

14 June 2018

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## Public File

Dear Mr Kenna

**Re: Investigation No. 466 - Certain Railway Wheels exported from France and the People's Republic of China – USP/NIP and Form of Measures**

### I. Introduction

During the recent verification visit by the Anti-Dumping Commission ("the Commission") at Commonwealth Steel Pty Ltd ("Comsteel"), the applicant was requested to comment on the following:

- (i) The recommended basis for an unsuppressed selling price ("USP") and non-injurious price ("NIP"); and
- (ii) The preferred form of measures to apply (should measures be recommended to the Assistant Minister).

### II. Unsuppressed selling price

When imposing Interim Dumping Duties ("IDD") the Assistant Minister is required to have regard to the desirability of specifying a lesser amount of duty than the full dumping or subsidy margin where the lesser amount is sufficient to remove the injury from dumping and subsidisation. The level of IDD cannot exceed the margin of dumping. The Assistant Minister's discretion to impose a lesser amount of IDD than the full margin of dumping is referred to as the "lesser duty rule".

The level at which the lesser duty rule is applied is by reference to the Non-injurious price ("NIP"). The NIP is derived from the Australian industry's unsuppressed selling price ("USP"). The USP is a selling price in the market that the Australian industry could reasonably achieve in the absence of dumped or subsidised imports. In determining a relevant USP, the Commission's practice is to examine the Australian industry's selling prices at a time unaffected by dumping or subsidisation. Where the Australian industry's selling prices have been impacted by dumping or subsidisation for an extended time and it is considered that the pricing is unsuitable, the Commission will examine using a constructed selling price based upon the industry's cost to make and sell plus a profit.

If either the selling price or constructed selling price methodologies are not appropriate, the Commission may consider the selling prices of undumped and unsubsidised imports in the Australian market.

Comsteel submits that the appropriate USP (from which the NIP will be derived) in the case of the iron ore railway wheels is the weighted-average domestic selling price over the three-year period 2014 to 2016. The weighted-average domestic selling price for the goods over this period was \$xxxxxx per unit ex works. This figure is derived from Comsteel's Confidential Appendix A6.1 "A6.1 Domestic Wheels CTMS Total". Comsteel recognises that domestic selling prices for the goods were influenced by import prices in 2016, however, as import prices declined in 2016 and 2017, Comsteel experienced

injury in the form of lost sales volumes as import prices undercut Comsteel's prices by in excess of xx per cent.

As Australian industry selling prices are considered suitable for a USP, it is not necessary to consider the alternative methodologies of constructed selling prices or the selling prices of undumped goods.

The Commission will derive the NIP from the Australian industry's USP market price by deducting from the USP all post exportation costs (these include overseas freight and insurance, duty, into store costs, importer expenses and importer profit (where the importer is independent of the end-user)).

Comsteel has alleged in its application for measures that a 'particular market situation' for iron ore railway wheels exists in China. The Commission has previously determined (Reports 322, 331 and 384) that steel billet prices in China – steel billet being the raw material used in the manufacture of iron ore railway wheels – “*are not suitable for determining a competitive market price free from government influences*” and determined a market situation applies for the finished goods incorporating steel billet. In investigations where a *market situation* has been determined for the subject goods, the Assistant Minister is not mandated to consider the lesser duty rule.

Comsteel considers that in this investigation the Assistant Minister is also not required to consider the lesser duty rule for goods exported from China. In respect of the goods exported from France, the Assistant Minister may, subject to the Commission's investigations with the exporter in France, consider whether it is appropriate to consider the lesser duty rule.

Comsteel therefore recommends:

- The USP be based upon the weighted-average domestic selling prices for iron ore railway wheels sold by Comsteel over the period 2014 to 2016;
- The Assistant Minister not consider the lesser duty rule for exports from China; and
- Subject to the Commission's investigations in France, the Assistant Minister may consider the lesser duty rule if a lower level of IDD is appropriate to remove the injurious effects of dumping for exports from France.

### III. Form of measures

The forms of anti-dumping measures available to the Assistant Minister when imposing IDD are prescribed in Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- The combination of fixed and variable duty method (i.e. 'combination' duty);
- The floor price duty method;
- The fixed duty method (i.e. \$x per tonne); or
- The ad valorem duty method (i.e. a percentage of the export price).

Comsteel considers that IDD based upon the combination method represents the most effective means of addressing the injurious effects of dumping and subsidisation. The combination method takes account of the dumping and subsidy margin(s) determined during the investigation period, as well as the ascertained export price determined for the exporter across the investigation period.

Measures based upon the combination method therefore reflect the level of dumping (and subsidisation) evident during the investigation period and are applied in a prospective manner.

Then floor price method is not considered a sufficient deterrent for the subject exporter(s) – particularly in a rising market. Similarly, the fixed price per tonne measure does not allow for fluctuations in prices. Measures based upon the *ad valorem* method are readily circumvented as the exporter can reduce the export prices to Australia to absorb the IDD impost.

Comsteel recommends that where the Assistant Minister is to impose IDD that the measure be based upon the combination method that includes a fixed and variable component of duty. This form of measure is considered by Comsteel to discourage circumvention of the measures and is therefore

effective in its intended application. In a falling market, importers can seek duty assessments to secure refunds of excess IDD paid should market prices fall.

If you have any questions concerning this submission, please do not hesitate to contact either Mr Ian Forbes on (02) 4974 0416 or Comsteel's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



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