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11 December 2017

Director
Anti Dumping Commission
Investigations 3
Industry House
10 Binara Street
Canberra ACT 2600
Australia

By email

Dear Director

CS Wind Corporation
Wind towers from Vietnam –Australian industry's incapacity

As you know we represent CS Wind Corporation ("CS Wind") in this investigation.

The purpose of this letter is to urgently draw your attention to the Commission's own exemption inquiry, EX0061 ("the Exemption Inquiry"), initiated pursuant to Anti-Dumping Notice No. 2017/141. Significantly, we draw your attention to the following circumstances of that exemption inquiry:

- The applicant is Keppel Prince Engineering Pty Ltd ("KPE"), being one (and the larger one) of the two applicants who claim to be the Australian industry producing the "like goods" in this investigation.
- Haywards Steel Fabrication & Construction Crisp Bros ("Haywards") must be taken to support KPE in its application for the Exemption Inquiry, in that Haywards supported the Tariff Concession Order upon which the application for the Exemption Inquiry is based.
- KPE and Haywards claim to be the only Australian producers of the goods subject to the Exemption Inquiry.
- The scope of the goods that are the subject of KPE's application for the Exemption Inquiry ("the Exemption Application") substantially overlaps with the scope of the goods under investigation in the current investigation ("the GUC").

A GE's concern regarding non-price factors is validated

As you may recall, in a submission lodged by General Electric International Inc ("GE") dated 13 September 2017, GE provided detailed comments to demonstrate that its decision to not fully award the Ararat project to the Australian industry was attributable to a range of commercial considerations, most significantly the commercial risks associated with potential delays, quality, and specification deviation issues. GE explained that its procurement decision to not allocate the full Ararat project to KPE was due to its concerns regarding KPE's capability, as an unproven supplier for GE. In that same submission, GE draw the Commission's attention to a Tariff Concession Order applied for by KPE as a clear example of KPE's incapacity. GE's submission states, in part:

> *KPE has recently lodged an application with the Comptroller-General Of Customs (Comptroller General) for a Tariff Concession Order (TCO) with respect to certain base sections for wind generator towers classified to Tariff Heading 7308.90.00 (TC1761480). GE understands that the core criteria for making a valid TCO application include a requirement that no substitutable goods are produced in Australia in the ordinary course of business. In making the application, KPE is asserting to the Comptroller General that the subject goods have not been produced in Australia on an ongoing or intermittent basis for the past 5 years and there are no producers in Australia willing to accept an order to supply these goods.*
>
> *KPE's TCO application undermines the validity of the scope of goods under consideration for the purposes of the present investigation – an issue that should be investigated by the ADC in formulating its Statement of Essential Facts. It also suggests that KPE are wholly reliant upon import sources for the manufacture of base ring sections that meet the description provided in TC176480. For OEMs such as GE that choose to source tower and base ring sections from the same supplier, this creates added complexity and commercial uncertainty to KPE's value chain. These issues are directly relevant to considerations of capacity and capability.*

We do not have access to KPE's TCO application. However, we draw the Commission's attention to the legislative criteria for the granting of a TCO, as mentioned by GE. In view of the grant of the TCO and the making of the Exemption Application, we believe that GE's comments and concerns regarding the Australian industry's capacity and capability have been confirmed.

Further, we take note of the following statement in support of the TCO application by Haywards:[1]

> *We fully understand the basis of this TCO for a certain category of wind generator tower section and we confirm that our company, Crisp Bros. & Haywards Pty Ltd, trading as Haywards Steel Fabrication and Construction, are not able to fabricate sections described due to constraints with workshop capacity and plate forming equipment.*
>
> *We are not aware of any other fabricators in Australia with the ability to manufacture these sections.*

The Exemption Application proceeds on the following basis:

- *Substitutable goods are not manufactured in Australia.*
- *The Applicant was the Applicant in relation to TCO 1761480.*
- *The Applicant met the requirements of Section 269FA of the Customs Act 1901 in relation to this TCO. There was no Objection to the granting of this TCO.*

Accordingly, we concur with GE's comments. There is a necessary and logical connection between KPE's TCO and Exemption Application, and the Commission's consideration of:

- KPE's eligibility as an Australian industry producing like goods to the GUC;
- KPE's claim that it has suffered material injury caused by dumping level price of imported wind tower from Vietnam.

Further, it would appear to us that GE's submission may not have fully appreciated the scope of

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1 See KPE exemption application, at page 7.

KPE's TCO application at that time. GE may have been under the misapprehension that the TCO application was in relation to "tower base rings". However, we find this to be clearly not the case, because the TCO actually applies to any section of a wind tower that meets the dimensional requirements set out in the TCO. The scope of the goods covered by the TCO and now by the Exemption Inquiry raise profound and fundamental questions about the Australian industry's capacity and capability to produce wind towers.

B The GUC overlap with the goods subject to the Exemption Inquiry

The TCO granted to KPE, and the Exemption Application and Inquiry describe the goods as having a *"stated use"* of *"base sections for a wind generator tower"*. However the physical description of the goods simply refers to the dimension, weight and steel thickness as follows:

> *SECTIONS, WIND GENERATOR TOWER, having ALL of the following:*
>
> *(a) plate steel having a thickness of NOT less than 33 mm and NOT greater than 60 mm;*
>
> *(b) individual section length NOT less than 14 100 mm AND NOT greater than 16 250 mm;*
>
> *(c) individual section weight NOT less than 60 metric tonnes and NOT greater than 105 metric tonnes;*
>
> *(d) diameter greater NOT less than 4 299 mm and NOT greater than 4 650 mm*
>
> *Op. 09.06.17 - TC 1761480*

As the Commission would be aware, the GUC as subject to the investigation are typically comprised of three or four sections, i.e. the top, middle and base sections. Apart from the variation in dimensions and the steel plate thickness (due to the design and overall shape of the tower), and in the fitting of any "internals", there are often no distinct physical differences between each sections – especially between the middle and base section. The only specification limit included in the definition of the GUC in this anti-dumping investigation is the following:

> *…a minimum height of 50 metres measured from the base of the tower to the bottom of the nacelle (i.e. where the top of the tower and nacelle are joined)…*

Accordingly, there is a clear overlap between the goods within the scope of the TCO and the Exemption Inquiry on the one hand, and the GUC on the other.

CS Wind has compared the physical specifications of the tower sections for Australian projects it won during the period of investigation ("POI") and shortly after the POI with the goods covered by the Exemption Inquiry. The words of the TCO and the Exemption Inquiry describe the goods as *"base sections for a wind generator tower"*. However, the goods as specified are not only *"base sections"*. The goods within the scope of the Exemption Inquiry can comprise *both* base sections and middle sections.

Some of CS Wind's Australian sales of the GUC during the POI fit within the description of the goods covered by the Exemption Application, or at least have physical characteristics very closely resembling the goods for which exemption has now been sought (the green cells refer):

Hornsdale (**[CONFIDENTIAL TEXT DELETED – project description]**)

SECTION	Length (meter)	Upper diameter (meter)	Lower diameter (meter)	Min. thickness (mm)	Max. thickness (mm)	Weight (MT)
[CONFIDENTIAL TABLE DELETED]						

Ararat project

SECTION	Length (meter)	Upper diameter (meter)	Lower diameter (meter)	Min. thickness (mm)	Max. thickness (mm)	Weight (MT)
[CONFIDENTIAL TABLE DELETED]						

Note: specifications either entirely covered by the scope of the Exemption Application or are very close to those prescribed in the Exemption Application are highlighted in green.

As shown above, the base sections for the **[CONFIDENTIAL TEXT DELETED – project description]** fit within the scope of the goods subject to the Exemption Application, subject only to length. The goods supplied by CS Wind to the **[CONFIDENTIAL TEXT DELETED – project description]** are longer by less than **[CONFIDENTIAL TEXT DELETED – number]** centimetres, or less than **[CONFIDENTIAL TEXT DELETED – number]**%.

The Silverton project, being a project that CS Wind won during 2017 (post POI), and being a project which the Australian industry claimed that "*[b]oth OF and KPE would be competitive against an undumped price from CS Wind*" [2] has these wind tower dimensions, again with the closely resembling specifications shaded in green:

Silverton

SECTION	Length (meter)	Upper diameter (meter)	Lower diameter (meter)	Min. thickness (mm)	Max. thickness (mm)	Weight (MT)
[CONFIDENTIAL TABLE DELETED]						

In our opinion, it is conceivable that the scope of the TCO and the Exemption Inquiry have been carefully defined in order to fit within the design requirements of certain project/s KPE is trying to supply, in collaboration with exporters from China. The Commission should ask KPE to explain the reasons and intention of its Exemption Application. Further, in our opinion this possibility alone (that KPE is again trying supply the Australian market teamed up with its business partners from China) should raise the Commission's concerns regarding the competitive conditions that currently exist in the Australian market for the GUC. We respectfully recall and refer the Commission to our submission concerning the likelihood of material injury in the present and in the future – see our submission on behalf of CS Wind dated 11 August, at pages 6 to 8.

More importantly, in light of the above, we respectfully urge the Commission to take the following matters into account in the current investigation:

- the TCO and the Exemption Application describe goods that are *almost identical to*, or at least have physical characteristics *very closely resembling*, the GUC as were exported by CS Wind to Australia during the POI, as well as goods that are about to be exported to Australia

[2] See Australian industry submission dated 24 October 2017, at page 4.

by CS Wind;

- KPE advises that it *cannot produce the goods covered by the TCO/Exemption Application*;
- KPE advises that it cannot produce any *substitutable goods* to the kind of goods covered by the scope of the TCO, being goods that one would have to expect at least include tower sections that have certain physical characteristics "like" those goods covered by the TCO; and
- through the TCO application and Exemption Application, KPE admits its inability to handle the dimensional, weight and steel processing requirements of wind tower production as demanded by the Australian market.

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In light of the above, the Commission should agree with the interested party submissions of Siemens, GE and CS Wind and find that the Australian industry has not suffered any material injury caused by the allegedly dumped *price* of the goods exported by CS Wind.

Yours sincerely

Charles Zhan
Senior Associate