

**Canberra**

6/2 Brindabella Circuit  
Brindabella Business Park  
Canberra International Airport  
ACT 2609 Australia  
+61 2 6163 1000

**Brisbane**

Level 4, Kings Row Two  
235 Coronation Drive  
Milton, Brisbane  
QLD 4064 Australia  
+61 7 3367 6900

**Melbourne**

Level 39  
385 Bourke Street  
Melbourne  
VIC 3000 Australia  
+61 3 8459 2276



commercial + international

25 October 2021

Ms Jaclyne Fisher  
Member  
Anti-Dumping Review Panel  
c/- Anti-Dumping Review Panel Secretariat  
GP Box 2013  
Canberra City  
Australian Capital Territory 2601

By email

Dear Ms Fisher

**Compañía Electro Metalúrgica S.A.**  
**Response to notice under *Customs Act 1901*, Section 269ZZG(1)**

We refer to your letter of 18 October 2021, and the Section 269ZZG(1) notice (“the Notice”) which was attached to it.

The Notice requests that Compañía Electro Metalúrgica S.A. (“ME Elecmetal”) provide further information in relation to its application for review. Specifically, the Notice requests that ME Elecmetal:

*Set out the reasons why the proposed decision provided in response to Question 10 in your application is materially different from the Reviewable Decision.*

Thank you for contacting us in relation to this matter. Below we set out the reasons as requested in the Notice.

ME Elecmetal applied for review of the Minister’s decision (“the Reviewable Decision”) made pursuant to s 269ZH(1)(b) of the *Customs Act 1901* (“the Act”). In ME Elecmetal’s application, it set out four grounds upon which it considered the reviewable decision was not the correct or preferable decision, pursuant to s 269ZZE(2)(b) of the Act. In relation to each of the four specific grounds, ME Elecmetal proposed that the correct or preferable decision was a decision not to secure the continuation of the measures under s 269ZH(1)(a) of the Act (“the Proposed Decision”), pursuant to s 269ZZE(2)(c) of the Act, and provided detailed reasons for its proposals.

To further elaborate, the Proposed Decision is materially different to the Reviewable Decision because, as set out and explained in ME Elecmetal's Application:

- 1 The Reviewable Decision had the effect of continuing the operation of the anti-dumping measures that applied to grinding balls exported from China to Australia, as were originally imposed on 1 September 2016, for an additional five years. As such, any imports will incur an interim duty liability that can only be refunded via the duty assessment process, and in that circumstance interested parties would potentially need to participate in additional anti-dumping procedures, including variable factor reviews, to ensure the measures remain relevant to contemporary market circumstances.
- 2 In contrast, the Proposed Decision would have the effect of "expiring" or of "not continuing" the anti-dumping measures. In other words they would cease. This will mean that:
  - (a) no interim dumping duty will be payable on imports of grinding balls from China as of that date;
  - (b) there will be no prospect of any future variable factors reviews or other anti-dumping procedures in relation to the anti-dumping measures imposed pursuant to the original notice,

each of which is materially different to the situation created by the Reviewable Decision.

- 3 *Per* the first ground of the application, the Reviewable Decision is based upon the adoption of the wrong standard for continuation of the anti-dumping measures. Contrary to this, the Proposed Decision would comply with the accepted standard for continuation of the anti-dumping measures. This is materially different to the Reviewable Decision.
- 4 *Per* the second ground of the application, the Reviewable Decision is not supported by law or evidence. Contrary to this, the Proposed Decision would be supported by law and evidence, which is materially different to the Reviewable Decision.
- 5 *Per* the third ground of the application, the Reviewable Decision is based on a misunderstanding of the nature of the benchmark adopted by the Commissioner when he made his recommendation that the measures be discontinued pursuant to s 269ZHG(1)(b) of the Act. Contrary to this, the Proposed Decision would fully reflect the Commissioner's analysis and inquiry and would be based on a robust assessment of all relevant information. This is materially different to the Reviewable Decision.
- 6 *Per* the fourth ground of the application, the Reviewable Decision is premised on a finding that material injury is likely to recur, being a finding which was not supported by evidence or analysis. Contrary to this, the Proposed Decision would be based on a consideration of all relevant information that was before the Commissioner when he made his recommendation to the Minister. This is materially different to the Reviewable Decision.

Accordingly, we respectfully submit that the Review Panel should be satisfied that the Proposed Decision is materially different to the Reviewable Decision *per* s 269ZZG(2)(c) on the basis of the content of ME Elecmetal's application and this response to the request for further information.

However, please do not hesitate to contact us should you require any further information.

Yours sincerely



**Charles Zhan**  
Partner



**Alistair Bridges**  
Senior Associate