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.

**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.

[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*.

**PART A: APPLICANT INFORMATION**

**1. Applicant's details**

Applicant's name: Changshu Longte Grinding Ball Co., Ltd ("Longte")

Address: No. 118 Longteng Road, Tong Gang Industrial District, Meili Town, Changshu City, Jiangsu Province, China

Type of entity (trade union, corporation, government etc.): Limited Liability company

**2. Contact person for applicant**

Full name: Xu Sheng

Position: Director

Email address: xusheng_shawn@lttg.cn

Telephone number: +86 512 5206 1039

Please note that all communications in relation to this application are requested to take place with and through Longte's legal representatives. For contact details please refer to Part E of this application.

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

Pursuant to Section 269ZZC of the *Customs Act* 1901 ("the Act"), a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. An *"interested party"* is defined under Section 269T of the Act as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia. Longte is a manufacturer and exporter of the goods to which the decision relates, namely grinding balls, and is thus an *"interested party"* for the purposes of the Act and this application.

**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 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 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..

Goods excluded from the goods which were the subject of the reviewable decision were 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 under the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

- 7325.91.00 with statistical code 26;
- 7326.11.00 with statistical code 29; and
- 7325.90 with statistical code 59.

**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.*

2016/90

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

**The reviewable decision was dated 1 September 2016 and was published on 9 September 2016, as evidenced by the following which has been extracted from the Anti-Dumping Commission website (see "Date Loaded"):**

# EPR 316

## Grinding balls from China

| No. | Type | Title | Date Loaded |
|---|---|---|---|
| 058 | Notice | Notice pursuant to subsection 10(3B) of the *Customs Tariff (Anti-Dumping) Act 1975* (PDF 427KB) | 09/09/2016 |
| 057 | Notice | Notice pursuant subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*057 - Section 8 Notice.pdf (PDF 383KB) | 09/09/2016 |
| 056 | Notice | ADN 2016/91 - Findings in Relation to a Subsidisation Investigation (PDF 485KB) | 09/09/2016 |
| 055 | Notice | ADN 2016/90 - Findings in Relation to a Dumping Investigation (PDF 613KB) | 09/09/2016 |
| 054 | Report | Final Report 316 - REP 316 (PDF 1.8MB) | 09/09/2016 |

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

See Attachment A

**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: ☒

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

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

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.**

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.*

**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;
- 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: Charles Zhan

Position: Associate

Organisation: Moulis Legal

Date: 10 October 2016

**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: | Charles Zhan |
| Organisation: | Moulis Legal |
| Address: | 6/2 Brindabella Circuit<br>Brindabella Business Park<br>Canberra International Airport<br>Australian Capital Territory<br>Australia 2609 |
| Email address: | charles.zhan@moulislegal.com |
| Telephone number: | +61 2 6163 1000 |

**Representative's authority to act**

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

**See Attachment C.**

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:…….

(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /

10 October 2016

# In the Anti-Dumping Review Panel

# Application for review
# Grinding balls exported from China

# Changshu Longte Grinding Ball Co., Ltd.



## Introduction

By way of an application to the Anti-Dumping Commission ("the Commission") dated "July 2015", Donhad Pty Ltd ("Donhad") and Commonwealth Steel Company Limited ("Moly-Cop") applied for a dumping and countervailing investigation into imports of certain grinding balls ("grinding balls") from the People's Republic of China ("China").

On 17 November 2015, in response to that application, the Commission initiated the subject anti-dumping investigation and concurrently a countervailing investigation in respect of grinding balls exported from China.

On 6 June 2016, the Commission terminated the countervailing investigation in so far as it related to the

exports of Changshu Longte and certain other Chinese exporters.[1]

On 9 September 2016, at the conclusion of the anti-dumping investigation, the Assistant Minister and Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Parliamentary Secretary") decided to impose dumping duties on grinding balls exported to Australia from China.[2]

Specifically, the Parliamentary Secretary decided to publish notices in relation to grinding balls exported from China under Sections 269TG(1) and (2) of the *Customs Act 1901* ("the Act").[3] These notices had the effect of imposing dumping duties on exports from the exporters to which they applied.

Changshu Longte Grinding Ball Co., Ltd. ("Longte") is a Chinese manufacturer and exporter of grinding balls, and is presently subject to those notices.

Longte seeks review by the Anti-Dumping Review Panel ("the Review Panel"), under Sections 269ZZA(1)(a) and 269ZZC of the Act, of the decision (or decisions) made by the Parliamentary Secretary to impose dumping measures against its exports of grinding balls to Australia, as outlined in this application.[4]

We now address the requirements of both the form of application that has been approved by the Acting Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2) in relation to each of Longte's grounds of review, being those requirements not already addressed within the text of the approved form itself.

# A First ground – the grinding bar cost substituted in Longte's costs of production was not determined in the country of export

## Introduction

In Report 316, the Commissioner of the Anti-Dumping Commission (hereinafter "the Commission")

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1 ADN 2016/58

2 Based on the recommendations contained in *Report No. 316 – Alleged Dumping and Subsidisation of Grinding Balls Exported from the People's Republic of China*, 6 June 2016 ("Report 316").

3 A reference in this Application to "the Act", or to a "Section", "Subsection" or "Subparagraph" is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

4 Longte notes that the Parliamentary Secretary, in relation to the subsidisation investigation, decided to publish notices in relation to grinding balls exported from China by "uncooperative and all other exporters", under Sections 269TJ(1) and (2) of the Act. However, the subsidisation investigation was earlier terminated in so far as it related to Longte. Longte is not subject to those notices. The Parliamentary Secretary's decision to publish these notices is not the subject of this review application.

recommended to the Parliamentary Secretary that the situation in the market of the country of export (namely, China) was such that sales in that market were not suitable for use in determining a price for normal value purposes under Section 269TAC(1). As a result, the Commissioner proceeded to work out the normal value of the grinding balls concerned under Section 269TAC(2)(c), on the basis of the cost to make and sell the grinding balls, and profit.

In working out the normal value in this way, the Commission did not use Longte's costs as set out in its financial records, or at least did not *only* use Longte's costs. Instead, the Commission "substituted" what it referred to as a "benchmark" cost for grinding bar into Longte's costs.

It would appear to Longte that the Commission claims to have done this because it was not satisfied that Longte's financial records *"reasonably reflect[ed] competitive market costs associated with the production or manufacture"* of grinding balls by Longte.

The dumping margin calculated for Longte in Report 316 with the substitution of the benchmark cost was a positive (dumping) margin of 3%. The dumping margin calculated for Longte without the substitution of the benchmark cost – in other words, using Longte's costs – was a no dumping margin of negative 5.9%.[5]

Longte disagrees with the substitution of the benchmark cost for grinding bar in the determination of its normal value.

## 10 Grounds

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

The first ground of Longte's disagreement is that the cost of production intended to be used for normal value calculation is required by the Act to be *"such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export"*. The grinding bar cost that was used by the Commission was not such a cost.

Section 269TAC(2) provides as follows:

> *Subject to this section, where the Minister:*

[5] See Commission's exporter verification report for Longte, published on 11 April 2016. Please also note that this dumping margin did not take into account some further revisions subsequently raised by Longte and accepted by Commission, which would have had the effect of further reducing the dumping margin.

*(a) is satisfied that:*

*(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or*

*(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);*

*the normal value of goods exported to Australia cannot be ascertained under subsection (1); or*

*(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);*

*the normal value of the goods for the purposes of this Part is:*

*(c) except where paragraph (d) applies, the sum of:*

*(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*

*(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export--such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or*

*(d) if the Minister directs that this paragraph applies--the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.* [underlining supplied]

The cost that the Commission used in working out Longte's normal value was said to be a combination of:

- monthly Latin American FOB billet prices for ASTM A36/A36-08 published by McGraw Hill Financial Services (Platts);
- a "ferroalloy uplift" –based on European import prices, to bring the billet grade from the Commission's own Latin America FOB billet prices for ASTM A36/A36-09 to the grade of grinding ball exported by Longte; and
- a "conversion factor" based on Longte's actual cost of converting steel billet to grinding bar.

This benchmark is explained by the Commission as meeting the following objectives:

*Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information for competitive market costs of steel billets. This is*

> *consistent with the Commission's approach in the most recently completed steel investigations INV 300 and 301. The Commission notes that the Latin American billet is of grade ASTM A36/A36-08. Monthly ferroalloy prices for the investigation period were obtained from Metal Bulletin. The total cost of ferroalloys applied to the steel billet was determined using a model developed by the Australian industry that allowed the Commission to replicate the chemical composition of each grade of exported grinding ball using the most cost effective combination of ferroalloys.*[6]

Thus, the cost used by the Commission for grinding bar, purportedly under Section 269TAC(2)(c) of the Act, consists of a Latin American FOB export billet price and European ferroalloy prices. These are not costs of production in the country of export of Longte's grinding balls. The country of export of Longte's grinding balls is China. Export prices of Latin American countries and import prices of European countries are not costs in China, were not costs determined by the Minister in China, and were certainly never a cost of Longte.

Section 269TAC(5A) directs the Commission, in the consideration of what are the costs of production to use under Section 269TAC(2)(c)(i), as follows:

> *Amounts determined:*
>
> *(a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and*
>
> *(b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);*
>
> *must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).*

In Report 316, the Commission maintained that:

> *Normal values were constructed under subsection 269TAC(2)(c) and, as required by subsections 269TAC(5A) and 269TAC(5B), in accordance with sections 43, 44 and 45 of the Customs (International Obligations) Regulation 2015 (the Regulations).*[7]

Taking each of these Regulations in turn, we note:

- Regulation 43(1) is a directional or descriptive regulation, which does not in our view impact on the issues at hand. It simply restates Section 269TAC(5A).
- Regulation 43(2) sets out when the Minister must use the financial records of an exporter to work out an amount as a cost of production – for the purposes of argument, we will proceed on the

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6 Report 316, page 26.

7 Report 316, page 24.

assumption that the Minister did not have to use Longte's financial records, by reason of the non-compliance of those records with a requirement of Regulation 43(2)(b).

- Regulation 43(3), (4) and (5) relate to the allocation of costs, and thus are not relevant for present purposes.
- Regulation 43(6) and (7) relate to the adjustment of costs in the circumstances of start-up operations, and thus are not relevant for present purposes.
- Regulation 43(8) relates to the Minister's ability to disregard any information that is considered to be unreliable, and thus is not relevant for present purposes.
- Regulation 44 refers wholly to administrative, selling and general costs, and thus is not relevant for present purposes.
- Regulation 45 refers wholly to profit, and thus is not relevant for present purposes.

We see nothing in any of these provisions which directs, allows or even suggests that the Commission could use, in the circumstances here at issue, an export price of Latin American countries, together with the import prices of European countries, as a cost of production of an exporter such as Longte that has China as its country of export. The statutory requirement under Section 269TAC(2)(c)(i) is that the Commission (ultimately, the Minister) must determine the amounts of the costs of production or manufacture of the goods *"in the country of export"*. The Commission has not done so. Reading the relevant provision of the Act to the effect that the cost does not have to be a cost in the country of export is to give those words – *"country of export"* – no meaning. And, if it is the case that this simple proposition needs further support, the scheme of the normal value construction provisions of the Act (as we point out below) gives relevance to the choice of the place of the cost and of the information that can be used for that purpose, and therefore provides such support.

Evidently, the Commission has determined what it *wants* the costs in the country of export to be. Longte's concern and complaint is that the benchmark grinding bar cost does not exist in the country of export, is not "of" the country of export, is formed by economic forces which are not evident in the country of export and indeed has no relationship to the country of export.

To the contrary, the Commission has attempted to do its best to ensure that the cost it used has nothing whatsoever to do with the country of export:

> *Based on the depth of the market, and the geographic distance from China minimising the potential distortions of GOC influenced billet prices impacting on the Latin American billet export prices, the Commission considers that the Latin American export billet prices in FOB terms represent the best available information for competitive market costs of steel billets. This is consistent with the Commission's approach in the most recently completed steel investigations*

*INV 300 and 301.*[8]

Relevantly, we also draw the Review Panel's attention to the following statement by the Commission in its investigation INV 300, in relation to its decision to change the steel billet benchmark basis from East Asia import prices to Latin American export prices:

> *…It is highly likely that Chinese billet prices have distorted steel billet prices in both the East Asia and Turkey steel billet indexes. Consequently, the Commission considers that East Asian steel billet prices do not constitute an appropriate benchmark for competitive market costs of steel billets in China as the index itself appear to be affected by Chinese steel billet prices. For the same reasons, the Commission does not consider Turkish import or export steel billet price indexes as appropriate benchmarks for competitive market costs of steel billets in China either.*[9]

We submit that Australian law directs the Minister to work out the normal value of goods, where the prices in sales of those goods are considered not to be suitable for that purpose, based on:

- the sum of *"cost of production or manufacture of the goods in the country of export*" according to Section 269TAC(2)(c); or
- third country sales under Section 269TAC(2)(d).

The proposition that the Commission might not *want* to proceed in either of those ways is irrelevant. In our submission the law is clear, and must be applied.

The principal and overarching requirement for such a normal value calculation is Section 269TAC(2)(c) and (d). The operation of Regulation 43 is for the purpose of prescribing the "manner" to be adopted, and the "factors" that should be taken into account, in working out the relevant costs described under Section 269TAC(2)(c)(i). We have explained how none of the Regulations mandate or permit the use of costs that are not determined in the country of export. The "manner" and the "factors" must still comply with and cannot extend beyond the enabling law and the regulation-making power under that law. The consideration that permits the Minister not to use the financial records of an exporter – being a conclusion that the records do not reasonably reflect competitive market costs[10] – is not a justification for ranging far and wide around the world to identify costs which do not exist in the country of export.

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8 Report 316, page 26.

9 Report 300, page 21.

10 Our client maintains that Regulation 43(2)(b)(ii), despite being a law of Australia, is a non-compliant implementation of the relevant provision in the WTO *Anti-Dumping Agreement*, which instead refers to an obligation on the investigating authorities to use the financial records of an exporter for normal value determination if they are maintained in accordance with the GAAP of the country of export and *"reasonably reflect the costs associated with the production… of the goods"* (Article 2.2.1.1 refers).

In response to this, the Commission might maintain – and has frequently said - that no costs for steel inputs (in this case, steel billet and grinding bar) in China reasonably reflect competitive market costs. Rather than support its position, maintaining this proposition instead underlines the illogical nature of such an application of the law. The Act provides that the Minister must determine the costs in the country of export. The records of an exporter need not be used for that purpose if they do not reasonably reflect competitive market costs. But the Minister must still determine the costs in the country of export. Presumably, the Commission at this point of the argument would say that it cannot or should not use costs in China because it does not think any of them reasonably reflect competitive market costs. This is illogical because the Commission's starting point is itself illogical, as we now explain.

We refer the Review Panel to Section 269TAC(4), which describes the way in which a cost-based normal value may be worked out where:

> *…the Government of the country of export:*
>
> *(a) has a monopoly, or substantial monopoly, of the trade of the country; and*
>
> *(b) determines or substantially influences the domestic price of goods in that country;*

A country with this kind of economy is colloquially referred to as having a non-market economy. In that situation, pursuant to Section 269TAC(4)(e), the normal value may be:

> *…a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:*
>
> *(i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;*
>
> *(ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;* [underlining supplied]

We also refer the Review Panel to Section 269TAC(5D)(a), which allows the normal value to be *"the amount determined by the Minister, having regard to all relevant information"* unconstrained by the rules under Section 2569TAC(2)(c) (ie *"in the country of export"*) or of Section 269TAC(4)(e) (ie *"in a country determined by the Minister"*), where:

> *both of the following conditions exist:*
>
> *(i) the exporter of the exported goods sells like goods in the country of export;*
>
> *(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;* [underlining supplied]

A country with these kind of conditions in the market for the goods concerned is defined as an economy in transition under the Act. Notably, Section 269TAC(5D) cannot be applied to China, because China is listed in Schedule 2 to the *Customs (International Obligations) Regulations 2015*, which provides that

Section 269TAC(5D) cannot be applied against the WTO Members there listed.

To return to our earlier point, we respectfully say that it is illogical to say that there is or can be no "cost" that reasonably reflects a competitive market cost in China. This is because the legislature has intended, and the legislation states, and the World Trade Organisation *Anti-Dumping Agreement* requires, that the costs for normal value determination in the case of WTO Members are to be determined in the country of export/origin.

The express words of the legislation, and the scheme of the legislation, require this to be the case:

- For a WTO Member, being a country specified in Schedule 2 of the Regulations to which we have referred, the costs determined by the Minister are those *in the country of export*.
- For non-market economies, the costs to be determined are those *in a country determined by the Minister* – they do not have to be determined in the country of export, and indeed would be unlikely to be so determined because of the finding that the country was a non-market economy.
- For countries where market conditions do not prevail in respect of the domestic selling price of those like goods, referred to as "economies in transition", the normal value can be determined by the Minister *having regard to all relevant information*.

By stipulating the information to be used for the purpose at each of these tiers, or in each of these situations, the Act makes clear that exporters of WTO Members are entitled to have costs in the country of export used for constructed normal value purposes, but that this is not the case for exporters from non-market economies[11] or economies in transition.

Moreover, if the Commission remains unmoved by the proposition that the legislation precludes the adoption of costs that are not *"determine[d]… in the country of export"*, the legislation has helpfully allowed there to be an alternative, namely third country export prices. In other words, if the Minister cannot determine the costs in the country of export, then the other option that is available is that presented under Section 269TAC(2)(d).

This requirement that the costs of production for the calculation of normal value are those in the country of export has been confirmed and crystallised by the WTO Panel decision in *European Union – Anti-*

[11] It is noted that listing of a WTO Member in Schedule 2 of the Regulations does not preclude a WTO Member from being a non-market economy for the purposes of Section 269TAC(4). However if a country is a non-market economy then it would not be a member of the WTO.

*Dumping Measures on Biodiesel from Argentina*[12] ("EU - Biodiesel"). That dispute involved the EU's decision to resort to a constructed normal value in relation to exports from Argentina. In constructing the normal value the EU substituted a FOB price based benchmark cost for soybean into the Argentinian exporter's costs of production, on the basis that the Argentinian cost of soybean was distorted by various Argentinian Government regulatory measures.

The Panel stated:

> *7.256. The text of both Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 refer to the "cost of production" in "the country of origin". Thus, the question before us is whether the cost used by the EU authorities for soybeans can be understood to be a cost in "the country of origin", that is, in Argentina.*
>
> *7.257. We recall, in this regard, that the EU authorities found the domestic prices of the main raw material used by biodiesel producers in Argentina to be "artificially lower" than international prices due to the distortion created by the Argentine export tax system. On that basis, the EU authorities disregarded the price actually paid by Argentine producers for soybeans and replaced it with "the price at which those companies would have purchased the soya beans in the absence of such a distortion". Accordingly, the EU authorities replaced the average actual purchase price of soybeans during the IP, as reflected in the producers' records, with the average reference price of soybeans published by the Argentine Ministry of Agriculture for export, FOB Argentina, minus fobbing costs, during the IP. The EU authorities considered that this reference price reflected the level of international prices and that this would have been the price paid by the Argentine producers in the absence of the export tax system.*
>
> *7.258. In our view, it is plain from this that the cost used by the European Union is not a cost "in the country of origin". It was specifically selected to remove the perceived distortion in the domestic price of soybeans caused by the Argentine export tax system. This is because the prices prevailing in Argentina were considered to be artificially lower than international prices. In other words, the EU authorities selected this cost precisely because it was not the cost of soybeans in Argentina.* [footnotes omitted]

On the basis of this plain interpretation of the relevant provision of the Anti-Dumping Agreement, the Panel decided that the costs used for constructing normal value under Article 2.2 of the *Anti-Dumping Agreement* must be based on the cost of production in the country of origin. The Panel ruled as follows:

> *7.260. …the European Union acted inconsistently with Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 by using a "cost" that was not the cost prevailing "in the country of origin", namely, Argentina, in the construction of the normal value.*

We submit that the WTO Panel's finding in EU - Biodiesel is directly relevant to the present investigation, and resolves any ambiguity, as it establishes that costs in the country of origin must be used for normal value purposes. A finding of the existence of a "particular market situation" in the market for the like

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[12] WT/DS473/R (29 March 2016)

goods (which, in Australia, equates with the situation where sales in that market are found not to be suitable for use in determining a price for normal value purposes) simply allows the investigating authority to determine the normal value by way of a cost-based construction or to base it on an exporter's third country sales. It does not allow the investigating authority to go beyond the markets of the country of export and substitute costs which are not those "in" or "of" the country of export.

We submit that these findings confirm the already clear language of Section 269TAC(2)(c) of the Act, which requires the constructed normal value to be based on *"the cost of production or manufacture of the goods in the country of export"*, together with the relevant selling, general and administrative ("SG&A") and profit.

In Longte's submission to the Commission in response to Statement of Essential Facts No 316 ("SEF 316") dated 11 May 2016 ("SEF submission"), we brought to the Commission's attention the direct relevance of the WTO Panel's finding in EU - Biodiesel. The Commission did not disagree with Longte's submission. Rather, Report 316 simply stated:

> *The Commission notes the recent WTO panel decision in EU – Biodiesel, as raised by Longte. The Commission further notes that the European Union (EU) filed a notice of appeal on 20 May 2016 in relation to that decision and that the Appellate Body is yet to rule on this matter.*[13]

The Appellate Body has now ruled on this matter. The Panel's finding has been upheld by the WTO Appellate Body.

In its report published on 6 October 2016,[14] the Appellate Body ruled as follows:

> *6.83. …Consequently, we uphold the Panel's finding, in paragraphs 7.260 and 8.1.c.ii of its Report, that the European Union acted inconsistently with Article 2.2 of the Anti Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 by not using the cost of production in Argentina when constructing the normal value of biodiesel. Having upheld this finding, the condition for Argentina's request for completion of the legal analysis is not fulfilled. Thus, we do not examine this request.*

In the course of arriving at this ruling, the Appellate Body stated:

> *6.23. Furthermore, Article 2.2 of the Anti Dumping Agreement refers to "the cost of production in the country of origin". In our view, given the fact that Article 2.2.1.1 starts with the phrase "[f]or the purpose of paragraph 2", the interpretation of the term "costs" in Article 2.2.1.1, for purposes of calculating the costs of production, must be consistent with how the term "cost" is understood in Article 2.2. Thus, insofar as the cost of production is concerned, the costs "calculated on the*

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13 Report 316, at pages 28 and 29.

14 WT/DS473/AB/R (6 October 2016)

*basis of records kept by the exporter or producer" under Article 2.2.1.1 must lead to a cost "in the country of origin". The context provided by Article 2.2 suggests that the second condition in the first sentence of Article 2.2.1.1 should not be interpreted in a way that would allow an investigating authority to evaluate the costs reported in the records kept by the exporter or producer pursuant to a benchmark unrelated to the cost of production in the country of origin.*

*6.24. In addition, in our view, Article 2.2 of the Anti-Dumping Agreement concerns the establishment of the normal value through an appropriate proxy for the price of the like product in the ordinary course of trade in the domestic market of the exporting country when the normal value cannot be determined on the basis of domestic sales. The costs calculated pursuant to Article 2.2.1.1 of the Anti-Dumping Agreement must be capable of generating such a proxy. This supports the view that the "costs associated with the production and sale of the product under consideration" in Article 2.2.1.1 are those costs that have a genuine relationship with the production and sale of the product under consideration. This is because these are the costs that, together with other elements, would otherwise form the basis for the price of the like product if it were sold in the ordinary course of trade in the domestic market.*

*…*

*6.73. We further observe that, while both obligations apply harmoniously when an investigating authority constructs the normal value, the scope of the obligation to calculate the costs on the basis of the records in the first sentence in Article 2.2.1.1 is narrower than the scope of the obligation to determine the cost of production in the country of origin in Article 2.2. In circumstances where the obligation in the first sentence of Article 2.2.1.1 to calculate the costs on the basis of the records kept by the exporter or producer under investigation does not apply, or where relevant information from the exporter or producer under investigation is not available, an investigating authority may have recourse to alternative bases to calculate some or all such costs. Yet, Article 2.2 does not specify precisely to what evidence an authority may resort. This suggests that, in such circumstances, the authority is not prohibited from relying on information other than that contained in the records kept by the exporter or producer, including in-country and out-of-country evidence. This, however, does not mean that an investigating authority may simply substitute the costs from outside the country of origin for the "cost of production in the country of origin". Indeed, Article 2.2 of the Anti Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 make clear that the determination is of the "cost of production […] in the country of origin". Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin". Compliance with this obligation may require the investigating authority to adapt the information that it collects. It is in this sense that we understand the Panel to have stated that Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 "require that the costs of production established by the authority reflect conditions prevailing in the country of origin".*

*6.81. As noted earlier, when relying on any out-of-country information to determine the "cost of production in the country of origin" under Article 2.2 of the Anti-Dumping Agreement, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin", and this may require the investigating authority to adapt that information. In our view, domestic prices may reflect world prices and, in such circumstances, a price at the border could, as the European Union argues, be simultaneously characterized as both an international and a domestic price. We do not consider, however, that the Panel failed to take such considerations into account. Rather, the Panel's analysis focused on the EU authorities' understanding of the surrogate price for soybeans. In line with the Panel's understanding, we consider that the mere fact that a reference price is published by the Argentine Ministry of Agriculture does not necessarily make this price a domestic price in Argentina. In addition, we note, as the Panel did, that the EU authorities considered that the*

> *reference price published by the Argentine Ministry of Agriculture reflected the level of international prices of soybeans. Other than pointing to the deduction of fobbing costs, the European Union has not asserted, either before the Panel or before us, that the EU authorities adapted, or even considered adapting, the information used in their calculation in order to ensure that it represented the cost of production in Argentina. On the contrary, the EU authorities specifically selected the surrogate price for soybeans to remove the perceived distortion in the cost of soybeans in Argentina. As the Panel stated, the EU authorities selected and used this particular information precisely because it did not represent the cost of soybeans in Argentina. Thus, we agree with the Panel that the surrogate price for soybeans used by the EU authorities did not represent the cost of soybeans in Argentina for producers or exporters of biodiesel. Accordingly, we do not consider that the European Union has established that the Panel erred in its application of Article 2.2 of the Anti-Dumping Agreement in finding that the European Union acted inconsistently with Article 2.2 of the Anti Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 by not using the cost of production in Argentina when constructing the normal value of biodiesel.*
>
> …
>
> *6.83. …Consequently, we uphold the Panel's finding, in paragraphs 7.260 and 8.1.c.ii of its Report, that the European Union acted inconsistently with Article 2.2 of the Anti Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 by not using the cost of production in Argentina when constructing the normal value of biodiesel. Having upheld this finding, the condition for Argentina's request for completion of the legal analysis is not fulfilled. Thus, we do not examine this request.* [underlining supplied]

Accordingly, Longte respectfully requests the Review Panel to find that the use of a cost of production in working out Longte's normal value, by way of the outright substitution of Longte's own grinding bar cost by a benchmark grinding bar cost derived from prices for steel billet exported by Latin American countries and ferroalloy imported into European countries, is not the correct or preferable decision.

## 11 Correct or preferable decision

**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**

In Longte's view, the correct and preferable decision ought to be that the Longte's own costs of production should be used in the construction of normal value, even if the Minister maintains that a particular market situation exists. This should be the correct and preferable decision, given that:

- the Commission was satisfied that *"Longte's CTMS was complete, relevant and accurate"*;[15]
- there was an absence of better or more preferable information regarding the cost in the country of export than the cost records of Longte before the Commission or the Minister when making

[15] Report 316, at page 32.

the reviewable decision, and that absence remains in this review before the Review Panel;

- the Minister's decision that certain parts of Longte's costs did not "reasonably reflect competitive market cost" was based overwhelmingly on the s view that the competitive market cost and the normal value should be determined using out-of-China costs, which is not a sustainable view if the Review Panel accepts Longte's argument in relation to this ground.

Assuming for the purposes of argument that the Commission correctly formed the view that Longte's costs did not reasonably reflect competitive market costs in one or other respect, the correct or preferable decision ought to have been that any cost used still had to be such amount as determined by the Minister in the country of export. In that the benchmark grinding bar cost was not so determined, that part of the reviewable decision was incorrect.

In B below, we identify further consequences that flow from the making of the correct decision.

## 12 Material difference between decisions

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

Firstly, the proposed decision that the cost of production be determined based on Longte's own cost records, and not on Latin America export prices of steel billet and European import prices of ferroalloy, would generate a materially different dumping margin. This is clearly demonstrate by the no-dumping margin published by the Commission[16] prior to its use of the benchmark cost surrogation-based normal value and ultimate dumping margin determination. Based on Longte's estimation, the dumping margin based on correction of this error itself would be negative 6.4% - not dumping. This is in line with the dumping margin of negative 5.9% stated in the verification report for Longte, combined with the changes raised by Longte in its SEF submission and accepted by the Commission in Report 316.

We submit that the difference between the outcomes of these two decisions is material.

Secondly, it may be considered that the proposed decision (that the benchmark grinding bar cost substituted by the Commission not be used) without any other decision being made by the Commission (ie about the legitimacy of the decision that Longte's financial records did not reasonably reflect competitive market costs, and about the consequences of that decision), do not resolve the question of what ultimately is the correct or preferable decision. However, even in such circumstances, the

[16] See Commission's verification report for Longte.

acceptance by the Review Panel of this ground of review is still materially different because the Review Panel would not then be able to recommend to the Parliamentary Secretary that the benchmark grinding bar cost can be used.

The acceptance by the Review Panel of the ground of review in B below, either independently or together with acceptance of this ground of review, is set out in B12.

## B Second ground –improper consideration of whether Longte's records reasonably reflect[ed] competitive market costs

**Introduction**

As has already been explained, in working out the normal value for Longte under Section 269TAC(2)(c) of the Act, the Commission substituted/adjusted Longte's costs with a benchmark grinding bar cost. This decision was made on the basis that Longte's costs of grinding bar did not reasonably reflect competitive market cost – because they were lower/different to the benchmark costs.

As also mentioned above, this benchmark grinding bar cost consists of three elements, namely:

- a steel billet cost,
- ferroalloy costs; and
- a conversion cost for transforming the steel billet to grinding bar.

Because the conversion cost is Longte's own cost, the decision to find that Longte's "grinding bar costs" did not reasonably reflect competitive market costs is in fact only a decision that Longte's cost records for *steel billet* and *ferroalloy* did not reasonably reflect competitive market costs, and should therefore be "adjusted" to the level of the benchmark cost of those foreign "steel billet" and "ferroalloy" costs, namely the Latin American export prices for steel billet and the European import prices for ferroalloy.

This was done despite the Commission's findings that:

- Longte did not purchase steel billet during the investigation period;[17] and
- Longte had *"transitioned to being a fully integrated producer of grinding balls during the*

[17] Report 316, page 46, which states "*The Commission has information from exporter questionnaires indicating that the cooperating exporters did not purchase steel billet during the investigation.*"

*investigation period.*"[18]

Longte disagrees with the Commission's finding that Longte's financial records for grinding bar did not reasonably reflect competitive market costs and, more specifically, the implied finding that Longte's cost of steel billet and ferroalloy did not reasonably reflect competitive market costs for the purpose of Regulation 43(2).

Further, in respect of that part of the investigation period during which Longte was a fully integrated producer of grinding balls, Longte disagrees with the substitution of the benchmark cost for steel billet in the determination of its normal value. No finding was made as to the competitive market cost of the raw materials that Longte *did* purchase – amongst which were iron ore, scrap steel, coal and coking coal. In any case the record demonstrates that these inputs were recorded in the financial records of Longte at their actual costs (as accepted by the Commission)[19] and that those actual costs reasonably reflected competitive market costs (in our client's submission).[20]

# 10 Grounds

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

**The first ground** of Longte's disagreement is that the Minister erred in determining that Longte's grinding bar cost did not "reasonably reflect competitive market cost". The sole basis for the Minister's finding was that Longte's grinding bar cost was different to the "competitive grinding bar benchmark", that was constructed using Latin American prices for steel billet and European prices for ferroalloy.

Report 316 explains the Commission's determination process as follows:

> *Neither the Act nor the Regulations prescribe a method for assessing whether an exporter's records reasonably reflect competitive market costs associated with the production or manufacture of like goods. Generally, when undertaking this assessment, the Commission may examine whether the GOC influenced the price of any major cost inputs.*
>
> *As discussed in Appendix 2, the Commission considers that the significant influence of the GOC has distorted prices in the iron and steel industry and grinding balls market in China.*

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[18] Report 316, page 46.

[19] See Report 316, page 32, "*… the Commission undertook a verification visit to Longte in February 2016 for the purposes of verifying the information contained in Longte's exporter questionnaire response. The Commission was satisfied that Longte's CTMS was complete, relevant and accurate.*"

[20] This is because of the reporting by Longte of its raw material purchase costs (and what that demonstrated about those costs), its full responsiveness to the questions asked of it by the Commission, and its full cooperation and participation in the investigation.

> *As the GOC did not respond to the Commission's invitation to comment on this investigation, the Commission was not able to rely on GOC data to quantify the impacts of GOC distortion on exporters' cost inputs.*
>
> *As a result, in this instance, the Commission has quantified the effects of GOC influence by comparing each exporter's cost of production with a benchmark.*[21] [underlining supplied]

And:

> *Having established a competitive grinding bar benchmark using the above methodology, the Commission compared the competitive grinding bar benchmark to the costs reported in the exporter's records. This comparison shows that the costs reported in the exporter's records are significantly influenced by GOC distortion, such that they do not reasonably reflect competitive market costs.*[22] [underlining supplied]

This means that the Minister's finding that Longte (and other Chinese exporters') records did not reasonably reflect competitive market costs was based solely on the fact that Longte's costs of grinding bar were different, in this case lower, than the so called "competitive grinding bar benchmark". The Commission gives no explanation as to why this comparison supports the view that Longte's grinding bar cost did not reasonably reflect competitive market costs. In particular, the comparison itself:

- does not establish that Longte's cost records *"are significantly influenced by GOC distortion"*;
- does not allow an inference to be drawn that one cost reasonably reflects a competitive market cost (the higher one) when the other does not reasonably reflect a competitive market cost (the lower one);
- does not establish why Longte's grinding bar cost should be regarded as not reasonably reflecting a competitive market cost;
- does not establish why the benchmark based on a Latin American steel billet export price and European ferroalloy import prices should be regarded as reasonably reflecting a competitive market cost for the purpose of determining the cost of production in the country of export under Section 269TAC(2)(c).

Report 316 provides the following justification for the use of the Latin American steel billet export price as part of the competitive market cost benchmark:

> *The Commission considers that the Latin American export billet prices at FOB level published by McGraw Hill Financial Services (Platts), forms an independent and reliable basis for the steel*

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21 Report 316, page 24

22 Report 316, page 26.

> *billet input component.*
>
> *World Steel Association's statistics shows that in excess of 63 million tonnes of crude steel was produced in the Latin American region in 2014. The Latin America region includes two of the top 13 countries, Brazil and Mexico, based on crude steel production volumes. Consequently, the Commission considers that the Latin America region has sufficient volume to reflect competitive market conditions. In addition, the Commission notes there are significant reserves of iron ore within the Latin America region which are mined and exported in large volumes. Of the iron ore exported from Central and Southern America, over half was directed to China, and the amount directed to China was greater than the amount consumed regionally. The Commission considers that this reflects a consistent cost point for a significant raw material that is included in the cost of steel billet.*

However, as the Commission is clearly aware, Platts also provides steel billet data in relation to other regions, including the East Asia region, which accounts for a far greater proportion of the world crude steel output than the Latin American region. Indeed as Longte submitted in its submission responding to the Commission's Issues Paper concerning the selection of a steel billet benchmark, the Commission's preferred benchmark data was previously derived from East Asia steel billet prices, which are also published by Platts.[23] Further if the volume and crude steel production level are a relevant consideration for considering the "competitive market conditions" – as the quoted paragraph above appears to indicate – then the costs in China and East Asia should obviously prevail, because on those measures they must qualify as being costs emanating from prices formed by the most competitive steel markets in the world.

The point is that the Minister's reasoning and determination does not support the conclusion that Longte's cost records for grinding bar do not reasonably reflect competitive market costs. Rather, the Minister's reasoning goes no further than showing that a grinding bar cost constructed using Latin American steel billet export price, European ferroalloy import prices and Longte's own steel billet to grinding bar conversion costs is different to the cost recorded by Longte for its production of grinding bar in China.

We submit that the Commission has failed to genuinely and properly consider the question at hand: that is, whether the financial cost records of Longte reasonably reflected competitive market costs associated with the production of the goods under consideration. In purposefully seeking a cost as irrelevant to the cost of production in China as possible, the Commission has fallen into the error of forgetting what the original point of the exercise was – namely, whether Longte's grinding bar cost

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[23] Longte submission dated 18 February 2016, page 7, which noted the Commission's position regarding steel billet benchmark in a separate investigation concerning China at that time.

reasonably reflected competitive market costs in the country of export, which is China. Simply comparing a cost formed in China with a cost formed in and around Latin America and Europe, with a sprinkle of Longte's own costs thrown into the mix, does not demonstrate that one of the other costs does not reasonably reflect competitive market costs. All it does is to demonstrate that the prices are different, from which it might reasonably be extrapolated that the markets are also different.

Accordingly, we submit that the Minister's finding in this regard is not the correct or preferable finding. The decision is based on flawed logic. It does not address the assessment and determination required by Regulation 43(2) of the Regulation and Section 269TAC(2)(c) of the Act.

The second ground of Longte's disagreement is that the Commission cannot properly determine that Longte's grinding bar costs do not reasonably reflect competitive market costs unless it determines that each of the costs concerned are of that nature. Because Longte manufactured its own grinding bar for [CONFIDENTIAL TEXTS DELETED – number] months of the POI, in its own integrated manufacturing process, all the way from the basic metallurgical elements of iron ore, coke and coking coal to the finished grinding ball product, it does not have a "cost " of purchasing grinding bar in its financial records. What it has in its records is the costs of the raw materials, labour and factory overheads that are incurred in the production of grinding bar, for the purposes of manufacturing grinding balls, which when combined arrive at Longte's cost of manufacturing grinding bar.[24]

We submit that it is not possible to determine that a cost does not reasonably reflect a competitive market cost – so as to then go on to substitute a different cost of production as part of the exercise of determining the cost of production of the goods concerned – unless it is first determined that the exporter's cost was or was not a competitive market cost. A market generates prices by way of the interaction of the forces at work in that market, principally being the forces of supply and demand. In a market, the *cost* of a manufacturer in acquiring an input for production is the *price* of the party that supplied that input to the manufacturer. If there is no price, such as is the case where a manufacturer simply does not buy the input concerned, then there can be no determination made as to whether the cost for that input reasonably or unreasonably reflected competitive market costs.

The decision to use of grinding bar benchmark as a point of reference for the Commission's "reasonably reflect competitive market costs" determination is explained in Report 316 as follows:

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[24] As stated in Report 316, Longte and its related companies are considered as a single economic entity for the purpose of this investigation. We will refer this single economic entity as "Longte" as well, in line with the terminology used in Report 316.

> *The Commission compared each of the cooperating exporters' actual cost to manufacture or purchase grinding bar with the competitive market cost benchmark. This comparison at the grinding bar level supports the Commission's view that direct and indirect influences of the GOC affect Chinese manufacturers' costs of grinding bar. The Commission is also mindful that grinding bar comprises a significant proportion of the total CTMS for grinding balls and an adjustment to the costs at grinding bar level enables the Commission to account for the influences from the GOC on the predominant input costs (apart from the cost of conversion of grinding bar to grinding balls and cost of selling) that would otherwise not be accounted for.*[25]

Accordingly, consistent with the Commission's view that the cost of *conversion* of grinding bar to grinding ball, the cost of *conversion* of steel billet to grinding bar[26] and the cost of *selling* did reasonably reflect competitive market costs, Longte submits that it must be accepted that the alleged "direct and indirect influence of the GOC" could only be found in relation to the input costs of Longte's purchases of raw materials, and not the cost of conversion or the cost of selling. All that was left for the Commission to "substitute", on the basis of a finding that Longte's costs did not reasonably reflect competitive market costs, were its costs of inputs. Grinding bar was not one of its input costs in **[CONFIDENTIAL TEXTS DELETED – period]** of the POI.

The Commission attempted to explain the decision to set the point of comparison at the grinding bar cost level on the basis that the cost of grinding bar accounts for a significant proportion of the total cost of the production of grinding balls. With respect this is not relevant to the statutory exercise that is called for by the Act. The cost significance of grinding bar is simply due to the fact that grinding bar is the semi-finished good that constitutes the next-to-last step in the grinding ball production process. The significance of the grinding bar cannot inform the decision about whether Longte's financial records "reasonably reflect competitive market cost" for the purpose Regulation 43(2). The only thing that can inform that decision is whether the grinding bar used by the exporter concerned was purchased as a raw material input from the allegedly "distorted" iron and steel market for the production of grinding balls. Indeed, if the proportion of cost is the most relevant consideration then the Minister should have benchmarked the total cost of production of the grinding ball itself.

The point here is, even if the Commission can legitimately make a finding that the input costs on the market are affected by GOC influences,[27] it is the costs of the raw material inputs sourced from that

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25 Report 316, page 28.

26 As explained, Longte's actual cost of conversion of steel billet to grinding bar forms part of the Commission's "competitive market cost benchmark" for grinding bar.

27 Longte disagrees that such finding can be made, because, as stated above, the alleged GOC influences on inputs and the "not reasonably reflect competitive market costs" findings are made with a *ipso facto* circular reasoning.

market that need to be considered for substitution in the determination of the costs of production. Grinding bar is not one of those raw materials in Longte's integrated production process, nor was steel billet.[28]

We submit that the Commission's focus in its "substitution" or "adjustment" exercise must be on those costs in the financial records of the exporter in respect of which it can make a judgement about whether or not they reasonably reflected competitive market costs. That is how markets work. Without a market-generated cost in the first place, no judgement can be made as to whether it reasonably reflects competitive market costs, and no substitution can be so practised. This is especially the case when the Commission has accepted that the conversion cost – being the manufacturing costs of Longte - do reasonably reflect competitive market costs.

It is not apparent that any consideration was given by the Commission to the question of whether the reported costs of the various raw material inputs for steel billet reasonably reflected competitive market costs. Further, the raw material cost that was provided strongly supported the proposition that the cost of these raw materials did reasonably reflect competitive market costs. For example, the single most significant raw material, iron ore, was purchased from a variety of suppliers who sourced that material from 12 countries. More than [CONFIDENTIAL TEXTS DELETED – number]% of Longte's iron ore in the investigation period was purchased from Australia, more than [CONFIDENTIAL TEXTS DELETED – number]% from [CONFIDENTIAL TEXTS DELETED – country]. Domestically sourced iron ore comprised only about [CONFIDENTIAL TEXTS DELETED – number]% of the supply. These facts were made clear to the Commission during its investigation.

Accordingly, we submit that it was only those inputs purchased by Longte on the market that the Commission considered to be distorted by GOC influences that could be considered for the purposes of applying Regulation 43(2)(b), and which could be substituted in the Minister's determination of the costs of production under Section 269TAC(2)(c)(i) if the result of the consideration was that they did not reasonably reflect competitive market costs.

The conclusion that we draw from this, and that we ask the Review Panel to also draw, is that the Commission had no basis to find that Longte's costs of production of grinding balls did not reasonably reflect competitive market costs. What the Commission did was to ignore the costs that Longte did incur,

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[28] Given that the grinding bar benchmark cost used for determination contained Longte's own conversion cost for transforming steel billet to grinding bar as well, what is really being compared, and determined is the cost of steel billet.

and instead made a blanket decision, apparently applicable to all Chinese exporters, that a grinding bar cost based on foreign steel billet and ferroalloy prices would be substituted at a particular point in their cost of production regardless of whether the exporter purchased that input or not.

We submit on behalf of our client that the proper disciplines under Section 269TAC(2)(c) and its supporting Sections and Regulations must be used. Otherwise, the rule of law is not applied and has no meaning.

## 11 Correct or preferable decision

**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**

The reviewable decision concerning Longte's dumping margin was not the correct or preferable decision. The correct decision ought to have been that there was no evidence that the financial records of Longte did not reasonably reflect competitive market costs. We submit that it was unlawful to substitute the foreign steel billet price based grinding bar cost into Longte's costs of production. No findings that Longte's costs of production did not reasonably reflect competitive market costs were made nor can they now be made.

Longte was fully cooperative and provided all of the information requested by the Commission.

The Review Panel is therefore requested to recommend to the Parliamentary Secretary that the normal value for Longte be worked out under Section 269TAC(2)(c) on the basis that there was no information before the Commission to determine that Longte's costs did not reasonably reflect competitive market costs and that the information that was on the public record could not establish that Longte's costs did not reasonably reflect competitive market costs, and that therefore Longte's costs should be used.

On the correction of this error, and the consequent treatment of Longte without any cost substitution, the dumping margin for Longte in the investigation period was negative 6.4%.

Alternatively, in light of the second ground stated above alone, the Review Panel should recommend to the Parliamentary Secretary that Longte's own costs should at least be accepted for the purpose of working out normal value under Section 269TAC(2)(c) in so far as the period during which grinding balls were produced by Longte in an integrated production process. On the correction of this error and the consequent treatment of Longte without any cost substitution for the relevant period, the dumping margin for Longte in the investigation period would also have reduced substantively, to a negative or *de*

*minimis* level.[29]

## 12 Material difference between decisions

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

Presently, pursuant to the reviewable decision, the dumping margin in respect of Longte's exports to Australia during the investigation period was 3%. The dumping margin that results from the correction of the errors explained above would be negative or negligible.

We submit that the difference between the outcomes of these two decisions is material.

# C Third ground – the amount of profit was calculated incorrectly and unlawfully

**Introduction**

As part of the decision to work out the normal value of the goods under Section 269TAC(2)(c), the Commission recommended in Report 316 that an amount of profit for the purpose of Section 269TAC(2)(ii) be worked out under Regulation 45(2) of the Regulation.

According to the profit calculation spreadsheet pertaining to Longte that was used for the purposes of making that recommendation, the amount of profit was worked out by way of applying a profit ratio of [CONFIDENTIAL TEXTS DELETED – number]% to the adjusted/uplifted costs to make and sell ("CTMS") as determined by the Minister using the "competitive grinding bar benchmark".

Longte disagrees with the methodology adopted by the Commission and with the amount calculated.

## 10 Grounds

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

The first ground of Longte's disagreement is that the Minister has erred in the calculation of the profit amount under Regulation 45(2) by way of adopting inconsistent and self-contradictory information.

Longte made detailed submissions about this issue in its response to SEF 316. However in Report 316,

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[29] As indicated in the substantial no-dumping margin of negative 5.9% determined by the Commission in its verification report for Longte, when the dumping margin was calculated based on Longte's own costs.

the Commission simply responded to Longte's submissions by way of quoting the text of Regulation 45(2) and stating that *"the Commission is satisfied that the methodology employed in SEF 316 is consistent with subsection 45(2) of the Regulations"*.

Accordingly, we respectfully refer the Review Panel to Longte's SEF submission on this issue:

> *Regulation 45(2) prescribes the manner by which the Minister should determine the amount of profit to be used in constructing a Section 269TAC(2)(c) based normal value as follows:*
>
> > *The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*
>
> *The Commission proposes to recommend that the Minister work out Longte's cost of production for the purposes of Section 269TAC(2)(c) by determining an uplifted cost of production, based on a combination of Longte's own costs and the grinding bar benchmark. If this recommendation remains unchanged – despite everything we have said to the contrary in A above - the Commission must at least adopt a consistent approach and use the same uplifted cost of production in the calculation of the amount of profit under Regulation 45(2).*
>
> *With respect, we do not see how the Commission can use one cost for the purpose of working out the costs of production, and another for the purpose of working out the profit to be adopted. The legislation at least makes it clear that the Minister must use the financial records of the exporter if they are maintained in accordance with GAAP and "reasonably reflect competitive market costs". If that is not the case, then the Minister cannot use them. With respect, the Minister cannot use both the "accepted and corrected" costs and the "unaccepted" costs for different purposes in the same calculation.*
>
> *Longte submits that there is no basis for the inconsistent approach adopted in SEF 316 in this regard. We submit that it does not comply with law and is not an approach that an unbiased, reasonable decision maker could adopt.*
>
> *Further, the approach adopted in SEF 316 is contradictory to the Commission's own practice in Report 238, which concerned an investigation regarding deep drawn stainless steel sinks exported from China. In that case the Commission also decided to uplift the Chinese exporters' costs of production. However the Commission agreed that the correct and reasonable approach was to use the uplifted costs in working out the amount of profit under Regulation 181A (being the predecessor of Regulation 45). The Report states:*
>
> > *Regulation 181A provides that, where reasonably possible, profit for constructed normal values must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.*
> >
> > *Accordingly, the Commissioner has calculated a weighted average net profit on like goods sold on the domestic market in the ordinary course of trade, measured as a percentage mark-up on full cost to make and sell, for each Chinese selected exporter.*
> >
> > *The ordinary course of trade tests undertaken used the verified cost to make and sell data after performing the abovementioned amendments to the recorded costs incurred in relation to stainless steel raw materials. <u>The Commissioner observes that even when the cost of stainless steel raw materials is uplifted, all three selected exporters achieve profits at not insignificant levels.</u>*
> >
> > *This approach is the same to that taken in SEF 238, which took into account submissions on profit reasonableness received from Jiabaolu and Zhuhai Grand prior to the issue of*

> *SEF 238 (refer to Section 6.8 of that statement for discussion of these submissions).*
>
> *[underlining supplied]*
>
> *It appears to us that one of the key factors considered by the Commission in SEF 238 and Report 238 was that the exporters still achieved a profit when the uplifted costs were used in the ordinary course of trade test. The underlined text in the extract above bears this out.*
>
> *The same circumstances apply to Longte. This is because, based on Longte's own analysis using:*
>
> - *the uplifted costs determined in SEF 316; and*
> - *the original domestic sales profit calculation as used by the Commission,*
>
> *the Commission would come to the conclusion that Longte still achieved profit from its domestic sales of goods in the ordinary course of trade, being* ***[CONFIDENTIAL TEXTS DELETED – number]****%.*
>
> *Longte respectfully requests the Commission to bring its profit calculation in line with its proposed cost of production determination and its own prior administrative practice, and to calculate the amount of profit for Longte's constructed normal value in a reasonable and unbiased manner.*

Our above comments still apply. No substantive response was provided to them by the Commission, and there was of course no change to the methodology adopted in SEF 316 in the final Report.[30]

We are resubmitting our quoted comments from the SEF Submission to the Review Panel in the belief that they accurately expose the error made by the Commission in the profit calculation, and now augment those submissions for the Review Panel's consideration as follows:

(a) The application of Regulation 45 is triggered by the Minister's decision that the normal value of the goods must be constructed under Section 269TAC(2)(c) and by the operation of Section 269TAC(5B) of the Act. Section 269TAC(5B) provides:

> *(5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.*

(b) As already dealt with in detail above at A, Section 269TAC(2) also requires the Minister to determine the cost of production or manufacture of the goods in the country of export. Section 269TAC(5A) then provides that such costs:

> *must be worked out in such manner, and taking account of such factors, as the*

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[30] The only revision to the above was the profit ratio worked out from Longte's domestic sales of goods in the ordinary course of trade. In the Report this was **[CONFIDENTIAL TEXTS DELETED – number]**%, instead of the **[CONFIDENTIAL TEXTS DELETED – number]**% referred to in the SEF submission. This came about due to changes made to the uplifted "costs to make" for Longte in Report 316.

*regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b)*

(c) Section 269TAAD sets out the manner by which the Minister should determine whether the domestic sales of like goods were sold in the ordinary course of trade. Specifically, Section 269TAAD(4)(a) and (b) – the subsections referred to in Section 269TAC(5A) - also require the Minster to work out the cost of production, and the administrative, selling and general costs associated with the goods in the country of export. Section 269TAC(5) then provides that those costs are to be determined in the manner and according to the considerations provided in the Regulation.

(d) The regulations referred to in Section 269TAAD(5) is Regulation 43 (in relation to the cost of production) and Regulation 44 (in relation to the administrative, selling and general expenses). Regulation 43(1) states:

> *For subsection 269TAAD(5) of the Act, this section sets out:*
>
> *(a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of like goods in a country of export; and*
>
> *(b) factors that the Minister must take account of for that purpose.*

(e) Evidently, the Minister's responsibility to determine the amount of profit and the cost of production are for the same purpose – the purpose of constructing normal value as governed by Section 269TAC(2). The manner in which the Minister must determine the cost of production, either for the purpose of constructing normal value under Section 269TAC(2), or for the purpose of conducting an ordinary course of trade analysis under Section 269TAAD, point to the same rules as set out under Section 269TAAD(5), and are ultimately prescribed in Regulation 43.

(f) On the basis that the Minister has determined, for the purpose of constructing normal value under Section 269TAC(2)(c), that Longte's cost of production under Regulation 43 is to be an uplifted CTMS using the "competitive" grinding bar benchmark cost, the same cost of production (or CTMS) must be used for the purpose of applying the ordinary course of trade test under Section 269TAAD. It follows that the same CTMS and the same ordinary course of trade determination must also be applied for the purpose of determining the amount of profit under Regulation 45(2). This was not done.

Accordingly, we submit that the Minister's decision to determine the profit by way of calculating a profit ratio based on *"Longte's profit on domestic sales which met the original OCOT testing based on*

*Longte's verified (non-substituted) CTMS*"[31] is inconsistent with the requirements under the Act and the Regulation. The double and unlawful standard adopted by the Minister is incorrect, unreasonable and not an approach that an unbiased decision maker would have applied.

**The second ground** of Longte's disagreement is that, without detracting from Longte's view regarding the use of an inconsistent method in calculating the *profit ratio* (by way of using a cost that is inconsistent with the Minister's own determination), the Minister has also erred in the calculation of the *profit amount* in accordance with Regulation 45 (even if the **[CONFIDENTIAL TEXTS DELETED – number]**% *profit ratio* as determined by the Minister is correct).

As already cited above, Regulation 45 requires the Minister to work out *an amount* of profit, based on the cost and sales of like goods by Longte in the ordinary course of trade. The Commission claims that such amount should be worked out based on Longte's *verified* and *actual non-substituted* CTMS and that the ordinary course of trade test should be conducted on the same *non-substituted* data. However, the Commission only applied such an interpretation of the data it is required to use under Regulation 45(2) in relation to the calculation of a *profit ratio* and applied a different interpretation in completing the calculation of the *profit amount* under the same Regulation 45(2). This is because the non-substituted and actual cost of Longte was only used to conduct the ordinary course of trade test and to work out a *profit ratio* of **[CONFIDENTIAL TEXTS DELETED – number]**%. This ratio was then applied to the *substituted* and *uplifted* CTMS to calculate the *profit amount* to be used in the constructed normal value. In other words, an extraordinary triple standard was applied by the Minister in the calculation of the normal value, namely:

- a *surrogated cost* of production cost for the purpose of Section 269TAC(2)(c) and Regulation 43;
- a *non-surrogated cost* for the purpose of Section 269TAAD, Regulation 43 and working out a *profit ratio* as part of the determination under Regulation 45(2); and
- a *surrogated* cost of production as the basis for the purpose of applying the *non-surrogated* cost based *profit ratio* to work out the *profit amount* under Regulation 45(2).

This sequence of confusing and irregular calculation methodologies arrives at the highest possible costs, profits and subsequent normal value.

Quite simply, even if the Minister considers that he is allowed to work out the amount of profit under

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[31] Report 316, page 33.

Regulation 45(2) using a different set of costs than the cost that he himself determined to be the cost of production, then the Minister must at least adopt a consistent standard, and complete that very exercise by working out the *amount* of profit – which is what he is required to work out – using the consistent set of data. This should be done by applying the *profit ratio* derived from the actual cost and the actual cost-based ordinary course of trade determination, also to the *actual cost* in order to obtain the *profit amount.* This has not been done.

## 11 Correct or preferable decision

**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**

Based on the first ground addressed under C, we submit that the correct or preferable decision is that the Minister should work out the amount of profit based on the same costs that he has determined under Regulation 43. Accordingly, on the assumption that the Minister's determination of cost under Regulation 43 in Report 316 remains unchanged, the profit ratio used in the constructed normal value should be [CONFIDENTIAL TEXTS DELETED – number]% and not [CONFIDENTIAL TEXTS DELETED – number]%.

Based on the second ground, and if the Review Panel disagrees with the correct or preferable decision that we have advanced in relation to the first ground, the correct or preferable decision is to calculate the profit amount by way of applying the cost ratio of [CONFIDENTIAL TEXTS DELETED – number]% to the same actual cost of Longte that was used to derive the [CONFIDENTIAL TEXTS DELETED – number]% profit ratio. This means the amount of profit calculated based on Longte's actual cost under Regulation 43(2) will reduce the total amount of profit comprised in the normal value from USD[CONFIDENTIAL TEXTS DELETED – number]to USD[CONFIDENTIAL TEXTS DELETED – number].

## 12 Material difference between decisions

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

In relation to the first ground, the amount of profit worked out under Regulation 43(2) is based on a profit ratio of [CONFIDENTIAL TEXTS DELETED – number]%.

Presently, pursuant to the reviewable decision, the dumping margin in respect of Longte's exports to Australia during the investigation period is 3%. The dumping margin that results from the correction of the error explained above (and *only* that error) is negative [CONFIDENTIAL TEXTS DELETED – number]%, not dumping.

We submit that the difference between the outcomes of these two decisions is material.

In relation to the second ground, the dumping margin that results from the correction of this error (and *only* that error) will be [CONFIDENTIAL TEXTS DELETED – number]%.

## Conclusion and request

The decisions to which this application refers are reviewable decisions under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that Longte seeks to have reviewed.

Longte is an interested party in relation to the reviewable decision.

Longte's application is in the approved form and has otherwise been lodged as required by the Act.

We submit that Longte's application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decisions that should result from the grounds that Longte has raised in the application, and their individual effect on the outcome of each, are dealt with in A, B, and C above.

Accordingly, being fully compliant with the requirements of the Act, Longte requests the Review Panel to undertake the review of the reviewable decision, as requested by this application, under Section 269ZZK of the Act.

The Review Panel is requested to recommend to the Parliamentary Secretary that the reviewable decision (being the decision to publish notices under Sections 269TG(1) and (2)) be revoked under Section 269ZZM(3)((b) insofar as the Parliamentary Secretary decided to publish those notices in relation to grinding balls exported by Longte. This request is based on acceptance by the Review Panel of the grounds advanced by Longte in A and B above as well as in C, or only in relation to C.

**Lodged for and on behalf of Changshu Longte Grinding Ball Co., Ltd.**

**Charles Zhan**
**Associate**
**Moulis Legal**

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**7 October 2016**

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

Dear Review Panel

**Application for review**
**Ministerial decision to publish a dumping duty notice**
**Alleged dumping of grinding balls from China**

ChangshuLongte Grinding Ball Co., Ltd ("Longte") is a company that is directly concerned with the manufacture in China and the exportation to Australia of the abovementioned goods.

We confirm that we have retained the law firm of Moulis Legal to represent the interests of Longte for the purposes of our application to the Review Panel in respect of the abovementioned decision, and for the review that is initiated as a consequence of that application.

Please give Moulis Legal the same assistance and consideration in relation to the provision of information and cooperation in this matter as you would Longte.

The direct contact person at Moulis Legal is Charles Zhan. His email address is charles.zhan@moulislegal.com, and he can be contacted by telephone on +61 2 6163 1000.

Please contact him directly with any inquiries.

Yours faithfully

**Xu Sheng**
**Director**
**ChangshuLongte Grinding Ball Co., Ltd**

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

*Customs Act 1901 – Part XVB*

# Grinding Balls

# Exported from the People's Republic of China

# Findings in Relation to a Dumping Investigation

***Public notice under subsections 269TG (1) and 269TG (2) of the Customs Act 1901***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of grinding balls ("the goods"), exported to Australia from the People's Republic of China (China).

The goods the subject of the investigation are:

> *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.

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

- Tariff subheading 7325.91.00 with statistical code 26;
- Tariff subheading 7326.11.00 with statistical code 29; and
- Tariff subheading 7326.90.90 with statistical code 59.

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 316* (REP 316), 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 316 and accepted the Commissioner's recommendations and reasons for the recommendations, including all material findings of fact and law on which the Commissioner's recommendations were based, and particulars of the evidence relied on to support the findings.

The method used to compare export prices and normal values to determine whether dumping has occurred and to establish the dumping margin was to compare the weighted average of export prices with the weighted average of corresponding normal values over the investigation period pursuant to subsection 269TACB(2)(a) of the *Customs Act 1901* (the Act). The normal values were established under subsections 269TAC(2)(c) and 269TAC(6) of the Act. The export prices were established under subsections 269TAB(1)(a), 269TAB(1)(c) and 269TAB(3) of the Act.

Particulars of the dumping margins that have been established in respect of the goods exported to Australia from China by the following exporters are set out in the table below.

| Exporter / Manufacturer | Dumping margin |
|---|---|
| Changshu Longte Grinding Ball Co., Ltd | 3.0% |
| Hebei Goldpro New Material Technology Co., Ltd | 51.5% |
| Jiangsu CP Xingcheng Special Steel Co., Ltd | 20.6% |
| Jiangsu Yute Grinding International Co., Ltd | 43.3% |
| *Uncooperative and All Other Exporters* | 95.4% |

I, CRAIG LAUNDY, Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science,[1] 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 316.

I am satisfied, as to the goods that have been exported to Australia from China, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under subsection 269TG(1) of the Act), I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

(i) the goods; and

(ii) in accordance with subsections 45(2), 45(3A)(b) and 269TN(2) of the Act, like goods that were exported to Australia for home consumption on or after 22 April 2016, which is when the Commonwealth took securities following the Commissioner's Preliminary Affirmative Determination published on 21 April 2016 under section 269TD of the Act, but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused and is being caused. Therefore

[1] The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary and accordingly the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are 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 dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression and price suppression, loss of market share, loss of profits and profitability, reduced employment, reduced revenue and reduced capital utilisation.

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

Clarification about how measures are applied to 'goods on the water' is available in Australian Customs Duty Notice No. 2012/34, available at www.adcommission.gov.au.

REP 316 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2437, fax number +61 3 8539 2499 or email at operations3@adcommission.gov.au.

Dated this 1st day of September 2016.

CRAIG LAUNDY
Assistant Minister for Industry, Innovation and Science
Parliamentary Secretary to the Minister for Industry, Innovation and Science