

8 November 2018

Mr Michael Kenna
Assistant Director
Investigations 4
GPO Box 2013
CANBERRA ACT 2601

Email: investigations4@adcommission.gov.au

Public File

Dear Mr Kenna

Re: Investigation No. 466 - Certain Railway Wheels exported from France and the People's Republic of China – Rio Tinto Limited response to SEF

I. Introduction

I refer to Rio Tinto Limited's ("Rio Tinto") response to Statement of Essential Facts No. 466 ("SEF 466") published on 11 October 2018.

Rio Tinto's submission seeks to challenge the findings of the Anti-Dumping Commission ("the Commission") as they relate to the:

- determination of normal value;
- attribution of material injury to dumping;
- validity of the ADC's decision to publish a Preliminary Affirmative Determination ("PAD") and impose securities;
- form of measures to be recommended to the Minister.

Commonwealth Steel Company Limited ("Comsteel") has examined Rio Tinto's submission and provides the following comments concerning the matters raised by Rio Tinto.

II. Normal value

Rio Tinto has responded to the Commission's comments in the SEF that it will consider any information in response to the SEF concerning adjustments to steel costs, including adjustments for profit and selling expenses.

Rio Tinto has not provided any information in its submission to demonstrate potential differences that may arise due to cost differentials in Maanshan Iron and Steel Co., Ltd ("Masteel") China viz-a-viz the MG Valdunes ("Valdunes") steel billet costs, or any claimed differentials that can be attributed to alleged comparative costs. The submission merely suggests that the Commission not determine normal value for Masteel in a "conclusory fashion". This would not appear to be the Commission's intent following comments encouraging submissions on the issue contained in the SEF.

III. Material injury

In its Executive Summary Rio Tinto contends that the Commission has¹ *"incorrectly administered the Act and Material Injury Direction by attributing to dumping material injury caused by factors other than dumping"*. Rio Tinto further states that the Commission *"must provide reasons why it is satisfied that a significant proportion of the price differential between the exporter's Goods and the Australian industry's Goods is attributable to dumping rather than other factors."*

¹ Refer Rio Tinto Submission 31 October 2018, Section 2 (b), P.5 (EPR Document No. 69).

The 2012 revised Ministerial Direction on Material Injury (refer ACDN No. 2012/24) provided clarity on *“the requirements for material injury where other factors may be contributing to injury suffered by the industry”*. The Direction is clear stating *“that dumping or subsidization need not be the sole cause of injury to the industry”*. There may exist a number of factors that have caused injury to the Australian industry and those other factors may not be immaterial. In further clarifying the discussion involving a range of factors the Directive is clear that the injury from the dumping (or subsidization) must be *“material in degree”*.

The Commission has examined the impact of “other” factors² (including alleged comparative advantage of Chinese producer, Comsteel’s relationships with customers, reciprocal commercial arrangements, quality and wheel performance, packaging and efficiencies, etc) on the performance of the Australian industry. Rio Tinto argues that the Commission has concluded little more than asserting that the dumping margin determined is significant³. Rio Tinto further argues that the Commission is required to establish what “the price differential between the export price and the Australian industry price is attributable to dumping”. The Commission is not required to quantify the price impacts of the dumping or for other factors. Rather, the Commission must be satisfied that the injury caused by the dumping is material – that is, not immaterial, not insignificant and not insubstantial.

The relative size of the dumping margins determined is a relevant factor in concluding whether the injury experienced by the Australian industry is material in nature.

Comsteel does not consider that the example outlined by Rio Tinto concerning the quantification of injury experienced by the industry is a process that is envisaged by the then Minister in the Directive detailed in ACDN No. 2012/24.

The Commission has satisfied the requirements of subsection 269TG(1) that the Minister must be satisfied that because of the dumping material injury has been caused or is threatened to the Australian industry. The Commission, therefore, has not erred in its material injury and causation analysis in SEF 466.

IV. Provisional measures

It is asserted by Rio Tinto that in imposing securities (i.e. provisional measures) the Commissioner *“was not ‘in reality’ satisfied of the requisite matters or that there was an absence of any real basis for the decision.”* It would seem from this statement that Rio Tinto is inferring that at the time of publication of the PAD the Commissioner was not sufficiently appraised of the supply arrangements between Comsteel and the Australian industry customers to be sufficiently satisfied the securities were warranted.

Comsteel refutes this assertion as the Commission had been informed of the nature of the supply arrangements between Comsteel and its customers at the Australian industry verification visit that preceded the publication of the PAD. The Commission was therefore appraised of the threat of further injury to the Australian industry in the absence of measures.

The Commissioner was therefore sufficiently appraised at the time of the PAD to be satisfied that securities were required to prevent further injury from dumping.

V. Form of interim duty

Rio Tinto has submitted that following the publication of SEF 466 that it considers the most appropriate form of interim dumping duty for the exports to Australia is that based upon the price floor methodology.

Comsteel disagrees with this suggestion.

² Refer Statement of Essential Facts No. 466, Section 11.12.

³ EPR Document 69, P. 14.

The Commission has recommended the combination method as it is the most effective form of measures in deterring further dumping by the exporters the subject of measures. Rio Tinto contends that the combination method is considered appropriate where circumvention behavior is likely, where complex company structures exist and where price manipulation may have occurred. In recommending the most suitable (and effective) form of measure to apply, consideration must also be given to the rise and fall of prices in the market. Interim dumping duties based upon a floor price method are ineffective in a rising steel market. Where prices fall, the importer can seek a duty assessment to obtain a refund of excess interim dumping duty. This is not possible where a shortfall of interim dumping duty is made in a rising market.

Comsteel urges the Commission to recommend that the form of interim duties to be applied be based upon the combination form of measures. This method is considered the most effective form of measure to apply in this instance.

VI. Conclusions and Recommendations

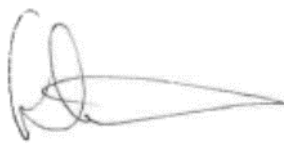
Comsteel does not consider that Rio Tinto has demonstrated grounds for the termination of Investigation No. 466. Contrary to Rio Tinto's submission the Commission has not erred and has correctly determined:

- Normal values for Masteel of China;
- The injury from the dumping is material;
- Provisional measures are warranted to prevent further injury to the Australian industry; and
- The combination form of measure is the most appropriate and effective measure in a new investigation.

Comsteel urges the Commissioner to recommend to the Minister the imposition of interim dumping duties under subsection 269TG(1) to ensure the Australian industry does not experience further material injury from dumping.

If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4974 0346 or Comsteel's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



Lindsay Reid
General Manager