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The Director - Investigations
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Review of wind towers exported from the Peoples Republic of China

Dear Director

This submission is made on behalf of Penglai Dajin Offshore Heavy Industry Co., Ltd. ("Dajin") in response to the particular market situation claims raised by Keppel Prince Engineering Pty Limited ("KPE") in its submissions to the current review of measures.

KPE has presented a number of submissions in which it asserts that a particular market situation exists which renders domestic sales unsuitable for establishing normal values. It also claims that certain costs of production do not reflect competitive market costs. KPE's assertions are based on its views that:

a) previous particular market situation findings by the Commission in the Chinese steel sector continue to be relevant;
b) the recent Section 20 finding by the Canadian Border Services Agency (CBSA) supports a particular market situation finding; and
c) the existence of subsidies is a relevant consideration for assessing particular market situation. KPE references the establishment of Special Economic Zones as evidence that exporters may benefit from subsidies.

We address each of these points below.

a) Previous particular market situation findings

KPE's basis for considering that exports of wind towers from China are dumped relies on the view that a market situation exists such that domestic sales of wind towers are unsuitable for the purposes of establishing a normal value. KPE references previous findings by the Commission in respect of the Government of China's (GOC) broad macroeconomic policies including numerous Five-Year Plans as evidence of intervention that impacts the wind tower domestic market.

As the GOC has stated on many occasions in previous investigations, these broad policies are aimed at fostering industry efficiency and reflect an aspirational future state of industry in China. Each entity in China is entitled to make commercial decisions in their own best interests.

Regardless of the Commission's previous findings, the primary consideration in this review involves a subjective examination of all relevant market variables in relation to the subject goods in totality. As stated by the Commission[1], '*a market situation assessment involves an examination of factors which may affect the interaction of supply and demand in a sector, industry or particular market, to a considerable extent that prices and costs in that market can no longer be viewed as being established under those market principles.*'

Therefore, the mere existence of broad policies and guidelines in China is not sufficient to be satisfied that distortion in the wind tower market in China exists, which would render arm's length transactions in the ordinary course of trade in that market to be unsuitable for use in determining normal values. As noted by the Anti-Dumping Review Panel[2]:

> *Notwithstanding that a suspicion of active government intervention extending beyond ordinary acceptable government regulation may be reasonably formed, suspicion alone is in my view not an adequate basis for a market situation finding. I consider that this requires some more concrete evidence of the implementation of governmental policies and their effect in the market, such as the generation of an evidently artificial domestic price. Only then, in my view, would it be possible to form a defensible view that it was more likely than not that a market situation of the requisite type had arisen.*

It is not sufficient for the Commission to merely rely on previous findings. Instead, the Commission must gather substantial 'positive' evidence that is relevant to the wind tower market during the current review period, for the Minister to be satisfied and determine that a particular market situation exists, that renders domestic sales unsuitable.

To that end, KPE's information on SEZ's in Liaoning Province is not considered relevant given Dajin's operations are located in Shandong Province. Likewise, the Commission's previous findings relating to steel products such as steel plate, aluminium zinc coated steel, galvanised steel coated steel, and hollow structural sections, are not considered relevant given those inquiries and findings were made over decade ago.

In the case of steel plate and its use as an input into the production of wind towers, Dajin submits that the tender and procurement process for sourcing steel plate for production of wind towers, is directly relevant to the consideration of particular market situation and/or whether costs of production reasonably reflect competitive market costs. As demonstrated during verification, wind farm operators will specify a panel of steel producers that meet the technical and delivery requirements for supply of steel plate. Dajin will then seek [redacted] **[terms of purchase]** offers for steel plate from the approved list of suppliers, including foreign steel producers.

[1] Report 2013 – Reinvestigation into HSS from China, Korea, Malaysia and Taiwan.
[2] TMRO Review of a decision to publish a dumping duty notice and countervailing notice - HSS

As evidenced during verification, in the case of the wind towers exported to Australia, Dajin procured steel plate from [redacted] in China, at prices only marginally below the equivalent price offer from [redacted], which itself was lower than other domestic price offers.

Therefore, the purchases of steel plate for use in the production of wind towers, is unlike the general market for steel plate in China. That is:

- the small group of select suppliers is assessed and approved by the wind farm operator;
- the approved suppliers are a mix of Chinese and foreign steel producers;
- the steel plate to be supplied is of a technical standard for wind tower production; and
- purchases are made on a [redacted] [terms of purchase] for deliveries covering the extended wind tower production schedule.

These particular supply and demand market characteristics are specific to the wind tower sector, whilst the previous particular market situation findings made by the Commission were based on a consideration of the general market dynamics of the broader domestic steel plate sector in China, which would not be applicable to the wind tower market.

Canadian Section 20 inquiry

KPE also references recent findings made by the Canadian Border Service Agency (CBSA) in its dumping investigation into wind towers exported from China. KPE considers that the preliminary findings made following the Section 20 inquiry conducted by the CBSA '*are highly relevant*' and support its view that domestic sales of wind towers in China are distorted as a result of significant influence by the GOC.

KPE's misunderstands the Section 20 inquiry in the Canadian dumping system, and importantly, overlooks the critical differences in the assessment of Chinese domestic market sales within the Australian and Canadian dumping systems, and in particular the alternative methodologies available within each system to determine normal value. Firstly, it is important to understand the context of the Section 20 inquiry within the Canadian anti-dumping framework and the impact this has on the standard of proof in rejecting domestic sales for dumping purposes.

China's accession to the WTO in 2001 was subject to terms and conditions outlined in Protocols. Article 15(a) of the Protocols (commonly referred to as the non-market economy provisions) allowed WTO members to use alternative methodology in determining price comparability for dumping purposes, by not requiring a strict comparison with domestic prices or costs in China if the producers under investigation could not clearly show that market economy conditions prevailed in the industry producing the like product with regard to manufacture, production and sale of that product.

Within the Canadian anti-dumping system, Section 20 of the relevant domestic legislation[3] allows for application of the non-market economy provisions, where certain conditions prevail in the domestic market. In the case of China, an alternative normal value method is applied where, in the opinion of the President, domestic prices are substantially determined by the government of that country and there is sufficient reason to believe that they are not substantially the same as they would be if they were determined in a competitive market.

By contrast, Australia granted China market economy status in 2005 and in doing so, relinquished the option to apply the non-market economy[4] or economy-in-transition[5] provisions within the *Customs Act 1901* (the Act). As such, the Commission must base its normal value determinations on domestic sales of like goods sold in China in the ordinary course of trade.

However, where the Minister is satisfied that one of the conditions of subsection 269TAC(2)(a) of the Act is met, domestic sales cannot be relied upon to determine normal values. One such condition is the existence of a situation in the market that renders domestic sales unsuitable.

So, whilst under both anti-dumping systems, the Commission and the CBSA initiate their respective dumping investigations into products exported from China with a presumption that domestic sales in China are suitable for determining normal values, a difference exists in the standard of proof required to reject domestic selling prices under section 20 of SIMA and subsection 269TAC(2)(a) of the Act.

In the Canadian system, there must be sufficient evidence and information for the President to have a reason to believe and to form an opinion that domestic prices are not substantially the same as they would be in a competitive market. Whereas under Australia's legislation, the Minister is required to be satisfied that a situation exists in the domestic market that renders sales in that market unsuitable for determining normal values.

In Dajin's view then, information which may be sufficient within the Canadian section 20 inquiry framework for the President to have reason to believe, would not automatically or necessarily have sufficient probative value to allow the Minister to be satisfied that a market situation exists under Australia's legislation.

Second, under the Canadian system, where the President forms the opinion that domestic prices are not substantially the same as they would be in a competitive market, the non-market economy provisions contained within section 20 of SIMA allows normal value to be determined on domestic selling prices in another surrogate country designated by the President. Alternatively, the President may designate the use of the aggregate of the cost of production and a mark-up in respect of the goods sold by producers in another surrogate country. Where sufficient surrogate information has not been furnished or is not available to

[3] Special Import Measures Act (SIMA) which reflects Canada's implementation of the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures.

[4] Subsection 269TAC(4) of the Act.

[5] Subsection 269TAC(5D) of the Act.

determine normal values as above, the President may use export prices from another surrogate country to Canada to establish the normal value.

By contrast, following Australia granting China market economy status for dumping purposes, where domestic sales are rejected following a market situation finding, the Commission is required to determine normal value according to the ensuing provisions of section 269TAC of the Act, which reflect the principles outlined in Article 2 of the WTO Anti-Dumping Agreement (ADA). This requires that normal values are to be determined by reference to a constructed selling price based on the costs of production in the country of export plus amounts for selling, general and administrative expenses and profit or export prices of like goods to an appropriate third country. Importantly, the non-market economy or economy-in-transition provisions within the Act, cannot be applied.

So, the clear difference in methodology is the ability under the Canadian system to disregard Chinese exporter's domestic sales and costing information and resort to a completely surrogate normal value based on another exporter's domestic sales, costs or export prices. Whereas under Australia's system, a constructed normal value must be calculated by reference to an exporter's costs, subject to conditions identified below.

This is an important point to understand in considering the estimated margin of dumping published by the CBSA in its preliminary determination, and referenced in KPE's submission of 8 August 2023. In disregarding all information submitted by Dajin, the CBSA has relied on surrogate information from Mexico, using '… *information provided by the complainant, and publicly available information, and information obtained through MetalBulletin Fastmarkets as well as SteelBenchmarker*'.

In constructing a normal value, the CBSA estimated the largest cost items for steel plate and flanges by '… *obtained benchmark pricing of steel plate from MetalBulletin Fastmarkets. Pricing was not available in the surrogate country, Mexico, so the CBSA created a world benchmark by averaging the steel prices in all available markets, excluding China. There is no benchmark pricing available for steel flanges, so the CBSA used the average flange cost per wind tower section based on the complainant's estimates for four different recent wind tower projects in Canada.*'

In summary, the CBSA's permitted alternative methodology is a far departure from the methodology commonly utilised by the Commission, and permitted under the Act. Therefore, the CBSA's section 20 preliminary dumping margins are of little relevance to the current review of measures.

Subsidies

Whilst KPE acknowledges that the current measures do not include any countervailing duties, and no claims of subsidisation have ben investigated or found to exist, it alleges that evidence of subsidy benefits is relevant to the current review of measures. This is a disingenuous attempt by KPE to have its subsidy allegations investigated without any reasonable basis for doing so. Investigation of subsidies are a complex matter that necessarily require information from various levels of government in determining specificity, and information from exporters and other alternative sources for determining

whether a benefit is conferred. Any attempt to draw conclusions about specificity and benefit without the proper initiation and conduct of a countervailing investigation, is improper.

Notwithstanding the above concerns, Dajin makes the following observations. First, none of the Liaoning Province SEZ policies references in KPE's submission are relevant to Dajin's own operations, as its manufacturing facility is located in Shandong Province.

Second, Dajin's receipt of government subsidies are of a general nature and not specific to either production or sale of the exported or domestic goods. Dajin also understands that such programs are generally available to entities within the local and provincial region and as such, not specific.

Third, funds received by Dajin under government programs are negligible, representing less than [redacted]% of total revenue. This is supported by the CBSA's recent preliminary subsidy determination which estimated a subsidy margin of 7.8%, which was predominantly driven by calculation of inputs at less than fair market value, which would not be included in a subsidy margin, due to the double counting from the replacement of input costs in the dumping margin calculations.

For these reasons, KPE's assertions surrounding subsidies are of no value to the current review of measures and should be dismissed from further investigation.

Conclusion

To summarise, Dajin considers that the market situation claims are weak and rely on outdated and inconsequential information. Dajin therefore requests that the Commission reject KPE's claims and determine normal values on the basis of domestic sales of wind towers sold in the ordinary course of trade.

John Bracic