Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application to the ADRP for 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
The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

Withdrawal
You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact
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.

[1] By the 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: Jiangyin Xingcheng Magotteaux Steel Balls Co., Ltd. ("Xingcheng Magotteaux")
Address: No. 1 Changshan Road, Jiangyin City, PRC.
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: BAO Shaojun
Position: General Manager
Email address: baoshaojun@citicsteel.com
Telephone number: +86 18651500070

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

Xingcheng Magotteaux is the manufacturer and exporter of the goods subject to review.

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

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

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

The goods the subject of the reviewable decision ("grinding balls") are:

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

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

7325.91.00 (statistical code 26)
7326.11.00 (statistical code 29)
7326.90.90 (statistical code 60)

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2021/95
Date ADN was published: 8 September 2021. Refer to notice at **Attachment A**.

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

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 application 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 highlighted in yellow, and the document 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.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

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: ☐

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

Refer to **Attachment B**.

10. 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 9:

Refer to **Attachment B**.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Refer to **Attachment B**.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Refer to **Attachment B**.

13. Please list all attachments provided in support of this application:

Attachment A: ADN 2021/95
Attachment B: Grounds of review
Attachment C: Minister's Statement of Reasons

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; and
- 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: John Bracic

Position: Director

Organisation: J.Bracic & Associates Pty Ltd

Date: 6 / 10 / 2021

PART E: AUTHORISED REPRESENTATIVE

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

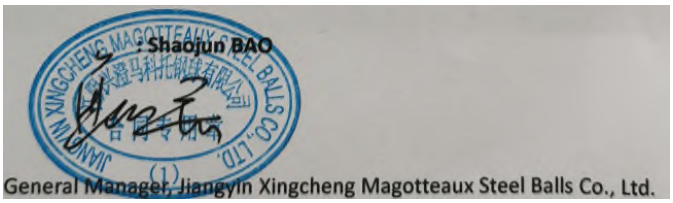
Provide details of the applicant's authorised representative:

Full name of representative: John Bracic
Organisation: J.Bracic & Associates Pty Ltd
Address: PO Box 6203, Manuka, ACT 2603
Email address: john@jbracic.com.au
Telephone number: +61 (0)499 056 729

Representative's authority to act

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

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: 

Name: BAO Shaojun

Position: General Manager

Organisation: Jiangyin Xingcheng Magotteaux Steel Balls Co., Ltd.

Date: 6 / 10 / 2021

J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3026
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

7 October 2021

Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601

Xingcheng Magotteaux seeks a review of the following findings and conclusions which led to the reviewable decision by the Minister.

- Ground 1: The Minister erred in securing the continuation of the anti-dumping and countervailing measures applying to grinding balls exported from China.
- Ground 2: The Minister erred in not determining fixed different specified variable factors in relation to Xingcheng Magotteaux, pursuant to subsection 269ZHG(4)(a)(iii) of the Act.
- Ground 3: The Minister erred in not substituting the unaccepted Commission benchmark with his preferred alternative benchmark, in determining individual ascertained variable factors applicable to Xingcheng Magotteaux.

Background

On 14 December 2020, the Commissioner of the Anti-Dumping Commission ("the Commissioner") initiated an inqury into whether the continuation of measures on grinding balls exported from China were warranted. Xingcheng Magotteaux cooperated with the inquiry and following verification of its submitted information, the Commission determined a 0% dumping margin and 0% subsidy margin.

On 18 May 2021, the Commission published Statement of Essential Facts Report No. 569 ("SEF 569"), in which it stated:

> *… the Commissioner is not satisfied that the expiration of the anti-dumping measures in respect of exports of grinding balls from China would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping, subsidisation and the material injury that the anti-dumping measures are intended to prevent.*
>
> *Based on the above preliminary findings, the Commissioner proposes to recommend to the Minister that the notices in respect of the goods exported to Australia from China be allowed to expire on the specified day.*

On 23 July 2021, the Commission provided the Minister for Industry, Science and Technology ("the Minister") with Final Report No. 569 ("REP 569"), in which the Commissioner confirmed he was not satisfied that the expiration of the anti-dumping measures in respect of exports of grinding balls from China would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping, subsidisation and the material injury that the anti-dumping measures are intended to prevent. Based on the findings contained in REP 569, the Commissioner recommended to the Minister that the notices in respect of the goods exported to Australia from China expire on the specified day.

On 8 September 2021, notification was made via Anti-Dumping Notice No. 2021/95 ("ADN 2021/95"), that the Minister decided **not** to accept the Commissioner's recommendations in REP 569. Instead, ADN 2021/95 notified that the Minister had:

a) declared that he had decided to secure the continuation of the anti-dumping measures set out in the dumping duty notice and the countervailing duty notice currently applying to the goods exported to Australia from China; and
b) determined pursuant to section 269ZHG(4)(a)(i) of the Act, that the notices continue in force after 9 September 2021.

On 10 September 2021, a document was placed on the public record setting out the Minister's statement of reasons (**Attachment C**) for not accepting the Commission's findings and recommendations contained in REP 569.

Ground 1: The Minister erred in securing the continuation of the anti-dumping and countervailing measures applying to grinding balls exported from China

1. Grounds for review

In the Commission's Final Report ("REP 569") to the Minister, the Commission noted that pursuant to subsection 269ZHF(2) of the *Customs Act 1901* ("the Act"), that the Commissioner *'must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be **likely** to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.'* [emphasis add].

The Commission also emphasised that '*… its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the Anti-Dumping Review Panel, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendation must nevertheless be based on facts.*

In its submission responding to the Commission's Statement of Essential Facts Report 569 ("SEF 569"), Xingcheng Magotteaux outlined its understanding of the threshold test for the continuation of measures. This included guidance set out in the Commission's Dumping and Subsidy Manual[3] which explains that:

[3] Dumping & Subsidy Manual; December 2013, page 153

> *In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where 'likely' has been taken to mean 'probable'.*

Xingcheng Magotteaux also highlighted WTO jurisprudence which confirmed that the likelihood test involved an affirmative determination. In US Drams[4], the WTO Dispute Panel found that the continued imposition of measures must be based on '*positive evidence*'. The Panel stated:

> *Accordingly, we must assess the essential character of the necessity involved in cases of continued imposition of an anti-dumping duty. We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.*

Further, the Appellate Body said of Article 11 in Corrosion Resistant Carbon Steel[5]:

> *In view of the use of the word "likely" in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.*

Xingcheng Magotteaux also informed the Commission of the Anti-Dumping Review Panel's (ADRP)[6] understanding of the legislative test, which confirmed:

> *27. Undertaking a continuation inquiry requires a prospective examination of the likelihood of future dumping and material injury. In its reinvestigation report (REP 389) the ADC referred to the decision of the Federal Court in Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2),8 where the Court held that the word "likely" in section 269ZHF(2) of the Act was taken to mean "more probable than not".*

Therefore, there is agreement and acceptance that the Act requires the Commissioner to recommend expiry of the measures, unless there is positive evidence to demonstrate that the recurrence of dumping and material injury in the future is likely or probable (ie. implying a greater degree of certainty that the event will occur than a finding that the event is not "not likely"). A review of REP 569 confirms that the Commission undertook a comprehensive

[4] US Drams – WT/DS99/R; para 6.42, page 139

[5] US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R; para 111, pages 39-40.

[6] ADRP Report No. 50 - Food Service and Industrial (FSI) Pineapple exported from the Kingdom of Thailand, pages 8-9.

examination of all relevant information and correctly applied the threshold test for continuation of the measures.

The Commission made the following findings and conclusions in REP 569.

> *Having regard to the negative dumping margins of the cooperative exporters, and the other information considered by the Commission as detailed for each cooperating exporter above, the Commission considers* ***there is insufficient evidence before it to be satisfied that any future exports are likely to be dumped should the measures be allowed to expire****.*
>
> *The Commission acknowledges that any future exports of grinding balls from uncooperative exporters may be dumped but* ***is not satisfied that it would be likely****. That is, while future exports by uncooperative exporters may be dumped,* ***the Commission is not satisfied of the higher threshold of likely as set out in section 269ZHF(2)****.*
>
> *Having regard to the two cooperative exporters subject to the countervailing duty notice having not received countervailable subsidies during the inquiry period,* ***there is insufficient evidence before the Commission to be satisfied*** *that any future exports are likely to receive countervailable subsidies should the measures be allowed to expire.*
>
> *The Commission acknowledges that while any future exports of grinding balls from noncooperative exporters may be in receipt of subsidies,* ***it is not satisfied that it would be likely****. That is, while future exports by non-cooperative exporters may be in receipt of subsidies,* ***the Commission is not satisfied of the higher threshold of likely as set out in section 269ZHF(2)****.*

It is clear from the detailed examination, analysis and assessment of all available and relevant information set out in REP 569, that the Commission understood and applied the correct test for the purposes of sunsections 269ZHF and 269ZHG of the Act.

In considering the Commission's analysis and findings contained in REP 569, the Minister decided **not** to accept the recommendations made by the Commissioner. The Minister did **not** agree with the Commissioner's findings of fact, evidence and reasons set out in REP 569, that the expiration of the anti-dumping measures in respect of exports of the goods from China would not lead or be likely to lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that those measures are intended to prevent.

In his statement of reasons, the Minister listed a number of reasons for **not** being satisfied with the Commission's findings of fact, evidence and reasons. This included:

- the Commission's selection of the raw material benchmark;
- evidence in support of negative dumping and countervailing margins;
- lack of evidence of a thorough analysis of available benchmarks
- that the Latin American benchmark is the most appropriate benchmark;
- that the Commission did not sufficiently analyse the accuracy of submissions and issues raised by the Australian industry;
- that the Commission's analysis concerning subsidies received by Chinese exporters is correct.

The Minister's statement of reasons also identified a number of matters of which he was satisfied. This included:

- grinding bar is a more appropriate benchmark to use than steel billet where both benchmarks are available;
- that material injury is likely to recur in respect of future exports should the countervailing duties be allowed to expire;
- that future exports are likely to be dumped, and that the goods exported by many Chinese exporters are subsidised;
- dumping and subsidisation is likely to continue and the cumulative effect of this is likely to result in the recurrence of material injury that the measures are intended to prevent if the measures were removed;
- measures should be continued because the expiration of measures would lead, or would likely lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.

Beyond the Minister's mere declarations in the statement of reasons that he was satisfied or not satisfied of certain findings and claims, **there is no analysis or assessment of the evidence upon which those declarations are based**. Whilst subsection 269ZHG(1) of the Act provides the Minister with some discretion in terms of having regard to other relevant information after considering the final report of the Commissioner, Xingcheng Magotteaux contends that the Minister must nevertheless continue to apply the correct threshold test interpreted by the Federal Court, the WTO Panels and Appellate Body. That is, the Minister is compelled to ensure and demonstrate that his decision is based on positive evidence and which supports a finding that dumping and/or material injury was likely (ie. more probable than not) to recur.

By rejecting the Commission's analysis and assessments contained in REP 569, and exercising his discretion to have regard to other information, it was incumbent on the Minister to demontsrate how that other information relied upon, met the requirement for an affirmative likelihood determination. In demonstrating that his determination was based on positive evidence and demonstrated a likelihood of dumping and/or material injury

recurring, the Minister was required to undertake and set out his analysis and assessment of that information.

Wilson JJ in *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)*[7] confirmed that findings without proper assessment would be insufficient for meeting the likelihood test.

> *Those "findings" did not address the question of the likelihood of injury. The concepts that the Report used of potential of, and greater susceptibility to, injury do not describe any injury, let alone a material injury that is likely to be caused by dumping if the measures expire. The CEO and Minister did not make a quantitative assessment about, or undertake the practical exercise of assessing, whether material injury to Qenos was likely if the measures expired.*

It is clear that the Commissioner undertook a detailed and thorough quantitative assessment in reaching the conclusions and findings outlined in REP 569. By contrast, Xingcheng Magotteaux submits that the Minister's statement of reasons contained no such assessment.

To highlight by example, the Minister dismisses the material injury analsysis performed by the Commissioner as it was premised on a finding of no dumping, which the Minister rejected due to his view that the Commissioner had not relied on the appropriate benchmark. In doing so, the Minister does not appear to have turned his mind to, or undertaken an assessment, as to whether dumping would have continued even relying on the alternative benchmark submitted by the Australian industry. The Minister appears to have simply assumed that an alternative benchmark would have resulted in an alternative dumping finding.

Even if the Minister had established that dumping would have continued using the alternative benchmark, the Minister was compelled to turn his mind to, and consider, whether material injury would have likely recurred. Instead, the Minister's statement of reasons simply assumes material injury recurring by stating as fact, '… *that such dumping and subsidisation is likely to continue and the cumulative effect of this is likely to result in the recurrence of material injury that the measures are intended to prevent if the measures were removed.*'

The Minister has not satisifed the legal threshold test establish by the Federal Court, which requires an affirmative likelihood determination supported by '*a quantitiave assessment*' and '*the practical exercise of assessing*'. Instead, after rejecting the detailed assessment and findings established by the Commissioner following a lengthy investigation, the Minister has merely hypothesised about the impact on dumping of relying on an alternative benchmark, and speculated on the likelihood of material injury recurring, instead of performing a rigorous examination and assessment of the issues.

[7] [2009] FCA 388 at [52].

Therefore, Xingcheng Magotteaux contends that the Minister has erred in not meeting the established threshold test for an 'affirmative likelihood determination', which required a positive finding of satisfaction based on a sound and reasonable assessment of positive evidence.

2. Applicant's opinion of the correct or preferable decision

In Xingcheng Magotteaux's opinion, the correct or preferable decision was the recommendation made by the Commissioner in 569, which determined that the notices in respect of grinding balls exported to Australia from China, should expire. This stems from the Commission's detailed and thorough analysis and assessment of the likelihood that dumping, countervailing and material injury would continue or recur in the absence of measures.

The Commission's assessment of the available evidence confirms that there was insufficient positive evidence to be satisfied that future exports of grinding balls would likely be dumped, subsidised and lead to material injury. Those assessments involved a rigorous examination of all available information and ensured the correct application of the threshold test for the likelihood determination.

In addition, it is important to note that the Latin Amercian benchmark relied upon by the Commission has been regularly used in previous grinding ball reviews. In those earlier inquiries, previous Ministers have endorsed the Latin American benchmark as relevant and appropriate, and the Minister's statement of reasons does not contain any sound basis for departing from the accepted and established benchmark.

In particular, the Minister's key reason for rejecting the findings and conclusions in REP 569, relate to the determination of the appropriate steel benchmark for the raw material inputs consumed in the production of grinding balls. As the Commission notes in REP 569, it relied on the multi-country Latin American benchmark for the reasons set out in section 6.6.1 of the report. The Commission added:

> *In addition to those reasons, while there may be other benchmarks, the Commission was persuaded by consideration by the Anti-Dumping Review Panel (ADRP) and the Full Federal Court. Further, tribunal members and judicial officers have not cast any doubt on the use of the Latin American benchmark, provided that it is objective and broadly representative of competitive costs.*

By contrast, the Commission found that information submitted by the Australian industry to support its alternative steel benchmark was based on:

- assertions which were countered by interested parties;
- purchase information by affiliated companies of the Australian industry, which were unable to be verified or tested;

- insufficient evidence to assess the applicability of the submitted purchases.

Therefore, in Xingcheng Magotteaux's opinion, the Commission's recommendation in REP 569, is the correct or preferable decision based on positive evidence and on an impartial and objective analysis. That is, the correct or preferable decision must have been that the Minister declare that he has decided not to secure the continuation of the measures, and that the measures subject to the notice should expire on the specified day, pursuant to subsection 269ZHG(1) of the Act.

3. Support for the proposed correct or preferable decision

The grounds outlined above, provide support for the making of the proposed correct or preferable decision by establishing the errors of fact and law in the Minister's decision and statement of reasons. Further support for the making of the proposed correct or preferable decision is reflected in the Commission's reasoning and findings of fact contained in REP 569.

4. Reason why the proposed decision is materially different from the reviewable decision

The proposed correct or preferable decision is materially different from the reviewable decision as the application of the correct test for the purposes of 269ZHG, would have ensured that the measures would have expired on 9 September 2021. Therefore exports of grinding balls by Xingcheng Magotteaux would not be subject to anti-dumping measures.

Ground 2: The Minister erred in not determining fixed different specified variable factors in relation to Xingcheng Magotteaux, pursuant to subsection 269ZHG(4)(a)(iii) of the Act.

1. Grounds for review

As outlined in ground 1 above, Xingcheng Magotteaux contends that it was not correct or preferable for the Minister to continue the measures on grinding balls, as the decision did not comply with the established threshold test for an 'affirmative likelihood determination', which required a positive finding of satisfaction based on a sound and reasonable assessment of positive evidence. However, if the ADRP forms the view that the Minister's decision was correct or preferable, Xingcheng Magotteaux contends that the Minister erred by disregarding verified information relevant to the determination of its ascertained variable factors.

In the notice initiating the expiry review, the Commission notified and invited exporters wishing to cooperate with the inquiry, to complete an exporter questionnaire so that it can determine whether dumping and subsidisation have occurred over the inquiry period (1 October 2019 to 30 September 2020), and whether the variable factors relevant to the determination of duty have changed.

Xingcheng Magotteaux submitted a complete questionnaire response, and was considered by the Commission to be a cooperating exporter, which subsequently involved a remote verification of the submitted data.

REP 569 confirms that Xingcheng Magotteaux had not yet exported grinding balls to Australia, and as such, had not previously been found to have exported at dumped prices. In these circumstances, the Commission correctly considered it appropriate to determine export prices by reference to the ascertained normal values of like goods sold in the domestic market by Xingcheng Magotteaux.

The Commission determined that Xingcheng Magotteaux's submitted data was found to be relevant and reliable, and that its grinding bar costs were not artificially influenced by government intervention during the inquiry period. As such, Xingcheng Magotteaux's domestic selling prices were suitable for establishing normal values pursuant to subsection 269TAC(1) of the Act. Further, the Commission also found that Xingcheng Magotteaux did not receive financial benefits from any of the investigated subsidy programs.

The Commission made the following margin determinations in REP 569 with respect to Xingcheng Magotteaux:

- a zero per cent dumping margin.
- a zero per cent subsidy margin.

After considering the Commission's findings of fact, evidence and reasons, the Minister stated that he '…*was not satisfied that the Commissioner's conclusions about dumping by Chinese exporters are correct*.' With respect to the Commission's findings on countervailing, the Minister stated that he was '… *not satisfied that the Commissioner's analysis concerning subsidies received by Chinese exporters is correct and I do not agree with the Commissioner's findings in relation to countervailing duty in REP 569*.'

In rejecting the Commission's findings outlined in REP 569, the Minister determined pursuant to section 269ZHG(4)(a)(i) of the Act, that the notices continue in force after 9 September 2021, with the variable factors to remain unchanged. In doing so, the Minister has prevented Xingcheng Magotteaux from receiving an individual margin of dumping and margin of countervailing, despite fully cooperating with the inquiry. Instead, Xingcheng Magotteaux exports are now subject to the all other non-cooperative export rates established from the previous review, in which it did not have opportunity to participate.

The Minister's decision to not make an individual determination of Xingcheng Magotteaux's variable factors was manifestly flawed and not correct or preferable.

First, the Commission's notice of initiation outlined that the scope of the inquiry would include determining whether dumping and subsidisation have occurred and whether the

variable factors relevant to the determination of duty have changed. Variable factors are defined at subsection 269T(4D) of the Act, as:

(a) if the goods are the subject of a dumping duty notice:
(i) to the normal value of the goods; and
(ii) to the export price of the goods; and
(iii) to the non-injurious price of the goods; and
(b) if the goods are the subject of a countervailing duty notice:
(i) to the amount of countervailable subsidy received in respect of the goods; and
(ii) to the export price of the goods; and
(iii) to the non-injurious price of the goods.

The initiation notice also confirms that the scope of the inquiry included examining whether export price, normal value and the amount of subsidisation had changed, and if so, determining and recommending different ascertained variable factors have effect.

As the scope of the inquiry included determining revised amounts of duty based on different ascertained variable factors, the Minister was required to have regard to, inter alia, the following:

- the amount of the export price of grinding balls exported by Xingcheng Magotteaux to Australia
- the amount of the normal value of grinding balls exported by Xingcheng Magotteaux to Australia
- the amount of countervailing subsidy received in respect of the grinding balls exported by Xingcheng Magotteaux to Australia.

Given that Xingcheng Magotteaux was considered and determined to be a cooperating exporter, as defined, the Minister was under an obligation to determine individual margins of dumping and countervailing applicable to Xingcheng Magotteaux's exports. Whilst the Act provides the Minister with discretion to disregard certain information, that discretion does not extend to disregarding an entire outcome of the inquiry, specifically, fixing different specified variable factors pursuant to subsection 269ZHG(4)(a)(iii) of the Act.

Xingcheng Magotteaux contends that the Minister was required to determine ascertained variable factors in accordance with the relevant sections of the Act. Instead, the Minister has erred by disregarding all information presented by Xingcheng Magotteaux, despite the Commission finding that its verified information was accurate, reliable and relevant for the purposes of ascertaining revised variable factors.

It is apparent from the Minister's statement of reasons, that he did not accept and agree with the Commission's methodology for constructing the raw material steel benchmark. In particular, the Minister did not agree with the use of the Latin American benchmark for steel billet, and instead preferred the alternative grinding bar benchmark proposed by the Australian industry.

Notwithstanding the Minister rejection of the Commission's recommended benchmark, it is clear that the Minister exceeded the discretion provided to him under the Act. In the case of dumping, the Minister's power to disregard information is limited to information deemed unreliable, as provided in subsections 269TAB(4) and 269TAC(7) of the Act.

As there is no finding by the Minister that Xingcheng Magotteaux's verified information was unreliable, despite the Commission's conclusion that the submitted data was accurate and reliable, it was incumbent on the Minister to determine revised ascertained variable factors relevant to Xingcheng Magotteaux, and fix individual rates of duty that would be applicable to Xingcheng Magotteaux's future exports to Australia.

Xingcheng Magotteaux contends that the Minister erred in rejecting the Commission's preferred steel billet benchmark, given that:

- the multi-country Latin American benchmark has been considered relevant and reliable in multiple previous grinding ball inquiries, and been found to be objective and broadly representative of competitive costs in China; and
- the Commission found that the alternative steel benchmark proposed by the Australian industry, and which was preferred by the Minister, was itself of questionable value and accuracy.

In those circumstances, Xingcheng Magotteaux contends that the Minister erred in disregarding all information relevant to the determination of Xingcheng Magotteaux's individual ascertained variable factors.

2. Applicant's opinion of the correct or preferable decision

In Xingcheng Magotteaux's opinion, the correct or preferable decision was the determination made by the Commission with respect to Xingcheng Magotteaux's margin of dumping and margin of subsidisation established in REP 569. That is, the correct or preferable decision relevant to Xingcheng Magotteaux's determined variable factors are:

- export price be determined under subsection 269TAB(3) of the Act, having regard to all relevant information, being the determined ascertained normal value over the review inquiry period;
- normal value be determined under subsection 269TAC(1) of the Act, relying on domestic sales of like goods sold for home consumption in the ordinary course of trade and in arms length transactions. Relevant adjustments outlined in REP 569 to be made pursuant to subsection 269TAC(8) of the Act.
- based on the above ascertained export price and normal values, Xingcheng Magotteaux's exports be subject to a floor price measure with zero per cent dumping margin.
- as no countervailable subsidies were received by Xingcheng Magotteaux during the inquiry period, the applicable subsidy margin is zero per cent.

3. Support for the proposed correct or preferable decision

The grounds outlined above, provide support for the making of the proposed correct or preferable decision by establishing the Minister's errors of fact and law. Further support for the making of the proposed correct or preferable decision is reflected in the Commission's reasoning and findings of fact contained in REP 569, which support the zero margin of dumping and countervailing determined by the Commission.

4. Reason why the proposed decision is materially different from the reviewable decision

By applying the proposed correct or preferable decision, Xingcheng Magotteaux's exports would be subject to a floor price measure with 0% interim dumping and countervailing duties. This compares to the reviewable decision which results in Xingcheng Magotteaux's exports being subject to the all other non-cooperative combined rate of 34%.

Ground 3: The Minister erred in not substituting the unaccepted Commission benchmark with his preferred alternative benchmark, in determining individual ascertained variable factors applicable to Xingcheng Magotteaux.

1. Grounds for review

As outlined in ground 2 above, Xingcheng Magotteaux contends that it was not correct or preferable for the Minister to disregard all of the information relevant to ascertaining Xingcheng Magotteaux's variable factors. However, if the ADRP forms the view that it was correct or prefereable for the Minister to disregard the Commission's recommended steel benchmark, Xingcheng Magotteaux submits that the Minister erred by not replacing the disregarded Latin American benchmark with the preferred alternative benchmark proposed by the Australian industry, in calculating updated ascertained variable factors.

That is, if the Minister considered that the Latin America benchmark data was unreliable, and the proposed alternative benchmark was relevant and reliable for the purposes of determining dumping and countervailing, then it was incumbent on the Minister to determine the correct benchmark and calculate different variable factors to those recommended by the Commission.

This is particularly relevant in Xingcheng Magotteaux's circumtances given that its export price was determined by reference to the ascertained normal value. Meaning that any revision to the ascertained normal value as a result of revising and substituting the benchmark, would have still led to a zero per cent margin of dumping. The only difference being that the floor price applicable to Xingcheng Magotteaux's future exports would have been either higher or lower.

It is also important to note that the Minister has not disregarded or disagreed with the Commission's determination of ascertained export prices. The Minister's concerns surround the steel benchmark and the impact on normal values and countervailing subsidies. Therefore, any revision to the steel benchmark would not have changed Xingcheng Magotteaux's 0% margin of dumping.

2. Applicant's opinion of the correct or preferable decision

In Xingcheng Magotteaux's opinion, the correct or preferable decision was to substitute the steel billet benchmark recommended by the Commission, with the Minister's preferred alternative benchmark proposed by the Australian industry, and calculate revised variable factors. This would ensure that Xingcheng Magotteaux's updated variable factors took account of the Minister's preferred steel benchmark, but also ensured that Xingcheng Magotteaux received its own individual dumping and countervailing rates of duty for cooperating with the inquiry, which would apply to its future exports.

3. Support for the proposed correct or preferable decision

The grounds outlined above, provide support for the making of the proposed correct or preferable decision by establishing the Minister's errors of fact and law. Further support for the making of the proposed correct or preferable decision is reflected in the Act which provides for the replacement of information disregarded by the Minister, with information that the Minister consider relevant and reliable.

4. Reason why the proposed decision is materially different from the reviewable decision

As the Commission notes in REP 569, information surrounding the alternative benchmark proposed by the Australian industry has been heavily redacted and interested parties have virtually no visibility of the submitted benchmark amounts. Despite this, it is clear from the Minister's statement of reasons that the difference between the Commission's recommended benchmark and the proposed alternative benchmark, is sufficient to alter the margins of dumping and countervailing found in REP 569.

To that end, Xingcheng Magotteaux considers that recalculated variable factors which take into account the Minister's preferred alternative benchmark, would likely result in a positive countervailing margin, and a substantially higher ascertained normal value. The increase in the ascertained normal value would result in a commensurate rise in the ascertained floor price applicable to Xingcheng Magotteaux's exports.

Despite the likely changes to Xingcheng Magotteaux's variable factors, the proposed correct or preferable decision would result in a substantially more flavourable outcome that the reviewable decision, which resulted in Xingcheng Magotteaux's exports being subject to the all other non-cooperative combined rate of 34%.

ANTI-DUMPING NOTICE NO. 2021/95

Customs Act 1901 - Part XVB

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

Decision on Continuation Inquiry No. 569 into Anti-Dumping Measures

Notice under section 269ZHG(1)[1]

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 14 December 2020, concerning the continuation of the anti-dumping measures, in the form of an anti-dumping notice and a countervailing duty notice, applying to grinding balls (the goods) exported to Australia from the People's Republic of China (China).

Recommendations resulting from the inquiry completed by the Commissioner, reasons for the recommendations and material findings of fact and law in relation to the inquiry are contained in Commissioner's Report No. 569 (REP 569).

I, CHRISTIAN PORTER, the Minister for Industry, Science and Technology, have considered REP 569 and have decided to not accept the recommendations in REP 569.

Under section 269ZHG(1)(b) of the Act, I **DECLARE** that I have decided to secure the continuation of the anti-dumping measures set out in the dumping duty notice and the countervailing duty notice currently applying to the goods exported to Australia from China.

Having decided to secure the continuation of the anti-dumping measures set out in the notices currently applying to the goods exported to Australia from China, I **DETERMINE** pursuant to section 269ZHG(4)(a)(i) of the Act, that the notices continue in force after 9 September 2021.

REP 569 and the reasons for my decision will be placed on the public record which may be examined on the Anti-Dumping Commission website.[2] Enquiries about this notice may be directed to the Anti-Dumping Commission at: clientsupport@adcommission.gov.au

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.[3]

[1] All legislative references are to the *Customs Act 1901* (Cth) (the Act), unless otherwise stated.
[2] The public record is available at www.adcommission.gov.au
[3] The Anti-Dumping Review Panel website may be accessed via http://www.industry.gov.au/about-us/our-structure/anti-dumping-review-panel

Dated this 8th day of September 2021

CHRISTIAN PORTER

Minister for Industry, Science and Technology

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

Reasons for decision on Continuation Inquiry No. 569

The Commissioner of the Anti-Dumping Commission (the Commissioner) has after conducting an inquiry, which commenced on 14 December 2020, given me a report (REP 569) into whether anti-dumping measures in the form of a dumping duty notice and a countervailing duty notice applying to grinding balls (the goods) exported to Australia from the People's Republic of China (China) should be continued.

I, CHRISTIAN PORTER, the Minister for Industry, Science and Technology, have considered REP 569 and decided **not** to accept the recommendations made by the Commissioner.

I do **not** agree with the Commissioner's findings of fact, evidence and reasons for the Commissioner's recommendations in REP 569 that the expiration of the anti-dumping measures in respect of exports of the goods from China would not lead or be likely to lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that those measures are intended to prevent.

I am not satisfied that the Commissioner's selection of benchmarks used in the assessment in REP 569 of whether the Chinese exporters were dumping were the appropriate benchmarks. I am not satisfied that the Commissioner's conclusions about dumping by Chinese exporters are correct.

After considering REP 569 I am not satisfied that there is evidence in support of not continuing the dumping and countervailing measures on the goods.

In REP 569 the Commissioner adopted benchmarks without giving sufficient reason in REP 569 and without giving sufficient consideration to other benchmarks that might be more appropriate for selection. I am not satisfied that REP 569 evidenced a thorough analysis of available benchmarks for the goods. I consider on balance that dumping would be likely to continue if the measures are allowed to expire.

In REP 569 the Commissioner adopted a Latin American export steel billet price benchmark (Latin American benchmark) without a full consideration of other benchmarks that might be more appropriate for selection and may have resulted in a materially different finding in relation to whether dumping was continuing.

I note submissions made by Commonwealth Steel Company Pty Ltd (Molycop) that the Latin American benchmark does not represent the best available information for determining competitive market costs for steel billet, and the alternative methodology proposed by Molycop for constructing a competitive grinding bar benchmark on the basis of competitive market prices for grinding bar.

I note that steel billet is converted into grinding bar which is then further converted into grinding balls. Grinding bar is therefore closer in the production chain to the goods under consideration, and I am satisfied it is a more appropriate benchmark to use than steel billet where both benchmarks are available.

I am not satisfied that the Commissioner conducted a thorough analysis of available benchmarks for steel billet in REP 569, in light of the submission by Molycop. I am not satisfied that the Latin American benchmark is the most appropriate benchmark.

I am satisfied that Molycop's evidence demonstrated that the Latin American benchmark was not reflective of actual purchase prices faced by grinding ball manufacturers and that this warranted further investigation by the Commissioner and consideration of grinding bar as an appropriate benchmark, rather than steel billet.

The Commissioner did not sufficiently analyse the accuracy of the Molycop submission or the issues raised in the Molycop submissions.

The analysis of material injury in REP 569 was premised on the conclusion of the Commissioner that the exporters were not dumping. That conclusion was based on the use of benchmarks that I am not satisfied were appropriate.

I have considered the finding of the Commissioner in relation to the countervailing measures that grinding balls exported by uncooperative and all other exporters from China (other than the two cooperative exporters and other exempt exporters) are subsidised at a rate of 6.2 per cent. I am not satisfied that this finding is consistent with the Commissioner's finding that subsidisation and material injury is not likely to recur in respect of future exports should the countervailing duties be allowed to expire. I am satisfied that material injury is likely to recur in respect of future exports should the countervailing duties be allowed to expire.

I have considered the finding of the Commissioner that if measures were allowed to expire, it is not likely that exports at dumped and/or subsidised prices would recur and cause material injury to the Australian industry. I consider that the goods are likely to be dumped, and that the goods exported by many Chinese exporters are subsidised. I consider that such dumping and subsidisation is likely to continue and the cumulative effect of this is likely to result in the recurrence of material injury that the measures are intended to prevent if the measures were removed.

I am not satisfied that the Commissioner's analysis concerning subsidies received by Chinese exporters is correct and I do not agree with the Commissioner's findings in relation to countervailing duty in REP 569.

I am satisfied that the anti-dumping measures the subject of REP 569 should be continued because the expiration of measures would lead, or would likely lead, to a continuation of, or a recurrence of, the dumping and subsidisation and the material injury that the anti-dumping measures are intended to prevent.