Rodney Jones
ABN: (65 453 117 616) PO Box 7172 GREENWAY ACT 2900 Email: rodbjones@tpg.com.au

8 January 2018

Mr Matthew Williams
Director Operations 3
Anti-Dumping Commission
Level 35, 55 Collins Street
MELBOURNE VICTORIA 3000

Email: operations3@adcommission.gov.au

Dear Mr Williams

Anti-dumping Investigation 405 – Wind Towers exported from Vietnam

Introduction

I act for the Australian industry manufacturing wind towers that comprises Keppel Prince Pty Ltd (KPE), Ottoway Fabrication Pty Ltd (OF) and Haywards Pty Ltd (Haywards).

This response is provided to the Statement of Essential Facts (SEF) 405.

The Australian industry disagrees with the Commission assessments on factors relevant to purchasing decisions, the dumping margin and material injury caused by dumping.

1. Factors relevant to purchasing decisions by OEMs

The Australian industry recognises that there are a number of factors that the original equipment manufacturers (OEMs) take into account when making their decisions to purchase wind towers.

1.1 Ararat Wind Farm (Ararat)

General Electric International Incorporated (GE)

The relevant factors in relation to Ararat were discussed in the importer verification report with GE (EPR 019) and are summarised below.

GE stated it assessed applicants for the Ararat project under strict qualification criteria.

- Price comparisons for the proposal process based on comparisons with GE's database of what all inputs should cost based on its experience in various regions.
- ability to deliver on time and to the required quality
- ability to manufacture to the required quality.

GE maintained that the ability to deliver on time and to the required quality was of greater importance in GE's decision making for the Ararat wind farm than price considerations.

GE also advised that it maintains a qualification process for suppliers. This is a two-part qualification process. The qualification criteria required a Supplier Quality Engineer to visit and assess the new supplier for capacity, quality and price-competitiveness in the global market. If the supplier meets this criterion its bids are evaluated and if successful the supplier is awarded a purchase order. This process is then followed by a First Piece Qualification.

Factors other than price relevant to purchasing decisions

The Commissions consideration of factors other than price at Section 7.9.2 of the SEF does not appear to consider any of the evidence provided by KPE in its submissions (EPR 008, 011 and 018) and information provided as part of the verification visit to KPE.

A summary of timelines relating to tenders and related correspondence with commentary is provided at **Confidential Attachment Ararat**.

Timely Delivery

The Commission refers to penalty clauses supporting the OEMs claim of timely delivery as a consideration.

The Commission does not appear to have had regard to the KPE submissions demonstrating that it could meet the manufacturing and delivery schedules for Ararat for the full complement of towers.

The Commission refers to correspondence from OEMs showing delivery schedules, timing and run rates were discussed as part of the tender process.

The Commission does not appear to have had regard to the KPE submissions demonstrating that it could meet the schedules, timing and run rates to supply the full volume of towers for Ararat.

The Ararat Wind Farm construction updates provided with the 30 August 2017 submission (EPR 011) showed that the first concrete pours for the foundations that the TBRs would be fixed to commenced in April 2016.

The update also showed that by November 2016 only 49 of the 75 turbines had been erected. As GE notes in its submission the Ararat project had a long lead time for delivery.

Information at **Confidential Attachment Ararat** shows that KPE had advised GE during the Ararat tender process that it had delivered between 50 and 90 towers into five different projects without ever having held up site assembly programs and asked to discuss the matter further.

The most recent project had been Taralga Wind farm comprising 51 towers, which KPE was the sole supplier for.

Prequalification

The Commission refers to the pre-qualification process which emphasises quality and the ability of a supplier to deliver to schedule. The Commission also refers to the length of time it would take to pre-qualify a new supplier.

The Commission does not appear to have had regard the KPE submissions on pre-qualification noting that the evidence for Boco Rock project in 2013 demonstrated that pre-qualification was part of the tower manufacturing process.

KPE had been asked by GE on several occasions and provided to GE quotations for the full supply of all towers to Boco Rock where pre-qualification was discussed. Boco Rock at 67 towers was a project of similar size to Ararat.

Information at Confidential Attachment Ararat shows that GE also conducted pre-qualification with KPE in ([redacted]) covering quality, capacity and delivery at the time that KPE was ([redacted]).

GE would have been aware of the [redacted] and that KPE was [redacted] (*Commercially sensitive*)

Prequalification was not raised as an issue that would affect the number of towers that KPE was considered for Ararat.

Reliability and Risk

correspondence confirming that GE, as a new industry supplier KPE was being asked to bid for roughly half the number of Ararat towers by GE; and

The Commission has placed undue weight on a single piece of correspondence from KPE indicating that it was only asked to bid for 30-33 towers in January 2015.

The Commission does not appear to have had regard to the KPE submissions demonstrating that the focus of negotiations between GE and KPE on Ararat was on costs and price reductions.

KPE notes that there is no correspondence indicating where the number of towers specified may have come from and can only speculate that it was a carryover from budget estimates given on other quotations.

More importantly there is no correspondence before or after this date specifying any figure for KPE (except the final figure based on price).

KPE considers that too much emphasis on been placed on this one email, taken out of context, when there is no other evidence to support it.

On the contrary all the previous correspondence to this date, such as the [redacted]for Ararat and the quotations for Boco Rock point to KPE quoting on the full quantity of towers with no suggestions of any lesser volumes. *(commercially sensitive)*

The information at **Confidential Attachment Ararat** evidences the above.

correspondence demonstrating the splitting of tenders to accommodate Australian industry bids and run-rates during the investigation period, which support OEMs contentions that supplying large wind tower projects to new, previously unqualified supplier is an unacceptable commercial risk.

The Commission does not appear to have had regard to the KPE submissions demonstrating that it could supply all the towers well with the required time frames for Ararat.

The Commission appears to be taking a narrow view of KPE being a new supplier and not had regard to KPE submissions that KPE has been supplying wind towers to the Australian market since 2000 and has supplied wind towers to six of the seven OEMs currently active in the market.

KPE was the sole supplier to the Taralga project (51 towers), the Portland Project (23) towers ([redacted]) in the injury period. KPE was the sole supplier for three smaller projects in the investigation period. *(commercially sensitive)*

GE knew that KPE was hardly a “New Supplier”, with KPE having made towers for almost every other European manufacturer at some stage since 2000.

GE had previously asked KPE on multiple occasions to quote for the full supply of 67 towers for Boco Rock with no mention of splitting supply.

The Commission does not appear to have regard to KPE submissions that demonstrate that there is no mention in any of the process for Ararat that GE was considering splitting supply for Ararat.

The Commission's consideration

The Commission recognised that factors other than price, namely timely delivery, quality, pre-qualification status, supplier reliability and risk were considered by GE.

Whilst KPE recognises that GE would consider these factors in its assessment of any suppliers the Commission does not appear to have regard to the KPE submissions demonstrating that these factors were not an issue of concern between KPE and GE for Ararat.

The Commission considers that CS Winds past experience in meeting GEs delivery and quality requirements provide it with a significant advantage.

The Commission does not appear to have had regard to KPEs submissions on its past experience in meeting delivery and quality requirements for other OEMs and to KPE submissions that delivery and quality requirements were not an issue between KPE and GE for Ararat.

The Commission further considers that GE's claim that it would not award the full Ararat contract to KPE in view of the risk of working with a new supplier is reasonable, in view of the fact that during the investigation period none of the 11 (nine wind tower and two TBR) projects awarded during the investigation period were awarded in their entirety to new suppliers.

The above statement is disingenuous and seeks to draw an unreasonable link.

Three of the wind tower projects relate to Hornsdale, where OF and CS Wind were both existing suppliers to Siemens. New suppliers were not involved.

Five of the other wind tower projects went to existing suppliers. New suppliers were not involved.

That leaves one wind tower project, Ararat, that was not awarded in its entirety to a new supplier to GE, KPE.

GE was responsible for only one of the nine wind tower projects.

The Commission is considering such a claim reasonable based on the sole wind tower project that GE was responsible for and the sole wind tower project that involved a new supplier to that OEM.

The Commission does not consider price to be the determinative factor, in the decision by GE to award wind tower projects to CS Wind Korea during the investigation period.

The Commission does not appear to have regard to KPEs submission demonstrating that the focus of discussions between KPE and GE was on price.

Submissions on non-price factors

The Commission does not appear to had regard to KPEs submissions on non-price factors whilst placing undue weight of the GE submissions.

The KPE submissions are supported by evidence from the investigation period at the time of the tenders and evidence from the injury period.

Such evidence includes GE continuing to ask KPE to quote for the full supply of tenders for Ararat and as noted on past tenders for Boco Rock.

The focus of negotiations being on cost and price reductions with the number of towers awarded dependent on the price offered.

The evidence provided that KPE could meet the delivery schedule for Ararat and its previous history and experience with similar projects in the Australian market.

The evidence provided that KPE could meet quality and capability requirements.

The evidence provided that there is no evidence to support GEs contention that it was always considering splitting supply for Ararat.

The evidence provided to show that issues relating to quality, delivery, pre-qualification and capability were not raised as issues of concern by GE with KPE in regard to Ararat.

In contrast there appears to be little evidence to support the GE submissions and the weight given to them by the Commission. There is a lack of evidence showing that non-price factors were crucial and determinative factors in awarding the tenders.

Such factors would, as noted be supported by evidence such as GE informing KPE that it would be splitting the supply of towers due to concerns over those factors.

The emphasis on the non-price factors appears to be all post the investigation period and the relevant tender processes. This is shown by the lack of supporting evidence during the investigation period and reference to irrelevant material post the investigation period.

The GE submissions and the weight given to them demonstrate a degree of ex post facto rationalisation that was noted in the Federal Court judgement on a Mobile Garbage Bins (MGBs).

In that judgement (2006FCA 1644) relating to price as the determinative factor Jacobson J notes:

- The public version of the site visit report stated in plain terms that the contractor said that price was not a major factor and that the contractor would have been prepared to pay more for the quality of the Schaefer MGBs. This was fairly

summarised in the passage I have set out at [83].

- Schaefer relied on this as evidence of perversity on the part of Customs and the CEO because it was submitted that this was clear evidence against a finding of causation.
- But I do not consider that the CEO was bound to accept statements made by end users who have an interest in the market-price being as low as possible. Moreover, there was a degree of ex post facto rationalisation in the contractor's statement that it was prepared to pay more, rather than it being a contemporaneous record of the factors taken into account. (226-228, emphasis added)

There does not appear to be evidence to support a contemporaneous record of the importance of non-price factors considered by GE and given weight by the Commission as noted above. Additionally, GE has an interest in the market price being as low as possible.

The evidence does not support non-price factors being the determinative factor in awarding the tender for Ararat.

Rather the evidence supports that price was the determinative factor in awarding the tender.

As such the competitiveness of KPE in the Ararat tender should be assessed on the competitiveness of its price to an undumped price from CS Wind.

KPE considers that further evidence of price being the determinative factor in GEs decisions was evident, as previously submitted for Boco Rock. KPE considers that price was the determinative factor in GE deciding to award the 67 towers for Boco Rock to China.

KPE noted in its previous submissions that the price advantage from the 15.6% dumping margin found by the Commission and other price factors regarding ([redacted]) pricing were the determinative factor in GEs decision to award the towers to China. (*Commercially sensitive*)

There is no evidence showing that GE had predetermined numbers during the Ararat tender process on splitting the tower supply. The only number GE provided to KPE on towers it was to supply was based on KPE meeting a price, not on KPEs capabilities.

There is evidence showing that GE asked KPE to quote throughout the process for the full supply of towers as there is for Boco Rock.

There is evidence showing that KPE could supply the full number of towers within the required timeframe for Ararat.

The most recent evidence of KPEs capabilities as the sole supplier of towers for a large project was for the Taralga Wind farm comprising 51 towers. The Taralga Wind Farm is within the injury period.

KPE submits that price was the determinative factor in GEs decision to limit the number of wind towers it awarded KPE.

KPE submits that material injury caused by the dumped imports from Vietnam should be assessed on KPE having a proven ability to supply a minimum of 51 wind towers for the Ararat wind farm.

KPEs assessment of material injury caused by the dumped imports from Vietnam is discussed further in this response.

1.2 Hornsdale Wind Farm projects (Hornsdale)

Siemens Ltd (Siemens)

The relevant factors in relation to Hornsdale were discussed in the importer verification report with Siemens (EPR 021) and are summarised below.

Siemens noted a range of factors that it assessed applicants for the Hornsdale projects in awarding the tenders.

- evaluation of both base product costs and associated qualification costs as well as other costs such as payment terms, duties, transportation.
- sufficiently qualified
- Meet delivery timeframes
- Maintain expected standards of quality.

Siemens also noted that the total cost was considered alongside a 'Supplier Comparison Factor' which sought to quantify differences between onshore and offshore suppliers to enable Siemens to make an objective comparison between tender applicants.

Siemens stated that the overarching consideration was whether a wind tower supplier could reliably supply wind towers within project timeframes and to the required specifications.

Factors other than price relevant to purchasing decisions

The Commissions consideration of factors other than price at Section 7.9.2 of the SEF does not appear to refer to any of the evidence provided by OF in its submissions (EPR 008, 012 and 018) and information provided as part of the verification visit to OF.

A summary of timelines relating to tenders and related correspondence with commentary is provided at **Confidential Attachment Hornsdale**.

Timely Delivery

The Commission refers to delays in relation to supply in the past which support the OEMs contention that delivery may be an issue with certain suppliers.

This can only refer to Snowtown II, Siemens and OF.

No regard appears to have been had to OFs submissions on this matter demonstrating that timely delivery was not an issue raised during the tender processes or considered critical to Siemens consideration of OF that would disqualify it as a supplier of wind towers.

If timely delivery was an issue of concern for Siemens then it would not have considered OF as a supplier for the Hornsdale projects until those concerns were resolved. Otherwise what is the point of Siemens engaging OF in the Hornsdale projects requesting multiple quotations that involve a great deal of time, effort and cost by OF and time effort and cost by Siemens in assessing such quotations.

The delay in delivery for Snowtown II was resolved during Snowtown II, the weight of evidence provided by OF supports this.

Siemens stated in its submissions that it has a prima facie preference for engaging local wind tower manufacturers, in the interests of supporting local industries and communities.

This is supported by the OF submissions that Siemens worked with OF in resolving the issue relating to delivery for Snowtown II and Siemens subsequent multiple requests to OF for prices for the Hornsdale projects.

The Commission refers to penalty clauses supporting the OEMs claim of timely delivery as a consideration.

No regard appears to have been had to the OF submissions demonstrating that it could meet the manufacturing and delivery schedules for Hornsdale for the full complement of towers let alone for half the volumes should Siemens have decided to split the tower supply as it had indicated.

No regard appears to have been had to the OF submission that despite the delay in delivery for Snowtown II the project was completed ahead of schedule, (by some two months as per attached) and that there were no penalties incurred.

The Commission refers to correspondence from OEMs showing delivery schedules, timing and run rates were discussed as part of the tender process.

No regard appears to have been had to the OF submissions demonstrating that it could meet the schedules, timing and run rates to supply the full volume of towers for the Hornsdale projects.

Quality

The Commission refers to quality issues experienced in the past supporting the contention that quality may be an issue with certain suppliers.

This can only refer to Snowtown II, Siemens and OF.

No regard appears to have been had to the OF submission demonstrating that the issue had been resolved, that OF had met all of Siemens extensive QA requirements and that Siemens had issued a press release praising the quality of the OF towers.

As with the timely delivery issue noted above if quality was an issue of concern for Siemens then it would not have considered OF as a supplier for the Hornsdale projects until those concerns were resolved. Otherwise what is the point of Siemens engaging OF in the Hornsdale projects requesting multiple quotations that involve a great deal of time, effort and cost by OF and time effort and cost by Siemens in assessing such quotations.

As OF has noted Siemens worked with OF to resolve the issues.

The Commission noted that an import supply schedule needed to be brought forward to address the delay in meeting quality requirements.

This has been addressed above, the delay did not affect the project deadlines and no financial penalties were incurred.

Prequalification

The Commission refers to the pre-qualification process which emphasises quality and the ability of a supplier to deliver to schedule. The Commission also refers to the length of time it would take to pre-qualify a new supplier.

No regard appears to have been had to the OF submissions showing that it had met prequalification for Snowtown II as part of the manufacturing process and that prequalification was also a part of the manufacturing process for the Hornsdale tenders.

As with the OF submissions relating to quality and timely delivery, prequalification was not raised as an issue that would disqualify OF from the tender process.

As noted, what is the point of Siemens engaging OF in the Hornsdale projects requesting multiple quotations that involve a great deal of time, effort and cost by OF and time, effort and cost by Siemens in assessing such quotations.

Reliability and Risk

The Commission refers to information regarding the financial health of OFs parent company.

No regard appears to have been had to OFs submissions that these issues had been discussed and resolved at a meeting with Siemens.

No regard appears to have been had that the issues were not current for Hornsdale I and were raised nine months after Hornsdale I had been awarded. Such issues could not in any way impacted on the decisions for Hornsdale I.

No regard appears to have been had that if such issues were issues of serious concern then there would have been detailed ongoing correspondence regarding the issue.

As with the OF submissions relating to quality, timely delivery and prequalification the financial health of OFs parent was not raised as an issue that would disqualify OF from the tender process.

The Commission's consideration

The Commission recognised that factors other than price, namely timely delivery, quality, pre-qualification status, supplier reliability and risk were considered by Siemens.
The Commission considers that CS Winds past experience in meeting Siemens delivery and quality requirements provide it with a significant advantage.
The Commission considers in the case of Hornsdale that non-price factors, including concerns regarding OFs parent would have been a significant consideration, notwithstanding OFs efforts to address the concerns.

No regard appears to have been had to OFs submissions that concerns regarding non-price factors had been resolved by Siemens and OF as demonstrated in OFs submissions leaving price as the determinative factor.

The evidence supporting OFs submissions can be summarised as:

- Siemens resolving the Snowtown issues with OF at the time of Snowtown.
- Siemens press release praising the quality of the towers OF manufactured and OF meeting the extensive quality requirements.
- Siemens asking OF to quote on Hornsdale I the month after the last of the towers for Snowtown II had been delivered by OF.
- Siemens continuing to engage OF in the tender process with requests for the full volume and split volumes of towers.
- Questions regarding the financial health of OFs parent company were not current and not relevant to Hornsdale I.
- The issue regarding OFs parent was resolved as Siemens requested quotations from OF for Hornsdale III.

There is no information to support that non-price issues were an issue of concern, if they were such issues of seriousness then Siemens would have informed OF that such issues were disqualifying it from consideration for tenders until they had been resolved.

What is the point of Siemens engaging OF in the Hornsdale projects requesting multiple quotations that involve a great deal of time, effort and cost by OF and time, effort and cost by Siemens in assessing such quotations.

That Siemens engaged OF in the Hornsdale projects which involved a great deal of time effort and costs by both parties evidences that Siemens had no great concerns over OFs abilities to meet its requirements as a supplier.

All of the information in the tenders submitted by OF to Siemens points to price being the determinative factor with the emphasis in the tenders on cost and price reductions.

The quotation for [redacted] demonstrates the primacy of price as the determinative factor as noted in **Confidential Attachment Hornsdale.** (*commercially sensitive*)

Submissions on non-price factors

The Commission does not appear to have had regard to OFs submissions on non-price factors whilst placing undue weight of the Siemens submissions.

The OF submissions are supported by evidence from the investigation period at the time of the tenders. Such evidence includes Siemens continuing to engage with OF for the tenders, its commitment to local suppliers and its prior history of working through issues with OF on Snowtown.

In contrast there appears to be little evidence to support the Siemens submissions and the weight given to them by the Commission.

The Commission assessment of the quality issue appears to be misdirected in the implication that OF could not make a product to the quality Siemens required.

This is plainly wrong as the evidence shows that OF delivered wind towers to Siemens exacting quality specifications.

The Commissions assessment of Siemens submissions suggests a view that Siemens would never consider OF as a viable supplier again due to past issues that had been resolved.

This is a narrow view, issues arise with suppliers during the course of supply.

This is shown in the KPE information submitted with the application at Conf Attachment 3 which shows ([redacted]). (*commercially sensitive*)

The attachment also shows for the Ararat project ([redacted]). (*commercially sensitive*)

Those issues were resolved and those suppliers continue to provide to the wind tower market.

Additionally, at the verification visit with KPE ([redacted]). (*commercially sensitive*)

Issues with the towers for Boco Rock ([redacted]) were also highlighted in KPEs submissions. (*commercially sensitive*)

Issues are worked through and resolved and the business relationship continues.

KPE has also previously submitted that delays to the Ararat project, none of which related to KPE, resulted in the KPE Ararat towers being held in storage well past the required scheduled dates.

This is in contrast to the Snowtown project which was completed two months ahead of schedule.

There is a lack of evidence showing that non-price factors were crucial and determinative factors in awarding the tenders. Such factors would, as noted be supported by evidence such as Siemens informing OF that it could not be considered as a viable supplier until such issues had been resolved.

The emphasis on the non-price factors appears to be all post the investigation period and the relevant tender processes.

This is shown by the lack of supporting evidence during the investigation period and reference to irrelevant material post the investigation period.

The Siemens submissions and the weight given to them demonstrate a degree of ex post facto rationalisation that was noted in the Federal Court judgement on a Mobile Garbage Bins (MGBs).

In that judgement (2006FCA 1644) relating to price as the determinative factor Jacobson J notes:

- The public version of the site visit report stated in plain terms that <u>the contractor said that price was not a major factor</u> and that the contractor would have been prepared to pay more for the quality of the Schaefer MGBs. This was fairly

summarised in the passage I have set out at [83].

- Schaefer relied on this as evidence of perversity on the part of Customs and the CEO because it was submitted that this was clear evidence against a finding of causation.
- But I do not consider that the CEO was bound to accept statements made by end users who have an interest in the market-price being as low as possible. Moreover, there was a degree of ex post facto rationalisation in the contractor's statement that it was prepared to pay more, rather than it being a contemporaneous record of the factors taken into account. (226-228, emphasis added)

There does not appear to be evidence to support a contemporaneous record of the importance of non-price factors considered by Siemens and given weight by the Commission as noted above. Additionally, Siemens has an interest in the market price being as low as possible.

In Siemens submission (EPR 004) on its concerns over the financial viability it refers to articles from March 2017 and July 2017 which are outside the investigation period and consideration of the tenders.

Such information is irrelevant to matters during the investigation period. If it was relevant then information regarding CS Winds financial health would have been an issue for Siemens given the half year loss of -28.8% (comprehensive income to sales) for the half year to December 2016 compared to a 14.1% profit for FY 2015.

The evidence does not support non-price factors being the determinative factor in awarding the tenders for Hornsdale.

Rather the evidence supports that price was the determinative factor in awarding the tender.

As such the competitiveness of OF in the Hornsdale tenders should be assessed on the competitiveness of its price to an undumped price from CS Wind.

Taking into account that Siemens had informed OF that it may split tower supply for Hornsdale and that OF has demonstrated that it could comfortably supply 16 towers to Hornsdale I and Hornsdale II OF submits that material injury caused by the dumped imports from Vietnam should be assessed at a minimum on those 16 towers for each project.

OF submits that price was the determinative factor in Siemens decision to award all the wind towers for the Hornsdale project to CS Wind.

OF submits that material injury caused by the dumped imports from Vietnam should be assessed on OF having a proven ability to supply a minimum of 16 wind towers for each of the Hornsdale projects.

OFs assessment of material injury caused by the dumped imports from Vietnam is discussed further in this response.

2. Dumping Margin Assessment

2.1 Flange bolts, other items and consideration other than price

Regardless of whether or not flange bolts fall outside the goods description the Commission has not address the industry submission on whether "The provision of flange bolts by the exporter to the importer at a price less than the fully absorbed CTMS plus the profit worked out represents a consideration payable for the goods other than the price."

The industry also disagrees with the Commission view that the flange bolts were supplied outside of the tender process for Ararat as ([redacted]) (*commercially sensitive*)

The approach by the Commission is contradictory to its statement in the exporter report that

> The visit team amended the exporters' sales data to include values for what the exporter had classified as "additional items" which were not originally reported as sales of the goods during the investigation period.
>
> The verification team used invoices and other source documents relating to these sale items to add the relevant value of these sales to the Australian export sales listing, since the wind towers under consideration required the additional items to satisfy the project requirements. (emphasis added)

Clearly flange bolts are an additional item required to satisfy the project requirements.

The industry is also concerned that if flange bolts are excluded from the export price what other additional items have been excluded.

An example of this is the [redacted] but essential additional items to satisfy the project requirements. KPE [redacted] (KPE Conf Att 3 to the application refers), CS Wind would have [redacted].

KPE also ([redacted]), ([redacted]) for the CS Wind towers and were billed at CTMS plus profit to GE needs to be taken into account. (*commercially sensitive*)

Industry in its submission to the exporter report noted.

> *Industry further submits that should the Commission decide that flange bolts fall outside of the goods description the fully absorbed CTMS plus the profit worked out needs to be taken into account in determining the export price. This is reflected in subsection TAB(1A) of the Act which states:*
>
> *For the purposes of paragraph (1)(a), the reference in that paragraph to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.*
>
> *Subsection 269TAA(1A) of the Act states that:*
> *1)For the purposes of this Part, a purchase or sale of goods shall not be treated*
> *as an arms length transaction if:*
> *(a) there is any consideration payable for or in respect of the goods other than their price;*
>
> *The provision of flange bolts by the exporter to the importer at a price less than the fully absorbed CTMS plus the profit worked out represents a consideration payable for the goods other than the price.*
>
> *This is as the flange bolts are an essential part of the wind tower and are as noted generally included in the request for tender for the wind towers.*
>
> *To provide and allow for the provision of flange bolts at less than the CTMS plus profit would provide a significant benefit to the importer and distort the export price.*

Items supplied do not have to be part of the goods to be considered part of the export price. An example is if CS Wind were to supply vehicles to GE for its staff for the Ararat project. The vehicles are not part of the tender but the provision of such vehicles below a normal market price would represent a benefit.

Industry submits that the Commission re-examine its calculations of the export price to ensure all items provided for the Ararat project and Hornsdale projects by CS Wind were at a market price.

2.2 Electricity

The Commission noted in regard to Australian industry's submission that:

> *The Australian industry stated that there was no indication in CS Wind Korea's verification report that costs were examined to ensure that they reasonably reflect market costs as required by subsection 43(2)(ii) of the Customs (International Obligations) Regulation 2015 (the Regulation).*

The Australian industry notes that the Commission has recently found, with respect to steel rod in coil (SEF 416) that the price of electricity in Vietnam is subject to such a degree of government control that it does not reflect a competitive market cost.

On this basis, the Australian industry submits that the conclusions reached in SEF 416 should also apply in regard to the cost of electricity for wind towers produced in Vietnam.
The Australian industry noted that the benchmark being requested by the applicant in SEF 416 would see CS Wind Vietnam's electricity costs in Vietnam uplifted by 243 per cent.

The Commission response notes that:

electricity is a less significant cost component for the production of wind towers in Vietnam.

despite being of the view in SEF 416, that the domestic prices of electricity may be distorted in Vietnam, this was not sufficient to find that a particular market situation exists for the domestic sales of rod in coil due to the conditions of competition evident in the market.

The significance of a cost item is not a factor for consideration of whether costs reasonably reflect market costs.

Whether a particular market situation exists for domestic sales of rod in coil is irrelevant as the issue under consideration is whether costs reasonably reflect market costs.

The Commission also noted that:

an uplift of CS Wind Vietnam's electricity costs, at a rate of 243 per cent, would result in a minor increase in the dumping margin,

It is not clear whether this uplift has been included in the dumping margin stated in the SEF of 8%.

Industry requests that the "minor increase" be taken into account in any final calculation of the dumping margin.

2.3 Impairment losses

Impairment losses were noted in the exporter report and excluded from the SG&A calculations.

CS Wind Korea, identified some costs which it considered to be irrelevant to the sale of wind towers (consisting of impairment losses on subsidiaries and impairment losses on intangible assets), which it did not include in its SG&A allocation.

Industry in its submission on impairment losses noted:

> *Industry questions why these losses were excluded as the Annual Report notes impairment losses for CS Wind Vietnam. As CS Wind Vietnam business comprises the production and sale of wind towers industry questions how these losses could be considered irrelevant to the sale of wind towers. Industry's view is that in isolation such losses could be viewed as a cost of doing business.*

The Commission in the SEF notes that:

> *The Commission notes that the impairment losses are not actual expenses incurred by CS Wind Korea and that these losses were not related to the production and sales of the goods under consideration. Therefore, the Commission considers that it is appropriate to exclude impairment losses from the SG&A calculations and thus the normal value. (*emphasis added*)*

The consideration is not one of whether impairment losses are not actual expenses incurred but whether the impairment losses were expenses to the relevant accounts.

Of relevance is that the E&A Ltd Annual Reports show the following in regard to impairment losses.

2013 Report
Impairment on investments, financial assets, loans and trade receivables. (p.41)
Expenses shows trade receivables impaired and inventories impaired. (p.46)

2015 Report
Impairment losses underperforming contracts claims 29.2 million. (p.i)
Impairment WIP. (p.ii)
Impairment Heavy Engineering Segment of WIP impacted contribution. (p.v)
Impairment Investment segment of WIP. (p.vii)
Expenses – Inventories and trade receivables impairment amounts. (p.58)

2016
Non-cash goodwill impairment of 6.1 million (wind tower business). (p.i)
WIP, debtor impairment of 8.1million. (p.ii)

All of the above impairments have been taken into account in reporting the Statutory Profit (loss) figure as noted in the Annual Reports.

It appears to be a contradiction when the Commission gives substantive weight to the Siemens submissions about concerns for E&As financial health when a large part of E&As losses was due to impairment, 2015 would have been a Statutory

profit of around $5 million excluding impairment. Yet, the Commission considers impairment losses should be excluded in the CTMS for CS Wind.

It may be that some of the impairment losses are associated with other non- wind tower businesses.

However, as noted in the submission *the Annual Report notes impairment losses for CS Wind Vietnam. As CS Wind Vietnam business comprises the production and sale of wind towers industry questions how these losses could be considered irrelevant to the (costs and) sale of wind towers.*

In addition, there are also impairment losses by CS Wind Korea, which appear to relate to investments and financial assets, that could be allocated to CS Vietnam as CS Korea is responsible for all these activities.

Industry submits that the Commission should examine the impairment losses, not on the basis on whether they are actual expenses incurred, but to what accounts such losses were expensed to and the relationship of those accounts with the wind tower business.

2.4 SG&A Expenses, allocation of production overheads and idle time

The Australian industry did not fully address these matters in its response to the exporter verification report, however given the delay from the report being placed on the public record and the short period of time to respond before the SEF, considers it appropriate to address them in this response.

The exporter report noted in relation

> *CS Wind Korea submitted that given all domestic and Australian sales of the goods were made in 2016 only SG&A expenses from 2016 should be considered when determining the CTMS for these sales. CS Wind Korea also submitted that it would be practically impossible to calculate the SG&A for 2016 sales based on 2015 data, due to the lack of basis for attribution and allocation.*
> *For the purpose of this verification report and for constructing normal value under subsection 269TAC(2)(c) of the Act, a rate of SG&A for 2016 only has been adopted.*

Industry submits that the above statement is ambiguous in terms of Australian sales only being made in 2016. The wind towers may only have been invoiced in 2016 but all the sales effort in relation to the contract occurred in 2015.

In addition, a large part of SG&A costs in regard to production would have been incurred in 2015 in sourcing raw materials and suppliers with production most likely commencing in 2015.

Excluding such costs would result in lower SG&A costs and not a fully absorbed CTMS for the goods.

The exporter questionnaire response notes:

> *The cost of finished goods, semi-finished goods and work in progress consists of the raw materials, direct labour, other direct costs and related production overheads (based on normal operating capacity). (p.9)*

Allocation of production overheads based on normal operating capacity instead of the actual wind towers produced can significantly understate the actual overheads for the project.

CS Winds stated capacity is 900 towers, had CS Wind produced only 300 towers during the period the allocation would be understated by two thirds, if 450 towers then it would be understated by half.

Such an allocation based on normal capacity would potentially see from half to two thirds of the overheads not allocated to any products and sitting in isolation. Such a method does not reflect a fully absorbed CTMS.

The applicants had asked the Commission to question how direct labour is allocated and how idle time or down time is accounted for.

The cost model used by the industry for the application was based on the number of hours of direct labour to manufacture the wind towers. There was no allowance for idle time or down time for when staff are idle between projects or stages of projects.

For example, a manufacture may have a set labour time of 50,000 hours for the year. Work on individual projects, direct labour booked to the projects, may account for 45,000 hours leaving 5,000 hours not booked to any project. These 5,000 hours should be allocated across projects based on the direct labour hours for each project.

The exporter verification report did not contain any information in regard to the basis of the allocation of overheads or how idle or down time was accounted for.

The industry requests that the Commission ensure that SG&A and related costs from 2015 are included in the CTMS.

The industry further requests the Commission check the allocation of overheads is based on actual production and not normal capacity to ensure that the CTMS reflects a fully absorbed CTMS.

The industry also requests that the Commission checks whether idle or down time has been allocated to the goods.

2.5 Determination of Profit

The Commission revisited the determination of profit in the SEF and again found that none of the domestic sales made by CS Wind Korea were in the OCOT.

The Commission then notes that CS Wind Vietnam is a producer of wind towers in its own right and it sells into the Vietnamese domestic market.

This finding contradicts the information in the EQR, the exporter verification visit and the application.

The EQR notes:

> *CSW Korea is a global distributor of the GUC around the world, including Australia and Vietnam.* (p.6)
>
> *As explained above, CSW Korea is responsible for the functions of:*
> *• marketing;*
> *• contract negotiation;*
> *• sales (globally including Australia and Vietnam); and*
> *• production arrangement.* (p.6)

The exporter verification report notes:

> *The verification team conducted verification visits in Vietnam and the Republic of Korea (Korea) to verify the sales data of CS Wind Korea and the cost data of the subsidiaries of the CS Wind group of companies that were involved in the production of the wind towers exported to Australia and sold domestically.*
>
> *The role of each entity in the production and sale of the goods was determined by the verification team as follows*:
>
> *1. CS Wind Korea, the marketer and beneficial owner of the goods (from raw materials to finished goods), until such time as ownership is transferred to the buyer of the wind towers.*
> *2. CS Wind Vietnam, which assembles/manufactures the wind towers on an arm's length toll processing basis on behalf of CS Wind Korea.*
> *3. PNC Global Korea, a related company which sources, coordinates and supplies certain wind tower internals on an arm's length transaction basis to CS Wind Korea.* (p.3)
>
> *The CTMS data provided to the verification team by CS Wind Korea, for both domestic and Australian sales, recorded the cost of goods and services supplied by its two subsidiaries, CS Wind Vietnam and PNC Global Korea* (p.8) Domestic sales being sales made by CS Wind Korea in Vietnam.

> *The verification team found that none of the domestic sales were in the OCOT.* (p.15) Domestic sales being sales made by CS Wind Korea in Vietnam.

The industry in its application provided the following information:

> *The applicants consider it is appropriate to use the consolidated accounts of CS Wind Corporation as the majority of its business is the manufacture and sales of Wind Towers. An overview of companies in the CS Wind group is at Public File Attachment 10.*
>
> *In addition, the USA treated CS Wind Corporation and CS Wind Vietnam as a single entity noting.*
>
> *In response to the Department's questionnaire responses, CS Wind Group reported that CS Wind Corporation is the Korean parent company of CS Wind Vietnam. According to CS Wind Group, CS Wind Corporation controls and owns the majority of shares of CS Wind Vietnam. Additionally, CS Wind Corporation plays an integral role in the sale and production of wind towers during the POR. For example, CS Wind Corporation negotiates the prices of wind towers directly with its U.S. customers, invoices the U.S. customer, and determines and retains profits. Moreover, CS Wind acts as a toller for its parent company, CS Wind Corporation, which, in turn, also purchased raw materials used by CS Wind Vietnam to produce the wind towers sold to the United States during the POR. Accordingly, the Department preliminarily determines that significant potential for manipulation of production and sales decisions exists between CS Wind Corporation and CS Wind Vietnam because CS Wind Corporation effectively controls and indirectly manages CS Wind's operations with respect to subject merchandise. Consistent with the investigation, we preliminary determine that CS Wind Vietnam and CS Wind Corporation are affiliated pursuant to sections 771(33) of the Act and that these companies should be treated as a single entity in this proceeding.*
>
> *The findings from the USA investigation demonstrate that CS Wind Corporation effectively control and indirectly manages CS Wind of Vietnam operations in regard to Wind Towers.*
>
> *This control effectively means that CS Wind Corporation is likely incurring costs relating to sales and production of Wind Towers that may not be reflected in CS Wind of Vietnams accounts.* (p.53)

The Commission appears to have appropriately taken the approach in the exporter verification report of treating the related entities of CS Wind as a single entity.

It is incomprehensible how the Commission can now find that CS Wind Vietnam was a seller of wind towers in its own right in light of the above.

CS Wind Korea has been found to be the seller of wind towers on the domestic market in Vietnam. Does this new finding mean that CS Wind Korea and CS Wind Vietnam both sell on the domestic market in Vietnam, competing against each other, one selling at a profit one at a loss? Or does CS Wind Vietnam sell to CS Wind Korea at a profit who then sell in the first arms length transaction at a loss? Does the calculation of the profitability of CS Wind Vietnams sales take into account a fully absorbed CTMS?

Industry submits that the profit methodology provided in its submission of 5 December 2017 remains the most appropriate rate for the constructed normal value.

The rate of profit is based on CS Winds global sales and reflects the profit that CS Wind Corporation achieves on its global sales.

The importer submissions of GE and Siemens refer to global pricing of Wind Towers, such global pricing also indicates a global rate of profit. To assume and apply a lesser rate of profit for Australia than the global indicates price differential practices for exports to Australia.

To use a lesser rate of profit, including a zero rate, is effectively concluding that Wind Towers exported to Australia should include a lesser rate of profit on Wind Towers exported and sold in other countries.

Such use of a lesser rate in not in accordance with the stated principle of the Government reforms of ensuring Australian manufacturers and producers are competing on a level playing field.

The rate of profit so worked out is in accordance with Regulation 45(3)(c) using a reasonable method and relevant information is the rate that should apply to the constructed normal value.

The Commission also considered that the rate of profit over the whole of the investigation period should be used instead of the excluding the abnormal results of the last six months.

Industry disagrees with this approach and considers that the abnormal results from the last six months should be excluded, noting in its submission.

> *Industry has not applied a rate of profit worked out for the whole investigation period as the last six months of 2016 show a comparable loss of -28.8%. The loss for these six months is not reflective with the previous achieved results and should be disregarded.*
>
> *These results are also reflected in the gross profit results of 14.3% for the period, 30% for 2014, 22% for 2015 and -4% for the last six months of 2016.*

> *The Annual Report of CS Wind Corporation notes that the seven companies and subsidiaries were included in the 2016 consolidated financial statements which likely accounts for the abnormal result for the period. Such companies included CS Rail Inc and PT. Daekyung Indah Heavy Industry which are not involved in the production and sales of Wind Towers.*

The Commission has not addressed the issue of the abnormal results of the last six months compared to previous periods.

The Customs (International Obligations) Regulation 2015 (the Regulations) at Regulation note for Regulation 43 (5) and (6) in relation to manufacturing costs and Regulation 44 (6) and (7) both refer to non-recurring costs and start up costs the Minister must take account of.

Industry submits that a similar approach must be taken when assessing and excluding the abnormal results of the last six months, especially given the inclusion of seven subsidiaries in the results, two of whom businesses did not relate to wind towers.

Industry further considers that a more equitable assessment and application of a rate of profit would be that over the injury period, from January 2013 to June 2016, the last six months being excluded.

This period is reasonable as it is comparing the performance of the exporter over the injury period as the performance of the Australian industry is likewise compared over the injury period.

Industry has calculated a rate of profit over this period, excluding other comprehensive income.

The rate calculated is **13.5%.**

Workings and notes on the rate of profit of **13.5%** that the industry submits should be included in the normal value is at **Confidential Attachment 1**.

3. Material injury caused by dumping

The Australian industry has provided evidence to support its submissions that price was the determinative factor in awarding the contracts for the Ararat and Hornsdale projects.

In determining the price competitiveness of Australian industry to an undumped price from CS Wind the industry submits that the Commission needs to take into account other price related factors that were provided in the application, discussed at the industry visits and in submissions.

Price competitiveness should also be compared with bids at the same times on equal terms as previously noted.

Information regarding other price related factors and supporting evidence is at **Confidential Attachment 2**.

The Australian industry has submitted that material injury caused by the dumped imports from Vietnam should be assessed on KPE having a proven ability to supply a minimum of 51 wind towers for the Ararat wind farm.

Material injury for Ararat should be assessed at a minimum on the loss 16 wind towers and the effects on loss of volume, and market share, revenue and profits.

The Australian industry has submitted that material injury caused by the dumped imports from Vietnam should be assessed on OF having a proven ability to supply a minimum of 16 wind towers for each of the Hornsdale projects.

Material injury for Hornsdale should be assessed at a minimum on the loss of 16 wind towers and the effects on loss of volume, and market share, revenue and profits.

4. Other matters

TBRs

That TBRs were found to be higher priced on a comparable basis from CS Wind should not affect the reasoning and evidence that price was the determinative factor for the wind towers.

The value of the TBRs compared to the value of the wind towers was noted at less than 2%. With such a minor value compared to that of the wind towers it is entirely possible that GE miscalculated a comparable price when [redacted] It may well also be due to that GE was not prepared to send a quality engineer for a project of minor value. (*commercially sensitive*)

Ability to supply the market

The Commission noted at pages 60 and 61 of the SEF.

> However, the Commission considers that the claim made by the Australian industry that it will be able to meet the demand for the majority of wind tower projects being tendered for in 2017 and 2018 is optimistic in light of the information provided by the Australian industry regarding its current capacity and projected wind tower demand.

Industry assessed the market to 2020 at around 400 wind towers per year in the application. With KPEs capacity of 175 wind towers and OFs minimum capacity of 110 towers the applicants estimated they would be able to supply around 75% of the market, a substantial majority.

Further information was provided on the available wind market tendered to date, not the estimated market for the years going forward, for which the applicants considered they had the capacity to supply a substantial majority.

Regardless, an ability to supply the whole market is an irrelevant consideration in regards to whether dumping has caused material injury and/or dumping will continue to cause material injury.

5. PAD

The Australian industry again asks the Commission to impose a PAD as soon as possible and require securities to be taken in respect of interim dumping duty that may become payable in relation to wind towers exported from Vietnam to prevent material injury to the Australian industry occurring while the investigation continues. The Australian industry has provided evidence that price was the determinative factor in the OEMs decisions in awarding tenders.

The Australian industry has provided evidence that an increased dumping margin would make the industry bids more competitive against undumped exports of wind towers from CS Wind Korea.

The Australian industry has provided evidence of material injury caused by the dumped exports.

The Australian industry has provided evidence of continuing material injury caused by dumped exports from Vietnam through 2017.

The industry considers that if a PAD is imposed and securities are taken on exports by CS Wind this will see equilibrium and more realistic pricing restored in the market as happened following the imposition of measures on China and Korea.

If you have any questions concerning this submission, please do not hesitate to contact me.

Yours sincerely

Rod Jones