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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 466

ALLEGED DUMPING OF CERTAIN RAILWAY WHEELS

**EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA AND FRANCE**

1 March 2019

Report 466 Certain Railway Wheels – China and France

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADA	World Trade Organization Anti-Dumping Agreement
ADN	Anti-Dumping Notice
the applicant	Commonwealth Steel Company Pty Ltd
BHP	BHP Billiton Ltd
CCCME	China Chamber of Commerce for Import and Export of Machinery and Electronic Products
China	The People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Comsteel	Commonwealth Steel Company Pty Ltd
CON 466	<i>Consideration Report No. 466</i>
CTMS	cost to make & sell
CTS	cost to sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EAF	electric arc furnace
EPR	electronic public record
FOB	Free On Board
FMG	Fortescue Mining Group
GAAP	generally accepted accounting principles
GOC	Government of the People's Republic of China
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Guidelines	<i>Guidelines on the Application of the Form of Dumping Duty 2013</i>
HRC	hot rolled coil steel
IDD	interim dumping duty
the Manual	The Commission's <i>Dumping and Subsidy Manual</i>
Marais Report	Review of reports on ore wagon wheel rim cracking' produced by Marais Consulting Engineers
Masteel	Maanshan Iron & Steel Co Ltd
Material Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>
Minister	Minister for Industry, Science and Technology
MOFCOM	Ministry of Commerce of the People's Republic of China
NDRC	National Development and Reform Commission
NIP	non-injurious price

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Non-cooperation Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
OECD	Organisation for Economic Co-operation and Development
PAD	preliminary affirmative determination
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
R&D	research and development
Rio Tinto	Rio Tinto Ltd
ROI	return on investment
Roy Hill	Roy Hill Holdings Pty Ltd
SASAC	State-owned Assets Supervision and Administration Commission
SEF	statement of essential facts
SG&A	selling, general and administrative
SIE	state invested enterprise
SOE	state owned enterprise
USP	unsuppressed selling price
Valdunes	MG-Valdunes SAS
VAT	value added tax

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report has been prepared in response to an application by Commonwealth Steel Company Pty Ltd (Comsteel) seeking the publication of a dumping duty notice in respect of certain railway wheels (railway wheels or the goods) exported to Australia from the People's Republic of China (China) and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Comsteel alleges that it has suffered material injury caused by railway wheels exported to Australia from China at dumped and subsidised prices, and from France at dumped prices.

This report makes recommendations to the Minister for Industry, Science and Technology (the Minister) regarding this investigation and sets out the findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases those recommendations.

1.2 Recommendations to the Minister

The Commissioner recommends that a dumping duty notice be published in respect of certain railway wheels exported to Australia from China and France.

1.3 Termination of subsidy investigation

In its statement of essential facts (SEF) for this investigation (SEF 466), the Commission advised that the subsidy margins it had found for exports of railway wheels from China were as follows:

Exporter	Subsidy margin
Maanshan Iron & Steel Co Ltd (Masteel)	0.6%
All other exporters	0.6%

Table 1: Subsidy margin summary

Subsection 269TDA(2) of the *Customs Act 1901* (the Act)¹ requires that the Commissioner must terminate a countervailing investigation in relation to an exporter if countervailable subsidisation for that exporter is determined to be negligible.

In relation to goods exported from China (a developing country),² countervailable subsidisation is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than 2 per cent.³

¹ Unless otherwise specified all legislative references are to the *Customs Act 1901*.

² For the purpose of subsection 269TDA(2), China is a developing country as defined by subsection 3(1) of the *Customs Tariff Act 1995*.

³ Subsection 269TDA(16)(b).

On 24 January 2019 the Commissioner terminated the countervailing investigation with regard to the goods under consideration. The Commissioner was satisfied that a countervailable subsidy was received by Masteel in respect of some or all of the goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy. Accordingly, the Commissioner terminated the countervailing investigation in relation to Masteel and to all exporters from China generally. Further information on the reasons for the Commissioner's decision to terminate the countervailing investigation is the subject of a separate report.⁴

1.4 Application of law to facts

1.4.1 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) for the purpose of making a report to the Minister.

1.4.2 Application

Comsteel alleges that the Australian industry producing railway wheels has suffered material injury caused by railway wheels exported to Australia from China and France.

The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Having considered the application, the Commissioner decided not to reject the application and, on 18 April 2018, initiated an investigation. Public notification of the initiation of the investigation was also made on 18 April 2018.

Consideration Report No. 466 (CON 466) and Anti-Dumping Notice (ADN) No. 2018/59 provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website at www.adcommission.gov.au.

1.4.3 Preliminary Affirmative Determination

In accordance with subsection 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice or it appears that there will be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, a date no earlier than 17 June 2018) and the Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

On 18 June 2018, the first working day after day 60 of the investigation, the Commissioner was satisfied that there appeared to be sufficient grounds for the

⁴ *Termination Report No. 466* available at www.adcommission.gov.au

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publication of a dumping duty notice in relation to exports of the goods from China and France and made a PAD to that effect. Following the making of the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any interim dumping duty that may become payable in respect of the goods exported from China and France and entered for home consumption in Australia on or after 19 June 2018.

ADN No. 2018/99 contains more information on the Commissioner's reasons for making a PAD.

1.4.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed under subsection 269ZHI(3),⁵ place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.

On 27 July 2018, the Commissioner, under subsection 269ZHI(3) of the Act, extended the deadline to publish the SEF, and provide his final report and recommendation⁶.

On 18 September 2018, the Commissioner approved a further extension to the deadline to publish the SEF, and provide his final report and recommendation⁷.

The Commissioner placed SEF 466 on the public record on 11 October 2018 and revised the level of securities to be required and taken for imports on or after 12 October 2018⁸.

1.4.5 Final report

On 26 November 2018 and 25 January 2019, the Commissioner approved extensions to the deadline to provide his final report and recommendations to the Minister.

This report and the recommendations in relation to this investigation were provided to the Minister on 1 March 2019.

In making the recommendations in this report, the Commissioner had regard to:

- the application;
- all submissions concerning and subsequent to the publication of ADN No. 2018/59 to which the Commissioner had regard for the purpose of formulating SEF 466;
- SEF 466 and all supporting evidence;
- all submissions made in response to SEF 466;
- submissions made prior to SEF 466 that, due to their timing, were not considered by the Commissioner for the purposes of the SEF; and
- any other matters that the Commissioner considered to be relevant.

⁵ On 14 January 2017, the Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI of the Act to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

⁶ Refer to ADN No. 2018/121.

⁷ Refer to ADN No. 2018/144.

⁸ Refer to ADN No. 2018/159.

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This report includes a statement of the Commissioner's reasons for the recommendations in this report.⁹ The statement of the Commissioner's reasons:

- sets out the material findings of fact on which the recommendations are based; and
- provides particulars of the evidence relied on to support those findings.

1.5 Findings and conclusions

A summary of the findings and conclusions is provided below.

1.5.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced railway wheels are 'like' to the goods that are the subject of the application.

1.5.2 Australian industry (Chapter 4)

The Commissioner found that there is an Australian industry producing like goods and that the goods are manufactured in Australia. The Commissioner has also found that the Australian industry producing the like goods consists of Comsteel.

1.5.3 Australian market (Chapter 5)

The Australian railway wheel market is supplied from local production by Comsteel and by imports from China and France.

1.5.4 Dumping assessment (Chapter 6)

The Commissioner's assessment of dumping margins is set out in Table 2 below.

Country	Exporter	Dumping Margin
China	Masteel	17.4%
	All other exporters	17.4%
France	MG-Valdunes SAS (Valdunes)	37.2%
	All other exporters	37.2%

Table 2: Dumping margin summary

1.5.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that the Australian industry has experienced injury in the forms of:

- loss of sales volume;
- loss of market share;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment (ROI);
- reduced capacity utilisation;

⁹ In accordance with subsection 269TEA(5).

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- reduced employment numbers;
- reduced revenue; and
- reduced production volumes.

1.5.6 Causation assessment (Chapter 8)

The Commissioner considers that the Australian industry has suffered material injury in the forms listed in section 1.5.5, above, as a result of the dumping of railway wheels exported to Australia from China and France.

1.5.7 Will dumping and material injury continue? (Chapter 9)

The Commissioner is satisfied that, in the future, exports of railway wheels from China and France may be at dumped prices and that continued dumping of the goods from China and France may continue to cause material injury to the Australian industry.

1.5.8 Non-injurious price (Chapter 10)

The Commission has calculated the non-injurious price (NIP) for exports of railway wheels from China and France that are considered to be the minimum price necessary to prevent the injury, or a recurrence of the injury, caused by the dumped goods.

The Commission has assessed the NIP from an unsuppressed selling price (USP) based on Comsteel's weighted average cost to make and sell railway wheels in 2017 plus the percentage profit achieved by Comsteel on the sale of railway wheels in 2016.

For all exports from both France and China, the NIP is above the normal value.

1.5.9 Proposed form of measures (Chapter 11)

The Commissioner proposes to recommend to the Minister that measures be imposed using the combination fixed and variable duty method.

2 BACKGROUND

2.1 Initiation

On 5 March 2018, Comsteel lodged an application under subsection 269TB(1) of the Act. The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from China and France and a countervailing duty notice in respect of the goods exported to Australia from China.

Comsteel alleged that the Australian industry had suffered material injury caused by exports of the goods to Australia from China and France at dumped prices and from China at subsidised prices. Comsteel alleged that the industry had been injured through:

- loss of sales volume;
- loss of market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced ROI;
- reduced attractiveness to reinvest; and
- reduced employment numbers.

After receiving further information from the applicant, the last of which was received on 23 March 2018, and having considered the application, the Commissioner decided not to reject the application. On 18 April 2018, the Commissioner initiated an investigation into the alleged dumping and subsidisation. Public notification of initiation of the investigation was made on 18 April 2018. ADN No. 2018/59 provides further details relating to the initiation of the investigation.

In respect of the investigation:

- the investigation period¹⁰ for the purpose of assessing dumping and subsidisation is 1 January to 31 December 2017; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and/or subsidised goods is from 1 January 2014.

2.2 Previous cases

There have been no previous investigations in Australia into the alleged dumping and/or subsidisation of railway wheels.

2.3 Preliminary affirmative determination

On 18 June 2018, the Commissioner made a PAD that there appeared to be sufficient grounds for the publication of a dumping duty notice.¹¹ The Commissioner was also satisfied that it was necessary to require and take securities in relation to exports of railway wheels from China and France to prevent material injury to the Australian industry

¹⁰ As defined by subsection 269T(1).

¹¹ Refer to ADN 2018/99 on the Commission's website.

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occurring while the investigation continued. Securities were imposed using the combination fixed and variable duty method with the following fixed rates:

Country	Exporter	Fixed rate
China	Masteel	17.0%
	Uncooperative and all other	17.0%
France	Valdunes	28.2%
	Uncooperative and all other	28.3%

Table 3: Rates of fixed dumping securities

2.3.1 Submissions following preliminary affirmative determination

In a letter to the Commissioner dated 2 July 2018,¹² the Chinese railway wheel exporter, Masteel, noted that, to require and take securities, the Commissioner must be satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

Masteel questioned how, if the injury suffered by Comsteel was in the form of the loss of supply contracts, the taking of securities could prevent injury to the Australian industry. A submission by Rio Tinto Ltd (Rio Tinto) on 5 September 2018¹³ supported Masteel's view that the Commissioner had not adequately explained why he was satisfied that it was necessary to require and take securities to prevent material injury to Comsteel while the investigation continues.

The contention put forward by Masteel and Rio Tinto is that, because the sale of railway wheels is generally contract based, once such contracts are lost by the Australian industry, no further injury can occur or at least cannot be prevented by the taking of securities. This submission seems to rely on the proposition that all such contracts are exclusive, allow no variation to their terms or operation under any circumstances and are not subject to renegotiation in the course of the investigation.

In its submission dated 31 October 2018,¹⁴ Rio Tinto claimed that the Commissioner must be satisfied, at the time of making the PAD, of the necessity to take securities to prevent material injury while the investigation continues. It further states that 'the Commissioner being properly satisfied at a later time after being made aware of a new development or information does not operate to validate the original decision'.

The Commissioner was satisfied at the time of his decision that the taking of securities was necessary to prevent material injury to an Australian industry occurring while the investigation continued.

The Commission's understanding of the contractual arrangements in place in the Australian market at the time of making the PAD was that they did not exclude the possibility of customers purchasing railway wheels from the Australian industry.

Subsequently, the relevant point made in the SEF, was that the Commissioner's understanding of the market and contractual arrangements had been proved accurate by

¹² Masteel submission of 2 July 2018 – Document 019 on the electronic public record (EPR).

¹³ Rio Tinto submission of 5 September 2018 – Document 047 on the EPR.

¹⁴ Rio Tinto Submission of 31 October 2018 – Document 069 on the EPR.

competitive processes undertaken by Australian customers to purchase railway wheels in the months following the making of the.

2.4 SEF 466

SEF 466 set out the facts on which the Commissioner proposed to base his recommendations to the Minister. SEF 466 informed interested parties of the facts established as of the date SEF 466 was placed on the public record and allowed them to make submissions in response.

Following its publication on the public record, interested parties had 20 days to respond to SEF 466. Responses to the SEF were to be provided to the Commissioner by no later than 31 October 2018.

The Commissioner considered submissions received in response to SEF 466 in making this report and recommendations to the Minister.

2.5 Submissions received from and meetings with interested parties

The Commission received submissions from interested parties during the course of the investigation. Prior to the SEF, the Commissioner had insufficient time to consider the following submissions:

- Comsteel's submission of 2 October 2018;¹⁵
- issues first raised by the French railway wheel exporter, Valdunes, in its submission of 2 October 2018 relating to the calculation of its dumping margin;¹⁶
- a submission made by the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) received by the Commission on 4 October 2018;¹⁷
- a submission made by the CCCME received by the Commission on 9 October 2018;¹⁸ and
- Comsteel's submission of 11 October 2018.¹⁹

These submissions were considered in preparing this report.

A list of the submissions received and meetings with interested parties is at **Non-confidential Appendix 1**.

2.6 Public record

The EPR contains non-confidential submissions made by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The EPR is available for inspection online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this report.

¹⁵ Document No.57 on the EPR.

¹⁶ Document No.59 on the EPR.

¹⁷ Document No.60 on the EPR

¹⁸ Document No.61 on the EPR.

¹⁹ Document No.63 on the EPR.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the Australian industry, comprised of Comsteel, manufactures railway wheels that are like goods to the goods under consideration.

3.2 Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must first determine that the goods produced by the Australian industry are 'like' to the imported goods. Subsection 269T(1) defines like goods as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.3 The goods

The goods the subject of the application (the goods) are:

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

In its application, Comsteel provided the following further information in relation to the goods:

Axles and other components are excluded from the goods coverage.

The railway wheels are manufactured in accordance with the relevant user defined specifications and drawings, and are used on rail carriages used to transport iron ore. The users of these type of railway wheels are:

- BHP Billiton Ltd (BHP);
- Rio Tinto Ltd (Rio Tinto);
- Fortescue Mining Group (FMG); and
- Roy Hill Holdings Pty Ltd (Roy Hill).

The railway wheels used in all user applications have the following typical characteristics:

- 38 inch or 966 mm to 970 mm diameter and of similar overall dimensional tolerances and shape;
- manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties as defined in the user specifications;
- manufactured using a forging and rolling process in accordance with defined standards;
- suitable to operate at axle loads above 36 metric tonnes; and
- a multi-wear rim.

3.3.1 Submissions about the description of the goods

In a submission dated 4 June 2018,²⁰ the CCCME claimed that the goods under consideration were more specific than the definition set out in italics above. The CCCME claimed that the goods under consideration were necessarily defined as the railway wheels ‘meeting the exacting specifications of each Australian end user’. It claimed that framing the goods under consideration according to a broader description, not incorporating the precise specifications, rendered the application for anti-dumping measures and the Commission’s consideration report defective. It claimed that the Commissioner should have rejected the application on this basis.

In an email received by the Commission on 9 June 2018, the Chinese railway wheel exporter, Masteel similarly submitted that railway wheels meeting the generic description of the goods could not have caused material injury to the Australian industry and that no such wheels had been exported to Australia from China. In a submission dated 11 September 2018,²¹ BHP supported this argument, stating that as generic wheels for use in a generic iron ore railway system do not exist, this ‘fundamental conceptual error constitutes a fatal flaw in the investigation, which justifies its termination’.

The Commission does not agree with the positions advanced by CCCME, Masteel and BHP in respect of the description of the goods under consideration in this investigation. In the Commission’s view, there is no requirement in the legislation for the scope of the goods covered by the application to be defined by reference to the detailed specifications of the models previously exported to Australia. Such an interpretation would mean slight specification changes to imports would take them outside the scope of any investigation or anti-dumping measures, rendering the legislative scheme ineffective and unworkable. The Commission’s view is that the description of the goods set out in italics above is a reasonable and accurate description of the goods the subject of the application.

3.4 Tariff classification

The goods are classified to tariff subheading 8607.19.00 (statistical code 20) in Schedule 3 to the *Customs Tariff Act 1995*.

²⁰ CCCME submission dated 4 June – Document No. 8 on the EPR.

²¹ BHP submission dated 11 September 2018 – Document No. 49 on the EPR.

3.5 Like goods

The Commission finds that the locally produced goods closely resemble the goods under consideration and are like goods given that:

- the primary physical characteristics of the imported and locally produced goods are similar – being of similar shape and dimension, and being made from similar alloy steel;
- the imported and locally produced goods are commercially alike as they are sold to common customers;
- the imported and locally produced goods are functionally alike as they have the same or similar end-use – to be affixed to railway cars to transport iron ore; and
- despite possible differences in the production process for the primary steel, the imported and locally produced goods are manufactured in a similar manner – through the forming, rolling and treating of steel sections cut from an ingot or billet.

Comsteel produces other types of steel wheels for railway applications. Although the other steel wheels produced by Comsteel are manufactured using a similar production process, on balance the Commission considers that when assessed against its like goods framework,²² such wheels are not like goods to the goods under consideration in this investigation.

3.5.1 Submissions about the like goods assessment

In its submission of 11 September 2018,²³ BHP claimed that it did not consider Comsteel wheels to be like goods to the wheels imported from China and France. It based this view on claims that:

- the Chinese and French wheels use a different production process (continuous casting) compared to Comsteel (ingot casting) to produce the relevant goods;
- the impact of the different production processes is that the Comsteel wheels have different physical characteristics to the Chinese and French wheels, in that the Comsteel wheels have a higher frequency of non-metallic inclusions (that is, they differ in terms of purity and chemical composition);
- the differences in physical characteristics result in the imported wheels being of a different quality to the domestic wheels; in particular, Comsteel wheels are more prone to cracking after a period of use in BHP's railway operations and do not meet the performance requirements mandated by BHP's specifications;
- the difference in quality means that the Comsteel wheels do not function in an identical manner to the Chinese and French wheels when used in BHP's railway operations, which has required BHP to implement costly mitigation measures to address the difference in functional performance.

In its submission of 2 October 2018,²⁴ an exporter of railway wheels to Australia from France, Valdunes, stated that BHP had raised significant and credible elements of fact in

²² See chapter 2 of the Commission's *Dumping and Subsidy Manual*, available on the Commission's website.

²³ BHP submission dated 11 September 2018 – Document No. 49 on the EPR.

²⁴ Valdunes submission dated 2 October – Document No. 59 on the EPR.

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support of its claim that the railway wheels produced by Comsteel were not like goods to those produced and exported by Valdunes. It said that the unique and specific design of the wheels sold to Australia was confirmed by the Commissioner's finding that Valdunes' wheels produced for domestic consumption did not offer any similar or like characteristics to those designed and produced for the Australian market.

Comsteel rejected BHP's assertions, stating that it had tendered and supplied wheels meeting BHP's specification since 1996. Comsteel claimed that the railway wheels it supplies are fit-for-purpose. It claimed it had been a long established supplier of Australian-made wheels to the iron ore industry in Australia and that the goods it manufactures are internationally recognised as of high quality and performance.

From the information gathered by the Commission and that provided by interested parties, there is no conclusive evidence that the production process used by Comsteel results in the production of wheels that were significantly different to the wheels imported from China and France in the investigation period. The cause of the cracking of a number of Comsteel wheels experienced by BHP is a matter of dispute between the parties. Investigations by independent parties do not conclude that quality of the Comsteel wheels was the cause of the problems. Indeed, BHP pre-approves suppliers to supply railway wheels meeting its own specification requirements and there is no evidence to suggest that wheels supplied by Comsteel in the investigation period did not meet these specifications.

Notwithstanding the claims relating to the quality of the Comsteel wheels (discussed in detail in the causation section of this report), the Commission is satisfied that the railway wheels manufactured by Comsteel during the investigation period meet the definition of like goods.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commissioner finds that there is an Australian industry producing like goods and that the goods are manufactured in Australia. The Commissioner also finds that the Australian industry producing the goods consists of one manufacturer, Comsteel.

4.2 Legislative framework

The Commissioner must be satisfied that the like goods are produced in Australia. Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

The Commission conducted an inspection of Comsteel's production facilities at Waratah in New South Wales and viewed the production processes undertaken.

Comsteel uses scrap metal as the main raw material to produce billet and ingot in its 60MT electric arc furnace (EAF). To produce ingot for railway wheels, certain alloys are added to the scrap steel to achieve the desired metallurgy. The molten steel from the EAF undergoes a vacuum degassing process before being poured into ingot moulds.

The ingots produced in the steelmaking process are sawn into 'cheeses' and then heated in a rotary furnace. The cheeses are pre-formed in a slab press and then forged in the forging press. The wheel is then rolled using edge and pressure rollers before being 'dished' and centre hole-punched in a final press.

The wheel is heated and rim quenched and then tempered in a tempering furnace. The wheel is shot blasted, hardness tested and machined to its final specifications.

The wheel undergoes various tests for surface defects and internal inclusion defects before being stamped and packaged for shipment.

4.4 Conclusion

In its application, Comsteel claimed to be the sole Australian producer of railway wheels. The Commission is not aware of any other Australian producer of the goods and no submissions or other information has been received to indicate that there are any other producers in Australia.

Following the Commission's verification of Comsteel's manufacturing processes in Australia, the Commission is satisfied that railway wheels are manufactured in Australia by Comsteel.

Accordingly, the Commissioner is satisfied, in accordance with subsections 269T(2) and 269T(4), that there is an Australian industry producing railway wheels in Australia and that this industry consists of Comsteel.

5 AUSTRALIAN MARKET

5.1 Finding

The Commissioner has found that the Australian market for railway wheels is supplied by Comsteel and imports from China and France. The Commission estimates that the size of the Australian market during the investigation period was approximately 21,500 units.

5.2 Background

The Australian market for railway wheels is supplied by Comsteel and imports from China and France.

The goods are used on iron ore carriages which run on proprietary railways owned by iron ore mining companies in the Pilbara region of Western Australia. During the investigation period, the proprietors of the railways were BHP, FMG, Rio Tinto and Roy Hill.

Specifications for railway wheels differ slightly between the Australian customers to reflect differences in railway track designs and load requirements of the ore carriages. There are no market substitutes for railway wheels in Australia.

Demand for railway wheels is driven by the commissioning of new ore carriages and the replacement of wheels on existing carriages. The typical lifespan of a railway wheel is between 8 and 12 years. During their operation, the wheels experience deterioration and damage. During their life, the wheels require periodic machine re-profiling to remove damaged material.

The integrity of the wheels is important to the safe and efficient operation of the railways. Wheel failures have the potential to cause train derailments. While the railway lines on which the wheels operate are private, they come into contact with populated areas such as at level crossings.

Purchases of the railway wheels by the mining companies have traditionally been made by end users from pre-qualified suppliers through contract or tender arrangements. Supply arrangements typically establish pricing and supply quantities for a fixed period and/or a quantity against which periodic orders are made. Delivery terms are typically to specified storage or workshop facilities either in Perth or the Pilbara region.

5.3 Market size

There was minimal demand for railway wheels in Australia in 2014 and 2015 due to a decline in iron ore prices, which placed cost pressures on iron ore producers. Demand increased significantly in 2016 and again in 2017 as iron ore prices rose and the iron ore miners increased their spending on maintenance programs, including the purchase of replacement railway wheels.

6 DUMPING INVESTIGATION

6.1 Finding

The Commissioner has found that exports of railway wheels from China and France have been dumped and the volume of dumped goods from each country is not negligible.

The dumping margins are shown in the following table.

Country	Exporter	Dumping Margin
China	Masteel	17.4%
	All other exporters	17.4%
France	Valdunes	37.2%
	All other exporters	37.2%

Table 4: Dumping margin summary

6.2 Introduction and legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

Subsection 269TAB(1)(a) provides that, subject to certain conditions, the export price of any goods exported to Australia is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods or any other matter arising after exportation. Where the conditions in subsection 269TAB(1)(a) are not met, such as when the export transactions are not arms length, the export price is determined under subsection 269TAB(1)(b) or subsection 269TAB(1)(c).

Subsection 269TAC(1) provides that, subject to certain conditions, the normal value of the goods is the price at which like goods are sold in the domestic market of the country of export. However, subsection 269TAC(1) cannot be used to calculate the normal value of the goods if one of the circumstances in subsections 269TAC(2)(a) or (b) is present. Where one or more of these circumstances are present, the normal value of the goods is to be calculated under either subsection 269TAC(2)(c) or (d).

Subsection 269TAC(2)(c) provides for the normal value to be a constructed amount, being the sum of the cost of production or manufacture of the goods in the country of export, and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export instead of being exported, the selling, general and administrative (SG&A) costs and the profit on that sale.

If the Minister directs that it applies, subsection 269TAC(2)(d) provides that the normal value is the price of like goods sold in the ordinary course of trade in arms length transactions from the country of export to an appropriate third country.

Dumping margins are determined under section 269TACB.

6.3 Cooperation by exporters to Australia

At the commencement of the investigation, the Commission contacted known exporters of the goods to Australia from China and France and invited them to complete an exporter

questionnaire. The exporter questionnaire and associated spreadsheets were also placed on the Case Page for investigation 466 on the Commission's website.

The exporter questionnaire sought information regarding the exporters' commercial operations, the goods exported to Australia, like goods sold on the domestic market and to third countries, economic and financial details, and relevant costing information. The Commission received exporter questionnaire responses from the following exporters:

- Masteel of China; and
- Valdunes of France.

Both exporters provided questionnaire responses that the Commission considered were deficient and that it considered could be quickly and easily rectified in a further response. Accordingly, both exporters were given, and took up, the opportunity to rectify the deficiencies in accordance with subsection 6(a) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Non-cooperation Direction).

Non-confidential exporter questionnaire responses for Masteel and Valdunes are available at the Commission's website at www.adcommission.gov.au.

6.4 Uncooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an 'uncooperative exporter', where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

In relation to making determinations that an exporter is an uncooperative exporter, the Commissioner has regard to both subsection 269T(1) and the Non-cooperation Direction.

During the investigation, the Commission established that Masteel and Valdunes were the only exporters of railway wheels to Australia in the investigation period. Nevertheless, under subsection 8(b) of the Non-cooperation Direction, the Commissioner has determined all exporters who did not provide a response to the exporter questionnaire or request a longer period to provide a response within the legislated period to be uncooperative exporters pursuant to subsection 269T(1).

The Commission received a submission from CCCME dated 6 February 2019.²⁵ As stated in the Commission's *Dumping and Subsidy Manual* (the Manual), where the Commission has not undertaken a sampling exercise, the Commission will determine separate rates for the individual exporters and an 'all other exporters' rate. The 'all other exporters' rate applies to any exporters not known, or which did not exist, at the time of the investigation, and applies to any new exporters.²⁶ The Commissioner notes that in accordance with Division 6 of the Act, which implements Article 9.5 of the World Trade Organization Anti-Dumping Agreement (ADA), an 'accelerated review' is available to exporters who did not export during the investigation period, assuming certain criteria are satisfied.

²⁵ Refer to [EPR Document 083](#)

²⁶ *Dumping and Subsidy Manual* p158.

6.5 Dumping assessment – China

6.5.1 Masteel

Verification of information

The Commission visited Masteel's premises in China to verify the information provided in its exporter questionnaire response.²⁷ A report covering the visit findings is available on the public record.²⁸

Export prices

For certain exports to Australia by Masteel during the investigation period, the Commission found that Masteel was both the exporter and importer in relation to these transactions.²⁹ For these sales to Australia, the goods were exported to Australia by the importer and therefore the export price cannot be established under subsection 269TAB(1)(a) or subsection 269TAB(1)(b) of the Act.

The Commission has, having regard to all the circumstances of the exportation, determined export prices for these exports under subsection 269TAB(1)(c), using the price paid or payable by the customer in Australia, less any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

For other exports to Australia by Masteel during the investigation period, the Commission's view is that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation);³⁰ and
- the purchase of the goods by the importer was an arms length transaction.³¹

The Commission established export prices for these transactions under subsection 269TAB(1)(a) of the Act, using the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Normal values

The Commission found that Masteel did not sell like goods to the goods under consideration in China in the investigation period.³²

The Commission's view is that, because of the absence of sales of like goods in China that would be relevant for determining a price under subsection 269TAC(1) of the Act, the normal value for exports from China should be determined under subsection 269TAC(2)(c) of the Act, being the sum of:

²⁷ Refer to [EPR Document 010](#).

²⁸ Refer to [EPR Document 045](#).

²⁹ Refer to Section 3.4 Finding in Exporter Verification Report on [EPR Document 045](#).

³⁰ Refer to Section 3.4 Finding in Exporter Verification Report on [EPR Document 045](#).

³¹ Refer to Section 3.5 Finding in Exporter Verification Report on [EPR Document 045](#).

³² Refer to Section 2.3 Finding in Exporter Verification Report on [EPR Document 045](#).

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- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the SG&A costs associated with the sale and the profit on that sale.

The amounts determined to be the cost of production or manufacture of goods in the country of export, the SG&A costs associated with the sale of the goods, and the profit on that sale must be worked out in accordance with the *Customs (International Obligations) Regulation 2015* (the Regulation).³³

The Commission considers that because of absence of sales in the Chinese domestic market a constructed normal value, being the sum of the cost of production or manufacture of goods in the country of export, SG&A costs associated with the sale of the goods, and the profit on that sale, is an appropriate proxy for the price of the like product had there been goods sold in the ordinary course of trade in China in arms length transactions.³⁴

Cost of production

In constructing a normal value under 269TAC(2)(c), the Minister needs to determine the cost of production or manufacture of the goods in the country of export.

Subsection 43(2) of the Regulation requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles (GAAP) in the country of export, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, the cost of production must be worked out using the exporter's records.

The Commission considers that the government influence by GOC in the steel and steel input markets in China is such that the costs incurred by Masteel in the production of railway wheels were not determined in a competitive market. These circumstances are not normal and ordinary because the records of Masteel reflect the government influence by the GOC which distorts the costs in the steel and steel input markets in China. As such, they are not suitable to use to work out an amount for the cost of production to use in the constructed normal value which would be an appropriate proxy for the price had there been goods sold in the ordinary course of trade in China in arms length transactions, had there not been an absence of sales in the Chinese domestic market. Therefore, Masteel's records relating to the production of steel billet used to produce railway wheels do not reasonably reflect competitive market costs.

Details of the Commission's consideration of whether Masteel's records reasonably reflect competitive market costs is at **Non-confidential Appendix 2**.

In these circumstances, the Commission is not required to work out an amount for the cost of production using the information set out in Masteel's records. The Commission has determined a suitable benchmark for steel billet used in production of railway wheels to use in the constructed normal value in order to establish an appropriate proxy for the

³³ See subsections 269TAC(5A) and (5B).

³⁴ *Mullins Wheels Pty Ltd v Minister for Customs & Consumer Affairs* [1999] FCA 132 (7 September 1999) [9], quoting *Metal Manufactures Limited v The Comptroller-General of Customs* [1995] FCA (13 April 1995) p. 10-11.

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price of railway wheels sold in the ordinary course of trade in China, had there not been an absence of sales in the Chinese domestic market.

The Commission considers that the suitable benchmark is to uplift Masteel's steel billet input costs to reflect the difference between these costs and the costs incurred by Valdunes, as adjusted for SG&A expenses that Masteel would not have incurred in the production of railway wheels in China.

The Commission's discussion of a suitable benchmark is at **Non-Confidential Appendix 3**.

SG&A costs

As the Commission established that Masteel does not sell like goods in China, it has not been able to work out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission has worked out an amount for SG&A under subsection 44(3)(a) of the Regulation by identifying the actual amounts of SG&A costs incurred by the exporter in the production and sale of the same general category of goods in China (other types of railway wheels sold by Masteel).

Profit

As Masteel does not sell like goods in China, the Commission was unable to calculate profit under subsection 45(2) of the Regulation. The Commission has instead calculated an amount for profit under subsection 45(3)(a) of the Regulation by identifying the actual amounts realised by Masteel from the sale of the same general category of goods (other types of railway wheels sold by Masteel) on the domestic market in China.

Adjustments

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to subsection 269TAC(9) as follows:

Adjustment type	Application
Domestic packaging expenses	Deduct the cost of domestic packaging expenses
Export packaging expenses	Add export packaging expenses
Export inland transport expenses	Add export inland transport expenses
Export handling and other expenses	Add export handling and other expenses
Export bank charges	Add export bank charges
Export credit expenses	Add export credit expenses

Table 5: Summary of adjustments

Dumping margin

The Commission calculated the dumping margin in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin has been calculated as **17.4 per cent**.

Export price, normal value and dumping margin calculations for Masteel are at **Confidential Appendix 5**.

6.5.2 Dumping assessment – Other exporter rate

As the Commissioner is satisfied that no other Chinese entities exported railway wheels to Australia in the investigation period, the Commissioner has established a rate for all other exporters at the same rate as established for the co-operating exporter, Masteel.

Export prices for all other exporters from China have been established under subsection 269TAB(3) of the Act and normal values have been established under subsection 269TAC(6) using relevant information provided by the cooperating exporter, Masteel.

The dumping margin has been calculated as **17.4 per cent**.

6.6 Dumping assessment – France

6.6.1 Valdunes

Verification of information

The Commission visited Valdunes' premises in France to verify the information provided in its exporter questionnaire response. A report covering the visit findings is available on the public record.³⁵

Export prices

The Commission considers that, in respect of Valdunes' Australian export sales during the investigation period:

- the goods have been exported to Australia otherwise than by the importer; and
- the purchases of the goods by the importer were arms length transactions.³⁶

The Commission found that the goods have been purchased by the importer from the exporter, and therefore the export price has been calculated using subsection 269TAB(1)(a) of the Act using the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

Normal values

The Commission found that, in the investigation period, Valdunes did not sell like goods to the goods under consideration in France. The Commission's view is that, because of the absence of sales of like goods in France that would be relevant for determining a price under subsection 269TAC(1) of the Act, the normal value for exports from France should be established under subsection 269TAC(2)(c) of the Act, being the sum of:

- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the SG&A costs associated with the sale and the profit on that sale.

³⁵ Refer to [EPR document No.042](#)

³⁶ Refer to section 3.8 of [EPR document No.042](#)

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The Commission was satisfied that Valdunes keeps records relating to the goods and the records are in accordance with GAAP in France.³⁷ The Commission has no information that would indicate that these do not reasonably reflect competitive market costs associated with the production or manufacture of the goods. In accordance with subsection 43(2) of the Regulation, the Commission has worked out the cost of production using the information set out in Valdunes' records.

During the verification process, Valdunes proposed that certain costs set out in its records either overstated the costs it actually incurred in relation to sales of railway wheels to Australia, or understated the costs of selling the same general category of goods on the domestic market. The Commission did not accept that Valdunes had provided a sufficient basis to move away from the information set out in its records and derived from its normal accounting practices. The Commission views that, if it were to deviate from the records as presented, this would mean the cost to make and sell would no longer reasonably reflect the cost of production, and would render it unusable under subsection 43(2)(b)(ii) of the Regulation.

SG&A costs

As Valdunes does not sell like goods in the domestic market, the Commission has not been able to work out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission has worked out an amount for SG&A under subsection 44(3)(a) of the Regulation by identifying the actual amounts of SG&A costs incurred by Valdunes in the production and sale of the same general category of goods (other types of railway wheels sold by Valdunes) on the domestic market. The Commissioner was unable to calculate an amount for SG&A under 44(3)(b) as there are no other known producers of like goods in France.

Profit

As Valdunes does not sell like goods in the domestic market, the Commission has not been able to work out an amount for profit under subsection 45(2) of the Regulation. The Commission calculated an amount for profit under subsection 45(3)(a) of the Regulation. The Commission calculated an amount of profit by identifying the actual amounts realised by Valdunes from the sale of the same general category of goods (other types of railway wheels sold by Valdunes) on the domestic market of France. The Commissioner was unable to calculate a profit under 45(3)(b) as there are no other known producers of like goods in France.

Adjustments

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to subsection 269TAC(9) as follows:

Adjustment type	Application
Domestic credit expenses	Deduct domestic credit expenses
Export inland transport and handling expenses	Add export inland transport and handling expenses
Export commission expenses	Add the cost of export commission
Export credit expenses	Add export credit expenses

Table 6: Summary of adjustments

³⁷ Refer to section 3.8 of [EPR document No.042](#)

Dumping margin

The Commission calculated the dumping margin in accordance with subsection 269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin has been calculated as **37.2 per cent**.

Export price, normal value and dumping margin calculations for Valdunes are at **Confidential Appendix 5**.

Submission

In its submission of 2 October 2018,³⁸ Valdunes referred to the rigorous standards imposed by the ADA for the investigation of dumping. In particular, Valdunes noted Articles 2.2.1.1 and 2.2.2 of the ADA dealing with elements of the construction of normal values.

Valdunes stated that the Commission had misapplied or misinterpreted several costing elements of the normal value by having:

1. over-adjusted any necessary uplift of variances from standard costs to actual costs in the calculation of constructed normal value based on cost to make and sell (CTMS);
2. denied downward adjustments proposed by Valdunes of its accounting SG&A costs as incurred by Valdunes in the ordinary course of business;
3. overstated the CTMS for export sale selling expenses by allocating general costs as well as adding into the constructed normal value a commission expense incurred in Valdunes' sales to Australia, thus double counting that charge;
4. understated certain domestic credit costs, and
5. overstated any applicable export credit costs in regards to Valdunes' sales to Australia.

As explained above, the Commissioner was satisfied that the actual costs submitted by Valdunes in its exporter questionnaire response were an accurate reflection of the costs to make and sell. In the work program to the verification report, the verification team noted:

*The verification team does not consider that Valdunes has adequately supported its claim to reallocate production overhead and SG&A expenses in accordance with the proposal. The verification team is not satisfied that the proposed reallocation is supported by sufficient evidence to justify a departure from the normal accounting practices of the company in allocating costs to particular production.*³⁹

Subsequent to the verification visit, Valdunes has not provided information that satisfies the Commissioner that this decision should be changed. As such, the Commissioner has not accepted point 1.

³⁸ Valdunes submission dated 2 October 2018 – Document 059 on the EPR

³⁹ Section GP12 of Confidential Attachment 1 to [Document 042 on the EPR](#)

With regard to point 2, the Manual states that:

Adjustments will not be made for ... differences in general sales and administration expenses that relate more to the general cost of doing business and are spread across all sales of the company (or expenses such as research and development as these too are spread across all sales of the firm). The Commission considers that general expenses of this nature do not fall within the scope of the term 'differences in conditions and terms of sale'.⁴⁰

The Commission found that the accounting cost adjustments provided fall into this category of expenses. The Commission was not satisfied during verification, and remains unsatisfied, that the accounting SG&A costs would affect *price* comparability between the domestic and export markets.

The Commission asked Valdunes to provide further clarification and evidence to support its claims set out in points 3, 4 and 5 above. As Valdunes did not provide further information, the Commission has been unable to assess these claims.

6.6.2 Dumping assessment – Other exporter rate

As the Commissioner is satisfied that no other French entities exported railway wheels to Australia in the investigation period, the Commissioner established a rate for all other exporters at the same rate as established for the co-operating exporter, Valdunes.

Export prices for all other exporters from France have been established under subsection 269TAB(3) and normal values have been established under subsection 269TAC(6), using relevant information provided by the cooperating exporter, Valdunes.

The dumping margin for all other exporters from France is **37.2%**.

6.7 Volume of dumped imports

Pursuant to subsection 269TDA(3), the Commissioner must terminate an investigation if satisfied that the total volume of goods that have been, or may be, dumped is negligible. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period.

The Commission has based its estimate of the total volume of goods imported into Australia over the investigation period on verified information provided by the importers and exporters to Australia. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from each nominated country was greater than three per cent of the total import volume and is therefore not negligible.

⁴⁰ *Dumping and Subsidy Manual* p64-65

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Finding

Based on an analysis of the information contained in the application and information obtained and verified during this investigation, the Commissioner considers that Comsteel has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price suppression
- reduced profits;
- reduced profitability;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers;
- reduced revenue;
- reduced production volumes.

7.2 Introduction

Comsteel claimed that it has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced ROI;
- reduced attractiveness to reinvest; and
- reduced employment numbers.

7.3 Approach to injury analysis

The Commission relied on Comsteel's verified data in performing its analysis of the economic conditions of the Australian industry since 1 January 2014, the start of the injury analysis period. The verified data includes production, cost and sales data for railway wheels on a quarterly and annual basis for the injury analysis period.

Unless otherwise stated, the Commission's analysis of Comsteel's data relates only to its domestic sales of railway wheels.

7.4 Volume effects

7.4.1 Sales volume

Figure 1 and Figure 2 below depict the volume of railway wheels sold by Comsteel in the Australian market in the injury analysis period.

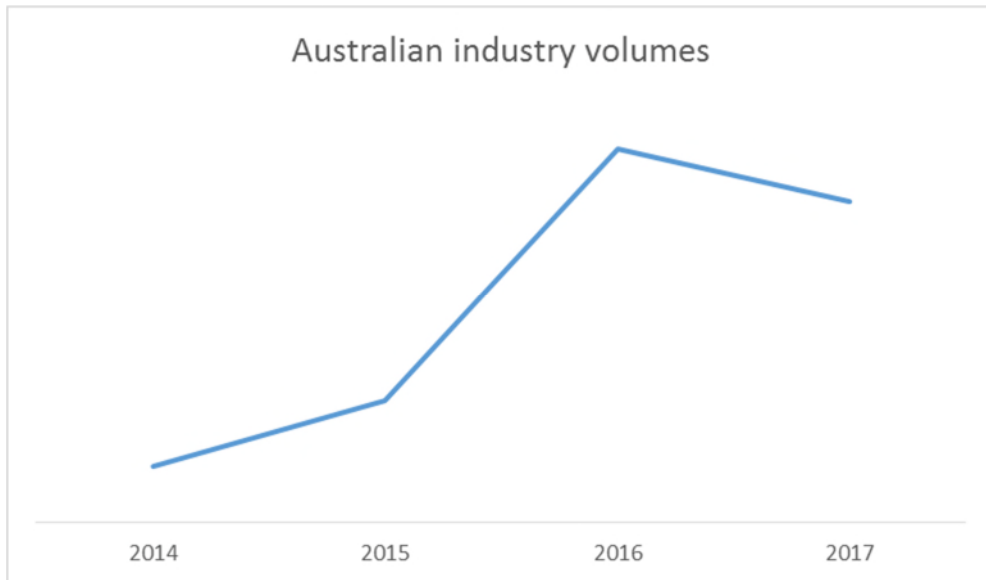


Figure 1: Annual volume of railway wheels sold by Comsteel

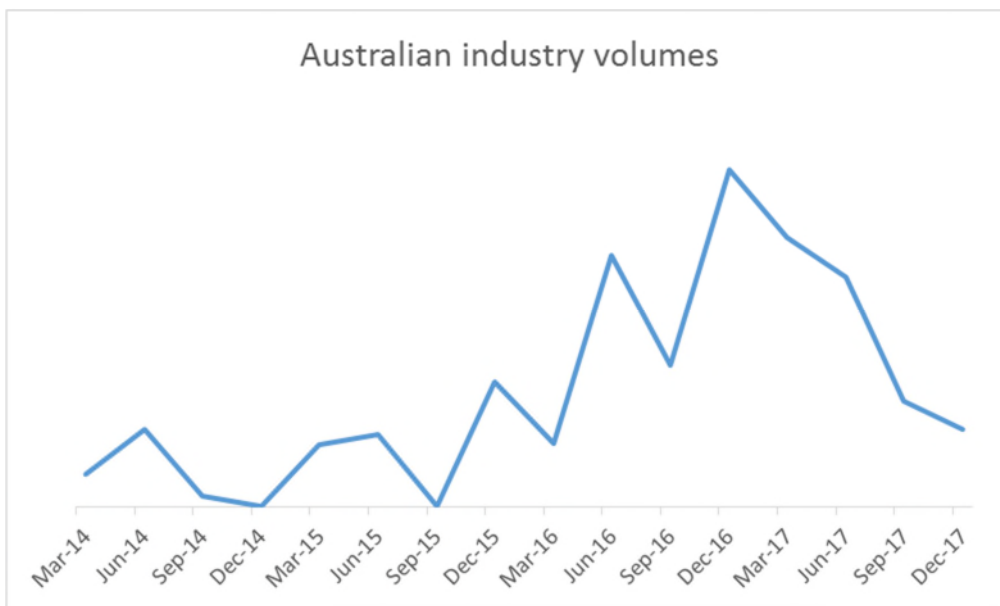


Figure 2: Quarterly volume of railway wheels sold by Comsteel

The majority of sales of the goods during the investigation period were a result of tender processes conducted by railway wheels customers. Comsteel was unsuccessful in the tender processes it participated in and was not invited to participate in Rio Tinto's tender to source a proportion of its requirements from an overseas supplier. Comsteel continued to supply a proportion of Rio Tinto's replacement railway wheel requirements in the investigation period.

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The following are the tender processes that were relevant to the supply or potential supply of railway wheels in Australia during the investigation period:

Customer	Awarded date	Result
BHP Billiton	November 2016	Awarded to a supplier of dumped goods
BHP Billiton	September 2017	Awarded to a supplier of dumped goods
Rio Tinto	mid-2017	Awarded to a supplier of dumped goods
FMG	mid-2017	Awarded to a supplier of dumped goods
Roy Hill	October 2017	Awarded to a supplier of dumped goods

Table 7: Tender processes relevant to sales or potential sales in the investigation period⁴¹

Comsteel supplied information in relation to its unsuccessful bids and claimed that it had lost sales in the investigation period to the dumped imports from France and China.

In its submission of 26 July 2018,⁴² the Ministry of Commerce of the People's Republic of China (MOFCOM) claimed that Comsteel had experienced remarkable growth since 2014, with its sales volume increasing over sixfold in the period 2014 to 2016. MOFCOM stated that this level of growth was not sustainable and that the minor dip in 2017 was a natural correction in a growing market. In its submission of 11 September 2018⁴³, BHP claimed that Comsteel has experienced a 500% increase in sales revenue during the injury period and consequently has not established that it has suffered material injury.

The Commission does not agree with MOFCOM's or BHP's assessment. The Commission considers that the Australian market for railway wheels increased significantly in 2016 and 2017, following subdued demand in 2014 and 2015. The fall in Comsteel's sales volumes in 2017 as depicted in Figures 1 and 2 above is, in the Commission's view, an indicator of injury and cannot be classified as a minor correction or a reflection of the ebb and flow of business.

In its submissions dated 11 September 2018⁴⁴ and 31 October 2018,⁴⁵ BHP claims that the Commission has based some of its conclusions concerning injury on the period between 2016 and 2017 (the investigation period) and not the overall period between 2014 and 2017. The European Commission, in its submission of 30 October 2018⁴⁶, makes similar claims. BHP and the European Commission made this observation in relation to a number of injury factors examined by the Commission.

In its injury analysis, the Commission analysed the period from 1 January 2014. The Commission found that the period 2014 to 2015 was a period of low prices for iron ore and the market for railway wheels contracted. The injury experienced during this period has not been attributed to dumping. From 2016 the market has experienced a steady recovery through 2017. The injury factors analysed by the Commission demonstrate that

⁴¹ Some of these tender processes and subsequent negotiations were for an extended period.

⁴² MOFCOM submission dated 26 July 2018 – Document 029 on the EPR

⁴³ BHP submission dated 11 September 2018 – Document 049 on the EPR

⁴⁴ BHP submission dated 11 September 2018 – Document 049 on the EPR

⁴⁵ BHP submission dated 31 October 2018 – Document 070 on the EPR

⁴⁶ EC submission dated 30 October 2018 – Document 068 on the EPR

Comsteel has not reflected this growth in the market between 2016 and 2017, and has instead experienced a decline.

Based on the verified information, the Commission’s view is that Comsteel has suffered injury in the form of reduced sales volumes.

Details of the tender processes set out in Table 7 above is at **Confidential Appendix 6**.

7.4.2 Market share

Figure 3 below demonstrates the proportion of the Australian market that was supplied by Comsteel and imports from China and France. The Commission is not aware of imports from other countries during the injury analysis period.

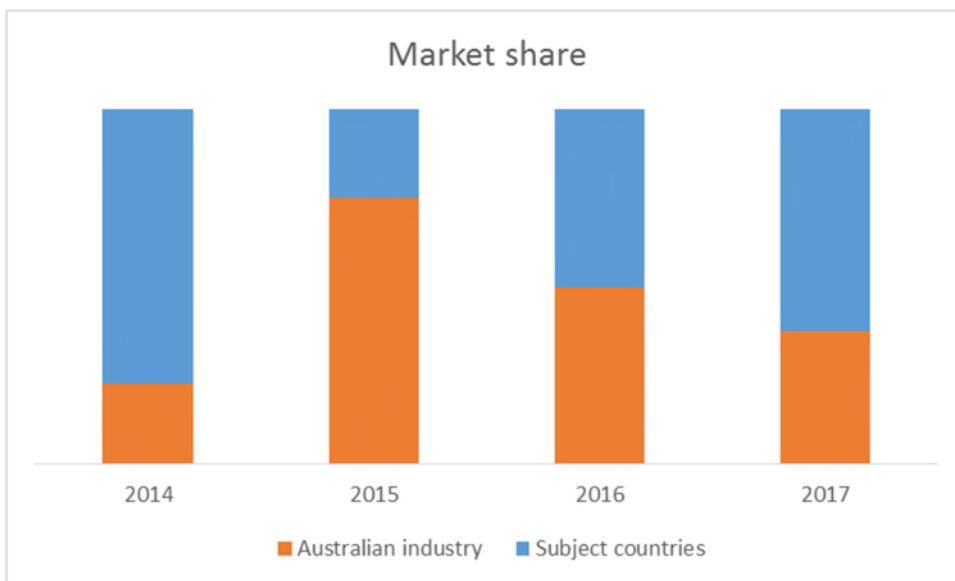


Figure 3: Shares in the Australian railway wheels market

Figure 3 depicts the loss of market share by the Australian industry between 2015 and 2017 and the growth of the Chinese and French exporters’ market shares during that time.

The Commission considers that Comsteel has experienced injury in the form of a loss of market share.

7.4.3 Conclusion – volume effects

The Commission considers that the Australian Industry has experienced injury in the form of lost sales volume and loss of market share.

7.5 Price suppression

Comsteel claimed that it experienced injury in the form of price suppression in the investigation period.

Price suppression occurs when price increases for the applicant’s product, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Figure 4 demonstrates that during the investigation period, Comsteel experienced an increase in its cost to make and sell (CTMS), resulting in a per unit loss position. Comsteel has not increased its unit selling price to account for the increase in unit CTMS.

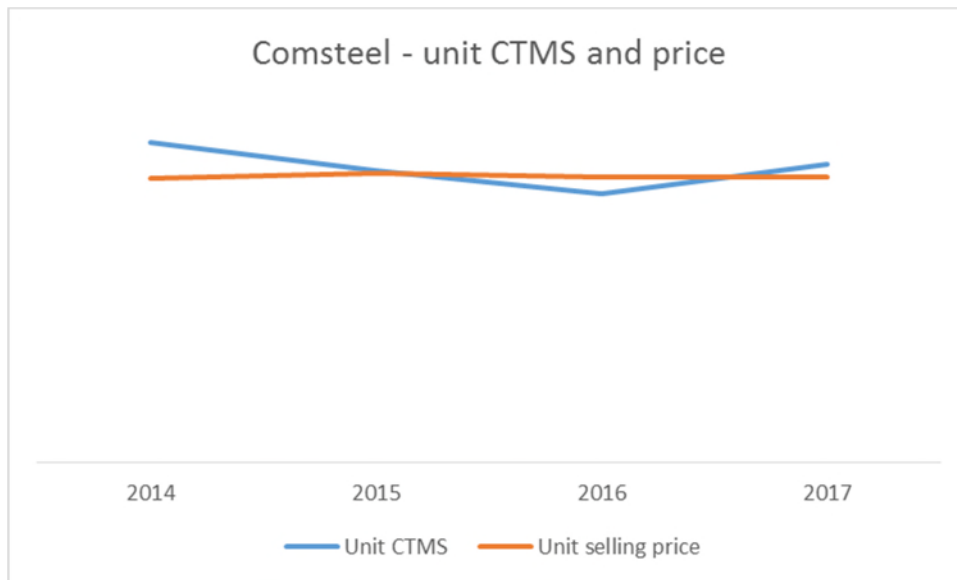


Figure 4: Comparison of Comsteel Unit CTMS and Unit Sales Revenue

In its submission dated 11 September 2018⁴⁷, BHP claimed that the evidence demonstrates that Comsteel's price did not fluctuate in accordance with costs or with higher demand for its products, as evidenced in 2015 when Comsteel experienced higher sales volumes in comparison with 2014. The Commission agrees that Comsteel's price has remained relatively stable during the injury analysis period.

As demonstrated in Figure 1, in the period between 2014 and 2015 the Australian market was relatively small. Comsteel was unprofitable in this period due to the high fixed costs of steelmaking and low volumes of sales. In 2016 the market significantly expanded and Comsteel experienced increased volumes resulting in increased profit and profitability.

In 2017 the market further expanded, however Comsteel was subject to increased competition from dumped goods. Comsteel's ability to raise prices to match the rising cost of raw materials was hindered by the presence of dumped goods in the market. As is explained in section 8.13 of this report, price is a significant determinant for contracts and, had the goods not been dumped, Comsteel could have remained competitive while raising their prices. Comsteel's inability to increase prices as a result of the presence of dumped goods has resulted in injury in the form of price suppression.

7.5.1 Conclusion – price effects

The Commissioner considers that the Australian industry has suffered injury in the form of price suppression.

7.6 Profits and profitability

Figure 5 demonstrates Comsteel's profit and profitability during the injury analysis period.

⁴⁷ BHP submission dated 11 September 2018 – Document 049 on the EPR

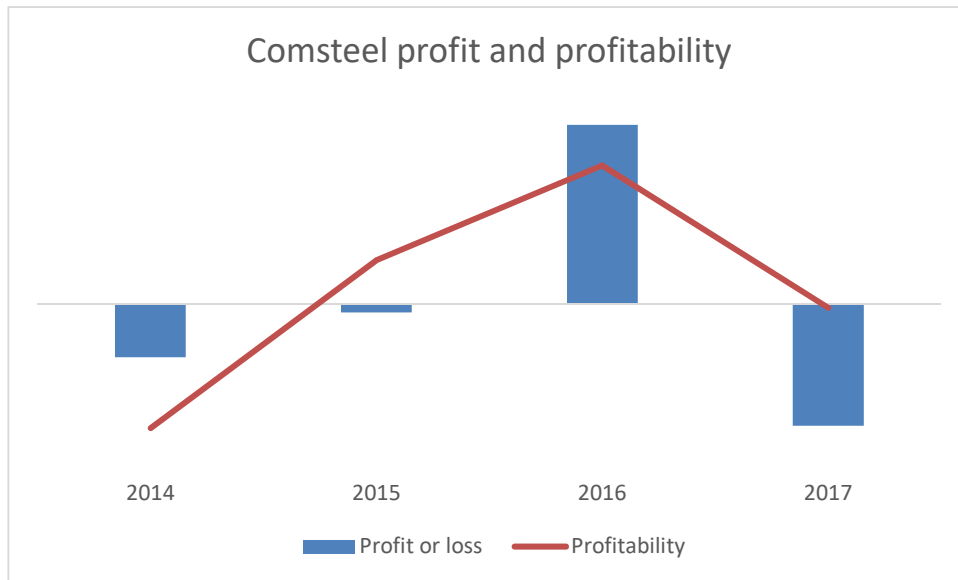


Figure 5: Comsteel profit and profitability

The profit and profitability follows a similar trend to volumes (as depicted in Figures 1 and 2), with an improvement in Comsteel's net profit position with increased volumes between 2014 and 2016, followed by a deterioration to a net loss position with reduced volumes in the investigation period. In its application Comsteel explained this correlation was due to fixed costs being averaged across lower volumes resulting in a deterioration of its net profit position during the investigation period.

The combination of Comsteel's inability to increase prices and falling volumes have impacted Comsteel's profits during the investigation period, moving from profit-making in 2016 to a loss-making position in the investigation period.

In its 11 September 2018 submission,⁴⁸ BHP claimed that there does not appear to be a correlation between Comsteel's profit position and its volumes or share of the railway wheels market in 2017. In the Commissioner's assessment, Comsteel's verified sales revenue and sales volumes reduced from 2016 to 2017, accounting for the reduced profit position evident in figure 5 above.

7.6.1 Conclusion – profit effects

Comsteel's falling volumes and its inability to increase prices to account for higher costs have impacted Comsteel's profits during the investigation period. The Commissioner considers that the Australian industry has suffered injury in the form of reduced profits and profitability during the investigation period.

7.7 Other economic factors

In its application, Comsteel claimed that it had experienced injury in the form of the following other injury factors:

- reduced ROI;
- reduced attractiveness to reinvest; and
- reduced employment numbers

⁴⁸ BHP submission dated 11 September - Document 050 on the EPR

7.7.1 ROI

The Comsteel application calculates ROI based on net profit or loss as a proportion of assets used in the production of the goods. The Commissioner examined evidence of Comsteel being unsuccessful on bids based on price, resulting in reduced volumes affecting profits and profitability. Reduced profit resulted in a reduced ROI. Figure 6 below demonstrates a sharp decline in ROI between 2016 and 2017.

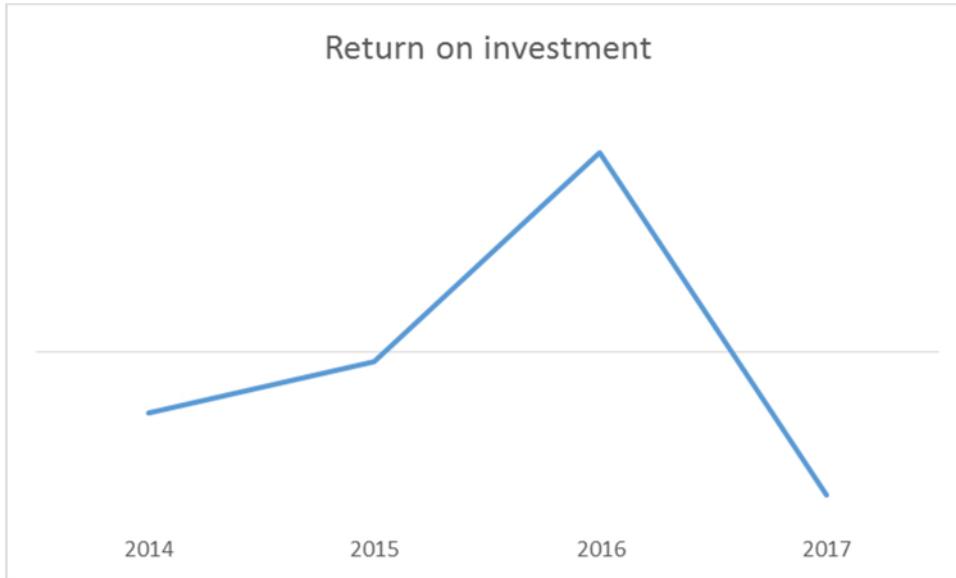


Figure 6: Comsteel ROI in Railway wheels division

Based on the information provided, the Commissioner finds that Australian industry has experienced injury in the form of reduced ROI.

In its submission dated 31 October 2018,⁴⁹ BHP reiterates its claims from its submission of 11 September 2018 that Comsteel’s ROI does not accurately reflect its sales position. In its submission dated 11 September 2018, BHP states that it understands that ROI is calculated as Comsteel’s profit or loss position and its sales volumes. The Commission calculated ROI based on Comsteel’s profit and loss position as a proportion of its net assets. While the assets are used for the production of the goods and other wheels, a proportion of assets has been allocated in the analysis correlating to the production of the goods. The level of assets has remained relatively stable through the injury analysis period. The net profit or loss position has fluctuated. As the profit position is a function of price and volumes, and Comsteel has experienced price suppression and reduced volumes due to the loss of tenders, it has consequently experienced injury in the form of reduced ROI.

7.7.2 Reduced attractiveness to reinvest

Comsteel clarified during the verification visit with the Commission that reduced attractiveness to reinvest relates to the reluctance of its new parent entity to further invest capital in the railway wheels business when it is unable to secure tenders for future supply. Comsteel claimed that this was due to imports at dumped prices. The Commission requested evidence to support the claim that Comsteel has been unable to secure further capital investment due to its inability to secure tenders for future supply,

⁴⁹ BHP submission dated 31 October 2018 – Document 070 on the EPR

which it was unable to provide. The Commissioner has been unable to identify injury in the form of reduced attractiveness to reinvest.

7.7.3 Employment

Employment within the railway wheels business followed a general downward trend during the injury analysis period. Between 2014 and 2015, Comsteel's Rail Division reduced employment numbers by 30 percent. During the investigation period employment numbers were reduced by 10 percent. Comsteel claimed that the reductions in employment numbers in the investigation period were due to retrenchments caused by reduced sales volumes resulting from the loss of railway wheel contracts.

Employment numbers provided by Comsteel were for the Rail Division which includes employees manufacturing all types of wheels produced by Comsteel. The Commissioner's analysis of Comsteel's production volumes indicated that production of wheels that are not like goods had remained consistent over the injury analysis period and that the decline in total wheel production was primarily attributed to the decline in the production of like goods.

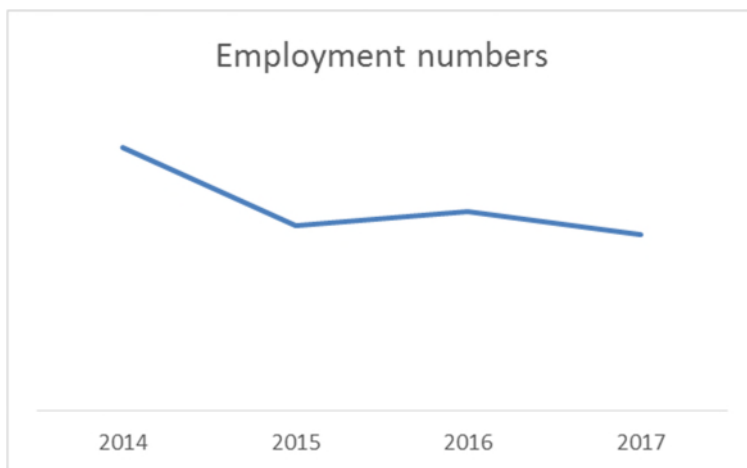


Figure 7: Comsteel employees in Railway wheel division

In its submission of 11 September 2018⁵⁰, BHP claimed that the reductions in employment numbers are not in keeping with Comsteel's revenue and market share. The Commissioner notes that Comsteel's fall in employment levels between 2016 and 2017 is consistent with declining sales volumes, market share and revenue in the same period.

Due to retrenchments as a consequence of reduced sales and production volumes of railway wheels in the investigation period, the Commissioner finds that the Australian industry has experienced injury in the form of reduced employment numbers.

7.7.4 Capacity utilisation

While Comsteel's capacity remained stable during the injury analysis period, capacity utilisation has been negatively impacted during the investigation period.

⁵⁰ BHP submission dated 11 September 2018 – Document 049 on the EPR

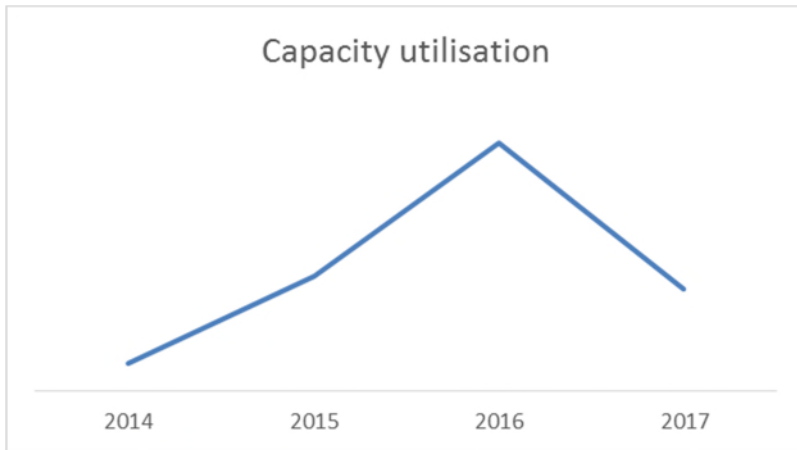


Figure 8: Comsteel capacity utilisation of Railway wheels division

In its submission of 11 September 2018⁵¹, BHP claimed that there is no basis for concluding that Comsteel’s capacity was ‘under-utilised’ as some of its production was for its export sales in the injury analysis period. This was reiterated in its submission dated 31 October 2018.⁵²

The Commissioner reviewed sales in the injury analysis period and found that the reduced capacity utilisation was partly due to the reduced export volumes in 2017 compared to 2015 and 2016, and partly due to reduced sales volumes on the domestic market.

Lower volumes have resulted in injury to the Australian industry in the form of reduced capacity utilisation.

7.7.5 Revenue

Figure 9 demonstrates an increase in Comsteel’s revenues between 2014 and 2016, and then reduced revenues in the investigation period. Reduced sales volumes (refer section 7.4) and an inability to increase prices (section 7.5) has resulted in injury in the form of reduced revenue.

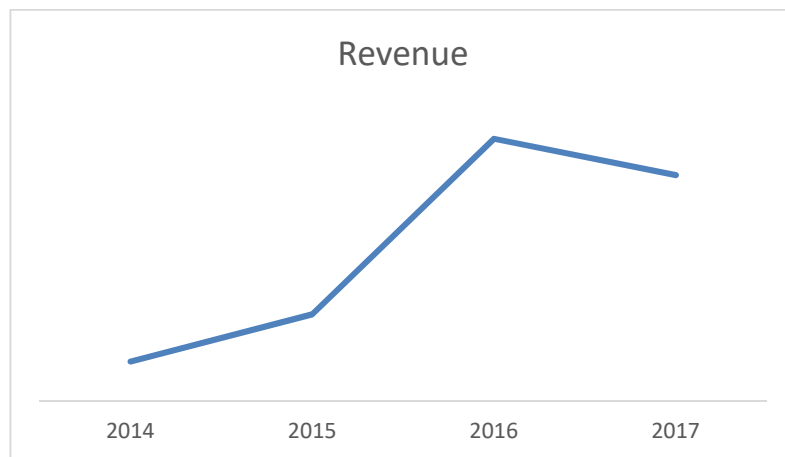


Figure 9: Comsteel revenue from railway wheels

⁵¹ Ibid.

⁵² BHP submission dated 31 October 2018 – Document 070 on the EPR

7.7.6 Production volumes

Figure 10 below demonstrates the volumes of like goods produced by Comsteel during the injury analysis period for both the domestic and export markets.

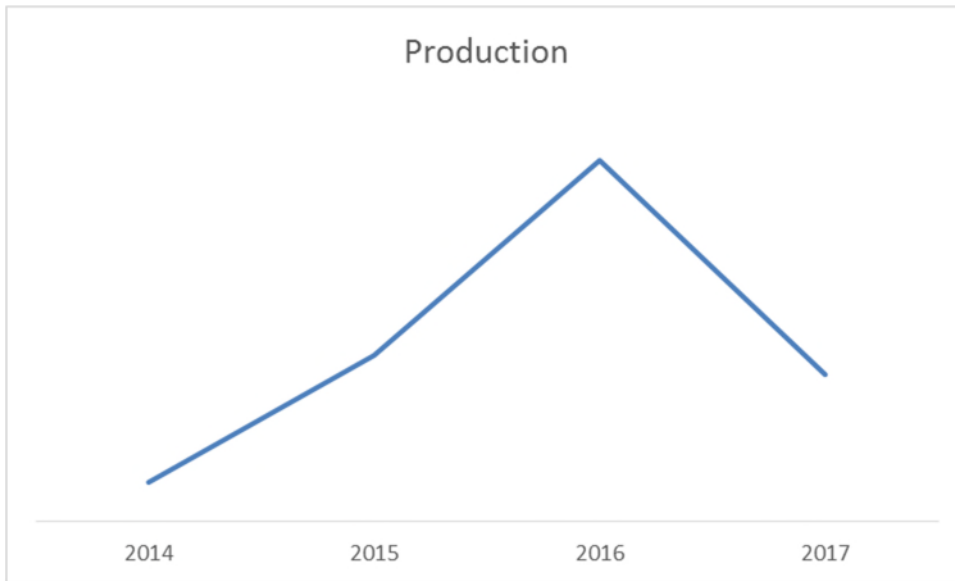


Figure 10: Comsteel production volumes

In its submission of 30 October 2018,⁵³ the European Commission noted that the Commission had not, in the SEF, analysed Comsteel's production levels. The EC suggested that information in Comsteel's application may indicate that production volumes in 2016 far exceeded demand and that the overproduction and ensuing high stock levels would at least partially explain the high losses in 2017.

The profitability of Comsteel as described above at section 7.6 of this report has been calculated based on the costs of the railway wheels sold in the relevant periods. Accordingly, production levels had no impact on the profitability analysis. As evident in Figure 10 above, Comsteel's production volumes of railway wheels declined sharply in the investigation period. This reflected reduced sales volumes for both the export and domestic markets.

The Commissioner finds that Comsteel has experienced injury in the form of reduced production volumes.

7.8 Other indicators

The Commissioner also reviewed the following economic factors:

Assets –assets are used collectively for the Rail Division, and a proportion has been allocated as relevant to the production of railway wheels. The value of assets did not demonstrate injury in the form of reduced asset values.

R&D - the information provided is not apportioned for the production of like goods and was not used by the Commissioner to draw any conclusions concerning injury in the form of reduced R&D investment.

⁵³ EC submission dated 30 October 2018 – Document 068 on the EPR

Capacity – Comsteel’s capacity to produce the goods has remained stable during the injury analysis period.

Productivity – measured using ‘overall equipment effectiveness’. Productivity has remained stable during the injury analysis period.

Wages – Average wages have increased during the injury analysis period, which may be partly a result of reduced employment numbers in the same period. No injury in the form of reduced wages was found.

7.8.1 Conclusion – other injury factors

The Commissioner considers that there is evidence that Comsteel has suffered injury during the investigation period in the form of:

- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers;
- reduced revenue;
- reduced production volumes.

The Commissioner was unable to ascertain whether there has been injury in the form of reduced attractiveness to reinvest.

7.9 Finding

Based on an analysis of the information contained in the application and obtained and verified during the Commission’s visit to Comsteel, the Commissioner’s view is that Comsteel has experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced ROI;
- reduced capacity utilisation;
- reduced employment numbers;
- reduced revenue;
- reduced production volumes.

Data forming the basis of the Commissioner’s assessment of the Australian market and Australian industry’s performance is at **Confidential Appendix 7**.

8 HAS THE DUMPING CAUSED MATERIAL INJURY?

8.1 Finding

The Commissioner has found that dumped exports of railway wheels from China and France have caused material injury to the Australian industry.

In investigating the cause of injury to the Australian industry the Commissioner had regard to the factors that influenced the Australian customers' purchasing decisions. Following visits to Australian industry and importers and reviewing relevant evidence, the Commissioner is satisfied that the procurement decisions by Comsteel's customers were predominantly based on price. Comsteel consequently lost sales in competition with imports at dumped prices. Where customers claimed the influence of factors other than price, the Commission reviewed these claims extensively at section 8.13 and is further detailed in **Confidential Appendix 10**.

8.2 Legislative framework

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors, to which the Commissioner has had regard, that may be taken into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Subsection 269TAE(2A) requires that regard be had to whether any injury to an industry is being caused by a factor other than the exportation of the goods and provides examples of such factors.

8.3 Cumulative effects of exportations

Subsection 269TAE(2C) sets out the requirements for assessing the cumulative effects of goods exported to Australia from different countries. In relation to a dumping investigation, where exports from more than one country are the subject of investigations resulting from applications under section 269TB that were lodged on the same day (as is the case in this investigation), the cumulative effects of such imports may be assessed if:

- the margin of dumping established for exporters in each country is not negligible; and
- the volume of dumped imports from each country is not negligible; and
- cumulative assessment is appropriate having regard to the conditions of competition between the imported goods and between the imported goods and like goods that are domestically produced.

The dumping margins determined by the Commissioner and the volumes of dumped imports from China and France are not negligible. The Commissioner has assessed the conditions of competition between the goods exported from China and France and like goods produced by the Australian industry. Railway wheels exported from China and France have competed against each other in tenders in Australia. The Commissioner is aware of customers in Australia switching between exports from China and France. Similarly, domestically produced goods have competed against exports from China and France for sales in Australia, including in tender processes.

The Commissioner's view is that it is appropriate to consider the cumulative effects of the dumped imports from China and France.

8.4 Size of the dumping margins

Subsection 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia.

The dumping margins outlined above for China and France (17.4 percent for China and 37.2 percent for France) are above negligible levels (i.e. above two percent). The Commissioner considers that the magnitude of dumping provided exporters from China and France with the ability to offer railway wheels to importers or end users at significantly lower prices than would otherwise have been the case.

8.5 Volume effects

Figure 11 depicts the sales volumes in the Australian market from 2014 to 2017.

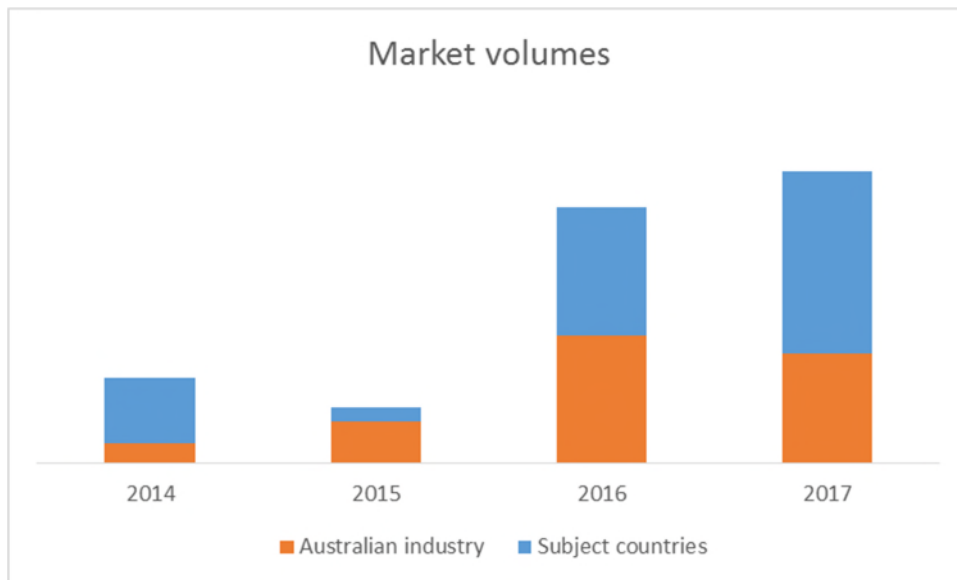


Figure 11: Volumes of the Australian market for railway wheels

Figure 11 demonstrates that the size of the railway wheels market in Australia increased significantly in 2016 and rose again in 2017. However, while volumes from the countries subject to this investigation increased in the investigation period compared to 2016, Australian industry's volumes declined in the investigation period.

Table 7 (refer section 7.4.1) details the tenders that impacted on sales or potential sales of railway wheels in Australia in the investigation period. Comsteel was unsuccessful in winning any of the tenders and, in one case, was not invited to participate in the tender. Comsteel provided the Commissioner with feedback it had received following tenders it participated in, advising that it had been unsuccessful as its price was well above its competitors. BHP advised the Commission, and the evidence shows, that the late 2016 tender which determined its supplier of railway wheels in the investigation period, was decided primarily on an evaluation of prices offered by pre-qualified suppliers. In the Commissioner's view, this provides a clear causal link between the dumping and material injury to the Australian industry in the investigation period.

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The successful competitors in all of these tenders were suppliers of dumped goods. Apart from the tender processes, Comsteel's only Australian customer is Rio Tinto, which continues to source a proportion of its requirements from the Australian manufacturer.

In its submission of 5 June 2018, Rio Tinto claimed that the volatility in iron ore commodity markets in recent years had caused diversified miners such as Rio Tinto to pursue productivity improvements including exploring opportunities to increase the operational life of railway wheels. It claimed that the successful implementation of these measures had resulted in a material incremental reduction in Rio Tinto's demand for new or replacement railway wheels. Rio Tinto submitted that the erosion of Comsteel's expected sales volumes that had occurred as a result of these productivity measures could not be entirely attributed to the presence of imported railway wheels in the Australian market.

In its submission of 26 July 2018, MOFCOM claimed that it would be expected that the sales of railway wheels would taper off in 2016 and 2017, reflecting a slowing growth in iron ore sales and following a significant influx of railway wheels purchased by the mining companies as iron ore sales rose.

The Commission compiled an accurate picture of the Australian market for railway wheels using verified information from Comsteel, exporters of the goods to Australia, importers and end users. The Commissioner is satisfied that the market for railway wheels in Australia increased in the investigation period compared to 2016 and that Comsteel's loss of sales volumes and market share in the investigation period was not the result of a general decline in the demand for railway wheels.

The Commissioner considers that the magnitude of dumping provided exporters from China and France with the ability to offer railway wheels to importers or end users at significantly lower prices than would otherwise have been the case. Having considered other possible causes of injury to the Australian industry (discussed at 10.12 below) the Commissioner is satisfied that dumping caused the significant volume injury suffered by the Australian industry in the investigation period.

8.6 Price effects

Comsteel claims that its prices were undercut by allegedly dumped import prices of railway wheels from China and France.

Comsteel provided evidence of price pressure in order to establish a causal link between the dumped imports and the injury suffered as a result of price undercutting. Comsteel provided communications from customers informing Comsteel that it has been unsuccessful in tender bids due to lower prices from overseas sources.

The Commissioner used information obtained from Comsteel, Masteel, Valdunes and importers/end users of railway wheels to undertake a price undercutting analysis. This analysis was undertaken comparing the cost of the imports from China and France delivered to Perth (adding importation costs if necessary) with Comsteel's prices at the same terms. This analysis shows that, in 2017, the dumped imports from China and France undercut Comsteel's selling prices by significant margins. Successful bids by suppliers of the dumped imports from China and France also significantly undercut Comsteel's offer prices for like goods. The Commission's price undercutting analysis is at **Confidential Appendix 8**.

The communications provided by Comsteel, and information obtained from the importers/end users of railway wheels in Australia support Comsteel's claim that it has

suffered injury in the form of price suppression, as it has experienced pressure to maintain or reduce pricing at a time when it was experiencing rising unit costs (as demonstrated in Figure 4 above). The Commission considers that the injury in the form of price suppression experienced by the Australian industry was caused by dumped imports.

In its submission of 24 July 2018,⁵⁴ the CCCME stated that it was unclear whether some or all of the price undercutting was due to the allegedly dumped exports from China and France or whether it was due to high, monopolistic pricing by the Australian manufacturer. It claimed that the Commissioner should consider whether Comsteel's prices were artificially inflated by Australian government policies and regulations, the cost of inputs to manufacture, electricity prices, leasing costs, transport costs, financing costs, labour costs and the effects of Australian unions on labour costs and occupational health and safety costs.

The CCCME also claimed that the Commissioner should consider Comsteel's historical monopolistic position in the Australian market and whether this has made the like goods it produces globally uncompetitive.

Australia's anti-dumping system is designed to allow Australian industries to compete with imports, free from the injurious effects of dumping and subsidisation. The system does not provide relief for an Australian industry that cannot compete with imports that are not at dumped and/or subsidised prices. The issues of comparative advantage and Comsteel's costs are addressed in section 8.13.1 of this report.

8.7 Profit effects

Comsteel alleged that injury to profit and profitability occurred through loss of profits through lost sales volumes due to unsuccessful bids.

Given that Comsteel:

- lost volumes during the investigation period to dumped imports; and
- due to price pressure from the dumped imports, was unable to increase its prices in line with unit cost to make and sell increases;

the Commission's assessment is that there is a causal link between injury suffered by Comsteel in the form of reduced profits and the dumped imports from China and France.

8.8 ROI

As stated in section 7.7.1, Comsteel experienced injury in the form of reduced ROI during the investigation period. Comsteel provided evidence to support its claim that it lost sales volumes due to lower priced import offers to customers/end users. Comsteel's profit position was impacted by lower volumes due to the impact of the dumped imports. These factors in turn have resulted in reduced ROI. The Commissioner's view is that dumped imports have caused injury to the Australian industry in the form of reduced ROI.

8.9 Capacity utilisation

Figure 8 demonstrates Comsteel's capacity utilisation rates during the injury analysis period.

⁵⁴ CCCME submission dated 24 July - Document 027 on the EPR

As Comsteel is able to use its capacity to manufacture other wheels that are not like goods, the Commissioner analysed volumes of other wheels produced in the period, which remained stable while volumes of railway wheels (like goods) declined.

The under-utilisation of Comsteel's facilities in the investigation period can be partially attributed to reduced sales volumes to BHP. Comsteel was a pre-approved supplier for the 2016 tender and the successful supplier was chosen based on price. This is the tender that governed the majority of BHP's railway wheel purchases in the investigation period. The loss of this tender in competition with dumped imports resulted in injury to the Australian industry in the form of reduced capacity utilisation.

8.10 Employment numbers

The reduction in employment numbers during the investigation period coincides with reduced capacity utilisation and total production volumes in Comsteel's Rail Division.

In its submission dated 31 October 2018, BHP claimed that Comsteel's reduced employment numbers did not correlate with its increase in sales of railway wheels since 2014. BHP further claimed that Comsteel's sales of other products have fallen in this period.

The Commissioner disagrees that Comsteel's sales of other products have fallen in the period. The Commission's analysis of Comsteel's production volumes indicates that production of wheels that are not like goods to the goods under consideration remained reasonably consistent over the injury analysis period and that the decline in total wheel production was primarily caused by the decline in the production of like goods, which had in turn been caused by the loss of tenders to overseas suppliers. Consequently, the Commissioner accepts that the decline in employment levels was due to the loss of volumes in the railway wheels business.

Australian industry suffered injury in the form of reduced employment numbers due to the dumped imports.

8.11 Revenue

The Commissioner's view is that Comsteel's loss of revenue in the investigation period was caused by the loss of sales to the dumped goods.

8.12 Production volumes

Reduced production in the investigation period was partly due to reduced sales in the domestic market as well as reduced export sales (although noting that export sales are a relatively small and irregular component of Comsteel's railway wheel business). The reduced sales in the domestic market was due to tender losses in the investigation period, as a result of price competition with dumped imports (refer section 7.4.1 above).

The Commissioner finds that Comsteel has experienced injury in the form of reduced production volumes caused by dumping.

8.13 Factors other than dumping causing injury

The Commissioner considered whether any factors other than the exportation of dumped goods had caused material injury to the Australian industry.

8.13.1 Comparative advantages of the Chinese manufacturer

In its submission of 5 June 2018, Rio Tinto claimed that the absence of competition in the Australian industry (with Comsteel being the only Australian producer of like goods) may have resulted in Comsteel's business practices becoming outdated. It suggested that this may have caused or at least contributed to the alleged injury suffered in the investigation period by Comsteel being unprepared, unwilling or too slow to adapt to the changing dynamics in global trade and competition.

Rio Tinto pointed to the much larger plant capacity of the Chinese producer, Masteel, compared to Comsteel. It noted that the scale of the Chinese producer could be expected to enable a more efficient production process and lower fixed costs per unit.

Rio Tinto also claimed that Masteel had made significant investments in robotics technology and automation, whereas it was unaware of any noteworthy investments in automation technology by the Australian manufacturer, Comsteel. Rio Tinto stated that, prior to purchasing railway wheels from Masteel, it had raised issues surrounding automation with Comsteel with the objective of seeking to assist Comsteel to improve its efficiencies and the quality of its products.

Further, Rio Tinto submitted that there was likely to be a substantial difference between the cost of railway wheel production in China and Australia due to the following factors:

- the likelihood that the cost of raw materials (including scrap) in Australia is significantly higher than the cost of materials available to Masteel;
- the likelihood that the structure of Comsteel's supply chain, including its reliance on third party suppliers, is significantly less cost efficient than Chinese manufacturers who benefit from vertically integrated supply chains;
- Comsteel's lack of economies of scale and purchasing power compared to large volume manufacturers such as Masteel;
- the higher cost of labour overheads in Australia;
- higher power costs in Australia;
- lower customs duties applying to imports of the goods from China due to the Chinese-Australia Free Trade Agreement;
- favourable foreign exchange rate movements; and
- less onerous environmental regulation in China compared to Australia.

In its submission of 24 July 2018⁵⁵, the CCCME raised similar issues in claiming that Chinese producers have a comparative advantage in the production of railway wheels.

In its submission of 11 September 2018⁵⁶, BHP claimed that the overseas suppliers, Valdunes and Masteel, have invested in superior technology which results in a higher quality product compared to the Comsteel railway wheels.

In assessing material injury, the Commissioner had regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).⁵⁷ Among other things, the Material Injury Direction makes it clear that, material injury from dumping can occur notwithstanding that

⁵⁵ CCCME submission dated 24 July 2018 – Document 027 on the EPR

⁵⁶ BHP submission dated 11 September 2018 – Document 049 on the EPR

⁵⁷ Available at www.adcommission.gov.au

there is also injury from other sources, however, injury caused by factors other than dumping must not be attributed to dumping.

In its submission dated 31 October 2018, following the Commission's publication of its SEF, Rio Tinto claimed that it did not appear that the Commission had attempted to separate the effect of dumping from the other factors or attempt to calculate or quantify the extent of the injury caused by factors other than dumping. It submitted that it is necessary for the Commission to ascertain whether the price differences between the exporter and Comsteel are predominantly because of dumping or predominantly because of other factors.

The Commission has conducted this analysis at **Confidential Appendix 9**. The Commission found that in a clear majority of transactions analysed during the investigation period, if the imported goods had not been dumped, Comsteel's price would have been lower than the price of imports.

Further to the above, the Commission considers that, in the absence of volumes lost to dumped imports, Comsteel would have sold a greater number of railway wheels. This would result in Comsteel's fixed costs remaining steady while the fixed cost per unit would be lower. This would lower Comsteel's total unit cost, allowing it to be even more competitive in the market.

The Commission notes the claims of Rio Tinto and CCCME regarding the competitive advantages from different technology and more integrated supply chains. As demonstrated above, Comsteel would have been competitive with undumped goods in the Australian market despite not having the same integrated supply chain or technology. Furthermore, the cost to make would have been further lowered by a higher production volume, making the Australian Industry more competitive in the absence of dumping. On this basis, while the Australian Industry could have potentially even further lowered its cost base if it had the integrated supply chain and more efficient technology, the injury experienced by Australian Industry was not caused by these factors.

8.13.2 Comsteel not collaborating effectively with its customers

In its submission of 26 July 2018, MOFCOM noted Rio Tinto's claim that it had raised process-based inefficiencies with Comsteel and had offered to assist Comsteel in improving efficiencies and quality. MOFCOM stated that it struggled to see how an allegation of injury and causation could be made against the importers based on the alleged price of the imports, when Comsteel appears to have been unwilling to achieve the better efficiencies and product quality that the customers demand.

The submission argues that an Australian industry is not entitled to a remedy for material injury caused by dumping if it has not conformed to its customers' requests to achieve greater efficiencies and lower pricing. In the SEF, the Commission stated that, while noting that Comsteel defends its record as a manufacturer seeking to improve its performance and efficiencies, the Commissioner stated in the SEF that he does not consider that this is an issue relevant to the question of whether dumping has caused material injury to the Australian industry. The Commission has also conducted an analysis at **Confidential Appendix 9** and found that in a clear majority of transactions analysed during the investigation period, once the dumping margin is accounted for, Comsteel's price would have been lower than the price of imports. Issues relating to product quality are discussed at section 8.13.4 below.

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In its response to the SEF, the GOC stated that the Commission's assessment of this issue demonstrated little nuance for complex business decision-making, tender conditions, and the belief and behaviours of customers. It stated that Comsteel had made commercial decisions to ignore the feedback of its customers and did not make recommended changes that would affect its quality and price to satisfy the needs and concerns of its customer.

As a result of not doing so, the GOC said that Comsteel did not preserve or enhance its customer relationship and was treated less favourably by its potential customer as a result, making it less competitive in the tenders concerned. Comsteel's failure to address customer concerns must be considered in the Commission's analysis and is not "an issue irrelevant to the question". The GOC stated that, the best evidence of those concerns is from those who are central to this investigation, namely the customers themselves.

The Commission understands the GOC's point that a company's decision to purchase dumped goods after unsuccessfully seeking to assist the local supplier offer a lower price could be viewed in the context of customer relations between the parties. However, when achieving a lower price is evidently the motivation behind the purchasing decision, it is difficult not to characterise the purchasing of dumped goods in these circumstances as injury caused by dumping. As discussed above, in many circumstances the railway wheels offered for sale by the Australian industry would have been priced lower than imports, had the imported railway wheels not been at dumped prices.

8.13.3 Reciprocal commercial arrangements

Rio Tinto submitted that it considered it to be strategically important to forge strong and enduring business relationships with Chinese entities through reciprocal commercial arrangements. In 2017, Rio Tinto's sales to China represented a significant proportion of the company's consolidated sales revenue.

The Commissioner notes that Comsteel has been a longstanding supplier of railway wheels to Rio Tinto, notwithstanding Rio Tinto's commercial arrangements with China. The Commissioner was not provided with any documentary evidence to show that this consideration was a factor in Rio Tinto's decision to purchase the dumped goods.

8.13.4 Quality and wheel failures

During the investigation, two major users of railway wheels in Australia, Rio Tinto and BHP, raised issues related to railway wheels produced by Comsteel that had cracked while in operation on their railways. The two other customers or potential customers of railway wheels in Australia in the investigation period, FMG and Roy Hill, did not make any submissions to the Commission on the quality of the Australian railway wheels in comparison to the imported wheels.

Rio Tinto submissions

During the Commission's visit to Rio Tinto, Rio Tinto advised that all the railway wheels it purchases meet the micro-alloy AAR D specification and were quite similar. It stated that both Masteel and Comsteel wheels adequately met the specifications required by Rio Tinto, although the Masteel wheels were exhibiting a slightly better wear rate than the Comsteel wheels.

Also during the visit, Rio Tinto stated that it had experienced nine incidents of Comsteel wheel failures in 2016 involving the cracking or shattering of wheel rims. Rio Tinto said

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that it had worked with Comsteel to minimise the risk of further problems by removing the wheels from service earlier.

In its submission of 5 June 2018⁵⁸, Rio Tinto claimed ‘there are real differences between Comsteel’s railway wheels and those imported from overseas which Rio Tinto submits have contributed in the past to, and still contribute towards, the rationale of its product selection, and any injury which the Australian industry has allegedly suffered’⁵⁹.

Rio Tinto stated that it had experienced issues with Comsteel’s railway wheels in respect of ‘shattered rim events’ that occurred in 2016 and resulted in an investigation and testing of Comsteel wheels manufactured in 2006 and 2007. The company stated that it was still managing the risk of shattered rims affecting the Comsteel wheels by removing ‘at risk’ wheelsets annually. Rio Tinto stated that it had not encountered any similar event with wheels purchased from Masteel.

In its supplementary submission of 11 June 2018, provided to the Commission with documentation associated with Rio Tinto’s 2017 tender process, Rio Tinto stated that it continued to have a meaningful relationship with Comsteel and had benefited from changes Comsteel had made to its supply model at Rio Tinto’s request. Rio Tinto maintained, however, that Comsteel, who enjoyed for an extended period a monopolistic position in the market, was ultimately unable to adapt to its changing needs, including in relation to pricing and non-pricing requirements such as safety concerns about packaging and shattered rims.

In a submission dated 5 September 2018, Rio Tinto stated that the non-price issues, including the Comsteel wheel failures, were legitimate factors that contributed significantly to Rio Tinto’s decision to purchase railway wheels from an alternative supplier. It stated that these factors were relevant to the ultimate tender outcome and remained relevant to Rio Tinto’s ongoing procurement decision-making and that these issues were, therefore, material causes of injury to the Australian industry not related to dumping or subsidisation.

Rio Tinto stated that it might not have reconsidered the sourcing of its railway wheels if the shattering of the rims had been an isolated event. It stated that it had experienced a number of shattered rim events in relation to Comsteel’s wheels since the beginning of 2016. Rio Tinto rejected Comsteel’s assertion that the failures were due to Rio Tinto neglecting its maintenance schedule adherence due to budget and operational pressures.

Rio Tinto stated that it relied on the analysis contained within the ‘Review of reports on ore wagon wheel rim cracking’ produced by Marais Consulting Engineers dated 10 July 2017 (Marais Report) to inform its decision to move away from Comsteel as its preferred supplier.

Rio Tinto also stated that it agreed with BHP’s submission that using scrap steel in an ingot casting process (as is used by Comsteel) will always be inferior to the continuous casting process using iron ore feedstock as used by Masteel⁶⁰.

⁵⁸ Rio Tinto submission dated 5 June 2018 – Document 009 on the EPR, p31

⁵⁹ Rio Tinto submission dated 5 June 2018 – Document 009 on the EPR, p26

⁶⁰ The Commission established that Masteel actually uses a combination of scrap and molten iron produced from iron ore to produce steel for its railway wheels.

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Rio Tinto further claimed that due to the identified defects with Comsteel's wheels, it was required to remove a large number of wheels from service and continuously monitor the wheels in operation at considerable cost to the business. It claimed that this was also a material factor in its decision to source future supply from an alternative supplier.

Rio Tinto repeated that it had had no rim shattering events with Masteel's wheels of a similar service life. It provided data recently collected by Rio Tinto to show that condemned Masteel wheels of a similar age to the Comsteel cracked wheels had not suffered from cracking.

Rio Tinto provided:

- the Marais Report, dated 10 July 2017, prepared by a consulting engineering company into the cracked wheels,
- correspondence with Comsteel regarding the problems;
- a powerpoint presentation dated January 2017 on the options for measures to counter the shattered rim problems;
- three reports into three of the cracked wheels undertaken by independent consultant ALS Industrial; and
- a spreadsheet summarising data on Masteel wheels scrapped over a three week period.

The Commissioner also had regard to Rio Tinto's 'Sourcing Strategy for Wagon Wheel Supply' and Recommendation to Award – Award of 2 Year Ore Car Wheel Supply Contract'.

Comsteel response to Rio Tinto

Comsteel stated in its submission of 10 July 2018 that it was aware of and participated in the investigation of cracked wheels in 2016 undertaken by Rio Tinto and an independent investigator engaged by Rio Tinto. Comsteel claimed that certain factors relating to wheel failure were inherent in the loading and operation of the carriages and that these factors needed to be mitigated by regular maintenance and a discipline for maintenance intervals as the wheels reached the end of their useful life.

Comsteel claimed that maintenance issues were contributors to the Rio Tinto wheel failures and that the failures were prevalent due to the backlog of maintenance resulting from a rapid growth in its fleet numbers and delay in installing onsite workshop capacity. It said that budget and operational pressures experienced by Rio Tinto had further reduced maintenance schedule adherence. It claimed that it discussed a management plan to ensure thin-rimmed high-risk wheels were mitigated whilst deferring maintenance through to the following financial year due to Rio Tinto's budget constraints.

Comsteel stated that it had assisted Rio Tinto in identifying reasons for the wheel failures and recommended suitable strategies to ensure regular maintenance or non-destructive testing to prevent further incidents.

In relation to Rio Tinto's claim that it had not experienced the same problem with Masteel's wheels, Comsteel believed that Masteel wheels of a similar age would have been made of a different steel grade that is more sympathetic to subsurface fatigue but has a shorter life due to its wear characteristics.

BHP submissions

During the Commission's visit to the company, BHP claimed that its original decision to seek an alternative supplier in the late 1990s was due to quality concerns with wheels

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supplied by Comsteel. BHP advised that these quality issues were so serious that Comsteel was suspended as a supplier of railway wheels. BHP advised that the quality issues were eventually addressed but it took over 2 years before Comsteel was re-qualified to supply wheels. This claim was again reiterated in its submission of 12 September 2018⁶¹.

BHP advised that it conducts a qualification process for suppliers which includes regular audits of manufacturing processes and quality. It stated that all suppliers must be qualified before they are invited to bid in a tender process. To pre-qualify, manufacturers are required to complete a suite of tests and provide evidence of compliance with BHP's specification requirements. BHP also audits suppliers of critical components periodically.

For its railway wheel tender process that commenced in September 2016 (which determined the supplier of the majority of BHP's wheel purchases in the investigation period) Comsteel, Masteel and Valdunes were pre-qualified suppliers and were invited to bid. Valdunes was the successful bidder in this tender. BHP found that while Comsteel could deliver the required volumes, it could not compete on price.

In September 2017, BHP commenced another tender process for the purchase of railway wheels for the remainder of the 2017/18 financial year. Again, Comsteel, Masteel and Valdunes were invited to tender, although Valdunes was subsequently excluded from consideration because it had changed its steel input sourcing and the new arrangement was being reviewed by BHP before the French supplier's pre-qualification could be reinstated. Masteel was the successful tenderer, offering the lowest pricing.

BHP claimed that it had experienced eight Comsteel wheel failures since January 2016. BHP claimed that five of these broken wheels were the result of 'subsurface defects', where small inclusions in the steel grow through cyclic loading until they break out onto the tread and rims surface. BHP submitted that the presence of these inclusions was the result of Comsteel's feedstock and manufacturing process. BHP claimed that the ingot-casting method used by Comsteel to produce its feedstock required a high degree of care to ensure acceptable steel quality.

BHP claimed that the modern alternative process of continuous casting used by Masteel and Valdunes allowed the segregation of impurities to be much more controllable and ensured that the material quality, particularly the material that will end up in the rim of the wheel, was of high quality. According to BHP, the continuous casting process reduces the amount of inclusions (impurities) in the steel. BHP claimed that this has resulted in a better quality of wheel and a longer lifespan for wheels manufactured by Masteel and Valdunes. BHP rejected the claim by Comsteel in its application that its wheels have a longer life in comparison to Masteel wheels, and provided the Commission with its own analysis of wear rates that it claimed demonstrates a high wear rate for Comsteel wheels. BHP further advised the Commission that it had worked with Comsteel to improve the manufacturing process and that due to the way Comsteel wheels are made they believe there is not much more that can be done to improve quality.

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 that this type of failure had occurred with all wheels across the fleet including those supplied by Comsteel and other suppliers. BHP noted that the Masteel wheels had been in service on its railway for only 7 years but that

⁶¹ BHP submission dated 18 September 2018 – Document 050 on the EPR

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the Valdunes wheels had been used since the mid-1990s and had not suffered similar problems.

BHP outlined the mitigation strategies it had introduced to reduce the risk of derailment due to broken or cracked wheels.

In a further submission dated 25 July 2018, BHP provided a chronology of its tenders and the incidents of wheel failure.

The Commission asked BHP if the wheel failures were a factor in the decision to not award the tendered wheel volumes to Comsteel. During the visit by the Commission, 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 Commission's visit to BHP, the company clarified that quality and the wheel failures had not been a key consideration in its 2017 tender process only because Comsteel were not in contention for the award, because their pricing was not competitive. BHP further revised its advice on this point in a submission dated 25 July 2018 but advised that this clarification was confidential (discussed further in **Confidential Appendix 10**).

In its submission of 11 September 2018⁶², BHP further claimed that injury to the Australian industry was due to changes in the pattern of consumption of its goods as a result of the quality difference between Masteel and Comsteel.

BHP provided:

- reports of the metallurgical examination of eight cracked Comsteel wheels by ALS Industrial, a company providing metallurgical testing services; and
- email correspondence between Comsteel, BHP and ALS Industrial (all dated in early 2018) relating to the cracked wheels.

The Commissioner also had regard to information provided by BHP in response to a request for any documents relating to the assessment of the tenders conducted by BHP in late 2016 and 2017 relating to the procurement of railway wheels. This information was:

- Invitation for Request for Quotation form for BHP's 2017/18 financial year requirements;
- contract change forms for the award of the tenders to Valdunes and Masteel;
- BHP's Request for Quotation response analysis for the two tenders.

Comsteel's response to BHP

Comsteel rejected BHP's claim that it was suspended as a supplier in the 1990s, claiming that it continuously supplied railway wheels to BHP throughout the decade. It provided records of supply purporting to show that it supplied BHP in each year of the 1990s⁶³.

Comsteel stated that its change to using 'fluted' ingots in its production process in 1996 was driven by a change in BHP's specification that was developed in conjunction with the Institute of Rail Technology, BHP and Comsteel. Comsteel claimed that it had always met the BHP specification, which included a lowering of the ultrasonic inclusion size from the 1.6mm specified in the relevant AAR standard, to 1.0mm to assist in reducing subsurface fatigue.

⁶² BHP submission dated 11 September 2018 – Document 049 on the EPR

⁶³ Comsteel submission dated 14 August 2018 – Confidential Attachment 1 – Document 036 on the EPR

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In relation to the wheel failures experienced by BHP in 2016, Comsteel claimed that, like Rio Tinto, BHP accepted higher risk maintenance and operating tactics to delay expenditure, in order to improve its cash flow position. Comsteel claimed that BHP deferred maintenance to its ore car fleet due to major workshop capacity investments being deferred.

Comsteel claims that BHP first raised the wheel failures as a quality issue on 28 June 2018 and shortly after wrote to Comsteel advising that it would be issuing Comsteel with a 'non-conformance report'. Comsteel claimed that BHP was seeking to cast an element of doubt over Comsteel's previously unquestioned supply capability in order to discredit Comsteel's reputation as a supplier of quality goods and avoid dumping duties. Comsteel provided copies of correspondence with BHP surrounding contract discussions in 2018, noting that the correspondence did not raise any quality issues and focused on price⁶⁴.

Comsteel rejected any suggestion that the issues experienced by BHP were the result of its manufacturing process. It disagreed with BHP's claim that the continuous casting method used by Masteel produced a lower level of impurities. It claimed that the ingot technology it employed was preferred by the world's premium wheel manufacturers, which manufacture high specification wheels for high speed passenger trains. Comsteel provided test results from an independent industry body showing similar steel cleanliness results for a number of manufacturers, including Chinese producers using continuous cast processes⁶⁵.

Comsteel claimed that evidence available to it showed that BHP had experienced wheel cracking involving the wheels of other manufacturers and that this supported the view that operational issues had caused the wheels to crack⁶⁶.

Comsteel submitted that it had continued to develop and implement a program of continuous improvement for railway wheels, refining ingot design, raw material inputs, refractories, steel making practices and forging dies to produce wheels with less impurities. It stated that it had, at all times, supplied BHP with wheels conforming to BHP's own specification.

MOFCOM comments

In its submission of 26 July 2018, MOFCOM noted Comsteel's lack of success in tenders conducted by Rio Tinto and BHP and the quality issues raised by both companies in relation to Comsteel's wheels.

Masteel comments

In its submission of 23 August 2018, Masteel observed that any issues Comsteel has with its customers will not be remedied by the imposition of antidumping duties and that it is not a matter for the Commissioner.

⁶⁴ Comsteel submission dated 14 August 2018 – Confidential Attachments 4, 5 & 6 – Document 036 on the EPR

⁶⁵ Comsteel submission dated 14 August 2018 – Confidential Attachment 2 – Document 036 on the EPR

⁶⁶ Comsteel submission dated 14 August 2018 – Confidential Attachment 3 – Document 036 on the EPR

Valdunes comments

In its submission of 2 October 2018, Valdunes claimed that manufacturing railway wheels using the continuous casting process results in the elimination of ‘inclusions’ (impurities) that taint steel produced using Comsteel’s ingot casting method. In response to Comsteel’s claim that it was unlikely that BHP had any wheels made using the continuous casting process that were of the same age or had experienced the same operating conditions as its wheels, Valdunes reminded the Commissioner that it had been pre-qualified by BHP for close to thirty years. Valdunes supported BHP’s claim that BHP was the only party in a position to provide the Commission with reliable evidence as to the quality, functionality and commercial substitutability of the railway wheels in the context of its railway operations.

Valdunes referred to the alleged suspension of Comsteel as a supplier to BHP in the mid-1990s and BHP’s claims that its experience with wheel breakages had shown that changes to Comsteel’s manufacturing processes had been unsuccessful in improving steel cleanliness.

BHP submission in response to the SEF

BHP submitted that, in the course of the investigation, Rio Tinto and itself had provided extensive information to the Commission concerning quality issues with the railway wheels produced by Comsteel. BHP objected to the conclusion in the SEF that there was a lack of evidence to support the claim that quality concerns were the cause of injury suffered by the Australian industry.

BHP stated that it had confirmed on a number of occasions that Comsteel’s wheel quality influenced its purchasing decisions in 2017 and that it does not create ‘contemporaneous evidence’ detailing every aspect of its procurement decisions in the expectation that it will be called upon to justify those decisions to third parties at a later time.

EC submission in response to the SEF

In its submission of 30 October 2018, the EC claims that besides price, quality is a major criteria for winning or losing tenders in this sector. It further claims that Australian industry’s quality and packaging issues appear to have been more problematic than the Commission has acknowledged.

The Commissioner’s assessment

During the investigation, the Commission extensively examined the claims of interested parties regarding the quality of the railway wheels made in Australia. It is common ground between Comsteel, Rio Tinto and BHP that a number of Comsteel’s wheels in operation on Rio Tinto’s and BHP’s railways suffered cracking, including prior to tender processes that determined sales in Australia in the investigation period.

The Commissioner also understands that it is also common ground that, while the wheels that failed represented a very small proportion of the Comsteel wheels in service, wheel failures of the kind that occurred are a serious matter for the mining companies in terms of safety and the efficient operation of the railways. The seriousness with which the companies view such events is demonstrated by the exacting wheel specification and design requirements imposed by the mining companies, their scrutiny and approval of potential suppliers, the monitoring of the condition of the wheels and the extensive investigation into wheel failure events.

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The Commissioner's focus was to identify any evidence showing that the decisions of Rio Tinto and BHP to purchase the dumped goods in the investigation period were caused, or predominantly caused, by factors other than price, and, in particular, concerns about the quality of the Australian-made wheels.

BHP employs a system whereby it pre-approves suppliers prior to procurement or tender processes following a detailed assessment of such factors as the supplier's production procedures, raw material sourcing and ability to meet the required specifications. BHP advised that, for its railway wheel tender process conducted in late 2016, Comsteel was a pre-approved supplier and the successful supplier was chosen on price. This is the tender that governed the majority of BHP's railway wheel purchases in the investigation period and for a quantity of 6,000 wheels, representing approximately 28 percent of the Australian market in 2017. The Commissioner considers that the loss of these sales by Comsteel represented, of itself, material injury to the Australian industry and that there is no question that this injury was caused by dumping and not other factors.

The Commissioner examined a considerable amount of material provided by Rio Tinto, BHP and Comsteel on the wheel failures. It examined this material not seeking to determine the cause of the wheel failures (which is in dispute between the parties and not an issue for the Commission to resolve) but to assess whether the material supported claims, for which there appeared to be no contemporaneous documentary evidence, that the dumped goods were purchased because of their superior quality and not because of their price.

As much of the relevant material was provided to the Commission in confidence, a discussion of that material is at **Confidential Appendix 10**. In summary, the Commissioner found that there was a lack of evidence to support the claim that quality concerns were the cause of injury suffered by the Australian industry in the investigation period. As set out in **Confidential Appendix 10**, the available evidence indicates that price was the key factor in the purchasing decisions.

Reports provided by Rio Tinto and BHP documenting independent investigations into the wheel failures do not reach any negative conclusions about the standard of the Comsteel wheels and appear to support the view that a number of factors, including maintenance practices and wheel condemnation policies, have the potential to cause or contribute to wheel failures. There was no evidence to support claims that Comsteel's steel manufacturing process was inherently inferior to that of the overseas suppliers, or that this was a factor in the decisions of the mining companies to purchase the dumped goods.

The Commission asked both Rio Tinto and BHP to provide any contemporaneous evidence, in the form of internal communications or records, demonstrating that the wheel failures had influenced their purchasing decisions. Neither provided evidence in response to these requests. In a teleconference with the Commission, Rio Tinto claimed that its regard to these factors could be logically inferred from its general concerns about innovation and quality. In its submission dated 31 October 2018, BHP reiterated that as Comsteel's price was not competitive there was no need to create documentary evidence that it would not have chosen Comsteel as a supplier in any event because of quality concerns.

The Commissioner does not agree with these views. Despite criticisms of Comsteel's wheel quality, wear rates and packaging, Rio Tinto continues to purchase railway wheels from Comsteel. In the case of BHP, it is undisputed that the 2016 tender was based on

price. The Commission notes the absence of evidence linking the 2017 tender to quality concerns, and that the documentary evidence provided for this tender infers that it was also based predominantly on price. As described above, in the absence of dumping, Comsteel's wheels would have been competitive on a price basis.

Taking into account the evidence available to the Commissioner on factors influencing the decision to purchase dumped railway wheels in the investigation period, the Commissioner is not satisfied that wheel quality or performance was a factor that caused injury to the Australian industry.

8.13.5 Packaging and efficiency

In its submission of 5 June 2018, Rio Tinto claimed that one of the quality issues it considered to be significant in its procurement decision-making is the packaging efficiency of the goods. Rio Tinto stated that it considered Masteel's packaging to be superior to Comsteel. It claimed that the Masteel packaging approach reduced manual handling, double handling and forklift movement, resulting in a safer working environment.

Rio Tinto provided evidence of two injuries to staff incurred in the last 12 months associated with the unpacking of Comsteel's wheels. Rio Tinto claimed that it had on numerous occasions made genuine attempts to engage and work collaboratively with Comsteel to improve its packaging. The company stated that Comsteel had, to date, failed to create what Rio Tinto considers to be a suitable packaging solution to eliminate or mitigate the safety risks or more generally improve its packaging processes.

Comsteel response

Comsteel claimed that Rio Tinto first raised wheel packaging concerns with them in December 2017, eight months after Rio Tinto's decision to use an additional source of supply for its wheel requirements. Comsteel submitted that it worked with Rio Tinto to resolve the safety issues with changes to daily procedures and work safe methods.

Comsteel claims to have met with Rio Tinto representatives in April 2018, and that during that meeting Rio Tinto accepted Comsteel's response to the packaging safety concerns. Comsteel stated that it had worked with Rio Tinto in an urgent and systematic manner to resolve the concerns. Comsteel refuted Rio Tinto's claim that the injury Comsteel had experienced was due to packaging issues and not due to the dumping of the railway wheels.

Valdunes' comments

Valdunes stated that, like Rio Tinto, it had been concerned with packaging safety and efficiency throughout the market it services and that it was always developing innovative, safer and more efficient packaging solutions.

The Commissioner's assessment

The available evidence does not indicate to the Commissioner that issues with packaging caused the injury experienced by Comsteel in the investigation period. Alternative forms of packaging do not feature in documentation relating to Rio Tinto's decision to source imported railway wheels. The timing of the emergence of the issue indicates to the Commissioner that it was more likely a reaction to the packaging of the dumped goods rather than a primary reason that the imported goods were purchased.

8.13.6 Wheel life and wear rates

Rio Tinto and BHP each submitted that the wear rate for Comsteel's wheels is higher than wheels supplied by overseas suppliers. Rio Tinto provided an internal report comparing wear rates for Comsteel wheels and two types of Masteel wheels, showing that one type of Masteel wheel demonstrated the lowest wear rates.

Relative wear rates of the wheels do not appear to have been a factor driving purchasing decisions that affected sales of wheels by Comsteel in the investigation period. Notwithstanding the claims of lower wear rates of imported wheels, the available evidence does not show that wear rates were a factor that caused injury to the Australian industry.

8.13.7 The impact of the iron ore market

The quantities of iron ore mined and the price of iron ore are factors that have the potential to impact on the demand for railway wheels. As more iron ore is sold and hauled, more railway wheels are required for maintenance of an increasing number of carriages. Lower iron ore prices, such as those experienced by Australian mining companies in 2014 and 2015, resulted in cost pressures on Australian iron ore producers. During this time, customers reduced maintenance spend, consumed contingent wheel stocks and used second-hand redundant wheels in general maintenance.

In 2016, rising iron ore sales quantities and prices saw railway wheel demand increase significantly compared to 2014 and 2015. Total annual demand rose again in 2017, compared to 2016. The Commissioner's view is that the iron ore market is not a factor that has caused injury to the Australian industry producing like goods in the investigation period.

8.13.8 Production and sale of other types of wheels

Railway wheel manufacturing involves significant fixed costs and changes in overall throughput have the potential to significantly impact on unit costs across all production, including like goods. The Commissioner examined Comsteel's production volumes of wheels that are not like goods to the goods under consideration and found that the production volumes were reasonably consistent through the injury analysis period. The Commissioner's view is that production volumes of other goods did not contribute to injury to the Australian industry producing like goods.

8.13.9 Sales of wheel sets

In some cases, Comsteel supplies customers with a 'wheel set', consisting of a new or reconditioned axle and two wheels. The Commissioner does not consider that a wheel set is a like good but recognises the sale of wheels in sets has the potential to impact on sales of like goods. For example, an increase in demand for 'wheel sets' could reduce the demand for sales of loose wheels.

Comsteel provided information to the Commissioner on its sales of wheel sets over the injury analysis period. Based on this information, the Commissioner's view is that the pattern of sale of wheel sets by Comsteel is not a factor that caused injury to the Australian industry in the investigation period.

8.13.10 Exports by Comsteel

In the injury analysis period, Comsteel exported like goods to be fitted to new iron ore railway carriages, with the new carriages subsequently imported into Australia. The

demand for such exports by Comsteel is irregular, being dictated by the mining companies' new iron ore carriage requirements and Comsteel being successful as the supplier of wheels for the new carriages built overseas.

In its submissions dated 11 September 2018⁶⁷ and 31 October 2018, BHP claimed that injury experienced by Comsteel as a result of the decline in the performance of its export business cannot be causally linked to the imported wheels.

The Commission's analysis of the injury suffered by the Australian industry in terms of volume, price, profits, profitability and other economic factors is based on Comsteel's performance on the Australian market. Comsteel has achieved irregular export sales in the circumstances described above. However, the absence of these sales in the investigation period does not diminish the materiality of the injury suffered by the Australian industry in the Australian market where it was unsuccessful in competing with dumped imports. The Commissioner is of the view that the pattern of exports experienced by Comsteel is not a factor that diminishes the injury that has been caused by the dumped imports.

8.14 Conclusion – factors other than dumping causing injury

Following the analysis of evidence provided to support each of the non-price factors examined above, the Commissioner is satisfied that the procurement decisions by Comsteel's customers were predominantly based on price. Comsteel was unsuccessful in competition with imports at dumped prices. In the absence of dumping Comsteel would have been competitive against import competition on price. It is the purpose of the anti-dumping system to address material injury caused to an Australian industry by the dumping of exports to Australia. The Commissioner is satisfied in this case that the dumping, and not other factors, has caused material injury to the Australian industry.

8.15 Materiality of injury caused by dumping

In assessing the materiality of injury caused by dumping, the Commissioner had regard to the size of the market and the volumes that Comsteel has been unable to secure in competition with dumped imports. In addition, the Commissioner found that the lost sales volumes resulted in adverse effects on Comsteel's profit and profitability, ROI, employment numbers and revenue.

As stated above, the Commissioner is satisfied, on the available evidence, that the dumping in and of itself caused material injury to the Australian industry in the investigation period.

The Commissioner considers that Comsteel suffered lost sales volumes in relation to all of the sourcing decisions taken by Australian consumers for railway wheels purchased in the investigation period. The Commissioner is satisfied that Comsteel's loss of the BHP tender to the dumped goods in late 2016 was, in itself, a source of material injury to the Australian industry because of the volume of railway wheels represented by the tender. BHP advised the Commission and the evidence shows that the late 2016 tender, which determined its supplier of railway wheels in the investigation period, was determined on an evaluation of prices offered by pre-qualified suppliers. The BHP tender represented 6,000 railway wheels, some 28 percent of the estimated Australian market in the investigation period. In the Commissioner's view, this alone provides a causative link

⁶⁷ BHP submission dated 11 September 2018 – Document 049 on the EPR

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between the dumping and material injury to the Australian industry in the investigation period. In addition, the Commissioner is satisfied that Comsteel also lost sales volume in relation to the other supply contracts relevant to supply of railway wheels in the investigation period due to the dumping, and these further lost sales volumes only add to the materiality of the injury caused by dumping.

The Commissioner's view is that the injury experienced by Australian industry caused by the dumping is material

8.16 Findings

Based on the Commissioner's verification of Australian industry's injury claims and the dumping margin calculations, the Commissioner considers that there are sufficient grounds for the publication of a dumping duty notice. The Commissioner finds that injury to the Australian Industry was caused by the dumping of the goods, and has been experienced in the forms listed in section 7.9 above.

In light of these findings, and in accordance with section 269TG(1), the Commissioner is satisfied that where securities have been taken following the making of a PAD (refer to section 2.3), material injury to an Australian industry producing like goods would or might have been caused if the securities had not been so taken.

9 WILL DUMPING AND MATERIAL INJURY CONTINUE?

9.1 Finding

The Commissioner is satisfied that exports of railway wheels from China and France in the future may be at dumped prices, and that continued dumping may continue to cause material injury to the Australian industry.

9.2 Introduction

Subsection 269TG(2) provides that where the Minister is satisfied, among other things, that dumping may continue and because of that material injury to an Australian industry producing like goods has been caused or is being caused, anti-dumping measures may be imposed on future exports of like goods.

9.3 Will dumping continue?

9.3.1 Quantitative analysis

The Commissioner's dumping analysis found dumping margins of between 17.4 per cent and 37.2 per cent for exporters of railway wheels to Australia during the investigation period.

The Commissioner notes that railway wheels continue to be imported from the nominated countries.

The Commissioner examined import volumes from the Australian Border Force (ABF) import database occurring during and following the end of the investigation period. The Commissioner observes that:

- import volumes from China increased significantly between 2015 and 2017;
- import volumes from France recommenced in 2017; and
- import volumes from the subject countries continued in 2018.

The Commissioner further observes that the weighted average free-on-board (FOB) export price from China calculated using the ABF import database dropped during the investigation period.

9.3.2 Qualitative analysis

In addition to the quantitative analysis above, the Commissioner notes that the market for railway wheels has grown since 2015 with further growth expected as investments of railway wheels purchased 8-12 years previously come to the end of their useful life. The Commission's analysis of tender documentation has demonstrated that procurement decisions are based predominantly on price (in comparison with dumped imports), causing Australian industry to suffer injury in a growing market. In the absence of duties, it is expected that Australian industry will continue to suffer injury through loss of tenders in comparison with dumped imports.

Based on the magnitude of dumping margins found, the quantitative analysis and the qualitative analysis, the Commissioner considers that dumping may continue if anti-dumping measures are not imposed.

9.4 Will material injury continue?

The Commissioner reviewed the Australian industry's performance over the injury analysis period and made a finding that railway wheels exported to Australia at dumped prices from the nominated countries caused material injury to the Australian industry.

The Commissioner considers that the continuation of price competition from dumped imports from the nominated countries is likely to have a continuing adverse impact (e.g. price undercutting and loss of sales volumes) on the Australian industry, particularly if volumes from the nominated countries were maintained or increased.

In its submissions of 4 and 10 October 2018, the CCCME referred to a 1992 report by the Anti-Dumping Authority⁶⁸ on the issue of 'tender dumping'. The CCCME stated that it was evident from the report that any injury that may have been suffered would have occurred at the time of the awarding of a tender and no further injury could be caused to Comsteel after it was not awarded a tender.

The circumstances that the Anti-Dumping Authority was considering in its examination of 'tender dumping' were where an Australian purchaser wishes to buy a very large and complex piece of equipment which might take months or years to build (the Anti-Dumping Authority gave the example of an electrical transformer). The issue considered by the Anti-Dumping Authority was how Australia's anti-dumping system might address these circumstances, considering that the Australian industry might suffer injury at the time the tender is lost to an overseas supplier offering dumped prices, and placing a dumping duty on the goods months or years later.

The issues canvassed by the Anti-Dumping Authority in its tender dumping report have little application to the circumstances of the railway wheels case. Tender processes for the supply of railway wheels have a history of being conducted regularly and are typically not subject to exclusivity arrangements. The Commissioner therefore considers that the report on tender dumping is not relevant to this investigation.

9.5 Commissioner's assessment

Based on the available evidence, the Commissioner considers that exports of railway wheels from the subject countries in the future may be at dumped prices. The Commissioner finds that the Australian Industry has been injured has been materially injured by the dumping, and that such continued dumping may cause further material injury to the Australian industry.

⁶⁸ The Anti-Dumping Authority was a body that formed part of Australia's anti-dumping administrative arrangements in the 1980s and 1990s.

10 NON-INJURIOUS PRICE

10.1 Finding

For exports from China and France, the NIP is above the normal value and therefore the lesser duty rule does not come into effect.

10.2 Introduction

Interim dumping duty (IDD) may be applied where it is established that dumped imports have caused material injury to the Australian industry producing like goods. The level of IDD imposed by the Minister cannot exceed the margin of dumping.

Where the Minister is required to determine IDD and the NIP of the goods is less than the normal value of the goods, the Minister must have regard to the 'lesser duty rule' in accordance with subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), unless one of the exceptions in subsection 8(5BAA) of the Dumping Duty Act applies.

The NIP is relevant to the application of the lesser duty rule.

10.3 Calculation of the NIP

Under subsections 269TACA(a) and 269TACA(b), the NIP of the goods exported to Australia is the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance to the Australian industry caused by the dumping of the goods.

The Commissioner generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commissioner's preferred approach to establishing the USP, as outlined in chapter 23 of the Manual, observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commissioner then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

10.4 Submissions received

Comsteel submitted⁶⁹ that the USP should be determined using its average selling prices in the calendar years from 2014 to 2016. It claimed that although domestic selling prices of the goods were influenced by import prices in 2016, Comsteel experienced injury in the form of lost sales due to the undercutting of its prices.

⁶⁹ Comsteel submission dated 14 June 2018 – Document 024 on the EPR

10.5 The Commissioner's assessment

The Commissioner notes that Comsteel's raw material costs increased between 2016 and 2017. The Commissioner considers that in a market unaffected by dumping, Comsteel should have been able to increase its prices to reflect this raw material cost increase and that the USP should therefore be calculated as the Australian industry's CTMS in 2017 plus the percentage profit achieved by Comsteel in 2016, when the market was unaffected by dumping.

The Commissioner compared the NIPs with the calculated weighted average normal values of exporters from China and France. The Commissioner determined that the NIPs were not less than the normal values. As a result, the NIP should not be the operative measure for exports from China and France.

Accordingly, the Commissioner recommends that measures be imposed in relation to railway wheels exported to Australia from China and France at the full dumping margins.

The Commissioner's calculation of USP and NIP is at **Confidential Appendix 11**.

10.6 Determination

For all exports from China and France, the NIPs are above the normal values and therefore the lesser duty rule does not come into effect.

11 ANTI-DUMPING MEASURES

11.1 Finding

The Commissioner recommends to the Minister that measures be imposed in respect of dumping duty for China and France using the combination duty method (i.e. the combination of fixed and variable duty).

11.2 Form of measures available

In relation to IDD, the methods that the Minister may utilise to work out the duty are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

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

11.3 Submissions received during the investigation

Comsteel submitted⁷⁰ that the combination method of anti-dumping measures represents the most effective method of addressing the injurious effects of dumping. It stated that this method takes account of the dumping margins determined during the investigation period, as well as the ascertained export price determined for the exporter across the investigation period.

Comsteel stated that the floor price method was not a sufficient deterrent against dumping, particularly in a rising market and that measures based upon the ad valorem method are readily circumvented as the exporter can reduce the export prices to Australia to absorb the impact of the measures.

In its submission of 24 July 2018, the CCCME claimed that the Commissioner was under a statutory obligation to investigate whether it was in the public interest for the Minister to impose anti-dumping measures. The CCCME submitted that it would not be in the public interest to impose measures in this case as it claimed Comsteel's ultimate parent company is a US-based private equity firm located in the Cayman Islands, a well-known tax haven.

The CCCME claimed that the Commissioner should pay due consideration to the negative impacts of anti-dumping measures on downstream industries and the general public in Australia and decide whether it is in Australia's national interest to afford tariff protection to maintain a monopoly position of the Australian industry and tax benefits for the Australian industry and its parent company at the cost of downstream industries and the Australian economy.

Comsteel claimed that it was a long-established manufacturer of quality railway wheels in Australia. It submitted that it would not be in the national interest for overseas supply to replace the Australian manufacture of the goods that are recognised internationally as high quality, combined with the local investment in infrastructure and employment.

⁷⁰ Comsteel submission dated 14 June 2018 – Document 024 on the EPR

11.4 Submissions in response to the SEF

11.4.1 Rio Tinto

Rio Tinto submitted that, if the Commission continued to recommend the imposition of interim dumping duties, the only appropriate form of duties was the floor price method. It noted that the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013* (the Guidelines) stated that the floor price method prevents exporters from reducing their export prices in order to decrease the amount of duty paid. It also said that the floor price method limits the punitive effect of price increases, while still achieving the aim of addressing material injury caused by dumping. Rio Tinto stated that criteria for using the combination duty method, namely the likelihood of circumvention behaviour, complex company structures between related parties and price manipulation in the market, had not been established in this case.

11.4.2 Comsteel

Comsteel submitted that interim dumping duties based on the floor price method would be ineffective in a rising steel market. It noted that, where prices fall, the importer can seek a duty assessment to obtain a refund of excess interim dumping duty but that this was not possible where a shortfall of interim dumping duty is made in a rising market.

11.5 Commissioner's assessment

The Commissioner, in considering which form of measures to use, has had regard to the Commission's *Guidelines on the Application of the Form of Dumping Duty 2013* (the Guidelines), relevant factors in the railway wheel market and submissions received from interested parties.

The Guidelines set out issues to be considered when determining the form of duties. The various forms of dumping duty available all have the purpose of removing the injurious effects of the dumping however certain forms of duty will better suit particular circumstances. The Guidelines list the key advantages and disadvantages of each form of duty.

The floor price method can limit the negative effect of price increases in the goods that are associated with the ad valorem duty method. It acts to prevent price manipulation by the exporter such as where they artificially decrease their export price under the ad valorem duty method which would decrease the amount of duty paid. A disadvantage is that a floor price can quickly become out-of-date and in a rising market become ineffective. This duty method may not suit the situation where there are many models or types of good with significantly different prices.

The combination duty method is considered appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market. Conversely, the combination duty method is less suitable in circumstances where there are many model types of the goods with a wide price range or where a falling market exists.

The ad valorem duty method is one of the simplest and easiest forms to administer when delivering the intended protective effect, is common in other jurisdictions, is similar to other types of Customs duties, is suitable where there are many models or types or where the market prices of goods fluctuate over time. The ad valorem duty method may also

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require fewer duty assessments and reviews than other duty methods. However, the ad valorem duty method has a potential disadvantage in that export prices might be lowered to abrogate the intended effects of the duty.

The Commissioner considers that, in the railway wheels case, the combination fixed and variable duty method is the most appropriate form of duty. The various models of the goods are similar and do not exhibit a wide price range and a falling market does not presently exist. The Commissioner notes Rio Tinto's submissions favouring the floor price method but considers that the combination fixed and variable duty method provides greater assurance that the measures will not become out-of-date due to fluctuations in price driven by raw material costs and undermine the remedy provided by the measures.

Australia's anti-dumping legislation does not provide for the consideration of the public interest when assessing whether dumping or subsidisation has caused material injury to the Australian industry. The Commissioner acknowledges the issues raised by the CCCME but does not consider that these constitute reasons for not recommending that anti-dumping measures are appropriate in this case. Notwithstanding its ownership profile, Comsteel meets the legislative definition of an Australian industry and is therefore entitled to a remedy to injurious dumping.

12 RECOMMENDATIONS

The Commissioner is satisfied that:

- the dumping of railway wheels exported to Australia from China and France in the investigation period has caused material injury to the Australian industry producing like goods.

The Commissioner recommends the Minister **impose**:

- dumping duties on railway wheels exported to Australia from China and France.

The Commissioner recommends the Minister **be satisfied**:

For China

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of railway wheels exported to Australia from China by all other exporters to be ascertained under subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of railway wheels exported to Australia from China to be ascertained under the preceding provisions of section 269TAC (other than subsection 269TAC(5D)) for all other exporters;
- in accordance with subsection 269TAC(2)(a)(i), the normal value of railway wheels exported to Australia from China by Masteel cannot be ascertained under subsection 269TAC(1) because of the absence of sales of like goods in China that would be relevant for the purpose of determining a price under subsection 269TAC(1);
- the weighted average of export prices over the investigation period is less than the weighted average of corresponding normal values over that period and therefore, in accordance with subsection 269TACB(4):
 - that railway wheels exported to Australia from China is taken to have been dumped; and
 - the dumping margins for those goods is the difference between the weighted average of export prices during the investigation period and the weighted average of normal values during that period;
- in accordance with subsection 269TG(1) the amount of the export price of railway wheels exported to Australia from China is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods would have been caused if security under section 42 had not been taken;
- in accordance with subsection 269TG(2) the amount of the export price of railway wheels that have already been exported to Australia from China is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia from China in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused.

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For France

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of railway wheels exported to Australia from France by all other exporters to be ascertained under subsection 269TAB(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of railway wheels exported to Australia from France to be ascertained under the preceding provisions of section 269TAC (other than subsection 269TAC(5D)) for all other exporters;
- in accordance with subsection 269TAC(2)(a)(i), the normal value of railway wheels exported to Australia from France by Valdunes cannot be ascertained under subsection 269TAC(1) because of the absence of sales of like goods in China that would be relevant for the purpose of determining a price under subsection 269TAC(1);
- the weighted average of export prices over the investigation period is less than the weighted average of corresponding normal values over that period and therefore, in accordance with subsection 269TACB(4):
 - that railway wheels exported to Australia from France is taken to have been dumped; and
 - the dumping margins for those goods is the difference between the weighted average of export prices during the investigation period and the weighted average of normal values during that period;
- in accordance with subsection 269TG(1) the amount of the export price of railway wheels exported to Australia from France is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods would have been caused if security under section 42 had not been taken;
- in accordance with subsection 269TG(2) the amount of the export price of railway wheels that have already been exported to Australia from France is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia from France in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused.

For China and France

- in accordance with subsection 269TAE(2C), the cumulative effect of exportations of railway wheels exported from China and France can be considered because:
 - each of the exportations is the subject of an investigation;
 - the investigations of those exportations resulted from applications lodged with the Commissioner on the same day;
 - the margin of dumping from China and France is not negligible;
 - the volume of imports from each country is not negligible; and

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- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

The Commissioner recommends the Minister **determine**:

For China

- in accordance with subsection 269TAB(1)(a) and subsection 269TAB(1)(c), that the export prices of railway wheels exported to Australia from China by Masteel is the price paid or payable for the goods by the importer or by the Australian customer, other than any other matter arising after exportation, as set out in Confidential Appendix 5;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price for the category of 'all other' exporters from China is calculated using relevant information provided by Masteel;
- in accordance with subsection 269TAC(2)(c) of the Act, the ascertained normal values for railway wheels exported to Australia from China for the investigation period for Masteel as the cost of production or manufacture of the goods in China plus the SG&A costs and the profit associated with such sales, as adjusted in accordance with subsection 269TAC(9);
- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal values for the category of 'all other' exporters from China is calculated using relevant information provided by Masteel;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4):
 - that railway wheels exported to Australia from China are taken to have been dumped over the investigation period; and
 - the dumping margins for exporters in respect of those goods and that period is the difference between the weighted average of export prices of those goods over that period and the weighted average of corresponding normal values over that period, as set out in Confidential Appendix 5;
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of railway wheels exported to Australia from China is an amount which will be worked out in accordance with the combination duty method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

For France

- in accordance with subsection 269TAB(1)(a), that the export prices of railway wheels exported to Australia from France by Valdunes is the price paid or payable for the goods by the importer, other than any other matter arising after exportation, as set out in Confidential Appendix 5;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price for the category of 'all other' exporters from France is calculated using relevant information provided by Valdunes;

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- in accordance with subsection 269TAC(2)(c) of the Act, the ascertained normal values for railway wheels exported to Australia from France for the investigation period by Valdunes as the cost of production or manufacture of the goods in France plus the SG&A costs and the profit associated with such sales, as adjusted in accordance with subsection 269TAC(9);
- in accordance with subsection 269TAC(6), having regard to all relevant information, that the normal values for the category of ‘all other’ exporters from France is calculated using relevant information provided by Valdunes;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4):
 - that railway wheels exported to Australia from France are taken to have been dumped over the investigation period; and
 - the dumping margins for exporters in respect of those goods and that period is the difference between the weighted average of export prices of those goods over that period and the weighted average of corresponding normal values over that period, as set out in Confidential Appendix 5;
- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of railway wheels exported to Australia from France is an amount which will be worked out in accordance with the combination duty method pursuant to subsection 5(7) of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

The Commissioner recommends the Parliamentary Secretary **declare**:

For China

- in accordance with subsection 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to (subject to section 269TN):
 - the goods exported by all exporters from China to Australia; and
 - like goods that were exported to Australia by all exporters from China after the Commissioner made a PAD under section 269TD on 18 June 2018 but before publication of the notice;
- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China after the date of publication of the notice;

For France

- in accordance with subsection 269TG(1), by public notice, that section 8 of the Dumping Duty Act applies to (subject to section 269TN):
 - the goods exported by all exporters from France to Australia; and
 - like goods that were exported to Australia by all exporters from France after the Commissioner made a PAD under section 269TD on 18 June 2018 but before publication of the notice;
- in accordance with subsection 269TG(2), by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from France after the date of publication of the notice;

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The Commissioner recommends that the Parliamentary Secretary **have regard to:**

- in accordance with subsection 8(5B) of the Dumping Duty Act, in relation to railway wheels exported to Australia from China and France, the desirability of specifying a method such that the sum of amounts outlined in subsection 8(5B)(c) and (d) of the Dumping Duty Act do not exceed the non-injurious price.

13 APPENDICES

Non-confidential Appendix 1	List of submissions and meetings
Non-confidential Appendix 2	Competitive market costs
Non-confidential Appendix 3	Assessment of suitable benchmark
Confidential Appendix 4	Consideration of a profit adjustment to Masteel's steel input costs
Confidential Appendix 5	Export prices, normal values and dumping margins
Confidential Appendix 6	Details of tender processes
Confidential Appendix 7	Commissioner's assessment of Australian market and Comsteel's performance
Confidential Appendix 8	Price undercutting analysis
Confidential Appendix 9	Competitiveness of Comsteel in the absence of dumping
Confidential Appendix 10	Wheel quality and failures analysis
Confidential Appendix 11	Calculation of USP and NIP
Confidential Appendix 12	Comparison of benchmarks

NON-CONFIDENTIAL APPENDIX 1: LIST OF SUBMISSIONS AND MEETINGS
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A1.1 Submissions

Date	Interested party	EPR document no.
25/05/2018	European Commission	6
29/05/2018	BHP	34
4/06/2018	CCCME	8
6/06/2018	Rio Tinto	9
9/06/2018	Masteel	13
9/06/2018	Masteel	14
11/06/2018	RTIO	15
14/06/2018	Comsteel	24
2/07/2018	Masteel	19
10/07/2018	Comsteel	20
18/07/2018	Comsteel	25
18/07/2018	Comsteel	26
23/07/2018	Comsteel	28
24/07/2018	CCCME	27
25/07/2018	BHP	32
26/07/2018	GOC	29
27/07/2018	Masteel	31
31/07/2018	Masteel	38
2/08/2018	BHP	33
14/08/2018	Comsteel	36
16/08/2018	Comsteel	40
17/08/2018	Masteel	39
20/08/2018	Masteel	37
23/08/2018	Masteel	43
23/08/2018	GOC	44
31/08/2018	Comsteel	46
4/09/2018	Comsteel	48
5/09/2018	RTIO	47
11/09/2018	BHP	49
12/09/2018	BHP	50
20/09/2018	CCCME	54
24/09/2018	Comsteel	56
25/09/2018	CCCME	55

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Date	Interested party	EPR document no.
28/9/2018	Comsteel	57
2/10/2018	Valdunes	59
2/10/2018	Comsteel	60
4/10/2018	CCCME	61
8/10/2018	Comsteel	63
9/10/2018	CCCME	62
10/10/2018	CCCME	66
11/10/2018	Comsteel	67
30/10/2018	European Commission	68
31/10/2018	Rio Tinto	69
31/10/2018	BHP	70
31/10/2018	Comsteel	71
31/10/2018	Masteel/CCCME	72
5/11/2018	GOC	73
8/11/2018	Comsteel	74
8/11/2018	Comsteel	75
8/11/2018	Comsteel	76
15/11/2018	Comsteel	77
19/11/2018	CCCME	78
4/02/2019	CCCME	83
18/02/2019	Comsteel	84
25/02/2019	CCCME	85

A1.2 Meetings

Date	Interested party	EPR document no.
13/08/2018	Comsteel	35
4/09/2018	Masteel and CCCME	52
17/09/2018	Rio Tinto (via teleconference)	58
14/11/2018	BHP (via videoconference)	

NON-CONFIDENTIAL APPENDIX 2: ASSESSMENT OF COMPETITIVE MARKET COSTS

A2.1 Introduction

The Commissioner found that Masteel, the only known Chinese exporter of railway wheels to Australia in the investigation period, did not sell like goods in China in the investigation period. Pursuant to subsection 269TAC(2), where the Minister is satisfied that because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection 269TAC(1) the normal value is (unless the Minister directs that subsection 269TAC(2)(d) applies):

- (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.

Subsection 269TAC(5A) requires, inter alia, that amounts determined to be the cost of production or manufacture of goods under subsection 269TAC(2)(c)(i) must be worked out in such manner, and taking account of such factors, as the regulations provide for the purposes of subsection 269TAAD(4)(a).

Regulation 43 of the Regulation sets out the manner in which the Minister must, for subsection 269TAAD(4)(a) and therefore for subsection 269TAC(2)(c)(i), work out an amount to be the cost of production or manufacture of like goods in a country of export and factors that the Minister must take account of for that purpose.

Regulation 43(2) states that if:

- (a) an exporter or producer of like goods keeps records relating to the like goods; and
- (b) the records:
 - (i) are in accordance with generally accepted accounting principles in the country of export; and
 - (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the amount by using the information set out in the records.

As per the Manual, the phrase 'reasonably reflect competitive markets costs' may refer to the situation where there is government influence on the costs of inputs.

When examining whether the input is supplied at a normal competitive market price the Commission may enquire whether the government had influenced the price of any major cost inputs. Government influence can be the supply of inputs by government-owned enterprises, or may arise in other circumstances (...)⁷¹

⁷¹ *Dumping and Subsidy Manual* p46

Where the government influence is found to extend to all supplies of that major cost input in the market and thus there is no suitable market price in the country of export, the other country surrogate methods are possible.⁷²

This Appendix discusses the Commission's assessment of whether the records of Masteel reasonably reflect competitive market costs associated with the production of railway wheels.

A2.2 Comsteel's claims

In its application, Comsteel claimed that a particular market situation applies in respect of steel billets used in the manufacture of railway wheels caused by the GOC's influence in the iron and steel market which renders sales of railway wheels in that market unsuitable for determining normal values under subsection 269TAC(1) of the Act.

In its application, Comsteel referred to the Commissioner's previous findings in relation to steel billets in China where the Commissioner found that a particular market situation exists that rendered domestic selling prices for the value-added product unsuitable for the determination of normal value. Comsteel in particular referred to the following investigations and reports where a particular market situation was found by the Commissioner:

- Investigation No. 300 (2016) Steel Reinforcing Bar;
- Investigation No. 301 (2016) Rod in Coils;
- Investigation No. 322 (2016) Steel Reinforcing Bar;
- Investigation No. 331 (2016) Rod in Coils; and
- Investigation No. 384 (2018) Alloy Round Bar.

Comsteel argued that the findings of these investigations in relation to a market situation in China are relevant to the like goods the subject of its application, as it believes the distortions identified by the Commissioner are still present in the Chinese market impacting steel raw material used in the manufacture of railway wheels in China.

Moreover, Comsteel highlighted the state invested nature of the Masteel Group of which Masteel is a member.

Comsteel claimed that the prevailing domestic selling prices of railway wheels in China are not suitable for the determination of normal values under subsection 269TAC(1) and requests the Commissioner to refer to a benchmark cost for steel billet free of government distortions.

Comsteel further submitted that:

- the cost of steel incurred by Chinese exporters are not reasonably reflective of competitive market costs;
- consequently, steel costs incurred by Chinese exporters of the goods should be replaced by the Commissioner with a substitute cost.⁷³

⁷² *Dumping and Subsidy Manual* p47

⁷³ Comsteel application – document 001 on the EPR.

A2.3 GOC questionnaire responses

Due to the allegations of subsidisation and a particular market situation in the application for the investigation, the Commission sent a Foreign Government Questionnaire to the GOC on the initiation of the case. The GOC responded to this questionnaire on 11 June 2018.⁷⁴

The GOC submitted that railway wheels are mechanical products made of steel and are a far downstream product from iron and steel and the basic products of that industry. It claims that there was nothing unusual or special about the GOC's consideration of the steel sector, as a very important part or a 'pillar' of China's economy. The GOC advised that it continues to publish aspirational policy documents reflecting the importance of the sector to China.

The GOC advised that less than 25 per cent of China's crude steel, iron ore, raw coal and coke producers are state invested enterprises (SIEs). The GOC submitted:⁷⁵

- amendments to the *Company Law* in 2014 that liberalised the regime governing the activities of all enterprises doing business in China;
- Article 37 of the *Company Law* that states a shareholder is to be responsible for making decisions regarding the operations and investments of a company;
- since 2014, it had refined the transparency of market entities by requiring businesses, including SIEs, to disclose their annual reports;
- amendments to laws in 2014 have better positioned Chinese businesses to defend their legitimate rights through the courts;
- it had further advanced its policy of adjusting the structure of State capital and assets in the economy by welcoming and facilitating the investment of more private capital into SIEs;
- it had opened the Chinese market to foreign investment to an even greater extent than before, including through Free Trade Agreements;
- it had repealed a great number of licensing/approval processes for doing business in a range of sectors and business lines;
- since 2015, it has pro-actively promoted electricity market reform;
- it has strengthened the power of law enforcement departments to seize and confiscate facilities and equipment of enterprises which violate the law, or even directly limit production or stop production for those enterprises that fail to observe statutory emission standards;
- it has enacted laws that further liberalises investment in the coal industry.

The GOC submitted that the raw material inputs industries and the industry that transforms those raw materials are highly competitive in their market behaviour. It claimed that it did not somehow control or directly influence price or costs of the railway wheel industry in any distortive or non-market sense.

The GOC stated that, from 31 October 2014, the administration of any new investment plan in the steel industry was further deregulated, from an approval system to a registration system. However, on and from July 2014 the GOC has advised proponents of new or expanded facilities that it would not consider the registration of new steel capacity investments in the absence of evidence that capacity of the same or similar scale had

⁷⁴ GOC questionnaire response – document 011 on the EPR.

⁷⁵ GOC questionnaire response – document 011 on the EPR.

departed the industry. It stated that this measure had been introduced because of the serious excess capacity in the steel industry, and the pressures that this has placed on China's environment and infrastructure.

The GOC advised that its involvement concerning market entry and investment are primarily related to issues such as the size and design of facilities, environmental protection, and the efficient use of energy and natural resources. It claimed these initiatives were not designed to artificially affect prices, whether by reducing them or increasing them. Efficient energy and resource utilisation is geared towards sustainable development, which is an important macro-economic and long-term policy consideration for any responsible government.

The GOC disagreed with Comsteel's claims that the prices of inputs used to manufacture these products are distorted, or not market-derived. It said it was a simple fact that prices differ between markets and that China is the largest steel producer in the world and, therefore has a significant comparative advantage in the production of steel products. The GOC submitted that prices of steel products in China are not artificially low, and they are certainly not dictated or decided by the GOC.

The GOC claimed that it does not regulate the pricing of railway wheels and/or iron ore, coking coal, coke, scrap steel, and/or steel billet. Rather, prices for railway wheels, iron ore, billet, coking coal, coke and scrap steel are all determined commercially, in the market place, in transactions between buyers and sellers.

The GOC provided import and export data for iron ore, coking coal, coke, scrap steel, steel billet and railway wheels. It also provided information on the taxes and tariffs applying to these products in China and confirmed that an export quota applies to coking coal. It stated that since October 2013 the GOC has restricted any further increases of steel production capacity in order to address industrial sustainability and environmental problems that are exacerbated by overcapacity.

A2.4 Submissions prior to the SEF

A2.4.1 Comsteel

Comsteel noted that 45.54 per cent of Masteel is owned by Magang (Group) Holding Co., Ltd, which in turn is 100 per cent owned by the GOC State-owned Assets Supervision and Administration Commission (SASAC).⁷⁶ It claimed that, as such, Masteel is an SIE that operates under the influence and guidance of the GOC's SASAC.

Comsteel claimed that the following extracts from Masteel's Annual Report for 2017 confirmed the GOC's continued influence on the Chinese steel industry and Masteel's adoption of the GOC's policies and programs for the iron and steel industry:

- "structural reform is further implemented in the steel industry at supply side. As a result, great achievements have been made in cutting over-capacity and 'ground steel strip' has been completely banned";
- "the Company responded to the government's policy to cut overcapacity in the iron and steel industry, heightened overall production efficiency, and shut off one blast furnace and one converter, involving 62,000 ton iron refining capacity and 64,000 iron steel refining capacity"; and

⁷⁶ Comsteel submission – document 048 on the EPR.

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- “The iron and steel industry will reduce another 30 million ton capacity in 2018. However, investment in the iron and steel industry has grown recently, driven by a rebound in profit. More cases of new capacity installation, capacity swap and changing converters into electric furnaces are seen and make overcapacity worse. Countermeasure: As a highly responsible entity, the Company will support capacity reduction by government at all levels and the industry association resolutely, enforce capacity reduction and optimize the supply of the iron and steel industry. In 2018, the Company is going to decommission two shaft furnaces and two converters, involving 1,000,000 ton iron smelting capacity and 1,200,000 ton steel smelting capacity”.⁷⁷

A2.4.2 The GOC

In its submission of 23 August 2018, the GOC claimed that previous findings by the Commissioner of ‘particular market situation’ and/or competitive market costs were heavily reliant on the view that distortion has been a consequence of the GOC adjusting the level of export tariffs, export quotas, import tariffs and value added tax (VAT) rebates applicable to inputs in the steel industry. It asserted that the findings placed a heavy reliance, in particular, on the influence of export taxes.

The GOC stated that since early particular market situation findings in Australian anti-dumping cases, the Chinese economy, its markets and its market regulation have changed considerably. The GOC observed that:

- the export tariff on coke, which was 40% in 2011 and 2012, has been removed;
- the export quota on coke has been removed;
- the export tariff rate for coking coal has been reduced from 10% to 3%.
- the operational import tariff for coking coal has been 3% since 15 October 2014;
- the operational export tariff on coking coal has been 3% since January 2015; and
- no raw materials relating to steel production, excluding coking coal, are subject to export quotas.

The GOC acknowledged that, during the investigation period, export tariffs remained in place for other input materials, namely iron ore (10 per cent), scrap steel (40 per cent) and steel billet (10 per cent). The GOC stated that it is not suggesting that free trade has been achieved with respect to all steel inputs.

In respect of the steel raw material inputs, the GOC stated the following:

- iron ore – China is the largest importer of iron ore in the world. The imported price of iron ore is in line with international market prices, strongly reflecting international supply and demand;
- steel billet – although an export tariff of 10 per cent remains on steel billet, Masteel manufactures steel billet to produce railway wheels and does not buy or sell steel billet; and
- scrap steel – this input material used by Masteel was subject to a higher export tariff during the investigation period but is only one of numerous inputs into the production process and cannot justify a finding that the price of railway wheels is distorted.

⁷⁷ 2017 Annual Report, Maanshan Iron & Steel Company Limited, available at <http://www.magang.com.hk/download/AnnualRpt/128/eng/ew_00323AR-20032018.pdf>.

The GOC also highlighted ongoing liberalisation of Chinese industries through changes to numerous GOC policies relating to company, environmental and competition laws.

A2.5 Submissions in response to the SEF

A2.5.1 The GOC

The GOC submitted that the SEF focussed on the broader economy and steel industry in China and was not specific to the manufacture by Masteel of the subject goods.⁷⁸

The GOC submitted that Masteel makes steel from raw materials and therefore submits that factors impacting on the cost of steel is not relevant to whether Masteel's records reasonably reflect competitive market costs. It submitted that commentary relating to state owned enterprises (SOEs) making and selling steel and SASAC's ownership of Masteel were not relevant. The GOC noted that in relation to its direct and indirect financial support to the Chinese steel industry, support for Masteel was found to be at a *de minimis* rate of 0.6 percent and that it was not clear how this level of support can have affected Masteel's costs.

The GOC commented on scrap steel prices in the period March to June 2018. The Commission has not had regard to this information as it relates to periods outside the investigation period.

A2.6 The Commission's assessment

The Commission has found that there is no domestic market for like goods, as Masteel does not sell like goods in the domestic market. On this basis, the Commission has not considered whether a particular market situation exists in the domestic market such that sales in that market are not suitable for use in determining a normal value based on domestic selling prices.

However, when constructing the normal value under subsection 269TAC(2)(c), the Commission is nevertheless required to act in accordance with regulation 43(2)(b), as set out at section A2.1 above, and must work out an amount for the cost of production using the information in the records if, *inter alia*, the *records reasonably reflect competitive market costs*.

The Commission examined the totality of factors of government influence by GOC in the Chinese steel and steel input markets in order to determine if Masteel's records reasonably reflect competitive market costs associated with the production of railway wheels.

For the reasons set out in this Appendix, the Commission considers that the government influence by GOC in the steel and steel input markets in China is such that the costs incurred by Masteel in the production of railway wheels were not determined in a competitive market.

These circumstances are not normal and ordinary because the records of Masteel reflect the government influence by the GOC which distorts the costs in the steel and steel input markets in China. The records are not suitable to use to work out an amount for the cost of production to use in the constructed normal value that is an appropriate proxy for the

⁷⁸ GOC submission – document 073 on the EPR

price of the like product sold in the ordinary course of trade in China in arms length transactions, had there not been an absence of sales in the Chinese domestic market.

A2.6.1 Background

The only known Chinese exporter of railway wheels to Australia in the investigation period, Masteel, manufactures railway wheels from a combination of the major inputs coking coal (or coke), iron ore and scrap steel. Masteel's production process for railway wheels has been outlined below at section A2.6.3.

The Commission considered available information to determine if Masteel's records reasonably reflect competitive market costs associated with the production or manufacture of the goods.

A2.6.2 Information relied upon

The Commission had regard to:

- Comsteel's application for the publication of dumping and countervailing duty notices on railway wheels exported to Australia from China and France;
- the GOC's response to the Commission's government questionnaire;
- submission's by interested parties;
- previous investigations undertaken by the Commission in relation to the Chinese steel industry;
- a recent report by the USA anti-dumping administration into China's status as a non-market economy;
- a recent report by the European Commission into significant distortions in the economy of China;
- *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission* published by the Commission in August 2016; and
- information obtained through the Commission's research and analysis.

A2.6.3 Production process for railway wheels

Production of railway wheels is a process with three major steps:

1. Combining raw materials into steel billet
2. Transforming billet into a blank/rough wheel
3. Finishing the blank wheel into the final product

Masteel produces steel billet used in the production of railway wheels using an electric arc furnace (EAF). In this process, scrap steel is charged by electrodes until the steel melts. Small amounts of alloying elements are later added to the molten metal to create the desired specific mix for the characteristics required by the billet.

Typically an EAF will be charged with scrap steel, however it is also possible to charge an EAF with solid or molten pig iron. Pig iron is formed by mixing iron ore with coal in a blast furnace.

Masteel produces billets for the goods under consideration by making molten pig iron in a blast furnace. It then mixes the pig iron with scrap steel in an EAF in approximately even quantities. The Commission considers this is relevant context when considering whether the costs incurred by Masteel reasonably reflect competitive market costs.

A2.6.4 GOC influence in the Chinese steel market

The Commission has previously found that the direct and indirect influences of the GOC have affected Chinese manufacturers' costs to produce steel billet or alloyed steel billet and, because of that, Chinese manufacturers' records did not reasonably reflect competitive market costs⁷⁹. In the following section the Commission re-evaluates the evidence for these findings as well as developments since those findings which are relevant to assessing whether the cost to produce steel used in the production of railway wheels in China in the investigation period reflected competitive market costs.

The Commissioner considers the GOC's involvement within and influence over the steel industry to be a primary cause of the prevailing structural imbalances within the steel industry in China. This involvement includes the issuing of planning guidelines and directives along with the provision of direct and indirect financial support. The result of this is that the cost to make steel is artificially lowered due to government influence, which results in an artificially high supply that pushes prices down.

Over the past decade the Chinese steel industry experienced significant investment and expansion of production capacity. The OECD reports that between 2006 and 2015, Chinese steelmaking capacity more than doubled, from 488 million metric tonne (mmt) to 1,150 mmt⁸⁰. While the Commissioner notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commissioner holds that both types of producers have received significant assistance from the GOC.

The OECD Economic Survey of China for 2017 states that China's adjustment towards lower but higher-quality growth urgently requires a reduction of overcapacity and a shift towards more efficient and less energy-intensive production through market-oriented mechanisms⁸¹. It states that a number of industries are affected by excess capacity, including steel and coal. It says that the overcapacity reduces corporate profits, weighs on enterprise investment and absorbs resources that could be used more efficiently elsewhere, thereby constraining potential growth. The OECD also notes that measures to eliminate capacity taking into account different levels of technology, energy efficiency, emissions and other criteria are, however, challenging to operationalise. These support a finding that the market in China for the production of steel was not a competitive market during the investigation period.

In drawing conclusions regarding the GOC's involvement in the distortion of Chinese steel markets, the Commissioner also recognises the GOC's recent attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commissioner considers them to be further evidence of the extent of distortions and GOC's involvement within and influence over the broader steel industry in China. Examples of these capacity management measures include the tightening of bank lending to smaller mills; industry consolidation through mergers and acquisitions; and use of stricter environmental requirements to forcibly shut down capacity.

⁷⁹ See for example Rod in Coil (Investigation 301), Alloy Round Bar (Investigation 384A)

⁸⁰ Recent developments in steelmaking capacity, OECD 2018

⁸¹ OECD Economic Surveys: China 2017 p62

Specific initiatives announced in recent years to address these imbalances include the Central Government's 'supply-side reform' initiative, 'Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry'; and 'The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry'. The 'Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry', proposes that SOE capacity be reduced by 100 to 150 million tonnes by 2020, via the banning of new steel projects and elimination of 'zombie mills'⁸². In 2016 the central government also pledged a RMB 100 billion fund for employee compensation, social security payments, and plant closure incentives in the coal and steel sectors⁸³. The 'Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry' strictly forbids the registration of new production capacity in any form and demands that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline⁸⁴.

In citing the GOC's ongoing influence within the domestic steel industry, it is the Commissioner's view that to date these attempts to address existing structural imbalances have had limited success. Constraints on the effectiveness of these initiatives not only relate to the extent of the imbalances but also the difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing down mills relates to their role as major employers, sources of tax revenue and providers of social services within their respective regions. Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and GDP oriented performance measures which encourage over investment in capacity⁸⁵.

The effectiveness of the GOC's attempts to address overcapacity have also been constrained by its desire to promote the replacement of older mills with new larger and more efficient mills. It is the Commissioner's view that while this initiative may improve the industry's structure over the longer term, provided the initiative is successful in decommissioning older mills, its current impact has been to increase production and exacerbate the existing structural imbalances. The difficulties faced by the GOC in achieving these objectives are also reflected in the reality that many smaller mills need to be shut down to offset the commissioning of new larger mills and the difficulties in ensuring that once mills are closed, they are not brought back on line as market conditions improve⁸⁶.

An example of these issues can be seen in the context of Baosteel (now China BAOWU Steel Group) which while indicating in 2016 that it would mothball 2.5 million tonnes of capacity as part of its plan to address overcapacity, also commissioned 9 million tonnes

⁸² Liu. H & Song. L, 2016. Issues and Prospects for the Restructuring of China's Steel Industry. China's New Sources of Economic Growth. Vol.1. Reform, Resources and Climate Change, pp338-339.

⁸³ Brun, Lukas. (2016) "Over Capacity in Steel – China's Role in a Global Problem," Duke, 2016, p38.

⁸⁴ KPMG, 2016. The 13th 5 Year Plan: China's Transformation and Integration with the World Economy, p29. Sourced from 'State Council Guiding Opinions on Reducing Overcapacity in the Iron and Steel Industry', State Council, 4 February 2016.

⁸⁵ Duke, 2016, p38.

⁸⁶ Liu. H & Song. L, 2016, p357.

of new capacity at its Zhanjiang facility. The GOC's attempts to remove unprofitable capacity from the industry have also been constrained by the significant presence of 'zombie mills' which under normal competitive market conditions would be shut down due to either poor profitability or insolvency. The challenges posed by these issues is also evident in commentary by the CISA which expects the 'shake out' of the industry to take at least a decade and that Chinese mills were in no hurry to consolidate despite the government's attempts to encourage mergers and acquisitions⁸⁷. The IMF has noted that reductions in steel and coal capacities have relied on administrative measures, and that more market-based overcapacity reduction would be required for a lasting solution to overcapacity in these sectors.⁸⁸

Key mechanisms through which the Commissioner considers that the GOC has distorted conditions within the Chinese steel industry, including the demand for and markets for major raw materials, are:

- the role and operation of SOEs.
- industry planning guidelines and directives.
- the provision of direct and indirect financial support.
- taxation and tariff policies.

Role and operation of SOEs

The Commissioner understands that Chinese SOEs represent 49 per cent of total Chinese steel production⁸⁹. It is the Commissioner's view that these entities continue to receive significant direct and indirect financial support from central, provincial and local levels of government as a means to increase tax revenues, expand employment and maintain social stability.

While the Commissioner does not consider the presence of these entities alone causes markets to be distorted, it does consider that their presence increases the likelihood that the GOC's plans and directives will be adhered to. The Commissioner also considers that the support provided to these entities by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting on supply and pricing conditions within the domestic Chinese market for steel products and raw materials used to produce steel. Examples of these support mechanisms include: government subsidies; support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees); and loans from state-owned banks.^{90,91,92}

⁸⁷ Platts, 2016. Global Market Outlook, Steel Business Briefing. March 2016 p15.

⁸⁸ International Monetary Fund (IMF), People's Republic of China: 2018 Article IV Consultation, Staff Report for the 2018 Article IV Consultation (2018), p21.

⁸⁹ European Commission (2017). Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations, SWD(2017) 483 final/2, Brussels, p. 358 (the EC Report)

⁹⁰ Liu. H & Song. L, 2016, p348.

⁹¹ Anti-Dumping Commission, Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016, p. 47.

⁹² World Bank, China 2030: Building a Modern, Harmonious, and Creative Society, Report No. 96299 (March 2013), p. 25.

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In its response to the Exporter Questionnaire, Masteel declared that it received a 10 year loan from the National Development Bank Corporation for a high-speed wheel and axle material technology project at a rate that was below the benchmark rate for China. The Commission did not find that this was a countervailable subsidy in the context of the subsidy investigation, as it did not specifically relate to the production of the railway wheels under consideration. However, this access to preferential loans which reduces costs is indicative of both the type of support received by SOEs in the steel sector in general and Masteel specifically.

The Commissioner considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated efforts by the central government to reduce the scale of steel production. It is also the Commissioner's view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices and costs for steel products and raw materials used to produce steel.

The significance of SOEs to the broader Chinese economy, including the steel industry and the industries that supply raw materials for the production of steel, is also reflected in the State Council of China's recent '*Guidance on the promotion of central enterprises restructuring and reorganisation*'. In introducing this guidance, the State Council notes the important role of 'central enterprises' in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The guidance also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

While there is limited transparency about the operations of Chinese state-owned corporations, the Commissioner understands that these companies can receive loans at less than commercial rates, that dividend policies can be set to pursue government objectives and that extended periods of loss-making may be tolerated—all of which reduce the normal commercial pressures for companies to operate efficiently and for poorly performing firms to cut back or cease operations.⁹³

SOE decisions about levels of production are often based on broader political goals as opposed to market signals.⁹⁴

As reported by the European Commission, "one of the tasks of SASAC was to transform SOEs into large national champions. Originally such companies were expected to be

⁹³ Anti-Dumping Commission, Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016, p. 47.

⁹⁴ European Union Chamber of Commerce in China, *Overcapacity in China: An Impediment to the Party's Reform Agenda* (2016), p. 10.

competitive only on the Chinese market, but global competitiveness has increasingly become the target."⁹⁵

Furthermore, the Party Committee of SASAC is tasked to monitor the implementation of the principles and policies of the Party and of the State within Company (...) To persist in combining the principle of the Party supervising the performance of officials with the legitimate selection by the board of directors of the managers and the legitimate use of human resources by the managers.⁹⁶

In this context, it is relevant to note that SASAC, through its ownership of Magang (Group), holds 45.54% of Masteel's shares. This means that, while it is not wholly controlled by the GOC, they are the most significant stakeholder. The Chairman of Masteel is the General Manager of Magang and also sits on their board of directors. This high degree of government influence means that Masteel will act in accordance with the GOC's objectives.

As SASAC is charged with creating companies that are 'national champions', it is reasonable to infer that market conditions will be manipulated by the GOC to ensure that SOEs operate on a large scale and are positive contributors to the economy. Intervention in the steel market includes (but not limited to) influence in the price of raw materials, access to preferential loans and preferential access to finance,⁹⁷ all of which reduce the cost to make steel. Masteel's website states that it was set up on 1 September 1993 and was regarded by the State as one of the nine pilot joint-stock limited enterprises which formed the first batch of overseas listed companies.⁹⁸ As the steel market is saturated with SOEs, the influence by the GOC has been widespread to benefit the whole steel making industry to maximise the chances of ongoing profitability. The specific policies used by the GOC to artificially decrease the price of raw materials are discussed below.

The US DOC found that SASAC exerts broad control through the creation of State Enterprise Groups (SEGs), where an SOE purchases a controlling stake in a number of entities to create a large group under its ultimate control.⁹⁹ This allows the GOC to leverage private capital invested in new or existing entities to pursue state goals, and in turns allows Government control over the economy with a significantly lower degree of capital investment than would otherwise be required through these 'control pyramids'.¹⁰⁰

The European Commission concludes that 'the overall objective of the SASAC Regulation, as provided for in Article 1 of the said Regulation is wider than just preserving the interest of the State as an investor. Article 1 specifies that the Regulation serves the main purpose to 'establish a State-owned assets supervision and management system that suits the needs of socialist market economy, better run State-owned enterprises,

⁹⁵ European Commission (2017). Commission staff working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations, SWD(2017) 483 final/2, Brussels, p. 19, http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf.

⁹⁶ Ibid p. 29

⁹⁷ US DOC report p89-90

⁹⁸ <http://www.magang.com.hk/eng/companyprofile.asp>

⁹⁹ US DOC report p79

¹⁰⁰ Ibid p. 89

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push forward the strategic adjustment to the layout and structure of the State economy, develop and expand the State economy [...]'.¹⁰¹.

The Commission considers that the significance and influence of SOEs in the Chinese steel market, including the sectors providing raw materials for the production of steel, has required intervention which distorts the market as a whole. This has also resulted in artificially lowered costs of raw materials to produce steel billet that do not reflect competitive market costs for all companies, including Masteel.

Industry planning guidelines and directives

The Commissioner considers that the GOC's involvement within the Chinese steel industry, through its planning guidelines and directives also materially contributed to its overcapacity, oversupply and distorted structure impacting on the market for steel products and raw materials used to produce steel during the investigation period, including the steel used for making the goods under consideration. The extent of this involvement is reflected through the numerous planning guidelines and directives regarding the industry's structure and composition, listed below. The World Steel Association estimates that more than 320 steel-related policies and measures were implemented by the GOC between 1990 to 2016, of which about half were aimed at capacity control.¹⁰² In noting that some of the listed documents are now dated, the Commissioner considers that this further demonstrates long term involvement of the GOC within the Chinese steel industry and hence it's central role in contributing to the structural imbalances and distorted prices and costs, including for steel raw material inputs.

- Steel Industry Adjustment Policy (2015 Revision).
- Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry (2016).
- The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry of Gain Profit and Development (2016).
- The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)

In addition to the planning guidelines and directives listed above, the GOC's involvement within the steel industry is also demonstrated through broader industrial restructuring and reorganising directives listed below.¹⁰³

- Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009).
- Guiding Opinions on Pushing Forward Enterprise Mergers & Acquisitions (M&A) and Reorganisation in Key Industries (2013).
- Guiding opinions on Resolving Serious Excess Capacity Contradictions (2013).
- Directory Catalogue on Readjustment of Industrial Structure (2013 Amendment).
- Guidance on the promotion of central enterprises restructuring and reorganisation (2016).

¹⁰¹ Ibid, p. 91

¹⁰² DBS Asian Insights, China's steel sector supply reform, April 2017 p4.

¹⁰³ These directive are targeted at multiple industries including the Chinese steel industry.

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Chinese industry is often governed by government policy directives. For example, the *Standard Conditions of Production and Operation of the Iron and Steel Industry* ('the standard conditions') serve as 'the basic conditions for production and operation of... [the] industry'. It sets out the requirements of steelmakers, for example in relation to product quality and production requirements. Firms are incentivised to comply with the standard conditions, as doing so provides the basis for policy support. In contrast, firms that do not conform are required to reform, and if they still fail to conform, must gradually exit the market.¹⁰⁴

The Commissioner notes that in its submission, the GOC explains:¹⁰⁵ 'On and from 31 October 2014 the administration form of any new investment plan in the steel industry was further deregulated, from an approval system to a registration system. However, on and from July 2014 the GOC has advised proponents of new or expanded facilities that it would not consider the registration of new steel capacity investments in the absence of evidence that capacity of the same or similar scale had departed the industry. This has been advised in consideration of the serious excessive capacity in the steel industry, and the pressures that this has placed on China's environment and infrastructure'.

The Commissioner sees this information as evidence of the involvement of the government in the market and its capacity to influence the number of participants and production volumes, which in turn has distorted the markets for major steel inputs.

The Commissioner has considered findings in other jurisdictions with regard to the competitive market in China. The United States Department of Commerce found in their report into China's Status as a Non-Market Economy that:

"[T]he National Mineral Resource Plan (2016-2020), which provides 'indicative targets' for the level of production of one set of resources (including oil, gas, coal, iron ore, and various nonferrous metals) and "binding targets" for the level of production of tungsten and rare earths"¹⁰⁶.

The report continues that:

As recently as 2016, the GOC presented a framework for granting or denying market entry in 12 product categories of which one is some primary materials including iron ore and nonferrous metals (State Council Notice on Announcing the Catalogue of Government Approved Investment Projects 2016 Edition)¹⁰⁷.

This demonstrates current intervention by the GOC in the raw materials markets, including raw materials which are used by Masteel in the production of the steel billet.

The 13th Five Year Plan for Mineral Resources (2016 – 2020), which covers the iron ore market, identifies that one of the problems in the sector is '[relatively numerous] government interventions in resource allocation [and] market principles applicable to

¹⁰⁴ Announcement on the Standard Conditions for the Iron and Steel Industry (Revised 2015).

¹⁰⁵ GOC questionnaire response – document 011 on the EPR.

¹⁰⁶ United States Department of Commerce (US DOC), China's Status as a Non-Market Economy, 2017. Page 121

¹⁰⁷ United States Department of Commerce (US DOC), China's Status as a Non-Market Economy, 2017. Page 132

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*mining rights are not comprehensive, the modern mining market system is not yet complete [...]*¹⁰⁸.

This demonstrates that the GOC is aware that, in 2016, the conditions within the domestic mineral resources sector in China was not subject to ordinary market principles.

Relevance and enforceability of planning guidelines and directives

In assessing the relevance of these planning guidelines and directives, the Commissioner notes the importance of the GOC's national five year plans which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commissioner notes, but does not agree with the GOC's view that they are for guidance and not enforceable.

Mechanisms through which the Commissioner considers the GOC is able to enforce these guidelines and directives include the presence and role of SOE's within the broader steel industry, the role of the National Development and Reform Commission (NDRC) and explicit enforcement mechanisms. In regards to SOEs, their significant share of total Chinese steel production and propensity to follow government guidance and directives ensures the GOC is able to influence broader trends in industry capacity and steel production.

Similarly, the NDRC through its dual role of developing planning guidelines and directives and approving large scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council notice on Further Strengthening the Elimination of Backward Production Capabilities and Guidelines, includes: revoking of pollutant discharge permits; restrictions on the provision of new credit support; restrictions on the approval of new investment projects; restrictions on the issuing of new and cancelling of existing production licenses.

Further evidence of this is presented in Masteel's Annual Report for 2017 which states:

As a highly responsible entity, the Company will support capacity reduction by government at all levels and the industry association resolutely, enforce capacity reduction and optimize the supply of the iron and steel industry". This statement is evidence that GOC's policies and directives are not of an abstract, guiding nature but rather seen as part of SIE's accountabilities. This also integrates Masteel's objectives with the 13th FYP, which "calls for the relevant companies to ensure that they adhere to the Plan's main objectives and tasks; and for China Iron and Steel Association to identify potential issues arising from the implementation of the 13th FYP for Steel and formulate policy suggestions accordingly."¹⁰⁹

The pervasive influence of the GOC's planning guidelines and directives on the steel sector and the main sectors that supply the steel sector mean that costs are not determined in a competitive market.

¹⁰⁸ 13th FYP for Mineral Resources, Section I-2.

¹⁰⁹ 13th FYP for Mineral Resources, Section V-4

Summary of themes, objectives and implementation

Key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry are listed below.

Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013):¹¹⁰

- Top ten companies accounting for 60 per cent of production.
- Three to five major steel corporations with core competency and international impact.
- Six to seven steel corporations with regional influence.
- Encouraging steel corporations to participate in foreign steel companies' M&A.

Steel Industry Adjustment Policy (2015 Revision):

- Upgrading product mix.
- Rationalising steel production capacity.
- Adjustments to improving organisational structures.
- Energy conservation, emission reductions, environmental protection.
- Production Distribution.
- Supervision and administration.
- Guiding market exit.
- Methods of, orientation and oversight of mergers and reorganisations.
- Consolidate number of steel companies.
- Lift capacity utilisation rates to 80 per cent by 2017.

Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy:

- Promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion.
- Intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice.

State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation:

- SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach.
- State-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position.
- Related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, nonferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

¹¹⁰ The Guiding Opinions is discussed at <http://rhg.com/notes/beijings-2015-industry-consolidation-targets-problem-or-solution>.

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The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020):

- Removal of 100 to 150 million tonnes of capacity between 2016 and 2020.
- Raising of capacity utilisation rates to 80 per cent by 2020.
- Further industry consolidation leading to 10 largest producers accounting for 60 per cent of production by 2020.

Direct and indirect financial support

Chinese banks appear to be guided by government policies, as well as national economic and social development needs.¹¹¹

Subsidies and tax concessions reduce the operating costs of Chinese steel enterprises, confer a competitive advantage through the ability to offer steel products at lower prices, and increase the profitability of steel production.¹¹²

The OECD has pointed to price influences in the Chinese energy market. A 2015 report notes that energy prices “do not reflect the true social and environmental cost of production, making for a widespread misallocation of resources”.¹¹³

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include: preferential loans and directed credit; equity infusions and /or debt-to equity swaps; access to land at little or no cost; government mandated mergers, permitting acquisition at little or no cost; and direct cash grants for specific steel construction projects.¹¹⁴

Similar programs previously identified by the Commissioner’s countervailing investigations concerning the Chinese steel industry are listed below.¹¹⁵ While these investigations do not correspond with the current investigation period, it is the Commissioner’s view that these programs have directly contributed to conditions within the Chinese steel industry during this period by providing direct financial support to recipient steel producers. This type of financial support not only inflates the profitability of recipient firms encouraging an expansion of supply but also supports otherwise unprofitable producers, delaying their timely exit from the industry.

- Anti-dumping Respondent Assistance.
- Environmental Prize.
- Environmental Protection Grant.
- Export Brand Development Fund.
- High and New Technology Enterprise Grant.
- Independent Innovation and High-Tech Industrialisation Program.
- Innovative Experimental Enterprise Grant.
- Matching Funds for International Market Development for Small and Medium Enterprises.

¹¹¹ Article 34 of the Law of the People's Republic of China on Commercial Banks (2003).

¹¹² Anti-Dumping Commission, Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016, p. 45.

¹¹³ OECD, *OECD Economic Surveys: China* (Paris: OECD Publishing, March 2015), p. 31.

¹¹⁴ Duke, 2016, p 26.

¹¹⁵ Relevant investigations include ADC 316 and ADC 322

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- One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known. Trademarks of China’ and ‘Famous Brands of China’.
- Preferential loans.
- Preferential Tax Policies for High and New Technology Enterprises.
- Preferential Tax Policies for Western Development “Go West” strategy.
- The provision of goods at less than adequate remuneration.
- Research & Development (R&D) Assistance Grant.
- Special Support Fund for Non-State-Owned Enterprises (NSOE).
- Superstar Enterprise Grant.
- Technology Project Assistance.
- Training Program for Rural Surplus Labour Force Transfer Employment.
- VAT and tariff exemptions on imported equipment.
- VAT Refund on Domestic Sales by Local Tax Authority.
- Venture Investment Fund of Hi-Tech Industry.
- Water Conservancy Fund Deduction.

While the Commission found that the countervailable subsidies received by Masteel in the investigation period were negligible as a proportion of export price, the Commission considers that an assessment of whether Masteel's records reasonably reflect competitive market costs involves a broader assessment of the totality of factors of government influence in the steel and steel input markets in China, as such programs of government support for entities in the Chinese steelmaking industry and sectors supplying raw materials to steel producers are likely to have distorted these markets.

It is clear from the European Commission's report that direct intervention in the railway market is a current goal of the 13th FYP, with the report stating that one area specifically identified for support from the GOC is railway equipment.¹¹⁶ Masteel makes a variety of railway wheels including high speed railway wheels,¹¹⁷ meaning this guidance is directly applicable to this company. The process for making billet for high speed railway wheels uses the same general process as for iron ore carriage wheels, and as such any technical or financial support under the 13th FYP would likely benefit iron ore carriage wheels produced by Masteel either directly or indirectly.

The 13th FYP then “gives guidance to financial institutions and private capital to support the priority tasks of the Plan”,¹¹⁸ indicating that financing and other non-operational costs are also likely to be affected across the sector even if provided by notionally private companies. This too would apply to Masteel due to their involvement in priority production.

The influence of direct and indirect financial support from the GOC to the steel sector and the sectors that supply it, in conjunction with the other mechanisms of GOC influence in the steel sector outlined in this Appendix, mean the cost to produce steel billet cannot be said to have been determined in a competitive market.

¹¹⁶ EC Report p. 349

¹¹⁷ Exporter Verification Report on [EPR Document 045](#)

¹¹⁸ EC Report p. 350

Taxation arrangements

Previous investigations by the Commissioner found evidence of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke, iron ore and scrap steel.¹¹⁹

Specifically export tariffs on raw materials relevant to the production of railway wheels:

1. Iron ore - 10%
2. Scrap steel - 40%
3. Coking coal – 10%
4. The Commissioner notes that the GOC on its questionnaire response indicated that the Ministry of Commerce and the General Administration of Customs are administering an export quota applied to coking coal.

The Commissioner found that these measures would keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market, increasing domestic supply and reducing domestic prices to a level below what would have prevailed under normal competitive market conditions.

The Commissioner is aware that the GOC has made significant efforts to reduce these mechanisms. In its submission dated 23 August 2018, the GOC highlights:

- “the export tariff on coke, which was 40% in 2011 and 2012, has been removed;
- (...) the export quota on coke has been removed; and (...) the export tariff rate for coking coal has been reduced from 10% to 3%.¹²⁰

The Commissioner notes that scrap steel, iron ore and coking coal are important raw materials in the manufacture of steel to make railway wheels and while government tariff and quota measures have declined in recent years, they remain factors that are likely to distort the markets for these materials in China.

While there have been efforts to rectify these distorting mechanisms, the Commissioner considers that during the investigation period the above mentioned mechanisms had an influence on the costs relevant to the production of railway wheels.

A2.6.5 Analysis of Masteel’s costs of production

The Commission analysed Masteel's cost of producing steel billet used in the production of railway wheels and the purchase price of steel billet used in the production of railway wheels by the only other verified exporter subject to this investigation, Valdunes. It is evident that the Masteel COP is typically lower than the Valdunes purchase price, being cheaper in 10 months out of 12. The average difference is 10.2%, with the average over the first 9 months being 11.9%. As Valdunes did not purchase any billet in Q4 of the investigation period the Commission has had to construct an estimate of prices for that period. This analysis is at **Confidential Appendix 12**.

The company Valdunes purchased billet from was a steelmaker who was operating in a competitive market, and the Commission has removed the relevant selling costs (calculated with reference to ArcelorMittal’s SG&A costs) to ensure comparability with

¹¹⁹ Anti-Dumping Commission, 2013, Report Number 198: Dumping of Hot Rolled Plate Steel Exported from the People's Republic of China, Republic of Indonesia, Japan, The Republic of Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel Exported from The People’s Republic of China, pp. 41-43.

¹²⁰ GOC submission dated 23 August 2018 – Document 044 on the EPR

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Masteel. The Commission considers the fact that Masteel produced the same steel for up to 24% less than the purchase price in another market indicates the extent of the GOC's influence, particularly as direct materials account for approximately 70% of Masteel's costs to manufacture billet, and manufacturing overheads including electricity to power the EAF account for a further 25%.

To further assess this point, the Commission compared the cost of production of a high volume steel produced by Masteel against an independent benchmark. The Commission compared the cost of A36 slab produced by Masteel, adjusted to an FOB price, with the price of a Latin American benchmark for the same product:

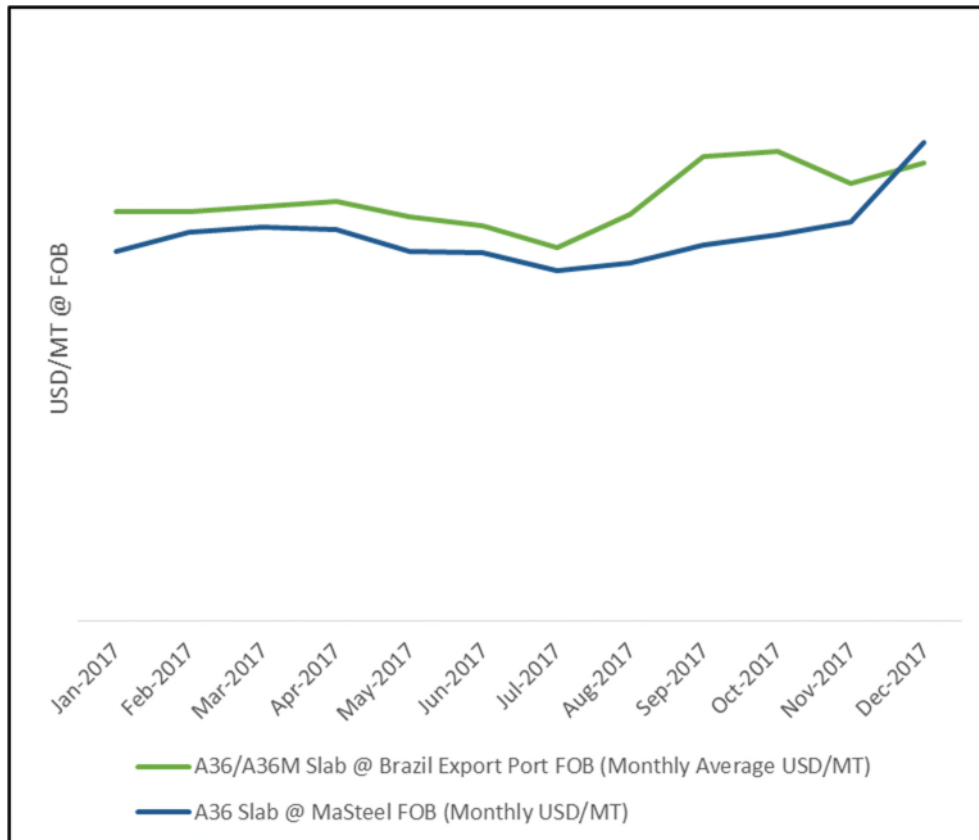


Figure 12 – comparison of A36 slab prices at FOB

Similar to the comparison with the French benchmark for steel used in the production of railway wheels, Masteel is materially lower than the competitive price in a like for like comparison. Masteel's adjusted COP is lower for every month except December, is on average 9.3% lower across the year. In September and October Masteel's adjusted COP was in excess of 20% lower than the competitive benchmark.

It is recognised by the Commission that, during some points in the investigation period, there may be individual components used in the production of steel (e.g. iron ore) where the prices in China are comparable to the price in other competitive markets. In instances where this is the case, the use of the benchmark will not artificially inflate the costs beyond those of a competitive market, as these too will be based on the same raw material purchases.

At the same time, the benefit of a billet benchmark is that it does not require the identification of every component that is in the steel mix and an assessment as to whether those costs are non-competitive and the finding of an appropriate benchmark to uplift it to a competitive price, as this is fundamentally part of the selected benchmark.

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The Commission does not consider that it is appropriate to limit GOC influence to input raw materials only because that would not accurately reflect the extent of the distortion. The Commission considers that to limit consideration of GOC influence to input raw materials only does not capture the influence of the GOC on other costs associated with the conversion of raw materials to steel billet. Further to this

- the influence of the GOC is wide ranging and reducing the influence of GOC to input raw materials only does not reflect the amount of distortion which includes GOC influence on the costs of converting raw materials to billet;
- the selected benchmark includes the cost of raw material sourced from international markets, potentially including China, and, as such, does not require the Commission to arbitrarily, or otherwise, select raw material sources as the defining factor in allocating costs of production.

A2.6.6 Assessment of whether Masteel's records reasonably reflect competitive market costs

Based on the preceding analysis, the Commissioner concludes that the GOC's influence over the steel industry and the markets for raw materials used in the production of steel in China has created distortions that mean that the costs incurred by Masteel were not determined in competitive market conditions.

The GOC was able to exert this influence through its directives and oversight, subsidy programs and taxation arrangements. The significant number of SOEs and SIEs in the Chinese steel market is evidence of the GOC's influence in the market, which has resulted in distortions to the costs associated with the production of steel used by Masteel in the production of railway wheels.

The Commissioner also concludes that because of the significance of this influence, the domestic price for major steel production inputs was substantially different to what it would have been in competitive market conditions.

The Commissioner determined that the circumstances are not normal and ordinary because the records of Masteel reflect the government influence by the GOC which distorts the costs in the steel and steel input markets in China. As such, they are not suitable to use to work out an amount for the cost of production to use in the constructed normal value which would be an appropriate proxy for the price of the like product sold in the ordinary course of trade in China in arms length transactions, had there not been an absence of sales in the Chinese domestic market. Therefore, Masteel's records relating to the production of steel billet used to produce railway wheels do not reasonably reflect competitive market costs.

NON-CONFIDENTIAL APPENDIX 3: ASSESSMENT OF SUITABLE BECHMARK FOR COST OF PRODUCTION

A3.1 Introduction

This Appendix sets out the Commission's assessment of a suitable benchmark to use in the constructed normal value in relation to the Chinese exporter, Masteel, in order to determine an appropriate proxy for the price of the like product, railway wheels, sold in the ordinary course of trade in China in arms length transactions, had there not been an absence of sales in the Chinese domestic market.

Having determined that the records of Masteel do not reasonably reflect competitive market costs in accordance with regulation 43(2)(b)(ii) of the Regulation,¹²¹ the Commissioner is not required to work out an amount for the cost of production using the information as set out in Masteel's records.

The Appendix sets out the Commission's approach to calculating Masteel's cost of production of railway wheels in China.

A3.2 Approach taken in SEF 466

In SEF 466, the Commission calculated the cost of production with reference to the actual costs incurred by Masteel in production of steel billet of the particular grades used to produce railway wheels and uplifted these costs with reference to the difference between these costs, and the billet purchase price for railway wheel grade steel incurred by the French producer examined in this investigation, Valdunes.

The Commission was able to conduct this for the first three quarters of the investigation period. Valdunes did not purchase steel billet in the final quarter of the investigation period. Due to this, the Commission adjusted the French billet costs from the third quarter of the investigation period, relative to movements of an East Asia steel benchmark, to determine a French billet price in that quarter. The Commission then annualised the difference between the French billet costs and the Masteel costs to produce billet used in railway wheels, and uplifted the Masteel billet costs by this annualised percentage.

A3.3 Submissions in response to the SEF

A3.3.1 Market cost claims: Government of China and BHP

In its response to the SEF, the GOC stated¹²² that Masteel does not purchase steel billet and therefore steel is not a market cost of Masteel if it is not purchased on a market. It stated that the Commission has surrogated a cost not actually incurred by the exporter.

BHP stated¹²³ that it had significant doubts that the Commission's approach had resulted in a determination of a normal value that could be properly compared to the export price of railway wheels produced by Masteel. BHP claimed that as Masteel is an integrated

¹²¹ The Commission's assessment is set out in Non-Confidential Appendix 2.

¹²² Refer to [EPR Document 073](#)

¹²³ Refer to [EPR Document 070](#)

producer of railway wheels, it does not purchase steel billet and therefore the price of steel billet is irrelevant.

The Commission's analysis of market costs claims

The Commission does not agree with the view presented by the GOC or BHP that the market price of steel billet is irrelevant. The Commission undertook an analysis of whether the costs to produce steel billet for railway wheels during the investigation period contained in Masteel's records reasonably reflected competitive market costs. This found that the cost to produce billet did not reasonably reflect competitive market costs. Further information is included in **Non-Confidential Appendix 2**.

Having concluded that the steel billet costs contained in Masteel's records did not reasonably reflect competitive market costs, it was open to the Commission to adjust the costs in Masteel's records to reflect a suitable benchmark that could be used in the cost of production in order to establish an appropriate proxy for the price of railway wheels, had there not been an absence of sales in the Chinese domestic market.

Given the GOC's significant influence on the Chinese steel market and steel input markets, the Commission considers that it is appropriate to uplift Masteel's costs at the steel billet level. This is the most appropriate point to uplift the costs to capture the total impact of the Government influences on the cost to produce steel billet in China. In addition, the Commission has access to a verified cost for the particular grade of alloy steel billet used in the production of railway wheels which the Commission considers to be a suitable benchmark, for the reasons outlined in **Non-Confidential Appendix 2**.

A3.3.2 Comparative advantage claims: Rio Tinto, BHP & Comsteel

Rio Tinto submitted¹²⁴ that, if the Commission used third country information as a benchmark, it should make adjustments to account for Masteel's comparative advantages. Rio Tinto claimed that the Commission should seek sufficient information from Valdunes and Masteel regarding their comparative advantages and disadvantages and make corresponding adjustments.

Rio Tinto further stated¹²⁵ that if the exporters involved in the investigation provide evidence or make submissions in respect of comparative advantages enjoyed in their respective countries, the Commission must take into account such evidence and consider making corresponding adjustments when constructing Masteel's cost of production. Rio Tinto also stated that the Commission must also consider whatever information is submitted in respect of comparative advantages that might be present in the Chinese market.

BHP claimed¹²⁶ that Chinese manufacturers have the benefit of lower costs for various inputs to the production of railway wheels (such as labour) compared to manufacturers in more developed countries. It stated that this is supported by the higher dumping margin findings for Valdunes compared to Masteel, indicating that Valdunes' non-steel billet costs were significantly higher than Masteel's non-steel billet costs.

¹²⁴ Rio Tinto submission dated 5 September 2018 – [EPR Document 047](#)

¹²⁵ Refer to [EPR Document 069](#)

¹²⁶ Refer to [EPR Document 070](#)

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Comsteel submitted that the Commission's methodology of using the Valdunes steel billet price involved the most appropriate source of verified steel billet information from a producer that is not government influenced. It stated that the steel billet price (including various alloys and treatment) is not published in newsletters or industry publications or by any other independent source. In Comsteel's view, the Valdunes steel billet input cost is therefore the best available alternative steel input cost that has been verified as reflective of a market price. Comsteel suspected that Valdunes purchased its steel input from an efficient European steel manufacturer and that any differences between this cost and the cost of producing steel in China could not reasonably be quantified, let alone be reliably based.

The Commission's analysis of comparative advantage claims

In considering Rio Tinto and BHP's submissions to the SEF, the Commission considered whether it would be appropriate to adjust the Valdunes steel billet price to reflect any comparative advantage or disadvantage that might be present in the Chinese market.

The Commission considers that in order to calculate any comparative advantages or disadvantages between Chinese and French billet costs, would require the Commission to isolate and subtract the effect of the GOC's significant involvement in the Chinese steel market. The Commission considers that it would not be possible to isolate and quantify the effect of GOC involvement, with any degree of accuracy, in the relevant markets and to quantify such comparative advantages or disadvantages.

The Commission notes that, in *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885*, Nicholas J considered the treatment of a more general adjustment to benchmark prices, namely for a claimed Chinese comparative advantage in production of hot rolled coil steel (HRC). Nicholas J did not find a legal error in the view of the then Australian Customs and Border Protection Service that such an adjustment was not practical, reasonable or warranted in that case and, that the more reasonable approach was to use a benchmark that reflected an average price of HRC that did not include any adjustment for comparative advantage.

In the recent *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC20*, the Full Federal Court also found that the legislation did not include a mandatory requirement to adjust foreign pricing information for comparative advantages and disadvantages.

The Commission also observes that no interested parties have provided information or evidence on how the Commission could quantify any such adjustment or proposed methodologies for consideration. The Commission considers that making of an adjustment for possible comparative advantages or disadvantages is not possible given the lack of information to quantify these advantages and disadvantages, and the inability to separate the significant involvement of the GOC in the relevant markets from any comparative differences between France and China.

A3.3.3 Selling expenses and profit claims: Masteel

In its response to the SEF, Masteel provided a number of annual reports for three steel industry entities to assist the Commission to estimate an appropriate level of profit and selling expenses that might be incorporated in the steel billet input cost incurred by Valdunes. Masteel did not go so far as to propose an amount by which it might be

appropriate to adjust the Valdunes' steel billet cost to estimate the steel input cost of production in China.¹²⁷

The Commission's analysis of selling expenses and profit claims

The Commission considers that it is appropriate to adjust the Valdunes' steel billet input cost by an amount for selling expenses. The Commission examined the reports provided by Masteel and formed the view that it would be reasonable to adjust Valdunes' steel input cost by the SG&A expenses (as a proportion of total revenue) incurred by the steel company, ArcelorMittal.

ArcelorMittal's core business is the production and sale of steel products and the amount of SG&A expenses as a proportion of revenue is readily identifiable in its financial statements. The other entities for which Masteel provided information were either more diversified businesses (in the case of Thyssenkrupp) or for which SG&A expenses were not readily identifiable in the financial statements of the entity (in the case of the Schmolz+Bickenbach group).

This adjustment addresses the claim that Masteel produces the steel billet required to produce railway wheels and therefore would not incur any SG&A expenses that might form part of the purchase price of the steel billet material cost from Valdunes.

The Commission does not consider that Valdunes' steel billet cost should be adjusted for an amount of profit. The steel supplier who Valdunes bought the steel billet from, went into bankruptcy during the investigation period. The Commission is unable to infer that the company would have been making any profit on the sales of the billet, and as such cannot calculate an amount of profit with which to adjust the cost of production. Further information on the supplier is contained in **Confidential Appendix 4**.

A3.3.4 Extent of reasonable market costs claims: BHP

BHP claimed that the Commission should have separately assessed whether Masteel's material, labour and overhead costs are reasonably competitive market costs and made any necessary adjustments to costs found not to reasonably reflect competitive market costs. BHP noted that, in respect of labour and overheads, the SEF did not contain any detail concerning which of Masteel's costs are alleged to be non-competitive market costs or any indication as to the materiality of the alleged distortion in cost brought about by the GOC's involvement in the steel industry.

BHP also noted that it considered that the Commission appeared to have accepted some costs as being appropriate for the purposes of determining a normal value, except in relation to the production of steel billet.

The Commission's analysis of the extent of reasonable market costs claims

The Commission considers that government influences distort the cost to produce domestic steel billet in China. **Non-confidential Appendix 2** sets out the Commission's findings that various GOC plans and policies distort the cost to produce domestic steel billet used to make railway wheels such that they no longer reasonably reflect competitive market costs. Steel billet is the only direct material used in the production of railway wheels.

¹²⁷ Refer to [EPR Document 072](#)

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As set out above, subsection 43(2) of the Regulation requires that, if an exporter keeps records relating to the like goods which are in accordance with GAAP, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, the cost of production must be worked out using the exporter's records.

The Commission's view is that the costs relating to steel billet used to produce railway wheels during the investigation period contained in Masteel's records do not reasonably reflect competitive market costs. As such the Commission has adjusted Masteel's cost to produce steel billet to obtain a suitable benchmark to be used in the constructed normal value to establish an appropriate proxy for the price of railway wheels, had there not been an absence of sales in the Chinese domestic market. The Commission considers the influence of the GOC is most pronounced in the production of the billet, being a primary steel product, rather than in the processing of that billet into railway wheels. Accordingly, the Commission decided to uplift Masteel's cost at point of billet production. The Commission has used the costs as reflected in the records of Masteel for the conversion of the billet to railway wheels.

A3.3.5 Producer advantages claims: BHP

BHP claim that Masteel is a large-scale, highly efficient steel producer that can be expected to be at the bottom of the cost curve for the production of steel billet.

The Commission's analysis of the producer advantages claims

In considering BHP's submissions to the SEF, the Commission considered whether it would be appropriate to adjust the Valdunes steel billet price to reflect any advantage or disadvantage that Masteel might achieve.

The Commission considers that, like other comparative advantages, in order to calculate any advantages or disadvantages that result from being an integrated, large scale producer, would require the Commission to isolate and subtract the effect of GOC's significant involvement in the Chinese steel market, noting that the development of national champions and the consolidation of the steel sector are objectives of the GOC policies and directives as discussed in **Non-Confidential Appendix 2**. The Commission considers that it would not be possible to isolate and quantify the effect of GOC involvement, with any degree of accuracy, in the relevant markets and to quantify any such comparative advantages or disadvantages.

A3.4 Commission's consideration of alternative methodologies for a benchmark

In preparing the final report, the Commission considered alternate methodologies for the determination of a benchmark for the purpose of constructing the normal value for Masteel in accordance with subsection 269TAC(2)(c) of the Act.

Cost Approach 1: Private domestic prices

In the SEF, the Commission considered that, due to the government influences that distort the prices of domestic steel billet, that private domestic prices for steel billet within China would not reflect an appropriate benchmark. **Non-confidential Appendix 2** sets out the Commission's findings that various GOC plans and policies distort the steel sector in China, including markets for the materials used in the production of steel billet that is, in

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turn, used to make railway wheels. Additionally, the Commission does not have access to private domestic prices for the particular grade of steel used for these wheels.

Therefore, the Commission considers that private domestic prices for steel billet in China are not a suitable benchmark for the cost of production that would establish an appropriate proxy for the price of railway wheels, had there not been an absence of sales in the Chinese domestic market. The Commission's view on this finding has not changed since the SEF.

Cost Approach 2: Import prices

The Commission considered the relevance of steel billet import prices in China to use as a suitable benchmark. Specifically, the Commission considered information provided by the GOC in its response to the questionnaire for the purpose of considering import prices as a suitable benchmark.

The Commission considers that import prices are not sufficiently specific to the grades of steel used in the production of railway wheels, as the price of the particular micro-alloyed steel is not the same as higher volume benchmarks. Masteel provided its cost information for a variety of grades which demonstrated that the cost to make different grades is materially different, and so a generic grade is unsuitable for replacement of the steel used in production of railway wheels.

It is also likely that any import price will be affected by government influences on domestic prices if they are to be competitive. The Commission considers that import prices for steel billet in China are not a suitable benchmark for the cost of production that would establish an appropriate proxy for the price of railway wheels, had there not been an absence of sales in the Chinese domestic market. The Commission's view on this finding has not changed since the SEF.

Cost Approach 3: External benchmarks

The Commission considered in the SEF that the most appropriate methodology to obtain a suitable benchmark was to uplift Masteel's steel billet costs with reference to the difference between these costs, and the billet costs incurred by the French producer, Valdunes. The Commission's assessment is that the uplifted costs are a suitable benchmark because they are the cost of the particular grade of micro alloyed steel used in the production of the goods under consideration, and are therefore capable of forming the basis of an appropriate proxy for the price of railway wheels had there not been an absence of sales in the Chinese domestic market. The Commission also notes that the costs of the French producer are verified costs available to the Commission. The Commission stated in the SEF that competitive benchmarks for the grades of steel used in the production of railway wheels are not available from reported pricing services.

Since the SEF, the Commission has conducted further analysis of potential benchmark methodologies to adjust Masteel's steel billet costs to be a suitable benchmark for the particular grade of micro alloyed steel used in the production of railway wheels. Noting that there is no published benchmark for the particular grades of steel consumed in the production of railway wheels, the Commission requested, and Masteel provided a listing of all grades of semi-finished steel produced by Masteel, regardless of the end use of these semi-finished goods.

The Commission compared the grades and volumes of production for grades of steel produced by Masteel with grades available in reporting pricing services. The Commission found that there was a grade of steel produced in significant quantities by Masteel during

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the investigation period that pricing data was also available in reported pricing services. There were two forms of steel of this grade available, billet and slab forms. The Commission noted that only in the case of slab had Masteel produced the steel across the investigation period. This means that for billet the Commission is unable to appropriately determine the difference between the cost incurred by Masteel and a competitive market cost for the billet.

The Commission considered each of the potential sources of slab for this grade from price reporting services to determine if any would allow the Commission to determine a representative market cost. The Commission considered, of the available sources that Brazil FOB prices may represent a competitive market cost for this particular grade of steel slab. These were sourced from Platts, a steel price benchmark service.

The Commission compared the cost to make this grade of steel by Masteel, adjusted to FOB terms using verified Masteel inland transport costs, with the FOB Brazilian prices. The Commission considered that this difference in costs between Masteel and Brazil could be used as a proxy to adjust Masteel's actual production costs of the micro alloyed billet used in the production of the like goods. This benchmark could be used in the cost of production to establish an appropriate proxy for the price of railway wheels, had there not been an absence of sales in the Chinese domestic market. However, the Commission maintains that although this alternative benchmark is available, it is not the preferred benchmark in the circumstances as the grade of steel to which it relates is not used in the production of railway wheels in China.

A3.5 The Commission's assessment

In determining the cost of production in the country of origin, the Commission's assessment is that the appropriate treatment for Masteel's steel input in the production of railway wheels in China, is to adjust Masteel's billet costs with reference to the difference between these costs, and the billet costs incurred by the French producer, Valdunes.

The Commission has adjusted Valdunes' steel input cost by the SG&A expenses (as a proportion of total revenue) incurred by a similarly sized steel company, ArcelorMittal, as Masteel is an integrated producer and would not have incurred these expenses.

The Commission considers that substituting costs at the level of steel billet, using the method described above, is the most reasonable approach to capture the impact of the influence of the GOC on the cost of producing railway wheels.

The Commission considers this benchmark is suitable because Valdunes purchased the particular grade of micro alloyed steel used in the production of railway wheels exported to Australia. The Commission has verified these costs for the period of investigation. The benchmark is therefore specific to the goods under consideration and the circumstances of Masteel. The Commission considered other approaches, as described above, but considers that based on the available evidence, this benchmark is the most suitable benchmark to determine the cost of production of railway wheels in China.

Accordingly, a constructed normal value including the cost of production based on this benchmark establishes an appropriate proxy for the price of railway wheels, had there not been an absence of sales in the Chinese domestic market.