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For Publication

Ms Belinda Robilliard
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Anti-Dumping Commission
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Dear Ms Robilliard

Siemens Wind Power Pty Ltd (Siemens)
Investigation into the Alleged Dumping of Wind Towers Exported to Australia from Vietnam (Case 405)

We refer to the CS Wind Exporter Verification Report published on 28 November 2017 (**Exporter Visit Report**) and the submissions in response to the Exporter Visit Report made by the Australian Industry on 5 December 2017 (**Australian Industry submissions**). The submissions made below supplement our previous submissions.

1. The focus of the Australian Industry submissions is on the ADC verification team's preliminary determination that it is appropriate to use a zero rate of profit in the calculation of constructed normal value for the purposes of section 269TAC(2)(b) of the *Customs Act 1901* (Cth) (**Act**).[1] The Australian Industry submits that such an approach manifests error in practice and in law, on the basis that the verification team abstained from working out a rate of profit where one could be calculated for the purposes of regulation 45(3)(c) of the *Customs (International Obligations) Regulation 2015* (**Regulations**).[2]

2. Siemens submits that the Australian Industry's position is misconceived, and supports the approach taken by the ADC verification team in relation to the calculation of a rate of profit for the purpose of constructed normal value.

3. It appears to be common ground that determination of profit is in this case to be worked out by one of the three alternative methods set out in regulation 45(3), as there were no comparable goods sold on the domestic market such that the ordinary course of trade (**OCOT**) method set out in regulation 45(2) can be applied. Nor is it possible to calculate profit pursuant to regulations 45(3)(a) or 45(3)(b).

4. In Siemens' submission, using a zero rate of profit for the purposes of regulation 45(3)(c) is reasonable and open to the ADC in all the circumstances. No error of law is revealed in circumstances where:

    (a) it is apparent from the Exporter Visit Report that the ADC verification team took into account all relevant information, including CS Wind Corporation's financial accounts as the Korean-based parent of CS Wind Vietnam, information gathered from CTMS, and information verified during the site visit;

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[1] Exporter Visit Report, p 15.
[2] Australian Industry submission, p 4.

(b) the ADC verification team made a positive finding that it is "*appropriate to use a zero rate of profit in the calculation of normal value*" (as distinct from an omission to consider what rate of profit was appropriate, or a determination not to include a rate of profit); and

(c) the ADC Manual explicitly contemplates that "*it is possible under these rules for the constructed normal value to include a zero profit in certain circumstances*".[3]

5. The Australian Industry submissions, in painting the ADC verification team's finding that a zero rate of profit is reasonable as a "*default decision not to include a rate of profit in the constructed normal value*", effectively implies that the ADC must, in all cases in which normal values are constructed, calculate an amount of profit which is greater than zero. No such obligation arises from the Regulations, and in fact the policy guidelines explicitly contemplate otherwise.

6. Moreover, whether or not there may be some alternative reasonable method for calculating the amount of profit for the purposes of regulation 45(3)(c), that would not suffice to demonstrate legal error on the part of the ADC. Accordingly, Siemens submits that the Australian Industry's complaints about the ADC's approach to the calculation of profit for the purpose of constructed normal value are misconceived.

If you have any questions concerning this submission please contact us.

Yours sincerely

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[3] at p 49.