Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

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

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

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

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

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

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

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

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

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: China Steel Corporation (herein referred to as "CSC")
Address: No.88, Chenggong 2nd Rd., Qianzhen Dist., Kaohsiung City 806, Taiwan
Type of entity (trade union, corporation, government etc.): CSC is a company limited by shares established in accordance with the Company Law of Taiwan

2. Contact person for applicant

Full name: Ms. Vicky Lin
Position: Administrator of Marketing Administration Department
Email address: 170985@mail.csc.com.tw
Telephone number: +886-7-337-1111 Ext. 23051

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

CSC is a producer and exporter of the subject goods.

4. Is the applicant represented?

Yes ☒ **No** ☐

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

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

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

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

The description of hot rolled coil exported from Taiwan that are subject of the reviewable decision are hot rolled coil (including in sheet form), a flat rolled product of iron or nonalloy steel, not clad, plated or coated (other than oil coated). Goods excluded are hot rolled products that have patterns in relief (known as checker plate) and plate products

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

The relevant tariff classification for the subject goods are:

Tariff subheading	Statistical codes
7208.25.00	32
7208.26.00	33
7208.27.00	34
7208.36.00	35
7208.37.00	36
7208.38.00	37
7208.39.00	38
7208.53.00	42
7208.54.00	43
7208.90.00	30
7211.14.00	40
7211.19.00	41

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

Anti-Dumping Notice (ADN) number: 2022/109
Date ADN was published: 25 November 2022. Refer to **Attachment A**.

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

PART C: GROUNDS FOR THE APPLICATION

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

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

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

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

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

Please refer at **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:**

Please refer at **Attachment B**.

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

Please refer at **Attachment B**.

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

Please refer at **Attachment B**.

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

Attachment A – ADN 2022/109 Attachment B: Grounds of review

PART D: DECLARATION

The applicant's authorised representative declares that:

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

Signature: 

Name: JOHN BRACIC

Position: DIRECTOR

Organisation: J.BRACIC & ASSOCIATES PTY LTD

Date: 22 / 12 / 2022

PART E: AUTHORISED REPRESENTATIVE

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

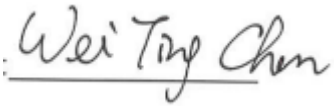
Provide details of the applicant's authorised representative:

Full name of representative: JOHN BRACIC
Organisation: J.BRACIC & ASSOCIATES PTY LTD
Address: PO BOX 3026, MANUKA ACT 2603
Email address: john@jbracic.com.au
Telephone number: +61 (0)499 056 729

Representative's authority to act

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

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

Signature : 

Name: WEI-TING CHEN

Position: General Manager of Marketing Administration Department

Organisation: China Steel Corporation

Date: 22 December 2022

J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

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22 December 2022

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

CSC seeks a review of the Minister's decision to continue the anti-dumping measures on hot rolled coil ("HRC) exported by CSC from Taiwan. It is submitted that the Minister's decision is not correct or preferable, as there was no probable likelihood of material injury to the Australian industry resuming.

Ground 1: The Minister erred in finding that recurrence of material injury was likely in the absence of measures.

1. Grounds for review

On 16 January 2022, the Commissioner of the Anti-Dumping Commission ("the Commissioner") initiated an inqury into whether the continuation of measures on HRC from Taiwan were warranted. CSC cooperated with the inquiry and following verification of its submitted information, the Commission determined a 3.2% dumping margin.

On 22 August 2022, the Commission published Statement of Essential Facts Report No. 594 ("SEF 594"). In that report, the Commission's assessment of the likelihood of material injury resuming, included an examination and comparison of export prices and non-injurious prices ("NIP"). This is consistent with the Commission's practice outlined in its published guidance:

> *Estimates of the USP and the NIP can assist in assessing whether dumping has caused material injury and the level of remedy that industry could expect from anti-dumping measures.*
>
> ….
>
> *As the investigation progresses, the NIP will be compared to export prices to assess causal link and the likelihood of an injury margin. Where export prices are found to be above the NIP, the Commission may consider the likelihood that material injury was not caused by dumping.*

The Commission's Manual goes on to add:

Assessment of the non-injurious price for injury purposes

While the Minister may not be required to have regard to the lesser duty rule in an investigation, as discussed under 'method for calculating a non-injurious price', the NIP may be utilised by the Commission to assess the materiality of injury caused by dumping. Accordingly, in each case, the Commission will continue to seek information and invite submissions on the proposed USP and the NIP that is derived from that amount, to be used in the examination of material injury.

In SEF 594, the Commission found that:

- the NIP relevant to the determination of interim duty payable has changed since it was last ascertained.
- for all Taiwanese exporters, that since the continuation of the measures in 2017, ascertained export prices for each exporter were consistently higher than the NIP in each assessment or examination of the variable factors undertaken by the commission.
- CSC's ascertained export price was higher than the NIP in this inquiry.

The commission invited parties to submit further information and evidence that could further inform its assessment.

In finalising its recommendations to the Minister in REP 594, the Commission formed the view that it was not preferable to determine an unsuppressed selling price, and therefore NIP, using any of the prescribed methods. The Commission concluded that:

In the absence of any other reasonable method, the commission considers that the NIP of the goods exported by each exporter should reflect the respective undumped price for each exporter, which is effectively equivalent to the respective normal value ascertained for each exporter.

By automatically setting the NIP equal to CSC's normal value in the absence of any other reasonable estimate, the Commission has effectively determined that CSC's export prices were injurious if they were dumped, and could only be non-injurious if they were at non-dumped levels. This position by the Commission disregards its own guidance that export prices above a meaningful NIP estimate, whether dumped or not, is a strong indication that material injury is not being caused by dumping.

The Commission also erred in not estimating a meaningful NIP for CSC's exports. As the Commission's manual highlights, the primary purpose of the NIP is for the Minister to have regard to the desirability imposing a lesser amount of duty that is adequate to remove injury. This determination is only made after the investigation has been completed and it has been determined that material injury would likely resume in the absence of measures.

The secondary purpose for estimating the NIP is for assessing material injury, which must be undertaken during the course of investigation in order to form part of the Commission's causal link analysis.

The Commission's inability to calculate a meaningful USP and NIP due to data limitations as highlighted in REP 594, should not prevent the calculation of a reasonable 'NIP estimate' for material injury assessment, even though those same limitations may prevent the imposition of a lesser duty. The level of dumping duties to be imposed are intended to prevent recurrence of material injury, and as such, it is important for the calculated NIP to include a fair degree of precision.

However, the NIP used for assessing material injury need only be a 'reasonable estimate' as it is used in the Commission's comparative assessment as a notional measure of price at which point injury to the industry may not be caused by dumping. This is simply an indicator of whether injury caused by dumping is occurring. As the ADRP highlights in its recent request for reinvestigation of findings into aluminium extrusions:

> *In circumstances where there is a high degree of price sensitivity in the market, an analysis of the NIP of exports relative to the selling prices of the Australian industry provides an indication of whether injurious dumping is occurring. It is acknowledged that this does not necessarily mean it is material injury.*

By failing to calculate a reasonable estimate of the NIP of CSC's exports, the Commission's material injury assessment is flawed as it omits a critical element that would assist in understanding whether resumption of material injury caused by dumping was likely. To that end, CSC provided the following analysis to the inquiry, based on the Commission's preliminary estimate of the NIP in SEF 594.

In SEF 594 the Commission confirmed :

> *… that since the continuation of the measures in 2017, ascertained export prices for each exporter were consistently higher than the NIP in each assessment or examination of the variable factors undertaken by the commission. The commission also found that each exporter's ascertained export price is higher than the NIP in this inquiry.*

In REP 594, the Commission also confirmed:

> *…since the continuation of the measures in 2017, the commission found that the ascertained weighted average export price for each exporter was higher than the ascertained NIP in the periods examined in the following cases:*
>
> - *Review 454*
> - *Review 528.*

> *The commission also found that the ascertained export price for each exporter was higher than the NIP in the period examined in Continuation Inquiry 400.*

The Commission appears to have removed reference to a comparison of ascertained export prices with the NIP in the current inquiry period due to its inability to calculate a reasonable estimate of the NIP.

The Commission also correctly noted in SEF 594 that:

> *While the commission would expect that the ascertained export prices would be at or above the NIP in most instances where the exporter is not dumping, the fact that the ascertained export price was higher than the NIP in instances where dumping was found for each exporter could indicate that any material injury to the Australian industry was not caused by this dumping. Therefore, this might lead to the conclusion that the expiration of the measure would not be likely to lead to a recurrence of material injury that the measure is intended to prevent.*

To highlight more clearly, the chart below compares CSC's ascertained free-on-board export prices (AEP), determined NIP, and the prevailing floor prices for each of the reviews covering the Commission's injury analysis period. The data is based on the Commission's verified calculations of information submitted by CSC and BlueScope, and is therefore considered positive evidence.

CONFIDENTIAL CHART DELETED

The chart reveals and confirms the following facts:

- at all times, CSC's weighted average export prices were above the corresponding NIP. That is, CSC has always exported HRC at prices above the price point at which the Commission has determined, would result in material injury being caused by dumping;
- the margin between the AEP and NIP has been increasing since 2016, resulting in CSC's AEP being [redacted]% above the corresponding injury level in the current inquiry period;
- the [redacted]% margin between the AEP and NIP in Review 528 was similar to the current review period, contradicting the Commission's assumptions that price volatility in 2020 and 2021 was likely due to supply constraints associated with the COVID-19 pandemic;
- the [redacted]% margin in Review 528 also refutes the Commission's view that BlueScope remains susceptible to injury as '… *favourable conditions evident during the inquiry period will likely dissipate over coming years*'. CSC's AEP was [redacted]% above BlueScope's comparable injurious level in the 2018-2019 period, prior to the commencement of the COVID-19 pandemic;

- the [redacted]% margin in the current review period demonstrates that the 'instances' of price undercutting observed in the Commission's price undercutting analysis, are merely irregular occurrences which are more likely to be the result of volatility in raw material costs, importation expenses and foreign exchange rates. This is not positive evidence of a likelihood that CSC would seek to undercut local prices. For this reason, little weight should be given to patchy instances of undercutting;
- the data also confirms that CSC has continued to export above the prevailing price, ranging from [redacted]%-[redacted]%. This confirms the following facts and addresses some of the key aspects of the Commission's preliminary assessment:
  - the degree by which CSC's export prices are above the prevailing floor price, refutes any suggestion that the floor prices were relevant or effective at ensuring higher export prices. CSC could have reduced its export prices by up to [redacted]% and continued to remain above the prevailing floor price;
  - as noted by the Commission on page 63 of SEF 594, that export prices are significantly higher than the prevailing floor price is confirmation that the measures are redundant, and in the absence of such measures, there is no positive evidence that CSC would have or will reduce its export prices;
  - CSC export prices prior to the COVID-19 pandemic in Review 528, were higher than all prior and post prevailing floor prices, and also higher than the potential floor price arising from this current review. This dismisses any suggestion that the NIP may not properly reflect the actual prices achieved in the market. It also confirms that irrespective of whether future market conditions revert to more normal characteristics following the receding impact of the COVID-19 pandemic, the most contemporary equivalent period unaffected by the COVID-19 pandemic is Review 528, where export prices exceeded the prevailing floor price and the contemporary NIP by a margin of [redacted]% and [redacted]% respectively.
  - finally, the price relativities depicted in the chart confirms that CSC could have reduced its export prices by a magnitude of [redacted]%-[redacted]% in the most recent years, effectively increasing its dumping margin by the same margin, and continue to remain above the non-injurious levels determined by the Commission. This undoubtedly demonstrates that the causal link between dumping, material injury and the measures has been severed for numerous years, and the considerable degree to which import and local prices have disconnected in the Australian market provides evidence that recurrence of material injury caused by dumping is not likely.

In summary, CSC contends that positive evidence available to the Commission, demonstrated that injury was not experienced by BlueScope, imports continued to be exported above the prevailing floor price, and continued to be exported above non-injurious

levels. These facts would support a finding that HRC exports by CSC are non-injurious and the measures are not warranted.

By declining to calculate a reasonable estimate of the NIP, and instead simply defaulting to the normal value as a measure of the NIP, the Commission have voided their own comparative analysis contained in SEF 594, and avoided performing a thorough causal link analysis aimed at determining whether resumption of material injury was likely. This undermines the Commission's analsysis in Rep 594, and the recommendations accepted by the Minister.

CSC contends that it was incumbent on the Commission to undertake a proper comparison of CSC's export prices, with estimates of the NIP and the Australian industry's estimated USP, as recommended by the ADRP. At the very least, the Commission ought to have utilised threshold analysis to understand the likelihood of Australian industry achieving price ranges proportional to the margin between CSC's AEP and NIP found in SEF 594.

To highlight more clearly, CSC's AEP was [redacted]% higher than the Commission's preliminary estimated NIP in SEF 594. In altering its position in REP 594, the Commission considers that any price point below CSC's AEP is injurious, and in effect preventing the Australian industry from achieving higher prices in the Australian market. However, given that the Commission had already found that the Australian industry achieved its highest prices and record profit levels during the inquiry period, it is ludicrous to suggest that they were prevented from achieving a further [redacted]% increase in prices, due to a 3% dumping margin by CSC.

Had the Commission instead estimated the industry's USP using an outlier profit, whilst unlikely to be achieved in a market unaffected by dumping, would have allowed for the calculation of an estimated maximum benchmark price for the NIP. By comparing CSC's AEPs during the inquiry period with this maxium benchmark NIP, it may have revealed that even at this unlikely levels, CSC's exports were non-injurious.

This type of analysis would have also been useful for understanding the degree to which CSC's export prices could have been reduced, and still remained non-injurious as they would have been above the maximum benchmark NIP. Again, by simply setting the NIP equal to the normal values, the Commission's findings are flawed as they are not based on positive evidence.

Therefore, CSC contends that the Minister has erred in determining that material injury caused by dumping was likely in the absence of measures, given the Commission's preference for not estimating a reasonable NIP, and not undertaking any meaningful comparative analysis of export prices, NIPs and industry selling prices.

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

CSC contends that the available evidence does not support a finding that material injury to the Australian industry is likely to be caused by CSC's future exports of HRC from Taiwan, in the absence of the measures. As such, the Commissioner ought not have recommended that the Minister take steps to secure the continuation of the anti-dumping measures against CSC's exports, as the Commissioner could not be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The correct and preferable decision was for the Minister to not secure the continuation of the measures insofar as they relate to CSC, and that the measures subject to the notice should expire, pursuant to subsection 269ZHG(1)(a) of the Act.

3. Support for the proposed correct or preferable decision

The grounds outlined above, provide support for the making of the proposed correct or preferable decision, as it establishes that the Minister's decision was based on the flawed analysis and reasoning contained in the Commissioner's Report 594. Specifically, the detailed comparison of CSC's historical and contemporary export prices, against the Commission's determined non-injurious prices, confirms that exports by CSC were sold at non-injurious levels. Further, the degree to which CSC's export prices exceed any meaningful NIP, confirms that a reasonable level of dumping would not likely lead to a resumption of material injury.

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

CSC's exports are currently subject to an 3.2% advalorem rate of dumping duty. Had the Minister made the proposed correct decision, CSC's exports would no longer be subject to interim dumping duties.