



**NON-CONFIDENTIAL**

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26 February 2014

Director, Operations 1  
Australian Anti-Dumping Commission  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

**BY EMAIL [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au)**

Dear Director,

**IN THE INVESTIGATION OF THE ALLEGED DUMPING OF WIND TOWERS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA (CHINA) AND THE REPUBLIC OF KOREA (KOREA):  
Submission in response to Statement of Essential Facts (SEF) 221 dated 4 February 2014**

I confirm that I act for A.C.N. 009 483 694 Pty. Ltd (t/a Haywards Steel Fabrication & Construction) and Keppel Prince Engineering Pty. Ltd. (t/a Keppel Prince), the applicants representing the Australian industry producing certain utility scale wind towers exported to Australia from China and Korea (the Applicants).

The Applicants make this submission in response to the Statement of Essential Facts (SEF) placed on the public record, by you, on 4 February 2014. The Applicants also make this submission in response to the various submissions received by you and placed on the public record from interested parties to the investigation, to the extent that additional information is required for you to make the correct and preferable recommendation to the Parliamentary Secretary in your report on or about 21 March 2014.

***Overview***

At the outset, the Applicants welcome the Commission's findings and conclusions contained in the SEF based on the available information. Specifically, the Applicants support the Commission's conclusions as to the existence of dumping by exporters of the goods from the subject countries, and that by reason of that dumping, the Australian industry producing like goods to the goods



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under consideration have suffered material injury, and will continue to do so unless a dumping duty notice is published by the Parliamentary Secretary.

### ***Australian Market***

The Australian industry agrees with the Commission's approach to the determination of the size and value of the Australian market based on an assessment of the date of sale of the imported goods, or the Australian produced "like goods", as the date that the contracts were awarded. This is the proper and appropriate date, as it reflects the point at which the value of the goods, and like goods is finally agreed by the buyer and seller in the course of settling agreement of the terms of sale.

Further, the date of sale also allows for a proper reference point for the attribution of injury by the allegedly dumped goods to the domestic industry, as it is the time that injury is irrevocably suffered by the domestic industry either through the loss of the tender contract (volume injury), or the award of the tender contract at reduced value (value, profit and profitability injury).

### ***Identification of "the goods under consideration", "like goods" sold in the market of the country of export, and "like goods" produced by the Australian industry***

The Commission was correct to find that the Australian industry produces "like goods" to the goods under consideration. This is because as made to order capital goods, the "like goods" produced by the Australian industry are either identical, or substantially similar, in all respects to the "goods under consideration" (GUC). Both the Australian industry and exporter of the GUC must meet the same, or substantially similar specifications prescribed by the wind turbine Original Equipment Manufacturer (OEM), in order to meet the requirements of the end use for the specific request for tender, which collectively constitute the Australian market, at any particular time.

On the other hand, it is not possible to compare domestic sales of generic structures, broadly described as "utility scale wind towers", to the GUC, and the "like goods" produced by the Australian industry, for the purposes of determining the normal value of the GUC. This is because, the GUC competed with the Australian industry producing "like goods" in terms of physical, functional and commercial likeness, in response to the prescriptions identified in the request for tender issued by the OEM. "Like goods" sold in the market of the country of export, have no regard to the specification contained in the request for tender, or with the GUC, at all. As such, the "like goods" sold in the market of the country of export are, *sui generis*.

Further, the Commission was correct to conclude that the actual and potential differences between the structures broadly described as "utility scale wind towers" sold in the market of the country of export and the GUC were too great to allow a fair or reasonable comparison between the two for



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the purpose of determining a normal value. This is a correct application of subsection 269TAC(2) of the Act, that provides that certain domestic sales may be unsuitable for use.

***Embeds form part of the definition of the goods***

The Australian industry refute the suggestion proposed in earlier submissions, that tower embeds cannot be considered part of the goods identity. Such a suggestion creates the fanciful notion, that if required in the design, embeds are not a component of the tower structure.

The goods the subject of this investigation are defined as:

“Certain utility scale wind towers, whether or not tapered, and sections thereof (whether exported assembled or unassembled), and whether or not including an embed being a tower foundation section. Certain wind towers are designed to support the nacelle (an enclosure for an engine) and rotor blades for use in wind turbines. . .” (p. 8, *Application, Non Confidential version*)

A proportion of wind towers are designed with a steel embed or foundation section, whilst others are not. In essence if the design calls upon an embed, it is an additional steel cylindrical section which is used in the design as a foundation to support the other steel cylindrical sections which fundamentally make up the tower. Combined, these components form the tower which has the purpose of supporting the wind turbine generator (nacelle) and blades.

Contingent to both, the embed and tower sections have the following characteristics:

- Both are fabricated cylindrical steel tower components produced in the same manner;
- Both are manufactured using identical production processes, facilities, and employee skill sets at each stage of production;
- Both are cylindrical, rolled steel cans, welded together by the same equipment and procedures;
- Both require the same surface treatment systems as specified;
- Both require the same generic quality requirements, with regards to reporting procedures and testing.

The Australian industry maintains that, as per the definition of the goods, an embed (if required) is a fabricated steel cylindrical component or section which is categorically aligned with wind tower sections, and cannot be segregated as a separate product in this application.

***Win&P Ltd (Korea) visit verification report***

We note the placement of the Win&P Ltd visit verification report (**Win&P Report**) on the public record following the publication of the SEF.



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At the outset we have concerns with the practice of “averaging” raw material costs applied to the costs of production of the specific GUC. As the GUC had specific steel grade requirements, and the timing of such purchase, we do not accept that it is reasonable or acceptable to apply a weighted average approach to the cost of steel raw material inputs. This concern is also reflected in the methodology applied to verify the connection of key raw material inputs such as plate steel and flanges to the specific GUC produced.

We do agree with the Commission’s view that third-country sales under subsection 269TAC(2)(d) of the Act should not be used as a method to determine the normal value. This is because of the unique nature of the GUC, and the difficulty in making the necessary physical and other adjustments to such goods sold to third countries.

It is entirely appropriate that an amount for profit be applied to the construction of a normal value under subsection 269TAC(2)(c) of the Act. Indeed, to suggest that no profit be applied would preclude a proper comparison of the export prices of the GUC being compared to normal values, albeit on a constructed basis, achieved within the ordinary course of trade. Therefore, at a minimum, the rate of 3.5% proposed in the SEF is a reasonable measure. However, if in the course of Win&P’s verification, access to the company’s annual reports were obtained, indicating a higher rate for profit across the enterprise, then that higher rate should be applied.

***SHANGHAI TAISHENG WIND POWER EQUIPMENT CO., LTD (TSP) (China) Visit verification report***

We have concerns with TSP’s manufacturing costs methodology (refer p. 33, *TSP Verification Report*):

“TSP explained that its method of allocating labour, overheads (including depreciation) and auxiliary materials (other components of towers e.g. platforms, ladders and cable trays) is based on a **‘steel volume’ allocation**, and the company does not record the actual costs of these categories directly involved in manufacturing each tower.”  
[emphasis added]

Specifically, the ‘steel volume’ allocation formula is:

Volume of steel booked by specific project each month  
----- X Total cost to be allocated  
Total volume of steel booked for all projects each month  
(overheads, auxiliary or direct labour)



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This raises significant questions around the reasonableness of the model. Specifically, how relevant, complete and accurate is the data applied towards the 'multiplier', as it drives the total cost to be allocated. Is this formula nothing but an arbitrary Bill of Materials? If so, we note the significant pressure on the Australian industry to provide fully verified cost of production data.

Further, we doubt if this approach is acceptable under General Accepted Accounting Principles (GAAP)? If not, then we note the consequences to the Minister's/Parliamentary Secretary's capacity to consider the costs of production under regulation 180 of the *Customs Regulations*.

In terms of our confidence that all the cost of production of the GUC have been captured, we have concerns with respect to the approaches applied to the following input costs:

- We are not satisfied that all the costs of internals have been captured - specifically, only "ladders, platforms, cable trays, and 'other internal components'" are listed (refer p. 31, *TSP Verification Report*);
- We are not satisfied that the full cost of flange purchases have been captured for the GUC, we are specifically concerned that the whole of enterprises, weighted average approach applied may have distorted the costs allocated to the GUC (p.42, *TSP Verification Report*);
- The Australian Industry is concerned that there has not been a full capture of all manufacturing overheads and depreciation charges. Overheads were allocated using TSPs steel demand allocation ratio, relating to: depreciation, electricity and water, and outside processing fees. The industry is not confident this adequately represents all relevant overheads and depreciation requirements, and is unclear as to what level of overheads costs was verified. For example the full cost of buildings, plant and equipment. Again, the industry does not feel TSPs steel demand allocation ratio is an accurate method to assess all relevant project costs (p.44, *TSP Verification Report*);
- The approach in relation to full direct labour cost verification is unclear to the Australian industry. Direct labour costs were assessed through the Direct Labour ledger for Nov 2012. The report states ... "TSP allocates direct labour to its in-house manufactured projects based on TSP's steel allocation method ratio." Verification was achieved by use of an allocation sheet provided by TSP. As Direct Labour hours are an important component of the verification, the industry is not confident that there has been adequate checks and balances conducted here to ensure fair and reasonable verification of this critical



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area. We do not believe this is acceptable under GAAP principles (p. 45, *TSP Verification Report*); and

- The Australian industry is not confident that the verification of selling, general and administration (SGA) charges was adequate. TSP provided some report estimates for SGA, however it is not clear how these were checked against all possible expense items, and verified against audited accounts (p. 47-8, *TSP Verification Report*).

Accordingly, the Australian industry submits that the cost of production or manufacture information submitted by TSP is unreliable, and the Minister/Parliamentary Secretary should disregard that information under regulations 180 and 181 of the *Customs Regulations*.

### ***Non-injurious price and proposed measures***

The Australian industry supports the Commission's recommendation that the non-injurious price be set at the level of the normal values for the respective exporters, as this is entirely appropriate given the unique specifications required by the particular projects.

Therefore, the appropriate measure to remove the injurious effects of dumping is the amount of dumping expressed as a percentage of the export price. The Australian industry agrees with the recommendation that dumping duties take an *ad valorem* form.

Yours sincerely,

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