



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XV B

**STATEMENT OF ESSENTIAL
FACTS NO. 316**

and

**PRELIMINARY AFFIRMATIVE
DETERMINATION NO. 316**

**ALLEGED DUMPING AND SUBSIDISATION OF
GRINDING BALLS EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

21 April 2016

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AMC	Asset Management Company
the applicants	Commonwealth Steel Company Ltd Pty (trading as Moly-Cop) and Donhad Pty Ltd
BOF	Basic Oxygen Furnace
CBSA	Canada Border Services Agency
CFR	Cost and freight
China	the People's Republic of China
CIA	CIA Electrometalurgica SA
CITIC	CITIC Heavy Industries Company Australia Pty Ltd
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 316	<i>Consideration Report No. 316</i>
CPM	CITIC Pacific Mining Management Pty Ltd
CTM	Cost to make
CTMS	Cost to make and sell
Donhad	Donhad Pty Ltd
DS 379	<i>United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China</i>
DS 436	<i>United States – Carbon Steel (India)</i>
DS 437	<i>United States – Countervailing Measures (China)</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EAF	Electric arc furnace
EU	European Union
FOB	Free on board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
GOC	Government of China
Goldpro	Hebei Goldpro New Material Technology Co., Ltd
the Guidelines	Guidelines on the Application of Forms of Dumping Duty – November 2013
HCC	Hard coking coal
HRC	Hot rolled coil
HSS	Hollow structural sections

PUBLIC RECORD

ICD	Interim countervailing duty
IDD	Interim dumping duty
Interim Regulations	<i>Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises</i>
INV 177	Investigation 177 - Certain Hollow Structural Sections exported from China, Korea, Malaysia, Taiwan and Thailand
INV 190	Investigation 190 -Alleged Dumping of Zinc Coated (galvanised) Steel and Aluminium Zinc Coated Steel Exported from China, Korea and Taiwan
INV 193	Investigation 193 - Alleged Subsidisation of Zinc Coated Steel and Aluminium Zinc Coated Steel Exported from China
INV 198	198 - Dumping of Hot Rolled Plate Steel Exported from China, Republic of Indonesia, Japan, Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel exported from China
INV 237	Investigation 237 - Silicon Metal exported from China
INV 238	Investigation 238 – Deep Drawn Stainless Steel Sinks exported from China
INV 300	Investigation 300 - Steel Reinforcing Bar from China
INV 301	Dumping Investigation 301 - Rod in Coils from China
Jeco	Jeco Materials Pty Ltd
Karara	Karara Mining Limited
LTAR	Less than adequate remuneration
Longte	Changshu Longte Grinding Ball Co., Ltd
Longteng	Changshu Longteng Special Steel Co., Ltd
the Manual	Dumping and Subsidies Manual
ME Longteng	ME Longteng Grinding Media (Changshu) Co., Ltd
MIIT	China's Ministry of Industry and Information Technology
Moly-Cop	Commonwealth Steel Company Ltd Pty (trading as Moly-Cop)
NDRC	China's National Development Reform Commission
NIP	Non-injurious price
OCOT	Ordinary course of trade
PAD	Preliminary affirmative determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PBC	People's Bank of China
Platts	McGraw Hill Financial Services
R&D	Research and development
the Regulations	<i>Customs (International Obligations) Regulation 2015</i>
REV 248	Review of Measures 248 – Aluminium Extrusions exported from China
SASAC	State-Owned Asset Supervision and Administration Commission of the State Council
SCM Agreement	Agreement on Subsidies and Countervailing Measures

PUBLIC RECORD

SEF	Statement of essential facts
SG&A	Selling, general and administrative
SIE	State Invested Enterprise
Sino Grinding	Sino Grinding International Pty Ltd
SOCB	State owned commercial bank
SOE	State Owned Enterprise
USA	United States of America
USD	United States of America dollar
USP	Unsuppressed selling price
TMRO	Trade Measures Review Officer
VAT	Value added tax
WTO	World Trade Organisation
Xingcheng	Jiangsu CP Xingcheng Special Steel Co Ltd
Yute	Jiangsu Yute Grinding International Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This Statement of Essential Facts (SEF) Number 316 has been prepared in response to an application by Commonwealth Steel Company Pty Ltd (trading as Moly-Cop) (Moly-Cop) and Donhad Pty Ltd (Donhad) 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).

Moly-Cop and Donhad (the applicants) allege that the Australian industry for grinding balls has suffered material injury caused by grinding balls exported to Australia from China at dumped and subsidised prices.

This SEF sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base recommendations to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary),¹ unless this investigation is terminated earlier, in relation to the application. This SEF also sets out the reasons for the Commissioner making a preliminary affirmative determination (PAD) under section 269TD of *Customs Act 1901* (the Act).²

1.2 Authority to make decision

Division 2 of Part XVB of the Act describes, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under subsection 269TB(1) for the purpose of making a report to the Parliamentary Secretary.

1.2.1 Application

The applicants allege that the Australian industry has suffered material injury caused by exports of grinding balls to Australia from China at dumped and subsidised prices.

Having considered the application, the Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application. As such, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping and subsidisation of grinding balls from China on 17 November 2015. Public notification of initiation of the investigation was also made on 17 November 2015.

Consideration Report No. 316 (CON 316) and Anti-Dumping Notice (ADN) No. 2015/132 provide further detail relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website at www.adcommission.gov.au.³

¹ On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

³ See number 2 on the public record

1.2.2 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a PAD if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or if there appears that there will be sufficient grounds subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, 16 January 2016⁴) and provisional measures may be imposed at the time of a PAD or at any time after a PAD has been made.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction) directs the Commissioner to publish a status report providing reasons why a PAD was not made. A status report in relation to this investigation was published on 18 January 2016.⁵

Pursuant to the PAD Direction, if the Commissioner has published a status report, the Commissioner must reconsider whether or not to make a PAD at least once prior to the publication of the SEF.

1.2.3 Termination of an investigation

Section 269TDA provides for when the Commissioner must terminate an investigation.

1.2.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows, place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.⁶

The SEF was originally due to be placed on the public record by 7 March 2016. However, the Commissioner was granted an extension by the Parliamentary Secretary. The Commissioner is now required to place the SEF on the public record by 21 April 2016.⁷

1.2.5 Final report

The Commissioner's final report and recommendations in relation to this investigation must be provided to the Parliamentary Secretary on or before 6 June 2016.

1.3 Findings and conclusions

The Commissioner's findings and conclusions in this SEF are based on available information at this stage of the investigation. A summary is provided below and there is greater detail in the remainder of this report.

⁴ If a due date in this report falls on a weekend or public holiday in Victoria, the effective due date will be the following business day

⁵ See number 15 on the public record

⁶ Subsection 269TDAA(1)

⁷ Further details of the extension are available in ADN 2016/25 at number 27 on the public record

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced grinding balls are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises of two Australian producers, Moly-Cop and Donhad.

1.3.2 Australian market (Chapter 4)

The Australian grinding ball market is supplied from local production by Moly-Cop and Donhad and by imports from several countries, the major country being China.

1.3.3 Dumping (Chapter 5)

The Commission's preliminary assessment of dumping margins is set out in Table 1.

Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	12.6%
Hebei Goldpro New Material Technology Co., Ltd	58.9%
Jiangsu CP Xingcheng Special Steel Co., Ltd	38.0%
Jiangsu Yute Grinding International Co., Ltd	47.6%
<i>Uncooperative and All Other Exporters</i>	104.8%

Table 1: Preliminary dumping margins

1.3.4 Countervailing (Chapter 6)

The Commission's preliminary assessment of subsidy margins is set out in Table 2.

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 2: Preliminary subsidy margins

The Commissioner proposes to terminate the investigation in relation to the cooperating exporters on the basis that each of the subsidy margins is negligible.

1.3.5 Economic condition of the Australian industry (Chapter 7)

The Commissioner considers that the Australian industry has experienced injury in the forms of:

- reduced market share;
- price depression;
- price suppression;

- reduced profits;
- reduced profitability;
- reduced revenue;
- reduced capacity utilisation; and
- reduced employee numbers

1.3.6 Causation assessment (Chapter 8)

The Commissioner is satisfied that the Australian industry has suffered material injury as a result of dumped and subsidised exports of grinding balls from China.

1.3.7 Will dumping, subsidisation and material injury continue (Chapter 9)

The Commissioner is satisfied that dumping, subsidisation and material injury will continue if interim duties are not imposed in relation to grinding balls exported to Australia from China.

1.3.8 Non-injurious price (Chapter 10)

The Commissioner is satisfied that there is a situation in the market that makes the domestic selling price of grinding balls in China unsuitable for the purposes of determining normal value under subsection 269TAC(1). Noting this, the Commissioner considers that regard should not be had to the desirability of fixing a lesser rate of duty and that the securities in relation to the PAD should be calculated and taken at full margins.

1.3.9 Reasons for making a PAD (Chapter 11)

Based on the information and evidence available, the Commissioner considers that:

- grinding balls have been exported from China at dumped and subsidised prices;
- there is an Australian industry producing like goods that is experiencing injury; and
- the dumped and subsidised goods are causing material injury to the Australian industry.

Under subsection 269TD(1)(a), the Commissioner is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from China. It is likely that exports will continue in the future.

Having regard to subsection 269TD(4)(b), the Commissioner is satisfied that it is necessary to require and take securities under section 42 in respect of interim dumping duties and interim countervailing duties that may become payable in relation to grinding balls exported to Australia from China to prevent material injury to the Australian industry while the investigation continues. Accordingly, the Commonwealth may require and take securities under subsection 269TD(4)(b).

1.3.10 Proposed measures (Chapter 12)

The Commissioner recommends that securities be applied to all exporters from China in accordance with the *ad valorem* duty method. Securities will apply to imports of grinding balls from China entered for home consumption on or after 22 April 2016.

2 BACKGROUND

2.1 Initiation

On 5 October 2015, the applicants lodged an application under subsection 269TB(1) requesting that the Parliamentary Secretary publish a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from China.

The applicants allege that the Australian industry has suffered material injury caused by exports of grinding balls to Australia from China at dumped and subsidised prices. The applicants allege that the industry has been injured through:

- price depression;
- price suppression;
- lost sales volume;
- loss of profits;
- loss of profitability;
- reduced revenue;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced employment.

Subsequent to receiving further information on 23 October 2015 from the applicants and having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping and subsidisation of grinding balls from China on 17 November 2015. Public notification of initiation of the investigation was also made on 17 November 2015.

ADN No. 2015/132 provides further details relating to the initiation of the investigation and is available on the Commission's website at www.adcommission.gov.au.⁸

In respect of the investigation:

- the investigation period⁹ for the purpose of assessing dumping and subsidisation is 1 October 2014 to 30 September 2015; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and subsidised goods is from 1 July 2011.

2.2 Previous investigations

There have been no previous investigations into the alleged dumping or subsidisation of grinding balls exported to Australia from any country.

2.3 Responding to this SEF

This SEF sets out the facts on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary, unless the investigation is terminated

⁸ See number 2 on the public record

⁹ Subsection 269T(1)

earlier. The SEF informs interested parties of the facts established to date and allows them to make submissions in response. It is important to note that this SEF may not represent the final views of the Commissioner.

Following its publication on the public record, interested parties have 20 days to respond to the SEF. Responses to this SEF should be provided to the Commissioner no later than 11 May 2016.

The Commissioner will consider submissions received in response to this SEF in either making his final report and recommendations to the Parliamentary Secretary, or in relation to terminating the investigation if he decides to do so. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after 11 May 2016, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the final report to the Parliamentary Secretary.¹⁰

The final report, if the investigation is not terminated, will set out the Commissioner's findings of fact in relation to the investigation and recommend whether a dumping duty notice and/or countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Submissions should preferably be emailed to operations3@adcommission.gov.au.

Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

The Director - Operations 3
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at www.adcommission.gov.au.

2.4 Submissions received from interested parties

The Commission has received nine submissions from interested parties during the course of the investigation. These submissions have been considered by the Commissioner in reaching the conclusions contained within this SEF. The submissions received are listed in **Appendix 1**.

2.5 Public record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available in hard copy by request in Melbourne or online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this SEF.

¹⁰ Subsection 269TEA(4)

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner considers that locally produced grinding balls are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises of two Australian producers, Moly-Cop and Donhad.

3.2 Legislative and policy framework

Subsection 269TC(1) provides that the Commissioner shall reject an application for a dumping duty notice or countervailing duty notice if, *inter alia*, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner first determines that the goods produced by the Australian industry are 'like' to the imported goods. Subsection 269T(1) defines like goods as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. However, the Australian industry must produce goods that are 'like' to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

3.3 The goods under consideration

The goods the subject of the investigation are:

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

The goods covered by this application include all ferrous grinding balls, typically used for the comminution of metalliferous ores, meeting the above description of the goods regardless of the particular grade or alloy content.

Goods excluded from this application include stainless steel balls, precision balls that have been machined and/or polished, and ball bearings.

3.4 Tariff classification

At the initiation of this investigation, ADN 2015/132 stated that the goods are typically classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- Tariff subheading 7325.91.00 with statistical code 26; and
- Tariff subheading 7326.11.00 with statistical code 29.

Prior to 20 December 2015, the goods were subject to a 4 per cent Customs duty. However on 20 December 2015, the China Australia Free Trade Agreement came into force at which time the goods became subject to a reduced rate of 3.3 per cent Customs duty. From 1 January 2016, the rate of Customs duty applicable to the goods further reduced to 1.7 per cent. From 1 January 2017 the goods will be free of Customs duty.

3.5 The Australian industry

The Commissioner must be satisfied that the “like” goods are in fact produced in Australia. Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

The Commission visited Moly-Cop’s Newcastle facility and Donhad’s Perth and Newcastle facilities to examine the manufacturing processes and to verify the claims made by the applicants in the application. The Commission has found that the applicants undertake at least one substantial process of manufacture in producing grinding balls in Australia and, as the goods are partly manufactured in Australia, there is an Australian industry producing like goods.

Further information on each applicant, its production process and product range is available in the Australian industry verification reports on the public record.

3.6 Submissions received in relation to the goods and like goods

Sino Grinding International Pty Ltd (Sino Grinding) submitted¹¹ the following comments in relation to the likeness of the goods:

- Physical likeness – Sino Grinding employs micro-alloying technology that differs from the applicants and gives them a competitive advantage;
- Commercial likeness – Sino Grinding’s grinding balls are produced from basic oxygen furnace (BOF) steel and with chemical specification that allows customisation of grinding balls to the customer’s particular needs;
- Functional likeness – customised chemistry and ball sizes differentiate Sino Grinding’s grinding balls from those produced by Australian industry; and
- Production likeness – Sino Grinding employs hammer forging technology which is a different production technology than that employed by the applicants.

CITIC Heavy Industries Company Australia Pty Ltd (CITIC) submitted¹² that all new plants in China manufacturing forged grinding media are using advanced technology including

¹¹ See number 8 on the public record

programmable logic controllers which allow those plants to operate at a lower cost per tonne than the Australian industry plants which rely on traditional upset forging.

CITIC further submitted that high chrome grinding balls should not be included in the goods description as the assumption that the total operational cost of high chrome balls that offer superior wear performance at higher price proportionally offsets the lower cost and increased consumption rate of forged steel balls discounts the varied end use requirements of the purchasers.

In relation to these submissions, the Commission notes that verification visits were undertaken to both applicants as well as two exporters of grinding balls, and that the production process was observed at each site. The locally produced goods are produced from both electric arc furnace (EAF) and BOF steel. The Commission was satisfied that the goods and the locally produced goods are manufactured in a similar manner.

The Commission also notes that both industry applicants and all cooperating exporters have the ability to customise the chemistry and ball sizes to the chemical and technical specifications required by their customers. As such, while the Commission accepts that each manufacturer may market a distinct value proposition, including in relation to high chrome balls, the goods and locally produced goods, are used in similar end-uses, are sold to common users and compete directly in the same market.

3.7 Commissioner's assessment – like goods

The Commissioner considers that the applicants produce goods that are 'like' to the goods under consideration for the following reasons:

- the primary physical characteristics of the goods and locally produced goods are similar;
- the goods and locally produced goods are commercially alike as they are sold to common users, and directly compete in the same market;
- the goods and locally produced goods are functionally alike as they have a similar range of end-uses; and
- the goods and locally produced goods are manufactured in a similar manner.

Further details on the Commissioner's assessment of like goods can be found in CON 316.¹³

Having regard to the above, the Commissioner is satisfied that the Australian industry produces 'like' goods to the goods the subject of the application, as defined in subsection 269T(1).

The Commissioner is satisfied that there is an Australian industry in respect of 'like goods' in accordance with subsection 269TC(1).

¹² See number 6 on the public record

¹³ See number 3 on the public record

4 AUSTRALIAN MARKET

4.1 Findings

The Commissioner finds that the Australian market for grinding balls is supplied by the Australian industry and imports from a number of countries, the largest of which is China. The Commission estimates that the size of the Australian market during the investigation period was approximately 240,000 tonnes.

4.2 Moly-Cop and Donhad

The Commission conducted verification visits at Moly-Cop's Newcastle production facility and at Donhad's Perth production facility, and is satisfied that there is an Australian industry producing like goods.

The Commissioner has had regard to the information verified at the visits to Moly-Cop and Donhad, as well as the matters discussed in the respective visit reports, in preparing this SEF. Verification visit reports are available on the public record.¹⁴

The Commissioner is satisfied that the applicants compete with importers of grinding balls in all market segments and in all states and territories in Australia.

4.3 Importers

Following the initiation of this investigation, the Commission identified the importers of grinding balls from China using the Australian Border Force's (ABF) import database. Based on individual import volumes, the following three importers were considered to be 'major' importers, accounting for 91 per cent of imports of grinding balls from China during the investigation period:

- Karara Mining Limited (Karara);
- CIA Electrometalurgica SA (CIA); and
- Sino Grinding.

The Commission sent each of the above three importers an importer questionnaire and received a response in a timely manner.

The Commission undertook on-site visits to Karara and Sino Grinding and verified the data supplied by those companies in terms of its relevance, completeness and accuracy. CIA is a non-resident importer of grinding balls, based in Chile. On this occasion, the Commission decided not to conduct an on-site verification of CIA's data. However CIA cooperated with the investigation and provided its internal records and source documents for its import and sales transactions. The Commission prepared a verification report for CIA based on its assessment of the information provided.

In conducting preparations for an in-country exporter verification for Jiangsu CP Xingcheng Special Steel Co Ltd (Xingcheng), the Commission sought information from a fourth importer of grinding balls, related to Xingcheng, CITIC Pacific Mining Management Pty Ltd (CPM). The Commission did not conduct an on-site verification of CPM's data;

¹⁴ See numbers 14 and 28 on the public record

however CPM cooperated with the investigation and provided its internal records and source documents for its import transactions. The Commission prepared a verification report for CPM based on its assessment of the information provided.

The importer verification reports are published on the public record.¹⁵

4.4 Market distribution

The Australian grinding balls market is supplied by the applicants, importers selling to end-users, and end-users importing grinding balls directly from the manufacturer.

The typical Australian-based grinding ball consumers value the source of grinding media on the basis of “total-cost-ownership”, that is, they will generally assess the total value of product taking into consideration price, consumption rate and supply chain costs. Supply security and technical support may also be taken into consideration.

The Australian industry estimates that approximately 90 per cent of grinding ball demand on the Australian market is from the mining industry, including for use in magnetite, copper and gold mine processing applications, with the remaining ten per cent taken up from coal pulverizing for electricity production and grinding plaster and cement for the building industry.

The Australian industry estimates that Australian manufacturers supply approximately 80 per cent of the Australian market, with the balance supplied by imports. The major sources of import supply are forged grinding balls from China and high chrome cast balls from Thailand and India.

Forged steel balls are generally consumed at a higher rate than high chrome balls and importers typically set their resale prices into the market lower to compensate for the higher consumption rate that will most likely arise.

The high chrome cast balls will typically result in a lower consumption rate than forged steel grinding balls, due to the more wear resistant microstructure of the product, however the significant component of chromium in the product inflates the manufacturing cost, and hence high chrome balls are more expensive.

The majority of grinding balls are sold into Western Australia (approximately 50 per cent of total sales) with the balance sold into the next largest volume states of New South Wales and Queensland.

4.5 Demand variability

Given that the major source of demand for grinding balls on the Australian market is the mining industry, the Australian industry claim that demand variability is primarily driven by the mining sector.

The Australian industry noted that a decline in mining investment in 2015 has not generally impacted the demand for grinding balls as the customers are well-established mines that have continued operation at, or near, maximum production output.

¹⁵ See numbers 13, 20, 25 and 30 on the public record

The Australian industry asserted that demand for grinding balls in Australia has remained stable across the four-year injury analysis period.

4.6 Market size

Based on the verified sales data of the Australian industry, verified exporter's data and import data obtained from the ABF import database, the Commission has estimated the size of the market for grinding balls which is shown in Figure 1 below. All years in Figure 1, and subsequent figures, align with the investigation period, e.g. years spanning October to September.

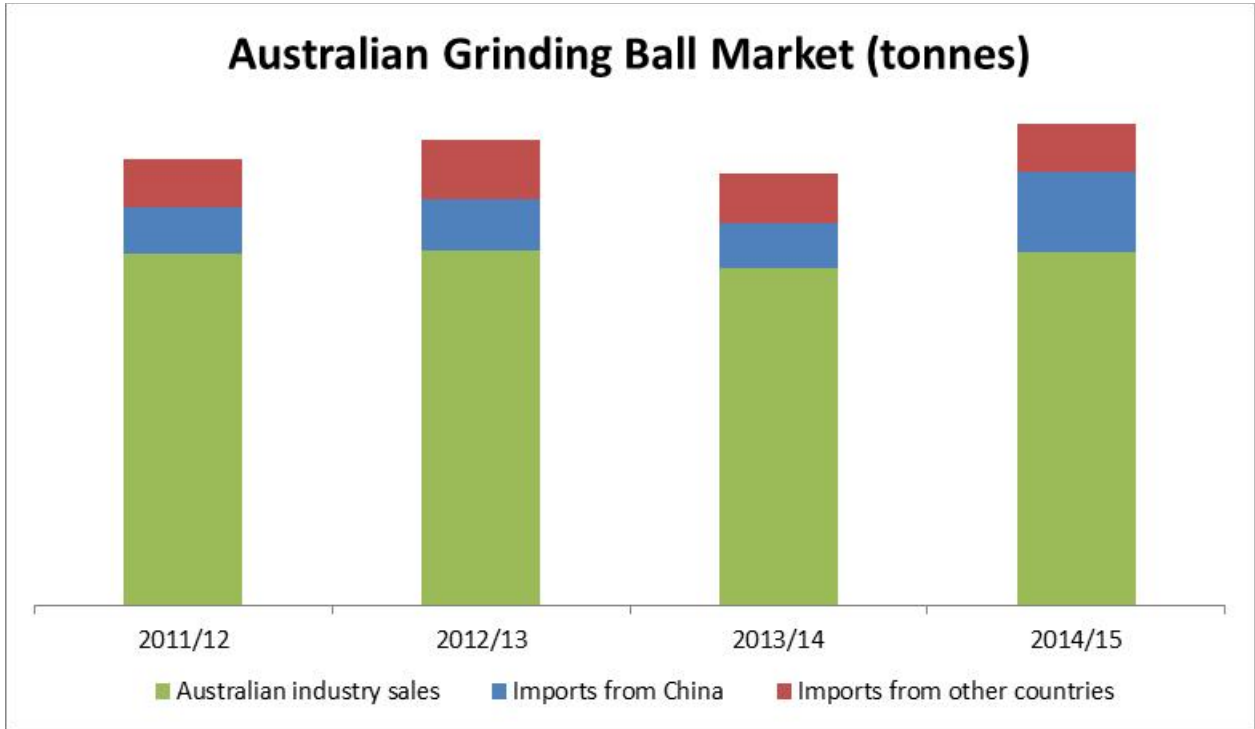


Figure 1: Australian market for grinding balls – Injury period

The Commission’s analysis regarding the Australian market for grinding balls is at **Confidential Attachment 1 – Australian Market**.

5 DUMPING INVESTIGATION

5.1 Preliminary finding

The Commissioner has found that grinding balls exported to Australia from China during the investigation period were dumped. The volume of dumped goods and the dumping margins were not negligible. The preliminary dumping margins are summarised in the table below.

Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	12.6%
Hebei Goldpro New Material Technology Co., Ltd	58.9%
Jiangsu CP Xingcheng Special Steel Co., Ltd	38.0%
Jiangsu Yute Grinding International Co., Ltd	47.6%
<i>Uncooperative and All Other Exporters</i>	104.8%

Table 3: Preliminary dumping margins

5.2 Introduction and legislative framework

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of Table 3, the Commission compared the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

5.3 Cooperative exporters

At the commencement of the investigation, the Commission contacted all known exporters of the goods and each identified supplier of the goods within the relevant tariff subheadings for grinding balls as identified in the ABF's import database and invited them to complete an exporter questionnaire.

The Commission received completed exporter questionnaire responses from the following exporters:¹⁶

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

¹⁶ As defined in subsection 269T(1).

These exporters have cooperated with the investigation.

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

5.4 Uncooperative exporters

Subsection 269T(1) provides that an exporter is an ‘uncooperative exporter’, where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

As noted in the status report for this investigation, after having regard to the *Customs (Extensions of Time and Non-cooperation) Direction 2015*, the Commissioner determined all exporters who did not provide a response to the exporter questionnaire, or request a longer period to provide a response within the legislated period (24 December 2015), to be uncooperative exporters pursuant to subsection 8(b) of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*.

For uncooperative and all other exporters, given that these exporters have not provided relevant information via a response to the exporter questionnaire, the Commissioner will use all relevant information and reasonable assumptions to calculate dumping margins.

5.5 Market situation finding

In the application, it was submitted that a particular market situation exists in the Chinese grinding balls market such that the domestic selling prices of grinding balls in the Chinese domestic market are not suitable for establishing normal values under subsection 269TAC(1). The applicants allege that grinding ball prices in China are artificially lower, or not substantially the same as they would be if they were determined in a competitive market.

After having considered these allegations, the Commission has formed a view that normal values cannot be ascertained under subsection 269TAC(1) because there is a particular market situation in the Chinese domestic grinding ball market such that sales in that market are not suitable to be used in determining a price under subsection 269TAC(1).

The Commissioner’s preliminary assessment of a particular market situation in China for grinding balls is in **Appendix 2**.

5.6 Benchmarks for competitive market costs for grinding bar

As the Commissioner considers that there is a particular market situation in China, normal values may be determined on the basis of a cost construction¹⁷ or third country sales.¹⁸ Normal values were constructed under subsection 269TAC(2)(c) and, as required by

¹⁷ Subsection 269TAC(2)(c)

¹⁸ Subsection 269TAC(2)(d)

subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulations).

Subsection 43(2) of the Regulations requires that, if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records.

As discussed in Appendix 2, the Commission considers that the significant influence of the government of China (GOC) has distorted prices in the iron and steel industry and grinding balls market in China. The Commission also 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 cost to make and sell (CTMS) calculations.

The Commission considers that direct and indirect influences of the GOC in the iron and steel industry is most pronounced in the part of that industry that might be described as upstream from grinding ball production. In particular, the GOC affects Chinese manufacturers' costs to produce grinding bars which in turn are used to produce grinding balls.

Accordingly, to account for the effects of the GOC's influence, the Commission has replaced Chinese manufacturers' grinding bar costs with appropriate competitive market costs for grinding bar. The order of preference to do so below is in accordance with the Commission's policy which has regard to the principles established in WTO Appellate Body findings as follows:

- i. private domestic prices;
- ii. import prices; and
- iii. external benchmarks.

5.6.1 (i) - Private domestic prices

The Commission considers that private domestic prices of grinding bar are equally affected by GOC influence and therefore not suitable for benchmarking exporter's CTMS. The Commission's assessment of data submitted by cooperating exporters shows that there is no significant difference between grinding bar prices from state invested enterprises (SIE) and private suppliers. Therefore, the Commission considers that private domestic prices of grinding bars in China are not suitable for determining a competitive market cost, free from government influence.

5.6.2 (ii) - Import prices

Based on the data supplied by cooperating exporters and gathered by the Commission, the Commission considers that prices of imported grinding bar sold in China are not suitable as a benchmark to reflect competitive market prices due to the lack of import penetration of grinding bar and the likelihood that import prices were equally affected by the government influences on domestic prices.

5.6.3 (iii) - External benchmarks

The Commission is not aware of any externally published grinding bar prices. However, the Commission considers that an external benchmark can be constructed based on the inputs which make up grinding bar, e.g. steel billet, ferroalloys and conversion costs. The methodology for the Commission's proposed benchmark construction of grinding bar is outlined at section 5.8.

5.7 Submissions in relation to benchmarks for competitive market costs for grinding bar

On 18 January 2016, the Commission published Issue Paper 2016/01 seeking submissions from interested parties in relation to the most appropriate methodology for determining a competitive market cost for grinding bar used in the production of grinding balls in the Chinese domestic market. The following submissions were received.

5.7.1 Applicants

The Commission received a submission¹⁹ from Moly-Cop advocating that the South African MEPS monthly billet price represents the most reasonable benchmark in determining competitive grinding bar costs for the purposes of constructing normal values. Moly-Cop asserted that South African data would be appropriate as it is geographically remote from the Asia region, making its domestic prices less susceptible to the influence of depressed Chinese billet prices. Moly-Cop further asserted that, based on the 2008 review of steel manufacturers in South Africa, it is best aligned with China in terms of the steel production capacity, being predominantly BOF rather than EAF.

5.7.2 Exporters

Longte

Among other things, Longte submitted²⁰ that there is no market situation for grinding balls in China and that its financial records accurately reflect its costs. Longte objected to the substitution of its costs in constructing a normal value.

Longte submitted that there is no grinding bar benchmark publicly available as grinding bar does not have an industrial standard. Should the Commission adopt a cost substitution methodology, Longte's view is that the Commission should use the production costs from its parent company, Changshu Longteng Special Steel Co., Ltd. (Longteng), in its integrated plant, in the second half of the investigation period as the "benchmark" cost of grinding bar for Longte for the entire investigation period.

Longte submitted that if the Commission maintains a view that surrogation of the cost of inputs purchased on the Chinese market is required, coke and coal costs could be surrogated into Longteng's costs.

¹⁹ See number 23 on the public record

²⁰ See number 26 on the public record

Goldpro and Yute

Goldpro and Yute jointly submitted that each is compliant in terms of subsection 43(2) of the Regulations, on the basis that they are producers of grinding balls who keep records relating to the goods, and that the records are in accordance with the general accounting principles and practices of China. In their opinion, each company's costs reasonably reflect competitive market costs associated with the production of grinding balls exported to Australia.

5.7.3 Commission's response to submissions

Competitive market costs

The Commission has determined that grinding bar accounts for the vast majority (approximately 80-90 per cent) of the cost to make grinding balls. The Commission considers that, due to the influence of GOC, the costs of grinding bar recorded by exporters in their records do not reasonably reflect competitive market costs.

The Commissioner considers that it is appropriate to substitute the costs relating to grinding bars recorded by exporters with a benchmark grinding bar cost. The Commissioner considers that this approach best removes all the influence of the GOC.

The Commissioner considers that the grinding bar benchmark will also reflect the world benchmark prices which are utilised to produce grinding balls, and as such, the substitution of the benchmark grinding bar costs will accurately reflect, rather than artificially inflating genuine raw material costs.

Grinding bar benchmark

The Commission considers that the costs of steel billet and ferroalloys in a grinding bar benchmark will reflect the cost of raw material sourced from international markets, and as such does not require the Commission to arbitrarily or otherwise select raw material sources as the defining factor in allocating costs of production.

The Commission considers that Longte's suggested approach to establishing a grinding bar benchmark does not capture the influence of the GOC on other costs associated with the conversion of raw materials to grinding bars and ultimately grinding balls.

In relation to the setting of the benchmark for grinding bar, the Commission has significant concerns with South African domestic steel billet prices due to the existence of import tariffs in South Africa. In addition, the South African domestic steel market is relatively shallow and may not show the same competitive characteristics with a price index having a larger geographical base and more depth in terms of transaction volumes.²¹

As such, the Commission does not consider that the South African domestic steel billet prices would constitute an appropriate benchmark for competitive steel billet costs.

²¹ South Africa ranked 21st overall in crude steel production, producing 6.5 million tonnes of crude steel in 2014

5.8 Substitution of grinding bar costs

The Commission's proposed benchmark for grinding bar cost consists of the following:

- i. A monthly Latin American export billet price in free-on-board (FOB) terms; and
- ii. Noting the Latin American billet is grade ASTM A36/A36-08, the billet prices were uplifted using independently sourced ferroalloy prices to provide a matrix of billet grades reasonably reflecting the chemical composition of each exported grinding ball grade; and
- iii. Where available, the exporter's actual cost of converting steel billet to grinding bar was used to uplift the alloyed billet price to an alloyed grinding bar price. Where the exporter's actual cost of converting billet to grinding bar was not available (where grinding bar was purchased rather than produced from billet by the exporter) the alloyed billet price was uplifted by a conversion factor based on an average of the conversion costs of the Australian industry and cooperating exporters to determine an alloyed grinding bar price.

The Commission considers that the Latin American steel billet export prices at FOB level published by McGraw Hill Financial Services (Platts), forms an independent and reliable basis for the steel billet input component.

World Steel Association's statistics shows that in excess of 63 million tonnes of crude steel was produced in the Latin American region in 2014. The Latin America region includes two of the top 13 countries, Brazil and Mexico, based on crude steel production volumes. Consequently, the Commission considers that the Latin America region has sufficient volume to reflect competitive market conditions. In addition, the Commission notes there are significant reserves of iron ore within the Latin America region which are mined and exported in large volumes. Of the iron ore exported from Central and Southern America, over half was directed to China, and the amount directed to China was greater than the amount consumed regionally. The Commission considers that this reflects a consistent cost point for a significant raw material that is included in the cost of steel billet.

Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information for competitive market costs of steel billets. This is consistent with the Commission's approach in the most recently completed steel investigation, Investigation No. 300 - Steel Reinforcing Bar from China (INV 300).

The Commission notes that the Latin American billet is of grade ASTM A36/A36-08. Monthly ferroalloy prices for the investigation period were obtained from Metal Bulletin. The total cost of ferroalloys applied to the steel billet was determined using a model developed by the Australian industry that allowed the Commission to replicate the chemical composition of each grade of exported grinding ball using the most cost effective combination of ferroalloys.

Having established alloyed grinding bar prices using the above methodology, the Commission substituted the grinding bar costs in the exporter's records with the benchmark grinding bar costs. Having done so, the Commission undertook the following steps to arrive at normal values for each exporter:

- The alloyed grinding bar price was uplifted by each cooperating exporters' actual cost to convert grinding bar to grinding balls, to determine the cost to make (CTM) of each grade of each exporter's grinding balls;
- The CTM was uplifted by each exporter's actual selling, general and administrative (SG&A) expenses to determine a CTMS for each grade of each exporter's grinding balls; and
- CTMS was uplifted based on each exporter's profit on those domestic sales which met the original ordinary course of trade (OCOT) testing (based on the exporter's disclosed, non-substituted CTMS).

5.9 Dumping assessment - Longte

5.9.1 Production facilities and verification

Longte provided a response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country visit to Longte during February 2016 to verify the information disclosed in its exporter questionnaire.

The verification team toured the facilities and confirmed that Longte was the producer of the goods under consideration.

A detailed report covering the visit findings is available on the public record.²²

5.9.2 Longte, Changshu Longteng Special Steel Co., Ltd and ME Longteng Grinding Media (Changshu) Co., Ltd.

The verification team considered the circumstances of the supply of grinding bar from Longte's parent company, Longteng and considered the appropriateness of collapsing Longte and Longteng into a single entity.

In addition, the verification team also considered the circumstances of the manufacture and export of grinding balls by Longte and sold by ME Longteng Grinding Media (Changshu) Co., Ltd (ME Longteng) through a joint venture arrangement and considered the appropriateness of collapsing Longte and ME Longteng into a single entity.

Where entities are 'collapsed' the actions of one member of the entity are taken to represent the actions of the whole. The issue of considering multiple entities as a single entity for the purpose of calculating dumping margins was considered by a World Trade Organization (WTO) dispute settlement panel dealing with the case of Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia.²³

In that WTO dispute settlement panel, the panel stated:

“In our view, in order to properly treat multiple companies as a single exporter or producer in the context of its dumping determinations in an investigation, the investigating authority has to determine that these companies are in a relationship close enough to support that treatment.”

²² See number 32 on the public record

²³ WT/DS312/R

It also stated that entities could be treated as a single entity where:

“the structural and commercial relationship between the companies in question is sufficiently close to be considered as a single exporter or producer.”

The panel considered that common management and ownership are indications of a close legal and commercial relationship and such companies “could harmonize their commercial activities to fulfil common corporate objectives.”

In this instance evidence of this capacity to harmonize commercial activities include:

- Longteng has a controlling interest in Longte;
- Longte is the equal joint venture partner in ME Longteng;
- During the verification, information and data was provided by Longte on behalf of Longteng and ME Longteng; and
- The verification team was also advised that on occasions, where ME Longteng’s mill had production orders in excess of its production capacity, production had been moved to Longte’s production facilities.

Considering the close structural and commercial relationship between Longte, Longteng and ME Longteng, the verification team considered it was appropriate to treat these companies as a single entity for the purpose of calculating a dumping margin.²⁴

5.9.3 Export price

As noted in the exporter verification report for Longte, the Commissioner is satisfied that the goods have been exported to Australia otherwise than by the importer and were purchased in an arm’s length transaction by the importer from the exporter.

Therefore the export price for Longte was calculated under subsection 269TAB(1)(a), as the price paid by the importer to exporter less transport and other costs arising after exportation.

5.9.4 Normal value

As detailed in section 5.3 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under subsection 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Longte’s normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	Longte’s actual verified costs to convert billet to grinding bar.

²⁴ As a result of this determination references to Longte throughout the report relate to the collapsed entity.

	Longte's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Longte's actual verified SG&A costs.
Profit	Longte's profit on domestic sales which met the original OCOT testing based on Longte's verified (non-substituted) CTMS.

Table 4: Longte normal value construction

A full reconstruction of this method is attached under **Confidential Attachment 2**.

Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export inland transport, handling and other expenses	Add an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred by Longte for each export transaction
Export bank charges	Add an upwards adjustment for export bank charges based on the verified charges incurred by Longte for each export transaction
Export credit terms	Add an upwards adjustment for export credit terms based on the verified credit days for each export transaction
Non-refundable value added tax	Add an upwards of 12 per cent to the normal value being the difference between the non-refundable value added tax (VAT) expense of 17 per cent incurred by Longte less a 5 per cent VAT rebate on export sales of grinding balls

Table 5: Adjustments to Longte's normal value

5.9.5 Preliminary dumping margin

The Commission has calculated the preliminary dumping margin for Longte of 12.6 per cent.

5.10 Dumping assessment - Xingcheng

5.10.1 Production facilities and verification

Xingcheng provided a response to the Commission's exporter questionnaire, and subsequently the Commission conducted an in-country verification visit to Xingcheng during February 2016 to undertake a detailed verification of the information disclosed in their exporter questionnaire.

The visit team toured the facilities and confirmed that Xingcheng was the producer of the goods under consideration.

A detailed report covering the visit findings is available on the public record.

5.10.2 Export price

During the investigation period Xingcheng exported the goods to both related and unrelated parties.

In relation to the goods exported by Xingcheng to unrelated parties, the Commission has determined the export price under subsection 269TAB(1)(a), as the price paid by the importer to exporter less transport and other costs arising after exportation.

In relation to the goods exported by Xingcheng to the related party, the Commission has determined the export price under subsection 269TAB(3), having regard to all relevant information.

Specifically, the Commission replaced the related party selling price with the selling price of another selected export sale of the same steel grade and diameter of grinding ball that was sold to an unrelated party in an arm’s length transaction to determine an export price. The selected sale occurred in a different quarter to the non-arm’s length sale. The Commission made a downwards timing adjustment by the cost difference of the grinding bar used in the arm’s length sale to that used in the non-arm’s length sales.

5.10.3 Normal value

As detailed in section 5 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under section 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Xingcheng’s normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	Xingcheng’s actual verified costs to convert billet to grinding bar. Xingcheng’s actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Xingcheng’s actual verified SG&A costs.
Profit	Xingcheng’s profit on domestic sales which met the original OCOT testing based on Xingcheng’s verified (non-substituted) CTMS.

Table 6: Xingcheng normal value construction

A full reconstruction of this method is attached under **Confidential Attachment 3**.

Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export inland transport, handling and other expenses	Add an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred for each export transaction
Export bank charges	Add an upwards adjustment for export bank charges based on the verified charges incurred for each export transaction
Export credit terms	Add an upwards adjustment for export credit terms based on the verified credit days for each export transaction
Non-refundable value added tax	Add an upwards adjustment of 12 per cent to the normal value being the difference between the non-refundable VAT expense of 17 per cent incurred by less a 5 per cent VAT rebate on export sales of grinding balls
Export commission	Add an upwards adjustment for the actual cost incurred for each export transaction
Domestic inland transport, handling and other expenses	Deduct a downwards adjustment for domestic export inland transport and handling charges based on the verified costs incurred for each domestic transaction
Domestic credit terms	Deduct a downwards adjustment for domestic credit terms based on the verified credit days for each domestic transaction
Domestic commission	Deduct a downwards adjustment for the actual cost incurred for each domestic transaction

Table 7: Adjustments to Xingcheng normal value

5.10.4 Preliminary Dumping Margin

The Commission has calculated the preliminary dumping margin for Xingcheng of 38.0 per cent.

5.11 Dumping assessment - Goldpro

5.11.1 Verification

Based on the volume of Goldpro's exports relative to the total export volume during the investigation period a decision was made not to conduct an on-site verification visit at Goldpro's premises.

Whilst a decision was made not to conduct an on-site verification visit, the Commission analysed the data submitted by Goldpro and is preliminarily satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate dumping margins.

It is noted that Goldpro has recently provided updated information to the Commission which may affect its dumping assessment. The Commission had insufficient time to consider this information in publishing this SEF. For this reason, the findings in relation to Goldpro could change between the SEF and final report.

5.11.2 Export price

In relation to the goods exported by Goldpro, the Commission has determined the export price under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

5.11.3 Normal value

As detailed in section 5 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under section 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Goldpro's normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	An average of actual verified costs from the Australian industry, Longte and Xingcheng to convert billet to grinding bar. Goldpro's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Goldpro's actual verified SG&A costs.
Profit	Goldpro's profit on domestic sales which met the original OCOT testing based on Goldpro's verified (non-substituted) CTMS.

Table 8: Goldpro normal value construction

A full reconstruction of this method is attached under **Confidential Attachment 4**.

Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export inland transport, handling and other expenses	Add an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred for each export transaction
Non-refundable value added tax	Add an upwards adjustment of 12 per cent to the normal value being the difference between the non-refundable VAT expense of 17 per cent incurred by less a 5 per cent VAT rebate on export sales of grinding balls
Domestic inland transport, handling and other expenses	Deduct a downwards adjustment for domestic export inland transport and handling charges based on the verified costs incurred for each domestic transaction

Table 9: Adjustments to Goldpro normal value

5.11.4 Preliminary Dumping Margin

The Commission has calculated the preliminary dumping margin for Goldpro of 58.9 per cent.

5.12 Dumping assessment - Yute

5.12.1 Verification

Based on the volume of Yute's exports relative to the total export volume during the investigation period a decision was made not to conduct an on-site verification visit at Yute's premises.

Whilst a decision was made not to conduct an on-site verification visit, the Commission analysed the data submitted by Yute and is preliminarily satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate dumping margins.

It is noted that Yute has recently provided updated information to the Commission which may affect its dumping assessment. The Commission had insufficient time to consider this information in publishing this SEF. For this reason, the findings in relation to Yute could change between SEF and final report.

5.12.2 Export price

In relation to the goods exported by Yute, the Commission has determined the export price under subsection 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

5.12.3 Normal value

As detailed in section 5.3 above, the Commission has formed a view that there is a particular market situation in China and the Chinese domestic grinding ball prices are not suitable to be used for establishing normal values under section 269TAC(1).

As such, the Commission has utilised subsection 269TAC(2)(c) to construct normal values.

The Commission has constructed Yute's normal values as follows:

Raw materials	Platts monthly Latin American FOB steel billet prices uplifted by the average cost for the investigation period for each alloy necessary to bring the billet to the chemical specification required for each grade of grinding ball exported to Australia.
Conversion costs	An average of actual verified costs from the Australian industry, Longte and Xingcheng to convert billet to grinding bar. Yute's actual verified costs to convert grinding bar to grinding balls.
SG&A expenses	Yute's actual verified SG&A costs.
Profit	Yute's profit on domestic sales which met the original OCOT testing based on Yute's verified (non-substituted) CTMS.

Table 10: Yute normal value construction

A full reconstruction of this method is attached under **Confidential Attachment 5**.

Adjustments

As normal value was ascertained under subsection 269TAC(2)(c), the Commission has made adjustments pursuant to subsection 269TAC(9) to ensure the normal value is properly comparable to export price, as follows:

Adjustment type	Description
Export inland transport, handling and other expenses	Add an upwards adjustment for export inland transport, handling and port charges based on the verified costs incurred for each export transaction
Non-refundable value added tax	Add an upwards adjustment of 12 per cent to the normal value being the difference between the non-refundable VAT expense of 17 per cent incurred by less a 5 per cent VAT rebate on export sales of grinding balls
Domestic inland transport, handling and other expenses	Deduct a downwards adjustment for domestic export inland transport and handling charges based on the verified costs incurred for each domestic transaction

Table 11: Adjustments to Yute normal value

5.12.4 Preliminary Dumping Margin

The Commission has calculated the preliminary dumping margin for Yute of 47.6 per cent.

5.13 Uncooperative and all other exporter dumping margins

As detailed in section 5.4 above, the Commission is treating all exporters of grinding balls from China in the investigation period other than Longte, Xingcheng, Goldpro and Yute as uncooperative exporters as defined in subsection 269T(1).

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative

exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has used the lowest of the weighted average export prices of those that were established for cooperating exporters in the investigation period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest of the weighted average normal values of those that were established for the cooperating exporters in the investigation period.

These changes include the adjusted normal values subsequent to the application of substituted billet prices in line with the Commissioner’s finding of a particular market situation for the domestic market of Chinese grinding balls.

This resulted in a dumping margin of 104.8 per cent. The Commission’s calculations for uncooperative all other exporters can be found in **Confidential Attachment 6**.

5.14 The Commissioner’s assessment

The Commissioner has assessed that grinding balls exported to Australia from China by:

- Longte;
- Xingcheng;
- Goldpro; and
- Yute

were at dumped prices during the investigation period. The Commissioner also found that the volume of dumped goods was not negligible during the investigation period.

The Commission has assessed that the dumping margin for uncooperative exporters from China is 104.8 per cent.

A summary of the Commission’s preliminary dumping margins are set out in Table 12.

Exporter / manufacturer	Dumping margin
Changshu Longte Grinding Ball Co., Ltd	12.6%
Hebei Goldpro New Material Technology Co., Ltd	58.9%
Jiangsu CP Xingcheng Special Steel Co., Ltd	38.0%
Jiangsu Yute Grinding International Co., Ltd	47.6%
<i>Uncooperative and All Other Exporters</i>	104.8%

Table 12: Preliminary dumping margins

6 SUBSIDY INVESTIGATION

6.1 Finding

The Commissioner finds that countervailable subsidies have been received in respect of grinding balls exported to Australia from China during the investigation period. The Commissioner finds that the volume of subsidised goods exported to Australia during the investigation period from China was not negligible.

However, the subsidy margin was negligible in relation to exports by Longte, Xingcheng, Goldpro and Yute, and the Commissioner proposes to terminate the countervailing investigation as it relates to those exporters.

The subsidy margin applicable to uncooperative and all other exporters is 8.2 per cent.

6.2 Investigated programs

The applicants alleged in the application and a subsequent submission that Chinese exporters of grinding balls benefited from 47 countervailable subsidies. These alleged subsidies related to programs for the provision of goods, grants, value added tax (VAT) exemptions, preferential taxation schemes, equity programs and preferential loan schemes.

As a result of its assessment of the information provided in the application and subsequent submission, the Commission investigated all 47 alleged subsidy programs.

To assess these programs further in relation to grinding balls exported to Australia, the Commission included questions relating to each program in a questionnaire and supplementary questionnaire which were forwarded to the GOC shortly after initiation of the investigation.

Responses to the questionnaires were not received from the GOC.

During examination of information provided in exporter questionnaire responses, and at verification visits by the Commission with selected Chinese exporters of the goods, the Commission was provided with information that indicated benefits were received, or were able to be received, by exporters of the goods under several new subsidy programs that were not included in the 47 alleged programs already being examined by the Commission.

Through this process, the Commission identified 7 additional subsidy programs that were not identified in the initial application or subsequent submission. As such a total of 54 programs have been investigated.

6.3 Summary of countervailable programs

After assessing all relevant information available, the Commissioner has found that countervailable subsidies have been received in respect of grinding balls exported to Australia from China, under 46 countervailable subsidy programs.

The findings in relation to each investigated program are outlined in the below table.

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Raw Materials (Steel billet) Provided by the Government at Less than Fair Market Value	Provision of goods	No
2	Raw Materials (Electricity) Provided by the Government at Less than Fair Market Value	Provision of goods	No
3	Preferential Tax Policies in the Western Regions	Income Tax	Yes
4	Land Use Tax deduction	Income Tax	Yes
5	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	Yes
6	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT	Yes
7	One-Time Awards to Enterprises Whose Products Qualify for “Well-Known TradeMarks of China” and “Famous Brands of China”	Grant	Yes
8	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
9	Superstar Enterprise Grant	Grant	Yes
10	Research & Development (“R&D”) Grant	Grant	Yes
11	Innovative Experimental Enterprise Grant	Grant	Yes
12	Special Support Fund for Non-State Owned Enterprises	Grant	Yes
13	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
14	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
15	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
16	Water Conservancy Fund Deduction	Grant	Yes
17	Anti-Dumping Respondent assistance	Grant	Yes
18	Technology Project assistance	Grant	Yes
19	Capital Injections	Grant	See 45
20	Environmental Protection Grant	Grant	Yes

PUBLIC RECORD

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
21	High and New Technology Grant	Grant	Yes
22	Independent Innovation and High-Tech Industrialisation Program	Grant	Yes
23	Environmental Prize	Grant	Yes
24	Provincial emerging industry and key industry development special fund	Grant	Yes
25	Environmental Protection Fund	Grant	Yes
26	Intellectual Property licensing	Grant	Yes
27	Financial resources construction special fund	Grant	Yes
28	Reducing pollution discharging and environmental improvement assessment award	Grant	Yes
29	Comprehensive utilisation of resources – VAT refund upon collection	Tariff and VAT	Yes
30	Grant of elimination of out dated capacity	Grant	Yes
31	Grant from Technology Bureau	Grant	Yes
32	Raw Materials (Coking coal) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
33	Raw Materials (Coke) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
34	Patent Award of Guangdong Province	Grant	Yes
35	Wuxing District Freight Assistance	Grant	Yes
36	Huzhou City Public Listing Grant	Grant	Yes
37	Huzhou City Quality Award	Grant	Yes
38	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
39	Wuxing District Public List Grant	Grant	Yes
40	Transformation technique grant for rolling machine	Grant	Yes
41	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grant	Yes
42	Key industry revitalization infrastructure spending in 2010	Grant	Yes

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
43	Jinzhou District Research and Development Assistance Program	Grant	Yes
44	Debt for equity swaps	Equity Programs	No
45	Equity infusions	Equity Programs	No
46	Unpaid dividends	Equity Programs	No
47	Preferential loans and interest rates	Preferential Loans	Yes
48	International trade increase project fund	Grant	Yes
49	Industrial economy reform and development fund	Grant	Yes
50	Sales revenue increase award	Grant	Yes
51	Tax contribution award	Grant	Yes
52	Energy and recyclable economy award	Grant	Yes
53	National controlled essential pollutant source supervision system third party operation and maintenance subsidy program	Grant	Yes
54	Scientific program awards in high and new scientific zone	Grant	Yes

Table 13 – Subsidy programs investigated

6.4 Subsidy margins

6.4.1 Cooperative exporters

The Commission found that the cooperative exporters received countervailable subsidies under nine programs.

Exporter-specific subsidy margins have been calculated for each selected exporter with reference to the specific programs that conferred a benefit to each exporter.

The subsidy margin was negligible in relation to exports by all cooperative exporters and the Commission proposes to terminate the countervailing investigation as it relates to exports by those exporters. This is discussed further below.

6.4.2 Uncooperative exporters

In accordance with section 269TAACA, in the absence of GOC advice regarding the individual enterprises that had received financial contributions under each of the investigated subsidy programs, the Commissioner has had regard to the available relevant facts and determines that uncooperative exporters have received financial contributions that have conferred a benefit under 46 programs found to be countervailable in relation to grinding balls during the investigation period.

6.4.3 Preliminary margins

Table 14 below shows the Commission’s individual subsidy margin calculations:

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 14 – Preliminary subsidy margins

The Commission’s findings in relation to each program investigated (including the method of calculation of subsidy margins) are outlined in **Appendix 3**.

The calculation of subsidy margins is at **Confidential Attachment 7**.

6.4.4 Proposed part termination of investigation

Subsection 269TDA(2) requires that the Commissioner must terminate a countervailing investigation in relation to an exporter if countervailable subsidisation for that exporter is determined to be negligible.

In relation to goods exported from China (a Developing Country²⁵), countervailable subsidisation is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than 2 per cent.²⁶

The Commission notes that for goods exported by Longte, Xingcheng, Goldpro and Yute during the investigation period, the subsidy margin is negligible. The Commissioner is therefore proposing to terminate the subsidy investigation into these exporters.

²⁵ Under the *Customs Tariff Act 1995*

²⁶ Subsection 269TDA(16)

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Preliminary finding

The Commissioner has preliminarily assessed that the Australian industry²⁷ producing like goods has suffered injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- reduced employee numbers; and
- reduced capacity utilisation.

Under subsections 269TG(1) and 269TJ(1), one of the matters that the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice or countervailing duty notice is that because of dumping or subsidisation, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

The Commissioner's preliminary assessment is that the Australian industry has suffered injury, and that the injury suffered is material.

7.2 Introduction

This chapter outlines the economic condition of the Australian industry and an assessment as to whether the Australian industry has suffered injury.

In the application, the applicants claimed that the Australian industry has suffered material injury caused by grinding balls being exported to Australia from China at dumped prices. The applicants claimed that the injurious effects of dumping have been:

- lost sales volume;
- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced revenue;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced employment.

²⁷ As noted in section 4 of this report, Moly-Cop and Donhad are the Australian manufacturers of the like goods. All references to the "Australian industry" are references to Moly-Cop and Donhad.

7.3 Approach to injury analysis

CON 316 advised that the Commission would examine the Australian market and the economic condition of the Australian industry from 1 July 2011 for the purposes of injury analysis and that the investigation period is from 1 October 2014 to 30 September 2015.

The following analysis relies on publically available information, data from the ABF import database and verified sales and cost data of the Australian industry, importers and exporters.

As outlined previously, Moly-Cop and Donhad together comprise the entirety of the Australian industry with regard to grinding balls. The Commission undertook visits to both Moly-Cop and Donhad to verify the information and data provided to the Commission in support of the joint application, and to gather an understanding of the economic condition of the Australian industry. The Commission is satisfied that the cost and sales data provide by the applicants is reasonably complete, relevant and accurate.

The Commission also considered the injury factors allegedly experienced by each applicant. The Commission's findings were presented in the respective Australian industry verification reports. The Commission has however consolidated the applicants' data below for the purposes of assessing injury to the Australian industry.

The injury analysis has been undertaken having regard to several key factors which impact on the market:

- Grinding balls are a specialty steel product;
- While both the Australian industry and Chinese exporters offer standard grades of grinding balls, it is more common for customers to require grinding balls produced to a particular specification, including size, chemical composition, surface hardness, centre hardness and wear coefficient;
- Sales are generally made via a tender process, which takes into consideration the appropriateness of each tenderer's offer on grounds of pricing, capacity to meet required specifications and security/reliability of supply; and
- Sales are made through traders as well as directly to end users.

7.4 Volume effects

7.4.1 Sale volumes

The Commission has consolidated the production amounts from the Australian industry with ABF import data and verified exporter data. Based on this consolidated data, the Commission found that during the injury analysis period the Australian market for grinding balls was between 214,000 and 240,000 tonnes per annum. The market expanded by approximately 10 per cent during the investigation period.

The size of the market for grinding balls was shown previously in Figure 1. Figure 1 indicates that, at a macro level, in an increasing market, the Australian industry has increased its sales volumes in the investigation period to restore sales volumes to the levels experienced in 2011/12 and 2012/13.

However, as noted in the Australian industry visit reports, the Australian industry has provided specific examples of sales it considers were lost to dumped and subsidised Chinese exports on a micro level.

7.4.2 Market share

Market share in relation to the Australian grinding ball market is shown in Figure 2, below.

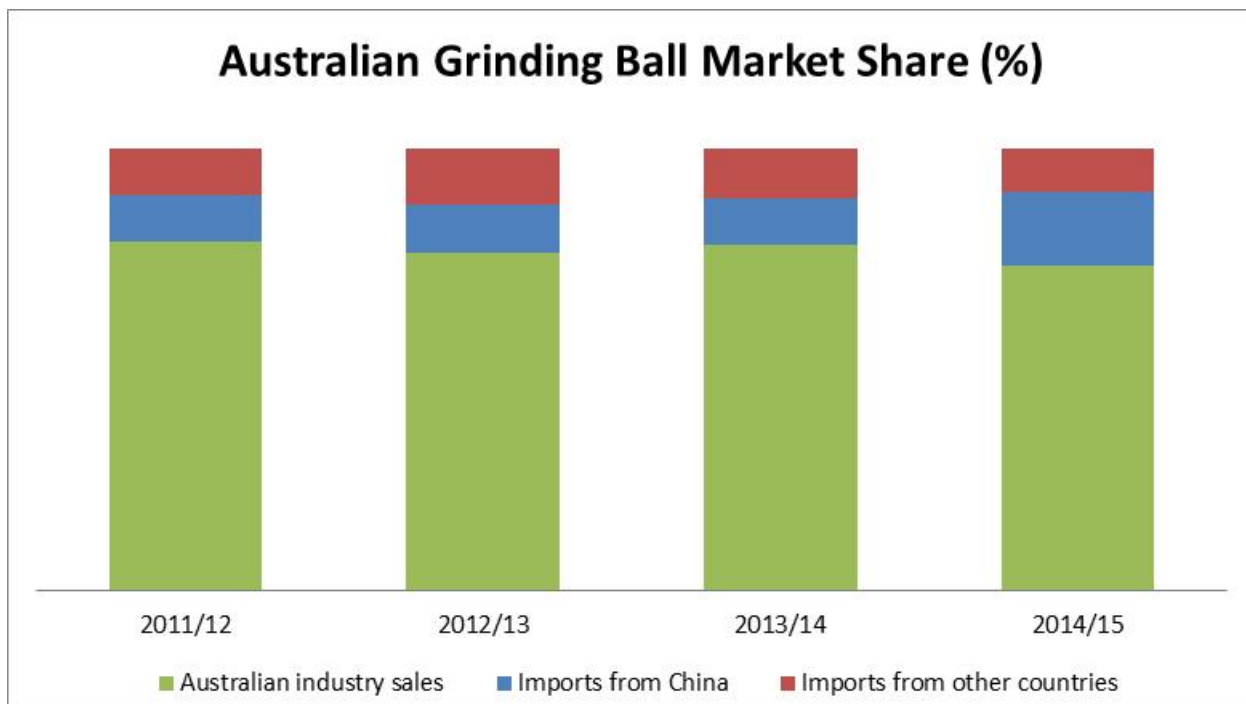


Figure 2: Australian grinding ball market share

Figure 2 indicates that the market shares for the Australian industry, Chinese imports and other imports remained relatively stable across the first three years of the injury analysis period. In the investigation period, however, Chinese imports captured an additional 6 per cent of market share at the expense of both the Australian industry and imports from other countries. This increase in market share was made possible by a 79 per cent increase in the volume of goods imported from China.

Therefore, despite achieving a higher level of sales volume during the investigation period, the Australian industry nonetheless experienced a decline in market share. The Commission considers that the Australian industry has experienced injury in the form of lost market share.

7.5 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

The applicants claim that they have reduced selling prices in response to a substantial increase in lower priced offers in the Australian market from Chinese exporters in an effort

to maintain sales volumes. As a result, the applicants claim that they have suffered material injury in the form of price depression and price suppression.

Figure 3 below demonstrates the movement in the Australian industry's unit selling price and unit CTMS over the injury analysis period.

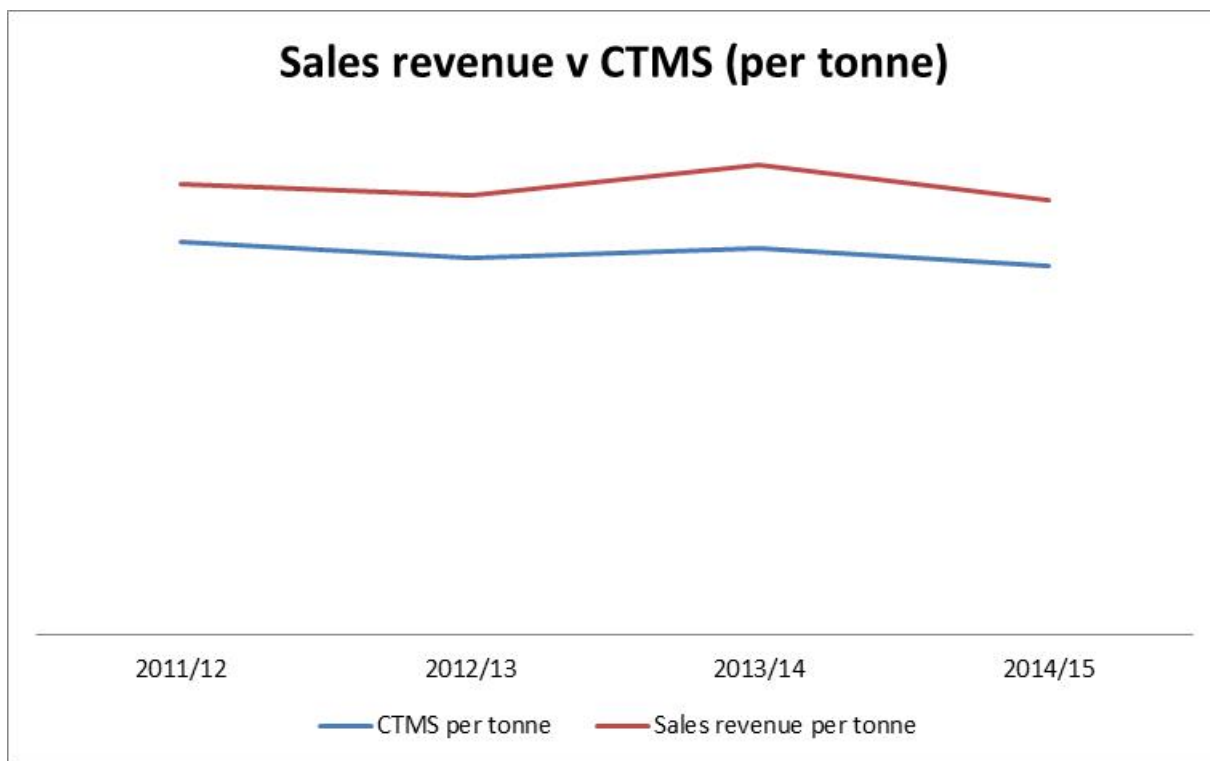


Figure 3: Australian industry unit selling price and unit CTMS

Figure 3 shows that the Australian industry's unit selling prices and unit CTMS declined over the injury analysis period. The Australian industry achieved the largest margin between unit costs and unit selling prices in 2013/14, however over the investigation period unit selling prices declined to a greater extent than unit CTMS. This is consistent with the claims made by the Australian industry that it has been forced to reduce selling prices in an attempt to maintain sales volumes. The Commission considers that the Australian industry has suffered price depression. In addition, given that the gap between unit selling prices and unit CTMS has narrowed, the Commission also considers that the Australian industry has suffered price suppression.

7.6 Profits and profitability

The applicants submitted that the pricing pressures experienced as a result of the allegedly dumped and subsidised grinding balls exported from China has had a flow-on effect in relation to profit and profitability.

Movement in the Australian industry's profit and profitability is shown in Figure 4 below.

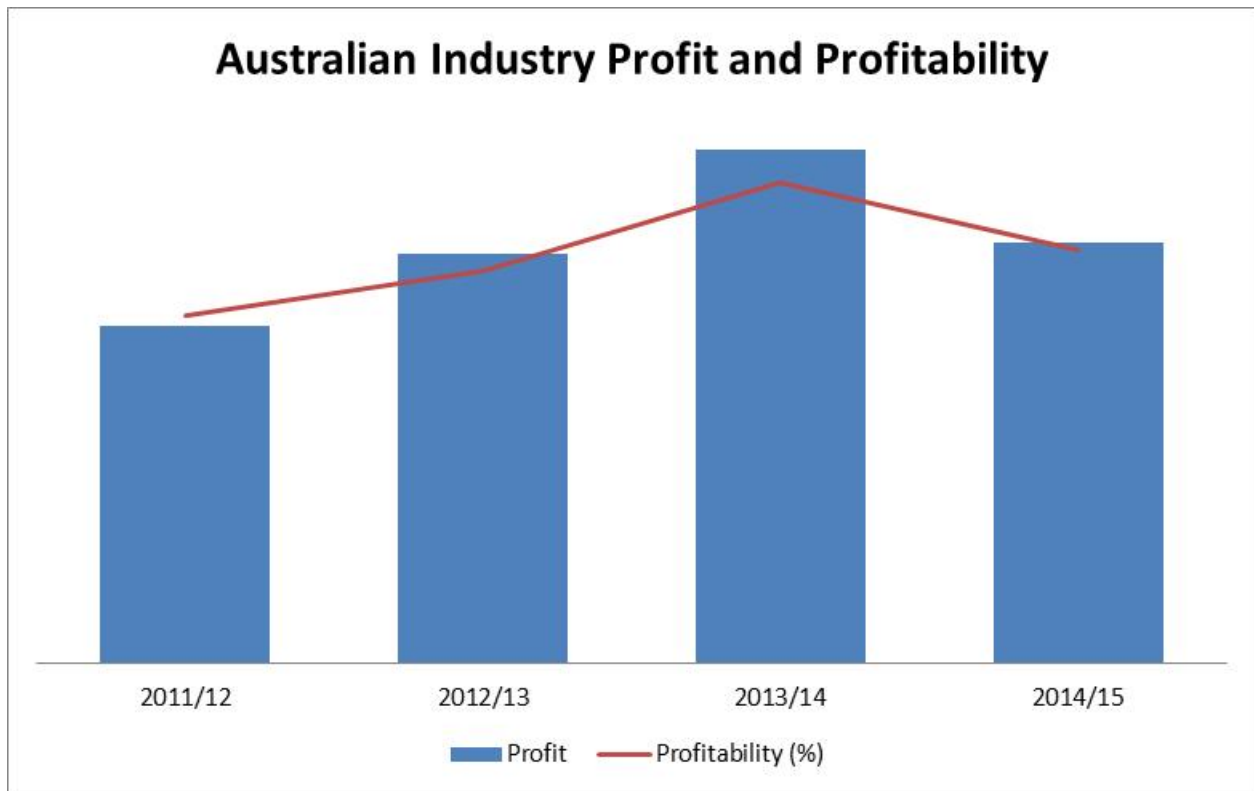


Figure 4: Australian industry unit profit and profitability

Figure 4 indicates that the Australian industry's profit and profitability rose steadily from 2011/12 to 2013/14 before declining in the investigation period.

This trend is consistent with the evidence relating to price and volume effects detailed above. Despite the Australian industry's increased sales volumes and lower CTMS, profit and profitability have nonetheless declined due to the Australian industry achieving a lower unit selling price in the investigation period.

The Commission considers that the Australian industry has experienced injury in the form of reduced profits and profitability.

7.7 Other economic factors

The Commission has considered the following economic factors in addition to the injury factors above.

Revenue

The applicants claim that the Australian industry has suffered material injury in the form of reduced revenue from sales of grinding balls in the investigation period.

The Commission notes that sales revenue remained stable during the period 2011/12 to 2013/14 before declining by approximately three per cent in 2014/15, despite an increase in sales volumes.

The Commission considers that the Australian industry has experienced injury in the form of reduced revenue.

Return on investment

Return on investment deteriorated over the years 2011/12 to 2013/14, before improving during the investigation period. The Commission notes that Moly-Cop underwent a significant financial restructure during 2013/14 and the improved return on investment may be attributable to this restructure. Moly-Cop asserted that the benefits of the restructure has been curtailed by the effects of dumped and subsidised Chinese goods, and the improvement in return on investment would have likely been stronger were it not for the impact of dumped and subsidised Chinese goods.

The Commission considers that there is insufficient evidence to conclude that the Australian industry has suffered injury in the form of reduced return on investment.

Capacity utilisation

Capacity utilisation remained steady during 2011/12 and 2012/13 before declining in each of the following years.

The Commission considers that Australian industry has experienced injury in the form of reduced capacity utilisation.

Employment

Employee numbers have reduced each year of the injury analysis period, with the greatest reduction occurring in the investigation period.

The Commission considers that Australian industry has experienced injury in the form of reduced employment.

7.8 Preliminary finding

Based on information available at this stage of the investigation, the Commissioner considers that the Australian industry has suffered injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenue;
- reduced employee numbers; and
- reduced capacity utilisation.

The Commissioner notes that the applicants have claimed injury in the form of lost sales volumes, however based on the Commission's analysis of the information provided, the Commissioner does not consider that Australian industry has suffered injury in the form of lost sales volumes.

8 HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Introduction

The Commissioner's preliminary finding is that during the investigation period, exports of grinding balls from China were dumped and subsidised and that these exports have caused material injury to the Australian industry.

8.2 Legislative framework

Under subsections 269TG(1) and (2) and 269TJ(1) and (2), one of the matters the Parliamentary Secretary must be satisfied of in order to publish dumping and countervailing duty notices is that, because of the dumping and subsidisation, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors that the Parliamentary Secretary may take into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

The Commission has also had regard to the Ministerial Direction for Material Injury as outlined further in section 8.11.²⁸

In the case of concurrent dumping and subsidisation, where it is established that the exported goods are both dumped and subsidised, the Commissioner may consider the combined effects of the dumping and subsidisation when determining whether material injury to the Australian industry producing like goods has been caused or is threatened - there is no need to quantify separately how much of the injury being suffered is the result of either dumping or subsidisation.²⁹

8.3 Size of the dumping and subsidy margins

Subsections 269TAE(1)(aa) and (ab) require the Parliamentary Secretary to have regard to the size of each of the dumping margins and the particulars of any countervailable subsidies received in respect of the goods exported to Australia from China.

The dumping margins outlined in Chapter 5 for the four cooperative exporters, which represented around 93 per cent of the export volume from China during the investigation period, ranged between 12.6 and 58.9 per cent. The dumping margin for uncooperative and all other exporters is 104.8 per cent. The subsidy margins, as outlined in Chapter 6, were negligible for cooperating exporters and 8.2 per cent for uncooperative and all other exporters. Combined, the weighted average dumping and subsidy margin is 22.7 per cent for all exports from China.

The Commissioner is satisfied that this dumping and subsidisation enabled importers of grinding balls to have a competitive advantage on price compared to the Australian industry.

²⁸ Ministerial Direction on material injury 2012, 27 April 2012, available on the Commission's website

²⁹ Section 269TJA.

8.4 Volume effects

As discussed in Chapter 7, the Australian industry has experienced an increase in sales volume while experiencing a reduction in market share during the investigation period.

8.4.1 Sales volumes

The Commission's analysis identified that during the investigation period:

- the Australian grinding ball market grew by approximately 10 per cent;
- import volumes from China grew by 79 per cent;
- import volumes from countries not subject to investigation declined by 2 per cent; and
- the Australian industry sales volumes increased by 4 per cent.

It is evident from this analysis that imports from China have captured a disproportionate share of the growth in the Australian grinding ball market during the investigation period. It is noted that import volumes have grown significantly both in absolute terms and relative to the size of the Australian market (subsection 269TAE(a)(b) and (c)(i)).

8.4.2 Market share

The Commission's analysis identified that during the investigation period:

- despite a 4 per cent increase in sales volume, the Australian industry suffered a loss of 4.9 percentage points of market share;
- the market share for Chinese imports increased by approximately 6.3 percentage points; and
- the market share for imports from countries not subject to the investigation decreased by approximately 2 percentage points.

Given the decline in the market share of both Australian industry and imports from countries not subject to the investigation in a growing market, the Commission considers that Australian industry's loss of market share during the investigation period is attributable to dumped imports from China.

8.5 Price undercutting

Price undercutting occurs when imported goods are sold at a price below that of the domestically produced goods.

The Commission undertook a price undercutting analysis based on verified sales data sourced from the two visited importers and the applicants for the investigation period.

The Commission conducted a price undercutting analysis at an aggregated level and where possible narrowed its analysis down to particular diameter ranges and to individual customers as outlined below.

In conducting the price undercutting analysis, the Commission compared the applicants' weighted average ex-works selling prices (AUD per tonne) to the visited importer's selling prices of imported goods at a comparable level of trade.³⁰

Due to the nature of the goods, which are often manufactured to an individual customer's specific requirements, the Commission was unable to compare the exact same models sold by the applicants and importers in its undercutting analysis.

8.5.1 Price undercutting at an aggregated level

The Commission assessed price undercutting at an aggregated level by comparing the weighted average selling price of the applicants' entire grinding ball range against the weighted average selling price of each visited importer's grinding ball range meeting the goods description.

This analysis showed that both visited importers undercut the applicants' selling prices in each quarter of the investigation period. The undercutting ranged from 0.1 per cent to 10.5 per cent on a quarterly basis.

8.5.2 Price undercutting by diameter

The Commission compared the weighted average selling prices of imported goods sold by the visited importers against the applicants' weighted average selling prices in particular diameter ranges over the investigation period.

Price undercutting by diameter range is summarised in the below table:

Diameter Range	Q4-2014	Q1-2015	Q2-2015	Q3-2015	Grand Total
25-27mm	NA				
30-36mm	NA				
40mm	12.5%	12.8%	11.7%	12.0%	12.1%
50-52mm	12.2%	2.7% - 11.4%	6.5% - 11.9%	5.8% - 8.4%	6.4% - 11.23%
64-65mm	NA	-0.8%	NA	NA	-1.2%
78-80mm	-5.8%	-7.3%	-4.5%	0.9%	-5.4%
94mm	7.9%	10.3%	8.8%	4.9%	8.7%
100-105mm	-14.3%	-15.2%	-15.6%	-15.2%	-15.0%
125mm	-18.5%	-19.2%	-18.5%	NA	-19.2%
140mm	NA				

Table 14: Summary of price undercutting by diameter range

³⁰ The following is noted:

- One selected importer, Karara, does not on-sell the goods it imports. For the purposes of the price undercutting analysis, the Commission estimated a selling price for Karara' using its verified FOB prices and adding its own verified post exportation costs (marine insurance, ocean freight, customs clearance costs and customs duty) and an amount for profit and SG&A based on another importer's data.
- The Commission is in possession of two additional importers' data; however the Commission does not consider this data to be suitable for the purposes of undercutting analysis, for reasons contained in Confidential Attachment 9.
- The Commission was unable to make adjustments in relation to credit terms which varied between the applicants and importers.

Despite what is noted above, the undercutting analysis covers a substantial volume of the imported goods. The Commission does not consider that the impact of the above would significantly alter its conclusions in respect to price undercutting.

The Commission notes that although there is no undercutting observed for 64-65mm, 78-80mm, 100-105mm and 125mm diameter ranges, the volumes of imports for these diameter ranges was immaterial.

8.5.3 Price undercutting by customer

Price undercutting was also considered in the context of customers purchasing grinding balls from the applicants and visited importers. The Commission notes that the data was limited.

Price undercutting by customer is summarised in the below table:

Row Labels	Q4-2014	Q1-2015	Q2-2015	Q3-2015	Grand Total
Customer A	11.5%	NA	NA	11.1%	11.4%
Customer B	NA	NA	NA	-13.8%	-14.3%

Table 15: Summary of price undercutting by customer

8.5.4 The Commissioner’s assessment – price undercutting

The Commissioner is satisfied that there is positive evidence of price undercutting on an aggregated basis and on the basis of particular diameter ranges with significant import volumes during the investigation period. The Commission considers that it was unable to draw meaningful conclusions about price undercutting at a customer level. However, this is not unexpected given that most sales are made on a tender basis and because the goods are usually specific to an individual customer’s requirements.

The Commissioner considers there is sufficient evidence from the price undercutting analysis to conclude that the dumping and subsidisation at the levels outlined in Chapter 5 and 6 (in the range of 12.6 percent to 58.9 per cent for cooperating exporters and 113 per cent for uncooperative exporters) created a competitive benefit to importers, and demonstrates that the applicants faced price pressure from imported goods.

The Commission’s price undercutting analysis is at **Confidential Attachment 9**.

8.6 Price effects

8.6.1 Price depression and suppression

At the Australian industry verification visits, both applicants provided comprehensive evidence to the Commission of their respective price setting practices. This evidence indicates that both companies constantly monitor price offerings in the market and that a key determinant for its prices to customers was the price of imports.

The Commission has found that grinding ball supply contracts are typically awarded on a tender basis. The Commission obtained evidence from the Australian industry detailing its tender application process as well as feedback received in relation to unsuccessful tenders. The Commission is satisfied that, given each applicant has the capacity to tailor grinding ball production to meet the particular technical specifications required by the customer, pricing is an integral aspect of the tender process from the perspective of the Australian industry. The evidence obtained by the Commission supports the Australian

industry's contention that it has had to reduce its offered prices in tendering processes in an effort to compete with lower priced dumped and subsidised Chinese goods, and that the Australian industry has lost tenders to these goods.

The Commission also accepts that numerous factors are considered by the tenderer in selecting the successful supplier, including capacity to meet technical specification, capacity to meet supply volumes in a timely manner, reliability and quality of supply, and price. The Commission obtained evidence from tenderers indicating that while price was not the sole reason the Australian industry was not awarded supply contracts, the Australian industry was nonetheless less competitive on price compared to the Chinese suppliers awarded the supply contracts. The Commission considers that import offers and movements in the price of imported grinding balls are leveraged by customers to negotiate prices with the Australian industry in tender processes, and that the Australian industry must respond to the price of imported products by reducing its price offers to remain competitive.

The Commission considers that the Australian industry has suffered price depression during the investigation period attributable to dumped and subsidised imports from China.

As specified in the Dumping and Subsidy Manual (the Manual) at page 16, in determining whether price suppression has occurred, the Commission may compare prices with costs and/or assess whether the prices for the Australian industry would have been higher in the absence of dumping and subsidisation.

As detailed in Chapter 7, the Australian industry's unit selling price has declined at a greater rate than the decline in unit CTMS over the injury analysis period. The Commission considers that the Australian industry's reduction in unit CTMS has been achieved through a combination of falling scrap steel prices and operational restructuring initiatives, and that some of these cost savings and efficiencies may translate into a reduction in prices to customers. The Commission notes however that unit selling prices have declined to a greater extent than the reduction in unit CTMS. In the context of an expanding market, the Commission considers that unit selling price would not have declined at a greater rate than the reduction in unit CTMS if the Australian industry's selling prices were not adversely affected by the presence of dumped and subsidised Chinese imports.

As such, the Commission considers that Australian industry has suffered price depression and price suppression during the investigation period attributable to dumped and subsidised imports from China.

8.7 Profit and profitability effects

As outlined in Chapter 7, the Australian industry has experienced deterioration in its profit and profitability.

Whilst the Commission has not established that dumped and subsidised imports from China have caused injury in the form of lost sales volume, it has been established that the dumped and subsidised imports have caused injury in the form of price depression and price suppression.

The Commission considers that, in an expanding market and in absence of the dumped and subsidised Chinese imports, the Australian industry would be able to achieve improved prices as the price point of its competitors would be higher. Accordingly, the Commission considers that the Australian industry would be in a position to increase revenue without incurring additional costs based on increased unit selling prices being generated. In turn, this would improve profits and profitability.

As such, the Commission considers that the Australian industry has suffered injury in the form of reduced profits and profitability caused by dumped and subsidised imports of grinding balls from China.

8.8 Other relevant economic factors

As explained in Chapter 7 and based on the causation analysis outlined above, the Commission has found that the Australian industry has experienced injury in the form of other economic factors related to the production of grinding balls.

The Commissioner considers that the link between grinding balls exported from China at dumped and subsidised prices and injury suffered by the Australian industry in the form of price and profit effects has had a negative impact on the Australian industry's decisions in respect of other economic factors. For example, reductions in selling prices and profitability have flow on effects in terms of lost revenue.

8.9 Comparison of export price and non-injurious price

As an additional test to establish whether there is a causal link between the alleged dumping and material injury, the Commission sought to compare export prices from China with estimates of a non-injurious price (NIP) for the investigation period.

To calculate the NIP, the Commission estimated the unsuppressed selling price (USP) for grinding balls for the investigation period using the Australian industry's selling prices in a period unaffected by dumping, e.g. the preceding year.

The Commission then deducted amounts from that USP for importer SG&A and profit, including into-store costs, Customs duty and overseas freight as verified from importers. These calculations provided for a NIP at the ex-works level.

The weighted average export price for the investigation period was below the NIP. The Commission considers this finding is consistent with the applicants' claim that the allegedly dumped goods have caused material injury.

The Commission's calculations of the NIP and the comparison with export price are at **Confidential Attachment 8**.

8.10 Injury caused by factors other than dumping

Subsection 269TAE(2A) requires consideration of whether injury to an industry is being caused or threatened by a factor other than dumped or subsidised imports.

During the investigation, the Commission either considered or was informed by interested parties of the following possible causes of injury:

- Effect of imports from countries other than China;
- The export performance of the Australian industry;
- Aggressive volume based marketing by the Australian industry;
- The Australian industry's pricing model; and
- The Australian industry's lack of technological competitiveness.

8.10.1 Effect of imports from countries other than China

Information from the ABF import database showed that approximately 63 per cent of grinding balls imported into Australia came from China, 29 per cent from Thailand and the remaining eight per cent from a variety of countries including India, Indonesia, South Africa and Spain.

The Commission analysed the FOB export prices of these other countries and found that prices for all countries were above the FOB export prices from China for the duration of the investigation period. The Commission observes that, as demonstrated in Figure 6 in section 9.4, the disparity between Chinese FOB prices and prices from other countries has increased from 2014. In addition, the Commission has not received evidence of lower price offerings from other countries during the course of the investigation.

The Commission is aware that a contributing factor to the above finding is the fact that Thai and Indian imports may include high chrome models which are often higher priced due to the higher level of alloying content and greater wear resistance. However, the Commission has not observed any shift in preference towards Thai and Indian high chrome models, and in fact notes that the volume of imported high chrome grinding balls has fallen during the investigation period. This is in contrast to the increase in imports of grinding balls from China.

The Commission considers that goods exported from countries other than China have not materially contributed to the Australian industry's injury.

8.10.2 The export performance of the Australian industry

The Australian industry's export sales have shown a general decline in volume over the injury analysis period. The decline in export volumes is a contributing factor to its decreased capacity utilisation, although export sales do not represent a significant proportion of the Australian industry's sales. As a result, the Commission is satisfied that the export performance of the Australian industry is not a significant contributing factor to its injury, noting that the injury factors such as the decline in the industry's domestic profit and profitability which is discussed in section 7.6 above are charted in relation to the Australian industry's domestic sales only.

8.10.3 Aggressive volume based marketing by the Australian industry

Sino Grinding submitted³¹ that there is no injury caused to the applicants as a result of the alleged dumped and subsidised imports, but rather that Australian industry has engaged in an aggressive volume strategy which has been characterised by a transfer of market share between the joint applicants.

³¹ See number 8 on the public record

Sino Grinding claimed that the applicants grew sales volumes during the investigation period and were therefore displaying characteristics more in keeping with being market aggressors.

The Commission is satisfied, as detailed in section 7.4 that while the Australian industry did achieve an increase in sales volumes during the investigation period, this was achieved in an expanding market, and market share was in fact lost to Chinese imports.

8.10.4 Australian industry's pricing model

Sino Grinding further submitted that the Australian industry operates an internal pricing model that drives a decline in prices based on international raw material indices despite being insulated from international market pressures by virtue of a declining Australian exchange rate and ownership of their own scrap supplies in the case of Moly-Cop.

The Commission notes that Moly-Cop does operate a pricing model that responds to changes in raw material costs such as scrap, however, the evidence obtained during the Commission's verification visit, and as demonstrated in section 7.5 above, is that Moly-Cop's unit selling prices have deteriorated at a greater rate than its improvement in CTMS. This indicates that the pricing model also responds to competitive pricing pressures as well as cost of production factors. The Commission is satisfied that the Australian industry's pricing has been impacted by the declining cost of raw materials, however, profit margins have been squeezed by the presence of dumped and subsidised goods in the market.

8.10.5 Australian industry's lack of technological competitiveness relative to Chinese exporters

Sino Grinding requested that the Commission differentiate the claims of injury from competitive advantage delivered by the distinct and substantive differences in the product due to efficiencies of BOF billet production technology relative to grinding media produced by EAF and as a result of technical development and technology investment by its exporter/manufacturers.

Jeco Materials Pty Ltd (Jeco) also submitted³² that its end user customers imported grinding balls to ensure better quality control resulting from superior production technologies rather than due to lower pricing incentives.

The Commission accepts that each manufacturer may market a distinct value proposition, based on BOF or EAF billet production, forging techniques and micro-alloying techniques. The Commission understands that each of these variables will be considered by end users when supply decisions are made. The Commission also accepts that such factors may provide a competitive advantage, however the final purchasing decision must be made within the underlying context of price, and the magnitude of the dumping and subsidy margins detailed in sections 5 and 6, indicate that Chinese exporters are operating with a distinct pricing advantage independently of any competitive advantage resulting from production technologies.

³² See number 7 on the public record

8.11 Materiality of injury

The Commission has taken into consideration other possible injury factors during the investigation period. In order to differentiate the effects of dumping and subsidisation from the effects of other factors that may have caused injury, the Commission has examined the effect dumping and subsidisation has specifically had on price and profit.

As noted in the price undercutting analysis, the Commission is satisfied that the Australian industry has been forced to lower prices to be competitive with dumped and subsidised imports.

Given the materiality of the dumping and subsidy margins found as outlined at sections 5 and 6, the Commission finds that the Australian industry's prices are lower than they otherwise may have been had grinding balls not been exported to Australia at dumped and subsidised prices. In particular, this price pressure has contributed to price depression and suppression for the Australian industry, which has resulted in lower profits and profitability, reduced revenues and a loss of market share.

The Commission is satisfied that an increase in price equal to the lowest dumping margin calculated (after taking into account the size of the market for grinding balls in Australia), combined with the potential to achieve a greater market share in the absence of dumped and subsidised imports, would have enabled the Australian industry to operate more profitably during the investigation period.

The Commission has also applied the following relevant aspects of the Ministerial Direction on Material Injury in the context of this investigation:

- dumping and subsidisation need not be the sole cause of injury;
- although there is no minimum threshold to establish the market share required to demonstrate that dumped or subsidised imports have caused material injury, the volume of dumped and subsidised imports of grinding balls represented around 17 per cent of the overall Australian market for grinding balls in the investigation period, which the Commission considers is sufficient to have caused material injury;
- it is possible to find material injury where an industry suffers a loss of market share in a growing market; and
- the increase in market share taken by dumped imports in the investigation period, suggests that the injury to the Australian industry was greater than that likely to occur in the normal ebb and flow of business.

Based on the above assessment, the Commission concludes that dumping and subsidisation has caused material injury to the Australian industry.

8.12 The Commissioner's findings

The Commissioner has found that Australian industry has suffered material injury in the form of:

- reduced market share;
- price depression;
- price suppression;
- reduced profits;

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- reduced profitability;
- reduced revenue;
- reduced employee numbers; and
- reduced capacity utilisation.

and that this material injury is caused by sales of grinding balls exported from China at dumped and subsidised prices. As directed by the Ministerial Direction on Material Injury, the Commissioner considers that the range of factors in which the industry has suffered injury, when considered together, is material in degree and greater than that likely to occur in the normal ebb and flow of business.

9 WILL DUMPING, SUBSIDISATION AND MATERIAL INJURY CONTINUE?

9.1 Preliminary findings

The Commissioner is of the view that exports of grinding balls from China in the future may be at dumped and subsidised prices, and that continued dumping and subsidisation may continue to cause material injury to the Australian industry.

9.2 Introduction

Pursuant to subsection 269TG(2) and subsection 269TJ(2), where the Parliamentary Secretary is satisfied that dumping and subsidisation may continue and because of that material injury to an Australian industry producing like goods has been caused or is being caused, anti-dumping measures may be imposed on future exports of like goods.

9.3 Will dumping continue?

9.3.1 Quantitative analysis

The Commission's dumping analysis found dumping margins between 12.6 per cent and 58.9 per cent for cooperating exporters and 104.8 per cent for uncooperative and all other exporters of grinding balls from China during the investigation period.

The Commission notes that forward orders exist for exports from China and that the grinding balls exported from China have a significant market share and influence in the Australian market.

The Commission has examined import volumes from the ABF import database occurring during and following the end of the investigation period. The Commission observes that import volumes from China for the six month period following the end of the investigation period - i.e. the last quarter of 2015 and the first quarter of 2016 - are significantly higher than verified volumes during the investigation period. The Commission notes that the total import volume of grinding balls from China was approximately 40,000 tonnes during the investigation period but the total imports of grinding balls from China is approximately 31,600 tonnes in the six months following the end of the investigation period. If these volumes of imports from China are sustained over the next six months this will result in a 50 per cent increase over the 12 month period following the investigation period.

The Commission further observes that the weighted average FOB export prices from China as recorded in the ABF import database remain consistently lower than the weighted average declared export prices of grinding balls from other countries during the investigation period and the six months post-investigation period. As pictured in Figure 6 this differential has slowly increased.

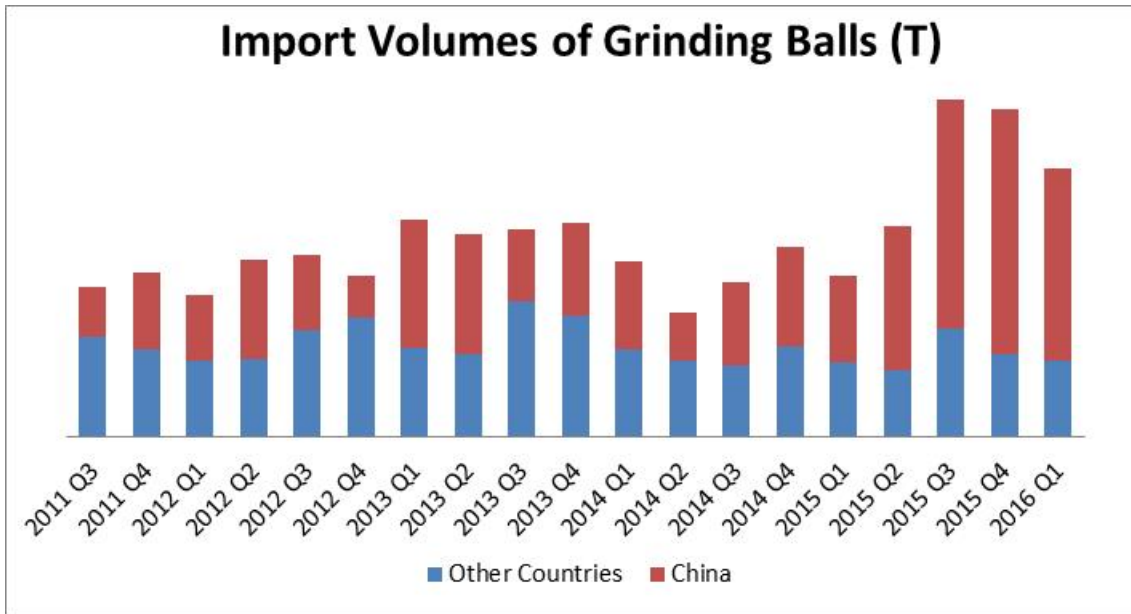


Figure 5 - Quarterly import volumes of grinding balls (source: ABF database)

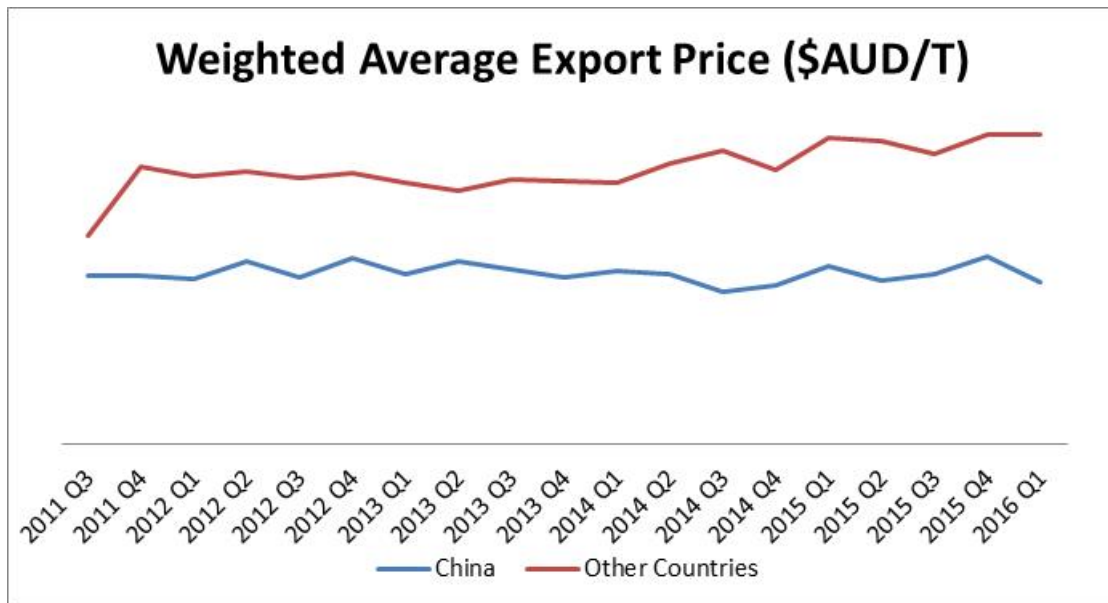


Figure 6 – Weighted average export prices of grinding balls (source: ABF database)

9.3.2 Qualitative analysis

In addition to the quantitative analysis above, the Commission notes the following facts in relation to the state of the steel industry in China:

- there is significant excess steel production capacity in China. The Department of Industry, Innovation and Science estimates that in early 2015, the overcapacity in the broader Chinese steel industry was around 200 million tonnes³³ with capacity utilisation averaging around 70 per cent over the past two years.³⁴

³³ Dept. of Industry and Science, March 2015, Resources and Energy Quarterly, p24

³⁴ Dept. of Industry and Science, June 2015, Resources and Energy Quarterly, June 2015, pp14-15

- The latest release of OECD's Steel Market Development report confirms that there is still an oversupply in the Chinese steel market. The report states that the output decreased by two per cent in 2015, however Chinese domestic demand fell at a higher rate leaving a gap between supply and demand. The report states that while the steel prices have fallen by 25 per cent in 2015 due to weakening demand and cheaper inputs, further downward pressure on steel prices and increased export competition is expected in the near future while the market is adjusting.³⁵
- The Department of Industry, Innovation and Science estimates that 21 per cent of China's steel producers operated at a cash loss in 2015, which indicates that exports may have been at dumped prices.³⁶
- An examination of exporter questionnaire responses indicates significant unutilised capacity for all cooperating exporters. The Commission calculates that the cumulated excess capacities of cooperating exporters would be sufficient to meet most of the Australian demand for grinding balls. This does not take into account the unknown excess capacity of several minor Chinese manufacturers not participating in this investigation.

9.3.3 The Commissioner's consideration

Based on this quantitative and qualitative analysis, and the magnitude of dumping margins found, the Commissioner considers that dumping will continue if anti-dumping measures are not imposed.

9.4 Will subsidisation continue?

The Commission found that grinding balls exported to Australia from China during the investigation period were subsidised, with subsidy margins for the uncooperative and all other exporters being 8.2 per cent.

There is no evidence before the Commission to show that countervailable subsidisation of Chinese products will cease in its entirety in the future and it is therefore considered that grinding ball manufactures will likely continue to receive financial contributions under at least some of the identified countervailable subsidy programs.

The Commissioner therefore considers that subsidisation will continue in the future.

9.5 Will material injury continue?

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that grinding balls exported at dumped and subsidised prices from China have caused material injury to the Australian industry.

The Commissioner considers that the continuation of price competition from dumped and subsidised imports from China is likely to have a continuing adverse impact (e.g. price undercutting) on the Australian industry, particularly if volumes continue to increase.

³⁵ OECD.org, Steel market Developments, Quarter 4 2015, pp17-21

³⁶ Dept. of Industry and Science, June 2015, Resources and Energy Quarterly, Mar 2016, p33

9.6 Commissioner's assessment

Based on the available evidence, the Commissioner considers that exports of grinding balls from China in the future may be at dumped and subsidised prices and that continued dumping and subsidisation may cause further material injury to the Australian industry.

10 NON-INJURIOUS PRICE

10.1 Introduction

Where the Parliamentary Secretary is required to determine both ICD and IDD, subsections 8(5BA) and 10(3D) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) apply.

Subsections 8(5BA) and 10(3D) require the Parliamentary Secretary, in determining the ICD and IDD payable, to have regard to the 'lesser duty rule'. The lesser duty rule in the context of concurrent dumping and countervailing notices requires consideration of the desirability of fixing a lesser amount of duty, such that the export price of the goods ascertained for the purposes of the notices combined with the amount of ICD and IDD do not exceed the NIP.

Under section 269TACA, the NIP of the goods exported to Australia is the minimum price necessary to prevent material injury being caused, or threatened to be caused, to the Australian industry by dumping or subsidisation of the goods.

However, pursuant to subsections 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Parliamentary Secretary is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:³⁷

- a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(ii);
- b) there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises;
- c) if a countervailing subsidy has been received in respect of the goods – the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Agreement (SCM Agreement) for the compliance period.

10.2 Preliminary assessment of NIP

For the reasons outlined in Chapter 5 and Appendix 2, the Commissioner recommends that the Parliamentary Secretary be satisfied that, in accordance with subsection 269TAC(2)(a)(ii), the situation in the Chinese grinding balls market is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1).

Accordingly, for this investigation, the Commissioner considers that subsections 8(5BAAA) and subsection 10(3DA) of the Dumping Duty Act apply, and as a result, the Parliamentary Secretary is not required to consider the lesser duty rule for the purposes of subsections 8(5BA) and 10(3D) of the Dumping Duty Act.

³⁷ Subsections 8(5BAAA)(a) to (c) of the Dumping Duty Act are in relation to the calculation of dumping duty and subsections 10(3DA)(a) to (c) of the Dumping Duty Act are in relation to the calculation of countervailing duty.

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As a result, for this investigation, the Commissioner recommends that the full dumping and subsidy margins determined in this report be applied to any ICD and IDD taken in relation to grinding balls exported to Australia from China.

The Commissioner notes that notwithstanding this recommendation, the Parliamentary Secretary is not obliged to, but still may, consider applying a lesser amount of duty.

11 REASONS FOR MAKING A PAD

The Commission has completed a preliminary assessment of dumping and subsidisation as set out in this SEF. The Commission's assessment shows that exports of grinding balls from China in the investigation period were at dumped and subsidised prices. In relation to dumping, the volumes and dumping margins of the dumped goods are not negligible. In relation to countervailing, the subsidy margins for cooperating exporters is negligible, however the volume and subsidy margins for uncooperative and all other exporters is not negligible. The available evidence indicates that competition from dumped and subsidised imports have caused the Australian industry to suffer material injury.

Based on the available information the Commissioner is satisfied that:

- grinding balls have been exported from China at dumped and subsidised prices;
- there is an Australian industry producing like goods that is experiencing injury; and
- the dumped goods are causing material injury to the Australian industry.

Consequently, the Commissioner is satisfied there appears to be sufficient grounds for the publication of a dumping duty notice and a countervailing duty notice in respect of grinding balls exported to Australia from China. It is likely that exports will continue in the future.

As a result, the Commissioner has made a PAD pursuant to section 269TD. Under subsection 269TD(4)(b), the Commissioner is satisfied that it is necessary to require and take securities to prevent material injury to the Australian industry occurring whilst the investigation continues. The Commonwealth may require and take securities under section 42 in respect of IDD and ICD that may become payable in respect of the goods imported from China and entered for home consumption in Australia on or after **Friday 22 April 2016**.

The amount of securities payable will be calculated on an ad valorem basis (calculated as a proportion of export price). Securities will be at the level of the full dumping and subsidy margins calculated, as shown below in Table 16 at section 12.4.2.

In making the PAD, the Commissioner had regard to the application and submissions received within 40 days of the public notice of initiation. The Commissioner has also had regard to other matters considered relevant including verified information and data from previous investigations as well as information gathered by the Commission or submitted by interested parties (where appropriate), including:

- data from importers;
- data from exporters;
- data submitted by the Australian industry; and
- submissions made between public notice of initiation of the investigation to the date of making the PAD.

12 PROPOSED MEASURES

12.1 Finding

The Commissioner proposes to recommend to the Parliamentary Secretary that:

- a dumping duty notice be published in respect of grinding balls exporter to Australia from all exporters from China; and
- a countervailing duty notice be published in respect of grinding balls exported to Australia from uncooperative and all other exporters from China.

The proposed form of measures in respect of ICD and IDD that may become payable, is the ad valorem duty method (i.e. a percentage of the export price).

12.2 Introduction

ICD are calculated on an ad valorem basis.

In relation to IDD, the methods that the Parliamentary Secretary may utilise are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- Combination of fixed and variable duty method (combination duty method);
- Floor price duty method;
- Fixed duty method (\$X per tonne); and
- Ad valorem duty method (i.e. a percentage of the export price).³⁸

12.3 Submissions from interested parties

The Commission has received one submission³⁹ from Moly-Cop on available forms of measures, as summarised below:

- in the case of verified exporters, there are complex company structures involving related parties;
- the combination duty method sets a minimum price which stabilises prices and provides certainty to market participants in the Australian market;
- the ad valorem method cannot guarantee the effectiveness of the measures in a falling market. In Moly-Cop's view the ad valorem method has the risk of under-collection of duties. As such, the ad valorem method can be punitive to the Australian industry; and
- export prices might be lowered to avoid the effects of the ad valorem duty. Moly-Cop submits that this risk is amplified in the case of a particular market situation finding.

In light of the above, Moly-Cop's view is that the combination duty method is the most appropriate form of measures in relation to this investigation.

³⁸ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*

³⁹ No. 29 on the Public Record, pp. 9-11

12.4 The Commissioner's consideration

12.4.1 Form of measures

In determining the most appropriate form of measures, the Commissioner had regard to the *Guidelines on the Application of Forms of Dumping Duty – November 2013* (the Guidelines)⁴⁰ and relevant factors influencing the grinding balls market. The Guidelines outline the advantages and disadvantages of each form of measure.

The Commissioner recommends that the ad valorem duty method apply for the purposes of the calculation of securities for this investigation.

The main reasons for recommending the ad valorem measure are:

- the high combined dumping and subsidy margins calculated (ranging from 12.6 to 58.9 per cent for cooperating exporters and 113 per cent for uncooperative exporters, with a weighted average margin of 22.7 per cent), reduces the likelihood for significant reduction in export prices to avoid the intended effect of the duties, particular in an industry where contracts are awarded on a competitive tender basis;
- the measures will better reflect changes in the market, because raw material prices can fluctuate dramatically, reducing the effectiveness of floor prices. In this regard the Commission notes that this report occurs approximately 5 months after the investigation period and current day raw material prices as utilised in the benchmarks established under the methodology at 5.8 have decreased due to movements in steel prices. As such any floor price under the combination or floor price duty method would be already outdated;
- ad valorem measures remove significant variability in the effective rate of duty;
- the ad valorem method does not need to be reviewed as often as other duty methods; and
- grinding balls imported from China can have various price points for different models. The guidelines state that the combination duty method, like the floor price duty method and fixed duty method, may not suit those situations where there are many models or types of the good with significantly different prices.

12.4.2 Combined measures

Noting that the Parliamentary Secretary is not required to consider applying the lesser duty rule, the Commission recommends that the level of ICD proposed for grinding balls exported from China be the full margin of countervailable subsidisation in the case of uncooperative and all other exporters.

The Commissioner notes that in this investigation, there is no double count in relation to ICD and IDD. Therefore, the calculation of combined dumping and countervailing duties is simply a matter of adding the reported dumping and subsidy margins together, as shown below.

⁴⁰ Available at <http://adcommission.gov.au/accessadssystem/Documents/Forms%20and%20Guidelines/Guidelineformsdumpingduty-November2013.pdf>

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Exporter / manufacturer	Dumping securities	Countervailing securities	Combined securities	Form of security
Changshu Longte Grinding Ball Co., Ltd	12.6%	NA	12.6%	Ad valorem
Hebei Goldpro New Material Technology Co., Ltd	58.9%	NA	58.9%	
Jiangsu CP Xingcheng Special Steel Co., Ltd	38.0%	NA	38.0%	
Jiangsu Yute Grinding International Co., Ltd	47.6%	NA	47.6%	
<i>Uncooperative and All Other Exporters</i>	104.8%	8.2%	113.0%	

Table 16: Securities table

13 APPENDICES AND ATTACHMENTS

Appendix 1	List of submissions
Appendix 2	Particular market situation finding
Appendix 3	Assessment of countervailable subsidies
Appendix 4	Assessment of adequate remuneration for coking coal in china
Appendix 5	Assessment of whether State Invested Enterprises are public bodies
Confidential Attachment 1	Assessment of Australian market
Confidential Attachment 2	Dumping margin calculations – Longte
Confidential Attachment 3	Dumping margin calculations – Xingcheng
Confidential Attachment 4	Dumping margin calculations – Goldpro
Confidential Attachment 5	Dumping margin calculations – Yute
Confidential Attachment 6	Dumping margin calculations – Uncooperative and all other exporters
Confidential Attachment 7	Subsidy margin calculations
Confidential Attachment 8	Comparison of export price to NIP
Confidential Attachment 9	Price undercutting analysis

APPENDIX 1 - LIST OF SUBMISSIONS

Date Received	Submission from	Subject of Submission	EPR No.
23 Dec 2015	Australian industry: Moly-Cop	Evidence of a particular market situation in the Chinese market for grinding balls	4
24 Dec 2015	Australian industry: Moly-Cop	Evidence of the Australian industry's claims in relation to countervailable subsidy programs and additional subsidy programs	5
24 Dec 2015	Importer: CITIC	Anti-Dumping Notice No. 2015/132: Grinding Balls Exported from China	6
28 Dec 2015	Importer: Jeco	Anti-Dumping Notice No. 2015/132: Grinding Balls Exported from China	7
29 Dec 2015	Importer: Sino Grinding	ADC 316: Grinding Balls exported to Australia from the People's Republic of China	8
5 Feb 2016	Australian industry: Moly-Cop	Issues Paper 2016/01	23
5 Feb 2016	Exporters: Yute and Goldpro	Issues Paper 2016/01	24
18 Feb 2016	Exporter: Longte	Issues Paper 2016/01	26
1 Apr 2016	Australian industry: Moly-Cop	Investigation No. 316 – Grinding Balls exported from P R China	29

APPENDIX 2 - PARTICULAR MARKET SITUATION FINDING

A2.1 Introduction

This appendix provides an assessment and determination of a 'particular market situation' (market situation) in relation to grinding balls in China during the investigation period. This appendix details the basis of assessment and the tests applied to determine the existence of a 'market situation' in relation to the domestic price of grinding balls in China.

A2.2 Allegation of market situation

In the application, the applicants alleged that, during the investigation period, a market situation existed in the Chinese grinding ball market that rendered sales in that market unsuitable for determining normal value under subsection 269TAC(1) due to interventions by the GOC in the Chinese iron and steel industry. The applicants alleged that this made the domestic price for grinding balls unsuitable for the determination of normal values.

The applicants' claim of GOC intervention in the Chinese steel industry identified the following measures:

- policies and plans that outline the GOC's aims and objectives for the Chinese steel industry; and
- VAT arrangements.

A2.3 Sources of information used by the applicants

Sources of information used by the applicants are listed below.

- National Steel Policy (2005).
- Blueprint for the Steel Industry Adjustment and Revitalisation (2009).
- National and regional Five-Year Plans and guidelines.
- The 12th Five-Year Plan: Iron and Steel (2011-2015 Development Plan for Steel Industry).

A2.4 Background

The Act does not provide any definition of particular circumstances or factors which would satisfy the Minister that a 'market situation' exists. The WTO Anti-Dumping Agreement is similarly silent in relation to the definition of the concept of a 'market situation' referred to within Article 2.2.

In relation to determining whether a 'market situation' exists, the Commission's Dumping and Subsidy Manual⁴¹ states:

In considering whether sales are not suitable for use in determining normal values under subsection 269TAC(1) because of the situation in the market of the country of exporter the Commission may have regard to factors such as:

⁴¹ Anti-Dumping Commission, November 2015, Dumping and Subsidy Manual.
http://www.adcommission.gov.au/accessadsystem/Documents/Dumping%20and%20Subsidy%20Manual%20-%20November%202015_20%20Nov%202015%20-%20final%20on%20website.pdf

In considering whether sales are not suitable for use in determining a normal value under s.269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:

- *whether the prices are artificially low; or*
- *whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s.269TAC(1).*

Government influence on prices or costs could be one cause of “artificially low pricing”. Government influence means influence from any level of government.

In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government’s involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.⁴²

The Commission considers that the analysis of a ‘market situation’ can involve the consideration of all relevant market variables in relation to the subject good in totality and that the term ‘a situation’ for the purposes of this report defies precise definition.

The Commission holds that ‘a situation’ refers to the presence of a factor or composite factors which collectively operate to cause a degree of distortion in the market that renders arm’s-length transactions in the OCOT in that market unsuitable for use in determining normal values.

More specifically, the Commission considers that a ‘market situation’ assessment involves an examination of factors which may affect the interaction of supply and demand in a sector, industry or market, to the extent that prices and costs in that market can no longer be viewed as being established under normal market principles.

In assessing a ‘market situation’, the Commission considers that governments can directly or indirectly influence domestic prices through the imposition of restrictions on how prices are charged for a product. This influence can be through:

1. direct price regulation (floor or ceiling pricing mechanisms); or
2. indirect influence through policies that impact on the supply of the subject goods or the supply or price of major inputs used in the production of the subject goods.

The influence of a government does not, in itself, establish the existence of a ‘market situation’. In assessing whether a ‘market situation’ exists, the Commission needs to examine both:

1. the effect such influence has on the market; and
2. the extent to which domestic prices are distorted and unsuitable for proper comparison with corresponding export prices.

The Commission considers that, in the context of this analysis, evidence of government policies and programs that specifically or indirectly flow to the relevant market under consideration may have an effect on domestic commerce with respect to the goods. The

⁴² Dumping and Subsidy Manual, pp 35.

Commission holds that this information is relevant to the analysis of whether factors exist which can be characterised as a 'market situation' for the purposes of subsection 269TAC(2)(a)(ii).

Consideration of whether a situation exists in the relevant market is concerned with the operation of policies and regulations (whether overt or implied) and their potential impact on the suitability of domestic selling prices for normal value purposes. Accordingly, the question to be answered is whether the relevant policies operate in a manner which:

- a) leads to a distortion of competitive market conditions in relation to the subject goods such that domestic sales are unsuitable for the purposes of determining normal value; and
- b) affects the conditions of commerce related to the production or manufacture of like goods such that the records of exporters cannot be relied upon to reasonably reflect competitive market costs associated with production in accordance with the provisions of subsection 43(2) of the Regulations.

A2.5 Evidentiary threshold

The Commission considers that the issue as to whether or not a 'market situation' exists in the domestic market of an exporting country is a matter for the Parliamentary Secretary to consider. In doing so, the Parliamentary Secretary ought to be satisfied on the basis of consideration of the totality of all relevant available evidence, that a 'market situation' exists for the purposes of subsection 269TAC(2)(a)(ii), in so far as the evidence provides a reliable understanding of the prevailing characteristics of the market for the goods in that country.

It is considered that the assessment as to whether a 'market situation' exists in a particular market constitutes a positive test. That is, before actual selling prices are rejected, the Commission needs to identify a 'market situation', and be satisfied that the 'market situation' renders the sales in that market not suitable for normal value purposes.

In undertaking this assessment, the Commission considers that the evidence does not have to be conclusive before a 'market situation' finding may be made.

Rather, it must be relevant and reasonably reliable. The Commission emphasises that consideration of the existence and operative effect of government administered programs upon a domestic market is distinctly different to the determination of any countervailable benefits in a countervailing investigation.

A2.6 China as a market economy

Australia treats China as a market economy for anti-dumping purposes and the Commission conducts its investigation in the same manner for China as it does for other market economy members of the WTO.

Irrespective of the country subject of the investigation, the Australian anti-dumping framework allows for the rejection of domestic selling prices in market economies as the basis for normal value where there is a 'market situation' rendering the sales unsuitable. The Commission's investigation in this case concerning China is outlined below.

A2.7 Information relied upon

The Commission provided the GOC with a 'Government Questionnaire' in December 2015. The GOC did not submit a response to the questionnaire. Following the lack of response by the GOC, the Commission's assessment of the GOC's impact on the market conditions during the investigation period was based on the best available information from other sources. Information sources relied upon by the Commission are listed below:

- The application for the publication of dumping and countervailing duty notices concerning grinding balls exported from China;
- Previous investigations undertaken by the Commission in relation to the Chinese steel industry, with a specific focus on the recent market situation findings made in INV 300, and Dumping Investigation 301 - Rod in Coils from China (INV 301) due to its timeliness and focus on the Chinese steel industry;
- An investigation into 'certain concrete reinforced bar' originating from China undertaken by the Canada Border Services Agency (CBSA), December 2014;⁴³ and
- Information obtained through the Commission's research and analysis.

A2.8 Previous investigations undertaken by the Commission

The Commission has previously undertaken a significant amount of information, research, and analysis on the impact which the GOC has had on the Chinese domestic steel markets. Cases with specific relevance to the allegations made by the applicants in respect to the Chinese steel industry include:

- INV 300 and 301;
- The Australian Customs and Border Protection Service's (ACBPS) 2012 Report No. 177 - Certain Hollow Structural Sections exported from China, the Republic of Korea (Korea), Malaysia, Taiwan and the Kingdom of Thailand (INV 177);
- The ACBPS' 2013 Report No. 193 - Alleged Subsidisation of Zinc Coated Steel and Aluminium Zinc Coated Steel Exported from China (INV 193);
- The Commission's 2013 Report No. 198 - Dumping of Hot Rolled Plate Steel Exported from China, Republic of Indonesia, Japan, Korea and Taiwan and Subsidisation of Hot Rolled Plate Steel exported from China (INV 198); and
- ACBPS' 2013 Report Number 190 -Alleged Dumping of Zinc Coated (galvanised) Steel and Aluminium Zinc Coated Steel Exported from China, Korea and Taiwan (INV 190).

A2.9 Assessment of the influence of the Government of China on the Chinese steel industry

When undertaking this investigation, the Commission's assessment of the 'market situation' considered the GOC's influence over the broader Chinese steel industry. The Commission sought information about the specific grinding ball market, and the iron and steel industries

⁴³ CBSA's December 2014, Statement of Reasons: Concerning the final determinations with respect to the dumping of 'Certain concrete Reinforcing Bar Originating in or Exported from the People's Republic of China, the Republic of Korea and the Republic of Turkey; and the subsidising of 'Certain Concrete Reinforcing Bar Originating in or Exported from the People's Republic of China'; and the terminations of the investigation with respect to the subsidising of 'Certain Concrete Reinforcing Bar Originating in or Exported from the Republic of Korea and the Republic of Turkey.

more broadly from the GOC. As noted above, the GOC did not respond to the questionnaire provided.

As the GOC did not respond, the Commission had limited contemporaneous information upon which to make its assessment.

It is important to note that the inputs and process for manufacture of the grinding bar used to produce grinding balls are similar to reinforcing bar and rod in coils.

The Commission notes that the GOC has supported a significant increase in steelmaking capacity through support of increasing blast furnace capacity.

In addition, the blast furnaces have become significant local employers and taxpayers for regional governments.

The Commission is reliant on the best available information for this assessment. As grinding balls are part of the broader steel industry findings, demonstrating government influence in the Chinese steel industry are relevant to the grinding balls market.

A2.10 Conditions within the Chinese steel industry

The prevailing conditions within the Chinese steel industry during the investigation period included significant excess production capacity and supply, and weakened demand and producer profitability. The continued depression in prices demonstrates that prevailing conditions within the Chinese grinding balls market during the investigation period were consistent with the conditions within the broader Chinese steel industry. These conditions included significant excess blast furnace production capacity leading to a supply glut, and weakened demand and producer profitability. For example, the Department of Industry, Innovation and Science estimates that in early 2015, the overcapacity in the broader Chinese steel industry was around 200 million tonnes⁴⁴ with capacity utilisation averaging around 70 per cent over the past two years.⁴⁵ Furthermore, it is estimated that in early 2015 around 50 per cent of the overcapacity in the global steel industry was located in China.⁴⁶

In recent years the combination of excess capacity and declining prices has put many Chinese steel producers under significant financial pressure. Between 2011 and 2014, it is estimated that the proportion of Chinese steel mills making a loss increased from around 10 per cent to 50 per cent. While lower input cost resulted in a reduction in the number of loss making mills from the beginning of 2014, the proportion remained significant throughout the investigation period. For example, it is estimated that the number of loss making mills fell from around 44 per cent in January 2014 to 15 per cent in December 2014.⁴⁷

The Commission holds that the price weakness in the domestic Chinese steel markets contributed to the significant increase in the level of Chinese steel exports in recent years as steel producers attempted to improve cash flow and profitability. For example, in 2014,

⁴⁴ Dept. of Industry and Science, June 2015, Resources and Energy Quarterly, June 2015, pp14- 15

⁴⁵ Platts Insight 201, 27 March 201

⁴⁶ Dept. of Industry, Resources and Energy Quarterly, March 2015, p25

⁴⁷ SBB Steel Prices, Price Spreads / China Long Steel Spread (IODEX) / China RMB/t

China's steel exports increased by around 50 per cent (year on year) to around 94 million tonnes. Similarly, in the first seven months of 2015, Chinese steel exports increased by a further 27 per cent (year on year). The primary destinations for China's steel exports were South Korea, India and Vietnam.⁴⁸

A2.11 Chinese steel industry: Factors contributing to current conditions

Over the past decade the Chinese steel industry experienced significant investment in and expansion of production capacity. It is estimated that over the last decade, total Chinese crude steel production capacity increased by around 190 per cent.⁴⁹ Similarly, it is estimated that between 2004 and 2014, total annual steel production in China increased from around 280 to 820 million tonnes. While the Commission notes that the growth in steel production has come from a combination of state owned and privately owned steel producers, the Commission holds that both types of producers have received significant assistance from the GOC, particularly at the provincial and local government level.

The Commission recognises that in recent years the GOC has taken significant steps to restructure and reorganise the domestic steel industry to better manage the level of excess production capacity, oversupply and environmental concerns.⁵⁰ For example, since July 2014, China's Ministry of Industry and Information Technology (MIIT) has released lists of steel makers that were to remove obsolete capacities. The MIIT also requested that provincial governments submit, by June 2015, their targets for dismantling outdated and excess capacity in 2015 and during the 13th Five Year economic development plan period (2016-2020).⁵¹ During the investigation period the GOC also announced plans to shut 47 mt of steel capacity⁵² and a further 80 mt by 2017.⁵³

Other regulatory interventions which demonstrate the GOC's significant involvement within the Chinese steel industry include the revision of the 'Chinese Environmental Protection Law' (January 2015) and the 'Execution of Capacity Swap for Industries with Overcapacity' (April 2015).⁵⁴ The 'Chinese Environmental Protection Law' establishes pollution reduction targets for local authorities and toughens penalties for non-compliance to encourage older, higher polluting steel mills to exit the industry.⁵⁵ The 'Execution of Capacity Swap for Industries with Overcapacity' (April 2015) states that any addition to steel mill capacity must be offset by a one-for-one reduction in existing capacity. In regions with a high concentration of steel mills the reduction ratio is 1.25 to 1.

The Commission considers that for a number of reasons, the effectiveness of these measures on reorganising the Chinese steel industry or reducing the level of excess

⁴⁸ Dept. of Industry, Internal Briefing Notes

⁴⁹ Dept. of Industry, Resources and Energy Quarterly, March 2015, p24

⁵⁰ Platts Insight 198, 03 April 2014. World Steel Review, 22 April 2015, p6. World Steel Review, 1 July 2015, p1

⁵¹ OECD, 2015, Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects. OECD Science, Technology and Industry Policy Papers, No. 18. OECD Publishing, p15

⁵² Dept. of Industry, Resources and Energy Quarterly, September 2014, p23

⁵³ OECD, 2015, Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects. OECD Science, Technology and Industry Policy Papers, No. 18. OECD Publishing, p15

⁵⁴ Dept. of Industry, Innovation and Science, Internal Briefing Notes

⁵⁵ Dept. of Industry and Science, March 2015, Resources and Energy Quarterly, p24

supply that existed during the investigation period was limited. The Commission considers that some of the key constraints on the effectiveness of these directives included the divergence in objectives between the different levels of the GOC and the availability of financing to support the restructuring and reorganisation.⁵⁶

With regard to the objectives of provincial and local governments, steel mills are typically major employers, sources of significant tax revenue and providers of health care and education services within their respective regions. As such, there are significant incentives for provincial and local governments to resist directives from the Central Government to remove excess capacity and to provide these producers with support to enable them to continue operating. With regard to financing, the Commission holds that the ability of Chinese steel producers to undertake capital investment required to restructure has been constrained by a combination of weak profitability and reduced support from traditional funding sources.^{57,43}

For example, in August 2015 the China Iron & Steel Association noted that during the first half of 2015 Chinese banks had cut loans to steel makers by around USD 15 billion or by 6% (on a year on year basis)⁵⁸ and that the provision of funding by Chinese banks to the Chinese steel industry was increasingly being directed at state owned steel producers.⁵⁹

The central role of the GOC in the current restructuring of the Chinese steel industry is consistent with its role throughout the development of the industry, including its significant expansion over the past decade which resulted in the excess supply and suppressed prices experienced during the investigation period.

A2.12 Chinese steel industry: GOC influence

The Commission holds that the GOC (including central, provincial and local governments) materially contributed to the excess supply of steel billet in the domestic Chinese market and hence significantly influenced domestic price for Chinese grinding bar and hence grinding balls during the investigation period. This influence has occurred through the following mechanisms.

- GOC directives, subsidy programs and involvement in strategic enterprises.
- Taxation arrangements, including value add taxes and export rebates.

A2.13 GOC directives

The Commission holds that the GOC maintained a central role in the development of the Chinese steel industry and by virtue, materially contributed to its rapid expansion and the chronic oversupply during the investigation period.

The significance of this role was articulated by a recent CBSA investigation into the dumping and countervailing of 'certain concrete reinforced bar' originating from the People's Republic of China.⁶⁰ The CBSA's '*Statement of Reasons*' report released in

⁵⁶ Platts Insight 201, 27 March 2015.

⁵⁷ Platts Insight 201, 15 May 2014.

⁵⁸ Metals Insight, 13 August 2015, p3.

⁵⁹ Metals Insight, 13 August 2015, p3.

⁶⁰ CBSA, 2014, p 14.

December 2014 notes that the GOC classifies the 'Iron and Steel Industry' as a 'fundamental or pillar' industry. The CBSA's report also noted that as a 'fundamental or pillar' industry the GOC maintains a degree of control over the industry, through a minimum of 50% equity in the principle enterprises. The significance of the GOC's role in the Chinese steel industry is also reflected in the National Development Reform Commission's (NDRC's) responsibility for approving all large steel projects.⁶¹

The Commission holds that the central role of the GOC in the Chinese steel industry is also reflected through the numerous planning documents and directives issued by the GOC regarding the structure and composition of Chinese steel industry. As such, in assessing the existence of a 'market situation' in the Chinese steel industry and consequently the Chinese grinding ball market, the Commission reviewed a number of GOC planning documents and directives. These documents and directives are listed below.

- *National Steel Industry Development Policy (2005).*
- *Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).*
- *2011-2015 Development Plan for the Steel Industry (2011).*
- *Steel Industry Adjustment Policy (2015 Revision).*

In addition to the GOC planning documents and directives listed above, the need for restructuring and reorganisation of the Chinese steel industry, including the elimination of backward capacity, was also addressed in the documents listed below. While these planning directives cover a broad range of industries, the inclusion of the steel industry reinforces its central role within the Chinese economy and hence high levels of GOC intervention.

- *Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009).*
- *Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013).*
- *Directory Catalogue on Readjustment of Industrial Structure (Version 11) (2013 Amendment).*

A2.14 GOC directives: Summary of themes and objectives

The Commission holds that the extent of the GOC's influence within the Chinese steel industry is reflected in the major themes and objectives of its plans and directives toward the industry. These themes and objectives are listed below.

National Steel Industry Development Policy (2005)⁶²

- Structural adjustment of the Chinese steel industry.
- Industry consolidations through mergers and acquisitions.
- Regulation of technological upgrading to new standards.
- Government supervision and management.

⁶¹ CBSA, 2014, p 17.

⁶² CBSA, 2014, p 17.

Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009)⁶³

- Maintaining stability within the domestic market.
- Controlling total steel production output and eliminating of backward capacity.
- Enterprise reorganisation and industrial concentration.
- Technical transformation and technical progress.
- Steel industry layout and development.
- Steel product mix and product quality.
- Maintain stable import of iron ore resources and rectify the market order.
- Development of domestic and overseas resources and guarantee the safety of the industry.

2011-2015 Development Plan for the Steel Industry (2011)⁶⁴

- Increased mergers and acquisitions to create larger, more efficient steel companies.
- GOC restrictions of steel capacity expansions.
- Upgrading steel industry technology.
- Greater emphasis on high-end steel products.
- Relocation of iron and steel companies to coastal areas.
- Minimum capacity requirements to reduce the number of small steel producers.
- Increased controls on the expansion of steel production capacity.
- Accelerating the development of higher value steel products.

Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)⁶⁵

- Top ten companies accounting for 60% of production.
- Three to five major steel corporations with core competency and international impact.
- Six to seven steel corporations with regional influence.
- Encouraging steel corporations to participate in foreign steel companies' M&A.

Steel Industry Adjustment Policy (2015 Revision)⁶⁶

- Upgrading product mix.
- Rationalising steel production capacity.
- Adjustments to improving organisational structures.
- Energy conservation, emission reductions, environmental protection.
- Production Distribution.
- Supervision and administration.
- Guiding market exit.
- Methods of, orientation and oversight of mergers and reorganisations.
- Consolidate number of steel companies.⁶⁷

⁶³ CBSA, 2014, p 17.

⁶⁴ CBSA, 2014, p18

⁶⁵ <http://rhg.com/notes/beijing-2015-industry-consolidation-targets-problem-or-solution>

⁶⁶

http://www.eurofer.eu/Issues%26Positions/Trade/ws.res/Steel_Industry_Adjustment_Policy_Comments_Appendix.fhtml/Steel_Industry_Adjustment_Policy_Appendix.pdf

- Lift capacity utilisation rates to 80% by 2017.⁶⁸

A2.15 GOC directives: Summary of GOC influence

The Commission notes that the emphasis of these individual planning documents and directives is on promoting the orderly restructuring and reorganisation of the Chinese steel industry to better manage the issue of chronic oversupply. However, these planning documents and directives also demonstrate the extent of the GOC's interventions within the Chinese steel industry.

The degree to which plans and directives issued at the central government level are integrated at the provincial level is reflected by the Shandong Province Development and Reform Commission's *'The opinions on the implementation of the structural adjustment of the steel industry in Shandong Province pilot program'* (2012). The 'Opinions' notes that since 2006, the Shandong Provincial Government had issued a number of plans and measures to control the development of the iron and steel industry, eliminate backward production capacity, and accelerate the pace of mergers and restructuring work in the province's steel industry. Examples of these plans included the 'Guiding Opinions on accelerating the restructuring of the steel industry within the Shandong Province' and the 'Shandong Province Iron and Steel Industry Revitalisation Plan'.

The *'Shandong Provincial People's Government Notice of Revitalisation Plan'* (2009) also demonstrates the linkages between plans issued by the Central GOC and those issued at the provincial government level. The Commission holds that the consistency between planning documents and directives at the central and provincial government level further reinforce the high level of government intervention in the Chinese steel industry. For example, following from the GOC's *'Blueprint for the Adjustment and Revitalisation of the Steel Industry'* (2009), the *'Shandong Province Iron and Steel Industry Revitalisation Plan'* identified the following areas where policy measures were to be applied:

- implementation of the national steel industry adjustment and revitalisation plan;
- acceleration of corporate mergers and acquisitions;
- technological transformation and technological innovation;
- development of domestic markets and stabilisation of position in export markets;
- improving resource security through 'going out' strategy;
- broaden financing channels for enterprises;
- increase the fiscal tax policy support; and
- give full play to the role of industry associations in planning, standards and policies.

A2.16 GOC subsidy programs

The nature of support provided by the GOC to the Chinese steel industry is also documented through previous investigations undertaken by the Commission. While these investigations don't correspond with the investigation period, these programs directly contributed to the state of the Chinese steel industry and grinding ball market during the

⁶⁷ Dept. of Industry and Science, 2015, China Resources Quarterly, Southern Autumn – Northern Spring, p15.

⁶⁸ *ibid.*

investigation period. Examples of the types of subsidies provided to the Chinese steel industry are set out below.⁶⁹

- Steel inputs provided by the government at less than adequate remuneration.
- Coking coal and coke provided at less than adequate remuneration.
- Preferential Tax Policies for Enterprises with Foreign Investment.
- Preferential Tax policies for Specific Regions.
- Preferential Tax Policies for Foreign Invested Enterprises.
- Land Use Tax Deductions.
- Preferential Tax Policies for High and New Technology Enterprises.
- Tariff and value-added tax (VAT) Exemptions on Imported Materials and Equipment.
- Research and Development (R&D) Assistance Grants.
- Special Support Funds for Non State-Owned Enterprises.

A2.17 GOC involvement in strategic enterprises

The Commission holds that the GOC also maintains significant interests in a number of major Chinese steel producers including some that produce the grinding bar used in the production of grinding balls. Through its involvement in these companies, the GOC is able to exert significant influence over the Chinese steel industry.

In supporting this view, the CBSA's investigation in 'Certain Concrete Reinforced Bar' notes that the GOC classifies the 'iron and steel industry' as a 'fundamental or pillar' industry and as such retains a minimum of 50% equity in the principle enterprises. The CBSA report also noted that state owned steel producers constituted a majority of the top ten steel producers in China and accounted for a significant share of total steel production and capacity.⁷⁰

The importance of these state owned steel producers is also reflected in the GOC's *Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries (2013)* which calls for the top ten steel producers to further consolidate control over Chinese steel production and hence influence over domestic steel markets. Out of the 10 largest Chinese steel produces, eight have a significant degree of government ownership.⁷¹ These companies includes: Hebei Steel Group; Baosteel Group; Ansteel Group; Wuhan Steel Group; Shougang Group; Maanshan Steel; Tianjin Bohai Steel; and Benxi Steel Group.

The central role of Chinese steel producers, with a significant degree of state ownership, within the Chinese steel industry is also reflected through their implementation of the underlying objectives of the GOC's planning directives. Examples of these activities include the involvement of Chinese state owned steel companies in projects which have either been recently commissioned or are under development. These projects include: Anshan Iron & Steel's Bayuquan Steelworks (6.5 million tonnes per annum (mtpa)) (Liaoning Province) (commissioned 2008); the Shougang Jingtang United Iron & Steel's

⁶⁹ INV 198 Final Report pp41-43 and INV 193 Final Report pp40-41

⁷⁰ In 2010, eight of the largest ten Chinese steel producers were state owned and that that in 2013 the top steel companies accounted for 45% of total Chinese crude steel production., CBSA, 2014, p14

⁷¹ Based on 2014 production. World Steel Association

Steelworks (Hebei Province) (commissioned 2010); and the Fangchenggang Steel Company Limited (Wuhan Iron & Steel Group) Steelworks (9.2 mtpa) (Guangxi Province) (commissioned September 2014).⁷² Significant Chinese steelworks with a focus on flat products currently being developed or planned include Baosteel's Zhanjiang steelworks (Guangdong Province) (expected commissioning in 2016); the Baotou Iron & Steel steelworks (5 mtpa) (Inner Mongolia); and the Chongqing Iron & Steel (Chongang) and POSCO signed Investment MOU (USD 3.3 bn) (signed July 2014).⁷³

A2.18 Taxation arrangements

The GOC has traditionally operated, amongst other taxation arrangements, a Value Added Tax (VAT). Under the Chinese VAT system, a 17% tax is paid on consumption of goods, including the inputs used in the production of steel. For goods produced and sold within China, the tax is ultimately paid by the final consumers of the particular good. Because it is difficult for exporters to pass these taxes on, some steel exporters have traditionally been compensated for VAT paid during the production process through VAT rebates.

Through altering the VAT rebates or export taxes applied to steel exports, the GOC is able to alter the relative profitability of different types of steel exports and of exports compared to domestic sales which will in turn influence the volume of steel directed to both markets. For example, by either reducing VAT rebates or increasing export taxes on steel exporters, the GOC is able to reduce the relative profitability of exports to domestic sales and hence provide significant incentives for exporters to redirect their product into the domestic Chinese market. By using these mechanisms to alter the relative supply of particular steel products in the domestic market, the GOC is also able to influence the domestic price for those products.

A recent example of the GOC altering VAT rebates on steel products occurred in January 2015. The GOC reduced the VAT rebate on steel products containing boron, which accounts for around 40% of exports.⁷⁴ While VAT rebates for boron have been recently reduced, they remain in place for other additives such as chromium.⁷⁵

At present (and during the investigation period) the GOC applies a VAT export rebate of five per cent to grinding balls. The Commission considers, however, that the application of a five per cent VAT rebate against a 17 per cent VAT rate creates significant incentives for Chinese exporters to redirect their product from the export to domestic Chinese market. The GOC has also caused a distortion in the domestic price for grinding balls through the application of export taxes on Chinese billets, which accounts for a significant proportion of the total grinding balls production cost.⁷⁶

Previous investigations by the Commission identified the use of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke,

⁷²OECD, 2015, Excess Capacity in the Global Steel Industry and the Implications of New Investment Projects. OECD Science, technology and Industry Policy Papers, No. 18. OECD Publishing, p15

⁷³ *ibid.*

⁷⁴ Dept. of Industry and Science, March 2015, Resources and Energy Quarterly, p24

⁷⁵ Metals Insight, 14 May 2015, p4

⁷⁶ Anti-Dumping Commission calculations

iron ore and scrap steel.⁷⁷ Due to the lack of response by the GOC, the Commission has relied on the best available information, including previously completed investigations. As in the case of steel billets, these measures would create significant incentives for exporters to redirect these products into the domestic market, increasing the relative supply and reducing the respective prices to a level below what would have prevailed under normal market conditions.

The Commission holds that lower raw material prices would have a depressing effect on the domestic prices of Chinese grinding balls through both direct and indirect channels. The relative importance of these two channels would depend on the degree to which lower raw material costs flow through to lower billet and grinding ball prices and the degree to which billet and grinding ball producers are able to retain the lower raw material costs in the form of increased profit. Where a majority of the lower raw material costs flow through to lower billet and grinding ball prices, the depressing effect on grinding ball prices would be direct. Where lower raw material prices are able to be retained by billet and grinding ball producers as increased profit, this would create incentives for these producers to expand production and hence have a depressing effect on domestic Chinese grinding ball prices, by further increasing the level of domestic supply relative to demand.

The Commission considers that the export taxes and export quotas on key inputs for steel continue to have a distortionary impact on the steel market by reducing input costs by increasing the supply quantities of raw materials available for steel production.

A2.19 Chinese grinding ball market: Assessment of particular market situation

Based on the proceeding analysis, the Commission has concluded that the GOC materially influenced conditions within the Chinese grinding ball market during the investigation period. The mechanisms through which the GOC exerted this influence include government directives and oversight, subsidy programs, taxation arrangements and the significant number of state owned steel companies.

The Commission also concludes that because of the significance of this influence over the Chinese grinding ball market, the domestic price for Chinese grinding balls was substantially different to what it would have been in the absence of these interventions by the GOC. Based on this analysis, the Commission has determined that during the investigation period the domestic price for Chinese grinding balls was influenced by the GOC to a degree which makes domestic sales of grinding balls unsuitable for use in determining normal values under subsection 269TAC(1).

⁷⁷ INV 198 Final Report pp 41-43

APPENDIX 3 - ASSESSMENT OF COUNTERAVAILABLE SUBSIDIES

A3.1 OVERVIEW

A3.1.1 INTRODUCTION AND SUMMARY OF FINDINGS

This appendix details the Commission's assessment of the 54 subsidy programs investigated in relation to grinding balls exported from China.

The 54 investigated programs, and the Commission's preliminary assessment of whether each is countervailable in relation to grinding balls exported from China, is outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Raw Materials (Steel billet) Provided by the Government at Less than Fair Market Value	Provision of goods	No
2	Raw Materials (Electricity) Provided by the Government at Less than Fair Market Value	Provision of goods	No
3	Preferential Tax Policies in the Western Regions	Income Tax	Yes
4	Land Use Tax deduction	Income Tax	Yes
5	Preferential Tax Policies for High and New Technology Enterprises	Income Tax	Yes
6	Tariff and VAT Exemptions on Imported Materials and Equipment	Tariff and VAT	Yes
7	One-Time Awards to Enterprises Whose Products Qualify for "Well-Known TradeMarks of China" and "Famous Brands of China"	Grant	Yes
8	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
9	Superstar Enterprise Grant	Grant	Yes
10	Research & Development ("R&D") Grant	Grant	Yes
11	Innovative Experimental Enterprise Grant	Grant	Yes
12	Special Support Fund for Non-State Owned Enterprises	Grant	Yes
13	Venture Investment Fund of Hi-Tech	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
	Industry		
14	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
15	Grant for key enterprises in equipment manufacturing industry of Zhongshan	Grant	Yes
16	Water Conservancy Fund Deduction	Grant	Yes
17	Anti-Dumping Respondent assistance	Grant	Yes
18	Technology Project assistance	Grant	Yes
19	Capital Injections	Grant	Yes
20	Environmental Protection Grant	Grant	Yes
21	High and New Technology Grant	Grant	Yes
22	Independent Innovation and High-Tech Industrialisation Program	Grant	Yes
23	Environmental Prize	Grant	Yes
24	Provincial emerging industry and key industry development special fund	Grant	Yes
25	Environmental Protection Fund	Grant	Yes
26	Intellectual Property licensing	Grant	Yes
27	Financial resources construction special fund	Grant	Yes
28	Reducing pollution discharging and environmental improvement assessment award	Grant	Yes
29	Comprehensive utilisation of resources – VAT refund upon collection	Tariff and VAT	Yes
30	Grant of elimination of out dated capacity	Grant	Yes
31	Grant from Technology Bureau	Grant	Yes
32	Raw Materials (Coking coal) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
33	Raw Materials (Coke) Provided by the Government at Less than Adequate Remuneration	Provision of goods	No
34	Patent Award of Guangdong Province	Grant	Yes
35	Wuxing District Freight Assistance	Grant	Yes
36	Huzhou City Public Listing Grant	Grant	Yes

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Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
37	Huzhou City Quality Award	Grant	Yes
38	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
39	Wuxing District Public List Grant	Grant	Yes
40	Transformation technique grant for rolling machine	Grant	Yes
41	Grant for Industrial enterprise energy management - centre construction demonstration project Year 2009	Grant	Yes
42	Key industry revitalization infrastructure spending in 2010	Grant	Yes
43	Jinzhou District Research and Development Assistance Program	Grant	Yes
44	Debt for equity swaps	Equity Programs	No
45	Equity infusions	Equity Programs	No
46	Unpaid dividends	Equity Programs	No
47	Preferential loans and interest rates	Preferential Loans	Yes
48	International trade increase project fund	Grant	Yes
49	Industrial economy reform and development fund	Grant	Yes
50	Sales revenue increase award	Grant	Yes
51	Tax contribution award	Grant	Yes
52	Energy and recyclable economy award	Grant	Yes
53	National controlled essential pollutant source supervision system third party operation and maintenance subsidy program	Grant	Yes
54	Scientific program awards in high and new scientific zone	Grant	Yes

A.3.1.2 RELEVANT LEGISLATION

Section 269T defines a 'subsidy' as follows:

"subsidy" , in respect of goods exported to Australia, means:

(a) a financial contribution:

(i) by a government of the country of export or country of origin of the goods; or

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(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 governmental 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 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 on 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 (whether directly or indirectly) in relation to the goods exported to Australia.

This reflects Article 1.1 of the WTO SCM Agreement.

S.269TAAC defines a countervailable subsidy as follows:

(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 particular 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

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:

(a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

(c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) Despite the fact that access to a subsidy is established by objective criteria, 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*
- (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or*
- (d) the manner in which a discretion to grant access to the subsidy has been exercised;*

determine that the subsidy is specific.

Section 269TACC directs how it is to be determined whether benefits have been conferred by a subsidy and the amount of this benefit.

Under Section 269TJ, one of the matters of which the Minister must be satisfied to publish a countervailing duty notice is that a countervailable subsidy has been received in respect of the goods.

A3.2 INFORMATION CONSIDERED BY THE COMMISSION

A.3.2.1 DONHAD AND MOLY-COP'S APPLICATION

The Commission has relied upon information submitted by the applicants in the application and in Moly-Cop's submission with respect to its investigation of the 47 countervailable subsidy programs (Programs 1 – 47) that were allegedly received by Chinese exporters of grinding balls exported to Australia.

A3.2.2 INFORMATION PROVIDED BY EXPORTERS

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by exporters in the exporter questionnaire responses, as well as information provided by exporters during verification visits.

A3.2.3 INFORMATION PROVIDED BY THE GOVERNMENT OF CHINA

The Commission included questions relating to each program in Government questionnaires that were sent to the GOC on 17 November 2015 and 12 January 2016.

The GOC did not cooperate with the Commission's request for detailed information about the programs identified in the Government questionnaires.

A3.2.4 OTHER INFORMATION CONSIDERED AS PART OF THIS ASSESSMENT

The Commission also considered as part of this assessment:

- Information submitted by interested parties in various general submissions to the investigation;

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- information submitted to various previous ACBPS and Commission investigations into the alleged subsidisation of various goods exported from China; and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in China.

A3.3 ASSESSMENT OF SUBSIDY PROGRAMS

A3.3.1 CATEGORY ONE: PROVISION OF GOODS

PROGRAM 1: STEEL BILLET AT LESS THAN ADEQUATE REMUNERATION

BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of steel billet by the GOC at an amount reflecting less than adequate remuneration (LTAR), having regard to prevailing market conditions in China.

In particular, it was claimed that steel billet, as a main raw material used in the manufacture of grinding balls, was being produced and supplied by GOC-owned (or partially-owned) enterprises in China at LTAR. For the purposes of this report, these GOC-owned or partially owned entities will be referred to as 'state-invested enterprises' (SIEs).

The definition of a subsidy under subsection 269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that produce steel billet are public bodies, and that a financial contribution in the form of provision of raw material inputs at LTAR by these SIEs to grinding balls producers constitutes a countervailable subsidy.

The Commission's assessment of whether SIEs constitute a public bodies within the meaning of subsection 269T(a)(ii) is discussed in Appendix 5.

The Commission requested information from Chinese exporters in relation to their purchases of steel billet during the investigation period. For each supplier of steel billet, the Chinese exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

As well as identifying the manufacturers of all purchased steel billet, the exporters were also asked to indicate whether these enterprises were SIEs. The exporter questionnaire responses received by the Commission indicated that none of the exporters had purchased steel billet from SIEs during the investigation period.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving steel billet at LTAR.

IS THERE A SUBSIDY?

Financial contribution

The cooperating exporters do not purchase steel billet for the production of grinding balls. Based on the information above, the Commission has no relevant information on which to conclude that any Chinese grinding ball exporters received this benefit, or if such a benefit exists.

As such, the available evidence does not support a finding that Program 1 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for steel billet.

PROGRAM 2: ELECTRICITY PROVIDED BY THE GOVERNMENT AT LESS THAN ADEQUATE REMUNERATION

BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from the provision of electricity by the GOC at LTAR. In particular, it was claimed that electricity was being produced and supplied by SIEs.

The definition of a subsidy under subsection 269T(a)(ii) includes reference to 'a financial contribution by a government or any public body'.

The application alleges that Chinese SIEs that provide electricity are public bodies, and that a financial contribution in the form of provision of raw material inputs at LTAR by these SIEs to grinding ball producers constitutes a countervailable subsidy.

Under this program, it is alleged that a benefit to exported grinding balls is conferred by electricity being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission requested information from the cooperating Chinese exporters in relation to their electricity costs during the investigation period. Each exporter was also asked to indicate whether the electricity providers were SIEs.

The Commission also requested information from the GOC in relation to this program, however no response was received.

Previous consideration

US Findings

The 2011 findings of the US countervailing investigation into aluminium extrusions exported from China determined that Provision of Electricity for LTAR to foreign invested enterprises located in the Nanhai District of Foshan City was countervailable. This finding was made under the US adverse facts available provisions and in the absence of a response from the GOC. The investigation also determined that provision of electricity for LTAR to firms located in the ZHITDZ was not countervailable.

In a later countervailing review concluded in 2014, the US did not find that that electricity for LTAR to FIEs Located in the Nanhai District of Foshan City was countervailable.

The 2008 US Thermal Paper countervailing investigation found that electricity was provided at LTAR in the Zhanjiang Economic and Technological Development Zone. The investigation found that tariff rates in Guangzhou were higher than those paid by firms in Zhanjiang and preferential pricing exists within Guangdong province. The amount of subsidy received was the difference between the rate paid by the exporter and the higher provincial rate.

EU Findings

In its 2013 countervailing investigation relating to Coated Steel exported from China the European Union (EU) determined that subsidies had been received in relation to the provision of electricity at LTAR. The EU observed that “*price differentials exist for different industrial users to pursue the industrial policies set by the GOC and reflected in the catalogue contained in Decision No. 40 (2005) of the NDRC (see further explanation in recital (182)).*” The EU case examined one exporter who was found to be benefiting from a lower rate than the generally applicable large industrial users rate on the basis that the exporter was located in a sub-category of certain industrial users. The subsidy amount was calculated by comparing the actual rate paid by the exporter to the large industrial users rate.

Australian and Canadian Findings

In separate countervailing investigations in relation to exports of silicon metal from China the Commission and Canadian authorities determined that producers of silicon metal had received electricity at LTAR.

Both cases found that the ferro-alloy industry, of which the silicon metal producers were a part, was entitled to a specific rate of electricity that was found to be below the rate available to large industrial users. This is consistent with the findings of the EU coated steel case and to a lesser extent the findings of the US thermal paper case.

In *Review of Measures - Aluminium Extrusions exported from China*, the Commission was not satisfied that that the requirements of subsection 269TACC(3)(d) were met. The Commission found that tariff data did not show that preferential pricing existed the province where the selected exporters were located.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving electricity at LTAR.

IS THERE A SUBSIDY?

In determining the existence of a subsidy, the investigation has followed the approach adopted by the Commission in Investigation 237 – Silicon Metal exported from China (INV 237) and Review of Measures 248 – Aluminium Extrusions exported from China (REV 248), as well as the Canadian and EU investigations detailed above, in determining if a subsidy exists.

As stated throughout this report, information about this program was requested from the GOC, however no response was provided. In the absence of a GOC response, the Commission sought to establish if the grinding ball industry was eligible for a specific rate of electricity that was below the rate available to large industry.

Provincial electricity tariff data was obtained for both the Jiangsu and Hebei provinces, the provinces in which the cooperating exporters are located, for both 2014 and 2015. The Commission compared the tariff data with the information supplied by each exporter and established that each exporter was subject to the tariff applicable to large industry. The tariff data indicated that certain industries were subject to preferential pricing, including the agricultural sector. The tariff data did not indicate that the grinding ball industry was subject to specific or preferential pricing.

AMOUNT OF SUBSIDY IN RESPECT OF THE GOODS

Based on the evidence available, the Commission is not satisfied that the requirements of subsection paragraph 269TACC(3)(d) are met. This program will therefore not be countervailed in respect of grinding balls exported from China.

PROGRAM 32: COKING COAL PROVIDED BY THE GOVERNMENT AT LTAR

BACKGROUND

The application alleged that Chinese exporters of grinding balls have benefited from the provision of raw material in the form of coking coal by the GOC at LTAR.

In particular, it was claimed that coking coal, one of the main raw materials used in the manufacture of grinding bar, which is in turn used for the manufacture of grinding balls, was being produced and supplied by SIEs in China at LTAR.

During this investigation it has been established that Longte transitioned to being an integrated producer of grinding balls during the investigation period. Integrated producers

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manufacture grinding balls using coking coal as one of the raw materials, while non-integrated producers purchase grinding bar to produce those goods.

The definition of a subsidy under subsection 269T(a)(ii) includes reference to ‘a financial contribution by a government or any public body’.

The application alleges that Chinese SIEs that produce coking coal are public bodies, and that a financial contribution in the form of provision of raw material inputs (coking coal) at LTAR by these SIEs to manufacturers of grinding balls constitutes a countervailable subsidy.

The Commission’s assessment of whether SIEs constitute a public bodies in the meaning of subsection 269T(a)(ii) is discussed at Appendix 5.

This assessment concludes that these Chinese SIEs that produce coking coal are ‘public bodies’ for the purposes of section 269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported grinding balls is allegedly conferred by coking coal being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission’s assessment of what constitutes ‘adequate remuneration’ for coking coal in China is contained in Appendix 4.

The Commission requested information from all Chinese exporters in relation to their purchases of coking coal during the investigation period. For each supplier of coking coal, the Chinese grinding ball exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

Information presented by Longte showed that coking coal was supplied to its parent company Longteng by non SIEs, however one supplier of coking coal was supplied by a SIE producer.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of this program.

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving coking coal at LTAR.

IS THERE A SUBSIDY?

Based on the available information, the Commission considers that this program does not represent a financial contribution that involves the provision of the goods (coking coal) by SIEs, being public bodies, at LTAR.

Using the information supplied by Longte, the Commission assessed each purchase of coking coal from an SIE for adequate remuneration.

In accordance with subsection 269TACC(5), the adequacy of remuneration was determined by reference to a 'benchmark' for adequate remuneration, established having regard to the prevailing market conditions in China (as discussed in Appendix 4).

In accordance with subsection 269TACC(6)(d), the amount of the benefit has been determined as the difference between adequate remuneration (the established benchmark) and the actual purchase price paid for coking coal incurred by the relevant exporter in purchasing those goods from an SIE.

The Commission notes that the export prices used to determine the benchmark price are at FOB terms, whereas the purchase price paid by Longte was on delivered terms. Given the absence of information in relation to freight costs for both the supplier of the coking coal to Longte, and the freight costs associated with transporting coking coal from the Australian mine to port of loading, the Commission considers it is reasonable to compare the delivered purchase prices as reported by the exporter to the FOB export prices, given that both incorporate some amount of freight cost.

The Commission has determined that the weighted average price paid by Longte over the investigation period for coking coal supplied by SIEs is lower than the weighted average export price for Australian premium low volume hard coking coal as supplied by an independent provider of export pricing data.

Based on this analysis, the Commission is not satisfied that coking coal has been provided at LTAR. As such, the available evidence does not support a finding that Program 32 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for coking coal.

PROGRAM 33: COKE PROVIDED BY THE GOVERNMENT AT LTAR

BACKGROUND

The application alleged that Chinese exporters of grinding balls have benefited from the provision of raw material in the form of coke by the GOC at LTAR. In particular it was claimed that coke, one of the main raw materials used in the manufacture of grinding balls, was being produced and supplied by SIEs in China at LTAR.

Coke is an intermediate raw material used in the manufacture of grinding bar. Coking coal is put through a coking oven to produce coke, hence coking coal is the main raw material used in the production of coke.

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Integrated producers manufacture grinding balls using coking coal and/or coke as one of the raw materials, while the non-integrated producers purchase grinding bar to produce those goods.

The definition of a subsidy under subsection 269T(a)(ii) includes reference to ‘a financial contribution by a government or any public body’.

The application alleges that Chinese SIEs that produce coke are public bodies, and that a financial contribution in the form of provision of raw material inputs (coke) at LTAR by these SIEs to manufacturers of grinding balls constitutes a countervailable subsidy.

The Commission’s assessment of whether SIEs producing coke constitute a public body in the meaning of subsection 269T(a)(ii) is discussed in Appendix 2.1.

This assessment concludes that these Chinese SIEs that produce coke are ‘public bodies’ for the purposes of subsection 269T, and the remainder of this section continues on the basis of this finding.

Under this program, a benefit to exported grinding balls is conferred by coke being provided by the GOC (through SIEs) at an amount reflecting LTAR, having regard to prevailing market conditions in China.

The Commission requested information from all Chinese exporters in relation to their purchases of coke during the investigation period. For each supplier of coke, the Chinese grinding ball exporters were required to identify whether the supplier was a trader or manufacturer of the goods. Where the supplier was not the manufacturer of the goods, each exporter was asked to identify the manufacturer.

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of this program.

ELIGIBILITY CRITERIA

There are no articulated eligibility criteria for enterprises receiving at LTAR.

IS THERE A SUBSIDY?

The cooperating exporters did not purchase coke from SIE’s during the investigation period. Based on the above, the Commission has no relevant information on which to conclude that any Chinese grinding ball exporters received this benefit, or if such a benefit exists.

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As such, the available evidence does not support a finding that Program 33 is countervailable at this time. The Commission has not been presented with evidence that suggests the grinding balls industry receives preferential pricing for coke.

A3.3.2 CATEGORY TWO: INCOME TAX

PROGRAM 3: PREFERENTIAL TAX POLICIES IN THE WESTERN REGIONS

BACKGROUND

The application alleges that grinding ball exporters located in the Western Regions of China are likely to have benefited from exemptions to income tax.

Under this program, enterprises established in the Western Regions engaged in industries encouraged by the State are eligible for a reduced tax rate of 15% (as opposed to the standard 25% taxation rate).

In certain circumstances, the program also operates to exempt enterprises from VAT and tariff on imported goods (*Program 6*, below). As the Commission will examine *Program 6* as a separate program, the assessment of this *Program 3* focuses specifically on reduced income tax rates only.

LEGAL BASIS

The legal basis to establish this subsidy is pursuant to the following:

- *Law of the People's Republic of China on Enterprise Income Tax (2007)*;
- *Regulations for the Implementation of Law of the People's Republic of China on Enterprise Income Tax (200)*;
- *the Circular of the State Council Concerning Several Policies on Carrying out the Development of China's Vast Western Regions*, State Council Circular Guo Fa No. 33 of 2000;
- *the Implementing Some Policies and Measures for the Development of Western Regions*, State Council Circular Guo Ban Fa No. 73 of 2001;
- *the Circular of the Ministry of Finance, the State Administration of Taxation, the General Administration of Customs on Issues of Incentive Policies on Taxation for the Strategy of the Development in the Western Areas* (Cai Shui No. 202 of 2001);
- *State Council Circular Guo Fa No. 39 of 2007*;
- *the Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Preferential Policies of Enterprise Income Tax*, State Council Circular Cai Shui No.1 of 2008;
- *State Council Circular Cai Shui No.4 of 2013*; and
- *the Circular on Deepening the Implementation of Tax Policy concerning Development of Western Regions*, State Council Circular Cai Shui No.58 of 2011.

The program is administered by the SAT and its local Branch Offices or Bureaus.

WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/284/CHN, dated 30 October 2015.

ELIGIBILITY CRITERIA

The program is available to enterprises established in the Western regions which are engaged in industries encouraged by the State as defined in the:

- *Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State*
- *Guiding Catalogue for Industry Restructuring*
- *Circular on the Preferential Tax Policy of the Western Regions*
- *Catalogue for the Guidance of the Foreign Investment Industries*
- *Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment*

IS THERE A SUBSIDY?

The Commission considers that the laws governing this program mandate a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in the Western Regions in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of grinding balls during the investigation period received tax savings under this program it would therefore confer a benefit in relation to grinding balls and the financial contribution would meet the definition of a subsidy under section 269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in subsection 269TAAC(2)(b), a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority. A subsidy is also considered specific if access to the subsidy is explicitly limited to particular enterprises (subsection 269TAAC(2)(a)).

For enterprises located in the Western Regions, only those industries which are 'encouraged' are eligible for the subsidy. Other companies in the designated geographical region (being those enterprises which are not 'encouraged') are not eligible for the subsidy.

Furthermore, this program is limited in eligibility to enterprises based in the Western Region, under the jurisdiction of the granting authority (SAT).

As the criteria or conditions providing access to the subsidy favours particular enterprises, being those 'encouraged' enterprises in the Western Regions, over all other enterprises, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the Commission finds that the subsidy is specific.

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has determined that cooperating exporters did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to cooperating exporters under this program.

Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was most recently investigated in INV 237. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

In the absence of the above relevant information, the Commission considers it is likely that uncooperative exporters situated in the Western Regions of China meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

In calculating the amount of subsidy attributable to uncooperative exporters under this program, it is noted that as:

- this program would operate to reduce enterprises' income tax liability; but
- the maximum benefit under Program 5 (reduction of tax from 25 per cent to 15 per cent) has already been applied to uncooperative exporters;

the maximum benefit amount available under this program has already been countervailed in relation to Program 5.

The Commission has therefore calculated a zero amount of a subsidy under this program for uncooperative exporters.

PROGRAM 4: LAND USE TAX DEDUCTION

BACKGROUND

The application alleges that grinding ball exporters are likely to have benefited from land use tax deduction. This program provides for the reduction or exemption of land use taxes for high and new technology enterprises.

LEGAL BASIS

Approval of Tax (Expense) Deduction (ZhengDiCaShui [2010] No.11581).

This program is administered by Huzhou City Local Taxation Bureau and Wuxing Sub-Bureau.

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CRITERIA

The program is available to new high and new technology enterprises within three years of their establishment.

IS THERE A SUBSIDY?

The Commission considers that the reduction in land use tax provided under this program is a financial contribution by the GOC which involves the forgoing of land use tax revenue otherwise due to the GOC.

Due to the nature of this program (exemption of land use tax), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, financial contribution is considered to confer a benefit to recipient manufacturers of grinding balls due to reduced tax liability owed to the GOC.

Where exporters of grinding balls during the investigation period received tax savings under this program, this would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, this program is limited to high and new technology enterprises that are less than three years old.

As the criteria or conditions providing access to the subsidy favours particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

The Commission therefore considers this subsidy to be specific.

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has determined that cooperating exporters did not receive financial contributions in respect of the goods under this program during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to cooperating exporters under this program.

Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

This program was most recently investigated in INV 237. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

In the absence of the above relevant information, and in keeping with the Commission's finding in previous investigations that cooperating exporters have received a financial contribution under this program, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

In the absence of usage information, the Commission considers that:

- subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them under this program during the investigation period in the form of a reduction in a tax.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission considers that because the maximum financial contribution grantable under a program is not stipulated in its legal instrument, the amount of the financial contribution shall be considered to be the amount found to be received by a cooperating exporter in a previous investigation, notably INV 177.

In attributing the amount of subsidy to each unit of grinding balls under subsection 269TACC(10), the benefit under each subsidy program has been attributed using the lowest total sales volume of the cooperating exporters, in the absence of actual sales data for the non-cooperating exporters.

PROGRAM 5: PREFERENTIAL TAX POLICIES FOR HIGH AND NEW TECHNOLOGY ENTERPRISES

BACKGROUND

The application alleges that grinding ball exporters are likely to have benefited from preferential tax policies. This program reduces the income tax paid by high and new technology enterprises to 15% (from the standard enterprise income tax rate of 25%).

LEGAL BASIS

This program is provided for in Article 28 of the *PRC Enterprise Income Tax Law 2007*, which states that:

“With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15 per cent.”

It is considered likely that this program is a national program, administered by the GOC’s *State Administration of Taxation*.

WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/284/CHN, dated 30 October 2015.

ELIGIBILITY CRITERIA

Companies recognised by the GOC as a high and new technology enterprise are eligible for this program.

To be recognised as a high and new technology enterprise, companies must meet certain criteria, submit an application, alongside copies of the company’s business registration and other relevant documentation, and have the application approved by relevant authorities.

IS THERE A SUBSIDY?

The Commission considers that the law governing this program mandates a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOC by eligible enterprises in China.

Due to the nature of this program (general exemption on income tax regardless of what activities generate this income (profit)), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

Where received, this financial contribution is considered to confer a benefit because of the tax savings realised.

Where exporters of grinding balls during the investigation period received tax savings under the program it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

A subsidy is considered specific if access to the subsidy is explicitly limited to particular enterprises (subsection 269TAAC(2)(a)).

The eligibility criteria of this subsidy limits it to enterprises that are considered higher and/or new technology enterprises. As the criteria or conditions providing access to the subsidy favour these particular enterprises over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has determined that of the cooperating exporters only Xingcheng received financial contributions in respect of the goods under this program during the investigation period.

The Commission determined that the amount of subsidy received by Xingcheng in respect of this program is the amount of tax revenue forgone by the GOC. In accordance with subsection 269TACD(2), the Commission then apportioned the total amount of subsidy received by Xingcheng to each unit of the goods using its total sales volume.

The Commission has determined that the remaining cooperating exporters did not receive a financial contribution in respect of the goods under this program and therefore considers a zero subsidy rate is applicable to the remaining cooperating exporters under this program.

Uncooperative exporters

The GOC was asked to provide any amendments to laws, regulations or policy that evidence that this program was not relevant to current investigations. The GOC did not provide any further information.

In the absence of this information, the Commission considers that, given:

- the fact that the program operates on a national level;
- a cooperating exporter was found to have been eligible for this program and to have accessed the program and therefore received a financial contribution under his program; and
- the Commission in other recent investigations has found cooperating Chinese exporters were eligible for this program

it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

It is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

The Commission considers that:

- subsections 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission is mindful that, under this program, the maximum benefit that could have been conferred during the investigation period is reduction in the tax liability from 25 per cent to 15 per cent.

In the absence of any other reliable information the Commission has attributed the subsidy margin of the cooperating exporter for this program to the uncooperative exporters.

A3.3.3 CATEGORY THREE: TARIFF AND VAT EXEMPTIONS

PROGRAM 6: TARIFF AND VAT EXEMPTIONS ON IMPORTED MATERIALS AND EQUIPMENT

BACKGROUND

The application alleges that Chinese producers of grinding balls are likely to have benefited from this program, under which the GOC provides an exemption of VAT and tariffs on imported equipment used as 'productive' assets.

LEGAL BASIS

The legal basis to establish this subsidy is pursuant to the following:

- *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37);
- *Catalogue of Industries for Guiding Foreign Investment*;
- *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004);
- *State Council's Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- *Import Goods Not Exempted from Taxation for Domestic Investment Projects Catalogue*.

The program appears to operate on a national level. The National Development and Reform Commission (NDRC) or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.

WTO NOTIFICATION

The GOC notified this program in WTO document G/SCM/N/123/CHN dated 13 April 2006.

ELIGIBILITY CRITERIA

Under Articles 1 and 2 of the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (Guo Fa [1997] No. 37) to be eligible for this program:

- the enterprise must be an FIE which falls in the 'encouraged' or 'restricted' categories in the *Catalogue of Industries for Guiding Foreign Investment* (2004) (until 30 November 2007) or the *Catalogue of Industries for Guiding Foreign Investment* (2007) (after 1 December 2007);
- the imported equipment which is sought to be exempt from tariff and/or VAT must be for the enterprise's own use and not fall in the State Council's *Import Goods Not Exempted from Taxation for Foreign Investment Projects Catalogue*; and
- the total value of the purchase must not exceed the investment 'cap';

or

- the enterprise must be a domestic invested enterprise (DIE) which falls in the *Catalogue of Industry, Product and Technology Key Supported by the State at Present* (2004) and the imported equipment must be for the enterprises own use and not fall in *the Import Goods Not Exempted from Taxation for Domestic Investment projects catalogue*; and
- the total value of the purchase must not exceed the investment ‘cap’.

IS THERE A SUBSIDY?

Based on the information above, the Commission considers this program is a financial contribution by the GOC, that involves the foregoing, or non-collection, of revenue due to the GOC (tariff and VAT) by eligible enterprises in China.

It is considered that, depending on the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of grinding balls.

Where received, this financial contribution is considered to confer a benefit because of the tariff and VAT savings realised.

Where exporters of grinding balls during the investigation period received tax savings under the program for equipment related to their grinding ball production, it would therefore confer a benefit in relation to those goods, and the financial contribution would meet the definition of a subsidy under s.269T.

Is the subsidy a countervailable subsidy (specific or prohibited)?

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

FIEs that fall in the category of ‘encouraged’ or restricted’ enterprises of the FIE catalogues are eligible for the subsidy, or DIEs that fall under the DIE catalogue are eligible for the subsidy. As the criteria or conditions providing access to this program favour these particular enterprises, over all other enterprises in China, the specificity of the subsidy is not excepted by reference to subsection 269TAAC(3).

For these reasons the Commission finds that the subsidy is specific.

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has determined that the cooperating exporters did not receive financial contributions in respect of the goods under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under this program.

Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

This program was first investigated in INV 177 and again in INV 193a and 193b. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that this program was not relevant to current investigations. The GOC did not provide any further information.

In the absence of the above relevant information, and in keeping with the Commission's finding in previous investigations that cooperating exporters have received a financial contribution under this program, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

Therefore, in the absence of relevant information, it is considered that this financial contribution has been made in respect of all products of these exporters, including grinding balls.

In the absence of usage information, the Commission considers that:

- subsection 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), in the absence of other information, the Commission considers that the highest benefit calculated for cooperating exporters in the galvanised steel and aluminium zinc coated investigations is a reasonable basis for calculating the subsidy amount attributable to uncooperative grinding ball exporters, and has used this information as a basis for its calculations.

PROGRAM 29: VAT REFUND ON COMPREHENSIVE UTILIZATION OF RESOURCES

BACKGROUND

The applicants alleged that one supplier of grinding bar to exporters of grinding balls, namely [REDACTED], reported receiving payments from the [REDACTED] Economic and Information Commission, which it described as

“Project: [REDACTED]”⁷⁸.

The applicants asserted that the law governing this program mandates a financial contribution by the GOC, which involves the refund of government revenue, specifically, VAT on comprehensive utilization of resources. Due to the nature of this program (refund of VAT), the applicants considered that a financial contribution under this program would be made in connection with the production, manufacture or export of grinding balls.

The applicants considered that this financial contribution has been made in respect of all products in receipt of grinding bar supplied by [REDACTED] including grinding balls and that as the financial contribution under this program takes the form of reduced tax liability (rather than a direct transfer of funds) it should be determined that the financial contribution has conferred a benefit under subsection 269TACC(3).

The applicants quantified the amount of subsidy in accordance with subsection 269TACC(6)(d) as the amount of tax revenue forgone by the GOC. This has been disclosed by [REDACTED] as a credit (deferred income) in the sum of RMB 6,175,000.

LEGAL BASIS

The Commission is not aware of the legal basis for this program.

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CRITERIA

The Commission is not aware of the eligibility criteria for this program.

IS THERE A SUBSIDY?

The Commission considers that the law governing this program mandate a financial contribution by the GOC, which involves the refund of government revenue (VAT on comprehensive utilization of resources).

Due to the nature of this program (refund of VAT), it is considered that a financial contribution under this program would be made in connection to the production, manufacture or export of grinding balls.

Where received, this financial contribution is considered to confer a benefit because of the VAT refunded on ‘comprehensive utilisation of resources’.

Is the subsidy a countervailable subsidy (specific or prohibited)?

⁷⁸ Translation of “[REDACTED]”

Due to the lack of information provided by the GOC and the cooperating exporters, the Commission has based its finding on the available information. It finds that VAT refunds made on 'comprehensive utilisation of resources' by the GOC could be made only to entities that have the characteristics of 'comprehensive utilisation of resources'.

The Commission therefore finds the program to be specific, and countervailable.

AMOUNT OF SUBSIDY

Cooperating exporters

The Commission has assessed the information supplied by each cooperating exporter and has determined that grinding bar has not been purchased from the manufacturer named by the applicants. The Commission has found no other evidence of the cooperating exporters receiving a benefit under this program.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under this program.

Uncooperative exporters

In relation to all uncooperative exporters, neither the GOC nor the individual exporters themselves provided information regarding whether benefits were conferred on these exporters under this program.

The GOC was asked to provide usage information, considered necessary to determine whether a financial contribution has been received in respect of the goods by uncooperative exporters, and determining whether a benefit had been conferred to those exporters under this program. This information was not provided.

Based on fact that cooperating exporters have received benefits under this program in previous investigations, and in the absence of relevant information, the Commission considers it is likely that certain uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

In the absence of usage information, Commission considers that:

- subsections 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them by financial contributions under this program during the investigation period in the form of tax savings.

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), in the absence of other information, the Commission considers that the benefit calculated for the cooperating exporter in receipt of the subsidy in INV 177 is a

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reasonable basis for calculating the subsidy amount attributable to uncooperative grinding ball exporters, and has used this information as a basis for its calculations.

In accordance with subsection 269TACC(10), the total amount of subsidy received by the uncooperative exporters has been apportioned to each unit of the goods using the cooperating exporters total sales value. To determine the subsidy margin the weighted average export price for grinding balls for all cooperating exporters for the entire investigation period was used.

A3.3.4 CATEGORY FOUR: GRANTS

PROGRAMS 7 TO 28, 30, 31, 34 TO 43 AND 48 TO 54

BACKGROUND

The application alleged that Chinese producers of grinding balls are likely to have benefited from the following grant programs:

- Program 7: One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China';
- Program 8: Matching Funds for International Market Development for small and medium size enterprises (SMEs);
- Program 9: Superstar Enterprise Grant;
- Program 10: R&D Assistance Grant;
- Program 11: Innovative Experimental Enterprise Grant;
- Program 12: Special Support Fund for Non-State-Owned Enterprises;
- Program 13: Venture Investment Fund of Hi-Tech Industry;
- Program 14: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment;
- Program 15: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan;
- Program 16: Water Conservancy Fund Deduction;
- Program 17: Anti-Dumping Respondent Assistance;
- Program 18: Technology Project Assistance;
- Program 19: Capital Injections;
- Program 20: Environmental Protection Grant;
- Program 21: High and New Technology Enterprise Grant;
- Program 22: Independent Innovation and High Tech Industrialization Program;
- Program 23: Environmental Prize;
- Program 24: Provincial emerging industry and key industry development special fund;
- Program 25: Environmental Protection Fund;
- Program 26: Intellectual property licensing;
- Program 27: Financial resources construction - special fund;
- Program 28: Reducing pollution discharging and environment improvement assessment award;
- Program 29: Anti-dumping Respondent Assistance;
- Program 30: Grant for elimination of out dated capacity;
- Program 31: Grant from Technology Bureau;
- Program 34: Patent Award of Guangdong Province;
- Program 35: Wuxing District Freight Assistance;
- Program 36: Huzhou City Public Listing Grant;
- Program 37: Huzhou City Quality Award;
- Program 38: Huzhou Industry Enterprise Transformation & Upgrade Development Fund;
- Program 39: Wuxing District Public List Grant;
- Program 40: Transformation technique grant for rolling machine;
- Program 41: Grant for Industrial enterprise energy management - centre

- construction demonstration project Year 2009;
- Program 42: Key industry revitalization infrastructure spending in 2010; and
- Program 43: Jinzhou District Research and Development Assistance Program.

Under these programs certain enterprises are eligible for cash grants provided by the GOC.⁷⁹ Benefits are conferred to these enterprises in the form of funds provided.

During the course of its investigation the Commission requested information from exporters of grinding balls in relation to benefits received over the injury analysis period. The purpose of requesting data for years prior to the investigation period was to determine whether countervailable subsidies had been received that should be amortised over a period of years, such that a benefit could be found to be attributable to the period of investigation. The cooperating exporters advised of payments received from the GOC⁸⁰ during this period.

Further investigation of information provided by cooperating exporters has shown that other benefits were received during the investigation period. The Commission has assigned the following descriptions to those programs:

- Program 48: International trade increase project fund;
- Program 49: Industrial economy reform and development fund;
- Program 50: Sales revenue increase award;
- Program 51: Tax contribution award;
- Program 52: Energy and recyclable economy program;
- Program 53: National Controlled Essential Pollutant Source Supervision System Third Party Operation and Maintenance Subsidy Program; and
- Program 54: Scientific Program Awards in High and New Scientific Zone.

WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of these programs.

LEGAL BASIS AND ELIGIBILITY CRITERIA – PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43

Program 7: One-time Awards to Enterprises Whose Products Qualify for ‘Well-Known Trademarks of China’ and ‘Famous Brands of China’

Legal basis

Decision Concerning Commending and/ or Awarding to Enterprises of Guangdong Province Whose Products Qualify for the Title of ‘China Worldwide Famous Brand’, ‘China Famous Brand’, or ‘China Well-Known Brand’.

The government of Guangdong province is responsible for the administration and management of this program.

⁷⁹ Either centrally, or through provincial or local government.

⁸⁰ Either centrally, or through provincial or local government.

Eligibility criteria

- enterprises whose products qualify for the title of 'China Worldwide famous Brand'; and
- enterprises whose products qualify for the title of 'China well-known brand' and/or 'famous trademark (China famous Trademark)'.

Program 8: Matching Funds for International Market Development for SMEs

Legal basis

Regulatory instrument:

Measures for Administration of International Market Developing Funds of Small and Medium Sized Enterprises.

The program is administered by the Ministry of Finance and Ministry of Commerce, with the assistance of other competent authorities, and is implemented by the local finance and foreign trade authorities in their respective jurisdictions.

Eligibility criteria

SME enterprises that have:

- a legal personality according to law;
- the capacity to manage an import or export business;
- made exports in the previous year of 15,000,000 (before 2010) or 45,000,000 (after 2010) US dollars or less;
- sound financial management systems and records;
- employees who specialise in foreign trade and economic business who possess the basic skills of foreign trade and economics; and
- a solid market development plan.

Program 9: Superstar Enterprise Grant

Legal basis

- *Measures for Assessment and Encouragement of Superstar Enterprises and Excellent Enterprises; and*
- *Notice of Huzhou Government Office Concerning Announcement of Criteria for Superstar Enterprises, Excellent Enterprises and Backbone Enterprises.*

This program is administrated by the Huzhou Economic Committee.

Eligibility criteria

Enterprises located in Huzhou city that satisfy the following criteria.

- (a) The 'output scale' of the enterprise must meet one of the following criteria:

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- business income of the current year not exceeding RMB 3.5 billion and sales;
 - revenue within the city exceeding RMB 2 billion;
 - sales revenue within the city exceeding RMB 2.5 billion;
 - sales revenue within the city exceeding RMB 1.5 billion where the increase of sales revenue between 2007 and 2008 was more than 30% and the increased paid up tax between 2007 and 2008 was more than RMB 10 million; or
 - revenue from self-export of current year is more than USD150 million.
- (b) The enterprise's accumulated industrial input between the years 2006 to 2008 must have exceeded RMB 150 million.
- (c) The enterprise must be profitable, and its VAT 'paid up', while its
- consumption tax;
 - income tax;
 - business tax;
 - city construction tax; and
 - education supplementary tax
- must exceed RMB 30 million.
- (d) The enterprise must not have suffered environmental or 'unsafe production accidents' (or other illegal incidents) in the current year.
- (e) If the enterprise is not state-owned, it must have passed the 'Five-Good Enterprises' assessment conducted by its county or district.

Program 10: Research & Development (R&D) Assistance Grant

Legal basis

Regulatory instrument:

Notice of the Office of People's Government of Wuxing District on Publishing and Issuing the Management Measures on Three Types of Science and Technology Expenses of Wuxing District.

The GOC stated that the funding shall not be more than RMB150,000 and the duration for supporting an enterprise shall not be more than 3 years.

The government of Wuxing district and the Science and Technology Bureau of Wuxing District ('STB') are jointly responsible for the administration of this program.

Eligibility criteria

The GOC stated that to qualify for this grant, applicant must meet the following requirements:

- register and operate in Jinzhou New District;

- have complete organisational structure, R&D facilities and intellectual protection measures;
- have definite direction and task for technology development and technology research and have independent assets and funds;
- have a technology team with strong capacities to do research and development; and
- have more than one patent or science and technology project of municipal level and above.

The GOC provided further information stating that the purpose of the grant is to accelerate the transformation of the economic development pattern and economic restructure of Jinzhou New District, enhance the capacity of self-dependent innovation of the district, implementing the strategy on “innovative Urban District”, and making efforts to achieve the sound and rapid economy development of Jinzhou New District.

Program 11: Innovative Experimental Enterprise Grant

Legal basis

Regulatory instrument:

Work Implementation Scheme of Zhejiang Province on Setting Up Innovative Enterprises.

Administered by the administrative office of Science and Technology Bureau of Zhejiang province.

Eligibility criteria

Eligible enterprises are those that are located in Zhejiang Province, and are:

- independent economic entities with ‘reasonable asset-liability ratios’, consistent earnings over the past 3 years, and an increasing market share;
- well placed to undertake research and development activities with a provincial or new and high-tech technology centre available, and proven relationships with colleges and scientific research centres;
- investing at least 5% of annual sales income;
- using intellectual property rights to protect major products; and
- strongly committed to technological innovation and protection with previous technological achievements.

Program 12: Special Support Fund for Non-State-Owned Enterprises

Legal basis

Regulatory Instrument:

Notions concerning accelerating the growth of the non-state-owned economy, 18 April 2003.

Eligibility criteria

Non-SOEs (SIEs) located in Yunnan Province.

Program 13: Venture Investment Fund of Hi-Tech Industry

Legal basis

Regulatory Instrument:

Circular of Chongqing People's Government Office on Temporary Administration Measures on Venture Investment Fund of Hi-tech Industry in Chongqing.

The program is administered by the Chongqing Venture Investment Fund.

Eligibility criteria

Enterprises with 'high-tech programs' located in the High-Tech Zone or the High-Tech Park of the new Northern District.

In addition:

- the program must have a leading technological position in its field, and sufficient experience to enter the industrialisation development phase (industrialisation programs with intellectual property rights are given priority);
- the product must be of high quality and have potential economic benefit to the collective development of the Chongqing High-Tech Industry Zone;
- the department supporting the program must have good credit, excellent operation mechanisms and strong innovation abilities;
- the enterprise must have good legal standing; and
- the total investment in the program must be RMB 100 million or more.

Program 14: Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment

Legal basis

Regulatory Instrument:

Provisions of Guangzhou Municipality on Encouraging Foreign Investors to Set up Headquarters and Regional Headquarters

Administered by the local commerce authority of Guangzhou.

Eligibility criteria

This program is available to enterprises whose headquarters are established in the Guangzhou Municipality by a foreign investor.

To qualify as 'Headquarters' the facility must control all the operations and management of any enterprises it is invested in, both in China and internationally.

Only one enterprise Headquarters is permitted in the Guangzhou Municipality.

To qualify as 'Regional Headquarters', the facility must control operations and management of some or all enterprises it is invested in a certain area of China.

Headquarters or Regional headquarters may be of investment companies, management companies, research and development centres, and production enterprises.

Program 15: Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan

Legal basis

Regulatory Instrument:

Notice of Issuing 'Method for Determination of Key Enterprises in Equipment Manufacturing Industry of Zhongshan,' Zhong Fu (2005) No.127.

The program is administered by the local economic and trade office, by the Municipal Economic and Trade Bureau ('METB') and by the Municipal Leading Group of Accelerating Development of Equipment Manufacturing Industry of Zhongshan City ('MLG').

Eligibility criteria

For an enterprise to be eligible for this program:

- it must be established, registered and carrying out business in Zhongshan City;
- its primary product must be part of the equipment manufacturing industry and comply with the relevant industrial policies;
- it must have assets over RMB 30 million, annual sales income of over RMB 50 million and annual paid-in tax of over RMB 3 million or, alternatively, the enterprise's main economic and technical indices must be at the forefront of the equipment manufacturing industry in the country or province, and have potential for additional development;
- it must have implemented a brand strategy, established a technical centre for research and development and be comparatively strong in its capacity for independent development and technical innovation; and
- it must have good credit standing.

Program 16: Water Conservancy Fund Deduction

Legal basis

Regulatory Instrument:

Notification of Relevant Problems of Further Strengthening Water Conservancy Fund Deduction Administration of Zhejiang Province Local Taxation Bureau (ZheDiShuiFa [2007] No.63).

This program is administered by the Local Taxation Bureau of Zhejiang Province and it is implemented by the competent local taxation authorities of the municipal and county levels in Zhejiang Province.

Eligibility criteria

The GOC has confirmed that only enterprises satisfying one of following criteria will eligible for the grant under this program:

- provide job opportunities to laid-off workers, the disabled, and retired soldiers searching for jobs;
- enterprises that 'utilize resource comprehensively as designated by government department above municipal level';
- trading enterprises of commodities with annual gross profit rate of less than 5%;
- enterprises undertaking 'State reserve and sale, the portion of revenues incurred from that undertaking may qualify for an exemption of the fee';
- 'advanced manufacturing enterprises' or key enterprises as designated by the municipal government, which are undertaking technology development projects and incurring development expenditure at an amount above RMB1 million;
- 'insurance company's revenue from sales which are subject to exemption of excise tax';
- 'bank's revenue from turnovers between banks';
- 'revenue from sales between members of an enterprise group subject to same consolidated financial statement'.

Program 17: Anti-dumping Respondent Assistance

Legal basis

Regulatory Instrument:

Notification of Receiving Fair Trade Assistance by Wuxing Foreign Economic and Trade Bureau.

This program is administrated by Wuxing District Foreign Economic and Trade Bureau.

Eligibility criteria

Enterprises which incur expenses in an anti-dumping proceeding may benefit from this program.

Program 18: Technology Project Assistance

Legal basis

Regulatory Instrument:

Interim Measure for Administration of Post-completion Assistance or Loan Interest Grant for Industrialization of Science and Technology Achievements Sponsored by Zhejiang Province (2008).

The Bureau of Finance and the Science and Technology Bureau of Huzhou City are jointly responsible for the administration of this program.

Eligibility criteria

This program is available to enterprises that undertake a scientific research project which meets the scope of the projects encouraged under this program.

Program 19: Capital Injection Grant

The applicants advised subsequent to lodging the application that Program 19 is more correctly categorised under Program 45 – Equity Infusions.

The Commission has assessed this program in the Equity Programs section below.

Program 20: Environmental Protection Grant

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

In a former investigation into galvanised steel and aluminium zinc coated steel products a similar program “Environmental protection grant” was identified. The cooperating exporter in those investigations explained that the program was available to enterprises to purchase equipment to help protect the environment and payments were by the Ministry of Finance. On further inquiry, the GOC advised that it was not able to confirm if there was a ‘program 31’ and otherwise did not provide any information. The Commission considered the GOC’s response in regard to that program to be non-cooperative (program 31 in INV 193 refers).

Program 21: High and New Technology Enterprise Grant

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 30*).

Program 22: Independent Innovation and High Tech Industrialization Program

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 31*).

Program 23: Environmental Prize

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 33*).

Program 24: Provincial emerging industry and key industry development special fund

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 34*).

Program 25: Environmental Protection Fund

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 38*), and in INV 198 (there known as, *Program 34*).

Program 26: Intellectual property licensing

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 39*), and before then INV 198 (there known as, *Program 37*).

Program 27: Financial resources construction - special fund

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 40*), and before then INV 198 (there known as, *Program 38*).

Program 28: Reducing pollution discharge and environment improvement assessment award

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 41*), and before then INV 198 (there known as, *Program 39*).

Program 30: Grant for elimination of out dated capacity

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 43*), and before then INV 198 (there known as, *Program 41*).

Program 31: Grant from Technology Bureau

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 44*), and before then INV 198 (there known as, *Program 42*).

Program 34: Patent Award of Guangdong Province

Legal basis

Regulatory instrument:

2009 Guangdong Patent Award Implementation Proposal.

Administered by the Guangdong Province Department of Intellectual Property and Department of Personnel.

Eligibility criteria

The award is granted to enterprises that have an ‘innovations and utility models’ or an ‘industrial design’ patent.

An application under the ‘innovations and utility models’ patent category must establish that:

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- the product in question is skilfully constructed and innovative with high creation and technical level;
- the product contributes to technical improvement and creation;
- the patent has created or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

An application under the industrial design category must establish that:

- the industrial design has reached high level at shape, pattern and colour;
- application of this industrial design has brought or has the potential to bring significant economic or social benefit; and
- the patent holder has significantly protected the patent.

Program 35 – Wuxing District Freight Assistance

Legal basis

Regulatory instrument:

Several Opinions On Further Supporting Industrial Sector To Separate And Develop Producer-Service Industry (HuZhengBanFa [2008] 109).

This program is administered by the Finance Bureau of Huzhou City.

Eligibility criteria

Those enterprises whose annual freight cost is RMB 3 million or above, will be refunded 50% of the increase in the annual turnover tax which is paid locally by the transportation business and which is retained by the city. This increase is measured over the amount of tax paid in 2007.

For enterprises whose annually paid income tax is RMB100,000 or above:

- 100% of the income tax paid by the 'separated enterprise' and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise; and
- 50% of the turnover tax paid by the separated enterprise and retained by the city will be granted as assistance in each of the three years after the establishment date of the separated enterprise.

Program 36: Huzhou City Public Listing Grant

Legal basis

Regulatory instrument:

Notification of Government of Huzhou City (HuBan No.160).

This program is administrated by the Finance Bureau of Huzhou City.

Eligibility criteria

This program is available to enterprises that successfully completed listing of shares during 2010.

Program 37: Huzhou City Quality Award

Legal basis

Regulatory instrument:

Notification of the Office of People's Government of Huzhou City (HuZhengBanFa No.60).

The Government of Huzhou City and the Bureau for Quality and Technical Supervision are jointly responsible for the administration of this program.

Eligibility criteria

The award is granted to no more than three enterprises each year that are registered in Huzhou City and have been in operation for more than three years and that have:

- 'enjoyed excellent performance';
- 'implemented quality management'; and
- 'obtained a leading position in industry with significant economic benefits and social benefits'.

The products of an applicant must also meet the standards provided by laws and regulations regarding product safety, environmental protection, field safety as well as relevant industrial policy.

Program 38: Huzhou Industry Enterprise Transformation & Upgrade Development Fund

Legal basis

The purpose of the program is to promote industrial structure adjustment and upgrading, and to support technology updating and innovation of enterprises.

The GOC has advised that there is no single purpose legal document directly related to any benefit received by a respondent under investigation.

The Bureau of Finance and the Economic and Information Committee of Huzhou City are jointly responsible for the administration of this program. The Bureau of Finance and the Economic and Information Committee of Huzhou City examine and approve applications, with the funds provided from the budget of the Financial Bureau of Huzhou City.

Eligibility criteria

This program is limited to enterprises registered in Huzhou and encourages the transformation and upgrade of enterprises, 'including but not limited to industry upgrades, and to promote equipment manufacturing industry, high and new technology industry and new industry'.

Program 39: Wuxing District Public List Grant

Legal basis

Regulatory instrument:

Notification on Awarding Advanced Individuals and Advanced Entities of Industrial Economy and Open Economy for the Year of 2010 (WuWeiFa [2011] No.14).

This program is administered by the Government of Wuxing District.

Eligibility criteria

A grant is available to eligible advanced publicly listed enterprises.

Program 40: Transformation technique grant for rolling machine

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, *Program 31*).

Program 41: Grant for Industrial enterprise energy management- centre construction demonstration project Year 2009

Legal Basis

The Commission is not aware for the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, *Program 32*).

Program 42: Key industry revitalization infrastructure spending in 2010

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 198 (there known as, *Program 33*).

Program 43: Jinzhou District Research and Development Assistance Program

Legal Basis

The Commission is not aware of the legal basis for this program.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

This program was found to be a current and countervailable subsidy most recently in INV 237 (there known as, *Program 34*).

ARE THERE SUBSIDIES - PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43?

Based on the information above, the Commission considers that the grants provided under these programs are financial contributions by the GOC, which involve a direct transfer of funds by GOC to the recipient enterprises in China.

Due to the nature of each grant, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including grinding balls).

The Commission noted that the above detailed programs have been investigated previously during INV 237, INV 193 or INV 177 and found to be countervailable subsidies.

This financial contribution is considered to confer a benefit to recipient manufacturers of grinding balls due to receipt of funds from the GOC.

Where exporters of grinding balls during the investigation period received grants under any of the above programs, these would therefore confer a benefit in relation to the goods, and these financial contributions would meet the definition of a subsidy under section 269T.

Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in subsection 269TAAC(2)(a) a subsidy is specific if access to the subsidy is explicitly limited by law to particular enterprises.

In accordance with the above-listed eligibility criteria, each grant is limited to specific enterprises either by location, enterprise type; product manufacture; ownership structure;

the possession of certain patents; trading focus (export oriented); public listing status; participation in an anti-dumping investigation; hi-tech status; and length of operation; capital contribution or other criteria.

As the criteria or conditions providing access to the subsidies favours particular enterprises over all other enterprises in China, the specificity of these subsidies is not excepted by reference to subsection 269TAAC(3).

The Commission therefore considers each of the above-listed grant programs to be specific.

AMOUNT OF SUBSIDY - PROGRAMS 7 TO 28, 30, 31 AND 34 TO 43

Cooperating exporters

The Commission has determined that the cooperating exporters did not receive any financial contribution in respect of grinding balls under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to the cooperating exporters under these programs.

Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under these programs.

These programs were recently investigated in either INV 237, INV 193 or in INV 177. The GOC was asked to provide any amendments to laws, regulations or policy that evidence that these programs were not relevant to current investigations. The GOC did not provide any further information.

It is noted that some of these programs are limited to enterprises in specific regions in China. The Commission requested the GOC provide information as to the location of all grinding ball exporters in China. The GOC did not respond to the Commission's request for information. Noting that at least some of these programs are limited in operation to specific areas in China, the Commission does not have reliable information as to the location of uncooperative exporters. The ABF import database does list 'supplier' addresses, but it is not certain for each 'supplier' whether they are in fact the exporter of the goods, and whether the supplier operates in more locations than the one listed (e.g. the listed location could represent a central or head office of an enterprise that operates grinding ball manufacturing facilities in multiple locations in China).

In the absence of the above relevant information, the Commission considers it is likely that some uncooperative exporters are eligible for these programs in their respective provinces.

In accordance with subsection 269TACC(2), receipt of the above grants are taken to have conferred a benefit because of the direct financial payment.

Having regard to the nature and eligibility criteria for each subsidy, it is considered that the financial contribution received for each program was in respect of all goods sold by that exporter (including grinding balls).

In the absence of usage information, the Commission considers that:

- subsections 269TACC(2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to uncooperative exporters under these programs; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(7), the Commission determines that uncooperative exporters have had benefits conferred to them under these programs during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission considers that:

1. where the legislative instrument that establishes the program specifies the maximum financial contribution that can be made under that program, that maximum amount be the amount determined to be the benefit for each program;
2. where the maximum financial contribution grantable under a program is not stipulated in its legal instrument (or where no known legal instrument exists), the amount of the financial contribution shall be considered to be the maximum amount found in relation to point 1.

In attributing the amount of subsidy to each unit of grinding balls under subsection 269TACC(10), the benefit under each subsidy program has been attributed using the average sales volume of all products of the all cooperating exporters, in the absence of actual sales data for the uncooperative exporters. To determine the subsidy margin the lowest export price of the cooperating exporters was used.

LEGAL BASIS, ELIGIBILITY CRITERIA AND SPECIFICITY – PROGRAMS 48 TO 54

Program 48: International trade increase project fund

Legal Basis

The Commission is not aware of the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Department of Commerce of Changshu City.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria in relation to increasing international trade and be located in Changshu City district in order to be eligible for the subsidy provided by the Department of Commerce of Changshu City.

The Commission therefore finds the program to be specific, and countervailable.

Program 49: Industrial economy reform and development fund

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Department of Finance of Changshu City.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire considers that enterprises must meet some criteria in relation to industrial reform and development and be located in Changshu City district in order to be eligible for the subsidy provided by the Department of Finance of Changshu City.

The Commission therefore finds the program to be specific, and countervailable.

Program 50: Sales revenue increase award

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that eligibility is determined with reference to the following scale:

- (1) increase amount for 50,000,000 & ratio for 30%: 10,000 award;
- (2) increase amount for 100,000,000 & ratio for 30%: 20,000 award;
- (3) increase amount for 500,000,000 & ratio for 25%: 50,000 award;
- (4) increase amount for 1,000,000,000 & ratio for 25%: 100,000 award;

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire that enterprises must meet the above detailed criteria in relation to sales revenue increases and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

The Commission therefore finds the program to be specific, and countervailable.

Program 51: Tax contribution award

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that eligibility is determined with reference to the following scale:

- (1) tax paid amount over 30,000,000 & increase ratio over 15%: 200,000 award;
- (2) tax paid amount from 20,000,000 to 30,000,000 & increase ratio over 18%: 150,000 award;
- (3) tax paid amount from 10,000,000 to 20,000,000 & increase ratio over 18%: 100,000 award;
- (4) tax paid amount from 5,000,000 to 10,000,000 & increase ratio over 20%: 50,000 award;
- (5) tax paid amount from 2,000,000 to 5,000,000 & increase ratio over 25%: 20,000 award;

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission understands from the relevant cooperating exporter questionnaire that enterprises must meet the above detailed criteria in relation to tax contribution increases and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

The Commission therefore finds the program to be specific, and countervailable.

Program 52: Energy and recyclable economy program

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is administered by the Commission of Meili County.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria in relation to energy and recyclable economy targets and be located in Meili County in order to be eligible for the subsidy provided by the Commission of Meili County.

The Commission therefore finds the program to be specific, and countervailable.

Program 53: National Controlled Essential Pollutant Source Supervision System Third Party Operation and Maintenance Subsidy Program

Legal Basis

The Commission is not aware for the legal basis for this program.

The Commission understands from the relevant cooperating exporter questionnaire that the program is jointly administered by the Finance Bureau of Jiangyin City and the Environment Protection Bureau of Jiangyin City.

Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet some criteria relating to pollution supervision and control and be located in Jiangsu Province in order to be eligible for the subsidy provided by the Finance Bureau of Jiangyin City.

The Commission therefore finds the program to be specific, and countervailable.

Program 54: Scientific Program Awards in High and New Scientific Zone

Legal Basis

Regulatory instrument:

Policy on Rewards Concerning Further Promoting the Development of High and New Technology Industry and Encouraging Scientific Innovative Business Undertaking CGG 2013 No.32.

The Commission understands from the relevant cooperating exporter questionnaire that the program is jointly administered by the Finance Bureau of Jiangyin City and the Science and Technology Bureau of Jiangsu Province.

Eligibility criteria

The Commission understands from the relevant cooperating exporter questionnaire that products recognized in as High and New Technology Products of Jiangsu Province may

be rewarded 5,000 yuan per product, not exceeding 20,000 yuan for each enterprise in total.

Are the subsidies countervailable subsidies (specific or prohibited)?

The Commission considers that enterprises must meet the above detailed eligibility criteria and be located in Jiangsu Province in order to be eligible for the subsidy provided by the Finance Bureau of Jiangyin City.

The Commission therefore finds the program to be specific, and countervailable.

AMOUNT OF SUBSIDY – PROGRAMS 48 to 54

Cooperating exporters

The Commission has determined that financial contributions in respect of the goods have been received by:

- Longte under programs 48 to 52; and
- Xingcheng under programs 53 and 54.

Having regard to the nature and eligibility criteria for the subsidy, it is considered that the financial contribution received was in respect of all goods sold by that exporter including grinding balls.

In accordance with subsection 269TACC(2), receipt of the grant is taken to have conferred a benefit because of the direct financial payment to the exporter.

In accordance with subsection 269TACC(6)(a), the amount of that benefit is taken to be equal to the sum granted.

In accordance with subsection 269TACC(10), the total amount of subsidy received by each exporter has been apportioned to each unit of grinding balls using that exporters total sales volume. To determine the subsidy margin the weighted average export price of grinding balls for each exporter was used.

Uncooperative exporters

For uncooperative exporters, no information was provided by either the GOC or the individual exporters themselves regarding whether benefits were conferred on these exporters under this program.

The Commission notes that these programs are limited to enterprises in specific regions in China. The Commission does not have reliable information as to the location of non-cooperating exporters.

In the absence of the above relevant information, and in light of the above receipt of the program by cooperating exporters, the Commission considers it is likely that uncooperative exporters meet the eligibility criteria for this program, have accessed this program, and therefore received a financial contribution under this program.

PUBLIC RECORD

In the absence of usage information, the Commission considers that:

- subsections 269TACC (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred to non-cooperating exporters under this program; and
- subsection 269TACC(6) is inappropriate for determining the total amount of subsidy attributable to that benefit.

Therefore, in accordance with subsection 269TACC(10), the Commission determines that uncooperative exporters have had benefits conferred to them under this program during the investigation period in the form of direct transfers of funds (grants).

In calculating the amount of subsidy attributable to that benefit under subsection 269TACC(7), the Commission considers that the subsidy amount calculated for the cooperating exporter is a reasonable basis for calculating the subsidy amount attributable to uncooperative grinding ball exporters in this investigation, and has used this information as a basis for its calculations.

In attributing the amount of subsidy to each unit of grinding balls under subsection 269TACC(10), the benefit under each subsidy program has been attributed using the average sales volume of all products of the all cooperating exporters, in the absence of actual sales data for the uncooperative exporters. To determine the subsidy margin the lowest export price of the cooperating exporters was used.

A3.3.5 CATEGORY FIVE: EQUITY PROGRAMS

The application alleged that Chinese producers of grinding balls are likely to have benefited from the following equity programs:

- Program 44 Debt for equity swaps;
- Program 45 Equity infusions; and
- Program 46 Unpaid dividends.

PROGRAM 44: DEBT FOR EQUITY SWAPS

BACKGROUND

This program was found to be a current and countervailable subsidy most recently by the CBSA in '*Concerning the final determinations with respect to the dumping of certain concrete reinforcing bar originating in or exported from the People's republic of China*', 4218-39 CV/138, 23 December 2014⁸¹ (there known as, *Program 176*) and the European Commission (EC) in '*Countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China*', 11 March 2013⁸².

The debt for equity swap was a measure used in the financial restructuring of China's State-owned steelmakers to state owned commercial banks (SOCBs). Pursuant to the *Regulations of Asset Management Companies* (promulgated by decree on 20 November 2000), the State Council established four Asset Management Companies (AMCs) that were directed to purchase certain non-performing loans from SOCBs. The four AMCs were supervised and managed by the People's Bank of China (PBC), China's Ministry of Finance and the China Securities Regulatory Commission. One of the authorised business activities available for the management of non-performing loans purchased by the AMCs was the debt for equity swap. A debt for equity swap is a transaction in which a creditor, in this case an AMC, forgives some or all of a company's debt in exchange for equity in the company.

The EC found that, in the absence of any cooperation from the GOC, the evidence available to it demonstrated that AMCs are public bodies because they were specifically created by the GOC to dispose of massive non-performing loans in key industries including the steel sector and to restructure the debts of SOEs, and, consequently, they were considered to exercise government authority. The EC further found in relation to SOCBs that at least 14 out of the 17 reported banks in that case were state-owned banks, and they were controlled by the government and exercised government authority in a manner that their actions were attributable to the State. For these reasons the AMCs and SOCBs China were considered public bodies.

The subsidy was considered specific as it was restricted only to selected entities selected by the State and the award of this financing is discretionary and no objective criteria exist. Therefore it was concluded that this programme constituted a countervailable subsidy.

LEGAL BASIS

⁸¹ Hereinafter *Canada – Countervailing measures on rebar from China*

⁸² Hereinafter *European Community – Countervailing measures on organic steel from China*

The Commission is not aware of the legal basis for this program.

WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of this program.

ELIGIBILITY CRITERIA

The Commission is not aware of the eligibility criteria for this program.

PROGRAM 45: EQUITY INFUSIONS

BACKGROUND

This program was found to be a current and countervailable subsidy most recently by the CBSA in *Canada – Countervailing measures on rebar from China* (there known as, *Program 178*) and the EC in *European Community – Countervailing measures on organic steel from China*.

The applicants assert, based on the CBSA and EC findings, that the GOC has provided substantial amounts of cash to steel producers through equity infusions, specifically, the GOC (through various state-owned entities) acquired shares in companies in which it was already the main shareholder without acquiring additional shareholder rights. As such, equity infusions constitute a direct transfer of funds.

The applicants consider that these equity infusions confer a benefit to the recipient companies as they are inconsistent with the usual investment practice of private investors, specifically, the payment by the SIE steel producer of an overvalued price of its portion of the new share issue not in line with fair market conditions. In the case of *European Community – Countervailing measures on organic steel from China*, the EC was satisfied that the GOC paid the same price as other investors despite the GOC's shares in the SIE steel producer being worth less as they had different rights and prospects than the shares sold to other shareholders.

The applicants asserted that these subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of the grinding balls.

LEGAL BASIS

The Commission is not aware of the legal basis for this program.

ELIGIBILITY CRITERIA

The Commission is not aware of the eligibility criteria for this program.

WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of this program.

PROGRAM 46: UNPAID DIVIDENDS

BACKGROUND

This program was found to be a current and countervailable subsidy most recently by the CBSA in *Canada – Countervailing measures on rebar from China* (there known as, Program 179) and the EC in *European Community – Countervailing measures on organic steel from China*.

The applicants asserted that SIEs including the steel companies producing grinding balls do not have to pay dividends to the government as their owner even when they earn profits, and as a result, SIE steel producers are able to finance investment through retained profits not distributed as dividends according to this program.

The applicants contended that unpaid dividends must be considered as a disguised grant or as revenue forgone in that the GOC does not collect dividends that are normally paid to private investors on their shares. These disguised grants were provided by the government through the entity directly holding the shares in the SIE steel producers, in principle SASAC, which, as noted above, performs Government functions.

The full amount of unpaid dividends is considered to confer a benefit to the recipient SIE steel producers as this is inconsistent with the usual investment practice of private investors that require dividend distributions normally attached to their shares.

The applicants asserted that these subsidies are specific because they were provided to a limited number of selected entities in which the government participated. Therefore it is considered that this programme constitutes a countervailable subsidy for exporting producers of grinding balls.

LEGAL BASIS

The Commission is not aware of the legal basis for this program.

ELIGIBILITY CRITERIA

The Commission is not aware of the eligibility criteria for this program.

WTO NOTIFICATION

The Commission is not aware of any WTO notification in respect of this program.

ARE THERE SUBSIDIES – PROGRAMS 44 TO 46?

The Commission has determined that the cooperating exporters did not receive any financial contribution in respect of grinding balls under these programs during the investigation period, nor has the Commission found cooperating exporters to have received any financial contribution under these programs in respect of other goods in previous investigations.

The Commission further notes that the CBSA and EC cases relied upon by the applicants were investigated prior to the commencement of the investigation period as it relates to this investigation.

On the basis of these factors, the Commission is not satisfied that exporters of grinding balls received any financial contribution in respect of grinding balls under these programs during the investigation period.

The Commission therefore considers a zero subsidy rate is applicable to all exporters under these programs.

A3.3.6 CATEGORY SIX: PREFERENTIAL LOANS

PROGRAM 47: PREFERENTIAL LOANS AND INTEREST RATES

BACKGROUND

The application alleged that during the investigation period, Chinese exporters of the goods benefited from low (subsidised) interest rates from SOCBs and government banks in accordance with the GOC policy to support and develop the expansion of the Chinese steel industry under the five year plans.

The applicants rely on the findings in *European Community – Countervailing measures on organic steel from China* (organic steel), to support the claim.

The application alleges that SOCBs are public bodies because they are vested with government authority and exercise government functions, and further, that privately owned banks are also subject to GOC direction. The application asserts that a benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market.

The Commission requested information from the cooperating Chinese exporters in relation to their lending arrangements during the investigation period.

The Commission also requested information from the GOC in relation to this program, however no response was received.

Previous consideration

EC Findings

The EC investigation established that the Chinese financial market is characterised by government intervention because most of the major banks are state-owned. It concluded on the basis of the available data that state-owned banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the State. The EC further concluded that the GOC had a policy to provide preferential lending to the organic coated steel sector, because public bodies, in the form of SOCB were engaged in such provision and held a predominant place in the market, which enabled them to offer below-market interest rates.

In relation to privately owned commercial banks, the EC found that the GOC policy to provide preferential lending to the organic coated steel producers extended to privately-owned commercial banks and that the GOC instructs them to "carry out their loan business upon the needs of national economy and the social development and with the spirit of state industrial policies."⁸³

In relation to loans provided by both SOCBs and privately owned banks the EC concluded that there was a financial contribution to the organic coated steel producers in the form of

⁸³ Article 34 of the Commercial Banking Law

a direct transfer of funds from the government, and that a benefitted existed to the extent that the government loans were granted on terms more favourable than the recipient could have obtained in the market.

The EC determined that the authorities only allow the financial institutions to provide preferential loans to limited number of industries/companies which comply with the development policies of the GOC, and on this concluded that the subsidies in form of preferential lending are not generally available and are therefore specific.

Accordingly, the EC concluded that the financing of the organic coated steel industry should be considered a subsidy.

The subsidy amount was determined by the EC as the difference between the amount that the company paid on the government loan and the amount that the company would pay for a comparable commercial loan obtainable on the market. As the loans provided by Chinese banks reflected substantial government intervention in the banking sector and did not reflect rates that would be found in a functioning market, the EC constructed a market benchmark. Chinese interest rates as measured by the standard lending rate of the People's Bank of China were adjusted to reflect the EC's assessment of normal market risk, the adjustment being the premium expected on bonds issued by firms with the highest grade of "non-investment grade" bonds (BB rating at Bloomberg).

LEGAL BASIS

The Commission has not identified any specific legal basis for this program (i.e. no specific law, regulation, or other GOC document has been identified that provides for its establishment).

WTO NOTIFICATION

The Commission is not aware of any WTO notification of this program.

ELIGIBILITY CIRTERIA

There are no articulated eligibility criteria for enterprises receiving preferential loans and/or interest rates.

IS THERE A SUBSIDY?

Financial contribution

The Commission considers that this program involves a financial contribution in the form of a direct transfer of funds from the government.

As part of the exporter questionnaires provided to Chinese exporters of grinding balls, the Commission requested information about the total value of loans held and the proportion of state ownership of the banks providing those loans. The Commission established that the majority of loans provided to the cooperating exporters were provided by state owned banks. The Commission's analysis is contained at Confidential Attachment 9

By a government or public body?

In order for this program to be considered to be a 'subsidy' the financial contribution must be from a government, public body, or private body entrusted with governmental functions.

The Commission's consideration of the term "public body" is detailed in Appendix 5.

In relation to the provision of loans, the Commission makes the following additional comments.

According to the most recent WTO Trade Policy Review on China, conducted in 2014, "credit policy continues to be of major importance in China. Efforts continue to be made to enhance the coordination between credit policy and industrial policies, by speeding up rural financial products and service innovation, improving the provision of financial services for and medium- sized enterprises, and by adopting measures to prevent and alleviate local debt-related risks. The PBC has guided financial institutions to intensify financial support to areas such as scientific and technological innovation, emerging industries of strategic importance, and service industries. Financial institutions were also guided to extend credit support for railways, shipping, thermal power and steel, and were encouraged to use credit products flexibly to support profitable export-oriented enterprises."⁸⁴

The WTO Review further noted that "the General Rules on Loans of 1996 stipulates that Banks determine the interest rate for a loan on the basis of the interest rate "ceiling" and "floor" fixed by the PBC. In 2013, however, the PBC issued a notice liberalizing lending rates. As a result, financial institutions may set lending rates independently. Nonetheless, according to the General Rules on Loans: "in accordance with the State's policy, relevant departments may subsidize interests on loans, to promote growth of certain industries and economic development in some areas (Article 15)""⁸⁵.

The WTO review noted that Chinese authorities claimed the General Rules on Loans of 1996 no longer reflected the current situation in the financial sector in China. The Commission notes that Article 34 of the Law of the People's Republic of China on Commercial Banks [2003] states that "commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State".

Without cooperation from the GOC the Commission was unable to clarify the continuing applicability of Article 15 of the General Rules on Loans or Article 34 of the Law on Commercial Banks, and in the absence of evidence provided to the contrary has deemed it reasonable to conclude that these provisions continue to apply within the framework of financial sector reform undertaken within China.

⁸⁴ WTO Trade Policy Review 2014 paragraph 28

⁸⁵ Ibid paragraph 3.130

The Commission further noted that SOBCs continue to be the predominant players in the Chinese financial market. According to a Fortune 500 report China's 12 largest companies are state owned, and of those 12, four are banks.⁸⁶

In the absence of a GOC response to the Commission in relation to this program, the Commission had to rely on the information available from the application, exporter questionnaire responses and publicly available sources. The Commission concludes on the basis of the available information that both SOBCs and privately owned banks are controlled by the government and exercise government authority in a manner that their actions can be attributed to the GOC.

Conferral of benefit on the goods

As Chinese exporters rely on loans to as a funding source in the production of grinding balls, it is considered this financial contribution is made in respect of the production, manufacture or export of the goods.

The Commission considers that a benefit exists to the extent that the government loans are granted on terms more favourable than the recipient could actually obtain on the market. The benefit is found to be the amount of the difference between the interest rate paid by the producer of grinding balls and the interest rate that would be payable on a the market.

Where exporters of the goods during the investigation period received a financial contribution under the preferential loans and interest rates program, it would therefore confer a benefit in relation to the goods, and the financial contribution would meet the definition of a subsidy under section 269T.

Are the subsidies countervailable subsidies (specific or prohibited)?

As provided for in subsection 269TAAC(4)(a), the Parliamentary Secretary may determine that a subsidy is specific, having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

As detailed above, the WTO Review found that Chinese financial institutions were guided to extend credit support to a range of industries, including steel. This finding is consistent with:

- *Decision No. 40*, being an Order from the State Council, which categorises the steel industry as an “encouraged industry”, and identifies “encouraged investment projects” as being eligible for special privileges and incentives, such as financial support; and
- *Order No. 35 - Policies for the development of Iron and Steel Industry*, in particular Articles 24 and 25, which limit the provision of loans to those companies complying with the national development policies for the Iron and steel industry.

⁸⁶ <http://fortune.com/2015/07/22/china-global-500-government-owned/>

Taking these policies into consideration the Commission is satisfied that the GOC only allows financial institutions to provide preferential loans to a limited number of industries/companies which comply with the development policies of the GOC. In the absence of cooperation from the GOC on this matter it is concluded that the subsidies in form of preferential lending are not generally available and are therefore specific.

AMOUNT OF SUBSIDY

Applicants' view

The applicants assert that because loans provided by Chinese banks were subject to substantial government intervention they did not reflect rates that would be found in a functioning market, and therefore an appropriate market benchmark would need to be constructed.

In keeping with the EC methodology conclusion in organic steel, the applicants proposed applying a benchmark based on Chinese interest rates, adjusted to reflect normal market risk. The applicants consider that in the absence of reliable information about the creditworthiness of Chinese grinding balls exporters, it is appropriate to consider that all firms in China would be accorded the highest grade of "Non-investment grade" bonds only (BB at Bloomberg). The benchmark rate would include the appropriate premium expected on bonds issued by firms with this rating in addition to the standard lending rate of the PBC.

Commission's view

The Commission notes that as of 13 July 2013, subsequent to the conclusion of the organic steel investigation, the PBC liberalised interest rates, allowing financial institutions to set lending rates independently, and in keeping with commercial lending practices.

The Commission has undertaken an analysis of the information provided by cooperating exporters in relation to loans they have sourced. The Commission established that while the majority of loans were sourced from SOCBs, those loans sourced from privately owned banks were all subject to interest rates above the prevailing PBC official interest rate. Furthermore, the Commission established that the interest rates differed considerably between exporters and between banks. The Commission considered this indicative of financial institutions setting lending rates based on commercial risk assessments, a fundamental tenet of a functioning financial market.

The Commission does not consider it is reasonable based on this evidence to assert that all Chinese exporters should be accorded a risk premium on par with non-investment grade bonds.

The Commission has instead calculated the benchmark rate for interest rates as the average interest rate charged by the privately owned banks over the investigation period.

The Commission has determined the amount of subsidy as the differential between this benchmark rate and the rate actually charged where that rate was less than the official PBC interest rate at the time the loan was sourced.

Cooperative exporters

The Commission found that Longte, Xingcheng and Goldpro received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with subsection 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined for each exporter as the difference between the benchmark rate as described above and the actual interest rate incurred where that interest rate was below the official PBC rate at the time the loan was sourced.

The amount of subsidy received in respect of grinding balls has been calculated by taking the interest rate differential, expressed as a percentage, and multiplying it by the outstanding amount of the loan.

In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the total turnover of the company.

Uncooperative exporters

For the uncooperative and all other exporters, no information was provided by either the GOC or the individual exporters themselves to identify whether a financial contribution has been received under this program. The Commission considers that these entities have not given the Commissioner information considered to be relevant to the investigation within a reasonable period.

Pursuant to subsections 269TAACA(1)(c) and 269TAACA(1)(d) the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods.

Considering the fact that:

- all grinding ball manufacturers exporting from China would likely require financing; and
- the majority of the cooperating exporters loans were sourced from SOCBs

it is considered likely that uncooperative and all other exporters obtained loans at subsidised rates and therefore received a financial contribution under this program.

In the absence of information that demonstrates the quantum of those loans held by uncooperative and all other exporters, in accordance with section 269TACD(1), the Commission determines that uncooperative and all other exporters would have had benefits conferred to them under this program by this financial contribution, and has calculated the amount of subsidy attributable to that benefit by reference to the highest subsidy rate determined for cooperating exporters.

APPENDIX 4 - ASSESSMENT OF ADEQUATE REMUNERATION FOR COKING COAL IN CHINA

A4.1 Introduction

After determining that SIEs that supplied coking coal in China are ‘public bodies’ for the purposes of the Act (Appendix 5 refers), the Commission has sought to determine a benchmark cost that represents adequate remuneration for coking coal in China to determine a competitive market cost for coking coal (under subsection 45(2) of the Regulations) and the benefit received under subsidy Program 32 (purchases of coking coal from SIEs at less than adequate remuneration).

In REP 193, the Commission established a benchmark price for coking coal using GOC supplied data for the Chinese export price of coking coal in the investigation period.

The Commission notes that in the current investigation, the GOC did not provide a response to the questionnaires provided to it. As such, the Commission could not reliably ascertain the volume and value of production of coking coal in China, the volume and value of imports of coking coal into China, and the volume and value of exports of coking coal from China.

The Commission further notes that there is no international benchmark price for coking coal. China has been identified as the major producer and consumer of coking coal. China also restricts the trade of coking coal to the international market by levying high export taxes and restrictions. As such, the market for coking coal is highly concentrated in China.

In light of these considerations, in establishing the benchmark for the alleged countervailable subsidy benefits received by the Chinese exporters for coking coal, the Commission has relied upon information contained in the application, information supplied by an independent provider of trade statistics and measures, and other publicly available data.

A4.2 Adequate remuneration for coking coal

Having found that domestic prices of coking coal in China are being influenced and distorted by the GOC, a benchmark price has been established. The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:

- i. private domestic prices;
- ii. import prices; and
- iii. external benchmarks.

(i) Private domestic prices

The Commission has previously found that private prices of coking coal are affected by government influence and are therefore not suitable.

In the absence of information from the GOC in relation to the domestic market for coking

coal, the Commission considers that private domestic prices of coking coal in China are not suitable for determining a competitive market price free from government influences.

(ii) Import prices

The Commission has previously found that import prices were not suitable as a benchmark due to the lack of import penetration of coking coal and the likelihood that import prices were equally affected by the government influences on domestic prices.

In the absence of a response by the GOC in relation to imports of coking coal the Commission does not have sufficient information available to it to make an assessment in regard to import prices. As such, the Commission considers that import prices are not suitable for determining a competitive market price of coking coal in the investigation period.

(iii) External benchmarks

Having eliminated the first two options discussed above, the Commission considered other options to establish a benchmark price for coking coal.

As stated, in INV 193 the Commission used the Chinese export price in the investigation period to establish the benchmark price for coking coal. In assessing the data collated from various sources in INV 193, the Commission found there to be a variety of factors affecting the quality and forms of coking coal produced, imported and/or exported by each of the top five countries trading in these commodities. The coking coal exported from China was considered to be the most comparable to the coking coal purchased domestically by the cooperating Chinese exporters, and the export data provided by the GOC was considered to have a lower risk compared to data from other countries for the purpose of determining adequate remuneration.

In the absence of information from the GOC in relation to export pricing, the Commission was unable to follow the methodology set in INV 193.

The applicants proposed that the benefit obtained by exporters of grinding balls be calculated based on the difference between the [REDACTED] for hard coking coal (HCC) (HCC 64 Mid Volume) for 30 September 2015 at a cost and freight (CFR) Jingtang price of USD 83.11/tonne, compared to the Atlantic HCC (Low Volume HCC) price for the same period of USD 107/tonne (CFR China), multiplied by the percentage of coking coal required to manufacture one tonne of grinding balls.

The Commission notes that the applicants uplifted the Atlantic HCC price (quoted at FOB terms) by an amount for freight to arrive at a comparable CFR price. The applicants also calculated the benefit amount based on one month only of the investigation period. For these reasons, the Commission was not satisfied that the approach proposed by the applicants was reasonable.

The Commission has instead adopted as a benchmark the Platts Australian low volume premium HCC FOB export price. The Commission is satisfied that this is an appropriate benchmark for the following reasons:

- Australia is a major producer of coking coal and is a significant supplier to China;

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- The Commission was able to cross reference the Platts data against Australian government data to ensure the Platts data being used was reliable; and
- The reservations presented in INV 193 against using Australian export pricing, notably the possibility that export prices were high at that time due to isolated supply factors, are no longer applicable to the current investigation period.

The Commission notes that in INV 193, the GOC objected to the use of an Australian export price benchmark on the grounds that the quality of Australian coking coal is higher than that produced domestically in China, and would therefore be more expensive.

Based on the Commission's analysis of prices paid for coking coal by Longte compared to Australian export prices, as detailed in in the discussion of Program 33 above, Chinese exporters are not disadvantaged by the use of an Australian benchmark, even if the quality of Australian coking coal is superior to that available domestically in China.

APPENDIX 5 - ASSESSMENT OF WHETHER STATE INVESTED ENTERPRISES ARE PUBLIC BODIES

A5.1 Background

In order for the programs alleged in the application to be considered a ‘subsidy’ the financial contribution provided under the program must be from a government, public body, or private body entrusted with governmental functions.

The application asserted that SIEs are public bodies (for the purposes of section 269T), relying upon:

- the Appellate Body Report in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)*⁸⁷, where the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority;
- the Appellate Body Report in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*⁸⁸, where guiding principles were stated as regards the meaning of “meaningful control”;
- a 2014 Worldsteel Association report which detailed that nine of the top ten steel companies in China, in terms of total crude steel production were SIEs, all of which are either wholly or partly owned by the *State-Owned Asset Supervision and Administration Commission of the State Council (SASAC)*, and all of which produce steel billet and/or grinding balls, themselves or through their subsidiaries;
- the *Interim Regulations on Supervision and Management of State-Owned Assets of Enterprises (Interim Regulations)* which set out the functions and obligations of a state-owned assets supervision and administration authority; and
- examples of SASAC’s current and ongoing direct control and responsibility for the appointment and removal of personnel from SIEs.

The applicants relied upon this information to conclude that the functions of SASAC, such as the power to appoint persons to key management positions, evidence a greater role in the management of enterprises than mere shareholder, and that this serves as evidences that the GOC exercises meaningful control over the nine SIEs known to produce steel billet and/or grinding balls, themselves or through their subsidiaries, and as such these entities possess governmental authority and therefore each are a public body.

The Commission requested exporters in their questionnaire responses to provide a list of all purchases of steel billet, electricity, coke, coking coal, and grinding bar during the investigation period.

A5.2 Previous consideration

The term ‘public body’ is not defined in the legislation or the SCM Agreement. It has been considered by the Commission in previous investigations and has been the subject of a

⁸⁷ Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011.

⁸⁸ Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014.

number of WTO Appellate Body findings. To inform the Commission's assessment of this issue in the present investigation the following documents are considered to be relevant:

- INV 177 – the Commission's finding in relation to the subsidisation of hollow structural sections (HSS) exported from China;
- INV 203 – the Commission's reinvestigation of certain findings in INV 177, one of which was whether SIEs that supplied hot rolled coil (HRC) to manufacturers of HSS were public bodies;
- INV 193 – the Commission's findings in relation to the subsidisation of aluminium zinc coated steel and galvanised steel (collectively 'coated steel') exported from China. The Commission found that SIEs that supplied hot rolled coil (HRC) to manufacturers of coated steel were public bodies;
- INV 237 – the Commission's finding in relation to the subsidisation of silicon metal exported from China;
- INV 238 – the Commission's finding in relation to the subsidisation of deep drawn stainless steel sinks exported from China;
- Anti-Dumping Review Panel (ADRP) Report (15 November 2013) in relation to INV 193 – the ADRP disagreed with the Commission's finding that SIE HRC suppliers were public bodies. The Parliamentary Secretary accepted the ADRP's finding in relation to this issue;
- DS 379 – this Appellate Body finding considered the meaning of 'public body' in accordance with Article 1.1(a)(1) of the SCM Agreement. This report is considered to be one of the most definitive references to date on the matter of public bodies;
- DS 436 – this WTO Panel finding further considered the requirements for finding an entity to be a public body; and
- *United States – Countervailing Measures (China)* (DS 437) – this dispute involved a number of decisions of the US in relation to multiple investigations and again considered the factors that determine whether an entity is a public body.

In relation to DS 437, while this decision is recent the Commission considers it of less relevance to the present investigation. In the US investigations considered by the Panel in DS 437, the US determined that the relevant input suppliers were public bodies on the grounds that these suppliers were majority-owned or otherwise controlled by the GOC. The Commission agrees with the views of the Panel in this dispute, and the Appellate Body in DS 379, that majority ownership of itself does not lead to a conclusion that an entity is a public body. The Commission does not advocate such an approach in the present investigation.

In DS 379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority).⁸⁹

- **Indicia 1** - where a *statute or other legal instrument* expressly vests government authority in the entity concerned;

⁸⁹ Appellate Body report DS379 at [318]

- **Indicia 2** - where there is evidence that an entity is, *in fact, exercising governmental functions* may serve as evidence that it possesses or has been vested with governmental authority; and
- **Indicia 3** - where there is evidence that a government exercises *meaningful control* over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

The Commission, and more recently the ADRP, have used these indicia as the basis for its approach to determining decisions regarding whether entities subject to dumping and countervailing investigations should be considered to be public bodies.

A5.3 Decisions of the Commission

In INV 177, the Commission assessed whether SIE suppliers of HRC were public bodies according to each of the three indicia. The Commission concluded that Indicia 1 was not met, however evidence exists to show that both Indicia 2 (evidence that an entity is, in fact, exercising governmental functions) and Indicia 3 (evidence that a government exercises meaningful control over an entity and its conduct) are satisfied in relation to Chinese HRC and/or narrow strip manufacturers. This conclusion was based on an assessment of a number of factors including policy documents issued by the GOC and statements by SIE steel manufacturers in public reports. The Commission considered that the evidence “show(ed) that these entities are still constrained by, and abiding by, multiple GOC policies, plans and measures, and in some circumstances acting as an important means by which these GOC policies and plans are implemented.”

The Commission’s finding was appealed to the Trade Measures Review Officer (TMRO), who directed the Commission to conduct a reinvestigation of the public body finding. The Commission’s reinvestigation report, INV 203, affirmed the findings in INV 177. It considered that ‘SIEs are exercising government functions and that there is evidence that the government exercises meaningful control over SIEs and their conduct. In performing government functions, SIEs are controlling third parties.’

In INV 193, relating to coated steel, the Commission relied on its findings in INV 203 to find that SIE suppliers of HRC were public bodies. The GOC appealed this finding to the ADRP. In disagreeing with the Commission’s finding, the ADRP made the following observations:

- Active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority;
- In concluding that certain companies were actively implementing objectives in the five-year plans the Commission conflated the purpose of acting in accordance with a government policy and carrying out government functions;
- Article 14 of the Interim Measures, which vests SASAC with certain obligations in respect of the economy, is a reference to SASAC and not to the SIEs. It does not evidence how, or if, there is authority delegated to SIEs to control participants in the iron and steel industry;
- Having an impact on other participants in the industry is not indirectly controlling them and is not evidence of the exercise of governmental authority; and
- There is no material which demonstrates that there has been a delegation (noting this is not necessarily in the strict sense of delegation) of governmental authority to

SIEs to impose state-mandated policies on participants in the iron and steel industry.

A5.4 Commission's consideration

The Commission considers that the ADRP's decision to direct a reinvestigation of the findings in INV 177 was, to a large extent, premised on the TMRO's view that there needs to be the essential element of exercising a power of government over third persons. This view was in turn likely influenced by the words of the Appellate Body in DS 379, 'that the term "government" is defined as the "continuous exercise of authority over subjects; authoritative direction or regulation and control".'

The Panel considered this issue in DS 437, a decision that was handed down after the ADRP's report in relation to coated steel. The Panel stated in its report that '(it) was not persuaded by China's argument that... "[a] public body, like government in the narrow sense, thus must itself possess the authority to 'regulate, control, supervise or restrain' the conduct of others".' The Appellate Body's view was that this was not supported by the findings in DS 379. It stated that:

'In our view, governments, either directly themselves or through entities that are established, owned, controlled, managed, run or funded by the government, commonly exercise or conduct many functions or responsibilities that go beyond "the effective power to 'regulate', 'control', or 'supervise' individuals, or otherwise 'restrain' their conduct".'

The Commission considers that while it was relevant for the ADRP to consider this element in the context of the coated steel case, the ability to control others is of itself not decisive in determining whether an entity possesses, exercises or is vested with government authority.

In DS 436, also released after the ADRP's findings, the WTO Dispute Settlement Body further considered the issue of whether a government exercises 'meaningful control' over an entity. The Panel stated that 'to determine whether an entity has governmental authority, an investigating authority must evaluate the core features of the entity and its relationship to government. Governmental control of the entity is relevant if that control is "meaningful".'

The Dispute Settlement Body stated that, in its view:

- 'government involvement in the appointment of an entity's directors (involving both nomination and direct appointment) is extremely relevant to the issue of whether that entity is meaningfully controlled by the government';
- 'while a government shareholding indicates that there are formal links between the government and the relevant entity, government involvement in the appointment of individuals – including serving government officials – to the governing board of an entity suggests that the links between the government and the entity are more substantive, or "meaningful", in nature'; and
- 'in the context of government ownership and government involvement in the appointment of directors, such evidence provides additional support for a finding that an entity is under the "meaningful" control of the government.'

The Interim Regulations set out the functions and obligations of a state-owned assets supervision and administration authority. Relevant provisions are as follows:

- Article 13 states that one of the main responsibilities is to ‘appoint or remove the responsible persons of the invested enterprise’;
- Article 16 states that a state-owned assets supervision and administration authority ‘shall establish and improve the mechanism for selecting and appointing the responsible persons or enterprises’;
- Article 17 describes the positions presumably considered to be ‘responsible persons’, which include the general manager, deputy general manager, chief accountant, chairman, vice-chairman and director of the board;
- Article 17 also states that where the State Council or any level of government ‘provide otherwise’ in relation to the appointment or removal of responsible persons then those decisions prevail;
- Article 18 states that a state-owned assets supervision and administration authority shall establish a performance evaluation system and conduct annual performance reviews of responsible persons; and
- Article 19 states that a state-owned assets supervision and administration authority shall determine the remuneration of responsible persons of wholly state-owned enterprises.

The Commission is not in possession of evidence as to whether SASAC has appointed directors or other key management positions to any of the suppliers of steel billet, electricity, coke, coking coal or grinding bar identified within the exporter questionnaire responses submitted. Additionally, as part of the government questionnaire, the GOC was requested to respond to a number of questions concerning entities that produce grinding balls and upstream raw material, including:

- a list of all manufacturers of grinding balls and upstream raw materials suppliers and the percentage of GOC ownership in each (A4);
- whether there is GOC representation in the business, and if so the type of representation (e.g. on the Board of Directors), the authority responsible, and an indication of any special rights provided to the representative (e.g. veto rights) (A4);
- for each business where the GOC is a shareholder and/or there is GOC representations in the business provide the complete organisational structure, including subsidiaries and associated businesses and copies of annual reports of the business for the last 2 years (A4);
- confirm whether the ‘*Law of the People’s Republic of China on State-Owned Assets of Enterprises*’ is current and has not been superseded or supplemented by other laws and if so provide any superseding or supplementary laws (C2).

The GOC did not provide a response to these questions. In the absence of this information the Commission has had regard to other relevant information in its possession, including information contained in the application and other information obtained by the Commission relating to the ownership structures of Chinese steel producing enterprises, the findings of previous investigations, and the Interim Regulations.

The Commission observes that the GOC submitted during INV 177 that the current law, as outlined in Article 7 of the Interim Regulations, prevents SASAC from exercising any government functions of administrative public affairs. Article 7 states:

People's governments at all levels shall strictly abide by the laws and regulations on State-owned assets management, persist in the separation of government functions of social and public administration from the functions of investor of State-owned assets, persist in the separation of government functions from enterprise management and separation of ownership from management.

The State-owned assets supervision and administration authority shall not perform the functions of social and public administration assumed by the government. Other institutions and departments under the government shall not perform the responsibilities of investor of State-owned assets of enterprises.

The Commission does not consider this Article to be at odds with a finding that SIEs are public bodies. The Appellate Body in DS 379 stated that an entity may possess certain features suggesting it is a public body and others that suggest that it is a private body. In DS 436 the Government of India argued that the National Mineral Development Corporation enjoyed a significant amount of autonomy from it, which was granted "to make the public sector more efficient and competitive". These are similar sentiments to those expressed by the GOC in the Commission's previous considerations of public bodies. The Dispute Settlement body in DS 436 stated that '(s)o long as public sector enterprises are involved, we are not persuaded that the grant of a greater degree of autonomy is necessarily at odds with a determination that such public sector enterprises constitute public bodies.'

In the absence of information from the GOC in relation to its role in the operation of SIEs, and in light of the reasons considered above, the Commission considers that it is reasonable to conclude for the purpose of the current investigation that SIEs that produce and supply raw materials to manufacturers of grinding balls should be considered public bodies.