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Non-Confidential Submission

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BY EMAIL

Dear Ms Robilliard

Importer's submission by General Electric International Inc *(GE)* regarding ADC Case No 405 Investigation into the alleged dumping of certain wind towers exported from the Socialist Republic of Vietnam

I refer to the CS Wind Exporter Verification Report published by the Anti-Dumping Commission (***Commission***) on 28 November 2017 (***CS Wind Report***), the Australian industry's submission in response to the CS Wind Report on 5 December 2017 (***5 December Submissions***), and the Commission's Notice (ADN 2017/174) published on 1 December 2017 which provides for interested parties to comment on the CS Wind Report *'to allow the Commission to fully examine the injury claims of interested parties'*.

This submission is informed by the Australian Industry Verification Reports published by the Commission in relation to Keppel Price Engineering Pty Ltd (***KPE***) dated 19 September 2017 and Ottoway Fabrication Pty Ltd (***OF***) dated 16 November 2017. The submissions made below supplement GE's previous submissions of 24 July 2017 (***24 July Submissions***) and 14 September 2017.

1 Summary

The Commission's preliminary findings in the CS Wind Report provide further evidentiary support for GE's view that the Australian industry has not sustained material injury to the wind tower manufacturing sector as a result of any alleged dumping.[1] This is particularly evidenced by the preliminary dumping margin of 2.6% calculated by the Commission pursuant to section 269TACB of the *Customs Act 1901* (Cth) (***Customs Act***), which is only marginally above the negligible threshold for the purposes of s 269TDA(1)(b)(ii).

If it cannot be established that dumping has caused material injury to the Australian industry,[2] the Commission should not recommend the imposition of dumping duties. Accordingly, the Commissioner should promptly terminate the investigation pursuant to subsection 269TDA(13) of the Customs Act.

2 Assessment of Causation and Material Injury

2.1 Legal framework

The causation requirements set out in sections 269TG(1) and (2) of the Customs Act reflect Australia's implementation of article 3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (***ADA***) and article VI(6)(a) of the *General Agreement on Tariffs and Trade* (***GATT***) which states that:

> No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

Section 269TAE(1) of the Customs Act outlines that, in determining whether 'material injury' has been caused for the purposes of section 269TG, the Minister may have regard to a number of factors which include the following:

> (aa) the size of the dumping margin, or each of the dumping margins, worked out in respect of the goods of that kind that have been exported to Australia and dumped;
>
> …
>
> (e) the difference between:
>
> (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
>
> (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia…

The Ministerial Direction on Material Injury[3] includes the following specific directions in relation to the process of assessing the materiality of injury caused by dumping undertaken by the Commission:

> Whether dumping or subsidisation is the sole cause of injury or whether there are other contributing factors, I direct that the injury caused by dumping or subsidisation must be material in degree.This is consistent with Australia's international trade obligations under the World Trade Organisation's Anti-Dumping Agreement…

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[1] See 24 July Submissions, section 5.

[2] For the purposes of Section 269TG(2) of the Customs Act.

[3] Ministerial Direction on Material Injury 2012, dated 27 April 2012 (***Ministerial Direction***).

Under the Ministerial Direction, in order for any injury caused by dumping to be *'material in degree*', that injury must be *'greater than that likely to occur in the normal ebb and flow of business*', and must not be *'immaterial, insubstantial or insignificant'*.[4]

Having regard to: (i) the small preliminary margin of dumping that has been provisionally determined by the Commission in the CS Wind Report, (ii) the Australian wind tower industry as a whole,[5] and (iii) the impact of other factors on injury alleged to have been caused to the Applicants,[6] GE submits that the evidence before the Commission supports a finding that any injury that has been caused by dumping (in the event that dumping is found to have occurred) is 'immaterial, insubstantial or insignificant'.

Further, GE submits that the Commission's calculation of a 2.6% preliminary dumping margin supports GE's 24 July Submissions in relation to material injury and causation. Relevantly, the 24 July Submissions set out GE's supplier evaluation processes[7] and the specific details of procurement of wind towers in relation to the Ararat wind farm project (***Ararat***) (including the impact of price and non-price related factors).[8] Even in a scenario where CS Wind's price for the supply of wind towers for Ararat was to increase by a factor of ~2.6% (as would happen if dumping duties were imposed), CS Wind's price per tower would remain significantly more cost competitive than KPE's price. Consequently, to the extent that a causal link can be established between price differences and 'injury' suffered by the Australian industry, any injurious effect of these price differences should not be attributed to dumping.

2.2 Injury caused by factors other than dumping

The principle that injury caused by other factors must not be attributed to dumping, as reflected in Article 3.5 of the ADA, is specifically noted in the Ministerial Direction and the Commission's policy guidance.[9]

Notwithstanding GE's view that any injury caused by dumping is 'immaterial, insubstantial or insignificant', GE also considers that the separate verification reports published in relation to the joint Australian industry applicants support GE's previous submissions that any material injury that has been suffered by the Australian industry is attributable to factors other than dumping.

Specifically, GE draws attention to the following points made by the Commission:

- **The impact of the RET on the dynamics of the Australian market for wind towers** – In the KPE verification report, it is stated that *'[o]verwhelmingly, the RET and investments in the wind tower market decide the number of wind towers that will be required*'[10] and that '*[i]n 2014 there was a delay in the agreement of the RET, which resulted in a downturn in the industry and investment in wind energy being delayed. This resulted in the Australian industry demand for wind towers falling from 283 towers in 2013 to just three in 2014, with flow on effects for profit, profitability, volume capacity utilisation and capital expenditure'.*[11]

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[4] Ibid.

[5] See 24 July Submissions, sections 5.2 and 5.3.

[6] See 24 July Submissions, section 6.

[7] See 24 July Submissions, section 2.3; GE; Importer Visit report, 6.

[8] See 24 July Submissions, section 3.1; GE; Importer Visit report, 6-7.

[9] Anti-Dumping Commission; Dumping and Subsidy Manual, 127-129.

[10] KPE; Australian Industry Visit report, 27.

[11] KPE; Australian Industry Visit report, 30.

- **The causal link between indicators of injury and 'other factors'** – In the OF verification report, it is stated that: '*injury factors claimed by OF regarding reduced profits and reduced profitability, reduced capacity utilisation, constrained capital investment and reduced return on investment are recognised as having been partly attributable to other injury factors'*.[12]
- **The capacity of the Australian industry to service the Australian market is impacted by the geographic location of wind projects –** The Commission has reported that *'KPE indicated that it is most competitive on transport costs within an identified radius of its production facilities in Portland and…there are certain areas where it is not competitive on price due to the location of the wind farm'*[13] and '*OF indicated that it cannot serve Western Australia, particularly since Australian coastal shipping is more expensive than international shipping. The shipping cost from South Australia to Tasmania is similarly prohibitive. Far north Queensland is also an issue geographically'.*[14]
- **Non-price related factors, influences the award of tenders by OEMs**: In the OF verification report, it is stated that '*OF acknowledged that it was not awarded the full ninety towers on the Snowtown II project as the OEM involved, Siemens, was seeking to spread its risk'* and '*OF saw the Siemens decision to split supply for the Snowtown II project as reasonable and expected as OF was a new manufacturer of wind towers whose manufacturing capabilities and capacities were untested'.*[15]

These observations directly support GE's 24 July Submissions on the impact of the RET,[16] the significance of geographical proximity to wind farms,[17] and the significance of non-price related factors on procurement decisions.[18]

GE submits that the direct causal link between these particular market forces and each of the injury factors identified by the Applicants (taking into account the materiality of these factors) must be adequately recognised and appropriately excluded from the Commission's material injury and causation analysis.

3 Rate of profit calculated by the Commission

The Australian Industry's 5 December Submissions focus on the approach taken by the Commission's verification team in relation to determining a margin of profit to be included for the purposes of ascertaining constructed normal values.[19]

GE supports, in principle, the approach taken by the Commission's verification team with respect to the calculation of a rate of profit for the purposes of constructing normal values pursuant to section 269TAC(2)(b) of the Customs Act, Regulation 45 of the *Customs (International Obligations) Regulation 2015*, and relevant policy guidance.[20]

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[12] Ottaway Fabrication; Australian Industry Visit report, 25.

[13] KPE; Australian Industry Visit report, 32.

[14] OF; Australian Industry Visit report, 29.

[15] OF; Australian Industry Visit report, 28.

[16] See 24 July Submissions at section 5.2.

[17] 24 July Submissions at section 6.2(b).

[18] See 24 July Submissions at sections 2.3 and 3.1.

[19] Australian Industry; 5 December Submissions, 2-10.

[20] Anti-Dumping and Subsidy Manual, 49.

4 Request for termination

On the basis of the evidence available on the public record, GE submits that the Commission should not reasonably find that dumping has caused material injury to the Australian industry for the purposes of subsection 269TG(2)(b). Accordingly, GE urges the Commissioner to promptly terminate the investigation pursuant to subsection 269TDA(13) of the Customs Act following, or concurrent with, the publication of the SEF.

Yours sincerely,

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General Electric International Inc

Australia and New Zealand