



# ADRP Conference Summary

## 2018/84 Steel Reinforcing Bar exported from the People's Republic of China

Panel Member	Paul O'Connor
Review type	Review of Minister's Decision Steel Reinforcing Bar - ADRP Review 84
Date	19 June 2018
Participants	Justin Wickes and Joe Crowley Anti-Dumping Commission (ADC) Representatives
Time opened	14:30 AEST
Time closed	15:15 AEST

### Purpose

The purpose of this conference was to obtain further information in relation to the Review 84 before the Anti-Dumping Review Panel (ADRP) in relation to Steel Reinforcing Bar exported from the People's Republic of China.

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901* (the Act).

In the course of the conference, I may have asked the ADC representatives to clarify an argument, claim or specific detail contained in the party's application or submission and in the relevant ADC report. The conference was not a formal hearing of the review, and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference as it relates to relevant information (within the meaning of section 269ZZK(6) of the Act). Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument not previously put in an application or submission is not something that the ADRP has regard to, and is therefore not reflected in this conference summary.

### Discussion

The specific information that the ADRP sought in this conference was:

1. ADC representatives confirmed that Jiangsu Shagang Group Co., Ltd (Shagang) export price was determined under section 269TAB(3) and not under section 269TAB(2B), as confirmed at page 17 of the relevant ADC report.



2. In relation to the calculation of the external billet benchmark price, the applicants allege, the ADC included in the calculation of the price paid for billet by non-integrated producers. The ADC confirmed that at the stage of the Statement of Essential Facts (SEF), non-integrated producers purchase prices had been included. However, in response to submissions received following the SEF, the ADC changed its approach and only included integrated producers from Indonesia, Thailand and Spain in the benchmark calculation.
3. Reference was made to an ADC spreadsheet headed "*Document 16-Confidential Appendix 1-Benchmark Review 411, 412, 413, 414, and 423 (Final)*." ADC representatives stated the document was created in the lead up to the SEF and that the tab index at the bottom of the spreadsheet suggests that the non-integrated producers were included. The ADC representatives pointed to the formula at Row 42 of the spreadsheet which confirms that only integrated producers were included in the benchmark calculation.
4. As to why the billet cost of the Vietnamese integrated producer was not also included, ADC representatives advised that particular company did not keep cost data for billet on a quarterly basis and that it only had data for billet over the entire review period. Accordingly, at the ADC determined not to include this data in the benchmark calculation.
5. ADC representatives confirmed that Hunan Valin Xiangtan Iron & Steel Co., Ltd (Hunan Valin) did not export the goods during the review period and that its last export to Australia was in the September 2015 quarter.
6. ADC representatives confirmed that during the initial investigation period (1-July-14 to 30-June-15) Jiangsu Yonggang Group Co., Ltd (Yonggang) exported [REDACTED]<sup>1</sup> MT to Australia. In the review period (1-Apr-16 to 31-Mar-17), Yonggang exported [REDACTED] MT. However, in the intervening period Yonggang exported approximately [REDACTED] MT
7. ADC representatives were asked to comment on the factors to be considered in the application of section 269TAB(2B). In relation to factors beyond the control of the

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<sup>1</sup> References to MT are confidential.



exporters, ADC representatives noted the Explanatory Memorandum referred to natural disasters and that this reference suggests the focus is upon external matters impacting upon the exporter's production.

8. ADC representatives noted, the applicant's position is that whilst the Minister had imposed interim dumping duty, this fact should not be seen as being 'tied back' to the exporter's pricing decisions made during the investigation period.
9. ADC representatives also noted, the imposition of interim dumping duty did not prevent the applicants from exporting to Australia. Any such exports would however be subject to interim dumping duty which would be paid by the importer, but the importer could then seek to rely upon the duty assessment process and apply for a refund, if applicable.
10. The Panel member noted in the ADC report reliance was placed upon the examples referred to in the Explanatory Memorandum but the Panel member noted section 15AD of the *Acts Interpretation Act* provides that where legislation specifies or provides an example, that example is not to be taken to be exhaustive.
11. ADC representatives were asked to comment on the impact of other exporters of the goods exporting at dumped prices with margins of up to 42%, as identified in REP 418. In this context, the ADC representatives suggested that consideration ought to be given to the purpose of the legislation, in that if the imposition of measures was considered to be an external factor there would never be a circumstance in which the legislative amendments would be able to operate.
12. Further, reference was made to the Explanatory Memorandum which suggests the amendments were designed to address the intent or motive of the exporter to 'game the system'. The legislation suggests it is necessary to point to some evidence of such an intent, to link it to the observed facts that the exporter has either stopped exporting all substantially reduced its export volume, and that such action was taken to achieve a favourable outcome through the review process.
13. ADC representatives commented that the applications were lodged prior to the introduction of the legislative amendments. As such the applicants would have assumed that the applications would have been assessed and export prices determined under the previous regime or practice and that this would have been of



benefit to them in a market in which prices were increasing. The applicants' intent would have been to secure a floor price based upon the low point in the price cycle, which would be ineffective in a market in which the prices were now increasing.

14. In relation to the timing adjustment, the ADC appears to have taken a simple average of prices over the 12 month investigation period and compared that simple average with the simple average of prices over the 12 month review period. Applicants allege that in the early part of the investigation period, prices were high and the applicants had not exported. Further, export prices were determined under section 269TAB(1) which focuses upon particular export prices and on particular dates. By taking a simple average of the 12 month investigation period this would capture prices which were not contemporaneous with the dates of the export transactions. That is, such an average would pick up prices prior to the commencement of the exports.
15. It was noted that the focus of the Anti-Dumping Agreement was to ensure that a fair comparison was made between normal values and export prices. Incorporating prices which were not contemporaneous with export transactions would frustrate such a comparison.
16. Another emphasis flowing from the Anti-Dumping Agreement and the legislation is the adoption of weighted average methodology for several purposes. It was noted that the adoption of a simple average over an investigation period appeared to depart from this approach.
17. ADC representatives noted, following the SEF the applicants put forward a number of options for the calculation of the timing adjustment. One such option was to compare the weighted average of SBB prices from the original investigation (weighted based on individual export volumes for each exporter) compared to a simple average of SBB prices over the four quarters of the review period. The ADC representatives confirmed the applicants had not argued for the adoption of a comparison of the simple average of only the quarters within which they had exported with the simple average of SBB prices over the entire review period.
18. The Review Panel requested the ADC provide the following further information:
  - To calculate the weighted average export price by month or quarter in which exports occurred for Hunan Valin and Yonggang during the investigation period;



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- To compare those prices with the simple average SBB prices over the four to quarters of the review period;
- To calculate a revised dumping margin for Hunan Valin and Yonggang, in light of the outcome of the calculations carried out above; and
- To calculate a revised dumping margin for Shagang which is to be based upon the averaged of the revised dumping margins for Hunan Valin and Yonggang.

Paul O'Connor

Panel Member

Anti-Dumping Review Panel

2 July 2018