



# ADRP Conference Summary

## 2019/100 Wind Towers exported from the People's Republic of China and the Republic of Korea

Panel Member	Senior Member, Ms Joan Fitzhenry
Review type	Review of a Minister's decision made under subsection 269ZHG(1) of the <i>Customs Act 1901</i>
Date	11 March 2020 – 19 March 2020
Participants	11 March: Carl Halpin, Rhys Piper, Savita Kapoor and Maria Themistocleous (Anti-Dumping Commission) 19 March: Paul Sexton, Carl Halpin, Rhys Piper and Savita Kapoor (Anti-Dumping Commission)
Time opened	11 March: 3:00pm (AEDT) 19 March: 10:00am (AEDT)
Time closed	11 March: 4.00pm 19 March: 10.34am

### Purpose

The purpose of this conference was to obtain further information in relation to the review before the Anti-Dumping Review Panel (ADRP) in relation to Wind Towers exported from the People's Republic of China and the Republic of Korea.

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 parties to clarify an argument, claim or specific detail contained in the party's application or submission. 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 *Customs Act 1901*). 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 in relation to Reinvestigation Report No. 487 provided by the Commissioner of the Anti-Dumping Commission (ADC) on 5 March 2020:



*11 March 2020*

Ordinary Course of Trade (OCOT) assessment

- I sought clarification with respect to the difference in the number of profitable projects between the number stated in the submission by Shanghai Taisheng Wind Power Equipment Co., Ltd (TSP) and those stated in the Confidential Appendix 3, tab C to the Reinvestigation Report.
- The ADC response was that the difference was that the ADC calculation included a cost uplift for the steel raw material input. This was done on the basis of subsection 269TAAD(5) and the regulations.
- I also asked for confirmation regarding certain cost to make amounts provided by TSP in their submission with respect to the cost-based adjustment under Option A.
- The ADC response was that they agreed with the amounts except that they did not take into account the cost uplift.
- I asked for the reason why column AP of Tab A of Confidential Appendix 3 showed that there were changes to the result of the OCOT test from that conducted in the original inquiry but the Reinvestigation Report stated that the reinvestigation approach did not produce a different outcome in terms of which of TSP's domestic sales were in the OCOT.
- The ADC explained that the Reinvestigation Report was stating that there were still both sales in OCOT and not in OCOT.
- I asked why if there were different sales now in OCOT, that did not flow through to the normal value calculation.
- The ADC asked to take that question on notice (this was subsequently explained during the discussion below on the s.269TAC(8) adjustment).

S.269TAC(8) Adjustment

- I sought clarification of the amounts used for the adjustment for physical differences using Option C.
- The ADC advised that they used the uplifted cost to make amount plus the profit and SG& A from the original investigation for the calculation of the Option C market price. A different set of OCOT sales were used to those from the OCOT assessment done for the reinvestigation.
- I referred the ADC team to the comment by TSP in its submission that the result for the Option A and Option C should be the same.



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- The ADC explanation was that Option A looked at the difference in just the weighted average cost of the domestic and export sales whereas Option C is comparing price differences.
- I sought clarification of the comment in the Reinvestigation Report that an adjustment using Option A would not remove the physical differences.
- The ADC response was while there was some correlation between price and cost, that is, the more cost the higher the price, there was variability in the differences. So, they could not rule out that factors other than cost were affecting those particular prices in the market. The profit margin varied significantly between projects. Also, prices are set by the tender process but the costs will be affected by the production process that may be six to twelve months later.

#### Excluded Sales

- I asked for an explanation of the exclusion of sales of towers produced by a third party from s.269TAC(1), assuming that the sales were OCOT sales.
- The ADC explained that they were not satisfied that all of the costs associated with the production of those towers had actually been provided. The production was not under TSP's control.
- They further explained that the costs reported by TSP were only what they were charged by the subcontractor so the ADC did not know enough about the circumstances of those transactions. It was also noted that only [REDACTED] of the [REDACTED] transactions were profitable.
- I was also referred to GP10A of the work program for TSP

#### Conclusion

- I requested the calculation of the normal value using the same set of OCOT sales for the profit calculation for Option C as came out of the OCOT test in the reinvestigation.
- I also foreshadowed that there may be other calculations that I would request be done.
- The ADC flagged that they would need to provide calculations to the exporter if they were to be used as part of the recommendation by the ADRP.
- I formally adjourned the conference to a date and time to be determined.



19 March 2020

- The ADC confirmed the information it had provided to the ADRP in the form of calculations using the same OCOT profit as the sales in OCOT for the adjustment for the physical differences based on Option C.
- The further request for information in the form of calculations by the ADRP was noted and the ADC queried whether they were to use the same OCOT profit as the sales in OCOT for the physical differences in the wind towers, that is, were they to use the same profit that resulted from the question 3 calculation for the calculation under question 5.
- I confirmed that they should.
- With question 2, I confirmed that the less than 20% test should be done across all projects.
- It was also confirmed that the ADC would use un-uplifted costs for the cost-based adjustment using Option A.
- I sought information on whether the COVID-19 measures would affect the ability of the ADC to provide the information in a timely way.
- The ADC flagged that it may take one to two weeks to get the calculations done and go through the internal quality assurance process. It was not known whether the COVID-19 measures would affect the exporter's ability to consider the calculations.
- I noted that the legislation did not give the Minister the time to extend the report when there had been a re-investigation but this should not affect the exporter being provided procedural fairness by being given the calculations to check. I asked that there should be a caveat when they were provided to the exporter to the effect that the calculations should not be taken as an indication of what the recommendation of the ADRP will be to the Minister and that it should not be assumed that any recommendation would be accepted by the Minister.
- The ADC advised they thought the caveat was appropriate. The ADC also noted the complexity of the calculations and the need for the internal quality assurance process.
- I agreed that the quality assurance process should not be curtailed.
- The ADC asked that the request by the ADRP for further calculations be amended to reflect the clarification provided at the conference and I agreed to do so.
- It was noted that there would be a further conference when the ADC was ready to provide the further calculations.