Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days’ notice of the conference date and time. See the ADRP website for more information.

Further application information
You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal
You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

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1 By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY Customs Act 1901.
2 As defined in section 269ZX Customs Act 1901.
PART A: APPLICANT INFORMATION

1. Applicant’s details

Applicant’s name: Jiangsu CP Xingcheng Special Steel Co., Ltd. (Xingcheng)

Address: No58, Xiyanshan, Chengjiang Country, Jiangyin City, Jiangsu Province, P.R.China.

Type of entity (trade union, corporation, government etc.): Limited liability company

2. Contact person for applicant

Full name: Ms. Chen Ying

Position: Chief representative of Australia Branch

Email address: chenying@citicsteel.com

Telephone number: (86)-1381-212-8736

3. Set out the basis on which the applicant considers it is an interested party

Pursuant to Section 269ZZC of the Customs Act 1901 (“the Act”), a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. An “interested party” is defined under Section 269T of the Act as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia. Xingcheng is a manufacturer and exporter of the goods to which the decision relates, namely grinding balls, and is thus an “interested party” for the purposes of the Act and this application.

4. Is the applicant represented?

Yes ☒ No

If the application is being submitted by someone other than the applicant, please complete the attached representative’s authority section at the end of this form.

*It is the applicant’s responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*
PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

- ☒ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice
- ☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice
- ☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice
- ☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice
- ☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice
- ☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures
- ☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry
- ☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods the subject of the reviewable decision were ferrous grinding balls, whether or not containing alloys, cast or forged, with diameters in the range 22mm to 170mm (inclusive).

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

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

7. Provide the tariff classifications/statistical codes of the imported goods

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*:

- Tariff subheading 7325.91.00 with statistical code 26;
- Tariff subheading 7326.11.00 with statistical code 29; and
- Tariff subheading 7326.90.90 with statistical code 59.

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

Anti-Dumping Notice No. 2016/90
9. Provide the date the notice of the reviewable decision was published

The reviewable decision was published on 9 September 2016, as evidenced by the Anti-Dumping Commission website: http://www.adcommission.gov.au/cases/Pages/CurrentCases/ADC-316.aspx.

*Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission’s website) to the application*

See Attachment A.

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked ‘CONFIDENTIAL’ (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked ‘NON-CONFIDENTIAL’ (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

See Attachment B, in respect of which, confidential and non-confidential versions have been provided.

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

11. Identify what, in the applicant’s opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.

12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

_Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901._
PART D: DECLARATION

The applicant’s authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference before it gives public notice of its intention to conduct a review, and the applicant (or the applicant’s representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the Customs Act 1901 and Criminal Code Act 1995.

Signature:

Name: Lingchen Pu

Position: Partner

Organisation: Beijing Zhonglun Law Firm

Date: 2016/10/05
PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant’s authorised representative

Full name of representative: Lingchen Pu

Organisation: Beijing Zhonglun Law Firm

Address: 36-37/F, SK Tower, 6A Jianguomenwai Avenue, Chaoyang District, Beijing 100022, P.R.China

Email address: pulingchen@zhonglun.com

Telephone number: 86-10-6568 1022/183

Representative’s authority to act

* A separate letter of authority may be attached in lieu of the applicant signing this section *

See Attachment C
Grinding Balls

Exported from the People’s Republic of China

Findings in Relation to a Dumping Investigation

Public notice under subsections 269TG (1) and 269TG (2) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of grinding balls ("the goods"), exported to Australia from the People’s Republic of China (China).

The goods the subject of the investigation are:

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

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

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

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the Customs Tariff Act 1995:

- Tariff subheading 7325.91.00 with statistical code 26;
- Tariff subheading 7326.11.00 with statistical code 29; and
- Tariff subheading 7326.90.90 with statistical code 59.

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description.

The Commissioner reported his findings and recommendations to me in Anti-Dumping Commission Report No. 316 (REP 316), in which he outlines the investigation carried out and recommends the publication of a dumping duty notice in respect of the goods. I have considered REP 316 and accepted the Commissioner’s recommendations and reasons for the recommendations, including all material findings of fact and law on which the Commissioner’s recommendations were based, and particulars of the evidence relied on to support the findings.
The method used to compare export prices and normal values to determine whether dumping has occurred and to establish the dumping margin was to compare the weighted average of export prices with the weighted average of corresponding normal values over the investigation period pursuant to subsection 269TACB(2)(a) of the Customs Act 1901 (the Act). The normal values were established under subsections 269TAC(2)(c) and 269TAC(6) of the Act. The export prices were established under subsections 269TAB(1)(a), 269TAB(1)(c) and 269TAB(3) of the Act.

Particulars of the dumping margins that have been established in respect of the goods exported to Australia from China by the following exporters are set out in the table below.

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

I, CRAIG LAUNDF, Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 316.

I am satisfied, as to the goods that have been exported to Australia from China, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under subsection 269TG(1) of the Act, I DECLARE that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) applies to:

(i) the goods; and

(ii) in accordance with subsections 45(2), 45(3A)b) and 269TN(2) of the Act, like goods that were exported to Australia for home consumption on or after 22 April 2016, which is when the Commonwealth took securities following the Commissioner's Preliminary Affirmative Determination published on 21 April 2016 under section 269TD of the Act, but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused and is being caused. Therefore

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1 The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary and accordingly the Parliamentary Secretary is the relevant decision maker. On 18 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.
under subsection 268TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression and price suppression, loss of market share, loss of profits and profitability, reduced employment, reduced revenue and reduced capital utilisation.

In making my determination, I have considered whether any injury to the Australian industry is being caused by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures are applied to ‘goods on the water’ is available in Australian Customs Duty Notice No. 2012/34, available at www.adcommission.gov.au.

REP 316 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2437, fax number +61 3 8539 2499 or email at operations3@adcommission.gov.au.

Dated this 1st day of September 2016.

CRAIG LAUNDFY
Assistant Minister for Industry, Innovation and Science
Parliamentary Secretary to the Minister for Industry, Innovation and Science
In the Anti-Dumping Review Panel

Application for review
Grinding balls exported from China

Jiangsu CP Xingcheng Special Steel Co., Ltd. (Xingcheng)
1. Introduction

On 17 November 2015, the Anti-Dumping Commission (“the Commission”) initiated dumping and subsidies investigations against imports of grinding balls from the People’s Republic of China (“China”) on the basis of the application lodged by Commonwealth Steel Company Pty Ltd and Donhad Pty Ltd.

In response to the investigations, Jiangsu CP Xingcheng Special Steel Co., Ltd. (Xingcheng) – a Chinese manufacturer and exporter of grinding balls – duly submitted the questionnaire reply on 31 December 2015. After analysis of the substance of the questionnaire reply, the on-spot verification was subsequently conducted by the Commission on 27-29 January 2016 at the premises of Xingcheng. The Verification Report together with the dumping margin calculation worksheets were disclosed to Xingcheng on 31 March 2016.

In the Verification Report, the Commission preliminarily accepted all information submitted by Xingcheng without determining the existence of the particular market situation, and calculated a dumping margin of 19.78% for Xingcheng. Upon review of the disclosure, Xingcheng had found some obvious errors in relation to the calculation of the dumping margin, on which Xingcheng provided its views and comments on 6 April 2016.

In replying to Xingcheng’s comments and on account of the Commission’s own modification, the revised Verification Report as well as the new dumping margin calculation worksheets were disclosed on 7 April 2016. The revised dumping margin
for Xingcheng was set at 23.5%.

On 21 April 2016, the Preliminary Affirmative Determination (PAD)\(^5\) was made and the Statement of Essential Facts (SEF)\(^6\) was issued. The detailed dumping margin calculation worksheets were disclosed to Xingcheng. The PAD confirmed the existence of the particular market situation, thus constructed the normal value based on international prices. Consequently, the dumping margin became 38% for Xingcheng under the PAD.

Comments\(^7\) on the PAD and the SEF were made by Xingcheng on 11 May 2016. A revised calculation of dumping margin was again disclosed by the Commission on 23 May 2016. After several rounds of emails exchange, see **Confidential Exhibit 1**, the final dumping margin of 20.6% was determined by the Commission on 30 May 2016.

At the conclusion of the investigation, in a decision published on 9 September 2016, the Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Parliamentary Secretary") decided to impose antidumping measures on grinding balls exported to Australia from China. Specifically, the Parliamentary Secretary decided to publish notices\(^8\) and Final Report No 316\(^9\) in relation to grinding balls exported from China under Sections 269TG(1) and (2) of the Customs Act 1901 ("the Act").

To this end, Xingcheng seeks review by the Anti-Dumping Review Panel ("the Review Panel"), under Sections 269ZZA(1)(a) and 269ZZC of the Act, of the decision

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(or decisions) made by the Parliamentary Secretary to impose antidumping measures against the exports of grinding balls to Australia, which are set forth in this application.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2)(b) in relation to each of Xingcheng’s grounds of review, being those requirements not already addressed within the text of the approved form itself.

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

10.1 The Commission improperly determined that the related export prices were influenced by the commercial relationship between Xingcheng and CPM

During the investigation period (October 2014 – September 2015), Xingcheng exported [redacted] tons of subject goods to Australia, among them [redacted] tons were sold to a related company, namely [redacted], which is an importer and end-user of the subject goods in Australia.

In Section 3.6 of the Verification Report, the Commission found that:

In respect of export sales of grinding balls by Xingcheng to the related party during the investigation period, the visit team found evidence that:

- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; and
- Xingcheng and the related party, both being bodies corporate, are controlled, directly or indirectly, by a third person (whether or not a body corporate).\(^{10}\)

The verification team therefore considers that all export sales of grinding balls to Australia by Xingcheng to the related party during the investigation period were not arms-length\(^{11}\) transactions.

\(^{10}\) *Customs Act 1901* (Cth) s.269TAA(4)(b)(i).

\(^{11}\) Section 269TAA of the Act outlines the circumstances in which the price paid or payable shall not be treated as being at arm’s length. These are where: there is any consideration payable for or in respect of the goods other than price; the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or in the opinion of the Parliamentary Secretary, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
The second paragraph of Section 3.7 further concludes:

The verification team verified that the non-arm’s length sales of the goods were consumed by the related party and not subsequently sold. Therefore, in relation to the sales to the related party, the verification team recommends that the export price be determined under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation.

Section 5.10.2 of the SEF confirms the above statement and conclusion.

Besides, the Commission explained through email dated 7 April 2016 regarding the determination of export prices for related transactions as below:

During the verification the visit team discussed the related party relationship, in particular the price negotiation with them and the unrelated parties. The visit team determined from that discussion that the prices between Xingcheng and the related party are influenced by their commercial relationship.

After Xingcheng’s repeated requests regarding what evidences had supported the above conclusions, the Commission gave a final reply through email dated 30 May 2016 as below:

We have consulted the verification team and they have confirmed their view in regard arms length sales. The verification team considered that the price to CITIC was higher than to unrelated parties that purchase lower volumes and Xingcheng could not satisfactorily explain the reason for this difference such that they were satisfied that the sales were at arms length. Xingcheng also did not provide any evidence in the form of price lists or any other documents, be they contractual arrangements or otherwise, which demonstrated or at least indicated price negotiations were on a par with their unrelated customers.

... 

As the Final Report is due to be presented to the Parliamentary Secretary on 6 June, the attached spreadsheet represents the Commission’s final position in relation to Xingcheng’s dumping margin.

In section 5.10.3 of the Final Report, the Commission provided a similar comment as below:

In relation to Xingcheng’s related party sales, the Commission considers that the price paid by the related party was higher than that paid by unrelated parties despite the unrelated parties purchasing lower volumes. The Commission was not satisfied that Xingcheng provided sufficient evidence, e.g. in the form of price lists or any other documents, be they contractual arrangements or otherwise, to demonstrate or at least indicate that price negotiations with the related party were undertaken on the same basis as with unrelated customers. In the absence of such evidence, and given the nature
of the price differential, the Commission considers that the sales to the related party were not arms length.

Consequently, in section 5.10.4 of the Final Report, the Commission determined the export prices of goods exported by Xingcheng to CPM under subsection 269TAB(3), having regard to all relevant information.

Specifically, the Commission replaced the related party selling price with the selling price of another selected export sale of a similar steel grade and diameter of grinding balls that was sold to an unrelated party in an arms length transaction to determine an arms length export price.

On the basis of the above-quoted statements and reasons, Xingcheng submits that:

First, the Commission failed to properly accord Xingcheng with any opportunity to defend its interests in this regard. As demonstrated above, the Commission only provided its “reasoning” regarding the arm’s length of the related sales through email on 30 May 2016, which was already moved towards the final stage of the investigation and thus, left Xingcheng with no means and opportunity to defend itself.

In addition, according to the Commission’s email dated 7 April 2016, the Commission made its conclusion based solely on a discussion during the on-spot verification. As a matter of fact, there was no discussion at all regarding the price negotiation between Xingcheng and CPM during the on-spot verification. Had such crucial factual evidence and points of law been pursued or discussed during the on-spot verification, it should have been duly recorded in the Verification Report.

But, except for a simple conclusion regarding the related sales in the Verification Report, the Commission did not substantially address this issue and provide no evidence and reasoning to Xingcheng before concluding the investigation on what factual basis and through which verification such “related sales” were considered to be not made in arms-length.

In Xingcheng’s view, the right to a fair hearing was improperly deprived of, because the Commission offered its (unsubstantiated) reasoning regarding the related sales simply too late that had caused Xingcheng procedurally impossible to make
comments or defend itself.

Second, the Commission disregarded Xingcheng’s explanation on the difference between the related export prices and the unrelated export prices, without giving reasons thereof.

In the comments made to the SEF dated 11 May 2016, Xingcheng clarified that the difference between export prices to and that to an unrelated customer were the reasons of cost difference. For example, the models exported to were and , the model similar with these two models was . The cost of grinding bar for each model is listed hereunder, based on “Table G-5 Australian CTMS” in the questionnaire reply.

<table>
<thead>
<tr>
<th>Model</th>
<th>Period</th>
<th>Unit cost of grinding bar</th>
<th>Cost difference between periods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The prices of these three models in different periods are set forth below, based on “Table B-4.2 Australian Sales” in the questionnaire reply.

<table>
<thead>
<tr>
<th>Model Match</th>
<th>Period</th>
<th>Quantity</th>
<th>Exchange rate</th>
<th>Net invoice value USD</th>
<th>Net invoice value RMB</th>
<th>Unit price in RMB</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

By summarizing the above prices and costs information together as below, it is very clear that the export prices to were not at all influenced by the relationship.

<table>
<thead>
<tr>
<th>Model Match</th>
<th>Period</th>
<th>Quantity</th>
<th>Unit price in RMB</th>
<th>Unit cost of grinding bar</th>
<th>Gross margin between prices and grinding bar</th>
</tr>
</thead>
</table>
From the above table, the prices of models [m1] and [m2] were higher than the price of model [m3], which is caused by the obvious reason of cost factors, in that the former is higher than the latter. In commercial scenario, it is a common sense that the higher the cost, the higher the price.

Besides, although the prices of models [m4] and [m5] are higher than the price of model [m6], the gross margin of the former is lower than the latter. This is because the less the quantity, the higher the gross margin but not necessarily the higher price, since the price is dominated by cost and other factors. In addition, the price of model [m7] is lower than the price of model [m8]. This is due to the different sizes of the products, i.e. the smaller the size, the less efficient of production, thus the higher the cost and price.

Xingcheng must state that all these identified factors that could possibly influence the prices were not requested or verified; to the contrary the Commission chose a short cut to arrive at a conclusion that whenever transactions were made between related parties, prices would be bound to be not “arms-length” – such findings are tantamount to “give and take”. As demonstrated above, this was wrong, not to speak of depriving of Xingcheng’s right to a fair hearing during the cause of the investigation.

Third, the allegation that Xingcheng did not provide sufficient evidence is unfounded. As a matter of fact, Xingcheng has provided all export sales documents required by the Commission during the on-spot verification, which is Confidential Appendix 1 of the Verification Report. These documents include purchase order, sales contract and commercial invoices etc. On the first page of the purchase order, it clearly said that
“Purchase Order is raised in reference to Quotation Offer dated 29/08/2015 from Jia ngyin Xincheng Special Steel to of .” The first page of the sales contract also mentioned that the contract was made upon agreement between the buyer and the seller. Therefore, it is clearly from the facts on the records that sales between Xingcheng and were conducted through commercial negotiations.

Being an unbiased investigating authority, it is required by the law to instruct the interested parties involved to provide appropriate factual evidences with a view to supporting the claims made. This is especially true when an investigating authority had certain uncertainty with regard to the data or information submitted, such investigating authority should have acted in proactive manner not being in passive position, and then delivered such a conclusion at very end of the investigation. From the above factual statements, it is obvious that Xingcheng could have been able to provide more evidences such as the quotation to defend itself, if it was properly instructed by the verification team. To this end, Xingcheng would like to submit its price negotiation emails with as well as the price quotations mentioned in the emails as Confidential Exhibit 2.

Fourth, it is evident that transactions between Xingcheng and were considered falling within arms-length, which is demonstrated and supported by Verification Report made by the Commission on February 2016. In that report, notwithstanding the fact that the Commission identified the relationship between Xingcheng and , it nevertheless concluded in section 7 that “the Commission is satisfied that import transactions between and its suppliers are at arm’s length in terms of section 269TAA.” Thus, for the same transactions between Xingcheng and , the Commission’s findings were made in a surprisingly inconsistent way. Such contradictory conclusions constituted a prima facie case of inconsistency which should be the subject matter to be reviewed by the Review Panel, including the
reasons stated above

10.2 The Commission’s downwards timing adjustment made to the replaced related export prices was not proper

In section 5.10.4 of the Final Report, the Commission stated:

‘‘the Commission replaced the related party selling price with the selling price of another selected export sale of a similar steel grade and diameter of grinding balls that was sold to an unrelated party in an arm’s length transaction to determine an arm’s length export price. As the selected sales occurred in a different quarters, the Commission made a downwards timing adjustment equal to the cost difference in the grinding bar benchmark between quarters one and three of the investigation period.’’

Without prejudice to the arguments under section 10.1, Xingcheng contends that the Commission’s downwards timing adjustment was not proper for the following reasons.

First, timing is not a factor affecting the price setting of grinding balls. By using the term “timing adjustment”, it appears that the Commission believes timing is a factor affecting Xingcheng’s price setting. This is not true, because as the verification shows the subject product is not a seasonal product and its price movement does not correspond to different timing period. Rather, Xingcheng sets its prices by taking account of the market situation, cost of production, reasonable profit, and other terms of sales.

Second, for the sake of argument, even if the Commission considered that prices were affected by costs of production of different periods due to the material price fluctuation, such adjustment should have been made by taking into account of the cost difference booked in Xingcheng’s accounts rather than the cost difference in the grinding bar benchmark. This is because Xingcheng’s price setting was made by reference to its own specific consideration of cost factors relating to the production instead of relying on any other outsource benchmark.

In this regard, as mentioned in previous section, was vertically produced in Xingcheng’s integrated factories by using self-made grinding bar and cut-ends,
while [redacted] was produced from the out-sourcing grinding bars. It means that [redacted] is more cost effective than [redacted]. The cost difference in the grinding bar benchmark used by the Commission to make the downwards timing adjustment only reflects the international prices difference in two periods, and it does not reflect Xingcheng’s own cost structure difference that could have had on Xingcheng’s price setting.

Thus, Xingcheng sees no reason for the Commission to disregard Xingcheng’s own specific cost of production booked in its accounts, which is complete, relevant and accurate as confirmed in section 4.2 of the Verification Report.

Notwithstanding the above, Xingcheng finds that the Commission explained through an email dated 24 May 2016 the rational to use the benchmark, as follows:

*We have used the benchmark grinding bar cost because it is considered to be the competitive market costs of the grinding bars used in the relevant grades, and therefore an accurate reflection of the timing adjustment.*

Xingcheng does not agree. The Commission’s reasoning for its adjustment would ask Xingcheng to equate its price with some uncertain competitive market costs, which is practically and commercially impossible.

Furthermore, there is no legal basis for the Commission to adjust the export price by benchmarking competitive market cost. Xingcheng considers that the determination of the particular market situation only (under the Australian law) permits the Commission to deviate from the normal rule for the determination of normal value. The existence of the particular market situation bears no direct or indirect relationship with determining or adjusting the export prices.

Third, while it is not acceptable to adjust the export price by benchmarking competitive market cost, Xingcheng nevertheless contends that any benchmark used to adjust the related sales prices should be as closely as possible to the period the sales are made. This is because the adjustment made to the export price is to arrive at a proxy of the related export price without the influence of the commercial relationship. Thus, an adjustment of the grinding bar cost based on monthly benchmark would
certainly result in a more accurate proxy of the related export price, that should be without the influence of the commercial relationship, than an adjustment of the grinding bar cost based on quarterly benchmark.

In this regard, Xingcheng recalls that it has provided all detailed cost of production information during the verification. In particular, according to “Confidential Attachment 4b - Xingcheng CTMS and NV (post submission)”, it is clear that the production of the product was made in . The production of was made in with . Thus, any adjustment of the grinding bar cost, if warranted, should be the difference in the grinding bar benchmarks between and .

However, section 5.10.4 of the Final Report provides:

As the selected sales occurred in a different quarters, the Commission made a downwards timing adjustment equal to the cost difference in the grinding bar benchmark between quarters one and three of the investigation period.

It means that the Commission compared the average grinding bar benchmark during with that . By applying this methodology, the Commission had adjusted significant downwards of export prices by , which is more than the cost of difference in monthly benchmarks. Thus, the dumping margin was artificially inflated.

10.3 The Commission’s determination that there was a market situation for grinding balls in China was mere conjecture

The Act does not provide any definition of particular circumstances or factors which would satisfy the Minister that a ‘market situation’ exists. In relation to determining whether a ‘market situation’ exists, the Commission’s Dumping and Subsidy
Manual\textsuperscript{13} states:

\textit{In considering whether sales are not suitable for use in determining a normal value under s.269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:}
\begin{itemize}
  \item whether the prices are artificially low; or
  \item whether there are other conditions in the market which render sales in that market not suitable for use in determining prices under s.269TAC(1).
\end{itemize}

\textit{Government influence on prices or costs could be one cause of “artificially low pricing”. Government influence means influence from any level of government. In investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government’s involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market.}\textsuperscript{14}

As the Commission itself indicated that:

\textit{The influence of a government does not, in itself, establish the existence of a ‘market situation’. In assessing whether a ‘market situation’ exists, the Commission needs to examine both:}
\begin{itemize}
  \item the effect such influence has on the market; and
  \item the extent to which domestic prices are distorted and unsuitable for proper comparison with corresponding export prices.}\textsuperscript{15}

However, throughout Appendix 2 of the Final Report, except the mere conjecture of the possibility of the government influences on the grinding balls market in China, Xingcheng fails to see any direct and substantiated evidence or at least circumstantial evidence pointing to either the effect the government influence has produced on the grinding balls market, or the extent to which domestic prices of grinding balls are distorted.

This is especially so considering nearly all parts of Appendix 2 that are discussing the Government of China’s (GOC) involvement in the iron and steel industry at the macro level, such as:
\begin{itemize}
  \item \textit{Five year plans at national and local level}
\end{itemize}

\textsuperscript{14} Dumping and Subsidy Manual, pp 35.
\textsuperscript{15} The Final Report, p 83.
• National Steel Industry Development Policy (2005).
• Blueprint for the Adjustment and Revitalisation of the Steel Industry (2009).
• Steel Industry Adjustment Policy (2015 Revision).
• Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries (2009).

By merely listing the above documents or directives in Appendix 2, Xingcheng fails to see how these documents or directives have indeed produced effect on the grinding balls market and how the domestic prices of grinding balls are distorted by these documents or directives, how those documents or directives are closely relevant to the sector of grinding balls. The fact that the grinding balls industry is part of the broad iron and steel industry does not discharge the Commission’s responsibility in this regard.

Also, so-called GOC subsidy programs that might have granted to the steel industry demonstrates nothing how these subsidies have effect on the grinding balls market and how the domestic prices of grinding balls are distorted by these subsidies. The questionnaire responses by the 4 cooperating Chinese exporters could serve as direct evidence whether or not their prices are distorted due primarily to the listed documents or directives.

Furthermore, the Commission also discussed the GOC’s involvement in strategic enterprises in section A2.17 of Appendix 2. First of all, none of those state owned enterprises (SOEs) listed by the Commission involves in the production of grinding balls. More importantly, the SOEs are also market participants, the mere existence of SOEs in the iron and steel industry does not mean there is a distortion on the iron and steel market. Otherwise, the only market without distortion would be the market consists of only private enterprises, which is counterintuitive.

Lastly, the Commission’s discussion regarding the taxation arrangements just states the theoretical possibility that the 5% VAT rebate policy might depress the domestic
prices of grinding balls. But Xingcheng fails to see any evidence on records to prove the effects that the 5% VAT rebate policy could have had on the domestic price of grinding balls.

10.4 The Commission improperly considered that Xingcheng’s records did not reasonably reflect competitive market costs

As a result of the Commission’s finding that there is a market situation for grinding balls in China, the normal value is constructed under subsection 269TAC(2)(c), and as required by subsection 269TAC(5A)&(5B), in accordance with sections 43, 44 and 45 of the Customs (International Obligation) Regulation 2015. (the Regulation)

In particular, when considering whether the exporter’s records reasonably reflect competitive market cost associated with the production or manufacture of like goods under subsection 43(2)(b)(ii), the Commission concludes, in section 5.8 of the Final Report, that “the costs reported in the exporter’s records are significantly influenced by GOC distortion, such that they do not reasonably reflect competitive market costs.” The Commission further quantifies the distortion effect by comparing the competitive grinding bar benchmark to the costs reported in the exporter’s records.

Section 43(2) of the Regulation provides that:

If:
(a) an exporter or producer of like goods keeps records relating to the like goods; and
(b) the records:
(i) are in accordance with generally accepted accounting principles in the country of export; and
(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;
the Minister must work out the amount by using the information set out in the records.

Best on the term “must” in the last sentence, Xingcheng believes that the records kept by the exporter or producer are the prime source of information in order to establish the costs of production of the like product, and that the use of the data included in those records constitute the rule and the replacement of that data on another reasonable basis is the exception.
Further, Xingcheng considers that any derogation from or exception to a general rule must be interpreted narrowly. In light of this, it cannot reasonably be considered that any measure of the GOC which could have an influence on the prices of the raw materials and, as a result, on the price of the product in question, may be the source of a distortion that permits, in the context of the calculation of the normal value of the like product, the prices included in the records of the exporter or producer under investigation to be disregarded. If any measure taken by the GOC which is capable of influencing, even slightly, the prices of the main raw materials could be taken into account, the principle enshrined in Section 43(2) of the Regulation, to the effect that those records are the prime source of information in order to establish the costs of production of the like product, would risk being deprived of any useful effect.

More importantly, Xingcheng recalls that the GOC’s influence referred to by the Commission in Appendix 2 of the Final Report has never directly regulate the prices of grinding bar in China’s market. Given the fact that the disregard, in the context of calculating the normal value of the like product, of the production costs of that product included in the records of the exporter or producer under investigation falls within the scope of an exception, where the distortion relied upon by the Commission is not an immediate consequence of the government measures from which it originates, but of the effects that that measure is deemed to produce on the market, the Commission must ensure that they explain the operation of the market in question and demonstrate the specific effects of those measures on it, without relying in that regard on mere conjecture. Unfortunately, this is exactly what the Commission has done in this case.

10.5 The steel billet cost substituted in Xingcheng’s costs of production was not the costs of production in the country of export

Section 269TAC(2) provides that

Subject to this section, where the Minister:

(a) is satisfied that:

(i) ...; or

(ii) because the situation in the market of the country of export is such that sales in that
market are not suitable for use in determining a price under subsection (1);
the normal value of goods exported to Australia cannot be ascertained under subsection (1);
or (b) is satisfied, ...
the normal value of the goods for the purposes of this Part is:
(c) except where paragraph (d) applies, the sum of:
(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export--such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or...

It means that when there is a particular market situation, the normal value may be constructed with cost of production or manufacture plus the administrative, selling and general costs and the profit. In particular, based on the ordinary meaning of the terms used under Section 269TAC(2)(c)(i) above, such cost of production or manufacture must be the one in the country of export. More importantly, Xingcheng believes that the cost of production in the country of export not only requires the Commission to determine the value of the cost that would otherwise be without the alleged distortion in the country of export, but also such cost must reflect the terms or conditions of the cost in the country of export that factually exists.

In this regard, section 5.8 of the Final report states that “the Commission has adjusted the grinding bar costs in the exporter’s records to align them with the competitive grinding bar benchmark.” Such alignment simply replace the Xingcheng’s cost of production with the international prices has deviated from the requirement that the cost of production must be in the country of export.

This is because the Commission’s replacement of the costs of grinding bar have overlooked the fact that Xingcheng is vertically integrated producer. The steel billets used by Xingcheng to manufacture the grinding balls were mostly produced in-house on net cost base. However, the monthly Latin American export billet price in free-on-board (FOB) terms contains a reasonable profit of the billet and necessary cost to move the goods from factory to port. Therefore, an adjustment is needed to bring the billet price used by the Commission to net cost at factory level.
Xingcheng noticed the Commission comments in this regard in section 5.8.2 of the Final Report. In particular, the Commission argues that it has no profit or inland freight data, or assumes that it is not necessary to make any adjustment.

Xingcheng does not agree. First, it is the Commission’s responsibility to ensure the replaced cost of production is the one in the country of origin. It is simply not an excuse for the Commission not to carry out its responsibility just because it has no data. The Act has provided sufficient solution in this regard, such as facts available. Second, the Commission’s assumption that the Latin American billet prices do not contain profit due to the reported weakness in globe market has not factual basis. Third, the Commission not upward adjusting the cost of moving billets from workshop to workshop, which is negligible since the movement is within the factory, cannot offset the inland freight that should have been incurred in a material amount in order to move the billet from factory to port.

10.6 The average domestic inland transportation and domestic credit cost adjusted from normal value do not reflect the actual delivery terms and payment terms of the domestic sales

There were two types of delivery terms for domestic sales during the investigation period: pick up at the factory and home delivery. Home delivery required the home delivery service during the investigation period. Thus, all domestic inland freight were incurred for . However, the Commission allocated the total domestic inland transportation to all domestic sales regardless whether these sales were home delivery or not. Thus the unit average domestic inland freight that has been deducted from the constructed normal value was underestimated. The same applies to the Commission’s calculation of unit average domestic credit cost. Some domestic transactions were made with advance payment, and some were made with credit period. In spirit of this remarkable difference, the Commission allocated the total domestic credit cost to all domestic sales regardless of the actual payment term. Thus the unit average domestic credit cost that has been deducted from the constructed normal value was underestimated.
10.7 The denominator used to calculate the percentage of dumping margin is not proper

In the email dated 30 May 2016, the Commission disclosed its final calculation of the dumping margin in the attachment “Confidential Attachment 4c - Xingcheng DM - Final”. Xingcheng notices that the percentage of dumping margin was calculated by using the total dumping in column “BY” divided by the aggregation of extended EXP in column “BH”. More importantly, the “extended EXP” were the export prices that the Commission has replaced the related party selling price with the selling price of another selected export sale of a similar steel grade and diameter of grinding balls that was sold to an unrelated party in an arm’s length transaction, and a downwards timing adjustment has been made by the Commission to these export prices based on the cost difference in the grinding bar benchmark between quarters one and three of the investigation period.

Xingcheng contends that it is not proper for the Commission to disregard the actual paid export prices as the denominator when calculating the percentage of the dumping margin. This is because the antidumping duty is always levied on the actual price paid regardless whether the price is related or not and whether the export price should be adjusted. The “extended EXP” calculated by the Commission as the denominator has inflated the dumping margin.

11. Identify what, in the applicant’s opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

The correct or preferable decisions ought to be that:

11.1 The sales between Xingcheng and CPM were conducted through free negotiation, and the prices were not influenced by their relationship; that the export prices of goods exported by Xingcheng to CPM be determined under subsection 269TAB(1)(c).
11.2 Without prejudice to the preferable decisions under 11.1, the adjustment made to the related export prices should be made based on the cost difference booked on Xingcheng’s accounts rather than the cost difference in the grinding bar benchmarks.

11.3 Without prejudice to the preferable decisions under 11.1 and 11.2, the benchmark used to adjust the related export prices should be as closely as possible to the period the sales were made, i.e. on monthly base.

11.4 There is no particular market situation for grinding balls in China, and the domestic prices should be used to determine the normal value.

11.5 Without prejudice to the preferable decisions under 11.4, Xingcheng’s records do reasonably reflect competitive market costs, and should not be substituted by the benchmark for the construction of normal value.

11.6 Without prejudice to the preferable decisions under 11.4 and 11.5, the steel billet cost substituted in Xingcheng’s costs of production should be downwards adjusted for the inland freight and profit.

11.7 The average domestic inland transportation and domestic credit cost adjusted from normal value should be calculated based on the actual delivery terms and payment terms of domestic sales.

11.8 The denominator used to calculate the percentage of dumping margin is the export price actually paid.

12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision**

The proposed decisions outlined in response to question 11, above, will materially alter the Commission’s decision to impose the antidumping measure on Xingcheng as follows:

12.1 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.1, the Commission would have found that export prices to CPM were not influenced by the relationship, and, therefore,
the Commission would have used the prices paid by CPM to determine the export prices; thus no dumping would have been found by the Commission; and

12.2 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.2, the Commission would have upwards adjusted the export prices to CPM based on the cost differences book on Xingcheng’s accounts; thus no dumping would have been found by the Commission; and

12.3 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.3, the Commission would have adjusted the export prices to CPM based on the monthly benchmark; thus less dumping would have been found by the Commission; and

12.4 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.4, the Commission would have used Xingcheng’s domestic sales prices to determine the normal value; thus no dumping would have been found by the Commission; and

12.5 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.5, the Commission would have used Xingcheng’s cost of product to construct the normal value; thus no dumping would have been found by the Commission; and

12.6 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.6, the Commission would have downwards adjusted the inland freight and profit from benchmark of the steel billets prices; thus less dumping would have been found by the Commission; and

12.7 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.7, the average domestic inland transportation and domestic credit cost adjusted from normal value should are calculated based on the actual delivery terms and payment terms of domestic sales; thus less dumping would have been found by the Commission; and
12.8 by reason of the correct or preferable decisions ought to have been found by the Commission, specifically 11.8, the denominator used to calculate the percentage of dumping margin is the export price actually paid; thus less dumping would have been found by the Commission;

Xingcheng submits that the acceptance by the Review Panel of grounds of review above would materially change the final dumping margin of Xingcheng, and would lead to the termination of investigation insofar as Xingcheng.
## List of Exhibits

<table>
<thead>
<tr>
<th>Confidential Exhibit 1</th>
<th>Email exchange 20160511-0526</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential Exhibit 1</td>
<td>Email exchange 20160526-0530</td>
</tr>
<tr>
<td>Confidential Exhibit 2.1</td>
<td>Email exchange for price negotiation CN</td>
</tr>
<tr>
<td>Confidential Exhibit 2.1</td>
<td>Email exchange for price negotiation EN</td>
</tr>
<tr>
<td>Confidential Exhibit 2.3</td>
<td>CPIT Quotation Sheet Aug 24</td>
</tr>
<tr>
<td>Confidential Exhibit 2.4</td>
<td>CPIT Quotation Sheet Aug 29</td>
</tr>
</tbody>
</table>
POWER OF ATTORNEY

We, Jiangsu CP Xingcheng Special Steel Co., Ltd., No.58 Xiyanshan, Chengjiang Country, Jiangyin City, Jiangsu Province, China, an exporter of grinding balls to Australia, hereby authorize Mr. Pu Lingchen of Beijing Zhonglun Law Firm as our Attorneys/Consultants to represent us before the Anti-dumping Review Panel, in relation to the application for review of the Ministerial decision Anti-Dumping Notice No. 2016/90, dated 9 September, 2016.

The Attorneys/Consultants are authorized to take all necessary actions in the above mentioned matter, including but not limited to, the submission of application, participating in conference, inspecting the public file, obtaining copies of any document from the public file and giving oral & written submissions, in relation to this application and any review that may be conducted as a result of this application, as and when necessary.

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