



26 July 2024

**Anti-Dumping review Panel
GPO Box 2013
CANBEERA CITY
ACT 2601**

By email: ADRP@industry.gov.au

Review No. 169 - Steel pallet racking exported from China and Malaysia

Zhejiang ShangHong Shelf Co., Ltd

Dear Panel Member

We act for Zhejiang ShangHong Shelf Co., Ltd (**ShangHong**).

This submission is made in relation to the matters set out in the Conference Summary of the Review Panel's meeting with representatives of the Anti-Dumping Commission (**ADC**) on 12 July 2024 (**Summary**).

Paragraph references in this letter are references to the paragraphs in the Summary.

Paragraph 4 – ShangHong Export price

At paragraph 4 the ADC acknowledges that it did not calculate an export price for ShangHong. In the absence of an export price for ShangHong the ADC had no basis to speculate as to whether ShangHong sold goods during the investigation period at prices that were indicative of dumping.

In this respect we note that there was a significant issue of whether the ShangHong sale price should be used as the export price or whether the export price should be the sale price of ShangHong related party Hong Kong trading company. These issues were not raised by the ADC with ShangHong.

Paragraph 6 – Assumptions that dumping will recur

The ADC has made clear that its assumption that dumping will recur is based on Chinese dumping margins being calculated pursuant to section 269TAC(2) of the *Customs Act 1901* with a benchmark HRC cost being used in that calculation. The Summary states at paragraph 6:

"It noted that in the original investigation (REP 441) the benchmark HRC price used in the constructed cost methodology was very influential in Chinese Exporters' normal values."

and



“This assumption of a normal value being based on constructed methodology using benchmark HRC provided the ADC with a current comparison point with export selling prices which led to it considering dumping was likely to continue or recur.”

In paragraph 7 of the Summary it is stated:

“...The ADC inferred that dumping would be likely in the inquiry period based on current HRC prices.”

It is submitted that the above quotations highlight that the ADC findings that dumping was likely to continue or recur were inextricably connected to the use of a benchmark HRC price in the construction of a normal value for Chinese exporters.

For the reasons set out in our letter dated 6 May 2024, this approach is contrary to rulings by the World Trade Organisation (**WTO**) panel in Australia - Anti-Dumping and Countervailing Duty Measures on Certain Products from China - Report of the Panel WT/DS603/R (**2024 WTO Ruling**). The ADC's heavy reliance on an invalid method of calculating the Chinese dumping margins supports ShangHong's submission that the Minister had no reliable evidence that dumping of steel pallet racking from China is likely to continue or recur.

ShangHong price and cost analysis

As noted in paragraph 7 of the Summary, ShangHong was given no opportunity to review or comment on REP 617 Confidential Attachment Nine, ShangHong Price and Cost Analysis. This lack of procedural fairness meant that ShangHong did not have the opportunity to raise the issues set out in page 14 of our letter dated 6 May 2024.

We also note that in paragraph 8 of the Summary it is recorded that the ADC made basic errors when comparing the Shanghong domestic prices with export prices. The data in Confidential Attachment Nine should be treated as unreliable and be given little weight. The data in Confidential Attachment Nine suffers from the following:

- It is an analysis of data that the ADC had rejected as being deficient;
- The analysis was not explained to ShangHong nor provided to ShangHong for comment;
- The data contains basis errors together with fundamental issues regarding the identification of the appropriate export sale price.

Relevance of HRC pricing

While ShangHong had originally asserted that any dumping would be the difference between the amount the Chinese exporter paid for HRC and the HRC benchmark determined by the ADC, this statement was made prior to the 2024 WTO Ruling. ShangHong recognises that the 2024 WTO Ruling makes clear that the ADC practice of using of a HRC benchmark was inconsistent with the practice of an unbiased and objective investigating authority and not in accordance with article 2.2 of the Anti-Dumping Agreement.

In recognition of the 2024 WTO Ruling ShangHong does not maintain that there is a relationship between the HRC benchmark and the dumping margin of any goods exported from China. There is no credible basis on which the ADC can maintain its heavy reliance on the use of surrogate HRC values.

Reviewing the impact of WTO Rulings

Paragraph 8 of the Summary sets out that the ADC acknowledged that:

- REP 617 relies on the original findings in REP 441;



- To assess whether REP 441 was compliant with the ruling in WTO Panel Report A4 Copy Paper the ADC needed to undertake further analysis of the findings in REP 441; and
- The additional analysis is contained in Confidential Attachments six, seven, eight and ten.

These three pieces of information demonstrate that considerable analysis was required before the ADC could be satisfied that the data from REP 441 was reliable evidence of dumping given the findings in WTO Panel Report A4 Copy Paper.

It is understandable that a significant amount of analysis was required to ensure that the findings in REP 441 were valid given the findings in WTO Panel Report A4 Copy Paper. It is submitted that the 2024 WTO Ruling has an even greater impact on the reliability of the findings in REP 441.

The ADC has not undertaken any analysis to try verify whether the data from REP 441 is reliable given the findings in the 2024 WTO Ruling. In the 2024 WTO Ruling the WTO reviewed ADC determinations for 3 different manufactured steel products from China. Each involved using surrogate costs of production and each ADC determination was found to be non-compliant on this basis.

In the absence of any in depth analysis, there is no reliable basis on which the Minister could form the view that the findings of dumping of products from China in REP 441:

- remain credible following the 2024 WTO Ruling; and/or
- justify a finding that dumping is likely to recur in 2024 in the dumping measures were removed.

Please contact us if you have any questions.

Yours faithfully

CGT Law

A handwritten signature in black ink that reads "RWiese". The signature is written in a cursive, slightly slanted style.

Russell Wiese

Director

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