



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

Exemption Inquiry Report: EX0067

Wind Towers

**Exported to Australia from the People's Republic of
China and Republic of Korea**

Applicants:

**Keppel Prince Engineering Pty Ltd and
Goldwind Australia Pty Ltd**

September 2018

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Abbreviations

Abbreviations	Full reference
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Applicants	Keppel Prince Engineering Pty Ltd and Goldwind Australia Pty Ltd
China	the People's Republic of China
Commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Duties	interim dumping duty and dumping duty
Exemption goods	the goods subject to the application as described in section 3.3
Goldwind	Goldwind Australia Pty Ltd
Keppel Prince	Keppel Prince Engineering Pty Ltd
Korea	Republic of Korea
Minister	the Minister for Industry, Science and Technology
MW	Megawatt
Tariff Act	<i>Customs Tariff Act 1995</i>
TCO	Tariff Concession Order

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by Keppel Prince Engineering Pty Ltd (Keppel Prince) and Goldwind Australia Pty Ltd (Goldwind) (together, the Applicants) requesting an exemption from interim dumping duty and dumping duty (the duties) under subsection 8(7)(b) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act) in relation to the export of certain utility scale wind tower sections from the People's Republic of China (China) and the Republic of Korea (Korea).

This report sets out the Commission's findings upon which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Minister for Industry, Science and Technology (the Minister)² on whether or not to exempt goods from the duties.

1.1 Application of law to facts

1.1.1 Authority to make the decision

Subsection 8(7) of the Dumping Duty Act set out, amongst other things, the matters to be considered by the Minister in deciding whether to exercise their discretion to exempt goods from the duties.

1.1.2 Initiation of inquiry

After examining the application, the Commission initiated an inquiry on 1 June 2018. The details of the initiation are contained in Anti-Dumping Notice (ADN) No. 2018/89.³

1.2 Findings and conclusions

The Commission has found that a Tariff Concession Order (TCO) under Part XVA of the *Customs Act 1901* (the Act) is in force in respect of the goods subject to the inquiry (referred to as the 'exemption goods' in this report).

The Commission considers the conditions of subsection 8(7)(b) of the Dumping Duty Act for granting an exemption are satisfied.

1.3 Recommendation

The Commissioner recommends to the Minister that the exemption goods be exempted from the duties.

¹ All legislative references in this report are to the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² For the purposes of this inquiry, the Minister is the relevant decision maker.

³ Available at the Commission's website www.adcommission.gov.au.

2. Background

2.1 Original investigation

On 21 March 2014, the Commission completed an investigation into the alleged dumping of wind towers exported to Australia from China and Korea.

The then Parliamentary Secretary to the Minister for Industry accepted the Commissioner's recommendations and found that wind towers from China and Korea had been dumped and that the dumping had caused material injury to the Australian industry. A dumping duty notice was published on 16 April 2014. The reasons for the then Parliamentary Secretary's decision in this case are contained in *Anti-Dumping Commission Report 221* (REP 221).

ADN No. 2014/33 contains details of the measures, including a description of the goods subject to measures.

2.2 Exemption application

On 16 May 2018, the Applicants wrote to the Commission requesting an exemption from the duties in relation to its imports of certain utility scale wind tower sections.⁴

The Applicants request that the Minister exercise the discretion to exempt the exemption goods from the duties on the basis that a TCO under Part XVA of the Act in respect of the exemption goods is in force. In its application, the Applicants submitted that TC 1813104, which is currently in force covering the exemption goods, provides grounds for the Minister to grant an exemption from the duties.

2.3 Exemption inquiry

The Commission accepted the Applicants' letter as an application for an exemption from the duties. On 1 June 2018, the Commissioner initiated an exemption inquiry, by publishing ADN No. 2018/89 which advised that an exemption inquiry had been initiated, provided details of the goods subject to the inquiry, and outlined the procedures to be followed during the inquiry.

The Commission sent Haywards Steel Fabrication and Construction and Ottoway Fabrication Pty Ltd, as entities previously found to have produced like goods in Australia, an invitation to respond to the Applicants' application on 4 June 2018, by completing the 'Response to Exemption Application' questionnaire (the questionnaire) and requested that responses be received no later than 22 June 2018. No responses were received.

2.4 Legislative requirements for an exemption

The Applicants have applied for an exemption under subsection 8(7)(b) of the Dumping Duty Act.

Subsection 8(7) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:

⁴ Electronic public record item no. 1 for EX0067, available at www.adcommission.gov.au

...

- (b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

In determining whether a TCO in respect of the exemption goods is in force, regard is had initially to whether the exemption goods are correctly classified to the tariff heading to which the TCO is linked. Close scrutiny will then be made of the terms of the TCO to ensure that the exemption goods meet each of those terms. If the exemption goods do more than what is described in the TCO, but otherwise meet its terms and are classified correctly to the tariff heading to which the TCO is linked, legal authority supports the eligibility of those particular goods for that TCO.⁵

The Applicants request that the Minister exercise the discretion to exempt the exemption goods from the duties on the basis that TCOs under Part XVA of the Act in respect of the exemption goods are in force.

⁵ *Robert Bosch Australia Pty Ltd v Collector of Customs*, AAT, 29 August 1986; *Re Klockner Moeller Pty Ltd v Collector of Customs*, AAT, 18 January 1989.

3. The “goods subject to measures” and the “goods subject of the application for exemption”

3.1 The goods subject to measures

The goods exported from China and Korea, covered by the current dumping duty notices are:

Certain utility scale wind towers, whether or not tapered, and sections thereof (whether exported assembled or unassembled), and whether or not including an embed being a tower foundation section.

The wind towers are designed to support the nacelle (an enclosure for an engine) and rotor blades for use in wind turbines that have electrical power generation capacities equal to or in excess of 1.00 megawatt (MW) and with a minimum height of 50 metres measured from the base of the tower to the bottom of the nacelle (i.e. where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical junction boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section.

Goods specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

3.2 Tariff classification

The goods subject to measures are generally, but not exclusively, classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:⁶

- 7308.20.00 (statistical code 03 and 04);
- 7308.90.00 (statistical code 52, 53, 54, 55, 56, 63 and 65); and
- 8502.31.10 (statistical code 31)

3.3 Goods subject to the application for exemption

The goods the subject of the exemption inquiry (the exemption goods) are specified in TC 1813104, being:

⁶ As at 20 June 2015, subsequent to the imposition of anti-dumping measures, statistical code 02 pertaining to tariff sub-heading 7308.20.00 has been replaced with statistical codes 03 and 04, and statistical code 49 pertaining to tariff sub-heading 7308.90.00 has been replaced with statistical codes as listed in this report. These changes are detailed in Australian Customs Notice No. 2015/19 accessible at <https://www.homeaffairs.gov.au/>. See also the dumping commodity register at <http://www.adcommission.gov.au>.

SECTIONS, WIND GENERATOR TOWER, having ALL of the following:

- (a) plate steel having a thickness of NOT less than 30 mm and NOT greater than 60 mm;*
- (b) section length NOT less than 15 500 mm and NOT greater than 22 000 mm;*
- (c) section weight NOT less than 80 metric tonnes and NOT greater than 120 metric tonnes;*
- (d) outer diameter NOT less than 4 400 mm and NOT greater than 4 900 mm*

The exemption goods are classified to tariff subheading 7308.90.00 of *Schedule 3 to the Customs Tariff Act 1995*.

4. Goods subject to Tariff Concession Order

4.1 Assessment

The Commission has found that on 16 May 2018, the decision to grant tariff concession TC 1813104 was published in the *Commonwealth of Australia Tariff Concessions Gazette*.⁷ TC 1813104 has been operative from 29 January 2018 and corresponds to tariff classification 7308.90.00. The exemption goods as described in section 3.3 are covered by the TC 1813104 and have the exact same specifications as TC 1813104.

Accordingly, the conditions for granting an exemption are satisfied.

4.2 Conclusion

The Commission recommends that the Minister exempt the exemption goods from dumping duty, under subsection 8(7)(b) of the Dumping Duty Act on the basis that a TCO in respect of the goods is in force.

4.3 Effective date of exemption

Keppel Prince and Goldwind's application for exemption, examined in this report, was made on 16 May 2018.

The timing in relation to the granting of an exemption is at the discretion of the Minister. Subsection 8(8A) of the Dumping Duty Act provides that if an exemption is given because of an application for exemption, then the date of effect must not be earlier than the day the application is made.

The Commission recommends that the exemption, if granted, have effect from the date of the application, that is, on and from 16 May 2018.

⁷ Available at the Department of Home Affairs website: www.homeaffairs.gov.au