



Australian Government

Anti-Dumping Review Panel

ADRP REPORT NO. 41

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

September 2016

Review of a decision of the Commissioner of the Anti-Dumping Commission to terminate part of an investigation into the alleged dumping and subsidisation of grinding balls exported to Australia from the People's Republic of China.

Table of Contents

Abbreviations	2
Introduction	3
Background.....	3
Conduct of the Review	4
Grounds for Review	5
Relevant Legislation.....	5
Consideration and Assessment of Grounds	7
Was the supplier of Steel Billet a public body or a private body entrusted or directed by the Government of China?	7
Has there been a failure or refusal to adequately examine the pass-through of benefits by upstream suppliers of steel billet?.....	12
Should the provision of electricity by the GOC at less than adequate remuneration be considered regionally specific?	15
Conclusions/Recommendations.....	17

Abbreviations

Act	Customs Act 1901
ADC	Anti-Dumping Commission
China	People's Republic of China
Commissioner	Commissioner of the Anti-Dumping Commission
Donhad	Donhad Pty Ltd
Goldpro	Hebei Goldpro New Material Technology Co., Ltd
GOC	Government of China
Longte	Changshu Longte Grinding Ball Co., Ltd
LTAR	Less than adequate remuneration
Minister	Minister for Industry, Innovation and Science
Moly-Cop	Commonwealth Steel Company Pty Ltd trading as Moly-Cop Mining Consumables - Waratah Steel Mill
Parliamentary Secretary	Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 316	ADC Report No 316 into the alleged dumping and subsidisation of grinding balls exported to Australia from the People's Republic of China
SEF 316	Statement of Essential Facts No 316 into the alleged dumping and subsidisation of grinding balls exported to Australia from the People's Republic of China
SCM	Agreement on Subsidies and Countervailing Measures set out in Annex 1A to the World Trade Organisation Agreement
SIEs	State-Invested Enterprises
TER 316	Termination of part of an investigation - alleged dumping and subsidisation of grinding balls exported from the People's Republic of China
Xingcheng	Jiangsu CP Xingcheng Special Steel Co., Ltd
Yute	Jiangsu Yute Grinding International Co., Ltd

Introduction

1. Commonwealth Steel Company Pty Ltd trading as Moly-Cop Mining Consumables - Waratah Steel Mill (Moly-Cop) has applied pursuant to section 269ZZQ of the *Customs Act 1901* (the Act), for a review of a decision of the Commissioner of the Anti-Dumping Commission (the Commissioner) to terminate part of a countervailing investigation into grinding balls exported to Australia.
2. The application for review was accepted and notice of the initiation of the review, as required by section 269ZZRC of the Act, was made on 14 July 2016. The acting Senior Member of the Anti-Dumping Review Panel (Review Panel) has directed in writing pursuant to section 269ZYA of the Act that the Review Panel be constituted by me.

Background

3. On 5 October 2015, Moly-Cop and Donhad Pty Ltd (Donhad) lodged an application for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from the People's Republic of China (China). An investigation was initiated by the Commissioner on 17 November 2015. Anti-Dumping Notice 2015/132 provides further details regarding the investigation.
4. The goods the subject of the application were:
Ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range of 22mm to 170mm (inclusive).
5. Moly-Cop and Donhad are the only two manufacturers of the goods in Australia. The investigation period was stated as 1 October 2014 to 30 September 2015 with the injury analysis period stated as commencing from 1 July 2011.
6. The ADC sent questionnaires out and received responses from the following exporters who were then considered to be co-operating exporters:
 - Hebei Goldpro New Material Technology Co., Ltd (Goldpro);
 - Changshu Longte Grinding Ball Co., Ltd (Longte);
 - Jiangsu CP Xingcheng Special Steel Co., Ltd (Xingcheng); and
 - Jiangsu Yute Grinding International Co., Ltd (Yute).
7. A combined Statement of Essential Facts (SEF 316) and Preliminary Affirmative Determination (PAD) was placed on the public record on 21 April 2016. SEF 316 found that grinding balls exported from China had been dumped and subsidised, and that material injury was being caused to the Australian industry as a result of that dumping and subsidisation.

8. SEF 316 further stated that:
- Longte, Xingcheng and Goldpro had been in receipt of countervailable subsidies, but the subsidy margin was not more than 2%;
 - Yute had not been in receipt of countervailable subsidies; and
 - The Commissioner proposed to terminate the countervailing investigation into co-operating exporters Longte, Xingcheng, Goldpro and Yute.

Interested parties were invited to make submissions regarding the SEF 316 by 11 May 2016.

9. A final report into the alleged dumping and subsidisation of grinding balls exported to Australia from the People's Republic of China (REP 316) was provided to the Parliamentary Secretary on 6 June 2016.¹ At the same time, the Commissioner issued the Termination Report (TER 316).² Anti-Dumping Notice 2016/58 provided the public notice of the decision of the Commissioner to terminate part of the investigation.
10. On 8 July 2016 Moly-Cop made application under Section 269ZZO for a review of the termination decision made under section 269TDA(2) of the Act.

Conduct of the Review

11. In accordance with section 269ZZT(1)(a) of the Act, the Review Panel must make a decision either affirming the reviewable decision or revoking the reviewable decision. In essence, a decision to terminate will be affirmed under section 269ZZT if it is the correct or preferable decision and will be revoked if the decision to terminate was not the correct or preferable decision. In a review of a decision under section 269ZZT, the Review Panel must have regard only to information that was before the Commissioner when he made the decision.³
12. The Review Panel may also have regard to further information obtained at a conference held under section 269ZZRA or further information provided by the Commissioner upon request of the Review Panel pursuant to section 269ZZRB of the Act.
13. A conference was held under section 269ZZRA of the Act, with the ADC on 26 August 2016 relating to information before the Commissioner in relation to Program One provision of steel billet at less than adequate remuneration (LTAR) and Program Two provision of electricity at LTAR. In the former program, it related to information in the confidential spreadsheets supplied by the co-operating exporters and in relation

¹ ADC Report 316 Alleged dumping and subsidisation of grinding balls exported to Australia from the People's Republic of China

² TER 316 - ADC Termination Report Termination of Part of an Investigation into the alleged dumping and subsidisation of Grinding Balls exported from the People's Republic of China.

³ Section 269ZZT(4) of the Act

to the latter program, the ADC was asked to clarify its comments in relation to evidence found in relation to entity and regional specificity. A non-confidential summary of the conference was placed on the public record.

14. I requested that the ADC provide additional information, pursuant to section 269ZZRB of the Act, in relation to the questions identified in the above mentioned conference. A copy of the ADC response dated 30 August 2016 was placed on the public record.
15. At the beginning of the review, I also requested the ADC provide me with confidential versions of documents relating to TER 316 and SEF 316 as well as extracts of the exporter questionnaires relating to subsidies and any other confidential information on the subsidy programs mentioned above. None of these were placed on the public record as all were the confidential versions of material from the ADC EPR 316.
16. I received a letter from Moulis Legal questioning whether the review application made by Moly-Cop is valid and requesting that the review be abandoned.⁴ I have considered the arguments submitted by Moulis Legal and am satisfied that the review application is valid.

Grounds for Review

17. Moly-Cop contended that terminating the subsidisation investigation in respect of the four exporters, Goldpro, Longte, Xingcheng and Yute was not the correct or preferable decision because:
 - (a) The Commissioner has failed or refused to consider whether or not the supplier of steel billet was a 'public body' or a 'private body entrusted or directed by' the Government of China (GOC);
 - (b) The Commissioner has failed or refused to adequately examine the pass-through of benefits by upstream suppliers of steel billet; and
 - (c) The Commissioner has erred in his decision not to find that the provision of electricity by the GOC at LTAR (Program 2) was not regionally specific.

Relevant Legislation

18. For the purposes of this report, outlined below are the relevant definitions from sections 269T, 269TAAC and 269TACC.

Section 269T(1) Definitions

Countervailable subsidy - means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy.

Subsidy -in respect of goods exported to Australia, means:

⁴ Letter from Moulis Legal dated 19 July 2016

- (a) *a financial contribution;*
 - (i) *By a government of the country of export or country of origin of the goods; or*
 - (ii) *By a public body of that country or a public body of which that government is a member; or*
 - (iii) *By a private body entrusted or directed by that government or public body to carry out a government function; that involves:*
 - (iv) *A direct transfer of funds from that government or body; or*
 - (v) *The acceptance of liabilities, whether actual or potential, by that government or body; or*
 - (vi) *The forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or*
 - (vii) *The provision by that government or body of goods or services otherwise than in the ordinary course of providing normal infrastructure; or*
 - (viii) *The purchase by that government or body of goods or services; or*
- (b) *any form of income or price support as referred to in Article XVI of the General Agreement of Tariffs and Trade 1994 that is received from such a government or body;*
if that financial contribution or income or price support confers a benefit (directly or indirectly) in relation to the goods exported to Australia.

Section 269TAAC - Definition - countervailable subsidy

- (1) *For the purposes of this Part, a subsidy is a **countervailable subsidy** if it is specific.*
- (2) *Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:*
 - (a) *If, subject to subsection (3), access to the subsidy is explicitly limited to specific enterprises; or*
 - (b) *If, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or*
 - ...
- (3) *Subject to subsection (4), a subsidy is not specific if:*
 ...
- (4) *The Minister may, having regard to:*
 - (a) *the fact that the subsidy program benefits a limited number of particular enterprises; or*
 - (b) *the fact that the subsidy program predominantly benefits particular enterprises; or*
 - ...*determine that the subsidy is specific.*

Section 269TACC Working out whether a financial contribution or income or price support confers a benefit

(1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.

...

(3) In determining whether a financial benefit confers a benefit, the Minister must have regard to the following guidelines:

...

(d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided at less than adequate remuneration;

...

(4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

Consideration and Assessment of Grounds

Was the supplier of Steel Billet a public body or a private body entrusted or directed by the Government of China?

19. The ADC found that Program One was not a countervailable subsidy for the purposes of the grinding balls investigation as it did not find that a benefit had been conferred by steel billet being provided by the GOC through State-Invested Enterprises (SIEs) at an amount reflecting less than adequate remuneration (LTAR) to the grinding ball exporters. The ADC found that the co-operating exporters had not purchased steel billet from SIEs or other suppliers during the investigation period and had only purchased grinding bar. A countervailing duty can only be imposed on goods exported to Australia, where a countervailable subsidy has been received in respect of those goods and material injury has been caused to the Australian industry.⁵
20. For the purposes of clarity, it is worth noting that grinding balls are manufactured from grinding bar and grinding bar is manufactured from steel billet.
21. Moly-Cop considers that the Commissioner should have concluded that the suppliers of steel billet were either 'public bodies' or 'private bodies entrusted or directed' by the GOC to carry out a governmental function. Moly-Cop suggests that the ADC concluded that steel billet suppliers to the grinding ball manufacturers were not SIEs and since the steel billet suppliers were not SIEs the conditions of a subsidy under the definition in section 269T (1) was not established.

⁵ Section 269TJ of the Act

22. Moly-Cop contends that the correct question for the ADC to have asked was whether or not the suppliers of steel billet are either:
- (a) *government of the country of export or country of origin of the goods; or*
 - (b) *a public body of that country or a public body of which that government is a member; or*
 - (c) *a private body entrusted or directed by that government or public body to carry out a government function.*

Moly-Cop suggests that limiting the consideration to whether the SIEs are public bodies is an error in assessing whether the suppliers were public bodies or private bodies entrusted or directed by the Government of China.

23. Moly-Cop also considers that the ADC failed to apply the 'public bodies test' to the steel billet suppliers. This test is outlined from the Appellate Body report DS 379.⁶ I will not repeat the three indicia of this 'test' as it is outlined in both the TER report and the review application.
24. Moly-Cop contends that if the Commissioner had applied the 'public bodies test' to the steel billet suppliers, it would have been open to conclude that they were public bodies. It cites the SEF 316 findings related to "particular market situation" as indicative that the three indicia of the 'public bodies test' have been met. It further states if this fails, that such suppliers should be considered as a 'private body entrusted or directed by' the GOC.
25. Moly-Cop raised this issue with the ADC following the publication of SEF 316, emphasising the importance of the ADC ensuring that the suppliers of steel billet (incorporated in grinding bar) to the co-operating exporters did not receive a benefit in relation to their purchases of steel billet. It cited the relevant Appellate Body Report (US - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada) dealing with the pass through of raw materials in exported product.⁷ Longte also provided a submission restating that it did not purchase steel billet.⁸
26. The ADC states in Appendix One that for the purposes of its Termination Report, the GOC-owned or partially owned entities are referred to as SIEs.⁹ The ADC undertook an assessment of whether SIEs constitute public bodies as discussed in Appendix 3 of TER 316 and concluded that SIEs that produce and supply raw materials to manufacturers of grinding balls should be considered public bodies.¹⁰ The ADC outlined the steps it had undertaken to draw this conclusion. It did not specifically deal with the issue of whether there were private bodies 'entrusted or directed' by the GOC in Appendix 3.

⁶ Appellate Body Report, United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/AB/R, adopted 11 March 2011 (DS 379)

⁷ TER 316 Section 4.5.1 page 17

⁸ TER 316 Section 4.5.1 page 17

⁹ TER 316 Section A1.3.1 page 29

¹⁰ TER 316 Appendix 3 page 85

27. The ADC also outlined in Appendix One the steps it had taken to establish whether the exporters of grinding balls were in receipt of steel billet provided by the GOC at LTAR.¹¹ The ADC requested that Chinese exporters supply information regarding its purchases of steel billet, or grinding bar, during the investigation period. In relation to the supply of steel billet, further questions were asked regarding the status of the supplier, that is, did it trade or manufacture the steel billet, as well as its ownership/management arrangements. In circumstances where the supplier was not the manufacturer of the steel billet, information was requested as to who was the manufacturer and also the ownership/management arrangements of these enterprises.
28. The ADC determined that the co-operating grinding ball exporters the subject of the TER 316 namely, Goldpro, Longte, Xingcheng, and Yute did not purchase steel billet during the investigation period.¹² On this basis the ADC determined that no benefit has been conferred to the co-operating exporters as none had purchased steel billet.
29. The ADC did ascertain that each of the co-operating exporters did purchase grinding bar during the investigation period. The ADC then examined the information relating to the grinding bar suppliers. The ADC found that, during the investigation period, two of the co-operating exporters (Longte and Xingcheng) obtained grinding bar from related parties, who were not SIEs, and who manufacture the steel billet that is used in the grinding bar which is purchased by these exporters.
30. In these circumstances the ADC concluded that as the co-operating exporters:
- had not purchased steel billet during the investigation period; and
 - had obtained grinding bar from other parties (two exporters had suppliers who were related parties) during the investigation period.

There was no evidence to suggest that a benefit had been received by the co-operating exporters in relation to steel billet being provided by the GOC at LTAR. The ADC concluded that, in such circumstances, there was no countervailable subsidy in relation to Program One with respect to the co-operating exporters.

31. Given the importance of being able to establish the information relating to the source of steel billet used ultimately in the manufacture of the grinding balls, I reviewed the confidential spreadsheets provided by the co-operating exporters to the ADC outlining the supply of products to the grinding bar exporters.
32. In so doing, I noted there were no purchases of steel billet by any of the exporters. There were however some purchases of grinding bar from SIEs. In these circumstances I wished to clarify the statement in TER 316 “Those upstream suppliers were not listed as SIEs” as well as other information contained in Longte’s confidential spreadsheets.

¹¹ TER 316 Section A1.3.1 Page 29

¹² TER 316 Section A1.3.1 Page 29

33. I convened a conference, in accordance with section 269ZZRA of the Act, with the ADC on 26 August 2016 and subsequently requested that the ADC provide additional information pursuant to section 269ZZRB in relation to the Commissioner's assessment of the Program One subsidy.

34. In its response, the ADC explained more fully the steps it had taken in relation to establishing whether steel billet had been obtained at LTAR.¹³ It stated:

"In some instances, the supplier of grinding bar was also the producer of that grinding bar. In other instances, the supplier of grinding bar purchased that grinding bar from a trader or producer of grinding bar. In some instances, the trader or producer of the grinding bar was a SOE. Whilst some of the purchases of grinding bar involved SOEs, from the information available, the Commission did not identify any direct or indirect purchases of steel billet from an SOE by the co-operating exporters. This was the intended meaning of the first paragraph in Section 4.6.1 at page 18 of TER 316."

While the letter refers to SOE, the confidential spreadsheets to which this information relates states SIEs and TER 316 defines the term SIEs. I have accepted that these equivalent terms for the purposes of this report

35. The ADC also explained that the verification teams, who visited Longte and Xingcheng,

"were satisfied that both exporters had transitioned to being fully integrated producers of grinding balls by the end of the investigation period, thus having little or no reliance on grinding bar or steel billet purchases from unrelated parties going forward. The integrated related parties producing and supplying their grinding bar requirements were not SOEs."

The ADC restated that it did not find any evidence that the co-operating exporters purchased steel billet at LTAR and concluded that no countervailable subsidy existed in relation to Program One.

36. I have reviewed this information and can find no evidence that the ADC conclusion is not appropriate in relation to steel billet.

37. However, Moly-Cop suggests that the ADC should have considered whether the upstream steel billet suppliers were public bodies or were private bodies 'entrusted or directed' by the GOC. I will deal with these issues separately.

38. The ADC report states that it did assess whether some suppliers were public bodies. While I understand the Moly-Cop contention that there is not a direct statement to this effect, the linkages between the assessment in appendix 3 of TER 316 regarding SIEs and public bodies and the statement regarding what SIEs meant for the purposes of this report suggests that the ADC was clear that it was considering

¹³ ADC Letter dated 30 August 2016 pages 2- 3

whether suppliers of steel billet to the relevant exporters had any linkages with the GOC. However, it found that no steel billet was supplied to the co-operating exporters. In these circumstances, it was not necessary to make a specific finding relating to whether steel billet suppliers were public bodies. In any event, the ADC did analyse the steel billet suppliers.

39. The ADC found that the majority of grinding ball exported to Australia was supplied from related companies (fully integrated producers of steel billet and grinding bar by end of the investigation period). These companies were not SIEs and were not considered to be public bodies. The two remaining exporters had a variety of suppliers of grinding bar, some of which were SIEs, though these quantities were not of substantial volumes. My assessment is that these were small volumes and relatively insignificant in the context of overall supply.
40. Moly-Cop also contends that the ADC should have considered whether private bodies were 'directed or entrusted' by the GOC in accordance with the definition of subsidy. The question remains as to whether the Commissioner should have assessed whether the 'private body' suppliers of steel billet to the grinding bar suppliers, who then on-sold to the grinding ball exporters, were private bodies 'entrusted or directed' by the GOC.
41. Moly-Cop suggests that the ADC finding in SEF 316 that there is a 'particular market situation' in the iron and steel industry and related markets is evidence of the fact that such suppliers, if not public bodies, are private bodies 'entrusted or directed' by the GOC. It relies on the influence and control of the GOC in the iron and steel industry established, it contends in the market situation analysis in SEF 316, as indicative of private bodies being 'entrusted or directed' by the GOC. No other specific evidence was provided.
42. Moly-Cop contends that the test that should be applied to guide such an assessment is the 'public bodies test' (referred to from the Appellate Body Report, US - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WT/DS379/AB/R adopted 11 March 2011)).
43. There are, in my view, very different legislative requirements associated with determining whether a particular market situation exists which renders domestic sales unsuitable to establish a normal value, and the requirement to establish that a benefit has been conferred on the goods exported to Australia by the government, public body or private body 'entrusted or directed' by the government. The level of control or direction required in decision making associated with 'public bodies' has been expressed very clearly in the judgements of Nicholas J. in *Dalian* and *Pan Asia*.¹⁴
44. I do not think Moly-Cop has established in its application that there is evidence that the GOC has 'entrusted or directed' the private bodies, and there does not appear to

¹⁴ *Dalian Steelforce Hi-Tech Co Ltd v Minister of Home Affairs* [2015] 2015 FCA 885 and *PanAsia Aluminium (China) Ltd v Attorney General* [2013] FCA 870

be evidence that would meet the 'public bodies test' referred to above. In my view, Moly-Cop has not established that the ADC failed to undertake the necessary analysis and consideration of the steel billet suppliers associated with the manufacture of grinding balls exported to Australia. It may have been open for the ADC to make such an assessment however not without evidence. The fact that there are SIEs in the iron and steel industry and that the GOC has particular strategies and objectives in play that impact the market, is not sufficient to meet the legislative requirements of being 'entrusted or directed' required in the definition of a subsidy.

45. For the reasons mentioned above, I do not accept the arguments submitted by Moly-Cop that the Commissioner has erred in his regard of the suppliers of steel billet.

Has there been a failure or refusal to adequately examine the pass-through of benefits by upstream suppliers of steel billet?

46. Moly-Cop takes issue with the Commissioner's decision to examine the 'pass-through of benefit to one level upstream'. Moly-Cop suggests that the Dumping and Subsidy Manual does not direct the Commissioner to examine benefits to only one level upstream as it states
- "in considering whether there is 'pass-through' the Commissioner will examine the transactions that take place between the input product on which the subsidy is paid and the final exported product".¹⁵ It does go on to say that 'in most cases, upstream subsidies will be investigated up to one level immediately preceding the point of producing the exported goods...However there be some few cases where it is appropriate to move up an additional stage.'*
47. Moly-Cop also cites as relevant, the Appellate Body Report US-Softwood Lumber IV which dealt with subsidy bestowed directly or indirectly upon the manufacturer and the need to establish the amount of subsidy flowed through to the producer of the goods exported.¹⁶
48. Moly-Cop contends that the ADC failed to assess the pass-through of benefits from upstream suppliers of steel billet. It claims that it provided this information in its submission to the SEF 316. In its review application, Moly-Cop then comments that the ADC has clearly concluded that the transaction did occur between these related entities, but concluded that these were not SIEs and cites the constraint of general practice to consider pass-through to only one level upstream.¹⁷
49. Firstly, it is important to note that this ground is linked to Moly-Cop's first ground regarding the supply of steel billet by public bodies or by private bodies entrusted or directed by the GOC. Moly-Cop appears, in my view, to be suggesting that the ADC

¹⁵ Dumping and Subsidy Manual November 2015 pages 108 - 110.

¹⁶ Appellate Body Report United States - Final countervailing Duty Determination with respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R, adopted 19 January 2004

¹⁷ TER 316 Section 4.6.1 page 18

should have assessed whether there was pass-through of a benefit from the suppliers of steel billet, supplied from two levels upstream from the exporters of grinding ball. That is, was there a benefit in the original provision of steel billet at LTAR two levels upstream from grinding ball exporters which conferred a benefit to such exporters?

50. The ADC outlined in TER 316 the steps it had taken to assess whether the co-operating exporters had obtained steel billet, or grinding bar made from steel billet, from suppliers who had sourced steel billet from the GOC (through SIEs) at LTAR. I have also had regard to the information provided by the ADC in its letter in response to my request for additional information under section 269ZZRB of the Act.¹⁸
51. The ADC did undertake analysis and consideration of the suppliers of grinding bar and their sources of steel billet, to assess whether there had been a benefit passed through to the exported grinding balls. The ADC stated that it 'examined the pass-through of benefits to one level upstream' and Moly-Cop indicates that this statement in TER 316 is confusing given it did consider the suppliers of steel billet. I agree with Moly-Cop in this regard. For this reason, I requested that the ADC clarify its inquiries in this regard.¹⁹
52. The ADC did seek information about:
- All grinding bar and steel billet purchases;
 - The supplier of the grinding bar or steel billet;
 - Whether that grinding bar or steel billet supplier was a SIE;
 - Where the supplier of grinding bar or steel billet was not the producer of the grinding bar or steel billet, details of the producer and whether that producer was a SIE.
53. It noted that the two major exporters of grinding balls (approximately 85%) had transitioned to becoming integrated producers (through related parties) by the end of the investigation period, thus having no reliance on purchases of steel billet or grinding bar from unrelated parties.²⁰ The ADC states that these integrated producers (through related parties) were not SIEs. As indicated in Ground One above, I do not think there is evidence that these private entities were under the direction of the GOC or SIEs.
54. The concern expressed by Moly-Cop regarding the collapsing of the related transactions into one is also not valid. It would appear that the approach adopted by the ADC is consistent with the following:

'Where the inputs are purchased from a related upstream supplier and consistent with practices elsewhere, the Commission will infer that the whole

¹⁸ Letter from the ADC dated 30 August 2016

¹⁹ Conference on 26 August 2016 and request under section 269ZZRB of the Act

²⁰ Letter from ADC dated 30 August 2016 page 3

of the input subsidy has been passed through to the related downstream purchaser.²¹

The ADC has approached its consideration of the two major exporters in this manner. However there is no evidence that an 'upstream subsidy' was conferred on the steel billet manufactured by these related parties. So, in essence, there is no benefit to be passed-through to the downstream manufactured product. Accordingly, there is no evidence of a benefit to these grinding ball exporters. In relation to the other two exporters, there were a variety of suppliers of grinding bar, who in turn sourced from other suppliers or manufactured steel billet themselves. There were some purchases from SIEs but not in large quantities.

55. There are a couple of other issues which emerge in relation to the circumstances of this case as to whether the ADC should have undertaken additional inquiries in relation to the steel billet suppliers.
56. Firstly, the Dumping and Subsidy Manual suggests that in most cases, upstream subsidies will be investigated up to one level immediately preceding the point of producing the exported goods, rather than additional levels. It provides appropriate and practical reasons for this being the case. The ADC in responding to my request for further information, did flag that it would have necessitated further questionnaires being sent to input suppliers and the GOC, and a substantial extension of time to complete the investigation.²² The ADC also commented on the need to have evidence of the significance of the upstream subsidy and did not consider it had this.
57. I agree with the ADC in this regard that to take these additional investigatory steps after the publication of the Statement of Essential Facts would have led to the investigation being lengthened considerably. I have also reviewed the practice outlined in the Dumping and Subsidy Manual and consider the ADC have followed this appropriately.
58. The second issue that arose in my view is whether the ADC was required, regardless of what is stated in the Dumping and Subsidy Manual, to undertake further investigations of the alleged upstream subsidy of steel billet, once it had found that the co-operating exporters had not purchased steel billet.
59. In this regard, I considered the judgements of O'Connor J.²³ and Jacobson J.²⁴ who have previously considered the requirements of undertaking further investigations following material being provided in the context of the strict time limits in the anti-dumping system and the general workability of the scheme. It can be understood from both judgments that a decision maker is not obliged to investigate each avenue suggested by an interested party and to do so would make the statutory scheme

²¹ Dumping and Subsidy Manual November 2016 Section 18.2 and 18.3 pages 109 -110

²² Letter from ADC dated 30 August 2016, page 3

²³ *Al Abdullatif Industrial Group Co Ltd v Minister for Justice and Customs* [2000] FCA 758 [22] and [27]

²⁴ *Schaefer Waste Technology Sdn BHD v CEO, Australian Customs Service* [2006] FCA 1644 [199 - 204]

unworkable. A decision maker must do their best on the material available after giving interested parties the right to be heard.

60. In my view, the ADC has undertaken the appropriate study of upstream suppliers to track the source of steel billet to form its view as to whether it needed to institute further investigations into the upstream suppliers of steel billet. In the circumstances of its findings that the two major exporters together with its related suppliers are fully integrated producers, the pass-through issue has been appropriately dealt with. In relation to the remaining two exporters, noting the strict timeframes associated with the anti-dumping system, and the number of different suppliers of grinding bar and upstream steel billet, to these two exporters, the approach taken by the ADC was appropriate. It would have necessitated a new investigatory process.
61. For the reasons outlined above I do not agree with Moly-Cop that the Commissioner erred in failing to or refusing to examine the 'pass-through' of benefits by upstream suppliers to steel billet.

Should the provision of electricity by the GOC at less than adequate remuneration be considered regionally specific?

62. Moly-Cop contends that the ADC has tested the specificity of Program Two - electricity provision at LTAR, by assessing whether it related to a subset of enterprises within the region rather than whether the countervailable subsidy was regionally specific. It quotes the Panel Report on EU Large Civil Aircraft where the Panel concluded that a subsidy available in a designated region within the territory of the granting authority is specific, even if it is available to all enterprises in that region.²⁵ It cites as evidence that the ADC should have found that Program Two is consistent with the Subsidies and Countervailing Measures Agreement (SCM) and should be considered regionally specific.
63. Moly-Cop contends that the Commissioner has not provided any reasons under section 269TAAC(3) of the Act which would indicate that the subsidy was not specific and has fettered his discretion by not considering matters open to him to consider under section 269TAAC(4) of the Act. Moly-Cop considers that Program Two should be found to be countervailable.
64. Moly-Cop raised this issue with the ADC during the investigation, emphasising the regional specificity of electricity and citing the above-mentioned WTO Panel Report regarding regional specificity. Longte also made a submission in response to Moly-Cop's comments, indicating that the 'specificity' issue does not over-ride the need to establish whether a benefit has been conferred.²⁶

²⁵ Panel Report EC and certain Member States - Measures affecting trade in large civil aircraft, WT/DS316/R, adopted 30 June 2016.

²⁶ TER 316 Section 4.5.2 page 17

65. The ADC in TER 316 did not disagree with the comments made by Moly-Cop but indicated that the electricity pricing setting arrangements in China did not of itself provide evidence that regionally specific electricity subsidies had been provided to exporters of grinding balls.
66. Outlined in the Section A1.3.2 of TER 316²⁷ is the analysis undertaken by the ADC as to its finding that there had not been a benefit conferred by the provision of electricity at LTAR. The ADC indicated that it had considered the electricity in the provinces where the co-operating exporters were located and also examined the information provided by each exporter regarding the electricity tariffs incurred. Each exporter was subject to the tariff applicable to large manufacturing and this is not a preferential rate compared to other industries within the region. The ADC noted that it had followed in this investigation the approaches taken in Investigation 237 - Silicon Metal exporter from China and Review of Measures 248 - Aluminium Extrusions exported from China in relation to the provision of electricity at LTAR.
67. During the conference held on 26 August 2016, I requested further information pursuant to section 269ZZRB, in relation to what consideration, if any, had been given to pricing between regions by the ADC.²⁸
68. The ADC commented in its response²⁹ that in its view, the National Development and Reform Commission (the body referred to by Moly-Cop in its pricing analysis) does not set a benchmark electricity price for China. The ADC did examine electricity tables for additional provinces in China but formed the conclusion that there existed multiple electricity markets given pricing reflected a number of variables. The ADC states it had no basis to find that the differences in pricing of electricity from one province to the next related to GOC intervention.³⁰ The ADC also stated that Moly-Cop did not provide any evidence of preferential pricing between regions.
69. I have reviewed the information supplied by Moly-Cop, as well as the material obtained by the ADC from the exporters and the relevant electricity tables, and agree with the ADC. While Moly-Cop's point regarding the EU Large Civil Aircraft report, that is, that a subsidy (and which confers a benefit) available in a designated region within a territory is regionally specific, it has not provided evidence that this has occurred in this case. With no evidence of preferential pricing, it is difficult to conclude that there is a benefit.
70. In my view, there is insufficient evidence to form the view that a benefit has been conferred on the relevant exporters by the provision of electricity by the GOC at LTAR. Given there was no evidence of a subsidy, the question of specificity becomes redundant in my opinion. Section 269TAAC of the Act requires the assessment of a subsidy to be a countervailable subsidy only if it is specific. With no evidence of a subsidy to the exporters of grinding ball, specificity is not in question.

²⁷ TER 316 Appendix A1.3 2 pages 30 - 32

²⁸ ADRP Conference summary 26 August 2016

²⁹ ADC letter dated 30 August 2016 page 4

³⁰ ADC letter dated 30 August 2016 page 4

71. In my view, the ADC has undertaken the appropriate consideration and analysis to determine there was no benefit conferred to the grinding ball exporters and there was no specific or preferential pricing. In such circumstances, I do not find that Moly-Cop's claim that the Commissioner erred in relation to Program Two is correct.
72. For this reason, I do not agree with this ground.

Conclusions/Recommendations

73. I reject Moly-Cop's application for review for the reasons given above. I do not agree that Moly-Cop has established that the Commissioner erred in his consideration of the provision of steel billet and electricity at LTAR in his investigation. Accordingly, I agree with the findings of the ADC in this regard, that the termination of the countervailing investigation is appropriate and has been undertaken in accordance with section 269TDA(2) of the Act.
74. I consider that the reviewable decision was the correct or preferable decision and I affirm it pursuant to section 269ZZT(1) of the Act.



Jaclyne Fisher

Member

Anti-Dumping Review Panel

12 September 2016