

**Canberra**  
6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
Australian Capital Territory 2609

Canberra +61 2 6163 1000  
Brisbane +61 7 3367 6900  
Melbourne +61 3 8459 2276

[www.moulislegal.com](http://www.moulislegal.com)

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**Brisbane**  
Level 4, Kings Row Two  
235 Coronation Drive  
Milton, Brisbane  
Queensland 4064

**Melbourne**  
Level 39, 385 Bourke Street  
Melbourne  
Victoria 3000

Australia



commercial + international

The Director  
Investigations 4  
Anti-Dumping Commission  
55 Collins Street  
Melbourne  
Victoria 3000

By email

Dear Director

## **Ministry of Commerce of the People's Republic of China Alleged dumping and subsidisation of railway wheels exported from China – INV 466**

As you know we represent the Government of the People's Republic of China ("the GOC") in this investigation.

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The GOC wishes to express its concern at the false and damaging allegations made by the applicant, Commonwealth Steel Company Pty Ltd (hereafter the "Applicant" or "Comsteel"). The application for this investigation puts forward ill-informed and misleading allegations. The GOC is dismayed to find that these flawed contentions have been the basis of the initiation of this investigation by the Anti-Dumping Commission ("the Commission"),<sup>1</sup> and of the Commission's preliminary affirmative determination ("PAD").<sup>2</sup>

In particular, the Applicant's allegations with regards to an alleged "particular market situation" and alleged subsidy programs in China are not supported by positive evidence. Those allegations provide misleading impressions about the Chinese market. The GOC has provided the Commission with its Government Questionnaire response, which it trusts will correct these misleading impressions. The GOC reserves its rights to make additional representations on those issues in a separate submission.

<sup>1</sup> See Doc No 001 – Application.

<sup>2</sup> See Doc No 016 – ADN 2018/99 PAD 466.

The Commission has taken the step of publishing a PAD, and at the same time has imposed securities on subject exporters. This comes as a surprise to the GOC, as the information on the public record does not appear to provide “sufficient grounds” for the publication of a dumping duty notice, or countervailing duty notice, as required by the governing legislation.<sup>3</sup>

At this juncture the GOC wishes to take this opportunity to comment specifically on the allegations of material injury and associated causation, which are alleged by the Applicant and have regrettably been supported by the Commission, in a preliminary sense, in its PAD.

## **A The Australian market is segmented by four separate end users**

The goods the subject of this investigation are narrowly defined. They are:

*Forged and rolled steel, high hardness, nominal 38-inch (or 966 mm to 970 mm) diameter, railway wheels, whether or not including alloys.*<sup>4</sup>

This is further narrowed by the Applicant’s characterisation of the goods:

*The railway wheels are manufactured in accordance with relevant user defined specifications and drawings, and are used on rail carriages used to transport iron ore.*<sup>5</sup>

The “relevant user defined specifications” refer to the requirements of the following four companies (collectively the “End Users”):<sup>6</sup>

- BHP Billiton Iron Ore Pty Ltd (“BHP”);
- Rio Tinto Ltd (“Rio Tinto”);
- Fortescue Metals Group Ltd (“FMG”); and
- Roy Hill Holdings Pty Ltd (“Roy Hill”).

With the Commission having completed verification visits to a number of the End Users, it will be familiar with the individual requirements set by each and the processes used to purchase the goods. However, for clarity, it bears repeating that each of the End Users sets unique specifications for the railway wheels that it requests from the market and ultimately orders. The goods the subject of this investigation are supplied on the basis of a successful tender process and manufactured specifically to the requirements of that End User. The goods the subject of this investigation are not a commodity product and the goods are not interchangeable between the End Users.

## **B The End Users must consider factors other than price**

The Applicant’s claims that:

*The material injury sustained by Comsteel as evidenced in 2017 is as a direct consequence of the increased volumes of railway wheels at dumped and subsidised export prices from China and dumped prices from France.*<sup>7</sup>

This statement is indicative of the Applicant’s oversimplified logic, that is, that if the prices of the alleged dumped and subsidised imported competition were higher, the Applicant alone would have been successful in the tender process. This is a flawed assumption that is either naïve in the extreme, or masks a clear misunderstanding of a sophisticated market.

<sup>3</sup> See the *Customs Act 1901* subsection 269TD(1).

<sup>4</sup> See Doc No 003 – ADN 2018/59 Notice of initiation at page 2.

<sup>5</sup> See Doc No 003 – ADN 2018/59 Notice of initiation at page 2.

<sup>6</sup> See Doc No 001 – Application at page 10.

<sup>7</sup> See Doc No 020 – Comsteel submission at page 5.

The purpose of a tender process is to evaluate bids against a multitude of relevant factors. These factors will have different weighting based on the differing requirements of the End Users. Price will be one factor, however it rarely will be the only factor.

This has already been identified by the Commission, and by the Applicant in its discussions with the Commission:

*It is clear to the Commission from discussions with Comsteel and the importers/end users of railway wheels in Australia that price is not the only factor relevant to the purchasing decision.*

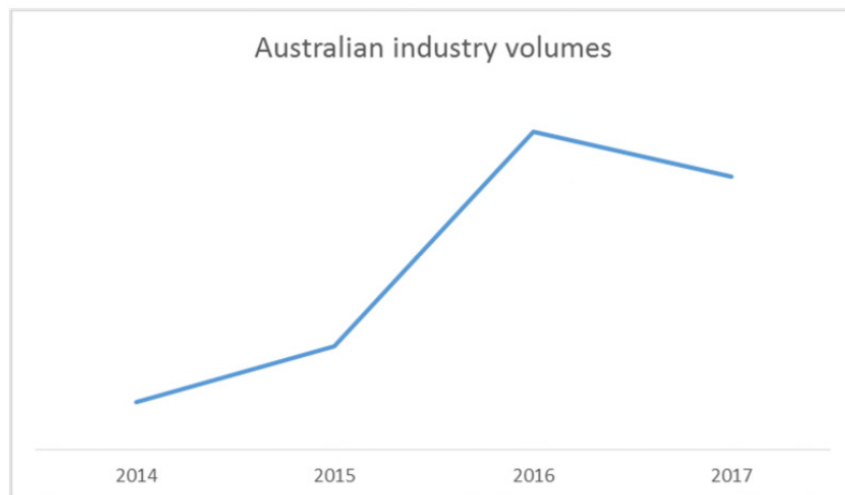
*For example, reliable performance is an important consideration for the iron ore mining companies, both from standpoint of safety and the efficient operation of the rail infrastructure. Timely and convenient delivery arrangements, warranty offers and low wear rates are also factors relevant to supplier selection.<sup>8</sup>*

Notwithstanding this admission, the Applicant continues to put forward an allegation that is predicated on price being the determinative factor. This does not equate with the statements made by the End Users, the companies making the purchasing decisions. It has been stated unequivocally that quality and safety are essential considerations, and this is explored further below.

### **C The Applicant’s injury claim is not convincing in absolute terms**

The Commission has made the preliminary determination that the Applicant has suffered injury in a number of forms. However, when it comes down to it, the only real complaint is that it has made quite a high volume of sales, but not as many as in the year previous to the POI, at the same prices as it enjoyed in the previous year, and profitably, but in circumstances where it had mildly increased costs. Further, one might surmise that those increased costs were essentially due to the lower volume of sales. It has to be said, on these facts, that a compelling case of injury is not presented.

The Applicant’s sales volumes over the period are indicative of its broader material injury allegations:<sup>9</sup>



### **Comsteel – Australian Industry Visit Report – Railway wheels**

<sup>8</sup> See Doc No 016 – ADN 2018/99 PAD 466 at page 23.

<sup>9</sup> See Doc No 023 – Comsteel verification report at page 13.

This change in volume is expanded on in the Application as follows:<sup>10</sup>

*Indexed table of Applicant's sales quantities\**

Quantity	2014	2015	2016	2017
<b>All Products</b>				
Aust. Market	100	95.02	122.09	106.93
Export Market	100	109.7	144.69	69.91
Total	100	97.1	125.28	103.42
<b>Like Goods</b>				
Aust. Market	100	216.07	666.52	571.95
Export Market	100	-	-	-
Total	100	216.07	666.52	571.95

Source: Confidential Appendix A3 'Wheels Turnover'.

As shown by the graphic and table above, the Applicant has experienced remarkable growth since 2014. It is growth that has seen its sales volume for the goods increase by over sixfold in the three year period from 2014 to 2016. This level of growth is not sustainable, and was not sustainable. As expected, the data shows a minor dip in 2017. It is considered minor as the sales in 2017 were still nearly six times the Applicant's sales in 2014. The GOC contends that this is a natural correction within a growing market, and certainly within the normal ebb and flow of business.

## **D The Applicant lost contracts based on quality and safety considerations**

The Applicant has addressed the change in sales volume in 2017:

*In respect of the 'like goods' disclosed in Confidential Appendix A3, Comsteel's sales of goods increased in 2015 and 2016, and fell away sharply in 2017 (due to lost contracts at BHP and Rio Tinto).*<sup>11</sup> (underlining supplied)

That is, it is the lost contracts to BHP and Rio Tinto *specifically* that the Applicant considers is the cause of the material injury.

In addition to not being successful in obtaining contracts from BHP and Rio Tinto, in mid to late 2017 the Applicant was also not successful in obtaining contracts from Fortescue Metals and Roy Hill.<sup>12</sup> Based on the Applicant's comments, it does not point to these unsuccessful tender bids as the cause of the alleged injury predominantly or significantly.

The End Users that make the purchasing decisions have stated that other factors are important considerations in tender bids. Primarily, this is a focus on safety and quality, an area in which the End User Rio Tinto says the Applicant's railway wheels are not as good as those of Masteel.

Safety is a determinative factor in the End User's purchasing decision. Rio Tinto states:

*Safety is paramount at Rio Tinto. It is one of the five core values espoused by Rio Tinto and codified into its seminal business framework document, the way we work....*<sup>13</sup>

...

*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-marking.*<sup>14</sup> (underlining supplied)

<sup>10</sup> See Doc No 001 – Application at page 16.

<sup>11</sup> See Doc No 001 – Application at page 12.

<sup>12</sup> See Doc No 016 – ADN 2018/99 PAD 466 at page 13.

<sup>13</sup> See Doc No 009 – Rio Tinto submission at page 26.

<sup>14</sup> See Doc No 009 – Rio Tinto submission at page 28.

Rio Tinto has provided detailed information in its submission as to the safety concerns it has with the Applicant's goods, including:

- wheel packaging safety and efficiency concerns;<sup>15</sup>
- wheel lifespan and wear;<sup>16</sup> and
- shattered wheel rim events.<sup>17</sup>

For its part, in its submission Comsteel has contested the proposition that the issues are to the severity stated by Rio Tinto.<sup>18</sup> However, that is not the point. Comsteel's submission confirms that from at least July 2016,<sup>19</sup> Rio Tinto and the Applicant have been in communication about Rio Tinto's concerns with regard to the safety and quality of the Applicant's goods. This factor was, and is, important to Rio Tinto and was known by the Applicant prior to the unsuccessful tendering process which it considers to have been the source of the material injury.

The safety concerns are not an inconsequential issue:

*In its submission of 5 June 2018, Rio Tinto claimed that material differences in quality between the Chinese and Australian manufactured railway wheels is a factor that arguably explains any injury suffered by Comsteel. Rio Tinto submitted that these quality issues were represented by:*

- *safer and more efficient packaging arrangements provided by Masteel;*
- *a superior rate of wheel wear and therefore lifespan of the Masteel wheels; and*
- *incidents of shattered rims with Comsteel's wheels and no such issues with wheels supplied by Masteel.*

*In its meeting with the Commission, Rio Tinto advised that it had been frustrated and disappointed with Comsteel's lack of responsiveness to efforts to improve efficiencies (thereby reducing the cost profile of railway wheels for both Comsteel and Rio Tinto).<sup>20</sup>*

These comments<sup>21</sup> have been echoed by BHP:

*BHP stated that safety and reliability are significant factors considered in its purchasing decisions. The Office of the National Rail Safety Regulator (ONRSR) regulates the safety and reliability of railways operated by the iron ore producers including BHP. Wheel failures could cause derailments of the ore trains in populated areas such as at level crossings.<sup>22</sup>*

...

*BHP also claimed that there have been more recent quality concerns with 8 broken Comsteel wheels that have been investigated since January 2016. BHP claimed that 5 of these broken wheels were the result of 'subsurface defects'. BHP provided the verification team with further information concerning these wheel failures following the meeting. BHP claimed that the only*

<sup>15</sup> See Doc No 009 – Rio Tinto submission at page 26.

<sup>16</sup> See Doc No 009 – Rio Tinto submission at page 30.

<sup>17</sup> See Doc No 009 – Rio Tinto submission at page 31.

<sup>18</sup> See Doc No 020 – Comsteel submission at page 1.

<sup>19</sup> See Doc No 020 – Comsteel submission at page 2.

<sup>20</sup> See Doc No 016 – ADN 2018/99 PAD 466 at page 23.

<sup>21</sup> We are concerned at the use of words in the PAD. The statements are evidence, not claims. To say that Rio Tinto "claimed" that quality differences "arguably" explains any material injury is almost to accuse Rio Tinto of not being truthful. Rio Tinto purchased Masteel wheels ahead of the Applicant's and has told the Commission that the Applicant's wheels were not considered to be good enough. These are not "claims" nor do they only "arguably" establish the proposition that the Applicant's wheels were not purchased because of quality and safety concerns and the risk and cost associated with wheel failures. These concerns were based on documented events with respect to the Applicant's wheels which had not occurred in the case of Masteel's wheels.

<sup>22</sup> See Doc No 018 – BHP Verification Report at page 6.

*issues it has had with Masteel wheels were due to thermal cracking which is due to heat from braking, and this has occurred with all wheels across the fleet including those supplied by Comsteel and Valdunes. BHP further claimed that the Comsteel defects were due to its manufacturing process, discussed in section 4.5 below.*

*The verification visit team inquired if the wheel failures were a factor in the decision to not award the tendered wheel volumes to Comsteel. BHP advised that the tender evaluation processes in 2016 and 2017 had focussed on the comparative price of the products offered by the pre-qualified suppliers. Following the meeting, BHP clarified that quality and the wheel failures had not been a key consideration only because Comsteel were not in contention for the award, because their pricing was not competitive. BHP further clarified this point by explaining that given the seriousness of the Comsteel wheel failures in late 2017 and early 2018, even if Comsteel had submitted the cheapest price for wheels in the most recent tender for FY19 requirements, then it would have been unlikely to have been awarded those volumes due to the ongoing wheel failure issues and quality concerns.<sup>23</sup> [underlining supplied]*

The small size and segmentation of the market allows for the Commission to interrogate the decision making of the End Users in depth for its causation analysis. Noting this, the Applicant has pointed specifically to unsuccessful contracts with BHP and Rio Tinto as the source of its injury. Both of these End Users have pointed to significant safety and quality issues with the Applicant. It bears repeating, BHP has stated:

*...even if Comsteel had submitted the cheapest price for wheels in the most recent tender for FY19 requirements, then it would have been unlikely to have been awarded those volumes due to the ongoing wheel failure issues and quality concerns.*<sup>24</sup>

The Applicant's allegations are premised on the notion that if not for dumped and/or subsidised goods, it would not have suffered injury. However, as identified by both Rio Tinto and BHP,<sup>25</sup> Applicant's railway wheels were considered not to be good enough, to the extent of potentially causing death and costly derailments, a concern shared by the two End Users and which had been proven to one of them by reason of eight failures on the part of the Applicant's wheels and none in the case of the Masteel wheels.

## **E Sales have been affected by reduced demand and long product life**

The industry for the goods under consideration is intrinsically linked to the iron ore mining industry. As identified by the Commission:

*As more iron ore is sold and hauled, more railway wheels are required for maintenance of the carriages. The Commission understands that there is a strong correlation between sales of iron ore and demand in the railway wheels market. Figure 6 demonstrates the sales trend in the iron ore market in WA where all four end users of the goods are based.*<sup>26</sup>

The sales of iron ore has been illustrated by the Commission:<sup>27</sup>

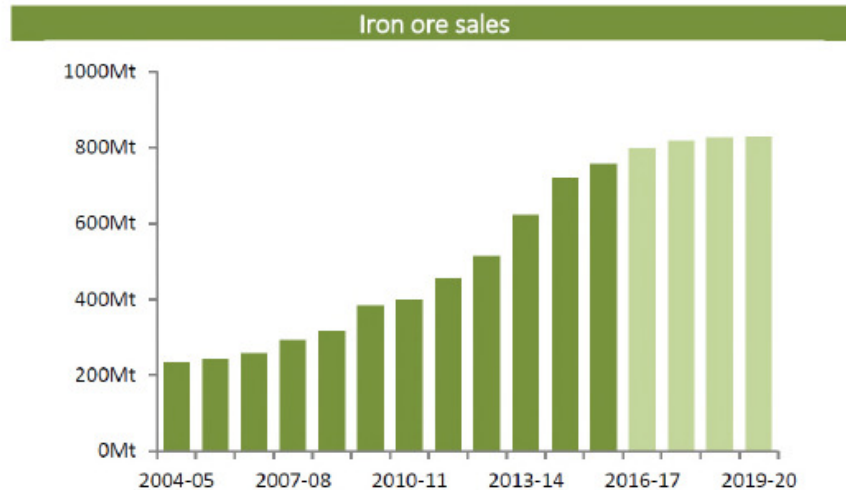
<sup>23</sup> See Doc No 018 – BHP Verification Report at page 7.

<sup>24</sup> See Doc No 018 – BHP Verification Report at page 7.

<sup>25</sup> Again we voice our disquiet about the wording used in the PAD when reciting the interchanges that took place between the Commission and the End Users. The Commission states that BHP “*claimed that the only issues it has had with Masteel wheels were due to thermal cracking which is due to heat from braking, and this has occurred with all wheels across the fleet including those supplied by Comsteel and Valdunes*”. If the Commission does not believe what it was told, it should make a finding of fact to that effect. Otherwise, to say that BHP merely “claimed” something to be the case is to allow for it not to be true.

<sup>26</sup> See Doc No 002 – Consideration Report at page 36.

<sup>27</sup> See Doc No 002 – Consideration Report at page 37.



**Figure 6: Western Australian iron ore sales<sup>7</sup>**

As can be seen, growth in the iron ore sales tapered off over the relevant period. Axiomatically, it would be expected that the sales of the goods under consideration would follow a similar trajectory. This is to be considered in the context that there is a natural limitation on the number of railway wheels that can be sold, based on the natural life cycle of the goods. As noted by the Commission:

*The Commission notes that despite ongoing maintenance, a railway wheel has a finite period of usefulness. The application states that this is between 8 and 12 years. This means that at the end of this timeframe the originally supplied railway wheels will need to be replaced with new wheels.<sup>28</sup>*

The significant increase in sales from 2014 means that by 2017 the goods sold between those two years were at most three years old, with a significant number of useful years ahead. The increase in iron ore sales is seen to taper off in 2016, 2017 and moving forward. Accordingly, the picture painted is one of a significant influx of railway wheels as iron ore volumes increased, meaning that more wheels were in service with more useful years of life left by 2017, a time when it was also clear to the End Users that volume was not trending upwards at previous rates. The demand for railway wheels therefore lessened, and sales of the goods under consideration similarly tapered off.

This is reflected in the Commission's discussion with Roy Hill:

*Roy Hill explained that, due to the lengthy operational life of the railway wheels, it had to date had limited requirements for replacement railway wheels. The new railway cars had also been provided with some operational spares.<sup>29</sup>*

The key point is that the Applicant appears to have an unrealistic expectation of the market. The fluctuations in the iron ore market and the useful life of the goods mean that there is a natural cap on the amount of goods that can be sold, consistent with demand. It is unrealistic for the Applicant to consider that its sales would continue at the high levels of growth seen since 2014. The Commission must consider the drop-off in the Applicant's sales through this lens as well.

<sup>28</sup> See Doc No 002 – Consideration Report at page 38.

<sup>29</sup> See Doc No 002 – File Note of Meeting with Roy Hill at page 1.

## F The Applicant has not collaborated effectively with its customers

Information from the End Users indicates that the Applicant suffers from its own inefficiencies. The GOC encourages the Commission to consider the issues raised by Rio Tinto in depth, to further understand the Applicant’s business practices.

The Commission has made a preliminary determination that Comsteel suffered from price suppression, as it “was unable to increase its selling price to address the increase in cost, due to lower price offers from overseas suppliers”.<sup>30</sup> This was illustrated by the following graphic:<sup>31</sup>

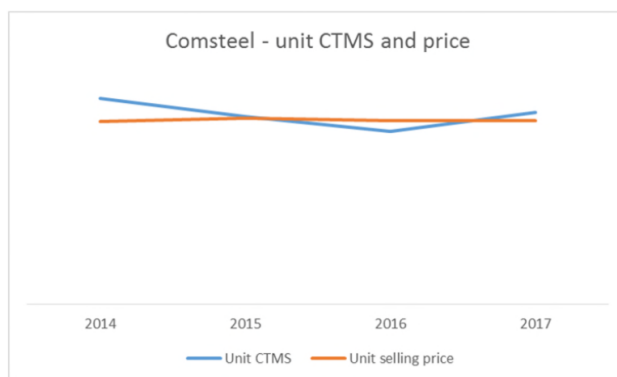


Figure 4: Comparison of Comsteel Unit CTMS and Unit Sales Revenue

However, Rio Tinto has provided added context to this information. Rio Tinto has stated that it offered to work alongside the Applicant to address its process based inefficiencies:

*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.<sup>32</sup>*

The GOC struggles to see how an allegation of injury and causation could be made against the importers, based on the alleged price of the imports, when the Applicant appears to have been unwilling to achieve the better efficiencies and product quality that the End Users demand.

The importance of these factors to the End Users is confirmed by their own statements:

*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.<sup>33</sup>*

It stands to reason that an End User, especially one which flags efficiency and safety as key components, would seek to diversify its supply chain rather than rely on a single producer when that producer cannot meet its product expectations.

\*\*\*\*\*

The GOC believes that it is clear from the information on the public record that factors such as safety, quality and inefficiency of the Applicant caused injury to the Applicant in the period of investigation. Presumably the confidential evidence that underpins the public record also compels that conclusion.

<sup>30</sup> See Doc No 023 – Comsteel Verification Report at page 16.

<sup>31</sup> See Doc No 023 – Comsteel Verification Report at page 16.

<sup>32</sup> See Doc No 009 – Rio Tinto submission at page 19.

<sup>33</sup> See Doc No 009 – Rio Tinto submission at page 19.



The Commission is obligated to carry out the non-attribution analysis mandated by the WTO *Anti-Dumping Agreement* and Australian law properly, by distinguishing and separating the injury caused by some or other factors. The circumstances of this investigation give the Commission a better-than-usual ability to undertake such an analysis because of the limited number of end users and competitors in the relevant markets. In this investigation the Commission has available to it directly relevant first-hand testimony about the purchasing decisions that took place. Significant weight can and should be given to the end users' evidence about their own decision-making in undertaking this necessary non-attribution analysis.

The GOC considers that the facts do not establish that the alleged dumping and subsidisation has caused the material injury alleged to have been suffered by the Applicant. Based on the evidence of the End Users making the purchasing decisions, it is the Applicant's own lack of quality and comparatively unsafe products that have caused it to be unsuccessful in the tender processes concerned, being events which took place in a declining market for railway wheels.

The GOC respectfully requests that the Commission interrogate the issues raised in depth. If the key causation element cannot be established – and the GOC submits that it cannot, given what the Commission has been told and what it must observe - the investigation should be terminated.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Charles Zhan', written in a cursive style.

**Charles Zhan**  
Senior Associate