

Dr. Ross S. Becroft B.A., LL.B., M.Comm.Law, PhD

Louis H. Gross B. Juris., LL.B. Special Counsel

Level 17
390 St Kilda Road
Melbourne, Victoria, 3004
Australia
Telephone: (61 3) 9866 5666
Facsimile: (61 3) 9866 5644
Our Ref: RB: 3180

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The Director
Operations 1
Anti-Dumping Commission
5 Constitution Ave
CANBERRA ACT 2601

operations1@adcommission.gov.au

SENVION SUBMISSION – PUBLIC FILE VERSION

Dear Sir/Madam

Re: DUMPING INVESTIGATION ADC 221 – WIND TOWERS EXPORTED FROM CHINA AND KOREA

SUBMISSION BY IMPORTER – SENVION

RESPONSE TO STATEMENT OF ESSENTIAL FACTS

We act for Senvion SE and its Australian subsidiary Senvion Australia Pty Ltd.

Senvion was formerly known as Repower and it changed its name to Senvion in January 2014.

This submission is in response to the Statement of Essential Facts ('SEF') issued by the Anti-Dumping Commission ('ADC') in this investigation on 4 February 2014.

Summary of Senvion's Position

Senvion objects to a number of findings in the SEF. It maintains that the legal criteria for the publication of a dumping notice are not made out. It is essential that the ADC give full and

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proper consideration to the matters raised in this submission and to our client's earlier submission dated 7 November 2013. Senvion is of the view that the ADC has not adequately taken into account the commercial matters raised in section 2 of its submission dated 7 November 2013 that would, if properly considered, mean that there is no basis for a finding that any dumping has caused material injury to the Australian industry. [TEXT DELETED – SUMMARY OF CRITERIA FOR SELECTION OF WIND TOWER SUPPLIER] There are also matters raised in this submission that would affect the calculation of any dumping margins.

Senvion's response to the SEF

We are instructed to raise a number of issues that should be taken into account by the ADC in formulating the final report to the Parliamentary Secretary by 21 March 2014.

1. Erroneous Inclusion of Embedments as part of the Goods Under Consideration.

We note that this case concerns 'tower sections... whether or not including an embed being a tower foundation section' (see SEF page 12 paragraph 4).

Senvion contends that an embedment does not constitute an element of a wind tower. Rather an embedment is instead a separate part of the wind turbine that must be characterised as a 'transition piece' that enables a wind tower to be joined to a concrete foundation.

There are a number of factors that support this contention, being:

The purpose of an embedment – an embedment is designed to prevent a wind tower from falling over by providing a connection to the concrete foundation or footing. It provides a larger footprint to more widely distribute the weight of the tower and increased mass to resist the wind and mechanical forces of the operating turbine from tipping the turbine over.

The physical nature of an embedment – embedments are steel components that are cast in and joined to the concrete foundation of the tower. It is essentially a 'steel can' that is embedded directly into the concrete. The embedment is generally between 1.2m – 2.0m in height with 500mm protruding above the foundation ground level. The height of the embedment is dependent upon the foundation design which is subject to local wind tower generator geotechnical parameters. The design of an embedment is also determined by the requirements of the foundation design. For example, the embedded flange is designed according to the strength of the concrete used in the foundation.

Separate treatment of embedments commercially and within a project – embedments are usually purchased separately from wind towers and hence are separately priced. Further, embedments are normally transported to the site much earlier than the wind towers and are utilised much earlier in the construction phase compared with wind towers.

Wind towers do not now commonly require embedments - Many of the new generation of wind towers do not use embedments at all. Where embedments are not used in connection with wind turbines, the tower is bolted to the foundation directly via the use of long steel bolts (anchor bolts) which are cast in to the concrete foundation.

Based upon the above considerations, the ADC should restrict its investigation to wind towers and exclude embedments from its deliberations in this case. Embedments are not part of the goods under consideration. The inclusion of the words 'whether or not including an embed' in the description of the goods under consideration is a non-sequitur and does not cure the issue because wind towers do not include embedments.

2. Response to Keppel Prince Submission of 16 December 2013 (refer SEF page 42).

Keppel Prince has made a number of assertions in response to Repower's submission dated 7 November 2013. A significant number of these assertions relate to the issue of whether Keppel Prince was required to be an accredited supplier to be chosen as a supplier of wind towers to Senvion. These assertions may be summarised as follows:

- Senvion had informed Keppel Prince that a lack of accreditation would not disadvantage them or other local suppliers from bidding for and winning new projects (page 2, paragraph 2, KPE submission).
- That Keppel Prince did not go through a pre-qualification audit until November 2012, which was after the award of the contract for the supply of wind towers at Mt Mercer in late September 2012 (page 2, paragraph 4, KPE submission).
- That 'whilst the new audit format uncovered some deficiencies, there was agreement between KPE and Repower that we could resolve any outstanding issues' (page 3, paragraph 1, KPE submission).
- That it is 'aware of the requirement for manufacturers to be compliant to International Design Configuration demands' (page 3, paragraph 2, KPE submission).

- That 'KPE did receive mixed signals and different expected delivery dates of embeds for the recent Mt Mercer project' (page 3, paragraph 4, KPE submission).
- That 'internal components do not constitute a substantial process in the manufacture of the goods' (page 3, paragraph 5, KPE submission).

The assertions set out above principally relate to the issue of whether Senvion treats the question of quality assurance extremely seriously and applies its quality assurance standards in a consistent manner. In this regard, Senvion says in response:

- That as a world-wide wind turbine supplier, Senvion must ensure that its products are safe, perform to specification and are delivered on time in accordance with project time frames. For example, Senvion may be subject to significant liquidated damages calculated for each day that a project is delayed, which may lead to liabilities of several million dollars in each project.
- Senvion's audit processes have advanced over the last 2 to 3 years to a point where it is always its preference that a supplier be accredited to ensure that the quality and safety of its products are guaranteed.
- It is Senvion's policy that if a supplier does not supply products for a [TEXT DELETED – ACCREDITATION VALIDITY PERIOD] that supplier's accreditation will lapse. This occurred in the Australian context where Senvion was not successful in bidding for projects in [TEXT DELETED – YEARS].
- Pre-qualification processes are not about excluding local suppliers from fair and reasonable access as asserted by Keppel Prince, but rather they are to ensure that the required high standards in production processes and products are in place and retained. It is common for Australian wind farm projects to specify a minimum amount of local content and Senvion must seek to work with local suppliers to meet quality assurance standards but using local suppliers is often simply not possible.
- During the planning phase for the Mt Mercer project, Senvion was of the expectation that it may have been possible for [TEXT DELETED – NAME OF SUPPLIER] to achieve qualification in parallel to the tendering process for the Mt Mercer project so that by the time that Senvion was ready to supply towers for the project they would be accredited. However, this did not eventuate because of factors such as tight project timeframes and another supplier already being accredited with Senvion. Without accreditation there are greatly increased risks of not being able to construct wind turbines on time and to specification.

- [TEXT DELETED – DATE AND NAME OF SUPPLIER] was engaged by Senvion to manufacture embedments as part of the pre-qualification process and as a precursor to qualification to produce wind towers for other projects. This process was halted due to deficiencies identified by Senvion's audit team and which required rectification alone by [TEXT DELETED – NAME OF SUPPLIER]. The current situation is. [TEXT DELETED – DETAILS OF ACCREDITATION ARRANGEMENTS].
- Keppel Prince, despite protestations to the contrary, is not a specialised wind tower producer and outcomes in previous projects have not always been optimal.
- Internal components are an integral part of a wind turbine, and the production and fitting out of internal components involves considerable time and effort which is not inconsequential to the production of the wind tower itself.

3. Response to SEF

3.1. Date of Sale for determining export price

Senvion understands that the ADC is using the date of shipment of goods as the day of sale to arrive at export prices. Whilst it is very common to issue a pro-forma invoice for shipping and customs purposes at the time the goods are made available to the purchaser under [TEXT DELETED – APPLICABLE SHIPPING TERMS] shipping terms, this is long after the material terms of sale have been agreed to by the parties. Instead, the material terms of sale have been agreed, either when a formal contract of sale is signed, or in the absence of [TEXT DELETED – CONTRACT INFORMATION]. The time difference between the raising of purchase orders and delivery is in the range of [TEXT DELETED – DELIVERY TIME FRAMES] for embedments and between [TEXT DELETED – DELIVERY TIME FRAMES] for wind towers. The time differences between signing a contract and delivery may be longer. This treatment of the issue by the ADC is contrary to Article 2.4 of the WTO Anti-Dumping Agreement and Section 269TAF of the Customs Act, which prescribes the obligation to make currency conversions on the date when the material terms of sale are established.

We note in section 7.3 of the SEF that the ADC has treated the date of awarding the contract for a tender as the effective date of sale in its analysis of injury on the basis that effectively from this date the sales in terms of future revenue and volumes has been awarded to the successful party. We do not understand how the ADC can assert that a contract has been awarded to a foreign exporter (for determining injury) when a contract for a tender has been awarded but then find that the material terms of sale have not yet been established until delivery has taken place (for determining export prices). It is also artificial to make a finding that injury can be suffered when the local industry fails to be awarded a tender, given that, in reality, there would not be a loss of revenue until much

later in time, and usually payment is not made until after delivery occurs.

3.2. Volume effects

In section 7.4 of the SEF, the ADC concludes that the Australian industry would have been successful in the Mt. Mercer project but for the alleged undercutting of prices in the range of 10-12 percent. Servion takes issue with this finding. Even if price was the determining factor in selecting a wind tower supplier (which is denied), in the event that an exercise was undertaken of adding the full preliminary dumping margin of 20.4 percent to the tender prices and the transportation costs to site were also applied, [TEXT DELETED – PRICING COMPARISON TO ILLUSTRATE PRICE OF EXPORTER IN THE ABSENCE OF ALLEGED DUMPING WOULDN'T CHANGE SELECTION OF WIND TOWER SUPPLIER AND FACT THAT THERE WERE BIDS FROM OTHER SUPPLIERS THAT WERE OF A MORE FAVOURABLE PRICE COMPARED WITH THE AUSTRALIAN INDUSTRY] In these circumstances, it is not open to the ADC to make a finding that the Australian industry has lost any sales resulting from exports from Korea during the period of investigation.

3.3. Other causes of injury

In section 7.8 of the SEF, the ADC refers to the argument of the Australian industry that the high Australian dollar relative to other currencies has not been a major cause of material injury. This cannot be correct. The Australian dollar has appreciated by over twenty percent against the United States dollar in the period from 2010 to early 2013. (The average level of appreciation is much greater across the injury analysis period). The Korean WON has closely followed the movements of the United States dollar through this period. The local industry relies on the fact that exporters from other countries (e.g. Indonesia and Vietnam) should have increased their market shares in Australia. This is not necessarily the case as there may be a variety of commercial reasons why exporters from other countries have not succeeded with tenders and it must be borne in mind that each year there are only a small number of wind tower projects commenced. In the SEF, the ADC has not analysed the effects of currency movements in its injury analysis (other than the general statement on page 43 that the appreciation of the Australian dollar would make imports more price competitive). It is a requirement under Article 3.5 of the WTO Anti-Dumping Agreement for the ADC to adequately examine any known factors other than dumping imports that are at the same time injuring the domestic industry. The ADC must therefore provide details of how currency movements may have reduced the competitiveness of the Australian industry in the injury analysis period.

3.4. ADC's assessment of Repower's statement that price is not the only consideration in choice of suppliers

In Section 7.8.2 the ADC has found that price was the determinative factor in the awarding of tenders and choice of suppliers. In respect of the Mt. Mercer project, the ADC has relied upon the fact that WIN&P offered the lowest price and that other suppliers were encouraged to reconsider their offer during the tender process. [TEXT DELETED – INFORMATION ON TENDERING / QUOTATION PROCEDURES] This procedure is routine and it does not in any way reduce the importance of other project criteria such as product quality, production capability and meeting a customer's project deadlines. [TEXT DELETED – INFORMATION ON TENDERING / QUOTATION PROCEDURES]

Conclusion

Senvion contends that should the ADC fully and properly assess the evidence before it, the conclusion must be that there is no causal relationship between dumping and material injury. Further, in its dumping analysis the ADC must revisit a number of issues raised in this submission that would reduce or eliminate any dumping margin found in relation to exports from Korea. We also make the observation that this investigation concerning Korean exports is narrowly focused in that it relates to one contractual arrangement between an exporter and importer and the results are unlikely to reflect the commercial reality between the parties and will inevitably distort outcomes in this matter.

Do not hesitate to contact the writer should you have any queries in relation to the matters raised.

Yours faithfully

GROSS & BECROFT



Dr. Ross Becroft

Principal