

# 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	9 August 2018
Participants	Ms Catherine Gladman and Mr Mick Kenna, Anti-Dumping Commission (Commission)
Time opened	09:00 AEST
Time closed	09:20 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*<sup>1</sup> (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.

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<sup>1</sup> 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:

### **Ursine Steel Co., Ltd (Ursine):**

1. Commission Representatives were asked to comment on the apparent inconsistency between the Commission's response to Ursine dated 14 February 2018 in which it stated "in any case, Ursine did not provide domestic cost information for the period prior to the review period when it is claimed that the date of sale occurred for some export transactions" and the comment at page 16 of Ursine's application to the Review Panel which states, "the Commission had evidence of all domestic sales and domestic costs for the quarter prior to the commencement of the review period to allow for an alignment of sales and costs with the export contract dates that occurred in the June quarter 2017."
2. Commission Representatives confirmed that Ursine's domestic sales data for the quarter prior to the review period had been provided in the context of the Continuation Investigation and therefore had been available to the Commission.
3. The Review Panel noted that two bundles of documents relating to two export transactions to Australia had been provided by Ursine in its response to the Exporter Questionnaire. A further five bundles of documents were examined as part of Ursine's "desk top" verification. These five bundles also related to export transactions to Australia.
4. Included in each bundle were: Purchase Order providing details of the consignment's weight; Sales Contract providing for base price per MT, delivery allowance, total price in Australian dollars (A\$); Commercial Invoice specifying weight and total A\$. The bundles also included internal company documents tracking payment of the contract price to Ursine's bank account.

5. In all transactions the prices and quantities supplied were consistent with the Contract, which supports Ursine's argument the contract date rather than the invoice date ought to have been preferred for comparison with domestic transactions.
  
6. Two of the bundles related to export sales to one customer. The Purchase Orders were expressly stated to be "based on our General Conditions of Purchase" which can be found on the company's website. These General Conditions relevantly contain the following terms:
  - Purchase's terms and conditions of purchase shall apply exclusively. Supplier's terms and conditions which deviate from purchase's conditions of purchase shall not be recognised by purchaser.
  - The prices are fixed prices. They are inclusive of everything supplier has to do to fulfil his supply/service obligation.
  - The ordered volumes are binding, in the event of excess supplies/services. Purchaser shall be entitled to refuse these at the expense and cost of supplier.
  - Part supplies/services are not permitted unless purchaser has expressly consented thereto.
  
7. Commission Representatives acknowledged that for each of the seven transactions the invoice quantities and prices were consistent with the terms of the export Contract and Purchase Orders. However, the Commission was of the view that merely because the material terms of the seven sample transactions had not been changed between the contract date and the invoice was not sufficient for the Commission to move from reliance upon the invoice date.
  
8. In relation to the two sampled sales to the one Australian customer, the Commission Representatives referred to that company's General Conditions of Purchase which enabled amendment to the Contract with the agreement of the parties. They also required any amendment to the Contract to be confirmed in writing by the purchaser. Such conditions indicate that there was certainly scope for the material terms of the Contract to be amended or varied.

9. The Commission Representatives made reference to a further condition which enabled the purchaser to terminate the Contract, in whole or in part, in certain circumstances.
10. The Commission Representatives referred to the Manual<sup>2</sup> which requires exporters to substantively address whether the materials cost differs at the time of subsequent invoicing having regard to production schedules for domestic and export and lead times for purchasing main input materials. The Commission Representatives noted that they had drawn Ursine's attention to the concerns regarding use of the Contract date in the Commission's response dated 14 February 2018 but Ursine had not addressed this aspect.

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

11. In reference to Dalian, the Commission Representatives confirmed that the Commission had available to it information pertaining to the domestic sales of two other Chinese producers and that such information could provide a basis upon which to determine a profit for Dalian.
12. Reference was made to the following statement regarding Dalian REP 419 "where differences in level of trade are shown to affect price, adjustments are made, if warranted to ensure a fair comparison with export price." The Commission Representatives confirmed that no level of trade adjustment had been made, as Dalian had not demonstrated there were differences in the costs associated with its sales into the Free Trade Zone and the costs of its export sales to Australia. Dalian provided no evidence as to any differences in its selling structures such as would impact upon price.
13. Reference was made to Ground 3 in Dalian's application to the Review Panel in which it argues for an adjustment to reflect the shipping time to Australia. The Review Panel asked the Commission to undertake calculations accommodating such an adjustment.

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<sup>2</sup> At page 62.

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

14. In reference to Tianjin Youfa's application to the Review Panel, in which it argues for a small adjustment to its cost reflecting its sales of scrap, the Review Panel asked the Commission to undertake calculations accommodating such an adjustment.

Paul O'Connor

Panel Member

Anti-Dumping Review Panel

16 August 2018