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Director
Anti Dumping Commission
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By email

Dear Director

CS Wind Corporation
Wind towers from Vietnam – market and injury comments

As you know we represent CS Wind Corporation ("CS Wind") in this investigation.

The Anti-Dumping Commission ("the Commission") has initiated an investigation into the alleged dumping of certain wind towers from Vietnam. The application for the investigation[1] ("the Application") was lodged on behalf of the Australian industry by Keppel Prince Engineering Pty Ltd ("KPE") and Ottoway Fabrication ("OF") (together the "Applicants").

We wish to draw the Commission's attention to certain unique features of this investigation, relating to the nature of the goods under consideration and the special circumstances of the wind tower and wind power market. We submit that in light of the information already provided to the Commission by interested parties, and this submission, the Commission must find that there are no grounds for the issuance of any Preliminary Affirmative Determination or the imposition of securities against CS Wind's exports of the subject goods. This outcome arises because:

- there was no actionable dumping of the goods by CS Wind during the investigation period; and
- there was no material injury caused to the Australian industry, whether because there was no actionable dumping, or because the imported goods did not cause material injury in absolute terms.

Indeed, we ask the Commission to terminate the investigation at the earliest opportunity.

[1] See public record document 001, Application.

A Requirements for the making of a PAD

Section 269TD(1) of the Customs Act 1901 ("the Act") provides that, the Commission may issue a PAD only if:

> *At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:*
>
> *(a) that there appears to be sufficient grounds for the publication of such a notice; or*
>
> *(b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;*[2]

Further, the Commission's Dumping and Subsidy Manual provides the following guidelines:

> *The Commission cannot require and take securities under s. 42 of the Act in respect of any interim dumping duty (or countervailing duty) that may be payable on the goods under consideration unless the Commissioner has made a PAD and is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues*.[3] [underlining supplied]

As will be explained further below, the Commission should find that a PAD is neither warranted nor necessary. We respect and recognise the Commission's responsibility to verify the information presented to it, and that in complex cases that analysis is neither a quick nor an easy exercise. However, at the same time we must advise that CS Wind's Exporter Questionnaire response demonstrates that there has been no actionable dumping by our client. Further, there is no evidence that material injury to the Australian industry has occurred or will occur while the investigation continues.

B Instability caused by the Renewable Energy Target

The entire Australian renewable energy market faced severe policy uncertainties in the lead up to the September 2013 federal election. Post-election, the then newly elected government chose to review the Renewable Energy Target ("RET"), in a process that lasted nearly two years. The Australian renewable energy market suffered significantly because of this policy turmoil, and sustained lasting instability. This issue is well recognised in the submissions on the public record of this investigation authored by General Electric International Inc ("GE")[4] and Siemens Wind Power Pty Ltd ("Siemens"),[5] and by the Applicants themselves:

> *The Australian market has been volatile for the period 2013-2016 due to uncertainty over the RET.*
>
> *The market moved from 283 Towers (five projects) in 2013 to three Towers (one project) in 2014 to 189 Towers (five projects) in 2015 to 78 Towers (four projects) in 2016.* [6]

Further:

> *The effect of the uncertainty of the RET on the Australian market has been previously noted.*
>
> *This saw the market collapse in 2013 from 283 Towers (five projects) tendered to three Towers (one project) tendered in 2014.*
>
> *Section A4.2 of this application notes reports from the CEC on an investment freeze for wind farms and projects being delayed due to the uncertainty over the RET. This uncertainty saw*

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2 See *Customs Act 1901*, Section 269TD(1).
3 See *Dumping and Subsidy Manual - April 2017* at page 145.
4 See public record document 005, submission by General Electric at page 9.
5 See public record document 004, submission by Siemens at page 4.
6 See public record document 001, Application at pages 35 and 36.

> *KPE suspend its Wind Tower fabrication workshop with 85 employees terminated in late 2014.*
>
> *Investment and commitments from state governments to renewable energy and the resolution of the RET in July 2015 saw confidence and investment return to the market with increased projects and Wind Towers available for tender in 2016 and 2017.*
>
> *This increased confidence and optimism is noted in the E&A Reports as is the strong competition from overseas suppliers*
>
> *This resulted in KPE re-opening its Wind Tower fabrication workshop and securing tenders in 2015 and 2016.*
>
> *However, KPE noted strong competition from dumped Wind Towers from Vietnam in the market which resulted in lower than expected prices and loss of sales on tenders it competed on.*
>
> *The applicants are an industry that has been injured by factors other than dumping with the uncertainty over the RET.*[7]

The Application also referred to "Clean Energy Reports" in its Application, to provide background on the Australian market.[8] In relation to wind power projects, the Clean Energy Report 2016 comments:

> *The 2016 figures represent the lowest total capacity commissioned in a calendar year since 2004, as the policy uncertainty driven by the extended review of the RET under the Abbott Government, combined with long project lead times, continued to wash through the industry*.[9] [underlining supplied]

The policy uncertainties created by the RET review and changes had profound and devastating impacts on the wind energy market during the injury and investigation periods.[10] The review announcement and subsequent reduction of the RET targets fundamentally changed market conditions in Australia, causing significant volatility and fluctuation in market size. The Australian market for renewable wind technology was forced to a standstill. For nearly two years the market faced, not only uncertainty, but also a near complete freeze on investment.

These policy uncertainties and RET changes materially affected the Applicants throughout the period of investigation. Such factors must be given proper consideration in the Commission's assessment of any claimed material injury both for the purpose of considering the necessity and desirability of a PAD at this time and in arriving at the final outcome of the investigation. Injury caused by factors not related to dumping – or in this case not in relation to competition at all – must not be attributed to the alleged dumping.

The impact this policy turmoil had on the Applicants was particularly profound, due to the Applicants' misreading of and lack of readiness for the market changes that occurred before and during the POI. For example, it is clear that KPE was readying itself for conditions of high demand, and that it would have been unprepared for the sudden freeze of the market. As noted in Investigation 221:

> *The Australian industry claims that the Australian market for wind towers is expected to double during the next two to three years as renewable energy policy heads towards achieving a 20% renewable energy mix by 2020. In order to meet this target the Australian industry estimate that approximately 400 wind towers per year would be required.*[11]

Similarly, in a 2015 address by in the Annual General Meeting by Managing Director of E&A Limited,

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7 Ibid, at page 45.
8 Ibid, at pages 21 to 23.
9 See Clean Energy Council, *Clean Energy Report 2016* at page 54.
10 For an example of the profound policy turmoil affecting particularly wind energy, see http://www.abc.net.au/news/2015-06-11/abbott-wants-to-reduce-wind-farms-wishes-ret-never-implemented/6539164 ; and http://www.abc.net.au/news/2015-06-12/tony-abbott-launches-another-attack-against-wind-farms/6541952
11 See Final Report 221 at page 19.

the parent company of Ottoway Fabrication ("OF"), the Managing Director acknowledged that OF had struggled to read the market and had miscalculated the impact of changes to the RET:

> *Ottoway Fabrication first half for FY'16 has been slower than expected. Ottoway Fabrication had expected the revised legislative changes to the RET to deliver increased opportunities during the second quarter of FY'16. This has not yet eventuated.*[12]

OF is also disadvantaged by reason of the fact that it is a relative newcomer to wind tower manufacturing in Australia. It only commenced manufacturing wind towers in 2013 – just before the market collapsed. Due to the sudden change in the market due to the RET review, the company's *"promising entry"*[13] to the industry did not eventuate.

In contrast, exporters such as CS Wind were buffered from the freeze in the Australian market, due to continued growth in the global wind power market. This ensured CS Wind's ability to maintain healthy growth and to continue to build its reputation as a reliable and high quality source of supply for its major customers.

C CS Wind's customers' procurement decisions are sophisticated and complex

CS Wind submits that the Applicants' assertion that price is the *"determinative factor"*[14] in the awarding of wind tower orders is either misleading or betrays a fundamental misunderstanding of the market for the goods. While price is an economic factor for any customer, the supplier's ability to meet strict technical and quality requirements, its capacity to supply the goods within the strict deadlines, its overall production capacity to meet project requirements and, for customers requiring consistency and security in their global projects, its capability to meet that level of consistency and stability, are equally, if not more, important. Wind towers are highly customised, quality-focused, time sensitive, high value products. Wind towers and wind generators are not commodity products which are supplied as generic products to an open market.

The Applicants mistakenly portray the wind tower and wind energy market as something quite different:

> *An un-dumped price for the Wind Towers supplied by CS Wind has been calculated that is XX% (Confidential pricing) above the price first offered by KPE for the project. KPE considers that this price difference demonstrates that it would have been the lower priced tenderer and likely awarded all 75 Wind Towers for the Ararat project.*[15]

GE, being KPE and CS Wind's common customer for the Ararat project, has correctly responded as follows:

> *The Ararat project had a long lead time for delivery, which meant that KPE could be awarded a high proportion of the towers for this project. However, GE did not consider it was viable to award KPE the full volume of wind towers as it did not consider that KPE would be able to produce the full amount in the required lead time, given capacity and would be able to produce the full amount in the required lead time, given capacity and timing constraints.*[16]

The advice from GE makes it abundantly clear that in the only project where KPE competed with CS Wind it did not "lose" the order to CS Wind due to pricing at all. The question of whether or not CS Wind's overall prices in the period of investigation were at a dumped level (which they were not) is therefore rendered moot with respect to the claim of injury related to that project.

Similarly, we note the following comments from the other Applicant, Ottoway Fabrication:

> *An un-dumped price for the Wind Towers supplied by CS Wind has been calculated that is*

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12 See *E&A Limited 2015 Annual General Meeting Chairman & Managing Directors Address* at page 15.
13 See Application at page 37.
14 See Application at page 25.
15 Ibid, at page 39.
16 See public record document 005, submission by General Electric at page 5

> *XX (Confidential pricing information) the price offered by OF in February for the 32 Wind Towers for the project. OF considers that this demonstrates that it would likely been awarded all 32 Wind Towers for the Hornsdale Stage 1 project.*[17]

CS Wind's customer in this project, Siemens, has provided the following comments relating to the Applicants' assertion.

> *The Applicants state that Ottoway had a "promising entry to the Wind Tower market [that was] affected by the uncertainty over the RET", and note that Ottoway was only contracted to manufacture 23 wind towers during the injury analysis period. This fledgling performance, Ottoway's acknowledged "lower utilisation of…facilities caused by uncertainty over the RET impacting on performance", and the publicly available information which cast doubt on the financial viability of its parent company, E&A Limited, hardly ground its expectations of growth and investor confidence. Indeed, E&A Limited's 2016 Annual Report records that prior to the release of the 2016 half year results, the company decided to "impair the goodwill held in the accounts of Ottoway Fabrication for an amount of $6.1 million as a consequence of the uncertainty associated with the future wind tower orders and the uncertainty relating to Arrium's Whyalla steel businesses". On 10 March 2017, E&A Limited announced its intention to delist from the ASX in light of, amongst other things, the low level of trading of its shares. E&A Limited's financial health was rated "weak" in the Morningstar Quantitative Equity Report released 10 July 2017.*
>
> *Manufacturer reliability and capacity are key concerns for our client, given the significant lead times between the time of wind tower contract award and the delivery of towers to the wind project site, and the demands of the wind power market. In particular, wind towers must be customised to project specifications, and it is not viable for our client to recommission or delay supply of wind turbines because of inefficiencies or instabilities of a wind tower manufacturer. Indeed, delivery delays may result in our client facing financial penalties for late installation or operation under its own contracts with the proponent of the project. For our client to secure contracts with overseas wind tower manufacturers who are not plagued by the same uncertainties and RET-affected utilisation/production concerns as domestic manufacturers is simply a prudent commercial decision.*
>
> *…*
>
> *There are a multitude of factors that go into its decision to award tenders for certain project to certain manufacturers. Price is but one factor, and is certainly not the 'determinative' factor that the Applicants assert. Put another way, the ADC cannot be satisfied that but for the allegedly dumped imports, the Applicants would have won the tenders identified in the Application (namely, the Snowtown 2, Hornsdale and Ararat Wind Farm project tenders) as claimed.*[18] [footnotes excluded]

Accordingly, as noted by both GE and Siemens, there are significant alternate factors they take into consideration in making decisions to procure wind towers. This includes the fundamental capacity of the supplier to supply the project within the specified timeframe, and the supplier's overall capacity and reliability to meet the customer's project requirements. If a producer cannot demonstrate the required level of commitment and capacity, then it will not qualify to supply such projects. Whether or not it has the ability to compete on price therefore becomes irrelevant.

Thus, it is wrong for the Applicants to claim that they have lost orders to CS Wind due to "dumped price[s]". The fact is, the Applicants did not "lose" the Ararat and Hornsdale projects orders due to price, and did not "lose" the order to CS Wind. The Applicants were not eligible to supply those projects for other reasons, namely their own capability. Those orders were never theirs to lose.

In this regard, it is useful to note that during the investigation period KPE appears to have had a

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17 See public record document 001, Application at page 39.

18 See public record document 004, submission by Siemens at page 9.

maximum capacity of around 110 wind towers per annum. [19] That is, over the course of a year, it could only produce 110 wind towers, at a rate of less than 10 towers per month. It is understood that OF had a similar but even smaller capacity, at around 100 or less wind towers a year. Production capacity for wind towers is typically calculated based on the typical machine running time/labour time required to complete tower/tower sections. That is, only a proportionate number of towers can be produced and delivered within a particular timeframe. Accordingly, for a significant project with a short to medium timeframe, it would become self-evident to a customer that the Applicants would either be unable to or would struggle to independently supply to the project according to the required timeframe. It is a prudent commercial decision for any wind farm project customer to consider whether the producer can actually meet the time frame and capacity requirement, prior to considering its price offer.

In addition to a producer's ability to meet time commitments, it must also meet the stringent quality standards set for the project. GE and Siemens are leading wind power project suppliers in the global wind tower market, managing projects across the world. These companies are known for their high standards, and require the wind tower producers with whom they engage to meet the same standards. In this regard we refer you directly to the submissions of the importers on quality requirements.[20]

These wind farm project suppliers represent a segment/sectors of the market themselves. CS Wind secured sales to those two customers, or "market sectors", due to its overall capacity, quality, and proven credibility. These attributes secured our client's pre-qualification for the projects of these customers. For their part, the Applicants did not have and still do not have the same credentials to compete with CS Wind in relation to those two customers' markets. The Applicants have lesser capacity and capability, and did not meet the non-price criteria to be a supplier for those projects in the first place.

To the extent that price is a factor, the Applicants argue that price pressure was imposed, at the relevant time, by allegedly dumped imports from Vietnam. With respect, CS Wind finds this allegation to be absurd. In this regard, CS Wind refers the Commission to the following circumstances:

- For the White Rock project offered by Goldwind in 2015, **[CONFIDENTIAL TEXT DELETED – commercial information regarding sales process]**. The project was eventually awarded to the Australian industry and Chinese exporters on a 20/50 (70 towers all together) co-supply arrangement.[21]
- Similarly, for the Kiata project offered by Vestas in 2016, **[CONFIDENTIAL TEXT DELETED – commercial information regarding sales process].** This project was also awarded to the Australian industry.
- For the other three projects during the POI, namely the Coonooer Bridge and Waterloo Stage 2 projects in 2015, and the Cooper Pedy project in 2016, CS Wind was not invited to provide any quotation whatsoever, and therefore cannot be said to have competed with the Australian industry with respect to that project.
- For each **[CONFIDENTIAL TEXT DELETED – project information]** in 2017, **[CONFIDENTIAL TEXT DELETED – commercial information]**. For example:
  - the 22 tower Mt Gellibrand project offered by Acciona – which was awarded to the Australian industry;
  - the 53 tower Mt Emerald project offered by Vestas - which CS Wind understands to have been awarded to a Chinese supplier and/or an Australian industry supplier;

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[19] See '*Keppel Prince Engineering expands wind tower manufacturing capacity*', Australian Manufacturing (online) 13 March 2017 <http://www.australianmanufacturing.com.au/43954/keppel-prince-engineering-expands-wind-tower-manufacturing-capacity>.

[20] See public record document 004, submission by Siemens at page 9 and public record document 005, submission by General Electric at page 4.

[21] See, http://www.abc.net.au/news/2016-11-03/victorias-largest-wind-tower-manufacturer-to-take-on-50/7993878

- the 75 tower Sapphire project offered by Vestas - the project was partially awarded to CS Wind, for the supply of [CONFIDENTIAL TEXT DELETED – number] towers,[22] with the remaining order for [CONFIDENTIAL TEXT DELETED – number] towers awarded to a Chinese exporter [CONFIDENTIAL TEXT DELETED – commercial information regarding sales process].

CS Wind finds it strange that the Australian industry would claim to have been materially injured by CS Wind's exports, and that it will continue to be so injured, due to CS Wind's prices, when the price offers being made by the Australian industry and its Chinese supplier partner/s typically are the lowest.

We have provided an updated table for the Australian wind tower market during the POI and up to date, with CS Wind's comments regarding each project, to assist the Commission's understanding regarding the Australian market. [CONFIDENTIAL ATTACHMENT]

D No material injury is occurring nor is there a likelihood of same

Lastly, we submit that, regardless of the situation during the POI, there is simply no evidence to demonstrate that the Australian industry is suffering material injury at this time, or that it would be likely to suffer such material injury in the future.

As acknowledged by the Applicants, the Australian wind power market has been recovering since the second half of the POI. In 2017 the Applicants expect that market demand is likely to be over 700 wind towers.[23] Based on CS Wind's latest information, the Australian market for 2017 has already exceeded 900 towers.

Amongst these already confirmed and declared projects, around [CONFIDENTIAL TEXT DELETED – number] towers' worth of projects do not involve CS Wind – ie, CS Wind is not being invited to provide quotations to supply. In addition, [CONFIDENTIAL TEXT DELETED – commercial information], CS Wind understands that those projects have been awarded to the Australian industry and Chinese suppliers.

Further, for [CONFIDENTIAL TEXT DELETED – number] pending projects involving the supply of [CONFIDENTIAL TEXT DELETED – number of towers] towers, [CONFIDENTIAL TEXT DELETED – commercial information]. CS Wind expects that these projects will again be jointly awarded to the Applicants together with Chinese suppliers.

Put simply, these developments mean that [CONFIDENTIAL TEXT DELETED – comments regarding Australian market and competition between CS Wind and the Australian industry] on around [CONFIDENTIAL TEXT DELETED – number] towers' worth of market demand in 2017. The Australian industry has already been awarded or has secured orders under some of these projects one way or the other. For further perspective, we note that the Applicants' total capacity for 2017 is less than 300 towers. Given the clear record of success of the Australian industry in securing tower sales for projects in collaboration with Chinese suppliers, and its full order book, there can be no expectation of injury being caused during the remaining course of the investigation such as would be required to form the basis for a decision to issue a PAD.

Accordingly, CS Wind submit that it is not open for the Australian industry to claim that it is currently suffering material injury caused by CS Wind – whether at dumped prices or not. Further, there is no evidence that the Australian industry will suffer any material injury caused by exports from CS Wind in the foreseeable future.

Lastly, we note the Applicants' submission that:

> *The stated capacity of CS Wind is 900 Towers per year, which is more than adequate to supply the Australian market.*

CS Wind advises that the comments are incorrect in so far as they attempt to describe the total size of the Australian market and the capacity of CS Wind Vietnam. Further, CS Wind reminds the

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22 **[CONFIDENTIAL TEXT DELETED – commercial information]**

23 See public record document 001, Application at page 45.

Applicants that CS Wind is a global wind tower supplier and must allocate its capacity to service its customers globally and not just for the Australian market.

E Conclusion

The renewable energy market in Australia suffered an extensive period of volatility from which it is only now stabilising. The Australian industry producers may have suffered from these negative consequences in recent years. However it is incorrect and inappropriate to "blame" exports from Vietnam at allegedly dumped prices for the difficulties faced by the Australian industry.

It is self-evident that the Applicants do not have the capacity to satisfy even half of the current market demand – and the [CONFIDENTIAL TEXT DELETED – comments concerning Australian market]. In CS Wind's view, the Australian industry may have also established relationships with customers and other exporters not subject to this investigation to secure market share in certain projects and to shield itself from competition. In light of these circumstances, CS Wind respectfully urges the Commission to find that it cannot be satisfied a PAD is necessary in order to prevent material injury to an Australian industry occurring while the investigation continues – because there is no such material injury occurring.

It would appear to CS Wind that the Applicants' use of the anti-dumping investigation in this instance is merely an attempt to further enhance the Applicants' position in the market, increase trade barriers for exporters with whom the Applicants have no arrangements or understandings in place, and to shield the Applicants and the Chinese suppliers with whom they appear to be partnering from legitimate competition.

We call upon the Commission and the Minister to carefully evaluate the circumstances and not to allow the trade remedy system to be misused in this way. The Applicants have not been and are not being materially injured by competition from CS Wind, and do not have the capacity to meet Australia's growing demand of renewable energy market.

The anti-dumping system is not a shield against fair competition, and the present circumstances clearly do not warrant the intervention of the Commission in the form of a PAD or the ultimate imposition of dumping duty.

Yours sincerely

Charles Zhan
Senior Associate