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Telephone: +61(0) 425 221 036

Email: Andrew.percival@percivallegal.com.au

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By Email

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

Dear Mr Kenna

RE: Dumping and Subsidy Investigation – Exports of Certain Railway Wheels from the People’s Republic of China – Submission by Masteel in response to Comsteel Submissions

As you know, we act for Maanshan Iron & Steel Co. Ltd and Taiyuan Heavy Industry Railway Transit Equipment Co., Ltd. (**Masteel**) in relation to this investigation.

The Applicant, Comsteel, has made several submissions in relation to this investigation. The purpose of this submission is to comment on Comsteel’s submissions.

1. Submission by Comsteel dated 10 July 2018

As you know I do not represent Rio Tinto or any of the other Pilbara mining companies in question in this investigation and its advisors are better placed to respond to this submission by Comsteel.

However, it is of interest that Comsteel is taking issue with one or more of its major customers, particularly Rio Tinto, on a number of issues it claims are relevant to this investigation on the quality and performance of its railway wheels it supplies and what actions it has adopted to address perceived or actual deficiencies in the quality of these railway wheels and their performance and ancillary issues such as packaging. Whether these issues have been addressed to the satisfaction of Comsteel’s customers is a matter for them to comment and I am not in a position to comment on this.

But the question arises as to what Comsteel hopes to achieve by taking issue on these matters with one or more of its major customers that are unrelated to dumping and/or subsidisation but on the quality and performance of its products?

For these customers to continue to source their railway wheels from a monopoly supplier at a high price, including which, if Comsteel’s application for dumping measures is successful at an even higher prices with issues concerning the quality of its products that potentially

impact on the customer's operations and its economic performance and consequently its own customers when alternate sources of supply are available at lower prices and with superior quality and performance? This does not seem to have been addressed. Why?

Would the imposition of antidumping measures (i.e. customs duties) and the associated increase in costs remedy the issues that those customers have with railway wheels produced and supplied by Comsteel and, if so, how?

As previously submitted, the "*price*" of a product includes a variety of factors (e.g. materials, quality, performance, etc). How will antidumping measures address these factors if the domestic industry is supplying inferior products? Will it simply have the effect of inferior domestic products being supplied at a higher price with the revenue from the antidumping measures being a windfall to the Federal Government?

The rational commercial decision for those customers of Comsteel that are not happy with Comstel's products or its supply would seem to be them to source their railway wheel requirements from other sources that meet their requirements but that is a matter for those customers. However, that is not a dumping or subsidy issue. It is a commercial issue based on commercial/operational considerations and on the quality of products being supplied.

This presumably explains why Comsteel customers have looked to other sources for their railway wheels but that is a matter for them to explain to Commission as the reports on public file have indicated that they have.

Comsteel argues that problems with its railway wheels were not due to any product deficiency and to the extent that they may have been, they have been rectified. I am not in a position to comment on this but merely make the observation, this has nothing to do with dumping or subsidisation. They are separate matters except that product quality and performance may be relevant to "*price*" but issues as to product quality and performance are a matter for the customer, the impact that such products may have on its commercial operations. This obviously would affect its "*price*" considerations and purchasing decisions.

Query the relevance of Comsteel's arguments regarding its product quality and performance are relevant to this investigation. If they are deficient that is arguably the source of its injury. In this context, why has Comsteel expended much argument in its submission that its products were not deficient and, if not, why it has taken rectification action and what relevance do such claims have to this investigation? Who is Comsteel trying to convince, the Commission or its customers and, if the former, why, and, if the latter, why if Comsteel's rectification are not satisfactory to them?

These are matters that Comsteel's customers are in a better position to advise on to the extent that they have not already done so.

2. Submission by Comsteel dated 23 July 2018

In this submission Comsteel refers to Mansteel's 2017 Annual Report and, in particular, to the alleged subsidies Masteel received from the Government of China.

Of interest, Comsteel's submission does not identify how the alleged subsidies fall within the definition in the WTO's Agreement on Subsidies and Countervailing Duties and Australia's legislation, why they are countervailable and why they are or could be relevant to this investigation.

Nor has Comsteel has provided evidence of how the alleged subsidies have caused it injury. Comsteel's Application also failed in this regard despite containing a "*shopping list*" of subsidies in an ambit claim in contravention of WTO rules.

Mere conjecture, as you would be aware, is insufficient under WTO rules on subsidies and this applies to Comsteel's "*shopping list*" of subsidies in its ambit claim in the hope that some of such subsidies it has included in its application could be countervailable and somehow causing it injury that is material. No evidence is provided to support its claims in this regard. This is of course contrary to WTO rules and unless Comsteel provides probative evidence in relation to each subsidy it refers to, each such claim should be disregarded. The evidential onus is on Comsteel in the first instance and it has failed to discharge that evidential burden. Hence its claims should be rejected in this regard.

Further, Comsteel has not provided for inclusion on the public file maintained by the Commission its and the API's a non-confidential version of the group accounts in the interests of transparency as to what subsidies and other financial benefits it receives as required by the WTO Subsidies and Countervailing Duties Agreement and Australia's legislation. Why has Comsteel not disclosed such accounts or been requested to do so?

It seems inconsistent for an applicant seeking antidumping measures based on annual and financial reports and related matters in relation to exporters when it is not prepared to disclose its own similar reports and is in breach of Article 12 of the WTO Subsidies and Countervailing Duties Agreement and Australia's legislation.

This precludes a proper assessment of injury and causation and is contrary to Article 12.1 of the WTO Subsidies and Countervailing Duties Agreement and Australia's legislation.

Accordingly, unless Comsteel and its related bodies corporate disclose their financial and annual reports, its claims in this regard in relation to Masteel must be rejected, which have no factual basis or relevance to this investigation in any event, as must also its application as it precludes a proper assessment of material injury and causation.

Consequently, the investigation should be terminated on this basis as there is no evidence of injury, material or otherwise, caused by dumping or subsidisation to Comsteel. If Comsteel is of a different view, then it should provide that evidence, which must be objective, transparent and probative, and not mere assertion.

Please contact me if you have any questions.

Kind regards

Andrew Percival

T: +61 (0) 425 221 036

E: andrew.percival@percivallegal.com.au

W: www.percivallegal.com.au