



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

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

Time

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

Conferences

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

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

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Further application information

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

Withdrawal

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

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

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PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Commonwealth Steel Company Pty Ltd (trading as Moly-Cop Mining Consumables – Waratah Steel Mill)

Address: 2 Maud Street, Waratah NSW 2285

Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: [REDACTED]

Position: [REDACTED]

Email address: [REDACTED]

Telephone number: [REDACTED]

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

The applicant for review was the co-applicant in relation to an application under section 269TB of the *Customs Act 1901* that led to the making of the reviewable decision – being a member of the Australian industry producing like 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.****

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PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

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

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

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

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

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

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

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

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

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

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

The goods the subject of the reviewable decision were:

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

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

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

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

The goods are classified to the tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* specified below:

- 7325.91.00 statistical code 26
- 7326.11.00 statistical code 29
- 7326.90.90 statistical code 59 (additional tariff code identified by the Commission during the course of the investigation)

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

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

Anti-Dumping Notice (ADN) No. 2016/90

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9. Provide the date the notice of the reviewable decision was published

9 September 2016

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

A copy of the notice of the reviewable decision is attached as Appendix A to this application.

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PART C: GROUNDS FOR THE APPLICATION

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

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

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

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

10.1 The Assistant Minister was wrong to use export billet prices as “such amounts” as he determined to be the cost of production or manufacture of the exporters.

Having determined that because of the situation in the Chinese domestic market for grinding balls is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1), the Commission was right to consider whether or not the exporters' records of the costs associated with the production or manufacture of like goods “reasonably reflect competitive market costs” (as required by subparagraph 43(2)(b)(ii) of the *Customs (International Obligations) Regulation 2015 (the Regulation)*).

The Assistant Minister, on the recommendation of the Commissioner, has correctly concluded that the conditions of the Regulation have not been satisfied, specifically that the exporters' records “do not reasonably reflect competitive market costs”, and as such is not required to work out an amount to be the cost of production or manufacture of exporters' like goods using their records.

Given that the Regulation prescribes that where “competitive market costs” are found, they “must” be used to determine the exporter's costs of production or manufacture, the Regulation also imposes the same prescription on the Assistant Minister's determination of “such amount” as to be the cost of production or manufacture of the goods exported.³ In other words, the Assistant Minister is at all times confined to consideration of costs of production that “reasonably reflect competitive market costs”.

The Commission has acknowledged the potentially distortive effect of government of China (GOC) influenced billet prices impacting on the Latin American billet export price, thereby rendering those prices not reasonably reflective of competitive market costs. In this case, the Commission concluded that “the depth of the market, and geographic

³ Regulation 43 of the *Customs (International Obligations) Regulation 2015* is relevant to the determination of costs of production or manufacturer by reason of subsection 269TAC(5A) of the *Customs Act 1901*.

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distance from China” minimised the impact. With respect, having acknowledged the risk of GOC influence on competitive market conditions, the Commission’s treatment of that risk, namely, geographic distance, is unsound.

Free-on-board (**FOB**) Latin American export billet prices are directly influenced by Chinese FOB export prices given that they compete in a number of similar exports markets, including those in South and Central America. Indeed, for many export destinations, at the FOB level, Latin American export prices are suppressed to compensate for the “geographic distance” otherwise identified by the Commission as a justification for their selection of it as a so-called ‘competitive’ benchmark. On the other hand, if the Commission is genuinely attempting to counteract the GOC influence on Chinese billet export prices by selecting a benchmark source that has geographic distance from China, then only a benchmark billet price based on domestic sales values should be selected. This is because only a domestic sales price will ensure that the GOC influence on competitive market conditions has been minimised through geographic distance.

10.2 The Assistant Minister has erred in not adding an upward adjustment of 12 per cent to the normal value for Jiangsu CP Xingcheng Special Steel Co., Ltd (Xingcheng) under subsection 269TAC(9)⁴ to account for the difference between the non-refundable VAT expense of 17 per cent incurred by the exporter less a 5 per cent VAT rebate on export sales of grinding balls

The Commissioner claims that:

“the export price for Xingcheng did not include any VAT component”,⁵

and that in support of this conclusion:

“the Commission removed the upwards VAT adjustment made to its normal value in SEF 316”.⁶

The Commissioner has wrongly concluded that the price of all export sales did not include any VAT component. In a submission to the Commission following publication of SEF 316, Xingcheng concedes a non-refundable amount of VAT at 12%:

“If translated into English, it is exactly the same with the formula used in column “Average unit price incl VAT” of in “Confidential Attachment 4c - Xingcheng DM”,

i.e. [REDACTED]

⁴ References to statutory provisions are references to provisions of the *Customs Act 1901*, unless otherwise expressly stated.

⁵ *Report No. 316* at p. 36.

⁶ *Ibid.*

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[REDACTED]
[REDACTED]⁷

Xingcheng's reference to prices that "are net of 12% non-refundable VAT"⁸ were conceded by Xingcheng to be a:

*"start point to determine the export prices are internal transfer prices between Xingcheng and its Exporter, which is net of ocean freight, inland transportation, handling expenses and the non-refundable VAT"*⁹

Xingcheng acknowledged at all times that:

*"These prices are the internal transfer prices between Xingcheng and its exporter. Although they were actual figures derived from Xingcheng's accounting system and the relevant VAT invoices were also provided, this does not mean that these figures could be qualified as actual export prices paid by importers as required by subsection 269TAB(1)(a) of the Act."*¹⁰

Indeed, the Commission concluded that the party named by Xingcheng as the "exporter", was in fact just an intermediary.¹¹

Therefore, the correct question for the Commissioner to answer was what was the non-refundable VAT amount determined in the case of:

- sales to unrelated Australian importers of the goods?
- related party export sales?

To rely on a 'theoretical' "start point" for the calculation of internal transfer prices for accounting purposes, "net of VAT" as an indicator that there was in fact no VAT component related to the export sales is a significant error and needs to be corrected with an upward adjustment to the normal value of 12%.

⁷ EPR Folio No. 316/037 at p. 3.

⁸ EPR Folio No. 316/037 at p. 2

⁹ EPR Folio No. 316/037 at p. 3.

¹⁰ EPR Folio No. 316/037 at p. 2

¹¹ EPR Folio No. 316/025 at p.14.

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

11.1 The Assistant Minister was wrong to use export billet prices as "such amounts" as he determined to be the cost of production or manufacture of the exporters.

The correct or preferable decision resulting from the first ground for review raised in response to question 10, would be for the Assistant Minister to use a Latin American domestic billet price as "such amount" as determined to be the cost of production or manufacture of each of the exporters. In the course of the investigation, the Australian industry suggested that the Commissioner have regard to *MEPS monthly US\$/t domestic ex-works billet price for Mexico*.¹²

11.2 The Assistant Minister has erred in not adding an upward adjustment of 12 per cent to the normal value for Xingcheng under subsection 269TAC(9) to account for the difference between the non-refundable VAT expense of 17 per cent incurred by the exporter less a 5 per cent VAT rebate on export sales of grinding balls

The correct or preferable decision resulting from the second ground for review raised in response to question 10, would be for the Assistant Minister to make an upward adjustment of 12 per cent to the normal value for Xingcheng.

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

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

12.1 The Assistant Minister to use a Latin American domestic billet price as "such amount" as determined to be the cost of production or manufacture of each of the exporters.

This proposed decision would materially alter the normal value calculation for each exporter, by increasing the normal value by approximately 11%.¹³ An increased normal value calculation will *pari passu* result in an increase to the dumping margin calculation of approximately the same proportion.

12.2 The Assistant Minister to make an upward adjustment of 12 per cent to the normal value for Xingcheng.

This proposed decision would materially alter the normal value calculation for Xingcheng, by increasing the normal value by approximately 12%. An increased normal value calculation will *pari passu* result in an increase to the dumping margin calculation of approximately the same proportion.

¹² *EPR Folio No. 316/038* at p. 4.

¹³ CONFIDENTIAL ATTACHMENT A for analysis

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PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

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

Signature:.....

Name:



Position:



Organisation: Commonwealth Steel Company Pty Ltd

Date: 10/10/2016