Australian Government
Anti-Dumping Review Panel

ADRP REPORT No. 47

Grinding Balls exported from the People's Republic of China

18 April 2017

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Abbreviations

Term	Meaning
Act	*Customs Act 1901*
ADA	Anti-Dumping Agreement
ADN	Anti-Dumping Notice
Benchmark	The Latin American export billet price benchmark for grinding bar at FOB Level published by McGraw Hill Financial Services (Platts)
CIO Regulation	*Customs (International Obligations) Regulation 2015*
CITIC	CITIC Pacific Mining Management Pty Ltd
CTMS	Cost to Make and Sell
Commission	The Anti-Dumping Commission
Commissioner	The Commissioner of the Anti-Dumping Commission
Donhad	Donhad Pty Ltd, part of the Australian industry.
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act, 1975*
FOB	Free on board
GOC	Government of the People's Republic of China
Goods	Ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive), excluding stainless steel balls, precisions balls that have been machined and/or polished, and ball bearings.
Longte	Changshu Longte Grinding Ball Co., Ltd, one of the Chinese exporters
Longteng	Changshu Longteng Special Steel Co, Longte's parent company
Original Investigation period	1 October 2014 to 30 September 2015
Manual	Dumping and Subsidy Manual November 2015

Minister	Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation, and Science.
Moly-Cop	Commonwealth Steel Company Pty Ltd, part of the Australian industry.
Report	The report published by the Commission in relation to Alleged Dumping and Subsidisation of Grinding Balls exported from the People's Republic of China dated 6 June 2016.
Reviewable Decisions	The decisions of the Minister made on 1 September 2016 to declare that subsections 8 and 10 of the *Customs Tariff (Anti-Dumping) Act1975* applied to ferrous grinding balls with diameters in the range 22mm to 170mm (inclusive) made pursuant to s 269TG(1) and (2) and s 269TJ(2) of the *Customs Act, 1901* ("Act").
Sanfang	Anhui Sanfang New Material Technology Co., Ltd, one of the Chinese exporters.
SEF	Statement of Essential Facts and Preliminary Affirmative Determination No 316 published on 21 April 2016.
Xingcheng	Jingsu CP Xingcheng Special Steel Co., Ltd, one of the Chinese exporters.

Recommendation

1 This review is of the decisions made by the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science ("Minister") dated 1 September 2016 to declare that subsections 8 and 10 of the *Customs Tariff (Anti-Dumping) Act 1975* applied to Ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive) (“Reviewable Decisions”). The Reviewable Decisions were made pursuant to s 269TG(1) and (2) and s 269TJ(2) of the *Customs Act 1901* (“Act”) and were the subject of Anti-Dumping Notices 2016/91 and 2016/92.

2 I recommend that that the Minister affirm the Reviewable Decisions.

Scott Ellis
Panel Member
Anti-Dumping Review Panel
18 April 2017

Summary

1 This review relates to the importation of grinding balls from the People's Republic of China. Grinding balls are steel balls used to break up lumps of ore into smaller lumps of ore.

2 As a result of the Reviewable Decisions, dumping and countervailing duties were imposed on the export of grinding balls from China to Australia. The rate of the dumping duty ranged from 3.0% to 43.3% for cooperative exporters and was 95.4% for uncooperative and other exporters. Countervailing duties were imposed on uncooperative and all other exporters of grinding balls at the rate of 8.2%.

3 Applications for review were made by three of the exporters affected by the duties, and by one of the participants in the Australian industry.

4 There were a number of grounds of review. The grounds advanced by a number of the applicant exporters related to the Commission's finding that there was a "market situation" in the Chinese iron and steel industry, the finding that the producer's records did not reasonably reflect market costs and the use of the Latin American export billet benchmark price for grinding bar at FOB Level published by McGraw Hill Financial Services ("Benchmark") in determining the costs of production. The applicants also raised a number of grounds which were specific to their own circumstances.

5 I do not consider that the grounds identified by the applicants should be upheld. I consider that the Reviewable Decisions were the correct and preferable decisions.

Background

6 The Reviewable Decisions arose from an application by Donhad Pty Ltd ("Donhad") and Commonwealth Steel Company Pty Ltd[1] ("Moly-Cop") for the imposition of dumping duties and countervailing duties.[2] Together, Donhad and Moly-Cop are the Australian Industry.

[1] Moly-Cop trades as "Moly-Cop Mining Consumables – Waratah Steel Mill"/"Moly-Cop".
[2] EPR1 on the electronic public record maintained by the Commission.

7 The goods the subject of the application were described in the application as follows:

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

The application excluded stainless steel balls, precisions balls that have been machined and/or polished, and ball bearings. The application noted that the goods covered by the application include all ferrous grinding balls, typically used for the comminution of metalliferous ores, meeting the above description of the goods, regardless of the particular grade or alloy content.

8 The application stated that grinding balls generally fall within two tariff classifications in Schedule 3 to the Act. One classification, 7325.91.00, refers to "Other cast articles of iron or steel, grinding balls and similar articles for mills". The other classification, 7326.11.00, refers to "Other articles of iron or steel, forged or stamped but not further worked, grinding balls and similar articles for mills". Moly-Cop and Donhad both manufactured only forged grinding balls. Neither manufactured cast grinding balls.

9 The application was accepted by the Commission and an investigation, number 316, was initiated in respect of the goods the subject of the application on 17 November 2015.[3] The investigation period identified by the Commission was 1 October 2014 to 30 September 2015.

10 Exporter questionnaires were dispatched by the Commission. Each of the following responded and was treated by the Commission as a cooperative exporter:

(a) Changshu Longte Grinding Ball Co., Ltd ("Longte");

(b) Hebei Goldpro New Material Technology Co., Ltd;

(c) Jingsu CP Xingcheng Special Steel Co., Ltd ("Xingcheng"); and

(d) Jiangsu Yute Grinding International Co., Ltd.

[3] EPR 316, 2.

11 The Commissioner published a combined Statement of Essential Facts and a Preliminary Affirmative Determination on 21 April 2016 ("SEF").[4]

12 The Commission published a report on 6 June 2016 ("Report").[5] It recommended the imposition of dumping and countervailing duties on the export of the goods to Australia. In making the Reviewable Decisions, the Minister accepted the findings and reasoning in the Report.

13 Applications were made, within time, for review of the Reviewable Decisions by:

(a) Longte;

(b) Xingcheng;

(c) Moly-Cop; and

(d) Anhui Sanfang New Material Technology Co., Ltd ("Sanfang").

Sanfang is an exporter of cast grinding balls. It did not export grinding balls to Australia during the investigation period. Grounds 10.1, 10.2, 10.3 and 10.4 of Sanfang's application related to both the Reviewable Decisions. All the other grounds advanced related only to the Decision to impose dumping duties under ss 269TG(1) and (2).

14 The Senior Member of the Panel appointed me to constitute the Panel for the purpose of the review.

15 I accepted the applications for review. Notice of initiation of the review was published on 31 October 2016.

16 Submissions under s 269ZZJ of the Act were received from the Commission and Moly-Cop on 30 November 2016.

17 Pursuant to s 269ZZL of the Act, I requested that the Commission reinvestigate certain findings on 16 December 2016. I allowed the Commission until 15 March 2017 to complete the reinvestigation. A reinvestigation report was provided.

[4] EPR 316, 33.
[5] EPR 316, 54.

18 Pursuant to s 269ZZRA of the Act, conferences were held with officers of the Commission on 7 February 2017 and 14 March 2017. Non-confidential summaries of the conferences were placed on the public record.

19 In carrying out its function, the Review Panel may not have regard to any information other than "relevant information" as that expression is defined in s.269ZZK(6). For the purpose of the review, the relevant information is that to which the Commission had, or was required to have, regard when making the findings set out in the report to the Minister.[4] In addition to relevant information, the Review Panel may have regard to conclusions based on relevant information that is contained in the application for review and any submissions received under s.269ZZJ.[5]

20 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.

Grounds of Review

21 Several of the grounds of review advanced by the applicants raised common issues relating to the broad reasoning adopted by the Commission in the Report.

22 In general terms, the Commission determined that:

(a) there is a particular market situation in the Chinese domestic iron and steel market and that domestic selling prices are not suitable for establishing normal market values for the purposes of s 269TAC(1) of the Act;

(b) the records of the exporters did not "reasonably reflect competitive market costs associated with the production or manufacture of grinding balls"; and

(c) the component of the cost of production or manufacture of grinding balls referable to the raw material of grinding bar should be determined by reference to the Benchmark, rather than the costs identified in the producers' accounts.

This chain of reasoning governed the Commission's determination of the normal value of the goods exported.

23 The common issues advanced by the applicants were:

(a) the conclusion that there was a "market situation" in China was mere conjecture;

(b) the Commissioner should not have concluded that the records of the exporters did not reflect competitive market costs; and

(c) the Commissioner was wrong to use the Benchmark because it did not relate to the costs of production in China.

24 There was also a number of more specific grounds of review which related to the specific circumstances of the exporters. I will deal first with the issues that were common to a number of the applicants, then deal with the specific issues raised.

Market Situation

25 Section 269TAC deals with how the normal value of goods is to be determined. The general rule is that the normal value of goods is to be determined by reference to the domestic market price.[6] Section 269TAC(2) creates exceptions to this rule. The salient provisions are:

> (2) Subject to this section, where the Minister:
>
> (a) is satisfied that:
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> …
>
> (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);
>
> …
>
> the normal value of the goods for the purposes of this Part is:
>
> (c) … 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

[6] Section 269TAC(1).

> administrative, selling and general costs associated with the sale and the profit on that sale…

26 The Commission found that there was a "market situation" within s 269TAC(2)(a)(ii), which justified departure from a market based determination of the normal value under s 269TAC(1).

27 Both Xingcheng and Sanfang contended that the Commission's conclusion that there was a market situation was "mere conjecture". They argued that the materials relied upon by the Commission did not support the conclusion that there was a "market situation". They contended that "mere" influence by Government is not sufficient to establish the existence of a "market situation". There needed to be evidence of a direct impact of the Government on the relevant market. They contended that, although the Commission referred to several plans and policy documents promulgated by the Government of China ("GOC"), there was no consideration of the direct impact of the various plans on the market. The provision of subsidies demonstrates nothing about how those subsidies affect the price. The references by the Commission to state owned enterprises is not relevant, they said, because those entities are not involved in grinding ball production. The Commission referred to the 5% VAT rebate, but there was no evidence of the actual effect on domestic price of grinding balls.

28 The nature and extent of the influence of the GOC on the market in China both for steel generally, and in relation to grinding balls in particular, are complex issues, which might involve extensive economic analysis. The limited nature of the review conducted by this Panel was described by the then Senior Member of the Panel, the Hon Michael Moore in an earlier decision of the Panel in the following terms:

> It seems to me that having regard to the fact that the Panel will ordinarily have to undertake a review in a comparatively short time frame against a background where the Commissioner will have ordinarily undertaken an extensive process of investigation and reporting, and also having regard to the fact that the Panel can require the Commissioner to reinvestigate, the Panel's role in a review does not entail full reinvestigation of matters considered by the Commissioner and raised by interested parties in the application for review. The investigation by the Commissioner will often entail the evaluation by the Commissioner of material gathered in the investigation both from overseas and domestically. That evaluation may involve subsidiary conclusions or decisions involving assessment and judgement. I do not see the Panel's role as involving this type of evaluation afresh. Rather the Panel's role includes, by way of illustration, assessing whether there has been

> inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations.[7]

29 Mr Moore also said:

> The Panel's powers to revoke or recommend the revocation of a number of types of reviewable decisions only arises if the reviewable decision was either not the correct decision (when there has been a decision which does not involve the exercise of a discretion) or, alternatively, not the preferable decision (when there has been a decision involving the exercise of a discretion). It is tolerably clear this is the statutory test having regard to the obligation (at various points in Division 9 of Part XVB) on an applicant for review to identify in the application reasons for believing that the decision was not the correct or preferable decision and the power of the Panel to reject an application if this is not done.

30 The Commission discussed the issue at section 5.5 of the Report. It also relied upon the materials discussed in Appendix 2 of the Report. It is fair to say that the conclusion reached about the market situation reflected and relied upon conclusions which had previously been articulated by the Commission in previous investigations relating to the steel industry in China.

31 Salient features of the materials relied upon were:

(a) the Commission found that subsidies were received in relation to 46 of 54 subsidy programs identified in the subsidy investigation.[8] This conclusion was not challenged by the exporter applicants in this case. The Report also indicated that there has been a history of subsidization of the iron and steel industry;

(b) the GOC has published several policy statements and has established a taxation regime governing the development and rationalization of the steel industry. The report of the Canadian Border Services Agency indicates that there are occasions on which punitive measures have been taken in response to non-compliance with policy;

(c) the GOC has strategic ownership stakes in a number of the major steel producers in China. This has the consequence that government dictates are

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[7] ADRP Report 24 – Power Transformers.

[8] Report at p23.

not simply external constraints upon independent management. Where there is significant government ownership, it becomes an internal consideration; and

(d) China's VAT system involves the imposition of a general VAT of 15%, which is subject to 5% rebates for export trade. This system which can be used to manipulate profitability and prices in particular segments of the steel industry.

32 These materials provide support for the conclusion reached by the Commission.

33 I do not consider that it is particularly significant that the Government invested steel mills do not directly produce grinding balls. It appears likely that their influence, and the influence of the GOC, would flow through the market. As pointed out by the applicants, there is no direct evidence of the impact of subsidies and VAT on grinding ball prices. However, it appears likely that this information would be particularly hard to obtain. The Commission referred to the fact that it sent a questionnaire to the GOC, but received no response. It stated that it reached its conclusion on the basis of the information available to it and in the absence of more direct information from the GOC. The Commission's conclusion was supported by relevant material. I consider that the conclusion of the Commission that there was a "market situation" was in accordance with the Act and was justified.

Regulation 43: Use of Producers' Records

34 Having found that there was a "market situation" within s 269TAC(2), the Commission determined the normal value of the grinding balls by reference to the cost of production or manufacture in China, rather than by reference to domestic sales. In such circumstances, the Minister is required to calculate the cost of production or manufacture in accordance with the *Customs (International Obligations) Regulations 2015* ("IO Regulations"), specifically Regulation 43.

35 Regulation 43 relevantly provides:

> (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 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.

…

(8) For this section, the Minister may disregard any information that he or she considers to be unreliable.

36 Grinding bar is a significant component of the cost of manufacturing forged grinding balls. In determining the cost of production, the Commission did not rely on the information set out in the producers' records as to the cost of production of grinding bar. Instead, the cost of production was determined using Latin American export billet prices at FOB level published by the Benchmark to determine the cost of the steel used in the production of the grinding balls.

37 Xingcheng,[9] Sanfang[10] and Longte[11]argued that the Commission was wrong to conclude that their sales records did not reasonably reflect competitive market costs.[12]

38 It was argued that Regulation 43(2) uses the word "must", so that any derogation from the mandatory language must be construed narrowly. It was said that any other construction would allow slight influence on the market to enable the primary source of data to be undermined, and enable the primary requirement of Regulation 43(2) to be deprived of substantial effect.

39 I do not agree. Regulation 43(2) provides that the producers' records must be used except where the records do not "reasonably" reflect competitive market prices. Slight influence of government on market prices would not have the effect that records do not "reasonably" reflect competitive market prices. It should also be noted that Regulation 43(2) does not direct the Minister to have *no* regard to the

[9] Ground 10.4.
[10] Ground 10.6.
[11] Ground B.
[12] It was not suggested that the cooperative producers' records were not maintained in accordance with generally accepted accounting principles in the country of export.

producers records in situations where those records do not reasonably reflect competitive market costs. Where the Minister is not required to use the information set out in the records, the Minister can still use the information in the records to the extent that the Minister considers it appropriate. Also, Regulation 43 does not require the Minister to use the producers records exclusively, even where they are prepared in accordance with generally accepted accounting principles and reflect market costs. What Regulation 43 says is that, where the producers records must be used where those records are prepared in accordance with generally accepted accounting standards

40 It was also argued that the Commission ought to identify the specific effect which the GOC had on prices in order to conclude that the records did not reasonably reflect market prices. I do not consider that it is necessary for the Minister to identify the price differential between recorded costs and competitive market costs before the Minster may use information other than the producer's records. It is sufficient if the Minster is satisfied that the records do not reflect market costs. In any event, during the course of ascertaining the costs under Regulation 43, the Minister will calculate costs which reflect competitive market costs, so that the difference will be apparent.

41 A third argument was that the approach adopted by the Commission did not show that the recorded costs did not reflect market costs. The Commission's approach, they said, merely showed that the recorded costs were different from the costs calculated by the Commissioner. I do not accept this argument. It does not take into account the separate material relied upon by the Commission to establish that there was a market situation in the Chinese steel industry and that the Chinese costs were not merely different, but not reflective of competitive market costs. In selecting the Benchmark, the Commission described[13] the characteristics of the market to which the Benchmark related. Those characteristics lead the Commission to conclude that the Benchmark was of a competitive market for grinding bar. The fact that the recorded costs did not, after appropriate adjustments, match a market driven index such as the Benchmark, supports the conclusion that the recorded costs were not reflective of market costs.

[13] At section 5.7.

42 I do not accept these grounds of the applications for review.

"External" benchmark

43 In determining the normal value, the Commissioner determined the cost of grinding bar by reference to the Benchmark. The Commission then carried out adjustments to take into account transport costs from Latin American ports to China and differences in grade between the grinding bar the subject of the Benchmark and those used by the exporters.

44 Sanfang,[14] Longte[15] and Xingcheng[16] argued that the Commission was wrong to use a foreign benchmark and that the Commission had failed to determine the costs in China.

45 The task of the Minister under Regulation 43 is to determine the costs of production, in China, of the goods under consideration in the Investigation. That task was carried out in the context that the Commission had determined that:

(a) there was a market situation in relation to domestic sales of grinding balls; and

(b) the producers' records did not reflect competitive market costs.

In determining the cost of production in China under Regulation 43, the Minister is entitled to take into account evidence about the cost of production in other places.[17] The use of evidence about costs of production in other jurisdictions is consistent with the approach taken under s 269TAC(2)(d) of the Act. The use of information about the costs of production in countries other than China is also consistent with the remarks of the Appellate Body in *EU-Biodiesel* at 6.73 which contemplates the use of "out of country" evidence.[18] The Commission took steps to adjust the benchmark so that it reflected conditions in China. In effect, the Commission used

[14] Ground 10.7.
[15] Ground A.
[16] Ground 10.5.
[17] *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry Innovation and Science* [2016] FCA 1309. In *Panasia Aluminium (China) Ltd v AG* (2013) 217 FCR 64 at [83], the Court held that it was open to the CEO of the Australian Customs and Border Protection Service to determine whether aluminium was supplied in China at less than adequate remuneration.
[18] *European Union–Anti-Dumping measures on biodiesel from Argentina* (WT/DS473/AB/R (6 October 2016)).

the Benchmark (and other information) to ascertain what competitive market costs for grinding bar would have been but for the market situation.

46 Longte and Moly-Cop took issue with the specific benchmark chosen by the Commission.

47 Longte argued that, if a foreign benchmark was to be used, then a South American benchmark was inappropriate because it did not relate to what it described as the largest and most competitive steel market in the world (ie the South East Asian market). In the Report[19] the Commission indicated that it had selected the South American benchmark because the South American market was a substantial market, including two of the top 13 iron and steel countries based on crude steel production, and that the balance of export and domestic consumption meant that the Benchmark represented a consistent cost point. The geographic distance from China minimized the effect on the Benchmark of the distortions which the Commission found existed in the Chinese market. This is a reasonable approach.

48 Moly-Cop[20] argued that the Minister was wrong to use an export billet benchmark in determining the cost of production because the baleful influence of the Chinese market situation adversely influenced export prices from Latin America. The Commission argued[21] that there was insufficient evidence that the Benchmark was affected by China's influence to such an extent that the Latin FOB price was not appropriate. In addition, in its submissions, the Commission annexed a copy of its Reinvestigation Report 361 in relation to Rod in Coils from China. This Reinvestigation Report noted[22] that a number of domestic markets were affected by trade remedy, safeguard and other non-tariff measures which affected competitive conditions and asserted the selection of a benchmark based on domestic prices would be problematic.

49 I am satisfied that the Benchmark adopted by the Commission was an appropriate one in the circumstances.

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[19] At page 26.
[20] Ground 1.
[21] At 29 of the Report.
[22] At 4.3.1.2.1 (p11).

Xingcheng

Related party transactions

50 Xingcheng exported a total of [redacted] tonnes of grinding balls to Australia during the investigation period. Of that amount, [redacted] tonnes were sold to CITIC Pacific Mining Management Pty Ltd ("CITIC") in two separate sales. It was not disputed that CITIC was a related party of Xingcheng.

51 In determining the export price, the Commission did not use the actual price booked by Xingcheng for the CITIC sales because it considered that those transactions were not arms length transactions. Apart from the relationship between Xingcheng and CITIC, the price for the CITIC transactions was significantly higher than the price for other sales by Xingcheng, even though the quantity of balls sold to CITIC was larger than Xingcheng's other sales.

52 The Commission determined price having regard to s269TAB(3), which provides that if there is no sufficient information to determine the export price under previous provisions, then the Minister may determine the export price having regard to all relevant information. Rather than using the CITIC prices, the Commission used an export sale by Xingcheng to a different party ("the third party"), and adjusted the price to account for changes to the Benchmark in the period between the third-party sale and the CITIC sales.

53 First, Xingcheng contended that it had not been given a reasonable opportunity to put material before the Commission about the nature of the transaction between it and CITIC.

54 I do not accept this contention. Xingcheng was given an adequate opportunity to put material before the Commission about its dealing with CITIC. The Commission discussed Xingcheng's related party transactions in the SEF.[23] Following publication of the SEF, Xingcheng had 20 days to make submissions in response to the SEF,[24] which Xingcheng did.[25] The Commission altered its position in relation to some aspects of the SEF in response to Xingcheng's submission.[26] Relevantly,

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[23] At page 28.
[24] Section 269TEA(3)(a)((iv).
[25] EPR 316, 46.
[26] At page 35.

the Commission recalculated its adjustment to the price of the third party transaction to take into account the different timing of the two transactions more accurately.

55 Moreover, the Commission had foreshadowed, prior to publication of the SEF, the approach which it proposed to take about the related party transaction. In email correspondence with Xingcheng, the Commission indicated the approach it would take and specifically noted that Xingcheng had not provided documentation relevant to its dealings with CITIC.[27] Xingcheng responded to the Commission's email but the documentation sought was not provided in response to that email or as part of its submission in response to the SEF.

56 Second, Xingcheng contended that the sales to CITIC were the result of negotiation in which the relationship between the parties played no part. To support this contention, Xingcheng attached sales documentation about these transactions. The Commission pointed out that Exhibit 2 to Attachment B contained material that was not provided to the Commission during the course of the investigation. The sales documentation appears to fall into this category and, accordingly, I have not taken the sales documentation into account in making my determination pursuant to s 269ZZK.

57 Xingcheng provided information about differences in costs for the grinding bar it used to make the balls the subject of the third-party transaction and the costs of the grinding balls the subject of the CITIC's transactions. The Commission adopted the position that the price actually paid by Xingcheng was not relevant because Xingcheng's costs were to be determined by reference to the Benchmark, rather than the costs recorded in the producer's records. The Commission adjusted the price of the third-party transaction to take into account the change in the Benchmark associated with the difference in the dates of the third-party sales, and the CITIC sales. This is a reasonable approach.

58 Xingcheng also argued [28] that the Commission should not have made the adjustment discussed in the previous paragraph. It asserted that timing was not a factor in setting price, and that the product was not a seasonal one.

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[27] Email dated 30 May 2016 from the Commission to Jian Guan (Xingcheng application, Attachment B).
[28] In ground 10.2.

59 It is possible that this argument misunderstands the Commission's rationale for the adjustment. Xingcheng itself contended that it sets its price having regard to changes in the costs of production, which I understand to include the changes to the costs of raw materials. The Commission's adjustment was intended to account for the change in the (reasonably competitive market) costs of grinding bar between the two quarters, which, subject to Xingcheng's final contention, is in accordance with Xingcheng's position.

60 Finally, Xingcheng contended that the adjustment to the price of the CITIC sales should have been made by reference to Xingcheng's own booked costs. I consider that the Commission was entitled to use the Latin American benchmark in making an adjustment in favour of Xingcheng.

61 Xingcheng also argued[29] that the Commission ought to have used monthly prices, rather than quarterly prices to calculate the adjustment. I consider that the Commissioner's use of quarterly prices was reasonable.

Adjustment for internal transport

62 Xingcheng contended [30] that the Commission's approach to calculating the domestic inland transportation costs and domestic credit costs was wrong.

63 It appears that only one of Xingcheng's domestic customers required site delivery and so only that customer incurred domestic inland transportation costs. When calculating the normal value, the Commission took the approach of averaging the domestic transport costs, and then deducting that average cost from the average domestic sale price. This approach was in accordance with the Commission's usual practice in relation to such calculations. The Commission was entitled to adopt that approach, in my opinion. Given that the normal value is essentially an average value across Xingcheng's product, and given that the total domestic transport costs has been deducted from the total price, I do not see that the Commission's approach unfairly prejudices Xingcheng.

64 Xingcheng advanced a similar argument with credit costs. Only some purchasers incurred credit charges. Again, I do not consider that there has been any error.

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[29] In ground 10.5.
[30] At ground 10.6.

"Denominator was improper"

65 Xingcheng complained that the Commission used the export prices it had calculated after adjusting for the related party transactions when it was calculating the dumping margin, rather than the export prices which Xingcheng had booked. However, for the purpose of determining the export price under s 269TAB(3) is to subsequently use that figure, rather than the price recorded by the producer for the purpose of determining the dumping margin. This is what the Commission did.

Integrated operation

66 Xingcheng also argued[31] that the use of the Benchmark in respect of its normal value was inappropriate for the additional reason that its operation was vertically integrated. The benchmark includes a profit component, whereas the billets used by Xingcheng were produced internally. The Commission asserted that it could not be assumed that the benchmark included a profit component, given the state of the iron and steel market globally. It also appears artificial to proceed on the basis that the normal value of the goods produced by Xingcheng would not include some component of profit on that part of the overall costs of production, even if that grinding bar was produced in an integrated operation. I accept the approach of the Commission.

Longte

67 In addition to the issues that were common to other applicants, Longte argued that it was not appropriate for the Commission to substitute the Benchmark for grinding bar in respect of that period of time when the grinding bar used to produce grinding balls was supplied by Longte's parent company, Changshu Longteng Special Steel Co ("Longteng"), rather than on the Chinese domestic market. It argued that the relevant records for this period were its records in relation to the costs of the raw materials used by it to produce grinding bar, rather than the costs of grinding bar. It argued that findings about a market situation at "grinding bar level" did not warrant a conclusion that its records did not reflect market costs for the raw materials used to produce its own grinding bar.

[31] At ground 10.5.

68 This issue was reinvestigated by the Commission, as a result of a request which I made to it.

69 The reinvestigation stated that Longte adopted a weighted average inventory valuation methodology which did not enable costs of grinding bar manufactured by Longte to be separately identified. The Commission also indicated that the distortion of the market resulting from GOC influence had the effect that all levels of steel production was compromised. In the circumstances, the Commission's treatment of Longte's costs was reasonable.

70 Longte also contended that the Commission's calculation of the profit component of the normal value under s 269TAC(2)(c) was wrong.

71 Two separate, but related, issues were raised.

72 The Commission indicated that it had included a profit component based on:

> Longte's profit on domestic sales which met the original OCOT testing based on Longte's verified (non-substituted) CTMS. [32]

This profit component was added to the cost of production which had previously been ascertained using the Benchmark, which Longte referred to as surrogated costs and which I shall refer to as the substituted costs.

73 "OCOT" testing is an analysis carried out in accordance with s 269TAAD of the Act in order to determine whether particular transactions are transactions in the ordinary course of trade. It is carried out as part of the determination of the normal value under s 269TAC(1) of the Act. The OCOT test involves comparing the price paid for goods with the cost of goods worked out in accordance with Regulations 43 and 44. If goods are sold at less than the cost of goods, the loss-making transactions may be excluded from the pool of arms length transactions that form the basis of the determination of the normal value (subject to meeting other conditions in s 269TAAD).

74 The first issue raised by Longte was that the Commission should have made the profit calculation using an OCOT based on the substituted costs, rather than the non-substituted costs. Longte pointed out that the Commission used Regulation 43

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[32] Report at p33.

to determine the normal value under s 269TAC(2)(c) and that s 269TAAD also requires the use of Regulation 43 to determine costs for the purposes of the OCOT test. Longte also complained that the Commission has switched from using substituted to non-substituted costs, and back, to its detriment.

75 It is important to recall that the Commission was not actually carrying out an OCOT test. The OCOT test forms part of the determination of the normal value under s 269TAC(1), not the determination of the normal value under s 269TAC(2)(c) of the Act. Under s 269TAC(2)(c), sales on the domestic market are not used, whether they are arms length or not. The Commission was not required to use the cost calculated in accordance with Regulation 43 to determine profit.

76 In its submission, the Commission justified its approach to determining the amount of profit by referring to a discussion at pages 51 to 52 of the Australian Customs and Border Service Report 177. The approach described in that Report involves calculating a profit margin based on the non-substituted costs of the producer. It proceeds on the assumption that, if the market situation did not exist, exporters would achieve the same return on investment in percentage terms that they achieved under the market situation and that this profit margin should be applied to the (substituted) costs determined by the Commission. The assumption that the same profit margin would be achieved is a reasonable one and is consistent with the objective of determining a normal value which reflects arms length transactions in a competitive market. In determining the profit margin, or return on investment, which the producers achieved in reality, the Commission looked at whether goods were sold below the cost of production and applied the OCOT approach to arriving at that profit ratio. This approach reflects the process that would have been followed had the Commission not concluded that it was necessary to use the Benchmark to determine the costs of production or manufacture. I consider that this approach to determining the profit component of the normal value was reasonable.

77 Longte complained that the Commission used the substituted costs at some stage in the profit calculation and the non-substituted costs at other stages. The non-substituted costs were only used to arrive at a profit margin as part of the process outlined above and for the reason outlined above.

78 The second issue Longte identified was that the Minster was required by Regulation 45 to determine an amount of profit, whereas what it did was determine a profit ratio.

I do not accept this ground. The Commission did determine an amount of profit. However, the process by which it determined an amount of profit involved ascertaining a profit ratio as a preliminary step, then applying that ratio to the substituted cost of production to arrive at an amount of profit.

Sanfang

Scope of the investigation

79 Sanfang contended cast grinding balls and forged grinding balls were not "like goods", within the meaning of that expression in s 269T of the Act. It contended that this had the consequence that the Investigation ought not to have included both cast and forged grinding balls.[33]

80 It was not disputed that:

(a) Sanfang produced and exported grinding balls which were cast, not forged; and

(b) the Australian industry produced forged grinding balls, not cast ones.

81 Sanfang identified a number of differences between cast grinding balls and forged grinding balls. It contended that:

(a) the two types of grinding balls used different raw materials. Forged grinding balls use steel billet and cast grinding balls use scrap;

(b) the production methods are different. Cast grinding balls involve melting the scrap and then casting it. Forged grinding balls are forged or rolled. This requires the use of completely different technology;

(c) the chemical composition of the two are different. Most significantly, cast grinding balls having a chromium content that is greater than 18.0, while grinding balls have a chromium content that is between 0.5 and 0.2;

(d) because of these differences, cast grinding balls are harder than forged grinding balls and wear at a lower rate;

[33] Ground 10.2.

(e) the two products are used in different mining conditions. Cast grinding balls tend to be used for grinding smaller lumps of ore in smaller mills than forged grinding balls; and

(f) the two types of grinding balls do not compete on price.

Sanfang made similar made similar submissions to the Commission in response to the SEF.

82 An investigation is initiated under s 269TC of the Act. An application under s 269TB must be in Commission approved form. That form requires the applicant to describe the goods the subject of the application.

83 Sections 269TC(1), 269TC(2) and 269TC(3) require the Commissioner to reject an application if he is not satisfied of the matters identified in paragraphs (a), (b) and (c) of those subsections. Paragraph (b) of each of those subsections is directed to whether "there is, or is likely to be established an Australian industry in respect of like goods'. If the Commissioner is so satisfied, an investigation is initiated by publishing a notice in accordance with sections 269TC(4). The notice under s 269TC(4) requires the Commissioner to identify "the goods the subject of the application". If follows that, when initiating an investigation, the Commissioner is required to consider whether goods that are or might be produced by the Australian industry ("Australian goods") are "like" the goods identified in the application.

84 Section 269T(1) sets out the meaning of "like goods":

> ***like goods***, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

85 In the present case, the Australian industry's application identified two types of grinding balls, cast grinding balls and forged grinding balls. The Australian industry produced grinding balls which were identical to grinding balls described in the application, ie forged grinding balls. Thus, while it may be true that that there is no Australian industry in respect of cast grinding balls, that is not the matter which the Commission was required to consider. The question the Commission was required to consider was whether there was an Australian industry in respect of the goods the subject of the investigation ie "ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive)" or

goods like them. There was no dispute that there was an Australian industry producing goods falling within this description. The "goods under consideration" were identified by the Commission[34] in terms which reflected the application.

86 Sections 269TB and 269TC do not require the goods identified in an application to be "like" each other.

87 This approach to the scope of goods the subject of a single investigation under the Act is consistent with World Trade Organization ("WTO") decisions. In *Korea – Anti-dumping Duties on Imports of Certain Paper from Indonesia*[35], the WTO Panel considered dumping duties imposed on paper used in office printers and printing paper sold in large rolls and sheets to offset printers and publishers for commercial use. The Republic of Indonesia contended that the two types of paper should have been treated separately. The Panel referred to Article 2.6 of the Anti-dumping Agreement, which reads:

> "Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration." (emphasis added)[36]

88 The Panel said:

> We note that Article 2.6 takes "the product under consideration" as the starting point of the definition of "like product". It then stipulates that the like product is the product that is identical to the product under consideration, or one that has physical characteristics that closely resemble those of the product under consideration. The phrase "Throughout this Agreement" indicates that this definition applies to the definition of like product for both dumping and injury determinations in an anti-dumping investigation. Therefore, once the product under consideration is defined, the IA has to make sure that the product it is using in its injury determination is like the product under consideration. As long as that determination is made consistently with the parameters set out in Article 2.6, the IA' s like product definition will be WTO-consistent.

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[34] Section 3.3 of the Report.
[35] WT/DS312 (28 October 2005).
[36] By the Panel.

89 In the Report[37] the Commission considered Sanfang's submission that cast grinding balls should not be included in the goods under consideration. The Report said:

> The Commission acknowledges that both applicants and each of the cooperating exporters are manufacturers of forged grinding balls, rather than cast grinding balls. The Commission also acknowledged that there is some variation in production processes and chemical composition such that forged and cast grinding balls perform differently in end use applications. The Commission understands that cast and forged grinding balls are not used interchangeably, that is, cast grinding balls and forged grinding balls are not used in combination, however, evidence obtained during the investigation indicates that cast grinding balls and forged grinding balls are substitutable across a large range of end uses.
>
> …
>
> The Commission accepts that while some production and technical specification differences exist between cast grinding balls and forged grinding balls they are nonetheless functionally alike and therefore substitutable across a range of end uses.

90 At section 4.4 of the Report, the Commission also said:

> Forged steel balls are generally consumed at a higher rate than high chrome balls and importers typically set their resale prices into the market lower to compensate for the higher consumption rate that will most likely arise.
>
> The high chrome cast balls will typically result in a lower consumption rate than forged steel grinding balls, due to the more wear resistant microstructure of the product, however, the significant component of chromium in the product inflates the manufacturing costs and hence high chrome balls are more expensive.

91 There are obvious similarities between cast and forged grinding balls, as well as the differences. However, it appears that grinding balls come in a variety of sizes and both forged and cast grinding balls are manufactured in a variety of sizes and with a range of chemical compositions. The selection of a particular type and model of grinding ball is a matter, to some extent, of trial and error. Different specification grinding balls may be more or less suitable for any application. There are also applications in which either cast or forged grinding balls may be suitable. Indeed, it appears that CITIC was exploring its options in this regard during the investigation period. This suggests that cast and forged grinding balls are part of a continuum of grinding balls.

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[37] At section 3.9.

92 Sanfang contended that the two types of grinding ball did not compete on price. It is more accurate to say that price was a component in the competition between the two types of grinding balls. Overall cost, quality and reliability would have been other factors. This does not mean that if an importer of cast grinding balls substantially reduced the price of its grinding balls there would be no pressure on an Australian manufacturer of forged grinding balls to reduce the price of the forged grinding balls to remain cost completive overall.

93 I consider that it was appropriate to include both cast and forged grinding balls within the scope of the Investigation and as part of the goods under consideration.

Price undercutting

94 Sanfang argued[38] that there could be no price undercutting by cast grinding balls because the cast and forged goods did not compete directly on price. Although the Commission found that there was price undercutting as part of the analysis of material injury to the Australian industry, this was only one aspect of the overall inquiry into material injury. Further, the inquiry in relation to material injury is directed to the effect or likely effect of (all) the goods the subject of the investigation, not just some of the goods the subject of the investigation. Moreover, price was a component of the competition on cost between cast and forged grinding balls.

The "all other exporters" rate

95 Sanfang contended [39] that the Commission should have calculated the rate applicable to all other exporters having regard to the circumstances of producers of cast grinding balls, rather than just the circumstances of producers of forged grinding balls. In particular, the Commission should have considered the costs of production of cast grinding balls compared to the costs of forged grinding balls.

96 In its submission, the Commission pointed out the rate for "all other" exporters was calculated applying the statutory formula contained in s 269TACAB, and without the Minister having been provided with specific information about cast grinding ball production costs by exporters during the investigation period. I accept the Commission submissions on this point.

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[38] At ground 10.3.
[39] At ground 10.4.

Moly-Cop

97 Moly-Cop contended[40] that the Commissioner had not properly taken VAT into account and that Xingcheng's normal value ought to be increased by 12%. As I understand it, Moly-Cop argued that Xingcheng had conceded that the VAT free prices were not actual export prices and were really internal transfer prices. In its submission, the Commission indicated that sales were to a related intermediary and did not incur VAT, so that a VAT adjustment was not warranted.

98 I accept the approach of the Commission on this issue.

Conclusion

99 For the reasons given above, I recommend that the Reviewable Decisions should be affirmed.

[40] Ground 10.2