



ADRP Conference Summary

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

Panel 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	25 June 2019
Participants	Mr Charles Zhan (Moulis Legal - representative of Shanghai Taisheng Wind Power Equipment Co., Ltd)
Time opened	3:00pm AEST
Time closed	4:01pm AEST

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 from Shanghai Taisheng Wind Power Equipment Co., Ltd (TSP) was information TSP could provide on the following:



Australian Government

Anti-Dumping Review Panel

- The benchmark used by the Anti-Dumping Commission (ADC) was *Flat Products/Plate CFR East Asia*. It provided prices for a range of thicknesses of steel plate, some of which are outside those used for wind towers. In particular, it contains prices for steel plate of thicknesses which are thinner than those used for wind towers.
- Because of the lack of comparability of the Platts benchmark, it is not possible to simply adjust the cost data in TSP's records to achieve a competitive market price for the steel plate based on the Platts benchmark.

Mr Zhan, as the representative for TSP, commented that the Platts benchmark had been used to implement a fixed cost uplift that the ADC wanted to use from the original investigation to the current one without actually assessing whether or not TSP's cost record in the continuation inquiry period reasonably reflected competitive market cost.

Mr Zhan then read an aide memoire, which had been provided to the ADRP on to the record of the conference. A copy of that aide memoire is attached.

A discussion also took place regarding the calculation of the uplift in *Confidential Attachment 4 487 Steel Cost Uplift Analysis (China)*.



Shanghai Taisheng Wind Power Equipment Co., Ltd (“TSP”)

ADRP review Ground of review relating to “cost of production”

Aide memoire for Section 269ZZHA conference on 25 June 2019

1. *The first is the information provided by the ADC that the Platts benchmark used by the ADC (Flat Products/Plate CFR East Asia) provides prices for a range of thicknesses, some of which are outside those used for wind towers. In particular, it contains prices for steel plate of thicknesses which are thinner than those used for wind towers.*

We make the following comments regarding the issues concerning the benchmark selected by the Commission:

1. It is the first time we are informed of the ADC’s concerns regarding thickness range. We are not aware of this issue ever been raised during the continuation inquiry directly with TSP or in any other form on the public record. We were not aware that this is a relevant information or relevant consideration in relation to the decision being reviewed.
2. We recall that the Platts benchmark was selected by the Commission itself “*as its benchmark because it is comprised of non-China import prices, and is therefore likely to be the most representative of competitive plate steel prices in the region.*” This was used as a benchmark to determine if the cost of TSP was reasonably reflective of competitive market cost, as required by Regulation 43 of the *Customs (International Obligations) Regulation 2015*. As stated in Report 487, the Commission considered that “*the benchmark indicates that competitive market steel prices were significantly higher during the manufacturing period than the costs set out in the exporter’s*

records.” Accordingly, the function of the benchmark is as an indicator of the general competitive market price level of plate steel. If such benchmark is not further defined by different thickness, then it could be an indication that the different thicknesses are not a significant enough factor to warrant having separate benchmarks differentiating say, very thick plate, medium thick plate, or thinner plate. If plate steel prices can vary hugely due to different thickness, by as much as [NUMBER]% - which is what the Commission’s method is suggesting, then that benchmark probably should not qualify as a suitable benchmark for plate steel of that grade to start with.

3. More importantly, the problem we have identified via the Platts benchmark is that the Commission has refused to genuinely assess, based on the relevant and contemporary facts of the continuation inquiry, whether TSP’s cost record indeed reflected competitive market cost, and if not, what kind of adjustment is required, to bring that cost to the contemporary competitive market cost, relevant for the period of the inquiry and going forward. What Report 487 has done, is to insist on imposing a cost differential that was calculated 5 years ago, based on a different investigation for a different product, not wind tower. The effect of that approach is to entrench the level of cost bias established from five years ago, to ensure that TSP’s cost is always rendered as not reasonably reflecting competitive market cost for plate. This is because the Report 487’s method is to always uplift the Platts based competitive market benchmark by [NUMBER]%, forever. That means TSP’s cost of plate steel will only have a chance of being regarded as reasonably reflect competitive market cost, if it is about [NUMBER]% higher than a contemporary competitive benchmark. There is no evidence suggesting that plate steel used for wind tower projects is so different to the kind of plate steel underpinning the Platts data, that it must always be [NUMBER]% more expensive.
4. In any case the same concerns about the accuracy and a more detailed level of comparability in the product specification are equally applicable to the basis of the Commission’s [NUMBER]% uplift. We recall that the starting point of the Commission’s method is claimed to be the differential between the selling prices of the exporters from Indonesia, Japan, Korea and Taiwan who cooperated with the investigation 198, for the investigation period of 2012, and those of the Chinese exporter Jigang’s. That differential was then applied as an uplift to TSP’s cost of plate steel for the investigation period of January 2012 to June 2013. There are no evidences that the

Investigation 198 based differential or the resultant uplifted cost for 2012 to 2013 is tailored to the specific type and specification of the plate steel used for wind towers production by TSP in the continuation inquiry period of January 2017 and 2018. The same comments the Commission now seem to make about Platts benchmark would equally apply to the database it relied on in Investigation 198.

5. In our view, what should have been questioned, is legitimacy and correctness of the Commission's uplifted cost for TSP from the original investigation, which is shown to be more than [NUMBER]% higher than the Platts benchmark, rather than to use that absurd outcome to question the accuracy and comparability of the Platts benchmark for plate steel itself. We also note that TSP raised questions about the Commission's method of cost uplifting and surrogation and the conflicting descriptions of its method, in its SEF submission, which we referred to again in the application. For example, we noted that in Investigation 198 the Commission actually determined that the Chinese exporter's cost of plate steel was only affected slightly by the cost of coking coal and coal, measured at less than 2.6% of its export price. The product produced by the Chinese producer were also likely to be of different grades to those used for wind tower productions.
6. We find it difficult to understand that the Commission seem to point to a relatively minor aspect of the Platt steel benchmark, somehow as a defence of its attempt to inflate that market cost benchmark by [NUMBER]%. The only basis for the approach is the Commission's own problematic view based on information from five years ago and from different investigations. Even if that approach was defensible back then – it is clearly outdated and with only historical relevance to the determination the Minister must make in relation to the current inquiry. In our view the Report 487's approach towards determining TSP's cost of production is nothing but a mechanism that entrenches what was done five years ago, and to always regard TSP's cost as not reasonably reflective of competitive market cost, and to implement an unreasonable inflation to TSP's dumping margin – on the basis that this is the outcome from five years ago.
7. If the issue is genuinely to do with the accuracy of a cost benchmark, then that issue can be resolved. We pointed the Commission and now in this ADRP review, to the specific and contemporary cost data that the Commission is in possession in the continuation inquiry, which are information precisely about the costs of plate steel

used for wind towers and which were considered to reasonably reflect competitive market cost. This includes the plate steel cost of the Vietnamese exporter, the Korean exporter, the plate steel TSP imported from Japan, and indeed the Australian industry's own plate steel cost. Such information will help to address any concerns about comparability, and can be used as basis to determine whether TSP's cost of plate steel reasonably reflected competitive market cost, with or without the help of the Platts benchmark.

8. We note that the Commission said in its submission to the Review Panel that in relation to the Australian industry's own plate cost, it is unable to account for the relevant grade differences. We draw the Review Panel's attention to the fact that one of the [NUMBER] Australian projects TSP exported during the period of inquiry was co-supplied with the Australian industry. Therefore, at least for one project, there should be no grade difference at all – they are simply different sections of the tower produced to the same customer design and specification. Once again, the Commission also has other relevant information, in the form of the cost data of the Vietnamese producer, Korean producer, and TSP's cost of imported plate steel from Japan, which all provides relevant information for the cost determination the Minister is required to make for the continuation inquiry. In any case it would be reasonable to expect that the information regarding the cost of plate steel actually used for producing wind towers are all within a reasonably similar and comparable band of grades, and much more accurate and relevant than the benchmark the Commission developed from a case that is not for wind tower or plate steel specifically used for wind towers. Lastly, we find the Commission's comments that the more relevant benchmark of cost references as identified by TSP is unworkable because "*the Commission did not have any means of adjusting these costs to reflect a competitive market cost of steel in China*" is problematic, given the Commission's insisted method also relies on the plate prices from foreign markets.

2. *The second flows from the above information. This is that, because of the lack of comparability of the Platts benchmark, it is not possible to simply adjust the cost data in his client's records to achieve a competitive market price for the steel plate based on the Platts benchmark.*

1. We believe that our response to the first question already addressed the issue to a large degree. It is not clear to us the level of comparability the Commission is referring to, and how that such issue does not equally affect the method it decided to apply.
2. If the Commission is genuinely concerned with the comparability a plate steel benchmark to TSP's cost record, then it could have tried to assess whether and what are the quantifiable differences between the type of steel underlining the Platts benchmark and those used by TSP. If the differences are indeed quantifiable and must be addressed to ensure accuracy of the comparison or, ultimately, the cost surrogation, then such differences need to be quantified and adjusted based on evidence. For instances, if grade difference is the concern, the Commission could assess if there is a substantive price differences between the grade represented in the Platts benchmark and the grade used for wind tower production by TSP. The Commission could gather such data from China or another benchmark market it considers suitable. If thickness is the concern, the Commission should also assess if thickness is a major price driver at all, that warrants a concern about the reliability and comparability of the competitive market cost determination. Once such assessments are conducted, the conclusion maybe that any differences in grades or thicknesses would have had relatively minor impact on the reliability of the benchmark that no adjustment is required. Such investigations were simply not conducted.
3. In our view it is incredible that any concerns regarding the specific level of comparability between the Platts plate steel benchmark and the specification of the plate steel used TSP warranted a [NUMBER]% inflation. In any case, any comparability issue with the Platts benchmark would have equally existed and not addressed by the Commission's own approach. We recall again the Commission's current approach is said to be the following:
 - Step 1 – differences between a basket of selling prices by exporters, and the “normal value” of a Chinese plate exporter in 2012, from Investigation 198;
 - Step 2 – apply the difference in Step 1 as an uplift to TSP's plate steel cost from January 2012 to June 2013 to uplift TSP's cost of 2012/2013

There is no regard to the lack of comparability in these exercises. Then, for the Continuation Inquiry:

- Step 3 – work out the differences between Step 2 and the Platts benchmark in 2012, which is [NUMBER]%, and then apply [NUMBER]% to the Platts benchmark for the period of inquiry;
- Step 4 – Apply the Platts benchmark with [NUMBER]% inflation during the period of inquiry as the surrogate cost for TSP's plate steel for January 2017 to June 2018.

There is also no regard to the lack of comparability in these exercises. The Commission does not explain why simply work out the cost differential between the contemporary Platts benchmark and TSP's actual cost record during the period of inquiry would create an outcome that is more problematic or less accurate in principle, than the outdated uplifting it has applied.

4. Once again, we note that the Commission is in possession with direct evidence to test out any comparability issue, or to simply use those evidence as the benchmark to address the comparability issue. As noted, the Commission has the contemporary and specific cost information of plate steel actually purchased and used for wind tower production in Vietnam, Korea, and Australia. They would serve as much more relevant and comparable basis of comparison than those derived from the plate steel investigation concerning an investigation period of 2012. But the Commission refused to engage with those relevant and contemporary information. Rather, it insisted to use the outdated, less accurate and less comparable data.
5. As TSP asked again in its review application, how does the so called indexed "competitive market cost" that is being used to surrogate TSP's plate steel cost compared to the Australian industry's –who produced the same wind towers with the same steel as TSP? As shown in the Commission's "487 – TSP – Appendix 4a – Uplift Calc" spreadsheet, the average plate steel cost the Commission used to surrogate TSP's cost for the POI is RMB [NUMBER]per tonne. On a quarterly basis the surrogate plate steel cost ranged from USD[NUMBER] to USD[NUMBER] per tonne for the period of inquiry. The Review Panel could compare these numbers to the plate steel cost in Australia, in Korea and in Vietnam, and to see if the so-called competitive market cost that the Commission implemented for TSP is "comparable" to the plate steel used for wind tower productions, and whether that method is correct and preferable.

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