



ADRP Conference Summary

2018/88 Certain Hollow Structural Sections - Review of Measures

Panel Member	Paul O'Connor
Review type	Review of Minister's Decision - Certain Hollow Structural Section exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan
Date	1 August 2018
Participants	Ms Catherine Gladman and Mr Mick Kenna, Anti-Dumping Commission (Commission)
Time opened	09:00 AEST
Time closed	10:00 AEST

Purpose

The purpose of this conference was to obtain further information in relation to the Review before the Anti-Dumping Review Panel (Review Panel) in relation to Certain Hollow Structural Sections exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan.

The Conference was held pursuant to section 269ZZHA of the *Customs Act 1901*¹ (the Act).

In the course of the Conference, I may have asked the Anti-Dumping Commission Representatives (Commission Representatives) to clarify an argument or specific detail contained in the applications to the Review Panel or in Commission Report 419 (REP 419).

The Conference was not a formal hearing of the review.

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 is not something that the Review Panel has regard to, and is therefore not reflected in this Conference summary.

¹ Unless otherwise stated, all statutory references are to the *Customs Act 1901*.



Discussion

The specific information that the Review Panel sought in this Conference was:

General:

1. The Review Panel noted, in February 2018, its Senior Member published ADRP Report No. 63 which dealt with a similar argument raised in the current reviews, namely Dalian's sales into a Chinese Free Trade Zone (FTZ).
2. At page 20 of REP 419, the Commission indicated it used the verified HRC purchase prices of producers in Korea and Taiwan during the review period. The Commission Representatives confirmed that such purchases were made by non-integrated producers of coil who purchased the coil from unrelated suppliers.

Ursine Steel Co., Ltd (Ursine):

3. Commission Representatives confirmed Ursine's exports to Australia were of [REDACTED]
[REDACTED]
[REDACTED] The Commission maintains the appropriate match to those export sales are domestic sales of a Grade [REDACTED]. However, the Commission Representatives confirmed, there were not enough sales of [REDACTED], on which to base a normal value, so [REDACTED] domestic selling prices were adopted which were in turn subject to a specification adjustment, accounting for the differences between [REDACTED] product and the [REDACTED] product. Commission Representatives maintained, using the difference between [REDACTED] and [REDACTED] is an appropriate way to adjust the [REDACTED]. The Commission considers that Ursine did not provide evidence that the respective applications or markets for the two product types are so different that the relative prices of [REDACTED] grades are not a suitable basis for an adjustment to [REDACTED] grades, The Commission considers that Ursine did not provide evidence that the respective applications or markets for the two product grades are so different that the relative prices of the [REDACTED] grades are not a suitable basis for an adjustment to the [REDACTED] grades, particularly in the absence of a better basis
4. Commission Representatives noted, although Ursine was critical of the method by which the specification adjustment was derived, it did not suggest an alternative method. The Commission noted, from the spreadsheets provided to the Review



Panel, the adjustment is minor, such that the [REDACTED] product was only uplifted by [REDACTED]%, reflecting the difference between [REDACTED] and [REDACTED].

5. At page 47 of REP 419, the Commission appeared to place significance upon the position taken by Ursine in the recently completed Continuation Investigation (REP 379). The Commission Representatives commented, reference was made to REP 379 to provide context, highlighting the differing approaches or arguments put by Ursine in the Continuation Investigation to that which were advanced in the course of REP 419. The Commission Representatives confirmed, its position was not that Ursine was locked into its position taken in REP 379. The Commission certainly entertained Ursine's arguments in the context of REP 419 and that there was never any suggestion it was a not open to Ursine to put forward different arguments in the course of REP 419.
6. At page 47 of REP 419, the Commission quotes from the Manual, suggesting the quoted factors "need to substantively address". The Commission Representatives were asked whether it was the Commission's position that although Ursine may have argued the basis for the timing adjustment by using the contract, rather than the invoice date, Ursine had not provided information which had substantively addressed its claim. In response, Commission Representatives stressed it was important to appreciate the chronology of events.
7. On 14 February 2018 the Commission responded in writing to Ursine's arguments regarding the basis for the determination of normal values. The Commission response appears as Confidential Attachment C to Ursine's application to the Review Panel. The Commission Representatives indicated, this written response alerted Ursine, at an early point, that the Commission was not convinced of its arguments regarding reliance upon the contract date, rather than the date of invoice. The Commission notes that no response was received from Ursine.
8. Next, on 19 March 2018, the Commission published SEF 419. Ursine did not respond to the SEF 419 until 9 April 2018. In response to the SEF, although Ursine again raised the issue as to the basis for the determination of normal value, the Commission emphasized Ursine did not address or provide documentary evidence to counter the issues identified in the Manual and drawn to their attention in the Commission's response of 14 February 2018.



9. The Commission's position was that Ursine's response to the SEF did not provide sufficient information to dissuade the Commission from reliance upon the invoice date.
10. The Commission Representatives noted, the Commission's approach to the date of sale is well established, as is reflected in the Manual. The level of evidence required to move away from the invoice date is far more extensive than just an argument to the effect that HRC prices may vary over time.
11. In summary, the Commission Representatives maintained the Commission alluded, very early, to the fact that Ursine had not provided sufficient evidence and that Ursine had ample opportunity to address the Commission's concerns prior to the SEF. However, they made no contact and then, following the SEF, they provided a response which essentially presented arguments rather than evidence.
12. The Commission Representatives agreed that as HRC is a commodity its prices varied over the review period.
13. In relation to evidence required to support the contract date rather than the invoice date, the Commission Representatives indicated evidence needed to have been provided to confirm that at the contract date the price was fixed in stone and that it was not to be varied in any way or given any opportunity for the contract to be cancelled.
14. The Commission Representatives confirmed, in support of the argument in the Exporter Questionnaire that the Australian contract dates ought to be relied upon, Ursine provided two examples of such contracts. In the course of the desk top verification, a further five Australian sales contracts were examined. However, the Commission Representatives commented, such documents did not go to the extent of demonstrating the absolute terms of the sale. The documentation was essentially limited to a reference to price and quantity. The documentation was missing terms to the effect that the contract could not be cancelled or in any way modified. On the basis of that documentation, the Commission was not satisfied that there could not be a change to the material terms of the contract. Further, the Commission was of the view that Ursine had not substantively addressed the relevant matters set out in the Manual.



15. At page 17 of Ursine’s application for review, the company refers to differences in the use of [REDACTED] and [REDACTED] and submits “a downward adjustment is required to domestic prices of [REDACTED] to ensure a proper comparison with the exported goods [REDACTED].” The issue is when the coil is received from the supplier, it can have quite different specifications from batch to batch, because of variances in the steelmaking processes. When Ursine produces, to meet a specific order, it needs to choose from particular batches of the coil to produce the grade of HSS that they want. The differences between batches of the coil give rise to specification differences which ultimately impact upon price. However, Ursine maintains, as all of the product is based upon common coil they should all be regarded as comparable on price. This is not an argument accepted by the Commission.

16. The Commission Representatives again reiterated, as the grades of coil possess different specifications, only certain batches of coil can be used to produce to a required specification. To produce to grade [REDACTED] Ursine needs to select certain coil with certain minimum yield strengths, which is an important factor in price. The Commission maintains, the yield strength for [REDACTED] is far closer to Ursine’s export grade [REDACTED], than it is to the domestic [REDACTED] grade.

17. Commission Representatives noted, Ursine appears to be mounting some arguments based around an average yield strength. However, that is something which is not typically known to, or of interest to the customer. Although product may be produced at an average yield strength higher than the standard, all the customer is interested in, and prepared to pay for, is that the product meets the minimum standard. The Commission therefore maintains that arguments around average yield strengths are a red herring.

Dalian Steelforce Hi-Tech Co., Ltd (Dalian):

18. At page 26 of REP 419, the Commission acknowledges, Dalian’s sales to its customer in the FTZ are a different level of trade to sales to its Australian customer.

19. The Commission Representatives noted, the Manual indicates it is not sufficient just to claim that sales are made at different levels of trade, it must be demonstrated that those differences have an impact upon price. The Commission Representatives maintain, no evidence was put to the Commission to support any differences in the



cost base and prices between Dalian's export sales to Australia and those into the FTZ.

20. The Commission Representatives acknowledged, Dalian's sales into the FTZ are relatively small, compared to the volumes exported to Australia and that the consignments into the FTZ are spread over irregular and small consignments. However, of significance to the Commission is, such small and irregular sales have been happening for numerous years and reflect a continuing pattern of sales.

Tianjin Youfa Steel Pipe Group Co., Ltd (Tianjin Youfa):

21. At paragraph 39 of Tianjin Youfa's application to the Review Panel, it argues the Commission's uplifted steel material prices appeared to be at odds with reported East Asian HRC prices from SBB Platts. The Commission Representatives responded noting the Platts pricing came from a Bluescope presentation. The Commission tried to identify this pricing in the SBB published data and believes the pricing quoted relates to a particular grade of HRC. That grade is [REDACTED] grade HRC, possessing specific widths, thicknesses and is based upon CFR ex Ho Chi Minh City. As a result, the Commission Representatives are not surprised the actual verified purchase prices of manufactures in Korea and Taiwan are not aligned perfectly with the specific product referenced by Platts. Accordingly, the Commission places little reliance upon the variances identified by Tianjin Youfa.
22. The Commission Representatives noted, their methodology attempts to exclude specialty grades and derive a good cross-section of different grades to get a reliable benchmark for HRC.
23. Specific benchmarks were adopted for black HRC and another for pre-galvanised HRC. The Commission Representatives noted that this differentiation between HRC coil benchmarks may not be fully appreciated by the Applicant.
24. The Commission Representatives believe, Tianjin Youfa may be erroneously assuming the Commission has derived a common benchmark covering both black HRC and pre-galvanised HRC and has adopted a simple average of both types. Again, the Commission Representatives emphasized, separate benchmarks were identified for black HRC and for pre-galvanised HRC.



25. Tianjin Youfa argue, the Taiwanese and Korean producers do not use narrow strip, as is used in China. The Commission Representatives acknowledged, narrow strip is a product unique to China which reflects the scale of some of their production capacity. The Commission Representatives noted, narrow strip is a feedstock limited to certain widths and diameters and that it cannot be used to produce structural grade.
26. The Commission Representatives highlighted, in light of the different characteristics between narrow strip and the more usual HRC, the Commission obtained a separate benchmark for narrow strip. This benchmark was obtained by adjusting the HRC benchmark by the difference between the purchase price for narrow strip and the purchase price of HRC within the Tianjin Youfa group of production facilities.
27. The Commission Representatives noted, although Tianjin Youfa's production facilities predominantly use narrow strip, some companies within the Tianjin Youfa group manufactured from HRC. The Commission therefore determined the differences in prices paid for those entities for HRC with the prices that all members of the group had paid for narrow strip.
28. At paragraph 42 of Tianjin Youfa's application to the Review Panel, it is suggested the Taiwanese and Korean exporters, who used galvanised steel to produce the pre-galvanised [REDACTED], appear to have a \$150 per tonne price premium on the price of HRC. The Commission Representatives acknowledged, this was approximately correct, in Australian dollar terms. However, the Commission Representatives again emphasised, separate benchmarks have been determined for black and pre-galvanised grades. As Tianjin Youfa [REDACTED] [REDACTED], they are concerned that the benchmark the Commission has relied upon is in some way contaminated or influenced by the pre-galvanised product, which is not the case as separate benchmarks have been determined and applied.
29. At paragraph 48 of Tianjin Youfa's application to the Review Panel, it is claimed there is a cost difference of approximately [REDACTED]% between narrow strip and HRC. As noted above, the Commission Representatives acknowledge some differential between the cost of HRC and narrow strip. The Commission Representatives noted Tianjin Youfa had argued they wanted the Commission to limit its focus on one particular production entity within the group which had produced goods exported to Australia



Australian Government

Anti-Dumping Review Panel

and which produced HSS from both HRC and narrow strip. However, the Commission noted, there were in fact [REDACTED] production facilities, within the group. A subset had produced HSS exported to Australia in the review period, although the Commission understands that there are no underlying differences between the entities that would mean one is more likely to provide HSS for export to Australia than any other entity. Therefore, the Commission based its estimate of the difference between narrow strip and HRC on the prices paid for such products by all production entities within the group. The Commission therefore derived an average price that Tianjin Youfa had paid for narrow strip and the average price paid for HRC and determined the appropriate difference. The Commission was of the view a broader sample was the best way of demonstrating the difference between the two prices for the two goods. It believed by doing so it was less likely to be contaminated by one of the production entities buying certain grades of HRC that were more expensive.

Paul O'Connor

Panel Member

Anti-Dumping Review Panel

10 August 2018