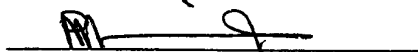


Report No. 82

Investigation into the alleged dumping of forged or stamped, but not further worked, grinding balls and similar articles for mills originating in or imported from the People's Republic of China (PRC): Final determination

The International Trade Administration Commission of South Africa herewith presents
its **Report No.82: INVESTIGATION INTO THE ALLEGED DUMPING OF FORGED OR
STAMPED, BUT NOT FURTHER WORKED, GRINDING BALLS AND SIMILAR
ARTICLES FOR MILLS ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S
REPUBLIC OF CHINA (PRC): FINAL DETERMINATION**



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PRETORIA

02 / 11 / 2004

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO THE ALLEGED DUMPING OF FORGED OR STAMPED, BUT NOT FURTHER WORKED, GRINDING BALLS AND SIMILAR ARTICLES FOR MILLS ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA (PRC): FINAL DETERMINATION

SYNOPSIS

The International Trade Administration Commission of South Africa (the Commission) was established on 1 June 2003 in terms of the International Trade Administration Act 2002 (Act 71 of 2002) (the ITA Act), which replaced the Board on Tariffs and Trade Act 1986 (Act 107 of 1986) (the BTT Act). As regards anti-dumping matters the Commission superseded the Board on Tariffs and Trade (the Board) in all respects. For sake of simplicity all references in this report are to the Commission. All references in this report referring to the Commission, and which relate to the period prior to 1 June 2003, should be understood to be a reference to the Board, and all references to the ITA Act, which relates to the period prior to 1 June 2003, should be understood to be a reference to the BTT Act.

On 03 October 2003, the Board on Tariffs and Trade (the Board), formally initiated an investigation into the alleged dumping of forged or stamped, but not further worked, grinding balls and similar articles for mills, commonly referred to as forged grinding balls, originating in or imported from the People's Republic of China (PRC). Notice of the initiation of the investigation was published in Notice No. 2522 of *Government Gazette* No. 25492 dated 03 October 2003. The application was lodged on behalf of the Southern African Customs Union (SACU) industry by Scaw Metals: A Division of Anglo Operations, which claimed that the dumped imports were causing it injury in the form of material retardation of the establishment of an industry.

The investigation was initiated after the Commission considered that there was sufficient evidence to show that the subject product was being imported at dumped prices, causing material retardation of the establishment of the SACU industry.

On initiation of the investigation, known producers and exporters of the subject product in the PRC were sent foreign manufacturers/exporters questionnaires to complete. The exporters in the PRC requested that they be granted market economy treatment. As a result, the market economy treatment (MET) questionnaires were also sent to them for completion. Importers of the subject product were also sent questionnaires to complete.

The Commission made a preliminary determination that the subject products originating in or imported from the PRC were being dumped onto the SACU market and that the SACU industry was suffering injury. The Commission, however, made a preliminary determination that inability of the applicant to capture sufficient market share, even though its selling prices are undercutting those of the imported subject products, sufficiently detracted from the causal link. The Commission, therefore, did not find a causal link between the dumped imports originating in or imported from the PRC and the injury experienced by the Applicant. The Commission therefore made a preliminary determination to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of forged or stamped, but not further worked, grinding balls and similar articles for mills originating in or imported from the PRC, be terminated.

The Commission's detailed reasons for its decision were set out in Commission Report No.60 (preliminary report).

After considering all parties' comments and representations in respect of the preliminary report and the letter of essential facts, the Commission made a final determination that the subject products originating in the PRC and manufactured by Changshu Longteng Special Steel Co. Ltd and Pangang Group International Economic & Trading Company and exported into the SACU by Minmetals Australia (Pty) Ltd were not being dumped into the SACU market. The Commission also made a final determination that the subject products originating in the PRC and manufactured and exported by other

manufacturers were being dumped into the SACU market. The Commission made a final determination that the establishment of the forged or stamped, but not further worked, grinding balls and similar articles for mills industry in the SACU was being materially retarded. The Commission, however, made a final determination that the inability of the applicant to capture sufficient market share, even though its selling prices are undercutting those of the imported subject products, sufficiently detracted from the causal link. The Commission, therefore, did not find a causal link between the dumped imports originating in or imported from the PRC and the injury experienced by the Applicant.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of forged or stamped, but not further worked, grinding balls and similar articles for mills originating in or imported from the PRC, be terminated.

BACKGROUND

In its report (Report no. 4108): *Investigation into the alleged dumping of grinding media, originating in or imported from Australia and the People's Republic of China (PRC): Final determination*, the Board made a determination that the subject product originating in or imported from Australia and the PRC was being dumped, that the SACU industry was experiencing material injury and that, although there was a causal link between the dumping and the material injury experienced by the SACU industry, the efficiency of the imported product and the cost benefit of using this product, sufficiently detracted from the causal link.

At the time of the Board's final determination, Scaw Metals had already commenced to develop the capability to manufacture a new and complete range of quality forged steel grinding media that complies with international standards. The initiative has resulted in Scaw Metals installing a modern plant to produce forged grinding media, utilizing technology sourced from Chile, South America. The plant was commissioned in

December 2002. Scaw Metals stated that the new forged grinding media almost completely replaced the cast grinding media that were traditionally manufactured by Scaw Metals for the SACU mining industry.

Scaw Metals alleged that the profitability of the new plant was severely affected by the presence in the SACU market of the dumped forged grinding media from the PRC and had, therefore, brought an application for remedial action against the alleged dumping of grinding media originating in or imported from the PRC. Scaw Metals also alleged that the dumped imports were causing injury to the SACU industry in the form of material retardation of the establishment of the forged grinding media industry.

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 71 of 2002, (ITA Act), the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994, (the Anti-Dumping Agreement) and the International Trade Administration Commission Anti-Dumping Regulations (ADR).

1.2 APPLICANT

The application was lodged by Scaw Metals: A Division of Anglo Operations (Applicant), being a manufacturer of forged or stamped, but not further worked, grinding balls and similar articles for mills, commonly referred to as forged grinding balls in the SACU.

1.3 DATE OF ACCEPTANCE OF PETITION

The Application was accepted by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 25 September 2003. The trade representatives of the country concerned were advised accordingly.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from the PRC were being dumped on the SACU market, thereby causing material retardation of the establishment of the SACU industry. The

basis of the alleged dumping was that the goods were being exported into the SACU at prices less than the normal value in the country of origin.

The Applicant alleged that as a result of the dumping of the products from the PRC, the forged or stamped, but not further worked, grinding balls and similar articles for mills industry in the SACU was being materially retarded in the form of:

- insufficient output
- price undercutting
- insufficient sales
- Inability to capture sufficient market share
- low productivity
- low profits
- insufficient utilisation of production capacity
- low return on investments
- negative effect on cash flow
- inability to create more employment
- Inability to show growth
- Increase in inventory levels in relation to the business plan projections.

Comments by International Trade Services (ITS)

ITS, on behalf of exporters, queried the fact that the basis for the initiation of the investigation was the material retardation of the establishment of a grinding media industry in South Africa. ITS stated that the applicant erroneously assumes that it is entitled to interpret product differentiation as the establishment of a new industry. In this regard it referred the Commission to the decision taken in its report no. 4108 (Investigation into the alleged dumping of grinding media, originating in or imported from Australia and the People's republic of China (PRC): final determination) on the "like product", the Commission stated that "

After considering all the above factors, the Board was satisfied that the SACU product and the imported products are "like products for purposes of the Dumping Agreement."

ITS further stated that as part of the investigation process the Commission was required to determine industry standing. Article 5.4 of the Anti-Dumping Agreement inter alia provides that an application should be made by or on behalf of the domestic industry producing the like product. In the said report the authorities decided that "The petition was, therefore, regarded as being made "by or on behalf of the domestic industry" and eligible for initiation under the above provisions of the Anti-Dumping Agreement." In the circumstance it cannot be argued that an industry has since been established. It would therefore appear that the Applicant is confusing the extension of an existing product range with the establishment of a new industry.

ITS concluded by stating that the fact that nowhere in the Anti-Dumping Agreement any provision whatsoever is made for grounds for seeking relief if and when a product range is extended, leaves the Commission with no option but to terminate the investigation immediately.

Comments by Minmetals Australia (Pty) Ltd

Minmetals Australia (Pty) Ltd (Minmetals Australia), the exporter of the subject product stated that the Applicant's non-confidential application stated that to meet changed market demands, it began the process of investing in the establishment of a new industry for the manufacture of forged steel grinding media that resulted in the commissioning of a new forged steel grinding media plant in January 2003.

Minmetals stated that this investment by the Applicant couldn't constitute the establishment of a new industry in the SACU because the Applicant stated that it was manufacturing forged balls in year 1999.

Minmetals stated that the Applicant has clearly made new investments on its existing manufacturing process to increase and improve its production of forged, rather than cast balls, which are still being produced in the SACU. This does not constitute the establishment of a new industry, and thus there could be no retardation of the establishment of the SACU forged grinding media industry, since, factually, it already existed.

Minmetals further stated that the Board on Tariffs and Trade in its report No. 4108: Investigation into the alleged dumping of grinding media, originating in or imported from Australia and the People's Republic of China (PRC): Final determination, found that the SACU product and imported products are "like products", for purposes of comparison in that investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

Comments by Deloitte

In response to the comments by ITS and Minmetals Australia, Deloitte, acting on behalf of the Applicant, stated that it has shown in its application, and the Commission has already satisfied itself, that a major investment in production facilities with new technology, for the production of a product range never before produced in or supplied from the SACU, constituted the establishment of an industry. The fact that Scaw Metals already manufactures similar products with different technical characteristics does not detract from this. Scaw Metals previously manufactured cast balls in the range of 70mm to 125mm and forged balls in the range of 30mm to 60mm. The requirements of the mining industry in the SACU have changed whereby they now require forged as opposed to cast grinding balls in the range of 70mm to 125mm.

Deloitte stated that Minmetals' argument against Scaw Metals' application was based on the assumption that in order to apply under material retardation of the establishment of an industry, that such an industry in its entirety needs to be new.

It stated that it would be very short sighted to interpret the term "industry" too wide. Within the steel industry there are different "sub-industries" or "branches of manufacture" that include the scrap steel conversion industry, that in turn includes grinding media with its branches of manufacture. If this wide interpretation approach is followed it would exclude any protection against unfair trade to any new investment in any of the wider industries in the SACU. Scaw Metals' investment in a new large diameter forged steel grinding media manufacturing facility not previously established in the SACU therefore represents a new branch of the grinding media industry. Therefore, although a grinding media industry did exist in South Africa before Scaw Metals expansion, the industry for producing larger forged grinding media, which is the subject of this application, did not exist before Scaw Metal's expansion.

Deloitte concluded by stating that Minmetals reference to like products during the course of the previous investigation is irrelevant since the assessment was with respect to the comparison between forged and cast balls for the purposes of identifying the like products for that investigation. The current issue is whether products of this nature have been manufactured in the SACU previously and whether the investment concerned justifies the conclusion that an industry has been established. The fact that the goods manufactured by the new investment are like to the cast balls previously manufactured by Scaw Metals and the imported product from the PRC, does not detract from the establishment of a new branch of manufacture.

The Commission considered these comments, but confirmed its decision that Scaw Metals' investment in a new large diameter forged steel grinding media manufacturing facility not previously established in the SACU, represented a new branch of the grinding media industry.

The Commission, therefore, decided to proceed with the investigation.

1.5 INVESTIGATION PROCESS

The Commission formally initiated an investigation into the alleged dumping of forged or stamped, but not further worked, grinding balls and similar articles for mills originating in or imported from the PRC, pursuant to Notice No. 2522, which was published in Government Gazette No. 25492 on 03 October 2003.

Prior to the initiation of the investigation, the trade representative of the country concerned was notified of the Commission's intention to investigate, in terms of Article 5.5 of the Anti-Dumping Agreement and ADR 27.1. All known interested parties were informed and requested to respond to the questionnaire and the non-confidential summary of the petition.

The information submitted by the Applicant was verified on 03 September 2003.

1.6 INVESTIGATION PERIOD

The investigation period for dumping was from 1 January 2003 to 31 July 2003. The investigation period for injury was from 1 January 2003 to 31 May 2003.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of only one producer of the subject product, namely, Scaw Metals: A Division of Anglo Operations (the Applicant).

The information submitted by the Applicant, was verified by the investigating officers prior to the initiation of the investigation.

1.7.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified as interested parties:

- (a) Minmetals China, of the PRC
- (b) Changshu Longteng Special Steel Co. Ltd
- (c) Pangang Group International Economic & Trading Company
- (d) Minmetals Australia (Pty) Ltd
- (e) Moly-Cop Chile

The application was brought only against the PRC, However, Minmetals Australia was identified as an interested party in this matter because all export sales of the subject products by Changshu Longteng Special Steel Co. Ltd (Changshu Longteng) and Pangang Group International Economic & Trading Company (Pangang) to SACU were invoiced to it. Minmetals R.S.A (Pty) Ltd is the sole agent of Minmetals Australia.

As the PRC is normally considered by the Commission to be a country where prices are influenced by Government intervention, section 32(4) of the ITA Act is normally applied when determining normal value. The Applicant nominated Chile as the surrogate country and obtained the cooperation of Moly-Cop Chile (Moly-Cop) to determine a normal value in the PRC, in the event that the

Commission does not grant the exporters in the PRC market economy treatment. Moly-Cop was therefore also regarded as an interested party in this investigation.

Complete responses were received from Changshu , Pangang and Moly-Cop. Comments were also received from Minmetals Australia (Pty) Ltd (Minmetals Australia) and are included in this report.

Information submitted by Changshu and Pangang was verified on 16 to 26 February 2004. Information submitted by Moly-Cop was verified on 11 and 12 March 2004.

1.7.3 Importers

The following SACU importers were identified as interested parties:

- (a) Mill Grinding Products,
- (b) Bolt Corporation (Pty) Ltd,
- (c) Minmetals RSA (Pty) Ltd,
- (d) Manhattan Mining Equipment (Pty) Ltd,
- (e) Hua Wei Manufacuring (Pty) Ltd.

A complete response was received from Minmetals RSA (Pty) Ltd (Mimetals RSA). Information submitted by Minmetals RSA was verified on 28 January 2004.

Comments by Deloitte

Deloitte stated that both Changshu and Pangang indicated that they exported to Minmetals Australia, which in turn exported to the SACU. Minmetals stated in its response that it was the exporter of grinding media from the PRC. The parties

therefore seem to contradict each other as to who is considered as the exporter of the goods concerned. It seems as though there are two possibilities regarding exports from the PRC. It could either be exported directly from the PRC to the SACU with Minmetals Australia as the agent, or it could be exported from the PRC to Australia from where it could be exported to the SACU.

Deloitte stated that if ITAC decides to impose any provisional payment and anti-dumping duties, it requested that it be imposed on grinding media originating in and exported from the PRC and Australia as it believes the risk exists of the exporter circumventing the duty by exporting via Australia.

The Commission found that the application was brought and initiated against the PRC. The Commission also found that although Minmetals Australia was the bona fide exporter of the subject product, it was determined during the verification that the subject products were manufactured and exported directly from the PRC and did not physically go to Australia. Furthermore, it is not the policy of the Commission to impose anti-dumping duties or provisional payments against a country that has not been included in the investigation.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as:

Forged or stamped, but not further worked, grinding balls and similar articles for mills.

2.1.2 Tariff Classification

The subject product is currently classifiable as follows:

Tariff subheading	Description	Duty
7326	Other Articles of Iron or Steel:	
7326.1	Forged or stamped, but not further worked:	
7326.11	Grinding balls and similar articles for mills	Free

The product being petitioned is forged or stamped, but not further worked, grinding balls and similar articles for mills commonly known as "forged grinding balls", classifiable under tariff subheading 7326.11. According to the Applicant, the product may also be imported under the tariff subheading 7325.91, which makes provision for cast grinding balls. There is no duty payable on products imported under the two subheadings.

The Applicant indicated, therefore, that circumvention would be possible and requested that should the Commission decide to impose a duty on tariff subheading 7326.11, the duty be also applied to tariff subheading 7325.91 as the product might also be imported under tariff subheading 7325.91.

The South African Revenue Services (SARS) indicated that it could distinguish between cast articles and forged articles and that it would also be possible to distinguish between forged but not further worked and polished or calibrated.

The Commission, therefore, decided to limit the anti-dumping duties, if any, to tariff subheading 7326.11 only.

2.1.3 Import Statistics

Article 5.8 of the Anti-Dumping Agreement provides as follows:

"There shall be immediate termination in cases where the authorities determine that the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member."

The import statistics obtained from SARS indicated that the volume of the alleged dumped imports from the PRC accounted for 97 per cent of the total imports during the period of investigation.

2.1.4 Country of origin/export

The subject product is manufactured and exported from the PRC.

2.1.5 Application/end use

The imported product is used by the mining industry during the milling process to crush rocks and ore, which is part of the comminution process.

2.1.6 Production process

The forging process consists of the casting of a steel billet that is then hot-rolled into round bars of the required diameter (ball bars). The bars are then heated and forged by a manually fed press. The balls are then transported in-line to a heat treatment system where they are heat-treated.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as forged or stamped, but not further worked, grinding balls and similar articles for mills, commonly referred to as forged grinding balls.

2.2.2 Application/end use

The SACU product is also used by the mining industry during the milling process to crush rocks and ore, which is part of the comminution process.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 7326.11.

2.2.4 Production process

The forging process consists of the casting of a steel billet that is then hot-rolled into round bars of the required diameter (ball bars). The bars are then heated and fed into a forging machine which produces the balls. The balls are then transported in-line to a heat treatment system where they are heat-treated.

2.3 LIKE PRODUCTS

2.3.1 General

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine whether the products produced by the SACU industry are like products to those originating in or imported from the PRC.

Article 2.6 of the Anti-Dumping Agreement provide as follows:

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

2.3.2 Analysis

In determining the likeness of products, the Commission used the following criteria:

- (1) raw material used;
- (2) physical appearance and characteristics;
- (3) tariff classification;
- (4) method of manufacturing; and

- (5) customer demand and end use.

(1) Raw material

Both the SACU and the imported product are manufactured from billets.

The Commission found that the raw materials for the imported and the SACU products are comparable.

(2) Physical appearance and characteristics

Both the SACU and the imported product can be described as forged grinding balls.

The Commission found that the imported and the SACU products have similar physical appearance and characteristics.

(3) Tariff Classification

The Commission found that both the imported and the SACU products are currently classifiable under tariff subheading 7326.11

(4) Method of manufacturing

The method of manufacturing of both the imported and the SACU products is the forging process.

The Commission found that the imported and the SACU products are manufactured using the same method.

(5) Customer demand and end use

Both the imported and the SACU products are used by the mining industry during the milling process to crush rock and ore, which is part of the comminution process.

The Commission found that the imported and the SACU products are used for the same purpose.

After considering all the above factors, the Commission was satisfied that the SACU products and the imported products are like products, for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

Article 5.4 of the Anti-Dumping Agreement, provides as follows:

"An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 5 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry..

ADR 7.3 provides as follows:

- "An application shall be regarded as brought by or on behalf of the SACU industry if-
- (a) at least 25 per cent of the SACU producers by domestic production volume support the application; and
 - (b) of those producers that express an opinion on the application, at east 50 per cent by domestic production volume support such application."

The Applicant, Scaw Metals, is the sole manufacturer of forged grinding balls in the SACU. Based on this, it is evident that the Applicant's production represents 100 per cent of the total production of the subject product in the SACU.

The Commission, therefore, decided that the petition was made "by or on behalf of the domestic industry" under the above provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 DUMPING

Section 1(2) of the ITA Act, provides a definition of the term “dumping”. The Act provides as follows:

“‘dumping’ means the introduction of goods into the commerce of the Republic or the common customs area at an export price contemplated in section 3(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;”

4.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

“‘normal value’ means

- (i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting countries of origin; or
- (ii) in the absence of a price contemplated in subparagraph (i), either –
 - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit;
 - or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative”

Section 32(4) of the ITA Act further provides as follows:

“If the Commission, when evaluating an application concerning dumping, concludes that normal value of the goods in question is, as a result of government intervention in the

exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country.”

4.3 EXPORT PRICE

Export prices are determined in accordance with section 32(2)(a) of the ITA Act which provides as follows:

“export price’, subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;”.

Section 32(5) of the ITA Act further provides as follows:

“The Commission must, despite the definition of “export price” set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis”.

Section 32(6) of the ITA Act provides as follows:

“Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-

- (a) there is no export price as contemplated in the definition of dumping;
- (b) there appears to be an association or a compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
- (c) the export price actually paid or payable is unreliable for any other reason”.

4.4 ADJUSTMENTS

Article 2.4 of the Anti-Dumping Agreement provides as follows:

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the ex-factory export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of

the Anti-Dumping Agreement and no anti-dumping duty will be imposed.

The margin of dumping is normally calculated in the currency of the country of export.

4.6 METHODOLOGY IN THIS INVESTIGATION FOR THE PRC

4.6.1 Normal value

Type of economy

The PRC is normally considered by the Commission to be a country where prices are influenced by Government intervention and therefore section 32(4) of the ITA Act should apply.

4.6.2 Request to be granted Market Economy Status (MES)

On 17 December 2004, the Commission accepted criteria to determine whether market economy status (MES) should be accorded to a company in a country that has, or that has had, significant government interference in its economy:

As the two manufacturers in the PRC who exported the subject product during the POI have requested that they be granted MES, MES questionnaires were sent to the exporters for completion. The Commission considered the responses received from the exporters before making its preliminary determination.

(a) Ownership and stockholding

Changshu Meili Capital Business Investment Company invested *****RMB in 1994 to establish Changshu Longteng Special Steel Plant. In April 2000, according to the agreement signed between Meili Capital Business Investment Company and twelve individuals, Meili Capital Business Investment Company transferred this enterprise to twelve individuals. In March 2002, in accordance with decisions at the second and third shareholders' meetings, all shares were transferred to Mrs.Xu Caiyun and Mr.Ji Binyuan while the company was renamed to Changshu Longteng Special Steel Co.,Ltd.

Pangang was originally established by solo investment from Panzhihua Steel Group in September 1994.

(b) Independence regarding decisions on purchases

(i) Raw Materials

Changshu indicated that it seeks the raw materials from the spot market through short-term contracts, and generally chooses the supplier according to the market situation and signs single-transaction contracts with the suppliers.

The Commission found that the raw materials were sourced from independent companies. The Commission verified the payments of raw materials.

Pangang stated that it purchased the bloom from its holding company Panzhihua New Steel & Vanadium Co.Ltd. (PNSV). It signs a purchase contract with Panzhihua New steel & Vanadium Co.Ltd., usually once a

month.

(ii) Land and buildings

Changshu stated that they have the legal land use right of the land, and the buildings are self-built by them.

Pangang stated that the land where the factory is located was obtained on the basis of a lease agreement, which remains in force for a period of 20 years.

(iii) Capital Equipment

Changshu stated that they bought the capital goods from the local producers at market prices.

Pangang stated that they purchased the capital goods from the market from different facilities suppliers at market prices.

(iv) Loans

Active capital loans were raised by Changshu from various banks at an average interest rate of 8.4 per cent per annum. Pangang's capital loans were also raised from various banks at an average interest rate of 5.31 per cent per annum

(v) Labour

The Commission found that there is no collective bargaining in determining labour rates and this is also confirmed in the articles of association in so far as the union delegate has no voting powers, *inter alia*, in matters related to the determination of wages.

(c) Costs of major inputs should reflect market values

The major raw material is bloom. Changshu obtained its major input from the spot market through short-term contracts. The Commission found the price paid by Changshu to be market related.

Pangang obtained its major input material from its sister company.

The Commission noted that the bloom purchased by Pangang from its sister company was scrap metal and although the price could have been market related, for purposes of its preliminary determination, the Commission found that the transactions between the two companies could not have been at arm's length.

(d) Accounting standards

The financial position of the two companies as reflected in the companies financial statements is presented in accordance with Chinese "Enterprise Financial Accounting Norms" and the companies statements are audited and commented on by a Chinese accredited independent auditor (the audit report for 2002 was submitted)

While the Commission noted that the financial statements are presented in accordance with Chinese "Enterprise Financial Accounting Norms" and are independently audited, it could not make a finding that these complied with the Generally Accepted Accounting Practices (GAAP) used in free market economies.

(e) Lack of distortions from current or previous government intervention

The first level of enquiry is whether the enterprise was transformed from government to private.

The Commission could not make a finding that there was a complete lack of distortions from current or previous government intervention with regards to Changshu and Pangang or their supplier's of goods and services.

(f) Bankruptcy laws

The Bankruptcy Act, to which Changshu and Pangang are subject to, was submitted and considered by the Commission.

(g) Exchange rate conversions

Discussion

The exchange rate of the Chinese currency is pegged to the US Dollar and therefore is determined by the government and not determined by international currency trading markets.

DETERMINATION ON MARKET ECONOMY TREATMENT

The Commission found that, on the information provided, the companies daily operations are conducted according to free market principles. The Commission, however, also found that the fact that wages were not determined by collective bargaining, detracted from Changshu and Pangang's claim to be operating under market economy conditions.

Comments by Deloitte

Deloitte, acting on behalf of the SACU industry, stated that not much is readily available on the grinding media industry in the PRC. However, several publications indicate that the Chinese steel industry has not transformed to full market economy conditions. Steel is the major input into grinding media and uses the same general inputs.

It stated that, should ITAC decide to continue with using the information supplied by the exporters it should determine whether the suppliers of the inputs operate under market conditions. Only when the ITAC has unequivocal proof that the suppliers are operating under market conditions could the costs of the input be used. For all other costs the selling price of the exporters should be adjusted based on the cost for the manufacture of grinding media supplied by Moly-Cop Chile.

Comments by ITS

In responding to Deloitte's comments, ITS stated that as quoted in its letter of 12 July 2004, even Iscor's research indicated that the steel market in China is driven by international supply and demand conditions. Moreover, it explained that labour agreements indeed exist, with the difference that such agreements are negotiated between the exporters and the workers individually. ITS added that the workers' interests are secured through trade union representation.

As to whether or not the exporters' financial statements comply with GAAP requirements in "free market economies", ITS reiterated that the investigating officers in fact verified that all internal reporting systems and the interpretation of financial data are similar to systems used in the "capitalist

world" In the circumstances, it agrees with the Commission's decision to grant the exporters market economy treatment. For the above reasons Deloitte's objections to said treatment do not hold water and therefore their request that Moly-Cop, Chile, should be used as a surrogate is inconsequential. For the record, it repeats its earlier objection that Moly-Cop, Chile would have been completely unacceptable as a surrogate as they are related to Scaw and also obtained its technology from them.

Comments by Deloitte

In its response to the Commission's preliminary report no. 60, Deloitte stated that of the 11 factors against which the Commission measured the exporters in order to determine whether they operated under market conditions, it believes that 8 are not indicative or conclusive of market conditions.

Deloitte stated that although the Commission concluded that the raw material, capital equipment and major inputs were obtained from independent parties (except for bloom in the case of Pangang), the Commission could not confirm whether these parties are privately controlled companies or whether there was no government intervention in the markets of these goods. It, therefore, does not believe that these factors, ie raw material, capital equipment and major inputs, are not conclusive that the exporters operate under market conditions.

Deloitte stated that the Commission concluded that labour and exchange rates are not indicative of market conditions, whilst accounting standards, the lack of distortions from the current or previous government intervention and bankruptcy laws were not conclusive on market conditions. Eight out of eleven factors considered by the Commission were therefore not conclusive on market conditions or showed that market conditions did not prevail. It therefore believes that the factors considered by the Commission on market

conditions are not sufficiently conclusive for the Commission to make a positive finding on market conditions.

Deloitte stated that it therefore believes that the normal value in Chile for Moly-Cop as supplied and verified should be used to calculate the normal value for the PRC.

Comments by ITS

In its comments to the Commission's preliminary report, ITS stated that it would appreciate it if the Commission could explain how an individually negotiated agreement between a worker and the company can detract from the fact that these companies operate under free market conditions. It stated that it should also be considered that the workers do not operate in a vacuum, but they have union representation to safeguard their interest. It stated, therefore, that the Commission's finding in this regard is not clear. It stated that the Commission states that although it accepts that the financial statements presented in the submissions of the manufacturers concerned are independently audited, it could not make a finding that these statements complied with the GAAP used in free market economies. ITS stated that in this regard it wishes to reiterate that audited statements presented to the Commission are indeed according to GAAP as used in "free market economies" as all internal reporting systems and the interpretation of this data are similar to those used in "free market" companies.

The Commission's report also quoted Deloitte that the Chinese steel industry has not transformed to full market economy conditions. This quote is devoid of all truth. The fact is that domestic steel prices in China are moving sharply upward, driven by a strong local demand for steel products. (Metal Bulleting Research July 2004). Also, in a research document (Iscor 2004, South Africa in the Global Steel Market), Iscor indicated that the domestic steel prices in

China are currently higher than the SACU domestic prices for similar products (US\$447 per ton vs. US\$424 per ton). ITS concluded by saying that it is clear that the steel market in China is driven by international supply and demand conditions and is not prone to government intervention as wrongly assumed by Deloitte.

Comments by Deloitte

In responding to the comments by ITS, Deloitte stated that it agrees with the ITAC conclusion that it could not make a finding on whether Chinese accounting principles complied with the Generally Accepted Accounting Principle ("GAAP") of free market economies.

Deloitte stated that although each country has its own GAAP, the International Accounting Standard Board ("IASB") sets standards against which each country's GAAP can be measured. Only once the Commission has measured the Chinese GAAP against IASB standards, would the Commission be able to conclude whether or not Chinese GAAP complies with "free market" principles. Deloitte further stated that until such time as the Commission can make an objective comparison of the Chinese GAAP against clearly defined "free market GAAP principles" any conclusion on Chinese GAAP would be inconclusive as an indication of market principles in the PRC. The Commission should therefore maintain the status quo, i.e. that Chinese manufacturers do not operate under market conditions, until such time as the Commission is the position to contrary.

The Commission took all these comments into account, and decided to confirm its preliminary determination that based on the information before it, the two companies operated under market economy principles in respect of the products concerned, during the POI.

4.6.3 Changshu Longteng Special Steel Co. Ltd

Changshu Longteng is a manufacturer and exporter of the subject goods in the PRC. Changshu normally bought billets (raw material) from the local suppliers and convert them to grinding balls. However, the suppliers of billets sometimes run out of stock and Changshu was then compelled to buy bloom and get an independent company to process it to billets. The Commission verified the cost of both bloom and billet and the conversion cost of bloom to billet.

During the verification it was determined that, Changshu processed billets (raw material) into grinding balls on behalf of other companies which then sold the product on the domestic market in the PRC.

Changshu seldom sells the subject product in its domestic market. During the POI, Changshu's domestic sales constituted less than 1 percent of its export volume.

ADR 8.3 provides as follows:

"Domestic sales of the like product shall normally be considered a sufficient volume to determine a normal value if such sales constitute five per cent or more of export sales volume to the SACU. Sales representing less than five per cent of export sales to the SACU may nevertheless be deemed sufficient where such sales are of sufficient magnitude to provide for a proper comparison."

The Commission, therefore, made a final determination that the domestic sales of the like product by Changshu cannot be considered a sufficient volume to determine a normal value. As a result the normal value for the exporter was determined in accordance with Section 32(2) (b) (ii) (aa) of the ITA Act.

Normal Value based on cost build-ups.

As the Commission found during the verification that Changshu processed billets to grinding balls on behalf of other companies, which then sold the finished product in the domestic market in the PRC, the Commission constructed the normal value by adding the verified processing fee charged to other companies during the POI to other cost of manufacturing of Changshu.

The Commission considered this method based on domestic sales to be more reliable than the traditional cost construction method it normally uses.

Comments by Deloitte

In its comments to the Commission's letter of essential facts, Deloitte stated that following the comments on the preliminary report, the dumping margin of Changshu decreased considerably to 1.9% and no reasons were given as to what changed in the normal value calculation that gave rise to such a considerable difference, other than comments on the profit allocation.

The Commission found that in the preliminary determination the normal value of Changshu was constructed by adding the processing fee to the cost of raw material and a mark-up of *** per cent. This mark-up was erroneously added to the total cost of manufacturing instead of only to the raw material cost as selling price of processing already included SG&A and profit.

For purposes of its final determination the Commission also applied the mark-up of *** per cent instead of *** per cent applied in its preliminary determination. The mark-up was the same as the mark-up indicated by the applicant in its application.

Export price

Export price is defined in section 32(2) (a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale.

To enable a proper comparison with the normal value, the export price should be at the ex-factory level and at the same level of trade.

Export sales to SACU were made through Minmetals Australia.

Export prices were based on the actual invoiced sales to Minmetals Australia.

Adjustments to the export price

The Commission made the following adjustments to the export prices for purposes of the calculation of the ex-factory export prices:

(i) Inland freight and handling costs

The exporter paid inland freight to a freight company on a monthly basis and allocated the amount to the shipments made in that month.

Total freight during the POI was determined and allocated to every shipment. The handling costs and other customs expenses were also included in the freight amount. These costs were deducted from the export price.

(ii) **Packaging**

The exporter used two different types of bags to pack the subject product, when destined for consumption in the export market. Both one and two ton bags were used. The costs of the bags were deducted from the export price.

Ex-factory Export Prices

The ex- factory export prices were calculated taking the above adjustments into account.

4.6.3.1 Margin of dumping

The dumping margin is the difference between the normal value and the export price after allowance has been made for any differences affecting price comparability.

The dumping margin was calculated by subtracting the ex-factory export price from the constructed normal value, and the difference was expressed as a percentage of the ex-factory export price. The dumping margin was determined to be 1.9 per cent.

4.6.4 Pangang

Panzhihua New Steel and Vanadium Company Ltd (Panzhihua) is a manufacturer of rail in the PRC. Panzhihua makes bloom for purposes of making rail. However, if the bloom does not meet the specified quality for making rail it is then sold as scrap, at a low price, to its related company, Pangang, for the manufacturing of grinding balls.

Pangang is the exporter of the subject products. Pangang does not

manufacture the subject products itself. It sends the bloom to another company to be processed to billets (main raw material for grinding balls). After the processing, the billets are sent directly from the billet processor to another company, an independent processor, which then processes the billets to grinding balls. All the processing costs incurred are invoiced to Pangang.

The final products are then transported directly from the ball processor to the harbour for export to different countries. Ownership of the final product remains with Pangang.

Normal Value

Pangang did not sell the subject products on its domestic market during the POI. Pangang supplied its cost information, but as the Commission found that Pangang obtained its bloom from its sister company, the Commission found that the transactions between the two companies may not have been at arm's length. The Commission, therefore, for purposes of its preliminary determination decided to apply the normal value calculated for Changshu to Pangang.

Comments by ITS

In its comments to the preliminary determination ITS stated that, it wishes to reiterate its comments that the Commission was acting on a possibility and not a fact. It stated that it presented the Commission with evidence that the price charged by Panzhihua for its bloom is much higher than the international price for scrap set at US\$ 100 per ton during the investigation period. Therefore, the information submitted to the Commission clearly indicates that the transaction between Panzhihua and Pangang was indeed at arms length and that the Commission should use Pangang's normal value

for dumping purposes.

The Commission verified the price of scrap during the POI and found that the price charged by Panzhihua for its bloom was higher than the international price for scrap set at US\$ 100 per ton during the POI. The Commission, therefore, made a final determination to use Pangang's own costs in constructing the normal value.

The Commission found that in its preliminary determination a mark-up of *** percent was erroneously added to the total cost of manufacturing instead of only to the raw material cost as the selling price of processing already included SG&A and profit.

For purposes of its final determination the Commission also applied the mark-up of *** per cent instead of *** per cent applied in its preliminary determination. The mark-up was the same as the mark-up indicated by the applicant in its application.

Export price

Export price is defined in section 32(2) (a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale.

Export sales to SACU were made through Minmetals Australia.

Export prices were based on the actual invoiced sales to Minmetals Australia.

Adjustments to the export price

The Commission made the following adjustments to the export prices for purposes of the calculation of the ex-factory export prices:

(i) **Inland freight and loading charge**

The exporter paid for the transportation of the goods from the factory to harbour. The exporter also paid for the loading of the goods onto the ship. These costs were deducted from the export price.

(ii) **Customs payments, transport agency cost, THC and storage charge**

The exporter incurred cost for terminal handling, transport agency, customs and storage. These costs were deducted from the export price.

Ex-factory Export Prices

The ex- factory export prices were calculated taking the above adjustments into account.

4.6.4.1 Margin of dumping

The dumping margin was calculated by subtracting the ex-factory export price from the constructed normal value, and the difference was expressed as a percentage of the ex-factory export price. The dumping margin was determined at a negative.

4.6.5 Residual dumping margin:

Since there are other manufacturers of the subject product in the PRC, the residual dumping margin was calculated by comparing the highest weighted average normal value before adjustments of Changshu, Pangang and Moly Cop Chile with the lowest weighted average export price of the two exporters after adjustments.

The normal value was, therefore, based on domestic sales of Moly Cop in Chile. The export price was based on the weighted average ex-factory price of Pangang.

Based on this information a residual dumping margin of 59.20 per cent was calculated.

Comments by Deloitte

Deloitte requested the Commission to include the adjustment for the cost of consignment stock in its weighted average price calculation. Consignment stock remains the property of Minmetals SA until is removed from stock and delivered to the customer. Nothing prevents Minmetals SA to supply any of its other clients from the consignment stock at any stage.

The Commission found that it calculated the export prices based on export transactions between the two exporters and Minmetals Australia and not on transactions between Minmetals Australia and Minmetals SA. All necessary adjustments pertaining to the export transactions between the exporters and Minmetals Australia were deducted to calculate the ex-factory export price.

Comments by ITS

*In its comments to the preliminary report, ITS stated that it was not clear why the Commission decided to use a profit margin calculated at *** percent of the raw material cost.*

The Commission found that for purposes of its final determination the mark-up was amended to *** percent, being a mark-up indicated by the applicant in its application.

Comments by Deloitte

Deloitte stated that it does not agree with the use of the cost structures of the exporters. It stated that it believes that the Commission has not made positive conclusions on the majority of the market economy factors to justify a conclusion that the exporters are operating under market conditions.

It stated that should the Commission, however, continue to make use of the cost structure as the basis for the construction of normal value, it believes that major cost items, such as the bloom content, should be based on the information supplied for Moly-Cop as it has shown that there is still significant government intervention in the steel industry.

The Commission found that its determination on MES was not based on how many factors were negative and how many were positive, but on facts presented and considered in the investigation. As the Commission found that the two companies operated under free market economy during the POI, the Commission could not consider substituting major cost items of the two companies with that of Moly-Cop.

4.7 SUMMARY - DUMPING

The Commission made a final determination that the subject products originating in the PRC and manufactured by Changshu Longteng Special Steel Co. Ltd and Pangang Group International Economic & Trading Company and exported onto the SACU by Minmetals Australia (Pty) Ltd were not being dumped into the SACU market. The Commission also made a final determination that the subject products originating in the PRC and manufactured and exported by other manufactures were being dumped into the SACU market.

5. INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled Determination of injury. Footnote 9 to the word injury provides as follows:

"Under this agreement the term injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."

5.2 GENERAL

Article 3.1 of the Anti-Dumping Agreement provides as follows:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.

- (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and
- (b) the consequent impact of these imports on domestic producers of such products."

Article 4.1 of the Anti-Dumping Agreement further provides as follows:

For purposes of this Agreement, the term domestic industry shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products,".

The following injury analysis relates to Scaw Metals, the Applicant, which constitutes 100% of the total domestic production of the subject product. The Commission made a preliminary decision that this constitutes a major proportion of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

With reference to Article 3.1.(a), Article 3.2 of the Anti-Dumping Agreement provides as follows:

“With regard to the volume of the dumped import, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member.”.

In any anti-dumping investigation, the Commission normally uses audited import statistics from the South African Revenue Services (SARS) to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The product being investigated is forged grinding balls, classifiable under tariff subheading 7326.11.

The following table reflects all the import volumes under tariff sub-heading 7326.11 for the period 1 January 2003 to 31 May 2003:

Table 5.3.1.1

Import volumes (kg)	Jan-May 2003
PRC	7 982 700
Other Countries	285 140
TOTAL	8 267 840
Alleged dumped imports as % of total imports	97%

Information in the table above shows that the volume of the alleged dumped imports from the PRC accounted for 97 per cent of the total imports during the first five months of 2003.

Comments by ITS

ITS stated that it was amusing that although the information in par F7.1 of the application is withheld it is quite clear that Scaw is keeping a backdoor open to import if they are not already doing so.

Comments by Deloitte

In responding to the statement made by ITS, Deloitte stated that Scaw is not importing and has no intention to do so as clearly stated in section F7.1 of the application. It stated that ITS's statement is inconsequential.

The Commission normally uses bills of entry obtained from the South African Revenue Services (SARS) to identify importers in any anti-dumping investigation. It considers these statistics to be the most reliable. The Commission found that information at its disposal at the time of initiation of the investigation did not indicate that the Applicant was also importing the

subject product.

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a), Article 3.2 of the Anti-Dumping Agreement further provides as follows:

"With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

Price undercutting

Price undercutting is the extent to which the landed cost of the imported product is lower than the ex-factory selling price of the SACU product.

Calculation of price undercutting

The Applicant's average ex-factory selling price was compared to the average landed cost of the imported product for the period 1 January 2003 to 31 May 2003.

The landed cost of the subject product originating in the PRC was calculated by adding clearance charges to the C.I.F price verified at Minmetals RSA.

In comparing the Applicant's weighted average selling price for forged balls with the landed cost of the product imported from the PRC, the Commission found that the price of the imported product from both companies was not undercutting the Applicant's selling price.

Comments by Deloitte

*Deloitte stated that it has been able to obtain a copy of a quotation issued by an overseas company exporting to one of its domestic customers for the supply of forged steel balls. The price offered is *** per ton delivered to the customer's site. This translates to a delivered selling price of R** which is **% higher than the normal domestic selling price of R** per ton that it requires for its new forged grinding media plant to be financially viable. This indicates that its unsuppressed selling prices are competitive with foreign manufacturers trading fairly in the SACU market.*

The reduction in the imported product's price has resulted in a depression of the SACU industry's price and the imported product's price has undercut the SACU industry's selling price. The continued importation of dumped forged grinding media originating in China has also resulted in price suppression. The continued sale of the imported products at dumped prices could lead to it cutting back in production and the eventual closure of the plant. This would result in the loss of some jobs.

Comments by ITS

ITS stated that in its submission Scaw Metals calculated price undercutting on the basis of an "intended" average price. It stated that it is not surprised that by using such a hypothetical unattainable price they managed to concoct a measure of undercutting. It further stated that, unless Scaw manage to improve the quality/efficiency of their product, it would never approach the so-called intended price.

ITS further stated that the 'intended' price is based on a quotation issued by an overseas company to one of Scaw's domestic customers. On the other hand the actual import statistics show that import prices ex-China and ex-Chile (the only other exporter of forged balls to SACU) are on a par.

Comments by Deloitte

Deloitte stated that Scaw has already shown in its application that price undercutting does exist and the ITAC has already ruled that Scaw has prima facie shown material injury, which included price undercutting. ITS has not provided information to prove the contrary.

Deloitte stated that the fact that Scaw might be quoting at prices lower than the importer, is only supportive of Scaw's claims of price depression and suppression. In a market where the buying decision weighs heavily on price, Scaw must quote at significantly depressed prices in order to compete with dumped imports.

Deloitte stated that comparing the weighted average unsuppressed selling price of Scaw with the weighted average landed cost of the imported product, would provide the ITAC with a better indication of price undercutting than arbitrary references to isolated transactions.

Deloitte stated that the quality arguments are mere allegations made by the respondents and not substantiated or supported by any mining industry documentation. Scaw did not upgrade existing technology but introduced new world-class technology utilizing best international practice with world-class quality.

Deloitte stated that the intended average price is comparable to an unsuppressed selling price, which is an acceptable term used by the Commission to calculate price undercutting, and would be the price achievable by Scaw when competing with fairly price imports.

Deloitte concluded by stating that Scaw receives no preferences from "Anglo" mines and competes on exactly the same requirements as any other supplier.

The Commission found that it applied the unsuppressed and undepressed selling price to calculate the price disadvantage for the purpose of applying a lesser duty but the actual average selling price for the purpose of calculating price undercutting.

The Commission further found that information verified indicated that the prices of the imported products did not undercut the Applicant's price, when comparing the applicants average selling price with the landed cost of the imported subject product.

Comments by Deloitte

In its comments to the Commission's preliminary report, Deloitte stated that in Scaw's submission on price undercutting, the undercutting was calculated based on the current import prices and the price Scaw should reasonably obtain given its new investment and reasonable selling price. Scaw showed that the imported prices were undercutting its required, unsuppressed selling prices in this regard. Deloitte still believes that this is the level at which the price disadvantage should be calculated.

It stated that Scaw started manufacturing the subject product only in January 2003. At this time the dumped imports were already supplying the local market. Scaw was made to understand at the time that the imported grinding

media were supplied to the end customers under fixed 6 months contract. In order for Scaw to gain market share it had no option but to undercut the imported products at the prices prevailing at the time.

Deloitte stated that the price undercutting calculation should be made at the level of the selling price from Minmetals RSA to the independent customer, excluding any delivery costs, and the ex-factory selling price of Scaw. The Commission should satisfy itself that the selling price or invoiced price from Minmetals RSA to the final customer is not undercutting Scaw's selling price, irrespective of whether the total landed costs is not undercutting Scaw's selling prices. The comparison for price undercutting purposes should therefore be made at the same level, i.e what is the end customer paying for the respective products less delivery charges?

Deloitte further stated that it understands that the importer holds consignment stock which is only invoiced to the customer as and when it draws from this stock. It therefore believes that the price undercutting should be calculated including the selling price out of consignment stock as this is the price Scaw directly competes with. Deloitte stated that it believes that the above comparisons would show that Minmetals RSA is supplying the goods to the end users at prices lower than the calculated landed costs and that there would be no price undercutting or not to the extent that the Commission has been made to believe. Scaw's market intelligence has shown that Scaw's selling prices to end customers are not undercutting the imported Chinese products by more than an average R50.00 per ton. It is inconceivable that the mining industry would be paying considerably more for a product that delivers the same efficiencies, especially with the tough economic conditions the mines are currently facing.

Comments by ITS

In responding to the above comments ITS stated that it agrees 100 per cent with Deloitte when it says that the assessment of the price undercutting should be done at the level of the selling price from Minmetals RSA to the final customer. ITS stated that as it initially indicated, in order to compare prices on the same level of trade, Scaw's price at gate should be compared to Minmetals' price ex-warehouse to the final customer. Whereas it could be argued that importers may have a choice between importing and buying from Scaw (hence the calculation of price undercutting on the basis of landed cost), Minmetals RSA, a subsidiary of a Chinese firm, will never buy from Scaw. Contrary to Deloitte's expectation of lower ex-warehouse price, it knows that negative price undercutting is much bigger if calculated on this basis.

The Commission found that, contrary to what was stated by Deloitte in its comments to the Commission's preliminary report, information at the disposal of the Commission indicated that the weighted average selling price of Minmetals RSA final customers during the POI was higher than the landed cost of the product and as a result was not undercutting the applicant's selling price.

5.3.3 Consequent Impact of The Dumped Imports on The Industry

With reference to Article 3.1(b), Article 3.4 of the Anti-Dumping Agreement provides the following:

"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

5.3.3.1 Actual and potential decline in sales

The following table reflects the variance between the Applicant's actual sales for the period Jan-May 2003 compared to its business plan estimate:

Table 5.3.3.1.2

	Actual (Jan-May 2003)	Business Plan Jan -May 2003	Variance from actual
Sales volume (ton)	100	184	(84)

This table was indexed due to confidentiality using the period Jan-May 2003 as base

The information in the table indicates that in terms of the Applicant's business plan, sales for the period January to May 2003 were budgeted to be 184 index points against actual sales of 100 index points.

The Applicant stated that the volumes anticipated in the business plan have not been met. In terms of the business plan the sales were budgeted to be

*** tons against the latest estimate of some *** tons. The variance is largely attributable to the importation of forged grinding media from China which at current importation rates could total some *** tons this year, a significant increase on the 9 841 tons imported in 2002.

The continued sale in the SACU of dumped imported forged grinding media from China will result in its total grinding media business being placed at financial risk and possible closure.

5.3.3.2 Profit

The Applicant provided information showing actual profit before interest and tax compared to its original business plan and its revised estimates.

The information indicates that the anticipated profits before interest and tax per the Applicant's business plan have not being achieved.

5.3.3.3 Output

The following table outlines the Applicant's domestic production volume of the subject product for the period Jan-May 2003 compared to its business plan estimate:

Table 5.3.3.3

YTD Jan 2003 to May 2003	Actual	Business Plan
Volume (tons)	100	172

This table was indexed due to confidentiality using the period Jan-May 2003 as base

The information in the table indicates that in terms of the Applicant's business plan output for the period January 2003 to May 2003 was not achieved.

The Applicant stated that the lower output is a direct result of the Chinese product taking away its sales and market share. It stated that the rate of output in the business plan would more than justify the establishment of a new industry in the SACU.

5.3.3.4 Market share

Information on market share indicated that the dumped imports from the PRC accounted for a substantial share of the market for the period Jan 2003 to May 2003.

The Applicant stated that if the alleged dumped imports continue to flow into the SACU market the market share of the alleged dumped imports will increase even further, making the production of forged grinding media uneconomical in SACU. This will subsequently, cause the closure of the new plant.

Comment by Deloitte

In its comment to the preliminary report, Deloitte stated that even if the calculations using its method under price undercutting shows price undercutting it would not detract from the causal link as the Commission's reason for terminating the investigation was not given as price undercutting, but Scaw's alleged inability to gain market share despite this undercutting. It stated that Scaw only started production of the product concerned in January 2003. The investigation period for injury covered a period of only 5 months from January 2003 to May 2003. Given the short investigation period and the fact that the imported grinding media is supplied under a contract period of 6 months, it believes that the Commission should extend its assessment on whether or not Scaw has increased its market share to a period subsequent to the initial investigation period.

*Deloitte further stated that Scaw has increased its share of the market from *** percent over the investigation period, to *** percent for the period subsequent to the investigation period. In addition, Scaw increased its average monthly sales by ***percent from *** tons during the investigation period to *** tons subsequent to the investigation period.*

It stated that Scaw was therefore able to capture market share by undercutting the dumped imports. Scaw is still suffering injury despite the increase in market share as the dumped prices it is forced to compete against are still putting downward pressure on Scaw's prices which are currently not at a level at which Scaw is able to obtain a reasonable return on its investment.

*In response to the Commission's finding regarding "Scaw's inability to capture sufficient market share, Deloitte stated that it has shown that Scaw has increased its market share from ***per cent to *** per cent, an increase of *** per cent points. Deloitte believes this increase to be "sufficient" for the Commission's causality analysis given the period of only one year since the investigation period. Scaw has also increased its average monthly sales volume and is supplying nearly two thirds of the market demand for forged grinding media. Deloitte therefore believe that the above comments and information supplied sufficiently negates the Commission's finding and clearly demonstrates that there is a causal link between the injury being suffered by the domestic industry and the dumping from China.*

Comments by ITS

In responding to the comments by Deloitte, ITS stated that, as to Scaw's claim of increased market share, it can only assume that Scaw managed to replace some of their cast balls with forged balls. In this regard it has the pleasure in quoting from Deloitte's own submission to the Commission as

quoted in the preliminary report i.e., "...Chinese forged grinding media is rapidly gaining market share in the SACU market at the expense of Scaw.... This can be seen in the dramatic increase in the import volumes..." Even after the investigating period, Minmetals RSA managed to retain its domestic sales volumes. One of the applicant's clients even returned to Minmetals owing to better efficiencies he is achieving even at much higher price.

The Commission found that in its business plan, the applicant estimated its sales volume to be *** tons for the year 2003 at R***/tonne. Information submitted indicate the applicant's sales volume for the year 2003 to be ** *tons at an average price of R**/tonne. Using the 2003 figures to calculate market share the following figures were arrived at: *** percent for the applicant and ***percent for the dumped imports. The applicant could, therefore, not make the estimated sales volumes even though it was selling at a lower price than the imported product

The Commission further found that, contrary to what Deloitte stated, subsequent to the POI the applicant's market share decreased by ***per cent whilst the market share of the dumped imports increased by more or less the same margin. The Commission also found that subsequent to the POI, the applicant lost more market share to the dumped imports from the PRC.

5.3.3.5 Productivity

Using the production and employment figures sourced from the Applicant, its productivity in respect of the subject product is as follows:

Table 5.3.3.5

	Machine A	Machine B	Average
Employee productivity (tons/employee)	100	72	86

This table was indexed due to confidentiality

The Applicant stated that as volumes produced are low, the units produced per employee, are also low. The value derived per employee is lower. Raw materials would also be more expensive as lower volumes will be ordered. The cost of consumables and fixed costs per unit of output would also escalate as lower volumes are produced.

5.3.3.6 Return on investment

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of assets.

The Applicant provided a table indicating its actual profit after interest and tax expressed as a percentage of its net value of assets compared to its business plan. The information indicated that the anticipated profit before interest and tax has not been realized.

The Applicant stated that the return on investment is far less than the original return anticipated that would warrant the establishment of such an industry.

5.3.3.7 Utilisation of production capacity

The following table indicates the Applicant's utilisation of production capacity for the period Jan-May 2003:

Table 5.3.3.7

YTD May 2003	Total
Applicant's production (volume - tonnes)	
Capacity	100
Actual production	46
Utilisation (%)	46%

This table was indexed due to confidentiality

The Applicant stated that this is below the anticipated volumes and is attributed to the dumped imports from the PRC.

5.3.3.8 Factors affecting domestic prices

There are no other known factors, which could affect the domestic prices negatively.

5.3.3.9 The magnitude of the margin of dumping

In Chapter 4 of this report, it was found that the subject product was imported at dumped prices into the SACU during the investigation period at the following margins:

Table 5.3.3.9

Country: PRC	DM %
Changshu Longteng Special Steel Co., Ltd	1.9
Pangang Group International Economic & Trading Corporation	(11.04)
Other Manufactures	59.2

The Commission found the margins of Changshu and Pangang to be insignificant. The Commission found the margin calculated for other manufacturers/exporters to be significant

5.3.3.10 Actual and potential negative effects on cash flow

The Applicant provided a table indicating its cash flow for the period Jan-May 2003 compared to its business plan estimate.

The Applicant stated that the forecast reduction in the sales volume and profits would adversely and materially affect the cash flow as the situation deteriorates further.

5.3.3.11 Inventories

The Applicant provided information indicating its inventory level for the period Jan-May 2003.

The Applicant stated that it could not sell all its production since January 2003, and that the inventories increased during the period January to May. The inventory level is high and is contrary to the policy not to maintain high inventory levels. This demonstrates that it could not sell and compete against the low priced Chinese products. Should the imports continue at low prices it would have to further cut back production to reduce the stock levels.

5.3.3.12 Employment

The Applicant provided information on its employment levels for the period Jan-May 2003.

The Applicant stated that if the plant operates at 90 per cent of capacity the employment complement at the plant would increase by 74.8 index points.

5.3.3.13 Wages

The Applicant provided information indicating its wages per employee for the period Jan-May 2003.

It stated that some employees have already been put on short time, a result of the price reduction due to the alleged dumped imports from China. The alleged dumping could lead to a portion or all of these employees potentially losing this income.

5.3.3.14 Growth

The Applicant stated that forged grinding balls have a well-developed market in SACU. It invested in manufacturing forged grinding media to meet the changing demand of the market for forged instead of cast balls. The Applicant stated that the alleged dumped imports have taken *** percent of

the SACU market and if the trend continues this market share will continue to grow. It stated that at this point in time it is reducing its prices to match the imported product's price, in order to maintain market share. It stated that it is at risk of further losses in market share as a result of the continued sale of the alleged dumped low priced forged grinding media. If it can retain and grow its market share it would produce at a cost effective and efficient rate, as forecast, and this would also enable it to enter the export market thus enhancing its growth. This would further justify the establishment of the industry and result in creation of new jobs as output increased.

5.3.3.15 Ability to raise capital or investments

The Applicant stated that as a result of the alleged dumped imports from the PRC capturing a substantial portion of the SACU market it has unutilized capacity and does not require further investment.

Comments by ITS

ITS stated that although it has already presented the Commission with sufficient grounds to terminate the investigation based on the establishment of a new industry, also in terms of the information presented on the alleged injury suffered by the domestic industry, the investigation should be terminated.

Article 3 of the Agreement on Implementation of Article VI of GATT 1994 lists a number of factual elements that should be considered in order to determine whether or not material injury exists. Par 3.1 states unequivocally that any determination of injury shall be based on both a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and, b) the consequent impact of these imports on domestic producers of such products.

Par 3.2 elaborates with regard to the volume of dumped imports and explains that the investigating authorities shall consider whether or not there has been a significant increase in dumped imports. Of course imports from China and especially through Minmetals RSA have increased substantially over the past few years. However, the reasons for the increased imports are very simple and self-explanatory. In fact, Scaw admits in its petition that its cast balls (dated technology yet like product to other grinding media including forged balls) increasingly fell into disfavour with the mines. Scaw goes on to document its 'upgrade' to forged balls. In summary, on the "volume of imports" it is clearly a case of market preferences, in turn dictated by cost effectiveness and hassle-free operation that drove the increased demand for the Chinese product.

Par 3.2 continues to direct authorities with regard to the effect of the dumped imports on prices to consider whether there has been a significant price undercutting by the offending imports, as compared with the price of the like product of the importing member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred to a significant degree. The final sentence of par 3.2 reads, "No one or several of these factors can necessarily give decisive guidance."

*ITS stated that it would make bold to say that in this particular case, the fact that no price undercutting whatsoever exists means that the Chinese imports, even if dumped, per definition cannot be the cause of Scaw's alleged injury, especially since they also plead price suppression and price depression. Scaw should explain how they can blame Minmetals for their alleged injury when they offer 100mm forged balls at R*** per ton while the equivalent price from Minmetals came to R*** per ton to the same customer. How anyone can claim that by fixing his own price 32% below that of a competitor, the latter*

causes him injury presumably through price depression and price suppression is beyond belief.

At this juncture it may be prudent to point out that while the Commission tends to regard the ex-factory price of the SACU product and the landed cost of the imported product as the most appropriate level at which to compare prices such a comparison is not applicable in this case. Article 2.4 of the WTO Agreement directs authorities to make a comparison at the same level of trade. As Minmetals RSA is an affiliate of a Chinese firm, specifically established to service the South African market from China, it will never consider buying products from Scaw. In the circumstances comparison, in order to be fair, can only be done on the level at which Scaw and Minmetals RSA sell the product to the mines and others. The end user, in this case the only buyer, has the option to either buy from Scaw or Minmetals RSA.

*While it has the quoted Scaw price of R*** per ton for 100mm forged balls to *** on good authority, it should like to mention that the latest pricing situation still does not result in any price undercutting by the Chinese product. These prices, also to ***, are R***per ton and R*** per ton from Scaw and Minmetals RSA respectively. For the record, should Scaw claim price depression and/or price suppression as subsequent events (after the POI) such claim should be rejected as groundless. The reason for said rejection is to be found in the GATT directives as contained in par 3.5 dealing with causality. Said paragraph states unambiguously that, "the authorities shall (own underlining) examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these factors must not be attributed to the dumped imports (own underlining)." It continues to list the various relevant factors, including one pertinent to this case, i.e. "development in technology".*

*It stated that for the record, Scaw's technology, despite having been upgraded recently, under the guise of the "establishment of new industry", is seriously lagging behind that of China. The following are major reasons why a company such as *** is willing to pay more for the Chinese product:*

- (i) Scaw's quality control and/or process are seriously deficient resulting in its forged balls not being symmetrical. These in turn results in production problems for the mines in that the balls do not pass smoothly through the feeder boxes. Not only is the hassle factor a problem, but the use of the imperfect product obviously also has cost implications.*
- (ii) As the balls wear out, it is highly desirable that the 'remains' disintegrate quickly. Whereas Minmetals RSA provides balls with a soft core, which ideally suit the mines' requirements in this respect, Scaw will not/cannot meet the set specifications. Again the Scaw product causes hassles and extra costs.*

In conclusion and if it may reverse the oft-quoted directive in Article 3 of the Anti-Dumping Agreement relating to 'decisive guidance' we make bold to say that the foregoing "necessarily gives decisive guidance" as to the fact that Scaw's alleged injury is not/cannot be caused by the Chinese product. The reasons are quite clear: no price undercutting exists to this day, and therefore one can only surmise that any claim of alleged price suppression and/or depression is not because of significantly higher Chinese prices, but rather because of an inferior product which does not permit Scaw to increase its prices to the level asked by Minmetals RSA.

At this juncture a word of caution may be necessary. The Commission may find (or attention may be drawn to the fact) that mines in the Anglo stable pay appreciably more for the Scaw product. Not only should these transactions

be ignored as they may be arranged (support in-house producers), but also because of the fact that they are not done at arm's length there is no way of getting the truth. The other side of the coin is that it is not uncommon for sister companies to be overcharged by a family member as the former do not expect such treatment from a close relative and gladly pay up.

From the above it is quite clear that while the investigation was initiated on the wrong premise there are similarly no grounds to continue with the investigation in the absence of injury attributable to the imported product.

Comments by Deloitte

Deloitte stated that Article 3.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("the Anti-Dumping Agreement" ("the ADA") requires the authorities to "consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member."

Deloitte stated that from ITS comments it is clear that the increase in imports in absolute terms is not in dispute as ITS agree to a significant increase in the importation of the subject product. There has also been an increase relative to consumption and production in the SACU. Scaw is producing a product that can compete with the imported product, yet is suffering price undercutting, declining sales, profit margins, output, productivity and capacity utilisation due to increased dumped imports from the PRC.

Comments by ITS

ITS stated that the whole application apart from the fact that it is fatally flawed as previously shown, is based on a pie-in-the-sky business plan. In addition to the unattainable 'intended' price, it is clear that all cost and profit

estimates are based on production volumes which do not begin to represent an acceptable business plan. It is small wonder that, without having had insight into the plan, we are able to deduce that costs are sky high, that profit expectations are not realised and that 'intended' prices remain unattainable.

In view of the a foregoing, should the Commission decide to continue with the investigation, no injury analysis can be based on the fatally flawed business plan which forms the basis of the application.

The Commission found that information verified indicated that the prices of the imported products did not undercut the Applicant's price, when comparing the applicants average selling price with the landed cost of the imported subject product.

Comments by ITS

In its comments to the Commission's preliminary report ITS stated that first off, it would like to reiterate that it cannot agree with the finding that the introduction of new technology qualifies as the establishment of a new industry. Nevertheless, although the Commission finds in its preliminary report that the establishment of the SACU industry was materially retarded, it does so, with due respect, on the wrong assumption that the local manufacturer is entitled to a 100% market share. The basis for this assumption is the fact that the applicant, in its injury analysis, calculated all its injury indicators on a business plan that would give them 100% share of the market. This is neither realistic nor feasible. ITS submits that if the petitioner was realistic in its claim, given the fact that even with significant lower domestic prices compared to the exported product it could not achieve its stated sales volumes, there can be no claim of material retardation of the industry. ITS submit that the applicant's current economic position should be regarded as realistic and not a dream of a 100 market share. Therefore, the

Commission should find that, given the current market conditions and the fact that even in the absence of any duty the applicant would not be able to achieve better results, that the SACU industry is not experiencing the material retardation of the establishment of an industry.

Comments by Deloitte

In responding to ITS's comments, Deloitte stated that nowhere in its business plan or application to the Commission or in the Commission's report has the applicant or the Commission made reference that the applicant needs to obtain a 100% market share or that the injury analysis was based on an assumption of a 100% market share. It stated that the application is based on fair competition against undumped imports prices from where supply and demand, efficiencies and customer service will dictate the market shares and the reasonable results.

Comments by Deloitte

In its comments to the Commission's preliminary report Deloitte stated that it agrees with the Commission's conclusions in this regard.

Comments by ITS

In responding to Deloitte's comments, ITS stated that, with respect, not by any stretch of the imagination can introduction of new technology to an ageing industry be used as grounds for seeking relief on the basis of "the retardation of the establishment of an industry." However, as the Commission nevertheless initiated the investigation on this highly questionable basis, it reiterates that owing to the fact that even with significantly lower prices compared to the Chinese product, Scaw could not begin to achieve its stated sales volume, there can be no claim of material retardation of the

establishment of an industry.

SUMMARY - INJURY

After considering all relevant factors and comments by interested parties, the Commission found that the establishment of the forged or stamped, but not further worked, grinding balls and similar articles for mills industry in the SACU was being materially retarded in the form of:

- insufficient output
- insufficient sales;
- Inability to capture sufficient market share;
- low productivity;
- low profits;
- insufficient utilisation of production capacity;
- low return on investments;
- negative effect on cash flow;
- inability to create more employment;
- Inability to show growth;
- Increase in inventory levels in relation to the business plan projections and is therefore unable to establish a viable manufacturing industry for forged grinding ball.

6. CAUSAL LINK

6.1 GENERAL

In order for the Commission to impose final anti-dumping duties, it must be satisfied that there is sufficient evidence to indicate that the injury experienced by the SACU industry is as a result of the dumping of the subject products.

Article 3.5 of the Anti-Dumping Agreement provides the following:

"It must be demonstrated that the dumped imports are, through the effects of dumping, ...causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities."

6.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase of volume and the extent to which the market share of the domestic industry has decreased since the commencement of injury, with a corresponding increase in the market share of the allegedly dumped product.

The market share information shows the market share for the subject product from the PRC was significant.

The import statistics with regard to the volume of imports shows that the alleged dumped imports from the PRC accounted for 97 per cent of the total imports for the period 1 January 2003 to 31 May 2003.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

Information in chapter 5 of this report shows that the price of the imported product from the PRC was not undercutting the price of the Applicant's product.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

The Applicant stated that the imported alleged dumped Chinese forged grinding media is rapidly gaining market share in the SACU market at the expense of Scaw as the sole manufacturer of forged grinding media in this market. This can be seen in the dramatic increase in the import volumes during the first 3 months of this year compared to last year. Its actual sales in the SACU market for the period January 2003 (when the new plant was commissioned) to date are substantially less than the projected sales that were made in the business plan taking into account a fair trading environment. These projections must be achievable in order to justify the investment that it has made. Its investment in the establishment of a new industry in the SACU was based on fair competitive practices in the SACU market that provided the basis for the estimated production and sales volumes.

The Applicant stated, however, that the alleged dumped products from the PRC are negatively impacting on the establishment of this new industry. As indicated in this application the imported products from the PRC are gaining market share as a result of the sales at alleged dumped prices. It stated that it therefore had to reduce its selling price to customers or these customers would buy the imported product. As a direct result of the low prices it is forced to reduce its selling prices to un-economical levels that retard the establishment of the forged grinding media manufacturing industry in the

SACU market.

The Applicant stated that further factors that are retarding the establishment of this new industry, arising from the substantially lower than projected production and sales volumes and lower selling prices are: increased unit costs of manufacture, increased stock and working capital levels, loss of jobs, reduced working time of employees, reduced cash inflows and significantly reduced profits. The new industry is also negatively impacted, as without a sound domestic market base, it is not possible to grow the business by developing export markets in Africa for forged grinding media. It stated that if the importation of dumped forged grinding media originating in the PRC continues it would be forced to close down this newly established plant.

6.5 STEPS TAKEN TO ENSURE THAT THERE IS A PLACE IN THE MARKET FOR THE PRODUCT

6.5.1 Market Research

The Applicant stated that it has been manufacturing and supplying cast grinding media to the SACU market for more than 50 years and it knows exactly what customers needs are. As the customer demand in the SACU industry changed from the cast to the forged grinding media the shift in demand was the primary reason for it commissioning the forged grinding media plant in January 2003.

The Applicant stated that it began its development of the manufacture of forged balls in early 2000 to test the product in the SACU market and to gain acceptance of the new product by a broad customer base. This development has been successfully achieved and is demonstrated by the fact that more than 90 per cent of customers are using forged grinding media instead of

cast steel balls. Prior to the year 2000 some 85 per cent of customers were using cast steel balls.

6.5.2 The technical standards of the product required

The Applicant provided information on technical comparisons between the SACU and the imported products with respect to carbon content, chromium content and surface hardness.

The Applicant stated that the technical differences between the imported product and the SACU products are minor and will not influence the decisions of customers.

6.5.3 Whether the product meets the standard

The Applicant stated that it has invested in a new forge plant to ensure that the latest technology is used to compete with fair imports from abroad. It has invested in a technology, which is very similar to the technology in the PRC. The technology used and quality of the product manufactured is now very similar to the imported product from the PRC.

The Applicant stated that it took note of the Board's previous findings, which recommended that they should invest in a similar technology.

6.5.4 Statements made by clients as regard potential volume they will buy

The Applicant stated that local customers have a preference to procure forged grinding media from domestic manufacturers. Given that the quality and characteristics of the imported and the locally produced forged balls are similar, and therefore, their performance is similar, it is not possible for the local industry to sell at prices that are higher than the import prices of the

dumped product.

6.6 THE EFFECT OF CHANGES IN THE EXCHANGE RATE

6.6.1 Production Costs

The Applicant stated that as the domestic price of steel scrap (the main raw material input) is closely associated with the export parity price for steel scrap, movements in Rand/US Dollar exchange rate does influence the cost to purchase steel scrap. However, cost increases have been taken into account in the business plan.

6.6.2 Selling price

The Applicant stated that the exchange rate has no direct influence on the selling price of its product. However, it has an indirect impact on the selling price as the imported product becomes cheaper when the Rand strengthens against the US Dollar. This places further downward pressure on its prices.

6.6.3 Price of the imported product

The Applicant stated that the exchange rate has a direct impact on the selling price of the imported product as it becomes cheaper if the Rand strengthens against the US Dollar.

6.7 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

Article 3.5 of the Anti-Dumping Agreement provides the following:

"The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry".

6.7.1 Volume and price of imports not sold at dumping prices

The following table shows the volume and value in SA Rand of dumped imports and imports from other countries for the subject product:

Table 6.7.1

	YTD Jan-May 2003	
Kilograms	Volume	R/kg
Alleged Dumped imports: - PRC	7 982 700	3.54
Imports from other countries	285 140	8.87
Total import volume	8 267 840	

The volume of imports from other countries accounted for 3 per cent during the period 1 January 2003 to 31 May 2003.

The average unit price of the alleged dumped imports from the PRC was R3.54/kg in the period January 2003 to May 2003, compared to the average unit price of the imports from other countries for the same period of R8.87/kg.

The Applicant referred the Commission to a copy of the quotation issued by the overseas manufacturer to one of the Applicant's domestic customers for the supply of forged steel ball. The price offered is Euro *** per ton delivered to the customer's site. This translates to a delivered selling price of R** *which is ***% higher than the domestic selling price of R***per ton that the Applicant requires in its business plan for its new forged grinding media plant to be financially viable.

6.7.2 Contraction in demand or changes in patterns of consumption

The Applicant stated that the market size has remained largely unchanged for the last two years and it is not expected to change significantly in the future. There presently exists a cast steel and cast iron grinding media manufacturing industry in the SACU. However, due to the changing requirements of the SACU gold mining industry for an improved quality large diameter forged steel grinding media, the traditional cast steel and cast iron grinding media are no longer competitive in the market.

The Applicant stated that it made a decision to invest in forged grinding media technology to remain in the market.

6.8 OTHER FACTORS THAT MAY AFFECT SALES VOLUMES AND PRICES, INCLUDING STATE OF ECONOMY

There are no other known factors that may affect sales volumes and prices.

6.9 OTHER

The Applicant stated that as a result of the Board's final determination in the previous investigation, that its outdated cast ball technology was causing the material injury and the changed requirements of the grinding media market for forged grinding media instead of cast steel/iron grinding media, it has invested in the establishment of a new world class manufacturing plant utilizing international best practice and technology.

The Applicant records that it has no objection to having to compete with fair domestic and international competition in the SACU grinding media market. However, the dumping of the Chinese forged grinding media in the SACU market is not only retarding the establishment of the new industry, but also posing a threat of the potential closure of the plant should the dumping continue. The imposition of anti-dumping duties for a period of 5 years as set out in Article 11.3 of the Anti-dumping Agreement would ensure that the newly established SACU forged grinding media industry will continue to supply the SACU market, competing with fair imports such as in the case of offers from manufacturers in Italy.

The Commission found that in its final determination in the Investigation into the alleged dumping of grinding media, originating in or imported from Australia and the People's Republic of China (PRC) (see report No. 4108), the Commission made a determination that the subject product originating in or imported from Australia and the PRC was being dumped, that the SACU industry was experiencing material injury and that although there was a

causal link between the dumping and the material injury experienced by the SACU industry, the efficiency of the imported product and the cost benefit of using this product, sufficiently detracted from the causal link .

The Commission also found that in the above investigation the efficiency of the product referred to above was to a large extent attributed to the superior performance of forged grinding media when compared to cast grinding media. The availability of forged balls in the market created a preference for them and resulted in the applicant investing in this technology and phasing out the production of cast balls.

Comments by Deloitte

In its comments to the preliminary report Deloitte stated that the Commission stated that Scaw's inability to capture sufficient market share even though its selling prices undercut those of the imported subject products, detracted from the causal link. It stated that it understood from the Commission's report that the Commission found that the subject product has been dumped on the SACU market and that Scaw has suffered injury over the investigation period and that all other factors indicated causality between the dumped imports and injury suffered, but for the reason as set out above. Therefore, the only factor withholding the Commission from imposing preliminary payments is that the Commission cannot causally link the dumped imports to the injury suffered by Scaw, because of Scaw's alleged inability to capture sufficient market share, despite the marginal undercutting of the imported product.

Deloitte further stated that in the previous investigation, the Commission found that there was no causal link between the dumped imports and the injury suffered because the efficiency obtained through the use of the imported product and the cost benefit of using it. The issue on whether or

not the imported product is more efficient and holds cost benefits over Scaw's product has not been cited as a reason for a negative finding on causality in the present investigation, nor has the issue of differences in quality been raised or considered in the Commission's current report.

It stated that in other words, if the information available to the Commission shows that Scaw has not been undercutting the imported product or that Scaw has gained market share, such information would effectively negate the Commission's negative conclusion on causal link as set out in the report.

Comments by ITS

In its comments to the Commission's preliminary report, ITS stated that it agrees with the Commission's findings.

It stated that the Commission should take seriously the applicant's comments that it took note of the Board's previous finding, which recommended that it should invest in similar technology. It stated that the drift of this comment seems to be that the applicant never intended to invest in a forged grinding ball manufacturing operation. It planned to entrench its position in cast balls through the introduction of anti-dumping measures. It stated that the applicant only decided to invest in new technology after the recommendation of the BTT. Now the applicant again seeks to monopolise the market even though it is clear that the market prefers to have a choice of supplier

Comments by Deloitte

In responding to the comments by ITS, Deloitte stated that the exporters state that Scaw decided to invest in the new technology only after the then Board on Tariffs and Trade (BTT) decision on the previous investigation. The decision to invest in new technology was made before then which is evident

from the time between the BTT decision of 6 July 2001 and the production start date of Scaw in January 2003. It takes longer than a year and a half to do market research, make an investment and funding decision and to set up the whole facility. As support Deloitte referred to its letter to the previous BTT dated 3 April 2001 where it referred to the new technology which implied that the decision to commence on the new technology was made in October 1999.

Deloitte further stated that whether or not Scaw intended to invest in new technology back then is irrelevant. The BTT concluded that Scaw's technology at the time was not up to standard which resulted in inefficiencies to the end customers. Whether or not the BTT's conclusions were correct or whether Scaw reacted to the BTT's recommendations or to market demand is not at issue here, merely that Scaw rectified the situation identified by the BTT as detracting from causal link.

Deloitte concluded by stating that investment in modern, more efficient technology should be encouraged by the Commission for whatever reason. Scaw merely seeks to level the playing field by competing with undumped prices leaving the market with its choice of suppliers, not only from Scaw or the PRC but also from any fairly priced supplier.

6.10 SUMMARY ON CAUSAL LINK

After considering all relevant factors and comments, the Commission found that the inability of the applicant to capture sufficient market share, even though its selling prices are undercutting those of the imported subject products, detracted from the causal link.

The Commission could, therefore, not causally link the injury experienced by the Applicant to the dumped imports originating in or imported from the PRC.

7. SUMMARY OF FINDINGS

7.1 Dumping

The Commission found that the subject products originating in the PRC and manufactured by Changshu and Pangang and exported into the SAUC by Minmetals Australia were not being dumped into the SACU market.

The Commission also found that the subject products originating in the PRC and manufactured and exported by other manufactures were being dumped into the SACU market with the following margin:

Table 7.1

Country: PRC	Dumping Margin %
Other Manufactures	59.2

7.2 Injury

The Commission found that the establishment of the forged or stamped, but not further worked, grinding balls and similar articles for mills industry in the SACU was being materially retarded in the form of:

- insufficient output
- insufficient sales
- inability to capture sufficient market share
- low productivity
- low profits
- insufficient utilisation of production capacity
- low return on investments

- negative effect on cash flow
- inability to create more employment
- Inability to show growth
- Increase in inventory levels

The Commission, therefore, made a final determination that the establishment of the forged or stamped, but not further worked, grinding balls and similar articles for mills industry in the SACU was being materially retarded.

7.3 Causal link

The Commission found that the inability of the applicant to capture sufficient market share, even though its selling prices are undercutting that of the imported subject products detracted from the causal link. The Commission could, therefore, not causally link the injury experienced by the Applicant to the dumped imports originating in or imported from the PRC.

8. DETERMINATION

The Commission made a final determination that:

- (1) The subject products originating in the PRC and manufactured by Changshu Longteng Special Steel Co. Ltd and Pangang Group International Economic & Trading Company and exported by Minmetals Australia (Pty) Ltd were not being dumped into the SACU market. The Commission also made a final determination that the subject products originating in the PRC and manufactured or exported by other manufactures were being dumped into the SACU market.
- (2) The establishment of the forged or stamped, but not further worked, grinding balls and similar articles for mills industry in the SACU was being materially retarded;
- (3) The inability of the applicant to capture sufficient market share even though its selling prices are undercutting that of the imported subject products detracted from the causal link. The Commission could, therefore, not find a causal link between the dumped imports originating in or imported from the PRC and the injury experienced by the Applicant.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of forged or stamped, but not further worked, grinding balls and similar articles for mills originating in or imported from the PRC, be terminated.