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 (Review Panel) on or after 20 October 2025 for a review of a reviewable decision of the Minister.

Any interested party[2] may lodge an application to the Review Panel for review of a Ministerial decision.

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

The Review Panel maintains a public record for reviews of decisions of the Minister. If a review is initiated, a copy of the application will be placed on the Review Panel's website.

Please note that the existence of applications will be disclosed on the Review Panel's 'Pending Applications and Duty Assessments' webpage prior to initiation, including the following information:

- Relevant reviewable decision
- Country and goods to which the application relates
- Number of applications
- Status (e.g. application/s under consideration)

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

Conferences
The Review Panel may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application. The conference may be requested any time after the Review Panel receives the application for review and before beginning to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the Review Panel 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 Review Panel website for more information.

[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*.

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

International Trade Remedies Advisory (ITRA) Service
Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the ITRA Service.

For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267

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

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Baowu Group Masteel Rail Transit Materials Technology Co., Ltd ("Masteel")
Address: No. 1799 Tianmen Avenue, Ma'anshan City, Anhui Province, China.
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: [redacted]
Position: Export Sales Manager
Email address: [redacted]
Telephone number: [redacted]

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

Masteel is the producer and exporter of the goods subject to the countervailing duty notice.

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 Review Panel 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:

Railway wheels of forged and rolled high carbon steel, with an outside diameter from 27.5 inches to 37.5 inches (699 millimetres to 953 millimetres), whether or not including alloys.

Further Information

The railway wheels are manufactured in accordance with relevant user defined specifications and drawings, and are used on rail carriages/wagons in freight transport.

The wheels used in all user applications have the following typical characteristics:

- outside diameter from 27.5 to 37.5 inches (699 to 953 millimetres (mm)), and of similar overall dimensional tolerances and shape;
- are manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties, as defined by user/customer specifications;
- are manufactured using a forging and rolling process in accordance with defined standards; and
- are suitable to operate at axle loads of up to 36 metric tonnes, as defined by user/customer specifications.

Exclusions

Axles and other components are excluded from the description.

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

Tariff Classification: 8607.19.00 **Statistical Code:** 20

8. **Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number: ADN 2026/116
Date ADN was published: 28 August 2026

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: ☒

Please note: Failure to adequately and accurately respond to questions 9 – 12 below may result in the application or ground/s being rejected pursuant to s 269ZZG(2) or s 269ZZG(5) of the *Customs Act 1901*. Where there are multiple grounds of review, it is important to address each of the questions below for each ground.

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.

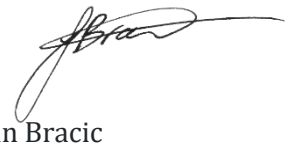
13. Please list all attachments provided in support of this application:

Attachment A: Anti-Dumping Notice 2026/116 **Attachment B: Grounds of appeal**

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Review Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Review 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 Review Panel 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: 21 / 09 / 2026

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 3749, Manuka, ACT 2603, Australia
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: Xiang LI

Position: General Manager

Organisation: Baowu Group Masteel Rail Transit Materials Technology Co., Ltd

Date: 21 / 09 / 2026

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PART C -Ground 1. The Program 1 benefit was not determined by reference to the adequacy of remuneration for like goods in China

Question 9. Ground on which the reviewable decision is not the correct or preferable decision

The finding in REP 690 Appendix D4.1.4 and D4.1.6 that steel billet was provided to Masteel for less than adequate remuneration, and the amount of benefit found under Program 1, were not determined "having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided" as s.269TACC(4) of the Act requires. The Commissioner adopted, by cross reference, the benchmark constructed for a different statutory purpose under s.269TAC(2)(c), did not separately answer the question s.269TACC(4) poses, and built the benchmark on a premium derived from Chinese price data the Commissioner had stated could not be sourced. On the face of the record the resulting benefit is the difference between two published price series and does not measure the adequacy of the remuneration Masteel actually paid.

Question 10. The correct or preferable decision

The Minister should revoke the reviewable decision insofar as it applies to goods exported by Masteel and substitute a decision that the countervailing duty notice does not apply to Masteel, on the basis that, once the benefit under Program 1 is determined in accordance with s.269TACC(4), the countervailable subsidy received by Masteel does not exceed the negligible level in s 269TDA(16)(b) of the Act. In the alternative, the Minister should revoke the reviewable decision and substitute a decision publishing a countervailing duty notice in which the variable factors for Masteel are re-determined on a benefit calculated in accordance with s.269TACC(4). To that end Masteel asks the Review Panel to require the Commissioner, under s.269ZZL(1) of the Act, to reinvestigate the findings in Appendix D4.1.4 and D4.1.6 of REP 690 as to the benchmark and the amount of benefit under Program 1.

Question 11. How the ground supports the proposed decision

a) The statutory question

A financial contribution by way of the provision of goods confers a benefit only if the goods are provided for less than adequate remuneration. Section 269TACC(3)(d) of the Act provides that "the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration". Section 269TACC(4) then fixes the standard against which adequacy is measured: "For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased."

Those words implement Article 14(d) of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), which provides that "[t]he adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision

or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale)". The Appellate Body has held that an authority may depart from in-country private prices where those prices are distorted by the government's predominant role in the market, but that *"[w]hen an investigating authority resorts, in such a situation, to a benchmark other than private prices in the country of provision, the benchmark chosen must, nevertheless, relate or refer to, or be connected with, the prevailing market conditions in that country, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale, as required by Article 14(d)*".[3]

Where a proxy is used, the authority "*is under an obligation to ensure that the resulting benchmark relates or refers to, or is connected with, prevailing market conditions in the country of provision*".[4] The assessment is made from the recipient's perspective as "*a benefit arises under <u>each</u> of the subparagraphs of Article 14 if the recipient has received a "financial contribution" on terms more favourable than those that are available to the recipient in the market*".[5] And *"[i]n all cases, in arriving at a proper benchmark, an investigating authority must explain the basis for its conclusions*".[6]

WTO jurisprudence informs the construction of s.269TACC(4). The Federal Court has accepted that Article 14(d), so construed, "*does not preclude the use by investigating authorities of what might be called a "non-country of provision" or "external" benchmark in an appropriate case*",[7] and Masteel does not contend otherwise. The same judgment describes the statutory requirement as one that "*merely provides that adequacy of remuneration is to be determined having regard to prevailing market conditions*" and treats the Commission's regard to that matter as "*a central element of its deliberative process*".[8] The question on this ground is whether the Commissioner in fact gave that regard to prevailing market conditions in China, or instead answered a different question.

b) REP 690

Appendix D4.1.4 records that Masteel had no billet purchases from private operators, that no other Chinese entity responded, and that "*the Commissioner was unable to source Chinese steel billet cost or price information via other sources*".[9] On that footing the Commissioner concluded that he "*cannot compare the government price to private operator prices, or prices paid in the same sector or the economy as a whole*" and "*therefore used the constructed steel billet benchmark price used in the calculation of Masteel's normal value as the benchmark for the LTAR assessment*".[10] That constructed price is Turkish domestic billet as reported by MEPS, plus a premium "*calculated by the difference between the MEPS Chinese steel billet price and the price paid by Masteel for the special steel billet it uses to make the goods*".[11] The benefit was then "*the difference between the prices paid by Masteel to SOEs and the constructed benchmark*".[12]

The benchmark on the normal value side was constructed for the purpose of s.269TAC(2)(c)(i), which asks for "*such amount as the Minister determines to be the cost of production or manufacture of the*

[3] Appellate Body Report, United States - Certain Softwood Lumber from Canada, WT/DS257/AB/R, para 103.
[4] Ibid., para 106.
[5] Appellate Body Report, United States - Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R, para 4.128.
[6] Ibid., para 4.153.
[7] Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885 (Nicholas J), [110].
[8] Ibid., [114].
[9] REP 690, Appendix D4.1.4, "Commissioner's assessment".
[10] REP 690, Appendix D4.1.4.
[11] REP 690, Appendix D4.1.4 (conclusion) and Appendix C7.3 (conclusion), in identical terms.
[12] REP 690, Appendix D4.1.6.

goods in the country of export". Appendix C8 explains that the Commissioner's aim on that side was to remove from Masteel's recorded billet cost "the effects of the not normal and ordinary circumstances" identified in the particular market situation analysis.[13] That is a cost construct designed to strip out distortion. Section 269TACC(4) asks something else entirely, which is, what remuneration would have been adequate for like goods, having regard to the conditions actually prevailing in the market in China, including price, quality, availability, marketability, transportation and the other conditions of purchase or sale. A number produced to answer the first question does not answer the second unless the Commissioner separately turns his mind to the second. Appendix D4.1.4 does not do so. It adopts the s.269TAC(2)(c) construct by cross reference and treats the country-selection factors in Appendix C7 (the status of each country's steel industry, GDP per head, labour costs, market status) as the whole of the prevailing market conditions inquiry.[14] Those factors go to which foreign country most resembles China. None of them is a condition of purchase or sale of billet in China.

The Full Court has explained, in the context of s.269TAC(2)(c)(i), that where a decision-maker "*uses pricing information from some other country or market*" the statutory task is not performed unless the decision-maker turns his or her mind to "*whether that foreign pricing information was relevant and appropriate*" to the statutory question and gives "*genuine consideration*" to that issue.[15] The same discipline applies under s.269TACC(4), whose text directs attention to the country of provision expressly. The Manual passage that REP 690 itself quotes describes a sequence of in-country comparisons (private operators, then "*comparable companies in the same sector of the economy*", then "*comparable companies in the economy as a whole*").[16] REP 690 records that none of those steps could be taken and moves directly to Turkey. It does not record any consideration of how Turkish billet prices were to be related to conditions in China beyond the country-selection factors, nor of any adjustment for the conditions of purchase or sale that s.269TACC(4) lists.

c) The premium contradicts the premise on which the external benchmark rests

The Commissioner's stated reason for leaving China was that Chinese billet price information could not be sourced. Within the same appendix the premium is built from "*the MEPS Chinese billet price*".[17] Appendix C7.3 describes the same series as "*reliable Chinese steel billet data*".[18] The reasons cannot support both positions. Either Chinese billet price information was available and reliable, in which case the first step in the Commissioner's own hierarchy was open and the reasons do not explain why it was not taken, or it was not, in which case the premium rests on data the Commissioner had rejected. The Commissioner's answer to the circularity submission, that *"[t]he distortions in the Chinese domestic market are accounted for in the use of the benchmark, to which the premium is then applied*",[19] does not address this point. It explains why the Turkish base is used. It does not explain why a Chinese

[13] REP 690, Appendix C8: "the most appropriate method to determine the cost of production for steel billet in China is to use Masteel's recorded cost for steel billet, adjusted to remove the effects of the not normal and ordinary circumstances."
[14] REP 690, Appendix D4.1.4, listing the factors considered in Appendix C7.
[15] Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2019] FCAFC 122 (the Court), [93(4)(a)].
[16] REP 690, Appendix D4.1.4, quoting the Dumping and Subsidy Manual (December 2021), p 76.
[17] REP 690, Appendix D4.1.4: "The Commissioner made this adjustment using the difference between the MEPS Chinese billet price and the verified price paid by Masteel for its special steel billet."
[18] REP 690, Appendix C7.3, "Commissioner's assessment".
[19] REP 690, Appendix C7.3.

series that was reliable enough to set the premium was not reliable enough to inform prevailing market conditions in China.

d) The benefit does not rely on what Masteel paid

The benefit found under Program 1 does not depend on the price Masteel actually paid for its billet, and that can be shown from the public record alone. Let 'T' be the Turkish MEPS billet price, 'C' the Chinese MEPS billet price, and 'M' Masteel's verified price for the special steel billet it uses to make the goods.

Symbol	Meaning
T	Turkish MEPS billet price
C	Chinese MEPS billet price
M	Masteel's verified price for its special billet

On the definitions in REP 690, the benefit reduces to a single difference between two published prices

Step	What REP 690 does	Formula
Premium	Special-grade uplift	M − C
Benchmark	Turkish price plus the premium	T + (M − C)
Benefit	Benchmark minus the price Masteel paid	[T + (M − C)] − M
Simplify		T + M − C − M
Result		T − C

Masteel's own price enters the calculation once as an addition and once as a subtraction, so it cancels. A worked example below makes the point clearly. Taking T = 500, C = 400 and M = 450:

Step	Formula	Numbers	Result
Premium	M − C	450 − 400	50
Benchmark	T + premium	500 + 50	550
Benefit	benchmark − M	550 − 450	100
Check	T − C	500 − 400	100

The benefit returns the same figure whatever Masteel paid. If M is increased to 480, with T and C unchanged, the benefit does not move.

Step	Formula	Numbers	Result
Premium	M − C	1000 − 400	600
Benchmark	T + premium	500 + 600	1100
Benefit	benchmark − M	1100 − 1000	100

The benefit found is therefore the difference between the Turkish and Chinese published standard-billet series, whatever Masteel actually paid for the special billet it bought. That result cannot be a determination of the adequacy of the remuneration Masteel paid. A calculation that returns the same figure whether Masteel paid more or less for its billet does not have regard to the "*conditions of purchase or sale*" of that billet, and it does not measure whether Masteel "*received a "financial contribution" on terms more favourable than those that are available to the recipient in the market*".[20] It measures the gap between two national price indices. The observation holds exactly where the premium and the benefit are computed on the same monthly series. The monthly mechanics are in

[20] Appellate Body Report, United States - Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R, para 4.128.

confidential attachments that Masteel has not seen, and the ADRP is asked to test the point on reinvestigation rather than to accept Masteel's algebra.

e) The Commission's own manual confirms that the surrogate uplift and the countervailed subsidy are the same amount

That the same figure sits in the constructed normal value and in the Program 1 benefit is not an inference. It is the premise of the Commission's own manual. Part 20.2 of the Dumping and Subsidy Manual distinguishes a domestic subsidy where the normal value is drawn from in-country data, in which case the subsidy "*is not relevant to double counting and a domestic subsidy will be countervailed to the full amount of that subsidy - it will not affect quantification of dumping duty*", from the case where the normal value is drawn from a surrogate country.[21] In the surrogate case the manual states that "*the normal value has been determined using information from another 'surrogate' country" and "the Commission will avoid any double counting effect*".[22]

The manual treats the surrogate case differently precisely because, when the normal value is built from a surrogate rather than from in-country prices, the domestic subsidy is carried into the constructed normal value and so into the dumping margin. The Commission thus accepts, as a matter of stated practice, that the surrogate billet benchmark it used to construct Masteel's normal value contains the very Program 1 subsidy it separately countervailed. On the Commission's own analysis, the uplift and the benefit are one amount. That confirms, from the record and without recourse to Masteel's arithmetic, that the benefit under Appendix D4.1.6 was measured as the surrogate differential rather than as the adequacy of the remuneration Masteel paid.

f) Why the decision is not correct or preferable

The reviewable decision rests on a benefit that was not determined in the manner s.269TACC(4) prescribes. In place of the statutory question the Commissioner adopted a construct built for another provision, used Chinese price data he had said was unavailable, and produced a benefit indifferent to the transaction it means to assess. A correct or preferable decision is one in which the Program 1 benefit, if any, is determined by reference to prevailing market conditions for like goods in China, with the basis for the benchmark explained. The Review Panel is invited to require reinvestigation of Appendix D4.1.4 and D4.1.6 under s 269ZZL(1), which permits the Panel to "*require the Commissioner to: (a) reinvestigate a specific finding or findings that formed the basis of the reviewable decision*".

Question 12. Why the proposed decision is materially different from the reviewable decision

Program 1 is the principal component of Masteel's 10.0 per cent subsidy margin. The remaining programs found for Masteel are grants and tax items carried over from Investigation 466.[23] REP 690 records Masteel's submission that removal of the Program 1 finding "*would substantially reduce its subsidy margin to de minimis*", and does not contradict it.[24] Section 269TDA(2) requires termination as to an exporter where a countervailable subsidy "*never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16)*", and for China that level

[21] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90.
[22] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90.
[23] REP 690, chapter 7.5.1, listing programs 466-83, 466-88, 466-94, 466-102, 466-103, 466-107 and 466-110.
[24] REP 690, chapter 2.7.5 ("Public body determination").

is a subsidy that "*when expressed as a percentage of the export price of the goods, is not more than 2%*". A decision under which the notice does not apply to Masteel at all is materially different from a notice imposing interim countervailing duty of 10.0 per cent of the export price. In the alternative, a notice fixing a re-determined and lower rate of duty for Masteel is materially different in the sense the Panel has previously applied, where even a small change in rate "*can become material in terms of dumping duty imposed when it relates to large volumes of imports*".[25]

[25] Anti-Dumping Review Panel, Report No. 39 (Rod in Coils exported from Indonesia, Taiwan and Turkey), [170].

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Part C: Ground 2. The finding that Masteel's billet suppliers are public bodies applies an ownership and control test, not the governmental authority test

Question 9. Ground on which the reviewable decision is not the correct or preferable decision

The finding in REP 690 Appendix D4.1.3 that MIS and Masteel's other steel billet suppliers are public bodies within s.269T(1) of the Act rests on evidence of government ownership and control (ultimate state shareholding, a Party committee, general corporate and state-assets legislation, and articles of association) and on an assumption drawn from the absence of a Government of China questionnaire response. It identifies no legal instrument vesting governmental authority in any supplier and no governmental function performed by any supplier in the commercial sale of billet. Ownership and control, without more, do not establish that an entity is a public body. Absent that finding there is no financial contribution under Program 1.

Question 10. The correct or preferable decision

The Minister should revoke the reviewable decision insofar as it applies to goods exported by Masteel and substitute a decision that the countervailing duty notice does not apply to Masteel, on the basis that no countervailable subsidy under Program 1 was received in respect of Masteel's goods and the remaining countervailable subsidies do not exceed the negligible level in s 269TDA(16)(b) of the Act. In the alternative, Masteel asks the Review Panel to require the Commissioner under s 269ZZL(1) to reinvestigate the finding in Appendix D4.1.3 of REP 690.

Question 11. How the ground supports the proposed decision

a) The statutory test

A subsidy exists under s.269T(1) of the Act only where there is a financial contribution:

> "(i) by a government of the country of export or country of origin of the goods; or
>
> (ii) by a public body of that country or a public body of which that government is a member; or
>
> (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function".

The Act does not define "public body". REP 690 finds that Masteel's suppliers fall within limb (ii). It makes no finding of entrustment or direction under limb (iii).[26]

The Federal Court has adopted, for the purposes of s.269T, the Appellate Body's construction of the same term in Article 1.1(a)(1) of the SCM Agreement. In *Dalian Steelforce* Nicholas J set out paragraphs 317 to 319 of the Appellate Body report in *US - Anti-Dumping and Countervailing Duties (China)*, restated his own analysis in *Panasia* and said: "The respondents did not dispute the correctness of

[26] REP 690, Appendix D4.1.3, "Commissioner's assessment", concluding that the suppliers "possess, exercise and are vested with governmental authority and are, therefore, public bodies".

these paragraphs and I adopt them for the purposes of my analysis in this case."[27] The test so adopted is that:

> "[a] public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority."[28]

Masteel accepts that test and accepts, as the Commissioner says, that the indicia are not a checklist. The ground is that the test was not applied.

The Appellate Body was explicit about what ownership and control do and do not show:

> "apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority."[29]

It reversed the panel's "*any entity controlled by a government*" reading because "*control of an entity by a government, in itself, is not sufficient to establish that an entity is a public body*".[30] An authority must "*avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant*".[31] The panel in *US - Countervailing Measures (China)* applied that standard to findings that Chinese state-owned enterprises were public bodies and held that "*evidence of government ownership, in itself, is not evidence of meaningful control of an entity by government and cannot, without more, serve as a basis for establishing that the entity is vested with authority to perform a governmental function*",[32] finding a breach where the authority "*found that SOEs were public bodies based solely on the grounds that these enterprises were (majority) owned, or otherwise controlled, by the Government of China*".[33] The Appellate Body has since summarised the position in one sentence:

> "the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body".[34]

b) What the record shows

Appendix D4.1.3 begins with ownership, noting that MIS "*is ultimately owned by the GOC, both directly, and through GOC ownership of its parent company*", with the ownership chain set out in Figure 21, and the three ultimate holders (SASAC, the National Council for Social Security Fund and Anhui Province SASAC) are said to be "*themselves public bodies*".[35]

[27] Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885 (Nicholas J), [53]-[55]. Panasia Aluminium (China) Ltd v Attorney-General (Cth) [2013] FCA 870 is cited here only as quoted at [54] of Dalian Steelforce.
[28] Appellate Body Report, United States - Certain Products from China, WT/DS379/AB/R, para 317, as quoted in Dalian Steelforce [2015] FCA 885 at [53].
[29] Ibid., para 318, as quoted in Dalian Steelforce [2015] FCA 885 at [53].
[30] Ibid., para 320.
[31] Ibid., para 319, as quoted in Dalian Steelforce [2015] FCA 885 at [53].
[32] Panel Report, United States - Certain Products from China, WT/DS437/R, para 7.70.
[33] Ibid., para 7.75.
[34] Appellate Body Report, United States - Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R, para 4.10.
[35] REP 690, Appendix D4.1.3.

From ownership it moves to control, noting that those holders "*are mandated to ensure their assets, which includes MIS, operate in a way consistent with government policies and interests*", enforced by ownership "*and also through the Communist Party of China committee appointed to MIS*", so that GOC ownership "*gives it meaningful control over the entities, including influence over appointments, business objectives, investment and business decisions*".[36] In answer to Masteel's submission it adds three legal instruments:

- Article 170 of the Company Law (the Party organisation "shall play a leading role"),
- Article 36 of the Law of State-Owned Assets in Enterprises (state-owned enterprises "shall make investments in compliance with the industrial policy of the state"). and
- the articles of association ("accept the supervision of the government and the general public").[37]

Each of those matters is evidence of ownership or of control. None is an instrument that vests governmental authority in MIS, and none records MIS performing a governmental function. Nor does the Commissioner find otherwise. What follows is the finding that "*the GOC exercises control over MIS and its conduct, including decisions related to investment, capacity and production where investment, capacity and production decisions impacts the volume, price and terms on which MIS supplies billet to Masteel*".[38] That sentence is the only bridge between the evidence and the conclusion, and it is a statement about the effects of control.

The conclusion, that the suppliers "*possess, exercise and are vested with governmental authority*", is stated in the next paragraph without further reasoning.[39] The Appellate Body reasoning that Dalian Steelforce adopted contemplates that evidence of meaningful control "*may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions*".[40] REP 690 does not identify the governmental function said to be performed. Selling billet to a related manufacturer at a negotiated price is a commercial function. On the Commissioner's reasoning every state-owned enterprise in China that is subject to the Company Law, the state-assets law and Party organisation is a public body. That is the conclusion the panel in DS437 held to be inconsistent with Article 1.1(a)(1).

The finding was then extended. "*Other than confirming during verification that Masteel's other suppliers were SOEs, the Commissioner was not provided further information regarding their ownership structure, or further involvement of the GOC in their operations.*" The Government of China did not answer the questionnaire, and *"[i]n the absence of contrary information, the Commissioner considers it reasonable that these other suppliers have a similar level of GOC involvement to MIS*".[41] The Commissioner relies on s.269TAACA(1)(c) and (d), which permit him, where an entity covered by subsection (2) has not given relevant information, to "*act on the basis of all the facts available*" and "*make such assumptions as the Commissioner ... considers reasonable*". The power is engaged by the government's non-cooperation. It

[36] REP 690, Appendix D4.1.3.
[37] REP 690, Appendix D4.1.3, "Commissioner's assessment" in response to Masteel's submission of 19 June 2026.
[38] REP 690, Appendix D4.1.3.
[39] REP 690, Appendix D4.1.3.
[40] Appellate Body Report, United States - Certain Products from China, WT/DS379/AB/R, para 318, as quoted in Dalian Steelforce [2015] FCA 885 at [53].
[41] REP 690, Appendix D4.1.3.

does not convert the absence of evidence about a supplier into evidence that the supplier is vested with governmental authority, and it does not displace the verified data supplied by the cooperating exporter. As to those suppliers the record contains nothing but state ownership.

The Commissioner's answer to Masteel's submission is that Masteel's reading of the test is "*incorrect and overly narrow*" because *"[d]etermining whether an entity is a "public body" requires evaluation of all available evidence of the entity's features and its relationship with government*".[42] Masteel agrees that all the evidence must be evaluated. Here, all the evidence evaluated goes to one characteristic, and the Appellate Body's caution against "*focusing exclusively or unduly on any single characteristic*" is directed at exactly this reasoning. REP 690 Appendix D2 itself lists the three indicia, an instrument that "*expressly vests government authority in the entity*", evidence that the entity "*is, in fact, exercising governmental functions*", and evidence of meaningful control coupled with the exercise of "*governmental authority in the performance of government functions*".[43] No vesting instrument and no governmental function appear anywhere in the record. What remains is meaningful control, and that indicium asks for more than control. Having found control, the Commissioner stopped.

Dalian Steelforce does not assist the Commissioner. The Court there declined to find legal error because the Commission's conclusion "*was based upon its consideration of the whole of the information available to it*" and because the Commission "*understood the indicia ... were not determinative*".[44] That is a judicial review holding on the material in that case. The Review Panel's task in this case is different. It must decide whether the reviewable decision is the correct or preferable decision on this record, and on this record the whole of the information available establishes ownership and control and nothing more.

c) Consequence

If MIS and the other suppliers are not public bodies, there is no financial contribution within s.269T(1) under Program 1 and no benefit falls to be measured under s.269TACC. The remaining programs found for Masteel are grants and tax items.[45] Section 269TDA(2)(b) then requires termination as to Masteel where the Commissioner is satisfied that a countervailable subsidy "*never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16)*", which for China is "*not more than 2%*" of the export price. The correct or preferable decision is therefore a decision under which the countervailing duty notice does not apply to Masteel.

Question 12. Why the proposed decision is materially different from the reviewable decision

The reviewable decision applies interim countervailing duty of 10.0 per cent of the export price to Masteel's exports. The proposed decision applies no countervailing duty to Masteel. REP 690 records, without contradiction, Masteel's position that removal of the Program 1 finding would reduce its subsidy margin to de minimis.[46] A new decision that removes the duty altogether is materially

[42] REP 690, Appendix D4.1.3, "Commissioner's assessment".
[43] REP 690, Appendix D2, "Public bodies". The Federal Court set out the same three indicia in Dalian Steelforce [2015] FCA 885 at [56].
[44] Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885, [73].
[45] REP 690, chapter 7.5.1.
[46] REP 690, chapter 2.7.5.

different within s 269ZZK(1A) of the Act, which permits a recommendation to revoke and substitute "only if the new decision is materially different from the reviewable decision".

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Part C: Ground 3. Chapter 12.4 of REP 690 does not address the submission Masteel made and gives no reasons directed to an exporter that pays a single duty

Question 9. Ground on which the reviewable decision is not the correct or preferable decision

Masteel submitted in response to SEF 690 that, the dumping investigation having been terminated as to Masteel, the Turkish benchmark used to construct the normal value remained embedded in the calculation of the Program 1 benefit and produced an inflated countervailing duty. Chapter 12.4 of REP 690 restates that submission as a request to consider whether double counting would occur, answers it by describing an adjustment to the dumping margin that has no operation for an exporter who pays no dumping duty, attributes that adjustment to a document that predates the submission, and gives no reason directed to Masteel's position. A decision reached without addressing the submission as put is not the correct or preferable decision, and the absence of reasons on the point leaves the benefit measurement in Ground 1 unexplained.

Question 10. The correct or preferable decision

Masteel asks the Review Panel to require the Commissioner under s 269ZZL(1) of the Act to reinvestigate the findings in Appendix D4.1.4 and D4.1.6 of REP 690 on the benchmark and amount of benefit under Program 1, addressing the submission Masteel made on 19 June 2026 as it applies to an exporter subject only to a countervailing duty notice, and to set out the reasons for whatever finding results, as s 269ZZL(3) requires. The Minister should then revoke the reviewable decision and substitute the decision that follows from the reinvestigated finding, being the decision identified under Ground 1.

Question 11. How the ground supports the proposed decision

a) The submission as put

Section 4 of Masteel's submission of 19 June 2026 addressed the use of the same Turkish MEPS price plus premium in the constructed normal value and in the Program 1 benefit. Its closing passage stated the point that mattered for Masteel: "Even though the Commissioner has recommended termination of the dumping investigation for Masteel, the flawed methodology remains embedded in the subsidy calculation and continues to generate an inflated countervailing duty."[47] The submission was directed to the countervailing side. With the dumping investigation terminated, Masteel pays one duty, and the amount of that duty is the amount of the Program 1 benefit.

Masteel's submission was directed to the countervailing side. With the dumping investigation terminated, Masteel pays one duty, and the amount of that duty is the amount of the Program 1 benefit. For an exporter in that position, every error in measuring the subsidy passes directly into the duty, with no offsetting adjustment anywhere else in the system. That is the double count Masteel

[47] Masteel, Response to SEF 690, 19 June 2026 (EPR 690, item 32), section 4.

raised. It does not depend on two duties being imposed, and so it is distinct from the "double remedies" the Appellate Body described in *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*[48].

The point rests instead on Article 19.4 of the SCM Agreement which provides that "[n]o countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product", and a countervailing duty is "a special duty levied for the purpose of offsetting any subsidy". For an exporter that pays only the countervailing duty, every error in the measurement of the subsidy passes directly into the duty, with no offsetting adjustment anywhere else in the system. That is the position Masteel put, and it is the position chapter 12.4 does not engage with.

b) What chapter 12.4 says

Chapter 12.4 begins by describing the Commissioner's general practice: where a raw material cost is adjusted in constructing normal value and the same input is the subject of a less than adequate remuneration finding, "the Commissioner will generally "back out" the relevant subsidy margin from the effective dumping margin in order to avoid any double counting. In other words, while the calculated dumping margin will be unchanged, the effective, or applied, dumping margin will be the adjusted rate with the relevant subsidy margin deducted."[49] It quotes Part 20.3 of the Manual to the same effect and records that "[t]he usual practice of the Commissioner to give effect to avoiding a double count is to deduct the LTAR subsidy margin from the dumping margin".[50] It then restates Masteel's submission as it "called on the Commissioner to consider whether the methodology adopted in calculating the dumping and subsidy margins would result in double-counting of the financial contribution attributed to the provision of steel billet at LTAR".[51] The Commissioner's assessment, in full, is: "The Commissioner made an adjustment in SEF 690 to account for the double-count, as suggested by Masteel. SEF 690 mentioned this adjustment at footnotes 9, 52 and 88 of that report. The Commissioner has included this chapter 12.4 to clarify the adjustment made."[52]

The adjustment described operates on the dumping margin. For Masteel there is no dumping margin to adjust: Table 35 records Masteel's rate of interim dumping duty as "-", and footnote 99 explains that the double count was avoided because "the commission has "backed-out" the effect of Program 1 from the dumping margin calculation".[53] For the uncooperative exporters, who pay both duties, the mechanism has delivered a combined effective rate of 28.8 per cent rather than the sum of 28.8 and 3.6 per cent.[54] For Masteel it has none. There is also a problem of chronology. The adjustment is said to have been made "in SEF 690 ... as suggested by Masteel". SEF 690 was published on 29 May 2026. Masteel's submission is dated 19 June 2026.[55] The adjustment cannot have been made at Masteel's suggestion, and the chapter gives no other account of how the point Masteel raised on 19 June was considered. What operative content there is has been delegated to three footnotes of the SEF. Nothing

[48] Appellate Body Report, United States - Certain Products from China, WT/DS379/AB/R, para 541.
[49] REP 690, chapter 12.4.
[50] REP 690, chapter 12.4, quoting the Dumping and Subsidy Manual (December 2021), Part 20.3.
[51] REP 690, chapter 12.4, "Masteel submission".
[52] REP 690, chapter 12.4, "Commissioner's assessment".
[53] REP 690, Table 35 and footnote 99.
[54] REP 690, Table 35 (uncooperative exporters: effective rate 28.8%, ICD 28.8%, IDD 3.6%).
[55] REP 690, chapter 2.7.5, listing Masteel's submission of 19 June 2026 and its subjects. SEF 690 was published on 29 May 2026 (EPR 690, item 25).

in chapter 12.4 addresses an exporter whose only duty is the countervailing duty, and nothing explains why a deduction from a dumping margin that does not exist answers a submission about the size of the subsidy.

The restatement of the submission in chapter 12.4 confirms the mismatch. Masteel did not call on the Commissioner to "consider whether" double counting would result. Its submission was that, for Masteel, the consequence of the shared benchmark survived termination on the countervailing side and inflated the countervailing duty. The Commissioner answered a question that was not asked and left unanswered the one that was.

c) The double-count machinery has no operation for an exporter that pays a single duty

The reason chapter 12.4 answers the wrong question is structural, and it can be shown from the manual the Commissioner applied. Part 20.2 sets out how the double count is avoided in a joint dumping and countervailing case, and Part 20.3 works three scenarios. In each, the countervailing duty is imposed first and in full, and the correction, where one is made, is taken from the dumping duty. An export subsidy is deducted from the dumping duty because it is "deemed to have contributed to the dumping margin".[56] A domestic subsidy, where the normal value is drawn from in-country data, "is not relevant to double counting" and is not deducted at all.[57] The separate case, and Masteel's case, is a domestic subsidy where "the normal value has been determined using information from another 'surrogate' country", for which the manual states that "the Commission will avoid any double counting effect".[58]

The manual contains no worked scenario for that case. The table below sets the manual's three scenarios beside Masteel's actual position (Scenario D).

[56] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90 (first and second bullets) and Part 20.3, p 91 (Scenarios A and C).
[57] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90 (third bullet) and Part 20.3, p 91 (Scenario B).
[58] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90 (final paragraph).

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Application	Dumping margin	Export subsidy	Domestic subsidy	Proposed CVD	Proposed dumping duty	Normal value	Treatment of the double count
Scenario A	20%	10%	–	10%	10%	in-country	export subsidy (10) deducted from the dumping duty (20 – 10 = 10)
Scenario B	20%	–	10%	10%	20%	in-country	no deduction; a domestic subsidy is "not relevant to double counting" (para 2)
Scenario C	30%	15%	10%	25%	15%	in-country	export subsidy (15) deducted from the dumping duty (30 – 15); domestic subsidy (10) countervailed in full
Scenario D (Masteel actual)	(28.2%)	–	10%	10%	nil	surrogate	para 3; the deduction lands on the dumping side, which is nil

The pattern is uniform. The countervailing duty is imposed first and in full in every row, and it is never reduced. The only correction valve is the dumping duty. For Masteel that valve is empty. On the actual facts the dumping investigation was terminated, so there is no dumping duty from which to deduct anything (Scenario D). Had the dumping margin been small and positive, the deduction of the domestic subsidy would have driven the dumping duty to zero and stopped there, with the excess simply lost and the countervailing duty untouched (Scenario E). Only where the dumping margin exceeds the subsidy does a dumping duty survive the deduction (Scenario F), and Masteel is far from that case. In every version the countervailing duty carries the full Program 1 amount, unadjusted.

That framework is relevant to this ground in a way chapter 12.4 never confronts. The manual's promise that "the Commission will avoid any double counting effect" in the surrogate case is honoured, for an exporter in Masteel's position, only if the countervailing duty is itself correctly measured, because the countervailing side is the one place the double-count machinery never touches. Chapter 12.4 describes only the deduction from the dumping margin. That is a mechanism which does nothing for Masteel, and the chapter nowhere grapples with the single-duty position the manual's own framework exposes.

For an exporter in Masteel's position, the safeguard the manual promises can operate in only one place, which is the countervailing duty. The manual's correction is made in the dumping duty, and no dumping duty applies to Masteel. The double count therefore remains, uncorrected, in the one duty Masteel pays, and chapter 12.4 offers no reasoning on that at all.

d) Relevance to whether the decision is correct or preferable

The Review Panel has said of a Commission report that "whatever the ADC's view was on the merits of ATM's submissions, it should have at least acknowledged and addressed ATM's arguments and comments ... to ensure that it was clear that ATM's submissions were taken into consideration in

making the relevant finding".[59] Where a report "does not provide any reasons" for its treatment of a point and "did not address this aspect of the Applicants' submissions", the Panel has required reinvestigation and directed that "if a particular approach were to be adopted (or rejected) by the ADC, the reasons therefor should be clearly set out".[60] Masteel accepts that a failure to address a submission does not of itself displace a decision whose substance is right. The point of this ground is that here the substance is not right. The submission chapter 12.4 failed to address is the submission that the benchmark and the benefit are the same number and that the benefit is therefore overstated. Ground 1 shows why that is so on the face of the record. Chapter 12.4 is the place in REP 690 where the Commissioner was asked to explain why the Program 1 benefit, measured as it was, is the amount of the subsidy Masteel received. He did not do so. A reinvestigation under s 269ZZL, in which the Commissioner "must ... set out the reasons for the Commissioner's decision", is the means by which that explanation is obtained and tested.

Question 12. Why the proposed decision is materially different from the reviewable decision

This ground is advanced together with Ground 1, and the material difference is the same. If, on reinvestigation, the Program 1 benefit is re-determined in accordance with s 269TACC(4), the resulting decision either removes Masteel from the countervailing duty notice (where the subsidy does not exceed the 2 per cent negligible level under s 269TDA(16)(b)) or fixes a lower rate of interim countervailing duty. Either outcome is materially different from a notice imposing duty at 10.0 per cent of the export price. Masteel acknowledges that if the reinvestigation confirms the benefit as found, the ground will not produce a materially different decision.[61]

[59] ADRP Report No. 126 (Hollow Structural Sections exported from Thailand), [188].
[60] ADRP Report No. 71 (Certain Wire Rope exported from South Africa), [104] and [107].
[61] ADRP Report No. 143 (Precision Pipe and Steel Tube exported from China), [4]-[5] (affirmation recommended where the Commissioner's revised approach "does not result in a change to the variable factors and subsidy margins"), and Report No. 134 (Ammonium Nitrate exported from the Russian Federation), [317].

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Part C: Ground 4. The findings that subsidised exports by Masteel caused material injury are internally inconsistent and misstate the record

Question 9. Ground on which the reviewable decision is not the correct or preferable decision

The Minister's satisfaction under s.269TJ(1)(b) of the Act that material injury to the Australian industry was caused "*because of*" the subsidy received in respect of Masteel's goods rests on findings in chapters 8.7, 9.3, 9.8.8 and 9.9.1 of REP 690 that are inconsistent with one another and with the termination of the dumping investigation as to Masteel. The same price gap at the single model Masteel sold is described as "*marginal*" in chapter 8.7 and as "*approximately equal*" to 10 per cent in chapter 9.9.1, on prices extrapolated to quarters in which neither party sold that model. Chapter 9.8.8 proceeds on the footing that "*all exports from China were dumped and subsidised*", which is untrue of Masteel. The remedied price analysis assumes, without evidence, that the whole of the subsidy found passed into Masteel's export price. Those findings do not constitute the objective examination on positive evidence that the statutory question requires.

Question 10. The correct or preferable decision

Masteel asks the Review Panel to require the Commissioner under s.269ZZL(1) of the Act to reinvestigate the findings in chapters 8.7, 9.3 and 9.9.1 of REP 690 as they concern the price effects of, and injury caused by, subsidised goods exported by Masteel, on the record and without extrapolating prices to periods in which no sales of the relevant model occurred. The Minister should then revoke the reviewable decision and substitute a decision that, absent satisfaction under s 269TJ(1)(b) in respect of goods exported by Masteel, the countervailing duty notice does not apply to those goods, or, if satisfaction is maintained on reinvestigated findings, a notice reflecting those findings.

Question 11. How the ground supports the proposed decision

a) The statutory question

The Minister may publish a countervailing duty notice under s.269TJ(1) only where satisfied:

> (a) [that] a countervailable subsidy has been received in respect of the goods; and
>
> (b) because of that: (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened.

In determining that question the Minister "*may … have regard to*" the matters in s.269TAE(1), including for a s.269TJ determination "*particulars of any countervailable subsidy received in respect of goods of that kind*", the export price, the difference between Australian and export prices, and the effect of the exports on Australian prices. The Minister "*must consider whether any injury to an industry … is being caused or threatened by a factor other than the exportation of those goods*", including "*the volume and prices of importations of like goods that are not subsidised*", and "*any such injury or hindrance must not be attributed to the exportation of those goods*".

Those provisions give effect to Articles 15.1 and 15.5 of the SCM Agreement. Article 15.1 requires that a determination of injury "*shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products*". Article 15.5 requires that "[i]*t must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury*" and that "[t]*he demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities*".

Masteel accepts that s.269TAE(1) is framed by reference to exports "*from the country of export*" and that the Commissioner's aggregate analysis of Chinese exports is the analysis the Act contemplates. This ground is confined to the findings the Commissioner chose to make about Masteel specifically, and to the reliability of the aggregate findings insofar as they assume facts about Masteel that the record contradicts. The dumping findings are not in issue, as the dumping investigation was terminated for Masteel and no dumping duty applies to it.[62]

b) The Masteel-specific findings contradict one another

Chapter 8.7 finds that "*Masteel's prices were higher than Comsteel's weighted average selling price*" and that, at the level of the one model Masteel sold, "*Masteel prices marginally undercut Comsteel's price*".[63] Chapter 9.4.2 repeats that "*when compared at the model level, Masteel's prices marginally undercut Comsteel's prices*".[64] Chapter 9.9.1 then finds that "[t]*hroughout the investigation period, Masteel's imports were subsidised at a rate of 10%. This level of subsidisation is approximately equal to the level of undercutting by Masteel's exports at MCC 915.*"[65] A gap that is "marginal" in chapter 8 is "*approximately equal*" to 10 per cent in chapter 9.

Each description carries a separate finding in the report. The first supports the finding that Masteel undercut Comsteel. The second supports the finding that the undercutting disappears once the subsidy is removed at the remedied price. Both describe the same comparison at the same model, so both cannot be correct. The underlying figures are confidential, and Masteel does not ask the Panel to resolve the conflict on the public record. It asks only that the finding be reinvestigated, so that one description supported by the data replaces the two that now conflict.

The comparison rests on prices that do not exist for part of the period. Footnote 55 records that "*Neither Masteel nor Comsteel sold MCC sub-category 915 in every quarter of the investigation period. For the purposes of comparison, the commission has extrapolated prices from those quarters where there were sales to the entire investigation period.*"[66] A finding of undercutting "*throughout the investigation period*" at a model that was not sold throughout the investigation period is not a finding on positive evidence. It is a finding on an assumption about quarters in which no transaction occurred.

c) The aggregate findings assume a fact that is untrue of Masteel

[62] TER 690, section 5.2; REP 690, Table 35, footnote 100.
[63] REP 690, chapter 8.7 and Figure 7.
[64] REP 690, chapter 9.4.2.
[65] REP 690, chapter 9.9.1 and Figure 11.
[66] REP 690, chapter 8.7, footnote 55; see also footnote 54 to the same effect for Masteel's prices generally.

Chapter 9.8.8, in discharging the non-attribution obligation in respect of imports that are not dumped or subsidised, proceeds on the stated basis that "*the Commissioner is satisfied that all exports from China were dumped and subsidised, as discussed in chapters 6 and 7*".[67] Masteel's exports were not dumped. The Commissioner had so found on 14 August 2026.[68] Chapter 9.3 states the position accurately in one place ("*all exports from China during the investigation period were either dumped or subsidised or both*") and inaccurately in the finding that matters.[69] Chapter 13.1 records the ultimate finding that "*exporters from China exported the goods to Australia at dumped and subsidised prices*" and that "*the dumped and subsidised goods caused material injury*".[70] The composite formulation carries the dumping findings against the uncooperative exporters into a satisfaction that is then applied, through the countervailing duty notice, to an exporter against whom no dumping was found. Section 269TAE(2A)(a) directs the Minister to consider "*the volume and prices of imported like goods that are not dumped*" as a possible other cause of injury. Masteel's goods are goods that are not dumped. Chapter 9.8.8 does not consider them as such.

d) The remedied price analysis assumes what it needs to prove

Chapter 9.3 reasons that "*[i]f the prices of imported goods are adjusted to offset the applicable dumping and subsidy margins, i.e. to a "remedied price", they closely match Australian industry prices*", and applies that reasoning to Masteel "*at a subsidised rate of 10.0%*", concluding that the subsidy "*still resulted in Masteel providing goods to customers in Australia at prices that were lower than if they were not subsidised*".[71] The remedied price adds the whole of the subsidy margin to the export price. That assumes that every dollar of benefit found under Program 1 reduced Masteel's export price by a dollar. REP 690 contains no evidence of pass-through and no reasoning on it. On the Commissioner's own findings Masteel's export price exceeded a normal value constructed on benchmark billet costs by 28.2 per cent.[72] A price that sits 28.2 per cent above a cost built on the very benchmark that defines the subsidy is not, without explanation, a price depressed by that subsidy. The satisfaction required by s.269TJ(1)(b) is that injury was caused "*because of*" the subsidy. An assumption of full pass-through is not a demonstration of that causal link on "*positive evidence*".

e) Why the decision is not correct or preferable

Masteel accepts that s.269TDA(14) operates at the level of the country and that the Commissioner is not required to make exporter-specific injury findings. The Commissioner did, however, make Masteel-specific findings and relied on them, and the reviewable decision applies a countervailing duty notice to Masteel on the strength of a satisfaction that draws on those findings. Where the findings are inconsistent with each other, rest on extrapolated prices, and assume a dumping finding that was never made, the satisfaction under s.269TJ(1)(b) in respect of Masteel's goods is not shown to have been reached on an objective examination of positive evidence. The correct or preferable course is reinvestigation of those findings under s.269ZZL(1), and a decision that follows the reinvestigated findings.

[67] REP 690, chapter 9.8.8.
[68] TER 690, section 5.2.
[69] REP 690, chapter 9.3.
[70] REP 690, chapter 13.1.
[71] REP 690, chapter 9.3.
[72] TER 690, section 4.4.4 and section 5.2.

Question 12. Why the proposed decision is materially different from the reviewable decision

If, on reinvestigation, the Minister is not satisfied under s.269TJ(1)(b) that material injury was caused because of the subsidy received in respect of goods exported by Masteel, the notice cannot apply to those goods and no countervailing duty is payable on them. That is materially different from a notice imposing interim countervailing duty at 10.0 per cent of the export price. Masteel acknowledges that if satisfaction is maintained on reinvestigated findings, the ground may not of itself produce a materially different decision, and it is advanced on that footing and in support of Grounds 1 to 3.

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Part C: Ground 5. The Commission gave effect to its double-count avoidance obligation only through a mechanism that cannot operate for a single-duty exporter, and so left the double counting effect in the countervailing duty

Question 9. Ground on which the reviewable decision is not the correct or preferable decision

The Commission's stated practice requires it, where a countervailable domestic subsidy is combined with a normal value constructed from a surrogate country, to "avoid any double counting effect". That obligation is engaged by the configuration present in this case, and by its terms it is not confined to cases in which both a dumping duty and a countervailing duty are imposed. The Commission gave effect to it in the only way its practice describes, by deducting the subsidy from the dumping margin. For Masteel, whose dumping investigation was terminated, that deduction operates on nothing. The effect the obligation is directed at, the use of the same surrogate benchmark differential both to construct the normal value and to measure the Program 1 benefit, therefore remains in the countervailing duty, uncorrected. Having addressed the double count only by a dumping-side mechanism incapable of operating for this exporter, the Commission did not give proper effect to it, and imposed a countervailing duty that, to the extent it reflects that differential rather than the subsidy conferred on Masteel, is not confined to the amount of the subsidy found to exist.

Question 10. The correct or preferable decision

The Minister should revoke the reviewable decision insofar as it applies to goods exported by Masteel and substitute either a decision that the countervailing duty notice does not apply to Masteel, or a decision fixing a countervailing duty reduced to the amount of the subsidy conferred on Masteel once the double counting effect is removed. To that end Masteel asks the Review Panel to require the Commissioner under s 269ZZL(1) of the Act to reinvestigate the amount of subsidy found under Appendix D4.1.6 of REP 690, and specifically whether, for an exporter whose dumping investigation has been terminated, the Commission has given effect to its stated obligation to avoid any double counting effect.

Question 11. How the ground supports the proposed decision

a) The obligation and its source

This ground makes the same substantive point that Ground 3 makes in its reasoning. It rests on the Commission's own stated practice. Part 20.2 of the Dumping and Subsidy Manual sets out how double counting is dealt with in a joint dumping and countervailing case. An export subsidy is deducted from the dumping duty. A domestic subsidy, where the normal value is drawn from in-country data, "is not relevant to double counting and a domestic subsidy will be countervailed to the full amount of that subsidy - it will not affect quantification of dumping duty".[73] The Manual then sets the present configuration apart: "Where there is a 'domestic' subsidy and the normal value has been determined using information from another 'surrogate' country, the Commission will avoid any double counting

[73] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90 (second and third bullets).

effect".[74] Masteel is in that configuration. Its subsidy under Program 1 is a domestic subsidy, and its normal value was constructed from the Turkish surrogate.[75]

b) The obligation attaches to the configuration, not to the number of duties

The final paragraph of Part 20.2 is triggered by two facts, a domestic subsidy and a surrogate normal value, and its terms are unqualified. It does not say that the Commission will avoid the effect only where both duties are imposed. By contrast, the mechanism the Commission uses to discharge it, the deduction worked through the scenarios in Part 20.3, is expressly framed around the dumping duty, and so presupposes that a dumping duty exists.[76] The obligation and the mechanism are not the same thing. On the proper construction of the Commission's stated practice, the obligation to avoid the effect is engaged by the configuration and is not discharged by running a mechanism that, in the particular case, corrects nothing. To read the obligation as fullfilled whenever the dumping-side mechanism is unavailable is to read the words "will avoid any double counting effect" as if they said "will, where a dumping duty is imposed, reduce that duty". That is not what the practice says.

c) A double counting effect is wider than a double remedy

Masteel does not rely on the double-remedy principle, and accepts, as it does under Ground 3, that an exporter which pays a single duty cannot offset the same subsidisation twice. The Appellate Body used the term "double remedies" to describe "circumstances in which the simultaneous application of anti-dumping and countervailing duties on the same imported products results, at least to some extent, in the offsetting of the same subsidization twice".[77] The Commission's practice does not use that term. It undertakes to avoid a "double counting effect". A counting effect is present whenever the same amount is made to do work in two separate calculations, whether or not two duties result. Here the same surrogate differential defines the constructed normal value and measures the countervailing benefit, as Ground 1 demonstrates and as Part 20.2 itself recognises when it singles out the surrogate case, unlike the in-country case, as one in which the effect must be avoided. The Commission chose the wider formulation, and the correct or preferable decision holds it to the words it used.

d) The effect survives in the countervailing duty

The dumping-side deduction reduces the dumping duty and nothing else. For Masteel there is no dumping duty, so the deduction is a nullity, as the scenarios set out under Ground 3 show. The surrogate differential therefore sits, in full, in the one duty imposed on Masteel. The Commission's undertaking to "avoid any double counting effect" has, for this exporter, avoided nothing. The subsidy figure that was carried into the terminated dumping calculation is the same figure now carried, unadjusted, in the countervailing duty.

e) Articles 10 and 19.4 inform the construction of the benefit provisions

The benefit provisions of the Act are to be construed consistently with the SCM Agreement they implement. A countervailing duty is "a special duty levied for the purpose of offsetting any subsidy

[74] Dumping and Subsidy Manual (December 2021), Part 20.2, p 90 (final paragraph).
[75] REP 690, Appendix D4.1.4 (surrogate benchmark) and Appendix D4.1.1 (Program 1 as a domestic provision of billet).
[76] Dumping and Subsidy Manual (December 2021), Part 20.3, p 91 (Scenarios A to C, in each of which the correction is taken from the dumping duty).
[77] Appellate Body Report, United States - Certain Products from China, WT/DS379/AB/R, para 541.

bestowed directly or indirectly upon the manufacture, production or export of any merchandise". No countervailing duty may be levied "in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product". Where the amount imposed is measured by a cross-country price differential that the Commission simultaneously treats as the cost adjustment in constructing the normal value, the Commission has not isolated "the amount of the subsidy found to exist" from the differential, and cannot be satisfied that the duty offsets the subsidy alone. The Appellate Body has said, of the parallel requirement that countervailing duties be imposed in "appropriate amounts", that an authority "may not, in fixing the appropriate amount of countervailing duties, simply ignore that anti-dumping duties have been imposed to offset the same subsidization".[78] That principle applies with equal force where the interaction is not between two duties but between the two calculations that rest on the one benchmark.

f) The satisfaction required for the notice was not properly reached

The countervailing duty notice was published on the Minister's satisfaction that "a countervailable subsidy has been received in respect of the goods" and, through the benefit provisions, of the amount of that subsidy. Where the amount rests on a figure the Commission also deploys as the dumping cost adjustment, and where the Commission's own obligation to avoid the double counting effect has not been discharged on the only side on which a duty survives, the satisfaction as to the amount of the subsidy was not reached on a proper basis.

g) Why the decision is not correct or preferable

The correct or preferable decision is one in which the Commission gives effect to its own avoidance obligation on the side where the duty actually falls. That requires the Commission to satisfy itself that the countervailing duty imposed on Masteel reflects the subsidy conferred on Masteel, and not the surrogate differential carried across from the terminated dumping calculation. The Commission did not undertake that task, because it treated the obligation as discharged by a dumping-side deduction that, for Masteel, corrected nothing. Reinvestigation under s 269ZZL(1) is the means by which the task is performed and the amount of the countervailing duty brought within the subsidy found to exist.

The effect of confining the correction to the dumping side can be seen by comparing Masteel with an exporter found to be dumping. Where the dumping margin exceeds the Program 1 amount, the deduction reduces the dumping duty by the whole of that amount, as Scenario F in the table under Ground 3 shows. That exporter receives the full benefit of the correction. Masteel, which was found not to have dumped, receives none of it, because the deduction has nothing to operate on. The correction the manual describes is therefore worth the full Program 1 amount to an exporter that dumps, and nothing to an exporter that does not.

The Commission has itself recognised that the correction need not stay on the dumping side when that side is unavailable. In two subsidy investigations that followed separate dumping investigations, where a dumping duty notice had already been published, it stated:

[78] Appellate Body Report, United States - Certain Products from China, WT/DS379/AB/R, para 571. That statement was made in a case where both duties were imposed. Masteel relies on it not for that two-duty proposition but for the underlying principle that an investigating authority must attend to the interaction between its dumping and subsidy calculations, which here is the shared surrogate benchmark.

> "While the Commission typically makes this double-count adjustment to the dumping margin, it is not possible to do so in this investigation because a dumping duty notice has already been published. As such, the double-count adjustment has been made to the amount of countervailable subsidy received."[79]

The reasoning applies with more force where the dumping investigation has been terminated. There is then no dumping margin to adjust at all, and the only place the adjustment can be made is in the amount of countervailable subsidy received.

Question 12. Why the proposed decision is materially different from the reviewable decision

This ground is advanced together with Ground 1, and the material difference is the same. To the extent the countervailing duty reflects the surrogate differential rather than the subsidy conferred on Masteel, its removal reduces the 10.0 per cent rate, and if the corrected amount does not exceed the negligible level of 2 per cent of the export price the notice cannot apply to Masteel at all. A decision removing the duty, or fixing a lower rate, is materially different from a notice imposing interim countervailing duty at 10.0 per cent of the export price, within s 269ZZK(1A) of the Act. Masteel acknowledges that if the reinvestigation confirms the amount of the subsidy as found, this ground will not produce a materially different decision.

[79] ADC Report No. 331, *Alleged Subsidisation of Rod in Coils Exported from the People's Republic of China*, chapter 8, p 21. The same words appear in ADC Report No. 322, *Alleged Subsidisation of Steel Reinforcing Bar Exported from the People's Republic of China*, chapter 8, p 22. In neither case was a countervailing duty ultimately recommended.

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PART C: Ground 6. The capital grants for axle production lines (Programs 690-15, 690-16 and 690-17) were countervailed against freight railway wheels without any finding that a benefit passed to the goods, and the amount was not properly attributed to the goods

Question 9. Ground on which the reviewable decision is not the correct or preferable decision

The finding in REP 690 Appendix D4.5.4 that grants under Programs 690-15, 690-16 and 690-17 conferred a benefit "in relation to the goods" was not a finding that any benefit from those grants reached freight railway wheels. The Commissioner accepted that the grants were approved for, disbursed against and accounted for as axle production assets. He countervailed them against the goods on the basis that wheels and axles are made within one business unit that shares overheads and services, and that grants to axle lines therefore confer "indirect benefits" on wheels through "operational synergies". That reasoning identifies no asset, cost or function of wheel production that the grants funded, and it would treat every grant to any product of a multi-product enterprise as a subsidy in respect of every other product. In the alternative, the amount attributed to each unit of the goods under s.269TACD(2) of the Act was not "properly attributable" to those units, because the Commissioner treated the grants as benefiting all products of the rail equipment business unit, wheels and axles alike, and then attributed the whole amount across a turnover base described as the "railway product business unit" and the "broader railway wheel category". If that base excludes axle turnover, the numerator and the denominator do not match and the per-unit subsidy is overstated. Masteel's submission on these programs of 22 May 2026 was set aside under s.269TDAA(3) and answered for the first time in the final report.

Question 10. The correct or preferable decision

The Minister should revoke the reviewable decision insofar as it applies to goods exported by Masteel and substitute a decision publishing a countervailing duty notice in which the variable factors for Masteel are re-determined with Programs 690-15, 690-16 and 690-17 excluded from the amount of countervailable subsidy received in respect of the goods. In the alternative, the amount under those programs should be attributed to units of the goods on a base that includes the turnover of every product the Commissioner found the grants to benefit, that is, Masteel's whole turnover including railway axles. To that end Masteel asks the Review Panel to require the Commissioner, under s.269ZZL(1) of the Act, to reinvestigate the findings in Appendix D4.5.4 and D4.5.6 of REP 690 as to whether a benefit under those programs was conferred in relation to the goods and, if so, the amount properly attributable to each unit of the goods. This ground is advanced together with Grounds 1 to 5, and its consequence for the negligible level in s.269TDA(16)(b) is addressed under question 12.

Question 11. How the ground supports the proposed decision

a) The statutory question

A subsidy, for the purposes of Part XVB, is a financial contribution of a described kind "if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia". Two elements follow. There must be a benefit. And the benefit must be "in relation to the goods exported to Australia". The words "whether directly or indirectly" widen the route by which a benefit may reach the goods. They do not remove the requirement that it reach them.

Section 269TACC(2) provides that "[a] direct financial payment received from any of the following is taken to confer a benefit", including from "a government of a country". That deeming settles that the recipient was benefited. It says nothing about which goods the benefit relates to, and it does not displace the words of s.269T(1). Section 269TACD then requires, once the amount of the countervailable subsidy "received in respect of goods" has been worked out, that the Minister "work out how much of that amount is properly attributable to each such unit" of the goods.

Those provisions implement Article 1 of the Agreement on Subsidies and Countervailing Measures, under which "a subsidy shall be deemed to exist if" there is a financial contribution "and" a benefit is thereby conferred, and the countervailing-duty discipline in Article 19.4, which provides that "[n]o countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product". The Appellate Body has explained the consequence where the benefit lands somewhere other than on the product countervailed: "it is only the subsidies determined to have been granted upon the processed products that may be offset by levying countervailing duties on those products".[80] It is "not sufficient for an investigating authority to establish only for the input product the existence of a financial contribution and the conferral of a benefit to the input producer"; the authority "must establish that a financial contribution exists; and it must also establish that the benefit resulting from the subsidy has passed through, at least in part, from the input downstream, so as to benefit indirectly the processed product to be countervailed".[81] Pass-through "cannot simply be presumed; it must be established by the investigating authority", and "[i]n the absence of such analysis, it cannot be shown that the essential elements of the subsidy definition in Article 1 are present in respect of the processed product".[82] The Appellate Body further held that the analysis must establish "whether, and in what amount" the benefit flowed through.

[83]That dispute concerned separate producers of an input and a processed product. Masteel does not suggest the facts are the same. The point of principle is narrower and applies with more force here. In Softwood Lumber the two products were vertically linked: logs are made into lumber, so a benefit on logs can plausibly travel into lumber, and the Appellate Body still required the authority to establish that it did. Here the two products are not linked at all. Axles are not an input into wheels. Nothing produced on an axle forging line or an axle heat treatment line enters a wheel. If a demonstrated pass-through is required where the products are connected in the production chain, an undemonstrated one cannot suffice where they are not. WTO jurisprudence informs the construction of ss.269T and 269TACD.

[80] Appellate Body Report, United States – Certain Softwood Lumber from Canada, WT/DS257/AB/R, para 140.
[81] Ibid., para 142.
[82] Ibid., para 143.
[83] Ibid., para 141.

b) What the record shows about the grants

The character of the three programs is not in dispute on the record. REP 690 describes Program 690-17 by its name, "2017 New high-speed axle production line project grant", and describes Programs 690-15 and 690-16 as the 2015 Special Guidance Fund Investment Plan for the Rail Transit Equipment Industrial Base, fixed projects No. 2 and No. 3.[84] Appendix D4.5.4 records Masteel's evidence that "the grants relate exclusively to axle-specific projects and assets" and does not contradict it. The Commissioner's own finding begins by accepting that "certain capital grants were originally approved for assets or projects described as axle-related". Masteel's questionnaire response placed on the record the investment plan notice for fixed projects No. 2 and No. 3[85] and the independent special audit report on the new high-speed axle production line project,[86] which records the funded equipment as an annular heating unit, a hydraulic quick forging unit, a suspended heat treatment line and CNC machine tools, all for axles, and concludes that the funds were used in accordance with the project objectives.[87] The Commission's verification report classified these three programs, and only these three among the capital grant programs, at the "Business unit" level, while Programs 690-14 and 690-18 were classified at the "Company" level.[88] The Commission therefore did not itself treat these grants as company-wide support. It treated them as support to a part of the enterprise, and the only question was which part.

c) The finding in Appendix D4.5.4 does not answer the statutory question

The Commissioner's reasoning is that "Masteel's rail equipment operations, including the manufacture of FRW and axles, are conducted as an integrated business unit, with shared production infrastructure, shared overheads and shared operational functions (including utilities, quality assurance, engineering support, maintenance and logistics)", and that "capital grants supporting the expansion and modernisation of axle-related production lines and rail-equipment industrial base infrastructure confer indirect benefits on the manufacture and export of the goods through operational synergies, including improved capacity utilisation, shared services, and reduced unit costs within the rail equipment business unit".[89] On that basis the grants were "treated" as "conferring an indirect benefit in relation to the goods".

Three things are absent from that reasoning. First, there is no finding that any of the grants funded any shared asset, shared overhead or shared function. The funded assets are identified in the record and they are axle-specific. Shared utilities, quality assurance, engineering, maintenance and logistics exist in every manufacturing enterprise with more than one product line. Their existence is not evidence that a grant for an axle forging unit reduced the cost of making a wheel. The reasoning moves from the fact of integration to the conclusion of benefit without any step in between.

Second, the reasoning proves too much. If a grant for one product line benefits every other line in the same business unit because they share overheads, then every grant to any product of a multi-product

[84] REP 690, Appendix D4.5.1, Table 42.
[85] EPR 690, Item 24 (Masteel exporter questionnaire response), Exhibit I-4.4 (investment plan notice for fixed projects No. 2 and No. 3).
[86] EPR 690, Item 24 (Masteel exporter questionnaire response), Exhibit I-4.4 (independent special audit report on the new high-speed axle production line project).
[87] EPR 690, Item 24, section 2.
[88] Exporter verification report, Baowu Group Masteel Rail Transit Materials Technology Co., Ltd, 4 May 2026, EPR 690, Item 22, program table at pp 14 to 15.
[89] REP 690, Appendix D4.5.4.

enterprise is a subsidy "in relation to" every product that enterprise exports. The words "in relation to the goods exported to Australia" in s.269T(1) would then do no work, and s.269TACD(2) would never require anything more than a turnover apportionment of every grant the enterprise received.

REP 690 itself does not apply that logic consistently. Chapter 7.4.3 records that programs relating to "passenger-wheel projects and other non-rail-equipment products" were found not to relate to the goods and were excluded. Passenger wheel projects share Masteel's utilities, quality assurance, engineering, maintenance and logistics no less than axle projects do. The report gives no reason why shared overheads carry an axle grant into freight wheels but do not carry a passenger wheel grant into freight wheels. The distinction drawn is between products the Commissioner chose to group and products he did not, and that is not a distinction the statute recognises.

Third, even on the Commissioner's own premise the finding stops short. An "indirect benefit" through "operational synergies" is, by its nature, a fraction of the grant, not the whole of it. The Appellate Body's formulation asks "whether, and in what amount" a benefit flowed through.[90] Appendix D4.5.6 attributes the entire amount received in the investigation period under each program. No part of the reasoning identifies what portion of a grant for axle capacity is said to have reduced the unit cost of a wheel, or how. A conclusion that some unquantified benefit exists cannot support attribution of the full amount.

d) The Commission's own policy requires allocation across the operations the grant supports

The Dumping and Subsidy Manual states: "The amount of the subsidy, once attributed to the investigation period, may have to be allocated to the goods under consideration. For example, an enterprise may have multiple products and the total subsidy benefits within the investigation period, in relation to the enterprise's whole operations, must be allocated in order to estimate the amount of the subsidy on the goods. Allocation to the goods may be made according to the most appropriate factor and depending on case circumstances: as a proportion of total production costs, or as a proportion of production or sales quantity".[91] The policy assumes that the base over which a subsidy is allocated is the set of operations the subsidy benefits. A grant that the Commissioner finds to benefit wheels and axles alike is, on the Commissioner's own finding, a benefit to the whole of a base that includes axles. It cannot be allocated to wheels on a base from which axles are excluded.

e) The alternative: the attribution base does not match the finding

Appendix D4.5.4 defines the recipient of the benefit as "all products within Masteel's rail equipment business unit, including the goods", and the same appendix defines that unit as "including the manufacture of FRW and axles". Appendix D4.5.6 then states that "these programs each relate to the broader railway wheel category" and attributes the amount "based on the value of turnover for Masteel's railway product business unit during the investigation period". Two different descriptions of the base appear within two pages. If the "railway product business unit" turnover used in Confidential Attachment 11 includes axle sales, the base matches the finding and the alternative limb of this ground falls away. If it does not, the Commissioner has placed a grant found to benefit wheels and axles in the numerator and only wheel turnover in the denominator, and the amount attributed to each unit of the

[90] Appellate Body Report, United States – Certain Softwood Lumber from Canada, WT/DS257/AB/R, para 141.
[91] Dumping and Subsidy Manual (December 2021), chapter 17, "Allocation to the goods", p 68.

goods is overstated by the proportion that axle turnover bears to the whole. That is not an amount "properly attributable to each such unit" within s.269TACD(2). Masteel's submission of 22 May 2026 identified this mismatch.[92]

REP 690 summarises the submission as a request to "adjust the allocation methodology"[93] but does not state which base was used or why. The public record therefore does not permit the point to be resolved, and Masteel asks that it be tested on reinvestigation.

f) The submission was not considered until the final report

REP 690 records that Masteel's submission of 22 May 2026 was made before SEF 690, that "pursuant to section 269TDAA(3), the Commissioner did not have regard to it in SEF 690 as it would, in the Commissioner's opinion, have prevented the timely placement of the SEF on the public record", and that the Commissioner "has considered this submission in preparing this final report".[94] The reasoning in Appendix D4.5.4 set out above, including the findings as to shared infrastructure, overheads and functions, therefore appears for the first time in the final report. Masteel has had no opportunity to answer it before the reviewable decision was made. That is not advanced as a separate ground. It is the reason the Panel should require reinvestigation of the finding under s.269ZZL(1) rather than decide the point on a record that contains the Commissioner's reasoning and no response to it.

g) The Commissioner’s repsonse

The Commissioner may say that s.269T(1) is satisfied by an indirect benefit, that s.269TACC(2) deems a direct payment from a government to confer a benefit, that verification established the integrated character of the business unit, and that allocation across the unit is consistent with the Manual. None of that meets the ground. The word "indirectly" describes how a benefit may arrive at the goods. It still has to arrive. The deeming in s.269TACC(2) establishes a benefit to Masteel, which is not disputed. It does not however establish a benefit in relation to freight railway wheels. Integration is a fact about the enterprise, not a finding about the grants, and the Commissioner did not find that the grants funded anything the wheel lines use. And the Manual's allocation rule cuts the other way, as it allocates a benefit across the operations it supports, which on the Commissioner's finding include axles.

h) Why the decision is not correct or preferable

The reviewable decision countervails, against freight railway wheels, grants that the Commissioner accepts were approved and used for axle production assets, on a finding that identifies no benefit to wheels and quantifies none. In the alternative it attributes those grants to units of the goods on a base that, on the face of the report, may not match the products the grants were found to benefit. The correct or preferable decision excludes the three programs from the amount of countervailable subsidy received in respect of the goods or, at the least, attributes them over the whole of the operations the Commissioner found them to benefit. Reinvestigation of Appendix D4.5.4 and D4.5.6 under s.269ZZL(1), which permits the Panel to "require the Commissioner to: (a) reinvestigate a

[92] EPR 690, Item 24, section 5.
[93] REP 690, Appendix D4.5.4.
[94] REP 690, chapter 2.6.10.

specific finding or findings that formed the basis of the reviewable decision", is the means by which that is done.

Question 12. Why the proposed decision is materially different from the reviewable decision

The amounts received under Programs 690-15, 690-16 and 690-17 in the investigation period are confidential and are not disclosed in the public record. The three programs are among the capital grant and other programs that, together with Program 1, make up Masteel's 10.0 per cent subsidy margin.[95] Their exclusion reduces the rate of interim countervailing duty fixed for Masteel by XX%. A countervailing duty notice fixing a lower rate for Masteel is materially different from the notice as published, in the sense the Panel has previously applied, and where the reduction, taken with the reductions sought under Grounds 1 to 5, brings the countervailable subsidy received in respect of Masteel's goods to not more than 2 per cent of the export price, the notice cannot apply to Masteel at all.

[95] REP 690, chapter 7.5.1 and Appendix D4.5.

Customs Act 1901 – Part XVB

Freight Railway Wheels

Exported to Australia from the People's Republic of China

Findings in Relation to a Subsidy Investigation

Public notice under sections 269TJ(1) and (2) of the Customs Act 1901

Anti-Dumping Notice (ADN) 2026/116

The Commissioner of the Anti-Dumping Commission (**the Commissioner**) has completed the investigation into the alleged subsidisation of freight railway wheels, exported to Australia from the People's Republic of China (**China**).

The goods the subject of the investigation (**the goods**) are:

> *Railway wheels of forged and rolled high carbon steel, with an outside diameter from 27.5 inches to 37.5 inches (699 millimetres to 953 millimetres), whether or not including alloys.*

Further information on the goods

The railway wheels are manufactured in accordance with relevant user defined specifications and drawings, and are used on rail carriages/wagons in freight transport.

The wheels used in all user applications have the following typical characteristics:

- *outside diameter from 27.5 to 37.5 inches (699 to 953 millimetres (**mm**)), and of similar overall dimensional tolerances and shape*
- *are manufactured from a high carbon steel with the addition of micro alloying elements to achieve hardness and mechanical properties, as defined by user/customer specifications*
- *are manufactured using a forging and rolling process in accordance with defined standards, and*
- *are suitable to operate at axle loads of up to 36 metric tonnes, as defined by user/customer specifications.*

Exclusions

> *Axles and other components are excluded from the description.*

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

Tariff code	Statistical code
8607.19.00	20

Table 1: Summary of tariff subheading

The tariff classification and statistical code may include imports that are both subject and not subject to this investigation. The listing of the tariff classification and statistical code is for convenience or reference only and does not form part of the goods description.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No 690* (**REP 690**), 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 690 and accepted the Commissioner's recommendations and reasons for the recommendations, including all material findings of fact or law on which the Commissioner's recommendations were based, and particulars of the evidence relied on to support the findings. The report is available at www.adcommission.gov.au.

Particulars of the level of subsidisation established are set out in the following table:

Exporter	Countervailing subsidy margin[1]	Duty method
Baowu Group Masteel Rail Transit Materials Technology Company Ltd. (**Masteel**)	10.0%	Proportion of the export price, as per section 10(3B) of the *Customs Tariff (Anti-Dumping) Act 1975*
Non-cooperative entities[2]	28.8%	

Table 2: Summary of subsidy margins

I, TIM AYRES, the Minister for Industry and Innovation and Minister for Science (Minister), 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 690.

I am satisfied, as to the goods that have been exported to Australia, that countervailable subsidies have been received in respect of the goods and because of that, material injury to the Australian industry producing like goods would or might have been caused if security had not been taken. Therefore, under section 269TJ(1) and subject to section 269TN of the Customs Act 1901 (**the Act**), I DECLARE that section 10 of the *Customs Tariff (Anti-Dumping) Act 1975* (**the Dumping Duty Act**) applies to:

(i) the goods, and

(ii) like goods that were exported to Australia from China by all exporters after the Commissioner made a preliminary affirmative determination under section 269TD but before publication of the notice.

I am also satisfied that a countervailable subsidy has been received in respect of the goods that have already been exported to Australia, and that a countervailable subsidy may be received in respect of like goods that may be exported to Australia in the future; and because of that, material injury to the Australian industry producing like goods has been or is being caused. Therefore, under section 269TJ(2) of the Act, I DECLARE that section 10 of the Dumping Duty Act applies to like goods that are

[1] As outlined in Chapter 12 of REP 690, and in a separate notice I am publishing today on the Anti-Dumping Commission website, the effective rate of combined interim dumping and countervailing duty for non-cooperative entities is adjusted to avoid imposing duties to compensate for the steel billet cost adjustment used in the calculation of both the dumping and subsidy margins.
[2] For clarity, all exporters other than Masteel.

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 subsidisation are the size of the countervailable subsidy margin, the effect of subsidised imports on prices including price undercutting and the consequent impact on the Australian industry including reduced market share, lost sales volumes, price suppression, reduced revenue, profits and profitability.

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

REP 690 and other documents included in the public record may be examined on the public record available at www.adcommission.gov.au

Clarification about how measures and securities are applied to 'goods on the water' is available in ACDN 2012/34, available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2527 or email investigations4@adcommission.gov.au

Dated this 27th day of August 2026

TIM AYRES

Minister for Industry and Innovation and Minister for Science