

PUBLIC



Australian Government
Anti-Dumping Review Panel

ADRP Report No. 141

Grinding Balls exported from the People's Republic of
China

December 2021

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Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ADA	World Trade Organization (WTO) Anti-Dumping Agreement (Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994)
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
Anhui Sanfang	Anhui Sanfang New Material Technology Co. Ltd.
AUD	Australian Dollar
Appellate Body	Appellate Body of the World Trade Organisation
Applicants	Applicants to the review listed in paragraph 1 of this report.
C & F	Cost and Freight
Changshu Longte Grinding Ball	Changshu Longte Grinding Ball Co., Ltd. Changshu Longte's parent company is Changshu Longteng Special Steel., Ltd (Longteng)
China	The People's Republic of China
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
CTM	Cost to Make
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	Grinding balls as described in the report

GOC	Government of China
Inquiry period	1 October 2019 to 30 September 2020.
Original Investigation period	1 October 2014 to 30 September 2015
LA grinding bar benchmark	Grinding bar benchmark derived from Platts Latin American steel billet prices, ferroalloys and conversion costs (different benchmarks for each exporter to reflect different grades/models of grinding balls)
Manual	Dumping and Subsidy Manual, November 2018
ME Elecmetal	Compania Electro Metalurgica S.A
Minister	The then Minister for Industry, Science and Technology
Minister's Reasons	Minister's reasons for decision in continuation inquiry no.569 published on 10 September 2021
Molycop	Commonwealth Steel Company Pty Ltd trading as Molycop (the Australian industry)
Molycop grinding bar benchmark	The preferred grinding bar benchmark submitted by Molycop
OCOT	Ordinary course of trade
Platts	S & P Global Platts
REP 316	The ADC's report titled Alleged Dumping and Subsidisation of Grinding Balls exported from the People's Republic of China dated 6 June 2016.
REP 476	The ADC's report titled Accelerated Review of Dumping Duty Notice and Countervailing Duty Notice in relation to Certain Grinding Balls exported to Australia from the People's Republic of China by Anhui Sanfang New Material Technology Co. Ltd July 2018
REP 520	The ADC's report titled Review of Anti-Dumping Measures applying to Certain Grinding Balls exported to Australia from the People's Republic of China dated 12 October 2020

REP 569	The ADC's report titled Inquiry into the Continuation of Anti-Dumping Measures applying to Certain Grinding Balls exported to Australia from the People's Republic of China dated 23 July 2021
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the then Minister announced in ADN 2021/95 on 8 September 2021 securing the continuation of anti-dumping measures pursuant to s.269ZHG(1)(b) of the Act
RMB	Renminbi
SG&A	Selling, general and administration expenses
SEF 569	Statement of Essential Facts No. 569
WTO	The World Trade Organization
Xingcheng Magotteaux	Jiangyin Xingcheng Magotteaux Steel Balls Co Ltd
Yute	Jiangsu Yute Grinding International Co Ltd, an exporter but not an applicant to the review

Summary

1. This is a review of the decision of the then Minister for Industry, Science and Technology (the Minister) in relation to the continuation of anti-dumping measures pursuant to s.269ZHG(1) of the *Customs Act 1901* (the Act) in respect of grinding balls exported from the People's Republic of China (China) (the Reviewable Decision). The applicants for the review were:
 - Jiangyin Xingcheng Magotteaux Steel Balls Co Ltd (Xingcheng Magotteaux);
 - Changshu Longte Grinding Ball Co., Ltd (Changshu Longte); and
 - Compania Electro Metalurgia S.A (ME Elecmetal).
2. The Anti-Dumping Review Panel (Review Panel) accepted 11 grounds in total.
3. For the reasons set out in this report, I recommend that the Minister for Industry, Energy and Emissions Reduction revoke the Reviewable Decision and substitute a new decision under s.269ZHG(1)(a) of the Act declaring that you have decided not to secure the continuation of the anti-dumping measures on grinding balls exported from China.

Introduction

4. The applicants applied under s.269ZZC of the Act for a review of the Reviewable Decision.
5. The application was accepted and notice of the proposed review, as required by s.269ZZI, was published on 25 October 2021.
6. Pursuant to s.269ZZK of the Act, a report must be provided no later than 60 days following the publication of the notice of review, unless a reinvestigation report is required (under s.269ZZL(1) of the Act).¹
7. The Senior Member of the Review Panel directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.

¹ Pursuant to s.269ZZK(3).

Background

8. The original anti-dumping measures were imposed by public notice on 9 September 2016 following the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science consideration of ADC Report No 316 (REP 316). Exports of grinding balls during the original investigation period (1 October 2014 to 30 September 2015) were found to be dumped and subsidised. The anti-dumping measures were due to expire after 9 September 2021.
9. The former Minister modified the variable factors for exports from China following a review of measures (REP 520) on 11 November 2020. The review period was 1 July 2018 to 30 June 2019.
10. On 14 December 2020 the Anti-Dumping Commission (ADC) initiated a continuation inquiry of anti-dumping measures in relation to grinding balls exported from China following an application from the Australian industry, Commonwealth Steel Company Pty Ltd (Molycop). The period of inquiry was stated as 1 October 2019 to 30 September 2020 (inquiry period).
11. The Commissioner provided a report (REP 569), with recommendations to the Minister, regarding whether the Minister take steps to secure the continuation of anti-dumping measures if satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent. This report was dated 23 July 2021.
12. The Minister advised in ADN 2021/95 that he had decided not to accept the recommendations in REP 569. The Minister issued a notice under s.269ZH(1)(b) of the Act securing the continuation of anti-dumping measures currently applying to grinding balls exported from China. On 10 September 2021, the Minister issued a notice outlining his 'Reasons for decision on Continuation Inquiry No 569' (Minister's Reasons).²

² The then Minister issued a 'reasons for decision on continuation inquiry No 569' which indicated that he had decided not to accept the recommendations made by the Commissioner. In addition, he

13. The goods to which this application relates are:

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

The goods covered 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 that are excluded include stainless steel balls, precision balls that have been machined and/or polished, and ball bearings.

Conduct of the Review

14. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the Reviewable Decision or revoke it and substitute a new specified decision. In addition, s.269ZZK(1A) of the Act requires that, if the Review Panel is recommending a new specified decision, it must be materially different from the Reviewable Decision.
15. In undertaking the review s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
16. Subject to certain exceptions,³ the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.
17. If a conference is held under s.269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. A list of the conferences held during the course

indicated he did not agree with the Commissioner's findings of fact, evidence and reasons for the Commissioner's recommendations contained in REP 569.

³ See s.269ZZK(4).

of this review is available at Appendix A. A non-confidential summary of the information obtained at the conferences was made publicly available in accordance with s.269ZZX(1) of the Act. Given the information being sought from the ADC related to confidential information of both the exporters and Molycop, I did not include other parties at either of the conferences.

18. I note that Changshu Longte and ME Elecmetal in submissions to the Review Panel, question whether the Review Panel can require a reinvestigation under s.269ZZL of the Act. Given I did not require a reinvestigation in this matter, I have not dealt with this issue.⁴

19. In conducting this review, I have had regard to:

- The review applications and documents submitted with the applications;
- Submissions received pursuant to s.269ZZJ of the Act insofar as they contained conclusions based on relevant information. Submissions were received from Jiangsu Yute Grinding International Co Ltd (Yute), Molycop, Changshu Longte, and ME Elecmetal;
- REP 569, its confidential attachments, information referenced in the report, information created during the investigation, and submissions to investigation 569;
- Information from REP 316, REP 476 and REP 520;
- Relevant information obtained at conferences; and
- The Minister's Reasons.

20. I note that the Minister's Reasons do not provide any findings other than what is described in the statement published on 10 September 2021. As referred to in paragraphs 15 and 16 above, subject to certain exceptions, the Review Panel may only have regard to relevant information, which includes information the Commissioner had regard to or was required to have regard to. The Review Panel

⁴ Changshu Longte and ME Elecmetal submissions dated 24 November 2021 Section E Standards of Review.

must also determine a matter in a like manner as if it were the Minister in conducting a review of a Reviewable Decision.

21. The Review Panel issued two Notices under s.269ZZG(1)⁵ of the Act requesting further information in relation to the grounds in two of the applications. Changshu Longte and ME Elecmetal provided the requested further information in responses dated 25 October 2021. A copy of the non-confidential version of these responses was placed on the public file.

Grounds of Review

22. The grounds of review relied upon by the applicants, which the Review Panel accepted, are as follows:

Xingcheng Magotteaux

- a. Ground One: The Minister erred in securing the continuation of the anti-dumping measures and countervailing measures applying to grinding balls exported from China;
- b. Ground Two: The Minister erred in not determining fixed different variable factors in relation to Xingcheng Magotteaux, pursuant to subsection 269ZHG(4)(a)(iii) of the Act; and
- c. Ground Three: The Minister erred in not substituting the unaccepted Commission benchmark with his preferred alternative benchmark, in determining individual ascertained variable factors applicable to Xingcheng Magotteaux.

Changshu Longte

- a. Ground One: The Minister erred in adopting the incorrect standard for determining whether measures should be continued;

⁵ Section 269ZZG(1) of the Act provides that the Review Panel may in certain circumstances seek further information regarding an application prior to initiation of a review.

- b. Ground Two: The Minister erred in finding dumping 'likely' as this is not supported by evidence or law;
- c. Ground Three: The Minister's critique of the benchmark is misconstrued; and
- d. Ground Four: The Minister had no evidence or analysis to support the material injury finding.

ME Elecmetal

- a. Ground One: The Minister erred in adopting the incorrect standard for determining whether measures should be continued;
 - b. Ground Two: The Minister erred in finding dumping 'likely' as this is not supported by evidence or law;
 - c. Ground Three: The Minister's critique of the benchmark is misconstrued; and
 - d. Ground Four: The Minister had no evidence or analysis to support the material injury finding.
23. Two of the applicants have raised identical grounds and the other has raised similar grounds. In these circumstances I have chosen to group individual grounds that have a common theme as follows:
- Normal value assessment: the benchmarks used in the assessment of 'competitive market costs';
 - Whether the Minister erred in his finding that dumping was likely;
 - Whether the Minister's had evidence or analysis of material injury; and
 - Whether the Minister erred in securing the continuation of the anti-dumping measures.
24. The other grounds raised by Xingcheng Magotteaux specific to its variable factors will be dealt with separately.
25. It is worth noting that grinding balls (the goods) are manufactured from grinding bar which is manufactured from steel billet and ferroalloys. The ADC noted that the cost

of steel and relevant alloys represents up to 90 per cent of the cost to make (CTM) grinding balls.

Consideration of Grounds

Normal Value assessment: Benchmarks used in the assessment of ‘competitive market costs’⁶

Claims:

26. Changshu Longte⁷ states that the Minister’s Reasons indicates that he was not satisfied that the appropriate benchmarks were used by the ADC in REP 569 in determining whether Chinese exporters were dumping. Changshu Longte indicates it is not clear why the benchmarks were considered unsatisfactory by the Minister but, in its view, there appears to be two themes:

- That the benchmark cost was not for grinding bar cost; and
- That the ADC did not undertake a thorough analysis of the available benchmarks.

27. Changshu Longte proposes that the Minister has not fully understood the role of reg. 43 of the CIO Regulation in the determination of the normal value, nor how the benchmark has been calculated and what it represents. It states:

(a) The ADC did not use a ‘Latin American steel billet price’ as its benchmark. It constructed a competitive market benchmark for grinding bar using:

- A monthly Latin American export billet price at FOB terms;
- A matrix of alloyed billet grades reasonably reflecting the chemical composition of grinding bar grade; and

⁶ Grounds three of Changshu Longte and ME Elecmetal applications, and Xingcheng Magotteaux ground two are included in this ground.

⁷ Changshu Longte and ME Elecmetal claims are identical so I will refer only to Changshu Longte in each ground’s analysis for the remainder of this report.

A relevant cost of converting the alloyed billet to an alloyed grinding bar cost.

(b) The grinding bar benchmark represents a grinding bar cost that the ADC considered would reflect steel, alloys and actual conversion costs in China. It noted that this methodology has previously been accepted by the Minister in Rep 316, assessed by the Review Panel and the Full Federal Court of Australia and been upheld (*Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Immigration, Innovation and Science [2019] FCAFC 122*). It noted that the ADC has followed the same methodology in the recent review of measures in REP 520 (covered the review period of 1 July 2018 to 30 June 2019) which the then Minister accepted on 11 November 2020.

28. Changshu Longte considers the ADC provided appropriate analysis of the available benchmarks and its reasons for not adopting the benchmark methodology proposed by the Australian industry at pages 32 to 39 of REP 569. Changshu Longte further considers the Minister was 'mistaken' in whether appropriate analysis was conducted by the ADC. It considers that the appropriate benchmarks were used by the ADC in its findings and recommendations.

29. Changshu Longte contends the Minister's Reasons

do not cite the Commissioner's considerations, or other interested parties' submissions, nor do they note the relevant concerns regarding the accuracy of Molycop's proposal were raised by the Commissioner and by interested parties.

30. Xingcheng Magotteaux claims there is no analysis or assessment of the evidence in the Minister's Reasons as to why he was dissatisfied with the benchmark adopted in the ADC's normal value determination in REP 569.

31. Xingcheng Magotteaux also commented that the 'benchmark approach' adopted by the ADC had been used in the original inquiry (REP 316) and had been subject to Review Panel, single court and full court consideration and had not been overturned. It considers that the approach remains valid.

Findings:

32. The Minister's Reasons indicated that he was concerned with the benchmarks selected and used in the assessment of whether exporters were dumping. In particular, he stated that in REP 569 there was:

- Insufficient reasons provided for the selection of the benchmarks;
- Insufficient consideration given to other benchmarks that might be more appropriate. He stated

... the Commissioner adopted the Latin American export steel billet price benchmark without a full consideration of other benchmarks that might be more appropriate for selection and may have resulted in a materially different finding in relation to whether dumping was continuing;

- Insufficient analysis of the available benchmarks for the goods. The Minister referred to the submissions made by Molycop and the alternate methodology proposed for constructing a competitive grinding bar benchmark. He proposed that a 'grinding bar benchmark' would have been more appropriate than a 'steel billet benchmark'.⁸ He also considered that insufficient analysis had been undertaken of the issues raised in the Molycop submission. He stated that

I am satisfied that Molycop's evidence demonstrated that the Latin American benchmark was not reflective of actual purchase prices faced by grinding ball manufacturers and this warranted further investigation by the Commissioner and consideration of grinding bar as an appropriate benchmark, rather than steel billet.

33. The ADC in REP 569 indicated the following points in relation to its approach to competitive market costs in normal value assessment.

⁸ It is assumed that the Minister's reference to a 'steel billet benchmark' means a calculated grinding bar benchmark developed from steel billet prices as both the steel billet based grinding bar benchmark and the Molycop grinding bar price benchmark are grinding bar benchmarks.

- (a) It noted that the cost of steel and relevant alloys represents up to 90 per cent of the CTM grinding balls. The ADC considers there is a 'particular market situation' in the Chinese steel market and that steel costs are likely to be distorted and have a direct impact on the grinding ball prices in China. It used the benchmark as part of its process in assessing competitive market costs and also in assessing the normal value. As part of this latter assessment, the benchmark was used to assess whether the exporters' records could be used for establishing the costs for the ordinary course of trade (OCOT) test for normal value purposes
- (b) In relation to the assessment of grinding bar prices, a full description of the process followed is outlined in paragraph 6.6.1 of REP 569. It indicated that in the absence of a more preferable approach, the ADC constructed a grinding bar benchmark it considered representative of a competitive price free from Chinese influence.
- (c) It provided the reasons why the Latin American export billet price (FOB level) published by S & P Global (Platts) was preferred. It noted that as the grade of steel billet published by Platts did not contain the ferroalloys required for grinding bar it obtained monthly ferroalloy prices from Argus Media Ltd (Argus). The cost of ferroalloys added was based on the specific chemical composition of the grinding bar used by each cooperative exporter for the manufacture of grinding balls. The conversion costs of the steel billet and ferroalloys were based on actual conversion costs where available. If not available for a particular exporter, the average of co-operating exporters' conversion costs was used.
- (d) Each exporter's actual costs for grinding bars were then compared with the applicable grinding bar benchmark to ascertain if the actual costs reflected a competitive market cost. If the exporter's costs were considered 'competitive' these costs were used together with the selling and administration costs in the construction of the cost to make and sell (CTMS) grinding balls.
- (e) It followed the same approach to establishing the grinding bar benchmark as adopted in REP 316 (the original inquiry period - 1 October 2014 to 30 September 2015)), REP 520 (review of measures for the period 1 July 2018

to 30 June 2019) and in its SEF 569. It noted that the Review Panel had considered the use of the Latin American steel billet in the development of the grinding bar benchmark in ADRP Report No. 47, as had the Full Federal Court in the *Changshu Longte* judgment. It considered the grinding bar benchmark based on Latin American steel billet prices to be objective and broadly representative of competitive costs.

- (f) It also noted that one exporter who exports cast grinding balls (Anhui Sanfang) had a benchmark developed using: (i) a monthly Brazilian scrap steel price (published by Platts) and (ii) relevant published alloy costs. This methodology was similar to the approach in REP 476 (Accelerated review of anti-dumping measures for this exporter) and accepted by the then Minister.

34. For normal value determination, for each of the cooperative exporters, the constructed CTMS was used to assess whether the Chinese domestic selling prices could be considered to be in the OCOT pursuant to s.269TAAD of the Act. The domestic selling prices assessed to be in the OCOT were considered suitable for normal value purposes pursuant to s.269TAC(1) of the Act.

35. At section 6.6.5 in REP 569 the ADC outlined issues raised by Molycop regarding the grinding bar benchmark derived from the Latin American steel billet (hereafter referred to as LA grinding bar benchmark) following the publication of SEF 569 and its concern that the Latin American export steel billet price does not represent the best information available. Molycop considers:

- (a) 'The Platts Latin American export billet price understates the semi-autonomous grinding (SAG) ball quality billet input cost required for grinding bar production;
- (b) The Latin American billet price is a Brazilian export price and not a 'multi-country' Latin American reference price. In addition, the Latin American export billet price is marginally priced to compete on the export market;
- (c) The ADC has not verified whether this price is reflective of full cost recovery of producing grinding ball quality steel; and

(d) A competitive steel billet price can only be achieved through the replacement of a benchmark grinding bar price based upon a domestic price sourced from a market economy'.⁹

36. The ADC noted that Molycop had proposed an alternate methodology for constructing a competitive grinding bar benchmark (hereafter referred to as the Molycop grinding bar benchmark). Molycop proposed basing the benchmark on grinding bar prices from its affiliated companies (from various regions). The detail of specific information is considered commercially sensitive and not for the public file. It provided information regarding whether the steel billet prices used by the ADC represented the full CTMS of special bar quality (SBQ) or merchant bar quality (MBQ) emphasising that SBQ billet is preferred for grinding balls manufacture.
37. The ADC in REP 569 provided its response to each of these issues and also noted submissions from other interested parties in relation to Molycop's submission.
38. The ADC further noted that there is no unique approach to establishing what a competitive market cost in China would be in the absence of Government of China (GOC) influence. It stated it was a matter of judgement based on all the evidence presented and the circumstances of the case. It considered that there was not sufficient evidence that demonstrated that Molycop's alternate methodology was preferable to that of the LA grinding bar benchmark. It emphasised the Latin American steel billet price remained preferable (used in the LA grinding bar benchmark) given it is based on a range of countries, thus less likely to be influenced by the circumstances in individual markets.

Submissions:

39. Yute provided a summary of its views and reasons it considered the adoption of the LA grinding bar benchmark was preferable to the Molycop grinding bar benchmark. It also considered that the Minister's preference for the Molycop grinding bar benchmark does not support a finding that the goods were likely to be dumped.¹⁰ Yute claims that the Minister '... has not considered whether the Molycop

⁹ REP 569 Section 6.6.5.

¹⁰ Yute submission dated 23 November 2021.

benchmark comprises of purchases that are applicable to the Chinese market or what reasonable adjustments would be required.’

40. Yute further states:

It is completely inappropriate for the Minister to adopt a different benchmark where:

- a. the ADC has thoroughly reviewed the competing benchmarks and made a reasoned decision that is consistent with past decisions of the Minister and the Full Federal Court;*
- b. The Latin American benchmark is based on the same information and constructed in the same manner as when previously considered by the ADC, the Minister, the Review Panel and the Full Federal Court;*
- c. The Minister’s and Molycop’s current concerns with the Latin American benchmark were equally applicable to the Latin American benchmark when approved for use in previous investigations. For instance, the Minister in the Minister’s Reasons notes that grinding bar is closer in the production chain to the goods under consideration than steel billet. This characteristic has existed from the time the Latin American benchmark was first adopted. It is not a criticism that affected the previous approval of the Latin American benchmark adopted by the ADC, the Minister, the Panel and the Full Federal Court.*

41. Molycop claims that the Minister has not misconstrued the steel billet derived benchmark as suggested by Changshu Longte. Rather he has referred to it as a reference point to differentiate between a grinding bar price benchmark (as proposed by Molycop) and a grinding bar benchmark constructed from Latin American steel billet prices.¹¹

42. Changshu Longte and ME Elecmetal in their submissions both claim that the Minister has not properly considered the circumstances surrounding the establishment of its grinding bar benchmark developed by the ADC for comparison

¹¹ Molycop submission dated 24 November 2021 pages 5 to 6.

with its actual costs of production of grinding balls. They propose that the Review Panel recommend to the Minister that the previous Minister's decision was wrong at law.¹²

Legislation and Relevant Case Law:

43. Section 269TAC Normal Value

- (1) *Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*
- (1A) *For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.*
- (2) *Subject to this section, where the Minister:*
- (a) *is satisfied that:*
- (i) *because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or*
- (ii) *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 (1);*
- the normal value of goods exported to Australia cannot be ascertained under subsection (1); or*
- (b) *is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to*

¹² Changshu Longte and ME Elecmetal submissions dated 24 November 2021.

obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

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

(d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions (my emphasis)

44. Section 269TAA **Ordinary Course of Trade:**

(1) If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

(i) for home consumption in the country of export; or

(ii) for exportation to a third country;

at a price that is less than the cost of such goods; and

(b) *that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;*

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

(2) *For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.*

(3) *Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.*

(4) *The cost of goods is worked out by adding:*

(a) *the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and*

(b) *the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.*

(5) *Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes. (my emphasis)*

45. Regulation 43 of the CIO Regulation states:

Determination of cost of production or manufacture

(1) *For subsection 269TAAD(5) of the Act, this section sets out:*

(a) *the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of the like goods in a country of export; and*

(b) factors that the Minister must take account of for that purpose.

(2) If:

*(a) an exporter or producer of like goods keeps records relating to the like goods;
and*

(b) the records:

*(i) are in accordance with generally accepted accounting principles (GAAP)
in the country of export; and*

*(ii) reasonably reflect competitive market costs associated with the
production or manufacture of like goods;*

*the Minister must work out the amount by using the information set out in the
records. (my emphasis)*

46. Relevant judgments:

*(a) Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the
Minister for Industry, Innovation and Science (No 2) [2018] FCA 1135.*

*(b) Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the
Minister for Industry, Innovation and Science [2019] FCAFC 122.*

Both the single judge and the full court dealt with the use of the Latin American steel billet data in constructing a cost of production of grinding balls. Both courts did not consider the methodology adopted by the ADC in REP 316, the Review Panel's consideration of this issue in ADRP Report No. 47 and the acceptance of this by the Minister as unlawful. This methodology related to the cost of production being based on the Latin American steel billet costs, ferroalloy costs and uplifted by conversion costs to establish a grinding bar benchmark. Other aspects of the decision regarding how the normal value was determined were also considered.

*(c) Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry,
Innovation and Science [2016] FCA 1309*

(d) Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC 20

One of the arguments presented in the *Steelforce* matters was whether in establishing for normal value purposes, a cost of production of hollow structural steel, it was possible to substitute foreign pricing of hot rolled coil, one of the major raw materials in the constructed cost. The primary judge and the full court agreed that there was nothing preventing the use of foreign pricing information in cost construction as long as the intent was to achieve a cost of production in China.¹³

Analysis:

47. The assessment of whether dumping is apparent requires the comparison of the normal value and the export price.
48. For normal value determination,¹⁴ subject to certain exceptions, the normal value is based on domestic selling prices of the like goods sold in arms length transactions and in the OCOT. Section 269TAAD of the Act provides that certain sales are not considered to be in the OCOT. Such sales being where the seller will not be able to recover the cost of such goods within a reasonable period of time.¹⁵ Regulations 43 and 44 detail how the amounts of these costs are to be determined for the purpose of undertaking the comparison with domestic selling prices.¹⁶
49. Section 269TAC(2)(a) provides that the Minister must not determine normal value under s.269TAC(1) if certain circumstances exist. One of these circumstances is commonly referred to as a 'particular market situation'.
50. The ADC's analysis in REP 569 is confusing in some respects in regard to its comments on 'particular market situation'. At paragraph 6.5 of REP 569 the ADC states '... it is the Commission's view that a particular market situation existed in respect of the domestic market for grinding balls in China for the inquiry period'.¹⁷

¹³*Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC 20 paragraph 116.*

¹⁴ Section 269TAC(1) of the Act (extract shown at paragraph 43).

¹⁵ Section 269TAAD of the Act provides guidance as to how this assessment is to be made (extract shown at paragraph 44.)

¹⁶ Section 269TAAD(5) of the Act (extract shown at paragraph 44) and reg.43 (extract shown at paragraph 45).

¹⁷ REP 569 page 32.

However, it subsequently states in its assessment of the normal value for each of the cooperating exporters (though not in exactly the same language for each) that:

The Commission has found that, when compared to the benchmark set out in chapter 6.6, the cost of grinding bar for Longte was at a competitive market cost during the inquiry period. Therefore, the Commission considers that Longte's grinding bar costs are not artificially low due to government intervention during the inquiry period. While the effect of a market situation may be borne out in the prices of goods without there needing to be an artificially low priced input, there is no evidence before the Commission for it to be satisfied that a proper comparison cannot be made between the domestic and export prices. The Commission is therefore not satisfied that the situation in the market of the country of export during the inquiry period is such that sales in that market are not suitable for use when determining a price under section 269TAC(1) for Longte.¹⁸

51. I have proceeded on the basis that the ADC does not consider s.269TAC(2)(a)(ii) applies as it assessed the normal value pursuant to s.269TAC(1) based on domestic selling prices. The ADC assessed the OCOT using the exporters' CTMS which included the exporters' actual costs. Reg 43(2) requires the Minister to use an exporter's records if such records are GAAP and are reasonably reflective of competitive market costs.
52. In the circumstances of the applicants, the actual costs in the relevant records revealed that its records could be used to develop a CTMS. Sales that were considered in the OCOT and met the other elements of s.269TAC(1) were used by the ADC in REP 569 to determine the normal value pursuant to s.269TAC(1) of the Act.
53. The ADC developed a 'benchmark' of grinding bar to undertake the assessment of whether the exporters prices had been distorted and was also used to assess whether the exporters' records reasonably reflect 'competitive market costs'. Having compared this benchmark with the actual costs it concluded for each exporter that

¹⁸ REP 569 page 42.

the exporters' records could be used for normal value purposes. It is the benchmark used for the 'competitive market cost' analysis that is in contention.

54. The specific issue of concern as expressed in the Minister's Reasons relates to the choice of the benchmark.

The grinding bar benchmark

55. The grinding bar benchmark is a notional cost. It is designed to reflect what a competitive market cost would be in China without the GOC influence.
56. As described above, the benchmark is used to assess whether the exporters' prices had been distorted and also for the assessment of whether exporters' records reasonably reflect 'competitive market costs' associated with the manufacture or production of the goods for the purposes of reg. 43(2). This latter test is to enable an assessment of whether domestic selling prices are in the OCOT.
57. 'Competitive market costs' in reg. 43(2) is not further defined in the legislation. The definition generally applied by economists suggests that a 'competitive market' is a market in which there are many buyers and sellers so that each has a negligible impact on the market price.¹⁹ The forces of supply and demand set prices and businesses make rational decisions about whether to supply such goods or to exit the market. A competitive market cost has generally been accepted as meaning a cost that has been established where the forces of supply and demand are at play.
58. The Dumping and Subsidy Manual (the Manual) outlines what is meant by competitive market costs.²⁰ It recognises that 'The concept of a competitive market price is not taken to prevent an exporter buying inputs from arms length suppliers at the prevailing price even if that input had been sold at below cost or dumped. This is because a company should not be penalised for making commercial decisions to buy inputs at the best price, and a dumping authority would not be able to verify input costs from uncooperative or unrelated companies'. This suggests that prices can be used for the purposes of reg. 43(2) if such prices are in a competitive market setting that is not influenced by Government interventions or corporate

¹⁹ Principles of Economics, J.S. Gans, S.P. King, R.E. Stonecash, N. G. Mankiw, Harcourt Australia, 2000 page 62.

²⁰ Dumping and Subsidy Manual November 2018, pages 44 to 47.

relationships. There is no specific requirement in reg. 43(2) that an exporter's costs must be profitable to be suitable for use in this provision.

59. The issue is whether the benchmark used by the ADC is the most preferable benchmark to undertake the comparison with actual costs for use for OCOT purposes. The Minister did not accept any of the ADC's findings or recommendations in this regard (as outlined in paragraph 32) and proposed that the Molycop grinding bar benchmark would be preferable.
60. The applicants and another exporter, Yute, support the benchmark developed by the ADC. They also referred the Review Panel to the single and the full court judgments of *Changshu Longte* that deals with the Minister's decision in REP 316.²¹ I note in REP 316 that the normal value was determined pursuant to s.269TAC(2)(c) of the Act but using the same approach to the benchmark in the CTMS constructed normal value. The applicants and Yute, also refer to the former Minister's acceptance of this same approach in REP 520.
61. Molycop disagreed with the benchmark used by the ADC in the 569 continuation inquiry and proposed alternative approaches. Following the publication of the SEF 569, its preferred approach for the benchmark was based on grinding bar prices obtained from affiliates in a number of regions.
62. In order to assess the different perspectives on the 'benchmark' I requested the ADC:
 - a. provide the detailed calculations of the grinding bar benchmarks for the applicants;
 - b. outline its analysis of the grinding bar benchmark developed for the assessment of competitive market costs for the applicants; and
 - c. the analysis undertaken in regard to the Molycop grinding bar benchmark.²²

²¹ *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science (No 2) [2018] FCA 1135 and Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2019] FCAFC 122.*

²² Non-confidential conference summary with ADC on 8 November 2021, page 2.

63. The ADC explained, by reference to the calculations in its confidential spreadsheets the process of ‘tailoring’ the grinding bar benchmark to the specific exporter. This was undertaken by the addition of ferroalloys prices (based on Argus price index) to the Platts Latin American steel billet price and uplifted by a conversion factor to develop a notional cost of grinding bar. Different combinations of ferroalloys were added based on the different models/grades of grinding balls that the benchmark was calculated for. The conversion factor was based on actual costs of manufacture by exporters in China.²³
64. A summary spreadsheet of the calculations of the grinding bar benchmark for all exporters was provided.²⁴
65. The ADC also provided the confidential spreadsheets summarising the Platts steel billet prices since the original investigation (REP 316) for a number of sources including [REDACTED] (confidential Platts price index information [REDACTED]). This information reveals there was a decrease in steel billet prices between the review period for REP 520 (review of measures) and the inquiry period for REP 569 (the continuation inquiry). However, I also noted that such variations occurred regularly during the period since 2014.
66. The ADC advised that it had prepared the Platts steel billet pricing summary from 2014 onwards to understand the trends in steel billet prices since the original investigation period, as well as to assess whether there was consistency in pricing movements between sources.²⁵ The ADC stated while there were fluctuations in the Latin American steel billet price during the inquiry period, these were consistent across all sources.²⁶ Given the availability of other sources in the Platts index, I sought information as to whether consideration had been given to using other sources from the Platts steel billet price index.
67. The ADC advised: ‘...that in adopting the Latin American price index, the choice was not dictated by the level of the price. It considered the conditions in the Latin America region were more akin to the conditions in China, without being subject to the influence of China, thus minimising the need to make adjustments for

²³ REP 569 page 34.

²⁴ Non-confidential conference summary with the ADC on 8 November 2021, page 2.

²⁵ Non-confidential conference summary with the ADC on 8 November 2021, page 3.

²⁶ Non-confidential conference summary with the ADC on 8 November 2021, page 3

comparative advantage. That is, there are large-scale steel producers with ready stocks of the raw materials of iron ore in Latin America. Latin American countries are subject to market forces. Furthermore, it also had the advantage of being consistent with earlier reports of the ADC, particularly REP 316 which had been subject to consideration by the Review Panel and judicial review. Other sources in the Platts index for steel billet had not been further considered' as the Latin American prices were considered more suitable²⁷

68. I observed that the LA grinding bar benchmark was lower than the actual costs for each exporter by at least [REDACTED]
[REDACTED]
(confidential CTMS information [REDACTED]).²⁸ [REDACTED]
[REDACTED]
[REDACTED]. (Confidential price analysis of Platts price index [REDACTED].

69. I sought further information from the ADC as to the specific analysis undertaken in relation to Molycop's submission as well as its proposed benchmark.²⁹ The ADC provided a brief outline as to the confidential information it had received. It stated:

The ADC noted that it had met with Molycop (EPR record 28) on 15 June 2021 following its submission in response to the Statement of Essential Facts REP 569 and had also received additional information from Molycop. Much of this information was considered commercially sensitive given it related to pricing and invoices in other markets (from affiliates of Molycop). For this reason, it was unable to be placed on the public file. It also noted that some of the information related to countries that were not similar to China and also had other issues, such as trade measures in place. It referred the Review Panel to the confidential information provided by Molycop included in the confidential information supplied by the ADC.

²⁷ Non-confidential conference summary with the ADC on 8 November 2021 page 3.

²⁸ Non-confidential conference summary with the ADC on 8 November 2021 page 3.

²⁹ Non-confidential conference summary with the ADC on 8 November 2021 page 4.

The ADC noted that it had received submissions from a number of interested parties expressing concern as to the use of Molycop's information when it was received late in the inquiry process. The ADC's analysis and its position on the information is detailed in report 569. It noted that are a range of issues raised in the Molycop submission.

70. A further conference was subsequently held with the ADC to seek an explanation of the specific analysis of 'competitive market costs' undertaken in REP 569 Confidential Spreadsheet Attachments 23 (Regional Steel Price Analysis – Molycop submission) and 25 (Benchmark Analysis - Molycop submission Conversion Costs).³⁰ The main purpose of the conference was to get an explanation and understanding of the underlying calculations used in the analysis undertaken by the ADC in these spreadsheets.
71. To assist in its analysis the ADC had developed alternate grinding bar benchmarks scenarios based on the information provided by Molycop to enable comparison with the actual costs (of exporters) for grinding bar. These included:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Confidential ADC analysis of grinding bar benchmarks [REDACTED])

72. The analysis included the [REDACTED] between each of the [REDACTED]
[REDACTED]
[REDACTED] for Changshu Longte [REDACTED]
[REDACTED]

³⁰ Non-confidential conference summary with the ADC on 29 November 2021.

[REDACTED] than the Changshu Longte actual costs. (Confidential benchmark pricing analysis [REDACTED])

73. Molycop raised a number of issues in relation to the LA grinding bar benchmark. It suggested that the:

- a. steel billet prices used by the ADC should represent the full CTMS of special bar quality (SBQ) or merchant bar quality (MBQ) emphasising that SBQ billet is preferred for grinding balls manufacture;
- b. Latin American steel billet price is marginally costed and does not reflect full cost recovery; and
- c. Latin American steel billet price related to only one country's prices.

74. I reviewed the ADC's comments in this regard:

- the ADC noted that basing the benchmark on the Platts³¹ Latin American steel billet price index had been followed since the original investigation (REP 316) as well as in the review of measures for grinding balls (REP 520);
- The ADC clarified with Platts the source/s³² of the Latin American steel billet prices used in the index;³³ and
- With respect to the grade of steel used, the ADC noted that it tailored the 'grinding bar benchmark' to the composition of the grinding balls of individual exporters by the addition of ferroalloys. It noted that Molycop considered this did not sufficiently address the issue regarding the grade of steel required to

³¹ S&B Global Platts (Platts) website advises it is an independent provider of information, benchmark prices and analytics for the energy and commodities markets. The ADC subscribes to Platts to obtain pricing information on a number of different commodities.

³² REP 569 footnote 61 page 38: Platts advised that it collects export transaction data from multiple Latin American countries. Multiple mills are involved, depending on availability to supply exports. Prices are calculated on an FOB basis from multiple ports, with the main reference being at FOB terms from the Vitoria port.

³³ Non confidential conference summary with the ADC on 8 November 2021, the ADC advised that it approached Platts following Molycop's claim that the Latin American steel billet price was from one country only.

produce grinding balls. It referred to comments received from exporters who disagreed with Molycop's views in this regard.

Having considered these issues, I accept and agree with the approach taken by the ADC.

75. Furthermore, as referred to in paragraphs 57 and 58 , I note that there is no legislative requirement in reg. 43(2) or policy approach specifying that the 'competitive market costs' be fully costed. This provision deals with what records are suitable for use by the Minister in assessing OCOT and specifically when the Minister must use the exporter's records
76. At paragraph 36, there is a summary of the ADC's analysis of the Molycop submissions regarding the LA grinding bar benchmark based on sections 6.6.4 and 6.6.5 of REP 569.
77. Changshu Longte indicates that the benchmark is a tool to assist in the assessment of normal value. I agree with its comments in this regard. By its nature, the benchmark is subjective and can be based on a range of factors. The intent, however, remains to develop a notional competitive market cost for comparison with, in this case, Chinese exporters' actual costs and prices.
78. Turning to Molycop's grinding bar benchmark, I reviewed Molycop's submissions, the confidential pricing information provided by Molycop, the ADC file note of the meeting held with Molycop on 15 June 2021 as well as the submissions from other parties in response to some issues raised by Molycop in its submissions.
79. I note the issues identified by the ADC with the use of the Molycop grinding bar benchmark, namely that:
 - a. it was unable to be fully verified and it was based on information from third parties who are affiliated to Molycop;
 - b. given confidentiality concerns, it was not able to be fully considered by the interested parties to the continuation inquiry; and

- c. whether it would be a suitable benchmark as a comparator with Chinese actual costs given it was unable to ascertain if adjustments would be necessary.

I agree with the ADC's reasons in this regard that the Molycop grinding bar benchmark is less preferable than the LA grinding bar benchmark.

80. Having reviewed the evidence submitted by Molycop and the ADC's analysis, and noting the comments in the Minister's Reasons I am satisfied that:

- a. the ADC provided an accurate summary of the information provided by Molycop in REP 569;
- b. the ADC provided its reasons as to why it considered the LA grinding bar benchmark was the preferred approach;
- c. the ADC provided its reasons as to why the Molycop grinding bar benchmark was considered to be less preferred in relation to the assessment of competitive market costs;³⁴
- d. the ADC's spreadsheet analysis also revealed it had considered the different benchmarks proposed by Molycop;
- e. the ADC provided responses in REP 569 to relevant issues raised by Molycop in its submissions;
- f. the ADC considered other interested parties comments on such issues.

81. While the Minister and Molycop expressed a preference for the Molycop grinding bar benchmark, I agree with the ADC's assessment that the Molycop grinding bar benchmark presents a number of issues as to its suitability as a benchmark for comparison purposes with the Chinese production costs of grinding balls. It is unverified and it is unclear whether adjustments would be required to these prices to enable an appropriate benchmark to be developed for cost of production comparison purposes.

³⁴ REP 569 pages 37 to 38.

82. In my opinion for the reasons identified by the ADC, the Molycop grinding bar benchmark is a less preferable approach for assessing the ‘competitive market costs’ in China.

Summary

83. The Minister’s Reasons indicated he did not accept that the use of the ‘benchmark price’ used in the assessment of the normal value for grinding balls was correct. The Minister considered insufficient analysis had been undertaken and, in particular, considered more analysis was required of Molycop’s alternate benchmark.
84. The ADC recommended the normal value pursuant to s.269TAC(1) based on the applicants’ domestic selling prices in China, having been satisfied that these were in OCOT and in arms length transactions. Its construction of the CTMS grinding balls for use in the OCOT test, appropriately considered the relevant legislation in constructing the CTMS in reg. 43 (and reg. 44). In particular, it considered whether the applicants’ records could be used pursuant to reg. 43(2). That is, the assessment of ‘competitive market costs’ was based on the comparison of each exporter’s actual costs for grinding bar with a grinding bar benchmark tailored to the grades being sold on the domestic market based on the Platts Latin American steel billet price and Argus priced ferroalloys uplifted by the actual (where available) conversion costs.
85. In constructing the grinding bar benchmark, the ADC chose the Latin American steel billet price index as it is a published price prepared by an independent party that captures prices from a variety of countries and manufacturers in the Latin American region. The ADC decided on a region that it considered had similarities of conditions to China, was less likely to be affected by the impact of China’s production (and export) of steel and steel products and avoided countries impacted by trade measures.³⁵ These are relevant considerations and I agree with these reasons as to the suitability of the Platts LA steel billet price as a basis to construct a grinding bar benchmark for Chinese production, noting that a published grinding bar price was not evident.

³⁵ Non-confidential conference summary with ADC on 8 November 2021 page 4.

86. Given the analysis mentioned above, I consider the ADC in REP 569 followed the correct approach in terms of assessing the normal value under s.269TAC(1) and the use of the exporter's records for the assessment of whether the sales were in the OCOT.
87. While the Minister expressed a preference for the Molycop grinding bar benchmark, I do not consider Molycop's benchmark is preferable for the reasons outlined in paragraph 81. I agree with the ADC findings that the LA grinding bar benchmark is the preferable approach given all the circumstances. I also observe that the Review Panel has previously considered this approach and I do not disagree with its findings.³⁶ Furthermore, the same approach in establishing the benchmark was adopted by the previous Minister in REP 520. I also agree with the ADC's comments that there is no unique approach to establishing what a competitive market cost in China would be in the absence of GOC influence.
88. Having considered the 'relevant information'³⁷ I consider the ADC:
- a. provided sufficient reasons for the choice of the benchmark for competitive market costs assessment;
 - b. undertook consideration of the alternate benchmarks presented by Molycop;
 - c. provided analysis of Molycop's submissions and its reasons for not adopting certain approaches advocated by Molycop;
 - d. adopted an approach that is not inconsistent with the findings in ADRP Report No 47, single judge and full court judgments in *Changshu*;
 - e. considered the relevant information and did not place 'inappropriate weight on particular data or ignore relevant information';³⁸ and

³⁶ ADRP Report No 47.

³⁷ Pursuant to s.269ZZK(6)(d) of the Act: , ' ... *the information the Commissioner had regard to, or was, under paragraph 269ZHF(3)(a) required to have regard to, when making the findings set out in the report under section 269ZHF to the Minister in relation to the making of the reviewable decision*

³⁸ The role of the Review Panel was expressed by the then Senior Review Panel Member in ADRP Report No 24 Power Transformers pages 4 to 5.

- f. developed an appropriate benchmark to assess competitive market costs and whether the exporters' records could be used for reg. 43(2) purposes in the determination of a normal value of grinding balls.

Conclusions

89. Accordingly, I consider that the records of the applicants were correctly assessed by the ADC as being suitable to develop the CTM grinding balls based on the comparison of the LA grinding bar benchmark with the exporter's actual costs. This enabled the OCOT to be assessed and the normal value to be established pursuant to s.269TAC(1) of the Act. The applicants have established that the Minister's decision erred in this regard.
90. I recommend that the Minister for Industry, Energy and Emissions Reduction, determine that:
 - a. The normal value of grinding balls exported from China to Australia by Changshu Longte under s.269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the county of export in sales that are arms length transactions by the exporter as adjusted in accordance with s.269TAC(8). These documents are referred to at confidential attachment 6 to REP 569.
 - b. The normal value of grinding balls exported from China to Australia by Xingcheng Magotteaux under s.269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the county of export in sales that are arms length transactions by the exporter as adjusted in accordance with s.269TAC(8). These documents are referred to at confidential attachment 17 to REP 569.
91. There are ancillary recommendations required to give effect to these conclusions in this ground related to the export price in order to determine the resulting dumping margins for Changshu Longte and Xingcheng Magotteaux.

Whether the Minister erred in his finding that dumping was likely³⁹

Claims:

92. Changshu Longte⁴⁰ states that the Minister has not determined a dumping margin for any of the exporters. It claims that:
- the Minister's decision is not in accordance with the Act, is not supported by evidence and appears arbitrary;
 - the Minister has not determined a normal value or export price for any of the exporters and proposes that he must be satisfied about these elements in order to make a dumping finding;
 - the Minister's decision is not based on positive evidence and proposes that a different benchmark does not necessarily make a dumping finding more 'likely';
 - the Minister's Reasons focusses on the benchmark and suggests that a different benchmark may have resulted in a materially different finding; and
 - the Minister has not satisfied himself about whether the domestic sales were in the OCOT and has not determined the costs of production under reg. 43(2). It suggests that the Minister has made his decision based on 'suspecting' the exports might be dumped.
93. Changshu Longte states that the ADC's findings were determined in accordance with the Act and demonstrates that Changshu Longte's exports had a negative dumping margin of negative 8.9 per cent during the inquiry period.
94. Changshu Longte observes that the Commissioner adopted the same benchmark for Changshu Longte's exports in REP 520 as it has done in REP 569. It notes that REP 520 found dumping margins for Changshu Longte using this benchmark. It suggests it is contradictory of the Minister to accept this methodology in REP 520

³⁹ Grounds two of Changshu Longte and ME Elecmetal applications are included in this ground.

⁴⁰ Changshu Longte and ME Elecmetal grounds and claims are identical, so I will refer only to Changshu Longte.

when dumping is found but then disagree with the same methodology when used in REP 569.

Findings:

95. The Minister stated that given his concern with the benchmarks used by the ADC in REP 569 in the assessment of whether Chinese exporters were dumping, he was not satisfied that the conclusions regarding dumping were correct. He considered that dumping was likely if the measures were allowed to expire.
96. The ADC in REP 569 found that during the inquiry period, the dumping margins for cooperative and 'uncooperative and all other exporters' were negative. These details together with the dumping margins found in previous reports and the export volumes in the inquiry period are summarised in the Table below.

<i>Exporter and product type</i>	<i>REP 316</i>	<i>REP 520</i>	<i>REP 569</i>	<i>REP 569</i>
	<i>Dumping Margin</i>	<i>Dumping margin</i>	<i>Dumping margin*</i>	<i>Export volumes (Mt & per cent)</i>
Changshu Longte forged	3 per cent	2.1 per cent	Negative 8.9 per cent	[REDACTED]
Yute Forged	43 per cent	15 per cent	Negative 4.4 percent	[REDACTED]
Anhui Sanfang cast	nil exports	nil exports	Negative 20.6 per cent	[REDACTED]
Xingsheng Magotteaux forged	nil exports	nil exports	(nil exports) 0 per cent	nil exports
Uncooperative & all other exporters	95.4 per cent	27.1 per cent	Negative 2.5 percent	Less than 0.02 per cent

*Dumping margins recommended in REP 569 but not adopted by the Minister.

97. The ADC concluded that there was insufficient evidence to be satisfied that future exports are likely to be dumped by the cooperating exporters. In relation to the uncooperative exporters, it concluded that while such exports might be dumped it

was not satisfied that it would be likely. It noted the higher threshold of 'likely' as required by s.269ZHF(2) of the Act.⁴¹

Legislation:

98. **Section 269ZHF Report on application for continuation of anti-dumping measures**

*(2) The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping 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.*** (my emphasis)

Submissions:

99. Yute indicates that the Minister has failed to determine that even with adopting the Molycop benchmark whether there would have been a dumping finding in the inquiry period. Yute suggests the Minister has made a number of assumptions in considering whether the dumping margins would change from negative to positive.

100. Molycop proposes that the Minister relied on the information it provided in its submissions to the ADC following SEF 569. This detailed information on a suitable benchmark should be used for normal value purposes. Molycop proposes that this is 'positive evidence'.⁴² It further suggests that this information provided

... a more definitive assessment of the likelihood of dumping of grinding balls exported to Australian during the investigation period (based on the Minister's preferred benchmark)' than has been stated by Changshu Longte.

Analysis:

101. The Minister's Reasons indicated that if the benchmarks were incorrect, the dumping findings were also incorrect, and he considered dumping likely. He

⁴¹ REP 569 section 8.5.

⁴² Molycop submission dated 24 November 2021 page 5.

secured the continuation of measures on this basis as well as considering subsidisation and material injury were also likely.

102. In preparing a report to the Minister, the Commissioner is required pursuant to s.269ZHF(2) to not recommend the securing of anti-dumping measures unless satisfied that the expiration would be ‘... **likely** to lead to a **continuation** of, or recurrence of, the dumping ...’⁴³. (my emphasis)
103. In the previous ground in this report, my recommendation is that the LA grinding bar benchmark adopted by the ADC in REP 569 is the preferred benchmark. On this basis, my findings in relation to whether there was dumping during the inquiry period mirrors the findings of normal values, export prices and resulting dumping margins of the applicants in REP 569. The Minister’s Reasons outlined no other aspects of the dumping finding as an issue other than the comment that if a different benchmark was applied, dumping would be likely.
104. For the purposes of this ground given it refers to whether dumping is likely, I have considered the normal values, export price and resulting dumping margins for all exporters. I accept and agree with the ADC’s findings in respect of the normal values, export prices and resulting dumping margins for Yute, Anhui Sanfang and ‘uncooperative and all other exporters’ during the inquiry period.
105. In REP 569, the ADC assessed Yute’s normal value in a similar fashion to Changshu Longte and Xingcheng Magotteaux. Yute had a negative dumping margin in the inquiry period.
106. In relation to Anhui Sanfang, the ADC adopted the same approach to the assessment of competitive market costs and normal value as referred to above, but its benchmark was based on a scrap steel price index as Anhui Sanfang had different raw materials as inputs to its manufacturing process.⁴⁴ I accept and agree with the approach adopted by the ADC. Anhui Sanfang had a negative dumping margin during the inquiry period.

⁴³ Section 269ZHF extract at paragraph 98.

⁴⁴ The ADC used the Steel Scrap Turnings Brazil South East Domestic Production Mill Delivered price index published by Platts REP 569 page 34.

107. Uncooperative and all other exporters dumping margin was determined by the ADC based on the highest weighted average normal value compared with the lowest weighted average export price as referred to in Section 6.11 of REP 569. I accept this approach for this cohort.
108. The dumping margins in the inquiry period are those outlined in the column referring to REP 569 in the Table shown at paragraph 96 and remains unchanged for the applicants and other exporters. Dumping was not identified during the inquiry period.
109. In the absence of other information in the Minister's Reasons regarding whether dumping is likely to recur, I have reviewed the Commissioner's findings on whether dumping is 'likely' as outlined in section 8 of REP 569.
110. It is apparent that none of the cooperating exporters have exported at dumped prices during the inquiry period. In REP 569, the ADC assessed a negative dumping margin for uncooperative and all other exporters. The dumping margins found in REP 520 (review of measures) showed decreasing margins as compared to those found in the original investigation (REP 316). These margins further decreased in REP 569 as summarised at the table in paragraph 96.
111. Yute and Anhui Sanfang also had negative dumping margins during the inquiry period with Anhui Sanfang having a significant negative dumping margin. Both had the same approach adopted by the ADC in REP 569 to the benchmark assessment for 'competitive market costs' as the applicants.
112. I note that the ADC in its introduction states the following:

The Commission noted that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the Anti-Dumping Review Panel, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusion and recommendations must nevertheless be based on facts.⁴⁵

⁴⁵ REP 569 Section 8.2 page 60 and referencing the ADRP Report No 44 Clear Float Glass.

113. I do not propose to repeat the analysis undertaken by the ADC in REP 569, but it captured the following considerations for each of the cooperative exporters:

- a. 'exporters' margins;
- b. the volume of exports before and after measures were imposed;
- c. the effect of the measures;
- d. the level of the dumping compared with the level of measures;
- e. and any changes in margins'.⁴⁶

114. The findings in relation to Changshu Longte reveal that its dumping margin was 3 per cent as a result of the original measures, decreased to 2.1 per cent in review of measures REP 520 and moved to negative 8.9 per cent in the continuation inquiry. Its volumes increased year on year since the original measures were imposed in 2016 up until 2019 and decreased marginally in 2020. The ADC compared its domestic and export pricing and CTM during the inquiry period and noted that its prices 'track closely with the underlying CTM'.

115. The ADC considered that Changshu Longte seeks to maximise profits on export sales and is selling at higher prices into Australia and other export markets than it sells domestically. The ADC concluded that '... while Changshu Longte may export at dumped prices in the future, there is insufficient evidence to conclude that it is likely that it will do so.'⁴⁷ I note that Changshu Longte is the [REDACTED] [REDACTED] since the original investigation. (Confidential export volumes and dumping margin analysis – [REDACTED]). I agree with these findings, there is insufficient evidence to suggest that Changshu Longte is likely to sell at dumped prices.

116. In relation to the other applicant, Xingcheng Magotteaux, it has not exported to Australia since the measures were imposed in 2016 nor during the inquiry period.

⁴⁶ The Manual page 176

⁴⁷ REP 569 pages 65 to 66.

The ADC concluded that there was insufficient evidence to suggest that Xingcheng Magotteaux would export at dumped prices in the future. I agree with these findings.

117. In relation to Yute, the ADC considered while its export prices had increased since the original inquiry period, it did not export in every year since 2016 and its volumes were at similar levels to volumes in the original investigation period. The ADC considered while it ‘... may export at dumped prices in the future, there is insufficient evidence to conclude that it is likely that it will do so’.⁴⁸ I agree with these findings.

118. In relation to Anhui Sanfang, the ADC considered its circumstances were different to the other exporters as it exports cast grinding balls, which are accepted as being a ‘more expensive product’ than forged grinding balls. Anhui Sanfang commenced exporting following the accelerated review conducted in 2018 (REP 476). In the inquiry period it was found to have a significant negative dumping margin (negative 20.6 per cent) and the ADC considered it ‘... does not compete directly on price’. The ADC considers it unlikely to export at dumped prices in the future. I agree with these findings.

119. The analysis undertaken by the ADC reveals that the cooperating exporters (who exported during the inquiry period) were selling at higher prices to Australia than domestically. Furthermore, these exporters were not dumping during the inquiry period and, in the majority of cases, were making healthy profits. On the information before the ADC, I agree with the findings and conclusions in REP 569 that there was insufficient evidence to suggest that these exporters are likely to sell at dumped prices in the future. I note that given the volumes of exports from ‘uncooperative exporters and all other exporters’ is less than 0.02 per cent and the negative dumping margins found, there is insufficient evidence to consider future exports are likely to be dumped by this cohort.

120. While it is not possible to predict whether there will be changes to the prices of raw materials or whether new exporters may commence exports which may change the circumstances, there is insufficient evidence to suggest that it is likely that dumping of exports from China of grinding balls will recur.

⁴⁸ REP 359, page 68.

121. In summary, the legislative test required by s.269ZHF is whether dumping is likely to continue or recur. In the inquiry period dumping has not occurred. In relation to whether it is likely to recur, based on my review of the ADC's analysis of the tracking of prices to CTM and profitability undertaken in relation to Changshu Longte and Yute, and the profitability analysis undertaken in relation to Anhui Sanfang, it is more likely than not that each would seek to continue to maintain profit levels. While it is not possible to forecast the future, based on current behaviour there is insufficient evidence to suggest the exporters will likely sell at dumped prices in the future.

122. I agree and adopt the ADC's findings in relation to whether dumping is likely to continue or recur in relation to exports of grinding balls from China.

Conclusion:

123. I accept the applicants' grounds of review, as there is insufficient evidence to suggest that dumping is likely.

Whether there was evidence/analysis to support material injury findings⁴⁹

Claims:

124. Changshu Longte⁵⁰ claims that the Minister's finding about the recurrence of material injury is erroneous and is based on the Minister's assumption that dumping was likely to continue after the measures expired. It claims this is premised that any dumping is injurious whereas there is no evidence that supports this assumption. It indicates that dumping is not always injurious. It also points to the following factors outlined in REP 569 that suggest that material injury caused by dumping is less likely than more likely:

(a) In sales of grinding ball from importers to end-users instances of prices undercutting those of the Australian industry were limited to one quarter of the inquiry period, and only involved one diameter of grinding ball;

⁴⁹ Grounds four of Changshu Longte and ME Elecmetal applications are included in this ground.

⁵⁰ Changshu Longte and ME Elecmetal grounds and claims are identical, so I will refer only to Changshu Longte.

- (b) In sales of grinding ball between exporters and end-users, prices did undercut the Australian industry's prices. However, the Commission considered some degree of this undercutting was due to the costs savings associated with bypassing a trading company with the additional costs and margins that entails;*
- (c) Volumes of forged grinding balls from China have decreased. This is because the prevailing movement in the market is toward cast grinding balls at the expense of forged grinding balls. The Australian industry does not produce cast grinding balls. So, while exports of forged grinding balls may continue in the absence of the measures, it is not apparent that there will be any increase in the volume of forged grinding balls imported;*
- (d) Exports of cast grinding balls may increase, however, at present that bulk of the demand in Australia is supplied by cast grinding ball that are not of Chinese origin.⁵¹*

125. Changshu suggests that by not considering these findings, the Minister has not provided any findings of fact nor undertaken any analysis on which to base his decision that material injury was apparent.

Findings:

126. The Minister's Reasons stated that the material injury analysis in REP 569 was premised on the Commissioner's conclusion relating to the exporters being found to not have been dumping. He states that as this conclusion was based on inappropriate information he did not agree with the findings. He also considered that the goods exported by many Chinese exporters were subsidised. He considered material injury is likely to recur from future exports should the countervailing duties be allowed to expire.

127. The ADC outlined in Section 5 of REP 569, its findings in relation to the economic condition of the Australian industry. It indicated that since the introduction of anti-dumping measures in 2016, the Australian industry has experienced improvements

⁵¹ REP 569 extracts from pages 70 – 72 included in Changshu Longte's review application.

in several economic indicators but a deterioration in economic performance in the form of reduced sales volumes and reduced market share.

128. The ADC noted that there had been an increase in the volume of cast grinding balls (noting that Molycop manufactures forged grinding balls) and in exports from other sources not subject to anti-dumping measures. The ADC found that ‘... exports of cast grinding balls from countries other than China are now the second largest source of those goods in the market’.⁵²

129. Changshu Longte and Yute are not subject to the countervailing duty notice.⁵³ Anhui Sanfang and Xingcheng Magotteaux were found in REP 569 to not be in receipt of countervailable subsidies as part of the verification process undertaken by the ADC.

Submissions:

130. Yute suggests that it is not apparent in the Minister’s Reasons that any positive evidence is relied on in making the decision that dumping or material injury was likely. It suggests this contrasts with the detailed inquiry conducted by the ADC.⁵⁴

131. Yute indicates that while it is not subject to countervailing duties, it considers the Minister’s Reasons with respect to such duties is flawed. It indicates that the ADC found that less than 0.02 per cent of exports were by ‘uncooperative exporters and all other exporters’ during the inquiry period. This cohort were subject to both dumping and countervailing duties. Yute does not consider that the volume of such exports could constitute material injury to the Australian industry. It claims that the Minister has erred in this regard.

132. Molycop refers to the findings by the ADC in REP 569 regarding the existence of price undercutting by exports from China. It suggests that such price undercutting and loss of sales volumes to imported Chinese grinding balls supports the Minister’s decision that the continuation of measures is necessary to prevent material injury to the Australian industry.⁵⁵ It suggests that ‘... the Minister has not erred in his

⁵² REP 569, Section 5.8, page 29.

⁵³ The Minister’s decision in relation to REP 316 did not impose countervailing duties on Changshu Longte or Yute.

⁵⁴ Yute Submission dated 23 November 2021 page 7.

⁵⁵ Molycop submission dated 24 November 2021 page 6.

assessment that the more representative benchmark would likely result in a dumping and material injury (or recurrence thereof)'.

Analysis:

133. It is apparent from the analysis of material injury by the ADC in REP 569 that Molycop had suffered a deterioration in economic performance in the inquiry period in terms of market share and sales volume.

134. The ADC considered the Australian industry’s market share as well as the sales/production volumes and export volumes since 2016. The ADC noted that since the imposition of measures in 2016, there had been an increase in the volume of cast grinding balls. Molycop produces forged grinding balls. It noted that there has been ‘ ... increasing utilisation of high-chrome cast balls which may have had an impact on the economic condition of the Australian industry’ and as referred to in paragraph 128, cast grinding balls from countries other than China are the second largest source of those goods in the Australian market.

135. In relation to the inquiry period, the following table summarises the volumes from China and other sources, categorised by whether it was forged or cast grinding balls. (Confidential market volumes – [REDACTED]):

Country	Forged Grinding Balls (Mt)	Cast Grinding Balls (Mt)	Cast as a proportion of total from that country (per cent)	Total volumes	Percentage of total volume in the market (per cent)
China	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other Countries not subject to measures	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Australian industry	████████		██	████████	██
Total Volume	████████	████████	██	████████	

136. When the period between the year ending 2019 is compared with the year ending 2020, it is apparent that imports of grinding balls have increased, as has the size of the Australian market. There was a ██████████ of exports from China and a ██████████ from all other sources between these periods. Exports from other sources have taken the ██████████ in market size with the ADC observing that Molycop and the largest Chinese exporter had reductions in volumes. Anhui Sanfang export volumes of cast grinding balls ██████████ ██████████ see also table at paragraph 96). (confidential export volumes ██████████).

137. The ADC data included total volumes of exports from each source and also average FOB prices for these exports to Australia. While I considered the average FOB prices from each country, it is difficult to draw any conclusions on pricing as the volume of cast grinding balls influences the average FOB prices for these sources.

138. The ADC's pricing analysis focused on prices in the Australian market. It found evidence of price undercutting, but it noted that these were from exporters neither found to be dumping, nor subject to countervailing notices. The ADC considered that given the direct sales from Chinese exporters are not at dumped or subsidised prices and already enjoy a price advantage, it considers there is no reason for the exporters to reduce their export prices should the measures expire.⁵⁶ Having considered this analysis, I agree with the comments by the ADC in this regard.

139. The ADC also considered the prices of cast grinding balls and noted that they are more expensive than forged and increasing in volumes. It found that end users are making price assessments of the value of using cast grinding balls over forged grinding balls given the view that cast grinding balls have a longer productive life.

⁵⁶ REP 569 page 71.

140. As shown in the table at paragraph 134, the volume of cast grinding balls from 'other countries not subject to measures' [REDACTED] export volumes from China (confidential export volumes – [REDACTED]) and in the circumstances where the volumes from other sources (not subject to anti-dumping measures) [REDACTED] between 2019 and 2020. The evidence of the [REDACTED] of volumes of other sources who [REDACTED] [REDACTED] suggest there are other factors impacting the Australian market for grinding balls, and more likely than not impacting the economic performance of Molycop. (confidential export volumes – [REDACTED])

141. Accordingly, while it is apparent that Molycop has suffered injury in terms of reductions in sales volumes and its market share, it is not as apparent that dumping and/or subsidisation has caused this injury. It appears from the analysis outlined above, there is a shift in demand to cast grinding balls and from sources not subject to anti-dumping measures. Both [REDACTED] have had [REDACTED] (confidential market volume information) during the inquiry period according to the ADC.

142. As outlined in the Manual, dumping and subsidisation does not have to be the sole cause of material injury, however injury caused by other factors must not be attributed to them.⁵⁷ In the circumstances of neither dumping nor subsidisation⁵⁸ being apparent during the inquiry period, there is insufficient evidence that the material injury being experienced by Molycop can be attributed to exports from China.

143. In reviewing the 'Economic Condition of the Industry' findings in REP 569 and the confidential information provided by the ADC underpinning this analysis, there did not appear to be any errors in its calculations or in its analysis of these findings.

144. It is still necessary for the purposes of s.269ZHF(2) to consider whether injury is likely to recur should the anti-dumping measures expire, this is considered in the next ground.

⁵⁷ Dumping and Subsidy Manual November 2018, page 128 which refers to the Ministerial Direction on Material Injury dated April 2021.

⁵⁸ At the 8 November 2021 conference the ADC provided information regarding the level of exports subject to countervailing duty. It was considered immaterial.

145. I agree with and accept the ADC's findings in relation to injury during the inquiry period. The shift in the market towards cast grinding balls and the increase of imports from sources other than China appear significant. I am satisfied that there are factors other than dumping and subsidisation that are emerging as factors impacting the Australian industry.

Conclusion:

146. The findings in REP 569, with which I agree reveal that during the inquiry period there was insufficient evidence that dumping and/or subsidisation was the cause of injury. I agree and accept the ADC's analysis in this regard.

Whether the Minister erred in securing the continuation of the anti-dumping measures⁵⁹

Claims:

147. Xingcheng Magotteaux submits that the Minister's Reasons provides no analysis or quantitative assessment of whether the expiration of measures would lead or is likely to lead to a continuation of dumping or subsidisation or the material injury that the anti-dumping measures are intended to prevent. For this reason, it states that the Minister had failed to apply the threshold test for the continuation of measures.⁶⁰ It also refers to earlier policy of the ADC that 'likely' has been taken to mean 'probable'. Its submission also notes the relevant World Trade Organization (WTO) Dispute Panel and Appellate Body reports reflect this interpretation by stating that the test requires that such a result be probable rather than possible or plausible.

148. Xingcheng Magotteaux proposes that the ADC had conducted '... a comprehensive examination of all relevant information and correctly applied the threshold test for continuation of measures' in s.269ZHG of the Act. It suggests that the Minister in rejecting the ADC's findings of fact, evidence and reasons, has made declarations

⁵⁹ Grounds one of Changshu Longte and ME Elecmetal applications, and Xingcheng Magotteaux ground one is covered by this ground.

⁶⁰ Refers to ADRP Report No 50 and the judgment in *Siam Polyethylene Co Ltd v Minister for Home Affairs (No2.)* [53] '... that the word "likely" in section 269ZHF (2) of the Act was taken to mean "more probable than not".'

regarding what he is not satisfied about without providing analysis or assessment of the evidence in support of those declarations.

149. Xingcheng Magotteaux acknowledges that the Minister has discretion pursuant to s.269ZHG(1) of the Act to have regard to other relevant information, although it proposes that the Minister must still demonstrate that his determination is based on positive evidence regarding the likelihood of dumping and subsidisation.

150. Xingcheng Magotteaux states:

To highlight by example, the Minister dismisses the material injury analysis performed by the Commissioner as it was premised on a finding of no dumping, which the Minister rejected due to his view that the Commissioner had not relied on the appropriate benchmark. In doing so, the Minister does not appear to have turned his mind to, or undertaken an assessment, as to whether dumping would have continued even relying on the alternative benchmark submitted by the Australian industry. The Minister appears to have simply assumed that an alternate benchmark would have resulted in an alternate dumping finding. Even if the Minister had established that dumping would have continued using the alternative benchmark, the Minister was compelled to turn his mind to, and consider, whether material injury would have likely recurred.

151. Changshu Longte, like Xingcheng Magotteaux, proposes that the Minister has adopted an incorrect standard in deciding that anti-dumping measures should continue for grinding balls. It refers to both Australian law and Australia's obligations as a member of the WTO. It refers to the requirement in the WTO Anti-Dumping Agreement (ADA) that any decision to continue anti-dumping measures be based on positive evidence. It cites the *Appellate Body Report US – Anti-Dumping Measures on Oil Country Tubular Goods, paragraph 180* as evidence of this requirement.

152. Changshu Longte proposes that the test articulated in s.269ZHF is 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 Minister stated 'After considering REP 569 I am not satisfied that there is

evidence in support of not continuing the dumping and countervailing measures on the goods.

153. All applicants claim that the Minister's decision is inconsistent with Australia's legislation and the ADA.

Findings:

154. The Minister's Reasons state:

I do not agree with the Commissioner's findings of fact, evidence and reasons for the Commissioner's recommendations in REP 569 that the expiration of the anti-dumping measures in respect of exports of the goods from China would not lead or be likely to lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that those measures are intended to prevent.

The analysis of material injury was premised on the conclusion of the Commissioner that the exporters were not dumping. That conclusion was based on the use of benchmarks that I am not satisfied were appropriate.

I have considered the finding of the Commissioner in relation to the countervailing measures that grinding balls exported by uncooperative and all other exporters from China (other than the two cooperative exporters and other exempt exporters) are subsidised at a rate of 6.2 per cent. I am not satisfied that this finding is consistent with the Commissioner's finding that subsidisation and material injury is not likely to recur in respect of future exports should the countervailing duties be allowed to expire.

I consider that the goods are likely to be dumped, and the goods exported by many Chinese exporters are subsidised. I consider that such dumping and subsidisation is likely to continue and the cumulative effect of this is likely to result in the recurrence of material injury that the measures are intended to prevent if the measures were removed.

I am satisfied that the anti-dumping measures the subject of REP 569 should be continued because the expiration of measures would lead, or would likely lead, to a continuation of, or a recurrence of, the dumping and subsidisation

*and the material injury that the anti-dumping measures are intended to prevent.*⁶¹

155. The ADC in Section 8 of REP 569 outlined its findings in relation to the likelihood that dumping, subsidisation and material injury will continue or recur and that it was not satisfied that with the expiration of measures it would do so. The ADC noted that ‘...the Commission, must consider what will happen in the future should a certain event, being the expiry of measures, occur. However, the Commissioner’s conclusions and recommendations must nevertheless be based on facts’.⁶²

156. The ADC in REP 569 made the findings summarised as follows:

- (a) Exports from China are likely to continue;
- (b) During the inquiry period, the cooperating exporters had zero or negative dumping margins and the uncooperative exporters also had negative dumping margins. It noted that uncooperative exporters made up less than 0.02 per cent of exports during the inquiry period.
- (c) None of the cooperating exporters (who were subject to the countervailing duty notice) received subsidies during the inquiry period. It noted that while some manufacturers may receive countervailable subsidies, the level of subsidisation is likely to be negligible.
- (d) It examined each of the cooperating exporters in terms of export volumes and export pricing since 2016 through to 2020 and in general terms while they may export at dumped levels in the future there was insufficient evidence to conclude that this was likely.
- (e) Analysis included the levels of export prices since 2016 which were increasing, the negative dumping margins in the inquiry period, profits level of exporters, the cost and pricing alignment of domestic and export sales, export selling prices to other countries being higher than domestic selling prices. The ADC concluded that these factors suggested that it was not likely that future exports would be dumped. It drew the same conclusions for

⁶¹ Reasons for Decision on Continuation Inquiry No 569 published on 10 September 2021.

⁶² REP 569, page 60, referencing ADRP Report No. 44 Clear Float Glass.

uncooperative exporters indicating that there was insufficient evidence to suggest it was likely. In relation to subsidisation, it considered that while non-cooperative exporters may export and may be in receipt of countervailable subsidies, it was not likely.

- (f) The increasing utilisation of high-chrome cast grinding balls in the market. It observed that should the measures expire, exports of forged grinding balls will continue but with the shift to cast grinding balls, and in an expanding market, it cannot conclude that '... of itself, the expiry of measures would lead to an increase in export volumes from China'⁶³.

Submissions:

157. Yute supports the grounds and analysis presented by the applicants that the determination under s.269ZHF of the Act must be based on positive evidence. It acknowledges that the Minister's decision pursuant to s.269ZHG relates to the continuation or expiry of measures but proposes it is limited to the criteria of s.269ZHF of the Act. It refers to the absence of positive evidence in the Minister's Reasons regarding whether the removal of measures would result in a continuation or recurrence of dumping and material injury that the measures are intended to prevent.⁶⁴

158. Yute further suggests that the Minister has applied the wrong test - one where Chinese exporters must provide positive evidence as to why dumping duties should not be continued. Instead, it proposes that the correct test is that measures should only be continued if dumping and material injury are likely.

159. Molycop's submission disagrees with the applicants' grounds in relation to the continuation of measures. It notes that the Minister has provided reasons why it did not adopt the findings and recommendations in REP 569. In particular, it referred to the comments by the Minister regarding the ADC failing to 'sufficiently analyse' Molycop's submission, the issues raised by Molycop as well as the detailed grinding bar pricing information (relating to pricing in six countries) provided by Molycop.⁶⁵

⁶³ REP 569 page 72.

⁶⁴ Yute submission dated 23 November 2021 page 8.

⁶⁵ Molycop submission dated 24 November 2021 pages 2 to 3.

160. Molycop also disputes the comments by the applicants' as to the Minister's findings that dumping was likely. It claims that the Minister based this finding on information before him.

161. Molycop states that the key issue is whether the Reviewable Decision has contravened the requirements of s.269ZHG(1). Molycop states that the Minister has not erred in continuing the measures applicable to grinding balls. It disagrees with the claims made by Changshu Longte and ME Elecmetal that the Minister failed to reach a 'standard of satisfaction' as to whether the measures should be continued.

162. Changshu Longte and ME Elecmetal propose that the Minister's powers regarding s.269ZHG are not unbounded and '... must conform with the governing legislation, broader legal requirements found in administrative law principles and relevant international law within which Australia's anti-dumping regime operates.'⁶⁶ It proposes that the Minister did not exercise his powers in this manner. In particular, it refers to Article 11.3 of the ADA '*... unless the authorities determine... that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury and that this determination be based on positive evidence*', it suggests that the Minister did not have positive evidence.⁶⁷ It also claims that the Minister considered 'whether there was evidence in support of not continuing the measures' whereas s.269ZHF(2) of the Act requires consideration of 'whether there was evidence in support of continuing them'.

163. Changshu Longte and ME Elecmetal also suggest that the Reviewable Decision was not supported by evidence, nor any findings of fact in the Minister's Reasons.

Legislation

164. Section 269ZHG(1) Powers of the Minister in relation to continuation of anti-dumping measures:

⁶⁶ Changshu Longte and ME Elecmetal submissions dated 24 November 2021, page 2.

⁶⁷ Changshu Longte and ME Elecmetal submissions dated 24 November 2021, page 2.

(1) *After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must by notice published in accordance with subsection (2):*

(a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; or

(b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

Note: Subsection (3) deals with the end of the anti-dumping measures and subsection (4) deals with the continuation of the anti-dumping measures.

Analysis:

165. There are two conditions that must be met for the Commissioner to recommend to the Minister that the measures be secured.⁶⁸ First, if the measures expired there would be the likelihood of the continuation of, or a recurrence of, the dumping and subsidisation, and second, there be a likelihood of the continuation or recurrence of the material injury that the anti-dumping measures are intended to prevent. The section therefore imposes a 'likelihood' test with respect to each of the two conditions. The 'likely' test has been accepted to mean that the occurrence of each condition is 'probable' or 'more probable than not'.⁶⁹

166. As referred to by the ADC in REP 569, an examination of the likelihood of an event occurring requires some degree of prediction of the future. In these circumstances, there must be reliance on facts to enable reasonable conclusions to be drawn. It is also generally accepted that past behaviour may assist in forecasting future behaviour.⁷⁰

167. This ground relates to whether the anti-dumping measures (dumping and countervailing duties) should be continued or not. The basis of the Minister's decision, pursuant to s.269ZHG(1) arises from the Commissioner's

⁶⁸ Pursuant to s.269ZHF(2) of the Act.

⁶⁹ *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)* [2009] FCA 838 at paragraph [48].

⁷⁰ ADRP Report No 44: Clear Float Glass exported to Australian from the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand.

recommendation to the Minister pursuant to s.269ZHF(2).⁷¹ The recommendation from the Commissioner in REP 569 deals with whether dumping and subsidisation will continue or recur, but also whether injury will continue or recur.

168. Earlier grounds in this report have found that dumping and subsidisation⁷² did not occur from exports of grinding balls from China during the inquiry period. While Molycop experienced injury during the inquiry period in the form of loss of market share and sales volumes, it was not apparent that this was linked to the exports from China given no dumping or subsidisation was identified.

169. In REP 569 the ADC considered from the information it had received that ‘... cast grinding balls may continue to capture higher market share’ and ‘...and it is therefore reasonable to assume that the volume of cast grinding balls being imported will continue to grow.’⁷³ It also considered whether dumping was likely to continue. As referred to in the previous ground dealing with whether dumping was likely, there is insufficient evidence to suggest that dumping is likely to continue or recur.

170. In respect to the subsidisation dealt with in REP 569, two of the cooperating exporters were not subject to countervailing notices and the other two were found not to be in receipt of countervailable subsidies. There is no evidence in relation to these other two exporters that subsidisation is likely to occur.

171. While there remains a cohort of ‘uncooperative and all other exporters’ who have countervailing notices in place, there is insufficient evidence available that suggests this cohort may export in the future given the lack of exports during the inquiry period. Furthermore, I note that the ADC indicates,

⁷¹ Section 269ZHG enables the Minister to also consider other relevant information. In this matter, no other relevant information was outlined in the Minister’s Reasons other than already referred to in this report.

⁷² The ADC advised at the conference on 8 November 2021 that there was an immaterial amount of countervailing duties levied during the inquiry period. This related to [REDACTED] of Chinese origin grinding balls, [REDACTED] and the duty of [REDACTED]

⁷³ REP 569 page 72.

... while some manufacturers in China may continue to receive countervailable subsidies in respect of the goods, the level of subsidisation for each individual exporter, if any, is likely to be negligible.⁷⁴

In my view, there is insufficient evidence to suggest that it is more probable than not that subsidised exports will continue or recur.

172. In the previous ground dealing with injury, the evidence suggests there is a shift in the Australian market to cast grinding balls as well as an increase in exports from other sources. It is more probable than not that this trend will continue. Against this background, and in light of the lack of evidence that dumped and subsidised exports from China is likely, there is insufficient evidence to support the continuation of anti-dumping measures to prevent the continuation or recurrence of injury.

173. In these circumstances, I consider that the ADC's findings contained a sufficient factual basis and reasoned analysis to support its recommendations to the Minister for the expiration of measures. By contrast, and as identified by Yute and Changshu Longte, there is insufficient evidence included in the Minister's Reasons that suggest dumping, subsidisation and injury would be likely to continue or recur.

174. Molycop suggests that the Minister has not erred in his consideration of s.269ZHG(1) of the Act by continuing the measures. The evidence I have considered from the information available does not support this conclusion. There is insufficient evidence to consider that the expiration of measures would lead, or likely lead to a continuation of, or recurrence of dumping or subsidisation and material injury. I disagree with Molycop's views in this respect.

Conclusion:

175. There is insufficient evidence to conclude that the expiration of anti-dumping measures would lead, or be likely to lead to the continuation of dumping, subsidisation and injury. Therefore, the Reviewable Decision was not correct or preferable.

⁷⁴ REP 569 page 64.

Xingcheng Magotteaux Ground 1

176. This ground has been dealt with in the section titled 'Whether the Minister erred in securing the continuation of the anti-dumping measures' in the previous ground.

Xingcheng Magotteaux Grounds 2 and 3

177. The Minister erred in (a) not determining fixed different variable factors in relation to Xingcheng Magotteaux, pursuant to subsection 269ZHG(4)(a)(iii) of the Act; and (b) not substituting the unaccepted Commission benchmark with his preferred alternative benchmark, in determining individual ascertained variable factors applicable to Xingcheng Magotteaux.

Claims:

178. Xingcheng Magotteaux contends that the Minister erred by disregarding verified information. It states that it provided all the information requested. It was classed as a cooperative exporter and its information found to be relevant and reliable. Its normal value was established under s.269TAC(1) of the Act. Furthermore, it was found to not receive benefits from the countervailable subsidies.

179. Xingcheng Magotteaux claims that the Minister:

- a. is required to determine the correct benchmark and use this value to assess which provision of s.269TAC applies in order to determine its normal value. It claims this is critical for Xingcheng Magotteaux as its export price was determined by reference to the normal value. Accordingly, regardless of what benchmark is used, it would still have a zero per cent dumping margin. Without its variable factors being established, it is subject to the uncooperative exporters combined anti-dumping measures rate of 34 per cent;
- b. has erred in law by disregarding all the information provided and having not established variable factors for its future exports based on that information. It suggests that regardless of what benchmark is applied variable factors should still have been determined;

- c. failed to take into account that Xingcheng Magotteaux had fully cooperated with the continuation inquiry by following the process outlined in the Commissioner's notice relating to the continuation inquiry in accordance with Division 6A of Part XVB of the Act. It specifically referred to the consideration of whether dumping and subsidisation has occurred and whether the variable factors (as defined in s.269T(4D) of the Act) had changed;
- d. is required by law to fix different specified variable factors for Xingcheng Magotteaux and has no discretion to disregard its information under s.269ZHG(4)(a)(iii) when evidence has been provided that the variable factors have changed; and
- e. has erred by not establishing variable factors regardless of whether the Minister agrees with the findings of the Commissioner or not.

Findings:

180. The Minister made no specific findings in relation to Xingcheng Magotteaux.

181. The ADC in REP 569 found that while Xingcheng Magotteaux did not export the goods during the inquiry period, it recommended that the export price be a value equal to the normal value with a zero dumping margin applied. It also found that Xingcheng Magotteaux had not been in receipt of any countervailable subsidies and accordingly a zero per cent subsidy margin was applicable.

Submissions:

182. Molycop's submission indicates that the Minister was not satisfied with the 'variable factors finding' by the ADC. In such circumstances it considers it appropriate that the measures found in Review 520 continue to apply to Xingcheng Magotteaux. It noted that Xingcheng Magotteaux did not export during the inquiry period.⁷⁵

183. Yute claims that the Minister's decision is flawed, as he has retained in the Reviewable Decision the variable factors from Review 520 that were developed by

⁷⁵ Molycop submission dated 24 November 2021 page 4.

the same methodology that he now considers flawed. Yute considers this so unreasonable that it constitutes an error of law.

Analysis:

184. Xingcheng Magotteaux seeks to have variable factors established based on the evidence it submitted to the continuation inquiry. It suggests that regardless of which benchmark was preferred, the result of a zero dumping margin would have applied. This is on the basis that it had not exported during the inquiry period and would have a zero dumping margin applied.

185. Given my findings in the preceding ground dealing with the preferred benchmark and the recommendation that the normal value, export price and resulting dumping margin be that recommended in REP 569, I do not need to further consider these grounds.

186. However, I would make the following observation. It would seem a reasonable expectation that as a cooperating exporter, its information would be used to determine its variable factors or that the Minister would determine variable factors for it on some other basis. The failure to provide variable factors would appear to be an error.

Conclusions

187. My conclusions in respect to each of the grounds dealt with above are as follows:

- Normal value assessment: the benchmarks used in the assessment of 'competitive market costs':

I consider that the records of the applicants were correctly assessed by the ADC as being suitable to develop the CTM grinding balls based on the comparison of the LA grinding bar benchmark with the exporter's actual costs. This enabled the OCOT to be assessed and the normal value to be established pursuant to s.269TAC(1) of the Act. The applicants have established that the Minister's decision erred in this regard (see paragraph 89).

- Whether the Minister erred in his finding that dumping was likely:

Based on current behaviour there is insufficient evidence to suggest the exporters' will sell at dumped prices in the future. I agree and adopt the ADC's findings in relation to whether dumping is likely to continue or recur in relation to exports of grinding balls from China for all exporters (see paragraphs 121-122).

- Whether the Minister had evidence or analysis of material injury finding:

I agree with and accept the ADC's findings in relation to injury during the inquiry period. The shift in the market towards cast grinding balls and the increase of imports from sources other than China appear significant. I am satisfied that there are factors other than dumping and/or subsidisation that are emerging as factors impacting the Australian industry (see paragraph 145).

- Whether the Minister erred in securing the continuation of the anti-dumping measures:

There is insufficient evidence to consider that the expiration of measures would lead, or likely lead to a continuation of, or recurrence of dumping or subsidisation and material injury. On this basis the Minister erred in securing the continuation of measures (see paragraphs 174-175).

- Whether the Minister erred in (a) not determining fixed different variable factors in relation to Xingcheng Magotteaux, pursuant to subsection 269ZHG(4)(a)(iii) of the Act and (b) not substituting the unaccepted Commission benchmark with his preferred alternative benchmark, in determining individual ascertained variable factors applicable to Xingcheng Magotteaux:
- *I agree that the preferred benchmark as recommended by the ADC in REP 569 was used in the assessment of the normal value for Xingcheng Magotteaux. The recommendation relating to the normal value for Xingcheng Magotteaux is at paragraph 90.*

Recommendations

188. Pursuant to s.269ZZK(1) of the Act and for the reasons given above, I consider that the Reviewable Decision was not the correct or preferable decision. Furthermore, I consider that the recommended new decision (outlined below) is materially different

to the Reviewable Decision as required pursuant to s.269ZZK(1A) of the Act. It proposes the anti-dumping measures expire in relation to exports of grinding balls from China rather than be continued.

189. I recommend that the Minister for Industry, Energy and Emissions Reduction adopt all the recommendations made by the Commissioner in relation to normal value, export price and resulting dumping margins, and countervailable subsidies, as detailed in Section 9 of REP 569. An extract of the relevant recommendations is provided at Attachment One to this report.

190. For the reasons outlined in this Report, I am, therefore satisfied that the Reviewable Decision was not the correct or preferable decision in relation to the:

- securing of the continuation of anti-dumping measures for exports of grinding balls from China pursuant to s.269ZHG(1)(b) of the Act; and
- publication of notices securing the continuation of notices after 9 September 2021 pursuant to s.269ZHG(4)(a)(i) of the Act.

191. I recommend that the Minister for Industry, Energy and Emissions Reduction revoke the Reviewable Decision and substitute a new decision under s.269ZHG(1)(a) of the Act declaring that you have decided not to secure the continuation of the anti-dumping measures on grinding balls exported from China.



Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
24 December 2021

Conferences

Date of conference	Participants	Purpose of conference
8 November 2021	ADC representatives	To obtain further information on the calculation of the grinding bar benchmark contained in confidential spreadsheets, export volumes from China, countervailing duties imposed and duty assessments during the inquiry period.
29 November 2021	ADC representatives	To obtain further information on the calculation of the grinding bar benchmark and the analysis contained in confidential spreadsheets prepared by the ADC.

Attachment One

An extract from REP 569 detailing the relevant recommendations by the
Commissioner

The Commissioner recommends that the Minister be satisfied that:

- sufficient information has not been furnished to enable the export price of grinding balls exported to Australia from China by uncooperative exporters to be ascertained under the subsections preceding section 269TAB(3);
- sufficient information has not been furnished to enable the normal value of grinding balls exported to Australia from China by uncooperative exporters to be ascertained under the subsections preceding section 269TAC(6);
- in accordance with section 269TACD(1), countervailable subsidies have been received in respect of the goods exported to Australia, in the amounts set out in Confidential Attachment 19.

The Commissioner recommends that the Minister determine that:

- the export price of grinding balls exported from China to Australia by Longte to unrelated customers under section 269TAB(1)(a), is the price paid by the importer to the exporter less transport and other costs arising after exportation, as set out in Confidential Attachment 4;
- the export price of grinding balls exported from China to Australia by Longte via ME under section 269TAB(1)(c), having regard to all the circumstances of the exportation, is the price set out in Confidential Attachment 4;
- the normal value of grinding balls exported from China to Australia by Longte under section 269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, as adjusted in accordance with section 269TAC(8) and as set out in Confidential Attachment 6;
- the export price of grinding balls exported from China to Australia by Anhui Sanfang under section 269TAB(1)(a), is the price paid by the importer to the exporter less transport and other costs arising after exportation, as set out in Confidential Attachment 8;
- the normal value of grinding balls exported from China to Australia by Anhui Sanfang under section 269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length

transactions by the exporter, as adjusted in accordance with section 269TAC(8) and as set out in Confidential Attachment 10;

- the export price of grinding balls exported from China to Australia by Jiangsu Yute under section 269TAB(1)(a), is the price paid by the importer to the exporter less transport and other costs arising after exportation, as set out in Confidential Attachment 12;
- the normal value of grinding balls exported from China to Australia by Jiangsu Yute under section 269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, as adjusted in accordance with section 269TAC(8), and as set out in Confidential Attachment 14;
- the export price of grinding balls exported from China to Australia by Xingcheng Magotteaux under section 269TAB(3), having regard to all relevant information and an absence of exports to Australia, is equal to the normal value of like goods sold by Xingcheng Magotteaux in the domestic market as set out in Confidential Attachment 17;
- the normal value of grinding balls exported from China to Australia by Xingcheng Magotteaux under section 269TAC(1) is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, as adjusted in accordance with section 269TAC(8) and as set out in Confidential Attachment 17;
- the export price of grinding balls exported from China to Australia by uncooperative exporters is the lowest weighted average FOB export price for forged grinding balls (being the market in which Molycop is competing) from amongst those established for cooperating exporters, as set out in Confidential Attachment 18;
- the normal value of grinding balls exported from China to Australia by uncooperative exporters is the highest weighted average normal value for forged grinding balls established amongst cooperating exporters, as set out in Confidential Attachment 18;
- in accordance with section 269TAACA, the Commission has had regard to the available relevant facts for the amount of countervailable subsidy received in respect

of goods exported by uncooperative exporters in the review period, to be the amount as set out in Confidential Attachment 19.

The Commissioner recommends that the Minister direct that:

- in accordance with 269TAC(8), adjustments, as listed in Table 11, are necessary to ensure a fair comparison of normal values and export prices for grinding balls exported to Australia by Longte, as set out in Confidential Attachment 6.
- in accordance with 269TAC(8), adjustments, as listed in Table 16, are necessary to ensure a fair comparison of normal values and export prices for grinding balls exported to Australia by Anhui Sanfang, as set out in Confidential Attachment 10.
- in accordance with 269TAC(8), adjustments, as listed in Table 20, are necessary to ensure a fair comparison of normal values and export prices for grinding balls exported to Australia by Jiangsu Yute, as set out in Confidential Attachment 14.
- in accordance with 269TAC(8), adjustments, as listed in Table 22, are necessary to ensure a fair comparison of normal values and export prices for grinding balls exported to Australia by Xingcheng Magotteaux, as set out in Confidential Attachment 17.