



31 May 2021

Director, Investigations Unit 1  
Anti-Dumping Commission  
GPO Box 2013  
CANBERRA ACT 2601

Your ref: SEF 569  
Matter no: 2021008

**By email:** [investigations1@adcommission.gov.au](mailto:investigations1@adcommission.gov.au)

Dear Director

**Statement of Essential Facts 569 – Grinding Balls from China**

We act for Jiangsu Yute Grinding International Co. Ltd (**Yute**). We make this submission in response to Statement of Essential Facts No 569 concerning certain grinding balls exported to Australia from China (**SEF**). Yute agrees with the recommendation of the Anti-Dumping Commission (**ADC**) that the notices in respect of grinding balls exported from China to Australia be allowed to expire on 9 September 2021. Yute makes the following below additional points in respect of the issues raised in the SEF.

**1. No evidence to support the likely continuation of dumping**

As you are aware, the ADC must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the ADC is satisfied that the expiration of the measures would lead, or would be “likely” to lead, to a continuation of, or a recurrence of dumping (section 269ZHF(2) of the *Customs Act 1901* (**Act**)).

In *Siam Polyethylene Co. Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838, Justice Rares stated “I am satisfied that the word “likely” in s.269ZHF(2) should be interpreted as meaning more probably than not”. This approach to the interpretation of section 269ZHF(2) of the Act has been applied by the Anti-Dumping Review Panel (**ADRP**) (see report 119 paragraph 59).

The ADRP has also noted that a finding that a recurrence of dumping is more likely than not requires there to be some evidence which indicates that exports to Australia, once the measures were removed, are likely to be dumped. The importance of a factual basis for a prediction of future dumping has also been emphasised by the World Trade Organisation. The WTO panel in *US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R* (para 111) held “[i]n view of the use of the word “likely” in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.”

The need for the ADC’s recommendations to be based on fact, and not assumptions, is non-contentious. In its submission dated 11 May 2021 Molycop states:

*“The Commissioner will not be relying upon assumption(s) in recommending to the Minister for Industry, Science and Technology that the measures not be allowed to expire. Rather, the Commissioner will have*



*considered the past actions of the Chinese exporters of grinding balls (primarily the Longte Group of companies) to continue to export the goods to Australia at dumped prices.*

*Past practice is indicative of likely future behaviour(s)."*

In line with Molycop's contention that past practice is indicative of likely future behaviours, the most relevant evidence in respect of the continuation inquiry is the levels of dumping, if any, identified during the inquiry period, being 1 October 2019 – 30 September 2020. During the inquiry period the ADC found no evidence of dumping. In fact, of the 4 exporters reviewed, the average **negative** dumping margin identified was -11.8%. This shows that not only were Chinese exporters not exporting goods to Australia at dumped prices, but that those exporters were not pursuing an aggressive pricing strategy with respect to Australian exports.

Such a high negative dumping margin suggests that Chinese exporters were pricing goods according to normal commercial factors and not by reference to the dumping duties imposed by the Australian Government. Taking into account the information before the ADC of Chinese domestic pricing, export pricing and the cost of production, there is no evidence to suggest that Chinese exporters base their pricing on factors other than normal commercial factors.

The ADC identified a simple and expected pricing strategy adopted by Chinese exporters, the price of goods rises and falls in line with the cost to produce those goods.

In respect of Yute, the ADC correctly found during the inquiry period that all but 2% of its exports were at average prices that were higher than the comparable domestic sales. This reflects that Yute does not have a strategy of exporting goods at a price lower than similar domestic goods.

Further evidence of this can be seen in Yute's production capacity. Yute is operating at less than 100% capacity. Yute exports to markets that do not impose dumping duty. If Yute had an aggressive export pricing strategy it could simply reduce export prices and attempt to increase volume. However, this is contrary to Yute's strategy of supplying high quality tailored grinding ball solutions at a price that produces a profit for Yute.

Molycop is right, past practice is indicative of likely future behaviours. Given the past behaviour of Chinese exporters, it is difficult to see what evidence would justify a finding by the ADC that dumping is likely to reoccur if the notices are permitted to expire.

To reach a finding that the reoccurrence of dumping was more probable than not, the ADC would need to engage in speculation that was not supported by evidence. Such speculation would not only lack an evidentiary basis, it would be contrary to the available evidence.

## **2. Calculation of dumping margins**

In calculating the dumping margin, the ADC found that the Latin American export billet price at the free on board level published by S&P Global (Platts) (**LA Export Price**) provides an independent and reliable basis for constructing a benchmark using steel billet as an input component.

Molycop has claimed that it is adversely impacted by the ADC's decision to select the LA Export Price as the appropriate steel input benchmark. In response to this it has offered to provide the ADC with Molycop's own selected examples of domestic third party purchase prices for grinding bar. It would be totally inappropriate for the ADC to rely on non-verified sales data selected and provided by Molycop in circumstances where Molycop has admitted that it is adversely impacted by the use of the LA Export Price.



The ADC is right to reject the use of private sales data, as opposed to an independent published benchmark, in circumstances where the ADC has not independently selected and verified the sales data.

The reasons supporting the use of the LA Export Price are sound. It is a multi-country benchmark that comprises two very significant steel manufacturers in Brazil and Mexico. It is geographically distant from China. Further, given that over half the iron ore exported from Central and South America is exported to China, the LA Export Price has significantly similar cost inputs as would Chinese produced product.

The use of this benchmark was directly considered by the ADRP in Report 47. In this review Molycop had specifically argued that only a benchmark based on domestic sales values should be selected (section 10.1 of its for application for review dated 10 October 2016). At paragraph 48 of Report 47 the ADRP member considered the arguments for and against the use of a domestic, as opposed to an export, benchmark. At paragraph 49 of Report 47 the panel member stated that the use of the export benchmark was appropriate in the circumstances.

It is simply wrong for Molycop to claim that the ADRP only considered the use of a benchmark generally and not whether an export, as opposed to a domestic, benchmark is appropriate.

When the decision to use the LA Export Price was appealed to the Full Federal Court, a ground of appeal was:

*“Thirdly, if the Minister was to substitute for the actual production costs a benchmark derived from foreign pricing information, he was also obliged (but failed) to consider any comparative advantages and disadvantages between the respective markets, and whether an adjustment was therefore appropriate. He was obliged to consider all of the respective advantages and disadvantages, irrespective of any specific submission being made by any interested party.”*

This ground of appeal directly required the Full Federal Court to assess whether the ADC had made a legal error in its use of the LA Export Price as a benchmark. Paragraph 94 of the Full Federal Court decision repeated the ADC’s reasoning in Report 316 as to why the LA Export Price was used as the benchmark. The Full Federal Court also set out the ADRP’s consideration of the decision to use the LA Export Price (paragraph 99).

Following this, at paragraphs 100 and 101 the Full Federal Court held:

*“100. Ground 3 was advanced on the basis that there was a complete failure to consider comparative advantages and disadvantages between the relevant markets or whether an adjustment was appropriate.*

*101. The Minister considered whether the foreign pricing information was relevant and appropriate to determining the “cost of production ... in the country of export” and considered whether it could be improved, having regard to the comparative advantages and disadvantages, through an adjustment. Ground 3 is not made out.”*

The Full Federal Court upheld a direct challenge to the ADC’s use of the LA Export Price index. In doing so it considered the reasons advanced by the ADC for the use of that benchmark. These are primarily the same reasons as set out in the SEF.

In our view, the ADC position that the Full Federal Court and the ADRP have both considered, and not cast any doubt over the use of, the LA Export Price, is correct.

In the circumstances, the use of the LA Export Price index should be maintained. A different index should not be selected merely because the LA Export Price index disadvantages Molycop. Whether the LA Export Price advantages or disadvantages Molycop is not a relevant consideration.



Please let us know if you have any questions regarding the issues raised in this letter.

Yours faithfully

**CGT Law**

A handwritten signature in black ink, appearing to read 'RWiese', is positioned below the printed name.

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