

Interested Party Submission

Anti-Dumping Commission

Wind Tower Inquiry

14 October 2013

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1. General

In response to demand for renewable energy generation, both as a result of shifting community expectations of power generators and increased government incentives and environmental regulations, a significant number of wind project proponents have emerged who plan, design, build and operate wind farms from which power is sold to electricity retailers.

In building these wind farms, the project proponents purchase turbines and ancillaries such as wind towers for these projects. While there is no manufacturer of turbines in Australia and as such all turbines are imported, wind towers are available both locally and from international suppliers.

Towers are not commodity products. Each turbine model may have 2 or 3 matching tower designs based on different tower heights. Both the turbine and tower are customized to local Australian requirements (e.g. Australian standards concerning electrical wiring or OHS considerations for ladders and platforms). Occasionally there is even more tailoring to the particular project if a particular planning envelope requires a modification to the standardised designs (e.g. special tower height).

The relative indicative development costs of the components of a wind farm were set out in the *Review of the Australian Wind Industry 2011* which was commissioned by the Clean Energy Council and is provided below:

COST ITEM	TYPICAL RANGE*	
	\$m AUD/MW	CONTRIBUTION TO TOTAL CAPITAL COSTS %
Turbine works	1.10 TO 2.00	60 TO 75
Balance of Plant works	0.35 TO 0.60	10 TO 25
Grid connection	0.05 TO 0.35	5 TO 15
Other	0.15 TO 0.42	5 TO 15
TOTAL	1.7 TO 3.4	100

In the above table the line item “turbine works” includes towers (which typically account for 10% of the total project cost and logistics for both the turbine and the tower which also account for approximately 10% of the cost.

However, in saying this, we do not intend to downplay that the cost of wind towers is not still significant in terms of the overall cost of establishing a wind farm.

If duties are imposed, we have strong concerns that it will become increasingly difficult for wind farm proponents to mount proposals for future wind farm projects as a result of the likely increases in the cost of wind towers to Australian customers and the subsequent lessening of competitiveness of wind farms versus other sources of renewable energy. This is also likely to result in negative effects on Australia’s renewable energy industry with respect to both the pricing of green energy and the achievement of aims to reduce greenhouse gas emissions.

In this, our first submission to this inquiry, we will present a range of information as best we can. However, we are concerned that extensive material was redacted from the Application and this makes it impossible to meaningfully participate in the consultation in many respects.

2. Deficiency of the Application

2.1 Deficiencies

We are aware that under international and domestic legal requirements, the applicants will be required to disclose the basis of their claims (or where material is confidential and would be damaging to the applicants, a summary will be disclosed).

Until such bases are disclosed, we consider that the Application is substantively deficient and it is not capable of providing parties likely to be affected by an adverse decision of the Commission sufficient visibility of the allegations and information upon which the Commission is to make their decision so as to allow affected parties to correct or confirm such information.

We have access to extensive technical and commercial staff both in Australia and internationally and, once the applicant's material is disclosed, we will be in a position to assist the Commission in its scrutiny of these technical aspects of the Application.

To assist the Commission, we identify below that information which the Applicant must disclose and clarify to allow appropriate scrutiny to occur prior to the Commission's decision.

2.2 Foundation data

The information that should be disclosed in the answer to Question 6 of Part A-4 of the Application form constitutes the fundamental foundation information upon which the picture of the Australian sales of wind towers is based. In this case, the Application states the following:

Period (CY)	(a) Your Sales	(b) Other Austⁿ Sales	(c) Total Austⁿ Sales (a+b)	(d) Dumped Imports	(e) Other Imports	(f) Total Imports (d+e)	(g) Total Market (c+f)
2008	100	--	100	--	100	100	100
2009	136	--	136	--	854	854	186
2010	54	--	54	100 ²	215	454	83
2011	71	--	71	0	0	0	66
2012	76	--	76	677	0	1,615	184

The table provided in the Application does not allow for meaningful analysis to be performed. One significant problem is that each column is indexed independent of,

and without regard to, each of the other columns such that there is no method to make comparisons between the number of wind towers allegedly dumped, the number otherwise imported and those that are supplied locally. Whilst the Commission's prescribed application form appears to request the information in this indexed way as a compromise to maintain the confidentiality of the applicant's data, in this instance, it prevents the information from being of any real substantive use.

Two key reasons for this are that the indexing for every column except (d) commences in 2008, but the indexing for the alleged dumping only commences in 2010 and further no imports were alleged to have occurred in 2011 which means there is no indexed figure in that year at all. As such, there is only one indexed figure for the growth of alleged dumped imports which does not provide enough information to suggest any sort of trend and, as the index for column (d) does not even align in terms of its year of origin (with the indexes created to convey the other types of sales), no comparison of trends is possible.

The index only allows for a very basic comparison of the growth or contraction of sales within each column. This is effectively meaningless in terms of allowing any broader comparison to be undertaken. For example, if the indexed figure for 2008 in column (a) is 500 wind towers and the indexed figure for 2008 in column (e) is 2 wind towers, the changes while significant in terms of growth in 'Other Imports' or growth in 'Your Sales' would not be meaningful in terms of establishing a loss of sales or market share by comparing one category to the other.

In addition, the Commission notes in its Consideration Report No. 221 that, contrary to claims made in the Application, there is a third Australian supplier of wind towers E&A Contractors which has effectively replaced RPG and has secured a contract for the supply of 20 wind towers. It is unclear whether the table takes into account either RPG's or E&A Contractors' sales during the relevant period (both of which should appear in column (b)).

On 10 October 2013, the Commission released a statement that, contrary to the assertions of the Applicants that 70 towers were imported from China at dumped prices, the wind towers were not in fact imported from China at all. This is a significant error and indicates that the Application has not been prepared with the necessary care and due diligence. The Commission should, therefore, be cautious and obtain corroboration before giving any weight to the statements in the Application. This issue also demonstrates why it is important for all the information relied on by the Applicants to be published unless it would be of genuine commercial detriment to the Applicants and, if so, a summary must be provided.

The Applicant needs to clarify which sales it purports to represent. In addition, the Commission should require sufficient data to be made available so as to enable interested parties to understand the basis on which year-on-year comparisons and comparisons of domestically produced, imported and allegedly dumped sales of wind towers are being made.

2.3 Transparency and confidentiality claims

Domestic and international law requires a level of transparency to ensure that the parties potentially affected by an anti-dumping decision have a reasonable opportunity to participate in the process. The key requirements being:

- Claims of confidentiality are only accepted if good cause is shown that the information is by its very nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significant adverse effect upon a person supplying the information); and
- Where such claims have been made, non-confidential summaries of the information are to be provided in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

If the Applicants do not wish to disclose this information publicly, that is their prerogative but the Commission must disregard the information and give it no weight in the analysis or the decision.

Throughout the Application, information has been redacted which prevents other interested parties from understanding or responding to that material. The most important issues of transparency and disclosure concern the material that goes to the Applicant's submissions on the Chinese and Korean 'normal value'. The Applicants submitted that this should be established on the basis of the 'constructed methodology'. In that respect:

- On page 47, the "constructed normal value" of Chinese and Korean towers have been masked. There is no basis on which the disclosure of a 'constructed' or 'made up' headline number could be confidential. Indeed, this number is a fundamental consideration in the decision making process and in not disclosing this number it is not possible to effectively comment upon or respond to this key aspect of the Application.
- Attachments B-2.1(c) and B-2.1(h) concern labour hours. There is no basis upon which the disclosure of the estimated labour hours for a producer in Korea or China could adversely affect the Applicants. This also fails to disclose essential details of the assumptions upon which such labour hours were determined, such as the location or region of the equivalent labour force or the level of skills being considered.
- Attachments B-2.1(e) to B-2.2(e) are each cost models. It seems unlikely that such cost models which concern hypothetical rather than actual costs could be confidential. Even if the underlying source of one or more line items within one or more model were derived from a source that actually is confidential (eg a quotation received on a confidential basis) it is difficult to conceive of a basis upon which the disclosure of such a line item would adversely affect the Applicants. Finally, even if certain line items were confidential and disclosure detrimental to the Applicants, a summary of the information should be provided (eg quotation received from a supplier for X litres of paint on X date).

It appears that the information in the Application has already been shared between at least the two Applicants. It should be noted that these two Applicants are each

other's only Australian (and therefore closest) competitor. There are only two possibilities, therefore:

- There is no detriment in this information being disclosed; or
- There is detriment but it has already occurred when the Applicants shared the information with each other. No material additional detriment would then be possible from public disclosure.

Even so, if it is demonstrated that all the data used in a cost model is confidential and detrimental to disclose (and one must be very sceptical this could possibly be the case):

- The model itself needs to be provided showing the line items into which data is inserted;
- The basis on which the model has been prepared (including any assumptions) such as if labour was assumed to have been sourced from a particular location or level of skill;
- The mathematical relationships applied to the data; and
- The source and nature of the information which has been redacted (eg by author and nature – eg X Co quotation or informal discussions with Y Co) or, if that material is itself confidential, a generic description of the source and nature.

2.4 Contradictory Statements

A core issue in relation to this matter concerns how the 'normal value' should be established and a key consideration is whether domestic selling prices are available (in which case they need to be provided) or not.

On this fundamental point, the Application opens its analysis by stating:

- “Domestic selling prices are not readily available from published sources and/or industry publications.”

And in the next sentence:

- “Further, in the case of China, the applicants consider that domestic selling prices for utility scale wind towers are artificially low and cannot be relied upon for demonstrating *prima facie* dumping margins.”

In order for the Commission to take this contradictory information into account and for interested parties to understand the Applicant's submissions, it is necessary to clarify whether there are in fact domestic prices available (in which case they need to be disclosed for comment and analysis) or whether they are not available (in which case it is not possible to conclude they are 'artificially low').

2.5 Inconsistent With Publicly Available Information

We also note that the data in the Application does not seem to correspond to the information publicly available. For instance, at the end of 2012, the then Australian Minister for Climate Change, Industry and Innovation stated that “[m]ore than 80

per cent of wind turbine towers used in Australia to date have come from Australian suppliers”¹.

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

3.1 The product subject to the investigation

Careful thought is needed in order to properly identify and analyse what are the products subject to the investigation and what are the like goods.

The Application is in relation to wind towers (as defined in the Application), a product that is supplied separately in Australia but which is not traded between China and Australia. Rather, the international trade is in combined sets each comprising a turbine together with a matching tower. This issue complicates the analysis of what are ‘like goods’ (discussed in the next section).

Another example of significant complication concerns identifying the price of wind towers. Project proponents generally acquire turbine and tower sets on terms where there is a separately identified amount of consideration for the turbine, the tower, and a range of other ‘line items’ that are not specifically allocated to either the turbine or the tower.

However, the contract does not operate in an “a la carte” manner. Rather the pricing in the contract is for the entire package and it is not necessarily the case that a “stand alone” tower cost would be the same as the “line item” amounts in those contracts. In addition, because some of the other line items (eg the payment for the warranty) have no physical item associated with them, there is a question of how to allocate these amounts between the physical imports of turbines and towers.

3.2 The “like” products

The relevant criteria for establishing what are the like goods are as follows:

- Physical likeness

At the broadest level, there is a physical likeness between wind towers and a range of other cylindrical or conical rolled steel towers².

However as the Application notes, wind towers typically consist of additional features including flanges, ladders and platforms. It is also important to note that wind tower designs are proprietary and typically vary considerably between turbine manufacturers, projects and proponent projects. For example some towers can be considerably heavier than others, some may include a lift or elevator and others may not. In addition it has been the case that Australian built

¹ <http://climatechange.gov.au/sites/climatechange/files/media/March%202013/Combet-MediaRelease-310-12.pdf>

² This is further discussed in relation to “Production likenesses” below.

towers have previously been sold with wiring included while imported Chinese towers have been ‘hollow’ in the sense that they do not include wiring.

It is therefore not possible to make direct comparisons of nominal prices.

- Commercial likeness

In negotiations with suppliers, the Australian producers often labour the non-physical or commercial differences for customers of buying Australian produced towers. It is asserted that this provides benefits to the customer in terms of their relationship with a range of stakeholders including land owners, political decision makers and organized labour.

- Functional likeness (ie ‘end use’)

Further to the points discussed above regarding the differences in design, there is the fundamental point that locally produced towers do not compete directly with import packages combining towers and turbines because there are no Australian produced turbines.

We also confirm that as the Application notes, there are alternative solutions to rolled steel wind towers including cylindrical concrete wind towers and lattice steel towers. Contrary to the Application, both cylindrical concrete wind towers and lattice steel towers are a lower cost alternative to locally produced rolled steel wind towers.

In addition we understand that some wind project proponents are considering these alternatives in Australia.

- Production likeness (ie supply side substitution)

The Australian anti-dumping Manual notes that:

“Different production processes may produce identical goods. However, different production processes may be used to create different product characteristics. A comparison of production process will not of itself establish like goods, but may highlight differences or provide support to the assessment of other considerations.

- *To what extent are the goods constructed of the same or similar materials?*
- *Have the goods undergone a similar manufacturing process? If different, what is the impact of those differences?*
- *Are there any patented processes or inputs involved?”*

In this case it is relevant to note that the same production facilities used by Keppel Prince in Australia to produce wind towers are also used to produce a range of other products including towers for mounting stadium lights (eg the Simmonds Stadium Geelong), supporting bridges (eg the Thiess ALSTOM fast rail project), furnace chimney stacks, boilers, mill trommel screens and drum debarking machines.



4. The determination of the normal value

4.1 General

Section 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

Unless there is a sufficient basis to depart from the price paid or payable for like goods in China, it is this price that must be used as the normal value.

Section 269TAC(2)(a) of the Act then provides that another method will be used only when one of the following applies:

- there are no sales, or an absence of relevant sales;
- there is a low volume of relevant sales; or
- sales are unsuitable because of a situation in the market of the country of export.

There is strong evidence that the first two of these circumstances are not applicable.

It is therefore only if a relevant “situation in the market” applies as discussed below. However, since this concept, interpreted correctly, cannot be applied to the present case, the Commission cannot resort to a construction of the normal value.

Even assuming recourse can be made to a constructed normal value, there is no basis to disregard Chinese domestic costs.

4.2 From a legal perspective, the normal value cannot be constructed because of an alleged particular market situation.

a) Presence of a High Volume of Relevant Sales in Domestic Market

The Government of China does not intervene in the domestic market for the supply of either wind towers or wind turbines. Further there can be no argument that the Chinese market for the supply of wind towers suffers from an absence or lack of volume of relevant sales.

The Chinese market accounted for over 50% of new global installations in 2010,³ the vast majority of which we understand were constructed from domestically (i.e. Chinese) produced wind towers. Whilst there has been considerable consolidation in recent years, there remain approximately 20 significant manufacturers of wind towers in the Chinese domestic market who compete to supply as many as 80 Chinese wind turbine manufacturers⁴ evidencing a highly competitive market with a frequency and volume of sales that far exceeds that in Australia.

Significant suppliers of wind towers include very large companies such as Titan Wind Energy, TSP Shanghai Taisheng Wind Power Equipment (TSP) and CS Wind Corporation.

- Titan Wind Energy is the largest manufacturer of wind towers in China. It has four manufacturing facilities in both China and Denmark and exports to numerous countries.
- TSP is a pioneer in the industry and has been involved in manufacturing of wind towers since 1995. TSP claims to be the No. 1 wind tower manufacturer in China and exports to the US, Japan and Australia.
- CS Wind Corporation has been involved in steel construction for over 20 years. It started supplying wind towers in 2003 and since that date has supplied over 3,200 wind towers, including exports to the United States, Australia, New Zealand and throughout Europe. CS Wind Corporation has manufacturing facilities in China, Vietnam and Canada.

b) Existence of a Particular Market Situation

The applicants allege that the domestic selling prices for wind towers in China are unsuitable for establishing normal value for the products exported to China as a particular market situation exists in these markets. In this respect, the applicants seem to rely on s.26TAC(2) of the Act. This provision states that in the case that the normal value cannot be ascertained on the basis of the domestic sales:

“because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)”

The applicants claim (and the Commission has accepted for the purposes of a preliminary decision to enable a substantive inquiry to commence) that there are reasonable grounds for claiming that Chinese domestic selling prices for plate steel are not suitable to determine normal values.

The applicants have not, however, established a sufficient basis for a final decision that a “market situation” applies in relation to wind towers.

³ Barry, H & Yeo, S, *Review of the Australian Wind Industry 2011*, Report commissioned by the Clean Energy Council, p.17.

⁴ Barry, H & Yeo, S, *Review of the Australian Wind Industry 2011*, Report commissioned by the Clean Energy Council, p.10.

Section 269TAC(2) of the Act implements Article 2.2 of the WTO AD Agreement and the Australian courts have accepted that because the local legislation was passed for the purposes of interpreting the international agreement, the findings of the GATT panels and WTO case law should be highly persuasive.⁵ Indeed there are no occasions upon which the Australian Courts have declined to follow WTO precedent. Article 2.2 provides:

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

c) Guidance on the concept of a particular market situation precluding a proper comparison

The relevant condition under which the Commission can resort to a construction of the normal value is twofold:

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

The GATT panel addressed this in *EC – Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil (EC – Cotton Yarn)*. These findings reveal two key elements.

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

*“the test for having any such recourse was not whether or not a “particular market situation” existed per se” but that “[a] “particular market situation” was only relevant insofar as it had the effect of rendering the sales themselves unfit to permit a proper comparison”.*⁶

⁵ *Panasia Aluminium (China) Ltd v Attorney-General (Cth)* [2013] FCA 870; *Companhia Votorantim de Cellulose e Papel v Anti-Dumping Authority* (1996) 71 FCR 80; *Rocklea Spinning Mills Pty Ltd v Anti-Dumping Authority & Fraser* (1995) 56 FCR 406; *Atlas Air Australia Pty Limited v Anti-Dumping Authority* (1990) 26 FCR 456; *Powerlift (Nissan) Pty Ltd v Minister for Small Business, Construction & Customs*.

⁶ GATT Panel report, *EC – Cotton Yarn*, para. 478.

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

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

The Panel continued by stating that:

“there must be something intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison” (emphasis by the Panel).⁷

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

“that the prices used as a basis of normal value were themselves so affected by the combination of high domestic inflation and a fixed exchange rate such that those sales did not permit a proper comparison”.⁸

d) Application to the case at hand

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

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

In the case at hand, there is nothing:

“intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison”.⁹

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

⁷ GATT Panel report, *EC – Cotton Yarn*, para. 478.

⁸ GATT Panel report, *EC – Cotton Yarn*, para. 479.

⁹ GATT Panel report, *EC – Cotton Yarn*, para. 478.

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

4.3 The applicants’ allegations with respect to the particular market situation are factually incorrect.

a) Factual incorrectness of the applicants’ claim

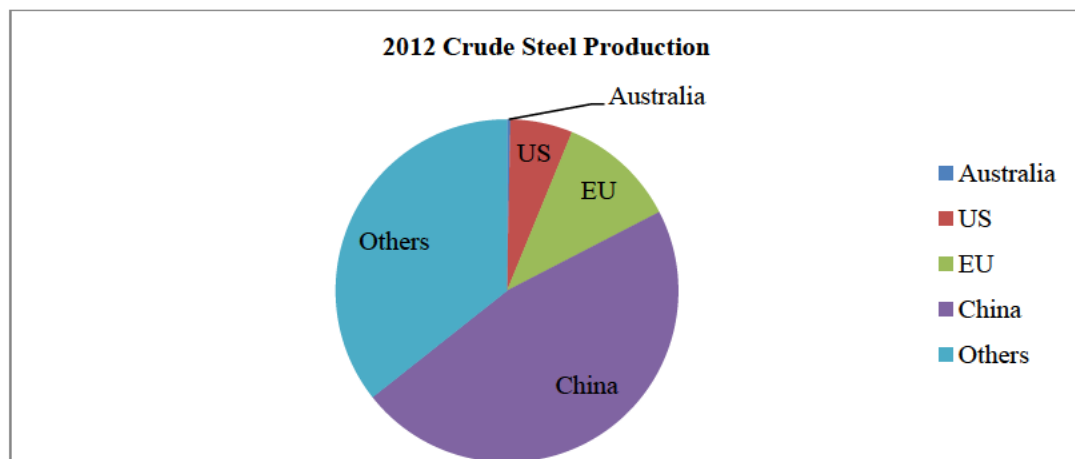
Although the facts referred to by the applicants to claim that the normal value should be constructed are irrelevant from a legal point of view, it needs to be stressed that they are also factually incorrect.

It is simply not true that “domestic selling prices for utility scale wind towers in China are artificially low due to government influence on raw material prices”¹⁰, as claimed by the applicants. If there is a price difference between the Chinese exports and the Australian domestic supplies, this does not relate to distortions by the government, but to lower manufacturing costs as a result of lower labour costs and economies of scale as well as cost savings by intelligent outsourcing.

b) Steel prices in China are not artificially low

The applicants’ claims with respect to the alleged distortion of prices of steel are incorrect from a factual perspective. Steel is a significant input material of the wind tower, and comprises a substantial proportion of its cost (although we note that it comprises approximately one third of the cost, not over half as stated by the applicants).

Steel production levels between Australia and China are vastly different. According to data published by World Steel Association, the chart below shows the share of crude steel production between major economies.

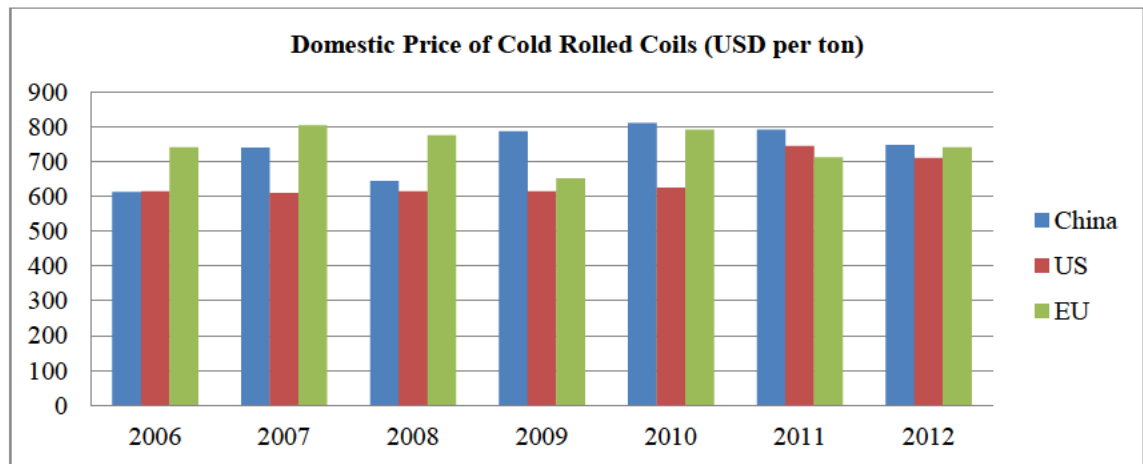


Source: World Steel Association

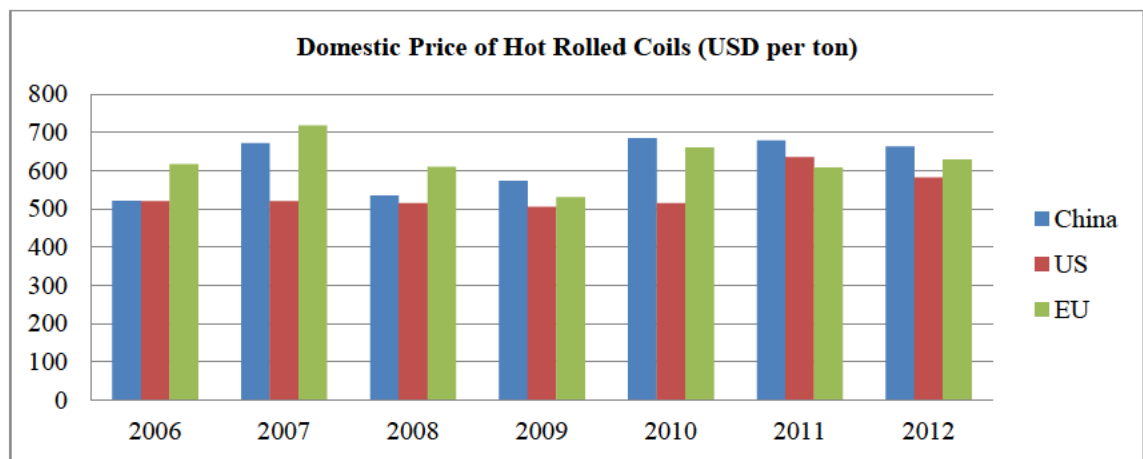
¹⁰ Application, page 44.

China produced the highest level of steel in 2012 at 708,784 thousand tonnes, while Australia produced 4,893 thousand tonnes. Such a vast difference implies significant differences in economies of scale between firms in these two economies.

Moreover, in addition to being legally irrelevant, there is no evidence to suggest that the price of steel is cheaper in China when compared to other major economies. As presented in the charts below, domestic steel prices in China, particularly cold rolled coils and hot rolled coils, are consistent with prices in other major economies (e.g. US and EU) based on data from Bloomberg.¹¹



Source: Bloomberg



Source: Bloomberg

Therefore, it is reasonable to argue that the steel price difference between the Chinese and Australian tower manufacturers are due to local economic factors - specifically, the price of steel in Australia when compared to other major economies.

c) Lower manufacturing costs in China: lower labour costs and economies of scale

If there is any price difference between the Chinese exports and the Australian domestic supplies, this simply relates to lower manufacturing costs in the Chinese

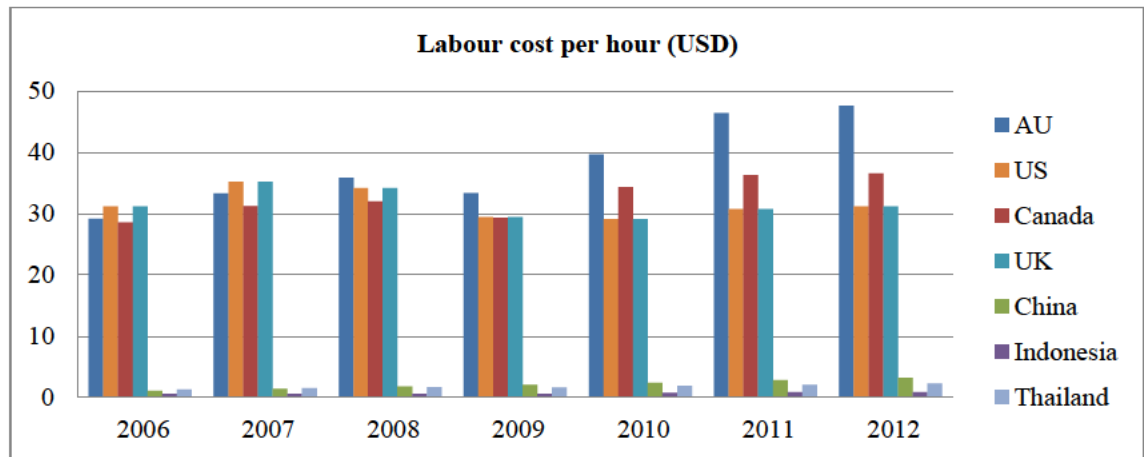
¹¹ Note: these tables show domestic prices.

industry due to lower labour costs in that market and economies of scale afforded to large scale producers.

- Labour costs

The manufacture of wind towers is a steel fabrication business, which is labour intensive by nature. Therefore, labour is a significant input cost component and has a significant impact on total cost.

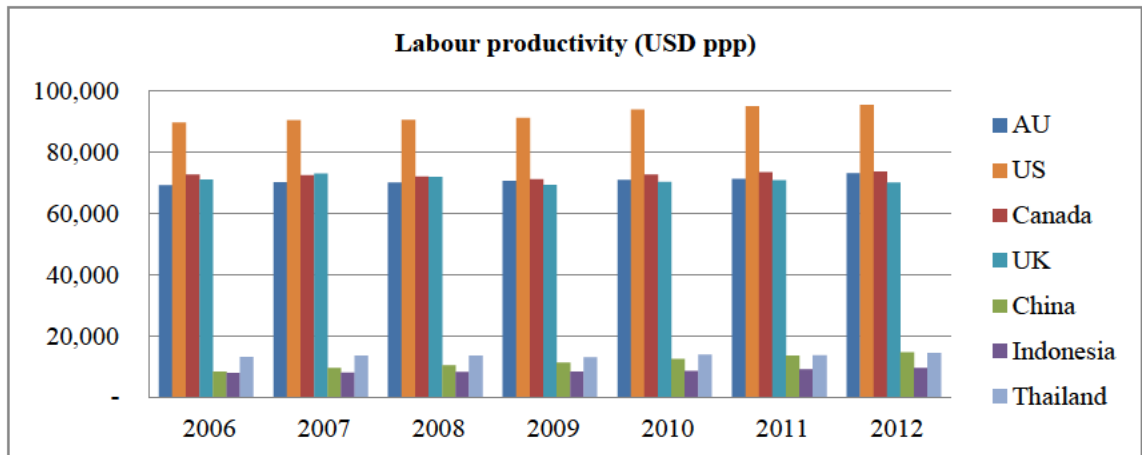
In recent years, labour costs in Australia have increased significantly compared to other economies as shown below (data sourced from the Economist Intelligent Unit (“EIU”)). On an absolute size basis, the labour cost per hour in Australia were around 15 times higher than in China in 2012. The graph further demonstrates that Australian labour has become increasingly expensive over recent years since 2009.



Source: EIU

Absolute labour costs per hour represent one aspect of the relative economic benefit afforded to manufacturers in China. The other factor that should be considered when evaluating the impact of market factors on labour costs is the relative productivity of the labour force in each market.

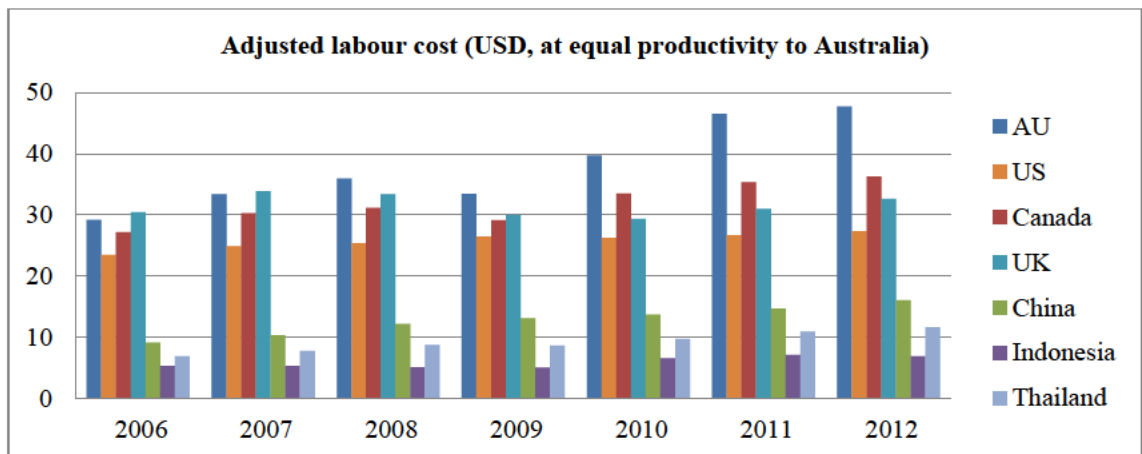
The following chart shows labour productivity, measured as GDP divided by the size of the labour force, to obtain GDP contribution per worker. The GDP contribution per worker is then adjusted on the basis of purchasing power parity (“ppp”) for each territory, to provide a normalised base for comparison (by removing the impact of FX movements and inflation in specific territories).



Source: EIU

This chart shows that the labour force in China (and other developing economies) is relatively unproductive per person when compared to that in Australia (or other Western economies), despite its relative cheapness.

We can combine this data to adjust the absolute labour cost graph to reflect the differences in productivity between each territory. The chart below therefore combines the impact of labour costs (which are relatively low in developing countries) with productivity (which is relatively higher in western countries).¹²



Source: Calculated based on data from EIU

The results of this exercise demonstrate that the lower productivity in the developing countries is more than offset by the lower labour costs paid to workers.

It is clear from the results of this analysis that labour costs per hour are significantly cheaper in developing countries – despite productivity differences – which directly contributes to a lower cost of manufacture for wind towers. It further demonstrates

¹² For example, if country A's labour cost is \$10 per hour, but workers are only 50% as productive, the adjusted labour cost in country A would be equal to \$20.

that Australian labour costs have increased in relative terms when compared to a basket of other nations.

- Economies of scale

Economies of scale are critical to price in manufacturing industries where fixed costs are a substantial part of the overall price of a good. They are therefore highly relevant in determining the manufacturing cost of the wind tower. Further it is widely acknowledged that with increases in production volumes, firms in a market achieve a certain learning rate which further reduces the unit cost of production. It has been suggested that the appropriate learning rate in the wind energy industry is approximately 10% (i.e. when total production doubles, the unit cost of production falls by 10%) but may be as high as 20% with Asian suppliers, particularly South Korea.¹³

In applying the conservative learning rate of 10% and using the quantity of 350 as the base index quantity (the total demand in Australia at its peak), we have set out below the relative efficiencies gained as higher volumes are achieved. Of course, given that there are three Australian producers sharing only a portion of the total demand in Australia, they will in fact have much lower quantities and the effects of the learning rate in terms of the differences in economies it provides to the smaller Australian suppliers and the much larger Chinese ones are likely to be even more significant. This suggests that as a result of the learning rate alone, Chinese producers are likely enjoying cost advantages in excess of 30% to their Australian counterparts.

Quantity of Units Produced	New unit cost as a % of the original unit cost
350	100%
700	90%
1400	81%
2800	73%

In addition to this, there is strong evidence, at both macro and micro economic levels, to suggest that economies of scale are significantly higher in China than in Australia.

For example, Australian wind energy installed capacity in 2008 only accounted for 1% of the world's total, while China accounted for 10% in 2008.¹⁴ This suggests the total size of the Australian wind tower market is substantially smaller than the annual production capacity in China. Indeed more recent information suggests that the Chinese market accounted for over 50% of new global installations in 2010.¹⁵

¹³ Awerbuch, S., Morthorst, P. and Krohn, S (editor), "The Economics of Wind Energy", European Wind Energy Association, March 2009; Barry, H & Yeo, S, *Review of the Australian Wind Industry 2011*, Report commissioned by the Clean Energy Council, p.21.

¹⁴ Australian Energy Resource Assessment, Chapter 9.

¹⁵ Barry, H & Yeo, S, *Review of the Australian Wind Industry 2011*, Report commissioned by the Clean Energy Council, p.17.

Historically, the total sales volume in the Australian market was only approximately 350 units at its peak.¹⁶ However, the capacities of the Chinese manufacturers, as provided in Appendix A, are significantly higher than the entire Australian market:

- ◆ TSP has annual manufacturing capacity of 1600 units or 3,200 MW.¹⁷
- ◆ Titan has annual manufacturing capacity of 1500 units.¹⁸
- ◆ CS Wind Corporation has annual manufacturing capacity of 1800 units.¹⁹

To explain why the cost of towers is sensitive to scale includes the following points:

- ◆ There is considerably greater freedom to more efficiently organize and use production facilities as scale increases (explained further below);
- ◆ Steel procurement prices are highly sensitive to volumes and it appears that even the local producer that is part of a global group (ie Keppel Prince) has not accessed this through aggregating its steel purchases; and
- ◆ There are overheads that can be spread over a broader number of units produced.

A tower production line consists predominantly of:

- ◆ The rolling and welding of the ‘tube’;
- ◆ Blasting;
- ◆ Painting; and
- ◆ Fit out.

At a sub-scale facility (such as those in Australia) there is typically one location within the facility used for rolling and welding. This is the slowest part of the process and a stage of production that can result in unpredictable delays if a quality check reveals a weld is weak. If a weld is found to be weak, this typically results in a 12 hour delay in the production process.

Blasting and painting are comparatively quicker processes and therefore at higher volume plants in China it is possible to have several welding lines feeding a smaller number of blasting and painting facilities. This also enables these blasting and painting facilities to be kept busy even if one ‘feeder’ welding line suffers a holdup.

Australian suppliers who are unwilling or unable to compete internationally through exporting simply will not be able to achieve the economies of scale necessary to compete effectively with their international rivals who can individually produce a greater number of wind towers than the whole of the Australian market demands each year.

¹⁶ Diagram A-9.9.1 from Application for Dumping Duties Certain Utility Scale Wind Towers, August 2013.

¹⁷ TSP website: <http://www.shtspchina.com/manufacturing_facilities.html>

¹⁸ Titan website <<http://www.titanwind.com.cn/product/3.html>>

¹⁹ CS Wind Corporation website <http://www.cswindcorp.com/eng/company/01_overview.asp>

This data demonstrates that the lower cost per wind tower quoted by Chinese manufacturers, if any, is a direct result of their market conditions, specifically lower labour costs, and significantly greater economies of scale.

d) Cost savings by outsourcing to firms with higher levels of productivity and efficiency

Australian wind tower manufacturers generally manufacture tower internal fittings (such as platforms, hatches, doors and steel brackets, etc) to order in-house, while Chinese manufacturers outsource such productions to other parties with specific manufacturing expertise.

As a result, Chinese manufacturers typically enjoy cost savings by outsourcing the production of non-critical and non-competitive components to firms with higher levels of productivity and efficiency in manufacturing such products.

The key driver in terms of the cost of internal fit out is therefore the different business strategies pursued by wind tower manufacturers in China and Australia.

Further, the wording in the Application regarding this key component of cost is vague (see the Applicant's description of the 'goods the subject of this application' at pages 8 and 9 of the Application). The cost of the internal fit out is a key differentiator in the overall price, and should not be disregarded when comparing prices.

4.4 There is no legal basis to construct the normal value on the basis of costs that do not relate to the Chinese domestic market.

a) General

Even if it is established that a 'market situation' is present in relation to wind towers (which it has not), the approach that seems to be adopted by the applicants must be rejected.

From the limited information available on the public record, it appears that the applicants used information for certain cost elements that does not relate to the Chinese domestic market, but to international prices or prices in a different market.

This approach would not be in line with the requirements under Australian and WTO law, as explained below.

The applicants' methodology is also flawed because it does not rely on the costs as included in the records of the Chinese producers/exporters.

b) Regulations 180 and 181 and the corresponding provision in the WTO AD Agreement

Section 269TAC(2)(c) of the Act lays down how the normal value should be constructed. It provides that the normal value will be the sum of the amounts determined to be:

- the cost of production or manufacture of the goods in the country of export ("COP");

- the administrative, selling and general costs (“AS&G”) associated with the sale; and
- the profit of that sale.

This provision corresponds to Article 2.2 of the WTO AD Agreement, which refers to:

“the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits”.

For the present case, the reference to the COP in the “country of export” or the “country of origin” is key, as will be explained below.

Pursuant to Section 269TAC(5A) of the Act, the amounts determined to be the COP and the AS&G have to be worked out in accordance with Regulations 180 (determination of cost of production or manufacture) and 181 (determination of administrative, selling and general costs) of the Customs Regulations 1926.

Regulation 180(2) (and 181(2) in similar terms for the AS&G) establish that the COP has to be determined on the basis of the records of the exporter or producer of the goods if the records kept fulfill two cumulative conditions:

- they are in accordance with generally accepted accounting principles in the country of export; and
- they reasonably reflect competitive market costs associated with the production or manufacture of the goods

This requirement implements Article 2.2.1.1 of the WTO AD Agreement, which reads in relevant part as follows:

“For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration”

Although Regulation 180(2) refers to “competitive market costs” rather than just “costs”, the interpretation given to this Regulation must be in line with WTO law.

c) The records need to reflect the costs in the domestic market

The normal value needs to relate to the domestic market of the exporter. As stated by the Appellate Body, it needs to be ensured *“that normal value is, indeed, the “normal” price of the like product, in the home market of the exporter”* (emphasis added).²⁰ Consequently the fact that the price paid for raw materials in the home

²⁰ Appellate Body report, *US – Hot-Rolled Steel*, para. 140.

market is higher or lower than that in the export market or other markets is irrelevant.

Article 2.2.1.1 of the WTO AD Agreement does not detract from this principle. Indeed, the mere fact that costs data kept in a company's records do not reflect market prices does not imply that these records do not reasonably reflect the costs associated with the production and sale of the product under consideration in the domestic market. There is no requirement that the records reflect a "market value".

WTO case law confirms this position. In *US – Softwood Lumber V*, the investigating authorities took into account the revenue from by-products in calculating the cost of production for two Canadian respondents. The investigating authorities treated the revenues obtained from the sale of these by-products as income that was used to offset the cost of production of softwood lumber, the product under investigation. The issue before the Panel was the valuation of these by-products. Its main conclusions in relation to the relevance of the concept of "market value" to Article 2.2.1.1 read as follows:

“Canada argues that Article 2.2.1.1 requires that a by-product offset must reasonably reflect the market value for the by-product at issue; otherwise, the cost of production of the main product – in our case, softwood lumber – would be either overstated or understated. The United States disagrees. We do not find any textual basis in Article 2.2.1.1 on which we could conclude – as Canada argues – that, for the requirements of Article 2.2.1.1 to be met, it is necessary that the by-product revenue offset reflect the market value of those by-products.⁴⁴⁶ Nor, has Canada pointed to any justification.

⁴⁴⁶ *Indeed, to accept Canada's argument that Article 2.2.1.1 requires an investigating authority to ensure that the by-product offset reasonably reflects the market value "would require us to read into the text words which are simply not there. Neither a panel nor the Appellate Body is allowed to do so". (Appellate Body Report, *India – Quantitative Restrictions*, para. 94)²¹ (emphasis added)*

The Panel thus rejected the position that the records cannot reasonably reflect the costs associated with the production and sale of the product under consideration in case they do not reflect the market value.

In relation to Article 2.2.1.1, the Panel in *Egypt – Steel Rebar* considered:

“that to resolve this claim, we must consider whether the evidence of record indicates that the short-term interest income is related to the production and sale of rebar in the Turkish home market.”²²

The Panel thus explicitly referred to the domestic market.

²¹ Panel Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, para. 7.321.

²² Panel Report, *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*, para. 7.422.

d) Application to the case at hand

Even assuming the normal value can be constructed (which is not the case), the approach that seems to be adopted by the applicants cannot be upheld.

First of all, the costs should be based on the actual records of the exporters/producers in China. Of course, this information was not available to the applicants. The Commission will need to collect all information it requires in this respect and will determine the normal value (if constructed) accordingly, in line with the requirements spelled out above.

From the limited information available, it appears that the applicants used information for certain cost elements that does not relate to the Chinese domestic market, but to international prices or prices in a different market. For instance, the steel costs have been obtained on the basis of a Chinese steel trader, but it is unclear whether this quotation was made for the domestic Chinese market or another market. A similar comment applies to the flange costs.

4.5 Conclusion

In this case, unless a ‘market situation’ is established, the normal value must be determined on the basis of the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

It is not possible to consider whether there is a ‘market situation’ until the domestic Chinese market for wind towers has been investigated and found to be wanting.

The applicants wrongly assert that merely because the market for steel is one in which a ‘market situation’ exists, so too a ‘market situation’ exists in relation to wind towers. That approach has been explicitly rejected.

Even if an examination of the Chinese market for wind towers establishes that there is a relevant ‘market situation’, the applicants have not applied the required framework to building up a constructed cost and the Application must be rejected on that basis too.

5. The domestic industry did not suffer injury from the alleged dumping

5.1 The unreliability of the injury assessment in the Application

The unevenness and infrequency of wind farm tenders makes it difficult to analyse the market share of wind tower manufacturers, and particularly difficult to reach statistically relevant conclusions as to trends in data based on a small number of large tenders.

The Application was made based on just one tender in 2010 and three in 2012. Since there are only a handful of wind farms that are offered for tender each year, the loss

of just one or two tenders has a significant impact on market share data and may skew the results so as to render them unreliable.

Further, reliance upon such a small sample size does not provide good statistical evidence from which to draw trend conclusions as a larger data set would be required to reduce the impact of any one off characteristics that may exist in relation to the awarding of each large contract.

The small number of wind farms established each year is illustrated in the below graph taken from the Clean Energy Council report:²³

The Application makes it clear that it is in 2012 that imported wind towers exceeded Australian manufactured wind towers. As can be seen above, the number of wind farms established in 2012 (three) does not provide sufficient data to reach a conclusion as to the key driver of lost market share being dumping.

5.2 Capacity utilisation

The data provided by the applicants regarding capacity utilisation seems to be contradicted by information they have provided in other forums.

In particular, Haywards has publically stated that in 2012, where there ought to have been reduced capacity, its workshops were at or near full production throughout the year, indicating that there has not necessarily been a reduction in capacity utilisation.²⁴

5.3 Data should relate to the wind towers market, not to other activities

²³ *Wind Farm investment, employment and carbon abatement in Australia Report June 2012* p 9 Figure 5
<<https://www.cleanenergycouncil.org.au/resourcecentre/reports.html>>

²⁴ Haywards Financial Report FY12.

The applicants perform other activities in addition to the manufacture of wind towers and these activities have also had a detrimental impact on their financial performance. The depression in the aluminium and construction industries has led to a lower demand for steel products and also contributed to the reduction of revenue and profits for the applicants in 2012.²⁵

In addition to the fabrication of wind towers, KPE performs a diverse range of activities including metal fabrication, the provision of electrical and mechanical maintenance services for the aluminium industry, surface treatment and industrial coating and crane and associated equipment hire.²⁶ This is illustrated by the fact that, for the 2012 financial year, the maintenance contract with Portland Aluminium provided 39% of total revenue at KPE and KPE considers the maintenance contract to be a “major core business”²⁷ and a “shining light”.²⁸ This means that it would be unreliable to base any analysis of injury suffered solely on the decline in wind tower manufacturing as KPE has other significant businesses.

Further KPE has stressed in its financial reports that there has been a depression in the aluminium industry that has seen Portland Aluminium contain its costs and keep any capital work to a minimum since 2009.²⁹ This depression has lasted until 2012, where KPE has forecasted that 2013 may see an improvement and levels may finally get back to the pre-2009 levels. This again indicates wind tower manufacturing cannot be singled out as the only reason for weaker financial performance as its other activities, which play a significant role, have also been depressed since 2009.

Haywards also undertakes other activities including the fabrication of bridge girders, steel girders for rail links, manufacturing large bins for mine sites and providing manufacturing assistance to underground mining through the fabrication of buckets.

These other activities may influence the financial performance of the applicants. Haywards has not disclosed segmented financial information. This lack of visibility warrants investigation by the Commission as to the impact of the other aspects of the diversified activities on Haywards’ financial performance.

6. Lack of causal link between the allegedly dumped imports and the alleged injury of the domestic industry

6.1 Causation analysis under Australian and WTO law

a) Effect of the dumped imports on the domestic industry

Section 269TG(2) of the Act provides that one of the key conditions for the imposition of anti-dumping measures is that dumped imports have caused or are

²⁵ KPE Financial Report FY12.

²⁶ KPE Financial Report FY12.

²⁷ KPE Financial Report FY12.

²⁸ KPE Financial Report FY11.

²⁹ KPE Financial Report FY09.

causing (or threaten to cause) material injury to an Australian industry producing like goods.

The applicants' claims of injury require scrutiny.

Below we explain why the allegedly dumped imports cannot be found to be causing any alleged injury in view of the lack of coincidence in time between the trends in allegedly dumped imports.

b) Non-attribution requirement: other factors

Even if price undercutting and/or price depression were to be found (which there is not), this is not sufficient to find causation for the purposes of imposing anti-dumping duties. Also a non-attribution analysis needs to be carried out. In relation to this part of the causation analysis, Section 269TAE(2A) of the Act provides that:

“In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as: (a) the volume and prices of imported like goods that are not dumped; or (b) the volume and prices of importations of like goods that are not subsidised; or (c) contractions in demand or changes in patterns of consumption; or (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or (e) developments in technology; or (f) the export performance and productivity of the Australian industry; and any such injury or hindrance must not be attributed to the exportation of those goods.”

These provisions enact into local law Australia's obligations under Article 3.5 of the WTO AD Agreement. Article 3.5 specifies the following:

“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.”

The Appellate Body described the non-attribution requirement as requiring:

“investigating authorities, as part of their causation analysis, first, to examine all ‘known factors’, ‘other than dumped imports’, which are causing injury to

the domestic industry ‘at the same time’ as dumped imports. Second, investigating authorities must ensure that injuries which are caused to the domestic industry by known factors, other than dumped imports, are not ‘attributed to the dumped imports.’”³⁰

Below we explain that there are several other factors that are causing the injury, if any, to the domestic industry. By distinguishing any injury caused by these factors, it will be revealed that no causation can be found between the alleged injury and the allegedly dumped imports.

6.2 Absence of coincidence in time between the imports and the alleged injury

On the basis of the figures provided by the applicants, no imports from the countries under investigation (that is, China and Korea) were made in 2008, 2009 and 2011. Imports were only made in 2010 and 2012 (see Application, page 43).

Unless a very peculiar chain of events unfolded, any injury would logically need to occur in the years where imports were actually carried out, that is, in 2010 and 2012. Indeed, as explained below, this is what international case law has found.

WTO case law has made it very clear that it is highly unlikely that there is a causal link in case of such lack of coincidence in time between the evolution of the volume of imports and the evolution of the injury factors. For instance, the panel in *Argentina – Footwear (EC)* stated the following in this respect:

“In practical terms, we believe therefore that this provision means that if causation is present, an increase in imports normally should coincide with a decline in the relevant injury factors. While such a coincidence by itself cannot prove causation (because, inter alia, Article 3 requires an explanation – i.e., “findings and reasoned conclusions”), its absence would create serious doubts as to the existence of a causal link, and would require a very compelling analysis of why causation still is present.”³¹ (emphasis added)

In the years in which dumping is alleged in this case, the following observations can be made about the Applicants’ claims based on the data presented in the Application itself:

- profit: the domestic industry obtained record profits in 2010 (in the presence of allegedly dumped imports), while profits plummeted in 2011 (when no imports were present) and rise again in 2012 (in the presence of allegedly dumped imports)³²;
- profitability: the domestic industry obtained an unprecedented profitability in 2010 (in the presence of allegedly dumped imports), which reach the lowest level in years in 2011 (when no imports were present) and

³⁰ Appellate Body report, *US – Hot-Rolled Steel*, para. 222.

³¹ Panel report, *Argentina – Footwear (EC)*, para. 8.238.

³² Application, page 25.

increased again in 2012 (in the presence of allegedly dumped imports)³³;
and

- production: production in 2012 (in the presence of allegedly dumped imports) increases as compared to 2011 (when no imports were present)³⁴.

In this case the applicant's injury claims fail to offer any basis to address the serious doubts that are the case where injury is not concurrent with the imports that are alleged to be dumped, and given no causation can be established, the applicants' claims must be rejected and the investigation should be terminated without the imposition of measures.

Further, both Australian and Chinese manufacturers won parts of the tender for two of those three wind farms (being Gullen Range and Snowtown II). This makes it clear that the alleged dumped prices were not the driver of whether the tender was awarded to Australian or Chinese manufacturers, and casts further doubt on the allegations that dumped prices were responsible for the injuries identified.

6.3 Other factor: market variations and contraction in demand

Section 269TAE(2A) of the Act explicitly refers to the contractions in demand or changes in patterns of consumption as another factor.

Interestingly, a coincidence in time can be found between the contraction in demand of the Australian market and the evolution of the injury factors. The consideration report reveals that the Australian market size for wind towers was at its peak in 2009.³⁵

A report by the Clean Energy Council³⁶ also found that the number of wind turbines established each year in 2010, 2011 and 2012 in Australia was almost half the number of turbines installed in 2008 and 2009. This is illustrated in the following graph taken from the report:

³³ Application, page 25.

³⁴ Application, page 24.

³⁵ Consideration report, page 19.

³⁶ *Wind Farm investment, employment and carbon abatement in Australia Report June 2012* p 9 Figure 5 <<https://www.cleanenergycouncil.org.au/resourcecentre/reports.html>>.

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As the demand for wind towers is driven by the number of wind turbines to be installed, this fall in activity decreased demand for wind towers. Accordingly, the market contracted and the Australian wind tower manufacturers saw a decline in their sales volumes.

Rather than the alleged dumping, it is this fall in activity and contraction in the size of the market which is the primary driver for the declining sales volumes of the Australian wind tower manufacturers and other injury factors. Indeed, the primary factor behind reduction in sales volumes and the associated decline in revenue and profits for the applicants is the slowdown in wind farm investment in the period both prior to and during the alleged dumping.

In other words, it can be concluded from this data that the decline in the size of the market has been the cause of any injury that may have been suffered by the Australian manufacturers in the period from 2010 to 2012.

The falling size of the market since 2008 and 2009 has been downplayed in the anti-dumping Application as wind farm investment is the predominant driver in the demand for wind towers. Further, the selection of 2008 as a 'base case' in the Application misrepresents the average size of the Australian market for wind towers by selecting the year in which investment peaked.

Therefore, the comparison by the applicants of subsequent years to the 2008/2009 peak provides a misleading view as to the nature and size of the Australian market and is therefore unreliable in determining whether an injury has been suffered.

6.4 Other factor: lack of export performance of the domestic industry

Section 269TAE(2A) of the Act explicitly notes that the export performance of the Australian industry as another relevant factor in determining whether there is a causation between the alleged dumping and local injury.

On page 20 of the consideration report, it is stated that the applicants did not complete appendix A6.2 relating to export sales "*as they had not made sales of those types*". On page 23, Appendix A-7 of the Application, the Applicants specifically

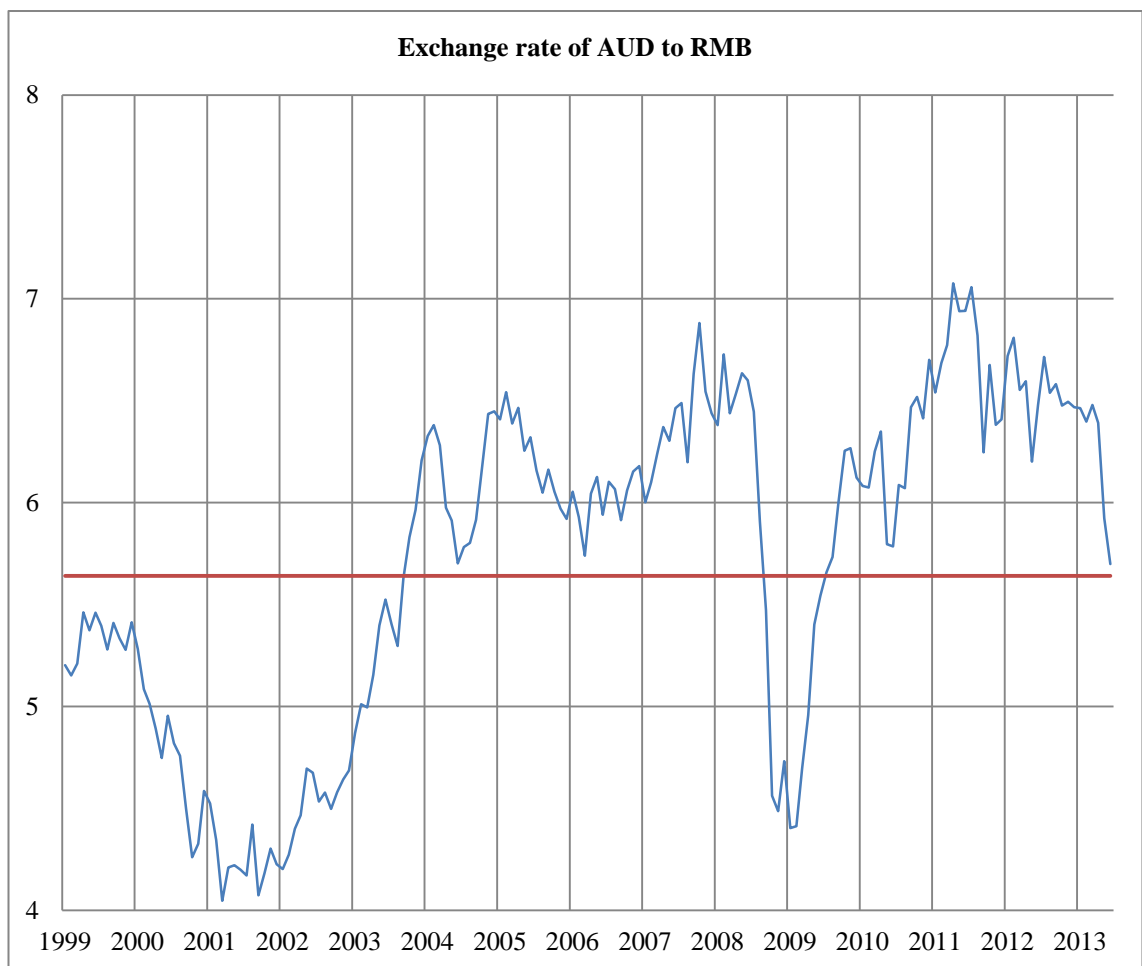
state “*The applicants have no export sales*”. On this basis, it seems that the domestic industry did not carry out any export sales of wind towers.

The failure of the Australian industry to achieve any export revenue at all strongly suggests that either (a) Australia lacks a competitive advantage in the production of wind towers; or (b) the alleged difficulties of the Australian producers are a feature of their own decision making rather than dumped imports.

6.5 Other factor: Position of Australian dollar as compared to the RMB

The Australian Dollar has significantly appreciated against global major currencies, including the RMB, in recent years. As a result, *ceteris paribus*, Australian made products have become more expensive compared to overseas products.

As shown below, the AUD appreciated significantly against the RMB in recent years which made imports from China cheaper. The average exchange rate of 6.44 from the period of January 2012 to June 2013 was 14.2% higher than the long run average of 5.64 from 1999 to 2011.³⁷



It is appropriate to use the period from 1999 to estimate the average long run exchange rate as it provides a sufficient sample size by covering 13 years. It also

³⁷ Based on monthly exchange rate data published by RBA.

captures the effect of an entire market cycle from the beginning of a new market cycle following the Asian financial crisis in 1998.

To evaluate whether the average exchange rate in the recent period from January 2012 to June 2013 was indeed higher than the long run average, a statistical test is conducted to test the hypothesis that the two periods have equal averages. As shown in Appendix A, two sampled mean tests (or the Welch's t test) clearly reject such an hypothesis, demonstrating that the AUD exchange rate remained elevated in the period from January 2012 to June 2013 when compared to the long run market average.³⁸

This demonstrates that the strength of the Australian dollar made imports from China relatively cheaper, and supports the argument that the wind towers were not dumped in the Australian market.

6.6 Other factor: failure to participate in all tenders

The consideration report (see page 18) mentions that the applicants *inter alia* relied on estimates “based on The Commission date for contracts they had not competed in”, to establish the dates of awarding the contract that were taken into account to estimate import volume.

This suggests that the applicants did not compete in all tenders. Imports of wind towers resulting from tenders in which the domestic industry did not compete cannot be considered to cause injury to the domestic industry. The only cause of any such injury in this respect is the failure by the domestic producers to participate in these tenders. That injury, assuming it is present is the local producers own doing.

6.7 Other factor: malinvestment

The adverse financial performance of RPG, and its subsequent entry into administration, can be explained by the fact that substantial capital was expended to increase capacity prior to the slowdown in wind farm projects caused by regulatory and market factors.

RPG acquired Major Metals in Dalby, Queensland in August 2007 and undertook a significant capital expenditure program to increase its wind tower fabrication capacity.³⁹ However, as mentioned above in this report, a number of factors combined to drastically decrease wind farm investment since 2009 which has seen fewer orders for wind towers. Consequently malinvestment on the part of RPG was the key driver for reduced capacity utilisation due to weak activity, and a key driver for its eventual entry into administration.

The fact that this took place in the period before the alleged dumping took place provides further evidence that broader market conditions are the key driver for the reduced profitability and capacity utilisation of the applicants.

³⁸ Appendix A contains a summary of Welch's t test.

³⁹ RPG Holdings Financial Report for year ending 30 June 2008.

A further factor to consider is the location of new wind farms. Previously many wind farms were built in South Australia (where RPG invested heavily), Victoria (where KPE invested heavily) and Tasmania (where Haywards invested heavily). However there has been significant reduction in demand for wind towers in those states where local suppliers have committed significant and poorly timed investments. The growth area for new wind farms is now likely to be built in NSW which is 1000km from the nearest local tower factory. Transport costs over land in Australia add significantly to the total cost of the wind tower, often by more than 10%.

This lack of flexibility which has arisen through lack of foresight and subsequent concentration of manufacturing facilities in the three south eastern states has been a significant factor in the diminishing ability of local suppliers to compete.

6.8 Other factor: regulatory framework

Another factor which offers a comprehensive reason for the falling demand for wind towers from the applicants relates to issues with the regulatory framework regarding renewable energy.

In August 2009, the Federal Government implemented the Renewable Energy Target (“RET”) scheme whereby 20% of Australia’s electricity was to come from renewable sources by 2020.⁴⁰ As part of this scheme, investment in renewable energy was encouraged through the creation of Renewable Energy Certificates (“REC”).⁴¹

Under the original scheme, electricity generated from renewable sources such as wind were issued one REC for every megawatt of power produced above a baseline set by the Office of Renewable Energy Regulator.⁴² These RECs could then be traded and sold.⁴³ RECs effectively subsidised energy projects such as wind farms and it is believed that RECs must trade at around \$45-\$50 to drive new wind farm investments.⁴⁴

However throughout 2010, there was a collapse in the price of RECs such that RECs were trading at under \$30 in December 2010, well below the level needed to drive wind farm investment.⁴⁵ This collapse in price was due to many households availing themselves of Government subsidised solar-panel installations. This created a

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<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook43p/ret>

41 <<http://www.allens.com.au/pubs/ener/foeneraug09.htm>>

42 <<http://www.theaustralian.com.au/national-affairs/price-hit-puts-wind-projects-in-limbo/story-fn59niix-1225976871282>>

43 <<http://www.allens.com.au/pubs/ener/foeneraug09.htm>>

44 <<http://www.theaustralian.com.au/national-affairs/price-hit-puts-wind-projects-in-limbo/story-fn59niix-1225976871282>>

45 <<http://www.theaustralian.com.au/national-affairs/price-hit-puts-wind-projects-in-limbo/story-fn59niix-1225976871282>>

surplus of RECs and drove down the price of RECs, thus making new wind farms investments economically uncompetitive.

The flawed treatment of solar PV that was introduced into the RET was publicly cited by KPE as a reason for the delay of several potential wind farm projects. KPE specifically stated that these RET issues contributed to a 42% decrease in revenue for its 2009 financial year.⁴⁶ The uncertainty in the market caused by price of RECs was also cited by RPG as a reason for its relatively weaker financial performance.⁴⁷

Legislation was eventually passed to split the scheme between small-scale and large-scale (which includes wind farms) electricity generation which came into effect in early 2011. However KPE admitted that the wind energy market remained flat in 2012 as there was no improvement in the REC pricing.⁴⁸ The price of RECs remained in the low \$30s levels even throughout 2013 as the Australian Federal election held in September 2013 heightened the policy uncertainty in the renewables sector. This was driven by the belief that a change of government could lead to the abolition of the ‘carbon tax’ (or carbon pricing scheme) and a change to the RET, thus again highlighting the uncertainty in the regulatory environment.⁴⁹

As a result of these regulatory issues, there has been underlying weakness and uncertainty in the wind farm sector for a number of years which has dampened investment. Consequently the demand for wind towers from wind farm operators has decreased. This is a core reason for the reduced revenues and profits of the applicants, and was specifically cited by the applicants as the key drivers of their worsening financial results in their publically available financial statements.

6.9 Other factor: failure to realise cost savings and economies of scale

As explained in section 4.3(c) above, the Chinese producers benefit from economies of scale and cost savings by outsourcing the production of non-critical and non-competitive components to firms with higher levels of productivity and efficiency in manufacturing such products.

The Australian manufacturers have not achieved significant economies of scale and production efficiency.

6.10 Other factor: relaxation of requirements for local content

Previously many tenders for wind towers contained contractual requirements from the wind tower operators that the towers had to be manufactured in Australia. The proponents of projects from approximately 2008 onwards have tended to have lesser local content requirements in their tenders than the proponents of pre-2008 projects

⁴⁶ KPE Financial Report FY09

⁴⁷ RPG Financial Report FY10

⁴⁸ KPE Financial Report FY12

⁴⁹ <<http://reneweconomy.com.au/2013/infigen-posts-loss-says-vested-interests-policy-uncertainty-damaging-aust-renewables-market>>

thus providing conditions more conducive to imports. This also helps to explain why imports have started increasing in the previous few years.

Related to the above point, when there were firmer local content preferences in tenders (ie prior to imports becoming a more effective competitor) there was no effective competition for the supply of wind towers in Australia. Each of the three Australian suppliers had particular strengths in different States and whilst they entered each other's States occasionally, they did not provide effective and vigorous competition to each other. In ordinary circumstances, each of these local monopolies (or at least parties with local market power) would have been earning an inflated monopolistic profit. For this reason the Commission must note that the level of profits achieved by each of the local suppliers prior to the relaxation of the local content rules should not be used as a benchmark by which to judge or assess current competitive profitability levels.

7. Lesser duty rule should be applied

If anti-dumping measures were to be imposed (and for the reasons set out above this should not be the case), the lesser duty rule should be applied in the present case.

The present investigation does not relate to an industry that includes at least two small-medium enterprises. As explained above, the normal value of the goods can be and should be determined by reference to the exporting country's domestic market. Even assuming that this would not be done in the present investigation because of an alleged particular market situation, the lesser duty rule should still be applied.

In the case that the Commission sought to quantify any perceived injury suffered by the local Australian industry, it would be limited to the difference between the alleged dumping price and the next cheapest alternative that would have been taken up in the counterfactual had the dumping price not been available.

Local project proponents in Australia are considering a number of such alternatives including Australian produced cylindrical cement towers.

8. Summary

The applicant has not disclosed much of the substance of its Application but even so it is possible to conclude that the anti-dumping duties sought cannot be implemented. In particular:

- An incorrect approach has been applied in reaching the normal value and therefore it is not possible to conclude whether or not any products have been dumped;
- There is no evidence of injury and, to the contrary, evidence that the industry's problems relate to poor economies of scale, intermittent/variable government policy and the high Australian dollar. These problems are unrelated with any alleged the alleged dumping;

- The question of quantification of adjustments has not been considered and applied; and
- No analysis has been undertaken concerning the Application of the lesser duty rule and instead the applicants claim the whole of the dumping margin as a duty.