



**INVESTIGATION 221**

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

**VERIFICATION REPORT – IMPORTER**

**REPOWER AUSTRALIA PTY LTD**

THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED THEREIN  
WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND MAY NOT REFLECT  
THE FINAL POSITION OF THE ANTI-DUMPING COMMISSION

**October 2013**

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### ABBREVIATIONS

\$	Australian dollars
ADN	Australian Dumping Notice
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Commission	Anti-Dumping Commission
█	█
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Minister	the Minister for Industry
USP	Unsuppressed Selling Price

## **1 BACKGROUND AND PURPOSE**

### **1.1 Background**

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

The Commissioner of Anti-Dumping (the Commissioner), after having regard to the Anti-Dumping Commission's (the Commission) consideration report (CON 221), decided not to reject the application for the publication of a dumping duty notice.

Public notification of initiation of the investigation was made on 29 August 2013 in *The Australian* newspaper and Anti-Dumping Notice (ADN) 2013/68.

### **1.2 Verification report**

REpower Australia Pty Ltd (REpower) was named in the application as an importer of wind towers from the nominated exporting countries. The Commission contacted REpower following the initiation of the investigation seeking information on its importations.

REpower advised the Commission that procurement of wind towers was handled by the Tower Procurement group of REpower Systems SE located in Germany and the United States of America (USA). REpower suggested a meeting with the procurement group in the USA. The Commission advised REpower that it would not be able to meet with REpower USA and asked REpower to provide documents relating to its purchase and importation of wind towers in Australia.

REpower agreed and provided all requested information and documents.

REpower appointed Gross & Becroft Lawyers to act on its behalf for the investigation. The relevant contact personnel for REpower and Gross & Becroft are:

REpower – Katrina Langdon - Strategic Sourcing Manager

Gross & Becroft – Dr Ross Becroft

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REpower advised the Commission that it had imported wind towers from [REDACTED] [supplier details] for the Mt Mercer project and that these were its only importations of wind towers during the period of the investigation.

It was explained to REpower that we would prepare a report and provide it to the company to review for factual accuracy, and to identify those parts of the report it considers to be confidential. It was further explained that, in consultation with the company, we would prepare a non-confidential version of the report, and place this on the investigation's Public Record.

The Commission requested information to:

- confirm that REpower is the importer of wind towers attributed to it within the commercial database and obtain information to assist in establishing the identity of the exporter(s) of the wind towers;
- verify information on imports of wind towers to assist in the determination of export prices;
- establish whether the purchases of wind towers were arms-length transactions;
- establish post-exportation costs;
- identify sales and customers and verify sales volume, selling prices and selling costs;
- obtain general information about the Australian market for wind towers;
- collect information on the Mt Mercer wind farm; and
- seek views from REpower on the Australian market for wind towers.

### 1.3 Investigation process and timeframes

The investigation process and timeframes were advised to REpower as follows.

- The investigation was initiated on 29 August 2013.
- The investigation period is 1 January 2012 to 30 June 2013.
- The injury analysis period is from 1 January 2008 for the purpose of analysing the condition of the Australian industry.
- Responses to the exporter questionnaire (REQ) are due 7 October but may be later due to finding right contacts. The Commission will visit and verify exporter information to assess dumping and seek views on market and injury. The Commission will use all available information where exporter does not cooperate.
- Responses to the importer/end questionnaire are also due 7 October. Some of these may also be later.
- A preliminary affirmative determination (PAD) may be made no earlier than day 60 of the investigation (27 October 2013) and provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made.

The Commission will not make a PAD until (and if) it becomes satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice.

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This was distinguished from the 'reasonable grounds' threshold for initiation of the investigation.

- The statement of essential facts (SEF) for the investigation is due to be placed on the public record by 16 December 2013, or such later date as the Minister allows under s.269ZHI of *the Customs Act 1901* (the Act).

The SEF will set out the material findings of fact on which the Commission intends to base its recommendations to the Minister, and will invite interested parties to respond, within 20 days, to the issues raised therein. It is essential that submissions are provided in a timely manner and with a public record version to enable them to be considered.

- Following receipt and consideration of submissions made in response to the SEF, the Commission will provide its final report and recommendations to the Minister.

This final report is due no later than 30 January 2014, unless an extension to the SEF is approved by the Minister.

- The Ministers decision is due 30 days after the final report.

### 1.4 Anti-dumping in general

REpower had been advised at initiation of the investigation process and details. An outline of anti-dumping was also provided via this report.

There are three essential links for imposition of measures:

1. the Australian industry must be suffering or there must be a threat of material injury; and
2. the goods must be dumped; and
3. the dumped goods must be cause of material injury.

Dumping is assessed on goods by comparison of the export price to the normal value.

- The export price is generally ex-works (EW) or free on board (FOB) and deductions may be made to get an imported price back to EW or FOB.
- The normal value is usually assessed on domestic sales in the ordinary course of trade at the same period as the export sales, that is, if export sales are based on the date of contract then normal values are based on the same dates.
- Where no suitable normal values may be done on domestic sales, the Commission may construct normal values based on costs plus, where appropriate, an amount for profit. The Commission may also consider 3<sup>rd</sup> country sales as a suitable comparison.

Where dumping, injury and a causal link are found duties may be imposed.

- Dumping duty can be as a percentage of the export price, as a fixed amount or a combination of both. The form of duty would be examined further given the uniqueness of each tower project in price and scope. REpower is welcome to make a submission on this.

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- Duties may be imposed up to the full level of dumping or up to a level required to remove injurious effects (the non-injurious price (NIP)). The NIP is based on the unsuppressed selling price (USP).

Where the Commissioner is satisfied that grounds for duties exist the Commissioner may publish a PAD imposing securities whilst the investigation continues. These securities may be converted to Interim dumping duties (IDD). IDDs are imposed after an investigation is concluded and the Minister accepts the Commission's recommendation to impose measures. Importers can apply every six months for a final assessment of the IDD that may see none, some or all the duty refunded.

The Commissioner may terminate an investigation before conclusion where the Commissioner is satisfied of any of: no dumping, no material injury or no causal link.

Decisions by the Commissioner to terminate and by the Minister to impose measures can be appealed to the Anti-Dumping Review Panel (ADRP). In any appeal to the ADRP only information before the Commissioner/Minister may be taken into account.

The Anti-Dumping Commission (ADC) website [www.adcommission.gov.au](http://www.adcommission.gov.au) has detailed information on anti-dumping investigation procedures. The Electronic Public Record (EPR) contains all non-confidential information on the wind towers investigation.

## **2 THE GOODS**

### **2.1 Description**

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.

### **2.2 Tariff classification**

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.

The customs duty rate for wind towers classified under tariff headings 7308 imported from China is 4% and from Korea is 5%.



### **3 COMPANY DETAILS**

#### **3.1 Commercial Operations**

REpower markets and installs wind turbine generators supplied by REpower Systems SE for wind farm developers and other customers.

[REDACTED]

[details on suppliers]

REpower’s website notes that it has been operating in Australia for 10 years and is now the largest Engineering, Procurement and Construction (EPC) provider in the region. REpower has approximately 30% of the Australian wind energy market, with over 900 MW of wind energy capacity installed over 14 wind farm projects and another 131 MW under construction.

REpower projects to date are listed below.

<b>Project</b>	<b>Contract</b>	<b>Turbines</b>	<b>Client</b>
<b>NEW SOUTH WALES</b>			
<a href="#">Capital Wind Farm</a>	EPC	67 x S88	Infigen Energy
<a href="#">Cullerin Range</a>	S&I	8 x MM82 7 x MM92	Origin Energy
<a href="#">Woodlawn</a>	EPC	23 x S88	Infigen Energy
<b>SOUTH AUSTRALIA</b>			
<a href="#">Clements Gap</a>	S&I	27 x S88	Pacific Hydro
<a href="#">Hallett 1</a>	EPC	45 x S88	AGL Energy
<a href="#">Hallett 2 (Hallett Hill)</a>	EPC	34 x S88	AGL Energy
<a href="#">Hallett 4 (North Brown Hill)</a>	EPC	63 x S88	AGL Energy
<a href="#">Hallett 5 (The Bluff)</a>	EPC	25 x S88	AGL Energy
<a href="#">Snowtown</a>	EPC	47 x S88 1 x S95	Trustpower
<b>VICTORIA</b>			
<a href="#">Hepburn</a>	EPC	2 x MM82	Leonards Hill

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			Wind Operations
<a href="#">Mt Mercer</a>	S&I	64 x MM92	Meridian Energy Ltd
<a href="#">Oaklands Hill</a>	EPC	32 x S88	AGL Energy
<a href="#">Portland Stage II (Cape Bridgewater)</a>	S&I	29 x MM82	Pacific Hydro
<a href="#">Portland Stage III (Cape Nelson South)</a>	S&I	22 x MM82	Pacific Hydro
<a href="#">Portland Stage IV (Cape Nelson North &amp; Cape Sir William Grant)</a>	S&I	10 x MM82 13 x MM92	Pacific Hydro
<a href="#">Wonthaggi</a>	EPC	6 x MM82	Regional Wind Farm

Repowers website is at <http://www.repower.com.au/en/home/>

REpower was awarded the contract to supply 64 wind turbines for Mt Mercer in [REDACTED]. REpower purchased 64 wind towers (including embeds) for the wind turbines from [REDACTED] for the Mt Mercer project.

### 3.1.1 Ownership and corporate structure

[REDACTED] [company structure] REpower Systems SE is a wholly owned subsidiary of the Suzlon Group, Suzlon Energy Ltd, located in Pune, India.

REpower Systems SE is the company responsible for the procurement of wind towers in Australia.

REpower and Suzlon have combined operations in the Australian and New Zealand wind energy markets and are now operating as REpower Australia. The Suzlon Group is the fifth largest wind power group in the world with operations in 33 countries. The Suzlon Group has supplied over 20 GW of wind energy generating capacity across the world.

### 3.2 Relationship with suppliers

REpower advised that it does not have any commercial relationship with its overseas or local suppliers of wind towers for the Australian market other than as an arms length buyer and seller. Suzlon manufactures wind towers at two sites in India; however these towers have not been used in the Australian market.

#### 3.2.1 Australian suppliers

REpower has previously purchased wind towers from [REDACTED]. Suzlon has previously purchased wind towers from [REDACTED].

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REpower advised that it had considered both [REDACTED] as suppliers of wind towers for the Mt Mercer project. [supplier details]

REpower also advised that it continues to engage with Australian companies where possible for the supply of wind towers to the Australian market.

### 3.2.2 Overseas suppliers

REpower considered [REDACTED] overseas suppliers in its final stages of the tender for the Mt Mercer project, [REDACTED] was the successful bidder for the Mt Mercer project.

### 3.3 Like goods

REpower imported towers for the Mt Mercer project from [REDACTED].

Given that REpower sought and analysed pricing of towers from [REDACTED] for the Mt Mercer project we consider that:

- the primary physical characteristics of imported and locally produced goods are similar;
- the imported and locally produced goods are commercially alike as they are considered in the tender process sold to common users;
- the imported and locally produced goods are functionally alike as they have a similar range of end-uses: and
- the imported and locally produced goods are manufactured in a similar manner.

With regard to the information provided we are satisfied that the Australian industry produces like goods to the wind towers imported by REpower from [REDACTED].

REpower noted that one of the Australian manufacturers, [REDACTED] does not supply internal components to the wind towers. REpower also pointed out that the Commission, in any comparison of like goods, must compare goods that have the same internal components and accessories (if any).

The Mt Mercer project is discussed in detail further in this report.

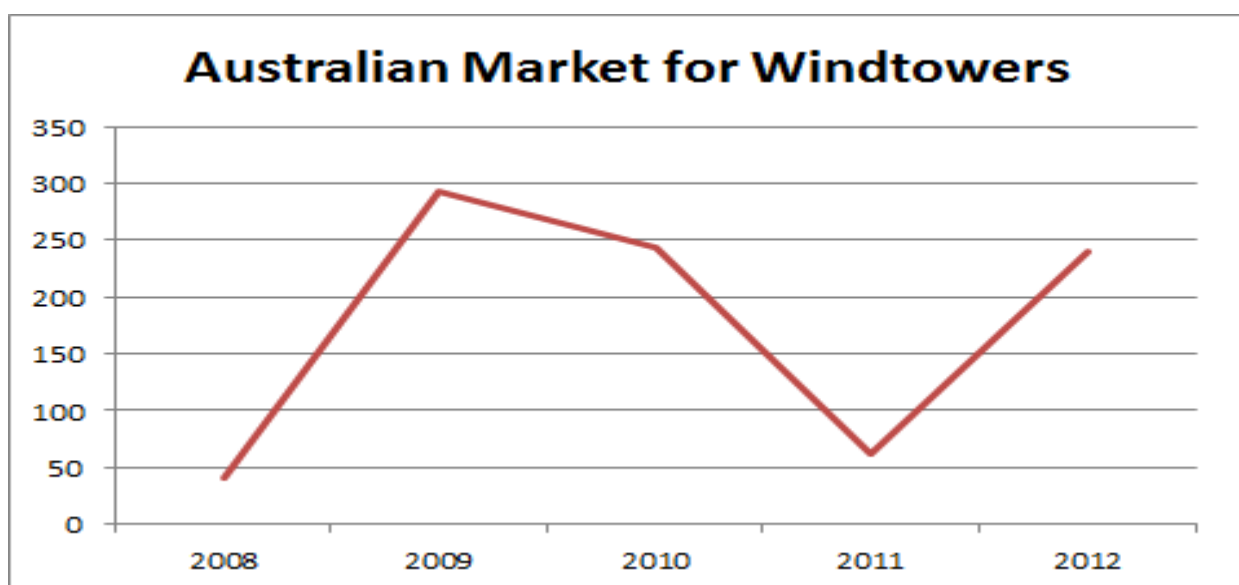
## 4 AUSTRALIAN MARKET

### 4.1 Market size and analysis

In Consideration Report 221 the Commission considered 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 noted 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 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 Commission estimates that in calendar year 2012, the size of the Australian market for wind towers was approximately 240 towers.



The assessment of the size of the Australian market will be reviewed when information is provided by other industry members, importers, exporters and other interested parties.

In a written submission, REpower has put forward its own calculations of wind towers from its knowledge of projects which discloses a different number of wind towers supplied in each year in comparison with the above chart. However, much of the discrepancy is likely to be due to the method by which a project was included in the annual figures. In this regard, REpower estimated the number of towers in each year by working back from the project completion date to estimate the date of the wind tower contract.

### 4.2 General

REpower made a number of comments on the general conditions of the wind farm industry in Australia. REpower noted the following matters:

- Historically there have been large fluctuations in the demand for wind farms in Australia which is likely to continue in the foreseeable future. This is due to factors such as the large capital intensive nature of wind farm projects as well as the overall conditions of the renewable energy markets.

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- That demand in Australia for the supply of wind towers is unlikely to double during the next 2-3 years as asserted by the Australian industry;
- There is a degree of uncertainty created by the change in Federal Government and there is to be a review of renewable energy targets and policies in 2014.
- It is very unlikely that 400 towers per year will be constructed for the balance of this decade in order to achieve a 20 per cent renewable energy mix by 2020.

There are a number of market factors that may reduce the demand for wind farms in the foreseeable future. For example, the present low price of Renewable Energy Certificates (RECs), which are an important factor in the decision to construct wind farms

### 4.3 Mt Mercer wind farm

The Mt Mercer wind farm project is based in Victoria, Australia, located approximately 30 km south of Ballarat. REpower Systems SE signed a contract on [REDACTED] with Meridian Energy Ltd (Meridian) to supply 64 MM92 wind turbines, each with 2.05 MW of rated power, to the Mt Mercer wind farm. Meridan issued a Notice to Proceed with the project on [REDACTED]. The wind turbines are scheduled to be installed and commissioned between September 2013 and January 2015.

REpower required 64 wind towers including embeds for the project. The towers were specified as:

- 80 metres in height type MM92, imported as 3 sections and with 1 x embedment;
- the equipment included and shipped with the wind tower was 1 x bottom platform, 1 x external stairs, handrail and door and other internal components including 1 x bus bar, cables and lighting.
- The only free issue item from REpower was the bus bar, supplied to [REDACTED] for the Mt Mercer project. However, in other projects a service lift or a climb assist system can be provided as a free issue item.

REpower also advised that other accessories, such as weather monitoring equipment, bottom cabinet, bolts, cables connecting busbar to converter, special lifting equipment were supplied by REpower directly to the project and not through [REDACTED].

#### 4.3.1 Procurement process

REpower provided a brief timeline of the project and information concerning its selection of a wind tower supplier for Mt Mercer as follows.

REpower stated that the most important criteria for choosing a tower supplier is the supplier's ability to consistently produce high quality towers within often tight time frames and to provide high quality services associated with its products. Whilst price is important, it is not the most important criterion.

[REDACTED]

[process

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details] REpower was awarded the contract to supply wind turbines for Mt Mercer in [REDACTED]. The Contract for the Supply and Installation of Wind Turbines by REpower Systems SE was executed by Mt Mercer Windfarm Pty Ltd on [REDACTED] and the Notice to Proceed was issued on [REDACTED].

[REDACTED]. In the Strategic Decision Document the offers of [REDACTED] potential suppliers were compared. In the Strategic Decision Document, it is noted that [REDACTED] were not currently qualified REpower suppliers. Copies of the Strategic Decision Document that includes pricing comparisons and delivery schedules are at **Confidential Attachment Pr1**.

The purchase order for the embeds was placed

[REDACTED]. REpower said that only a supplier already accredited with REpower could achieve this timeline due to the lengthy qualification process and manufacturing and shipping lead times. Hence the order for the 64 embeds was placed with [REDACTED] on the [REDACTED].

The decision to purchase the wind towers from [REDACTED] was made in early [REDACTED].

The Purchase Order issued by REpower to [REDACTED] for 64 wind towers was issued on [REDACTED]. The purchase order for [REDACTED] on [REDACTED]. Copies of these documents are at **Confidential Attachment Pr2**.

We note that the Strategic Decision Document provides two dates of comparisons for the [REDACTED] mentioned suppliers, dated [REDACTED]. Pricing was for the wind towers and embeds as separate items; delivery was [REDACTED].

[REDACTED]. Logistic costs, including transport (ocean and land) and import charges, had been added by REpower for each supplier to arrive at a delivered to site cost for all suppliers. All pricing is in Australian dollars (AUD) with any currency conversions required using the date of the price comparison as the conversion date. The document shows that [REDACTED].

[REDACTED]. [pricing details]

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The accreditation of suppliers is discussed in the following section.

We note that the purchase order to [REDACTED] is on the prices and terms stated in the pricing document, being in [REDACTED]. Payment terms are stated as [REDACTED]. Verification of the imports for Mt Mercer is discussed later in this report.

### 4.3.2 Choice of supplier

REpower submitted that the main reason why [REDACTED] was chosen was that [REDACTED] is an ongoing accredited supplier of REpower on a world-wide basis and with which REpower has a [REDACTED]. REpower manufactures and supplies highly complex power stations (wind turbines), accredited by an independent third party to achieve a design life of at least 20 years. As such REpower has a rigorous Quality Assurance process for both its in-house manufacturing and external supplier base. REpower provided a summary of REpower's supplier evaluation process and its initial Supplier Self Evaluation Questionnaire which it said is very detailed and comprehensive. Copies of these documents are at **Confidential Attachment Pr3**.

The process can take up to 12 months to complete and under REpower's global sourcing procurement policy, it is a requirement for REpower entities to use an accredited supplier.

During the qualification process, a supplier's ability to deliver to a defined schedule is also assessed. REpower submitted that is particularly important

[REDACTED]

[*delivery risks*]

We noted that the documents provided for the supplier evaluation show that there are [REDACTED] steps in the process and [REDACTED] quality approval stages. The document is valid from [REDACTED].

[REDACTED]

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[REDACTED]

[REDACTED] . [supplier evaluation process]

Any purchases from [REDACTED] are made pursuant to a

[REDACTED]

[REDACTED] . REpower said that the Agreement is extremely comprehensive and was negotiated at the highest echelons within REpower and [REDACTED] .

[REDACTED]

[REDACTED] . Copies of these documents are at **Confidential Attachment Pr4.**

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]. [Agreement details]

REpower also provided an article about the REpower Suppliers Day [REDACTED] and the award for [REDACTED] highlighting their outstanding performance as supplier, this article is at **Confidential Attachment G1**.

REpower said that [REDACTED] has the capacity to produce 400 wind towers per annum and REpower's experience is that [REDACTED] can produce [REDACTED] wind towers per week and [REDACTED] embeds per week (for REpower). REpower said that this is important in order to assist REpower to satisfy wind farm project deadlines as discussed above.

### 4.3.3 Industry accreditation

REpower said that in the Strategic Decision Document, it is noted that [REDACTED] were not currently qualified REpower suppliers. However REpower understands the importance of seeking local content where the local suppliers are competitive. REpower said it is prepared to qualify local suppliers providing they meet the rigorous Quality Assurance Audit requirements and if engaged post qualification, perform well in terms of quality of product, documentation and timeliness. REpower also said that as a result of the request for quotation (RFQ) process, it was clear the local suppliers were

[REDACTED]. In addition, on 5 October 2012 RPG entered into voluntary administration.

[REDACTED]. [REDACTED], REpower began the supplier accreditation process with these two companies, conducted a supplier audit and issued purchase orders to each to manufacture [REDACTED] embeds to satisfy the [REDACTED] part of the Quality Audit.

[REDACTED]. Embeds are also a less complex and lower risk product in wind farm manufacturing and it is common for suppliers to qualify for these products first prior to qualifying for a complete wind tower and its internal parts.

REpower provided summaries of the results of [REDACTED] that [REDACTED] went through with REpower in late 2012 together with feedback provided by REpower. Copies of these documents are at **Confidential Attachment Ac1**.

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[REDACTED]

[REDACTED] were assessed items including: supplier management, production covering process input and sequences, personnel and material resources and effectiveness and efficiency.

[REDACTED]

REpower advised that it has used [REDACTED] previously to supply wind towers.

[REDACTED]

[REDACTED]. In accordance with REpower's Quality Assurance guidelines, supplier accreditation lapses after a defined period and thus re-qualification was required.

We asked REpower if [REDACTED] was advised accreditation had lapsed? Why did REpower consider them if not accredited? Was there time to reaccredit them given the estimated 12 month accreditation process and could they have been assessed during the [REDACTED] period when quotations were revalidated?

REpower advised in response that

[REDACTED]

[REDACTED] [assessment of suppliers]

## 5 IMPORTS

REpower issued the purchase order to [REDACTED].

The Commission considers at this stage that the purchase order dates best reflects the date of sales for the wind towers and embeds.

### 5.1 Importation and supply process

REpower provided a delivery schedule for the wind towers and embeds for the Mt Mercer project. The schedule shows that the

[REDACTED] [delivery

schedule] A copy of the delivery schedule is at **Confidential Attachment Imp1**.

[REDACTED].

REpower explained that the Mt Mercer project involves the supply of a total of 64 wind turbines. The invoicing occurs at the time the goods are completed and inspected and is determined by the supply contract. However, the number of wind towers that are actually shipped at any one time will depend upon factors such as ship availability, economies for batching for shipping and onsite project requirements. Over the course of the project the total number of wind towers being invoiced and shipped will match up.

REpower provided an outline of the importation delivery process from [REDACTED] to the Mt Mercer site.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED] [import process]

### 5.2 Verification of imports

We asked REpower to provide the following documents and information:

**24 towers delivered** [REDACTED]

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Copies of the:

- commercial invoice;
- payment to the supplier;
- port, handling charges in [REDACTED];
- bill of lading;
- packing list;
- overseas freight and insurance;
- Customs entry;
- Port charges including landing, wharfage charges customs duties etc;
- cartage/delivery fees; and
- any other charges between the [REDACTED] point and the landed, duty paid into-site (Mt Mercer) point, including charges such as storage and demurrage.

**25 towers invoiced** [REDACTED]

Copy of the commercial invoice and payment.

**8 embeds delivered** [REDACTED] **and 10 embeds delivered**  
[REDACTED]

Copies of the:

- commercial invoice;
- payment to the supplier;
- port, handling charges in [REDACTED];
- bill of lading;
- packing list;
- overseas freight and insurance;
- Customs entry;
- Port charges, including landing, wharfage charges customs duties etc;
- cartage/delivery fees; and
- any other charges between the [REDACTED] point and the landed, duty paid into-site (Mt Mercer) point, including charges such as storage and demurrage.

**46 embeds invoiced** [REDACTED]

Copies of the commercial invoices and payments.

REpower provided copies of the requested documents which are at **Confidential Attachment Imp2-5**.

REpower provided copies of the shipping contracts for the wind towers and embeds from [REDACTED] to Australia.

[REDACTED]

Copies of documents relating to shipping charges and insurance are at **Confidential Attachment Imp6**.

REpower also provided copies of contracts for transport and custom clearing services in Australia, covering items including wharfage, storage, reloading on truck, demurrage and

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delivery and handling charges. Copies of documents relating to these costs are at **Confidential Attachment Imp7**.

From the documents we calculated post [REDACTED] to site costs per wind tower, including embed of [REDACTED]. Calculation of these costs is at **Confidential Appendix 1**.

The total to site cost of a wind tower with embed is calculated at [REDACTED] which is comparable with the costing used by REpower in its assessment of the tenders.

### 5.3 Forward orders

[REDACTED]  
[REDACTED]. [future projects]

### 5.4 Export price

We have reviewed the documents provided and are satisfied subject to further inquiries, that the export price is the contract price between REpower Systems SE and [REDACTED].

The price stated in the purchase orders and invoices is [REDACTED] per wind tower and [REDACTED] per embed.

The terms stated in the documents are

[REDACTED]. The available information supports these terms.

## **6 WHO IS THE IMPORTER AND EXPORTER**

### **6.1 Who is the importer?**

We reviewed the documents provided in respect of the selected shipments. We note that:

- REpower Systems SE issues the purchase orders to [REDACTED];
- REpower Systems SE is listed as the purchaser on the commercial invoices from [REDACTED];
- REpower Systems SE arranges for the importation of the goods into Australia;
- REpower Systems SE is listed as the consignee on the Bills of Lading; and
- REpower Systems SE is listed as the owner of the goods on the customs entries.

We consider REpower Systems SE to be the beneficial owner of the goods at the time of importation, and therefore the importer.

### **6.2 Who is the exporter?**

The Commission will generally identify the exporter as:

- a principal in the transaction, located in the country of export from where the goods were shipped, who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal in the transaction, located in the country of export, who owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

Subject to further inquiries, we are satisfied that [REDACTED] can be considered the exporter of wind towers imported by REpower Systems SE. To our knowledge, this entity is a principal in the country of export, which manufactures the goods and gave up the goods for shipment directly to REpower Systems SE.

## **7 ARMS LENGTH**

In determining export prices under s. 269TAB(1)(a) and normal values under s. 269TAC(1), the Act requires that the relevant sales are arms length transactions.

S.269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; and
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

REpower stated that it has no relationship with its supplier other than being a buyer and seller in arms' length transactions. It stated that it does not receive any reimbursement, rebates or other support from its supplier in respect of the goods and advised that the invoice price was the price paid. We found no evidence to contradict this.

We are satisfied that import transactions between REpower Systems SE and its supplier are at arms' length in terms of s. 269TAA.

## **8 CAUSATION**

We sought REpower's views on the Australian industry claims in its application of injury and causation from the allegedly dumped imports of wind towers from China and Korea.

REpower's views were that any alleged dumping cannot be found to have caused material injury to the Australian industry.

The subject goods are sophisticated expensive made-to-order products supplied via a complex international supply chain. Suppliers like REpower will not base their selection of wind tower manufacturer based simply on price. A number of other more important criteria must be met including:

- The need for wind tower manufacturers to be accredited suppliers for quality assurance purposes;
- The requirement for products to be manufactured to specific design and product standards;
- The ability for REpower to comply with a wind farm customer's project time frames, which may be very tight; and
- The ability of a wind tower supplier to have the capability to produce complete wind towers, including equipment and internal components.

On the question of material injury, REpower raised a number of matters including:

- The currency movements in the USD-AUD exchange rate between 2008 and 2013 that have been generally unfavourable to Australian manufacturers;
- The high demand variability in the wind farm industry in Australia;
- Low economies of scale and high production costs of the Australian industry;
- The decision by Australian producers to remain general fabricators and to not specialize in wind tower production (and seek to export) as many foreign suppliers have done; and
- The high costs of shipping products to Australia which, in many cases, to some degree already provides the Australian industry with protection against import competition.



## 9 UNSUPPRESSED SELLING PRICE

Under s 8(5B) of the *Customs Tariff (Anti Dumping) Act 1975*, the Minister must have regard to the desirability of fixing a lesser amount of duty such that the sum of the export price and the lesser amount of duty does not exceed the non-injurious price (NIP). Section 269TACA of the *Customs Act 1901* defines the non-injurious price as the minimum price necessary to remove the injury (or hindrance) caused by dumping and/or subsidy.

Unsuppressed selling price and non-injurious price issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice.

The Commission generally derives the non-injurious price by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price.

The Commission's preferred approach to establishing unsuppressed selling prices observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, the Commission then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export free on board point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

Given the uniqueness of each type of wind tower, in terms of height, thickness inclusions/exclusions (Such as embeds, lifts) and free issue goods the Commission was seeking views from interested parties on methods of calculating and applying a USP and NIP.

REpower advised that it will provide a submission on the unsuppressed selling price in due course.

## **10 RECOMMENDATIONS**

Based on the information available, for wind towers exported by [REDACTED] to REpower Systems SE:

- the goods have been exported to Australia otherwise than by the importer;
- it appears that the goods have been purchased by the importer from the exporters;
- the purchases of the goods by the importer were arms length transactions; and
- the goods are subsequently sold by the importer to a person who is not an associate of the importer.

Subject to further inquiries with the exporter, we are satisfied that the export prices can be established under s. 269TAB(1)(a) at a [REDACTED] level using the invoice price.

**11 APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix</b>	█ to site costs
<b>Confidential Attachment G1</b>	Supplier award
<b>Confidential Attachment PR1</b>	Pricing comparison suppliers
<b>Confidential Attachment PR2</b>	Purchase orders
<b>Confidential Attachment PR3</b>	Supplier evaluation documents
<b>Confidential Attachment PR4</b>	FSA QAA documents
<b>Confidential Attachment ACC1</b>	Industry accreditation analysis
<b>Confidential Attachment IMP1</b>	Delivery schedule
<b>Confidential Attachment IMP2-5</b>	Purchase/Import documentation
<b>Confidential Attachment IMP6</b>	Shipping insurance
<b>Confidential Attachment IMP7</b>	Transport, wharfage other to site charges