



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

**Anti-Dumping  
Commission**

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***CUSTOMS ACT 1901 - PART XVB***

**REPORT NO. 316**

**ALLEGED DUMPING AND SUBSIDISATION OF  
GRINDING BALLS EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**6 June 2016**

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**ABBREVIATIONS**

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AMC	Asset Management Company
Anhui	Anhui Sanfang New Material Technology Co., Ltd
the applicants	Commonwealth Steel Company Ltd Pty (trading as Moly-Cop) and Donhad Pty Ltd
Boliver	Boliver International
BOF	Basic Oxygen Furnace
CBSA	Canada Border Services Agency
CFR	Cost and freight
China	the People's Republic of China
CIA	CIA Electrometalurgica SA
CITIC	CITIC Heavy Industries Company Australia Pty Ltd
combination method	the combination fixed and variable duty method
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 316	<i>Consideration Report No. 316</i>
CPM	CITIC Pacific Mining Management Pty Ltd
CTM	Cost to make
CTMS	Cost to make and sell
Donhad	Donhad Pty Ltd
DS 379	<i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i>
DS 436	<i>United States – Carbon Steel (India)</i>
DS 437	<i>United States – Countervailing Measures (China)</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EAF	Electric arc furnace
Elecmetal	Compañía Electro Metalúrgica S.A.
EU	European Union
EU – Biodiesel	<i>European Union – Anti-Dumping Measures on Biodiesel from Argentina</i>
EXW	Ex-works
FOB	Free on board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
GOC	Government of China

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Goldpro	Hebei Goldpro New Material Technology Co., Ltd
the Guidelines	Guidelines on the Application of Forms of Dumping Duty – November 2013
HCC	Hard coking coal
HRC	Hot rolled coil
HSS	Hollow structural sections
ICD	Interim countervailing duty
IDD	Interim dumping duty
Interim Regulations	<i>Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises</i>
INV 177	Investigation 177 - Certain Hollow Structural Sections exported from China, Korea, Malaysia, Taiwan and Thailand
INV 190	Investigation 190 -Alleged Dumping of Zinc Coated (galvanised) Steel and Aluminium Zinc Coated Steel Exported from China, Korea and Taiwan
INV 193	Investigation 193 - Alleged Subsidisation of Zinc Coated Steel and Aluminium Zinc Coated Steel Exported from China
INV 198	198 - Dumping of Hot Rolled Plate Steel Exported from China, Republic of Indonesia, Japan, Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel exported from China
INV 237	Investigation 237 - Silicon Metal exported from China
INV 238	Investigation 238 – Deep Drawn Stainless Steel Sinks exported from China
INV 300	Investigation 300 - Steel Reinforcing Bar from China
INV 301	Dumping Investigation 301 - Rod in Coils from China
INV 331	Subsidy Investigation 331 - Rod in Coils from China
Jeco	Jeco Materials Pty Ltd
Karara	Karara Mining Limited
Korea	The Republic of Korea
LTAR	Less than adequate remuneration
Longte	Changshu Longte Grinding Ball Co., Ltd
Longteng	Changshu Longteng Special Steel Co., Ltd
the Manual	Dumping and Subsidies Manual
ME Longteng	ME Longteng Grinding Media (Changshu) Co., Ltd
MEPS	MEPS (International) Ltd
MIIT	China's Ministry of Industry and Information Technology
Moly-Cop	Commonwealth Steel Company Ltd Pty (trading as Moly-Cop)
NDRC	China's National Development Reform Commission
NIP	Non-injurious price
OCOT	Ordinary course of trade
PAD	Preliminary affirmative determination
PAD 316	<i>Preliminary Affirmative Determination No. 316</i>
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PBC	People's Bank of China

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Platts	McGraw Hill Financial Services
R&D	Research and development
the Regulations	<i>Customs (International Obligations) Regulation 2015</i>
REV 248	Review of Measures 248 – Aluminium Extrusions exported from China
SASAC	State-Owned Asset Supervision and Administration Commission of the State Council
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SEF	Statement of essential facts
SEF 316	<i>Statement of Essential Facts No. 316</i>
SG&A	Selling, general and administrative
SIE	State Invested Enterprise
Sino Grinding	Sino Grinding International Pty Ltd
Softwood Lumber IV	<i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i>
SOCB	State owned commercial bank
SOE	State Owned Enterprise
USA	United States of America
USD	United States of America dollar
USP	Unsuppressed selling price
TER 316	<i>Termination Report No. 316</i>
TMRO	Trade Measures Review Officer
VAT	Value added tax
WTO	World Trade Organisation
Xingcheng	Jiangsu CP Xingcheng Special Steel Co Ltd
Yute	Jiangsu Yute Grinding International Co., Ltd

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Introduction

This Report Number 316 (REP 316) has been prepared in response to an application by Commonwealth Steel Company Pty Ltd (trading as Moly-Cop) and Donhad Pty Ltd (Donhad) for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from the People's Republic of China (China).

Moly-Cop and Donhad (the applicants) allege that the Australian industry for grinding balls has suffered material injury caused by grinding balls exported to Australia from China at dumped and subsidised prices.

### 1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*<sup>1</sup> describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner of the Anti-Dumping Commission (the Commissioner) in conducting an investigation in relation to the goods covered by an application under subsection 269TB(1). Section 269TDA describes the reasons upon which the Commissioner must terminate an investigation. Section 269TEA sets out the requirements for a report that the Commissioner must give to the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) following an investigation.<sup>2</sup> Section 269TLA sets out requirements for the Parliamentary Secretary's decision after receiving such a report from the Commissioner.

### 1.3 Background

On 17 November 2015, the Commissioner initiated this investigation following his consideration of an application lodged by Moly-Cop and Donhad.

The Anti-Dumping Commission (the Commission) received completed exporter questionnaire responses from the following four exporters:<sup>3</sup>

- Changshu Longte Grinding Ball Co., Ltd (Longte);
- Jiangsu CP Xingcheng Special Steel Co., Ltd (Xingcheng);
- Hebei Goldpro New Materials Co., Ltd (Goldpro); and
- Jiangsu Yute Grinding International Co., Ltd (Yute).

These exporters were considered to be cooperative exporters.<sup>4</sup>

The Commission undertook verification visits to Longte and Xingcheng. Although Goldpro and Yute were not visited, the Commission analysed the data submitted by each company

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

<sup>2</sup> On 23 December 2014, the then Minister for Industry and Science delegated his powers and functions under Part XVB of the *Customs Act* to the Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Department of Industry and Science became the Department of Industry, Innovation and Science. The titles of the Minister and Parliamentary Secretary also changed to the Minister for Industry, Innovation and Science, and the Parliamentary Secretary to the Minister for Industry, Innovation and Science. On 20 September 2015 the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

<sup>3</sup> As defined in subsection 269T(1).

<sup>4</sup> Under subsection 269T(1)

and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate dumping and subsidy margins.

#### **1.4 Statement of essential facts and preliminary affirmative determination**

*Statement of Essential Facts No. 316* (SEF 316) and *Preliminary Affirmative Determination No. 316* (PAD 316) for this investigation were combined and placed on the public record on 21 April 2016.<sup>5</sup> In preparing SEF 316 and PAD 316, the Commissioner had regard to the application, submissions concerning publication of a dumping duty notice and countervailing duty notice that were received by the Commission within 40 days after the date of initiation of the investigation and any other matters considered relevant.

#### **1.5 Report to the Parliamentary Secretary**

The Commissioner must, within 155 days of initiation of the investigation, give the Parliamentary Secretary a report recommending whether to publish a dumping duty notice and/or a countervailing duty notice in respect of the goods the subject of the application.<sup>6</sup> The report is due to be given to the Parliamentary Secretary on 6 June 2016.

The Parliamentary Secretary must decide whether to publish a dumping duty and/or a countervailing duty notice within 30 days of receiving the Commissioner's recommendation, unless the Parliamentary Secretary considers there are special circumstances that prevent the decision being made within that period.<sup>7</sup> The decision by the Parliamentary Secretary is due by 6 July 2016.

#### **1.6 Submissions from interested parties**

In response to SEF 316 and PAD 316, the Commissioner received 12 submissions from interested parties. The Commissioner did not have regard to two submission received after the end of the 20 day period following the SEF as the Commissioner considered that to do so would prevent the timely preparation of this report.<sup>8</sup> Non-confidential versions of all 12 submissions are available on the public record.

#### **1.7 Partial termination of the investigation**

On 6 June 2016, the Commissioner terminated part of the subsidy investigation in respect of grinding balls exported to Australia from China by the cooperative exporters Longte, Xingcheng, Goldpro and Yute. *Termination Report No. 316* (TER 316) and Anti-Dumping Notice (ADN) 2016/58 sets out the reasons for the Commissioner's termination decisions and are available on the public record.

#### **1.8 Particular market situation**

The Commissioner has found that a particular market situation exists in the Chinese iron and steel market due to significant Government of China (GOC) influence. The

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<sup>5</sup> An electronic copy of the public record is available at the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>6</sup> Under section 269TEA(1),

<sup>7</sup> Under section 269TLA,

<sup>8</sup> Pursuant to subsection 269TEA(4),

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Commissioner considers that this has led to the prices in individual product markets within the Chinese economy, such as grinding balls, to be significantly distorted. As such, due to the operation of subsection 269TAC(2)(a)(ii), the Commissioner has not had regard to the domestic prices of grinding balls in China in the calculation of normal values. Details of the finding are included at Appendix 2.

### 1.9 Dumping finding

The Commissioner has determined that the goods were exported to Australia from China at dumped prices during the investigation period. The dumping margins are shown in Table 1 below.

Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	3.0%
Hebei Goldpro New Material Technology Co., Ltd	51.5%
Jiangsu CP Xingcheng Special Steel Co., Ltd	20.6%
Jiangsu Yute Grinding International Co., Ltd	43.3%
<i>Uncooperative and All Other Exporters</i>	95.4%

Table 1: Dumping margins

### 1.10 Countervailing

The Commissioner has determined that the goods have been exported from China at subsidised prices. The subsidy margins are shown in Table 2 below.

Exporter / manufacturer	Subsidy margin
Changshu Longte Grinding Ball Co., Ltd	0.2%
Hebei Goldpro New Material Technology Co., Ltd	0.0%
Jiangsu CP Xingcheng Special Steel Co., Ltd	0.7%
Jiangsu Yute Grinding International Co., Ltd	0.0%
<i>Uncooperative and All Other Exporters</i>	8.2%

Table 2: Subsidy margins

### 1.11 Injury and causation

The Commissioner has found that the Australian industry has suffered injury and that the injury is material. The Commissioner has also found that the material injury has been caused by the dumping and subsidisation of grinding balls from China.

### 1.12 Proposed measures

The Commissioner recommends that interim dumping duties (IDD) be calculated in accordance with the combination fixed and variable duty method (combination method).

### 1.13 Conclusion

The Commissioner has found that:

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- grinding balls have been exported from China at dumped and subsidised prices;
- there is an Australian industry producing like goods that has experienced material injury; and
- the dumped and subsidised goods have caused material injury to the Australian industry.

Based on the above findings and in accordance with subsection 269TEA(1), the Commissioner recommends that a dumping duty notice and a countervailing duty notice be published in respect of grinding balls exported to Australia from China.

## 2 BACKGROUND

### 2.1 Initiation

On 5 October 2015, the applicants lodged an application under subsection 269TB(1) requesting that the Parliamentary Secretary publish a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from China.

The applicants allege that the Australian industry has suffered material injury caused by exports of grinding balls to Australia from China at dumped and subsidised prices. The applicants allege that the industry has been injured through:

- price depression;
- price suppression;
- lost sales volume;
- loss of profits;
- loss of profitability;
- reduced revenue;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced employment.

Subsequent to receiving further information on 23 October 2015 from the applicants, and having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping and subsidisation of grinding balls from China on 17 November 2015. Public notification of initiation of the investigation was also made on 17 November 2015.

ADN No. 2015/132 provides further details relating to the initiation of the investigation and is available on the public record.<sup>9</sup>

In respect of the investigation:

- the investigation period<sup>10</sup> for the purpose of assessing dumping and subsidisation is 1 October 2014 to 30 September 2015; 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 subsidised goods is from 1 July 2011.

### 2.2 Previous investigations

There have been no previous investigations into the alleged dumping or subsidisation of grinding balls exported to Australia from any country.

### 2.3 SEF 316 and PAD

On 21 April 2016, the Commissioner published a combined SEF 316 and PAD.

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<sup>9</sup> See number 2 on the public record

<sup>10</sup> Subsection 269T(1)

SEF 316 indicated that grinding balls exported from China had been dumped and subsidised, and that the dumping and subsidisation was causing material injury to the Australian Industry. Securities of between 12.6 per cent and 113 per cent were imposed on grinding balls exported to Australia from China.

The combined SEF 316 and PAD is available on the public record.

## **2.4 Report to the Parliamentary Secretary**

The Commissioner must give the Parliamentary Secretary a report in respect of the goods the subject of the application that recommends whether the Parliamentary Secretary:

- should publish a dumping duty notice under section 269TG and/or a countervailing duty notice under section 269TJ, and the extent of any duties that are, or should be payable under the *Customs Tariff (Anti-Dumping Act) 1975 (Dumping Duty Act)* because of that notice (or those notices); and
- ought to be satisfied as to the matters in respect of which the Parliamentary Secretary is required to be satisfied before such notices can be published.<sup>11</sup>

The Commissioner must have regard to the application, any submission concerning publication of the notice to which the Commissioner had regard in formulating the SEF, the SEF, and any submission made in response to the SEF that is received within 20 days after the SEF is placed on the public record.<sup>12</sup> The Commissioner may have regard to any other matters that the Commissioner considers relevant.<sup>13</sup>

The Commissioner is not obliged to have regard to any submission made in response to the SEF that is received after the end of the 20 day period<sup>14</sup> following publication of the SEF if the Commissioner considers that to do so would prevent the timely preparation of the report.<sup>15</sup>

## **2.5 Submissions in response to SEF 316**

The Commissioner received 12 submissions from interested parties following SEF 316. Ten of these submission as well as submissions received prior to the publication of SEF 316 have been considered by the Commissioner in reaching the conclusions in this report. All submissions received during the course of the investigation are listed in **Appendix 1**.

The Commission received a confidential submission from Alcoa of Australia on 27 May 2016, however a non-confidential version of the submission was not provided for publication on the public record until 3 June 2016. The Commission also received a joint submission from Goldpro and Yute on 3 June 2016. The Commissioner did not have regard to these submissions because, in his opinion, to do so would prevent the timely preparation of this report to the Parliamentary Secretary.

In summary, the submissions in response to SEF 316 addressed the following issues:

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<sup>11</sup> Under subsection 269TEA(1).

<sup>12</sup> Under subsection 269TEA(3).

<sup>13</sup> Under subsection 269TEA(3)(b).

<sup>14</sup> As referred to in subsection 269TEA(3)(a)(iv).

<sup>15</sup> Under subsection 269TEA(4).

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- whether cast grinding balls should be excluded from the goods under consideration;
- the correctness of the Commission's finding in regards to particular market situation;
- the use of a Latin American free on board (FOB) billet price in the benchmark competitive cost for grinding bars;
- normal value calculations utilised in SEF 316 and PAD 316;
- the arms length nature of related party transactions for cooperating exporters;
- pass-through of upstream subsidies for subsidy Programs 1 and 2;
- the materiality of the Australian industry's injury and the extent to which it was caused by dumped and subsidised grinding balls from China;
- the form of measures;
- whether a dumping duty notice should be issued retrospectively in accordance with subsection 269TN(3).

Each of these issues raised by the submissions has been considered and the responses are included within the body of this final report.

### **2.6 Public record**

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available in hard copy by request in Melbourne or online at <http://www.adcommission.gov.au>. Documents on the public record should be read in conjunction with this report.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Findings

The Commissioner considers that locally produced grinding balls are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises of two Australian producers, Moly-Cop and Donhad.<sup>16</sup>

### 3.2 Legislative and policy framework

Subsection 269TC(1) provides that the Commissioner shall reject an application for a dumping duty notice or countervailing 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 the report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG or a countervailing duty notice under section 269TJ. This includes a recommendation on whether the Parliamentary Secretary should be satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

In making this recommendation, the Commissioner first determines 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. However, the Australian industry must 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:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

### 3.3 The goods under consideration

The goods the subject of the investigation are:

*Ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive).*

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<sup>16</sup> As set out in *Consideration Report 316*.

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The goods covered by this application include all ferrous grinding balls, typically used for the comminution of metalliferous ores, meeting the above description of the goods regardless of the particular grade or alloy content.

Goods excluded from this application include stainless steel balls, precision balls that have been machined and/or polished, and ball bearings.

### 3.4 Tariff classification

At the initiation of this investigation, ADN 2015/132 stated that the goods are typically classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- Tariff subheading 7325.91.00 with statistical code 26; and
- Tariff subheading 7326.11.00 with statistical code 29.

Prior to 20 December 2015, the goods were subject to a 4 per cent Customs duty. However on 20 December 2015, the China Australia Free Trade Agreement came into force at which time the goods became subject to a reduced rate of 3.3 per cent Customs duty. From 1 January 2016, the rate of Customs duty applicable to the goods further reduced to 1.7 per cent. From 1 January 2017 the goods will be free of Customs duty.

### 3.5 Additional tariff classification

During the course of the investigation, the Commission became aware that a small volume of the goods have been declared under tariff subheading 7326.90.90, with statistical code 59. This tariff subheading covers other articles of iron and steel not specified or included in previous subheadings.

The Commission published ADN 2016/50 on 6 May 2016 notifying that goods meeting the goods description that were imported into Australia during the investigation period under this additional tariff classification would also be examined as part of the investigation.

The inclusion of this tariff classification does not constitute a change to the goods description. Rather, this is a clarification of the tariff subheadings that may include goods meeting the goods description.

ADN 2016/50 is available on the public record.

Goods classified under tariff subheading 7326.90.90, with statistical code 59 are subject to the same rate of duty as detailed in section 3.4 above.

### 3.6 The Australian industry

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Subsections 269T(2) and 269T(3) 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.

The Commission visited Moly-Cop’s Newcastle facility and Donhad’s Perth and Newcastle facilities to examine the manufacturing processes and to verify the claims made by the applicants in the application. The Commission has found that the applicants undertake at least one substantial process of manufacture in producing grinding balls in Australia and,

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as the goods are partly manufactured in Australia, there is an Australian industry producing like goods.

Further information on each applicant, its production process and product range is available in the Australian industry verification reports on the public record.

### 3.7 Commissioner's assessment - like goods

The Commissioner considers that the applicants produce goods that are 'like' to the goods under consideration for the following reasons:

- the primary physical characteristics of the goods and locally produced goods are similar;
- the goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market;
- the goods and locally produced goods are functionally alike as they have a similar range of end-uses; and
- the goods and locally produced goods are manufactured in a similar manner.

Having regard to the above, the Commissioner is satisfied that the Australian industry produces 'like' goods to the goods the subject of the application, as defined in subsection 269T(1).

The Commissioner is satisfied that there is an Australian industry in respect of 'like goods' in accordance with subsection 269TC(1).

### 3.8 Submissions in response to SEF 316 - cast balls

Anhui Sanfang New Material Technology Co., Ltd. (Anhui)<sup>17</sup>, submitted that high chromium cast grinding balls should be excluded from the goods under consideration because:

- the raw materials, production equipment and processes for cast grinding balls are totally different from forged grinding balls;
- neither of the two Australian applicants or the four cooperating Chinese exporters produce cast grinding balls, nor do they have any production equipment and machinery related to the production of cast grinding balls;
- cast grinding balls have significantly different chemical compositions than forged grinding balls; and
- cast grinding balls and forged grinding balls have different end uses such that cast grinding balls exported from China cannot be used as substitutes for domestically produced forged grinding balls.

### 3.9 The Commission's consideration - cast balls

The Commission acknowledges that both applicants and each of the cooperating exporters<sup>18</sup> are manufacturers of forged grinding balls, rather than cast grinding balls. The Commission also acknowledges that there is some variation in production process and chemical composition such that forged and cast grinding balls perform differently in end

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<sup>17</sup> See number 36 on the public record.

<sup>18</sup> The Commission notes that there is a possibility that uncooperative exporters exported cast balls to Australia, however due to the non-cooperation it was unable to confirm the volume of cast balls exported to Australia from China.

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use applications. The Commission understands that cast and forged grinding balls are not used interchangeably, that is, cast grinding balls and forged grinding balls are not used in combination, however evidence obtained during the investigation indicates that cast grinding balls and forged grinding balls are substitutable across a large range of end uses.

Information obtained from importers during the course of the investigation indicates that certain end users continue to trial or request tenders for both cast and forged grinding balls within their mining operations. CITIC Pacific Mining Pty Ltd (CPM) advised that the ultimate objective is to identify the most suitable specification of grinding media in terms of size, chemical composition, hardness and wear rate that meet its operational need, and also to identify the most cost-effective grinding media consumption rate (kg/ton).

The Commission also considered a research paper presented at the Metallurgical Plant Design and Operating Strategies Forum in 2013 titled “The Application of High-Chrome Grinding Media at MMG Century Mine for Improved Grinding Media Consumption and Metallurgy Performance”. The premise of this paper was that cast and forged grinding balls were substitutable in a particular mine.

The Commission accepts that while some production and technical specification differences exist between cast grinding balls and forged grinding balls they are nonetheless functionally alike and therefore substitutable across a range of end uses. Further details regarding cast balls is in section 4.4.

The Commission notes that exemptions can be granted, but only in certain specified circumstances. Information about exemptions can be found on the Commission’s website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## 4 AUSTRALIAN MARKET

### 4.1 Findings

The Commissioner finds that the Australian market for grinding balls is supplied by the Australian industry and imports from a number of countries, the largest of which is China. The Commission estimates that the size of the Australian market during the investigation period was approximately 240,000 tonnes.

### 4.2 Moly-Cop and Donhad

The Commission conducted verification visits at Moly-Cop's Newcastle production facility and at Donhad's Perth production facility, and is satisfied that there is an Australian industry producing like goods.

The Commissioner has had regard to the information verified at the visits to Moly-Cop and Donhad, as well as the matters discussed in the respective visit reports, in preparing this SEF. Verification visit reports are available on the public record.<sup>19</sup>

The Commissioner is satisfied that the applicants compete with importers of grinding balls in all market segments and in all states and territories in Australia.

### 4.3 Importers

Following the initiation of this investigation, the Commission identified the importers of grinding balls from China using the Australian Border Force's (ABF) import database. Based on individual import volumes, the following three importers were considered to be 'major' importers, accounting for 91 per cent of imports of grinding balls from China during the investigation period:

- Karara Mining Limited (Karara);
- CIA Electrometalurgica SA (CIA); and
- Sino Grinding International Pty Ltd (Sino Grinding).

The Commission sent each of the above three importers an importer questionnaire and received a response in a timely manner.

The Commission undertook on-site visits to Karara and Sino Grinding and verified the data supplied by those companies in terms of its relevance, completeness and accuracy. CIA is a non-resident importer of grinding balls, based in Chile. On this occasion, the Commission decided not to conduct an on-site verification of CIA's data. However CIA cooperated with the investigation and provided its internal records and source documents for its import and sales transactions. The Commission prepared a verification report for CIA based on its assessment of the information provided.

In preparing for an in-country exporter verification for Xingcheng, the Commission sought information from a fourth importer of grinding balls, related to Xingcheng, CPM. The Commission did not conduct an on-site verification of CPM's data; however CPM cooperated with the investigation and provided its internal records and source documents

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<sup>19</sup> See numbers 14 and 28 on the public record

for its import transactions. The Commission prepared a verification report for CPM based on its assessment of the information provided.

The importer verification reports are published on the public record.<sup>20</sup>

#### **4.4 Market distribution**

The Australian grinding balls market is supplied by the applicants, importers selling to end-users, and end-users importing grinding balls directly from the manufacturer.

The typical Australian-based grinding ball consumers value the source of grinding media on the basis of “total-cost-ownership”, that is, they will generally assess the total value of product taking into consideration price, consumption rate and supply chain costs. Supply security and technical support may also be taken into consideration.

The Australian industry estimates that approximately 90 per cent of grinding ball demand on the Australian market is from the mining industry, including for use in magnetite, copper and gold mine processing applications, with the remaining ten per cent taken up from coal pulverizing for electricity production and grinding plaster and cement for the building industry.

The Australian industry estimates that Australian manufacturers supply approximately 80 per cent of the Australian market, with the balance supplied by imports. The major sources of import supply are forged grinding balls from China and high chrome cast balls from Thailand and India.

Forged steel balls are generally consumed at a higher rate than high chrome balls and importers typically set their resale prices into the market lower to compensate for the higher consumption rate that will most likely arise.

The high chrome cast balls will typically result in a lower consumption rate than forged steel grinding balls, due to the more wear resistant microstructure of the product, however the significant component of chromium in the product inflates the manufacturing cost, and hence high chrome balls are more expensive.

The majority of grinding balls are sold into Western Australia (approximately 50 per cent of total sales) with the balance sold into the next largest volume states of New South Wales and Queensland.

#### **4.5 Demand variability**

Given that the major source of demand for grinding balls on the Australian market is the mining industry, the Australian industry claim that demand variability is primarily driven by the mining sector.

The Australian industry noted that a decline in mining investment in 2015 has not generally impacted the demand for grinding balls as the customers are well-established mines that have continued operation at, or near, maximum production output.

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<sup>20</sup> See numbers 13, 20, 25 and 30 on the public record

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The Australian industry asserted that demand for grinding balls in Australia has remained stable across the four-year injury analysis period.

### 4.6 Market size

Based on the verified sales data of the Australian industry, verified exporter's data and import data obtained from the ABF import database, the Commission has estimated the size of the market for grinding balls which is shown in Figure 1 below. All years in Figure 1, and subsequent figures, align with the investigation period, e.g. years spanning October to September.

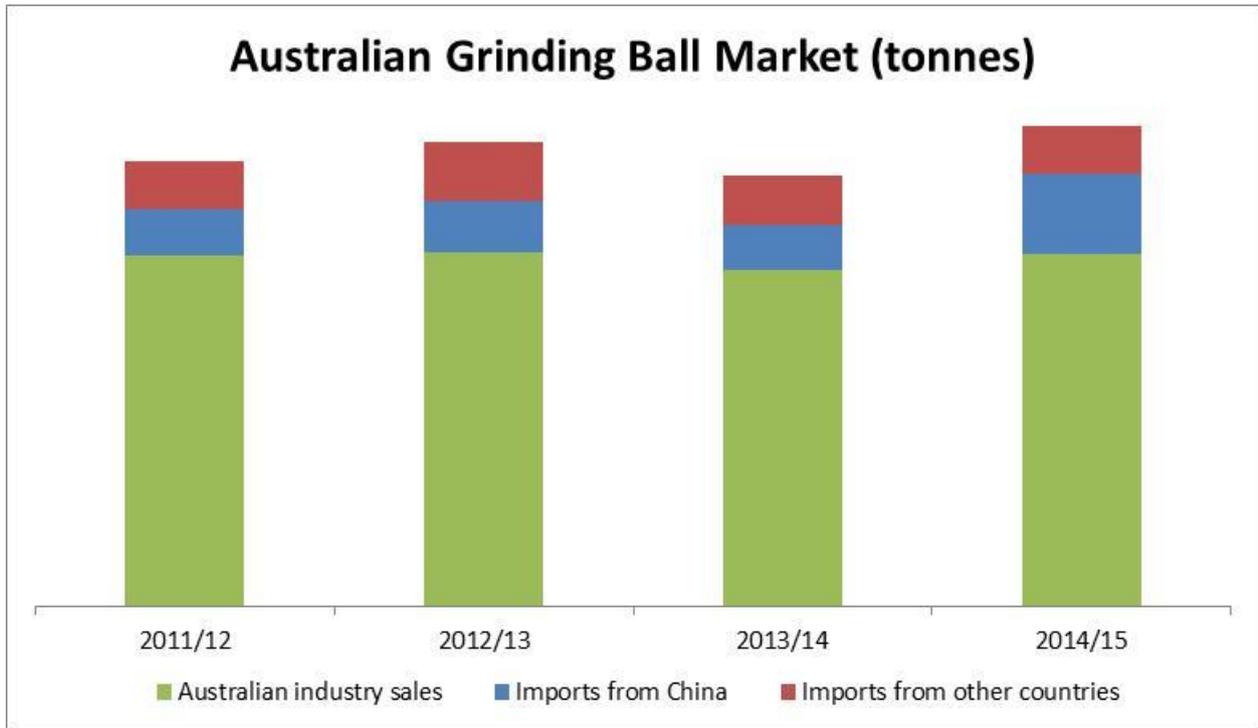


Figure 1: Australian market for grinding balls – Injury period

The Commission's analysis regarding the Australian market for grinding balls is at **Confidential Attachment 1 – Australian Market**.

## 5 DUMPING INVESTIGATION

### 5.1 Finding

The Commissioner has found that grinding balls exported to Australia from China during the investigation period were dumped. The volume of dumped goods and the dumping margins were not negligible. The dumping margins are summarised in the table below.

Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	3.0%
Hebei Goldpro New Material Technology Co., Ltd	51.5%
Jiangsu CP Xingcheng Special Steel Co., Ltd	20.6%
Jiangsu Yute Grinding International Co., Ltd	43.3%
<i>Uncooperative and All Other Exporters</i>	95.4%

Table 3: Dumping margins

### 5.2 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. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of Table 3, the Commission compared 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, in accordance with subsection 269TACB(2)(a).

### 5.3 Cooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'. At the commencement of the investigation, the Commission contacted all known exporters of the goods and each identified supplier of the goods within the relevant tariff subheadings for grinding balls as identified in the ABF's import database and invited them to complete an exporter questionnaire.

The Commission received completed exporter questionnaire responses from the following exporters:

- Longte;
- Xingcheng;
- Goldpro; and
- Yute.

The Commission undertook verification visits to Longte and Xingcheng. Although Goldpro and Yute were not visited, the Commission analysed the data submitted by each company

and is satisfied that the data is accurate, relevant and complete. This data was used to calculate dumping and subsidy margins.

As a result, these exporters were considered to be cooperative exporters.

## **5.4 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.

As noted in the status report for this investigation, pursuant to section subsection 8(b) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*, the Commissioner 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 (24 December 2015), to be uncooperative exporters on the basis that no relevant information was provided in a reasonable period.

In accordance with subsection 269TACAB(1), the export price for uncooperative exporters was worked out under subsection 269TAB(3) and the normal value was worked out under subsection 269TAC(6). These provisions were also applied for all other exporters.

## **5.5 Particular market situation finding**

Subsection 269TAC(2) provides that in certain circumstances, the normal value of the goods exported to Australia is an amount determined under subsections 269TAC(2)(c) or 269TAC(2)(d). In particular, where the normal value of the goods cannot be ascertained under subsection 269TAC(1) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1).

In the application, it was alleged that a particular market situation (market situation) exists in the Chinese grinding balls market, such that the domestic selling prices of grinding balls in the Chinese domestic market are not suitable for establishing normal values under subsection 269TAC(1). The applicants alleged that grinding ball prices in China are artificially lower, or not substantially the same as they would be if they were determined in a competitive market.

Having considered these allegations, the Commissioner formed a view in SEF 316 that there is a market situation in the Chinese domestic grinding ball market and that domestic selling prices are not suitable for establishing normal values under subsection 269TAC(1).

### **5.5.1 Submissions in response to SEF 316 - market situation**

A joint submission by Yute and Goldpro<sup>21</sup> claimed that, if there is no basis for countervailing measures for the cooperating exporters, it is not possible to reach a market situation finding. Yute and Goldpro also requested that the Commission take into account

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<sup>21</sup> See number 39 on the public record

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the GOC's response to Investigation No. 331, regarding the alleged subsidisation of rod in coils exported from China (INV 331).

Boliver International (Boliver)<sup>22</sup> submitted that the Commission has erred in its findings by following the reasoning employed in earlier Investigation No. 300 - Steel Reinforcing Bar from China (INV 300) and Investigation No. 301 – Rod in Coils from China (INV 301). Boliver submitted that grinding balls are a speciality steel product whereas steel reinforcing bar and rod in coil are commodity steel products. As such, in its opinion, the conclusions reached in those investigations are not relevant to grinding balls. Boliver contended the grinding bar used to produce grinding balls is made to a specific recipe for each customer, therefore the exporter's actual costs to manufacture grinding balls must be used in the normal value. Boliver did not provide any supporting evidence to contradict the Commission's findings.

Longte<sup>23</sup> submitted that SEF 316 did not adequately explain why the alleged GOC involvement in the iron and steel industry satisfied the conditions under subsection 269TAC(2)(a)(ii).

### 5.5.2 The Commission's consideration – market situation

The Commission makes the following general points in relation to the issues raised in the above submissions regarding market situation:

- market situation and subsidies are separate matters. Market situation relates to a situation in the market of a country of export such that sales in that market are not suitable for use in determining a normal value, whilst subsidy refers to a financial contribution or income or price support provided to a manufacturer in the country of export which confers a benefit in relation to the goods exported to Australia. As such, whilst the existence of subsidies may be relevant to claims of market situation, they are not determinative. Nonetheless, in total the Commission found that subsidies had been received in relation to 46 of the 54 subsidy programs investigated, including subsidies relating to income tax, tariff and value-added tax (VAT) exemptions, grants and preferential loans. This does not support Yute and Goldpro's claims that there is no basis for countervailing measures in the Chinese grinding ball industry. The proposed part termination of the countervailing investigation (now terminated as of 6 June 2016) reflected the negligible subsidy margins received by the cooperating exporters only;
- The Commission also considers that various plans, policies and taxation regimes of the GOC have contributed to the distorted prices of production inputs including (but not limited to) raw materials used to make grinding balls in China and render those costs unsuitable for cost to make and sell (CTMS) calculations. The Commission considers that direct and indirect influences of the GOC in the iron and steel industry is most pronounced in the part of that industry that might be described as upstream from grinding ball production. In particular, the GOC affects Chinese manufacturers' costs to produce grinding bars which in turn are used to produce grinding balls;
- The GOC was invited to comment on the investigation in a government questionnaire. This included providing a response on the alleged market situation. However, the GOC did not respond to the questionnaire. As a result, the

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<sup>22</sup> See number 41 on the public record

<sup>23</sup> See number 40 on the public record

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Commission relied on other sources of information to quantify the level of distortion in the Chinese grinding balls market; and

- SEF 316 contained, as does this report, a comprehensive summary of the Commission's market situation assessment at **Appendix 2**.

The Commission does not agree with Boliver's claims that previous findings in relation to steel reinforcing bar and rod in coil are irrelevant to grinding balls on the basis that grinding balls are a specialty steel product. The Commission considers it highly relevant to have regard to the broader Chinese iron and steel industry. Whilst there is some variation in the chemical specification requirements of each grinding ball purchaser, the steel billet used in the production of grinding balls is nonetheless produced using the same or similar raw materials (with the addition of alloys) and production techniques used for the production of billet consumed in rebar and rod in coil. The Commission's market situation determination reflects the practical reality that distortions in the Chinese iron and steel industry will equally impact producers of commodity steel products (such as steel reinforcing bar and rod in coil), as it will specialty steel product producers (such as grinding ball producers), due to the common raw materials and production processes in the upstream stages of production.

As such, the Commissioner affirms the market situation finding in SEF 316.

### 5.6 Competitive market costs for grinding bar

As the Commissioner considers that there is a market situation for grinding balls in China, normal values may be determined on the basis of a cost construction<sup>24</sup> or third country sales.<sup>25</sup> Normal values were constructed under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulations).

In relation to determining the cost of production or manufacture for the purposes of subsection 269TAC(5A)(a), subsection 43(2) of the Regulations requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records.

Neither the Act nor the Regulations prescribe a method for assessing whether an exporter's records reasonably reflect competitive market costs associated with the production or manufacture of like goods. Generally, when undertaking this assessment, the Commission may examine whether the GOC influenced the price of any major cost inputs.

As discussed in Appendix 2, the Commission considers that the significant influence of the GOC has distorted prices in the iron and steel industry and grinding balls market in China.

As the GOC did not respond to the Commission's invitation to comment on this investigation, the Commission was not able to rely on GOC data to quantify the impacts of GOC distortion on exporters' cost inputs.

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<sup>24</sup> Subsection 269TAC(2)(c)

<sup>25</sup> Subsection 269TAC(2)(d)

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As a result, in this instance, the Commission has quantified the effects of GOC influence by comparing each exporter's cost of production with a benchmark.

On 18 January 2016, the Commission published Issue Paper 2016/01 seeking submissions from interested parties in relation to the most appropriate methodology for determining a competitive market cost for grinding bar. The submissions received and the Commission's consideration of them was detailed in SEF 316.

### **5.6.1 Private domestic prices**

The Commission's assessment of data submitted by cooperative exporters shows that there is no significant difference between grinding bar prices from state invested enterprises (SIE) and private suppliers. The Commission considers that private domestic prices of grinding bar are equally affected by GOC influence and therefore are not suitable for benchmarking exporter's costs. Therefore, the Commission considers that private domestic prices of grinding bars in China are not suitable for determining a competitive market cost, free from government influence.

### **5.6.2 Import prices**

Based on the data supplied by cooperating exporters and gathered by the Commission, the Commission considers that prices of imported grinding bar sold in China are not suitable as a benchmark to reflect competitive market prices due to the lack of import penetration of grinding bar and the likelihood that import prices were equally affected by the government influences on domestic prices.

### **5.6.3 External benchmarks**

The Commission is not aware of any externally published grinding bar prices. However, the Commission considers that an external benchmark can be constructed based on the inputs which make up grinding bar, e.g. steel billet, ferroalloys and conversion costs. The methodology for the Commission's proposed benchmark construction of grinding bar is below.

## **5.7 Benchmark for grinding bar costs**

The Commission's benchmark for grinding bar costs consists of the following:

- i. a monthly Latin American export billet price in FOB terms; and
- ii. noting the Latin American billet is grade ASTM A36/A36-08, the billet prices were uplifted using independently sourced ferroalloy prices to provide a matrix of billet grades reasonably reflecting the chemical composition of each exported grinding ball grade; and
- iii. where available, the exporter's actual cost of converting steel billet to grinding bar was used to uplift the alloyed billet price to an alloyed grinding bar price. Where the exporter's actual cost of converting billet to grinding bar was not available (where grinding bar was purchased rather than produced from billet by the exporter) the alloyed billet price was uplifted by a conversion factor based on an average of the conversion costs of the cooperating exporters to determine an alloyed grinding bar cost.

The Commission considers that the Latin American export billet prices at FOB level published by McGraw Hill Financial Services (Platts), forms an independent and reliable basis for the steel billet input component.

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World Steel Association's statistics shows that in excess of 63 million tonnes of crude steel was produced in the Latin American region in 2014. The Latin America region includes two of the top 13 countries, Brazil and Mexico, based on crude steel production volumes. Consequently, the Commission considers that the Latin America region has sufficient volume to reflect competitive market conditions. In addition, the Commission notes there are significant reserves of iron ore within the Latin America region which are mined and exported in large volumes. Of the iron ore exported from Central and Southern America, over half was directed to China, and the amount directed to China was greater than the amount consumed regionally. The Commission considers that this reflects a consistent cost point for a significant raw material that is included in the cost of steel billet.

Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information for competitive market costs of steel billets. This is consistent with the Commission's approach in the most recently completed steel investigations INV 300 and 301. The Commission notes that the Latin American billet is of grade ASTM A36/A36-08. Monthly ferroalloy prices for the investigation period were obtained from Metal Bulletin. The total cost of ferroalloys applied to the steel billet was determined using a model developed by the Australian industry that allowed the Commission to replicate the chemical composition of each grade of exported grinding ball using the most cost effective combination of ferroalloys.

### 5.8 Adjustment using exporter's records

Having established a competitive grinding bar benchmark using the above methodology, the Commission compared the competitive grinding bar benchmark to the costs reported in the exporter's records. This comparison shows that the costs reported in the exporter's records are significantly influenced by GOC distortion, such that they do not reasonably reflect competitive market costs.

As noted above in Section 5.6, subsection 43(2) of the Regulations requires the exporter's records to be used where they reasonably reflect competitive market costs. However, subsection 43(2) does not provide how cost of production should be determined where the records do not reasonably reflect competitive market costs.

As a result, the Commission has adjusted the grinding bar costs in the exporter's records to align them with the competitive grinding bar benchmark.

Having made this adjustment, the following steps were undertaken to arrive at normal values for each exporter:

- The competitive grinding bar benchmark was uplifted by each cooperating exporters' actual cost to convert grinding bar to grinding balls, to determine the cost to make (CTM) of each grade of each exporter's grinding balls;
- The CTM was uplifted by each exporter's actual selling, general and administrative (SG&A) expenses to determine a CTMS for each grade of each exporter's grinding balls; and
- CTMS was uplifted based on each exporter's profit on those domestic sales which met the original ordinary course of trade (OCOT) test (based on the exporter's unadjusted records).

### **5.8.1 Submissions in response to SEF 316 - adjustment using exporter's records**

The following submissions were made in relation to the adjustment using exporter's records as carried out in SEF 316:

#### Moly-Cop

Moly-Cop<sup>26</sup> asserted that the Commission's decision to use Latin America export prices in the competitive market cost benchmark is unsound.

Moly-Cop referenced previous findings of the Commission and World Trade Organisation (WTO) jurisprudence to support its view that when comparing exporter records to a benchmark, the benchmark should be based on domestic market conditions. Moly-Cop asserted that the use of another country's domestic price information in any benchmark is consistent with the principle of trying to achieve parity between the market conditions for the supply of goods in the country of export and another country.

Moly-Cop further speculated that the Latin American billet export price is potentially tainted by related party transactions.

Moly-Cop proposed that the Commission should use the MEPS (International) Ltd (MEPS) monthly USD per tonne domestic ex-works billet price for Mexico.

#### Longte

Longte<sup>27</sup> submitted that the Commission's decision to adjust Longte's cost of grinding bar based on the grinding bar benchmark is legally problematic in many respects, including:

- the principles adopted in *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, (Softwood Lumber IV), and applied by the Commission, relate to the determination of adequacy of remuneration in a countervailing investigation under the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and do not relate to the determination of competitive market costs;
- the Softwood Lumber IV report clearly stated that if relying on a benchmark, that benchmark must relate to the prevailing market conditions for the good or service in question in the country of provision or purchase;
- the operation of section 43 of the Regulations is for the purpose of prescribing the manner to be adopted, and the factors that should be taken into account, in working out the relevant costs described under subsections 269TAC(2)(c)(i) and (ii), such manner and factors being that the costs of production for the calculation of normal value are those in the country of export; and
- this requirement has been confirmed by the WTO Panel decision in *European Union – Anti-Dumping Measures on Biodiesel from Argentina* (EU - Biodiesel).

Longte submitted that the findings in EU - Biodiesel confirm the language of subsection 269TAC(2)(c), which requires the constructed normal value to be based on the cost of production or manufacture of the goods in the country of export, together with the relevant

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<sup>26</sup> See number 38 on the public record

<sup>27</sup> See number 40 on the public record

SG&A and profit. Longte requested that the Commission determine Longte's normal value in accordance with its actual costs of production.

### Xingcheng

Xingcheng<sup>28</sup> submitted that the steel billet used to manufacture grinding balls was mostly produced in-house on a net cost basis, whereas the monthly Latin American export billet price in FOB terms contains a reasonable profit of the billet and necessary cost to move the goods from factory to port. Xingcheng argued that an adjustment for profit and transport is needed to bring the billet price used by the Commission to a net cost at factory level.

### Yute and Goldpro

Yute and Goldpro opposed the Commission's competitive cost benchmarking approach. They further submitted that Latin American prices lag Chinese prices by three months, such that if the Commission persisted in using a benchmark, the most contemporaneous export prices should be used, being for the period April 2015 to March 2016, but adjusted for profit and export costs.

## **5.8.2 The Commission's consideration – adjustment using exporter's records**

As detailed above, the Commission considers that the significant influence of the GOC has distorted prices in the iron and steel industry and grinding balls market in China. The Commission further considers that various plans, policies and taxation regimes have also distorted the prices of production inputs including (but not limited to) raw materials used to make grinding balls in China and render those costs unsuitable for CTMS calculations.

The Commission compared each of the cooperating exporters' actual cost to manufacture or purchase grinding bar with the competitive market cost benchmark. This comparison at the grinding bar level supports the Commission's view that direct and indirect influences of the GOC affect Chinese manufacturers' costs of grinding bar. The Commission is also mindful that grinding bar comprises a significant proportion of the total CTMS for grinding balls and an adjustment to the costs at grinding bar level enables the Commission to account for the influences from the GOC on the predominant input costs (apart from the cost of conversion of grinding bar to grinding balls and cost of selling) that would otherwise not be accounted for.

This methodology is in keeping with the Commission's policy and practice in the *Dumping and Subsidy Manual* (the Manual).<sup>29</sup> Given that the Commission has found that the significant influence of the GOC on the iron and steel industry has rendered the actual costs for the manufacture or purchase of grinding bars incurred by exporters of grinding balls unsuitable for CTMS calculations, the Commission is satisfied that the methodology employed to determine a competitive market cost for grinding bar cost is in accordance with the Commission's policy and practice.

The Commission notes the recent WTO panel decision in EU – Biodiesel, as raised by Longte. The Commission further notes that the European Union (EU) filed a notice of

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<sup>28</sup> See number 37 on the public record

<sup>29</sup> Available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

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appeal on 20 May 2016 in relation to that decision and that the Appellate Body is yet to rule on this matter.

The Commission is not satisfied that sufficient evidence has been provided to support Moly-Cop's claims that the Latin American benchmark is affected, and to what extent, by related party transactions. As such the Commission is not persuaded that the Latin American benchmark employed in SEF 316 should be removed in favour of the Mexican benchmark proposed by Moly-Cop. The Commission notes that the Latin American benchmark includes Mexican prices.

In relation to the claim that the Latin American billet benchmark needs to be adjusted to reflect a level of profit contained therein, the Commission notes that such an adjustment was only made possible in INV 300 and INV 301 based on the average verified level of profit achieved by the cooperating Chinese exporters on their own sales of steel billet. The Commission does not have similar information in relation to the sales of billet used in grinding balls. In the absence of that information, and noting the widely reported weakness in global steel markets, the Commission considers it unreasonable to assume that a profit is necessary and has not adjusted the Latin American billet price for a profit component.

Similarly, the Commission does not have in its possession the inland transport costs required to transport steel billet from the factory to the port of shipment in relation to the Latin American billet. On this basis, the Commission considers it reasonable to leave the Latin American steel billet benchmark unadjusted for inland transportation, noting that no upward adjustment has been made to reflect the fact that the Chinese manufacturers of grinding balls would incur inland transportation costs moving the billet from its place of manufacture to the place of manufacture of grinding balls.

In relation to Goldpro and Yute's claim that the Latin American steel billet prices lag Chinese billet prices and therefore Latin American steel billet prices applying to the period April 2015 to March 2016 should instead be substituted in determining a competitive market cost benchmark for grinding bar, the Commission notes the construction of the competitive market cost for grinding bar as detailed above is predicated upon contemporaneous cost data to ensure that the benchmark is reflective of competitive market costs at the time of manufacture of the goods. The substitution of cost data extending six months beyond the investigation period in no way serves to ensure that the grinding bar benchmark reflects competitive market costs at the time of manufacture of the goods.

### **5.8.3 Submissions in response to SEF 316 - constructed normal value**

Longte<sup>30</sup> submitted that in constructing normal values, the Commission's approach of applying a conversion cost percentage based on Longte's actual costs of converting steel billet to grinding bar to an uplifted steel billet benchmark resulted in an inflated conversion cost.

Similarly, Longte noted that the Commission had applied an amount for SG&A based on a percentage derived from Longte's actual SG&A costs and when applied to the uplifted CTM also inflated its SG&A costs. Longte requested that the Commission revise the constructed normal value calculations to ensure that the conversion costs and SG&A costs accurately reflect the costs recorded in its records.

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<sup>30</sup> See number 40 on the public record

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Longte asserted that it was also inconsistent for the Commission to calculate Longte's cost of production for the purposes of subsection 269TAC(2)(c) by determining an uplifted cost of production, while adding a profit for Longte for normal value purposes based on Longte's profit on domestic sales which met the original OCOT testing which was based on the actual costs recorded in Longte's records. Longte requested that an amount of profit be applied based on the uplifted cost of production as calculated by the Commission.

### 5.8.4 The Commission's consideration – constructed normal value

The Commission accepts Longte's argument that, by uplifting the steel billet costs used in the grinding bar competitive cost benchmark by percentages derived in its actual records, conversion costs and SG&A have unnecessarily been inflated.

To rectify this, the Commission revised the construction of normal values for all exporters to ensure that an actual per tonne conversion cost and SG&A amount has been applied.

In relation to the calculation of the profit for the purposes of subsection 269TAC(2)(c)(ii), the Commission is satisfied that the methodology employed in SEF 316 is consistent with subsection 45(2) of the Regulations, which states that, in relation to the determination of profit:

*the Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*

Accordingly, the Commission has made no change to the amount of profit included in the constructed normal value.

## 5.9 Dumping assessment - Longte

### 5.9.1 Production facilities and verification

Longte provided a response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country visit to Longte during February 2016 to verify the information disclosed in its exporter questionnaire.

The verification team toured the facilities and confirmed that Longte was the producer of the goods under consideration.

A detailed report covering the visit findings is available on the public record.<sup>31</sup>

### 5.9.2 Longte, Changshu Longteng Special Steel Co., Ltd (Longteng) and ME Longteng Grinding Media (Changshu) Co., Ltd (ME Longteng).

The Commission considered the circumstances of the supply of grinding bar from Longte's parent company, Longteng and considered the appropriateness of treating Longte and Longteng as a single entity.

In addition, the Commission also considered the circumstances of the manufacture and export of grinding balls by Longte and sold by ME Longteng through a joint venture

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<sup>31</sup> See number 32 on the public record

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arrangement and considered the appropriateness of treating Longte and ME Longteng as a single entity.

In this instance evidence of this capacity to harmonize commercial activities include:

- Longteng has a controlling interest in Longte;
- Longte is the equal joint venture partner in ME Longteng;
- During the verification, information and data was provided by Longte on behalf of Longteng and ME Longteng; and
- The verification team was also advised that on occasions, where ME Longteng's mill had production orders in excess of its production capacity, production had been moved to Longte's production facilities.

Considering the close structural and commercial relationship between Longte, Longteng and ME Longteng, the Commission considered it was appropriate to treat these companies as a single entity for the purpose of calculating a dumping margin.<sup>32</sup>

### 5.9.3 Submissions in response to SEF 316 – Longte's dumping margin

In response to SEF 316, Longte<sup>33</sup> submitted that in constructing its normal value:

- the Commission had included internal transfers of recycled blast furnace gas as a cost in the normal value calculations, despite the visit report noting that blast furnace gas should be excluded on the basis of treating the related parties as a single entity;
- SG&A costs had been overstated because Longteng's portion of SG&A had been calculated at the grinding bar production level rather than grinding ball level; and
- the normal value included a profit component in the cost of production relating to a processing fee charged by ME Longteng, which should be excluded based on the treatment of the related entities as a single entity.

In response to Longte's submission, Moly-cop<sup>34</sup> submitted that:

- Longte's SG&A may have been understated by the Commission, due to the treatment of the related parties as a single entity. Moly-Cop urged the Commission to satisfy itself that all the SG&A expenses of the various related entities within the group had been accounted for;
- in relation to internal profits in the cost of production, the Commission is required to have regard to the requirements of subsection 43(2)(b)(ii) of the Regulations, specifically the requirement that the costs "reasonably reflect competitive market costs associated with the production or manufacture of like goods". If the Commissioner is not satisfied that the costs of production as presented to him by the exporter reflect this condition, Moly-Cop asserted that it should be rejected, and best available information considered;
- if blast furnace gas is supplied by Longteng to the ball producer Longte, and this is used to reheat grinding bar in order to produce grinding balls, then it is a legitimate cost, irrespective of whether it is supplied by a related entity or not;

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<sup>32</sup> As a result of this determination references to Longte throughout the report relate to the single entity. The Commission approach to collapsing is outlined on page 67 of the *Dumping and Subsidy Manual*.

<sup>33</sup> See number 40 on the public record

<sup>34</sup> See numbers 43 and 47 on the public record

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- Longte's export price had been incorrectly determined under subsection 269TAB(1)(a). Moly-Cop submitted that the export price for sales between the exporter and Compañía Electro Metalúrgica S.A. (Elecmetal) ought to be determined under subsection 269TAB(1)(b), because in its view "the purchase of the goods by the importer was not an arms-length transaction"; and
- there are at least three other related parties whose involvement in Longte's grinding ball exports from China to Australia have yet to be examined or clarified by the Commission, being ME Elecmetal (China) Co. Ltd., ME Hong Kong Co. Limited and Elecmetal Australia.

### 5.9.4 The Commission's consideration – Longte's dumping margin

The Commission has reviewed the dumping margin calculations for Longte in light of the submissions received from Longte and Moly-Cop.

As detailed above, the Commission undertook a verification visit to Longte in February 2016 for the purposes of verifying the information contained in Longte's exporter questionnaire response. The Commission was satisfied that Longte's CTMS was complete, relevant and accurate.

The Commission reaffirms its decision to treat Longte, Longteng and ME Longteng as a single entity for the purpose of calculating a dumping margin. In so doing the Commission has revisited the treatment of blast furnace gas supplied by Longteng, SG&A for each of the three entities and also the profit component of the processing fee charged by ME Longteng. The Commission accepts that the issues raised by Longte are reasonable and has adjusted the dumping margin calculation to ensure that these items are addressed consistently with the decision to treat the Longte entities as a single entity.

In relation to blast furnace gas, the Commission notes that the effect of treating Longte entities as a single entity meant that blast furnace gas was excluded in relation to both the CTM of Longte's export sales and domestic sales such that the effect of lower CTM in constructing the normal value was offset by a higher profit from domestic sales.

In relation to Moly-Cop's concerns about related parties and export price determination, the Commission notes that the majority of Longte's sales to Australia were to unrelated parties and were therefore arms length. For sales that went through a related party, the Commission disregarded the price from Longte to the related party because those sales were not considered arms length transactions. For those sales, the Commission used the price between the unrelated Australian customers to Longte's related party minus deductions to determine the export price. In essence, the export price used had regard to the circumstances of export. However, due to the Commission's treatment of Longte and its related parties as a single entity, the Longte verification report and SEF 316 correctly detailed the export price for Longte as subsection 269TAB(1)(a). Even if the Commission had not treated Longte and its related parties as a single entity, the export price would have been the same, albeit under subsection 269TAB(1)(c).

The Commission found no evidence to support Moly-Cop's assertion that grinding balls were imported to Australia through any additional related companies.

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### 5.9.5 Export price

As outlined above, the Commissioner is satisfied that the goods were exported to Australia otherwise than by the importer and were purchased in an arms length transaction by the importer from the exporter.

Therefore the export price for Longte was calculated under subsection 269TAB(1)(a), as the price paid by the importer to exporter less transport and other costs arising after exportation.

### 5.9.6 Normal value

As detailed in section 5.3 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under subsection 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Longte's normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	Longte's actual verified costs to convert billet to grinding bar. Longte's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Longte's actual verified SG&A costs.
Profit	Longte's profit on domestic sales which met the original OCOT testing based on Longte's verified (non-substituted) CTMS.

**Table 4: Longte normal value construction**

A full reconstruction of this method is attached under **Confidential Attachment 2**.

#### Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

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Adjustment type	Description
Export inland transport, handling and other expenses	<b>Add</b> an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred by Longte for each export transaction
Export bank charges	<b>Add</b> an upwards adjustment for export bank charges based on the verified charges incurred by Longte for each export transaction
Export credit terms	<b>Add</b> an upwards adjustment for export credit terms based on the verified credit days for each export transaction
Non-refundable value added tax	<b>Add</b> an upwards of 12 per cent to the normal value being the difference between the non-refundable VAT expense of 17 per cent incurred by Longte less a 5 per cent VAT rebate on export sales of grinding balls

**Table 5: Adjustments to Longte's normal value**

### 5.9.7 Dumping margin

The Commission has calculated a dumping margin for Longte of 3.0 per cent.

## 5.10 Dumping assessment - Xingcheng

### 5.10.1 Production facilities and verification

Xingcheng provided a response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country verification visit to Xingcheng during February 2016 to undertake a detailed verification of the information disclosed in its exporter questionnaire.

The visit team toured the facilities and confirmed that Xingcheng was the producer of the goods under consideration.

A detailed report covering the visit findings is available on the public record.

### 5.10.2 Submissions in response to SEF 316 – Xingcheng dumping margin

Following the SEF 316, Xingcheng<sup>35</sup> made the following claims in relation to its dumping margin calculations:

- the export prices used by the Commission were at an ex-works (EXW) level, net of VAT, however were compared against normal values constructed to an FOB level resulting in an unfair comparison;
- certain export sales made to a related party were arms length, having been determined through "free negotiation without any influence of their relationship";
- if the related party sales are not considered arms length, the Commission's adjustment to ensure the related party prices were arms length was calculated based on the difference between the cost of grinding bar between the third quarter of 2015 and fourth quarter of 2014 and that this was incorrect because the grinding balls sold in September 2015 were in fact produced using grinding bar purchased in April 2015; and

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<sup>35</sup> See numbers 37 and 46 on the public record.

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- the Commission erred in determining domestic inland transportation and credit cost adjustments based on all domestic sales rather than on the volume of those sales to which inland transport and/or credit terms applied.

### 5.10.3 The Commission's consideration – Xingcheng dumping margin

The Commission examined Xingcheng's claims that export prices and normal values were compared at different levels, which were accepted. The dumping margin calculations have been adjusted to ensure fair comparison.

In relation to Xingcheng's related party sales, the Commission considers that the price paid by the related party was higher than that paid by unrelated parties despite the unrelated parties purchasing lower volumes. The Commission was not satisfied that Xingcheng provided sufficient evidence, e.g. in the form of price lists or any other documents, be they contractual arrangements or otherwise, to demonstrate or at least indicate that price negotiations with the related party were undertaken on the same basis as with unrelated customers. In the absence of such evidence, and given the nature of the price differential, the Commission considers that the sales to the related party were not arms length.

In relation to the adjustment applied to ensure the export prices to related parties were arms length, the Commission accepts the evidence supplied by Xingcheng that the grinding balls sold in the third quarter of 2015 were produced using grinding bar purchased in the second quarter. The Commission recalculated the downwards adjustment to the export price, which is now equal to the cost difference in the grinding bar benchmark for quarters one and three of the investigation period.

The Commission has reviewed its calculations in regard to domestic inland transportation and credit costs and is satisfied that the calculations were correctly calculated for SEF 316.

### 5.10.4 Export price

During the investigation period, Xingcheng exported the goods to both related and unrelated parties.

In relation to the goods exported by Xingcheng to unrelated parties, the Commission has determined the export price under subsection 269TAB(1)(c), as the price paid by the importer to exporter less transport and other costs arising after exportation.

In relation to the goods exported by Xingcheng to the related party, the Commission has determined the export price under subsection 269TAB(3), having regard to all relevant information.

Specifically, the Commission replaced the related party selling price with the selling price of another selected export sale of a similar steel grade and diameter of grinding ball that was sold to an unrelated party in an arms length transaction to determine an arms length export price. As the selected sales occurred in a different quarters, the Commission made a downwards timing adjustment equal to the cost difference in the grinding bar benchmark between quarters one and three of the investigation period.

### 5.10.5 Normal value

As detailed in section 5 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under subsection 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Xingcheng's normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	Xingcheng's actual verified costs to convert billet to grinding bar. Xingcheng's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Xingcheng's actual verified SG&A costs.
Profit	Xingcheng's profit on domestic sales which met the original OCOT testing based on Xingcheng's verified (non-substituted) CTMS.

**Table 6: Xingcheng normal value construction**

A full reconstruction of this method is attached under **Confidential Attachment 3**.

#### Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export bank charges	<b>Add</b> an upwards adjustment for export bank charges based on the verified charges incurred for each export transaction
Export credit terms	<b>Add</b> an upwards adjustment for export credit terms based on the verified credit days for each export transaction
Export commission	<b>Add</b> an upwards adjustment for the actual cost incurred for each export transaction
Domestic inland transport, handling and other expenses	<b>Deduct</b> a downwards adjustment for domestic export inland transport and handling charges based on the verified costs incurred for each domestic transaction
Domestic credit terms	<b>Deduct</b> a downwards adjustment for domestic credit terms based on the verified credit days for each domestic transaction
Domestic commission	<b>Deduct</b> a downwards adjustment for the actual cost incurred for each domestic transaction

**Table 7: Adjustments to Xingcheng normal value**

Noting that the export price for Xingcheng did not include any VAT component, the Commission removed the upwards VAT adjustment made to its normal value in SEF 316.

### 5.10.6 Dumping margin

The Commission has calculated a dumping margin for Xingcheng of 20.6 per cent.

## 5.11 Dumping assessment - Goldpro

### 5.11.1 Verification

Based on the volume of Goldpro's exports relative to the total export volume during the investigation period a decision was made not to conduct an on-site verification visit at Goldpro's premises.

Whilst a decision was made not to conduct an on-site verification visit, the Commission analysed the data submitted by Goldpro and is preliminarily satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate dumping margins. A verification report was published on the public record.

### 5.11.2 Export price

In relation to the goods exported by Goldpro, the Commission has determined the export price under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

### 5.11.3 Normal value

As detailed in section 5 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under subsection 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Goldpro's normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	An average of actual verified costs from Longte and Xingcheng to convert billet to grinding bar. Goldpro's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Goldpro's actual verified SG&A costs.
Profit	Goldpro's profit on domestic sales which met the original OCOT testing based on Goldpro's verified (non-substituted) CTMS.

**Table 8: Goldpro normal value construction**

A full reconstruction of this method is attached under **Confidential Attachment 4**.

## Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export inland transport, handling and other expenses	<b>Add</b> an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred for each export transaction
Non-refundable value added tax	<b>Add</b> an upwards adjustment of 12 per cent to the normal value being the difference between the non-refundable VAT expense of 17 per cent incurred by less a 5 per cent VAT rebate on export sales of grinding balls
Domestic inland transport, handling and other expenses	<b>Deduct</b> a downwards adjustment for domestic export inland transport and handling charges based on the verified costs incurred for each domestic transaction

**Table 9: Adjustments to Goldpro normal value**

### **5.11.4 Dumping margin**

The Commission has calculated a dumping margin for Goldpro of 51.5 per cent.

## **5.12 Dumping assessment - Yute**

### **5.12.1 Verification**

Based on the volume of Yute's exports relative to the total export volume during the investigation period a decision was made not to conduct an on-site verification visit at Yute's premises.

Whilst a decision was made not to conduct an on-site verification visit, the Commission analysed the data submitted by Yute and is preliminarily satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate dumping margins. A verification report was published on the public record.

### **5.12.2 Export price**

In relation to the goods exported by Yute, the Commission has determined the export price under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

### **5.12.3 Normal value**

As detailed in section 5.3 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under subsection 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Yute's normal values as follows:

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Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	An average of actual verified costs from Longte and Xingcheng to convert billet to grinding bar. Yute's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Yute's actual verified SG&A costs.
Profit	Yute's profit on domestic sales which met the original OCOT testing based on Yute's verified (non-substituted) CTMS.

**Table 10: Yute normal value construction**

A full reconstruction of this method is attached under **Confidential Attachment 5**.

### Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export inland transport, handling and other expenses	<b>Add</b> an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred for each export transaction
Non-refundable value added tax	<b>Add</b> an upwards adjustment of 12 per cent to the normal value being the difference between the non-refundable VAT expense of 17 per cent incurred by less a 5 per cent VAT rebate on export sales of grinding balls
Domestic inland transport, handling and other expenses	<b>Deduct</b> a downwards adjustment for domestic export inland transport and handling charges based on the verified costs incurred for each domestic transaction

**Table 11: Adjustments to Yute normal value**

#### **5.12.4 Dumping margin**

The Commission has calculated a dumping margin for Yute of 43.3 per cent.

### **5.13 Uncooperative and all other exporter dumping margins**

As detailed in section 5.4 above, the Commission is treating all exporters of grinding balls from China in the investigation period other than Longte, Xingcheng, Goldpro and Yute as uncooperative exporters as defined in subsection 269T(1).

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

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The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has used the lowest of the weighted average export prices of those that were established for cooperating exporters in the investigation period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest of the weighted average normal values of those that were established for the cooperating exporters in the investigation period.

These changes include the adjusted normal values subsequent to the application of substituted billet prices in line with the Commissioner's finding of a particular market situation for the domestic market of Chinese grinding balls.

This resulted in a dumping margin of 95.4 per cent. The Commission's calculations for uncooperative all other exporters can be found in **Confidential Attachment 6**.

### 5.14 The Commissioner's assessment

The Commissioner has assessed that grinding balls exported to Australia from China by:

- Longte;
- Xingcheng;
- Goldpro; and
- Yute

were at dumped prices during the investigation period. The Commissioner also found that the volume of dumped goods was not negligible during the investigation period.

The Commission has assessed that the dumping margin for uncooperative exporters from China is 95.4 per cent.

A summary of the dumping margins is set out in Table 12.

Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	3.0%
Hebei Goldpro New Material Technology Co., Ltd	51.5%
Jiangsu CP Xingcheng Special Steel Co., Ltd	20.6%
Jiangsu Yute Grinding International Co., Ltd	43.3%
<i>Uncooperative and All Other Exporters</i>	95.4%

**Table 12: Dumping margins**

## 6 SUBSIDY INVESTIGATION

### 6.1 Finding

The Commissioner finds that countervailable subsidies have been received in respect of grinding balls exported to Australia from China during the investigation period. The Commissioner finds that the volume of subsidised goods exported to Australia during the investigation period from China was not negligible.

The Commission found that, for goods exported by Yute during the investigation period, no countervailable subsidy had been received. For goods exported by Longte, Xingcheng and Goldpro, countervailable subsidies had been received, however the countervailable subsidisation was determined to be negligible.

The Commissioner has therefore terminated the subsidy investigation into the four cooperating exporters. TER 316 was published on 6 June 2016 detailing the reasons for the Commissioner's decision to terminate the subsidy investigation in relation to these exporters.

The subsidy margin applicable to uncooperative and all other exporters is 8.2 per cent.

### 6.2 Investigated programs

The applicants alleged in the application and a subsequent submission that Chinese exporters of grinding balls benefited from 47 countervailable subsidies. These alleged subsidies related to programs for the provision of goods, grants, VAT exemptions, preferential taxation schemes, equity programs and preferential loan schemes.

As a result of its assessment of the information provided in the application and subsequent submission, the Commission investigated all 47 alleged subsidy programs.

To assess these programs further in relation to grinding balls exported to Australia, the Commission included questions relating to each program in a questionnaire and supplementary questionnaire which were forwarded to the GOC shortly after initiation of the investigation.

Responses to the questionnaires were not received from the GOC.

During examination of information provided in exporter questionnaire responses, and at verification visits by the Commission with selected Chinese exporters of the goods, the Commission was provided with information that indicated benefits were received, or were able to be received, by exporters of the goods under several new subsidy programs that were not included in the 47 alleged programs already being examined by the Commission.

Through this process, the Commission identified 7 additional subsidy programs that were not identified in the initial application or subsequent submission. As such a total of 54 programs have been investigated.

### 6.3 Summary of countervailable programs

After assessing all relevant information available, the Commissioner has found that countervailable subsidies have been received in respect of grinding balls exported to Australia from China, under 46 countervailable subsidy programs.

The findings in relation to each investigated program are outlined in the below table.

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
1	Raw Materials (Steel billet) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
2	Raw Materials (Electricity) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
3	Preferential Tax Policies in the Western Regions	Income Tax	Yes
4	Land Use Tax deduction	Income Tax	Yes
5	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	Yes
6	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT	Yes
7	One-Time Awards to Enterprises Whose Products Qualify for “Well-Known TradeMarks of China” and “Famous Brands of China”	Grant	Yes
8	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
9	Superstar Enterprise Grant	Grant	Yes
10	Research & Development (“R&D”) Grant	Grant	Yes
11	Innovative Experimental Enterprise Grant	Grant	Yes
12	Special Support Fund for Non-State Owned Enterprises	Grant	Yes
13	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
14	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
15	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
16	Water Conservancy Fund Deduction	Grant	Yes

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<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
17	Anti-Dumping Respondent Assistance	Grant	Yes
18	Technology Project Assistance	Grant	Yes
19	Capital Injections	Grant	Yes
20	Environmental Protection Grant	Grant	Yes
21	High and New Technology Grant	Grant	Yes
22	Independent Innovation and High-Tech Industrialisation Program	Grant	Yes
23	Environmental Prize	Grant	Yes
24	Provincial emerging industry and key industry development special fund	Grant	Yes
25	Environmental Protection Fund	Grant	Yes
26	Intellectual Property licensing	Grant	Yes
27	Financial resources construction special fund	Grant	Yes
28	Reducing pollution discharging and environmental improvement assessment award	Grant	Yes
29	Comprehensive utilisation of resources – VAT refund upon collection	Tariff and VAT	Yes
30	Grant for elimination of out dated capacity	Grant	Yes
31	Grant from Technology Bureau	Grant	Yes
32	Raw Materials (Coking coal) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
33	Raw Materials (Coke) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
34	Patent Award of Guangdong Province	Grant	Yes
35	Wuxing District Freight Assistance	Grant	Yes
36	Huzhou City Public Listing Grant	Grant	Yes
37	Huzhou City Quality Award	Grant	Yes
38	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
39	Wuxing District Public List Grant	Grant	Yes
40	Transformation technique grant for rolling machine	Grant	Yes
41	Grant for Industrial enterprise energy management - centre construction	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
	demonstration project Year 2009		
42	Key industry revitalization infrastructure spending in 2010	Grant	Yes
43	Jinzhou District Research and Development Assistance Program	Grant	Yes
44	Debt for equity swaps	Equity Programs	No
45	Equity infusions	Equity Programs	No
46	Unpaid dividends	Equity Programs	No
47	Preferential loans and interest rates	Preferential Loans	Yes
48	International trade increase project fund	Grant	Yes
49	Industrial economy reform and development fund	Grant	Yes
50	Sales revenue increase award	Grant	Yes
51	Tax contribution award	Grant	Yes
52	Energy and recyclable economy program	Grant	Yes
53	National controlled essential pollutant source supervision system third party operation and maintenance subsidy program	Grant	Yes
54	Scientific program awards in high and new scientific zone	Grant	Yes

**Table 13 – Subsidy programs investigated**

## **6.4 Subsidy margins**

### **6.4.1 Cooperative exporters**

The Commission found that the cooperative exporters received countervailable subsidies under nine programs.

Exporter specific subsidy margins have been calculated for each selected exporter with reference to the specific programs that conferred a benefit to each exporter.

For goods exported by Yute during the investigation period, no countervailable subsidy had been received.

For goods exported by Longte, Xingcheng and Goldpro, the countervailable subsidisation was determined to be negligible.

The Commissioner has therefore terminated the subsidy investigation into these exporters.

## 6.4.2 Uncooperative exporters

In accordance with section 269TAACA, in the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commissioner has had regard to the available relevant facts and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 46 programs found to be countervailable in relation to grinding balls during the investigation period.

## 6.4.3 Subsidy margins

Table 14 below shows the subsidy margin calculations:

<b>Exporter / manufacturer</b>	<b>Subsidy margin</b>
Changshu Longte Grinding Ball Co., Ltd	0.2%
Hebei Goldpro New Material Technology Co., Ltd	0.0%
Jiangsu CP Xingcheng Special Steel Co., Ltd	0.7%
Jiangsu Yute Grinding International Co., Ltd	0.0%
<i>Uncooperative and All Other Exporters</i>	8.2%

**Table 14 – subsidy margins**

The Commission’s findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Appendix 3**.

The calculation of subsidy margins is at **Confidential Attachment 7**.

## 6.5 Submissions in response to the SEF 316 – subsidies

### Program 1

Moly-Cop<sup>36</sup> submitted that:

- the subsidy investigation should be extended beyond the cooperating exporters to assess the pass-through of benefits conferred to upstream inputs, specifically in relation to steel billet (Program 1) and electricity (Program 2); and
- having required cooperative exporters to identify their suppliers of steel billet or grinding bar, it is incumbent upon the Commission to analyse whether the suppliers of steel billet or grinding bar to cooperating exporters received a benefit in relation to their purchases of steel billet. Moly-Cop cited Article 10 of the SCM Agreement and Appellate Body Report for Softwood Lumber, in support of its claims.

In response to Moly-Cop’s submission Longte reiterated the fact that it did not purchase steel billet and therefore any claims that a benefit in relation to steel billet passed-through from an upstream entity was not possible.

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<sup>36</sup> Number 36 on the public record

## Program 2

Moly-Cop asserted that the pass-through of benefits in relation to the provision of billet applied equally to the provision of electricity. Moly-Cop further submitted that the Commission has failed to recognise the regional specificity of electricity. Moly-Cop asserted that, in *European Communities and Certain Member States - Measures Affecting Trade in Large Civil Aircraft*, the Panel, having regard to Article 2.2 of the SCM Agreement, concluded that a subsidy available in a designated region within the territory of the granting authority is specific even if it is available to all enterprises in that designated region. Moly-Cop referenced its earlier submission published on the public record on 24 December 2015<sup>37</sup> as evidence that a benefit had been conferred to the region applicable to cooperating exporters.

Longte<sup>38</sup> responded to Moly-Cops submission with its views that, while a subsidy can be “specific” if it is applicable to a region, specificity does not override the questions of whether a benefit is conferred. Longte asserted that the question of whether a subsidy is provided in the provision of electricity is not merely an exercise of finding the highest rate for electricity somewhere in a country and then comparing it with the rate paid by the recipient concerned.

## **6.6 The Commission’s consideration – subsidies**

### Program 1

The Commission has information from exporter questionnaires indicating that the cooperating exporters did not purchase steel billet during the investigation. However, each of the cooperating exporters did purchase grinding bar during the investigation period. Where the grinding bar supplier was not the manufacturer of the grinding bar or steel billet used in that grinding bar, the Commission examined the information to the next level upstream supplier. Those upstream suppliers were not listed as SIEs.

The Commission also established through verification that Longte has transitioned to being a fully integrated producer of grinding balls during the investigation period. The Commission is satisfied that its production of grinding balls towards the end of the investigation period was undertaken predominately from grinding bar purchased from its related party, Longteng. Longteng is not an SIE and manufactures its own steel billet. Similarly, the Commission established through verification that Xingcheng is a fully integrated producer of grinding balls and purchases the majority of its grinding bar from related parties. Those related parties are not SIEs and manufacture their own billet.

On the basis of the above, the Commission has examined the pass-through of benefits to one level upstream, which is the Commission’s general practice as outlined in the Manual. Whilst pass-through analysis may be warranted beyond more than one level in some instances, the Commission notes that any upstream benefit has likely been captured in the dumping margins, given the adjustment applied to exporter’s records at the grinding bar level, which fully counteracts the distortion caused by direct and indirect influences of the GOC upstream from grinding ball manufactures.

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<sup>37</sup> See number 5 on the public record

<sup>38</sup> See number 42 on the public record

## Program 2

In relation to Program 2, Electricity, the Commission notes earlier claims made by Moly-Cop in its submission on subsidies which states:

*The electricity prices are set by the NDRC (National Development Reform Commission) on the basis of a procedure that includes cost investigation, expert appraisal, public hearings, and final price determination and publication...The final price reflects purchasing costs, transmission costs and losses, and government surcharges. The prices are differentiated by province depending on the local situation and policy objectives pursued in the various provinces. They are set for different end-user categories (e.g. residential, industrial users).*

The Commission considers that the submission made by Moly-Cop is an accurate description of the price setting process in relation to electricity in China, however does not in itself provide evidence that regionally specific electricity subsidies have been provided to manufacturers of grinding balls. The Commission is of the view that many factors will cause regional differences in electricity pricing.

The Commission further notes that Moly-Cop's submission addresses specificity on an entity level rather than a regional level, concluding:

*Therefore, given that the tariff rates identify specific types of entities that receive a favourable rate of electricity it is clear that only these enterprises would benefit from the provision of the input by the GOC at less than adequate remuneration. For this reason the subsidy is determined to be specific.*

The Commission found no evidence during the course of the investigation to suggest that grinding ball producers were in receipt of benefits in relation to electricity on an entity specific or regionally specific basis.

## **6.7 Part termination of investigation**

Subsection 269TDA(2) requires that the Commissioner must terminate a countervailing investigation in relation to an exporter if no countervailable subsidy has been received by that exporter, or if the countervailable subsidisation for that exporter is determined to be negligible.

In relation to goods exported from China (a Developing Country<sup>39</sup>), 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.<sup>40</sup>

Based on the investigated programs, the Commission notes that:

- for goods exported by Yute during the investigation period, no countervailable subsidy had been received; and
- for goods exported by Longte, Xingcheng and Goldpro, the countervailable subsidisation was negligible.

The Commissioner has therefore partly terminated the subsidy investigation in relation to these exporters. TER 316 was published on 6 June 2016 detailing the Commissioner's reasons for the part termination of the subsidy investigation.

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<sup>39</sup> Under the *Customs Tariff Act 1995*

<sup>40</sup> Subsection 269TDA(16)

## 7 ECONOMIC CONDITION OF THE INDUSTRY

### 7.1 Findings Summary

The Commissioner has assessed that the Australian industry<sup>41</sup> producing like goods has suffered injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- reduced employee numbers; and
- reduced capacity utilisation.

Under subsections 269TG(1) and 269TJ(1), one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice or countervailing duty notice is that because of dumping or subsidisation, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

The Commissioner's assessment is that the Australian industry has suffered injury, and that the injury suffered is material.

### 7.2 Approach to injury analysis

*Consideration Report No. 316* (CON 316) advised that the Commission would examine the Australian market and the economic condition of the Australian industry from 1 July 2011 for the purposes of injury analysis and that the investigation period is from 1 October 2014 to 30 September 2015.

The following analysis relies on publically available information, data from the ABF import database and verified sales and cost data of the Australian industry, importers and exporters.

As outlined previously, Moly-Cop and Donhad together comprise the entirety of the Australian industry with regard to grinding balls. The Commission undertook visits to both Moly-Cop and Donhad to verify the information and data provided to the Commission in support of the joint application, and to gather an understanding of the economic condition of the Australian industry. The Commission is satisfied that the cost and sales data provided by the applicants is reasonably complete, relevant and accurate.

The Commission also considered the injury factors allegedly experienced by each applicant. The Commission's findings were presented in the respective Australian industry verification reports. The Commission has however consolidated the applicants' data below for the purposes of assessing injury to the Australian industry.

The injury analysis has been undertaken having regard to several key factors which impact on the market:

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<sup>41</sup> As noted in section 4 of this report, Moly-Cop and Donhad are the Australian manufacturers of the like goods. All references to the "Australian industry" are references to Moly-Cop and Donhad.

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- Grinding balls are a specialty steel product;
- While both the Australian industry and Chinese exporters offer standard grades of grinding balls, it is more common for customers to require grinding balls produced to a particular specification, including size, chemical composition, surface hardness, centre hardness and wear coefficient;
- Sales are generally made via a tender process, which takes into consideration the appropriateness of each tenderer's offer on grounds of pricing, capacity to meet required specifications and security/reliability of supply; and
- Sales are made through traders as well as directly to end users.

### 7.3 Volume effects

#### 7.3.1 Sale volumes

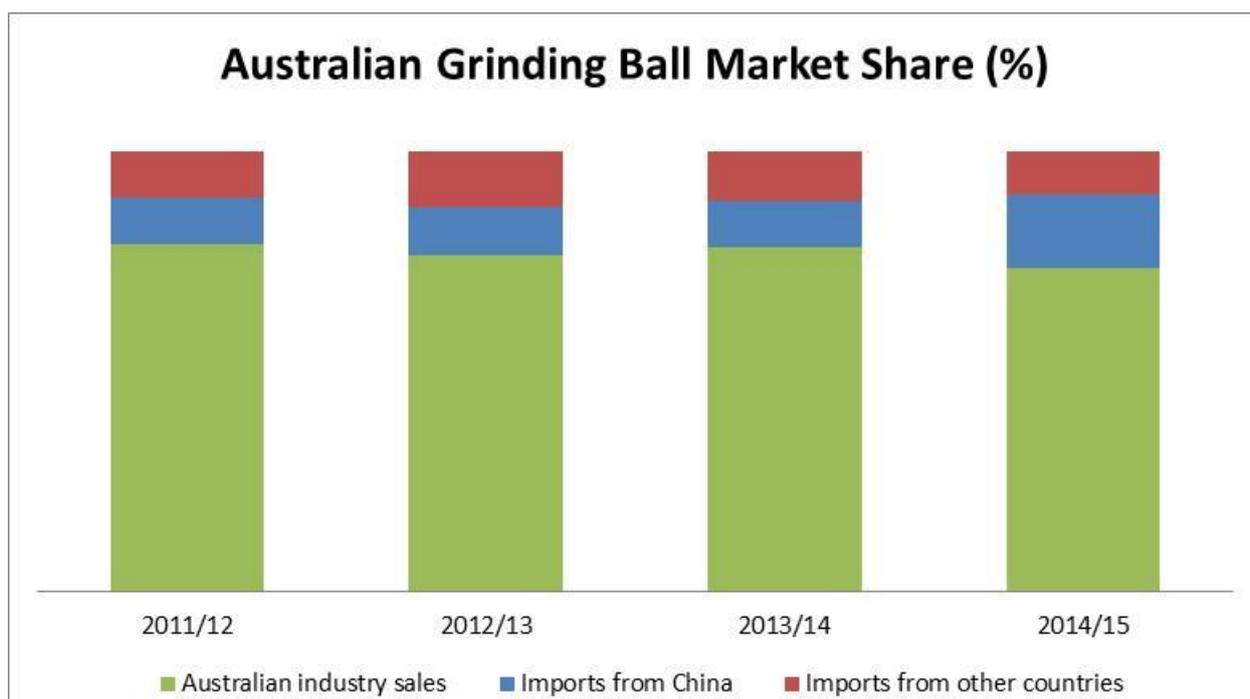
The Commission has consolidated the production amounts from the Australian industry with ABF import data and verified exporter data. Based on this consolidated data, the Commission found that during the injury analysis period the Australian market for grinding balls was between 214,000 and 240,000 tonnes per annum. The market expanded by approximately 10 per cent during the investigation period.

The size of the market for grinding balls was shown previously in Figure 1. Figure 1 indicates that, at a macro level, in an increasing market, the Australian industry has increased its sales volumes in the investigation period to restore sales volumes to the levels experienced in 2011/12 and 2012/13.

However, as noted in the Australian industry visit reports, the Australian industry has provided specific examples of sales it considers were lost to dumped and subsidised Chinese exports on a micro level.

#### 7.3.2 Market share

Market share in relation to the Australian grinding ball market is shown in Figure 2, below.



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**Figure 2: Australian grinding ball market share**

Figure 2 indicates that the market shares for the Australian industry, Chinese imports and other imports remained relatively stable across the first three years of the injury analysis period. In the investigation period, however, Chinese imports captured an additional 6 per cent of market share at the expense of both the Australian industry and imports from other countries. This increase in market share was made possible by a 79 per cent increase in the volume of goods imported from China.

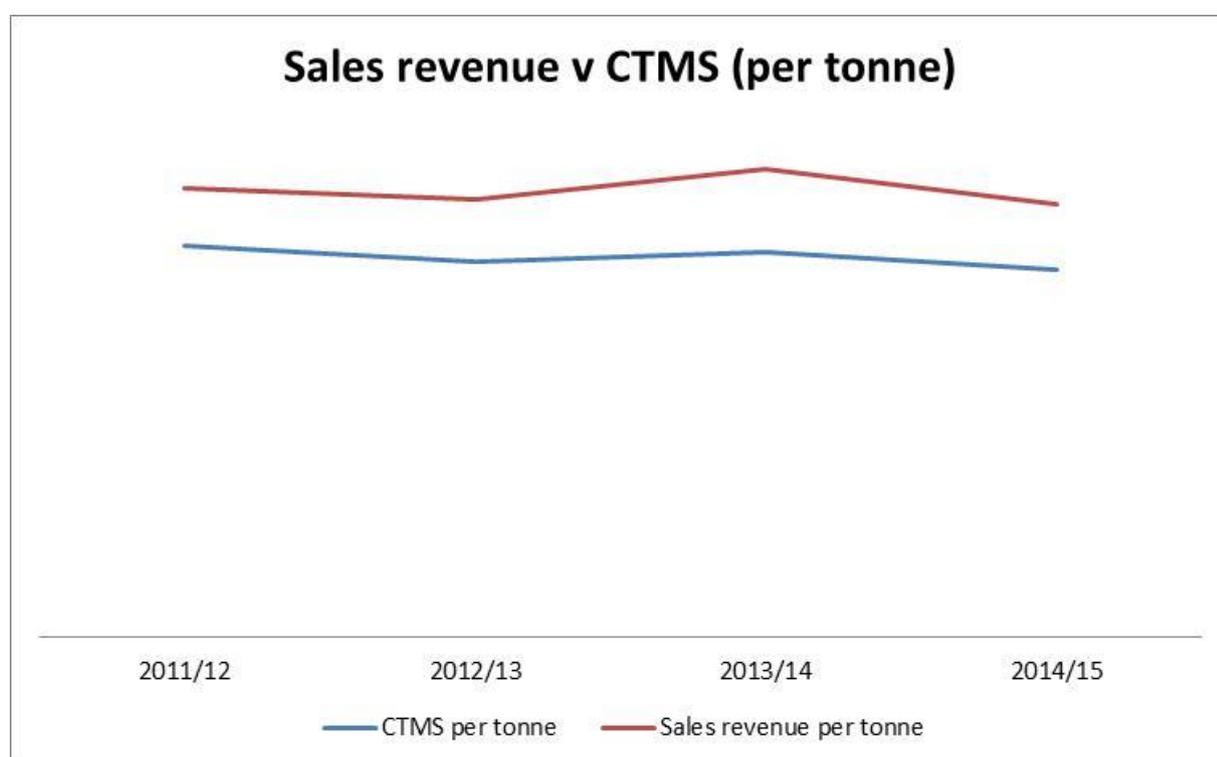
Therefore, despite achieving a higher level of sales volume during the investigation period, the Australian industry nonetheless experienced a decline in market share. The Commission considers that the Australian industry has experienced injury in the form of lost market share.

### 7.4 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

The applicants claim that they have reduced selling prices in response to a substantial increase in lower priced offers in the Australian market from Chinese exporters in an effort to maintain sales volumes. As a result, the applicants claim that they have suffered material injury in the form of price depression and price suppression.

Figure 3 below demonstrates the movement in the Australian industry's unit selling price and unit CTMS over the injury analysis period.



**Figure 3: Australian industry unit selling price and unit CTMS**

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Figure 3 shows that the Australian industry's unit selling prices and unit CTMS declined over the injury analysis period. The Australian industry achieved the largest margin between unit costs and unit selling prices in 2013/14, however over the investigation period unit selling prices declined to a greater extent than unit CTMS. This is consistent with the claims made by the Australian industry that it has been forced to reduce selling prices in an attempt to maintain sales volumes. The Commission considers that the Australian industry has suffered price depression. In addition, given that the gap between unit selling prices and unit CTMS has narrowed, the Commission also considers that the Australian industry has suffered price suppression.

### 7.5 Profits and profitability

The applicants submitted that the pricing pressures experienced as a result of the allegedly dumped and subsidised grinding balls exported from China has had a flow-on effect in relation to profit and profitability.

Movement in the Australian industry's profit and profitability is shown in Figure 4 below.

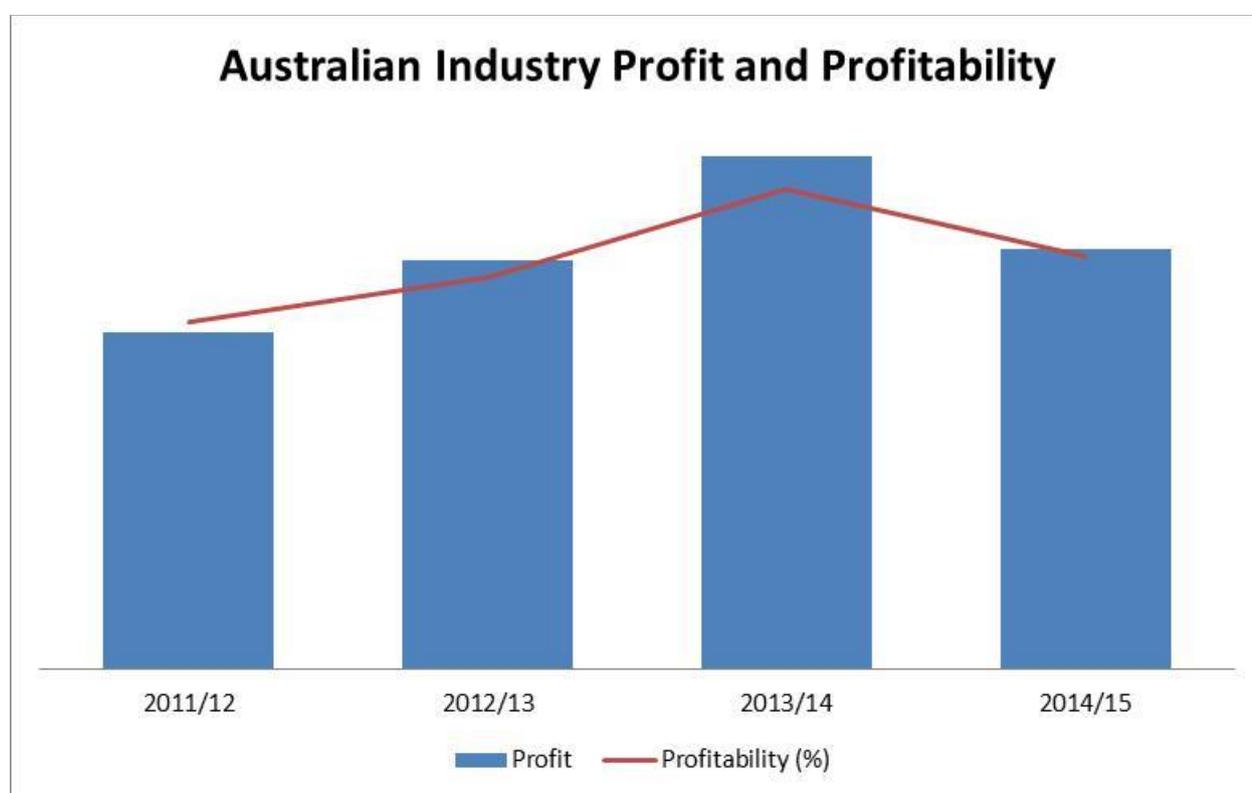


Figure 4: Australian industry unit profit and profitability

Figure 4 indicates that the Australian industry's profit and profitability rose steadily from 2011/12 to 2013/14 before declining in the investigation period.

This trend is consistent with the evidence relating to price and volume effects detailed above. Despite the Australian industry's increased sales volumes and lower CTMS, profit and profitability have nonetheless declined due to the Australian industry achieving a lower unit selling price in the investigation period.

The Commission considers that the Australian industry has experienced injury in the form of reduced profits and profitability.

## **7.6 Other economic factors**

The Commission has considered the following economic factors in addition to the injury factors above.

### Revenue

The applicants claim that the Australian industry has suffered material injury in the form of reduced revenue from sales of grinding balls in the investigation period.

The Commission notes that sales revenue remained stable during the period 2011/12 to 2013/14 before declining by approximately three per cent in 2014/15, despite an increase in sales volumes.

The Commission considers that the Australian industry has experienced injury in the form of reduced revenue.

### Return on investment

Return on investment deteriorated over the years 2011/12 to 2013/14, before improving during the investigation period. The Commission notes that Moly-Cop underwent a significant financial restructure during 2013/14 and the improved return on investment may be attributable to this restructure. Moly-Cop asserted that the benefits of the restructure has been curtailed by the effects of dumped and subsidised Chinese goods, and the improvement in return on investment would have likely been stronger were it not for the impact of dumped and subsidised Chinese goods.

The Commission considers that there is insufficient evidence to conclude that the Australian industry has suffered injury in the form of reduced return on investment.

### Capacity utilisation

Capacity utilisation remained steady during 2011/12 and 2012/13 before declining in each of the following years.

The Commission considers that Australian industry has experienced injury in the form of reduced capacity utilisation.

### Employment

Employee numbers have reduced each year of the injury analysis period, with the greatest reduction occurring in the investigation period.

The Commission considers that Australian industry has experienced injury in the form of reduced employment.

## **7.7 Submissions in response to SEF 316 - injury**

The Commission received a submission from Boliver<sup>42</sup> questioning the Commission's injury findings.

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<sup>42</sup> See number 41 on the public record

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In relation to volume effects, Boliver claimed that neither applicant had seen a reduction in actual tonnes produced during the investigation period and have erroneously claimed a loss of sales volume. Boliver stated that the Commission has only found a loss of market share, on the basis that Chinese imports have increased while production has remained stable.

In relation to price effects, Boliver claimed that the Commission has incorrectly assessed the consolidated Australian industry results in the injury findings, on its belief that Moly-Cop has not reduced its manufacturing costs as effectively as Donhad. Based on this, it considers both applicants should not have been found to have suffered both price depression and price suppression.

Boliver argues that the price depression and suppression conclusion reached by the Commission is a function of falling world commodity prices resulting in reduced input costs, combined with Moly-Cop's failure to effectively reduce its manufacturing costs.

Boliver made similar claims in relation to profit and profitability asserting that the Australian Industry consists of both Donhad and Moly-Cop and Donhad had increased sales with lower selling prices, yet had increased profit and profitability. Boliver concluded that only Moly-Cop is being adversely affected by international competition, because it has not reduced selling prices in line with reduced input costs.

### **7.8 The Commission's consideration – submissions on injury**

The Commission's analysis and findings in relation to the injury factors claimed by the applicants is detailed above.

The Commission has considered the assertions by Boliver and is satisfied that the interpretations drawn by Boliver are not supported by the evidence obtained during the investigation.

In relation to volume effects, the Commission has confirmed using verified data that production volumes for Australian industry during the investigation period were at levels lower than each preceding year of the injury analysis period. While Australian industry sales volumes did improve during the investigation period, the market share of Australian industry fell as Chinese imports captured a disproportionate share of the growth in the market.

In relation to price depression and price suppression, the Commission has analysed each applicant separately as well as in aggregate. The Commission established that each applicant has achieved improvements in CTMS, driven by a combination of efficiency initiatives and falling costs of inputs. Furthermore, each applicant has reduced selling prices, both in response to the increased volume of dumped and subsidised goods in the market as well as in the interests of passing cost savings on to customers. Boliver's claim that Donhad has been more willing to adapt and more effective in doing so is not supported by the verified data which shows that during the investigation period Moly-Cop reduced CTMS to a greater extent than Donhad in both absolute and percentage terms. Donhad did reduce selling prices to a greater extent, however were better positioned to do so in terms of profitability margins leading into the investigation period. The Commission remains satisfied that selling prices reduced at a greater rate than improvements in CTMS, evidencing price depression and price suppression.

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In relation to profit and profitability, Boliver's assertions are not supported by the verified data which shows that through greater improvements in CTMS, Moly-Cop's profit and profitability position during the investigation period was impacted less severely than Donhad's. The evidence supports the conclusion that Australian industry suffered reduction in profit and profitability despite increasing sales volume due to the impacts of price depression and suppression.

The Commission is not satisfied that the claims made by Boliver in relation to the injury factors detailed are supported by the evidence obtained during the investigation.

### **7.9 The Commissioner's findings**

The Commissioner considers that the Australian industry has suffered injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- reduced employee numbers; and
- reduced capacity utilisation.

The Commissioner notes that the applicants have claimed injury in the form of lost sales volumes, however based on the Commission's analysis of the information provided, the Commissioner does not consider that Australian industry has suffered injury in the form of lost sales volumes.

## 8 HAS DUMPING CAUSED MATERIAL INJURY?

### 8.1 Findings summary

The Commissioner's finding is that during the investigation period, exports of grinding balls from China were dumped and subsidised and that these exports have caused material injury to the Australian industry.

### 8.2 Legislative framework

Under subsections 269TG(1) and (2) and 269TJ(1) and (2), one of the matters the Parliamentary Secretary must be satisfied of in order to publish dumping and countervailing duty notices is that, because of the dumping and subsidisation, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors that the Parliamentary Secretary may take into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

The Commission has also had regard to the Ministerial Direction for Material Injury as outlined further in section 8.11.<sup>43</sup>

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, the Commissioner may consider the combined effects of the dumping and subsidisation when determining whether material injury to the Australian industry producing like goods has been caused or is threatened - there is no need to quantify separately how much of the injury being suffered is the result of either dumping or subsidisation.<sup>44</sup>

### 8.3 Size of the dumping and subsidy margins

Subsections 269TAE(1)(aa) and (ab) require the Parliamentary Secretary to have regard to the size of each of the dumping margins and the particulars of any countervailable subsidies received in respect of the goods exported to Australia from China.

The dumping margins outlined in Chapter 5 for the four cooperative exporters, which represented around 93 per cent of the export volume from China during the investigation period, ranged between 3.0 and 51.5 per cent. The dumping margin for uncooperative and all other exporters is 95.4 per cent. The weighted average dumping margin is 13.0 per cent. The subsidy margins, as outlined in Chapter 6, were negligible for cooperating exporters and 8.2 per cent for uncooperative and all other exporters.

The Commissioner is satisfied that this dumping and subsidisation enabled importers of grinding balls to have a competitive advantage on price compared to the Australian industry.

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<sup>43</sup> Ministerial Direction on material injury 2012, 27 April 2012, available on the Commission's website

<sup>44</sup> Section 269TJA.

## **8.4 Volume effects**

As discussed in Chapter 7, the Australian industry has experienced an increase in sales volume while experiencing a reduction in market share during the investigation period.

### **8.4.1 Sales volumes**

The Commission's analysis identified that during the investigation period:

- the Australian grinding ball market grew by approximately 10 per cent;
- import volumes from China grew by 79 per cent;
- import volumes from countries not subject to investigation declined by 2 per cent; and
- the Australian industry sales volumes increased by 4 per cent.

It is evident from this analysis that imports from China have captured a disproportionate share of the growth in the Australian grinding ball market during the investigation period. It is noted that import volumes have grown significantly both in absolute terms and relative to the size of the Australian market (subsection 269TAE(a)(b) and (c)(i)).

### **8.4.2 Market share**

The Commission's analysis identified that during the investigation period:

- despite a 4 per cent increase in sales volume, the Australian industry suffered a loss of 4.9 percentage points of market share;
- the market share for Chinese imports increased by approximately 6.3 percentage points; and
- the market share for imports from countries not subject to the investigation decreased by approximately 2 percentage points.

Given the decline in the market share of both Australian industry and imports from countries not subject to the investigation in a growing market, the Commission considers that Australian industry's loss of market share during the investigation period is attributable to dumped imports from China.

## **8.5 Price undercutting**

Price undercutting occurs when imported goods are sold at a price below that of the domestically produced goods.

The Commission undertook a price undercutting analysis based on verified sales data sourced from the two visited importers and the applicants for the investigation period.

The Commission conducted a price undercutting analysis at an aggregated level and where possible narrowed its analysis down to particular diameter ranges and to individual customers as outlined below.

In conducting the price undercutting analysis, the Commission compared the applicants' weighted average EXW selling prices (AUD per tonne) to the visited importer's selling prices of imported goods at a comparable level of trade.<sup>45</sup>

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<sup>45</sup> The following is noted:

Due to the nature of the goods, which are often manufactured to an individual customer's specific requirements, the Commission was unable to compare the exact same models sold by the applicants and importers in its undercutting analysis.

### 8.5.1 Price undercutting at an aggregated level

The Commission assessed price undercutting at an aggregated level by comparing the weighted average selling price of the applicants' entire grinding ball range against the weighted average selling price of each visited importer's grinding ball range meeting the goods description.

This analysis showed that both visited importers undercut the applicants' selling prices in each quarter of the investigation period. The undercutting ranged from 0.1 per cent to 10.5 per cent on a quarterly basis.

### 8.5.2 Price undercutting by diameter

The Commission compared the weighted average selling prices of imported goods sold by the visited importers against the applicants' weighted average selling prices in particular diameter ranges over the investigation period.

Price undercutting by diameter range is summarised in the below table:

Diameter Range	Q4-2014	Q1-2015	Q2-2015	Q3-2015	Grand Total
25-27mm	NA				
30-36mm	NA				
40mm	12.5%	12.8%	11.7%	12.0%	12.1%
50-52mm	12.2%	2.7% - 11.4%	6.5% - 11.9%	5.8% - 8.4%	6.4% - 11.23%
64-65mm	NA	-0.8%	NA	NA	-1.2%
78-80mm	-5.8%	-7.3%	-4.5%	0.9%	-5.4%
94mm	7.9%	10.3%	8.8%	4.9%	8.7%
100-105mm	-14.3%	-15.2%	-15.6%	-15.2%	-15.0%
125mm	-18.5%	-19.2%	-18.5%	NA	-19.2%
140mm	NA				

**Table 14: Summary of price undercutting by diameter range**

The Commission notes that although there is no undercutting observed for 64-65mm, 78-80mm, 100-105mm and 125mm diameter ranges, the volumes of imports for these diameter ranges was immaterial.

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- One selected importer, Karara, does not on-sell the goods it imports. For the purposes of the price undercutting analysis, the Commission estimated a selling price for Karara' using its verified FOB prices and adding its own verified post exportation costs (marine insurance, ocean freight, customs clearance costs and customs duty) and an amount for profit and SG&A based on another importer's data.
  - The Commission is in possession of two additional importers' data; however the Commission does not consider this data to be suitable for the purposes of undercutting analysis, for reasons contained in Confidential Attachment 9.
  - The Commission was unable to make adjustments in relation to credit terms which varied between the applicants and importers.

Despite what is noted above, the undercutting analysis covers a substantial volume of the imported goods. The Commission does not consider that the impact of the above would significantly alter its conclusions in respect to price undercutting.

### 8.5.3 Price undercutting by customer

Price undercutting was also considered in the context of customers purchasing grinding balls from the applicants and visited importers. The Commission notes that the data was limited.

Price undercutting by customer is summarised in the below table:

Row Labels	Q4-2014	Q1-2015	Q2-2015	Q3-2015	Grand Total
Customer A	11.5%	NA	NA	11.1%	11.4%
Customer B	NA	NA	NA	-13.8%	-14.3%

**Table 15: Summary of price undercutting by customer**

### 8.5.4 The Commissioner’s assessment – price undercutting

The Commissioner is satisfied that there is positive evidence of price undercutting on an aggregated basis and on the basis of particular diameter ranges with significant import volumes during the investigation period. The Commission considers that it was unable to draw meaningful conclusions about price undercutting at a customer level. However, this is not unexpected given that most sales are made on a tender basis and because the goods are usually specific to an individual customer’s requirements.

The Commissioner considers there is sufficient evidence from the price undercutting analysis to conclude that the dumping and subsidisation at the levels outlined in Chapter 5 and 6 (in the range of 3.0 percent to 51.5 per cent for cooperating exporters and 103.5 per cent for uncooperative exporters) created a competitive benefit to importers, and demonstrates that the applicants faced price pressure from imported goods.

The Commission’s price undercutting analysis is at **Confidential Attachment 9**.

## 8.6 Price effects

### 8.6.1 Price depression and suppression

At the Australian industry verification visits, both applicants provided comprehensive evidence to the Commission of their respective price setting practices. This evidence indicates that both companies constantly monitor price offerings in the market and that a key determinant for its prices to customers was the price of imports.

The Commission has found that grinding ball supply contracts are typically awarded on a tender basis. The Commission obtained evidence from the Australian industry detailing its tender application process as well as feedback received in relation to unsuccessful tenders. The Commission is satisfied that, given each applicant has the capacity to tailor grinding ball production to meet the particular technical specifications required by the customer, pricing is an integral aspect of the tender process from the perspective of the Australian industry. The evidence obtained by the Commission supports the Australian industry’s contention that it has had to reduce its offered prices in tendering processes in an effort to compete with lower priced dumped and subsidised Chinese goods, and that the Australian industry has lost tenders to these goods.

The Commission also accepts that numerous factors are considered by the tenderer in selecting the successful supplier, including capacity to meet technical specification,

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capacity to meet supply volumes in a timely manner, reliability and quality of supply, and price. The Commission obtained evidence from tenderers indicating that while price was not the sole reason the Australian industry was not awarded supply contracts, the Australian industry was nonetheless less competitive on price compared to the Chinese suppliers awarded the supply contracts. The Commission considers that import offers and movements in the price of imported grinding balls are leveraged by customers to negotiate prices with the Australian industry in tender processes, and that the Australian industry must respond to the price of imported products by reducing its price offers to remain competitive.

The Commission considers that the Australian industry has suffered price depression during the investigation period attributable to dumped and subsidised imports from China.

As specified in the Manual at page 16, in determining whether price suppression has occurred, the Commission may compare prices with costs and/or assess whether the prices for the Australian industry would have been higher in the absence of dumping and subsidisation.

As detailed in Chapter 7, the Australian industry's unit selling price has declined at a greater rate than the decline in unit CTMS over the injury analysis period. The Commission considers that the Australian industry's reduction in unit CTMS has been achieved through a combination of falling scrap steel prices and operational restructuring initiatives, and that some of these cost savings and efficiencies may translate into a reduction in prices to customers. The Commission notes however that unit selling prices have declined to a greater extent than the reduction in unit CTMS. In the context of an expanding market, the Commission considers that unit selling price would not have declined at a greater rate than the reduction in unit CTMS if the Australian industry's selling prices were not adversely affected by the presence of dumped and subsidised Chinese imports.

As such, the Commission considers that Australian industry has suffered price depression and price suppression during the investigation period attributable to dumped and subsidised imports from China.

### **8.7 Profit and profitability effects**

As outlined in Chapter 7, the Australian industry has experienced deterioration in its profit and profitability.

Whilst the Commission has not established that dumped and subsidised imports from China have caused injury in the form of lost sales volume, it has been established that the dumped and subsidised imports have caused injury in the form of price depression and price suppression.

The Commission considers that, in an expanding market and in absence of the dumped and subsidised Chinese imports, the Australian industry would be able to achieve improved prices as the price point of its competitors would be higher. Accordingly, the Commission considers that the Australian industry would be in a position to increase revenue without incurring additional costs based on increased unit selling prices being generated. In turn, this would improve profits and profitability.

As such, the Commission considers that the Australian industry has suffered injury in the form of reduced profits and profitability caused by dumped and subsidised imports of grinding balls from China.

## **8.8 Other relevant economic factors**

As explained in Chapter 7 and based on the causation analysis outlined above, the Commission has found that the Australian industry has experienced injury in the form of other economic factors related to the production of grinding balls.

The Commissioner considers that the link between grinding balls exported from China at dumped and subsidised prices and injury suffered by the Australian industry in the form of price and profit effects has had a negative impact on the Australian industry's decisions in respect of other economic factors. For example, reductions in selling prices and profitability have flow on effects in terms of lost revenue.

## **8.9 Comparison of export price and non-injurious price**

As an additional test to establish whether there is a causal link between the alleged dumping and material injury, the Commission sought to compare export prices from China with estimates of a non-injurious price (NIP) for the investigation period.

To calculate the NIP, the Commission estimated the unsuppressed selling price (USP) for grinding balls for the investigation period using the Australian industry's selling prices in a period unaffected by dumping, e.g. the preceding year.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight as verified from importers. These calculations provided for a NIP at the EXW level.

The weighted average export price for the investigation period was below the NIP. The Commission considers this finding is consistent with the applicants' claim that the allegedly dumped goods have caused material injury.

The Commission's calculations of the NIP and the comparison with export price are at **Confidential Attachment 8**.

## **8.10 Injury caused by factors other than dumping**

Subsection 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than dumped or subsidised imports.

### **8.10.1 Other injury factors considered in SEF 316**

Prior to SEF 316, the Commission either considered or was informed by interested parties of the following possible causes of injury:

- Effect of imports from countries other than China;
- The export performance of the Australian industry;
- Aggressive volume based marketing by the Australian industry;
- The Australian industry's pricing model; and
- The Australian industry's lack of technological competitiveness.

### **8.10.2 Effect of imports from countries other than China**

Information from the ABF import database showed that approximately 63 per cent of grinding balls imported into Australia came from China, 29 per cent from Thailand and the

remaining eight per cent from a variety of countries including India, Indonesia, South Africa and Spain.

The Commission analysed the FOB export prices of these other countries and found that prices for all countries were above the FOB export prices from China for the duration of the investigation period. The Commission observes that, as demonstrated in Figure 6 in section 9.4, the disparity between Chinese FOB prices and prices from other countries has increased from 2014. In addition, the Commission has not received evidence of lower price offerings from other countries during the course of the investigation.

The Commission is aware that a contributing factor to the above finding is the fact that Thai and Indian imports may include high chrome models which are often higher priced due to the higher level of alloying content and greater wear resistance. However, the Commission has not observed any shift in preference towards Thai and Indian high chrome models, and in fact notes that the volume of imported high chrome grinding balls has fallen during the investigation period. This is in contrast to the increase in imports of grinding balls from China.

The Commission considers that goods exported from countries other than China have not materially contributed to the Australian industry's injury.

### **8.10.3 The export performance of the Australian industry**

The Australian industry's export sales have shown a general decline in volume over the injury analysis period. The decline in export volumes is a contributing factor to its decreased capacity utilisation, although export sales do not represent a significant proportion of the Australian industry's sales. As a result, the Commission is satisfied that the export performance of the Australian industry is not a significant contributing factor to its injury, noting that the injury factors such as the decline in the industry's domestic profit and profitability which is discussed in section 7.6 above are charted in relation to the Australian industry's domestic sales only.

### **8.10.4 Aggressive volume based marketing by the Australian industry**

Sino Grinding submitted<sup>46</sup> that there is no injury caused to the applicants as a result of the alleged dumped and subsidised imports, but rather that Australian industry has engaged in an aggressive volume strategy which has been characterised by a transfer of market share between the joint applicants.

Sino Grinding claimed that the applicants grew sales volumes during the investigation period and were therefore displaying characteristics more in keeping with being market aggressors.

The Commission is satisfied, as detailed in section 7.4 that while the Australian industry did achieve an increase in sales volumes during the investigation period, this was achieved in an expanding market, and market share was in fact lost to Chinese imports.

### **8.10.5 Australian industry's pricing model**

Sino Grinding further submitted that the Australian industry operates an internal pricing model that drives a decline in prices based on international raw material indices despite

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<sup>46</sup> See number 8 on the public record

being insulated from international market pressures by virtue of a declining Australian exchange rate and ownership of their own scrap supplies in the case of Moly-Cop.

The Commission notes that Moly-Cop does operate a pricing model that responds to changes in raw material costs such as scrap, however, the evidence obtained during the Commission's verification visit, and as demonstrated in section 7.5 above, is that Moly-Cop's unit selling prices have deteriorated at a greater rate than its improvement in CTMS. This indicates that the pricing model also responds to competitive pricing pressures as well as cost of production factors. The Commission is satisfied that the Australian industry's pricing has been impacted by the declining cost of raw materials, however, profit margins have been squeezed by the presence of dumped and subsidised goods in the market.

#### **8.10.6 Australian industry's lack of technological competitiveness relative to Chinese exporters**

Sino Grinding requested that the Commission differentiate the claims of injury from competitive advantage delivered by the distinct and substantive differences in the product due to efficiencies of basic oxygen furnace (BOF) billet production technology relative to grinding media produced by electric arc furnace (EAF) and as a result of technical development and technology investment by its exporter/manufacturers.

Jeco Materials Pty Ltd (Jeco) also submitted<sup>47</sup> that its end user customers imported grinding balls to ensure better quality control resulting from superior production technologies rather than due to lower pricing incentives.

The Commission accepts that each manufacturer may market a distinct value proposition, based on BOF or EAF billet production, forging techniques and micro-alloying techniques. The Commission understands that each of these variables will be considered by end users when supply decisions are made. The Commission also accepts that such factors may provide a competitive advantage, however the final purchasing decision must be made within the underlying context of price, and the magnitude of the dumping and subsidy margins detailed in sections 5 and 6, indicate that Chinese exporters are operating with a distinct pricing advantage independently of any competitive advantage resulting from production technologies.

#### **8.10.7 Submissions in response to SEF 316 – other injury factors**

Boliver submitted that any injury factors evident were not the result of dumped and subsidised goods from China but rather were the result of natural change in the marketplace. Boliver asserted that these changes have been driven by the mining industry responding to falling commodity prices by exploring opportunities to reduce costs, including reviewing the cost of grinding media and considering more efficient logistical solutions such as transport hubs at remote destinations. Boliver asserted that Donhad had been better prepared to adapt to these changing circumstances than Moly-Cop, though neither had chosen to participate in the expansion of mining in the Pilbara, where the growth in the Australian market during the investigation period had occurred, to their combined detriment.

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<sup>47</sup> See number 7 on the public record

### **8.10.8 The Commission's consideration – submission on other injury factors**

Based on the information the Commission had obtained from the Australian industry and importers throughout the course of the investigation, the Commission agrees with Boliver's assertion that the end users of grinding balls have had to respond to falling commodity prices by reviewing all aspects of their business operations, including the most cost effective means of sourcing the most appropriate grinding media for their specific operations.

However, the Commission is satisfied that Australian industry actively engaged with the mining industry throughout this period. The Commission viewed tender documents evidencing both applicants' preparedness to reduce selling prices, and further notes that Moly-Cop's pricing model passes savings in raw material costs through to its customers. The Commission also obtained evidence that both applicants were engaged in tender processes to supply grinding media to Pilbara based mining operations, and that Donhad was actively engaged with CPM in pursuing supply options to meet CPM's specific requirements.

### **8.11 Materiality of injury**

The Commission has taken into consideration other possible injury factors during the investigation period. In order to differentiate the effects of dumping and subsidisation from the effects of other factors that may have caused injury, the Commission has examined the effect dumping and subsidisation has specifically had on price and profit.

As noted in the price undercutting analysis, the Commission is satisfied that the Australian industry has been forced to lower prices to be competitive with dumped and subsidised imports.

Given the materiality of the dumping and subsidy margins found as outlined at sections 5 and 6, the Commission finds that the Australian industry's prices are lower than they otherwise may have been had grinding balls not been exported to Australia at dumped and subsidised prices. In particular, this price pressure has contributed to price depression and suppression for the Australian industry, which has resulted in lower profits and profitability, reduced revenues and a loss of market share.

The Commission is satisfied that an increase in price equal to the lowest dumping margin calculated (after taking into account the size of the market for grinding balls in Australia), combined with the potential to achieve a greater market share in the absence of dumped and subsidised imports, would have enabled the Australian industry to operate more profitably during the investigation period.

The Commission has also applied the following relevant aspects of the Ministerial Direction on Material Injury in the context of this investigation:

- dumping and subsidisation need not be the sole cause of injury;
- although there is no minimum threshold to establish the market share required to demonstrate that dumped or subsidised imports have caused material injury, the volume of dumped and subsidised imports of grinding balls represented around 17 per cent of the overall Australian market for grinding balls in the investigation period, which the Commission considers is sufficient to have caused material injury;
- it is possible to find material injury where an industry suffers a loss of market share in a growing market; and

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- the increase in market share taken by dumped imports in the investigation period, suggests that the injury to the Australian industry was greater than that likely to occur in the normal ebb and flow of business.

Based on the above assessment, the Commission concludes that dumping and subsidisation has caused material injury to the Australian industry.

### **8.12 The Commissioner's findings**

The Commissioner has found that Australian industry has suffered material injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- reduced employee numbers; and
- reduced capacity utilisation.

and that this material injury is caused by sales of grinding balls exported from China at dumped and subsidised prices. As directed by the Ministerial Direction on Material Injury, the Commissioner considers that the range of factors in which the industry has suffered injury, when considered together, is material in degree and greater than that likely to occur in the normal ebb and flow of business.

## **9 WILL DUMPING, SUBSIDISATION AND MATERIAL INJURY CONTINUE?**

### **9.1 Findings summary**

The Commissioner is of the view that exports of grinding balls from China in the future may be at dumped and subsidised prices, and that continued dumping and subsidisation may continue to cause material injury to the Australian industry.

### **9.2 Introduction**

Pursuant to subsection 269TG(2) and subsection 269TJ(2), where the Parliamentary Secretary is satisfied that dumping and subsidisation 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 Commission's dumping analysis found dumping margins between 3.0 per cent and 51.5 per cent for cooperating exporters and 95.4 per cent for uncooperative and all other exporters of grinding balls from China during the investigation period.

The Commission notes that forward orders exist for exports from China and that the grinding balls exported from China have a significant market share and influence in the Australian market.

The Commission has examined import volumes from the ABF import database occurring during and following the end of the investigation period. The Commission observes that import volumes from China for the six month period following the end of the investigation period - i.e. the last quarter of 2015 and the first quarter of 2016 - are significantly higher than verified volumes during the investigation period. The Commission notes that the total import volume of grinding balls from China was approximately 40,000 tonnes during the investigation period but the total imports of grinding balls from China is approximately 31,600 tonnes in the six months following the end of the investigation period. If these volumes of imports from China are sustained over the next six months this will result in a 50 per cent increase over the 12 month period following the investigation period.

The Commission further observes that the weighted average FOB export prices from China as recorded in the ABF import database remain consistently lower than the weighted average declared export prices of grinding balls from other countries during the investigation period and the six months post-investigation period. As pictured in Figure 6 this differential has slowly increased.

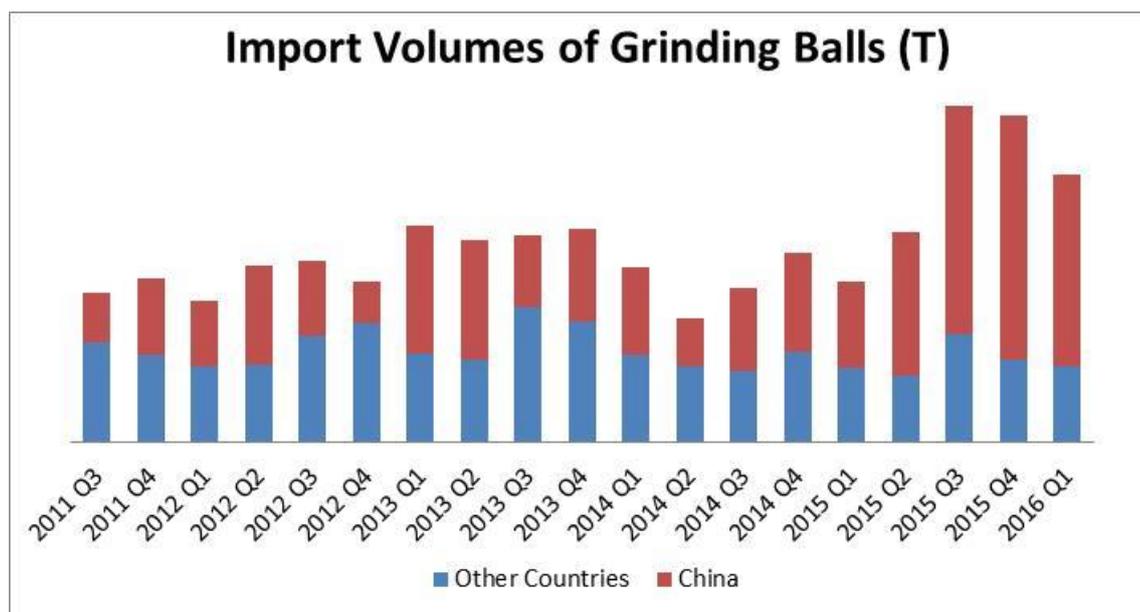


Figure 5 - Quarterly import volumes of grinding balls (source: ABF database)

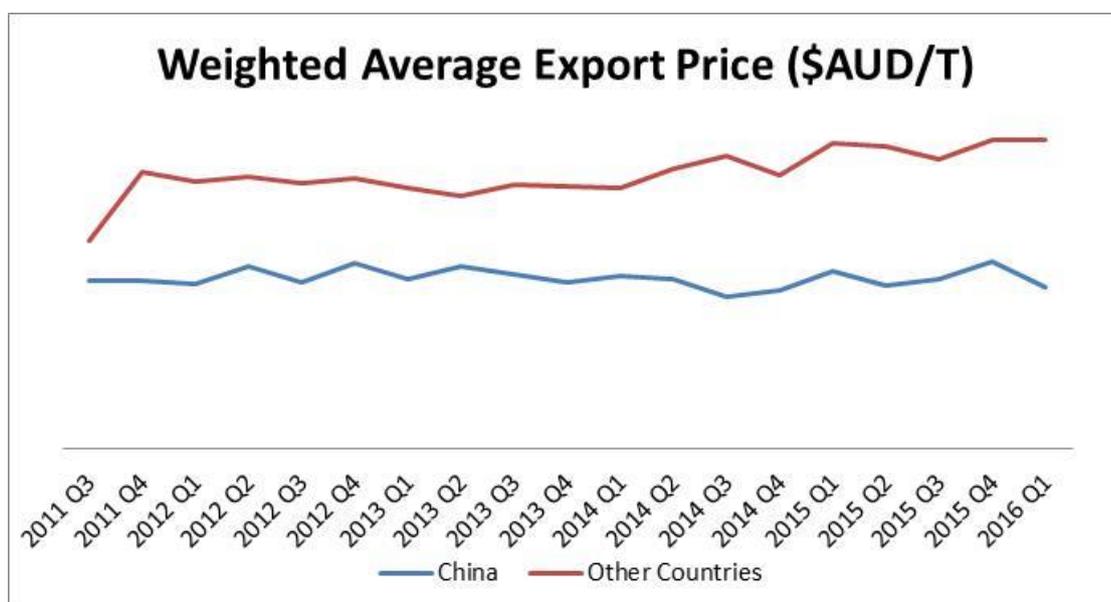


Figure 6 – Weighted average export prices of grinding balls (source: ABF database)

### 9.3.2 Qualitative analysis

In addition to the quantitative analysis above, the Commission notes the following facts in relation to the state of the steel industry in China:

- there is significant excess steel production capacity in China. The Department of Industry, Innovation and Science estimates that in early 2015, the overcapacity in the broader Chinese steel industry was around 200 million tonnes<sup>48</sup> with capacity utilisation averaging around 70 per cent over the past two years.<sup>49</sup>
- The latest release of the Organisation for Economic Co-operation and Development's (OECD) Steel Market Development report confirms that there is still

<sup>48</sup> Dept. of Industry and Science, March 2015, Resources and Energy Quarterly, p24

<sup>49</sup> Dept. of Industry and Science, June 2015, Resources and Energy Quarterly, June 2015, pp14-15

an oversupply in the Chinese steel market. The report states that the output decreased by two per cent in 2015, however Chinese domestic demand fell at a higher rate leaving a gap between supply and demand. The report states that while the steel prices have fallen by 25 per cent in 2015 due to weakening demand and cheaper inputs, further downward pressure on steel prices and increased export competition is expected in the near future while the market is adjusting.<sup>50</sup>

- The Department of Industry, Innovation and Science estimates that 21 per cent of China's steel producers operated at a cash loss in 2015, which indicates that exports may have been at dumped prices.<sup>51</sup>
- An examination of exporter questionnaire responses indicates significant unutilised capacity for all cooperating exporters. The Commission calculates that the cumulated excess capacities of cooperating exporters would be sufficient to meet most of the Australian demand for grinding balls. This does not take into account the unknown excess capacity of several minor Chinese manufacturers not participating in this investigation.

### **9.3.3 The Commissioner's consideration**

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

## **9.4 Will subsidisation continue?**

The Commission found that grinding balls exported to Australia from China during the investigation period were subsidised, with subsidy margins for the uncooperative and all other exporters being 8.2 per cent.

There is no evidence before the Commission to show that countervailable subsidisation of Chinese products will cease in its entirety in the future and it is therefore considered that grinding ball manufactures will likely continue to receive financial contributions under at least some of the identified countervailable subsidy programs.

The Commissioner therefore considers that subsidisation will continue in the future.

## **9.5 Will material injury continue?**

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that grinding balls exported at dumped and subsidised prices from China have caused material injury to the Australian industry.

The Commissioner considers that the continuation of price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact (e.g. price undercutting) on the Australian industry, particularly if volumes continue to increase.

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<sup>50</sup> OECD.org, Steel market Developments, Quarter 4 2015, pp17-21

<sup>51</sup> Dept. of Industry and Science, June 2015, Resources and Energy Quarterly, Mar 2016, p33

## **9.6 The Commissioner's assessment**

Based on the available evidence, the Commissioner considers that exports of grinding balls from China in the future may be at dumped and subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

## 10 NON-INJURIOUS PRICE

### 10.1 Introduction

Where the Parliamentary Secretary is required to determine both interim countervailing duty (ICD) and IDD, subsections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Subsections 8(5BA) and 10(3D) require the Parliamentary Secretary, in determining the ICD and IDD payable, to have regard to the 'lesser duty rule'. The lesser duty rule in the context of concurrent dumping and countervailing notices requires consideration of the desirability of fixing a lesser amount of duty, such that the export price of the goods ascertained for the purposes of the notices combined with the amount of ICD and IDD do not exceed the NIP.

Under section 269TACA, the NIP of the goods exported to Australia is the minimum price necessary to prevent material injury being caused, or threatened to be caused, to the Australian industry by dumping or subsidisation of the goods.

However, pursuant to subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Parliamentary Secretary is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:<sup>52</sup>

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises;
- c) if a countervailing subsidy has been received in respect of the goods – the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Agreement (SCM Agreement) for the compliance period.

### 10.2 Final assessment of NIP

For the reasons outlined in Chapter 5 and Appendix 2, the Commissioner recommends that the Parliamentary Secretary be satisfied that, in accordance with subsection 269TAC(2)(a)(ii), the situation in the Chinese grinding balls market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1).

Accordingly, for this investigation, the Commissioner considers that subsections 8(5BAAA) and subsection 10(3DA) of the Dumping Duty Act apply, and as a result, the Parliamentary Secretary is not required to consider the lesser duty rule for the purposes of subsections 8(5BA) and 10(3D) of the Dumping Duty Act.

As a result, for this investigation, the Commissioner recommends that the full dumping and subsidy margins determined in this report be applied to any ICD and IDD taken in relation to grinding balls exported to Australia from China.

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<sup>52</sup> Subsections 8(5BAAA)(a) to (c) of the Dumping Duty Act are in relation to the calculation of dumping duty and subsections 10(3DA)(a) to (c) of the Dumping Duty Act are in relation to the calculation of countervailing duty.

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The Commissioner notes that notwithstanding this recommendation, the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

## 11 ANTI-DUMPING MEASURES

### 11.1 Recommendation summary

The Commissioner recommends that:

- a dumping duty notice be published in respect of grinding balls exported to Australia by all exporters from China; and
- a countervailing duty notice be published in respect of grinding balls exported to Australia by uncooperative and all other exporters from China.

The ICD will be a proportion of export price. The recommended form of measures in respect of IDD that may become payable, is the combination duty method.

### 11.2 Introduction

ICD is calculated on as a proportion of export price (ad valorem).

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

- Combination of fixed and variable duty method (combination 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).<sup>53</sup>

### 11.3 Submissions from interested parties

#### 11.3.1 Moly-Cop

Moly-cop made two submissions<sup>54</sup> on the available form of measures, one prior to the SEF and one following the SEF. In both submissions, Moly-Cop advocated the combination duty method based on its views that:

- in the case of verified exporters, Longte and Xingcheng, there are complex company structures involving related parties;
- the largest exporter from China, being Longte, has the lowest dumping margin. Moly-cop submitted that Longte has lowered its export prices following initiation of the investigation by a greater extent than its preliminary dumping margin;
- the combination duty method sets a minimum price which stabilises prices and provides certainty to participants in the Australian market;
- the ad valorem method cannot guarantee the effectiveness of the measures in a falling market. In Moly-Cop's view the ad valorem method has the risk of under-collection of duties. As such, the ad valorem method can be punitive to the Australian industry; and
- export prices might be lowered to avoid in order to circumvent the effects of the ad valorem duty. Moly-Cop submits that this risk is amplified in the case of a particular market situation finding.

<sup>53</sup> Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*

<sup>54</sup> Nos. 29 and 38 on the public record

### **11.3.2 Longte**

Longte responded to Moly-Cop's submission following the SEF.<sup>55</sup> Longte refuted Moly-Cop's claims regarding the lowering of its export price and in addition noted the following:

- the combination duty method is not widely practiced by other WTO member countries;
- WTO member countries are obliged to collect dumping duties only to the extent of the margin of dumping, something it believes the combination duty method is much worse at doing than the ad valorem duty method; and
- there are other remedies in place to deal with Moly-Cop's concerns that the ad valorem duty method is susceptible to circumvention.

### **11.4 SEF 316 and PAD 316**

In SEF 316 and PAD 316, the Commissioner recommended securities calculated by reference to an ad valorem duty method. This recommendation was based on facts available at the time and took into consideration factors such as the preliminary dumping margins, observations in relation to raw material prices and to a lesser extent price variations for different models.

### **11.5 The Commissioner's final recommendation**

#### **11.5.1 Form of measures**

In determining the most appropriate form of measures, the Commissioner had regard to the *Guidelines on the Application of Forms of Dumping Duty – November 2013* (the Guidelines)<sup>56</sup>, submissions and other relevant factors influencing the grinding balls market.

The Commission notes that since SEF 316, certain facts have now changed. In particular:

- since publication of the SEF, the Latin American billet price utilised in the benchmark grinding bar price has increased considerably, returning to levels observed during the investigation period. This means that the ascertained export price relevant to the variable component of the combination duty method is more meaningful; and
- the dumping margins for all exporters have changed. The two visited cooperating exporters, Longte and Xingcheng, have the lowest dumping margins at 3 per cent and 20.6 per cent. Both of these two exporters have complex company structures with related parties. The Commission identified instances of non arms length dealings between certain related parties for both exporters as outlined in sections 5.9 and 5.10. Whilst the dumping margins are higher for Goldpro and Yute, they do not represent a significant volume of exports, noting that the weighted average dumping margin across all exporters, including uncooperative and all other exporters is 13 per cent.

Other considerations taken into consideration in the SEF, such as the variation in pricing of different models are even less significant in light of the two above factors. The Commissioner considers that the advantages of the combination method outweigh its

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<sup>55</sup> See number 42 on the public record

<sup>56</sup> Available at <http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsdumpingduty-November2013.pdf>

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drawbacks for this particular investigation. Accordingly, the Commissioner has reconsidered the most appropriate form of measures and recommends that the combination duty method apply.

The fixed component of IDD will be an amount calculated at the full dumping margins tabulated in table 16 below. The variable component will be applicable where the actual export price is below the ascertained export price.

### 11.5.2 Combined measures

Noting that the Parliamentary Secretary is not required to consider applying the lesser duty rule, the Commission recommends that the level of ICD proposed for grinding balls exported from China be the full margin of countervailable subsidisation in the case of uncooperative and all other exporters.

The Commissioner notes that in this investigation, there is no double count in relation to ICD and IDD.

Exporter / manufacturer	Dumping margin	Subsidy margin	Form of measure
Changshu Longte Grinding Ball Co., Ltd	3.0%	NA	Dumping - combination fixed (ad valorem) and variable Subsidies – proportion of export price
Hebei Goldpro New Material Technology Co., Ltd	51.5%	NA	
Jiangsu CP Xingcheng Special Steel Co., Ltd	20.6%	NA	
Jiangsu Yute Grinding International Co., Ltd	43.3%	NA	
<i>Uncooperative and All Other Exporters</i>	95.4%	8.2%	

Table 16: Dumping and subsidy margins

### 11.6 Imposition of dumping duties retrospectively

Dumping duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to dumping duties, the Commissioner has had to regard to whether:

- the importer knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and by that reason thereof material injury would be caused to Australian industry (subsection 269TN(4)(a));  
OR
- the goods are of a kind the exportation of which to Australia on a number of occasions has caused material injury to Australian industry, or would have caused material injury but for the publication of a notice under section 269TG (i.e. the goods are of a kind which have previously been found to be dumped in Australia) (subsection 269TN(4)(b));

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- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (subsection 269TN(3)(a)); and
- material injury, arising from dumping, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (subsection 269TN(3)(b)); and
- publication of a retrospective notice is necessary to prevent the serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice (subsection 269TN(3)(b)).

### 11.7 Imposition of countervailing duties retrospectively

Countervailing duties can be imposed retrospectively on goods which entered home consumption between the day of initiation of an investigation to the day securities could be taken (approximately 60 days after initiation) or were taken (up to a limit of 90 days).

In considering whether a retrospective notice should be published in relation to countervailing duties, the Commissioner has had to regard to whether:

- the goods entered home consumption up to 90 days before securities were taken (or the Commissioner had a right to take securities) (subsection 269TN(5)(a)); and
- material injury which is difficult to repair, arising from countervailable subsidies, has been caused to Australian industry by the importation during a short period of large quantities of goods of the same kind (subsection 269TN(5)(b)); and
- publication of a retrospective notice is necessary to prevent the recurrence of the injury (subsection 269TN(5)(b)).

### 11.8 Submissions from interested parties

Moly-Cop<sup>57</sup> asserts that the conditions by which the Parliamentary Secretary can apply retrospective measures have been met, noting specifically that:

- SEF 316 determined that material injury had occurred during the investigation period and that import volumes had surged following the end of the investigation period; and
- the fact that the Commission initiated an investigation and outlined the claims in CON 316, demonstrated that importers should have known that goods were being exported at less than normal value and Australian industry was being materially injured.

Longte<sup>58</sup> submitted that there are no grounds for retrospective duties, because:

- as an exporter, it has constantly denied that it has engaged in dumping;
- its importers lacked any knowledge of its financial records which would allow an assessment as to whether goods were being exported at less than normal value;
- the Commission had not determined that Longte was dumping up until at least 11 April 2016 when Longte's verification report was published detailing a negative dumping margin; and
- the import statistics noted in SEF 316 go up to 31 March 2016, prior to the publication of PAD 316 and SEF 316 on 21 April 2016.

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<sup>57</sup> See number 38 on the public record

<sup>58</sup> See number 42 on the public record

### **11.8.1 The Commission's consideration**

The Commission does not accept Moly-Cop's argument that the initiation of a dumping or countervailing investigation should lead to a definitive assessment on behalf of importers that goods are being exported into Australia at less than normal values and that material injury is being caused to Australian industry. An investigation is initiated if the Commissioner is satisfied that there appear to be reasonable grounds, based on the information contained in the application, for the publication of a dumping duty notice or countervailing duty notice. The grounds for publishing a dumping notice or countervailing duty notice are of a much higher threshold.

The Commission comments that there had been an increase in exports of grinding balls from China in the 6 months following the investigation period relative to the volume exported during the investigation period was made in the context of whether dumping and subsidisation would likely continue into the future. To provide more context, on a quarterly basis, exports peaked in the final quarter of the investigation period and have declined in the two following quarters. This deters from Moly-Cop's argument that Chinese exporters attempted to maximise the sale of dumped goods prior to the imposition of measures.

In addition, the Commission published a Status Report on 18 January 2016, which indicated that, as at day 60, the Commissioner was not satisfied that there appeared to be reasonable grounds for the publication of a dumping duty or countervailing duty notice, and a verification report in April 2016. The Commission considers that given the publication of this information in the public domain, it is not reasonable to assert that an importer knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and by that reason caused material injury to the Australian industry.

The Commission therefore does not recommend that the Parliamentary Secretary impose retrospective dumping or countervailing duties in relation to the importation of grinding balls from China.

## 12 RECOMMENDATIONS

### **The Commissioner is satisfied that:**

- the dumping and subsidisation of grinding balls exported to Australia from China has caused material injury to the Australian industry producing like goods.

### **The Commissioner recommends the Parliamentary Secretary impose:**

- dumping duties on grinding balls exported to Australia from China; and
- countervailing duties on grinding balls exported to Australia from China (from all exporters other than Longte, Xingcheng, Goldpro and Yute).

### **The Commissioner recommends the Parliamentary Secretary be satisfied:**

- in accordance with subsection 269TAB(3), that sufficient information has not been furnished, and is not available, to enable the export price of grinding balls exported to Australia from China by 'uncooperative' and 'all other' exporters, and in relation to some goods exported to Australia from China by Xingcheng, to be ascertained under subsections 269TAB(1)(a), (b), or (c);
- in accordance with subsection 269TAC(2)(a)(ii), the normal value of grinding balls exported to Australia from China cannot be ascertained under subsection 269TAC(1) because the situation in the market of China is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1);
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of grinding balls exported to Australia from China to be ascertained under the preceding provisions of subsection 269TAC for 'uncooperative' and 'all other' exporters;
- 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 grinding balls exported to Australia from China are 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 grinding balls 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 grinding balls 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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- in accordance with subsection 269TACD(1), countervailable subsidies have been received in respect of grinding balls by all exporters except Yute;
- in accordance with subsection 269TJ(1), countervailable subsidies have been received in respect of grinding balls that has been exported to Australia from China, 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 269TJ(2), countervailable subsidies have been received in respect of grinding balls that have already been exported to Australia from China, and may be received in respect of like goods that may be exported to Australia from China in the future and because of that, material injury to the Australian industry producing like goods has been caused;
- in accordance with subsection 269TJA(1), that as to grinding balls that have been exported to Australia from China:
  - (a) the amount of the export price of the goods is less than the amount of the normal value of the goods;
  - (b) a countervailable subsidy has been received in respect of the goods; and
  - (c) because of the combined effect of the difference in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry producing like goods has been and is being caused;
- in accordance with subsection 269TJA(2):
  - (a) the amount of the export price of like goods that have already been exported to Australia 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 in the future may be less than the normal value of the goods;
  - (b) a countervailable subsidy has been received in respect of the grinding balls that have already been exported to Australia, and may be received in respect of like goods that may be exported to Australia in the future; and
  - (c) because of the combined effect of the difference in paragraph (a) and of the subsidy referred to in paragraph (b), material injury to the Australian industry producing like goods has been and is being caused.

### **The Commissioner recommends the Parliamentary Secretary determine:**

- in accordance with subsections 269TAB(1)(a), 269TAB(1)(c) and 269TAB(3), that the export prices of grinding balls exported to Australia from China by Longte, Xingcheng, Yute and Goldpro are as set out in Confidential Attachment 2 to 5;
- in accordance with subsection 269TAB(3), the export prices for the categories of 'uncooperative' and 'all other' exporters having regard to all relevant information;
- in accordance with subsection 269TAC(2)(c), that the normal value of grinding balls is the sum of:
  - the cost of production or manufacture of the goods in China; and
  - on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in China, the administrative, selling and general costs associated with the sale and the profit on that sale;

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- as adjusted in accordance with subsection 269TAC(9), to ensure that the normal value of the goods so ascertained is properly comparable with the export price of the goods;
- in accordance with subsection 269TAC(6), normal values for the categories of 'uncooperative' and 'all other' exporters having regard to all relevant information;
- having applied subsection 269TACB(2)(a) and in accordance with subsections 269TACB(1) and (4),:
  - that grinding balls exported to Australia from China are taken to have been dumped; and
  - the dumping margins for exporters in respect of those goods and that period is the difference between the weighted average of corresponding normal values over that period;
- taking account of subsection 269TAAC(5), that the subsidies in section 6.3 of Final Report 316 are specific;
- in accordance with subsection 269TACC(1), having regard to all relevant information and subsection 269TACC(3), that a financial contribution has conferred a benefit.

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

- 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 21 April 2016 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;
- in accordance with subsection 269TJ(1), by public notice, that section 10 of the Dumping Duty Act applies to (subject to section 269TN):
  - the goods exported by all exporters from China, except Longte, Xingcheng, Goldpro and Yute; and
  - like goods that were exported to Australia by all exporters from China, except Longte, Xingcheng, Goldpro and Yute, after the Commissioner made a PAD under section 269TD on 21 April 2016 but before publication of the notice;
- in accordance with subsection 269TJ(2), by public notice, that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters from China, except Longte, Xingcheng, Goldpro and Yute, after the date of publication of the notice.

### **The Commissioner recommends the Parliamentary Secretary be of the opinion that:**

- in relation to some of the goods exported to Australia from China by Xingcheng were not arms length transactions.

**13 APPENDICES AND ATTACHMENTS**

<b>Appendix 1</b>	List of submissions
<b>Appendix 2</b>	Particular market situation finding
<b>Appendix 3</b>	Assessment of countervailable subsidies
<b>Appendix 4</b>	Assessment of adequate remuneration for coking coal in China
<b>Appendix 5</b>	Assessment of whether State Invested Enterprises are public bodies
<b>Confidential Attachment 1</b>	Assessment of Australian market
<b>Confidential Attachment 2</b>	Dumping margin calculations – Longte
<b>Confidential Attachment 3</b>	Dumping margin calculations – Xingcheng
<b>Confidential Attachment 4</b>	Dumping margin calculations – Goldpro
<b>Confidential Attachment 5</b>	Dumping margin calculations – Yute
<b>Confidential Attachment 6</b>	Dumping margin calculations – Uncooperative and all other exporters
<b>Confidential Attachment 7</b>	Subsidy margin calculations
<b>Confidential Attachment 8</b>	Comparison of export price to NIP
<b>Confidential Attachment 9</b>	Price undercutting analysis

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**APPENDIX 1 - LIST OF SUBMISSIONS**

<b>Date Received</b>	<b>Submission from</b>	<b>Subject of Submission</b>	<b>EPR No.</b>
23 Dec 2015	Australian industry: Moly-Cop	Evidence of a particular market situation in the Chinese market for grinding balls	4
24 Dec 2015	Australian industry: Moly-Cop	Evidence of the Australian industry's claims in relation to countervailable subsidy programs and additional subsidy programs	5
24 Dec 2015	Importer: CITIC	Anti-Dumping Notice No. 2015/132: Grinding Balls Exported from China	6
28 Dec 2015	Importer: Jeco	Anti-Dumping Notice No. 2015/132: Grinding Balls Exported from China	7
29 Dec 2015	Importer: Sino Grinding	ADC 316: Grinding Balls exported to Australia from the People's Republic of China	8
5 Feb 2016	Australian industry: Moly-Cop	Issues Paper 2016/01	23
5 Feb 2016	Exporters: Yute and Goldpro	Issues Paper 2016/01	24
18 Feb 2016	Exporter: Longte	Issues Paper 2016/01	26
1 Apr 2016	Australian industry: Moly-Cop	Investigation No. 316 – Grinding Balls exported from P R China	29
10 May 2016	Exporter: Anhui	Comments on Preliminary Affirmative Determination	36
11 May 2016	Exporter: Xingcheng	Comments on the Statement of Essential Facts No. 316	37
11 May 2016	Australian industry: Moly-Cop	Response to Statement of Essential Facts	38
11 May 2016	Exporter: Goldpro and Yute	Re SEF 316	39
11 May 2016	Exporter: Longte	Investigation concerning grinding balls exported from China	40
11 May 2016	Importer: Boliver	Dumping and subsidy investigation into grinding balls imported from China	41
23 May 2016	Exporter: Longte	Comments on Moly-Cop letter dated 11 May 2016	42
25 May 2016	Australian industry: Moly-Cop	Comments on Changshu Longte Grinding Ball Co., Ltd letter dated 11 May 2016	43
26 May 2016	Exporter: Jiangsu CP Xingcheng Special Steel Co Ltd	Comments on new calculation	46

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<b>Date Received</b>	<b>Submission from</b>	<b>Subject of Submission</b>	<b>EPR No.</b>
27 May 2016	Australian industry: Moly-Cop	Evidence of non-arms-length transactions by the exporter, Longte, and its related entities	47
3 June 2016	Goldpro and Yute	Untitled	48
3 June 2016	Alcoa	Alcoa: Investigation into Grinding Balls	49

## APPENDIX 2 - PARTICULAR MARKET SITUATION FINDING

### A2.1 Introduction

This appendix provides an assessment and determination of a particular market situation (market situation) in relation to grinding balls in China during the investigation period. This appendix details the basis of assessment and the tests applied to determine the existence of a market situation in relation to the domestic price of grinding balls in China.

### A2.2 Allegation of market situation

In the application, the applicants alleged that, during the investigation period, a market situation existed in the Chinese grinding ball market that rendered sales in that market unsuitable for determining normal value under subsection 269TAC(1) due to interventions by the GOC in the Chinese iron and steel industry. The applicants alleged that this made the domestic price for grinding balls unsuitable for the determination of normal values.

The applicants' claim of GOC intervention in the Chinese steel industry identified the following measures:

- policies and plans that outline the GOC's aims and objectives for the Chinese steel industry; and
- VAT arrangements.

### A2.3 Sources of information used by the applicants

Sources of information used by the applicants are listed below.

- National Steel Policy (2005).
- Blueprint for the Steel Industry Adjustment and Revitalisation (2009).
- National and regional Five-Year Plans and guidelines.
- The 12<sup>th</sup> Five-Year Plan: Iron and Steel (2011-2015 Development Plan for Steel Industry).

### A2.4 Background

The Act does not provide any definition of particular circumstances or factors which would satisfy the Minister that a 'market situation' exists. The WTO Anti-Dumping Agreement is similarly silent in relation to the definition of the concept of a 'market situation' referred to within Article 2.2.

In relation to determining whether a 'market situation' exists, the Commission's Dumping and Subsidy Manual<sup>59</sup> states:

*In considering whether sales are not suitable for use in determining normal values under subsection 269TAC(1) because of the situation in the market of the country of exporter the Commission may have regard to factors such as:*

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<sup>59</sup> Anti-Dumping Commission, November 2015, Dumping and Subsidy Manual.  
[http://www.adcommission.gov.au/accessadsystem/Documents/Dumping%20and%20Subsidy%20Manual%20-%20November%202015\\_20%20Nov%202015%20-%20final%20on%20website.pdf](http://www.adcommission.gov.au/accessadsystem/Documents/Dumping%20and%20Subsidy%20Manual%20-%20November%202015_20%20Nov%202015%20-%20final%20on%20website.pdf)

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*In considering whether sales are not suitable for use in determining a normal value under s.269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:*

- *whether the prices are artificially low; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s.269TAC(1).*

*Government influence on prices or costs could be one cause of “artificially low pricing”. Government influence means influence from any level of government.*

*In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government’s involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.<sup>60</sup>*

The Commission considers that the analysis of a ‘market situation’ can involve the consideration of all relevant market variables in relation to the subject good in totality and that the term ‘a situation’ for the purposes of this report defies precise definition.

The Commission holds that ‘a situation’ refers to the presence of a factor or composite factors which collectively operate to cause a degree of distortion in the market that renders arm’s-length transactions in the OCOT in that market unsuitable for use in determining normal values.

More specifically, the Commission considers that a ‘market situation’ assessment involves an examination of factors which may affect the interaction of supply and demand in a sector, industry or market, to the extent that prices and costs in that market can no longer be viewed as being established under normal market principles.

In assessing a ‘market situation’, the Commission considers that governments can directly or indirectly influence domestic prices through the imposition of restrictions on how prices are charged for a product. This influence can be through:

1. direct price regulation (floor or ceiling pricing mechanisms); or
2. indirect influence through policies that impact on the supply of the subject goods or the supply or price of major inputs used in the production of the subject goods.

The influence of a government does not, in itself, establish the existence of a ‘market situation’. In assessing whether a ‘market situation’ exists, the Commission needs to examine both:

1. the effect such influence has on the market; and
2. the extent to which domestic prices are distorted and unsuitable for proper comparison with corresponding export prices.

The Commission considers that, in the context of this analysis, evidence of government policies and programs that specifically or indirectly flow to the relevant market under consideration may have an effect on domestic commerce with respect to the goods. The Commission holds that this information is relevant to the analysis of whether factors exist

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<sup>60</sup> Dumping and Subsidy Manual, pp 35.

which can be characterised as a 'market situation' for the purposes of subsection 269TAC(2)(a)(ii).

Consideration of whether a situation exists in the relevant market is concerned with the operation of policies and regulations (whether overt or implied) and their potential impact on the suitability of domestic selling prices for normal value purposes. Accordingly, the question to be answered is whether the relevant policies operate in a manner which:

- a) leads to a distortion of competitive market conditions in relation to the subject goods such that domestic sales are unsuitable for the purposes of determining normal value; and
- b) affects the conditions of commerce related to the production or manufacture of like goods such that the records of exporters cannot be relied upon to reasonably reflect competitive market costs associated with production in accordance with the provisions of subsection 43(2) of the Regulations.

## **A2.5 Evidentiary threshold**

The Commission considers that the issue as to whether or not a 'market situation' exists in the domestic market of an exporting country is a matter for the Parliamentary Secretary to consider. In doing so, the Parliamentary Secretary ought to be satisfied on the basis of consideration of the totality of all relevant available evidence, that a 'market situation' exists for the purposes of subsection 269TAC(2)(a)(ii), in so far as the evidence provides a reliable understanding of the prevailing characteristics of the market for the goods in that country.

It is considered that the assessment as to whether a 'market situation' exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes.

In undertaking this assessment, the Commission considers that the evidence does not have to be conclusive before a 'market situation' finding may be made.

Rather, it must be relevant and reasonably reliable. The Commission emphasises that consideration of the existence and operative effect of government administered programs upon a domestic market is distinctly different to the determination of any countervailing benefits in a countervailing investigation.

## **A2.6 China as a market economy**

Australia treats China as a market economy for anti-dumping purposes and the Commission conducts its investigation in the same manner for China as it does for other market economy members of the WTO.

Irrespective of the country subject of the investigation, the Australian anti-dumping framework allows for the rejection of domestic selling prices in market economies as the basis for normal value where there is a 'market situation' rendering the sales unsuitable. The Commission's investigation in this case concerning China is outlined below.

## **A2.7 Information relied upon**

The Commission provided the GOC with a 'Government Questionnaire' in December 2015. The GOC did not submit a response to the questionnaire. Following the lack of response by the GOC, the Commission's assessment of the GOC's impact on the market conditions during the investigation period was based on the best available information from other sources. Information sources relied upon by the Commission are listed below:

- The application for the publication of dumping and countervailing duty notices concerning grinding balls exported from China;
- Previous investigations undertaken by the Commission in relation to the Chinese steel industry, with a specific focus on the recent market situation findings made in INV 300, and Dumping Investigation 301 - Rod in Coils from China (INV 301) due to its timeliness and focus on the Chinese steel industry;
- An investigation into 'certain concrete reinforced bar' originating from China undertaken by the Canada Border Services Agency (CBSA), December 2014;<sup>61</sup> and
- Information obtained through the Commission's research and analysis.

## **A2.8 Previous investigations undertaken by the Commission**

The Commission has previously undertaken a significant amount of information, research, and analysis on the impact which the GOC has had on the Chinese domestic steel markets. Cases with specific relevance to the allegations made by the applicants in respect to the Chinese steel industry include:

- INV 300 and 301;
- The Australian Customs and Border Protection Service's (ACBPS) 2012 Report No. 177 - Certain Hollow Structural Sections exported from China, the Republic of Korea (Korea), Malaysia, Taiwan and the Kingdom of Thailand (INV 177);
- The ACBPS' 2013 Report No. 193 - Alleged Subsidisation of Zinc Coated Steel and Aluminium Zinc Coated Steel Exported from China (INV 193);
- The Commission's 2013 Report No. 198 - Dumping of Hot Rolled Plate Steel Exported from China, Republic of Indonesia, Japan, Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel exported from China (INV 198); and
- ACBPS' 2013 Report Number 190 -Alleged Dumping of Zinc Coated (galvanised) Steel and Aluminium Zinc Coated Steel Exported from China, Korea and Taiwan (INV 190).

## **A2.9 Assessment of the influence of the Government of China on the Chinese steel industry**

When undertaking this investigation, the Commission's assessment of the 'market situation' considered the GOC's influence over the broader Chinese steel industry. The Commission sought information about the specific grinding ball market, and the iron and steel industries more broadly from the GOC. As noted above, the GOC did not respond to the questionnaire provided.

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<sup>61</sup> CBSA's December 2014, Statement of Reasons: Concerning the final determinations with respect to the dumping of 'Certain concrete Reinforcing Bar Originating in or Exported from the People's Republic of China, the Republic of Korea and the Republic of Turkey; and the subsidising of 'Certain Concrete Reinforcing Bar Originating in or Exported from the People's Republic of China'; and the terminations of the investigation with respect to the subsidising of 'Certain Concrete Reinforcing Bar Originating in or Exported from the Republic of Korea and the Republic of Turkey.

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As the GOC did not respond, the Commission had limited contemporaneous information upon which to make its assessment.

It is important to note that the inputs and process for manufacture of the grinding bar used to produce grinding balls are similar to reinforcing bar and rod in coils.

The Commission notes that the GOC has supported a significant increase in steelmaking capacity through support of increasing blast furnace capacity.

In addition, the blast furnaces have become significant local employers and taxpayers for regional governments.

The Commission is reliant on the best available information for this assessment. As grinding balls are part of the broader steel industry findings, demonstrating government influence in the Chinese steel industry are relevant to the grinding balls market.

### **A2.10 Conditions within the Chinese steel industry**

The prevailing conditions within the Chinese steel industry during the investigation period included significant excess production capacity and supply, and weakened demand and producer profitability. The continued depression in prices demonstrates that prevailing conditions within the Chinese grinding balls market during the investigation period were consistent with the conditions within the broader Chinese steel industry. These conditions included significant excess blast furnace production capacity leading to a supply glut, and weakened demand and producer profitability. For example, the Department of Industry, Innovation and Science estimates that in early 2015, the overcapacity in the broader Chinese steel industry was around 200 million tonnes<sup>62</sup> with capacity utilisation averaging around 70 per cent over the past two years.<sup>63</sup> Furthermore, it is estimated that in early 2015 around 50 per cent of the overcapacity in the global steel industry was located in China.<sup>64</sup>

In recent years the combination of excess capacity and declining prices has put many Chinese steel producers under significant financial pressure. Between 2011 and 2014, it is estimated that the proportion of Chinese steel mills making a loss increased from around 10 per cent to 50 per cent. While lower input cost resulted in a reduction in the number of loss making mills from the beginning of 2014, the proportion remained significant throughout the investigation period. For example, it is estimated that the number of loss making mills fell from around 44 per cent in January 2014 to 15 per cent in December 2014.<sup>65</sup>

The Commission holds that the price weakness in the domestic Chinese steel markets contributed to the significant increase in the level of Chinese steel exports in recent years as steel producers attempted to improve cash flow and profitability. For example, in 2014, China's steel exports increased by around 50 per cent (year on year) to around 94 million tonnes. Similarly, in the first seven months of 2015, Chinese steel exports increased by a

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<sup>62</sup> Dept. of Industry and Science, June 2015, Resources and Energy Quarterly, June 2015, pp14- 15

<sup>63</sup> Platts Insight 201, 27 March 201

<sup>64</sup> Dept. of Industry, Resources and Energy Quarterly, March 2015, p25

<sup>65</sup> SBB Steel Prices, Price Spreads / China Long Steel Spread (IODEX) / China RMB/t

further 27 per cent (year on year). The primary destinations for China's steel exports were South Korea, India and Vietnam.<sup>66</sup>

## **A2.11 Chinese steel industry: Factors contributing to current conditions**

Over the past decade the Chinese steel industry experienced significant investment in and expansion of production capacity. It is estimated that over the last decade, total Chinese crude steel production capacity increased by around 190 per cent.<sup>67</sup> Similarly, it is estimated that between 2004 and 2014, total annual steel production in China increased from around 280 to 820 million tonnes. While the Commission notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commission holds that both types of producers have received significant assistance from the GOC, particularly at the provincial and local government level.

The Commission recognises that in recent years the GOC has taken significant steps to restructure and reorganise the domestic steel industry to better manage the level of excess production capacity, oversupply and environmental concerns.<sup>68</sup> For example, since July 2014, China's Ministry of Industry and Information Technology (MIIT) has released lists of steel makers that were to remove obsolete capacities. The MIIT also requested that provincial governments submit, by June 2015, their targets for dismantling outdated and excess capacity in 2015 and during the 13<sup>th</sup> Five Year economic development plan period (2016-2020).<sup>69</sup> During the investigation period the GOC also announced plans to shut 47 mt of steel capacity<sup>70</sup> and a further 80 mt by 2017.<sup>71</sup>

Other regulatory interventions which demonstrate the GOC's significant involvement within the Chinese steel industry include the revision of the 'Chinese Environmental Protection Law' (January 2015) and the 'Execution of Capacity Swap for Industries with Overcapacity' (April 2015).<sup>72</sup> The 'Chinese Environmental Protection Law' establishes pollution reduction targets for local authorities and toughens penalties for non-compliance to encourage older, higher polluting steel mills to exit the industry.<sup>73</sup> The 'Execution of Capacity Swap for Industries with Overcapacity' (April 2015) states that any addition to steel mill capacity must be offset by a one-for-one reduction in existing capacity. In regions with a high concentration of steel mills the reduction ratio is 1.25 to 1.

The Commission considers that for a number of reasons, the effectiveness of these measures on reorganising the Chinese steel industry or reducing the level of excess supply that existed during the investigation period was limited. The Commission considers that some of the key constraints on the effectiveness of these directives included the

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<sup>66</sup> Dept. of Industry, Internal Briefing Notes

<sup>67</sup> Dept. of Industry, Resources and Energy Quarterly, March 2015, p24

<sup>68</sup> Platts Insight 198, 03 April 2014. World Steel Review, 22 April 2015, p6. World Steel Review, 1 July 2015, p1

<sup>69</sup> OECD, 2015, Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects. OECD Science, Technology and Industry Policy Papers, No. 18. OECD Publishing, p15

<sup>70</sup> Dept. of Industry, Resources and Energy Quarterly, September 2014, p23

<sup>71</sup> OECD, 2015, Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects. OECD Science, Technology and Industry Policy Papers, No. 18. OECD Publishing, p15

<sup>72</sup> Dept. of Industry, Innovation and Science, Internal Briefing Notes

<sup>73</sup> Dept. of Industry and Science, March 2015, Resources and Energy Quarterly, p24

divergence in objectives between the different levels of the GOC and the availability of financing to support the restructuring and reorganisation.<sup>74</sup>

With regard to the objectives of provincial and local governments, steel mills are typically major employers, sources of significant tax revenue and providers of health care and education services within their respective regions. As such, there are significant incentives for provincial and local governments to resist directives from the Central Government to remove excess capacity and to provide these producers with support to enable them to continue operating. With regard to financing, the Commission holds that the ability of Chinese steel producers to undertake capital investment required to restructure has been constrained by a combination of weak profitability and reduced support from traditional funding sources.<sup>75</sup>

For example, in August 2015 the China Iron & Steel Association noted that during the first half of 2015 Chinese banks had cut loans to steel makers by around USD 15 billion or by 6% (on a year on year basis)<sup>76</sup> and that the provision of funding by Chinese banks to the Chinese steel industry was increasingly being directed at state owned steel producers.<sup>77</sup>

The central role of the GOC in the current restructuring of the Chinese steel industry is consistent with its role throughout the development of the industry, including its significant expansion over the past decade which resulted in the excess supply and suppressed prices experienced during the investigation period.

### **A2.12 Chinese steel industry: GOC influence**

The Commission holds that the GOC (including central, provincial and local governments) materially contributed to the excess supply of steel billet in the domestic Chinese market and hence significantly influenced domestic price for Chinese grinding bar and hence grinding balls during the investigation period. This influence has occurred through the following mechanisms.

- GOC directives, subsidy programs and involvement in strategic enterprises.
- Taxation arrangements, including value add taxes and export rebates.

### **A2.13 GOC directives**

The Commission holds that the GOC maintained a central role in the development of the Chinese steel industry and by virtue, materially contributed to its rapid expansion and the chronic oversupply during the investigation period.

The significance of this role was articulated by a recent CBSA investigation into the dumping and countervailing of 'certain concrete reinforced bar' originating from the People's Republic of China.<sup>78</sup> The CBSA's '*Statement of Reasons*' report released in December 2014 notes that the GOC classifies the 'Iron and Steel Industry' as a 'fundamental or pillar' industry. The CBSA's report also noted that as a 'fundamental or pillar' industry the GOC maintains a degree of control over the industry, through a minimum of 50% equity in the principle enterprises. The significance of the GOC's role in

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<sup>74</sup> Platts Insight 201, 27 March 2015.

<sup>75</sup> Platts Insight 201, 15 May 2014.

<sup>76</sup> Metals Insight, 13 August 2015, p3.

<sup>77</sup> Metals Insight, 13 August 2015, p3.

<sup>78</sup> CBSA, 2014, p 14.

the Chinese steel industry is also reflected in the National Development Reform Commission's (NDRC's) responsibility for approving all large steel projects.<sup>79</sup>

The Commission holds that the central role of the GOC in the Chinese steel industry is also reflected through the numerous planning documents and directives issued by the GOC regarding the structure and composition of Chinese steel industry. As such, in assessing the existence of a 'market situation' in the Chinese steel industry and consequently the Chinese grinding ball market, the Commission reviewed a number of GOC planning documents and directives. These documents and directives are listed below.

- *National Steel Industry Development Policy (2005).*
- *Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).*
- *2011-2015 Development Plan for the Steel Industry (2011).*
- *Steel Industry Adjustment Policy (2015 Revision).*

In addition to the GOC planning documents and directives listed above, the need for restructuring and reorganisation of the Chinese steel industry, including the elimination of backward capacity, was also addressed in the documents listed below. While these planning directives cover a broad range of industries, the inclusion of the steel industry reinforces its central role within the Chinese economy and hence high levels of GOC intervention.

- *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 M&A and Reorganisation in Key Industries (2013).*
- *Directory Catalogue on Readjustment of Industrial Structure (Version 11) (2013 Amendment).*

## **A2.14 GOC directives: Summary of themes and objectives**

The Commission holds that the extent of the GOC's influence within the Chinese steel industry is reflected in the major themes and objectives of its plans and directives toward the industry. These themes and objectives are listed below.

### **National Steel Industry Development Policy (2005)<sup>80</sup>**

- Structural adjustment of the Chinese steel industry.
- Industry consolidations through mergers and acquisitions.
- Regulation of technological upgrading to new standards.
- Government supervision and management.

### **Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009)<sup>81</sup>**

- Maintaining stability within the domestic market.
- Controlling total steel production output and eliminating of backward capacity.
- Enterprise reorganisation and industrial concentration.

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<sup>79</sup> CBSA, 2014, p 17.

<sup>80</sup> CBSA, 2014, p 17.

<sup>81</sup> CBSA, 2014, p 17.

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- Technical transformation and technical progress.
- Steel industry layout and development.
- Steel product mix and product quality.
- Maintain stable import of iron ore resources and rectify the market order.
- Development of domestic and overseas resources and guarantee the safety of the industry.

### **2011-2015 Development Plan for the Steel Industry (2011)**<sup>82</sup>

- Increased mergers and acquisitions to create larger, more efficient steel companies.
- GOC restrictions of steel capacity expansions.
- Upgrading steel industry technology.
- Greater emphasis on high-end steel products.
- Relocation of iron and steel companies to coastal areas.
- Minimum capacity requirements to reduce the number of small steel producers.
- Increased controls on the expansion of steel production capacity.
- Accelerating the development of higher value steel products.

### **Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)**<sup>83</sup>

- Top ten companies accounting for 60% 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)**<sup>84</sup>

- 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.<sup>85</sup>
- Lift capacity utilisation rates to 80% by 2017.<sup>86</sup>

## **A2.15 GOC directives: Summary of GOC influence**

The Commission notes that the emphasis of these individual planning documents and directives is on promoting the orderly restructuring and reorganisation of the Chinese steel

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<sup>82</sup> CBSA, 2014, p18

<sup>83</sup> <http://rhg.com/notes/beijings-2015-industry-consolidation-targets-problem-or-solution>

<sup>84</sup>

[http://www.eurofer.eu/Issues%26Positions/Trade/ws.res/Steel\\_Industry\\_Adjustment\\_Policy\\_Comments\\_Appendix.fhtml/Steel\\_Industry\\_Adjustment\\_Policy\\_Appendix.pdf](http://www.eurofer.eu/Issues%26Positions/Trade/ws.res/Steel_Industry_Adjustment_Policy_Comments_Appendix.fhtml/Steel_Industry_Adjustment_Policy_Appendix.pdf)

<sup>85</sup> Dept. of Industry and Science, 2015, China Resources Quarterly, Southern Autumn – Northern Spring, p15.

<sup>86</sup> *ibid.*

industry to better manage the issue of chronic oversupply. However, these planning documents and directives also demonstrate the extent of the GOC's interventions within the Chinese steel industry.

The degree to which plans and directives issued at the central government level are integrated at the provincial level is reflected by the Shandong Province Development and Reform Commission's '*The opinions on the implementation of the structural adjustment of the steel industry in Shandong Province pilot program*' (2012). The 'Opinions' notes that since 2006, the Shandong Provincial Government had issued a number of plans and measures to control the development of the iron and steel industry, eliminate backward production capacity, and accelerate the pace of mergers and restructuring work in the province's steel industry. Examples of these plans included the 'Guiding Opinions on accelerating the restructuring of the steel industry within the Shandong Province' and the 'Shandong Province Iron and Steel Industry Revitalisation Plan'.

The '*Shandong Provincial People's Government Notice of Revitalisation Plan*' (2009) also demonstrates the linkages between plans issued by the Central GOC and those issued at the provincial government level. The Commission holds that the consistency between planning documents and directives at the central and provincial government level further reinforce the high level of government intervention in the Chinese steel industry. For example, following from the GOC's '*Blueprint for the Adjustment and Revitalisation of the Steel Industry*' (2009), the '*Shandong Province Iron and Steel Industry Revitalisation Plan*' identified the following areas where policy measures were to be applied:

- implementation of the national steel industry adjustment and revitalisation plan;
- acceleration of corporate mergers and acquisitions;
- technological transformation and technological innovation;
- development of domestic markets and stabilisation of position in export markets;
- improving resource security through 'going out' strategy;
- broaden financing channels for enterprises;
- increase the fiscal tax policy support; and
- give full play to the role of industry associations in planning, standards and policies.

## **A2.16 GOC subsidy programs**

The nature of support provided by the GOC to the Chinese steel industry is also documented through previous investigations undertaken by the Commission. While these investigations don't correspond with the investigation period, these programs directly contributed to the state of the Chinese steel industry and grinding ball market during the investigation period. Examples of the types of subsidies provided to the Chinese steel industry are set out below.<sup>87</sup>

- Steel inputs provided by the government at less than adequate remuneration.
- Coking coal and coke provided at less than adequate remuneration.
- Preferential Tax Policies for Enterprises with Foreign Investment.
- Preferential Tax policies for Specific Regions.
- Preferential Tax Policies for Foreign Invested Enterprises.
- Land Use Tax Deductions.
- Preferential Tax Policies for High and New Technology Enterprises.

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<sup>87</sup> INV 198 Final Report pp41-43 and INV 193 Final Report pp40-41

- Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipment.
- Research and Development (R&D) Assistance Grants.
- Special Support Funds for Non State-Owned Enterprises.

## **A2.17 GOC involvement in strategic enterprises**

The Commission holds that the GOC also maintains significant interests in a number of major Chinese steel producers including some that produce the grinding bar used in the production of grinding balls. Through its involvement in these companies, the GOC is able to exert significant influence over the Chinese steel industry.

In supporting this view, the CBSA's investigation in 'Certain Concrete Reinforced Bar' notes that the GOC classifies the 'iron and steel industry' as a 'fundamental or pillar' industry and as such retains a minimum of 50% equity in the principle enterprises. The CBSA report also noted that state owned steel producers constituted a majority of the top ten steel producers in China and accounted for a significant share of total steel production and capacity.<sup>88</sup>

The importance of these state owned steel producers is also reflected in the GOC's *Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)* which calls for the top ten steel producers to further consolidate control over Chinese steel production and hence influence over domestic steel markets. Out of the 10 largest Chinese steel producers, eight have a significant degree of government ownership.<sup>89</sup> These companies include: Hebei Steel Group; Baosteel Group; Ansteel Group; Wuhan Steel Group; Shougang Group; Maanshan Steel; Tianjin Bohai Steel; and Benxi Steel Group.

The central role of Chinese steel producers, with a significant degree of state ownership, within the Chinese steel industry is also reflected through their implementation of the underlying objectives of the GOC's planning directives. Examples of these activities include the involvement of Chinese state owned steel companies in projects which have either been recently commissioned or are under development. These projects include: Anshan Iron & Steel's Bayuquan Steelworks (6.5 million tonnes per annum (mtpa)) (Liaoning Province) (commissioned 2008); the Shougang Jingtang United Iron & Steel's Steelworks (Hebei Province) (commissioned 2010); and the Fangchenggang Steel Company Limited (Wuhan Iron & Steel Group) Steelworks (9.2 mtpa) (Guangxi Province) (commissioned September 2014).<sup>90</sup> Significant Chinese steelworks with a focus on flat products currently being developed or planned include Baosteel's Zhanjiang steelworks (Guangdong Province) (expected commissioning in 2016); the Baotou Iron & Steel steelworks (5 mtpa) (Inner Mongolia); and the Chongqing Iron & Steel (Chongang) and POSCO signed Investment MOU (USD 3.3 bn) (signed July 2014).<sup>91</sup>

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<sup>88</sup> In 2010, eight of the largest ten Chinese steel producers were state owned and that in 2013 the top steel companies accounted for 45% of total Chinese crude steel production., CBSA, 2014, p14

<sup>89</sup> Based on 2014 production. World Steel Association

<sup>90</sup> OECD, 2015, Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects. OECD Science, Technology and Industry Policy Papers, No. 18. OECD Publishing, p15

<sup>91</sup> *ibid.*

## A2.18 Taxation arrangements

The GOC has traditionally operated, amongst other taxation arrangements, a Value Added Tax (VAT). Under the Chinese VAT system, a 17% tax is paid on consumption of goods, including the inputs used in the production of steel. For goods produced and sold within China, the tax is ultimately paid by the final consumers of the particular good. Because it is difficult for exporters to pass these taxes on, some steel exporters have traditionally been compensated for VAT paid during the production process through VAT rebates.

Through altering the VAT rebates or export taxes applied to steel exports, the GOC is able to alter the relative profitability of different types of steel exports and of exports compared to domestic sales which will in turn influence the volume of steel directed to both markets. For example, by either reducing VAT rebates or increasing export taxes on steel exporters, the GOC is able to reduce the relative profitability of exports to domestic sales and hence provide significant incentives for exporters to redirect their product into the domestic Chinese market. By using these mechanisms to alter the relative supply of particular steel products in the domestic market, the GOC is also able to influence the domestic price for those products.

A recent example of the GOC altering VAT rebates on steel products occurred in January 2015. The GOC reduced the VAT rebate on steel products containing boron, which accounts for around 40% of exports.<sup>92</sup> While VAT rebates for boron have been recently reduced, they remain in place for other additives such as chromium.<sup>93</sup>

At present (and during the investigation period) the GOC applies a VAT export rebate of five per cent to grinding balls. The Commission considers, however, that the application of a five per cent VAT rebate against a 17 per cent VAT rate creates significant incentives for Chinese exporters to redirect their product from the export to domestic Chinese market. The GOC has also caused a distortion in the domestic price for grinding balls through the application of export taxes on Chinese billets, which accounts for a significant proportion of the total grinding balls production cost.<sup>94</sup>

Previous investigations by the Commission identified the use 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.<sup>95</sup> Due to the lack of response by the GOC, the Commission has relied on the best available information, including previously completed investigations. As in the case of steel billets, these measures would create significant incentives for exporters to redirect these products into the domestic market, increasing the relative supply and reducing the respective prices to a level below what would have prevailed under normal market conditions.

The Commission holds that lower raw material prices would have a depressing effect on the domestic prices of Chinese grinding balls through both direct and indirect channels. The relative importance of these two channels would depend on the degree to which lower raw material costs flow through to lower billet and grinding ball prices and the degree to which billet and grinding ball producers are able to retain the lower raw material costs in the form of increased profit. Where a majority of the lower raw material costs flow through to

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<sup>92</sup> Dept. of Industry and Science, March 2015, Resources and Energy Quarterly, p24

<sup>93</sup> Metals Insight, 14 May 2015, p4

<sup>94</sup> Anti-Dumping Commission calculations

<sup>95</sup> INV 198 Final Report pp 41-43

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lower billet and grinding ball prices, the depressing effect on grinding ball prices would be direct. Where lower raw material prices are able to be retained by billet and grinding ball producers as increased profit, this would create incentives for these producers to expand production and hence have a depressing effect on domestic Chinese grinding ball prices, by further increasing the level of domestic supply relative to demand.

The Commission considers that the export taxes and export quotas on key inputs for steel continue to have a distortionary impact on the steel market by reducing input costs by increasing the supply quantities of raw materials available for steel production.

### **A2.19 Chinese grinding ball market: Assessment of particular market situation**

Based on the proceeding analysis, the Commission has concluded that the GOC materially influenced conditions within the Chinese grinding ball market during the investigation period. The mechanisms through which the GOC exerted this influence include government directives and oversight, subsidy programs, taxation arrangements and the significant number of state owned steel companies.

The Commission also concludes that because of the significance of this influence over the Chinese grinding ball market, the domestic price for Chinese grinding balls was substantially different to what it would have been in the absence of these interventions by the GOC. Based on this analysis, the Commission has determined that during the investigation period the domestic price for Chinese grinding balls was influenced by the GOC to a degree which makes domestic sales of grinding balls unsuitable for use in determining normal values under subsection 269TAC(1).

**APPENDIX 3 - ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES**

**A3.1 OVERVIEW**

**A3.1.1 INTRODUCTION AND SUMMARY OF FINDINGS**

This appendix details the Commission’s assessment of the 54 subsidy programs investigated in relation to grinding balls exported from China.

The 54 investigated programs, and the Commission’s assessment of whether each is countervailable in relation to grinding balls exported from China, is outlined in the below table.

<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
1	Raw Materials (Steel billet) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
2	Raw Materials (Electricity) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
3	Preferential Tax Policies in the Western Regions	Income Tax	Yes
4	Land Use Tax deduction	Income Tax	Yes
5	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	Yes
6	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT	Yes
7	One-Time Awards to Enterprises Whose Products Qualify for “Well-Known TradeMarks of China” and “Famous Brands of China”	Grant	Yes
8	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
9	Superstar Enterprise Grant	Grant	Yes
10	Research & Development (“R&D”) Grant	Grant	Yes
11	Innovative Experimental Enterprise Grant	Grant	Yes
12	Special Support Fund for Non-State Owned Enterprises	Grant	Yes
13	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
14	Grants for Encouraging the Establishment of Headquarters and	Grant	Yes

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<b>Program Number</b>	<b>Program Name</b>	<b>Program Type</b>	<b>Countervailable in relation to the goods (Yes/No)</b>
	Regional Headquarters with Foreign Investment		
15	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
16	Water Conservancy Fund Deduction	Grant	Yes
17	Anti-Dumping Respondent Assistance	Grant	Yes
18	Technology Project Assistance	Grant	Yes
19	Capital Injections	Grant	Yes
20	Environmental Protection Grant	Grant	Yes
21	High and New Technology Grant	Grant	Yes
22	Independent Innovation and High-Tech Industrialisation Program	Grant	Yes
23	Environmental Prize	Grant	Yes
24	Provincial emerging industry and key industry development special fund	Grant	Yes
25	Environmental Protection Fund	Grant	Yes
26	Intellectual Property licensing	Grant	Yes
27	Financial resources construction special fund	Grant	Yes
28	Reducing pollution discharging and environmental improvement assessment award	Grant	Yes
29	Comprehensive utilisation of resources – VAT refund upon collection	Tariff and VAT	Yes
30	Grant for elimination of out dated capacity	Grant	Yes
31	Grant from Technology Bureau	Grant	Yes
32	Raw Materials (Coking coal) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
33	Raw Materials (Coke) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
34	Patent Award of Guangdong Province	Grant	Yes
35	Wuxing District Freight Assistance	Grant	Yes
36	Huzhou City Public Listing Grant	Grant	Yes
37	Huzhou City Quality Award	Grant	Yes
38	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
39	Wuxing District Public List Grant	Grant	Yes
40	Transformation technique grant for rolling machine	Grant	Yes
41	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grant	Yes
42	Key industry revitalization infrastructure spending in 2010	Grant	Yes
43	Jinzhou District Research and Development Assistance Program	Grant	Yes
44	Debt for equity swaps	Equity Programs	No
45	Equity infusions	Equity Programs	No
46	Unpaid dividends	Equity Programs	No
47	Preferential loans and interest rates	Preferential Loans	Yes
48	International trade increase project fund	Grant	Yes
49	Industrial economy reform and development fund	Grant	Yes
50	Sales revenue increase award	Grant	Yes
51	Tax contribution award	Grant	Yes
52	Energy and recyclable economy program	Grant	Yes
53	National controlled essential pollutant source supervision system third party operation and maintenance subsidy program	Grant	Yes
54	Scientific program awards in high and new scientific zone	Grant	Yes

### A.3.1.2 RELEVANT LEGISLATION

Section 269T defines a 'subsidy' as follows:

*"subsidy" , in respect of goods exported to Australia, means:*

*(a) a financial contribution:*

*(i) by a government of the country of export or country of origin of the goods; or*

*(ii) by a public body of that country or a public body of which that government is a member; or*

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*(iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;*

*that involves:*

*(iv) a direct transfer of funds from that government or body; or*

*(v) the acceptance of liabilities, whether actual or potential, by that government or body; or*

*(vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or*

*(vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or*

*(viii) the purchase by that government or body of goods or services; or*

*(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;*

*if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.*

This reflects Article 1.1 of the WTO SCM Agreement.

S.269TAAC defines a countervailable subsidy as follows:

*(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.*

*(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:*

*(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or*

*(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or*

*(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or*

*(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.*

*(3) Subject to subsection (4), a subsidy is not specific if:*

*(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and*

*(b) eligibility for the subsidy is automatic; and*

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- (c) *those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and*
- (d) *those criteria or conditions are strictly adhered to in the administration of the subsidy.*

(4) *The Minister may, having regard to:*

- (a) *the fact that the subsidy program benefits a limited number of particular enterprises; or*
- (b) *the fact that the subsidy program predominantly benefits particular enterprises; or*
- (c) *the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or*
- (d) *the manner in which a discretion to grant access to the subsidy has been exercised;*

*determine that the subsidy is specific.*

(5) *In making a determination under subsection (4), the Minister must take account of:*

- (a) *the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and*
- (b) *the length of time during which the subsidy program has been in operation.*

Section 269TACC directs how the Minister is to determine whether benefits have been conferred by a financial contribution or income or price support and the amount of this benefit.

Under section 269TJ, one of the matters of which the Minister must be satisfied to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

## **A3.2 INFORMATION CONSIDERED BY THE COMMISSION**

### **A.3.2.1 DONHAD AND MOLY-COP'S APPLICATION**

The Commission has relied upon information submitted by the applicants in the application and in Moly-Cop's submission with respect to its investigation of the 47 countervailable subsidy programs (Programs 1 – 47) that were allegedly received by Chinese exporters of grinding balls exported to Australia.

### **A3.2.2 INFORMATION PROVIDED BY EXPORTERS**

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by exporters in the exporter questionnaire responses, as well as information provided by exporters during verification visits.

### **A3.2.3 INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA**

The Commission included questions relating to each program in Government questionnaires that were sent to the GOC on 17 November 2015 and 12 January 2016.

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The GOC did not provide a response to the Commission's request for detailed information about the programs identified in the Government questionnaires.

### **A3.2.4 OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT**

The Commission also considered as part of this assessment:

- Information submitted by interested parties in various general submissions to the investigation;
- information submitted to various previous ACBPS and Commission investigations into the alleged subsidisation of various goods exported from China; and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in China.

## **A3.3 ASSESSMENT OF SUBSIDY PROGRAMS**

### **A3.3.1 CATEGORY ONE: PROVISION OF GOODS**

#### **PROGRAM 1: RAW MATERIALS (STEEL BILLET) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION**

##### **BACKGROUND**

The application alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of steel billet by the GOC at an amount reflecting less than adequate remuneration (LTAR), having regard to prevailing market conditions in China.

In particular, it was claimed that steel billet, as a main raw material used in the manufacture of grinding balls, was being produced and supplied by GOC-owned (or partially-owned) enterprises in China at LTAR. For the purposes of this report, these GOC-owned or partially owned entities will be referred to as 'state-invested enterprises' (SIEs).

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that produce steel billet are public bodies, and that a financial contribution in the form of provision of raw material inputs at LTAR by these SIEs to grinding balls producers constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs are public bodies for the purposes of the definition of 'subsidy' in subsection 269T(1) is discussed in Appendix 5.

The Commission requested information from Chinese exporters in relation to their purchases of steel billet during the investigation period. For each supplier of steel billet, the Chinese exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

As well as identifying the manufacturers of all purchased steel billet, the exporters were also asked to indicate whether these enterprises were SIEs. The exporter questionnaire responses received by the Commission indicated that none of the exporters had purchased steel billet from SIEs during the investigation period.

##### **LEGAL BASIS**

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

##### **WTO NOTIFICATION**

The Commission is not aware of any WTO notification of this program.

## **ELIGIBILITY CRITERIA**

There are no articulated eligibility criteria for enterprises receiving steel billet at LTAR.

## **IS THERE A SUBSIDY?**

### Financial contribution

The cooperating exporters do not purchase steel billet for the production of grinding balls. Based on the information above, the Commission has no relevant information on which to conclude that any Chinese grinding ball exporters received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 1 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for steel billet.

## **PROGRAM 2: RAW MATERIALS (ELECTRICITY) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION**

### **BACKGROUND**

The application alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of electricity by the GOC at LTAR. In particular, it was claimed that electricity was being produced and supplied by SIEs.

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that provide electricity are public bodies, and that a financial contribution in the form of provision of raw material inputs at LTAR by these SIEs to grinding ball producers constitutes a countervailable subsidy.

Under this program, it is alleged that a benefit to exported grinding balls is conferred by electricity being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission requested information from the cooperating Chinese exporters in relation to their electricity costs during the investigation period. Each exporter was also asked to indicate whether the electricity providers were SIEs.

The Commission also requested information from the GOC in relation to this program, however no response was received.

### Previous consideration

#### US Findings

The 2011 findings of the US countervailing investigation into aluminium extrusions exported from China determined that Provision of Electricity for LTAR to foreign invested enterprises located in the Nanhai District of Foshan City was countervailable. This finding was made under the US adverse facts available provisions and in the absence of a

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response from the GOC. The investigation also determined that provision of electricity for LTAR to firms located in the ZHITDZ was not countervailable.

In a later countervailing review concluded in 2014, the US did not find that that electricity for LTAR to FIEs Located in the Nanhai District of Foshan City was countervailable.

The 2008 US Thermal Paper countervailing investigation found that electricity was provided at LTAR in the Zhanjiang Economic and Technological Development Zone. The investigation found that tariff rates in Guangzhou were higher than those paid by firms in Zhanjiang and preferential pricing exists within Guangdong province. The amount of subsidy received was the difference between the rate paid by the exporter and the higher provincial rate.

### EU Findings

In its 2013 countervailing investigation relating to Coated Steel exported from China the EU determined that subsidies had been received in relation to the provision of electricity at LTAR. The EU observed that “*price differentials exist for different industrial users to pursue the industrial policies set by the GOC and reflected in the catalogue contained in Decision No. 40 (2005) of the NDRC (see further explanation in recital (182)).*” The EU case examined one exporter who was found to be benefiting from a lower rate than the generally applicable large industrial users rate on the basis that the exporter was located in a sub-category of certain industrial users. The subsidy amount was calculated by comparing the actual rate paid by the exporter to the large industrial users rate.

### Australian and Canadian Findings

In separate countervailing investigations in relation to exports of silicon metal from China the Commission and Canadian authorities determined that producers of silicon metal had received electricity at LTAR.

Both cases found that the ferro-alloy industry, of which the silicon metal producers were a part, was entitled to a specific rate of electricity that was found to be below the rate available to large industrial users. This is consistent with the findings of the EU coated steel case and to a lesser extent the findings of the US thermal paper case.

In *Review of Measures - Aluminium Extrusions exported from China*, the Commission was not satisfied that that the requirements of subsection 269TACC(3)(d) were met. The Commission found that tariff data did not show that preferential pricing existed the province where the selected exporters were located.

## LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

## WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

## ELIGIBILITY CIRTERIA

## **PUBLIC RECORD**

There are no articulated eligibility criteria for enterprises receiving electricity at LTAR.

### **IS THERE A SUBSIDY?**

In determining the existence of a subsidy, the investigation has followed the approach adopted by the Commission in Investigation 237 – Silicon Metal exported from China (INV 237) and Review of Measures 248 – Aluminium Extrusions exported from China (REV 248), as well as the Canadian and EU investigations detailed above, in determining if a subsidy exists.

As stated throughout this report, information about this program was requested from the GOC, however no response was provided. In the absence of a GOC response, the Commission sought to establish if the grinding ball industry was eligible for a specific rate of electricity that was below the rate available to large industry.

Provincial electricity tariff data was obtained for both the Jiangsu and Hebei provinces, the provinces in which the cooperating exporters are located, for both 2014 and 2015. The Commission compared the tariff data with the information supplied by each exporter and established that each exporter was subject to the tariff applicable to large industry. The tariff data indicated that certain industries were subject to preferential pricing, including the agricultural sector. The tariff data did not indicate that the grinding ball industry was subject to specific or preferential pricing.

### **AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS**

Based on the evidence available, the Commission is not satisfied that the requirements of subsection paragraph 269TACC(3)(d) are met. This program will therefore not be countervailed in respect of grinding balls exported from China.

## **PROGRAM 32: RAW MATERIALS (COKING COAL) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION**

### **BACKGROUND**

The application alleged that Chinese exporters of grinding balls have benefited from the provision of raw material in the form of coking coal by the GOC at LTAR.

In particular, it was claimed that coking coal, one of the main raw materials used in the manufacture of grinding bar, which is in turn used for the manufacture of grinding balls, was being produced and supplied by SIEs in China at LTAR.

During this investigation it has been established that Longte transitioned to being an integrated producer of grinding balls during the investigation period. Integrated producers manufacture grinding balls using coking coal as one of the raw materials, while non-integrated producers purchase grinding bar to produce those goods.

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that produce coking coal are public bodies, and that a financial contribution in the form of provision of raw material inputs (coking coal) at

## **PUBLIC RECORD**

LTAR by these SIEs to manufacturers of grinding balls constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs constitute a public bodies in the meaning of subsection 269T(1) is discussed at Appendix 5.

This assessment concludes that these Chinese SIEs that produce coking coal are 'public bodies' for the purposes of section 269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported grinding balls is allegedly conferred by coking coal being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission's assessment of what constitutes 'adequate remuneration' for coking coal in China is contained in Appendix 4.

The Commission requested information from all Chinese exporters in relation to their purchases of coking coal during the investigation period. For each supplier of coking coal, the Chinese grinding ball exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

Information presented by Longte showed that coking coal was supplied to its parent company Longteng by non SIEs, however one supplier of coking coal was supplied by a SIE producer.

### **LEGAL BASIS**

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

### **WTO NOTIFICATION**

The Commission is not aware of any WTO notification in respect of this program.

### **ELIGIBILITY CRITERIA**

There are no articulated eligibility criteria for enterprises receiving coking coal at LTAR.

### **IS THERE A SUBSIDY?**

Based on the available information, the Commission considers that this program does not represent a financial contribution that involves the provision of the goods (coking coal) by SIEs, being public bodies, at LTAR.

Using the information supplied by Longte, the Commission assessed each purchase of coking coal from an SIE for adequate remuneration.

## **PUBLIC RECORD**

In accordance with subsection 269TACC(5), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions in China (as discussed in Appendix 4).

In accordance with subsection 269TACC(6)(d), the amount of the benefit has been determined as the difference between adequate remuneration (the established benchmark) and the actual purchase price paid for coking coal incurred by the relevant exporter in purchasing those goods from an SIE.

The Commission notes that the export prices used to determine the benchmark price are at FOB terms, whereas the purchase price paid by Longte was on delivered terms. Given the absence of information in relation to freight costs for both the supplier of the coking coal to Longte, and the freight costs associated with transporting coking coal from the Australian mine to port of loading, the Commission considers it is reasonable to compare the delivered purchase prices as reported by the exporter to the FOB export prices, given that both incorporate some amount of freight cost.

The Commission has determined that the weighted average price paid by Longte over the investigation period for coking coal supplied by SIEs is lower than the weighted average export price for Australian premium low volume hard coking coal as supplied by an independent provider of export pricing data.

Based on this analysis, the Commission is not satisfied that coking coal has been provided at LTAR. As such, the available evidence does not support a finding that Program 32 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for coking coal.

### **PROGRAM 33: RAW MATERIALS (COKE) PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION**

#### **BACKGROUND**

The application alleged that Chinese exporters of grinding balls have benefited from the provision of raw material in the form of coke by the GOC at LTAR. In particular it was claimed that coke, one of the main raw materials used in the manufacture of grinding balls, was being produced and supplied by SIEs in China at LTAR.

Coke is an intermediate raw material used in the manufacture of grinding bar. Coking coal is put through a coking oven to produce coke, hence coking coal is the main raw material used in the production of coke.

Integrated producers manufacture grinding balls using coking coal and/or coke as one of the raw materials, while the non-integrated producers purchase grinding bar to produce those goods.

The definition of a subsidy under subsection 269T(1) includes reference to a financial contribution by a government or any public body.

The application alleges that Chinese SIEs that produce coke are public bodies, and that a financial contribution in the form of provision of raw material inputs (coke) at LTAR by these SIEs to manufacturers of grinding balls constitutes a countervailable subsidy.

## **PUBLIC RECORD**

The Commission's assessment of whether SIEs producing coke constitute a public body in the meaning of subsection 269T(a)(ii) is discussed in Appendix 2.1.

This assessment concludes that these Chinese SIEs that produce coke are 'public bodies' for the purposes of subsection 269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported grinding balls is conferred by coke being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission requested information from all Chinese exporters in relation to their purchases of coke during the investigation period. For each supplier of coke, the Chinese grinding ball exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

### **LEGAL BASIS**

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

### **WTO NOTIFICATION**

The Commission is not aware of any WTO notification in respect of this program.

### **ELIGIBILITY CRITERIA**

There are no articulated eligibility criteria for enterprises receiving at LTAR.

### **IS THERE A SUBSIDY?**

The cooperating exporters did not purchase coke from SIE's during the investigation period. Based on the above, the Commission has no relevant information on which to conclude that any Chinese grinding ball exporters received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 33 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for coke.

## A3.3.2 CATEGORY TWO: INCOME TAX

### PROGRAM 3: PREFERENTIAL TAX POLICIES IN THE WESTERN REGIONS

#### BACKGROUND

The application alleges that grinding ball exporters located in the Western Regions of China are likely to have benefited from exemptions to income tax.

Under this program, enterprises established in the Western Regions engaged in industries encouraged by the State are eligible for a reduced tax rate of 15% (as opposed to the standard 25% taxation rate).

In certain circumstances, the program also operates to exempt enterprises from VAT and tariff on imported goods (*Program 6*, below). As the Commission will examine *Program 6* as a separate program, the assessment of this *Program 3* focuses specifically on reduced income tax rates only.

#### LEGAL BASIS

The legal basis to establish this subsidy is pursuant to the following:

- *Law of the People's Republic of China on Enterprise Income Tax (2007)*;
- *Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (200)*;
- *the Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions*, State Council Circular Guo Fa No. 33 of 2000;
- *the Implementing Some Policies and Measures for the Development of Western Regions*, State Council Circular Guo Ban Fa No. 73 of 2001;
- *the Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas* (Cai Shui No. 202 of 2001);
- *State Council Circular Guo Fa No. 39 of 2007*;
- *the Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Preferential Policies of Enterprise Income Tax*, State Council Circular Cai Shui No.1 of 2008;
- *State Council Circular Cai Shui No.4 of 2013*; and
- *the Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions*, State Council Circular Cai Shui No.58 of 2011.

The program is administered by the SAT and its local Branch Offices or Bureaus.

#### WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/284/CHN, dated 30 October 2015.

#### ELIGIBILITY CRITERIA

## PUBLIC RECORD

The program is available to enterprises established in the Western regions which are engaged in industries encouraged by the State as defined in the:

- *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State*
- *Guiding Catalogue for Industry Restructuring*
- *Circular on the Preferential Tax Policy of the Western Regions*
- *Catalogue for the Guidance of the Foreign Investment Industries*
- *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment*

### IS THERE A SUBSIDY?

The Commission considers that the laws governing this program mandate a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in the Western Regions in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of grinding balls during the investigation period received tax savings under this program it would therefore confer a benefit in relation to grinding balls and the financial contribution would meet the definition of a subsidy under section 269T.

#### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in subsection 269TAAC(2)(b), a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority. A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (subsection 269TAAC(2)(a)).

For enterprises located in the Western Regions, only those industries which are 'encouraged' are eligible for the subsidy. Other companies in the designated geographical region (being those enterprises which are not 'encouraged') are not eligible for the subsidy.

Furthermore, this program is limited in eligibility to enterprises based in the Western Region, under the jurisdiction of the granting authority (SAT).

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those 'encouraged' enterprises in the Western Regions, over all other enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the Commission finds that the subsidy is specific.

### AMOUNT OF SUBSIDY

## PUBLIC RECORD

### Cooperating exporters

The Commission has determined that cooperating exporters did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to cooperating exporters under this program.

### Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was most recently investigated in INV 237. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

In the absence of the above relevant information, the Commission considers it is likely that uncooperative exporters situated in the Western Regions of China meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

In calculating the amount of subsidy attributable to uncooperative exporters under this program, it is noted that as:

- this program would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 5 (reduction of tax from 25 per cent to 15 per cent) has already been applied to uncooperative exporters;

the maximum benefit amount available under this program has already been countervailed in relation to Program 5.

The Commission has therefore calculated a zero amount of a subsidy under this program for uncooperative exporters.

## **PROGRAM 4: LAND USE TAX DEDUCTION**

### **BACKGROUND**

The application alleges that grinding ball exporters are likely to have benefited from land use tax deduction. This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.

### **LEGAL BASIS**

*Approval of Tax (Expense) Deduction (ZhengDiCaShui [2010] No.11581).*

## **PUBLIC RECORD**

This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.

### **WTO NOTIFICATION**

The Commission is not aware of any WTO notification of this program.

### **ELIGIBILITY CRITERIA**

The program is available to new high and new technology enterprises within three years of their establishment.

### **IS THERE A SUBSIDY?**

The Commission considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC.

Due to the nature of this program (exemption of land use tax), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, financial contribution is considered to confer a benefit to recipient manufacturers of grinding balls due to reduced tax liability owed to the GOC.

Where exporters of grinding balls during the investigation period received tax savings under this program, this would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

#### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, this program is limited to high and new technology enterprises that are less than three years old.

As the criteria or conditions providing access to the subsidy favours particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

The Commission therefore considers this subsidy to be specific.

### **AMOUNT OF SUBSIDY**

#### Cooperating exporters

The Commission has determined that cooperating exporters did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to cooperating exporters under this program.

### Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was most recently investigated in INV 237. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

In the absence of the above relevant information, and in keeping with the Commission's finding in previous investigations that cooperating exporters have received a financial contribution under this program, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

In the absence of usage information, the Commission considers that:

- subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them under this program during the investigation period in the form of a reduction in a tax.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission considers that because the maximum financial contribution grantable under a program is not stipulated in its legal instrument, the amount of the financial contribution shall be considered to be the amount found to be received by a cooperating exporter in a previous investigation, notably INV 177.

In attributing the amount of subsidy to each unit of grinding balls under subsection 269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the cooperating exporters, in the absence of actual sales data for the non-cooperating exporters.

## **PROGRAM 5: PREFERENTIAL TAX POLICIES FOR HIGH AND NEW TECHNOLOGY ENTERPRISES**

### **BACKGROUND**

The application alleges that grinding ball exporters are likely to have benefited from preferential tax policies. This program reduces the income tax paid by high and new technology enterprises to 15% (from the standard enterprise income tax rate of 25%).

## **LEGAL BASIS**

This program is provided for in Article 28 of the *PRC Enterprise Income Tax Law 2007*, which states that:

“With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15 per cent.”

It is considered likely that this program is a national program, administered by the GOC's *State Administration of Taxation*.

## **WTO NOTIFICATION**

The GOC notified this program in WTO document G/SCM/N/284/CHN, dated 30 October 2015.

## **ELIGIBILITY CRITERIA**

Companies recognised by the GOC as a high and new technology enterprise are eligible for this program.

To be recognised as a high and new technology enterprise, companies must meet certain criteria, submit an application, alongside copies of the company's business registration and other relevant documentation, and have the application approved by relevant authorities.

## **IS THERE A SUBSIDY?**

The Commission considers that the law governing this program mandates a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of grinding balls during the investigation period received tax savings under the program it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under section 269T.

### Is the subsidy a countervailable subsidy (specific or prohibited)?

A subsidy is considered specific if access to the subsidy is explicitly limited to particular enterprises (subsection 269TAAC(2)(a)).

The eligibility criteria of this subsidy limits it to enterprises that are considered higher and/or new technology enterprises. As the criteria or conditions providing access to the

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subsidy favour these particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

### AMOUNT OF SUBSIDY

#### Cooperating exporters

The Commission has determined that of the cooperating exporters only Xingcheng received financial contributions in respect of the goods under this program during the investigation period.

The Commission determined that the amount of subsidy received by Xingcheng in respect of this program is the amount of tax revenue forgone by the GOC. In accordance with subsection 269TACD(2), the Commission then apportioned the total amount of subsidy received by Xingcheng to each unit of the goods using its total sales volume.

The Commission has determined that the remaining cooperating exporters did not receive a financial contribution in respect of the goods under this program and therefore considers a zero subsidy rate is applicable to the remaining cooperating exporters under this program.

#### Uncooperative exporters

The GOC was asked to provide any amendments to laws, regulations or policy that evidence that this program was not relevant to current investigations. The GOC did not provide any further information.

In the absence of this information, the Commission considers that, given:

- the fact that the program operates on a national level;
- a cooperating exporter was found to have been eligible for this program and to have accessed the program and therefore received a financial contribution under his program; and
- the Commission in other recent investigations has found cooperating Chinese exporters were eligible for this program

it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

The Commission considers that:

- subsections 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them under this program during the investigation period in the form of tax savings.

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In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission is mindful that, under this program, the maximum benefit that could have been conferred during the investigation period is reduction in the tax liability from 25 per cent to 15 per cent.

In the absence of any other reliable information the Commission has attributed the subsidy margin of the cooperating exporter for this program to the uncooperative exporters.

## CATEGORY THREE: TARIFF AND VAT EXEMPTIONS

### PROGRAM 6: TARIFF AND VAT EXEMPTIONS ON IMPORTED MATERIALS AND EQUIPMENT

#### BACKGROUND

The application alleges that Chinese producers of grinding balls are likely to have benefited from this program, under which the GOC provides an exemption of VAT and tariffs on imported equipment used as 'productive' assets.

#### LEGAL BASIS

The legal basis to establish this subsidy is pursuant to the following:

- *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37);
- *Catalogue of Industries for Guiding Foreign Investment*;
- *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004);
- *State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- *Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue*.

The program appears to operate on a national level. The National Development and Reform Commission (NDRC) or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.

#### WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/123/CHN dated 13 April 2006.

#### ELIGIBILITY CRITERIA

Under Articles 1 and 2 of the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37) to be eligible for this program:

- the enterprise must be an FIE which falls in the 'encouraged' or 'restricted' categories in the *Catalogue of Industries for Guiding Foreign Investment* (2004) (until 30 November 2007) or the *Catalogue of Industries for Guiding Foreign Investment* (2007) (after 1 December 2007);
- the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the State Council's *Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- the total value of the purchase must not exceed the investment 'cap';

or

- the enterprise must be a domestic invested enterprise (DIE) which falls in the

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*Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004) and the imported equipment must be for the enterprises own use and not fall in *the Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue*; and

- the total value of the purchase must not exceed the investment 'cap'.

### IS THERE A SUBSIDY?

Based on the information above, the Commission considers this program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC (tariff and VAT) by eligible enterprises in China.

It is considered that, depending on the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of grinding balls.

Where received, this financial contribution is considered to confer a benefit because of the tariff and VAT savings realised.

Where exporters of grinding balls during the investigation period received tax savings under the program for equipment related to their grinding ball production, it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under s.269T.

#### Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

FIEs that fall in the category of 'encouraged' or restricted' enterprises of the FIE catalogues are eligible for the subsidy, or DIEs that fall under the DIE catalogue are eligible for the subsidy. As the criteria or conditions providing access to this program favour these particular enterprises, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the Commission finds that the subsidy is specific.

### AMOUNT OF SUBSIDY

#### Cooperating exporters

The Commission has determined that the cooperating exporters did not receive financial contributions in respect of the goods under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under this program.

#### Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

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This program was first investigated in INV 177 and again in INV 193a and 193b. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that this program was not relevant to current investigations. The GOC did not provide any further information.

In the absence of the above relevant information, and in keeping with the Commission's finding in previous investigations that cooperating exporters have received a financial contribution under this program, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

Therefore, in the absence of relevant information, it is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

In the absence of usage information, the Commission considers that:

- subsection 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), in the absence of other information, the Commission considers that the highest benefit calculated for cooperating exporters in the galvanised steel and aluminium zinc coated investigations is a reasonable basis for calculating the subsidy amount attributable to uncooperative grinding ball exporters, and has used this information as a basis for its calculations.

## PROGRAM 29: COMPREHENSIVE UTILISATION OF RESOURCES - VAT REFUND UPON COLLECTION

### BACKGROUND

The applicants alleged that one supplier of grinding bar to exporters of grinding balls, namely [REDACTED] reported receiving payments from the [REDACTED] Economic and Information Commission, which it described as "Project: [REDACTED]"<sup>96</sup>.

The applicants asserted that the law governing this program mandates a financial contribution by the GOC, which involves the refund of government revenue, specifically, VAT on comprehensive utilization of resources. Due to the nature of this program (refund

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<sup>96</sup> Translation of "[REDACTED]"

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of VAT), the applicants considered that a financial contribution under this program would be made in connection with the production, manufacture or export of grinding balls.

The applicants considered that this financial contribution has been made in respect of all products in receipt of grinding bar supplied by [REDACTED], including grinding balls and that as the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it should be determined that the financial contribution has conferred a benefit under subsection 269TACC(3).

The applicants quantified the amount of subsidy in accordance with subsection 269TACC(6)(d) as the amount of tax revenue forgone by the GOC. This has been disclosed by [REDACTED], as a credit (deferred income) in the sum of RMB 6,175,000.

### **LEGAL BASIS**

The Commission is not aware of the legal basis for this program.

### **WTO NOTIFICATION**

The Commission is not aware of any WTO notification of this program.

### **ELIGIBILITY CRITERIA**

The Commission is not aware of the eligibility criteria for this program.

### **IS THERE A SUBSIDY?**

The Commission considers that the law governing this program mandate a financial contribution by the GOC, which involves the refund of government revenue (VAT on comprehensive utilization of resources).

Due to the nature of this program (refund of VAT), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of grinding balls.

Where received, this financial contribution is considered to confer a benefit because of the VAT refunded on 'comprehensive utilisation of resources'.

Is the subsidy a countervailable subsidy (specific or prohibited)?

Due to the lack of information provided by the GOC and the cooperating exporters, the Commission has based its finding on the available information. It finds that VAT refunds made on 'comprehensive utilisation of resources' by the GOC could be made only to entities that have the characteristics of 'comprehensive utilisation of resources'.

The Commission therefore finds the program to be specific, and countervailable.

### **AMOUNT OF SUBSIDY**

Cooperating exporters

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The Commission has assessed the information supplied by each cooperating exporter and has determined that grinding bar has not been purchased from the manufacturer named by the applicants. The Commission has found no other evidence of the cooperating exporters receiving a benefit under this program.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under this program.

### Uncooperative exporters

In relation to all uncooperative exporters, neither the GOC nor the individual exporters themselves provided information regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information, considered necessary to determine whether a financial contribution has been received in respect of the goods by uncooperative exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Based on fact that cooperating exporters have received benefits under this program in previous investigations, and in the absence of relevant information, the Commission considers it is likely that certain uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, Commission considers that:

- subsections 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), in the absence of other information, the Commission considers that the benefit calculated for the cooperating exporter in receipt of the subsidy in INV 177 is a reasonable basis for calculating the subsidy amount attributable to uncooperative grinding ball exporters, and has used this information as a basis for its calculations.

In accordance with subsection 269TACC(10), the total amount of subsidy received by the uncooperative exporters has been apportioned to each unit of the goods using the cooperating exporters total sales value. To determine the subsidy margin the weighted average export price for grinding balls for all cooperating exporters for the entire investigation period was used.

## **A3.3.4 CATEGORY FOUR: GRANTS**

### **PROGRAMS 7 TO 28, 30, 31, 34 TO 43 AND 48 TO 54**

#### **BACKGROUND**

The application alleged that Chinese producers of grinding balls are likely to have benefited from the following grant programs:

- Program 7: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China';
- Program 8: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 9: Superstar Enterprise Grant;
- Program 10: Research and Development (R&D) Grant;
- Program 11: Innovative Experimental Enterprise Grant;
- Program 12: Special Support Fund for Non-State-Owned Enterprises;
- Program 13: Venture Investment Fund of Hi-Tech Industry;
- Program 14: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment;
- Program 15: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan;
- Program 16: Water Conservancy Fund Deduction;
- Program 17: Anti-Dumping Respondent Assistance;
- Program 18: Technology Project Assistance;
- Program 19: Capital Injections;
- Program 20: Environmental Protection Grant;
- Program 21: High and New Technology Grant;
- Program 22: Independent Innovation and High Tech Industrialization Program;
- Program 23: Environmental Prize;
- Program 24: Provincial emerging industry and key industry development special fund;
- Program 25: Environmental Protection Fund;
- Program 26: Intellectual property licensing;
- Program 27: Financial resources construction special fund;
- Program 28: Reducing pollution discharging and environment improvement assessment award;
- Program 30: Grant for elimination of out dated capacity;
- Program 31: Grant from Technology Bureau;
- Program 34: Patent Award of Guangdong Province;
- Program 35: Wuxing District Freight Assistance;
- Program 36: Huzhou City Public Listing Grant;
- Program 37: Huzhou City Quality Award;
- Program 38: Huzhou Industry Enterprise Transformation & Upgrade Development Fund;
- Program 39: Wuxing District Public List Grant;
- Program 40: Transformation technique grant for rolling machine;
- Program 41: Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009;
- Program 42: Key industry revitalization infrastructure spending in 2010; and

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- Program 43: Jinzhou District Research and Development Assistance Program.

Under these programs certain enterprises are eligible for cash grants provided by the GOC.<sup>97</sup> Benefits are conferred to these enterprises in the form of funds provided.

During the course of its investigation the Commission requested information from exporters of grinding balls in relation to benefits received over the injury analysis period. The purpose of requesting data for years prior to the investigation period was to determine whether countervailable subsidies had been received that should be amortised over a period of years, such that a benefit could be found to be attributable to the period of investigation. The cooperating exporters advised of payments received from the GOC<sup>98</sup> during this period.

Further investigation of information provided by cooperating exporters has shown that other benefits were received during the investigation period. The Commission has assigned the following descriptions to those programs:

- Program 48: International trade increase project fund;
- Program 49: Industrial economy reform and development fund;
- Program 50: Sales revenue increase award;
- Program 51: Tax contribution award;
- Program 52: Energy and recyclable economy program;
- Program 53: National Controlled Essential Pollutant Source Supervision System Third Party Operation and Maintenance Subsidy Program; and
- Program 54: Scientific Program Awards in High and New Scientific Zone.

### WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of these programs.

### LEGAL BASIS AND ELIGIBILITY CRITERIA – PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43

**Program 7: One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’**

#### Legal basis

*Decision Concerning Commending and/ or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of ‘China Worldwide Famous Brand’, ‘China Famous Brand’, or ‘China Well-Known Brand’.*

The government of Guangdong province is responsible for the administration and management of this program.

#### Eligibility criteria

- enterprises whose products qualify for the title of ‘China Worldwide famous Brand’; and

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<sup>97</sup> Either centrally, or through provincial or local government.

<sup>98</sup> Either centrally, or through provincial or local government.

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- enterprises whose products qualify for the title of 'China well-known brand' and/or 'famous trademark (China famous Trademark)'.

### **Program 8: Matching Funds for International Market Development for SMEs**

#### Legal basis

Regulatory instrument:

*Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.*

The program is administered by the Ministry of Finance and Ministry of Commerce, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.

#### Eligibility criteria

SME enterprises that have:

- a legal personality according to law;
- the capacity to manage an import or export business;
- made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less;
- sound financial management systems and records;
- employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
- a solid market development plan.

### **Program 9: Superstar Enterprise Grant**

#### Legal basis

- *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises; and*
- *Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises.*

This program is administrated by the Huzhou Economic Committee.

#### Eligibility criteria

Enterprises located in Huzhou city that satisfy the following criteria.

(a) The 'output scale' of the enterprise must meet one of the following criteria:

- business income of the current year not exceeding RMB 3.5 billion and sales;
- revenue within the city exceeding RMB 2 billion;
- sales revenue within the city exceeding RMB 2.5 billion;
- sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the

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increased paid up tax between 2007 and 2008 was more than RMB 10 million; or

- revenue from self-export of current year is more than USD150 million.

(b) The enterprise's accumulated industrial input between the years 2006 to 2008 must have exceeded RMB 150 million.

(c) The enterprise must be profitable, and its VAT 'paid up', while its

- consumption tax;
- income tax;
- business tax;
- city construction tax; and
- education supplementary tax

must exceed RMB 30 million.

(d) The enterprise must not have suffered environmental or 'unsafe production accidents' (or other illegal incidents) in the current year.

(e) If the enterprise is not state-owned, it must have passed the 'Five-Good Enterprises' assessment conducted by its county or district.

### Program 10: Research & Development (R&D) Grant

#### Legal basis

Regulatory instrument:

*Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.*

The GOC stated that the funding shall not be more than RMB150,000 and the duration for supporting an enterprise shall not be more than 3 years.

The government of Wuxing district and the Science and Technology Bureau of Wuxing District ('STB') are jointly responsible for the administration of this program.

#### Eligibility criteria

The GOC stated that to qualify for this grant, applicant must meet the following requirements:

- register and operate in Jinzhou New District;
- have complete organisational structure, R&D facilities and intellectual protection measures;
- have definite direction and task for technology development and technology research and have independent assets and funds;
- have a technology team with strong capacities to do research and development; and
- have more than one patent or science and technology project of municipal level and above.

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The GOC provided further information stating that the purpose of the grant is to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on “innovative Urban District”, and making efforts to achieve the sound and rapid economy development of Jinzhou New District.

### **Program 11: Innovative Experimental Enterprise Grant**

#### Legal basis

Regulatory instrument:

*Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises.*

Administered by the administrative office of Science and Technology Bureau of Zhejiang province.

#### Eligibility criteria

Eligible enterprises are those that are located in Zhejiang Province, and are:

- independent economic entities with ‘reasonable asset-liability ratios’, consistent earnings over the past 3 years, and an increasing market share;
- well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres;
- investing at least 5% of annual sales income;
- using intellectual property rights to protect major products; and
- strongly committed to technological innovation and protection with previous technological achievements.

### **Program 12: Special Support Fund for Non-State-Owned Enterprises (SOE)**

#### Legal basis

Regulatory Instrument:

*Notions concerning accelerating the growth of the non-state-owned economy, 18 April 2003.*

#### Eligibility criteria

Non-SOEs (SIEs) located in Yunnan Province.

### **Program 13: Venture Investment Fund of Hi-Tech Industry**

#### Legal basis

Regulatory Instrument:

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*Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing.*

The program is administered by the Chongqing Venture Investment Fund.

### Eligibility criteria

Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District.

In addition:

- the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- the enterprise must have good legal standing; and
- the total investment in the program must be RMB 100 million or more.

### **Program 14: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment**

#### Legal basis

Regulatory Instrument:

*Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters*

Administered by the local commerce authority of Guangzhou.

#### Eligibility criteria

This program is available to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor.

To qualify as 'Headquarters' the facility must control all the operations and management of any enterprises it is invested in, both in China and internationally.

Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as 'Regional Headquarters', the facility must control operations and management of some or all enterprises it is invested in a certain area of China.

Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.

### **Program 15: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan**

Legal basis

Regulatory Instrument:

*Notice of Issuing 'Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan,' Zhong Fu (2005) No.127.*

The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau ('METB') and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City ('MLG').

Eligibility criteria

For an enterprise to be eligible for this program:

- it must be established, registered and carrying out business in Zhongshan City;
- its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;
- it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- it must have good credit standing.

**Program 16: Water Conservancy Fund Deduction**

Legal basis

Regulatory Instrument:

*Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau (ZheDiShuiFa [2007] No.63).*

This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal and county levels in Zhejiang Province.

Eligibility criteria

The GOC has confirmed that only enterprises satisfying one of following criteria will eligible for the grant under this program:

- provide job opportunities to laid-off workers, the disabled, and retired soldiers searching for jobs;
- enterprises that 'utilize resource comprehensively as designated by government

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- department above municipal level’;
- trading enterprises of commodities with annual gross profit rate of less than 5%;
  - enterprises undertaking ‘State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee’;
  - ‘advanced manufacturing enterprises’ or key enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million;
  - ‘insurance company’s revenue from sales which are subject to exemption of excise tax’;
  - ‘bank’s revenue from turnovers between banks’;
  - ‘revenue from sales between members of an enterprise group subject to same consolidated financial statement’.

### **Program 17: Anti-dumping Respondent Assistance**

#### Legal basis

Regulatory Instrument:

*Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau.*

This program is administrated by Wuxing District Foreign Economic and Trade Bureau.

#### Eligibility criteria

Enterprises which incur expenses in an anti-dumping proceeding may benefit from this program.

### **Program 18: Technology Project Assistance**

#### Legal basis

Regulatory Instrument:

*Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Sponsored by Zhejiang Province (2008).*

The Bureau of Finance and the Science and Technology Bureau of Huzhou City are jointly responsible for the administration of this program.

#### Eligibility criteria

This program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.

### **Program 19: Capital Injection Grant**

The applicants advised subsequent to lodging the application that Program 19 is more correctly categorised under Program 45 – Equity Infusions.

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The Commission has assessed this program in the Equity Programs section below.

### **Program 20: Environmental Protection Grant**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

In a former investigation into galvanised steel and aluminium zinc coated steel products a similar program “Environmental protection grant” was identified. The cooperating exporter in those investigations explained that the program was available to enterprises to purchase equipment to help protect the environment and payments were by the Ministry of Finance. On further inquiry, the GOC advised that it was not able to confirm if there was a ‘program 31’ and otherwise did not provide any information. The Commission considered the GOC’s response in regard to that program to be non-cooperative (program 31 in INV 193 refers).

### **Program 21: High and New Technology Enterprise Grant**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 30*).

### **Program 22: Independent Innovation and High Tech Industrialization Program**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 31*).

### **Program 23: Environmental Prize**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

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### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 33*).

### **Program 24: Provincial emerging industry and key industry development special fund**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 34*).

### **Program 25: Environmental Protection Fund**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 38*), and in INV 198 (there known as, *Program 34*).

### **Program 26: Intellectual property licensing**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 39*), and before then INV 198 (there known as, *Program 37*).

### **Program 27: Financial resources construction special fund**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

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### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 40*), and before then INV 198 (there known as, *Program 38*).

### **Program 28: Reducing pollution discharge and environment improvement assessment award**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 41*), and before then INV 198 (there known as, *Program 39*).

### **Program 30: Grant for elimination of out dated capacity**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 43*), and before then INV 198 (there known as, *Program 41*).

### **Program 31: Grant from Technology Bureau**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 44*), and before then INV 198 (there known as, *Program 42*).

### **Program 34: Patent Award of Guangdong Province**

Legal basis

Regulatory instrument:

*2009 Guangdong Patent Award Implementation Proposal.*

Administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.

Eligibility criteria

The award is granted to enterprises that have an ‘innovations and utility models’ or an ‘industrial design’ patent.

An application under the ‘innovations and utility models’ patent category must establish that:

- the product in question is skilfully constructed and innovative with high creation and technical level;
- the product contributes to technical improvement and creation;
- the patent has created or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

An application under the industrial design category must establish that:

- the industrial design has reached high level at shape, pattern and colour;
- application of this industrial design has brought or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

**Program 35 – Wuxing District Freight Assistance**

Legal basis

Regulatory instrument:

*Several Opinions On Further Supporting Industrial Sector To Separate And Develop Producer-Service Industry (HuZhengBanFa [2008] 109).*

This program is administered by the Finance Bureau of Huzhou City.

Eligibility criteria

Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.

For enterprises whose annually paid income tax is RMB100,000 or above:

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- 100% of the income tax paid by the 'separated enterprise' and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise; and
- 50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise.

### **Program 36: Huzhou City Public Listing Grant**

#### Legal basis

Regulatory instrument:

*Notification of Government of Huzhou City (HuBan No.160).*

This program is administrated by the Finance Bureau of Huzhou City.

#### Eligibility criteria

This program is available to enterprises that successfully completed listing of shares during 2010.

### **Program 37: Huzhou City Quality Award**

#### Legal basis

Regulatory instrument:

*Notification of the Office of People's Government of Huzhou City (HuZhengBanFa No.60).*

The Government of Huzhou City and the Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program.

#### Eligibility criteria

The award is granted to no more than three enterprises each year that are registered in Huzhou City and have been in operation for more than three years and that have:

- 'enjoyed excellent performance';
- 'implemented quality management'; and
- 'obtained a leading position in industry with significant economic benefits and social benefits'.

The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.

### **Program 38: Huzhou Industry Enterprise Transformation & Upgrade Development Fund**

#### Legal basis

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The purpose of the program is to promote industrial structure adjustment and upgrading, and to support technology updating and innovation of enterprises.

The GOC has advised that there is no single purpose legal document directly related to any benefit received by a respondent under investigation.

The Bureau of Finance and the Economic and Information Committee of Huzhou City are jointly responsible for the administration of this program. The Bureau of Finance and the Economic and Information Committee of Huzhou City examine and approve applications, with the funds provided from the budget of the Financial Bureau of Huzhou City.

### Eligibility criteria

This program is limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises, 'including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry'.

### **Program 39: Wuxing District Public List Grant**

#### Legal basis

Regulatory instrument:

*Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010* (WuWeiFa [2011] No.14).

This program is administered by the Government of Wuxing District.

#### Eligibility criteria

A grant is available to eligible advanced publicly listed enterprises.

### **Program 40: Transformation technique grant for rolling machine**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, *Program 31*).

### **Program 41: Grant for Industrial enterprise energy management- centre construction demonstration project Year 2009**

#### Legal Basis

## PUBLIC RECORD

The Commission is not aware for the legal basis for this program.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, *Program 32*).

### **Program 42: Key industry revitalization infrastructure spending in 2010**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, *Program 33*).

### **Program 43: Jinzhou District Research and Development Assistance Program**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

#### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 34*).

### **ARE THERE SUBSIDIES - PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43?**

Based on the information above, the Commission considers that the grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.

Due to the nature of each grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

The Commission noted that the above detailed programs have been investigated previously during INV 237, INV 193 or INV 177 and found to be countervailable subsidies.

This financial contribution is considered to confer a benefit to recipient manufacturers of grinding balls due to receipt of funds from the GOC.

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Where exporters of grinding balls during the investigation period received grants under any of the above programs, these would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under section 269T.

### Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, each grant is limited to specific enterprises either by location, enterprise type; product manufacture; ownership structure; the possession of certain patents; trading focus (export oriented); public listing status; participation in an anti-dumping investigation; hi-tech status; and length of operation; capital contribution or other criteria.

As the criteria or conditions providing access to the subsidies favours particular enterprises over all other enterprises in China, the specificity of these subsidies is not excepted by reference to subsection 269TAAC(3).

The Commission therefore considers each of the above-listed grant programs to be specific.

## **AMOUNT OF SUBSIDY - PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43**

### Cooperating exporters

The Commission has determined that the cooperating exporters did not receive any financial contribution in respect of grinding balls under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under these programs.

### Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

These programs were recently investigated in either INV 237, INV 193 or in INV 177. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

It is noted that some of these programs are limited to enterprises in specific regions in China. The Commission requested the GOC provide information as to the location of all grinding ball exporters in China. The GOC did not respond to the Commission's request for information. Noting that at least some of these programs are limited in operation to specific areas in China, the Commission does not have reliable information as to the location of uncooperative exporters. The ABF import database does list 'supplier' addresses, but it is not certain for each 'supplier' whether they are in fact the exporter of the goods, and whether the supplier operates in more locations than the one listed (e.g. the listed location

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could represent a central or head office of an enterprise that operates grinding ball manufacturing facilities in multiple locations in China).

In the absence of the above relevant information, the Commission considers it is likely that some uncooperative exporters are eligible for these programs in their respective provinces.

In accordance with subsection 269TACC(2), receipt of the above grants are taken to have conferred a benefit because of the direct financial payment.

Having regard to the nature and eligibility criteria for each subsidy, it is considered that the financial contribution received for each program was in respect of all goods sold by that exporter (including grinding balls).

In the absence of usage information, the Commission considers that:

- subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under these programs; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission considers that:

1. where the legislative instrument that establishes the program specifies the maximum financial contribution that can be made under that program, that maximum amount be the amount determined to be the benefit for each program;
2. where the maximum financial contribution grantable under a program is not stipulated in its legal instrument (or where no known legal instrument exists), the amount of the financial contribution shall be considered to be the maximum amount found in relation to point 1.

In attributing the amount of subsidy to each unit of grinding balls under subsection 269TACC(10), the benefit under each subsidy program has been attributed using the average sales volume of all products of the all cooperating exporters, in the absence of actual sales data for the uncooperative exporters. To determine the subsidy margin the lowest export price of the cooperating exporters was used.

## **LEGAL BASIS, ELIGIBILITY CRITERIA AND SPECIFICITY – PROGRAMS 48 TO 54**

### **Program 48: International trade increase project fund**

#### Legal Basis

The Commission is not aware of the legal basis for this program.

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The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Department of Commerce of Changshu City.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria in relation to increasing international trade and be located in Changshu City district in order to be eligible for the subsidy provided by the Department of Commerce of Changshu City.

The Commission therefore finds the program to be specific, and countervailable.

## **Program 49: Industrial economy reform and development fund**

### Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Department of Finance of Changshu City.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire considers that enterprises must meet some criteria in relation to industrial reform and development and be located in Changshu City district in order to be eligible for the subsidy provided by the Department of Finance of Changshu City.

The Commission therefore finds the program to be specific, and countervailable.

## **Program 50: Sales revenue increase award**

### Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

### Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that eligibility is determined with reference to the following scale:

- (1) increase amount for 50,000,000 & ratio for 30%: 10,000 award;
- (2) increase amount for 100,000,000 & ratio for 30%: 20,000 award;

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- (3) increase amount for 500,000,000 & ratio for 25%: 50,000 award;
- (4) increase amount for 1,000,000,000 & ratio for 25%: 100,000 award;

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire that enterprises must meet the above detailed criteria in relation to sales revenue increases and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 51: Tax contribution award**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

#### Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that eligibility is determined with reference to the following scale:

- (1) tax paid amount over 30,000,000 & increase ratio over 15%: 200,000 award;
- (2) tax paid amount from 20,000,000 to 30,000,000 & increase ratio over 18%: 150,000 award;
- (3) tax paid amount from 10,000,000 to 20,000,000 & increase ratio over 18%: 100,000 award;
- (4) tax paid amount from 5,000,000 to 10,000,000 & increase ratio over 20%: 50,000 award;
- (5) tax paid amount from 2,000,000 to 5,000,000 & increase ratio over 25%: 20,000 award;

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire that enterprises must meet the above detailed criteria in relation to tax contribution increases and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 52: Energy and recyclable economy program**

#### Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

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### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria in relation to energy and recyclable economy targets and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 53: National Controlled Essential Pollutant Source Supervision System Third Party Operation and Maintenance Subsidy Program**

### Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is jointly administered by the Finance Bureau of Jiangyin City and the Environment Protection Bureau of Jiangyin City.

### Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

### Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria relating to pollution supervision and control and be located in Jiangsu Province in order to be eligible for the subsidy provided by the Finance Bureau of Jiangyin City.

The Commission therefore finds the program to be specific, and countervailable.

### **Program 54: Scientific Program Awards in High and New Scientific Zone**

### Legal Basis

Regulatory instrument:

*Policy on Rewards Concerning Further Promoting the Development of High and New Technology Industry and Encouraging Scientific Innovative Business Undertaking* CGG 2013 No.32.

The Commission understands from the relevant cooperating exporter questionnaire that the program is jointly administered by the Finance Bureau of Jiangyin City and the Science and Technology Bureau of Jiangsu Province.

### Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that products recognized in as High and New Technology Products of Jiangsu Province may

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be rewarded 5,000 yuan per product, not exceeding 20,000 yuan for each enterprise in total.

### Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet the above detailed eligibility criteria and be located in Jiangsu Province in order to be eligible for the subsidy provided by the Finance Bureau of Jiangyin City.

The Commission therefore finds the program to be specific, and countervailable.

## **AMOUNT OF SUBSIDY – PROGRAMS 48 to 54**

### Cooperating exporters

The Commission has determined that financial contributions in respect of the goods have been received by:

- Longte under programs 48 to 52; and
- Xingcheng under programs 53 and 54.

Having regard to the nature and eligibility criteria for the subsidy, it is considered that the financial contribution received was in respect of all goods sold by that exporter including grinding balls.

In accordance with subsection 269TACC(2), receipt of the grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with subsection 269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with subsection 269TACC(10), the total amount of subsidy received by each exporter has been apportioned to each unit of grinding balls using that exporters total sales volume. To determine the subsidy margin the weighted average export price of grinding balls for each exporter was used.

### Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The Commission notes that these programs are limited to enterprises in specific regions in China. The Commission does not have reliable information as to the location of non-cooperating exporters.

In the absence of the above relevant information, and in light of the above receipt of the program by cooperating exporters, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, the Commission considers that:

- subsections 269TACC (2), (3), (4) and (5) are inappropriate for determining

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whether a benefit has been conferred to non-cooperating exporters under this program; and

- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(10), the Commission determines that uncooperative exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission considers that the subsidy amount calculated for the cooperating exporter is a reasonable basis for calculating the subsidy amount attributable to uncooperative grinding ball exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of grinding balls under subsection 269TACC(10), the benefit under each subsidy program has been attributed using the average sales volume of all products of the all cooperating exporters, in the absence of actual sales data for the uncooperative exporters. To determine the subsidy margin the lowest export price of the cooperating exporters was used.

### A3.3.5 CATEGORY FIVE: EQUITY PROGRAMS

The application alleged that Chinese producers of grinding balls are likely to have benefited from the following equity programs:

- Program 44 Debt for equity swaps;
- Program 45 Equity infusions; and
- Program 46 Unpaid dividends.

#### PROGRAM 44: DEBT FOR EQUITY SWAPS

##### BACKGROUND

This program was found to be a current and countervailable subsidy most recently by the CBSA in '*Concerning the final determinations with respect to the dumping of certain concrete reinforcing bar originating in or exported from the People's republic of China*', 4218-39 CV/138, 23 December 2014<sup>99</sup> (there known as, *Program 176*) and the European Commission (EC) in '*Countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China*', 11 March 2013<sup>100</sup>.

The debt for equity swap was a measure used in the financial restructuring of China's State-owned steelmakers to state owned commercial banks (SOCBs). Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on 20 November 2000), the State Council established four Asset Management Companies (AMCs) that were directed to purchase certain non-performing loans from SOCBs. The four AMCs were supervised and managed by the People's Bank of China (PBC), China's Ministry of Finance and the China Securities Regulatory Commission. One of the authorised business activities available for the management of non-performing loans purchased by the AMCs was the debt for equity swap. A debt for equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company.

The EC found that, in the absence of any cooperation from the GOC, the evidence available to it demonstrated that AMCs are public bodies because they were specifically created by the GOC to dispose of massive non-performing loans in key industries including the steel sector and to restructure the debts of SOEs, and, consequently, they were considered to exercise government authority. The EC further found in relation to SOCBs that at least 14 out of the 17 reported banks in that case were state-owned banks, and they were controlled by the government and exercised government authority in a manner that their actions were attributable to the State. For these reasons the AMCs and SOCBs China were considered public bodies.

The subsidy was considered specific as it was restricted only to selected entities selected by the State and the award of this financing is discretionary and no objective criteria exist. Therefore it was concluded that this programme constituted a countervailable subsidy.

##### LEGAL BASIS

The Commission is not aware of the legal basis for this program.

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<sup>99</sup> Hereinafter *Canada – Countervailing measures on rebar from China*

<sup>100</sup> Hereinafter *European Community – Countervailing measures on organic steel from China*

## **WTO NOTIFICATION**

The Commission is not aware of any WTO notification in respect of this program.

## **ELIGIBILITY CRITERIA**

The Commission is not aware of the eligibility criteria for this program.

## **PROGRAM 45: EQUITY INFUSIONS**

### **BACKGROUND**

This program was found to be a current and countervailable subsidy most recently by the CBSA in *Canada – Countervailing measures on rebar from China* (there known as, *Program 178*) and the EC in *European Community – Countervailing measures on organic steel from China*.

The applicants assert, based on the CBSA and EC findings, that the GOC has provided substantial amounts of cash to steel producers through equity infusions, specifically, the GOC (through various state-owned entities) acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights. As such, equity infusions constitute a direct transfer of funds.

The applicants consider that these equity infusions confer a benefit to the recipient companies as they are inconsistent with the usual investment practice of private investors, specifically, the payment by the SIE steel producer of an overvalued price of its portion of the new share issue not in line with fair market conditions. In the case of *European Community – Countervailing measures on organic steel from China*, the EC was satisfied that the GOC paid the same price as other investors despite the GOC's shares in the SIE steel producer being worth less as they had different rights and prospects than the shares sold to other shareholders.

The applicants asserted that these subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of the grinding balls.

### **LEGAL BASIS**

The Commission is not aware of the legal basis for this program.

## **ELIGIBILITY CRITERIA**

The Commission is not aware of the eligibility criteria for this program.

## **WTO NOTIFICATION**

The Commission is not aware of any WTO notification in respect of this program.

## **PROGRAM 46: UNPAID DIVIDENDS**

## **BACKGROUND**

This program was found to be a current and countervailable subsidy most recently by the CBSA in *Canada – Countervailing measures on rebar from China* (there known as, Program 179) and the EC in *European Community – Countervailing measures on organic steel from China*.

The applicants asserted that SIEs including the steel companies producing grinding balls do not have to pay dividends to the government as their owner even when they earn profits, and as a result, SIE steel producers are able to finance investment through retained profits not distributed as dividends according to this program.

The applicants contended that unpaid dividends must be considered as a disguised grant or as revenue forgone in that the GOC does not collect dividends that are normally paid to private investors on their shares. These disguised grants were provided by the government through the entity directly holding the shares in the SIE steel producers, in principle the *State-Owned Asset Supervision and Administration Commission of the State Council* (SASAC).

The full amount of unpaid dividends is considered to confer a benefit to the recipient SIE steel producers as this is inconsistent with the usual investment practice of private investors that require dividend distributions normally attached to their shares.

The applicants asserted that these subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of grinding balls.

## **LEGAL BASIS**

The Commission is not aware of the legal basis for this program.

## **ELIGIBILITY CRITERIA**

The Commission is not aware of the eligibility criteria for this program.

## **WTO NOTIFICATION**

The Commission is not aware of any WTO notification in respect of this program.

## **ARE THERE SUBSIDIES – PROGRAMS 44 TO 46?**

The Commission has determined that the cooperating exporters did not receive any financial contribution in respect of grinding balls under these programs during the investigation period, nor has the Commission found cooperating exporters to have received any financial contribution under these programs in respect of other goods in previous investigations.

The Commission further notes that the CBSA and EC cases relied upon by the applicants were investigated prior to the commencement of the investigation period as it relates to this investigation.

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On the basis of these factors, the Commission is not satisfied that exporters of grinding balls received any financial contribution in respect of grinding balls under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to all exporters under these programs.

## A3.3.6 CATEGORY SIX: PREFERENTIAL LOANS

### PROGRAM 47: PREFERENTIAL LOANS AND INTEREST RATES

#### BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from low (subsidised) interest rates from SOCBs and government banks in accordance with the GOC policy to support and develop the expansion of the Chinese steel industry under the five year plans.

The applicants rely on the findings in *European Community – Countervailing measures on organic steel from China* (organic steel), to support the claim.

The application alleges that SOCBs are public bodies because they are vested with government authority and exercise government functions, and further, that privately owned banks are also subject to GOC direction. The application asserts that a benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market.

The Commission requested information from the cooperating Chinese exporters in relation to their lending arrangements during the investigation period.

The Commission also requested information from the GOC in relation to this program, however no response was received.

#### Previous consideration

#### EC Findings

The EC investigation established that the Chinese financial market is characterised by government intervention because most of the major banks are state-owned. It concluded on the basis of the available data that state-owned banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State. The EC further concluded that the GOC had a policy to provide preferential lending to the organic coated steel sector, because public bodies, in the form of SOCB were engaged in such provision and held a predominant place in the market, which enabled them to offer below-market interest rates.

In relation to privately owned commercial banks, the EC found that the GOC policy to provide preferential lending to the organic coated steel producers extended to privately-owned commercial banks and that the GOC instructs them to "carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies."<sup>101</sup>

In relation to loans provided by both SOCBs and privately owned banks the EC concluded that there was a financial contribution to the organic coated steel producers in the form of a direct transfer of funds from the government, and that a benefitted existed to the extent

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<sup>101</sup> Article 34 of the Commercial Banking Law

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that the government loans were granted on terms more favourable than the recipient could have obtained in the market.

The EC determined that the authorities only allow the financial institutions to provide preferential loans to limited number of industries/companies which comply with the development policies of the GOC, and on this concluded that the subsidies in form of preferential lending are not generally available and are therefore specific.

Accordingly, the EC concluded that the financing of the organic coated steel industry should be considered a subsidy.

The subsidy amount was determined by the EC as the difference between the amount that the company paid on the government loan and the amount that the company would pay for a comparable commercial loan obtainable on the market. As the loans provided by Chinese banks reflected substantial government intervention in the banking sector and did not reflect rates that would be found in a functioning market, the EC constructed a market benchmark. Chinese interest rates as measured by the standard lending rate of the People's Bank of China were adjusted to reflect the EC's assessment of normal market risk, the adjustment being the premium expected on bonds issued by firms with the highest grade of "non-investment grade" bonds (BB rating at Bloomberg).

### **LEGAL BASIS**

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

### **WTO NOTIFICATION**

The Commission is not aware of any WTO notification of this program.

### **ELIGIBILITY CRITERIA**

There are no articulated eligibility criteria for enterprises receiving preferential loans and/or interest rates.

### **IS THERE A SUBSIDY?**

#### Financial contribution

The Commission considers that this program involves a financial contribution in the form of a direct transfer of funds from the government.

As part of the exporter questionnaires provided to Chinese exporters of grinding balls, the Commission requested information about the total value of loans held and the proportion of state ownership of the banks providing those loans. The Commission established that the majority of loans provided to the cooperating exporters were provided by state owned banks. The Commission's analysis is contained at Confidential Attachment 9

#### By a government or public body?

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In order for this program to be considered to be a 'subsidy' the financial contribution must be from a government, public body, or private body entrusted with governmental functions.

The Commission's consideration of the term "public body" is detailed in Appendix 5.

In relation to the provision of loans, the Commission makes the following additional comments.

According to the most recent WTO Trade Policy Review on China, conducted in 2014, "credit policy continues to be of major importance in China. Efforts continue to be made to enhance the coordination between credit policy and industrial policies, by speeding up rural financial products and service innovation, improving the provision of financial services for and medium- sized enterprises, and by adopting measures to prevent and alleviate local debt-related risks. The PBC has guided financial institutions to intensify financial support to areas such as scientific and technological innovation, emerging industries of strategic importance, and service industries. Financial institutions were also guided to extend credit support for railways, shipping, thermal power and steel, and were encouraged to use credit products flexibly to support profitable export-oriented enterprises."<sup>102</sup>

The WTO Review further noted that "the General Rules on Loans of 1996 stipulates that Banks determine the interest rate for a loan on the basis of the interest rate "ceiling" and "floor" fixed by the PBC. In 2013, however, the PBC issued a notice liberalizing lending rates. As a result, financial institutions may set lending rates independently. Nonetheless, according to the General Rules on Loans: "in accordance with the State's policy, relevant departments may subsidize interests on loans, to promote growth of certain industries and economic development in some areas (Article 15)".<sup>103</sup>

The WTO review noted that Chinese authorities claimed the General Rules on Loans of 1996 no longer reflected the current situation in the financial sector in China. The Commission notes that Article 34 of the Law of the People's Republic of China on Commercial Banks [2003] states that "commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State".

Without cooperation from the GOC the Commission was unable to clarify the continuing applicability of Article 15 of the General Rules on Loans or Article 34 of the Law on Commercial Banks, and in the absence of evidence provided to the contrary has deemed it reasonable to conclude that these provisions continue to apply within the framework of financial sector reform undertaken within China.

The Commission further noted that SOBCs continue to be the predominant players in the Chinese financial market. According to a Fortune 500 report China's 12 largest companies are state owned, and of those 12, four are banks.<sup>104</sup>

In the absence of a GOC response to the Commission in relation to this program, the Commission had to rely on the information available from the application, exporter questionnaire responses and publicly available sources. The Commission concludes on

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<sup>102</sup> WTO Trade Policy Review 2014 paragraph 28

<sup>103</sup> Ibid paragraph 3.130

<sup>104</sup> <http://fortune.com/2015/07/22/china-global-500-government-owned/>

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the basis of the available information that both SOBCs and privately owned banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the GOC.

### Conferral of benefit on the goods

As Chinese exporters rely on loans to as a funding source in the production of grinding balls, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

The Commission considers that a benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market. The benefit is found to be the amount of the difference between the interest rate paid by the producer of grinding balls and the interest rate that would be payable on a the market.

Where exporters of the goods during the investigation period received a financial contribution under the preferential loans and interest rates program, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

### Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in subsection 269TAAC(4)(a), the Parliamentary Secretary may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

As detailed above, the WTO Review found that Chinese financial institutions were guided to extend credit support to a range of industries, including steel. This finding is consistent with:

- *Decision No. 40*, being an Order from the State Council, which categorises the steel industry as an “encouraged industry”, and identifies “encouraged investment projects” as being eligible for special privileges and incentives, such as financial support; and
- *Order No. 35 - Policies for the development of Iron and Steel Industry*, in particular Articles 24 and 25, which limit the provision of loans to those companies complying with the national development policies for the Iron and steel industry.

Taking these policies into consideration the Commission is satisfied that the GOC only allows financial institutions to provide preferential loans to a limited number of industries/companies which comply with the development policies of the GOC. In the absence of cooperation from the GOC on this matter it is concluded that the subsidies in form of preferential lending are not generally available and are therefore specific.

## AMOUNT OF SUBSIDY

### Applicants' view

The applicants assert that because loans provided by Chinese banks were subject to substantial government intervention they did not reflect rates that would be found in a

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functioning market, and therefore an appropriate market benchmark would need to be constructed.

In keeping with the EC methodology conclusion in organic steel, the applicants proposed applying a benchmark based on Chinese interest rates, adjusted to reflect normal market risk. The applicants consider that in the absence of reliable information about the creditworthiness of Chinese grinding balls exporters, it is appropriate to consider that all firms in China would be accorded the highest grade of "Non-investment grade" bonds only (BB at Bloomberg). The benchmark rate would include the appropriate premium expected on bonds issued by firms with this rating in addition to the standard lending rate of the PBC.

### Commission's view

The Commission notes that as of 13 July 2013, subsequent to the conclusion of the organic steel investigation, the PBC liberalised interest rates, allowing financial institutions to set lending rates independently, and in keeping with commercial lending practices.

The Commission has undertaken an analysis of the information provided by cooperating exporters in relation to loans they have sourced. The Commission established that while the majority of loans were sourced from SOCBs, those loans sourced from privately owned banks were all subject to interest rates above the prevailing PBC official interest rate. Furthermore, the Commission established that the interest rates differed considerably between exporters and between banks. The Commission considered this indicative of financial institutions setting lending rates based on commercial risk assessments, a fundamental tenet of a functioning financial market.

The Commission does not consider it is reasonable based on this evidence to assert that all Chinese exporters should be accorded a risk premium on par with non-investment grade bonds.

The Commission has instead calculated the benchmark rate for interest rates as the average interest rate charged by the privately owned banks over the investigation period.

The Commission has determined the amount of subsidy as the differential between this benchmark rate and the rate actually charged where that rate was less than the official PBC interest rate at the time the loan was sourced.

### Cooperative exporters

The Commission found that Longte, Xingcheng and Goldpro received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with subsection 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined for each exporter as the difference between the benchmark rate as described above and the actual interest rate incurred where that interest rate was below the official PBC rate at the time the loan was sourced.

The amount of subsidy received in respect of grinding balls has been calculated by taking the interest rate differential, expressed as a percentage, and multiplying it by the outstanding amount of the loan.

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In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the total turnover of the company.

### Uncooperative exporters

For the uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to subsections 269TAACA(1)(c) and 269TAACA(1)(d) the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Considering the fact that:

- all grinding ball manufacturers exporting from China would likely require financing; and
- the majority of the cooperating exporters loans were sourced from SOCBs

it is considered likely that uncooperative and all other exporters obtained loans at subsidised rates and therefore received a financial contribution under this program.

In the absence of information that demonstrates the quantum of those loans held by uncooperative and all other exporters, in accordance with section 269TACD(1), the Commission determines that uncooperative and all other exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of subsidy attributable to that benefit by reference to the highest subsidy rate determined for cooperating exporters.

## APPENDIX 4 - ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA

### A4.1 Introduction

After determining that SIEs that supplied coking coal in China are 'public bodies' for the purposes of the Act (Appendix 5 refers), the Commission has sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal (under subsection 45(2) of the Regulations) and the benefit received under subsidy Program 32 (purchases of coking coal from SIEs at less than adequate remuneration).

In REP 193, the Commission established a benchmark price for coking coal using GOC supplied data for the Chinese export price of coking coal in the investigation period.

The Commission notes that in the current investigation, the GOC did not provide a response to the questionnaires provided to it. As such, the Commission could not reliably ascertain the volume and value of production of coking coal in China, the volume and value of imports of coking coal into China, and the volume and value of exports of coking coal from China.

The Commission further notes that there is no international benchmark price for coking coal. China has been identified as the major producer and consumer of coking coal. China also restricts the trade of coking coal to the international market by levying high export taxes and restrictions. As such, the market for coking coal is highly concentrated in China.

In light of these considerations, in establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coking coal, the Commission has relied upon information contained in the application, information supplied by an independent provider of trade statistics and measures, and other publicly available data.

### A4.2 Adequate remuneration for coking coal

Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC, a benchmark price has been established. The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- i. private domestic prices;
- ii. import prices; and
- iii. external benchmarks.

#### (i) Private domestic prices

The Commission has previously found that private prices of coking coal are affected by government influence and are therefore not suitable.

In the absence of information from the GOC in relation to the domestic market for coking coal, the Commission considers that private domestic prices of coking coal in China are not suitable for determining a competitive market price free from government influences.

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### (ii) Import prices

The Commission has previously found that import prices were not suitable as a benchmark due to the lack of import penetration of coking coal and the likelihood that import prices were equally affected by the government influences on domestic prices.

In the absence of a response by the GOC in relation to imports of coking coal the Commission does not have sufficient information available to it to make an assessment in regard to import prices. As such, the Commission considers that import prices are not suitable for determining a competitive market price of coking coal in the investigation period.

### (iii) External benchmarks

Having eliminated the first two options discussed above, the Commission considered other options to establish a benchmark price for coking coal.

As stated, in INV 193 the Commission used the Chinese export price in the investigation period to establish the benchmark price for coking coal. In assessing the data collated from various sources in INV 193, the Commission found there to be a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities. The coking coal exported from China was considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters, and the export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration.

In the absence of information from the GOC in relation to export pricing, the Commission was unable to follow the methodology set in INV 193.

The applicants proposed that the benefit obtained by exporters of grinding balls be calculated based on the difference between the *Platts daily metallurgical coal assessment* for hard coking coal (HCC) (HCC 64 Mid Volume) for 30 September 2015 at a cost and freight (CFR) Jingtang price of USD 83.11/tonne, compared to the Atlantic HCC (Low Volume HCC) price for the same period of USD 107/tonne (CFR China), multiplied by the percentage of coking coal required to manufacture one tonne of grinding balls.

The Commission notes that the applicants uplifted the Atlantic HCC price (quoted at FOB terms) by an amount for freight to arrive at a comparable CFR price. The applicants also calculated the benefit amount based on one month only of the investigation period. For these reasons, the Commission was not satisfied that the approach proposed by the applicants was reasonable.

The Commission has instead adopted as a benchmark the Platts Australian low volume premium HCC FOB export price. The Commission is satisfied that this is an appropriate benchmark for the following reasons:

- Australia is a major producer of coking coal and is a significant supplier to China;
- The Commission was able to cross reference the Platts data against Australian government data to ensure the Platts data being used was reliable; and

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- The reservations presented in INV 193 against using Australian export pricing, notably the possibility that export prices were high at that time due to isolated supply factors, are no longer applicable to the current investigation period.

The Commission notes that in INV 193, the GOC objected to the use of an Australian export price benchmark on the grounds that the quality of Australian coking coal is higher than that produced domestically in China, and would therefore be more expensive.

Based on the Commission's analysis of prices paid for coking coal by Longte compared to Australian export prices, as detailed in in the discussion of Program 33 above, Chinese exporters are not disadvantaged by the use of an Australian benchmark, even if the quality of Australian coking coal is superior to that available domestically in China.

## APPENDIX 5 - ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

### A5.1 Background

In order for the programs alleged in the application to be considered a 'subsidy' the financial contribution provided under the program must be from a government, public body, or private body entrusted with governmental functions.

The application asserted that SIEs are public bodies (for the purposes of section 269T), relying upon:

- the Appellate Body Report in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*<sup>105</sup>, where the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority;
- the Appellate Body Report in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*<sup>106</sup>, where guiding principles were stated as regards the meaning of “meaningful control”;
- a 2014 Worldsteel Association report which detailed that nine of the top ten steel companies in China, in terms of total crude steel production were SIEs, all of which are either wholly or partly owned by the SASAC, and all of which produce steel billet and/or grinding balls, themselves or through their subsidiaries;
- the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises (Interim Regulations)* which set out the functions and obligations of a state-owned assets supervision and administration authority; and
- examples of SASAC’s current and ongoing direct control and responsibility for the appointment and removal of personnel from SIEs.

The applicants relied upon this information to conclude that the functions of SASAC, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder, and that this serves as evidences that the GOC exercises meaningful control over the nine SIEs known to produce steel billet and/or grinding balls, themselves or through their subsidiaries, and as such these entities possess governmental authority and therefore each are a public body.

The Commission requested exporters in their questionnaire responses to provide a list of all purchases of steel billet, electricity, coke, coking coal, and grinding bar during the investigation period.

### A5.2 Previous consideration

The term 'public body' is not defined in the legislation or the SCM Agreement. It has been considered by the Commission in previous investigations and has been the subject of a number of WTO Appellate Body findings. To inform the Commission’s assessment of this issue in the present investigation the following documents are considered to be relevant:

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<sup>105</sup> Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011.

<sup>106</sup> Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014.

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- INV 177 – the Commission’s finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- INV 203 – the Commission’s reinvestigation of certain findings in INV 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- INV 193 – the Commission’s findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively ‘coated steel’) exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- INV 237 – the Commission’s finding in relation to the subsidisation of silicon metal exported from China;
- INV 238 – the Commission’s finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to INV 193 – the ADRP disagreed with the Commission’s finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP’s finding in relation to this issue;
- DS 379 – this Appellate Body finding considered the meaning of ‘public body’ in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS 436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS 437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS 437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS 437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS 379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present investigation.

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):<sup>107</sup>

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;
- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

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<sup>107</sup> Appellate Body report DS379 at [318]

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

### **A5.3 Decisions of the Commission**

In INV 177, the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met, however evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence ‘show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.’

The Commission’s finding was appealed to the Trade Measures Review Officer (TMRO), who directed the Commission to conduct a reinvestigation of the public body finding. The Commission’s reinvestigation report, INV 203, affirmed the findings in INV 177. It considered that “SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.”

In INV 193, relating to coated steel, the Commission relied on its findings in INV 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission’s finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;
- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and
- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to SIEs to impose state-mandated policies on participants in the iron and steel industry.

### **A5.4 Commission’s consideration**

The Commission considers that the ADRP’s decision to direct a reinvestigation of the findings in INV 177 was, to a large extent, premised on the TMRO’s view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS 379, ‘that the

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term “government” is defined as the “continuous exercise of authority over subjects; authoritative direction or regulation and control”.’

The Panel considered this issue in DS 437, a decision that was handed down after the ADRP’s report in relation to coated steel. The Panel stated in its report that ‘(it) was not persuaded by China’s argument that... “[a] public body, like government in the narrow sense, thus must itself possess the authority to ‘regulate, control, supervise or restrain’ the conduct of others”.’ The Appellate Body’s view was that this was not supported by the findings in DS 379. It stated that:

‘In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond “the effective power to ‘regulate’, ‘control’, or ‘supervise’ individuals, or otherwise ‘restrain’ their conduct”.’

The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS 436, also released after the ADRP’s findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises ‘meaningful control’ over an entity. The Panel stated that ‘to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is “meaningful”.’

The Dispute Settlement Body stated that, in its view:

- ‘government involvement in the appointment of an entity’s directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government’;
- ‘while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or “meaningful”, in nature’; and
- ‘in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the “meaningful” control of the government.’

The Interim Regulations set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
- Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;
- Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;

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- Article 17 also states that where the State Council or any level of government 'provide otherwise' in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commission is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of steel billet, electricity, coke, coking coal or grinding bar identified within the exporter questionnaire responses submitted. Additionally, as part of the government questionnaire, the GOC was requested to respond to a number of questions concerning entities that produce grinding balls and upstream raw material, including:

- a list of all manufacturers of grinding balls and upstream raw materials suppliers and the percentage of GOC ownership in each (A4);
- whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A4);
- for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4);
- confirm whether the 'Law of the People's Republic of China on State-Owned Assets of Enterprises' is current and has not been superseded or supplemented by other laws and if so provide any superseding or supplementary laws (C2).

The GOC did not provide a response to these questions. In the absence of this information the Commission has had regard to other relevant information in its possession, including information contained in the application and other information obtained by the Commission relating to the ownership structures of Chinese steel producing enterprises, the findings of previous investigations, and the Interim Regulations.

The Commission observes that the GOC submitted during INV 177 that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

*People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.*

*The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.*

The Commission does not consider this Article to be at odds with a finding that SIEs are public bodies. The Appellate Body in DS 379 stated that an entity may possess certain

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features suggesting it is a public body and others that suggest that it is a private body. In DS 436 the Government of India argued that the National Mineral Development Corporation enjoyed a significant amount of autonomy from it, which was granted “to make the public sector more efficient and competitive”. These are similar sentiments to those expressed by the GOC in the Commission’s previous considerations of public bodies. The Dispute Settlement Body in DS 436 stated that ‘(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies.’

In the absence of information from the GOC in relation to its role in the operation of SIEs, and in light of the reasons considered above, the Commission considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that produce and supply raw materials to manufacturers of grinding balls should be considered public bodies.