

# ADRP Conference Summary

## 2020/88A Certain Hollow Sections exported from the People's Republic of China, the Republic of Korea and Taiwan

Panel Member	Paul O'Connor
Review type	Review of Minister's Decision
Date	22 October 2020
Participants	Mr Jeffery Waincymer representing Tianjin Youfa and Thyssenkrupp Materials Australia Pty Ltd
Time opened	14:00 AEDT
Time closed	15:00 AEDT

### 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 Sections exported from the People's Republic of China, the Republic of Korea and Taiwan.

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

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.

### Discussion

1. The conference was convened following recent orders of the Federal Court which set aside the Minister's decision with respect to Review Panel Report 88 and remitted Tianjin Youfa's application for review to the Review Panel for reconsideration.
2. Prior to the conference, the Review Panel provided Mr Waincymer, via the Secretariat, with a paper outlining items or issues are to be discussed in the conference. Mr Waincymer was also provided with four spreadsheets<sup>1</sup> headed:
  - "419-ADRP-Confidential Attachment 1-revised uplift.xlsx" (Attachment 1);

---

<sup>1</sup> These spreadsheets were initially provided to the Review Panel via an email dated 18

- “419-ADRP-Confidential Attachment 2- Revised normal values.xlsx” (Attachment 2);
- “419-ADRP-Confidential Attachment 3-Revised dumping margins.xlsx”. (Attachment 3) ; and
- “419-ADRP-Confidential Attachment 4- ... Revised material purchases.xlsx.” (Attachment 4).

3. Attachment 1 identified the [REDACTED] production entities within the Tianjin Youfa group that had exported the goods under consideration (GUC) and detailed, by quarter, quantity, value and price, their raw material purchases of hot rolled coil (HRC) and narrow strip over the review period. Importantly, although HRC purchases were identified, no differentiation was made between purchases of structural and nonstructural grade HRC (i.e. the prices were aggregated).
4. The Attachment 1 confirms that of the entities who had exported the GUC, only [REDACTED] had purchased both HRC and narrow strip during the review period. Mr Waincymer maintained only [REDACTED] of these [REDACTED] entities [REDACTED] had relevant purchases of both structural grade HRC and narrow strip and that this would be apparent from Attachment 2 referencing “narrow strip” and other purchase spread-sheets in Commission’s possession. Again, the purchases of HRC were not differentiated in between structural and nonstructural grades in Attachments 1 and 4, so this can only be assessed from Attachment 2 referencing “narrow strip” and other purchase spread-sheets in Anti-Dumping Commission’s (Commission’s) possession. The spreadsheets in Attachments 1 and 4 nevertheless, identified that all HRC purchase prices (of whatever grade) exceeded all purchase prices of narrow strip.
5. Mr Waincymer took issue with the relevance of Attachments 1 and 4 alone to the matter now for reconsideration before the Review Panel. Mr Waincymer called for consideration of Attachment 2 referencing “narrow strip”, and other purchase spread-sheets in Commission’s possession, as the basis for revising Attachment 1 to exclude non-structural HRC as an irrelevant product. The Commission has acknowledged that the external benchmark was based upon the purchases of only structural grade HRC by certain Taiwanese and Korean exporters.
6. The GUC exported by Tianjin Youfa were of two types, rectangular hollow sections (RHS) and circular hollow sections (CHS). Mr Waincymer noted Tianjin Youfa’s RHS exported to Australia was manufactured exclusively from structural grade HRC. [REDACTED] was the [REDACTED] to have purchased structural grade HRC

consumed in the production of RHS exported during the review period. Mr Waincymer also contended that Attachment 2 referencing “narrow strip”, and other purchase spread-sheets in Commission’s possession, will show that no other Tianjin Youfa exporter purchased structural HRC during the period under investigation. All the CHS exported to Australia by the relevant Tianjin Youfa production entities was constructed from narrow strip.

7. As the Commission had concluded it could not rely upon Tianjin Youfa’s purchases of steel material inputs due to a ‘particular market situation’, i.e. the influence of the Government of China upon prices within the steel sector, the Commission looked to an external benchmark (i.e. the purchase prices of structural grade HRC in Taiwan and Korea).
8. The Commission therefore had to determine, and adjust for, price differences between the benchmark prices for structural grade HRC and the prices in China of an identical grade of HRC (or similar grade if no identical grade existed) and the prices of narrow strip. The extent of any price differences from input differences, arising out of those comparisons needed to be somehow excluded, so that remaining differences would simply reflect the influence of the Government of China over prices within the Chinese steel sector. The Commission would then need to make adjustments to deliver hypothetical prices in China for narrow strip, in a market unaffected by Government influence. Mr Waincymer noted that such adjustments could take two forms: a downward adjustment to the benchmark prices or an upward adjustment (‘uplift’) to the actual prices paid by Tianjin Youfa’s relevant production entities. However, it was noted, REP 419 had opted for a downward adjustment of the foreign benchmark and that the application to Review Panel did not ask for this to be changed.
9. Attachment 1 identified an “uplift factor for RHS”, derived from the quarterly comparison of the HRC benchmark against all corresponding purchases of HRC, of both structural and nonstructural grades. Mr Waincymer claimed the Commission had no basis to change to an uplift approach contrary to REP 419 and also, ought to have excluded from Attachment 1 nonstructural grade purchases of HRC as only structural grade HRC had been used in the production of the RHS exported to Australia (i.e. by ██████████). An uplift approach, if permitted, can only compare like with like, or if different products are compared, must exclude the premium of one over the other.

10. With respect to CHS exported to Australia, Attachment 1 also records an “uplift factor” was derived from the quarterly comparison of the HRC benchmark against the corresponding quarterly weighted average purchase price of **all HRC** (whether structural or nonstructural grade) and narrow strip, by the production entities that produced CHS exported to Australia. This followed a conclusion by the Commission, contrary to its findings in REP 419, that it no longer considered structural grade HRC attracted a price premium over nonstructural grade HRC or narrow strip.
11. Mr Waincymer argued it was irrelevant to the task before the Commission to explore whether there were price differences between nonstructural and structural grades of HRC as none of the CHS exported to Australia was made with non-structural HRC, and as the benchmark was structural HRC. The task before the Commission in dealing with a replacement narrow strip price, when calculating cost to make CHS, was the identification of the premium of structural grade HRC over narrow strip from the purchase data of the Tianjin Youfa exporting entities. Attachments 1, 2 and 4 referencing “narrow strip”, and other purchase spread-sheets in Commission’s possession, demonstrate that the Commission had before it the necessary data to undertake this task. Given that REP 419 had simply reduced the benchmark by the difference between all HRC on the one hand and narrow strip on the other, all that now needed to be done was to simply reduce the benchmark by the difference between Tianjin Youfa’s structural HRC purchases alone on the one hand (because that was the benchmark product) and purchases of narrow strip on the other (because that was the CHS product exported to Australia).
12. Mr Waincymer urged the Review Panel to limit its focus to the scope of the relevant ground for review contained within Tianjin Youfa’s initial application lodged with the Review Panel in July 2018, and which is currently before the Review Panel for reconsideration. That ground states “the Commission applied an inappropriate uplift to account for the use of **narrow strip rather than HRC** raw material inputs” [emphasis added]. The accompanying submission sought to retain a downward adjustment to the foreign benchmark but exclude non-structural HRC from the calculation of the price premium between the input types.
13. Mr Waincymer noted this ground is limited to the uplift determined with respect to narrow strip and does not invite a review of the uplift to the production costs of RHS exported to Australia. Accordingly, there is currently no issue as to whether nonstructural grade HRC is “relevant in any way, shape or form to the issue currently before [the Review Panel]”.

14. Mr Waincymer noted that in REP 419, the Commission reduced the foreign benchmark for structural grade HRC by a premium of all HRC (i.e. all grades) over narrow strip for all entities within the Tianjin Youfa group. However, he noted the adjustments reflected in Attachment 1 start at the other end of the equation. That is, they begin with the actual prices paid by Tianjin Youfa and increase (i.e. uplift) the actual narrow strip prices by the percentage differences between the benchmark and the aggregated prices for all HRC and narrow strip. This he asserts had the effect of inflating the uplift by inherent differences in product values and not government influence.
15. Mr Waincymer noted that Tianjin Youfa had accepted, continues to accept, and had not sought to challenge, in the initial application for review, the uplift to the production costs of the RHS exported to Australia, as reported and recommended by the Commission Report 419. Tianjin Youfa accepts those uplifts, as so determined, are acceptable. The only issue which was subject to challenge in the application, and which remains before the Review Panel, is the quantum of the premium commanded by the structural grade external HRC benchmark over the narrow strip consumed in the CHS exported to Australia in the review period.
16. Mr Waincymer reiterated that the information before the Commission confirms that the CHS exported to Australia was manufactured from narrow strip. Indeed, the entirety of the Tianjin Youfa's production of CHS within the dutiable dimensions, whatever its market destination, consumed only narrow strip.
17. Mr Waincymer suggested that the correct approach would require reconstruction of Attachment 1 to remove nonstructural grade HRC entirely. As Tianjin Youfa's purchases of nonstructural grade HRC are irrelevant to the matter before the Review Panel, they need not be referenced in any amended Attachment. An upwards adjustment should not be made, and the adjustment methodology adopted in REP 419 should continue to be applied to the exporting entities and excluding non-structural HRC
18. Separate comparisons of the benchmark against Tianjin's Youfa's purchase prices for structural grade HRC and narrow strip could then be undertaken. The premium commanded by structural grade HRC over narrow strip could be quantified and then applied as an adjustment to the external benchmark. This would then generate a price for Tianjin Youfa's purchases of narrow strip which was unaffected by a government influences over the prices of raw material inputs.

19. Mr Waincymer questioned the need to undertake the comparison, and in turn the adjustment or uplift, on a quarterly rather than on an annual basis. By doing so he claims the Commission appears to be asserting that the Government of China's influence over production inputs (which gave rise to the "particular market situation") varied over the review period. In his view it makes no commercial sense to say that the extent of Government influences over prices varies significantly from month to month or indeed from quarter to quarter. He noted that in Attachment 1, and in Report 419, the uplift determined by the Commission for CHS ranged between [REDACTED] and [REDACTED]. A [REDACTED] factor aims to raise the price by [REDACTED]%. The latter is nearly [REDACTED]% higher than the amount of the uplift for the former. This it was said lacks a sense of commercial reality. Mr Waincymer questioned how it could be said that the magnitude of government influence could vary so dramatically over a 12-month timeframe. In his view, such an approach merely adds an extra arithmetical stage when the object of the exercise ought to be to identify a consistent level of government influence over pricing.

Paul O'Connor  
Member  
Anti-Dumping Review Panel  
13 November 2020