



25 June 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

**Further submissions by Molycop**

We act for Jiangsu Yute Grinding International Co. Ltd (**Yute**).

**Procedural fairness**

Yute is very concerned that the ADC seems to be undertaking a substantive new investigation into the construction of the normal value at a stage of the Continuation Inquiry that will prevent Yute and other interested parties being afforded procedural fairness.

The ADC's final recommendation to the Minister is due by 2 July 2021. Against this timeframe Molycop is seeking to make substantive new arguments to the ADC regarding the merits of the benchmark pricing the ADC has had in place since the original investigation in 2016.

It is a basic principle of procedural fairness that a decision maker will inform an interested party of a case against their interests and give them the opportunity to be heard. The more significant the decision is, in terms of the effect on a person's interests, the greater the care the decision-maker should take to provide that person with the opportunity to be heard.

Any decision concerning the construction of Yute's normal value will significantly affect its interests and may result in it being unable to export goods to Australia on a commercially viable basis. If the ADC is entertaining changing its position on construction of Yute's normal value, the following should occur:

1. Yute should be notified of the new methodology;
2. full details and calculations of the new constructed value should be provided; and
3. Yute should be given a reasonable time to make submissions in relation to any new findings.

Given that the ADC's final report to the Minister is due by 2 July 2021 we appreciate that there is insufficient time for procedural fairness to be afforded.

In the absence of being able to afford Yute procedural fairness, the ADC will commit an error of law if it fundamentally changes the construction of the normal value.

We appreciate that Molycop also has a right to be heard on the issues raised in the statement of essential facts. However, the construction of the normal value adopted by the ADC and set out in the



statement of essential facts, has been in place since 2016. The issues that Molycop is raising 9 days prior to due date for the final report to the Minister could have been made:

- a) at any time during the original investigation (concluded in 2016);
- b) when the use of the Brazilian benchmark was appealed to the Anti-Dumping Review Panel;
- c) when the use of the Brazilian benchmark was appealed to the Federal Court;
- d) during Review 520 (concluded in 2020);
- e) any time prior to the lodgement of the statement of essential facts in the continuation investigation.

Molycop has been given ample opportunity to make the points it is now seeking to raise and to present the evidence it is now seeking to submit. It is completely inappropriate that the ADC should deny procedural fairness to other interested parties, in order to permit Molycop to raise new matters and evidence at this very late stage.

The ADC would be well aware that it is not required to consider information provided to it more than 20 days after the publication of the statement of essential facts where to do so would prevent the timely preparation of the report to the Minister (section 269ZHF(4) of the *Customs Act 1901*).

In considering whether information provided by Molycop post 8 June 2021 would delay the preparation of the final report, the ADC must view the test as whether the information would delay the preparation of the final report “in manner that affords all parties procedural fairness”.

If the ADC cannot, within the required timeframe, consider the Molycop late information and afford other parties procedural fairness in preparing the final report, then it should not consider the Molycop late information.

### **Publication of record of meeting**

Taking into account the above points, we are disappointed that the ADC met with Molycop on 15 June 2021 but elected not to publish a record of this meeting until 23 June 2021. While normally an 8 day delay in publishing a record of meeting would cause no detriment, the situation is different where the meeting occurs 2 weeks prior to the due date of the final report.

### **Response to Molycop submissions**

The submissions made by Molycop are contentious. If they are to be considered by the ADC, they need to be fully investigated and not accepted simply at face value. Other parties to the investigation should also be given sufficient detail of the claims to enable an informal response. Based on the limited information made available by the ADC and in the limited time available due to 2 July deadline for the final report, we make the following comments:

- Molycop has asserted in its submission dated 22 June 2021 that for the Port of Vitoria “*more than xx per cent of exports were to China, Asia and Africa – markets heavily influenced by Chinese steel export prices*”. No evidence is given for the assertion as to the destination port. However, of more note is that it is unclear whether this claim relates to all exports from the port, or only exports of steel billet. Clearly, only exports of steel billet are relevant. Given that China and African countries do not rank in the top 10 export markets for Brazilian steel, it would be very surprising if a significant amount of steel billet was exported from the Port of Vitoria to China and Africa. Rather, almost half of Brazilian steel is exported to the US. The US is a market where the impact of Chinese steel prices is removed due to the very high US tariffs on Chinese steel. Any



claim that prices of steel billet exported from the Port of Vitoria are “heavily influenced by Chinese steel export prices” is without foundation.

- If, in fact, the reference to the destination port of exports from the Port of Vitoria does not relate solely to steel billet, the comment is very misleading. The ADC can assess whether or not this is the case. If in fact the comment is misleading, this should be taken into account when assessing all self-serving claims by Molycop.
- Molycop has claimed that the benchmark pricing does not represent the manufacturing cost of MBQ billet from unnamed steel mills in Mexico and Brazil. It is curious that Molycop has referred to Mexican pricing when it asserts that the benchmark does not include Mexican produced goods. Unless the Molycop referenced analysis had access to the precise goods that comprised the Latin American benchmark and then the precise costs of production of those goods, it is mere speculation as to whether the Latin American benchmark price covers the costs of manufacturing the goods it covers. It is not the role of the ADC to verify the profitability of the various sales that are combined to produce published and independently produced benchmark prices. What is relevant is that the pricing is objective and represents the price of the commodity free of influence of the Chinese Government.
- Molycop has claimed that exporters must absorb additional freight and logistics costs to compete in export markets. The Latin American benchmark is an FOB price. As such, the Molycop claim is irrelevant.
- Molycop continues to assert that a market-determined price for raw material grinding bar is the amount that should be included in the exporter’s cost base. This is appropriate where there is objectively sourced, and ADC verified, data. It is not appropriate where the data supplied relates to a small number of purchases, those purchases are by companies related to Molycop and Molycop has selected the data to be provided to the ADC.
- Molycop emphasises the difference in carbon content of merchant bar quality compared to the steel bar it says is used for the production of grinding bar. The ADC’s investigations will demonstrate that changes in the carbon content of steel bar has very little impact on production costs other than where the carbon content is extremely high (greater than ####%). The carbon content of Chinese produced grinding balls is between #####%.
- The primary cost for producers of material to be used for grinding media is the alloy content. The ADC has accounted for this in its methodology.
- Molycop has claimed that the benchmark does not include necessary further production such as *“ensuring that there are no steel defects; the porosity of the steel is closed up; removal of hydrogen, nozzle casting, etc.”* The ADC needs to make inquiries with manufacturers of grinding balls to determine the extent to which these processes are already captured in the manufacturing costs. Further, Yute requests that the ADC make its own independent inquiries as to the steel porosity and hydrogen level of “SBB’s A36” and whether or not it is nozzle casted. Yute believes that SBB’s A36 does not require the degree of further manufacturing asserted by Molycop.



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 that reads 'RWiese'. The signature is written in a cursive, flowing style.

**Russell Wiese**

Director

**Contact:**

D +61 3 9844 4328

M +61 431 646 488

E [rwiese@cgtlaw.com.au](mailto:rwiese@cgtlaw.com.au)