



Australian Government  
Anti-Dumping Commission

**PUBLIC RECORD**

**CUSTOMS ACT 1901 - PART XVB  
ANTI-DUMPING COMMISSION**

**PRELIMINARY AFFIRMATIVE  
DETERMINATION  
REPORT NO. 221**

**WIND TOWERS EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA  
AND THE REPUBLIC OF KOREA**

**6 December 2013**

# PUBLIC RECORD

## CONTENTS

CONTENTS.....	2
ABBREVIATIONS & SHORTENED FORMS .....	3
1 PRELIMINARY AFFIRMATIVE DETERMINATION .....	4
2 APPLICATION SEEKING DUMPING MEASURES .....	5
2.1 Initiation of dumping investigation.....	5
2.2 Statement of Essential Facts.....	5
2.3 Information from interested parties .....	5
3 THE GOODS UNDER INVESTIGATION.....	7
3.1 The goods under investigation.....	7
3.2 Tariff classifications.....	7
3.1 Like goods .....	8
3.2 Australian market .....	9
4 PRELIMINARY DUMPING ASSESSMENT .....	10
4.1 Preliminary assessment .....	10
4.2 Volumes.....	11
5 PRELIMINARY MATERIAL INJURY ASSESSMENT .....	12
6 REASONS FOR MAKING A PAD .....	14
6.1 General.....	14
7 PROVISIONAL DUMPING MEASURES .....	15
7.1 Preliminary finding.....	15
7.2 Preliminary assessment .....	15
7.3 Preliminary provisional measures.....	15
8 ATTACHMENTS .....	16

## PUBLIC RECORD

### ABBREVIATIONS & SHORTENED FORMS

Abbreviation / short form	Full reference
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
FAS	Free alongside ship
SEF	statement of essential facts
the Act	<i>Customs Act 1901</i>
the applicants	A.C.N. 009 483 694 Pty Ltd and Keppel Prince Engineering Pty Ltd
the Commission	Anti-Dumping Commission
the Commissioner	The Commissioner of the Anti-Dumping Commission
the Division	Division 2 of Part XVB of the <i>Customs Act 1901</i>
the goods	the goods subject to of the application
The Minister	the Minister for Industry
ADRP	Anti-Dumping Review Panel
WTO	World Trade Organisation

**1 PRELIMINARY AFFIRMATIVE DETERMINATION**

Under s.269TD of the *Customs Act 1901* (the Act<sup>1</sup>) the Commissioner of the Anti-Dumping Commission (the Commissioner) may, if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, make a preliminary affirmative determination (PAD) to that effect. The Commissioner may not make the PAD earlier than 60 days after the date of initiation of the investigation.

Day 60 of this investigation into the alleged dumping of wind towers exported from the People's Republic of China (China) and the Republic of Korea (Korea) was 27 October 2013.

After making a PAD, the Australian Customs and Border Protection Service (ACBPS) may require and take securities under s.42 in respect of interim duty that may become payable.

---

<sup>1</sup> All references are to the *Customs Act 1901* unless otherwise stated

## 2 APPLICATION SEEKING DUMPING MEASURES

On 6 August 2013, A.C.N. 009 483 694 Pty Ltd (Haywards) and Keppel Prince Engineering Pty Ltd (Keppel Prince) lodged an application requesting that the Minister responsible for anti-dumping publish a dumping duty notice in relation to wind towers exported to Australia from China and Korea.

The applicants alleged that the Australian industry has suffered material injury caused by wind towers exported to Australia from the nominated countries at dumped prices.

The applicants claimed that material injury in respect of wind towers commenced impacting profits and profitability in 2010. The application identified the injurious effects as:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits; and
- reduced profitability.

### 2.1 Initiation of dumping investigation

The Commissioner, after having regard to the Anti-Dumping Commission's (the Commission) consideration report, decided not to reject the application. Public notification of initiation of the investigation was made on 29 August 2013 in *The Australian* newspaper and Anti-Dumping Notice (ADN) 2013/68. Public record versions of submissions and reports are available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The investigation period<sup>2</sup> for the purpose of assessing dumping is 1 January 2012 to 30 June 2013 and the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from January 2008.

### 2.2 Statement of Essential Facts

Due to extensions of time allowed for various interested parties to supply information, public holidays in the nominated countries as well as the Commission's workload across multiple verification visits, the Commissioner requested an extension of the deadline for the publication of the Statement of Essential Facts (SEF). Pursuant to section 269ZH1 the Minister for Industry (the Minister) has approved an extension of time to publish the SEF. The SEF which was due on or before 18 December 2013 is now due on or before 4 February 2014. The Final Report with the Commission's recommendations is now due to the Minister on or before 21 March 2014. ADN No. 2013/99 refers.

### 2.3 Information from interested parties

The Commission has considered all relevant information provided by Keppel Prince, Haywards, importers and exporters. In the course of the investigation to date, the Commission has visited and verified information from:

- the Australian producers of like goods, Keppel Prince and Haywards; and
- major importers of wind towers.

---

<sup>2</sup> s.269T(1) refers.

## **PUBLIC RECORD**

In addition, the Commission has had regard to requested information contained in the exporter questionnaire responses.

Non-confidential versions of submissions, visit reports and questionnaire responses will be made available to interested parties on the public file as soon as they become available.

### **3 THE GOODS UNDER INVESTIGATION**

#### **3.1 The goods under investigation**

The goods the subject of the investigation, (the goods), are wind towers. The applicants describe the goods as:

*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.*

Further the applicants detailed that 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 classifications**

The goods may be classified to 7308.20.00-02 in Schedule 3 to the *Customs Tariff Act 1995*. This applies to complete towers, unassembled or assembled and applies to a basic tower that includes doors, ladders, landings and embed or tower foundation.

Steel tower sections, including sections with doors etc, are classified to 7308.90.00-49, assembled or disassembled, providing there aren't enough in a shipment to be judged to be a complete tower.

Combinations of towers and tower sections may vary on a case by case basis for assessment of tariff classification. Classification may vary when there is more of one thing than another, for example a tower section and lift or a tower section with lift, electrical junction boxes and other equipment.

An assembled complete wind powered generator is a composite machine consisting of two or more machines fitted together to form a whole; wind engine, generator, gearbox, yaw controls etc. fitted in a steel tower and nacelle, classification is to subheading 8502.31.10-31.

There are no tariff concession orders (TCOs) for towers under 7308. There are some TCOs under 8502 for wind turbine equipment, but none that specifically includes towers.

A customs duty rate of 4% applies to wind towers imported from China and Korea 5% under tariff headings 7308.

### **3.1 Like goods**

The term “like goods” is defined in s.269T to mean goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

The Australian industry manufacture wind towers matching the purchaser’s specifications on a project-by-project basis and have like characteristics as follows.

#### (a) Physical likeness

Although wind towers are built to each original equipment manufacturer’s (OEM) particular specifications, both imported and those produced in Australia all share basic physical characteristics – 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.

Wind towers vary in size and are built to a number of specifications, such as steel, welding, coating, and quality inspection standards that carry over from one OEM to the next. Therefore certain OEMs may have certain specifications that differ from the standard specifications, but the standards are general to the industry and have been adopted by most manufacturers.

Although every OEM has particular specifications it requires both overseas and Australian manufacturers to meet those standards for a particular wind project’s wind towers.

#### (b) Commercial likeness

Australian industry wind towers compete directly with imported wind towers in the Australian market solely on price. All wind towers are sold directly to the OEM, which incorporates them into wind turbines.

#### (c) Functional likeness

Both the locally produced and imported wind towers have comparable or identical end-uses. All wind towers are used exclusively as part of wind turbines for supporting and elevating the nacelle and blades for the generation of electricity.

#### (d) Production likeness

Locally produced and imported wind towers are manufactured in a similar manner and via similar production processes. All wind towers are produced by similar production methods utilising carbon steel welded into sections, before transportation to the wind project site for final assembly into wind towers.

The Commission has examined information on the physical and technical characteristics of wind towers produced by known exporters from the nominated countries and those produced by Keppel Prince and Haywards.

No interested party has suggested to the Commission that wind towers produced by the Australian industry and those produced by the overseas manufacturers from the nominated countries are not like goods.

On the available information, the Commission is preliminarily satisfied that there is an Australian industry producing like goods to the goods the subject of the application.



### **3.2 Australian market**

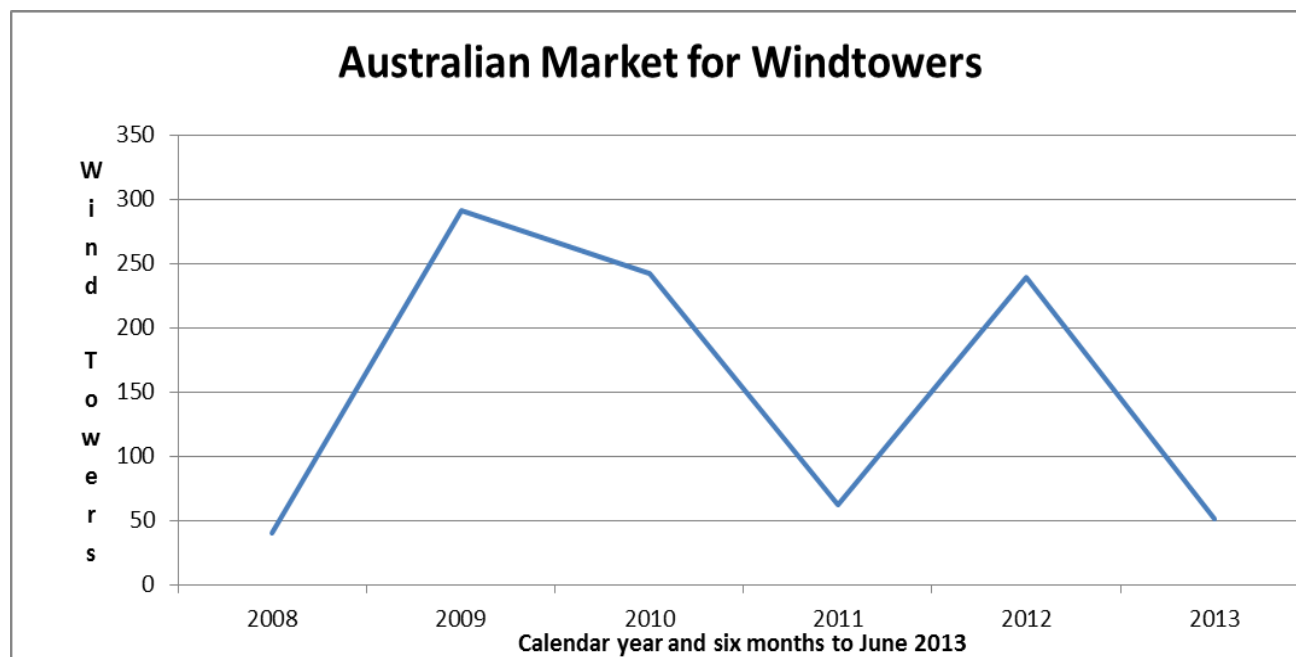
Wind towers manufactured in Australia and imported wind towers are provided for the purpose of structural support to the wind tower nacelle and blades in order for the turbine to reach suitable wind zone heights, whilst also transporting collected energy up and down the tower to the connected transmission grid and allowing personnel access to the turbine for maintenance purposes.

Both Australian and overseas wind tower manufacturers supply wind towers directly to either the OEM turbine producers or the contracted Engineer Procurement and Construct (EPC) firm.

The following graph depicts the Commission’s estimate of the Australian market based on the date of contract for supply for the wind towers using information provided in the application. The Australian market for wind towers is supplied by Keppel Price, other industry members and imports from China, Korea, the Socialist Republic of Vietnam and the Republic of Indonesia.

The Commission considers that the date the contract was awarded should be regarded as the effective date of sale as it reflects when a sale was won or lost by the Australian industry. The Commission notes that there will be a time lag between the awarding of the contract and the physical supply of towers, whether the towers are imported or supplied by the Australian industry.

The graph below shows the Commission’s estimate of the wind tower market based on the date of contract for the calendar years 2008 to 2012 and the first six months of 2013.



The size of Australian market for wind towers comprised 240 wind towers in calendar year 2012 and 51 wind towers in the first six months of 2013.

## 4 PRELIMINARY DUMPING ASSESSMENT

### 4.1 Preliminary assessment

The Commission has received substantially completed questionnaire responses from the exporter of wind towers from China, Shanghai Taisheng Wind Power Equipment Co. Ltd (Shanghai Taisheng) and the exporter of wind towers from Korea Win&P Ltd (Win&P).

The Commission notes that wind tower sales are project driven and differ in their technical properties between projects. The Commission preliminarily considers that domestic sales in China and Korea would not be suitable to compare to export sales due to the number of adjustments required that may be difficult to quantify and identify. The Commission therefore preliminarily considers that normal values cannot be established under s.269TAC(1) and has established normal values under s.269TAC(2)(c).

Using information provided by Shanghai Taisheng and other available information, the Commission constructed normal values under s.269TAC(2)(c) using the cost of production of the exported goods and selling, general and administration incurred in domestic sales plus a reasonable rate of profit.

The Commission notes the previous findings in REP 177, REP 190 and REP 203 and preliminary findings in SEF 198 that steel costs and prices do not reasonably reflect competitive market costs and prices in China. Plate steel is the major raw material input in the production of wind towers.

The Commission preliminarily considers under Regulation 180 of the *Customs Regulations 1926* that the raw material costs (being plate steel) in the submission from Shanghai Taisheng do not reasonably reflect competitive market costs associated with the production or manufacture of like goods. The Commission therefore has uplifted the prices of steel plate used in the constructed normal value for Shanghai Taisheng using available information from previous and present investigations into steel and plate steel.

The Commission has added an amount of profit to the constructed normal value in accordance with Regulation 181A (3)(c). The Commission preliminarily considers that the amount of profit added to the constructed normal value should reflect the profit achieved on wind towers sold by Shanghai Taisheng in the domestic market in China. The Commission preliminarily considers that whilst these sales may not be in the ordinary course of trade due to the costs not being reasonably reflective of market costs this profit is the most reasonable in the absence of other relevant information.

A normal value for Shanghai Taisheng has been calculated on a unit value per wind tower.

Export prices for Shanghai Taisheng have been calculated based on the information provided in the submission. Export prices have been preliminarily assessed under s.269TAB(1)(c), an export price has been calculated on a unit value per wind tower.

Using information provided by Win&P and other available information, the Commission constructed normal values under s.269TAC(2)(c) using the cost of production of the exported goods and selling, general and administration incurred in domestic sales plus a reasonable rate of profit.

The Commission has added an amount of profit to the constructed normal value in accordance with Regulation 181A (2). The Commission preliminarily considers that the amount of profit added to the constructed normal value should reflect the profit achieved on wind towers sold by Win&P in the ordinary course of trade in the domestic market in Korea.

## PUBLIC RECORD

A normal value for WIN&P has been calculated on a unit value per wind tower.

Export prices for WIN&P have been preliminarily assessed under s.269TAB(1)(a). An export price for WIN&P has been calculated on a unit value per wind tower.

A comparison of weighted average normal values with weighted average export prices shows the following dumping margins from the nominated countries:

<b>Country</b>	<b>Exporter</b>	<b>Dumping margin</b>
China	Shanghai Taisheng	16.2%
Korea	Win&P	12.1%

### 4.2 Volumes

The Commission examined the volume of exported goods over the investigation period to preliminarily determine if the volume of those goods calculated to be dumped was of a negligible volume.

When expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from each of the nominated countries was greater than 3%.

The Commission's assessment of export prices, normal values, dumping margins and import volumes is at **Confidential Appendix 1**.

**5 PRELIMINARY MATERIAL INJURY ASSESSMENT**

In its application, the Australian industry claimed that Australian manufactured wind towers compete with the same imported products solely on price and that both wind towers produced in Australia, and imported, must meet the OEM purchaser’s requirements.

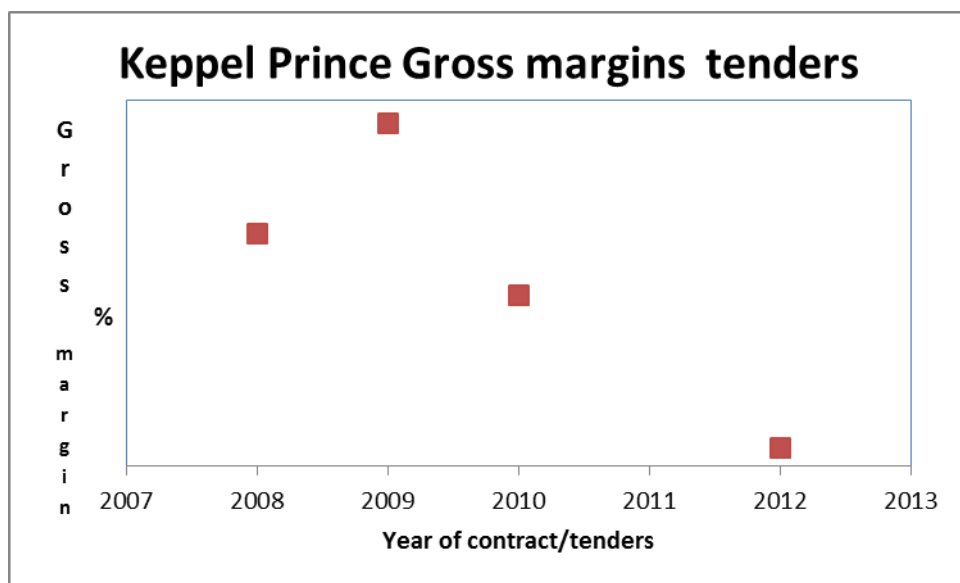
The Commission preliminarily considers that the injury suffered by Keppel Prince, being the major producer of wind towers over the investigation period, to be representative of the injury suffered by the Australian industry.

Evidence gathered from interested parties during the investigation shows that whilst other factors were taken into consideration, price appears to be the major factor in awarding the contract. Information verified with the Australian industry and importers showed that the allegedly dumped imports from Korea and China had been successful in winning contracts from the Australian industry at lower prices.

The total available for tender for the 2012 calendar year was 240 wind towers of which Keppel Prince was successful in obtaining 30 wind towers and another industry member E&A obtained 20 wind towers. The contracts lost to the allegedly dumped imports comprised 56 wind towers from China and 64 wind towers from Korea, 70 wind towers were awarded to a country other than China or Korea. There was one tender available in the first six months of 2013 that comprised 51 wind towers and was awarded to Keppel Prince.

The lost contracts comprising the 56 wind towers from China and the 64 wind towers from Korea caused injury to the Australian industry, representing a significant proportion of the available market as well as potential lost sales revenue, sales volume and effects on capacity utilisation for the Australian industry.

The Australian industry claimed it had also suffered price suppression. Keppel Prince said that all its contract bids are assessed on the basis of their gross profit contribution to the company. The Commission compared the gross margins that Keppel Prince achieved over the injury period as shown in the following chart. The gross margins comparison is as a percentage of gross profit over revenue for projects.



Note: vertical axis values have been removed due to the commercial sensitivities of the data.

## PUBLIC RECORD

The chart shows that Keppel Prince's margins increased in 2009 before decreasing in 2010 and 2012. Note that Keppel Prince did not win any tenders in 2011. The Commission considers that on the basis of this information that Keppel Prince has suffered injury in the form of price suppression.

The Commission considers that it is reasonable at this preliminary stage of the investigation to find that the allegedly dumped prices of wind towers enabled exporters to successfully win domestic contracts by undercutting the Australian industry prices.

Evidence and information requested by the Commission and provided by Keppel Prince support its claim of price pressures from the allegedly dumped imports that resulted in price undercutting and injury. There is evidence of reduced prices, reduced margins and lost contracts leading to lost revenue. The evidence requested by the Commission also appears to support the claim that price is the major factor in determining the tenders.

Keppel Prince provided evidence that support its claims of volume injury from the allegedly dumped imports. Evidence and information requested and provided by Keppel Prince support its claims of price pressures from the allegedly dumped imports that have caused price suppression and price depression in relation to 30 of the wind towers it won contracts for during the investigation period.

Whilst the Commission has preliminarily determined for the purposes of this PAD that dumping exists and it has caused material injury to the Australian industry, the Commission will continue to examine other possible causes of injury to the Australian industry.

The Commission's assessment of injury and causal link is at **Confidential Appendix 2**.

## **6 REASONS FOR MAKING A PAD**

### **6.1 General**

The Commission has been able to complete preliminary assessments of dumping based on verified and unverified information. The preliminary assessments show that exports of wind towers from China and Korea during the investigation period were at dumped prices. Furthermore, the volume and dumping margins of the dumped goods were not negligible from those nominated countries.

The Commission has preliminarily found that dumped exports of wind towers undercut competing tender offers made by the Australian industry. It is reasonable to expect that the increased competition from dumped imports caused the Australian industry to suffer from price suppression, price depression, lower revenues, lower sales volume, reduced market share and reduced profits and profitability.

Based on the available information as at 5 December 2013, the Delegate of the Commissioner is satisfied for the purpose of the PAD that:

- wind towers have been exported from China and Korea at less than their normal value;
- there is an Australian industry producing like goods that is experiencing injury; and
- the dumped goods are causing material injury to the Australian industry.

Consequently, the Delegate of the Commissioner is satisfied that there appear to be sufficient grounds for the publication of a dumping duty notice in respect of wind towers exported to Australia from China and Korea.

The Delegate of the Commissioner has therefore made PAD No. 221 under s.269TD to that effect.

In making the PAD, the Delegate of the Commissioner has had regard to the application, verified and unverified submissions received within 40 days of the publication of the notice of initiation, and other matters the Commissioner considers relevant.

Additionally, the Delegate of the Commissioner has also had regard to other relevant information and data submitted by interested parties to the investigation and gathered by the Commission during its investigation so far (where appropriate), including:

- data from importers;
- data from exporters;
- data submitted by the Australian industry; and
- submissions made to the investigations from day 40 of the investigation to the date of making the PAD (where possible).

<b>7</b>	<b>PROVISIONAL DUMPING MEASURES</b>
----------	-------------------------------------

### 7.1 Preliminary finding

The ACBPS will require and take securities under s.42 in respect of interim dumping duty that may become payable. Securities will apply in respect of imports of wind towers from China and Korea and entered for home consumption on or after 6 December 2013.

### 7.2 Preliminary assessment

The Commission understands that tender contracts continue to be assessed by importers and end-users and that exporters of preliminarily dumped goods from the nominated countries continue to submit tender offers for the supply of those contracts. The Commission is satisfied that securities are warranted to prevent material injury being suffered by the Australian industry whilst the investigation continues.

### 7.3 Preliminary provisional measures

Recent changes to the legislation allow the Minister to utilise additional methods of calculating the interim dumping duty beyond the single form that was previously available in the Act. The new forms of duty are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- combination of fixed and variable duty method;
- floor price duty method;
- fixed duty method (\$X per tonne); or
- *ad valorem* duty method (ie a percentage of the export price).

Given that wind towers are generally unique in their technical specifications for projects and that prices can vary substantially based on the height, thickness and inclusions with the towers, the Commission considers that an *ad valorem* rate of duty is the most reasonable option for imposing securities. The amount of provisional duties will be calculated as a proportion of actual declared export prices based on the level of the full dumping margins calculated for the PAD, as tabulated below:

Manufacturer/Exporter	Country	Preliminary Dumping margin
Shanghai Taisheng	China	16.2%
All other Chinese exporters	China	16.2%
Win&P	Korea	12.1%
All other Korean exporters	Korea	12.1%

**PUBLIC RECORD**

**8 ATTACHMENTS**

<b>Attachment / Appendix No.</b>	<b>Attachment / Appendix title</b>
Non-Confidential Attachment 1	Public notice - PAD
Confidential Appendix 1	Preliminary export prices, preliminary normal values, preliminary dumping margins and import volumes
Confidential Appendix 2	Injury and causal link assessment
Confidential Attachment 3	Commissioner Determination for PAD No. 221