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The Director – Investigations 1  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

**Continuation - Dumping and Subsidisation  
Grinding balls from China**

Dear Director,

This submission is made on behalf of Jiangyin Xingcheng Magotteaux Steel Balls Co., Ltd. (“Xingcheng Magotteaux”) in response to the Anti-Dumping Commission’s (“the Commission”) findings outlined in Statement of Essential Facts Report No. 569 (“SEF 569”). In summary, Xingcheng Magotteaux supports the Commission’s decision to recommend expiration of the measures on 9 September 2021.

**Expiry of measures**

Section 269ZHF(2) of the Customs Act (“the Act”) explicitly requires that the Commissioner:

*must not recommend that the Minister take steps to secure the continuation of the antidumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*

The Commission’s Dumping and Subsidy Manual<sup>1</sup> provides further guidance on the threshold test for establishing whether recurrence of dumping is ‘likely’. It explains that:

*In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where ‘likely’ has been taken to mean ‘probable’.*

In US Drams<sup>2</sup>, the WTO Dispute Panel found that the continued imposition of measures must be based on ‘positive evidence’. The Panel stated:

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<sup>1</sup> Dumping & Subsidy Manual; December 2013, page 153

<sup>2</sup> US Drams – WT/DS99/R; para 6.42, page 139

*Accordingly, we must assess the essential character of the necessity involved in cases of continued imposition of an anti-dumping duty. We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.*

Further, the Appellate Body said of Article 11 in Corrosion Resistant Carbon Steel<sup>3</sup>:

*In 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.*

Finally, in the review by the Anti-Dumping Review Panel (ADRP)<sup>4</sup>, the ADRP confirmed:

*27. Undertaking a continuation inquiry requires a prospective examination of the likelihood of future dumping and material injury. In its reinvestigation report (REP 389) the ADC referred to the decision of the Federal Court in Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2),<sup>8</sup> where the Court held that the word "likely" in section 269ZHF(2) of the Act was taken to mean "more probable than not".*

Therefore, the Act requires the Commissioner to recommend expiry of the measures, unless there is positive evidence to demonstrate that the recurrence of dumping and material injury in the future is likely or probable (ie. implying a greater degree of certainty that the event will occur than a finding that the event is not "not likely"). Xingcheng Magotteaux considers that SEF 569 undertakes a comprehensive examination of all relevant information and correctly applies the threshold test for continuation of the measures.

### **Dumping**

SEF 569 outlines that Xingcheng Magotteaux have not yet exported grinding balls to Australia, and as such, have not been found to have exported at dumped prices. In these circumstances, the Commission correctly considered it appropriate to determine export prices by reference to ascertained normal values of like goods sold in the domestic market by Xingcheng Magotteaux.

Xingcheng Magotteaux also supports the Commission's determination that its grinding bar costs were not artificially influenced by government intervention during the inquiry period, and that domestic selling prices were suitable for establishing normal values. More broadly, Xingcheng Magotteaux welcomes the Commission's statement that its submitted data was found to be relevant and reliable.

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<sup>3</sup> US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R; para 111, pages 39-40.

<sup>4</sup> ADRP Report No. 50 - Food Service and Industrial (FSI) Pineapple exported from the Kingdom of Thailand, pages 8-9.

Given the lack of evidence of dumping, SEF 569 correctly finds that there is insufficient evidence to conclude that dumping by Xingcheng Magotteaux is likely.

**Likelihood that material injury will continue or recur**

Xingcheng Magotteaux welcomes the detailed market analysis undertaken by the Commission in assessing whether material injury was likely to continue or recur. In particular, the Commission's findings surrounding the changing market dynamics in the Australian grinding ball market are consistent with the views and evidence submitted by Magotteaux Australia (Pty) Ltd ("Magotteaux Australia") in its Australian market questionnaire response.

This includes:

- high chrome cast grinding media have differing product characteristics and yields;
- the observed price, characteristics and yield differences between high chrome cast and steel forge grinding media, reflects a clear market segmentation and confirms that these products do not compete on price;
- the increasing trend towards cast grinding balls depicted in figures 2 and 3 of SEF 569, is a reflection of the product attributes preferred by end-user customers, which includes:
  - increase in precious metal recovery;
  - less wear;
  - wide range of associated technical services offered;
  - greater reliability;
  - high quality standard for product and services;
  - reduced supply chain risk with different plants in different countries;

The noted shift towards high chrome cast grinding media in the Australian market supports the Commission's finding that:

*"... should the measures expire, exports of forged balls from China will continue; however, given the prevailing movement in an expanding market toward cast grinding balls at the expense of forged grinding balls, the Commission cannot conclude that, of itself, the expiry of the measures would lead to an increase in export volumes from China.*

*... the Commission is of the view that cast grinding balls may continue to capture higher market share, and given that the Australian industry does not currently produce cast grinding balls, it is therefore reasonable to assume that the volume of cast grinding balls being imported will continue to grow. Presently, countries other than China dominate this segment of the market, though the volume of cast grinding balls exported from China has accelerated in recent years and this trend may continue depending upon competitive market dynamics."*

Xingcheng Magotteaux therefore agrees with the Commission's conclusion that in these circumstances, and noticeably due to the fact that there is no Australian production of cast

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grinding balls, it is not considered likely that expiration of the measures would result in material injury continuing or recurring.

Yours sincerely

John Bracic