PUBLIC RECORD

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Mr Matthew Williams
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Dear Mr Williams

PUBLIC RECORD

Anti-dumping Investigation 405 – Wind Towers exported from Vietnam

Introduction

I act for the Australian industry (the industry) manufacturing wind towers that comprises Keppel Prince Pty Ltd (KPE), Ottoway Fabrication Pty Ltd (OF) and Haywards Pty Ltd (Haywards).

The following submission is provided in response to the CS Wind Exporter Verification Report (the Report) placed on the EPR (023) on 30 November 2017.

The submission addresses the following matters:

- Determination of profit;
- Export price;
- Related party transactions;
- Credit expense adjustment;
- Impairment losses;
- Currency costs; and
- Market situation, electricity prices.

1. Determination of Profit

1.1 Determination of profit in Verification Report

The Report details the views and recommendations of the verification visit by the Anti-Dumping Commission (the Commission), noting that it may not reflect the final position of the Commission.

Section 7.4 of the Reports notes the following for the determination of a profit.

In constructing a normal value, the amount for profit is worked out in accordance with Regulation 45 of the Regulations.

The primary method the Commission must use is the profit achieved for sales of like goods sold by the exporter in the ordinary course of trade (OCOT). The verification team found that none of the domestic sales were in the OCOT. As such, the verification team was unable to calculate profit under Regulation 45(2).

Where this it is not possible to calculate profit under the primary method, the Regulations set out three alternative methods for profit determination, which are:

- by identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market or the country of export - Regulation 45(3)(a); or
- by identifying the weighted average of the actual amount realised by other exporters from the sale of like goods in the domestic market of the country of export - Regulation 45(3)(b); or
- subject to Regulation 45(4), by using any other reasonable method and having regard to all relevant information - Regulation 45(3)(c).

As stated in the Manual, there is no requirement to test for OCOT in any of the three alternatives for profit determination in Regulation 45, nor will the Commission read any OCOT requirement into them. The Manual also recognises that, in some instances, it may be appropriate to include a zero rate of profit.

As the verification team was unable to determine a profit based under any of the options available under the Regulation, the verification team considers it appropriate to use a zero rate of profit in the calculation of normal value[4]. (footnote 4 states *As per Regulation 45(3)(c) and Regulation 45(4)*.)

1.2 Legislation

1.2.1 Constructed normal value – Absence of relevant sales

Subsection 269TAC(2)(a)(i) of the *Customs Act 1901* (the Act) states in regards to normal values that:

> *Subject to this section, where the Minister:*
>
> *(a) is satisfied that:*
>
> *(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1);* or

The industry agrees that as there were no comparable goods sold on the domestic market in Vietnam there was an absence of relevant sales for determining a price under subsection (1).

Where 269TAC(2)(a)(i) is satisfied the Act states:

> *the normal value of the goods for the purposes of this Part is:*
>
> *(c) except where paragraph (d) applies, the sum of:*
>
> *(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or

(d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.

The amount of profit on the normal value is such amount as the Minister determines would be the profit on that sale as per 269TAC(2)(c)(ii).

Subsection 269TAC(2)(d) allows for the Minister to use third country sales, the Minister is not obliged to refer to or use third country sales, but there is no prohibition on the Minister doing so.

1.2.2 Determination of profit

Subsection 269TAC(5B) of the Act states in determining profit.

The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.

The relevant regulations referred to are contained in Section 45 of the Customs (International Obligations) Regulation 2015 (the Regulations) which state:

(1)For subsection 269TAC(5B) of the Act, this section sets out:

*(a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the **amount**) to be the profit on the sale of goods; and*

(b) factors that the Minister must take account of for that purpose.

(2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.

(3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

(4) However, if:

(a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and

(b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;

the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.

(5) For this section, the Minister may disregard any information that he or she considers to be unreliable.

(6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

The industry agrees with the Report that a profit could not be worked out under Regulation 45(2) as the Report found that none of the domestic sales were in the ordinary course of trade.

The industry agrees with the Report that a profit could not be worked out under Regulation 45(3)(a) given that CS Wind's core business in Vietnam is Wind Towers and these sales are unsuitable under subsection 45(2). Industry presumes that the Report also found so, though this is not stated.

The industry agrees with the Report that a profit could not be worked out under Regulation 45(3)(b) given that industry believes that there are no other identified other exporters or producers of like goods in Vietnam as stated in its application (pps 49,50). The industry presumes that no other exporters or producers were identified though the Report does not state so.

The industry submits that the Report contains errors in practice and law in considering it appropriate to use a zero rate of profit.

The industry disagrees that a profit could not be worked out under Regulation 45(3)(c):

using any other reasonable method and having regard to all relevant information.

The industry considers that Regulation 45(4) does not apply as there are no other exporters or producers in Vietnam.

The industry has worked out an amount for profit under Regulation 45(3)(c) using a reasonable method and relevant information that is also available to the Commission.

These matters are further addressed in the following sections.

1.3 Zero rate of profit – errors in practice and law

1.3.1 Errors in practice and law, working out.

The Regulations require that for the determination of the profit the Minister must work out an amount (the **amount**) to be the profit.

The Report contains no such evidence of the required "working out" with the exception in relation to Regulation 45(2).

The industry has presumed, as noted above, that amounts could not be worked out under Regulation 45(3)(a) and 45(3)(b) though this is not stated or shown in the Report.

There is also no evidence that any consideration was given to Regulation 45(3)(c), ***using any other reasonable method and having regard to all relevant information.***

In its application the industry provided calculations for profit in the constructed normal value.

> *The applicants have calculated a rate of profit of X% from CS Wind accounts.* (p.53).

CS Wind Financial Statements were provided at Confidential Attachment 9vii to the application in support of the rate of profit.

The information provided was relevant as it related to CS Wind, the method of calculation was reasonable.

Consideration Report (CON 405) in regard to initiation of the investigation noted:

> *In constructing the normal value, each applicant included an amount for SG&A expenses (including finance costs) and* ***profit based on CS Wind Corporation's financial accounts. CS Wind Corporation is the Korean-based parent of CS Wind Vietnam.***
>
> *The Commission notes that CS Wind Corporation's financial accounts contain some data which is not relevant to Vietnam and that it would be preferable to use figures based on CS Wind Vietnam's accounts.* ***However, it considers that the information used by the applicants is reasonable*** *on the basis that CS Wind Vietnam's financial accounts are not readily available to the applicants.* (p19)

There is no indication in the verification Report that regard was had to this information, why it may or may not be relevant information, or why a method of calculation using CS Wind Corporation accounts may or may not be reasonable.

There is no prohibition or restraint on the Commission using such information that was available to them.

The industry also notes that in the previous investigation a rate of profit was determined for Korea using information concerning profits of manufacturers of fabricated and processed metal products as revealed in data from the Korean Statistical Information Service. The Anti-Dumping Review Panel noted in in its report (ADRP REP15) regarding the calculation of the profit that "I do not accept that the method used was demonstrably unreasonable" (pps 16,17).

It was open to the Commission to consider such similar information in Vietnam in regard to the calculation of a profit, but there is no evidence in the Report that they had even turned their mind to any other reasonable method or relevant information.

The industry submits that the failure to work out such amounts as required in the Regulation amounts to errors in practice and law.

1.3.2 Error in practice, the Manual.

The Report notes that:

> *The Manual also recognises that, in some instances, it may be appropriate to include a zero rate of profit.*

The Manual states in regard to determining a profit under Regulation 45.

Where no profit can be determined under Regulation 45(2) because all sales of the like goods have not been in the ordinary course of trade, and calculations ***under Regulations 45(3)(a) and (b) for example show no profit, it is possible under these rules for the constructed normal value to include a zero profit in certain circumstances.*** (pps 48,49).

The principle stated is that under these rules it is possible to include a zero profit in certain circumstances.

This principle is different to that stated in the report that it may be appropriate to include a zero profit.

The Report does not identify what the certain circumstance are that made it possible to include a zero profit.

The Report further notes that:

> *As the verification team was unable to determine a profit based under any of the options available under the Regulation, the verification team considers it appropriate to use a zero rate of profit in the calculation of normal value[4]. (footnote 4 states As per Regulation 45(3)(c) and Regulation 45(4).)*

There is no statement in Regulation 45(3)(c) and Regulation 45(4) as to the appropriateness of a zero rate of profit.

The principle regarding a cap on profit does not apply as there are no other exporters or producers of the goods in Vietnam.

The industry submits that the errors in law and practice identified above evidence that:

- the Commission has not worked out the amounts required by the Regulations;
- regard has not been had to relevant information;
- certain circumstances have not been identified to make it possible to include a zero profit; and
- A rate of profit has not been calculated as required.

Industry submits that the above evidences that the Commission has determined not to include a rate of profit.

1.3.3 Error in law – Non-application of Profit

As summarised above the industry submits that the Commission is required to work out a rate of profit and has failed to do so.

The decision to apply a zero rate of profit is effectively a default decision not to include a rate of profit in the constructed normal value.

Such a decision is an error in law following the repeal of subsection 269TAC(13) of the Act in 2012. The repealed section and associated subsection was the only circumstance that allowed the Commission not to include a rate of profit.

Subsequent to the repeal of TAC269(13) and the associated legislation the Commission is required to work out amounts for a profit as determined by the Act and Regulations.

1.4 Legislative background – Rate of Profit

1.4.1 Customs Legislation (Anti-Dumping) Act 1989

The principles for determination of profits in constructed normal values were legislated in the *Customs Legislation (Anti-Dumping) Act 1989.*

Most of these principles remain in force today with the exception of TAC(13) which contained the only provision not allowing for the inclusion of a rate of profit in a calculated normal value.

The reasons and purpose of the legislation was outlined in the Explanatory Memorandum circulated with the Bill.

1.4.2 Explanatory Memorandum (Anti-Dumping) Act 1989

The Explanatory Memorandum (Ex Mem) Outline notes the following in regards to the rate of profit.

> *Additionally, the Bill gives effect to the Government's acceptance of the Anti-Dumping Authority's recent Report No. 4, concerning the inclusion of profit margins in certain normal value calculations, announced on 10 September 1989,*
>
> *The other substantive change proposed in this Bill relates to the amendments proposed in Clause 13, new section 269TAC, relating to the Government's decision on the Anti-Dumping Authority's Report to make provision for the inclusion of a profit margin when the normal value of goods is being constructed.*
>
> *The proposed amendments, in new subsections 269TAC(2)(c)(ii)(B) and (4)(e)(iii) give effect to the Authority's recommendation that when a normal value is being constructed, a profit margin (which may be zero) should be included.*
>
> *The one exception identified by the Authority and endorsed by the Government where a profit margin should not be included in a constructed normal value is where the relevant sales in the country of export have been made at a loss for an extended period of time.*
>
> *This has been given effect to in proposed new subsection 269TAC(13),*

The Ex Mem notes the one exception where a profit margin should not be included in a constructed normal value, the now repealed TAC(13).

The Ex Mem also notes that a profit margin (which may be zero) should be included when a normal value is being constructed.

The Bill as noted, gave effect to the Government's acceptance of the Anti-Dumping Authority (ADA) Report No. 4, concerning the inclusion of profit margins in certain normal value calculations.

ADA Report 4 includes reasons for determining a profit and where a profit margin may be zero.

1.4.3 Anti-Dumping Authority (ADA) Report No 4

The letter from the Minister to the ADA notes in regards to profit that:

> *It is now necessary to establish those circumstances when an element of profit should be included in a normal value construction. Accordingly, pursuant to sub-section 9(1) of the Anti-Dumping Authority Act 1988, I ask the Authority to prepare and give to me a report on what Regulations might be made to prescribe the circumstances when a profit component should be included in a normal value construction.* (Attachment 1)

The ADA recommended a profit should not be included where section 5(9) of the Anti-Dumping Act had been invoked. Section 5(9), s5(9), is reflected in the repealed TAC(13) of the Act.

The ADA views as stated in regards to a profit for all other constructed normal values were stated as (with emphasis added):

> *The Authority is **unable to identify** at this stage any instances **where a profit should not be included outside** of s5(9) cases.* (p 32)
>
> *The amount of the profit margin added would depend on the case, but would always be so chosen as to obtain the best estimate possible of a fair price within the domestic market of the country of export. Thus, the profit margin adopted could be high if the producer made high profits on sales of other goods in his domestic market, and could be low (and **sometimes, conceivably, zero**) if, for example, little profit was made by any producer, **worldwide**, of the goods in question.* (p 33)

ADA Report 4 sets out above its views regarding the amount of profit to be added in a constructed normal value.

1.4.4 Profit margin (which may be zero), relevant information

The Ex Mem to the Anti-Dumping Act notes that

> *when a normal value is being constructed, a profit margin (which may be zero) should be included.*

The phrase which may be zero appears to be reflected in principle in the Manual that

> *it is possible under these rules for the constructed normal value to include a zero profit in certain circumstances.*

ADA Report 4 notes the ADA was unable to identify where a profit should not be included but theorised a profit could **sometimes, conceivably be zero** by way of example where all sales worldwide by a producer were of little profit.

The conclusions that can be drawn from ADA Report 4 are that circumstances where a profit of zero would be applied are very rare and would need to be justified as to why a zero profit was found to be suitable.

There was no such reasoning, workings or justification in the verification Report as to why a zero rate of profit was sufficient. The industry submits this represents an error in law and practice as noted above.

The reference in ADA Report to worldwide sales of the goods in question implies that there is no constraint using relevant data relating to other sales of the goods by the producer.

This is reflected in Subsection 269TAC(2)(d) of the Act in using Third country sales.

There is also no prohibition on using the profit on such sales.

1.4.5 Level Playing Field – Rate of profit

The reforms fact sheet 2Nov15 on the Commission website states:

> *On 15 December 2014, the Government announced reforms to strengthen Australia's anti-dumping system* ***ensuring Australian manufacturers and producers are competing on a level playing field.***

The rate of profit worked out by industry to be applied to the constructed normal value follows the stated principle that Australian manufacturers are competing on a level playing field.

The rate of profit is based on CS Winds global sales and reflects the profit that CS Wind Corporation achieves on its global sales.

The rate of profit worked out by the industry is **10.3%**.

The rate of profit so worked out in accordance with Regulation 45(3)(c) using a reasonable method and relevant information is the rate that should apply to the constructed normal value.

To use a lesser rate of profit, including a zero rate, is effectively concluding that Wind Towers exported to Australia should include a lesser rate of profit on Wind Towers exported and sold in other countries.

Such use of a lesser rate in not in accordance with the stated principle of the Government reforms of ***ensuring Australian manufacturers and producers are competing on a level playing field.***

The importer submissions of GE and Siemens refer to global pricing of Wind Towers, such global pricing also indicates a global rate of profit. To assume and apply a lesser rate of profit for Australia than the global indicates price differential practices for exports to Australia.

The methodology and reasoning for the worked rate of profit is outlined in the following section.

1.5 Worked rate of profit Regulation 45(3)(c)

The rate of profit worked out under Regulation 45(3)(c) ***using any other reasonable method and having regard to all relevant information.***

The reasonable method is the Consolidated Comprehensive Income Attributable to the owner of the parent company (CS Wind Corporation) over the sales for CS Wind Corporation.

The relevant information is that contained in the financial records of CS Wind Corporation and in its Annual Reports.

Industry has calculated a rate of profit for the July 2015 to June 2016 year (the period). This period has been used as it best reflects the rate of profit that the exporter of the goods, CS Wind Corporation, would expect on its exports of Wind Towers.

The Consolidated Comprehensive Income Statements best reflect the cost and sales data of the CS Wind Companies involved in the production and sales of Wind Towers.

The rate of profit worked out for the period is a conservative rate as it does not take into account CS Wind Vietnam's losses relating to sales of Wind Towers on the domestic market. CS Wind Vietnams sales of Wind Towers accounted for approximately 16% of CS Wind Corporation total sales for 2016.

The rate of profit worked out for the period is **10.3%** and is a conservative rate when compared to previous periods.

The comparable rate of profit for the 2014 Financial year is **20.3%** and for the 2015 Financial Year is **14.1%**.

Industry has not applied a rate of profit worked out for the whole investigation period as the last six months of 2016 show a comparable loss of **-28.8%**. The loss for these six months is not reflective with the previous achieved results and should be disregarded.

These results are also reflected in the gross profit results of 14.3% for the period, 30% for 2014, 22% for 2015 and -4% for the last six months of 2016.

The Annual Report of CS Wind Corporation notes that the seven companies and subsidiaries were included in the 2016 consolidated financial statements which likely accounts for the abnormal result for the period. Such companies included CS Rail Inc and PT. Daekyung Indah Heavy Industry which are not involved in the production and sales of Wind Towers.

The industry also notes that in the verification Report in calculating SG&A figures only the period relating to the calendar year 2016 was used, not the whole investigation period.

Workings and notes on the rate of profit of **10.3%** that the industry submits should be included in the normal value is at **Confidential Attachment 1**.

2. Export price

2.1 Export price not inclusive of total value of goods exported to Australia

The Report notes at section 3.2.2:

> *The visit team amended the exporters' sales data to include values for what the exporter had classified as "additional items" which were not originally reported as sales of the goods during the investigation period.*
>
> *The verification team used invoices and other source documents relating to these sale items to add the relevant value of these sales to the Australian export sales listing, since the wind towers under consideration required the additional items to satisfy the project requirements.*

Industry is concerned that whilst these additional items are included in the export sales and thus the export price they may not have been included in the constructed normal value.

Industry asks the Commission to check and confirm that these items have been included in the constructed normal value at a fully absorbed cost to make and sell (CTMS).

2.2 Flange Bolts

The Report notes at section 4.1.3:

> *During the course of the verification of PNC Global Korea's CTMS information, the verification team became aware that certain sales and cost information relating to flange bolts on the Ararat project had not been included in either the sales or cost information.*
>
> *In response to this issue, CS Wind Korea indicated that this information had been omitted on the basis that the flange bolt costs did not relate to the 'goods' as per the goods description. CS Wind Korea was also able to demonstrate that the flange bolts represented components that were not attached to the wind towers or sections thereof and therefore fell outside of the goods description.*

Industry disputes that flange bolts fall outside of the goods description.

Flange bolts are an essential part of wind towers required to bolt together the sections of wind towers to each other. Flange bolts are generally included in request for tenders for Wind Towers.

The description of the goods as notified in ADN. 2017 78 notes:

> *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****. Several wind tower sections are normally required to form a completed wind tower.*

It is not a requirement for the associated components to be attached to the tower sections to meet the goods description.

Industry submits that flange bolts should be included in the normal value at a fully absorbed CTMS plus the profit worked out.

Industry further submits that should the Commission decide that flange bolts fall outside of the goods description the fully absorbed CTMS plus the profit worked out needs to be taken into account in determining the export price.

This is reflected in subsection TAB(1A) of the Act which states:

> *For the purposes of paragraph (1)(a), the reference in that paragraph to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.*

Subsection 269TAA(1A) of the Act states that:

> *(1)For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:*
>
> *(a) there is any consideration payable for or in respect of the goods other than their price;*

The provision of flange bolts by the exporter to the importer at a price less than the fully absorbed CTMS plus the profit worked out represents a consideration payable for the goods other than the price.

This is as the flange bolts are an essential part of the wind tower and are as noted generally included in the request for tender for the wind towers.

To provide and allow for the provision of flange bolts at less than the CTMS plus profit would provide a significant benefit to the importer and distort the export price.

Further information on flange bolts and calculations of the effect on the export price is included at **Confidential Attachment 1**.

3. Impairment losses

The Report notes at Section 7.3 that impairment losses were excluded from the SG&A calculations.

Industry questions why these losses were excluded as the Annual Report notes impairment losses for CS Wind Vietnam. As CS Wind Vietnam business comprises the production and sale of wind towers industry questions how these losses could be considered irrelevant to the sale of wind towers. Industry's view is that in isolation such losses could be viewed as a cost of doing business.

4. Adjustment – domestic credit

The Report notes at Section 6.3 that a downward adjustment was applied to the normal value for domestic credit expenses.

Industry disputes such an adjustment. The Report states that none of the domestic sales were in the OCOT.

It is incongruous and contradictory to allow such an adjustment in terms of sales where one set of sales has been found not to be in the ordinary course of trade and **unsuitable**, especially given that it is likely that the credit terms on the domestic market contributed to those sales not being in the ordinary course of trade.

5. Related party transactions

The Report notes at Sections 4.1.1 and 4.3 that purchases by related parties to CS Wind Vietnam reflected the fully absorbed cost to make.

Industry is concerned that this statement indicates that relevant SG&A costs have not been included.

PNC Global Korea is as noted in the Report a subsidiary of CS Wind Korea. PNC Global Korea would incur SG&A costs relating to the provision of raw materials to CS Wind Vietnam including sourcing, arrangement of logistics, payments, processing, warehousing, interest and finance costs. Such costs would be separate to the costs incurred by CS Wind Vietnam and CS Wind Korea and should be taken into account.

6. Currency and finance costs

There is no mention in the Report of currency costs relating to foreign exchange gains and losses. The CS Wind Group would be buying and selling in multiple currencies, including the US dollar, Korean Won and Chinese Yuan.

Industry asks for confirmation that such costs were taken into account and the basis used to determine the relevant date of sale and exchange rate.

Likewise, there is no mention of how finance costs were taken into account. Industry notes that such costs are relevant to the expansion of the CS Wind Vietnam facilities.

7. Market Situation Electricity Vietnam

In the verification Report there is no indication that costs were examined to ensure that they reasonably reflect market costs as required by Regulation 43(2)(ii).

In the application the industry noted a market situation in regard to electricity prices in Vietnam.

> *Vietnam Electricity (EVN), the country's power utility, is a state-run firm that determines electricity prices in Vietnam.*
>
> *The influence of government control over electricity pricing in a manner that does not reflect cost realities of a normal competitive market company is illustrated in a recent article where the deputy general director made statements including:*
>
> *Even though power generation this year is expected to meet with difficulty due to water shortage in reservoirs caused by long-lasting severe drought, Tri said EVN will enact measures to solve the problem.*
>
> *Other businesses are also struggling with economic difficulties. If we charged higher prices, the situation would be severely worse," the deputy general director explained.*

> *As a state-run company, we are due to be responsible for balancing the national economy and keeping it stable, especially at this time when the development of the country should be sustained at a steady pace and the citizens' life needs easing," he added.*
>
> *The above statements imply that price increases are required (to offset cost increases) that would normally be imposed but that these increases have been rejected due to its obligations as a state-run company.*
>
> *The applicants have used their electricity costs uplifted, for a similar amount as for gas, to account for the market situation in Vietnam. (pps 51,52)*

In CON205 it was noted that:

> *The Commission will consider whether electricity costs along with other costs are competitive market costs in the course of the investigation.*

The Manual notes the following in regards to costs:

> *The cost to make and the selling, general and administrative expenses will normally be based on the information in the exporter's records where they are kept in accordance with the generally accepted accounting principles in the country of export; reasonably reflect the competitive market costs of production;(p40).*
>
> *The concept 'reasonably reflect competitive market costs' may also refer to the situation where there is a government influence on the cost of inputs.*
>
> *Regulation 43(2) requires the records relating to the costs of production or manufacture for the like goods to 'reasonably reflect competitive market costs';*
>
> *The Commission applies the same tests when constructing the normal value of the goods under section 269TAC(2)(c).*
>
> *More generally, the Commission may examine whether the cost to make are those costs that would be incurred in a 'competitive' market. The term 'competitive' in Regulation 43(2) is given its usual meaning and this can only be known according to the case circumstances. (p45)*
>
> *Where a major input is influenced by government*
>
> *When examining whether the input is supplied at a normal competitive market price the Commission may enquire whether the government had influenced the price of any major cost inputs. Government influence can be the supply of inputs by government-owned enterprises, or may arise in other circumstances.* (p46)

The Commission has found in SEF416 in regards to electricity pricing in Vietnam.

> *The Commission is therefore of the view that the level of control exercised by the GoV on electricity prices has artificially supressed the price of electricity in Vietnam.*
>
> *As outlined in Chapter 5, the Commission is of the view that the price of electricity in Vietnam is subject to such a degree of government control that it does not reflect a competitive market cost (as required under subsection 43(2) of the Customs (International Obligations) Regulation 2015). The Commission is of the view that the*

cost of electricity should be substituted with a relevant benchmark price, should such a benchmark be available.

The Commission has been unable to identify an appropriate benchmark to use in the replacement of electricity costs. Due to this, for the purposes of this SEF, the Commission has not modified the cost to make and sell (CTMS) when conducting the OCOT test.

The Manual notes as an option for benchmark prices:

The Commission will first look to information in the country of export when calculating a price for the major cost input. In the context of a major input being supplied by government, and a decision has been taken that the supply is not reflecting a competitive market price of that input, a substitute value for a major cost input may be ascertained using:

- *the price constructed from any other relevant information including price lists, independent sources (including trade publications, trade statistics), earlier dumping investigations;* (p46)

Industry submits that the conclusions reached in SEF416should also apply in regard to cost of electricity for Wind Towers produced in Vietnam by CS Wind.

that the price of electricity in Vietnam is subject to such a degree of government control that it does not reflect a competitive market cost

that the cost of electricity should be substituted with a relevant benchmark price, should such a benchmark be available.

Industry also notes that the Government of Vietnam has not disputed the findings in SEF416 in regard to electricity pricing.

Industry agrees with the benchmark proposed by Liberty OneSteel in its submission to the current dumping investigation into Steel Rod in Coils exported from Vietnam.

it is proposed that available electricity tariff rates for the Philippines be used as a competitive market cost benchmark.

*The average retail tariff in the Philippines in 2015 was USD 0.18/kWh, compared to USD 0.074/kWh in Vietnam, as previously disclosed to the Commission by the applicant industry. This suggests that Vietnamese electricity tariff's trade at a 58.9% discount to a comparable competitive cost benchmark. (*EPR 416, submission 027, p.19)

The proposed benchmark would see CS Wind Vietnam's electricity costs in Vietnam uplifted by 243%.

8. Conclusion – Estimated dumping margin

The margin calculated in the Report without including a rate for profit is stated at 2.6%.

Industry has worked out an amount of profit to be included in the normal value at 10.3%.

This increases the dumping margin to 12.9%.

Industry considers that the other items it has submitted on relating to the export price, related party transactions, credit adjustment, impairment losses, currency and finance costs and uplifted electricity costs would add an estimated 3-4% to the dumping margin.

This would provide a final margin in the range of **16.4%**.

This is consistent with the margins found in the previous investigation into Korea and China. Given the global nature of prices and costs and that the previous margins were determined at a time where the Australian dollar was at parity with the US Dollar, but since depreciated to 0.75 it would be expected that the margin would be higher.

If you have any questions concerning this submission, please do not hesitate to contact me.

Yours sincerely

Rod Jones