



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 (Cth) - PART XVB*

# **FINAL REPORT NO 602**

**ACCELERATED REVIEW  
OF THE DUMPING DUTY NOTICE APPLYING TO  
CERTAIN WIND TOWERS  
EXPORTED TO AUSTRALIA  
FROM THE PEOPLE'S REPUBLIC OF CHINA**

**BY**

**PENGLAI DAJIN OFFSHORE HEAVY INDUSTRY CO., LTD**

**20 June 2022**

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**ABBREVIATIONS**

the accelerated review period	1 January 2021 to 31 December 2021
the Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicant, Penglai Dajin	Penglai Dajin Offshore Heavy Industry Co., Ltd
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 487	<i>Continuation Inquiry No 487</i>
Customs Tariff (Anti-Dumping) Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975 (Cth)</i>
EPR	electronic public record
FAS	free alongside ship
GOC	Government of China
the goods	the goods the subject of the accelerated review (also referred to as the goods under consideration)
IDD	interim dumping duty
INV 221	<i>Investigation No 221</i>
the manual	<i>Dumping and Subsidy Manual, December 2021</i>
MCC	model control code
the Minister	the Minister for Industry and Science
NIP	non-injurious price
the notice	the dumping duty notice
OCOT	ordinary course of trade
the original investigation period	1 January 2012 to 30 June 2013
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REQ	response to the exporter questionnaire
SG&A	selling, general, and administrative costs
USP	unsuppressed selling price

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

On 11 March 2022, Penglai Dajin Offshore Heavy Industry Co., Ltd (Penglai Dajin, the applicant) made an application to the Commissioner of the Anti-Dumping Commission (the Commissioner) seeking an accelerated review of the dumping duty notice (the notice) applying to certain wind towers (the goods) exported to Australia from the People's Republic of China (China).<sup>1</sup>

Penglai Dajin is currently subject to the 'all other exporters' interim dumping duty (IDD) rate of 10.9%, as determined by the then Minister for Industry, Science and Technology after consideration of the Commissioner's findings and recommendations in *Anti-Dumping Commission Report No 487 (REP 487)*.<sup>2</sup>

The Commissioner recommends that the Minister for Industry and Science (the Minister) alter the notice, so as to apply to Penglai Dajin, as if different variable factors had been fixed relevant to the determination of IDD.<sup>3</sup> The Commissioner also recommends that the IDD be worked out in accordance with the ad valorem method.<sup>4</sup>

As part of this accelerated review, the commission has calculated a dumping margin of **1.2%** in respect of the goods from Penglai Dajin.

This report sets out the facts on which the Commissioner is basing these recommendations to the Minister.

## 1.2 Background

The notice resulted from *Investigation No 221 (INV 221)*.<sup>5</sup>

Penglai Dajin submits in its application that it did not export the goods during the investigation period for INV 221 (the original investigation period)<sup>6</sup> and therefore is eligible for an accelerated review as it is a 'new exporter'.

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<sup>1</sup> Electronic Public Record (EPR) 602, no 001, available on the commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>2</sup> EPR 487, no 019.

<sup>3</sup> Variable factors in relation to a dumping duty notice are export price, normal value and non-injurious price (NIP).

<sup>4</sup> The methodology for calculation of the ad valorem duty method is defined in section 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013 (Cth)* (Customs Tariff (Anti-Dumping) Regulation).

<sup>5</sup> Anti-Dumping Notice (ADN) 2014/33.

<sup>6</sup> 1 January 2012 to 30 June 2013.

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As noted above, Penglai Dajin was subject to the 'all other exporters' IDD rate after the then Minister for Industry, Science and Technology accepted the Commissioner's findings and recommendations in REP 487.

Penglai Dajin's application submits that the IDD applicable to 'all other exporters' is inappropriate so far as Penglai Dajin is concerned.

### 1.3 Application of law to facts

Division 6 of Part XVB of the *Customs Act 1901* (Cth) (the Act)<sup>7</sup> allows eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews for the purpose of making a report to the Minister, and
- enables the Minister, after consideration of such reports, to leave the notices unchanged or to modify it as appropriate.

### 1.4 Findings

Penglai Dajin did not export the goods to Australia during the original investigation period. It meets the definition of a 'new exporter' under section 269T(1) and is eligible to apply for an accelerated review.

Based on all relevant and available information, the Commissioner, in relation to the variable factors for Penglai Dajin's exports of the goods to Australia, considers that:

- the export price should be determined pursuant to section 269TAB(1)(a)
- the normal value should be determined pursuant to section 269TAC(1), with certain adjustments pursuant to section 269TAC(8)
- the non-injurious price (NIP) should not be operative.

### 1.5 Recommendation

Based on the above findings and pursuant to section 269ZG(1)(b), the Commissioner recommends that the Minister alter the notice, so as to apply to Penglai Dajin, as if different variable factors had been fixed.

Further, the Commissioner recommends, in relation to Penglai Dajin's exports of the goods to Australia, that the IDD be worked out in accordance with the ad valorem method, pursuant to section 5(7) of the Customs Tariff (Anti-Dumping) Regulation.

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<sup>7</sup> All legislative references in this report are to the *Customs Act 1901* (Cth) unless otherwise specified.

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If accepted by the Minister, the IDD rate applicable to Penglai Dajin will take effect retrospectively from 11 March 2022 (the date Penglai Dajin lodged its application).

## **2 BACKGROUND**

### **2.1 The goods**

#### **2.1.1 Description**

The goods subject to anti-dumping measures, in the form of the notice, are outlined in the table below.

<b>Full description of the goods the subject of the application</b>
<p>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.</p> <p>Wind turbines that have electrical power generation capacities equal to or in excess of 1.00 megawatt (MW) and with a minimum height of 50 metres measured from the base of the tower to the bottom of the nacelle (i.e. where the top of the tower and nacelle are joined) when fully assembled.</p> <p>A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical junction boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section.</p>
<b>Further information</b>
<p>Goods specifically excluded from the scope are:</p> <ul style="list-style-type: none"> <li>• nacelles and rotor blades, regardless of whether they are attached to the wind tower</li> <li>• any internal or external components which are not attached to the wind towers or sections thereof.</li> </ul>

**Table 1: The goods the subject of the application**

Further details on the goods and existing measures is available on the Dumping Commodity Register on the Anti-Dumping Commission's (the commission) website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

#### **2.1.2 Tariff classification**

The goods are generally, but not exclusively, classified to the following tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995* (Cth):<sup>8</sup>

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<sup>8</sup> These tariff classifications and statistical codes may include goods that are both subject and not subject to the notice. The listing of these tariff classifications and statistical codes is for reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the notice.



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<b>Tariff classification (Schedule 3 of the Customs Tariff Act 1995)</b>			
<b>Tariff code</b>	<b>Stat Code</b>	<b>Unit</b>	<b>Description</b>
<b>7308: STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, LOCK-GATES, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, SHUTTERS, BALUSTRADES, PILLARS AND COLUMNS), OF IRON OR STEEL; PLATES, RODS, ANGLES, SHAPES, SECTIONS, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES, OF IRON OR STEEL:</b>			
<b>7308.20.00</b>	<b>Towers and lattice masts:</b>		
	03	tonnes	Tubular, whether or not tapered
	04	tonnes	Other
<b>7308.90.00</b>	<b>Other:</b>		
	<b>Columns, pillars, posts and beams, girders, bracing, gantries, brackets, struts, ties and similar structural units:</b>		
	<b>.Roll formed structures:</b>		
	52	tonnes	..Hot rolled
	53	tonnes	..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness less than 1.2 mm
	54	tonnes	..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness of 1.2 mm or more
	55	tonnes	..Other
	56	tonnes	.Other
	63	tonnes	Sectional components, prepared for use in towers and lattice masts
65	tonnes	Other	
<b>8502: ELECTRIC GENERATING SETS AND ROTARY CONVERTERS:</b>			
<b>8502.31.10</b>	<b>Other generating sets:</b>		
	<b>-- Wind-powered:</b>		
	31	no.	--- AC generating sets of an output exceeding 500 kVA
<b>Notes:</b>			
<ul style="list-style-type: none"> <li>• Statistical code 02 pertaining to tariff sub-heading 7308.20.00 was replaced with statistical codes 03 and 04; and</li> <li>• Statistical code 61 pertaining to tariff sub-heading 7308.90.00 was replaced with four statistical codes. Two of these (statistical codes 63 and 65) are relevant to the goods.</li> </ul>			

**Table 2: Tariff classifications of the goods**

### **2.1.3 Like goods**

Section 269T(1) defines like goods as goods that are identical in all respects to the goods under consideration or that, although not alike in all respect to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

The commission's framework for assessing like goods is outlined in Chapter 2 of the commission's *Dumping and Subsidy Manual* (the manual).<sup>9</sup>

## **2.2 Accelerated reviews**

The legislative framework that underpins the making of, and the Commissioner's consideration of, an application for an accelerated review of dumping and countervailing duty notices is contained in Divisions 1 and 6 of Part XVB.

If the Commissioner does not reject an application, or terminate an accelerated review, the Commissioner must, no later than 100 days after the application is lodged, provide the Minister a report recommending that the notices the subject of the application:<sup>10</sup>

- (a) remain unaltered,<sup>11</sup> or
- (b) be altered so as to apply to Penglai Dajin as if different variable factors had been fixed<sup>12</sup>

and set out the reasons for so recommending.<sup>13</sup>

Following the Minister's decision, a notice is published on the commission's website advising of the decision.<sup>14</sup>

## **2.3 Existing measures**

On 25 March 2019, with an effective date of 17 April 2019, the then Minister for Industry, Science and Technology revised the variable factors and effective rates of duty applicable to the goods as they affect exporters from China following *Continuation Inquiry No 487* (CON 487). Penglai Dajin is currently subject to the 'all other exporters' IDD rate of 10.9%. No IDD can be collected on Penglai Dajin's exports of the goods while its

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<sup>9</sup> Available on the commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>10</sup> Section 269ZG(2).

<sup>11</sup> Section 269ZG(1)(a).

<sup>12</sup> Section 269ZG(1)(b).

<sup>13</sup> Section 269ZG(1).

<sup>14</sup> Section 269ZG(3).

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application for accelerated review is being considered, but the Commonwealth is requiring and taking securities.<sup>15</sup>

The table below outlines IDD in place for exporters of the goods at the time this report was provided to the Minister.

Country	Exporter	IDD	Duty method
China	Shanghai Taisheng Wind Power Equipment Co., Ltd	Exempt	N/A
	All other exporters	10.9%	ad valorem

**Table 3: Current rates of IDD**

Further details of the current measures on exports from China are available in the Dumping Commodity Register on the commission's website.

### 2.4 Notification and participation

On 11 March 2022, Penglai Dajin lodged an application for an accelerated review of the notices applying to wind towers exported to Australia from China insofar as the notices affect Penglai Dajin. The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner did not reject the application because:

- the circumstances in which an accelerated review can be sought under section 269ZE(1) were satisfied
- the conditions for rejection under section 269ZE(2) were not satisfied, and
- the application satisfied the requirements of section 269ZF(1).

The commencement of this accelerated review was notified in ADN 2022/035,<sup>16</sup> which was published on 2 May 2022 and made available on the public record on the commission's website.<sup>17</sup> ADN 2022/035 advised that the Commissioner's recommendation will be made in a report on, or before, **19 June 2022**.<sup>18</sup>

For the purposes of the accelerated review, the period examined is 1 January 2021 to 31 December 2021 (the accelerated review period).

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<sup>15</sup> Section 269ZH.

<sup>16</sup> EPR 602, no 002.

<sup>17</sup> Section 2.6 refers.

<sup>18</sup> As this date falls on a Sunday, the recommendation is due on Monday 20 June 2022.

## **2.5 Information gathered**

### **2.5.1 Exporter questionnaire**

Upon the commencement of the accelerated review, the commission sent an exporter questionnaire to Penglai Dajin for completion.

On 25 April 2022, the commission received the completed response to the exporter questionnaire (REQ) from Penglai Dajin. A non-confidential version of the REQ is available on the public record.<sup>19</sup>

Penglai Dajin cooperated with the accelerated review and provided financial data in its REQ within the required timeframe.

The commission reviewed and assessed all of the information provided in the REQ in accordance with the intent of ADN 2016/30. Based on this assessment, the commission is satisfied that the information provided by Penglai Dajin is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

## **2.6 Public record**

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au)

## **2.7 Submissions**

With the exception of the REQ, no additional submissions were received in relation to this accelerated review.

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<sup>19</sup> EPR 602, no 003.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Production process

The commission considers that the like goods manufactured for domestic consumption are identical to, or have characteristics closely resembling, the goods exported to Australia if they are physically alike, share a production likeness, are commercially alike, and are functionally alike.

In order to determine the production likeness of the goods, the commission obtained an understanding of Penglai Dajin's production process. A summary of the production process for the goods is as follows:

- Tower manufacture
- Cutting
- Flame cutting groove / bevelling
- Bending roll, longitudinal welding, and second bending
- Fit-up
- Circumferential welding
- Brackets welding
- Blasting
- Metallize with zinc and painting
- Internal mounting
- Packing and transport

Quality control inspections are also conducted between each state of the production process.

### 3.2 Model control codes

Penglai Dajin produces and sells wind towers to order, which are specific to the customer and its project requirements.

Considering the uniqueness of each project, it is not appropriate to establish further model control codes (MCCs) for these goods.<sup>20</sup>

### 3.3 The goods exported to Australia

Penglai Dajin exported the goods to Australia during the accelerated review period.

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<sup>20</sup> Refer to Chapter 14 of the manual for the commission's model matching methodology.

### **3.4 Like goods sold on the domestic market in China**

Penglai Dajin produced and sold wind towers on the domestic market in China. The commission considers that the wind towers produced and sold by Penglai Dajin are 'like goods' to the goods exported to Australia in accordance with section 269T(1).

The commission considers that the goods manufactured for domestic consumption are not identical to the goods exported to Australia due to differences in tower designs including height, weight, circumference, and internals. Although wind towers vary from project to project, the commission is satisfied that there are goods sold on the domestic market in China that have characteristics closely resembling the goods exported to Australia, as follows:

- **Physical likeness:**

All wind towers are tubular steel towers with components such as doors, ladders, flooring, cables and wiring, and lights typically attached to the inner diameter of the welded steel plates.

Wind towers are built to particular specifications so vary depending on the wind farm's requirements. These variations include characteristics such as size, steel, welding, coating, and quality inspection standards.

Certain wind farm proponents may have certain specifications that differ from the standard specifications, but the standards are general to the global wind tower industry and have been adopted by most manufacturers.

- **Production likeness:**

Having previously verified the production process that occurs in various countries and compared with the information provided by the applicant regarding its production process, the commission is satisfied that the locally produced and imported wind towers are produced using similar facilities, raw material inputs, and manufacturing processes.

- **Commercial likeness:**

Wind towers and sections thereof are made to the purchasers' specifications on a project by project basis and no two projects are identical. The purchasing process in the market is often by tender and subsequent negotiation.

- **Functional likeness:**

The commission is satisfied that the goods and locally produced wind towers have identical or comparable end uses. All wind towers are used exclusively as part of wind turbines for supporting and elevating the nacelle and blades for the generation of electricity.

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All wind tower sections share common characteristics, have comparable end use applications and are produced at the same facilities, using the same raw material inputs and manufacturing processes.

### 3.4.1 Offshore wind towers

Penglai Dajin claimed in its application that the offshore wind towers it sells on the domestic market are not like goods to the onshore wind towers that it exports to Australia.<sup>21</sup>

The commission is satisfied that offshore wind towers fall within the goods description and are goods that have characteristics closely resembling the goods under consideration. The commission has assessed whether adjustments are necessary to ensure a proper comparison between domestic and exported goods in Chapter 5.

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<sup>21</sup> EPR 602, no 001, p 10.

## 4 EXPORT PRICE

### 4.1 Findings

The commission recommends, in respect of Australian sales of the goods by Penglai Dajin, that the export price be determined under section 269TAB(1)(a), as the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation.

The commission's export price calculations are at **Confidential Appendix 1**.

### 4.2 The importers

The commission considers Penglai Dajin's Australian customers to be the beneficial owners of the goods at the time of importation and therefore the importer.

### 4.3 The exporter

The commission considers Penglai Dajin to be the exporter of the goods,<sup>22</sup> as Penglai Dajin is:

- the manufacturer of the goods located in the country of export, knowing that they are destined for Australia
- named on relevant commercial documentation as the supplier (e.g. commercial invoices and purchase orders)
- named as the exporter on Certificate of Origin, and
- responsible for arranging and paying for the inland transport to the port of export.

### 4.4 Arms length assessment

In determining export prices under section 269TAB(1)(a) and normal values under section 269TAC(1), the Act requires that the relevant sales are arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price
- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller

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<sup>22</sup> The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.



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- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>23</sup>

In respect of Penglai Dajin's Australian sales of the goods (which are to unrelated customers) during the accelerated review period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all export sales made by Penglai Dajin to its unrelated Australian customers during the accelerated review period were arms length transactions.<sup>24</sup>

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<sup>23</sup> Refer to Chapter 5 of the manual for the commission's approach to assessment of arms length transactions.

<sup>24</sup> Section 269TAA refers.

## 5 NORMAL VALUE

### 5.1 Findings

The commission found that there were sufficient volumes of domestic sales of like goods that were arms length transactions and sold at prices that are in the ordinary course of trade (OCOT).<sup>25</sup> Accordingly, the commission has ascertained the normal value in accordance with section 269TAC(1), applying a market price calculation adjustment in accordance with section 269TAC(8) to ensure that differences between the normal value of goods exported to Australia and the export price of the exported goods would not affect comparison of domestic prices with export prices.

The commission's normal value calculations are at **Confidential Appendix 3**.

Due to the unique nature of this good and to calculate the price differences that affect comparison of like goods that are not identical in all respects, the commission has applied the market price comparison methodology outlined in section 5.6.1 of this report.<sup>26</sup>

### 5.2 Assessment of domestic sales

Section 269TAC(1) provides the general rule for calculating normal value. For sales to be relevant for the purpose of section 269TAC(1), they must be sales of like goods sold in the exporter's domestic market for home consumption that are at arms length and in the OCOT.

As noted in Chapter 3, the commission considers that both offshore and onshore wind towers are like goods. The commission has assessed all of Penglai Dajin's domestic sales of like goods (offshore and onshore towers) for the purpose of calculating the normal value under section 269TAC(1).

### 5.3 Arms length assessment

#### 5.3.1 Related party customers

In respect of Penglai Dajin's domestic sales of like goods to its related customers during the accelerated review period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller

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<sup>25</sup> Section 269TAAD.

<sup>26</sup> This approach is consistent with the findings made in ADRP Report 100.

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- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.<sup>27</sup>

The project negotiation and pricing process is the same for both related and unrelated customers. The commission also compared the weighted average unit prices paid by related and unrelated customers and observed that there was no clear price difference between related and unrelated customers.

The commission therefore considers that all domestic sales made by Penglai Dajin to its related customers during the accelerated review period were arms length transactions.

### 5.3.2 Unrelated customers

In respect of Penglai Dajin's domestic sales of like goods to its unrelated customers during the accelerated review period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>28</sup>

The commission therefore considers that all domestic sales made by Penglai Dajin to its unrelated domestic customers during the accelerated review period were arm's length transactions.

## 5.4 Ordinary course of trade

Section 269TAA states that domestic sales of like goods are not in the OCOT if arms length transactions are both:

- unprofitable in substantial quantities over an extended period
- unlikely to be recoverable within a reasonable period.<sup>29</sup>

The commission tested profitability by comparing the net invoice price against the relevant cost for each domestic sales transaction.

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<sup>27</sup> Section 269TAA.

<sup>28</sup> Section 269TAA.

<sup>29</sup> In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

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The commission tested whether the unprofitable sales were in substantial quantities (not less than 20 per cent) by comparing the volume of unprofitable sales to the total sales volume over the accelerated review period.

The commission tested recoverability by comparing the net invoice price against the relevant weighted average cost over the accelerated review period for each domestic sales transaction.

The following table sets out further detail:

OCOT particulars	Details
Price	Net invoice price
Cost	Quarterly cost to make and sell, including direct selling expenses for each transaction.
Weighted average cost	Weighted average cost to make and sell over the accelerated review period, including direct selling expenses for each transaction.

**Table 4: OCOT Details**

### 5.4.1 Assessment of market competitive costs

To determine the cost of production or manufacture, section 43(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation) requires that if:

- an exporter or producer keeps records relating to like goods that are in accordance with generally accepted accounting principles in the country of export, and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods

the Minister must work out the cost of production or manufacture using information set out in the exporter or producer's records.

As per the manual, the phrase 'reasonably reflect competitive markets costs' may refer to the situation where there is government influence on the costs of inputs.<sup>30</sup>

When examining whether the input is supplied at a normal competitive market price the commission may inquire whether the government had influenced the price of any major cost inputs.

As established in INV 221 and CON 487, the commission is of the view that the GOC's involvement and influence over the steel industry and the markets for raw materials used in the production of wind towers has created distortions that make them unsuitable to use for determining the cost of production in China.

The commission has not been presented with any evidence to suggest that the Government of China's (GOC) involvement in the industry has changed since the

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<sup>30</sup> The manual, section 9.3.

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previous inquiry. Therefore, Penglai Dajin's cost of production records are considered to not be determined in competitive market conditions, and do not reasonably reflect competitive market costs associated with the production of wind towers for the purposes of section 43(2) of the Regulation.

As a result, the commission uplifted the prices of raw material steel plate used to calculate the cost of production of Penglai Dajin's domestically sold wind towers.

### 5.4.2 Steel plate uplift methodology

In order to calculate the uplift applied to Penglai Dajin's cost to make data, the commission had regard to uplifted plate steel costs as reported in CON 487, where the commission previously established a competitive market cost for plate steel.<sup>31</sup> The commission indexed the uplifted plate steel costs from CON 487 with reference to movements in the S&P Global (Platts) benchmark in the accelerated review period. The commission referred to *Flat Products / Plate CFR East Asia / East Asia import CFR \$ / ton*, (CFR terms, USD per tonne) as its benchmark to index the cost.<sup>32</sup> The benchmark indicates that competitive market steel prices were significantly higher during the accelerated review period than the costs set out in Penglai Dajin's records. Therefore, the commission has adjusted Penglai Dajin's steel plate costs in its records.

The raw material steel plate purchases in Penglai Dajin's records were compared to the corresponding quarterly benchmarked prices. The difference in these prices was then applied to the cost of plate steel, as reflected in Penglai Dajin's records, as a proportional uplift that would be inclusive of any relevant grade differences.

The commission's indexation methodology and workings can be found at **Confidential Appendix 2A**.

## 5.5 Volume of relevant sales

Section 269TAC(2) provides alternative methods for calculating the normal value of goods exported to Australia where there is an absence, or low volume, of relevant sales of like goods in the market of the country of export. An exporter's domestic sales of like goods are taken to be in a low volume where the total volume of sales of like goods for home consumption in the country of export by the exporter is less than 5% of the total volume of the goods under consideration that are exported to Australia by the exporter (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).

The commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of domestic sales was 5% or greater and therefore was not a low volume.

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<sup>31</sup> This approach is consistent with findings made in ADRP Report 100.

<sup>32</sup> Steel price obtained from S&B Global (Platts), refer to <https://www.steelbb.spglobal.com/steelprices/>

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Due to the unique nature of this good a proper comparison between the goods exported to Australia and the goods sold on the domestic market is not possible without suitable adjustments. As stated in Chapter 3 of this report, a MCC structure was not established and therefore no model volume analysis was undertaken.

### 5.6 Adjustments to normal value

The commission considers adjustments under section 269TAC(8) are necessary to ensure that the normal value ascertained is properly compared with the export price of those goods.

#### 5.6.1 Market price calculation

The commission considered an alternative approach to achieve the objective of removing differences that affect price in relation to like goods that are not identical to the exported goods. In this approach, the commission first started with the weighted average sales prices of like goods, sold in arms length transactions in the OCOT.

The commission then established a 'market price' in the domestic market for identical goods to those exported and then compared the difference between these two prices to adjust the sales of all like goods sold in OCOT. In establishing what the 'market price' in the domestic market would have been, the commission based the price as the sum of:

- the cost to make the goods sold on the export market (being the identical model)<sup>33</sup>
- the selling general and administrative (SG&A) expenses for like goods sold on the domestic market<sup>34</sup>
- the profit achieved in the sales of onshore wind towers that is profitable or recoverable.

The commission considers that this approach creates a reasonable estimate of the price for which the goods exported to Australia, would have been sold at if they were sold on the domestic market. This is based on the following factors:

- Using the cost to make the goods on the export market accounts for cost based differences between the domestic and exported wind towers.
- Using this profit allows a fair comparison between the actual prices achieved in the domestic market and the 'market price', noting that section 269TAC(1) requires domestic sales used to determine normal value to be in the OCOT.
- It is reasonable to assume that there is a cost to sell the goods on the domestic market which would be accounted for in the market price, and that this cost may be different to that of export sales.

The commission considers that this is the most reasonable approach to calculating the price differences that affect comparison of like goods that are not identical in all respects.

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<sup>33</sup> Refer Confidential Appendix 2 for the export cost to make data.

<sup>34</sup> Refer Confidential Appendix 2 for domestic SG&A data.

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As these circumstances apply to this accelerated review, the commission has applied the above stated methodology to calculate the dumping margin.

### Use of onshore wind towers profit

As detailed in Chapter 3, Penglai Dajin sells both onshore and offshore wind towers in its domestic market. As part of its application, Penglai Dajin requested that the commission have regard to the differences between onshore and offshore wind towers when determining the normal value.<sup>35</sup>

The commission compared the weighted average selling price, CTMS and profit and found that there were material differences between onshore and offshore values for all 3 factors.

The commission considers that this indicates that the application of an amount of profit based on all like goods sales would affect the comparison between normal value and export price. Accordingly, the commission has used an amount of profit for domestic sales of onshore wind towers which are profitable and recoverable.

To ensure the normal value is comparable to the export price of goods exported to Australia at FAS terms, the commission has considered the following adjustments in accordance with section 269TAC(8).<sup>36</sup>

Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
Market price calculation	To calculate the price differences affecting comparison of like goods that are not identical in all respects, pursuant to 269TAC(8).	Described in Chapter 5 of this report.	N	Y

**Table 5: Assessment of adjustment**

### 5.6.2 Adjustments

The commission considers the following adjustment under section 269TAC(8) is necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Market price calculation	Described in Chapter 5 of this report.

**Table 6: Summary of adjustment**

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<sup>35</sup> EPR 602, no 001, p 12.

<sup>36</sup> This approach is consistent with findings made in ADRP Report 100.

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The commission's adjustment calculations are included in normal value calculations at **Confidential Appendix 3** and **Confidential Appendix 3A**.



## 6 DUMPING MARGIN

### 6.1 Findings

The commission has calculated a dumping margin of **1.2%** by comparing the export price with the corresponding normal value.

The dumping margin calculation is provided at **Confidential Appendix 4**.

## 7 NON-INJURIOUS PRICE

### 7.1 Findings

The Commissioner recommends that the NIP of the goods exported to Australia be set by reference to the corresponding normal values during the accelerated review period. As a result, the NIP is not operative.

### 7.2 Non-injurious price

The NIP is defined in section 269TACA as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury” caused by the dumped goods the subject of a dumping duty notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry is not affected by dumping.

### 7.3 Lesser duty rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).<sup>37</sup>

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

Pursuant to section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in the following circumstances:

- the Australian industry is composed of at least 2 small-medium enterprises, or
- the method of ascertaining normal value in circumstances of a particular market situation in the country of export.

These circumstances are not present in this accelerated review.

### 7.4 Calculation of the non-injurious price

The commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The commission’s preferred approach to establishing the USP is set out in Chapter 24 of the manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or

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<sup>37</sup> Section 8(5B) of the Dumping Duty Act.

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- selling prices of un-dumped imports.

Having calculated the USP, the commission then calculates a NIP by deducting the costs incurred in getting the goods from the export Free on Board point (or another point if appropriate – in this instance, FAS) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

### 7.5 The commission's assessment

In considering whether a constructed USP is appropriate, the commission notes the following factors:

- wind towers supplied by the Australian industry are unique in their technical specifications
- each original equipment manufacturer in the industry has a range of tower designs unique to its needs (driven mostly by the turbine requirements) and the project characteristics, and these tower designs differ significantly by cost and price
- there are a range of free issue items, including flanges and internals that affect the cost and final pricing of the wind tower.

The commission concludes that, given the unique design of each wind tower, it is not practicable to calculate a meaningful USP under any of the commission's usual 3 approaches. Therefore, the Commissioner considers that it is appropriate to recommend that the NIP of the goods exported to Australia be set by reference to the corresponding normal values during the accelerated review period. As a result, the NIP is not operative.

## **8 FORM OF MEASURES**

### **8.1 Current form of measures**

Penglai Dajin’s exports of the goods are currently subject to the ‘all other exporters’ effective rate of duty of 10.9%.<sup>38</sup>

In respect of any IDD that may become payable, duty is currently collected using the ad valorem duty method.

### **8.2 Recommended form of measures**

The commission notes that there is substantial variation in the prices of wind towers exported to Australia, and that this is primarily a result of differences in the tower specifications. These specifications change from project to project, which means that there is a high variability in prices over time. In these circumstances, the commission considers that the ad valorem duty method is the most appropriate form of measures for wind towers exported from China.<sup>39</sup>

The NIP, established by reference to the normal value of the exporter, will not be the operative measure. There is therefore no requirement for the Commissioner to make a recommendation regarding whether the Minister should consider the desirability of fixing a lesser amount of duty than the dumping margin found, pursuant to section 8(5BAA) of the Dumping Duty Act.

The Commissioner recommends to the Minister that duties on imports of the goods from Penglai Dajin be calculated in respect of any IDD that may become payable, using the ad valorem method.

A summary of the recommendations and effective rates of interim dumping duty are shown in the table below:

Country	Exporter	Duty method	IDD (%)
China	Penglai Dajin	ad valorem	1.2

**Table 7: Summary of effective IDD**

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<sup>38</sup> As determined in REP 487.

<sup>39</sup> As per the [Guidelines on the Application of Forms of Dumping Duty November 2013](#), available on the commission’s website.

## **9 EFFECT OF THE ACCELERATED REVIEW**

If the Minister accepts the recommendations in this report, in respect of wind towers exported by Penglai Dajin to Australia from China:

- the notice will be altered so as to apply to Penglai Dajin as if different variable factors had been fixed
- IDD will be worked out using the ad valorem duty method.

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 11 March 2022 (being the date the application was lodged).

## 10 RECOMMENDATIONS

The Commissioner recommends that the Minister consider this report and declare:

- under section 269ZG(3)(b) that, with effect from 11 March 2022, relevant to the determination of duty for the purposes of the Act and the Dumping Duty Act, the dumping duty notice in relation to the goods exported to Australia from China by Penglai Dajin is taken to have effect as if different variable factors had been fixed relevant to the determination of duty.

The Commissioner recommends that the Minister determine:

- the export price of the goods exported to Australia from China by Penglai Dajin under section 269TAB(1)(a), is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in **Confidential Appendix 1**
- the normal value of the goods exported to Australia from China by Penglai Dajin under section 269TAC(1), is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, as adjusted in accordance with section 269TAC(8), as set out in **Confidential Appendix 3**
- in accordance with section 8(5) of the Dumping Duty Act, that the IDD payable in respect of certain wind towers exported to Australia from China by Penglai Dajin is an amount which will be worked out in accordance with the ad valorem method, pursuant to section 5(7) of the Customs Tariff (Anti-Dumping) Regulation.

The Commissioner recommends that the Minister direct that:

- in accordance with section 269TAC(8), adjustments, as listed in Table 6, are necessary to ensure a fair comparison of normal values and export prices for the goods exported to Australia from China by Penglai Dajin.

**11 APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Export Price
<b>Confidential Appendix 2</b>	Cost to Make and Sell
<b>Confidential Appendix 2A</b>	Cost Uplift Calculation
<b>Confidential Appendix 3</b>	Normal Value
<b>Confidential Appendix 3A</b>	Profit
<b>Confidential Appendix 4</b>	Dumping Margin