

17 August 2018

Paul O'Connor
Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601 Email: ADRP@industry.gov.au Dear Member Mr Paul

BY EMAIL adrp@industry.gov.au

Dear Member

PUBLIC RECORD

Certain Hollow Structural Sections exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan – ADRP 2018_88

I refer to the Anti-Dumping Review Panel ("the Panel") Public Notice of 20 July 2018 indicating that the Panel proposes to conduct a review of the decision (Reviewable Decision) by the Parliamentary Secretary to the Minister for Jobs and Innovation (Parliamentary Secretary).

The Reviewable Decision was published on the Anti-Dumping Commission (ADC) website on 6 June 2018, Anti-Dumping Notice 2018/74 refers.

Austube Mills Pty Ltd ("Austube Mills") is a member of the Australian industry producing like goods the subject of the review and as such is an interested party for the purposes of the review.

For the assistance of the Panel in conducting this Review of a decision by the Parliamentary Secretary under subsections 269ZDB(1) of the *Customs Act 1901*¹ (the Act), Austube Mills provides the following submission to the grounds notified for the review.

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

Ground 1 *The ADC should have included in its profit calculation, only the profit derived from entities within the Tianjin Youfa group of companies that sold, on their domestic market, like goods to those exported to Australia.*

Austube Mills submits that the Anti-Dumping Commission (the ADC) has calculated profit in accordance with the Act and as Tianjin Youfa submitted in its application and stated as Ground 1 for the review.

It its application in relation to Ground 1 Tianjin Youfa states.

The 'Youfa' Group comprises a number of discreet legal entities but only some of which produced the goods exported to Australia by Tianjin Youfa International Trade Co Ltd. (the exporter) *paragraph 26 of application.*

¹ 1 All references to statutory provisions are references to provisions of the Customs Act 1901, unless otherwise specifically stated.

We submit that only the actual 'Youfa' Production entities that produced the goods for the Australian sales should be taken into consideration for purposes of determining: *paragraph 27*

Notional Profit *paragraph 28*

The ADC addressed the issue of the calculation of profit for the Tianjin Youfa entities producing the goods for the Australian sales as stated in REPORT No. 419 (REP 419) on page 31.

The Commission established normal values for Tianjin Youfa under subsection 269TAC(2)(c). The selling, general and administrative costs included in the normal value were calculated using information set out in the records of **the producer of the goods. The amount of profit was calculated using data relating to the production and sale of like goods by the producer of the goods** in the ordinary course of trade.

In the case of Tianjin Youfa, the exporter is not the producer of the goods exported to Australia. **A number of producers within the Tianjin Youfa Group sell the goods to Tianjin Youfa, which on-sells them to Australian customers.** The Commission considers that **the normal value, constructed to reflect a sale by the producers on the domestic market**, needs to be uplifted by the margin obtained by the exporter to allow a fair comparison with an export price between Tianjin Youfa and its Australian customers. (emphasis added)

Ground 2. *The ADC failed to give adequate consideration of, and weight to, Tianjin Youfa's use of "narrow strip" in calculating the uplift cost of Hot Rolled Coil raw material inputs used in the production of the goods exported to Australia.*

The ADC addressed the issues that Tianjin Youfa raised in regards to the up lift costs of Hot Rolled Coil (HRC) and narrow strip in the REP 419, pages 20-21.

The Commission has used the verified HRC purchase costs from the review period available for exporters in Korea and Taiwan. The Commission collated all HRC purchases from these exporters during the review period and calculated a quarterly weighted average HRC purchase cost in Chinese Yuan (RMB).

Separate benchmarks were calculated for black and pre-galvanised finishes. Chinese exporters' HRC purchase costs have been adjusted by the difference between the price paid by them for that product and the price of the comparable competitive market benchmark that has been calculated from verified data of the selected exporters in Korea and Taiwan.

The Commission considered whether there should be any adjustment to the competitive market benchmark to ensure that it reflects the cost of production of the goods in the country of export in accordance with subsection 269TAC(2)(c).

Tianjin Youfa's suppliers use a variation of HRC known as narrow strip to produce some of its HSS. Narrow strip is typically a marginally lower cost raw material than HRC and can be used to make certain specifications of HSS. Tianjin Youfa submitted that the benchmark should be adjusted to reflect the lower cost of narrow strip compared to HRC.

The Commission agrees that such an adjustment is appropriate and has adjusted the benchmark used to replace the raw material cost for Tianjin Youfa's exports of product made from narrow strip. The adjustment was based on the difference in Tianjin Youfa's purchase price of HRC compared to narrow strip over the review period.

The Commission also considered whether it would be appropriate to adjust the benchmark to reflect any net comparative advantage that might be present in the Chinese market. The Commission concluded that such an adjustment would not be possible particularly given the significant involvement of the GOC in relevant markets.

In *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885*, Nicholas J considered the treatment in REP 177 of a more general adjustment to benchmark prices, namely for a claimed Chinese comparative advantage in production of HRC. Nicholas J accepted the view of the ACBPS that such an adjustment was not practical, reasonable or warranted in that case and that the more reasonable approach was to use a benchmark that reflected an average price of HRC that did not include any adjustment for competitive advantage.

In the recent *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC20*, the Full Federal Court also found that the legislation did not include a mandatory requirement to adjust foreign pricing information for comparative advantages and disadvantages, as long as the matter is given due consideration.

The Commission considered whether the HRC benchmark should be adjusted for comparative advantage for purposes of this review. The Commission observes that no information or evidence on the subject was provided during the review.

The ACBPS found in REP 177 that China had both comparative advantages and disadvantages in producing HRC that would require calculating a net figure for comparative advantage. In addition, to calculate a net comparative advantage with any degree of accuracy would require the Commission to isolate and subtract the effect of GOC's significant involvement in the Chinese steel market generally, and the Chinese HRC market in particular. Similarly, for this review, the Commission considers that it would not be possible to isolate and quantify the effect of GOC involvement in the relevant markets and to determine a net comparative advantage.

Austube Mills agrees with the ADC approach on the uplifts calculated for black and pre-galvanised finishes. The uplifts were based on verified data for HRC purchase costs for the review period.

Austube Mills agrees with the ADC that the HRC benchmark should not be adjusted for comparative advantages and disadvantages for the purposes of the review. There is not a mandatory requirement to do so as long as the matter is given due consideration.

Austube Mills submits that the ADC erred in adjusting the benchmark for narrow strip in relation to HRC and that there should not be any adjustment to the competitive benchmark for narrow strip. Austube Mills submits that the benchmark used for HRC should be used for narrow strip without any further adjustment.

The ADC statement above that *“Narrow strip is typically a marginally lower cost raw material than HRC”* is not based on any verified information and appears to be simply conjecture. The ADC did not visit or verify data relating to any producers of narrow strip or HRC in China to form such a view.

Austube Mills submits that adjusting for narrow strip is similar to adjusting for different coil grades that has previously been rejected by the ADC.

The selected exporters from Korea, Malaysia and Taiwan all produce various models of HSS that require varying types of coil grade. Along with the Chinese exporters, they will purchase HRC for varying production requirements, including grade required, price of the coil and end use. The Commission considers that attempting to group coil grades will inevitably lead to an exercise similar to model matching in an attempt to allocate non-identical grades purchased by the selected exporters and the Chinese exporters. Any calculation of this kind moves away from the emphasis on using actual weighted average costs in the calculation of the benchmark as described above. The Commission is satisfied that collating all HRC purchases from the selected exporters during the inquiry period and calculating a quarterly weighted average HRC purchase cost in Chinese Yuan (RMB) for black and pre-galvanised finishes is the most appropriate in this inquiry and is consistent with the original investigation and subsequent reviews. (REP379. p.20)

Austube Mills submits that a difference in purchase prices of HRC and narrow strip does not evidence that strip is a marginal lower cost raw material.

The ADC found in REP 419 that:

Accordingly, and consistent with the original investigation, Reviews 265, 266 and 285, and Continuation 379, the Commission considers the costs of HRC incurred by Chinese exporters relating to the review period do not reasonably reflect competitive market prices.

A difference in purchase prices of narrow strip to HRC is likely a result of the market situation for HRC and strip prices in China noting that such prices do not reasonably reflect competitive market prices.

The adjustment to narrow strip pricing to HRC pricing by the ADC reflects an adjustment for comparative advantages and disadvantages that the ADC rejected in its approach for any such adjustment to HRC prices.

The ADC noted:

Similarly for this review, the Commission considers that it would not be possible to isolate and quantify the effect of GOC involvement in the relevant markets and to determine a net comparative advantage.

Austube Mills submits that it was not possible to isolate and quantify the effect of GOC involvement in the relevant markets to determine the adjustment for narrow strip to HRC.

Austube Mills submits that the Panel in its review of Ground 2 for Tianjin Youfa should reject any adjustment to the HRC benchmark for narrow strip.

Ursine Steel Co., Ltd (Ursine Steel).

Ground 1 - *The Minister erred in determining normal values using domestic sales which were not the most comparable like goods to the exported goods.*

Austube Mills agrees with the ADC's approach as stated in REP 419.

Concerning model matching, the Commission considers that the approach taken in its preliminary calculations, which follows the methodology taken in Continuation 379, provides a fair comparison between export prices and normal values. This is based on an assessment of the specifications of the HSS products sold, which the Commission understands may vary considerably notwithstanding that the products may be produced from the same grade of raw material.

The Commission considers that, taking into account the available information, basing the specification adjustment on the difference between grades of CHS is a reasonable approach. Ursine has not demonstrated that the markets and applications for CHS and RHS structural HSS are so different that the price difference between grades for CHS is not a reasonable basis for a specification adjustment for RHS. Ursine has also not suggested any alternative basis for the adjustment.

In relation to Ursine's proposed specification adjustment, the Commission considers that the models compared have a similar minimum yield strength (the specification which the Commission considers would most influence price) and therefore that the claim for a specification adjustment is not required to allow a fair comparison between the models. (p.46)

Austube Mills notes that this issue was extensively considered by the ADC in this review and Continuation 379 and that Ursine had not suggested any alternative basis for the adjustment.

Austube Mills submits that Panel should find the approach by the ADC in comparing models was the correct approach.

Ground 2 - *The Minister erred in determining the incorrect date of sale of the exported goods;*

Austube agrees with the ADC's approach to the date of sale as being the invoice date is the correct approach as stated in REP 419.

Austube Mills notes that the ADC extensively considered and addressed this issue at pages 46-47 of REP 419 and listed the following issues that Ursine Steel would need to address for such a claim:

- whether, why, and to what degree, the considerations in determining price differed between export and domestic sales;
- whether the materials cost differs at the time of subsequent invoicing of that export sale (compared to domestic sale invoices in the same invoice month of that export sale) having regard to factors such as the production schedules for domestic and export; and lead times for purchasing main input materials;
- whether contracts were entered into for the materials purchases, and materials inventory valuation.

Austube further notes that on pages 9 and 10 of its exporter questionnaire in regard to treatment of foreign exchange gains and losses arising from transactions response Ursine states:

Ursine books its purchases and sales denominated in foreign currency based on the official exchange rate on the date of invoice. The difference in foreign exchange between the invoice date and payment date is booked under “exchange gains and losses” as non-operating gains and losses. (EPR011)

The above statement evidences that for sales and purchases Ursine treats the invoice date as the effective date of sale and not the contract date.

REP 419 concludes that *“The Commission considers that Ursine has not substantively addressed these issues and therefore the Commission did not have evidence available to substantiate a claim that the date of sale was other than the invoice date.”*

Austube Mills also notes that Ursine was given time and opportunity to respond to the issue of the date of sale. Ursine did not respond until 55 days after the ADC notified Ursine of its concerns over using the contract date instead of the date of invoice as the date of sale.

Of relevance is that in its responses Ursine has brought new information before the ADC in its arguments some 21 and 22 days past the date of the SEF and past the due dates for responses for the SEF.

This new information is in Ursine’s response of 9 April 2018 (EPR049, p5).

It is also noted that the Commission considered it relevant that Ursine did not xxxxxxxxxxxxxxxx xx when it is claimed that the date of sale occurred for some export transactions.

Ursine’s xxxxxxxxxxxxxxxx were not included in the questionnaire response for review 419 because they had previously been provided to the Commission in Ursine’s questionnaire response to review 379. Those costs have been verified and found to be accurate, relevant and reliable. Ursine re-submits the costs verified and relied on by the Commission in Appendix 2 to its dumping margin calculations stemming from review 379 (refer to Confidential Exhibit A).

This new information is also referred to in Ursine’s response of 10 April 2018, (EPR051, p.2).

Ursine presented the Commission with its 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.

It appears clear that such information was not provided to the ADC in response to the exporter questionnaire and in response to the desk top verification and was only provided some 22 days after the SEF.

Austube contends that such information was not provided in a timely manner and should be disregarded.

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Ground 3 *The Minister erred in determining and applying a specification adjustment to the normal values.*

Austube Mills is unable to determine exactly what the basis for this ground of appeal is due to the extensive redactions and is unable to comment on the factual basis of what is actually being claimed. The fact that much of the information in the application for this ground is kept confidential is in Austube Mills opinion to prevent Australian industry from commenting on whether the adjustment is correct and the Panel should be cautious around accepting purported facts that are not open to scrutiny by the Australian Industry.

FOR AND ON BEHALF OF AUSTUBE MILLS PTY LTD