23 November 2021

Anti-Dumping Review Panel Secretariat
Anti-Dumping Review Panel
GPO Box 2013
CANBERRA CITY ACT 2601

FOR PUBLIC RECORD

By email: ADRP@industry.gov.au

Dear Secretariat

Grinding Balls exported from the People's Republic of China

We act for Jiangsu Yute Grinding International Co Ltd (**Yute**), a Chinese manufacturer and exporter of grinding balls. This submission is made in respect of the Anti-Dumping Review Panel's (**Panel**) review of the decision by the then Minister for Industry, Science and Technology made under section 269ZHG(1)(b) of the *Customs Act 1901* (**Act**) to secure the continuation of anti-dumping measures applying to grinding balls exported from the People's Republic of China (the **Reviewable Decision**).

Yute is an interested party under subsections 269ZX(c) and (d) of the Act in respect of the Reviewable Decision as Yute is directly concerned with the production and exportation from China of grinding balls to Australia.

For the reasons set out in this submission, Yute submits that the Reviewable Decision is incorrect and Panel should recommend that the Minister revoke the Reviewable Decision and replace it with a decision that the relevant notices in respect of grinding balls be taken to have expired on 9 September 2021.

In this submission we will refer to the benchmark applied by the Anti-Dumping Commission (**ADC**) as the Latin American Benchmark. We will refer to the benchmark advocated by Commonwealth Steel Company Pty Ltd trading as Molycop (**MolyCop**) as the MolyCop Benchmark.

1. Summary of submissions

In summary, Yute makes the following submissions:

a) the adoption of the Latin American Benchmark was preferable to the MolyCop Benchmark;
b) the Minister's preference for the MolyCop Benchmark does not provide support for the Minister's finding that goods were likely to be dumped;
c) in making the Reviewable Decision, the Minister applied the wrong statutory test and effectively reverse the proper inquiry under section 269ZHF(2) of the Act;
d) without having determine dumping margins under the MolyCop Benchmark, there was no evidence to support the Minister's findings that the likely dumping and subsidisation of goods would result in a recurrence of material injury by the Australian industry;

e) the Minister's findings that goods exported by many Chinese exporters would be subsidised was directly contrary to findings made by the ADC and not supported by alternative evidence.

2. Yute's involvement in the Continuation Inquiry

Yute and its Australian importing client participated fully in Continuation Inquiry 569. This included the completion of a detailed exporter questionnaire that was verified by the ADC. At the conclusion of its inquiry the ADC determined that Yute's dumping margin was -4.4%.

Yute's negative dumping margin was calculated under section 269TAC(1) of the Act. Yute's normal value under this section was calculated by reference to Yute's sales of like goods in the Chinese domestic market. In adopting this approach, the ADC made the following relevant findings:

a) there was no evidence before the ADC to satisfy it that a proper comparison could not be made between domestic and export sale prices (page 50 of Final Report REP 569 (**ADC Report**));
b) the production records of Yute were kept in accordance with GAAP in the country of export and reasonably reflect its costs of production association with the production or manufacture of like goods (page 50 of the ADC Report).

When making the Reviewable Decision, the Minister's reasoning did not criticise either of these findings.

3. Information on which the decision is based

In reviewing the Reviewable Decision it is relevant to consider the reasoning of the Minister and the key findings of evidence on which that reasoning was based. On 10 September 2021 the ADC published the then Minister's Reasons For Decision on Continuation Inquiry No. 569 (**Minister's Reasons**). We make comments regarding the content of the Minister's Reasons later in submission.

The Minister's Reasons are brief and Yute considered that the reasons did not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the Reviewable Decision. On 5 October 2021 Yute requested that the acting Minister for Industry, Science and Technology furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving reasons for the Reviewable Decision. A copy of this request is enclosed. This request was made pursuant to section 13(1) of the *Administrative Decisions (Judicial Review) Act 1977*.

Enclosed is the reply to this request from the Minister for Industry, Energy and Emissions Reduction. The Minister refused to provide further reasons for the Reviewable Decision as it was his belief that the Minister's Reasons constituted the findings of fact, references to evidence and material on which those findings were based.

It is reasonable to infer from this response that the Minister's Reasons constitute a complete record of

a) The Minister's findings on material questions of fact,
b) the evidence or other material on which those findings were based; and
c) the Minister's reasons for the Reviewable Decision.

That is, if the then Minister did not refer to a finding of fact, evidence or reason in the Minister's Reasons, it reflects that the then Minister did not in fact make any such finding of fact, refer to any such evidence or form any such reason for the Reviewable Decision.

In the circumstances, the reasons for the Reviewable Decision must be limited solely to those reasons set out in the Minister's Reasons. The Panel should not infer or presume any additional findings of fact or reasoning as the current Minister has set out that the then Minister's Reasons represent the complete findings of fact, relevant evidence and reasons for the Reviewable Decision.

For the avoidance of doubt, it is clear that the Minister did not:

a) verify the information provided by MolyCop to support its proposed benchmark;
b) determine any dumping margin for any exporter calculated using the MolyCop Benchmark.

4. Scope of submission

The applicants for review of the Reviewable Decision are Jiangyin Xingcheng Magotteaux Steel Balls Co., Ltd, Compañía Electro Metalúrgica S.A and Changshu Longte Grinding Ball Co Ltd (**Applicants**). The Applicants' grounds of review that are relevant to Yute are:

a) The Minister erred in securing the continuation of the anti-dumping measures and countervailing measures applying to grinding balls exported from China (**Measures**);
b) The Minister erred in adopting the incorrect standard for determining whether measures should be continued;
c) The Minister erred in finding dumping 'likely' as this is not supported by evidence or law;
d) The Minister's critique of the benchmark is misconstrued; and
e) The Minister had no evidence or analysis to support the material injury finding.

The Applicants did not specifically raise that the Minister erred in not determining different fixed variable factors in respect of Yute pursuant to subsection 269ZHG(4)(a)(iii) of the Act. Yute's primary contention is that the Minister erred in securing the continuation of the Measures. If the Panel agrees with this contention, the Measures will be discontinued and there will be no need to consider different fixed variable factors in respect of Yute.

The Reviewable Decision is the decision under section 269ZHG(1)(b) of the Act to secure the continuation of the Measures. In making this decision the Minister had the option under section 269ZHG(4)(a) of the Act to continue the Measures in their existing form, altering the Measures so that they did not apply to particular exporters or continuing the Measures but with different variable factors for particular exporters or exporters generally. In conducting its review, the Panel is empowered to recommend the replacement of the Reviewable Decision with a discontinuation decision under subsection 269ZHG(1)(a) of the Act or that the Measures continue in any of the forms set out in subsection 269ZHG(4) of the Act in respect of any exporter (and not merely the Applicants).

It may be that the Panel considers that the Measures should be continued, but also agrees that the Minister's critique of the benchmarks was misconstrued. If such a finding is made, it is appropriate for the Panel to make a recommendation that the fixed variable factors for each of the participating exporters be determined pursuant to subsection 269ZHG(4)(a)(iii) of the Act by reference to the application of the benchmark applied by the ADC.

For this reason, in addition to the grounds for review set out above, this submission will also address whether the Minister erred in not determining different fixed variable factors in respect of Yute pursuant to subsection 269ZHG(4)(a)(iii) of the Act or that the Measure be discontinued in respect of Yute pursuant to subsection 269ZHG(4)(a)(ii) of the Act.

5. Correct benchmark was used

The primary difference between the positions of the ADC and the Minister is the decision as to which benchmark should have been adopted by the ADC. We refer to Yute's submissions to the ADC in the

Continuation Inquiry regarding the appropriate benchmark. In summary, the reasons in support of the Latin American Benchmark over the MolyCop Benchmark are:

a) the Latin American Benchmark is based on an independent, reliable and publicly available steel benchmark;
b) the MolyCop Benchmark was based on unverified transactions selected by MolyCop which would not be transparent to parties impacted by the benchmark;
c) the ADC could not be satisfied that the data submitted by MolyCop represented arm's length transactions;
d) the ADC could not determine the extent to which the data submitted by MolyCop was applicable to the Chinese market or what adjustments were required to ensure that the sales were applicable to the Chinese market;
e) there is an inherent conflict in the Australian Industry selecting the data to be used for the benchmark;
f) the Latin American Benchmark is based on exports from Central and South America which are largely exported to markets other than China. For this reason, the export prices are less likely to be impacted by any particular market situation in the Chinese market for grinding bar; and
g) the Latin American Benchmark has been previously considered and approved by the Full Federal Court, the Minister, this Panel and the ADC.

It is important to note that the Full Federal Court's consideration of the use of the Latin American Benchmark in *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2019] FCAFC 122 was not cursory. A ground of appeal in the Full Court appeal directly concerned whether the decision of the Minister to use of the Latin American Benchmark was appropriate. In making its decision the Full Federal Court set out extensive passages from ADC Report 316 and Panel Report 47 concerning the Latin American Benchmark. These extracts largely repeat the ADC's reasons for selection of the Latin American Benchmark in the Continuation Inquiry.

These extracts were used in support of the Full Federal Court's findings that the Minister's use of the Latin American Benchmark was appropriate. In the absence of legislative change, or a contrary finding by either the Full Federal Court or the High Court, there is no basis for the ADC, the Minister or the Panel to adopt a benchmark other than the Latin American Benchmark.

It is completely inappropriate for the Minister to adopt a different benchmark where:

a) the ADC has thoroughly reviewed the competing benchmarks and made a reasoned decision that is consistent with past decisions of the Minister and the Full Federal Court;
b) the Latin American Benchmark is based on the same information and constructed in the same manner as when previously considered by the ADC, the Minister, the Panel and the Full Federal Court;
c) the Minister's and MolyCop's current concerns with the Latin American Benchmark were equally applicable to the Latin American Benchmark when approved for use in previous investigations. For instance, the Minister in the Minister's Reasons notes that grinding bar is closer in the production chain to the goods under consideration than steel billet. This characteristic has existed from the time the Latin American Benchmark was first adopted. It is not a criticism that affected the previous approval of the Latin American Benchmark by the ADC, the Minister, the Panel and the Full Federal Court.

Nor is it appropriate for the Latin American Benchmark to now be questioned merely because the value of the benchmark has lowered. A lower value benchmark may produce a less advantageous result for MolyCop. However, the purpose of selecting a benchmark is not to protect the Australian industry. It is to enable the ADC to determine the impact of an alleged particular market situation in China.

If the value of the Latin American Benchmark is comparable to the prices paid by Chinese exporters, it merely shows that during the inquiry period the alleged particular market situation has not impacted the production costs of the goods. This is the application of the benchmark. The result of applying the benchmark cannot be what determines whether the benchmark is appropriate.

A benchmark that is appropriate when it produces a dumping margin is equally appropriate where its application results in a finding of no dumping. Any other outcome would be indicative of an approach where a benchmark is selected by its impact on the overall outcome rather than whether the benchmark is an appropriate benchmark.

It is also noted that the Minister's Reasons do not address any of the ADC's concerns with the MolyCop Benchmark. In particular, the Minister has not considered whether the MolyCop Benchmark comprises of purchases that are applicable to the Chinese market or what reasonable adjustments would be required.

6. No material change to the outcome even if alternative benchmark was used

The Minister's primary complaint with the ADC's investigation was the selection of the Latin American Benchmark over the MolyCop Benchmark. The Minister made the assumption that if a different benchmark was adopted, the dumping margins would change from negative to positive.

This assumption was incorrect and reflected a misunderstanding of the role of a benchmark in determining the applicable dumping duty. A benchmark can be used to identify whether a particular input into the cost of production is artificially low. However, even where that is the case it does not automatically follow that the normal value is calculated by reference to a constructed value or by reference to sales to third countries.

The WTO Panel in *Australia – Anti-Dumping Measures on A4 Copy Paper* held that even where a "particular market situation" existed, recourse to a constructed value would only occur where that particular market situation rendered the domestic sales unfit to permit a proper comparison (paragraph 7.19). At paragraph 7.27 the Panel held:

"*If domestic sales do permit a proper comparison, then they cannot be disregarded as the basis for normal value, regardless of the existence of the particular market situation and its effects, whatever those may be.*"

At paragraph 7.73 the Panel held:

"*Where a "particular market situation" is found to exist, the investigating authority must examine whether "a proper comparison" of the domestic and the export price is permitted or not. We consider that the "proper comparison" language calls for an assessment in respect of the comparison of domestic and export prices*."

The ADC found that a particular market situation existed in respect of the domestic market for grinding balls in China. Following this, the ADC for each exporter reviewed whether that particular market situation rendered domestic sales unfit to permit a proper comparison to export sales. For each exporter the ADC found that despite the particular market situation, a proper comparison could be made between the domestic and export prices (pages 42, 46, 50 and 52 of the ADC Report).

This assessment is not impacted by which benchmark is used. Rather, the ADC is called to review the actual export prices, the actual domestic sale prices and the actual costs of production. Regardless of which benchmark was used, a manufacturer's actual cost of grinding bar remains the same.

In conducting its assessment, the ADC took into account exporter questionnaires that included extensive sections on the Chinese Market for Grinding Balls, Manufacturing and Production

Costs and the Australian Market for Grinding Balls. This included questions on the relationship between price and cost of production in each of the Australian and Chinese markets.

While the Minister may believe that an inappropriate grinding bar benchmark was used, the Minister is incorrect in his belief that the use of a different benchmark would likely have resulted in a finding of dumping.

Such an outcome would only have been likely if the ADC found that the particular market situation in China prevented a proper comparison between domestic sales and export prices. No such finding was made.

The application of the MolyCop Benchmark could have impacted the extent to which domestic sales were determined to be in the ordinary course of trade. This could have impacted which domestic sales were considered when determining exporter's normal value.

In applying the ordinary course of trade test, the ADC found, and the Minister did not dispute, that:

a) Yute's production records were kept in accordance with Chinese generally acceptance accounting practices; and
b) Yute's production records reflect its costs of production associated with the production or manufacture of the goods.

The Latin American benchmark had been found by the Full Federal Court to have been appropriately adjusted to reflect the costs of production in China. If any alternative benchmark was used, that benchmark would need to be adjusted to reflect the costs of production in China. Without having any information as to the sales comprising the MolyCop Benchmark, submissions cannot be made as to what adjustments are required.

However, we note the following comments in WTO Panel Report, EU-Cost Adjustment Methodologies II (Russia) as para 7.129:

"*Article 2.2 requires investigating authorities to calculate the costs of production 'in the country of origin' and, according to Article 2.2.1.1, this obligation 'normally' requires the use of the records of the investigated companies provided that the two conditions set out in this provision are met. We consider that, to the extent an investigating authority bases its calculations on information other than that reflected in the records of the investigated companies, it will be required to ensure that adjustments, if necessary, are made in order to arrive at the cost of production 'in the country of origin*'

The dumping margins assessed by reference to the ordinary course of trade test applying the Latin American Benchmark ranged from -4.4% to -20.6%. Given the extent to which goods were found not to have been dumped and the large level of domestic sales, it is highly unlikely that an alternative benchmark, adjusted in accordance with WTO law, would have materially altered the dumping margins.

It is entirely possible, and indeed likely, that the variable factors calculated in accordance with a properly adjusted alternative benchmark would have produced a 0% dumping margin.

While the Minister express a preference for the MolyCop Benchmark, he failed to demonstrate that adopting the MolyCop Benchmark would have resulted in a finding of dumping.

7. Application of the incorrect statutory test

a. Finding under section 269ZHF(2) to be based on positive evidence

The criteria for assessing continuation applications is set out in section 269ZHF of the Act. Under section 269ZHF(2) of the Act, in considering a continuation application, the ADC:

"*must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*"

Yute agrees with the submission of the Applicants that a determination under section 269ZHF(2) of the Act must be based on positive evidence and that clearly neither the ADC nor the Minister made any findings of fact that could constitute any such positive evidence. While the Minister disagreed with the benchmark used by the ADC, there is only mere speculation, and no positive evidence, that had the submission of MolyCop been accepted, a finding of dumping would have been made.

Even if the standard was lower than "positive evidence", a decision must be based on more than mere conjecture. This is made clear by section 269TAE of the Act which relates to findings of material injury to industry. Section 269TAE(2AA) of the Act sets out that a determination as to whether material injury to an Australian industry is being caused or threatened "*must be based on facts and not merely on allegations, conjecture or remote possibilities*". While section 269TAE(2AA) of the Act refers to determinations for the purpose of the initial application of dumping duties, there is no reason to believe that a lesser standard would be permitted when considering the continuation of those dumping duties.

The Minister engaged in pure conjecture as to whether the exporters were exporting goods at dumped prices, the level of any dumping, whether any dumping caused injury to the Australian industry and whether any injury was material. This should be contrasted to the detailed inquiry carried out by the ADC.

Yute also agrees that the Minister misinterpreted the test under section 269ZHF(2) of the Act. The test requires positive evidence of the need to continue dumping duties. However, the Minister applied the test as if it required Chinese exporters to produce positive evidence as to why dumping duties should **not** be continued. This error might explain why the Minister wrongly did not require positive evidence that dumping would continue prior to him making the Reviewable Decision.

b. Limits of the Minister's discretion

The decision by the Minister was made under section 269ZHG of the Act which does not repeat the criteria in section 269ZHF(2) of the Act. Nevertheless, it is clear that the Minister's discretion is limited by the criteria set out in section 269ZHF(2) of the Act.

The limits of the Minister's discretion under section 269HG of the Act was considered in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838 (***Siam***). Justice Rares held at paragraph 40 of *Siam* that the limits of the Minister's discretion:

"*are to be found in the subject matter, scope and purpose of Pt XVB of the Act and, in particular, in the requirement of s 269ZHG(1) itself, that the Minister must consider the report of the CEO. In that consideration, the Minister must also consider, as a fundamental matter in exercising his or her discretion, the central finding of the report that, in accordance with s 269ZHF(2), the CEO was satisfied that the expiration of the measures would lead or be likely to lead to a continuation or recurrence of both the dumping and the material injury that the anti-dumping measure is intended to prevent.*"

While Justice Rares' decision in *Siam* was overruled on appeal, this aspect of the judgement was not disturbed. Yute submits that the above passage represents the uncontroversial position that in exercising his power under section 269ZHG(1) of the Act the then Minister needed to apply the section 269ZHF(2) criteria.

8. Absence of positive evidence

The Minister's Reasons are remarkable for the complete lack of positive evidence to support a finding that the removal of the Measures would result in a continuance or reoccurrence or dumping and the material injury that the Measures were intended to prevent.

The ADC Report makes no findings of dumping and sets out the ADC view that dumping and material injury are not likely to occur if the Measures were removed. As such, the ADC Report could not be the source of the evidentiary basis of the Reviewable Decision.

As set out above, the current Minister believes that the Minister's Reasons represent a complete record of the evidence on which the Reviewable Decision is based.

The Minister has not determined dumping margins under the MolyCop Benchmark. Assuming a level of dumping was found, the Minister has not determined the volume of dumping. Without knowing the dumping margin or the volume of dumping, there could be no evidentiary basis for a finding as to the future likelihood of dumping and what, if any, material injury, that dumping may cause.

The sole substantive basis for the Reviewable Decision appears to be that the use of the MolyCop Benchmark *"…may have resulted in a materially different finding in relation to whether dumping was continuing*". The Minister's use of the words "may have" clearly indicate that the Minister did not know the impact of using the MolyCop Benchmark.

It is also clear that the Minister has not based his prediction of future dumping and material injury on the outcome of the initial investigation and the subsequent review. Firstly, we presume that the Minister does not agree with the findings of the initial investigation and subsequent review given that dumping margins in those cases were determined using the Latin American Benchmark. Secondly, the Minister's Reasons are premised entirely on an untested assumption that if the MolyCop Benchmark was used, dumping would have been found to have occurred during the investigation period covered by the Continuation Inquiry.

The result is the complete absence of positive evidence upon which the Reviewable Decision could be based.

9. Variable factors

The Reviewable Decision was to continue the Measures with the same variable factors as determined in Review 520 (**Review Rates**). The Review Rates followed an investigation by the ADC in which the Latin American Benchmark was applied. As such, the Review Rates reflect the application of the same benchmark which the Minister rejected in making the Reviewable Decision.

The Minister's decision to reject the Latin American Benchmark but continue Measures based on the Latin American Benchmark is so unreasonable as to constitute an error of law. It is clear that the Panel must recommend that the Reviewable Decision be revoked and replaced with an alternative decision. For the reasons set out above, Yute submits that the appropriate replacement decision is that the Measures be discontinued.

If the Panel believes that the Measures should be continued it has the options of recommending that the Measures remain unaltered, cease of apply to certain exporters or apply with different variable factors.

If the Panel considered that the Latin American Benchmark was the correct benchmark, but that the Measures should continue, those Measures should be altered so that they cease to apply to exporters assessed in the Continuation Inquiry as not dumping.

Alternatively, the variable factors should be altered so that a 0% dumping margin applies to the assessed exporters.

If a new benchmark was adopted, it would remain appropriate to assess new variable factors.

In calculating new variable factors, the correct approach is to determine the normal value pursuant to section 269TAC(1) of the Act. This is appropriate given that the ADC found, and the Minister did not dispute, that a proper comparison can be made between Yute's domestic and export sales prices.

We remain of the view that a properly adjusted benchmark would not result in Yute having a positive dumping margin.

10. Countervailing duties

Yute's exports are not subject to countervailing duties. However, submissions are made in respect of the Minister's findings on this issue as it is illustrative of the standard of the Minister's decision making, particularly in relation to material injury. The Minister's Reasons set out:

a) that the ADC found that grinding balls exported by uncooperative and all other exporters from China were subsidised at a rate of 6.2%;
b) the above finding was inconsistent with the ADC's finding that subsidisation and material injury is not likely to reoccur in respect of future exports should the countervailing duties expire; and
c) if measures were to expire, goods exported by "many" Chinese exporters will be subsidised.

It is crucial to note that at section 8.5.1 of ADC Report the ADC set out its finding that less than 0.02% of exports of the relevant goods from China during the injury period were by uncooperative exporters.

The Minister seems to have formed the view that exports by 0.02% of Chinese exporters constitute exports by "many" Chinese exporters. Additionally, the Minister has formed the view that exports constituting 0.02% of exports could cause material injury to the Australian Industry.

The findings regarding countervailing duties reflect that the Minister either:

a) did not review the findings of fact in the ADC Report; or
b) did not apply a concept of "material injury" that took into account the volume of subsidised exported goods.

Either action by the Minister reflects decision making that is contrary to the terms of the Act and constitutes as error of law.

11. Correct or preferable decision

For the reasons set out in (a) this submission, (b) the submissions of the Applicants and (c) the ADC Report, Yute submits that the Reviewable Decision should be revoked and the correct or preferable decision is that the relevant notices in respect of grinding balls be taken to have expired on 9 September 2021.

Please let us know if you have any questions.

Yours faithfully
CGT Law

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5 October 2021

Hon Angus Taylor MP
Acting Minister for Industry, Science and Technology
Industry House, 10 Binara Street
CANBERRA ACT 2601

Matter no: 2021057

By email: **angus.taylor.mp@aph.gov.au**
cc: **minister.porter@industry.gov.au**
angus.taylor@energy.gov.au

Dear Minister

Request for reasons for decision – Continuation Inquiry No. 569 Into Anti-Dumping Measures

We act for Jiangsu Yute Grinding International Co Ltd (**Yute**) and Sino Grinding International Pty Ltd (**Sino Grinding**).

The purpose of this letter is to request reasons for a decision pursuant to section 13(1) of the *Administrative Decisions (Judicial Review) Act 1977* (**ADJR Act**). The relevant decision is the decision by the Minister for Industry, Science and Technology in respect of Continuation Inquiry No. 569 into Anti-Dumping and Subsidisation measures applying to grinding balls exported from China (**Decision**). The Decision is one to which section 13(1) of the ADJR Act applies. While the Decision was made by Minister Porter, pursuant to section 17 of the ADJR Act, the Decision is now treated as having been made by yourself.

The Decision was made under section 269ZHG(1)(b) of the *Customs Act 1901* and was a decision to secure the continuation of the anti-dumping measures set out in the dumping notice and the countervailing duty notice then applying to goods exported to Australia. As a consequence of the Decision, the Minister determined pursuant to section 269ZHG(4)(a)(i) of the *Customs Act 1901* that the notices continue in force after 9 September 2021. For the avoidance of doubt, the decision to make the that determination is included in this request for reasons for a decision.

The Decision was made on 8 September 2021. A copy of the Decision is enclosed.

The effect of the decision is that the importation into Australia of grinding balls exported from China is subject to dumping duties. Yute and Sino Grinding are persons adversely affected, and are aggrieved, by the Decision as Yute is an exporter of grinding balls from China and Sino Grinding is an Australian importer of grinding balls exported from China.

Reasons for the Decision were published on the Anti-Dumping Commission website on 10 September 2021 (**Reasons**). A copy of the Reasons is enclosed. The enclosed Reasons do not constitute a statement in accordance with section 13(1) of the ADJR Act and do not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the Decision.

Yute and Sino Grinding request that the Minister furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving reasons for the Decision

Please let us know if you require any further details regarding the Decision or this request for reasons for a decision.

Yours faithfully
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THE HON ANGUS TAYLOR MP

MINISTER FOR INDUSTRY, ENERGY AND EMISSIONS REDUCTION

MC21-007133

Mr Russell Wiese
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27 OCT 2021

Dear Mr Wiese

Thank you for your letter of 5 October 2021 regarding Anti-Dumping Continuation Inquiry 569. I appreciate the time you have taken to bring this matter to my attention.

You have requested reasons for the decision dated 8 September 2021 made in respect of Continuation Inquiry No. 569 (Decision). You make this request pursuant to s 13(1) of the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act).

Pursuant to s 13(3)(a) of the ADJR Act, I provide notice that I am of the opinion that you are not entitled to make a request pursuant to s 13(1) of the ADJR Act. I do so as, in my opinion, the Decision is not a decision to which s 13 of the ADJR Act applies.

As acknowledged in your correspondence, a statement of reasons was published on 10 September 2021. That statement sets out the findings of facts, references the evidence and material on which those findings were based and provides the reasons for the Decision. Accordingly, I consider that s 13(11)(b) applies.

It is worth noting that the Decision is being reviewed by the Anti-Dumping Review Panel (ADRP). Three applications for merits review of the Decision have been lodged with the ADRP by other parties. Your clients may wish to consider whether to lodge any submissions in the ADRP's review (see, *Customs Act 1901* (Cth), s 269ZZJ). The process after receiving the report of an ADRP review can be found in s 269ZZM of the *Customs Act 1901* (Cth).

Thank you for raising this matter with me.

Yours sincerely

ANGUS TAYLOR