Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

Withdrawal
You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact
If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Zheijang ShangHong Shelf Co., Ltd
Address: No.2 Dongsheng Rd., Jiashan Economic Development Zone, Jiashan, Zhejiang, China
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: Russell Wiese
Position: Director
Email address: rwiese@cgtlaw.com.au
Telephone number: 03 9844 4328

3. Set out the basis on which the applicant considers it is an interested party:

The applicant is a Chinese company directly concerned in the manufacture and export of the goods the subject of the reviewable decision. The applicant exports the relevant goods to Australia either directly or via a related body corporate.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

Steel Pallet racking, or parts thereof, assembled or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following - beams, uprights (up to 12 metres) and brace (with or without nuts and bolts).

However, on 6 May 2019 the then Minister for Industry, Science and Technology exempted all components or parts of steel pallet racking, other than beams, uprights and braces, from interim dumping duty and dumping duty effective from 19 June 2018.

7. Provide the tariff classifications/statistical codes of the imported goods:

Tariff heading 7308.90.00

Statisical code 58

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2024/019

Date ADN was published: 9 April 2024

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Please refer to attachments 2 and 3 – Grounds for Review

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The Minister should declare under section 269ZHG of the Customs Act 1901 that he has decided not to secure the continuation of the anti-dumping measures in respect of goods exported from China.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Please refer to attachments 2 and 3 – Grounds for Review

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

The revieable decision was to continue the dumping measures in respect of goods exported from China. The proposed decision in question 10 is materially different as the dumping measures would not be continued in respect of goods exported from China.

13. Please list all attachments provided in support of this application:

Attachment 1 – Anti-Dumping Notice 2024/019
Attachment 2 – Grounds from Review – Confidential Version
Attachment 3 – Grounds for Review – Non-Confidential Version
Attachment 4 - Australia – Anti-Dumping Measures on A4 Copy Paper WT/DS529/R
Attachment 5 - Australia - Anti-Dumping and Countervailing Duty Measures on Certain Products from China - Report of the Panel WT/DS603/R
Attachmen 6 – Anti-Dumping Commission Report No. 617
Attachment 7 – Anti-Dumping Comminssion Final Report No. 441
Attachment 8 – Anti-Dumping Commisson Response to Exporter Questionnaire Deficency List ShangHong & Yuhua

PART D: DECLARATION

The the applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: Russell Wiese

Position: Director

Organisation: Customs and Global Trade Law Pty Ltd

Date: 30 / 4 / 2024

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: Russell Stewart Wiese
Organisation: Customs and Global Trade Law Pty Ltd
Address: Level 17, 31 Queen Street, Melbourne, Victoria, 3000
Email address: rwiese@cgtlaw.com.au
Telephone number: 03 9844 4328

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:
(Applicant's authorised officer)

Name:

Position:

Organisation: Zheijang ShangHong Shelf Co., Ltd

Date: / /

ANTI-DUMPING NOTICE NO 2024/019

Customs Act 1901 – Part XVB

Steel pallet racking

Exported from the People's Republic of China and Malaysia

Findings of the Continuation Inquiry No 617

Public Notice under subsection 269ZHG(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 3 April 2023, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to steel pallet racking exported to Australia from the People's Republic of China (China) and Malaysia is justified.

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No 617* (REP 617).

I, ED HUSIC, the Minister for Industry and Science, have considered REP 617 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of facts and law therein and have decided that the anti-dumping measures applying to steel pallet racking exported to Australia from China and Malaysia should continue from 9 May 2024.

Under subsection 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I **declare** that I have decided to secure the continuation of the anti-dumping measures currently applying to steel pallet racking exported to Australia from China and Malaysia.

I **determine**, pursuant to paragraph269ZHG(4)(a)(i) of the Act, that the dumping duty notice continues in force after 8 May 2024 (the specified expiry day).

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 617 has been placed on the public record, which may be examined at the Anti-Dumping Commission Office by contacting the case manager on the details provided below. Alternatively, the public record.is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the client support team on telephone number +61 6213 6000 fax number +61 3 8539 2499 or email clientsupport@adcommission.gov.au.

Dated this 8th day of APRIL 2024

ED HUSIC
Minister for Industry and Science

6 May 2024

Anti-Dumping review Panel

Submission in support of an application for review of Miniter's decision to continue dumping measures in respect of steel pallet racking exported from China and Malaysia

Zheijang ShangHong Shelf Co., Ltd

Dear Panel Member

This submission is made in support of the application by Zheijang ShangHong Shelf Co., Ltd (**ShangHong**) for a review of the decision of the Minister to continue dumping measures applying to certain steel pallet racking exported from China and Malaysia (**Measures**). This application only relates to exports from China.

This document is provided in response to questions 9 and 11 in ShangHong's application to the Anti-Dumping Review Panel (**Panel**) for review of a Ministerial decision.

As set out below, ShangHong submits that the Minister had no reliable evidence that the expiration of measures in respect of Chinese exports would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping Measures are intended to prevent. The primary grounds for this submission are:

a) That the Minister had no evidence of dumping of the goods by Chinese exporters subsequent to the original investigation; and
b) That reliance on any finding of dumping by Chinese exporters in the original investigation was not reasonable as the methodology adopted by the Anti-Dumping Commission (**ADC**) in that investigation has been found by a World Trade Organisation Review (**WTO**) Panel to be non-compliant with Australia's obligations under the WTO Anti-Dumping Agreement.

1. Relevant background - General

The background, so far as it is relevant, is set out below.

a) On 6 May 2019 the Minister made a decision to impose dumping measures in respect of certain steel pallet racking exported from China and Malaysia (**Original Dumping Decision**). In making her decision, the Minister stated in Anti-Dumping Notice 2019/45 that she accepted the recommendations and material findings of fact set out in Anti-Dumping Commission Report No. 441 (**REP 441**). A copy of REP 441 is attached.
b) On 4 December 2019 the WTO published panel report Australia – Anti-Dumping Measures on A4 Copy Paper WT/DS529/R (**2019 Panel Report**). A copy of the 2019 Panel Report is attached.
c) The Measures were due to expire on 8 May 2024.
d) On 1 March 2023 the ADC received an application by Dematic Pty Ltd for the continuation of the measures on goods exported to Australia from China and Malaysia. The ADC accepted the application and conducted Continuation Inquiry No. 617 in relation to the continuation of the measures (**Inquiry**).

e) On 26 March 2024 the WTO published panel report Australia - Anti-Dumping and Countervailing Duty Measures on Certain Products from China - Report of the Panel WT/DS603/R (**2024 Panel Report**). A copy of the 2024 Panel Report is attached.
f) On 27 March 2024 the ADC prepared Repot No 617 setting out its findings and recommendations in respect of the Inquiry (**REP 617**). A copy of REP 617 is attached.
g) On 8 April 2024 the Minister published Anti-Dumping Notice No 2024/019 setting out that having considered and accepted the recommendations in REP 617, including all of the material findings of fact and law, he had decided that the Measures should continue from 9 May 2024 (**Minister Decision**). A copy of Anti-Dumping Notice 2024/019 is attached.
h) The Minister Decision was published on 9 April 2024.

In sections 2 - 4 below we set out in more detail the findings from REP 441, the 2019 Panel Report and the 2024 Panel Report. An understanding of these reports is necessary to understand our submissions as to why the Minister Decision is incorrect.

2. Relevant Background - Findings of dumping of Chinese goods in REP 441

As will be set out below, the primary support for a finding in REP 617 that the expiration of the Measures would be likely to lead to a continuation of, or a reoccurrence of, dumping of the Goods from China was the finding in REP 441 that the Goods had been exported from China at dumped prices.

In respect of exports of the Goods from China to Australia, the ADC's finding in respect dumping are set out in section 6 of REP 441. The dumping margins in respect of China are set out below.

Country	Exporter	Dumping Margin
China	Changzhou Tianyue	78.6%
	Dexion China	33.7%
	Jracking Group	60.1%
	Schaefer Kunshan	72.7%
	Residual Exporters	77.0%
	Uncooperative and all other exporters (other than Dexion China and Jracking Group)	110.3%

Key elements of the ADC's decision making in respect of the REP 441 Chinese dumping margins are set out below.

6.5.2 – Particular market situation

At 6.5.2 of REP 441 the ADC stated:

"*The Commissioner's assessment and analysis of the available information indicates that the GOC materially influenced conditions within the Chinese HRC market and the Chinese steel markets generally, during the investigation period and because of that influence, the domestic prices for Chinese steel pallet racking were substantially different to those that would prevail in normal competitive market conditions.*

The Commissioner considers that the GOC influences in the Chinese steel industry have created a 'market situation' in the steel pallet racking market, such that sales of steel pallet racking in China are not suitable for determining normal value under subsection 269TAC(1)."

6.6 – Cost replacement for HRC

At section 6.6 of REP 441 the ADC set out its view that Chinese hot rolled coil (**HRC**) prices are influenced by the Chinese government's involvement in the steel market in China such that they do not reasonably reflect competitive market costs. Because of this finding, when constructing a normal value, the ADC elected to substitute the actual HRC cost of Chinese manufactures with a benchmark HRC cost. At 6.6.1 of REP 441 it stated:

"The Commissioner has determined that an appropriate basis for calculating a benchmark for HRC costs in China is the weighted average domestic HRC price paid by cooperating exporters from Korea and Taiwan in Reviews 456 and 457, at comparable delivery terms to those observed in China. This is because:

- *the review period for Reviews 456 and 457 is the same as the investigation period for this investigation; and*

- *it was determined using verified domestic HRC purchases by exporters in markets free of apparent government influence (in this instance, Korea and Taiwan).*

Furthermore, the Commissioner considers that it is not appropriate to use private domestic prices for HRC in China or import prices for HRC in China when determining a benchmark for the reasons discussed in ***Non-Confidential Appendix 4****."*

The ADC also considered whether the HRC input costs for Korea and Taiwan should be adjusted to take account of any comparative differences between the positions of the producers in China, Korea and Taiwan. It was stated at page 125 of REP 441:

"*The Commission is of the view that an adjustment for any comparative advantage or disadvantage in production costs would not be possible, particularly given the significant involvement of the GOC in relevant markets. The Commission also observes that no information or evidence on the subject was provided during the investigation. To calculate any differences, including those due to any comparative advantages or disadvantages, with any degree of accuracy would require the Commission to isolate and subtract the effect of the GOC's significant involvement in the Chinese steel market. 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 comparative advantages or disadvantages.*"

Adjustments were made to account for factors such as different grades and thickness of HRC, slitting costs, intermediary margins, volume based variations and delivery terms.

Normal value was calculated for two Chinese exporters (**Cooperating Exporters**) based on their own sales. For these two exporters, the ADC took the following approach to calculating the normal value:

- Having determined a particular market situation, normal value could not be established under section 269TAC(1) of the Act (actual domestic sale price);
- Constructed a normal value under section 269TAC(2)(c) of the Act in a manner that the exporter's actual HRC cost was substituted with a benchmark HRC cost.[1]

The balance of the Chinese exporters had a normal value calculated by reference to the normal values calculated for the 2 Cooperating Exporters.[2] As such, the normal value for all Chinese exporters was impacted by the decision of the ACD to disregard actual domestic sale prices and use a benchmark HRC cost when constructing a normal value.

[1] See sections 6.7.1 and 6.7.4 of REP 441
[2] See sections 6.7.2, 6.7.3, 6.7.5 and 6.7.6

Findings that were not made in REP 441

While the ADC found that Chinese government interference had influenced the Chinese domestic market for HRC and the costs of HRC did not reflect “competitive market costs”, the ADC did not:

a) conduct any investigation or make any findings in respect of whether that particular market situation prevented a proper comparison between domestic sale prices and export prices; or
b) make any finding that the actual HRC costs recorded by Chinese exporters did not reasonably reflect the costs of the exporter’s production and sale of steel pallet racking.

3. Relevant background – WTO Panel Report – A4 Copy Paper from Indonesia

The practice of the ADC in rejecting actual domestic sale values on account of a finding of a particular market situation was considered in the 2019 Panel Report. The 2019 Panel Report concerned the approach adopted by the ADC in investigation 341 concerning A4 copy paper exported from Indonesia. The ADC had found that a particular market situation existed in respect of an input into the manufacturer of Indonesian A4 copy paper.

Indonesia argued that before rejecting domestic sales, the ADC did not assess the effect of the particular market situation on the Indonesia domestic prices in relation to the effect on the export price of A4 copy paper. In doing so, Indonesia argued that the ADC disregarded domestic sales of Indonesia A4 paper without properly determining whether the particular market situation “did not permit a proper comparison”.

In the 2019 Panel Report the WTO panel held:

"7.89 We find that Australia did not examine whether domestic sales permitted a proper comparison between the domestic prices found to be affected by the decreased cost of pulp with the export prices for which the pulp cost was presumably equally decreased, despite assertions in the underlying proceeding which called for such an examination. In reviewing the ADC's determination … we conclude that the ADC was obligated to undertake the necessary additional examination to determine whether, because of the particular market situation, the domestic sales of the individual exporters do not permit a proper comparison of the domestic prices and the export prices.

7.2.4.5 Conclusion in respect of "permit a proper comparison"

On the basis of the above findings, we determine that the ADC's disregard of Indah Kiat's and Pindo Deli's domestic sales (and consequently of their domestic prices) as the basis for normal value was inconsistent with the requirement to examine whether sales in the exporting country's market do not "permit a proper comparison" because of "the particular market situation" in Article 2.2 of the Anti-Dumping Agreement. Specifically, where a particular market situation was found to affect domestic market sales prices solely as a result of a decreased cost for an input that was used identically to produce merchandise for the domestic and export markets, the investigating authority was obligated to assess the effect of the particular market situation on the domestic price in relation to the effect on the export price when determining whether domestic prices permitted a proper comparison with those export prices.

7.2.5 Conclusion

For the reasons elaborated above … find that Australia's measure is inconsistent with Article 2.2, first sentence, of the Anti-Dumping Agreement because the ADC disregarded domestic sales of A4 copy paper of Indah Kiat and Pindo Deli as the basis for determining normal value without properly determining that such sales did "not permit a proper comparison".

4. Relevant background – WTO Panel Report – Certain Steel Products from China

On 26 March 2024 a WTO Panel had down the 2024 Panel Report. The issues considered in the 2024 Panel Report and the findings of the WTO Panel are directly relevant to the calculation of the dumping margin in REP 441.

The 2024 Panel Report related to measures Australia imposed in respect of 3 different Chinese steel products being wind towers, deep drawn sinks and railway wheels. In respect of each measure, there was repetition of the Chinese arguments, and WTO findings, concerning whether Australia calculated the dumping margin in accordance with its obligations under the WTO Anti-Dumping Agreement.

For each of the products, the ADC constructed the normal value of the goods. Article 2.2.1.1 of the Anti-Dumping Agreement provides:

"For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration."

In respect of each of the products under review, China claimed that the ADC rejected using the exporter's costs of production when constructing normal values and instead used non-Chinese surrogate costs for certain steel elements. China argued that before doing so, the ADC either did not determine, or wrongly determined, that the records kept by the exporters or producers under investigation did not "reasonably reflect the costs associated with the production and sale of the product under consideration" within the meaning of the "second condition" of the first sentence of Article 2.2.1.1. This is so because, according to China, the ADC instead rejected the exporters' costs because they "did not reasonably reflect competitive market costs", within the meaning of applicable Australian law.

The WTO Panel agreed with China and found at paragraphs 7.74 and 7.75:

"*7.74. We consider that this clearly indicates that the ADC rejected the costs of steel plate because the costs for steel plate were not "competitive market costs". Indeed, immediately after noting that the relevant underlying statutory language means that "the Commissioner is not required to work out an amount for the cost of production using the information as set out in TSP Shanghai's records", the ADC indicates that the record costs were rejected for the sole reason that "[s]ignificant distortions" in the Chinese steel markets meant that the costs for steel plate were not "competitive market costs".*

7.75. We consider that the ADC's conclusion was a non-application of the second condition, i.e. the ADC did not reach a finding at all under the second condition. This is so because the consideration of whether costs "reasonably reflect competitive market costs" is different from the issue of whether the costs reflected in the exporters' records "reasonably reflect the costs associated with the production and sale of the product under consideration". The latter pertains to the question of whether the costs in the exporters' records reflect those incurred by the exporter. The former pertains to the question of whether the costs in the exporters' records reflect something else, i.e. competitive market costs."

(footnote omitted)

As the ADC made no findings that the exporter's costs did, or did not, reasonably reflect the costs associated with the production and sale of the product under consideration, the WTO

Panel found at paragraph 7.80 of the 2024 Panel Report that the ADC acted inconsistently with Article 2.2.1.1.

The ADC adopted the same approach of replacing actual costs of production with benchmark third country costs in respect of the investigation into the alleged dumping of deep drawn sinks. In respect of this approach, the WTO panel held at paragraphs 7.185 and 7.186 of the 2024 Panel Report:

"7.185. In our view, the ADC did not, in the expiry review, reasonably demonstrate that the selected surrogate costs, even with adjustments to delivery and slitting costs, reflected a "cost of production in the country of export" within the meaning of Article 2.2 of the Anti-Dumping Agreement. Simply stated, the ADC never explained why 304 SS CRC costs on two different continents (i.e. North America and Europe) represent a cost of production in China rather than a cost of 304 SS CRC in Europe and North America. Again, the ADC selected the surrogate costs largely because they were free from influence of Chinese steel market conditions. Thus, the surrogate costs were selected because they are not "distorted" Chinese costs. But we discern no logical basis on which to conclude that this ipso facto makes them (presumably undistorted) Chinese costs, and the ADC never offered a reasoned explanation as to why this would be the case.

7.186. On this basis, we find that the ADC acted inconsistently with the practice of an unbiased and objective investigating authority with respect to Article 2.2 of the Anti-Dumping Agreement by failing to provide a reasoned and adequate explanation as to why the surrogate costs, with only adjustments for delivery and slitting costs, represented a cost of production in China for the relevant exporters. As a result, and because it used surrogate costs that were not demonstrated to be costs of production in the country of origin in conducting the ordinary-course-of-trade test, the ADC violated Article 2.2.1."

The WTO Panel also considered Australia's approach to constructing the normal value of railway wheels using surrogate costs. The relevant sections of the 2024 Panel Report are set out below:

"7.307. China claims that the ADC improperly rejected Masteel's costs of producing steel billet when constructing its normal value because the ADC did so without making a proper finding under the second condition of Article 2.2.1.1.

7.308. In the original investigation, the ADC calculated a constructed normal value for Masteel (the only investigated Chinese exporter). In assessing what costs of production to use in its construction of normal value, the ADC recalled that, per the relevant underlying statute, the ADC must use the Masteel's records concerning its costs of production if they are kept in accordance with GAAP and reasonably reflect competitive market costs. The ADC then recalled that the influence of the Chinese Government had, in its view, resulted in distortions in China's domestic steel and steel input markets. The ADC stated that "[i]n these circumstances, the Commission is not required to work out an amount for the cost of production using the information set out in Masteel's records". The ADC then summarily indicated that it had selected a suitable replacement steel billet benchmark cost. This analytic progression by the ADC, in our view, establishes that the ADC rejected Masteel's costs of producing steel billet because, in its view, they did not reasonably reflect competitive market costs. In an appendix to its report, the ADC elaborated on why it considered that Masteel's costs of producing steel billet did not reasonably reflect competitive market costs. The ADC also indicated in this appendix that "[t]hese circumstances are not normal and ordinary because the records of Masteel reflect the government influence by the GOC which distorts the costs in the steel and steel input markets in China".

7.309. We recall that in section 7.3.1.4 above, addressing a similar claim with respect to the wind towers proceedings, we considered that when the ADC applies the competitive market costs test, it is failing to apply, rather than misapplying, the second condition in Article 2.2.1.1 of the Anti-Dumping Agreement. We see no reason to alter that conclusion here. We discern no other point at which the ADC makes either an affirmative or negative finding under the second condition. Again, the assessment of whether costs "reasonably reflect competitive market conditions", in our opinion, is different than whether costs "reasonably reflect the costs associated with the production and sale of the product under consideration". As indicated in the paragraph immediately above, the ADC rejected Masteel's relevant costs based on the former inquiry, rather than the latter. On this basis, we find that, in rejecting Masteel's costs because they did not reflect competitive market costs, the ADC did not make a finding under the second condition of Article 2.2.1.1. The ADC therefore could not rely on any flexibility provided by the word "normally" in the first sentence of Article 2.2.1.1, and thus had no basis upon which to depart from using Masteel's costs of production reflected in its records. We therefore find that the ADC acted inconsistently with Article 2.2.1.1 of the Anti-Dumping Agreement. We also note that we conclude that there was no first condition finding made in the ADC's report in the investigation. Thus, even if there had been an affirmative second condition finding, the ADC would still not have been entitled to depart from using Masteel's costs."

(Footnotes omitted)

Similarly, at paragraphs 7.319 and 7.320 the WTO Panel held:

"7.319. We consider that the ADC did not reasonably demonstrate that the surrogate costs represented costs of production in China. The costs were taken from a producer in a different country, and the only adjustment made was related to Masteel being a vertically integrated producer of steel billet. There is no explanation in the ADC's findings as to why a French company's cost of purchasing steel billet would meaningfully represent a Chinese company's cost of producing steel billet in China.

7.320. On this basis, we find that the ADC acted inconsistently with the practice of an unbiased and objective investigating authority with respect to Article 2.2 of the Anti-Dumping Agreement by failing to provide a reasoned and adequate explanation as to why the uplifted costs, without any adjustments to adapt such uplifted costs to Masteel's circumstances in China (other than SG&A), represented a cost of production in China for Masteel."

The WTO Panel also found that the ADC acted incorrectly by applying a profit rate to a constructed cost of production using surrogate costs, rather than using the Chinese exporter's actual costs of production. Such a profit did not reflect the actual profits realised by the exporter (see paragraph 7.338 of the 2024 Panel Report).

For each of the products reviewed by the WTO Panel, it was found that dumping margins were improperly inflated through the use of uplifted surrogate costs when constructing a normal value.

The essence of the 2024 Report is that on its own, a finding that the price of Chinese input costs, such as steel billet, cold rolled coil and steel plate, are influenced by Government interference in the market, is not a sufficient basis to disregard these costs when constructing an exporter's normal value. Rather, before such costs can be disregarded, the ADC must make a finding that such costs either were not recorded in accordance with generally accepted accounting principles or do not reasonably reflect the costs associated with the production and sale of the product under consideration.

5. Legislative test

The only circumstance where the ADC can recommend the continuation of the Measures is set out in section 269ZH(2) of the *Customs Act 1901* (**Act**). That section provides:

> "*The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*"

By implication, the Minister must not take steps to secure the continuation of the anti-dumping measures unless he or she is also satisfied of the matters set out in section 269ZH(2) of the Act.

In *Siam Polyethylene Co. Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838, Justice Rares stated *"I am satisfied that the word "likely" in s.269ZHF(2) should be interpreted as meaning more probably than not*".

In ADRP Report No. 156 the review panel stated the following regarding section 269ZHF(2) of the Act:

> *"It should also be reiterated that it is generally accepted that the 'likely' test established under s 269ZHF(2) is interpreted to mean 'more probable than not', and that a decision to continue measures must be based upon 'a foundation of positive evidence'. Such a decision should only be made, 'if the evidence demonstrates the dumping would be probable if the duty were terminated and not simply if the evidence suggests that such a result may be possible or plausible.' Interpreting s 269ZHF(2) of the Act in accordance with these principles mean that the Commissioner must not recommend the continuation of the measures unless there is positive evidence to demonstrate that the recurrence of dumping is likely or probable.*"
>
> (footnotes omitted).

In this submission we set out the reasons for our view that there is no positive evidence on which the ADC demonstrated that the recurrence of dumping of good exported from China is likely or probably if the Measures were removed.

6. Likelihood that dumping of goods from China will continue or reoccur

The Commissioner must not recommend the continuation of the Measures in respect of Chinese exports unless the Commissioner was satisfied that the expiration of the Measures would lead, or would be likely to lead, to a continuation of, of recurrence of, dumping that the Measures were intended to prevent.

In section 6.7 of REP 617, the ADC stated that it considered that the expiry of Measures would be likely to lead to a continuation or recurrence of dumping of steel pallet racking from China and Malayasia for the following 5 reasons:

- *The original investigation found dumping by all exporters from the subject countries, at margins ranging between 4.6% and 110.3%.*
- *Analysis of sales and cost data from ShangHong, where the commission found that prices were lower than costs for both domestic and export sales, indicates that it is likely to have been selling goods at dumped prices during the inquiry period.*
- *Analysis of HRC pricing data demonstrates that Chinese exports are likely to be dumped.*
- *No duty assessments have been lodged since the measures were imposed in 2019. In particular from Dexion Australia and Schaefer Australia, who are related entities with*

exporters, Dexion Malaysia and Schaefer Malaysia. The commission infers that it is likely that goods are still being exported at dumped prices from Malaysia, and notes that the value of the duties collected on exports from Malaysia is not insignificant.

- *Measures placed on steel pallet racking in other jurisdictions were the result of finding goods from China were dumped, which increases the likelihood that continued exports to Australia are also dumped…."*

In the circumstances, it is submitted that none of the above factor's are a reliable factual basis for forming the view that the removal of the Measures would result in the continuation or recurrence of the dumping of steel pallet racking from China. We address each of these reasons below.

a. Dumping margin from the original investigation

The ADC places considerable reliance on the findings of dumping set out in REP 441. This is the only evidence of dumping that the ADC holds as there have been no reviews or assessments and the ADC elected not to review individual margins as part of the continuation inquiry.

This is made clear by the ADC at 6.7.2 of REP No. 617 where it stated:

"The commission has not conducted any review of measures or duty assessments regarding exports from China since the measures were imposed. As a result, the commission is still reliant on dumping margins established in REP 441 to establish what is likely to occur should the measures expire."

In relying on the findings of dumping from REP 441, the ADC did not adjust those findings to take account of the findings of the WTO in the 2024 Panel Report. At 7.1.2 of REP Np. 617 the ADC stated:

"*The commission's consideration of submissions concerning the validity of variable factors determined in REP 441 concludes they were appropriately determined. As a result, the dumping margins based on these factors can be relied on for this inquiry*."

The findings of dumping in REP 441, as they relate to Chinese exports, are not reliable evidence of the likelihood of the continuation of recurrence of dumping if the Measures were removed. The reason for this is that the dumping margins for Chinese exporters in REP 441 were calculated in a manner that has been held by two different WTO review panels to not be in accordance with Australia's obligations under the WTO Anti-Dumping Agreement. Rather than being reliable, the determination of the variable factors in REP 441 was fundamentally flawed and almost certainly incorrect.

No proper comparison test

In REP 441 the ADC at no stage made any inquiry or finding as to whether the particular market situation did not permit a proper comparison between Chinese domestic prices and export prices. Rather, the ADC simply proceeded to construct normal values without undertaking a proper comparison test. Without having undertaken a proper comparison test, the ADC's use of constructed normal value was not in accordance with the WTO Anti-Dumping Agreement. This fundamentally limits the reliability of the findings in respect of China in REP 441.

The ADC attempted to address this at section 7.4 of REP 617. The ADC has based its 2024 "proper comparison" assessment on the information available to the ADC from the original investigation and information from the Inquiry. The approach of the ADC suffers from the fundamental and incurable flaw that it did not actually investigate the issues relevant to a proper comparison when conducting the original investigation. The type of investigation required by the ADC includes at a minimum the questions set out in sections I and J of the Inquiry exporter questionnaire. These questions required contemporaneous information from Chinese exporters about:

- Prevailing conditions of competition in the domestic market

- Goods in the domestic market
- Relationship between price and cost in the domestic market
- Marketing and sales support in the domestic market
- Prevailing conditions of competition in the Australian market
- Goods in the Australian market
- Relationship between price and cost in Australia
- Marketing and sales support in the Australian market

In the absence of obtaining this information from exporters in 2019, the ADC has had to make assumptions regarding what that information may have been. Further, the ADC's assumptions have been made without providing exporters any chance to know or respond to the ADC assumptions.

It should not simply be assumed that a particular market situation will mean a proper comparison is not possible. In ADC Report No. 569 (published in July 2021) concerning certain steel grinding balls exported from China, the ADC did properly investigate this issue and found that it was not satisfied that the market situation in China during the inquiry period meant that sales in China were not suitable for use when determining a normal value.

While there are no doubt differences between the markets for steel grinding balls and steel pallet racking, it is relevant that the ADC when conducting a proper inquiry into the matter in 2021 found that the market situation did not prevent a proper comparison.

It is impossible to know what finding the ADC would have made in 2019 had the matter been investigated properly and both Chinese and Australia industry participants had the opportunity to provide the ADC with detailed, relevant and contemporaneous evidence. It is not the role of either ShangHong or the ADC to speculate on such matters. Rather, the ADC has to take the evidence as it is – REP 441 dumping margins that were calculated without on the conduct of a proper comparison test.

The ADC has attempted to carry out a proper comparison 5 years after the original investigation with limited information. In doing so, it has relied on its own unchallenged assumptions and conjecture. The ADC proper comparison finding in REP 617 has no reliability so far as it relates to the correctness of the approach of the ADC in REP 441.

The "proper comparison" findings of the ADC in REP 617 cannot undo that REP 441 was not conducted in accordance with Australia's obligations under the WTO Anti-Dumping Agreement. This makes any reliance on the findings of dumping in REP 441 very unreliable evidence of the likelihood of dumping should the Measures be removed.

Continuing the Measures, largely in reliance on a finding of dumping in REP 441, will be a repetition and continuation of an approach that the WTO has found to be contrary to the WTO Anti-Dumping Agreement.

Use of surrogate HRC Cost

In the 2024 Panel Report the WTO made clear that Australia breached its obligations under the WTO Anti-Dumping Agreement by replacing actual Chinese costs of production with third country benchmark / surrogate costs based on a finding that the Chinese costs of production did not reflect competitive market costs. This is highly relevant as "not reflecting competitive market costs" was the very reason that the ADC rejected the actual HRC costs of Chinese manufacturers in REP 441.

For example, see section 6.6.1 of REP 441 where it is stated:

"*The Commissioner has determined that the HRC prices are influenced by the GOC's involvement in the steel market in China. As outlined in Non-Confidential Appendix 4, the Commissioner considers that HRC*

prices are significantly affected by GOC influences such that they do not reasonably reflect competitive market costs.

The Commissioner has therefore considered options for establishing competitive market costs of HRC in China for the purposes of constructing normal value under subsection 269TAC(2)(c)."

The ADC did not make a finding in REP 441that the HRC costs recorded by Chinese exporters did not reflect the cost of production of steel pallet racking in China.

Further, there was not a finding that the benchmark HRC price from Korean and Taiwanese exporters reflected the cost of HRC in China. Rather, that benchmark was selected as "*…it was determined using verified domestic HRC purchases by exporters in markets free of apparent government influence (in this instance, Korea and Taiwan).*"[3]

Further, in constructing a normal value, the ADC applied a rate of profit to the inflated constructed costs and not to the exporter's actual costs of production.

Each of these errors went to the heart of the determination of the dumping margin for Chinese exporters in REP 441. The errors:

a) altered how the normal value was determined (actual domestic sale price versus a constructed normal values); and
b) when a normal value was constructed, what values were used for the calculation of costs of production of the goods (substituted HRC cost) and what profit was added.

The ADC continued to apply the above errors in REP 617. This was made clear by the ADC's continued view that the calculation of the normal value for Chinese exporters would involve the substitution of the exporter's actual HRC cost with a benchmark cost. In adopting this approach, at no point did the ADC express a view that Chinese production costs were not properly recorded or did not reflect the costs of production in China.

The continuation of the view that surrogate costs were required was based on the ADC's continued view that a market situation exists in China and that this alone was sufficient to justify the use of a benchmark HRC cost.

In addition, at no point did the ADC attempt to recalculate the dumping margins from REP 441 by using the exporter's actual HRC cost instead of a surrogate HRC cost.

It is submitted that even it had done so, such an approach would be unreliable as the calculation would have been undertaken without the proper involvement of the affected exporter.

The finding of dumping in REP 441 was the ADC's primary basis for its view that dumping would continue / resume if the Measures were removed. The method adopted by the ADC in the original investigation has been found to be fundamentally flawed. In the circumstances, any reliance on the original dumping margin in the Inquiry is equally flawed. At the very least, the original dumping margin is not evidence that can justify a view that the removal of the Measures would make future dumping more probable than not. It does not constitute a foundation of positive evidence.

Rather, once the impact of a surrogate HRC cost is removed, it is likely that there is an absence of dumping. We note that at section 7.4.8 of REP 617 the Commission reported its finding that data from the original investigation showed that Chinese exporters:

[3] REP 441 at 6.6.1

"*…engage in pricing strategies in the Australian market which achieve either:*

• *higher margins than the margins attainable on the sale of the same goods on the domestic market*

• *increased sales volumes through undercutting Australian industry, or*

• *a combination of higher margins and increased sales volumes resulting from undercutting."*

Rather than having reliable evidence of dumping, the ADC has made factual findings that indicate the opposite – Chinese exporters are selling at increased margins in the Australian market than the Chinese domestic market. This is the opposite of dumping.

At 7.4.6 of REP 617 it was stated:

"*The Commissioner found there is a minimal difference in costs between goods produced for domestic consumption and those produced for export to Australia.*

…

The Commissioner found that the cooperating Chinese exporters used the same facilities, raw material inputs and manufacturing processes to make steel pallet racking for the Chinese domestic market as that exported to Australia, with raw materials accounting for the majority of the total cost to make."

If Chinese manufacturers had the same costs of production for Australia and domestic goods, but higher profit margins on Australian exports, Australian exports must have had a higher price than Chinese domestic goods. If the impact of the surrogate HRC pricing is removed, there would be no finding of dumping. This is not speculation, but the natural outcome of the ADC's factual findings set out above.

The purpose of this analysis is not to purportedly overturn REP 441. Rather, it is to demonstrate that REP 441 is not a reliable basis for a finding of likely dumping by Chinese exporters if the Measures were removed.

To continue the Measures based primarily on the dumping margins calculated in REP 441 would be to validate and continue ADC practices which have been held to be inconsistent with the WTO Anti-Dumping Agreement.

b. ShangHong financial data

The ADC has stated that it found that ShangHong's prices were lower than costs for both domestic and export sales and that this indicates that it is likely to have been selling goods at dumped prices during the inquiry period.

<u>Reliance on information that had been rejected as deficient by the ADC</u>

The ADC's reliance on this information is fundamentally flawed for a number of reasons. The primary reason being that the ADC has previously stated that ShangHong's cost information was deficient. Attached is the confidential ADC document "Response to Exporter Questionnaire Deficiency List ShangHong & Yuhua". **[NOT ATTACHED TO PUBLIC VERSION]**

In REP 617 Confidential Attachment 9, the ADC on the spreadsheet entitled "Issues with data" lists the [redacted]

[redacted]

[redacted] **[CONFIDENTIAL - Description of deficiencies in the exporter questionnaire listed by the ADC in REP 617 Confidential Attachment 9.]**

[redacted] **[CONFIDENTIAL - Argument regarding the recording of cost information by ShangHong and the impact on the reliability of the ShangHong data.]**

The ADC rejected the ShangHong information as being deficient. Once this finding was made, the same information cannot credibly be the basis for a likely finding of dumping if the Measures were removed. The approach represents very selective treatment of information. The information was apparently acceptable to the ADC to assist in a finding adverse to ShangHong, but rejected as deficient when ShangHong was seeking to obtain an individual dumping margin. Such an approach is inherently inconsistent and represents non-objective administrative decision making. It is not evidence that supports a finding that future dumping was likely.

Export price

It is clear from a review of REP-Confidential Attachment 9 that the ShangHong export sale price is based on the sale price from ShangHong to it Hong Kong related party trading company, Yuhua Trading (HK) Limited (**Yuhua**). The ADC has stated that there are no final trader (Yuhua) to importer prices. It is correct that the ADC did not have the complete Yuhua sale prices. However, we note the following:

1. It did not request the Yuhua sale price;
2. It had the Yuhua sale price in the sample export sale documents provided by ShangHong; and
3. It had the Yuhua sale price for sales from Yuhua to CH Racking Pty Ltd in the import questionnaire lodged by CH Racking Pty Ltd.

The Yuhua export price should have been used by the ADC. In section B-1 of its exporter questionnaire, ShangHong informed the ADC that Yuhua was a related Hong Kong trading company with the following features:

1. Its only function is to act as a buy sell company;
   [redacted] **[CONFIDENTIAL - Details of relationship between ShangHong and Yuhua including staffing, processing of orders, pricing and reason for the use of Yuhua as a buy / sell company]**

The ADC had known from 2 June 2023 that Yuhua was used as a related party buy sell company and did not seek any further information regarding this, including the Yuhua sale prices. This was not listed as a deficiency in the "Response to Exporter Questionnaire Deficiency List ShangHong & Yuhua". Without

exploring this issue, the ADC has ignored the Yuhua sale price and relied solely on the ShangHong sale price which it knows does not reflect the export price to the Australian importer.

Lack of procedural fairness

The ADC has made findings as to the profitability of ShangHong's domestic and export sales without putting its methodology or findings to ShangHong for review. This is despite that ADC having the bulk of the ShangHong data since 2 June 2023 and the final report being prepared in March 2024.

Had the ADC approach ShangHong with its assessment, ShangHong would have questioned the following:

- Whether it has treated the export price as being the price from ShangHong to Yuhua (its Hong Kong buy/sell subsidiary), or the price from Yuhua to the Australia customer;
- Whether in calculating costs it has used ShangHong's actual HRC cost or a substitute benchmark cost;
- [redacted] **[CONFIDENTIAL - Reference to specific accounting issue in the exporter questionnaire deficiency report]**
- Whether the MCC comparison was properly undertaken;
- While it is not agreed that sales were at a loss. If they were, how the calculation of sales at a loss resulted in a finding of likely dumping, given both domestic and export sales were at a loss. The ADC finding of sales at a loss does not result in an automatic finding that the ShangHong normal value was less than the ShangHong export price. The finding of domestic sales at a loss would likely result in the exclusion of those sales from being the normal value. In these circumstances, what was the alternative normal value and how was this calculated?

ShangHong was entitled to be afforded procedural fairness. The ADC's assessment of ShangHong's financial data should have been put to ShangHong. In the absence of it doing so, the ADC has elected to not receive comment from ShangHong. Given the issues raised above, such an approach limits the reliability of the ADC assessment of the ShangHong financial data.

The ADC acknowledge as much by stating in section 6.7.4 of REP 617:

"However, with the data being deficient and not verified, the commission has limited its reliance on ShangHong's data to the extent that it is relevant to whether dumping has likely continued."

Information does not cease being deficient and un-verified simply because the ADC considers the information relevant to determining whether dumping has continued.

It is also unclear what relevance the data can have at all to whether dumping has likely continued. The data is only relevant to this question if the data can be used to calculate a dumping margin. The ADC has ruled that the data is too deficient for the calculation of a dumping margin. If the data cannot be used to calculate a dumping margin, in what way has the ADC deemed the data relevant to the issue of whether dumping will continue? The ADC has pointed to sales at a loss, but the ADC is certainly aware that the calculation of a dumping margin is not as simple as identifying whether or not goods are sold at a loss (not that sales at a loss are conceded).

c. Review of HRC data

The ADC has acknowledged that a key factor in the original investigation for the finding of dumping of Chinese exports was the difference between actual Chinese HRC costs and the benchmark costs determined by the ADC. It is acknowledged that in an earlier submission, ShangHong submitted that HRC pricing was relevant as to whether there was a likelihood of dumping if the Measures were

removed. This submission was made prior to the WTO ruling that the substitution of exporter's actual HRC costs with a surrogate cost was contrary to Australia's obligations under the WTO Anti-Dumping Agreement. The ShangHong submission in respect of HRC made in response to the SEF is no longer maintained.

In the Inquiry ADC reviewed whether the relationship between Chinese HRC costs and the benchmark costs had changed. The ADC's findings on this issue were said to support a finding that dumping was likely to continue.

This ADC approach and finding is only relevant if the ADC was correct to replace the Chinese HRC cost with a benchmark cost when calculating a constructed normal value. This approach has been found to be a breach of Australia's obligations under the WTO Anti-Dumping Agreement.

While it may be that the relationship between Chinese HRC costs and the benchmark costs has not changed, following the 2024 Panel Report, such a finding cannot be relevant as to whether or not dumping is likely if the Measures were removed.

The focus of the ADC on comparative HRC costs demonstrates a reliance on a dumping margin methodology that is not in accordance with Australia's obligations under the WTO Anti-Dumping Agreement. As comparative HRC costs would be unlikely to be relevant to any future dumping margin, comparative HRC costs cannot be objective evidence to support the continuation of the Measures.

d. Lack of duty assessment applications

The ADC has pointed to the absence of duty assessments since the measures were imposed in 2019 as an indication that dumping continues. The relevance of this factor needs to be considered differently for Malaysian and Chinese exports. The key difference between the two countries is the very low volume of exports from China, compared to Malaysia, and the ADC methodology of calculating the dumping margin for Chinese exports.

The volume of exports of the Goods from China is very low (see section 6.6.1 of REP 617), with that low volume (presumably) spread over a number of importers. Given this low volume (particularly on a per importer basis), there would be limited commercial justification in an importer making an application for a duty assessment.

Duty assessments are expensive and usually require the assistance of specialist advisors. This is especially the case for an importer's first application and where the exporter did not receive an individual margin in the original investigation.

For low volume Chinese exports, the most likely explanations for a lack of dumping duty assessment applications are that the benefit of such an application would be uncertain and may not outweigh the costs (even if there was no dumping).

It should also be noted that the benefits of a duty assessment would be limited if the ADC continued to apply a methodology to calculating the dumping margin that was not in accordance with the WTO Anti-Dumping Agreement. Given the ADC insistence on using a constructed value and using a surrogate HRC value, the likely benefit of a duty assessment would be hard to predict. Further, a non-WTO compliant methodology would very likely result in the finding of a dumping margin. This would not reflect that exporters were dumping, but rather that the ADC had adopted a non-compliant methodology which greatly increased the likelihood of the ADC calculating a dumping margin.

In these circumstances, there was no justification for the ADC drawing the inference that a failure of importers of Chinese goods to lodge duty assessment applications was because those exports were

dumped. Such an inference is certainly not based on objective evidence. Rather, it is conjecture based on the absence of certain action by Australian importers.

ShangHong made submissions regarding this point in response to the SEF 617. In response to this the ADC noted "*The commission notes that ShangHong's submission to SEF 617 has not provided evidence to advance a position that its exports during the inquiry period were not dumped.*"

This statement shows a flawed approach by the ADC to the legislative test for the continuation of the Measures. The ADC is asking ShangHong to prove an absence of dumping. However, the onus is not on ShangHong. The test is whether there is objective evidence that in the absence of the Measures dumping would continue or reoccur. The ADC needs to be satisfied of a positive matter (reoccurrence of dumping), ShangHong is not required to prove an absence of dumping.

e. Trade measures in other jurisdictions

Trade measures in other jurisdictions may increase the likelihood of exports to jurisdictions that do not impose dumping duties. However, this is a different issue as to whether the imposition of trade measures in other jurisdiction is reliable evidence that the removal of the measures in Australia in May 2024 will lead to a continuation or reoccurrence of **dumping** of exports to Australia.

The ADC has not in REP 617 addressed in anyway how trade remedies in other jurisdictions is evidence of the likely dumping of goods by Chinese exporters if the Measures were removed. At section 6.6.5 of REP 617 the ADC refers to measures imposed in other jurisdictions and notes that this makes countries without measures a more attractive option. This is not disputed, but it is not evidence of dumping, just that a market without dumping duties is more attractive export market than one with such measures.

Section 6.7.3 refers to trade measures in other jurisdictions and the ShangHong claims regarding this in its response to SEF 617. However, the ADC response at 6.7.3 is to point to other claimed evidence of dumping. There is no explanation of how the required contemporary evidence of dumping is connected to trade measures in other jurisdictions or how this makes reliance on those foreign trade measures reasonable.

There is no other section of REP 617 where there is any discussion of how trade measures in other jurisdictions provides evidence of the likelihood that Chinese exports would be dumped in the absence of the Measures.

Before evidence of trade measures in other jurisdictions was considered relevant, it would be necessary for the ADC to examine:

a) From what period of inquiry was the dumping margin imposed by the third country assessed?
b) Is that period of inquiry relevant evidence as to whether there is dumping in 2024?
c) How does the relevant country calculate dumping margins for Chinese exports (in this respect it is noted that the USA treats China differently than Australia)?
d) What is the goods description for the trade measures in other jurisdictions?
e) Did the assessment of the dumping margin involve a constructed value and the substitution of actual Chinese HRC costs?

Ultimately, the finding of dumping into the market of one country does not provide any evidence of dumping into a third country. The ADC's analysis amounts to mere speculation and does not meet the standard required by the Act and the WTO Anti-Dumping Agreement.

7. How reasons support the making of the proposed correct or preferable decision

Question 11 of the ADRP application form requires ShangHong to set out how the grounds on which it claims that the Minister's decision is incorrect, support the making of the proposed correct or preferable decision.

It is submitted that the ADC, and by extension, the Minister, has found no reliable evidence that dumping of steel pallet racking from China will continue or reoccur if the Measures were removed. Primarily, this flows from the ADC's decision to not review the variable factors as part of the Inquiry. In the absence of the finding of dumping in the Inquiry period, the ADC has relied almost exclusively on the findings of dumping from REP 441. It is clear that the approach in REP 441 was not in accordance with Australia's obligations under the WTO Anti-Dumping Agreement. REP 441 provides no reliable evidence that dumping is likely to continue or reoccur if the Measures were removed.

The ADC is free to choose the manner in which it conducts its inquiry. It elected to rely heavily of REP 441. As those findings no longer have credibility, there is very limited evidence on which the ADC and the Minister can rely. The limited evidence available does not constitute a foundation of evidence that dumping is more probable than not if the Measures were removed.

The other factors referred to by the ADC / Minister are unreliable for reasons set out in section 6 above.

In the circumstances, the Minister made an incorrect decision to adopt the findings and recommendations in REP 617. The correct and preferable decision is that Measures should not be continued in respect of exports from China.

Yours faithfully
CGT Law

Russell Wiese
Director

Contact:
D +61 3 9844 4328
M +61 431 646 488
E rwiese@cgtlaw.com.au