



Win&P

Comments on margin calculation methodology adopted by ADC at PAD stage

Information note

1 Introduction

At the commencement of the verification, the ADC visit team considerably provided Win&P and its representatives with an electronic copy of the margin calculation spreadsheets that had been prepared for the purposes of the preliminary affirmative determination ("PAD").

Win&P did not agree and does not agree with the margin published at the time of the PAD, or with the imposition of securities which accompanied that PAD. Win&P understands that the policy of the ADC is to arrive at such findings in a preliminary way on a "desk audit" basis. For the purposes of doing that, the ADC will request supplementary information but does not necessarily confer with the relevant exporters about the interpretation of the information, nor to check the preliminary margin calculations and the methodologies and assumptions used.

Having reviewed the margin calculation spreadsheets, Win&P wishes to draw attention to these matters:

- (a) the universe of the goods under consideration for normal value purposes;
- (b) the material date of the export sales for currency conversion purposes;
- (c) the recoverability test, and the profitability applied to the constructed normal value thereby.

There may be other matters that Win&P wishes to raise, either in relation to the PAD margin spread sheets or the spreadsheets emanating from the verification visit. Win&P has not engaged in any price discrimination between the domestic and export markets, and on the basis of its own calculations it has no expectation of the generation of an actionable dumping margin. The export price and the constructed normal value we have calculated are practically identical.

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Win&P looks forward to close communication with the ADC visit team regarding these matters in the future.

2 Universe of the goods under consideration for normal value purposes

Win&P wishes to point out that foundations (also known as embeds or anchors) are not part of a wind tower in a commercial sense and should not be considered to be part of normal value considerations in relation to wind towers themselves. Win&P's position is that:

- (a) embeds are products that can be separately sourced and are separately sourced;
- (b) the commercial considerations that apply to embeds are different – installation, topography, design, timing, etc – and are not the same considerations that apply to wind towers;
- (c) related to the previous points - there are separate and distinct markets and separate and distinct profit considerations applying to the two types of products.

We point out that the *WTO Anti-Dumping Agreement* is intended to deal with the exportation of defined goods, and is not meant to be a comparison of procurement contracts or of project delivery prices that take place in different countries.

In Win&P's opinion, it was unacceptable for the applicant to seek an investigation in relation to two separate products, as if they were the one defined product, and it was remiss of the ADC to initiate an investigation into two defined products as if they were one. If the applicant wished to complain about the alleged dumping of embeds, that should have been addressed in a separate application so that it could have been evaluated on its own merits.

Win&P notes that the ADC presently appears to have a different view. As we understand it, and as informed by discussion with the visit team during this verification, the expression "*wind towers... whether or not including an embed being a tower foundation section*" is presently being interpreted as meaning that the goods under consideration are wind towers (ie the wind tower itself) and an embed, if there is an embed involved in the overall project or contract concerned. With respect, this is not the ordinary interpretation we would expect for those words, because an embed is not a wind tower. We submit that the words need to be interpreted as meaning that the investigation concerns wind towers, and the fact that there may or may not be an embed also somehow involved does not change the character of the wind tower. The words do not mean that the separate product known as an embed is also under investigation. The interpretation that embeds are actually part of the goods under consideration is also

denied by the proviso which is also in the definition of the goods under consideration, that “*external components that are not attached to the wind towers or sections thereof*” are excluded.

Win&P urges ADC to take the principled, practical and logical position that embeds are not the goods under consideration, and are not part of the goods under consideration. The goods under consideration are certain utility scale wind towers, of certain types, The reference to the inclusion or exclusion of embeds must be technically and practically interpreted as meaning that the inclusion or exclusion of an embed for a wind tower in a shipment or a project does not take the wind tower that the embed is intended to support outside the scope of the goods under consideration.

Win&P's practice and experience is that embeds are exported in advance [CONFIDENTIAL TEXT DELETED – commercial aspects of sales], so as to enable all of the separate and specific installation and construction activities that relate to the embed to take place. This occurs well in advance of the exportation of the wind tower itself. We do not see how a Collector of Customs could require dumping duties to be paid on the importation of an embed when the measures had been imposed on “*certain utility scale wind towers... whether or not including an embed*”.

In summary, Win&P submits that the goods under consideration are wind towers of certain types, and that the words referring to embeds are simply directed towards identifying the fact that the inclusion or exclusion of an embed does not alter the fact that the investigation only concerns the wind tower.

The inclusion of the embeds in the normal value for Win&P's wind towers distorts the normal value for the wind towers themselves. Win&P requests that the investigation relate only to wind towers, as defined by the initiation notice and as stipulated in Section C of the Exporter Questionnaire.

3 Material date of the export sales for currency conversion purposes

Win&P notes that the date used in the PAD margin spread sheets for the conversion of Win&P's AUD export invoice price for supply [CONFIDENTIAL TEXT DELETED – customer details] was the date on which the invoices were issued. This is long after the date on which the material terms of that sale were concluded.

According to Article 2.4.1 of the WTO Anti-Dumping Agreement:

When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale,⁸ provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and

in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation

8 Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale. [our underlining]

It is absolutely evident that it was the contract [CONFIDENTIAL TEXT DELETED – customer details] that set out all of the material terms of sale. Accordingly, it is the date of that contract that should be used for currency conversion purposes.

The [CONFIDENTIAL TEXT DELETED – customer details]¹ – pursuant to which Win&P [CONFIDENTIAL TEXT DELETED – customer details] - is a strict legal agreement which sets out all of the material terms of the sale between the parties. It does so completely and comprehensively.

Clause 11 of the Framework Supply Agreement provides as follows:

The Prices agreed for the duration of the relevant Appendix 1 are fixed prices, except as otherwise expressly agreed between the Parties.

Win&P accepted all of the risk of the transaction, and made its price decision, on the basis of the Framework Supply Agreement. [CONFIDENTIAL TEXT DELETED – commercial aspects of sales]. The Framework Supply Agreement was entered into after a long and exacting tender process which carefully identified all of the technical specifications, requirements and prices of the products to be supplied under its terms. There was no price change after the date of the contract.

In this regard we note that Attachment 9(a) is headed “Change to Purchase Order”. This is not a “change” in any relevant sense at all and is certainly not a change to the material terms of sale. It is simply a contemporaneous document that [CONFIDENTIAL TEXT DELETED – customer details] issue when the delivery date was confirmed so that it could be entered [CONFIDENTIAL TEXT DELETED – customer details and accounting system]. This is made clear by the fact that the date on the “Change to Purchase Order” is the contract date.²

¹ See EQ Attachment 38.

² Further inquiries by Win&P indicate that the original purchase order it issued was also headed “Change to Purchase Order” – it is just the name on the form.

Win&P submits that the date for currency conversion [CONFIDENTIAL TEXT DELETED – customer details and commercial aspects of sales] date of the contract, at which time the material terms of the sale were all fixed. Some later dates - defined only by the fact that a document was required to be printed out for the purposes of receiving payment – cannot be considered to be the relevant dates for the purpose of currency conversion in this case.

4 Recoverability test and OCOT profitability

It appears to us that this test was not performed for the purposes of the PAD margin spreadsheets. It is not clear whether this was an omission or whether it is a policy element of a PAD margin (ie that OCOT is not performed at that stage of an investigation). [CONFIDENTIAL TEXT DELETED – commercial aspects of domestic sales]

This is incorrect. Win&P had [CONFIDENTIAL TEXT DELETED – commercial aspects of domestic sales]. The recoverability test will need to be performed [CONFIDENTIAL TEXT DELETED - commercial aspects of domestic sales] the domestic sales in the POI.

Daniel Moulis

Principal