



24 November 2021

Ms Jaclyn Fisher
Member
Anti-Dumping Review Panel
GPO Box 2013
Canberra City ACT 2601

Email: ADRP@industry.gov.au

Dear Member

ADRP Review Investigation No. 141 - Grinding balls exported from The People's Republic of China

I. Introduction

Molycop refers to the ADRP notice of 25 October 2021 commencing a review of a decision by the then Minister for Industry, Science and Technology ("the Minister") made under section 269ZHG(1) of the Customs Act 1901 (the Act) to secure the continuation of anti-dumping measures applying to Grinding Balls exported to Australia from the People's Republic of China (China) (the "Reviewable Decision").

Applications for review of the Reviewable Decision were made on behalf of:

- Jiangyin Xingcheng Magotteaux Steel Balls Co Ltd ("Xingcheng Magotteaux");
- Changshu Longte Grinding Ball Co., Ltd ("Changshu"); and
- Compania Electro Metalurgica S.A. ("ME Elecmetal").

The Reviewable Decision was published on the Anti-Dumping Commission ("ADC") website on 8 September 2021 (refer ADN 2021/95).

The Minister's reasons for not accepting the Commissioner's recommendations as contained in Report No. 569 ("Report 569") were published on 11 September 2021 (see Non-Confidential Attachment 1).

II. Applicants' grounds for review

The ADRP has identified the following grounds as reasonable grounds by the parties:

A. Xingcheng Magotteaux

1. The Minister erred in securing the continuation of the anti-dumping measures and countervailing measures applying to grinding balls exported from China.
2. The Minister erred in not determining fixed different variable factors in relation to Xingcheng Magotteaux, pursuant to subsection 269ZHG(4)(a)(ii) of the Act; and
3. The Minister erred in not substituting the unaccepted Commission benchmark with his preferred alternative benchmark, in determining individual ascertainable variable factors applicable to Xingcheng Magotteaux.



B. Changshu

1. The Minister erred in adopting the incorrect standard for determining whether measures should be continued;
2. The Minister erred in finding dumping 'likely' as this is not supported by evidence or law;
3. The Minister's critique of the benchmark is misconstrued; and
4. The Minister had no evidence or analysis to support the material injury finding.

C. ME Elecmetal

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2. The Minister erred in finding dumping 'likely' as this is not supported by evidence or law;
3. The Minister's critique of the benchmark is misconstrued; and
4. The Minister had no evidence or analysis to support the material injury finding.

Molycop has addressed the applicant's contentions below.

III. **Xingcheng Magotteaux**

- *Ground 1 – Minister erred in securing the continuation of the measures*

It is asserted on behalf of Xingcheng Magotteaux that the Minister has "erred" in securing the continuation of the measures by not accepting the Commissioner's recommendations as contained in Report 569.

Molycop agrees with Xingcheng Magotteaux's statement that the continued imposition of measures must be based on 'positive evidence'¹. The Xingcheng Magotteaux application then shifts to the matter of whether dumping and material injury is 'likely'.

The Minister continued the measures on the basis that he was not satisfied with the determination of normal values for exporters in China for grinding balls. Specifically, the Minister states²:

"I am not satisfied that the Commissioner's selection of benchmarks used in the assessment in REP 569 of whether the Chinese exporters were dumping were the appropriate benchmarks. I am not satisfied that the Commissioner's conclusions about dumping by Chinese exporters are correct."

Sub-section 269ZHG(1) of the Act states:

"After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must by notice published in accordance with sub-section (2):

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

The Reviewable Decision was published on the Anti-Dumping Commission website on 8 September 2021 (and complies with subsection 269ZHG(2)).

¹ Xingcheng Magotteaux application for review, P.9.

² Statement of Reasons – Continuation Inquiry No. 569, EPR Document No. 037, P.1.



The Minister did not err in deciding to reject the Commissioner's recommendations in Report 569. The decision was made in accordance with the provisions of subsection 269ZH(1) and was based upon the Minister's assessment of the Commissioner's recommendations in Report 569 and "*any other information*".

The Minister's Statement of Reasons confirms that "*After considering REP 569 I am not satisfied that there is evidence in support of not continuing the dumping and countervailing measures on the goods.*" The Statement of Reasons further details the additional information relied upon by the Minister in making his decision.

Xingcheng Magotteaux correctly identifies the Minister's discretion concerning the consideration of the Commissioner's recommendations in Report 569 and '*other relevant information*'. The Statement of Reasons published by the Minister details the reasons for not accepting the Commissioner's recommendations in Report 569 including that he "*was not satisfied that the Latin American benchmark is the most appropriate benchmark.*"

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

Molycop had provided detailed grinding bar pricing information in six countries across the investigation period in Invest 569³. The grinding bar pricing information is more relevant to a grinding bar price than steel billet pricing as it is "*closer in the production chain to the goods under consideration*" (i.e. grinding balls) as confirmed by the Minister and requires fewer adjustments to be made than the Commissioner's selected steel billet prices.

Based upon the information available to the ADC and the Minister, the Minister formed the view that "*the Commissioner **did not sufficiently analyse the accuracy of the Molycop submission or the issues raised in the Molycop submissions***" (emphasis added). Molycop concurs with the Minister's assessment. Molycop did not receive any inquiries from the ADC following the formal lodgement of its 7 June 2021 submission in response to SEF 569.

Molycop respectfully disagrees with Xingcheng Magotteaux's statement that "It is clear that the Commissioner undertook a detailed and thorough quantitative assessment in reaching the conclusions and findings outlined in REP 569". This was certainly not the case with the ADC refusing to examine the grinding bar prices as supplied by Molycop in preference to the original decision in Investigation 316 to use the Latin American steel billet pricing. The selection of a benchmark in the original investigation does not oblige the Commissioner (or the Minister) to maintain that benchmark in the absence of more reliable and accurate information.

Xingcheng Magotteaux further suggests that the Minister "*has merely hypothesised about the impact on dumping of relying upon an alternative benchmark*". The Minister has not hypothesised as is contended by Xingcheng Magotteaux but, rather, taken a considered view based upon the information available to him.

Xingcheng Magotteaux has not demonstrated that the Minister's decision was not the correct or preferable decision. The Minister has correctly considered the information available to the Commissioner and, having considered all of the relevant information, concluded that the benchmark selected by the Commissioner was not the correct benchmark for the intended purpose.

Therefore, the Minister's decision as reflected in the Reviewable Decision was the correct and preferable decision.

³ Refer Molycop submission in response to Statement of Essential Facts No. 569 (EPR Document 023).



- *Ground 2 – The Minister erred by not determining variable factors for Xingcheng Magotteaux*

Xingcheng Magotteaux argues that if the ADRP confirms that the minister's decision was the correct and preferable decision, the Minister "*has erred by disregarding verified information*" relevant to the determination of variable factors for Xingcheng Magotteaux.

The Reviewable Decision as published on 8 September 2021 notified that the Minister had "...*decided to secure the continuation of the anti-dumping measures set out in the dumping notice currently applying to the goods exported to Australia from China*". Therefore the notice that applied on 8 September 2021 (i.e. based upon the then Minister for Industry, Science and Technology's decision on 11 November 2020 – see and 2020/117 – continues to apply.

Xingcheng Magotteaux is aggrieved by the Minister's decision to continue the measures based upon the applicable variable factors determine in review of measures Investigation No. 520 ('Invest 520'). As Xingcheng Magotteaux did not export to Australia during the investigation period in Invest 569, the Commissioner had recommended that Xingcheng Magotteaux's export price be set at the same level as its normal value, with a zero margin of dumping applicable.

For this reason – and due to the prospect of a zero dumping and countervailing duty liability had the Minister accepted the Commissioner's recommendations following Invest 569 - Xingcheng Magotteaux is asserting the Minister's decision is not the correct or preferable decision in respect of the determination of the variable factors as it is liable for the measures applicable to the uncooperative exporters category.

The Minister, however, had not erred by not applying revised variable factors to Xingcheng Magotteaux. The proposed variable factors as recommended by the Commissioner in Report 569 reflect a benchmark with which the Minister was not satisfied as appropriate. The Minister has not contravened subsection 269ZH(4) by not recommending revised variable factors – he has elected that the notice applicable at the time of the decision be continued.

The Reviewable Decision to not revise the variable factors applicable to Xingcheng Magotteaux therefore is the correct and preferable decision as it is not in contravention of the legislative provisions (i.e. subsection 269ZH(4)).

- *Ground 3 – The Minister erred by not substituting the preferred benchmark*

As indicated in Molycop's comments (above) it has not been demonstrated by Xingcheng Magotteaux that the Minister has erred by not determining revised variable factors for Xingcheng Magotteaux.

It therefore follows that the Minister has also not erred by not determining revised variable factors based upon the Minister's preferred benchmark for grinding balls exported to Australia from China.

IV. Changshu

- *Ground 1 – Wrong standard for continuation*

It is argued on behalf of Changshu that the Minister is required to reach a "standard of satisfaction" as to whether the Minister should continue the measures. It is argued that by not achieving this standard, the Reviewable Decision was "*contrary to both Australian law and Australia's obligations as a member of the World Trade Organisation ("WTO")*".



It would appear therefore that Changshu is casting the net as far and wide as possible to contend that the Reviewable Decision is not the correct or preferable decision.

Molycop does not disagree with Changshu's position that "*The relevant determination is whether the expiry of the duty would be likely to lead to a continuation or recurrence of the dumping and injury.*" This is not at dispute. The central issue is whether the Reviewable Decision has contravened the requirements of subsection 269ZHG(1). As indicated above, the Reviewable Decision does not contravene this provision.

The Changshu Ground 1 for review has not established that the Reviewable decision is in contravention of subsection 269ZHG(1). The Reviewable Decision, therefore, is the correct and preferable decision.

- *Ground 2 – finding that dumping 'likely' not supported by evidence or law*

Changshu contends that the Minister "suspects" the grinding balls exported to Australia during the period of investigation "might be" at dumped prices.

Molycop submits that the information provided by it in response to SEF 569 (that the Minister states the Commissioner had not adequately investigated) provided a more definitive assessment concerning the likelihood of dumping of grinding balls exported to Australia during the investigation period (based upon the Minister's preferred benchmark).

The focus is indeed on the selection of the appropriate benchmark to be used in the normal value determinations.

Changshu suggests that the Minister has not relied upon "positive evidence". Molycop refers the ADRP Member to its submission in response to SEF 569 that detailed the relevant pricing that was considered a suitable benchmark by the Minister. This relevant information is central to the minister's conclusion that it is *likely* future exports of grinding balls to Australia from China will be at dumped prices.

The Changshu Ground 2 is dismissive of the alternative benchmark information considered by the Minister as evidenced by the following⁴:

"How a different benchmark would be likely to turn an 8.9% negative margin of not dumping, into a positive margin [of] dumping is not articulated".

This statement does not establish grounds to dismiss the Minister's preferred benchmark based purely on the size of the determined dumping margin.

Changshu has not demonstrated that the reviewable Decision is erroneous, nor has it demonstrated that the Minister's assessment that dumping is *likely* based upon the preferred benchmark is incorrect.

- *Ground 3 – the Minister's critique of the benchmark is misconstrued*

Changshu argues that the Minister has misconstrued the benchmark referenced in the Statement of reasons as the Latin American export billet price is a component of the constructed benchmark to which section 43 of the Regulations refers.

The Minister's reference to the benchmark refers to the source of the steel input price used in the construction of the normal value for the applicable Chinese exporter. The Minister was referencing the

⁴ Changshu application for review, P.6.



steel input price (i.e. the Commissioner's preferred steel billet price ex Latin American export prices) versus the available grinding bar prices that Molycop supplied in its response to SEF 569.

It is not considered that the Minister has misconstrued the benchmark. Rather, it is the reference point of the steel input price that has been identified by the Minister.

Molycop submits that the Minister has not misconstrued the benchmark for inclusion in the constructed normal values for Chinese exporters. The Reviewable Decision is the correct and preferable decision.

- *Ground 4 – no evidence or analysis to support material injury finding*

It is contended by Changshu that the Reviewable Decision as it relates to the conclusion on material injury is "erroneous". However, the price undercutting analysis as concluded by the ADC in Report 569 confirms the existence of price undercutting (from exporters to importers to end-users, and from exporters to end-users⁵).

Molycop demonstrated in its application for the continuation of measures instances where it had experienced price undercutting and lost sales volumes to imported Chinese grinding balls.

Molycop also notes the volumes of forged grinding balls have decreased with increasing imports of cast balls occurring during the investigation period.

The determination of the normal values for Chinese exporters based upon a representative benchmark (i.e. grinding bar) is critical to the dumping findings. The Minister has not erred in his assessment that the more representative benchmark would likely result in a dumping and material injury (or a recurrence thereof).

The Review Decision concerning the likely recurrence of material injury is therefore the correct and preferable decision.

V. ME Elecmetal

The grounds of review nominated by ME Elecmetal are identical to the grounds of review raised by Changshu.

Please refer to Molycop's comments concerning each ground of review under Section IV. Above.

VI. Conclusion & recommendations

Xingcheng Magotteaux, Changshu and ME Elecmetal have not demonstrated that the Minister's Decision (i.e. the Reviewable Decision) is erroneous and contravenes the provisions of section 269ZHG of the Act.

Molycop requests the ADRP Member to affirm the Minister's decision so that the anti-dumping measures on grinding balls exported to Australia from China are continued as intended by the Minister.

⁵ Report 569, P. 70, 71.



If you have any questions concerning this submission, please do not hesitate to contact me on (02) 4974 0414 or Molycop's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Keith Ritchie'. The signature is fluid and cursive, with a prominent upward stroke on the left side.

Keith Ritchie
General Manager Operations
Molycop Australia

Grinding Balls exported to Australia from the People's Republic of China

Reasons for decision on Continuation Inquiry No. 569

The Commissioner of the Anti-Dumping Commission (the Commissioner) has after conducting an inquiry, which commenced on 14 December 2020, given me a report (REP 569) into whether anti-dumping measures in the form of a dumping duty notice and a countervailing duty notice applying to grinding balls (the goods) exported to Australia from the People's Republic of China (China) should be continued.

I, CHRISTIAN PORTER, the Minister for Industry, Science and Technology, have considered REP 569 and decided **not** to accept the recommendations made by the Commissioner.

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

I am not satisfied that the Commissioner's selection of benchmarks used in the assessment in REP 569 of whether the Chinese exporters were dumping were the appropriate benchmarks. I am not satisfied that the Commissioner's conclusions about dumping by Chinese exporters are correct.

After considering REP 569 I am not satisfied that there is evidence in support of not continuing the dumping and countervailing measures on the goods.

In REP 569 the Commissioner adopted benchmarks without giving sufficient reason in REP 569 and without giving sufficient consideration to other benchmarks that might be more appropriate for selection. I am not satisfied that REP 569 evidenced a thorough analysis of available benchmarks for the goods. I consider on balance that dumping would be likely to continue if the measures are allowed to expire.

In REP 569 the Commissioner adopted a Latin American export steel billet price benchmark (Latin American benchmark) without a full consideration of other benchmarks that might be more appropriate for selection and may have resulted in a materially different finding in relation to whether dumping was continuing.

I note submissions made by Commonwealth Steel Company Pty Ltd (Molycop) that the Latin American benchmark does not represent the best available information for determining competitive market costs for steel billet, and the alternative methodology proposed by Molycop for constructing a competitive grinding bar benchmark on the basis of competitive market prices for grinding bar.

I note that steel billet is converted into grinding bar which is then further converted into grinding balls. Grinding bar is therefore closer in the production chain to the goods under consideration, and I am satisfied it is a more appropriate benchmark to use than steel billet where both benchmarks are available.

I am not satisfied that the Commissioner conducted a thorough analysis of available benchmarks for steel billet in REP 569, in light of the submission by Molycop. I am not satisfied that the Latin American benchmark is the most appropriate benchmark.

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

The Commissioner did not sufficiently analyse the accuracy of the Molycop submission or the issues raised in the Molycop submissions.

The analysis of material injury in REP 569 was premised on the conclusion of the Commissioner that the exporters were not dumping. That conclusion was based on the use of benchmarks that I am not satisfied were appropriate.

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

I have considered the finding of the Commissioner that if measures were allowed to expire, it is not likely that exports at dumped and/or subsidised prices would recur and cause material injury to the Australian industry. I consider that the goods are likely to be dumped, and that the goods exported by many Chinese exporters are subsidised. I consider that such dumping and subsidisation is likely to continue and the cumulative effect of this is likely to result in the recurrence of material injury that the measures are intended to prevent if the measures were removed.

I am not satisfied that the Commissioner's analysis concerning subsidies received by Chinese exporters is correct and I do not agree with the Commissioner's findings in relation to countervailing duty in REP 569.

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