



## Win&P., Ltd

# Investigation concerning the alleged dumping of wind towers

## Comments on draft margin calculations

### A Introduction

Win&P notes that its comments on the visit report were requested to be provided before today in order for a non-confidential version to be placed on the public record. However the report and the detailed calculations attached to it were provided to us on Friday 17 January. The request only allowed four working days for these important activities to take place:

- consideration and review of the entirety of the report, and of the detailed calculations attached to it, and the formulation of a response, by our client;
- consideration of our client's response by ADC, and the making of any changes to the report that might be called-for, and the resubmission of the report to us; and
- vetting of a copy of the revised visit report for confidentiality purposes by our client, so that it could be placed on the public record.

Win&P requests a reasonable accommodation in terms of the time allowed for these activities to be completed. It also requests a reasonable and earnest consideration of the comments that it now makes, and of the correction of errors in the report and the calculations, before it is required to provide a non-confidential version for the public record.

It is submitted that these are important commercial and legal matters and there should not be a justification – such as the assurance that any submissions will be taken into account for the purposes of preparing the final recommendations - for placing an incorrect report on the public record.

NON - CONFIDENTIAL

## **B Inclusion of the sales of embeds in working out the normal value and dumping margin**

Win&P reiterates its position that embeds/foundation are not parts of a wind tower in a commercial sense and should not be considered to be part of normal value or dumping margin considerations in relation to wind towers themselves.

We again refer to our submission on this topic dated 12 December 2013. Nothing stated in this submission in relation to embeds is to be taken as detracting from that submission.

## **C Conversion of currencies at date of sale**

Section 269TAF(1) of the Customs Act 1901 provides as follows:

*If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.*

This directly reflects and implements the obligation to the same effect which contained in the WTO Anti-Dumping Agreement (Article 2.4.1 and footnote 8).

In the case of Win&P's margin calculation:

- the comparison does require a conversion of currencies;
- [CONFIDENTIAL TEXT DELETED – commercial aspects of sales]; and
- the material terms of the sale were undoubtedly established on the date of the contract that Win&P entered into with [CONFIDENTIAL TEXT DELETED – customer details].

Accordingly, as the requirements of Section 269TAF are met, the conversion of the AUD export price to KRW for the purposes of the margin calculation must be undertaken using the exchange rate between the two currencies on the date of the [CONFIDENTIAL TEXT DELETED – customer details] contract. The contracts were fully verified and it was established that the transactions took place according to the

contractual terms.<sup>1</sup>

The draft visit report suggests that the delivery date of the wind towers concerned should be considered to be the date on which the material terms of the sale were established.<sup>2</sup> The following notes to Win&P's financial accounts are quoted in the visit report as being the justification for that view:

[CONFIDENTIAL TEXT DELETED – internal accounting methodology as per notes to Win&P's financial accounts]

We do not know how it could be said that a note to Win&P's financial accounts could detract from the proposition that the material terms of the contract [CONFIDENTIAL TEXT DELETED – customer details] had been established by [CONFIDENTIAL TEXT DELETED – customer details] contract. It certainly cannot have changed or altered those terms.

There seems to have been a fundamental misconstruction of this matter in the draft visit report.

Respectfully, Win&P requests that the AUD value of its export [CONFIDENTIAL TEXT DELETED – customer details] be converted to KRW at the date of the contract [CONFIDENTIAL TEXT DELETED – customer and contract details].

**D Inclusion of [CONFIDENTIAL TEXT DELETED - internal accounting methodology and different divisions] SG&A and consequent overstatement of [CONFIDENTIAL TEXT DELETED - internal accounting methodology and different divisions] SG&A**

[CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions]. The company adopts segment reporting and this is reflected in its audited financial accounts in accordance with Korean GAAP.

[CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions]<sup>3</sup>

However, in working out the indirect SGA expense allocation in its “SG&A” worksheet under “Appendix 2

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<sup>1</sup> The specific terms [CONFIDENTIAL TEXT DELETED – customer and contract details] were presented, verified and explained.

<sup>2</sup> This conflicts with the position advised to interested parties in the consideration report (see page 18); the exporter questionnaire (see page 15); and the preliminary affirmative determination report (page 9).

<sup>3</sup> File name “SGA Allocation\_Different Method\_Submission”.

– Domestic Sales”, ADC has used the indirect expenses of [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] to work out the total indirect expenses.

[CONFIDENTIAL TEXT DELETED – internal accounting methodology, different divisions and numbers].

This calculation is incorrect. As indicated by Win&P during the verification, the indirect SG&A expense [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] shared by all divisions was KRW[CONFIDENTIAL TEXT DELETED – number] in 2012 and KRW[CONFIDENTIAL TEXT DELETED – number] in 2013 (referred to as the “company common” indirect expenses).

The KRW[CONFIDENTIAL TEXT DELETED – number] used by ADC as part of indirect expenses for the purpose of working out the SG&A [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] includes not only the company common expense, which should be used for allocation, but also expenses which are specifically traced to [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] (as further explained below).

Win&P considers that there may have been some confusion caused by reason of the description of part of the SG&A in the spreadsheet that Win&P provided to the ADC. The expenses identified as [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] comprise both:

- expenses which are company common expenses [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions]; and
- expenses which are specific and can be traced only to [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions].

The expenses which are specifically incurred for [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] are not relevant to the goods under consideration, and therefore should be excluded from the calculation of the SG&A [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions].

[CONFIDENTIAL TEXT DELETED – commercial arrangements with customers re tower design].

Although this is a logical proposition, we appreciate that ADC would require some evidence to establish that proposition to its satisfaction. Win&P did provide such evidence. In this regard we refer to the Business Plan in the verification materials. This was handed over to the verification team on the afternoon

of 16 December 2013. At page 21 is a description of the projects underway, and to be continued with, during 2013. [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] Towards the end of the table there is a section referred to as “Other R&D and Expenses of [CONFIDENTIAL TEXT DELETED – name of specific R&D program]” and within that section to [CONFIDENTIAL TEXT DELETED – name of specific R&D program]. These project acronyms refer to [CONFIDENTIAL TEXT DELETED – name of specific R&D program] and [CONFIDENTIAL TEXT DELETED – name of specific R&D program], neither of which relate to wind towers. Accordingly, we reiterate that the R&D expenses do not relate to the goods under consideration.

Therefore Win&P submits that the total indirect expenses should be revised to reflect the correct company common indirect expenses, being KRW[CONFIDENTIAL TEXT DELETED – number] for 2012 and KRW[CONFIDENTIAL TEXT DELETED – number] for 2013.

## **E Inclusion of foreign exchange gains and losses in calculation of SG&A**

In the ADC’s “SG&A” worksheet of “Appendix 2 Domestic Sales”, foreign exchange gains and losses were used in determining financial expenses within the SG&A of the constructed normal value. The draft visit report explains that this is because:

*We consider that foreign exchange gains are related to the cost of production of the goods. [CONFIDENTIAL TEXT DELETED – product sourcing and costing information] the values are booked to the accounts using the rate of exchange applying on invoice date and any foreign exchange gains and losses result in differences in the exchanges rates from the invoice date and payment date.*

However, as indicated in Win&P’s EQ response, there were no exports of the goods under consideration to Australia during 2012. All exports of the goods to Australia were during 2013. Therefore, there could not be any foreign exchange gain/loss for 2012 in relation to the export sale of the wind towers to Australia. This accounts for any exchange gain/loss which might be relevant in the case of Win&P at the sales level.

In relation to the [CONFIDENTIAL TEXT DELETED – internal accounting methodology and different divisions] level, the foreign exchange gain/loss for 2012 is shown in the relevant account journal (attached). The “Table of raw material purchases” (also attached) is to prove that the purchases of raw material for the Australian sales only took place in [CONFIDENTIAL TEXT DELETED – product sourcing and costing information]. In relation to 2012, the only relevant foreign exchange gain is KRW[CONFIDENTIAL TEXT DELETED – number], and the only relevant foreign exchange loss is

KRW[CONFIDENTIAL TEXT DELETED – number].

## **F Errors in calculating domestic credit expenses as an adjustment factor**

In working out the dumping margin, an adjustment relating to the domestic credit expenses has been made to the normal value. The ratio is worked out as [CONFIDENTIAL TEXT DELETED – percentage number and effect] adjustment was made.

The calculation of the domestic credit expenses is at the “Domestic CTMS” worksheet under Appendix 2 Domestic Sales spreadsheet. The calculation of export credit expenses is at Appendix 1 Export price spreadsheet.

As the ADC verified, all of Win&P’s domestic sales of the goods involved sales terms that required payments [CONFIDENTIAL TEXT DELETED – commercial aspects of sales]:

[CONFIDENTIAL TEXT DELETED – commercial aspects of sales]

For export, the sales term required [CONFIDENTIAL TEXT DELETED – commercial aspects of sales].

We understand that the following method was intended to be used in working out the credit expenses:

- for payment made before delivery/final invoice, a negative credit cost (credit benefit) is worked out based on the period between the date of the advance payment and the delivery date;
- for payment made after delivery/final invoice, a credit expense is worked out based on the period between the delivery date and the date of payment; and
- the amount of credit expenses is then divided by the sales revenue in order to determine the credit expenses adjustment ratio.

Win&P supports that methodology, however notes that there are several errors in the credit expenses calculation that was ultimately undertaken:

[CONFIDENTIAL TEXT DELETED – commercial aspects of sales]

Win&P now provides a table for the calculation of domestic credit expenses, addressing the above errors.

If it is the case that the ADC’s reason for the omission of [CONFIDENTIAL TEXT DELETED – commercial aspects of sales] as being outside the investigation period, then Win&P disagrees with

such position. The sales [CONFIDENTIAL TEXT DELETED – commercial aspects of sales] were subject to [CONFIDENTIAL TEXT DELETED – commercial aspects of sales], which is within the investigation period. This sale could only be regarded as outside the investigation period if the delivery date was used for the purpose of determining date of sale.

However, as we have already stated (see C above) the delivery date was not the date on which the sales took place. stated in the ADC's Consideration Report No 221 and the Preliminary Affirmative Determination Report No 221:

*The Commission considers that the date the contract was awarded should be regarded as the effective date of sale as it reflects when a sale was won or lost by the Australian industry.*

Further, the instruction of the Exporter Questionnaire issued by the ADC states:

*For tender sales, the Commission considers the contract date will normally be taken to be the date of sale. To ensure that the Commission can make a proper assessment of date of sale, we request the contract date, invoice date and delivery date. If you consider that a date other than the contract date is the appropriate date of sale, please provide a response outlining your reasons for this.*

A description of the ADC's general position is stated in the Glossary of Terms of the EQ:

***Date of sale***

*The Commission will normally use the invoice date as recorded in the exporter or producer's records. Another date may be used if this better reflects the material terms of sale. The questionnaire directs attention to matching data sets of domestic and export sales where some other date is used, as well as matching cost information.*

This description is in line with the ADC's *Dumping and Subsidy Manual*.

Win&P submits that the contract date is the appropriate date of sale for Win&P's sales of the goods, as the ADC correctly pointed out in its reports and in the EQ of this investigation. The material terms of Win&P's sales are fully established at that date.

As further advised in the EQ response, Win&P issued [CONFIDENTIAL TEXT DELETED – commercial aspects of sales] payment under the contract. Therefore, whether the ADC adopts a contract date approach or its more traditional invoice date approach regarding the date of sale, [CONFIDENTIAL TEXT DELETED – commercial aspects of sales] must be recognized as [CONFIDENTIAL TEXT DELETED – commercial aspects of sales] within the investigation period.

Further, we refer to our submission relating to material date of sale dated 12 December 2013 for ADC's

further consideration

## **G Duplication of packing and handling costs in making adjustment to the normal value**

Win&P notes that in determining the dumping margin, a “packing and handling costs” of KRW[CONFIDENTIAL TEXT DELETED – number] per unit was applied as [CONFIDENTIAL TEXT DELETED – effect] adjustment to the normal value.

The calculation of this adjustment is at the “Australian sales” worksheet under “Appendix 1 Export Price”, which demonstrates that the “packing and handling costs” adjustment was worked out as a total of:

- the amount of packing cost as stated in column X of the Australian sales spreadsheet;
- the amount of inland transport under column Y; and
- the amount of “handling & other” under column Z.

Further, a “packing and handling costs” adjustment for embeds was calculated, based on the amount of adjustment applied to the tower.

The calculation of the “packing and handling costs” adjustment is incorrect and has resulted in double counting of the packing costs and part of the handling costs. This is because the cost of packing and the crane rental costs (part of the “handling & other” cost) are already included in the CTM of the towers exported to Australia, as part of “raw material” costs and “other cost” of the export CTM. Therefore, making further adjustment of the packing and crane rental costs would amount to a double counting of these costs.

Accordingly, the amount of packing cost, being KRW [CONFIDENTIAL TEXT DELETED – number] per unit, and crane rental costs, being KRW[CONFIDENTIAL TEXT DELETED – number] per unit, should be excluded from the “packing and handling costs” adjustment.

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