

**Titan Submission: Anti-Dumping Commission  
Inquiry into the Market for Wind Towers**

21 October 2013

1.	Introduction	3
2.	Titan as a past and future Australian business partner	3
3.	The product subject to the investigation and the like product	3
4.	The determination of the normal value	4
	(a) There is no particular market situation from a factual and legal point of view	4
	(b) The costs used to calculate the constructed normal value should in any event relate to the Chinese market	6
5.	A comparison of prices in the wind tower market needs to take into account the timing of sales and requires several adjustments	7
6.	The alleged injury and causal link should be carefully assessed	8
7.	Summary	11

## **1. Introduction**

On 28 August 2013, a notice under subsection 269TC(4) of the Customs Act 1901 advising the initiation of an anti-dumping investigation concerning wind towers exported from the People's Republic of China and the Republic of Korea was published in The Australian newspaper. The investigation was initiated by the Australian Anti-Dumping Commissioner (Commissioner) following an application lodged by Australian manufacturers of wind towers (A.C.N. 009 483 694 Pty Ltd (Haywards) and Keppel Prince Engineering Pty Ltd (KPE)).

Titan Wind Energy (Suzhou) Co Ltd ("Titan") was founded in 2005 as a tower specialist with the largest manufacturing capacity in the world. In December 2010, Titan was listed on the Shenzhen Stock Exchange (Stock code 002531SZ). Since its establishment in Taicang, it has grown to now operate 6 factories.

By means of the present submission, Titan is making its views known to the Australian Dumping Commission ("ADC"). Titan trusts these will be taken into account.

## **2. Titan as a past and future Australian business partner**

Titan has sold 30 wind towers to an Australian customer in 2009 and 4 wind towers in 2011. Although Titan intends to continue serving the Australian market, no sales have been made to Australia during the investigation period. Nevertheless, Titan considers that the information which is provided in its questionnaire should be considered for the purpose of, at least, deciding whether or not there exists a "particular market situation" in China and for the injury assessment.

Titan is clearly an interested party in the meaning of Section 269T of the Act, as "any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or request or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods" and "any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods that have been, or are likely to be, exported to Australia.

As a general comment, Titan questions the reliability of the information supplied by the applicants. Titan is particularly troubled by the fact that some information is manifestly incorrect. As mentioned above, Titan exported 30 towers to Australia in 2009 and 4 wind towers in 2011. However, on the basis of the figures provided by the applicants, no imports from the countries under investigation (that is, China and Korea) were made in 2008, 2009 and 2011. Imports were only made in 2010 and 2012 (see Application, page 43). This casts serious doubts as to the information in the hands of the ADC.

## **3. The product subject to the investigation and the like product**

This investigation concerns "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".

Titan has a number of comments in relation to the description of the product:

- other goods share the basic physical characteristics of wind towers as described by the applicants (i.e. all are tubular steel towers with components such as doors, ladders, flooring, cables and wiring, and lights typically attached to the inner diameter of the welded steel plates). This relates in particular to steel chimneys;
- tubular steel towers with components such as doors, ladders, flooring, cables and wiring, and lights typically attached to the inner diameter of the welded steel plates can also be used for purposes other than as part of wind turbines for supporting and elevating the nacelle and blades for the generation of electricity. In particular, they can also be used for maintenance and transmitting the electricity generated from the wind turbines to power grid through cables;
- in terms of substitutes for the product concerned, also concrete towers can be used for wind turbines.

Titan considers that the elements outlined above should be taken into account in the injury investigation, since failing to do so would lead to conclusions which do not reflect the actual market. Therefore, the ADC should collect and analyze additional information, namely information concerning substitutes of and uses for the products concerned as well as other kind of products that fall under the product description.

As regards the like product, it is very important to take into account that different steel grades, thicknesses and types of surface treatment specs will affect the prices significantly and that factory throughput can be significantly affected by the different thicknesses of plates, requirements for metallising, different door designs, etc. These elements should be duly considered by the ADC when comparing the product concerned and the like product for the injury and dumping assessment.

#### **4. The determination of the normal value**

It is clear that there is an effective Chinese domestic market for wind towers with a significant number of suppliers and a large number of purchasers (many of whom are global companies operating across multiple jurisdictions) and the Applicant has rightly not suggested otherwise.

However, Titan understands that the ADC is considering whether there might exist a “particular market situation” mainly on the basis of findings relating to the steel market. On this basis, the ADC would then seek to construct the normal value to be used for the dumping calculation. Titan considers that the ADC can only resort to a construction of the normal value in exceptional circumstances, which are not present in this case. As an exception to the general principle of using the domestic price, the ADC should carefully verify the applicability of the relevant conditions required to revert to a constructed normal value. As explained below, these are not met in the present investigation.

Moreover, Titan understands that while constructing the normal value, the ADC might use certain cost data which does not relate to the Chinese market. This would apply in particular to the cost of the main raw material, that is, steel. Titan will explain below why this approach would be unlawful and cannot be pursued.

- (a) There is no particular market situation from a factual and legal point of view

Article 2.2 of the Anti-Dumping Agreement provides:

*“When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.” (own emphasis)*

The ADC can only resort to constructed normal value if:

- there is a particular market situation (*“the situation in the market of the country of export”*); and
- this particular market situation results in the domestic sales not permitting a proper comparison (*“not suitable for use in determining a price under subsection (1)”*).

GATT case law provides guidance about this concept, in particular in *EC – Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil (EC – Cotton Yarn)*. The panel’s findings show that:

First, the findings stress the fact that a particular market situation on its own is not sufficient to have recourse to a construction of normal value or export sales to third countries. The Panel explained that:

*“the test for having any such recourse was not whether or not a “particular market situation” existed per se” but that “[a] “particular market situation” was only relevant insofar as it had the effect of rendering the sales themselves unfit to permit a proper comparison”.*<sup>1</sup>

Second, the findings reveal that the particular market situation needs to relate to the domestic sales of the product concerned themselves (and thus not to the raw materials used for the production of the product concerned). The Panel explained that recourse to use of constructed value or third country sales in this situation is:

*“governed by whether or not the sales concerned would permit a proper comparison, due to the particular market situation”* (emphasis by the Panel).

The Panel continued by stating that:

*“there must be something intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison”* (emphasis by the Panel).<sup>2</sup>

In this respect, the Panel also rejected Brazil’s claim referring to the cost of raw materials. Brazil claimed that the combination of a fixed exchange rate and domestic inflation was a particular market situation capable of affecting the cost of raw materials. This position was rejected by the Panel, *inter alia* because Brazil failed to show:

---

<sup>1</sup> GATT Panel report, *EC – Cotton Yarn*, para. 478.

<sup>2</sup> GATT Panel report, *EC – Cotton Yarn*, para. 478.

*“that the prices used as a basis of normal value were themselves so affected by the combination of high domestic inflation and a fixed exchange rate such that those sales did not permit a proper comparison”.*<sup>3</sup>

The applicants have claimed that a ‘market situation’ exists merely because rolled steel is used in the manufacture of wind towers.

It is one thing to accept on a preliminary basis that there may be reasonable grounds that a “market situation” exists to enable an inquiry to be commenced but, for a legally valid final decision to be made, that approach is inadequate and applying the findings in *EC – Cotton Yarn*, a final decision made on that basis would be legally invalid.

In the case at hand, there is nothing:

*“intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison”.*<sup>4</sup>

Nor has it been demonstrated through the presentation of relevant facts and analysis that the Chinese domestic sales of wind towers themselves are affected by a particular market situation. Finding a particular market situation with respect to the raw materials used for the production of the product concerned has directly been rejected as a legally sufficient basis and is not the relevant test to apply to give recourse to a constructed normal value methodology.

Even if it is established that steel is a major input into the production of wind towers and that the ‘market situation’ apparently affecting steel ‘flows through’ to wind towers, these considerations can only be entertained after there has been a proper consideration of the Chinese market for wind towers and a demonstration that that market is laboring under a relevant ‘situation’.

Although not relevant from a legal perspective, Titan has the following comment in relation to the alleged influence by the Chinese government on the steel price in China. Titan, one of the largest users of steel in the wind tower market, has a privileged overview of the Chinese market conditions. Titan considers that the facts of this case, if analyzed in an objective and reasonable fashion, will reveal that the Chinese domestic market price of steel is not influenced in any way whatsoever by the Chinese government. The prevailing price in China is fully in line with market conditions in consideration of the dimension of the market and the economies of scale that such market allows. Moreover, and importantly, Titan generally relies on sources other than government-owned enterprises to purchase its raw materials.

In view of the above, the ADC should not determine dumping by comparing the export price of Chinese exporters with a constructed normal value on the basis of an alleged particular market situation.

- (b)** The costs used to calculate the constructed normal value should in any event relate to the Chinese market

---

<sup>3</sup> GATT Panel report, *EC – Cotton Yarn*, para. 479.

<sup>4</sup> GATT Panel report, *EC – Cotton Yarn*, para. 478.

Titan would like to point out that any constructed normal value should be computed on the basis of costs in China. This is the only approach that can be adopted in accordance with WTO law.

Article 2.2.1.1 of the Anti-Dumping Agreement provides that:

*“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”*

The normal value needs to relate to the domestic market of the exporter. As stated by the Appellate Body, it needs to be ensured *“that normal value is, indeed, the “normal” price of the like product, in the home market of the exporter”* (emphasis added).<sup>5</sup> Consequently the fact that the price paid for raw materials in the home market is higher or lower than that in the export market or other markets is irrelevant.

## **5. A comparison of prices in the wind tower market needs to take into account the timing of sales and requires several adjustments**

The present investigation will involve a comparison of the export price and the normal value, to assess dumping, and a comparison of the import prices and the prices charged by the Australian industry.

In view of the nature of the present market, there are several items that need to be taken into account with a view to ensuring a fair comparison. Titan will address below two key issues in this respect.

First, prices should be compared with respect to sales made nearly at the same point in time. Therefore, the determination of the relevant date to compare prices is key. Titan is providing below some information that should be taken into account.

For a typical project in Australia (of between 30 – 60 towers per project), the first placement of towers on site is typically less than 6 months from the contract date and the last tower will be installed within 9 months. This is a normal requirement from the customer. Generally, longer delivery periods are only applied if the supplier does not have the production capacity that allows it to meet the customer’s demands. The on-site erection of turbines takes place at a pace of around 6 sets per week. Accordingly, the erection time for 60 towers will be around 10-12 weeks, weather permitting. The quicker the turbines are erected, the lower the project cost for the customers.

Contrary to what the applicants claim, it is very uncommon for towers to be supplied over a period of two years or longer. In particular, given the price fluctuations that commonly occur for the main raw material, steel, awarding a contract 2 years in advance would entail significant risks for the suppliers and customers.

---

<sup>5</sup> Appellate Body report, *US – Hot-Rolled Steel*, para. 140.

On the basis of Titan's commercial terms, the following provides an overview of the time period to manufacture a Chinese wind tower and the supply thereof to a customer in Australia, after conclusion of a contract:

- (a) Steel+fabrication+internals = 4+3+3=10 weeks
- (b) 10 weeks + (capacity/week) + shipping = 10+(90/45)+8 = 20 weeks (assuming a shipment of about 90 sections) CIF Australia Melbourne Port
- (c) Invoices are issued after the towers are completed and after shipping and customs clearance in accordance to the agreed completion dates.

Titan's estimation of the timing for an Australian wind tower to be manufactured and supplied to a customer in Australia after a contract has been awarded is as follows:

- (a) Steel+fabrication+internals = 8+4+4=16 weeks
- (a) 16 weeks + (capacity/week) = 16+(90/12) = 24 weeks Ex Works
- (b) Invoices are issued progressively starting from:
  - i. down payment upon contract signing
  - ii. arrival of raw materials
  - iii. progress payments upon completion of each tower
  - iv. progress payment upon collection of each tower

Second, wind towers are not a homogenous product the price of which can be easily compared. Several differences can have a significant effect on prices. These differences should thus be taken into account by the ADC when comparing prices (for the dumping or injury assessment). For instance, different steel grades, thicknesses and types of surface treatment specifications all significantly affect the price.

As a final comment, although Titan understands that the ADC does not intend to carry out a separate dumping determination for Titan, the prices Titan offered during tenders in the Australian market should be taken into account for the price effects analysis in the injury investigation. Indeed, Titan is a Chinese producer cooperating in the investigation which carried out sales during the injury reference period. Therefore, Titan's offered prices provide a good source of information for the price level of Chinese imports.

## **6. The alleged injury and causal link should be carefully assessed**

Titan understands that the applicants have alleged that the Australian industry has suffered injury as a result of allegedly dumped imports. On the basis of its knowledge of the market, Titan assumes that the investigation will find that there is no injury and, in any event, no causal link.

Titan trusts that the ADC will carefully assess both elements. Below, Titan will provide some comments that it believes should be taken into account in these assessments, with a view to ensuring a correct outcome.



With respect to injury, Titan points out that stocks do not have any relevance as an injury indicator in this market. Indeed, no producer of wind towers keeps towers on stock since this does not make any economic sense. The towers are produced on order.

With respect to causation, Titan points out that since price is not the determinative element in tender selections, no causal link can be found between alleged dumping and the alleged injury. The following elements are the determinative factors for customers, in order of priority:

1. Reputation/Quality
2. Ability to deliver on time
3. Commercial/Payment terms
4. Cost of raw materials – steel/flanges/internals
5. Tower Supplier Fabrication Price

The Chinese exporters excel in the key items, as compared to the Australian industry.

In addition, Titan submits that if the domestic industry is suffering from some alleged injury, there are a number of causes of that injury unrelated to imports from China. These elements break the causal link between the Chinese imports and the injury, if any. By distinguishing and separating the injurious effects of these other factors, the ADC will find that no injury is being caused by the Chinese imports. These other factors include the following:

- *Access to raw materials:* In the Australian market, there is only one supplier of steel plates. This of course affects significantly the price of steel plates in the Australian market. Titan trusts that the ADC will investigate prices of steel plates in the Australian market with the same level of scrutiny as that used to assess prices in the Chinese market. This analysis will reveal that if there is “particular market situation”, it is in Australia;
- *Lack of efficiencies and scale:* Australian suppliers are generally not solely producing wind towers. Rather, wind towers are only one of a number of varied products produced from the same manufacturing facility. This results in a much lower level of efficiency than that of Chinese suppliers, who have manufacturing facilities dedicated solely to the production of wind towers allowing much greater efficiencies and economies of scale to be achieved. In particular Titan notes:
  - due to the volume of wind towers being produced by Titan (which supplies both the domestic Chinese market and a range of international markets), its factories are running 3 shifts most part of the year. As a result of this the equipment utilization rates are much higher than those of the Australian manufacturers, which of course has a significant effect on costs; and
  - the size of the factories of Titan allow for multiple welding stations, multiple blasting shops and multiple painting shops. The multiple equipment sets and large facilities allow for high flexibilities in adjusting production plans to cater for different tower variants, dimensions, weights, specifications, etc.

Certainly, Chinese manufacturers have a competitive advantage in this respect, as compared to Australian manufacturers;

- *High labour costs:* It is well established that the Australian labour market is one of the highest cost markets in the world, whereas China is a well recognised low cost alternative. In addition, most of the tower factories in Australia are located in regional areas where there are acute shortages of skilled labour and even higher labor costs.
- *Fragmented nature of the Australian market and lumpy local demand:* Given that Australian suppliers are not competitive internationally and rely solely on Australian domestic purchases, it is difficult for Australian suppliers to invest in state of the art equipment, upgrading of facilities, tools, etc to improve production efficiencies as result of:
  - the small and uncertain Australian market;
  - fluctuating orders due to the seasonal nature of the industry;
  - high land transportation costs for raw materials and getting towers to site; and
  - absence of a strong and mature tower supply chain (for instance, special thick steel, flanges, internals). Most inputs have to be imported from Asia;
- *Lack of maturity:* Australian suppliers still need to progress through the learning curve, especially for new tower types from different customers. Titan, for instance, has an established reputation and significant experience in producing towers for most of the key global wind energy industry participants (eg Vestas, Siemens, GE, Suzlon, Gold Wind, etc). Titan matured along the learning curves for these different towers long ago;
- *Inexperience:* As Australian suppliers are relatively late to enter the market and have very limited experience in working with the range of technologies relied upon by global customers, customers will need to incur costs in time, energy and resources to carry out technology transfers when they are dealing with tower suppliers from Australia. In contrast, Titan is an established proven supplier and the relevant customers have already taken care of the Technology Transfer activities;
- *Lack of Critical Mass:* Most large customers have hub offices in China which are responsible for functions such as tower sourcing, quality control, project management, operations, logistics, etc directly as a result of the large number of technologically advanced competitive suppliers based in the country (i.e. the Silicon Valley of wind towers). This critical mass of suppliers and buyers significantly reduces transaction costs through shared learning, the development of brand reputational trust (which then reduces the need for pre-purchase inspections and quality discussions) and simple efficiencies like reduced travel time for sales staff conducting negotiations and site visits;
- *Lack of bargaining power:* As noted earlier, Australian suppliers are disadvantaged by the fact that they have only one real supplier from whom they can acquire steel in Australia and as a result of that have little bargaining power and are likely forced to acquire these materials at uncompetitive prices. In comparison, Chinese producers like Titan have a greater degree of bargaining power in negotiations with raw materials suppliers due to the much higher volumes they are acquiring and the much larger number of suppliers from whom they can acquire these products both in China and internationally.

## 7. Summary

In summary, Titan considers that there is no basis for the ADC to be in doubt that there is an effective market for wind towers in China and as such the determination of normal value should be based on Chinese domestic sales prices. In any event, even if the ADC were to take the view that there is a market situation in the Chinese domestic market and a constructed normal value was necessary, the Commission must take into account suppliers' costs in China to be in accordance with WTO Law.

Second, Titan is not in a position to comment on whether the Australian manufacturers have been the subject of injury or the extent of that injury. However, if they have, as detailed above there are significant factors that are the cause of that injury unrelated to the supply of Chinese wind towers.

Third, Titan is concerned that the Applicants have not made available any information to support their claims and have redacted substantial information from their Application which would allow interested parties to scrutinise those claims. For example, as identified earlier, the Applicants have advised the ADC that no exports occurred from China to Australia in 2009 and 2011, when Titan's own sales records clearly indicate that we made substantial sales from China to Australia in those years.

Titan looks forward to the opportunity to further assist the ADC as it proceeds with its investigation and is happy to be contacted by the ADC in this regard.

*Titan Wind Energy (Suzhou) Co Ltd*