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Australian Government
Department of Industry,
Innovation and Science

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**REINVESTIGATION OF CERTAIN FINDINGS OF
REPORT NO. 316**

**REINVESTIGATION REPORT NO. 388
GRINDING BALLS
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

March 2017

Reinvestigation 388 - Grinding Balls from China

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADRP	Anti-Dumping Review Panel
ADRP Report 39	ADRP Report No. 39 Steel Reinforcing Bar exported from the People's Republic of China
ADRP Report 40	ADRP Report No. 40 Steel Rod in Coils exported to Australia from the People's Republic of China
China	The People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make/produce or cost of production
CTMS	Cost to make and sell
<i>Dalian</i>	<i>Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs</i> [2015] FCA885 (21 August 2015)
GAAP	Generally accepted accounting principles
GOC	Government of China
Goldpro	Hebei Goldpro New Materials Co., Ltd
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Inv 300	Investigation 300 – Steel Reinforcing Bar exported from the People's Republic of China
Inv 301	Investigation 301 – Steel Rod in Coils exported from the People's Republic of China
Inv 316	Investigation 316 – Grinding Balls exported from the People's Republic of China
the like goods	like goods to the goods subject of the application
Longte	Changshu Longte Grinding Ball Co., Ltd (the applicant)
Longteng	Changshu Longteng Special Steel Co., Ltd (the parent company of the applicant)
the Manual	<i>The Dumping and Subsidy Manual</i> , November 2015
<i>Panasia</i>	<i>Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth</i> [2013] FCA 870 (30 August 2013)
Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 316	Report no. 316 regarding Inv 316
Xingcheng	Jiangsu CP Xingcheng Special Steel Co., Ltd
Yute	Jiangsu Yute Grinding International Co., Ltd

1 INTRODUCTION AND FINDINGS

1.1 Introduction

This report provides the results of the reinvestigation of certain findings in Report No. 316 (REP 316) in respect of Grinding Balls exported to Australia from the People's Republic of China (China).

As required by the Anti-Dumping Review Panel (the ADRP), the Commissioner of the Anti-Dumping Commission (the Commissioner) has reinvestigated four specific questions that were contained in paragraph 4 of the letter sent from ADRP Panel Member, Scott Ellis to the Commissioner on 22 December 2016.

The four questions that are subject to reinvestigation are listed below:

- Part (a): What were Longte's records of the cost of production or manufacture of like goods, in so far as the like goods were produced or manufactured using grinding bar produced or manufactured by Longteng?
- Part (b): To what extent did Longte's records of the costs of production or manufacture of grinding balls from grinding bar manufactured or produced by Longteng reasonably reflect competitive market costs associated with the production of grinding bar or like goods?
- Part (c): Is it appropriate to make any (and if so, what) adjustment to Longte's cost to manufacture or produce like goods, as calculated in Report 316 using a Latin American billet benchmark, having regard to any differential in the cost of manufacture or production of grinding bar between:
 - (i) Grinding bar produced or manufactured by Longteng (and used by Longte); and
 - (ii) Grinding bar acquired by Longte from third parties?
- Part (d): What is the impact of the outcome in relation to the previous three issues on the margin calculation for Longte and the imposition of dumping duties?

As a result of the reinvestigation findings, the Commissioner recommends that the dumping margin calculated for Longte in Investigation 316 (Inv 316) remain unchanged.

2 BACKGROUND

2.1 Investigation 316

On 1 September 2016, following Inv 316, the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) accepted the findings in REP 316 and published a dumping duty notice and countervailing duty notice in relation to Grinding Balls exported to Australia from China.

The findings set out in REP 316 included that:

- grinding balls had been exported from China at dumped and subsidised prices;
- there was an Australian industry producing like goods that experienced material injury; and
- the dumped and subsidised goods caused material injury to the Australian industry.

2.2 Dumping and Countervailing Findings

Four exporters cooperated with the investigation:

- Changshu Longte Grinding Ball Co., Ltd (Longte);
- Jiangsu CP Xingcheng Special Steel Co., Ltd (Xingcheng);
- Hebei Goldpro New Materials Co., Ltd (Goldpro); and
- Jiangsu Yute Grinding International Co., Ltd (Yute).

The Commission undertook verification visits of Longte and Xingcheng. Although Goldpro and Yute were not visited, the Commission analysed the data submitted by each company and was satisfied that the data was accurate, relevant and complete. This data was used to calculate dumping and subsidy margins.

2.2.1 Dumping Finding

The Commission found during the investigation period (1 October 2014 – 30 September 2015) that:

- all four cooperating exporters exported grinding balls to Australia at dumped prices; and
- the volume of dumped goods was not negligible.

Table 2 summarises the Commissioner's assessment of dumping margins as indicated in REP 316.

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Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	3.0%
Hebei Goldpro New Material Technology Co., Ltd	51.5%
Jiangsu CP Xingcheng Special Steel Co., Ltd	20.6%
Jiangsu Yute Grinding International Co., Ltd	43.3%
<i>Uncooperative and All Other Exporters</i>	95.4%

Table 2 REP 316 dumping margins

2.2.2 Countervailing finding

The Commission found during the investigation period that:

- two of the four cooperative exporters exported grinding balls to Australia from China at subsidised prices; and
- the volume of subsidised goods was not negligible.

Table 3 summarises the Commissioner’s assessment of subsidy margins as indicated in REP 316.

Exporter / manufacturer	Subsidy margin
Changshu Longte Grinding Ball Co., Ltd	0.2%
Hebei Goldpro New Material Technology Co., Ltd	0.0%
Jiangsu CP Xingcheng Special Steel Co., Ltd	0.7%
Jiangsu Yute Grinding International Co., Ltd	0.0%
<i>Uncooperative and All Other Exporters</i>	8.2%

Table 3: REP 316 Subsidy margins

3 ADRP REVIEW

3.1 Legislative framework

Division 9 of the Act sets out the procedures for review, by the ADRP, of certain decisions by the Minister or the Commissioner.

In relation to decisions by the Minister, a person who is an interested party¹ may apply for review by the ADRP of a reviewable decision.² If an application for review is not rejected, the ADRP must make a report to the Minister on the application by recommending that the Minister:

- affirm the reviewable decision; or
- revoke the reviewable decision and substitute a specified new decision.³

Before making a recommendation to the Minister, the ADRP may, by written notice, require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified period.⁴

The Commissioner must conduct a reinvestigation as required by the ADRP and give the ADRP a report of the reinvestigation concerning the finding or findings.⁵ The report must:

- if the Commissioner is of the view that the finding or any of the findings the subject of reinvestigation should be affirmed, affirm the finding or findings; and
- set out any new finding or findings that the Commissioner made as a result of the reinvestigation; and
- set out the evidence or other material on which the new finding or findings are based; and
- set out the reasons for the Commissioner's decision.⁶

3.2 Review and reinvestigation

Applications to the ADRP for a review of the decision made by the then Parliamentary Secretary on 1 September 2016 following Investigation 316 were made by:

- Anhui Sanfang New Material Technology Co. Ltd ("Sanfang") on 3 October 2016;
- Xingcheng on 5 October 2016;
- Longte on 10 October 2016; and

¹ As defined in section 269ZX.

² Decisions of the Minister that are reviewable decisions are set out in subsection 269ZZA(1).

³ Under subsection 269ZZK(1).

⁴ Under subsection 269ZZL(1).

⁵ Under subsection 269ZZL(2).

⁶ Subsection 269ZZL(3).

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- Commonwealth Steel Company Pty Ltd (trading as Moly-Cop Mining Consumables – Waratah Steel Mill) on 10 October 2016.

On 31 October 2016, the ADRP published a notice under subsection 269ZZI(1) indicating its intention to conduct a review.

On 22 December 2016, the ADRP, in conducting its review, wrote to the Commissioner requiring the Commissioner to reinvestigate specific findings that formed the basis of the reviewable decision.

The specific findings the Commissioner has reinvestigated as required by the ADRP, and any new findings that the Commissioner has made as a result of the reinvestigation, are set out in this report.

4 REINVESTIGATION

4.1 Part (a)

What were Longte's records of the cost of production or manufacture of like goods, in so far as the like goods were produced or manufactured using grinding bar produced or manufactured by Longteng?⁷

4.1.1 Findings regarding part (a)

The company did not provide, in the response to the exporter questionnaire or during the verification visit, any specific cost of production records relating to the cost of production of like goods (grinding balls) produced using grinding bar manufactured by Longteng. Longte advised that their records for the cost of production of grinding balls was based on the weighted average grinding bar costs calculated using the purchase price Longte paid all of its suppliers of grinding bar (including, but not separately identifying in its costs, Longteng).

As advised by Longte, due to the nature of the weighted average inventory valuation accounting methodology used by Longte, it was not able to separately identify the cost of production of grinding balls using Longteng's grinding bar from those grinding balls produced using grinding bar purchased from other suppliers⁸.

However, to fully address the question asked by the ADRP, the Commission has provided further information detailing:

- the nature of the information provided by Longte during Inv 316;
- the enquiries made by the Commission regarding Longte's recording system and Longte's ability to separate the cost of production of grinding balls produced using Longteng's grinding bar from other grinding balls; and
- whether or not the information provided could reasonably have been used to calculate a separate cost of production for grinding balls produced from grinding bars produced by Longteng.

4.1.1.1 The nature of the information provided by Longte during Inv 316

During Inv 316, Longte provided three sets of data relevant to the question asked in part (a):

1. The cost of production for grinding balls produced by Longte where Longte is responsible for the production of grinding balls using grinding bar as its main raw material (**Confidential Attachment 1**);
2. A list of Longte's grinding bar purchases by supplier (**Confidential Attachment 2**); and

⁷ This question was noted in paragraph 4(a) of the ADRP's request for reinvestigation sent to the Commissioner on 22 December 2016.

⁸ In the Commission's experience, it is common that manufacturing companies producing goods that require several stages of production are not able to easily trace the costs of production in a detailed manner across the different stages of production.

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3. Longteng's records of the cost of production of grinding bar from the raw material level (**Confidential Attachment 3**).

4.1.1.1.1 **Commentary on Confidential Attachment 1**

Tab 2 of **Confidential Attachment 1** provides Longte's cost of production (CTM) data for grinding balls produced by Longte during the investigation period showing a summary of the cost and quantity produced for each month of the investigation period for each type of grinding ball produced.

Regarding the data provided, it is important to note the following details:

- The grinding bar "costs" reflected in this data are the total costs incurred by Longte calculated using the purchase price of the grinding bars used in production. This cost does not differentiate between those bars purchased from Longteng and those purchased from other unrelated suppliers. In the case of grinding bar purchased from Longteng, the 'cost' of the grinding bar would have been calculated using the 'purchase price' recorded when Longte transferred the grinding bar from its related party. Importantly, this figure does not reflect Longteng's actual cost of production of grinding bar.
- The terms "self-produce" and "outsourcing process" in the production method column, refer to whether or not the grinding balls were produced onsite in Longte's production facilities, or whether the grinding ball production was outsourced to other grinding ball manufacturers using grinding bar owned by Longte. This is not a reference to the source of the grinding bar nor whether it was sourced from Longte's related party, Longteng.
- The product quantity column refers to the total amount of grinding balls of each type produced during each month. It does not relate to the amount of input materials used.
- Longte's grinding balls CTM does not include any information regarding the quantity, model/type or supplier of the grinding bar (or other inputs) used in the production. The only information available regarding any of the inputs is a total cost for the month for each type of grinding ball produced.
- Because a large number of different models of grinding bar were used in the production of a large number of models of grinding balls and the unit cost of the different models of grinding bar used in different models of grinding ball varies considerably, the quantity and/or unit cost of grinding bar cannot be derived from the total costs listed.
- As there is no information regarding the quantity of grinding bar used in the process of producing grinding balls, grinding bar purchased by Longte cannot be reconciled to grinding bar consumed by Longte in producing grinding balls.
- There is also no information available regarding the timing of the purchase of the grinding bar compared to when the grinding bar is consumed in the production of grinding balls.

4.1.1.1.2 **Commentary on Confidential Attachment 2**

Confidential Attachment 2 provides a list of Longte's purchases of grinding bar for the investigation period and the three months prior.

Regarding the data provided, it is important to note the following details:

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- While the data on Tab 1 shows the supplier of the grinding bar, purchase date, purchase quantity, purchase cost and the type of bar purchased, the data does not show how or when these grinding bars were used after they were purchased.
- Tab 3 and Tab 4 shows the quantities of grinding bar purchased from Longteng compared to that purchased from unrelated suppliers. It is important to note that there was no period of time in which Longte was not purchasing grinding bar on the market.

4.1.1.1.3 Commentary on Confidential Attachment 3

Confidential Attachment 3 provides Longteng's CTM for grinding bar for the second six months of the investigation period.

Regarding the data provided, it is important to note the following details:

- Longteng's grinding bar CTM has only been provided for the second six months of the investigation period.
- While Tab 2 provides the detailed CTM for steel billet broken down by the model of billet produced, the CTM for grinding bar, liquid iron, pig iron and sinter are provided as single model summaries of costs.
- Each of the CTM's only provides one quantity amount, i.e. the amount of product produced through the process in each month. However, because there is no information as to the quantity of each input used at each stage, there is no meaningful way to trace the inputs consumed to the outputs produced at each stage of the CTM chain.
- Longteng's overall CTM for grinding bar showed that it produced more grinding bar than Longte purchased, but there is no information provided as to how this data could be filtered so that it only represents the CTM for grinding bar sold to Longte.

4.1.1.2 Enquiries made by the Commission during Inv 316

The source documents provided by Longte during the investigation did not enable the ability to trace the specific types of grinding bars purchased during the period through to the grinding bar used in production of grinding balls during the investigation period.

The Commission conducted an analysis of Longte's inventory system in order to make this assessment. **Confidential Attachment 4** shows some of the documents collected during the onsite verification which demonstrate how Longte's inventory is recorded in its accounting system.

Tab 1 of Confidential Attachment 4 is Longte's Material Purchases Sub ledger (MPS) and this has been separated into the debit and the credit side of the MPS on Tabs 2 and 3. From examining the debit side of the MPS, it can be seen that as a material is purchased from a supplier, the broad material type (e.g. round bar), the supplier and the purchase price are recorded against a voucher number. On the credit side, the MPS is reduced and the goods are recorded against one of Longte's warehouses against a different voucher number. However, there is no information that links the supplier of the raw material to the way that the raw material is used in production.

Tab 5 is Longte's stock list. In this list, you can see the type of raw material in stock, when the raw material enters and leaves stock but the supplier of the stock or the finished goods that the stock eventually becomes cannot be seen.

Following an examination of each piece of information provided by Longte in relation to inventory movements, the Commission determined that it was not possible to trace which grinding bars were used to produce which grinding balls.

4.1.1.3 Can the information available be used to estimate Longte's cost of production of grinding balls made from grinding bar produced by Longteng?

The Commission considers that the information available is insufficient to calculate a reasonably reliable cost of production for grinding balls produced solely from that grinding bar produced by Longteng.

The main impediment to using the data available to calculate a separate cost of production for grinding balls produced from Longteng's grinding bar is that the data contained in confidential attachments 1, 2, and 3 is unable to be reliably linked. For example, in order to calculate a reasonably accurate CTM for grinding balls produced from Longteng's grinding bar, the Commission would need to link the grinding ball costs contained in the Confidential Attachment 1, to the grinding bar purchase data contained in Confidential Attachment 2. This exercise cannot be undertaken with any reliability without a sound understanding of the timing differences between the purchase of grinding bar and production of grinding balls and the quantity of each type of grinding bar needed to produce each type of grinding ball. The Commission would then also need to link Longte's grinding bar purchase data to Longteng's grinding bar CTM data. Again, the Commission would need to understand the timing differences between Longteng producing the grinding bar and Longte using the grinding bar in production. The Commission would also need to know Longteng's CTM for the various types of grinding bar used in Longte's manufacture of grinding balls.

As such, the Commission does not consider it is able to determine Longte's costs of production of grinding balls using grinding bar produced by Longteng.

4.2 Part (b)

To what extent did Longte's records of the costs of production or manufacture of grinding balls from grinding bar manufactured or produced by Longteng reasonably reflect competitive market costs associated with the production of grinding bar or like goods?

4.2.1 Findings regarding part (b)⁹

In answering this question, the Commission has provided two parts to the response.

Firstly, in directly interpreting the question as provided by the ADRP in its request for reinvestigation letter of 22 December 2016, the Commission has understood that the ADRP seeks for the Commission to conduct the competitive market costs assessment referred to in the *Customs (International Obligations) Regulation 2015* (the Regulation), subsection 43(2)(ii) on the costs of production requested in part (a).

⁹ This question was noted in paragraph 4(b) of the ADRP's request for reinvestigation sent to the Commissioner on 22 December 2016.

However, as explained in the response to part (a), the Commission found that Longte did not keep a record of the cost of production of grinding balls from grinding bar manufactured by Longteng separately from those manufactured by other suppliers of grinding bar, and therefore the Commission is not in a position to comment on whether records of that nature would have reasonably reflected competitive market costs associated with the production of grinding bar had they been kept.

Further, the Commission is of the view that GOC influence in the steel industry has caused price distortions in all levels of steel production and, based on this view, the production of grinding bar by Longteng and any subsequent purchase of that grinding bar by Longte would have been subjected to these same distortions and reflected in the grinding bar selling price to Longte.

Further, in conducting this reinvestigation, the Commission considered whether the grinding bar purchase price between Longte and Longteng was reflective of Longteng's CTM grinding bar, refer to Tab 2 of **Confidential Attachment 2**. The Commission compared Longteng's reported weighted average CTM for grinding bar to the transfer prices paid by Longte in each month and found that Longteng's CTM was in some months higher than the transfer prices and in some months lower than the transfer prices. From this analysis the Commission concluded that the transfer price of grinding bar between Longte and Longteng was not reflective of Longteng's grinding bar CTM, but was matched against the average purchase price of grinding bar from other suppliers for the period. This conclusion is also consistent with the information provided by Longte during the verification visit. As such, the Commission considers the approach taken in Inv 316 of conducting the competitive market costs assessment on Longte's total cost to produce grinding balls, without separating out the source of the grinding bar, to be reasonable.

Secondly, on 7 February 2017, the Commission attended a conference with the ADRP member to clarify the scope of this question. In doing so, the ADRP member indicated that in receiving a response to this part, he wished for the Commission to address the claims made in Longte's second ground for appeal.

Sections 4.2.1.1 to 4.2.2 of this report address the ADRP member's conference request by providing:

- Longte's grounds of appeal,
- The Commission's methods and findings in Inv 316,
- Analysis of past cases which address the issue raised in Longte's grounds of appeal, and
- The Commission's view in response to Longte's grounds of appeal.

4.2.1.1 Longte's argument in their second appeal ground

Longte set out its argument in their second ground of appeal in two parts.

Firstly, Longte stated that the Minister erred in determining that Longte's grinding bar cost did not "reasonably reflect competitive market costs", stating that it believed that the sole basis for the Minister's finding was that Longte's grinding bar cost was different to the "competitive grinding bar benchmark" that was constructed using Latin American prices

for steel billet and European prices for ferroalloy¹⁰. In doing so, Longte submitted that the Commission did “not address the assessment and determination required by Regulation 43(2) of the Regulation and Section 269TAC(2)(c) of the Act”¹¹.

Secondly, Longte argued that the Commission could not properly determine that “Longte’s grinding bar costs do not reasonably reflect competitive market costs unless it determines that each of the costs concerned are of that nature”. Longte argued that because it manufactured its own grinding bar for part of the period of investigation, from basic elements of iron ore, coke, coking coal to the manufacture of the finished grinding ball product, it does not have a “cost” of purchasing grinding bar in its financial records for that part of the investigation period, noting that if there is no purchase price for grinding bar, then there can be no determination made as to whether the cost for that input reasonably or unreasonably reflected competitive market costs.

4.2.1.2 Commission’s methods used and findings of Inv 316

As discussed previously, Longte kept a record of the costs of production of grinding ball based on the weighted average cost of grinding bar from all suppliers.

4.2.1.2.1 Longte’s costs

During the verification visit, Longte’s purchase costs of grinding bar, as well as the cost to convert grinding bar into grinding ball, were examined and tested by the Commission and found to be a complete, accurate and reliable record of Longte’s costs of production.

Noting that Longteng was a related party to Longte, during the onsite verification visit to Longte, the Commission conducted specific testing of the grinding bar purchase price between Longte and Longteng in order to determine whether or not the purchase price was a reasonably reliable and accurate purchase price. Tab 2 of **Confidential Attachment 2**, contains a summary of weighted average purchase prices of grinding bar purchased from Longteng in addition to grinding bar purchased from unrelated suppliers. This summary shows the comparison between these prices. The verification team determined that the price between Longteng and Longte was consistent and within a reasonable margin of the prices of other suppliers and therefore concluded that Longteng’s prices were reasonable and did not require adjustment or further analysis.

4.2.1.2.2 Competitive market costs test

In the Final Report for Inv 316, the Commission’s approach to determining whether Longte’s records of cost of production reflect competitive markets costs was outlined on page 24 – 25 and stated as:

“Neither the Act nor the Regulations prescribe a method for assessing whether an exporter’s records reasonably reflect competitive market costs associated with the production or manufacture of like goods. Generally, when undertaking this assessment, the Commission may examine whether the GOC influenced the price of any major cost inputs.

As discussed in Appendix 2, the Commission considers that the significant influence of the GOC has distorted prices in the iron and steel industry and grinding balls market in China. As the GOC did not respond to the Commission’s invitation to comment on this investigation, the Commission

¹⁰ Page 16 of Attachment B of Longte’s application to the ADRP.

¹¹ Page 19 of Attachment B of Longte’s application to the ADRP.

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was not able to rely on GOC data to quantify the impacts of GOC distortion on exporters' cost inputs. As a result, in this instance, the Commission has quantified the effects of GOC influence by comparing each exporter's cost of production with a benchmark.¹²

Further on page 28 of the same report, the Commission further explained that:

"As detailed above, the Commission considers that the significant influence of the GOC has distorted prices in the iron and steel industry and grinding balls market in China. The Commission further considers that various plans, policies and taxation regimes have also distorted the prices of production inputs including (but not limited to) raw materials used to make grinding balls in China and render those costs unsuitable for CTMS calculations.

The Commission compared each of the cooperating exporters' actual cost to manufacture or purchase grinding bar with the competitive market cost benchmark. This comparison at the grinding bar level supports the Commission's view that direct and indirect influences of the GOC affect Chinese manufacturers' costs of grinding bar. The Commission is also mindful that grinding bar comprises a significant proportion of the total CTMS for grinding balls and an adjustment to the costs at grinding bar level enables the Commission to account for the influences from the GOC on the predominant input costs (apart from the cost of conversion of grinding bar to grinding balls and cost of selling) that would otherwise not be accounted for."

In summary, in Inv 316, the Commission concluded that Longte's records of the cost of production of grinding balls from grinding bar did not reflect competitive market costs associated with the production of grinding balls because the significant influence of the GOC had distorted prices in the iron and steel industry. The approach taken in analysing the grinding balls market was consistent with other similar cases of upstream steel products where it was considered that the GOC influence is most pronounced.

4.2.1.3 Findings of previous cases

4.2.1.3.1 Federal Court - Panasia

In the 2013 Federal Court Case of *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth*¹³ (Panasia case), the court dealt with a similar issue. In this case, the Court considered whether the approach of the then Customs and Border Protection in conducting the competitive market costs tests required under the then Regulation 180(2) of the *Customs Regulations 1926*¹⁴ was appropriate. The then Customs and Border Protection "identified a distorting influence stemming from the Chinese government's intervention in the domestic aluminium market on the price of primary aluminium" used in the production of aluminium extrusions and thus concluded that "the cost of primary aluminium reflected in the records of the exporters does not reasonably reflect competitive market costs".

In this case, it was concluded that the "cost of purchasing primary aluminium is a cost that is associated with the manufacture of aluminium extrusions" as required by the regulation. Further, it was found that it was open to the then CEO of Customs and Border Protection to conclude that the cost of primary aluminium did not reasonably reflect "competitive market costs" in the circumstances found to exist. The Court noted that the circumstances

¹² Page 24-25 of The Final Report for Inv 316

¹³ [2013] FCA 870 (30 August 2013)

¹⁴ The *Customs Regulation 1926* was replaced on 1 April 2015 by the *Customs (International Obligations) Regulation 2015*. The former regulation 180 is equivalent to the current section 43.

that were found to exist were that the “implementation of government policy may drive down particular costs associated with the manufacture or supply of goods such that the costs might not only reflect the ordinary effects of supply and demand but also reflect the impact of government policy aimed at increasing or reducing supply or demand”.

4.2.1.3.2 Federal Court - Dalian

In the 2015 Federal Court case of *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs*¹⁵, the Court concluded that the approach taken in the Panasia case was correct. The Court concluded that it was open for the then Customs to conclude that Dalian Steelforce’s records of cost of production of hollow structural sections (a steel product) did not reflect competitive market costs for similar reasons as outlined in the Panasia case and Customs had not misapplied the then regulation 180.

4.2.1.3.3 ADRP Review – Steel Reinforcing Bar exported from China

In the recent decision of the ADRP regarding Inv 300 into Steel Reinforcing Bar exported from China, handed down on 13 December 2016, one of the applicants for review raised similar grounds to the issue being explored in this reinvestigation.

In this review, a Chinese exporting company that was an integrated producer of steel reinforcing bar submitted that the Commission “did not properly consider the competitive market costs of the raw materials used in the manufacture of steel reinforcing bar¹⁶” by the exporting integrated producer. The exporter submitted that because it was an integrated manufacturer, it did not purchase steel billet¹⁷. The exporter claimed that “if there is no price, ..., then there can be no determination made as to whether the cost for that input reasonably or unreasonably reflected competitive market costs”¹⁸. Further, the exporter submitted that the Commission should focus on “the costs of the raw material in the exporter’s records so that it can make a determination about the alleged effects of the GOC influence on the prices of raw materials¹⁹” and claims that these raw materials should be those “where the substitution of a benchmark occurs, ..., rather than on a product it manufactures (steel billet) as part of the production process²⁰”.

The ADRP found that the exporter’s view that the “competitive market cost assessment must only be on the goods purchased by the manufacturer²¹” to be an incorrect view. The ADRP acknowledged that while a price comparison made at the level of costs actually purchased may be one method of assessing whether costs are competitive market costs, the approach taken by the Commission is also reasonable for an integrated producer.

Further, in relation to whether or not it was appropriate for the Commission to use steel billet as the point of comparison in relation to competitive market costs of the exporter’s records in the circumstances where the exporter was an integrated producer, the ADRP

¹⁵ [2015]FCA885 (21 August 2015)

¹⁶ ADRP Report No. 39 Steel Reinforcing Bar exported from the People’s Republic of China, para 66.

¹⁷ In this case, the Commission, after having concluded that the records of the cost of production of the exporters were not competitive market costs, determined a benchmark cost for steel billet and substituted costs at the steel billet level.

¹⁸ Hunan Valin Xiangtan Iron & Steel Co., Ltd application for review of Inv 300, page 12.

¹⁹ ADRP Report No. 39 Steel Reinforcing Bar exported from the People’s Republic of China, para 68.

²⁰ ADRP Report No. 39 Steel Reinforcing Bar exported from the People’s Republic of China, para 68.

²¹ ADRP Report No. 39 Steel Reinforcing Bar exported from the People’s Republic of China, para 77.

found the approach was reasonable for an integrated manufacturer in the circumstances where steel billet represents between 80% and 85% of the total cost of steel reinforcing bar cost²².

4.2.1.3.4 ADRP Review – Rod in Coils exported by China

In the recent decision of the ADRP regarding Inv 301 into rod in coils exported from China, handed down on 13 January 2017, two of the applicants for review raised similar grounds to the issue being explored in this reinvestigation. Both applicants were exporters who manufactured rod in coils through a fully integrated process.

The first exporter raised the same arguments as those raised in its application for review of Inv 300. The second exporter raised a similar but slightly different worded argument that “in order to ensure that only those cost elements found not to reasonably reflect costs associated with production or sale are adjusted or replaced, the investigating authority is compelled to examine and analyse each and every particular cost element²³”. It further argued that “it is not open to the investigating authority to circumvent or derogate from this requirement by examining a single cost element and then making a broad finding in respect of all costs²⁴”.

The ADRP rejected the arguments made by both applicants making note of the Commission’s findings in Inv 301, the submission made to the ADRP by the Commission and the Commission’s statement that the approach taken in Inv 301 was consistent with the Federal Court findings in *Panasia and Dalian*, as well as with the Commission practice as laid out in the *Dumping and Subsidy Manual*²⁵.

4.2.1.4 The Commission’s response to Longte’s second appeal ground

4.2.1.4.1 First part of Longte’s second ground of appeal

In relation to the first part of Longte’s second ground of appeal, i.e. that the Commission did not address the “competitive market costs” assessment under subsection 43(2) of the Regulation, the Commission refers to section 4.2.1.2 of this report and notes that the Commission’s consideration of the competitive market costs test in Inv 316 was explained.

Specifically, the Commission found:

- The significant influence of the GOC had distorted prices in the iron and steel industry and the grinding balls market in China;
- Various plans, policies and taxation regimes had distorted prices of production inputs (including but not limited to) raw materials used to make grinding balls and rendered the costs unsuitable for use in for CTMS calculations;
- The GOC did not respond to the Commission’s invitation to comment on this investigation, and so the Commission was not able to rely on GOC data to quantify the impacts of GOC distortion on exporters’ cost inputs;

²² ADRP Report No. 39 Steel Reinforcing Bar exported from the People’s Republic of China, para 79.

²³ ADRP Report No 40 Steel Rod in Coils exported to Australia from People’s Republic of China, para 47.

²⁴ ADRP Report No 40 Steel Rod in Coils exported to Australia from People’s Republic of China, para 47.

²⁵ Anti-Dumping Commission, November 2015, *The Dumping and Subsidy Manual November 2015* page 44.

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- Due to the lack of data provided by the GOC, the Commission undertook to quantify the effects of the GOC distortion on the market by comparing each of the cooperating exporters' actual cost to manufacture or purchase grinding bar with the competitive market cost benchmark,
- The comparison at the grinding bar level supported the Commission's view that direct and indirect influences of the GOC affected Chinese manufacturers' costs of grinding bar;
- The Commission also noted that grinding bar comprised a significant proportion of the total CTMS for grinding balls (approximately 85% - refer to Tab 2 of **Confidential Attachment 1**) and an adjustment to the costs at grinding bar level enabled the Commission to account for the influences from the GOC on the predominant input costs (apart from the cost of conversion of grinding bar to grinding balls and cost of selling) that would otherwise not be accounted for; and
- The Commission produced an issues paper seeking the views of interested parties on its consideration of market situation and the use of a benchmark in quantifying competitive market costs.

Further, the approach taken in Inv 316 was consistent with the approaches taken in previous cases, as outlined in section 4.2.1.3 of this report, and those approaches have consistently been upheld by both the Federal Court and the ADRP as a reasonable way to conduct the competitive market costs assessment under section 43 of the Regulation.

As such, in conducting the reinvestigation, the Commission is of the view that the methodology used in Inv 316 to make the competitive market costs assessment was reasonable and appropriate in the circumstance of the case.

4.2.1.4.2 Second part of Longte's second ground of appeal

In relation to the second part of Longte's second ground of appeal, the Commission makes two observations.

Firstly, Longte claims that it does not have purchase costs of grinding bar available for part of the investigation period, and due to this, the Commission should have conducted the competitive market costs assessment at the raw material elemental level of (iron ore, coke, coking coal, etc.) instead of at the bar level.

However, the Commission notes that the cost of grinding bar recorded in Longte's records was the purchase price paid for grinding bar paid by Longte, rather than Longteng's cost to produce grinding bar. Further, while Longte purchases some of the grinding bar used in the production of grinding balls from Longteng, more than 60% of the volume purchased in the investigation period is purchased from unrelated suppliers. Referring to Tab 1 and 3 of **Confidential Attachment 2**, it is clear that Longte made purchases of grinding bar in all months of the investigation period. While it is true that in a number of months of the investigation period, a portion of grinding bar purchases were made from Longteng, there was no part of the investigation period in which Longte purchased 100% of the grinding bar from Longteng.

Further, when Longte purchased grinding bar from Longteng, the cost of the grinding bar was transferred to Longte using a transfer price based on the market price of bar of the unrelated suppliers, rather than at the cost price to Longteng. The Commission tested this transfer price and found it to be reasonable, as per the discussion in section 4.2.1.2.1 of this report. Therefore, it is the Commission's view that there was accurate and reliable

information available as to the purchase price of grinding bar for all periods of the investigation.

Secondly, even if it had been the case for Longte that there was no purchase price information available for part of the investigation period, the Commission's approach of conducting the competitive market costs analysis at the level of an upstream raw material, (steel billet or grinding bar), is consistent with the Commission's approach in previous cases. Further, this approach is both explained in *The Dumping and Subsidy Manual* and has been upheld in previous ADRP decisions, as explained in section 4.2.1.3 of this report, even though exporters in the previous cases produced all of their upstream raw material and did not purchase any of it on the market.

4.2.2 The Commission's reinvestigation conclusion for Part (b)

As a result of this reinvestigation, the Commission concludes that Longte does not keep a record of a separate cost of production in relation to grinding balls made from grinding bar produced by Longteng.

However, as per the findings in Inv 316, the Commission considers that Longte's records of the cost of production of grinding balls do not reasonably reflect competitive market costs.

4.3 Part (c)

Is it appropriate to make any (and if so, what) adjustment to Longte's cost to manufacture or produce like goods, as calculated in Report 316 using Latin American billet benchmark, having regard to any differential in the cost of manufacture or production of grinding bar between:

- (i) Grinding bar produced or manufactured by Longteng (and used by Longte); and
- (ii) Grinding bar acquired by Longte from third parties?

4.3.1 Findings regarding part (c)²⁶

It is important to note at the outset in responding to this question that neither the Act nor the Regulation prescribes a method for calculating the cost of production of the like goods in a situation where it has been determined that the costs of production do not reflect competitive market costs. As such, there is limited guidance on how to determine a benchmark or what adjustments should be made to that benchmark to calculate the cost of production as determined by the Minister (or the Minister's delegate) for use in calculating a normal value using subsection 269TAC(2)(c) of the Act.

The Commission is of the view that while there may be more than one reasonable and appropriate method to calculate such a cost of production, the Commission has the discretion to determine the most appropriate method in each case²⁷. Therefore, in responding to the question posed in part (c), the Commission has not only considered

²⁶ This question was noted in paragraph 4(c) of the ADRP's request for reinvestigation sent to the Commissioner on 22 December 2016.

²⁷ The position that the Commission has discretion to determine the appropriate benchmark has been supported by the decision of the ADRP in ADRP Report No. 39 (Steel Reinforcing Bar), para 51.

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whether it is appropriate to make the adjustment suggested in part (c), but also whether or not the Commission would consider the method suggested in part (c) to be the most appropriate method considering all of the circumstances of the case.

In order to fully consider the question posed in part (c), the Commission has examined:

- the approach taken in recent similar cases (specifically Inv 300 and Inv 301);
- the approach taken in relation to Longte in Inv 316;
- the adjustment referred to in the question posed in part (c);
- the most appropriate method for calculating the cost of production for Longte using the benchmark; and
- whether it is possible to make an adjustment of the nature referred to in the question raised in part (c).

4.3.1.1 The approach taken in recent similar cases

During the reinvestigation, the Commission considered the approach in recent similar cases, focussing particularly on Inv 300 (Steel Reinforcing Bar) and Inv 301 (Steel Rod in Coils), because these cases have similar facts to Inv 316 and the issue of 'adjustments to the benchmark' was considered in recent reviews undertaken by the ADRP.

In both Inv 300 and Inv 301, the Commission calculated the benchmark using the Latin American FOB level steel billet export price minus the average profit for billet sales for a Chinese exporter in the same period realised for the sale of billets in the domestic market.

In Inv 300, the Commission explained its methodology as:

"For the purposes of calculating dumping margins, the Commission substituted the cooperating exporters' fully absorbed steel billet CTM values with the corresponding Latin American FOB level steel billet export price from Platts for the month minus an average rate of profit for billet sales the Chinese exporters realized for the sale of billets in their domestic market.²⁸"

In Inv 301, the Commission chose to take the same approach stating:

"The Commissioner considers it reasonable to deduct the verified average profit rate realised by Chinese exporters from sales of steel billets in order to calculate the competitive market costs for steel billets²⁹."

In both cases, the Commission considered it appropriate to make this adjustment because the Latin American FOB level steel billet export price from Platts is a "price level" benchmark, i.e. the benchmark represents the price at which steel billet is sold in the Latin American market. However, in both Inv 300 and Inv 301, all of the cooperating exporters were integrated producers of the goods, meaning that each of the exporters produced their own billet and did not purchase their billet on the Chinese market. As such, when each of the exporters calculated their cost to make the goods, the input cost for steel billet was a cost to make the billet rather than the cost to purchase the billet. The Commission therefore considered it appropriate to adjust the benchmark from a "price level" to a "cost level", using an appropriate adjustment, in order to ensure that the cost of

²⁸ REP 300 Page 24

²⁹ REP301, Page 18

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billet according to the exporters' records, and the cost of the billet calculated using the benchmark had been calculated at the same level.

This approach to adjusting the benchmark came under some scrutiny, with the issue being raised for review with the ADRP in each case. The ADRP held, for both cases, that the approach taken by the Commission was reasonable in the circumstances, having regard to the fact that all of the cooperating exporters were integrated producers who recorded the cost to produce billet in their records rather than the cost to purchase billet from other suppliers.

In the ADRP review of Inv 300, the Panel Member stated that:

"I have reviewed the information before the ADC and consider it reasonable to adjust the price to enable it to be suitable as a 'cost element' in the development of a cost to make rebar. I can find no limitation in the legislation which precludes this approach³⁰."

While in the ADRP review of Inv 301, the Panel Member in that case stated that:

"I consider it reasonable for the ADC to convert the price benchmark into a cost benchmark (since the exporters are vertically integrated and produce, not purchase, the billets, and the benchmark is a substitution for the billet 'costs' recorded in the exporters' CTMS³¹."

In the ADRP Review of Inv 301, the Panel Member also considered in detail whether using an amount of profit calculated using the profit realised on sales by a Chinese producer of billet was the most appropriate adjustment to make to a Latin American sourced benchmark price, but concluded:

"While it is not ideal to use the Chinese profit information, which is unrelated to the Latin American price index, I consider it to be the best and most reasonable option in the circumstances.³²"

4.3.1.2 The approach taken in relation to Longte in Inv 316

In relation to Longte in Inv 316, the Commission calculated the cost of production of grinding balls using a benchmark for the cost of grinding bar which was calculated using:

- the Latin American FOB level steel billet export price from Platts (a "price level" benchmark), **plus**
- an upwards adjustment for the additional cost of alloys added to the billet that is ultimately used to produce grinding bar and grinding balls, **plus**
- an upwards adjustment for the cost of converting steel billet to grinding bar.

This method was used because there was no reliable and publicly available benchmark available to determine market costs of grinding bar. However, as the billet cost used in calculating this benchmark is a "price level" billet cost, it is reasonable to consider that the benchmark grinding bar cost is also a "price level" grinding bar cost.

As discussed in previous sections of this report, Longte, in calculating its cost to produce grinding balls, used the cost of grinding bar recorded in its records. The cost of grinding

³⁰ ADRP Report No. 39 Steel Reinforcing Bar exported from the People's Republic of China, para 51.

³¹ ADRP Report No 40 Steel Rod in Coils exported to Australia from People's Republic of China, para 112.

³² ADRP Report No 40 Steel Rod in Coils exported to Australia from People's Republic of China, para 117.

bar recorded, was the cost to purchase grinding bar from suppliers (both related and unrelated). As such, both Longte's grinding bar cost recorded in its records and the benchmark were calculated using grinding bar at a "price level".

As explained in this section and section 4.3.1.1 of this report, in Inv 300 and 301, the Commission used a cost level benchmark to replace the cost level billet cost recorded by the exporters. During Inv 316, the Commission used a price level benchmark to replace a price level cost of grinding bar recorded in Longte's records. Given that the approach taken in Inv 316 ensured that the grinding bar benchmark was determined at the **same level** as the grinding bar cost recorded in Longte's cost of production of grinding balls, the Commission is of the view that the approach taken in Inv 316 is consistent with the approaches taken in Inv 300 and 301.

The Commission is therefore of the view that the approach taken in Inv 316 in regards to calculating Longte's cost to make grinding balls using the benchmark is reasonable and appropriate considering all of the circumstances of the case.

4.3.1.3 The adjustment according to the question posed in part (c)

In part (c), the ADRP member seeks the Commission's view on whether it is appropriate to make any adjustment to Longte's cost to produce grinding balls calculated using the Latin American billet benchmark, having regard to any differential in the cost of manufacture of grinding bar between grinding bar produced or manufactured by Longteng and grinding bar acquired from third parties.

Comparing the adjustment referred to in the question raised in part (c) with the approach taken in Inv 300, 301 and 316, the Commission has interpreted the question to be asking the Commission to consider whether it is appropriate to use a "cost level" benchmark in relation to the grinding balls produced using grinding bar produced by Longteng and a "price level" benchmark in relation to the grinding balls produced using grinding bar supplied by unrelated suppliers.

The Commission notes that while similarities can be drawn between the fully integrated exporters of the goods that cooperated with Inv 300 and 301 and Longte when it is using grinding bar produced by Longteng, it is necessary to note the differences in the way the CTM of the like goods was calculated. In the case of Longte, while Longteng is its parent company and the entities were treated as a single entity by the Commission, the two entities keep separate sets of records and Longteng's grinding bar cost was transferred to Longte at a market price for grinding bar, and not at the cost to produce grinding bar recorded in Longteng's records. Given that the costs of production of grinding balls in Longte's records use grinding bar at a "price level" and the benchmark is calculated at a "price level", the Commission is of the view that it is not necessary to make any further adjustments to the data provided.

The fact that the transfer price of grinding bar between Longteng and Longte is set at a market price rather than Longteng's cost to produce is evidenced by the fact that the transfer prices for grinding bar between Longte and Longteng closely align with the prices Longte paid to other suppliers of grinding bar during the period and do not closely align with Longteng's reported cost to manufacture grinding bar, as illustrated in Table 3 and Chart 3 on Tab 2 of **Confidential Attachment 2**. The chart illustrates that Longteng's CTM grinding bar is at times higher than the grinding bar transfer price between Longte and Longteng and is at times lower, while the transfer price is generally consistent with

the weighted average price Longte paid to other suppliers of grinding bar. Therefore, Longteng is sometimes making a profit on the 'sale' of grinding bar to Longte and is sometimes making a loss. In contrast, for Inv 300 and 301, the adjustment made to the benchmark, to bring it to a "cost level" benchmark rather than a "price level" benchmark, was calculated using the "profit" that one of the exporters made when it sold its billet on the Chinese market. As Longteng did not consistently make a profit on "sales" of grinding bar to Longte, any adjustment made could not be a simple downward adjustment to the benchmark to account for the "profit" as it was in Inv 300 and Inv 301.

Having considered the adjustment referred to in the question raised in part (c), the Commission considers that while it might be reasonable in some circumstances to make an adjustment of this nature, given Longte's original cost of production was calculated at a price level consistent with the benchmark used, the Commission considers that this approach would not be appropriate given the circumstances of this case.

4.3.1.4 The most appropriate method for calculating the cost of production for Longte using the benchmark

Noting the discussion contained in sections 4.3.1.2 and 4.3.1.3, the Commission considers that the most appropriate, correct and preferable method for calculating the cost of production for Longte using the benchmark, is the approach that was used in Inv 316 and does not consider that any change in the approach taken is necessary.

4.4 Part (d)³³

What is the impact of the outcome in relation to the previous three issues on the margin calculation for Longte and the imposition of dumping duties?

4.4.1 Findings regarding part (d)

4.4.1.1 Impact of findings made in part (a)

As the Commission concluded that there was no reasonable way to calculate a separate CTM for grinding balls produced by Longte solely from grinding bar supplied by Longteng, there is no impact of the findings of part (a) on the margin calculation for Longte and the imposition of dumping duties.

4.4.1.2 Impact of findings made in part (b)

As the Commission concluded that the records of Longte's cost of production of grinding balls did not reflect competitive market costs consistent with the approach taken in Inv 316, there is no impact of the findings of part (b) on the margin calculation for Longte and the imposition of dumping duties.

4.4.1.3 Impact of findings made in part (c)

As the Commission concluded that it is not appropriate to make an adjustment to Longte's cost to produce like goods, as calculated in Inv 316 using the Latin American billet benchmark, having regard to any differential in the cost of production of grinding bar between grinding bar produced by Longteng and grinding bar acquired by Longte from

³³ This question was noted in paragraph 4(d) of the ADRP's request for reinvestigation sent to the Commissioner on 22 December 2016.

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third parties, there is no impact of the findings of part (c) on the margin calculation for Longte and the imposition of dumping duties.

5 CONCLUSION

Based on the following evidence:

- Longte's verified CTMS data for grinding balls,
- Longte's verified grinding bar purchases data,
- Longteng's cost to make and sell grinding bar submitted as part of its response to the exporter questionnaire;
- Longte's inventory records;

and as a result of the reinvestigation of the finding in parts (a) to (c) of this report, the Commission does not recommend making any change to the dumping margin calculated for Longte in Inv 316.

6 ATTACHMENTS

Confidential Appendix 1	CTMS Grinding Balls
Confidential Appendix 2	Grinding Bar Purchases
Confidential Appendix 3	Longteng CTM for Grinding Bar
Confidential Appendix 4	Longte Inventory Records