

Goldwind Australia

ADC 221 - Wind towers exported from China and Korea

Second Submission to the Anti-dumping Commission

Document Version History

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1 Introduction

On the current timetable, the ADC is shortly to issue its Statement of Essential Facts in this case and, in light of the materials that have been disclosed on the public record to date, GWA has some observations to make in relation to the following points discussed in this submission:

- normal value of wind towers in China;
- export price of the TSP Gullen Range towers;
- Australian market conditions; and
- the Keppel Prince Verification Report.

2 Normal Value

Section 269TAC of the *Customs Act 1901* provides the framework for the establishment of the 'normal value' of the relevant goods. The general methodology is provided in subsection 269TAC(1) (ie the price paid or payable in the ordinary course in the source country) and the exceptions to that rule are set out in the subsequent subsections. This section can, and should, be interpreted consistently with the World Trade Organisation (WTO) Anti-Dumping agreement, the 'General Agreement on Tariffs and Trade' (GATT).

The main exception of relevance in this case is if there were a relevant "market situation" affecting the sales of wind towers in China.

In this case, the applicants have submitted that the normal price should not be established using the price paid or payable for wind towers in the ordinary course of trade in China because there is a relevant "market situation". The claimed "market situation" is that the price of Chinese steel used as an input into tower production is a distorted price.

However, the applicants' proposed approach cannot be followed.

WTO case law¹, which applies to Australia by way of the GATT, states that a "market situation" has to be in relation to the products that are the subject of the investigation themselves – not the price of an input into the production of the relevant goods.

It is therefore necessary for the ADC to establish the normal value based on the trade in China of wind towers in the ordinary course of trade in that country.

GWA engaged consultants KPMG to prepare an analysis of the Australian and Chinese markets for wind towers, with information sourced through actual purchases by a Goldwind associated company in China and the GWA competitive tender process (please see below at 3 for more information). KPMG have calculated that the normal value should be approximately::

- for 1.5MW towers [REDACTED] per set, or [REDACTED] per tonne; and
- for 2.5MW towers [REDACTED] per set, or [REDACTED] per tonne.

Refer to the accompanying KPMG letter and spreadsheet calculation.

¹ The EC-Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil (EC – Cotton Yarn) case explicitly rejects the notion that a 'market situation' can be found to exist for a product (say wind towers) on the basis of inferring that the market for an input (say steel) is subject to a "market situation". Rather, unless a 'market situation' is found in the wind tower market itself, which GWA submits means that the ADC is required to take the Chinese domestic price for wind towers as the normal value for wind towers. Similarly, the US-Softwood Lumber and Egypt – Steel Rebar both stand for the proposition that the ADC must look to Chinese home market data when establishing the normal value.

If (despite this submission) the ADC were to reach the conclusion that the Chinese domestic prices for wind towers can and should be disregarded, Goldwind notes that there is no information available to the ADC to establish a constructed value. Although information appears to have been provided by the applicants, the totality of the substance has been kept confidential and no summary has been provided. On this basis interested parties cannot comment on the information and the ADC cannot take it into account (unless it is first disclosed or summarised).

3 Export Price of the TSP Gullen Range Towers

Section 10 of the ADC's Goldwind verification report (Public Record Case 221, Number 15) states that:

"From our investigations, we are of the opinion that, for the goods imported by GWA from TSP, the goods have been exported to Australia otherwise than by the importer.

However, we do not have sufficient information to determine whether the goods have been purchased from the exporter.

Subject to further inquiries in relation to these shipments, we recommend that the export price for wind towers imported by GWA from TSP can be established under s.269TAB(1)(c) or s.269 TAB(3) of the Customs Act 1901."

Each of section 269TAB(1)(c) and (3) provide the Minister with discretion to determine the export price having regard to all the relevant circumstances of the exportation / all the relevant information. However, the Minister may disregard any information that (s)he considers unreasonable (section 269TAB(4)).

Section 269TAB(1)(c) would apply if the Minister was satisfied that (s)he had the necessary information to apply section 269TAB(1)(a) or (b) but that the information showed that neither of those sub-sections apply. Our understanding is that s.269TAB(1)(a) and (b) do not apply because the ADC has determined that the goods were purchased from a party other than the exporter (TSP).

However, in this case, the ADC has stated in Importer Verification Visit Report (Goldwind) section 7 that a conclusion on arms-length is pending further investigation and the ADC has presumably therefore concluded that it does not have sufficient information to apply the rules in 269TAB(1). Assuming the Minister is in the same position when making the final decision, subsection 269TAB(3) provides that where there is not enough information to determine whether or not sub-sections 269TAB(1)(a) or (b) apply, the Minister will determine the export price.

When the Minister exercises discretion to establish the export price, the Minister should be guided by the purpose of the legislation and the function that the determination of the export price has in the over-all antidumping system.

The purpose of identifying an export price is to compare it with the normal value of the goods in the source country in order to determine whether the suppliers are dumping products in export markets below equivalent domestic prices in their own country.

In this case, Goldwind conducted a competitive tender process with five Australian and off-shore suppliers. Goldwind's decisions as to which towers to procure from which country were made based on the outcome of that tender. It was on the basis of the tender process that an Australian supplier was selected to supply 17 of the towers but not 56 other towers. The price paid by GWA for the 56 towers supplied from China by TSP is (with very minor adjustments) equal to the price that arose from that tender process.

In relation to the price paid by GWA for the towers, the ADC has found that:

“Pending further inquiries we are satisfied that import transactions between GWA and its supplier are at arms length in terms of s. 269TAA.”

If the ADC requires further information in relation to the arms length nature of the transaction GWA would be happy to assist, including in relation to the supplier side of the transaction.

Given country sourcing decisions were made on the basis of the tender, the price paid by GWA is (with minor adjustments) equal to the winning tender price, and the ADC has made a finding (pending further inquiries) that the import transaction was on arms length terms, all the relevant information for the Minister to consider should lead to a conclusion that the price paid by GWA should be determined to be the relevant “export price”.

GWA has reviewed the ADC’s materials on the question of what should be the ‘export price’ for the Gullen Range Wind Farm towers and there does not appear to be any information under consideration that would suggest a price other than the price paid by GWA. Should the ADC consider that it has information that might suggest otherwise, GWA requests the opportunity to review and comment on that information prior to any decision to adopt an ‘export price’ other than the price it has paid for the Gullen Range Wind Farm towers.

4 Supply and demand for wind towers

In considering supply and demand for wind towers in Australia it is useful to draw a comparison between the level of concentration in the Chinese market and the Australian market to better understand how supply and demand might drive differences in prices in these markets.

With an aggregate annual production of approximately 8,000 towers, both the demand and supply side of the wind tower market in China is vigorously competitive. Table 1 below sets out the CR4 (a commonly used economic measure of concentration in a market) for the Chinese wind tower market. The Herfindahl–Hirschman Index (the other commonly used economic measure of concentration in a market) for the Chinese market is less than 1,800, also indicating that the market is low to moderately concentrated.

It is a settled principle of economics that markets with lower levels of concentration are generally characterized by lower prices and/or higher levels of service as firms must compete against each other for any given sale to remain viable. It is also the case that in markets characterized by low levels of concentration, firms must generally innovate and maximise efficiencies to remain competitive.

Table 1: The top four suppliers of wind towers in China

Supplier	Approximate share
Shanghai TSP	35.0%
XJHR	20.1%
Qingdao Shantai	10.1%
Qingdao Jieneng	5.8%
<i>Concentration Ration Top 4</i>	<i>71.0%</i>

Many other suppliers	29.0%
<i>Total</i>	<i>100%</i>

Significant customers in China include Goldwind, Guo Hua, Hydro China, CGNPC, VESTAS, CGNPC, CHNG, Longyuan, HBEDI, CWPC, Wind Power China, QPMP, Others, Zhijiang Yunda and DQFD.

By contrast, with a very volatile aggregate total demand for wind towers between 50 and 300 per year, the Australian supply side of the wind tower market is extremely highly concentrated with a CR4 of 100% and an HHI of in excess of 5,000 points. Such high levels of concentration are a result of the low level of demand in the market. GWA notes that there are a number of competing customers in the Australian market.

5 Keppel Prince verification report

Extensive confidentiality claims

There have been a significant number of items excluded from the verification report on the basis that they are claimed to be confidential and summaries have not been provided of that information. To enable the ADC to make an informed decision, it is necessary for the material (or a summary of it) to be made available to interested parties. In the absence of doing so, the excluded information should not be used by the ADC in preparing its Statement of Essential Facts (or the subsequent steps in the process).

Local preference

Page 16, last paragraph: the report notes:

“KP advised that the suppliers had no preference for locally produced or imported towers”

At least as regards GWA’s purchases, this is not correct. GWA prefers to procure wind towers locally and has done so on both its Australian projects (Morton’s Lane and Gullen Range). In appropriate circumstances, GWA can and does pay a premium to buy locally but the ability to do so is (of course) limited by the economics of the projects it undertakes, including by reference to the economics of competitor projects.

Preliminary findings of injury without findings of causation

The verification report makes a number of preliminary findings in relation to alleged injury. However, none of these findings are sufficient by themselves to properly found a decision to recommend dumping duties because the verification report does not address the issue of causation. For example, it may be that Keppel Prince suffered reduced sales volumes but without demonstrating that the cause of the loss of sales was dumping from China and/or Korea, no duties can be recommended.

Further, GWA notes that the verification report states:

“Keppel Prince claimed that the price pressures it was experiencing for the above tenders were all from wind towers sourced from China, evidence requested by the Commission and provided by Keppel Prince supports the claims. The evidence and information requested and provided by Keppel Prince support its claim of price pressures from the allegedly dumped imports that have caused price suppression and price depression. There is evidence of reduced prices and reduced margins. The evidence also support the claim that price is the major factor in determining the tender.”

Without further information, it is difficult to understand what evidence Keppel Prince could have provided about the prices of competing suppliers, given the closed nature of tender processes.

We agree with the point in the REPower submission (ADC221-010) that tenders for wind towers are not solely price related and that if an Australian tower manufacturer has lost a tender to a Chinese supplier, this does not automatically indicate that the Chinese supplier must have been cheaper. In addition, it is necessary to establish the cause of any injury alleged. It would not be appropriate, for example, to assume that causation is evidenced solely from the observation that the winner of a tender is successful solely on the basis of price. In a market where the products of each supplier for each project are highly differentiated (e.g. made to order), lead times are long and quality/reliability is important, price is not the only determinative in selecting a supplier. Price premiums are likely to attach to issues such as reputation, experience and previous relationships.