



ADRP Conference Summary

Review No. 170 – Certain railway wheels exported from the People’s Republic of China and the French Republic

Panel Member	Sharon Henrick
Review type	Review of Minister’s decision
Date	27 November 2024
Participants	<u>Baowu Group MTM Rail Transit Materials Technology Co Ltd (MTM)</u> • [REDACTED], J.Bracic & Associates
Time opened	4:30pm AEDT
Time closed	5:00pm AEDT 29 November 2024

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 railway wheels 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 was able to ask parties to clarify any argument, claim or specific detail contained in their application or submission. The conference was not a formal hearing of the review and was not an opportunity for parties to argue their case before me.

In accordance with section 269ZZHA(2), in making a recommendation under subsection 269ZZK(1), I may have regard to:

- (a) further information provided at this conference to the extent that it relates to “relevant information” within the meaning of section 269ZZK(6) of the Act;
- (b) any conclusions reached at this conference based on “that relevant information”.

At the time of the conference, I advised the participant:

- That the conference was being recorded and transcribed by Loghic Events, 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 participant indicated that they understood the Privacy Statement and consented to:

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

Further information requested

The specific information that the Review Panel sought in this conference was to understand the source of the confidential information contained in the note MTM's representative provided to the Review Panel during the conference held on 19 November 2024, which related to MTM's second ground of review and certain decisions of the Minister, based on recommendations and reasons provided by the Commissioner.

The Review Panel asked MTM's representative where they obtained that confidential information.

MTM's representative said they had represented parties named in the note for each of the five cases in the note. They said they went through their files about cases where a decision had been made to uplift an offset, including the confidential verification reports and calculations in those files.

The Review Panel noted the two previous discussions with MTM's representative about the need for MTM to obtain their client's consents to provide the confidential information to the Review Panel. The Review Panel also noted that it could not become involved in a breach by MTM's representative of its obligations of confidentiality to its clients.

The Review Panel asked MTM's representative to withdraw the confidential information. MTM's representative agreed to do so.

The Review Panel asked MTM's representative to provide it with non-confidential information about the cases referred to in the note that would be withdrawn.

The Review Panel observed that of the five cases MTM's representative had identified, one



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of the cases concerned an uplift of the raw material cost and the scrap offset where the scrap offset was in a separate column of the manufacturer's accounts. MTM's representative confirmed that was the case.

MTM's representative observed that they had previously considered whether the Review Panel might ask the Commission to identify cases where an uplift had been applied to a raw material offset.

The Review Panel explained that it is not anyone's adversary, or anyone's advocate and the role of the Review Panel is not to prove up an applicant's case. That is the role for the applicant, only.

The Review Panel agreed to hold the conference open to allow time for MTM's representative to prepare a note, without confidential information from their client's files, about the cases it is seeking to rely on and to provide the note to the Secretariat.

While the conference was open, on 28 November 2024, MTM withdrew in writing the note it provided to the Secretariat on 15 November 2024, which is referred to in the summary of the conference held on 19 November 2024.

On the same date, MTM provided a new note to the Review Panel about the five decisions of the Commissioner referred to above. However, the note contained confidential information which seemed to the Review Panel that MTM's representative could only have obtained from confidential files relating to their other clients, without having first obtained the consent of those clients to disclose the confidential information to the Review Panel.

The Review Panel arranged for the Secretariat to send an email to MTM's representative explaining that the Review Panel cannot accept confidential information from MTM's representative on behalf of MTM, which is not MTM's confidential information, and for which MTM has not obtained consent from third parties to provide their confidential information to the Review Panel because accepting that confidential information could implicate the Review Panel in a breach of MTM's representative's obligations of confidence to their other clients.

The Review Panel asked MTM's representative to revise the note to remove the references to the confidential information and re-submit the revised note to the Review Panel while the conference remained open. The Review Panel said it would hold the conference open until close of business on 29 November 2024 to allow time for that to occur.

Alternatively, the Review Panel asked MTM's representative to either:



- obtain written consents from those other clients to disclose their confidential information to the Review Panel as part of MTM's application to the Review Panel and for those consents to be obtained before close of business on 29 November 2024; or
- withdraw the note altogether.

MTM's representative provided the following note in response to the Review Panel's request.

The note contained references to confidential appendices in the Commissioner's Reports cited in the note. In one instance, the confidential appendix was referred to at the page in the public version of the Report, cited by MTM's representative's note. In other instances, the confidential appendix was not referred to at the page in the public version of the report, cited by MTM's representative.

The Review Panel has not accepted the references to the confidential appendices in the Reports and has removed them from the copy of the note set out below. That is because the confidential appendices contain confidential information which the Review Panel does not have the necessary consents, including from those who provided the confidential information to the Commissioner, to consider the confidential information.

The notes below reflect my knowledge and understanding of the ADC's methods for uplifting exporter's raw material costs, from my involvement in previous dumping inquiries.

My understanding is that the ADC's method for uplifting raw material costs generally involves applying the uplift to the full raw material input costs, which would as a consequence also uplift the cost of generated scrap, if those scrap costs were not separately reported.

Outlined below is a brief summary of relevant cases (300, 301, 365, 371) with the first four being examples where the uplift has been applied to the exporter's net raw material costs which would have included generated scrap costs, and the last case (482) is an example where the ADC has made a specific and separate uplift to the cost of recovered scrap, as proposed by MTM:

Report 300 (section 5.9.3, page 24): the ADC states that 'for the purposes of calculating dumping margins, the Commission substituted the cooperating exporters' fully absorbed steel billet CTM values with the corresponding Latin American FOB level steel billet export price...'



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Report 301 (section 5.5.2.2, page 20): I understand that the ADC applied the uplifted benchmark cost of billet to the total billet consumed in production, which accounted for the scrap cost generated from production. The Report states that ‘... in line with the market situation finding, the costs to produce billet are unreliable and as such are disregarded in favour of the substituted Latin American benchmark billet costs under section 43(8) of the Regulation.’

Reports 365 and 371 (section 4.8.1, page 29): the ADC states that ‘to make the appropriate adjustment for non-integrated Chinese exporters, the ACPBS compared the benchmark prices to purchases of HRC by those exporters to arrive at a percentage difference to be applied to the raw materials cost recorded in the exporters’ records.’

Reports 371 (section 4.8.1, page 29,): the ADC states that ‘to make the appropriate adjustment for non-integrated Chinese exporters, the ACPBS compared the benchmark prices to purchases of HRC by those exporters to arrive at a percentage difference to be applied to the raw materials cost recorded in the exporters’ records.’

Report 482 (section 4.6.7, page 45, 482 - PanAsia Aluminium (China) Limited - Appendix 4 - Uplifted CTMS & NV): the ADC states that ‘... aluminium costs have been determined by comparing the competitive benchmark cost to the exporter’s actual costs and applying the resulting percentage difference as an adjustment to the exporter’s records.’

The Review Panel closed the conference on 29 November 2024.