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BY EMAIL ONLY: Mick.Kenna@adcommission.gov.au

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Dear Mick,

Addendum to BHP Letter dated 25 July 2018 – ADC investigation 466

We refer to:

- BHP's letter to the Commission dated 25 July 2018 entitled 'Additional Relevant Facts – Importer Verification Report – BHP' (the **BHP Letter**);
- Comsteel's letter to the Commission dated 18 July 2018 entitled 'Re: Investigation No.466 – Certain Railway Wheels exported from France and the People's Republic of China – BHP Billiton Iron Ore Pty Limited Verification Visit Report' (the **Comsteel Letter**);
- The Commission's Verification Report in relation to its site visit to BHP dated 5 July 2018 (the **Verification Report**); and
- The notice of extension of time granted to issue Statement of Essential Facts and the Final Report published in this investigation on 27 July 2018 (**Time Extension**).

The BHP letter

The BHP Letter was issued before BHP was aware of the Comsteel Letter, and accordingly it did not respond to the allegations raised in the Comsteel Letter. In particular, the BHP Letter did not address the assertions regarding the accuracy of information provided by BHP to the Commission.

BHP has now reviewed the Comsteel Letter and confirms and reiterates the information provided to the Commission during its site visit to BHP and the information contained in the BHP Letter. If there is any particular assertion in the Comsteel Letter in respect of which the Commission would be assisted by a direct response from BHP, we would be happy to provide this. Otherwise, BHP does not intend to respond to the specific assertions made in the Comsteel Letter.

Time Extension

The Time Extension provides that the time by which the Statement of Essential Facts (**SEF**) must be published has been extended to 20 September 2018, and the time for the final report has been correspondingly extended. The Commission has explained that this extension is necessary because there are significant complexities associated with the verification work including 'due to the specific nature of the goods'.

BHP considers that this explanation reflects the various submissions made to the Commission disputing the conclusions set out in the Preliminary Affirmative Determination (**PAD**). In particular, BHP has questioned the adequacy of the description of the goods under consideration, whether or not the Comsteel goods and the goods imported by BHP are 'like goods', and whether or not imports of the goods under consideration by BHP are likely to cause or threaten to cause any material injury to

Comsteel. These are all threshold issues for a PAD and the imposition of securities under s269TD of the *Customs Act*.

BHP also considers that given the real issues to be determined in respect of this application, there is no longer a reasonable basis for the Commissioner to be satisfied that the provision of securities under s269TD of the *Customs Act* is necessary to prevent material injury whilst the investigation continues.

On the other hand, the continued requirement to provide securities imposes significant administrative, legal, logistical and other burdens on BHP (including out of pocket expenses). BHP expects other importers and end users of the goods are experiencing similar burdens.

Accordingly, BHP requests the Commissioner to withdraw the requirement that security be provided in respect of imports of the goods the subject of the application.

Yours sincerely,

BHP