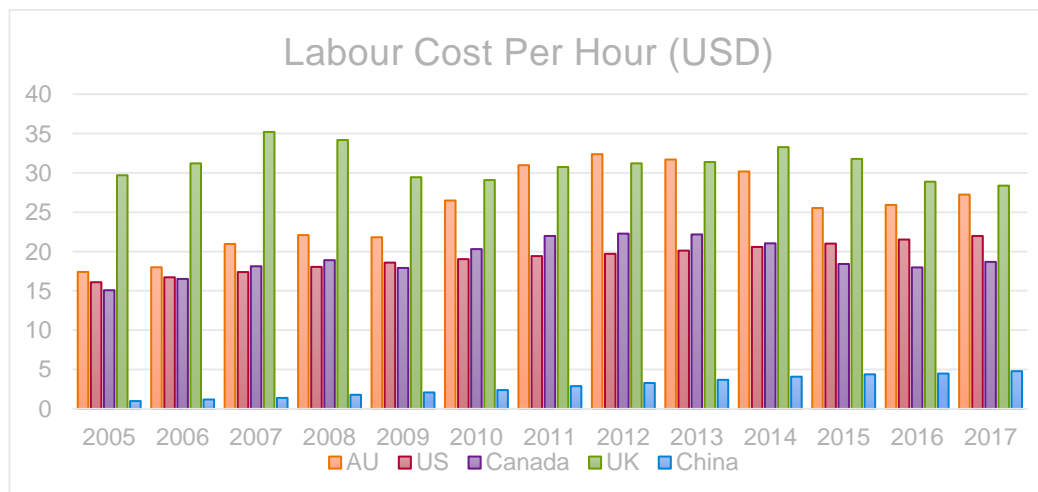
- lower tariffs due to the ChAFTA;
- unfavourable AUD currency movements; and
- less environmental regulation.

Each of these issues contributes to lower manufacturing costs in China than in Australia. This is explored further in the sections below.

(i) A combination of lower labour costs and higher productivity in China

The manufacturing of the Goods is essentially a steel fabrication business, which is labour intensive by nature. Therefore, labour is a significant input cost component and has a significant impact on total manufacturing cost.

In recent years, labour costs in Australia have remained higher than other economies as detailed in the graphic image below. In 2016, average hourly wages in the manufacturing sector in China reached US\$3.60.⁶⁵ In the same year, the national minimum wage in Australia was approximately US\$17.70. This makes wages in Australia almost 5 times more expensive for manufacturers than in the Chinese labour market.



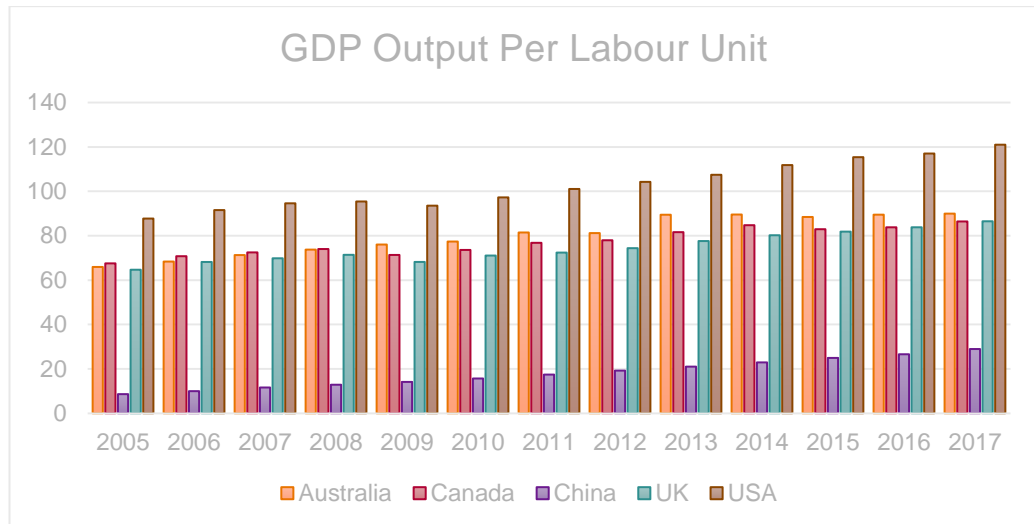
Source: EIU.

Absolute labour costs per hour represent one aspect of the relative economic benefit afforded to Chinese manufacturers. The other factor that should be considered when evaluating the impact of market factors on labour costs is the relative productivity of the labour force in each market.

The following chart shows labour productivity, measured as nominal GDP adjusted at 'Purchasing Power Parity', to provide a normalised base for comparison (by removing the impact of FX movements and inflation in specific jurisdictions), which is then divided by the size of the labour force, to obtain GDP contribution per worker.

⁶⁵ Euromonitor International, International Labour Organisation

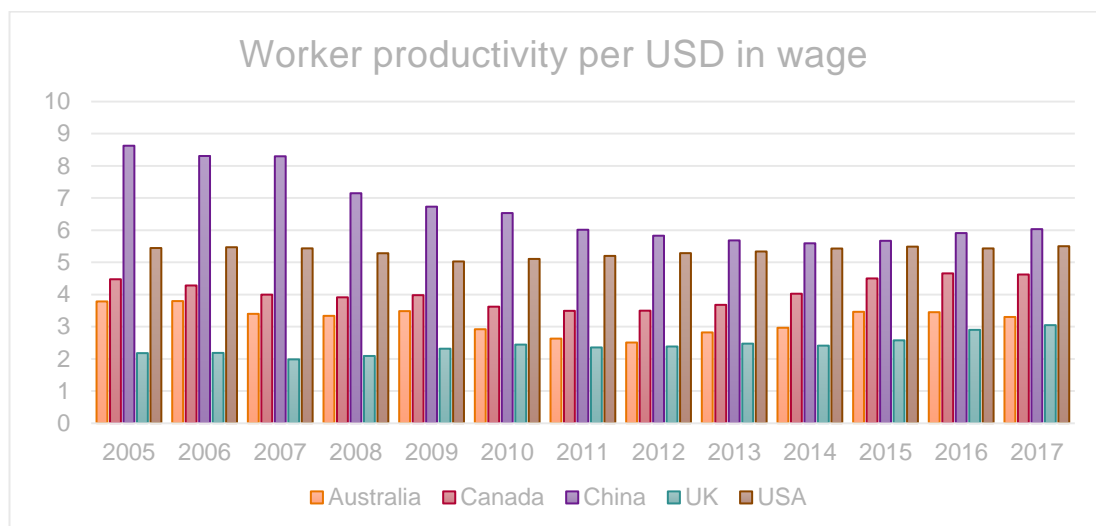
PUBLIC RECORD



Source: Calculated from Data obtained from EIU.

This chart shows that the labour force in China is relatively unproductive per person when compared to that in Australia (or other Western economies), despite its relative cheapness.

However, we can combine this data to adjust the absolute labour cost graph to reflect the differences in productivity between each jurisdiction. The chart below therefore combines the impact of labour costs (which are relatively low in China) with productivity (which is relatively high in Western countries).⁶⁶ This has been done by dividing the productivity of each country's labour force by the average labour cost per hour, to give the units of productivity of the labour force in each specific country, for each USD in wage.



Source: Calculated from Data obtained from EIU.

⁶⁶ For example, if country A's labour cost is \$10 per hour, but workers are only 50% as productive, the adjusted labour cost in country A would be equal to \$20.

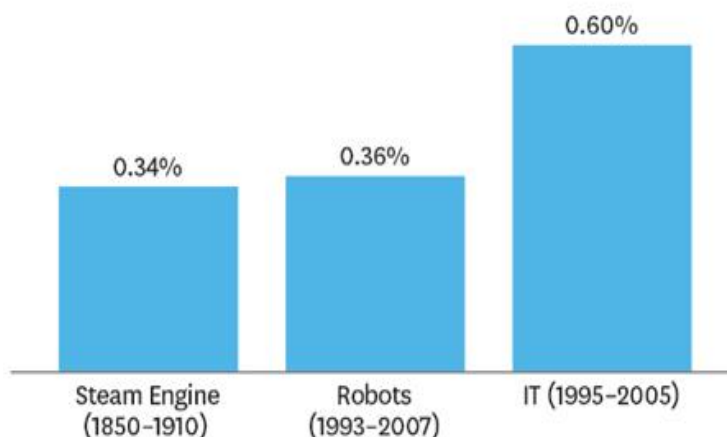
The results of this exercise demonstrate that the lower productivity in developing countries is offset by the lower labour costs paid to those workers. Although China has the lowest productivity of the countries represented in the data set, after wages are taken into account, China achieves the highest productivity for each USD of wage. Australia, on the other hand, achieves the second lowest productivity for each USD of wage. Therefore, it is clear from the results of this analysis that, taking into account productivity differences, labour costs per hour are significantly cheaper in developing countries, which directly contributes to a lower cost of manufacturing the Goods.

Rio Tinto also considers it relevant to take into consideration that Masteel has incorporated a high level of robotics technology and automation into its production processes (which is canvassed in detail at section 4.5(b)(ii) of this Submission). This provides a productivity boost at minimal cost, as Masteel has capability to build these robotics and also owns the relevant intellectual property that it has developed in respect of the technology. As noted in section 4.5(b)(ii) of this Submission, Rio Tinto has not seen any evidence to suggest that the Applicant has invested in robotics technology to the same extent.

Within the international manufacturing industry, it has been estimated that the use of robotics could raise labour productivity by 16% over a 14 year period.⁶⁷ As demonstrated in the graph below, the significant increase in productivity due to the use of robotics is similar to that which occurred as a result of the invention of the steam engine and as a result of the IT revolution:

Robots' Impact on Productivity Is Already Significant Compared to Other Major Technologies

TOTAL PERCENTAGE CONTRIBUTION TO ANNUAL LABOR PRODUCTIVITY GROWTH RATES



Source: *Harvard Business Review*

Therefore, as a result of Masteel's automation, the difference in productivity between Masteel and the Applicant per USD of wage can be expected to be even

⁶⁷ Harvard Business Review, 'Robots seem to be improving productivity, not costing jobs'

greater, resulting in more significant difference in costs and ultimately product prices.

This further demonstrates that Australian labour costs are high in relative terms when compared to a basket of other nations and productivity is relatively low, rendering Australian manufacturers such as the Applicant uncompetitive in the global market.

(ii) Economies of scale available to Chinese manufacturers

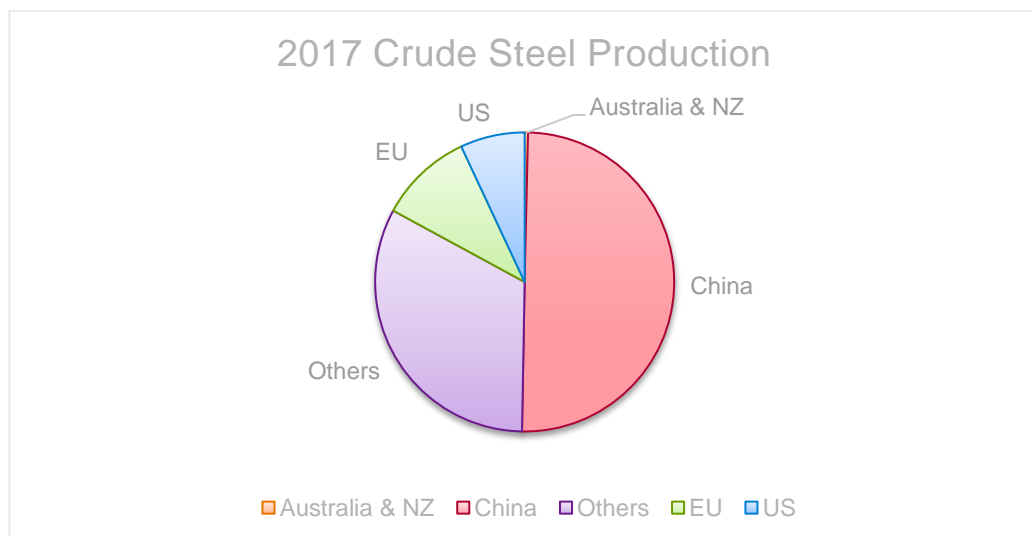
Economies of scale are critical to price in manufacturing industries where fixed costs are a substantial part of the overall price of a unit. They are therefore highly relevant in determining the manufacturing cost of the Goods, particularly when identifying the causes of manufacturing cost differentials between the Applicant and its Chinese counterparts, such as Masteel.

The two primary factors that explain why the cost of manufacturing the Goods is particularly sensitive to scale are that:

- steel prices vary according to steel production volumes; and
- steel product manufacturing requires a high proportion of fixed costs and overheads.

(A) Steel production volumes

Steel production levels between Australia and China are vastly different. Data published by the World Steel Association and presented in the chart below shows the share of crude steel production between major economies.



Source: World Steel Association

As the chart illustrates, China produced the highest level of steel in 2017 at 831.800 thousand tonnes (approximately 50%), while Australia produced a

mere 6 thousand tonnes. Such a vast difference implies significant differences in economies of scale between businesses operating in these two economies when it comes to steel manufacturing. This results in generally lower raw material prices being available to Chinese manufacturers.

(B) Relative size of the steel industry

Chinese manufacturers benefit from economies of scale, as they tend to manufacture immense volumes and export to most major markets.⁶⁸ Due to the relatively high levels of fixed costs and overheads associated with manufacturing activities, it is clear that having a greater level of production in the Chinese steel manufacturing market allows those manufacturers to receive the benefit of significant economies of scale.

Therefore, with China having such large volumes of steel production, it is clear that those manufacturers have a significantly greater ability to benefit from economies of scale as compared with their Australian counterparts. This allows Chinese manufacturers to produce the Goods for significantly lower costs than an Australian manufacturer due to the far greater economies of scale available to them.

(C) Availability of materials

Masteel obtains the scrap steel which it uses in its production of the Goods from related enterprises or local Chinese businesses. The Applicant on the other hand (as the only representative of the Australian industry) must rely on purchasing scrap steel at market prices. This difference in cost structure is likely to lead to higher prices with respect to Australian products.

(iii) Lower tariffs as a result of the ChAFTA

The introduction of the ChAFTA in December 2015 created another change in market conditions that potentially affected the market for the Goods during the Injury Analysis Period. The railway wheel market can be categorised under the new tariff agreement as follows:

Tariff code 8607.19.00 is stated by the Commission to apply to the goods under consideration⁶⁹. The goods are under the heading 'Parts of railway or tramway locomotives or rolling-stock.', sub-heading 'other, including parts: Wheels, whether or not fitted with axles'.

Pre-ChAFTA, this category was subject to a 5% tariff. Post-ChAFTA, this Tariff was reduced to 2% in January 2017, with the intention to be reduced to zero by January 2019. If the Goods that are the subject of this Investigation are under 'Other, including parts', the reduction of tariffs on Chinese imports of 5% over 4 years provides another explanation for the increase in foreign imports and foreign

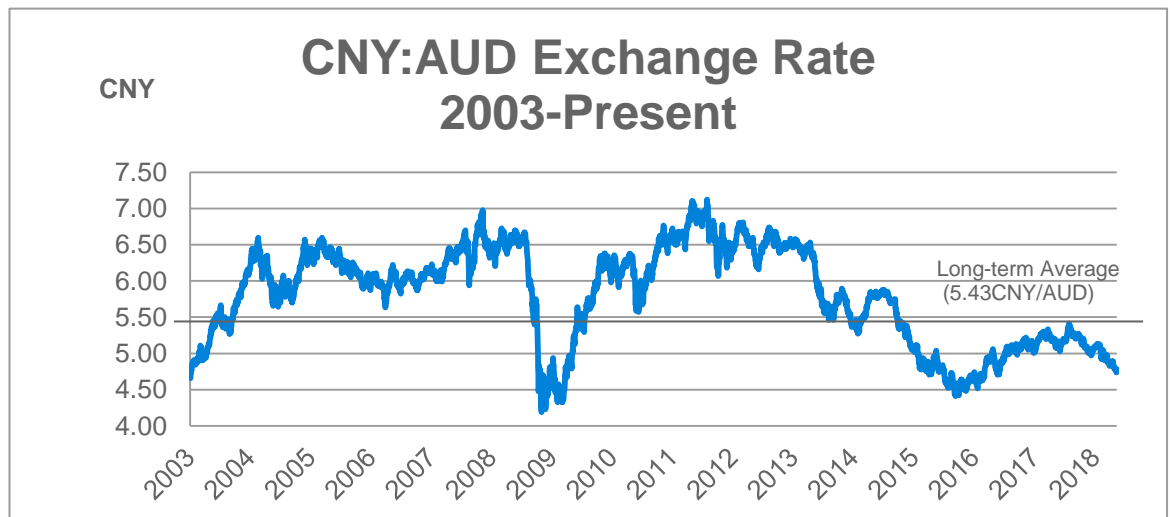
⁶⁸ IbisWorld, Iron Smelting and Steel Manufacturing

⁶⁹ Consideration Report, p 9.

market share, as this reduction in tariffs ultimately lowers the import price of Chinese steel products, such as the Goods.

(iv) Foreign exchange rate movements

Over the past 10 years, the AUD significantly appreciated against global major currencies, including the CNY. As a result, Australian manufactured products became more expensive compared to overseas manufactured products due to increases in the cost of labour and other Australian manufacturing inputs.

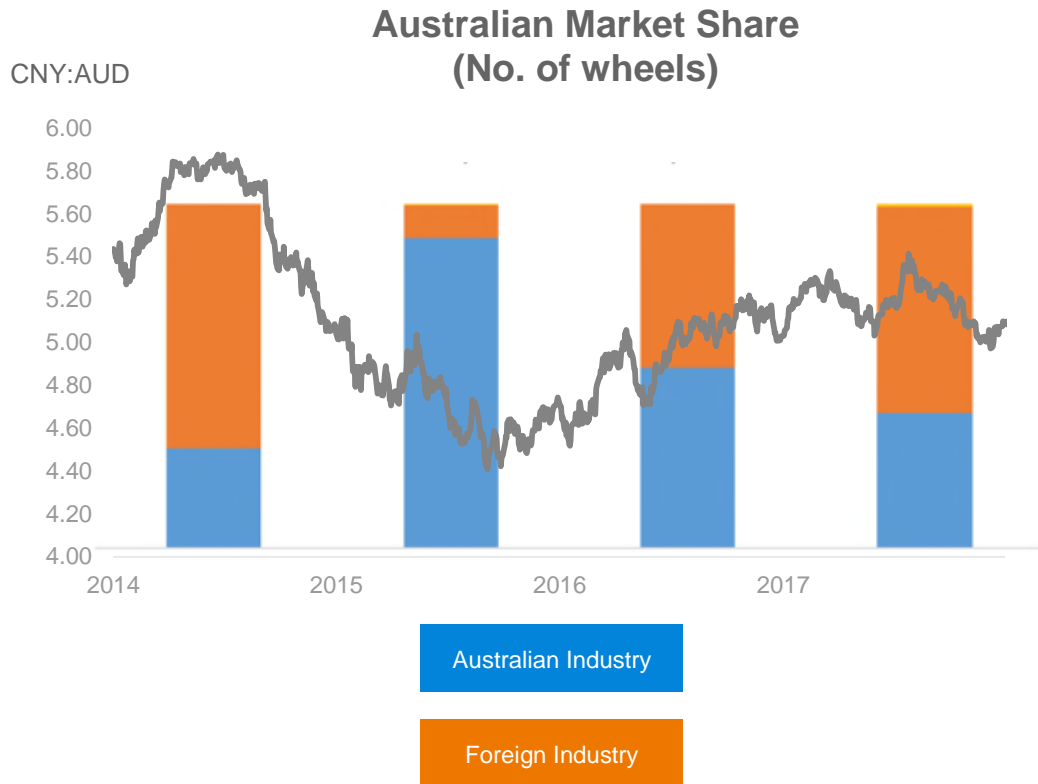


Source: Reserve Bank of Australia data

As illustrated in the chart above, the appreciation in the AUD to its peak in 2012 - 2013 significantly eroded the price competitiveness of the local industry, with competing prices from Chinese manufacturers likely to have fallen by around 40% on 2002 levels based on FX movements alone. This lack of competitiveness resulted in a 'hollowing out' of the Australian manufacturing industry, with substantial amounts of Australian manufacturing capacity permanently closing as a result.

Although there was subsequent depreciation of the AUD in the period between 2013 and 2016, that FX relief arrived too late for much of Australia's manufacturing industry. It also meant that imports had the opportunity to establish a strong foothold in the local market in Australia. Generally, a stronger AUD encourages a higher quantity of imports into Australia, due to the increased purchasing power of Australian consumers. When the AUD loses value against other currencies, purchasing power likewise declines.

The following graph overlays the CNY:AUD FX movements over the Injury Analysis Period with the share of the Australian market for the Goods, as split between Australian and foreign manufacturers. This shows a clear correlation between the strength of the AUD and the proportion of Goods sourced from Australian, rather than foreign, manufacturers, indicating that FX movements play a significant role in purchasing decisions.



Source: Reserve Bank of Australia data

With a strong AUD in 2014, foreign industry accounted for a high share of the market for the Goods as imports were relatively cheaper for Australian consumers. In 2015, when the AUD experienced decline against the CNY, these foreign imports became relatively more expensive and local industry won back a significant market share. As the AUD experienced a gradual upward trend throughout 2016 and 2017, market share of foreign industry also steadily grew. Therefore, it is clear that the value of the AUD has a substantial correlation with Australian consumer preference for either local or foreign products, including the Goods.

Decreases in the Australian industry's market share can consequently be partially attributed to macroeconomic conditions related to the stronger AUD, which has made imported Goods cheaper, allowing Chinese manufacturers to establish a foothold in the Australian market during the Injury Analysis Period.

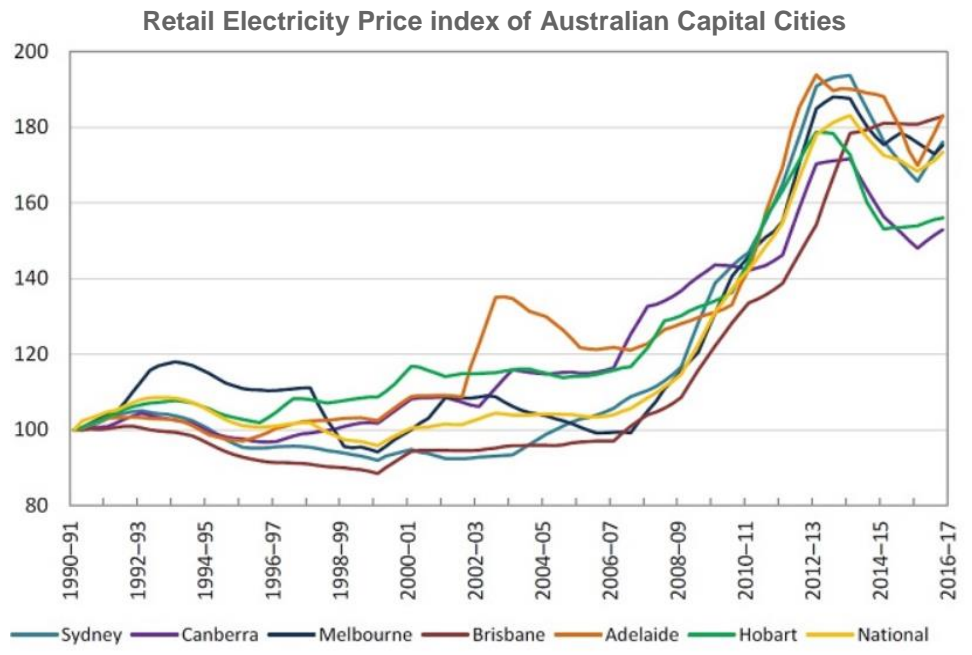
(v) Environmental regulation

Another contributing factor to lower steel prices in China in comparison to Australia is the imposition of less onerous environmental regulation by regulatory authorities on the Chinese manufacturing industry.⁷⁰ This reduced environmental regulation, colloquially referred to as "green tape", has materially contributed to the rapid growth seen in China over the last decade. Historically, Chinese businesses have not been required or incentivised to limit the pollution and waste resulting from

⁷⁰ IbisWorld Report, Iron Smelting and Steel Manufacturing

their manufacturing processes, and have had ready access to cheap energy in the form of thermal coal.

Australian manufacturers, on the other hand, must comply with comparatively stringent environmental laws and practices which ultimately increase input costs, reducing competitiveness. Additionally, rising utility prices in recent times that have been triggered by the closing of Australian brown coal power stations have further reduced Australia's competitive edge in the global market. This increase in prices is demonstrated in the graph below.

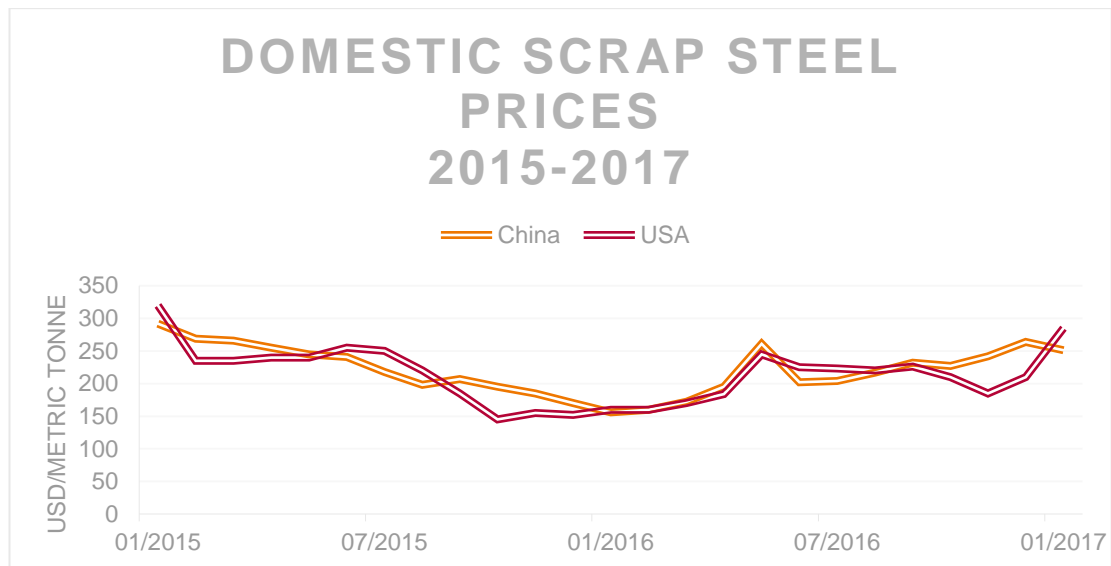


Source: ACCC

(vi) Steel prices

The Applicant alleges that distortions in steel prices have occurred in the Chinese market. However, Rio Tinto submits that there is no clear evidence to suggest that the price of steel is materially cheaper in China when compared to other major economies.

As illustrated in the charts below, domestic scrap steel prices in China were broadly consistent with US domestic prices and trends during the 2015 - 2017 period.



Source: Bloomberg & BDSV

As scrap metal is often used in the manufacturing of the Goods, this data demonstrates that steel prices are not materially lower in China than within the US market, and therefore differences in production costs are likely to be driven by differences in the costs of labour, productivity and required levels of regulatory compliance.

(vii) Summary

Rio Tinto contends that the data and empirical evidence outlined in this section 4.5(e) of this Submission strongly suggests that steel price differences are not the dominant cause of pricing differentials between product manufacturing in Australia versus in China, as the differentials between domestic steel prices are significantly less than the much wider differentials in labour rates, economies of scale productivity and FX differentials.

(f) Conclusion on causation

Rio Tinto observes that the Applicant has itself described the selling prices for the imported Goods and its own Goods as 'similar'.⁷¹ If the prices are similar, it is more difficult for the Applicant to attribute any loss it has allegedly suffered to dumping, subsidisation (or both) considering the myriad of factors listed above which may be affecting its business.

Ultimately, Rio Tinto submits that once the above factors have been taken into account, the Applicant has failed to establish that any material injury it has suffered has been caused by any alleged dumping and subsidy practices in China, France or both.⁷²

Alternatively, Rio Tinto submits that if the ADC concludes in its final report that dumping or subsidisation has caused the Applicant material injury, it should also consider the

⁷¹ The Application, p 11.

⁷² The Act, ss 269TG(1)(b)(i) and 269TJ(1)(b)(i).

desirability of applying the 'lesser duty rule' even if it concludes that normal value was not able to be ascertained because of the operation of s 269TAC(2)(a)(ii) of the Act.⁷³ To this end, Rio Tinto submits that a non-injurious price for the Goods in the Australian domestic market should be derived having regard to the unsuppressed selling price for those Goods taking into account the aforementioned factors.

4.6 Subsidy analysis

A subsidy is a financial contribution by government that confers a benefit in relation to particular goods.⁷⁴

(a) The Applicant's approach

The Applicant does not allege that exports from France are subsidised.⁷⁵ However, it alleges that the Goods exported from China during the Investigation Period benefitted from a range of subsidies which ultimately aided Chinese exporters who were able to reduce the 'export price' for their Goods. The Applicant used findings from multiple previous ADC investigations into the Chinese steel industry to argue that a number of identified subsidy programs supported by the GOC afford benefits to Chinese exporters of the Goods.

Some of the subsidy programs identified by the Applicant related to input costs in the production of the Goods,⁷⁶ while others related to preferential tax policies, financial grants and equity programs.⁷⁷ The Applicant then listed a number of additional Chinese exporter-specific subsidies as allegedly applicable to Masteel using its 2016 Annual Report.⁷⁸

(b) The ADC's approach

In its Consideration Report, the ADC referred to an invitation to the GOC to participate during the pre-initiation phase of the Investigation. Although the GOC acknowledged receipt of the correspondence, it did not request any further contact with the ADC.⁷⁹ The ADC then proceeded to assess the programs set out in the Application in tranches, according to the following categories.

- (i) For Category 1 (Provision of Goods), the ADC relied on a benchmark it established during a previous investigation (No. 331) concerning billet used in China. It considered that benchmark represented an appropriate proxy for the purpose of calculating a preliminary subsidy margin.⁸⁰

⁷³ Dumping Duty Act, ss 8(5BA) and 8(5BAAA)(a)

⁷⁴ Ibid, s 269T.

⁷⁵ The Application, p 41.

⁷⁶ Ibid.

⁷⁷ Ibid, pp 41-42.

⁷⁸ Ibid, pp 43-35.

⁷⁹ Consideration Report, p 19.

⁸⁰ Ibid, p 20.

- (ii) For Category 2 (Preferential Tax Policies), the ADC again relied on the findings of uncooperative exporters in investigation No. 331 as the basis for determining a preliminary subsidy margin in relation to the Goods.⁸¹
- (iii) For Category 3 (Financial Grants), the ADC used its previous investigations (Nos. 322 and 331) as a basis to conclude that the Applicant's approach was reasonable, however it noted that a number of the programs were based on locations which may not correlate to Masteel's location.⁸²
- (iv) For Category 4 (Equity Programs), the ADC accepted that no evidence had been provided to support the allegation that Masteel had received benefits under these programs. While these programs have not been excluded from the Investigation, the ADC has not included them in its preliminary subsidy margin in relation to the Goods.⁸³
- (v) For Category 5 (Preferential Loans and Interest Rates to Producers), the ADC considered that there was insufficient evidence to conclude that an outstanding amount owed by its subsidiary, Masteel Shanghai Trading, under a loan could be considered a financial contribution from the GOC. It therefore did not include this amount in its preliminary subsidy margin.⁸⁴
- (vi) For Category 6 (Miscellaneous Programs Disclosed in the 2016 Annual Report of Maanshan Iron & Steel Company Limited), the ADC considered that information disclosed in Masteel's financial report for 2016 constituted reasonable evidence that it had received financial contributions pursuant to these programs from the GOC. The ADC therefore included these amounts in its preliminary subsidy margin.⁸⁵

At this stage of the Investigation, the ADC has not calculated a subsidy margin for programs 5 – 46 as identified in the Application.⁸⁶ However, it has concluded that the present subsidy margin is not negligible (although the precise amount has not been disclosed to interested parties at this stage of the Investigation; it is contained in a confidential annexure to the Consideration Report).

(c) Rio Tinto's submissions

Rio Tinto is not in a position to comment at this stage of the Investigation on whether Masteel benefits from each of the many programs set out in the Application. Despite this, Rio Tinto submits that findings made by the ADC in previous investigations do not relieve it of the obligation to conduct a fresh inquiry into the existence of subsidisation programs in China during this Investigation. This inquiry must relate to the Investigation Period, and the ADC must be satisfied that Masteel was the recipient of any of the benefits suggested by the Applicant for the purpose of ss 269T and 269TACC of the Act.

⁸¹ Ibid, p 21.

⁸² Ibid, p 23.

⁸³ Ibid, p 24.

⁸⁴ Ibid, p 25.

⁸⁵ Ibid, p 27.

⁸⁶ Ibid, p 30.

This is especially pertinent where the ADC has reservations about whether certain programs in fact apply to Masteel (as, for example, in the case of Category 3 above).

4.7 Application of PAD or other interim measures

Rio Tinto contends that this Submission has clearly demonstrated that at this stage of the Investigation there are insufficient grounds for the ADC to make a Preliminary Affirmative Determination that either interim dumping or countervailing duty is payable in relation to the Goods for the purpose of s 269TD of the Act. Specifically, Rio Tinto's position is that it cannot be said that there appear to be sufficient grounds for:

- (a) the publication of a dumping duty notice, or a countervailing duty notice, in respect of the Goods; or
- (b) the publication of such a notice subsequent to the importation into Australia of such Goods.

5. Conclusion and recommendation

5.1 No imposition of measures

Rio Tinto submits that no anti-dumping duty notice, countervailing duty notice or other measure be imposed by the ADC in relation to the Goods. Rio Tinto submits that the conditions for imposing any measures under ss 269TG and 269TJ of the Act do not exist; namely that the Applicant has not conclusively demonstrated that the Australian industry has suffered material injury due to alleged:

- (a) dumping in relation to the Goods exported from China and France; and
- (b) subsidy practices which are said to have benefitted Chinese exporters with respect to the Goods.

5.2 Insufficient grounds for PAD

Further, Rio Tinto submits that there are insufficient grounds at this stage of the Investigation to warrant the ADC making a Preliminary Affirmative Determination that either interim dumping or countervailing duty is payable in relation to the Goods. In particular, this Submission has emphasised that:

- (a) the factual material at this stage of the Investigation does not meet the standards required to enable the ADC to comply with the Act in calculating the 'export price' or the 'normal value' of the Goods exported from China and France; and
- (b) the factual material at this stage of the Investigation does not establish that there are countervailable subsidies that benefit Chinese exporters with respect to the Goods.

5.3 Investigation be terminated

Lastly, for the reasons set out in this Submission, Rio Tinto recommends that the Investigation be terminated pursuant to s 269TDA of the Act.

Schedule 1 – Definitions

In this Submission, the following definitions apply:

ABF means the Australian Border Force.

ABS means the Australian Bureau of Statistics.

Act means the *Customs Act 1901* (Cth).

ADC means the Anti-Dumping Commission.

Anti-Dumping Notice means Anti-Dumping Notice No. 2018/59 dated 18 April 2018 and published pursuant to s 269TC(4) of the Act.

Applicant means Commonwealth Steel Company Pty Limited (ACN 000 007 698).

Application means the application dated February 2018 lodged by the Applicant, which appeared on the Public Record on 18 April 2018, seeking publication of dumping duty and countervailing notices in respect of the Goods exported to Australia from China and France during the Investigation Period.

AUD or **A\$** means the currency of the Commonwealth of Australia.

ChAFTA means the China-Australia Free Trade Agreement.

China means the People's Republic of China.

CNY means the Chinese Yuan Renminbi, being the currency of China.

Commissioner means the Commissioner of the ADC.

Comsteel Contract means the Supply of Ore Car Wheelsets – Contract No. CW2011902 dated [REDACTED] [Describes confidential contractual arrangement with the Applicant] (as amended) between the Applicant and Pilbara Iron.

Consideration Report means Consideration Report Number 466 dated 12 April 2018, issued by the ADC in response to the Application, which appeared on the Public Record on 18 April 2018.

CTMS means the costs to make and sell.

DDP means delivered duty paid.

DLC means dual listed companies.

Dumping Duty Act means the *Customs Tariff (Anti-Dumping) Act 1975* (Cth).

EIU means Economist Intelligence Unit.

France means the French Republic.

FOB means free on board.

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FX means foreign currency exchange.

GDP means gross domestic product.

GOC means the Government of China.

Goods means the goods the subject of the Application, more particularly described in Schedule 2 of this Submission.

Importer Questionnaire means the completed Importer Questionnaire provided by Rio Tinto to the ADC, together with this Submission.

Injury Analysis Period means the period from 1 January 2014.

Investigation means the investigation by the ADC in response to the Application.

Investigation Period means the period from 1 January 2017 to 31 December 2017 during which the Commissioner will examine exports to Australia of the Goods to determine whether dumping, subsidisation or both has occurred.

Manual means the Dumping and Subsidy Manual published by the ADC in November 2015 which explains the ADC's practices adopted in administering the anti-dumping and countervailing system.

Masteel means Maanshan Iron & Steel Co., Ltd.

Minister means the Assistant Minister for Science, Jobs and Innovation.

PAD or **Preliminary Affirmative Determination** means a preliminary affirmative determination pursuant to s 269TD(1) of the Act.

Pilbara Iron means Pilbara Iron Pty Ltd (ACN 107 216 535), a Rio Tinto Group member.

Public Record means the public record maintained by the ADC on its website in relation to the Investigation.

Rail Fleet means RTIO's 191 locomotives and 12,778 wagons (with 500 more wagons due for delivery in 2018).

Regulation means the *Customs (International Obligations) Regulation 2015* (Cth).

Rio Tinto or **Rio Tinto Group** means the dual listed company structure comprising Rio Tinto Limited and Rio Tinto plc and their various subsidiaries.

RTIO means Rio Tinto Iron Ore, a division of the Rio Tinto Group.

RTP means Rio Tinto Procurement, a division of the Rio Tinto Group.

SG&A means administrative, selling and general costs associated with the sale of the Goods.

Steelforce means *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20.

Submission means this document (including its Schedules and Annexures), lodged on behalf of Rio Tinto.

USD or **\$US** means the currency of the United States of America.

Valdunes means MG-VALDUNES S.A.S.

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WTO means the World Trade Organization.

Schedule 2 – Goods

The goods the subject of the Application, and under consideration as part of the resulting Investigation, are described below (being 'Table 3' appearing at pp 8 and 9 of the Consideration Report).

Full description of the goods, as subject of the application
Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys.
Further information
<p>Comsteel's application notes the following additional information:</p> <p>Axles and other components are excluded from the goods coverage.</p> <p>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:</p> <ul style="list-style-type: none"> • BHP Billiton Ltd (BHP); • Rio Tinto Ltd (Rio Tinto); • Fortescue Mining Group (FMG); and • Roy Hill Holdings Pty Ltd (Roy Hill). <p>The railway wheels used in all user applications have the following typical characteristics:</p> <ul style="list-style-type: none"> • 38 inch or 966 mm to 970 mm diameter and of similar overall dimensional tolerances and shape; • manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties as defined in the user specifications; • manufactured using a forging and rolling process in accordance with defined standards; • suitable to operate at axle loads above 36 metric tonnes; and • a multi-wear rim. <p>The wheels are manufactured in accordance with specifications established by the users listed above (and included as confidential attachments to the application). Comsteel highlights that the specifications may be slightly modified and renamed to suit the specific manufacturer's production process, however, all railway wheels will typically be in accordance with the iron ore producer's specifications.</p>

Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i>)				
Tariff code	Statistical code	Unit	Description	Duty rate
8607.19.00	20 ⁵	number	PARTS OF RAILWAY OR TRAMWAY LOCOMOTIVES OR ROLLING-STOCK: -- Other, including parts: Wheels, whether or not fitted with axles	China: 2% from 1 January 2017 France: 5%
Previous investigations				
This is the first investigation into the alleged dumping and subsidisation of railway wheels undertaken by the Commission.				