



# ADRP Conference Summary

## Review 124 – Deep Drawn Stainless Steel Sinks exported from the People’s Republic of China

Panel Member	Paul O’Connor
Review type	Review of Minister’s Decision
Date	15 April 2020
Participants	Matthew Williams, Gavin Crooks and Cameron Kennedy, Anti-Dumping Commission
Time opened	11:00 AEST
Time closed	12:10 AEST

### Purpose

The purpose of this conference was to obtain further information in relation to the applications before the Anti-Dumping Review Panel (Review Panel) in relation to Deep Drawn Stainless Steel Sinks exported from the People’s Republic of China.

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

In the course of the conference, I asked the Anti-Dumping Commission (Commission) representatives to clarify aspects of REP 517 referred to in the applications.

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

At the time of the conference, I advised the Commission representatives:

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.
- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel’s website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.



Prior to the conference, participants were provided with a copy of the Review Panel's Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel's website [here](#). The Commission representatives indicated that they understood the Privacy Statement and consented to:

- The recording of this conference; and
- The recording being dealt with as set out in the Privacy Statement.

Prior to the conference, the Panel provided the ADC with a number of points for discussion.

## Discussion

### Zhuhai Grand Kitchenware Co Ltd

#### **Clerical error**

1. One of Zhuhai Grand Kitchenware Co Ltd's (Zhuhai Grand's) Grounds for Review alleges a clerical error on the part of the ADC. In the latter stages of the inquiry, the ADC provided Zhuhai Grand with draft calculations showing a dumping margin of 13.2%. However, REP 517 and ADN 2020/003 stipulated a slightly higher dumping margin of 13.4%.
2. ADC representatives explained that the dumping margin calculations provided to Zhuhai Grand were in the form of a working draft and that Zhuhai Grand was advised the calculations were to be subject to an internal quality assurance process. Accordingly, the calculations were not to be regarded as indicative of the final determination of the dumping margin. The quality assurance process identified a minor change to the dumping margin, resulting in a 0.2% increase to 13.4%.
3. Zhuhai Grand was not advised of this change as it was considered immaterial and there was insufficient time remaining to complete the inquiry within which to provide Zhuhai Grand with a further opportunity to comment.

#### **Applicability of Program -1**

4. The focus of Zhuhai Grand's application to the Panel is the calculation of the dumping margin and seeks to challenge the relevance of a subsidy provided by the Government of China, known as *Program-1 Raw materials*, especially when REP 517 concluded that Zhuhai Grand did not derive any benefit from that program.



5. The ADC's representatives confirmed that Zhuhai Grand had not received any countervailable benefit as defined under that Program. However, for those exporters who had received a countervailable benefit, the external benchmark of the North American and European prices was used to quantify the extent of that benefit. The same benchmark used for Program -1 was also used for a dual purpose, the second being the determination of whether the exporters, including Zhuhai Grand's, costs of production were competitive market costs.

**Use of costs in the country of export:**

6. The ADC representatives confirmed Zhuhai Grand's normal value was determined under section 269TAC(1) of the Act. That section required the ADC to be satisfied that Zhuhai Grand's domestic sales were made in the ordinary course of trade (OCOT) and were arm's-length transactions. There is no dispute that Zhuhai Grand's domestic sales were made at arms length.
7. The Panel member stated that neither the *Anti-Dumping Agreement* (ADA) nor the legislation defines the characteristics of transactions which fall within the scope of the phrase OCOT. Accordingly, the ADC had a broad discretion, not constrained by an express legislative provision, as to what domestic sales could be considered to be within the OCOT.
8. The ADC was satisfied that Zhuhai Grand's accounts were kept in accordance with generally accepted accounting principles and accurately reflected Zhuhai Grand's cost of production of the goods.
9. The ADC noted that stainless steel was a major raw material input to the production of the goods and that the Government of China's (GOC) influence over the Chinese steel market, both in general and over domestic sales of stainless steel in particular, was such that the prices at which Zhuhai Grand's purchased stainless steel from its suppliers did not reasonably reflect competitive market costs. Accordingly, the ADC substituted the values recorded in Zhuhai Grand's accounts for the purchase of stainless steel with values derived from published prices of stainless steel sales within the European and North American markets.
10. Having substituted those values the ADC determined that some of Zhuhai Grand's relevant sales were not in the OCOT. The remaining sales were used to determine normal value under section 269TAC(1).



11. In its Application to the Panel, Zhuhai Grand argued the substitution of its actual cost of stainless steel with non-China surrogate costs resulted in an artificial increase in its cost of stainless steel of more than 30%. This in turn affected the correctness of the ADC's identification of the universe of Zhuhai Grand's domestic sales in the OCOT for normal value determination purposes, because the higher costs rendered a large number of profitable domestic sales unprofitable. Because those sales did not pass the OCOT test under section 269TAAD, Zhuhai Grand's normal value and dumping margin were consequentially overstated.
12. The ADC representatives maintain that determining the cost of production of the goods in China, through use of the external benchmark, was done under section 43 of the *Customs (International Obligations) Regulation 2015* (Regulation), as required by section 269TAAD(5).
13. The Panel noted that it was an open question as to whether the ADC was in fact constrained by the requirements of section 43 of the Regulation.
14. The Panel referred to section 269TAAD(1) which prescribes a limited range of circumstances in which sales of like goods to those exported to Australia are deemed not to be in the OCOT. This subsection requires the comparison of the domestic sale prices of like goods with "*the cost of such goods*". Subsection (2) then goes on to state "*the cost of goods*" is the sum of amounts determined by the Minister to be "*the cost of the goods in the country of export*" and the amounts determined to be the selling, general and administrative (SG&A) costs associated with the sale of those goods.
15. The ADC representatives noted, the costs of such goods is referred to within section 269TAAD(4) in conjunction with subsection (5), which in turn requires application of the Regulations.
16. The Panel member referred to subsection (4) adopting the general phrase "*the cost of goods*" that phrase must be read in context, and its meaning or scope derived from the focus of the section as a whole.
17. The Panel member stated that the focus of section 269TAAD(1) is upon ascertaining whether "*like goods*" sold in the country of export meet two requirements, one of



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which requires consideration of “*the cost of such goods*”. Subsections (4) and (5) then govern how such costs are to be determined. Those subsections therefore can be seen not as a general head of power, governing the manner in which the costs of goods can be determined, for any purpose under Part XVB of the Act, rather those subsections are limited in their application to the comparison required in section 269TAAD(1).

18. The Panel member mentioned that it can therefore be argued, the ADC was not required to adhere to subsections 269TAAD(4) and (5) when exercising its discretion to determine whether, and to what extent, Zhuhai Grand’s domestic sales were in the OCOT for the purposes of determining a normal value under section 269TAC(1).
19. Assuming *arguendo*, the Panel’s interpretation of the limited scope of the subsections 269TAAD(4) and (5) is correct, such an interpretation would not significantly impact on the present Panel’s Review, as in the exercise of its discretion as to whether Zhuhai Grand’s domestic sales were in the OCOT, the ADC, as a matter of policy rather than statutory obligation, would appear to have chosen to adhere to the method of determining costs outlined in subsections 269TAAD(4) and (5).
20. The ADC representatives note the approach taken was to look to domestic sales, assuming all were in the OCOT and then proceed to knock those sales out which were not in OCOT (pursuant to section 269TAAD).
21. The Panel will review the ADC’s adoption of the benchmark costs of stainless steel with this outcome in mind
22. The Panel noted Zhuhai Grand’s application cited the Federal Court decision in *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* which accepted that when an investigating authority is determining “*the cost of production ... in the country of export*” it is permissible to have regard to a benchmark of costs external to the country of export provided that the task is undertaken in a way authorised by statute. To achieve such authorisation, the investigating authority must turn its mind to either: whether the foreign pricing information was relevant and appropriate; or, whether the investigating authority gave genuine consideration to that issue.
23. The ADC representatives noted the reasoning for the adoption of the external benchmark and its relevance to the Chinese market was detailed in section 7.3 of



REP 517. That section in turn referenced an earlier ADC report, REP 238 February 2015, produced in support of the initial recommendation to impose measures on the goods. In that report the ADC found that there was sufficient evidence which showed there was a significant GOC influence in the Chinese steel industry that either directly or indirectly impacted on the domestic market for Chinese steel which is used in the production of deep drawn sinks.

24. The ADC representatives noted that Part VI of REP 238, at pages 208-219, addressed seven options to identify a suitable external benchmark as a substitute for the exporters' recorded costs of purchasing stainless steel from Chinese suppliers. These options included the adoption of an Asian benchmark and published North American and European prices. The report went on to recommend the adoption of the latter and proceeded to discuss appropriate adjustments to that benchmark to reflect conditions of comparative advantage prevailing in the Chinese market. The report recommended adjustments with respect to differences in delivery terms and slitting costs.
25. The ADC representatives indicated that the seven options for the appropriate benchmark traversed in REP 238 were revisited and reconsidered in the course of the inquiry and it was decided to continue with the adoption of the North American and European benchmark, with appropriate adjustments for differences in delivery and slitting costs.
26. The ADC representatives also noted that once the intention of the ADC to again adopt the North American and European benchmark became known, Zhuhai Grand did not make any submissions seeking any further adjustments to that benchmark in addition to the adjustments in relation to delivery and slitting costs.
27. As to Zhuhai Grand's criticism of the ADC's failure to adopt an Asian benchmark, the ADC representatives again noted the suitability of an Asian benchmark was addressed in REP 238, and, as with the present case, the GOC had chosen not to make a submission. It is therefore difficult to assess the suitability of an Asian region benchmark.
28. In terms of some of the other examples listed in the application, the ADC Representatives noted that REP 419 being one of those that was in relation to a



different type of good. In relation to those goods, stainless steel cold rolled coil was not an input into the production costs.

## **Primy**

29. Primy's application to the Panel noted, in both the domestic and export market Chinese manufacturers sell sinks as part of a package which can include a range of accessories. However, on the Chinese domestic market, the range of accessories sold with sinks is considerably larger than the range of accessories sold with sinks exported to Australia.
30. In response to the differences in the composition of the domestic and export sales the ADC considered an adjustment under section 269TAC(8) was warranted. The value of the adjustment was worked out by calculating the difference in the weighted average unit cost of production (excluding accessory costs) between the two markets for each relevant Model Control Code (MCC).
31. The ADC identified that the majority of accessories included in both domestic and export sales were purchased from external third parties. Where the accessories were sourced from third party suppliers the ADC did not include a profit margin in the adjustment. Primy's application to the Review Panel challenges this exclusion as being inconsistent with the *Dumping and Subsidy Manual* (Manual).
32. The ADC representatives noted the Manual does not address this exact scenario. Nonetheless, the ADC representatives consider that the value of the adjustments related to accessories was worked out in a manner consistent with the practices outlined in the Manual.
33. The Manual provides that where models sold domestically and exported to Australia are different, adjustment for differences in physical characteristics, where it reasonably affects price comparability, may be based upon production cost differences plus the addition of a gross margin (including selling, general administrative expenses (SG&A) and profit) to the production cost difference. The Manual goes on to state that by doing so the market value of the production cost difference is captured.



34. The ADC representatives noted, Primy's Ground for Review relates to circumstances where the specification difference (i.e. the range of accessories included in the sale of sinks) was achieved by the exporter as a result of the exporter's own production activities or achieved by procurement of resources (accessories) from a third party. The key difference between the two being that the first approach requires some estimation of the market value of the cost of the internal production of the accessory and the second does not, as it was purchased from the market at presumably a market price.
35. The Manual only provides guidance as to how to undertake the estimation of the market value of internally produced specifications. In such circumstances, it suggests amounts for SG&A and for profit be added to the internal production costs. This is because where the production costs incurred by the exporter in relation to activities associated with transforming goods from a raw material state into a finished state are not considered indicative of the market value until further amounts relating to selling expenses and a profit margin are added.
36. Where, as in the majority of Primy's sales, the accessories sold with the sinks are sourced from third-party suppliers, the adjustments do not recognise a profit margin. In those circumstances no adjustment for profit was considered necessary as the accessory was purchased from the market at presumably a market price. This is consistent with the approach suggested by the Manual, the focus of which is upon the calculation of an adjustment that reflects the market value of the production cost difference.
37. In contrast, where the market value of the accessory is already available, i.e. when the accessory is procured from third party, the ADC took the approach that the accessory purchase price was indicative of market value. That price in turn then becomes a cost of production in its own right, in terms of an inventory cost. The ADC representatives used an analogy relating to adjustments for inland freight. Where and exporter retains a transport provider, the cost of the inland freight forms part of the exporter's costs.
38. The ADC representatives noted that Primy only manufactured two accessories which were sold with the goods. The remainder were sourced from third parties. At verification, the ADC noted the cost of the accessories sourced externally were recorded as cost items in Primy's costs to make and sell data. The ADC





representatives noted it had not been presented with any evidence in the course of the inquiry, particularly at verification, to suggest that Primy's intention or practice was to include a markup on accessories sourced externally.

39. As a result of the verification visit, the ADC was under the impression that Primy only produced two of the accessories internally. One of these was described as a "wastebasket" made up of a hybrid of stainless steel scrap and components sourced from external suppliers.
40. The other accessory produced internally was a faucet. Faucets were manufactured by Primy at a separate and dedicated production facility. The ADC noted that in some instances the cost of production of these faucets exceeded the cost to make the sink itself. In such circumstances the ADC accepted that the addition of the faucets as part of the sale of the sink would affect price. The ADC accepted that it needed to determine the market value of the production cost of the faucet and looked to the Manual for a solution. The guidance provided by the Manual was to look to the production costs of the faucet and add to that amounts for SG&A and an amount for profit. In such circumstances, the most reliable information to inform the ADC as to the market value of a faucet was the OCOT profit margin i.e. the profit margin that was observed in the sale of like goods generally.
41. The ADC representatives noted, although Primy was arguing for the inclusion of a profit margin by way of an adjustment to domestic selling prices it was silent as to whether a similar adjustment was needed in relation to its export transactions.
42. The Panel referred the ADC representatives to an email from Primy dated 23 October 2019 which referenced a particular model. The email claimed the model included six different accessories which Primy produced internally. A further five accessories were said to have been sourced from third parties. The email went on to state, the aggregate costs of the internally produced and externally sourced accessories was approximately the same. Given this example, the Panel sought confirmation from the ADC as to the overall value of accessories produced internally when compared to the value of those sourced externally.
43. The ADC representatives noted that the information relating the email of 23 October 2019 was provided subsequent to both the verification visit to Primy and publication of the Statement of Essential Facts (SEF). As noted above, the ADC was under the



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impression, based upon information conveyed during the verification, that the only accessories Primy produced internally were the faucet and the wastebasket.

44. The ADC representatives confirmed, in the final report to the Minister the only accessory sold with sinks that attracted the profit margin adjustment was the faucet, for all other accessories, it was taken that the costs reported by Primy in its cost to make and sell was actually a reflection of the purchase price paid to external suppliers and was therefore the market value of those goods. The ADC representatives confirmed that that the inclusion of the amount of profit for the faucet was included in calculations subsequent to the publication of the SEF.

Paul O'Connor  
Panel Member  
Anti-Dumping Review Panel  
28 April 2020