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 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] 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*.

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.

PART A: APPLICANT INFORMATION

1. **Applicant's details**

Applicant's name: Shanghai Meishan Iron & Steel Co., Ltd (Meishan)

Address: Xinjian Zhonghuamenwai, Yuhuataiqu, Nanjing, Jiangsu

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

2. **Contact person for applicant**

Full name: [redacted]

Position: Manager - Legal Department

Email address: [redacted]

Telephone number: [redacted]

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

Meishan is a producer and exporter of aluminium zinc coated steel exported from the Peoples Republic of China.

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

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

The goods which were the subject of the reviewable decision are flat rolled products of iron and non-alloy steel of a width equal to or greater than 600mm, plated or coated with aluminium-zinc alloys, not painted whether or not including resin coating.

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

Goods identified as aluminium zinc coated steel, as per the description above, are classified to tariff subheading 7210.61.00 (statistical codes 60, 61 and 62) in Schedule 3 to the *Customs Tariff Act 1995.*

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 2018/54 is attached at **Attachment A**.

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

The attached ADN 2018/54 was published on 30 April 2018.

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 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.**

Please refer at **Attachment B**.

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.**

Please refer at **Attachment B**.

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

Please refer at **Attachment B**.

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.

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: John Bracic

Position: Director

Organisation: J.Bracic & Associates Pty Ltd

Date: 30 May 2018

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: Mr John Bracic

Organisation: J.Bracic & Associates Pty Ltd

Address: PO Box 6203, Manuka, ACT 2603

Email address: john@jbracic.com.au

Telephone number: +61 (0)499056729

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: [redacted]

Position: Director - Legal

Organisation: Shanghai Meishan Iron & Steel Co., Ltd

Date: 29 May 2018

J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

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

30 May 2018

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

Review of a Ministerial decision – Review of measures applying to aluminium zinc coated steel exported from China by Shanghai Meishan Iron & Steel Co., Ltd.

1. INTRODUCTION

On 8 May 2017, following an application for review of measures lodged by Meishan, the Anti-Dumping Commission (the Commission) initiated a review into aluminium zinc coated steel exported from China by Meishan.

On 28 August 2017, the Commission published its preliminary findings in Statement of Essential Facts Report No. 410 (SEF 410).

On 10 October 2017, the Commission requested the first of three extensions to the deadline for publishing the final report, the second and third requests followed on 11 December 2017 and 26 February 2018.

On 30 April 2018, the final report containing the basis and reasons for the Assistant Minister's decision was published.

2. REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION.

Meishan seeks a review of the following findings and conclusions which led to the decision by the Assistant Minister to ascertain variable factors:

Ground 1: The Assistant Minister erred in retrospectively applying new legislative amendments to the review of measures.

Ground 2: The Assistant Minister made incorrect assessments and determinations with respect to Meishan's exports, pursuant to subsection 269TAB(2A).

2.1 Ground 1: The Assistant Minister erred in retrospectively applying new legislative amendments to the review of measures.

Meishan submits that the Commission and the Assistant Minister erred in retrospectively applying new legislation which was not relevant at the time of Meishan's application for review or the Commissioner's decision to initiate the review. Instead, the newly introduced legislation only became effective many months after the scope of the review had been announced.

By way of background, Meishan lodged its application for review of the measures applicable to aluminium zinc coated steel on 14 April 2017. The Commission then initiated the review on 8 May 2017. At the time of initiation, subsection 269TAB(3) of the *Customs Act 1901* (the Act) provided that:

> *(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.*

It was the Commission's practice in circumstances where no exports were made during the review period, to ascertain the export price equal to the ascertained normal value to ensure that future exports were being sold at least equivalent to the established non-dumped price.

On 13 September 2017, the Government introduced the *Customs Amendment (Anti-Dumping Measures) Bill 2017 (*"the Bill"), which passed both Houses of Parliament on 19 October 2017 and received royal assent on 30 October 2017.

Therefore, the legislative amendments from the Bill took effect more than six months after Meishan had applied for its review and more than five months after the Commission had initiated the review. This period of time between initiation and introduction of the bill to Parliament is considered directly relevant given that the Bill included a retrospective provision. Item 4 of the Bill provided that the legislative amendments would apply to:

> *(a) a review under Division 5 of Part XVB of the Customs Act 1901 for which an application is lodged, or request is made, on or after the commencement of this Schedule;*
> *(b) such a review that was being undertaken **immediately** before the commencement of this Schedule but for which a declaration in accordance with subsection 269ZDB(1) of that Act had not been made at that time;*
> *(c) an application for such a review that was lodged, or a request for such a review that was made, before the commencement of this item but for which a notice of a review under subsection 269ZC(4), (5) or (6) of that Act had not been made at that commencement.*
> [Emphasis added]

Parts (a) and (c) are not relevant to Meishan's circumstances given that its application and the initiation of the review commenced prior to commencement of the Schedule. In considering then whether to retrospectively apply the new legislative amendments, the Commission was required to determine whether the circumstances of Meishan's review complied with part (b) – that is, whether the review was being undertaken immediately before the commencement of the Schedule and whether a declaration pursuant to subsection 269ZDB(1) of the Act had yet been made.

It is clear to Meishan that the introduced amendments outlined in the Bill should only be applied to those reviews that were 'undertaken **immediately** before the commencement of this schedule'. Had the Government intended for the amendments to apply to all reviews underway at the commencement of the schedule, there would have been no need to include the word 'immediately' in defining the retrospective application of the amendments.

The use of the term 'immediately' also ensures that the retrospective application of the legislative amendments observe the rule of law principal that the law should be capable of being known in order to comply. Limiting the retrospective application of the legislative amendments to only reviews commenced immediately prior to the commencement of the schedule, mitigates any adverse impact. In so doing, it allows for the legitimate and reasonable expectations of interested parties to be observed by ensuring that the retrospective amendments only applied to those reviews where the amendments were capable of being known and complied with.

To that end, '*immediately*' should be defined consistent with the Oxford dictionary definition as "*At once; instantly.*" and *"Without any intervening time or space."* Interpreted this way, the retrospective application of the legislative amendments would only be relevant to reviews initiated after the Government had announced its intention to amend the Act, by introducing the bill to Parliament on 13 September 2017. Support for this view is found in the practices of the Australian Tax Office (ATO) which has relied on announcements and published draft legislation to observe the rule of law principal that the law should be capable of being known in order to comply[3].

The *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013*[4] also provides a recent example of legislation that highlights the preferred date for retrospective legislation to take effect. That bill was announced on 1 March 2012 and first read in parliament on 13 February 2013. However, the ATO gave retrospective effect to the bill on 16 November 2012 (the day on which draft legislation was released for public comment).

In its final report, the Commission outlines its interpretation of the intent of the term immediately in item 4(b) of the amending legislation which;

> *…distinguishes between any review undertaken and completed prior to the commencement of the amendment, and those reviews that had been initiated, were underway and not yet completed prior to commencement. The Commission's view is that the amendments were intended to apply to the latter reviews.*

The Commission's view cannot be accepted as the second condition of part (b) automatically excludes any reviews which were completed prior to the commencement of the amendment, irrespective of whether they were undertaken immediately prior to the amendments or not.

The distinction between reviews which had been completed and those still underway is clearly reflected in that second condition of part (b) and not by the use of the term 'immediately'. This is confirmed by a reading of part (b) without the inclusion of

[3] http://law.ato.gov.au/atolaw/view.htm?docid=PSR/PS200711/NAT/ATO/00001

[4] http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4965_ems_b7b5685c-d33d-4c8c-8d95-24a621d41042%22

'immediately', which would have the exact same effect of limiting the retrospective application of the amendments to only reviews underway prior to the amendments and had not yet been completed.

Therefore, it is not correct to interpret the term 'immediately' as a way of distinguishing between those reviews which had been completed and those that had not yet been completed at the time of the amendments becoming effective. By doing so, the Commission has removed the effect and relevance of the term 'immediately' in assessing whether the newly introduced legislative amendments should be retrospectively applied to Meishan's review.

Instead, Meishan contends that item 4 is aimed at ensuring that the amendments are retrospectively applied only to reviews which were underway immediately prior to the commencement. Consistent with the retrospective application of other legislative amendments, and ensuring that parties are not adversely disadvantaged, Meishan submits that immediately should be interpreted as applying to reviews where the date of lodgement of the application was made after the date of the bill being introduced into parliament, being 13 September 2017. As Meishan lodged its application for review nearly five months prior to the bill being introduced to Parliament, the legislative amendments should not have been applied retrospectively to Review 410.

2.2 Ground 2: The Assistant Minister made incorrect assessments and determinations with respect to Meishan's exports, pursuant to subsection 269TAB(2A).

In accordance with the newly introduced subsection 269TAB(2A), the Minister must have regard to (i) previous volumes of exports by that exporter, (ii) patterns of trade for like goods, and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter. Notwithstanding its contention that the new legislative provisions ought not to have been applied retrospectively, Meishan nevertheless considers that the Commission erred in each of its assessments and the determination that Meishan's circumstances met the conditions for being considered a 'low volume exporter'.

2.2.1 Previous volumes of exports by that exporter

In its Final Report (REP 410), the Commission notes that Meishan had previously exported like goods to Australia during the original investigation period (1 July 2011 – 30 June 2012), and had not exported like goods since December 2012.

The explanatory memorandum to the Bill states that:

> *14. New paragraph 269TAB(2A)(b)(i) requires consideration of the previous volumes of exports (if any) of the goods that are the subject of the review to Australia by that Exporter. If the previous volumes of exports are **much higher** than the volume of exports during the period being examined by the review, this may indicate that the Exporter has adopted a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty. This may be relevant in the Minister's determination that the information (if any) provided by the Exporter is insufficient or unreliable for the purpose of determining an appropriate export*

price and that the specific methods prescribed under new subsection 269TAB(2B) should be applied.

[emphasis added]

It is clear that the new legislation requires the Commission to consider whether the previous volumes of exports were '*much higher than the volumes of exports during the period being examined by the review*' in order to understand and determine whether the exporter had '*adopted a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty*'.

In REP 410, the Commission states that volumes of exports of the goods to Australia during the original investigation period were compared to the review period and the Commission considers previous volumes of exports of the goods to Australia are **relatively** higher than the volume of exports during the review period. The Commission does not state that it considers previous volumes of exports of the goods to Australia to be **much higher** than the volume of exports during the review period.

The Commission requested and was provided with Meishan's quarterly export volumes from April 2011 through to March 2016.

That data clearly shows the following:

- exports to Australia by Meishan during the original investigation period totalled [redacted] metric tonnes, which approximately represented [redacted]% of the total Australian market, or [redacted]% of Meishan's total production capacity.

This small volume of exports by Meishan relative to the total aluminium zinc coated steel market, and relative to their respective production capacities demonstrates that these negligible export volumes during the original investigation period cannot be considered 'much higher' than the review period, and are in no way indicative of an intended strategy to exploit the dumping framework. Instead, the original negligible export volumes and the end of exports in 2012, reflect the company's decision to not supply and compete in export markets with common grades/types of products, but rather to focus on non-standard product specifications that are not readily available or able to be manufactured locally and/or by other exporters.

The decision of Meishan to apply for review of the measures at this time was prompted by a particular Australian end-user seeking supply of particular product specifications which it considers are not currently being manufactured in Australia, and in some cases are not able to be manufactured in Australia by the local producer. This includes aluminium zinc coated sheets [redacted]. **[Product material specifications]**

[redacted] **[Product material specifications]**. The specific Australian customer seeking supply of [redacted] aluminium zinc coated products has been advised by the local Australian producer, Bluescope Steel (Bluescope), that at this stage, it is unable to supply [redacted] material.

Meishan provided the Commission with evidence that it had contacted Bluescope and sought to confirm their production capabilities with regard to this very narrow and discrete product range. Meishan's desire to supply the small demand in Australia for [redacted] material is considered important to the Commission's determination and assessment of Meishan's relative export volumes.

Meishan did not cease exporting in 2012 as part of a strategy to request a review five years later in the hope of obtaining a favourable rate of dumping duty. It has applied for review of the measures to obtain an anti-dumping measure which would ensure future exports of these [redacted] materials are not dumped whilst effectively preventing material injury.

Meishan considers that a floor price measure would achieve this outcome and whilst addressing the injurious effects on the local Australian industry. The explanatory memorandum envisages this possible outcome by noting:

> *… the Bill makes allowance for the fact that some Exporters may have exported low volumes or made no exportations, but applying subsections 269TAB(1) or (3) will not lead to a less effective rate of duty.*

Therefore, Meishan contends that its previous export volumes were negligible and are not much higher relative to the total Australian market or Meishan's production capacity. As such, it should not be found to be a 'low volume exporter' that is the intended target of the new legislation amendments.

2.2.2 Patterns of trade for like goods

Meishan contends that the Commission's assessment and consideration of the patterns of trade for like goods to be fundamentally flawed and missing objective examination of the evidence. Apart from merely noting the marked decline in export volumes of like goods from China, the Commission's assessment focuses on and gives entire weight to the export volumes of like goods from other exporting countries.

This is in direct contrast to the example and guidance contained in the explanatory memorandum to the *Bill;*

> *15. New paragraph 269TAB(2A)(b)(ii) requires consideration of the patterns of trade for those goods. For example, some goods are specialty or custom products that are consistently exported in low volumes. Considering patterns of trade may involve an examination of the previous patterns of trade for the Exporter in question, or the pattern of trade generally among Exporters of goods from the country of export. The*

> *Minister may also consider the pattern of trade in other ways. For example, if a decline in the pattern of trade from the Exporter reflects a similar decline in the pattern of trade from the country of export generally, during the period being examined by the review, this may demonstrate that low volumes are indicative of broader market trends, rather than a strategy of low volume exports in an attempt to exploit the unintended consequence of the review of measures to obtain a more favourable rate of duty. This may weigh in favour of the Minister determining that the information (if any) provided by the Exporter is sufficient and/or reliable for the purpose of determining an appropriate export price and that the specific methods prescribed under new subsection 269TAB(2B) should not be applied.*

It is clear from the explanatory memorandum that the assessment of patterns of trade is to be undertaken in the context of the '*exporter in question*' or '*the pattern of trade generally among Exporters of goods from the country of export'*. As highlighted by example, a similar pattern of decline or trend between that of the exporter's volumes and from the country of export more broadly, suggests a broader market trend rather than an attempt by the exporter to reduce its export volumes to obtain a more favourable measure.

Whilst subsection 269TAB(2A) and the explanatory memorandum may not explicitly limit assessment to a particular country or countries, it is incorrect for the Commission to give greater weight to a comparison of Meishan's previous export volumes to that of other exporting countries, over total volumes from China. As highlighted above, the explanatory memorandum explicitly references the country of export. As is evident from the graph at Figure 1 of the Commission's issues paper, exports from China have been negligible, but for most of the period did not exist at all. This pattern of trade to Australia by Meishan and Chinese exporters more broadly reflects a contrast in market dynamics between the Australian and Chinese domestic markets.

Further, the Commission have overlooked the speciality nature of Meishan's previous and proposed exports to Australia. As evidenced in its email communication with the local Australian producer, Meishan's request for review is to enable exports of [redacted] material, which is understood to be incapable of being manufactured in Australia at this time.

This demonstrates and supports a conclusion that the patterns of trade to Australia are similar between Meishan's exports and exports more broadly from China, and as such, the correct decision was give weight to these facts and determine that Meishan was not a low volume exporter as defined, and recommend that the new subsection 269TAB(2B) of the Act should not be applied.

2.2.3 Factors affecting patterns of trade for like goods that are not within the control of the exporter.

Firstly, Meishan does not consider that its circumstances accord with the intent of the new export price provisions, which are aimed at limiting an exporters ability to receive a less effective anti-dumping duty by not exporting, or exporting small volumes at a higher price,

for a period of time, before applying for the duty to be reviewed. Meishan's exports have never been of a significant volume.

In REP 410, the Commission states:

> *The explanatory memorandum to the amending legislation identifies factors that may affect patterns of trade for like goods that are not within the control of the exporter. Such factors may include supply disruptions or natural events (such as flood, drought or fire) that affect production levels.*
>
> *The Commission has found that Meishan manufactured and sold like goods on the domestic market and to third countries during the review period. The Commission considers that this indicates that there do not appear to be any factors (such as natural events) that are not within the control of Meishan that are affecting trade for like goods.*

Meishan considers the Commission's assessment to be incorrect.

The Commission provides a loose and misleading reproduction of the relevant text of the explanatory memorandum that it presents as supporting its position. The explanatory memorandum does not define 'factors outside the exporter's control'. It simply provides two examples that may be considered such factors and does not in any way limit or provide an exhaustive list of such factors that may considered.

As highlighted and evidenced to the Commission, Meishan's purpose for requesting a review of the measures at this time is due to interest from a particular Australian end-user for supply of [redacted] material which is unable to be manufactured locally in Australia. Given the customised nature of the proposed exports, there is limited demand from a single customer. This limited demand is beyond the control of Meishan and it has been the primary factor which has led to the reduction in Meishan's export volumes since 2012.

Note 15 of the explanatory memorandum to the amending legislation states that '*some goods are specialty or custom products that are consistently exported in low volumes'*. It therefore logically follows that limited demand is a factor for a company that has a general policy of focusing on the supply of non-standard products into export markets.

The Commission then acknowledges that limited demand is indeed a *factor* but at the same time states that it '*does not consider that this factor has somehow prevented Meishan from exporting the goods to Australia'*, without providing any supporting reasoning. Meishan cannot control demand for customised products any more than it can control the other factors referred to by the Commission in REP 410. Indeed, a flood or fire may be easier for an exporting company to deal with than limited demand. This again represents a selective and convenient use of the guidelines on behalf of the Commission.

The Commission goes on to state that it;

> *has observed that there is still demand in Australia for aluminium zinc coated steel generally, as evidenced by the continued Australian production of those goods and imports into Australia of those goods…[T]he most likely reason that Meishan has not exported the goods to Australia since the December quarter of 2012 was because of the imposition of anti-dumping measures on exports from China to Australia.*

Meishan considers that these comments refer to the general demand for aluminium zinc coated steel and are not relevant to the non-standard materials referred to by Meishan.

2.3 THE CORRECT AND PREFERABLE DECISIONS

Meishan contends that the correct and preferable decisions to the challenged findings are:

Ground 1: Meishan considers that the Assistant Minister should not have retrospectively applied the new legislative provisions to Meishan's review as the review was not undertaken immediately before the commencement of the relevant schedule. Instead, the correct and preferable decision was for the Assistant Minister to ascertain Meishan's export price in accordance with 269TAB(3) of the Act, based on the determined normal value which would ensure its future exports to Australia are not dumped.

Ground 2: Meishan disputes the Commission's assessment and determination that its circumstances match that of a 'low volume exporter'. Instead, the correct and preferable decision was to ascertain Meishan's export price in accordance with 269TAB(3) of the Act, based on the determined normal value which would ensure its future exports to Australia are not dumped.

The explanatory memorandum envisages this possible outcome by noting:

> *… the Bill makes allowance for the fact that some Exporters may have exported low volumes or made no exportations, but applying subsections 269TAB(1) or (3) will not lead to a less effective rate of duty.*

In Meishan's view then, and the view reflected in the explanatory memorandum, the purpose of the dumping measures is to adequately address the effects of dumping, whilst ensuring that the measure does not go further than is necessary to attain it. As Meishan is only interested in undertaking future exports to Australia of customised [redacted] products for a single customer, it submits that the correct decision was to impose a floor price measure at the prevailing weighted average normal value or the normal values determined for the highest grade model sold domestically during the review period.

This would ensure that future export prices to Australia by Meishan reflected premium non-standard domestic prices. Based on the Commission's normal value calculations, the highest prices domestic model was "[redacted]".

3. REASONS WHY THE PROPOSED DECISIONS ARE MATERIALLY DIFFERENT FROM THE REVIEWABLE DECISION.

Ground 1: The proposed decision is materially different to the reviewable decision as the new provisions would not have been applied, and Meishan's export price would have been ascertained under subsection 269TAB(3) of the Act, which would have allowed the Commission to ascertain an export price equal to the ascertained normal value, and impose a 0% rate of duty and a floor price measure.

Ground 2: The proposed decision is materially different to the reviewable decision as a finding that Meishan was not a low volume exporter would have allowed the Assistant Minister to ascertain Meishan's export price under subsection 269TAB(3) of the Act, which would have provided for the export price to be ascertained equal to the ascertained normal value, resulting in a 0% rate of duty and a floor price measure.