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04 September 2023

The Director
 Investigations 3
 Anti-Dumping Commission
 GPO Box 2013
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 Australian Capital Territory 2601

By email

Dear Director,

Continuation Inquiry 621 – Wind towers from China Chengxi Shipyard Co., Ltd comments regarding KPE application

We write on behalf of Chengxi Shipyard Co., Ltd (“Chengxi Shipyard”) in relation to Continuation 621 (“the Inquiry”) concerning wind towers exported from China (“the GUC”).

The purpose of this submission is to provide Chengxi Shipyard’s comments with respect to the application submitted by Keppel Prince Engineering Pty Ltd (“KPE”) on 12 April 2023, seeking a continuation of the anti-dumping measures concerning certain wind towers exported from China (“the KPE Application”). In our view, the KPE Application is deficient, does not warrant the initiation of this inquiry, and that the Commissioner should not be satisfied that the measures should be continued with respect to exports by Chengxi Shipyard.

A	Background	2
B	KPE's Application does not meet the legal requirements for continuation inquiry	2
1	Failure to provide information regarding “ <i>volume and value of imports and sources of imports</i> ”	4
2	Failure to provide information regarding “ <i>sales and market shares of all suppliers</i> ”	5
3	Refusal to provide information regarding “ <i>performance of the local industry</i> ”	5
4	Insufficient information regarding “ <i>likelihood of material injury in the absence of the anti-dumping measures</i> ”	6
5	Lack of “ <i>relevant evidence as to the current normal values in the exporting country</i> ”	7
6	Misleading claims regarding “ <i>whether exporters retain excess capacity for direction to Australia</i> ”	9
C	Conclusion	9

A Background

The anti-dumping measures the subject of this Inquiry were first imposed on 16 April 2014 following Investigation 221.¹ Only two exporters, Shanghai Taisheng Wind Power Equipment Co. Ltd (“TSP”) from China and Win&P., Ltd (“Win&P”) from Korea, exported the GUC during that original investigation.² Chengxi Shipyard did not export the GUC to Australia during the investigation period. Despite this, the anti-dumping measures were imposed with respect to all wind tower exports from China and Korea as a result of Investigation 221.

On 16 July 2018, in response to an application lodged by KPE, the Commission initiated Continuation Inquiry 487.³ At the conclusion of Inquiry 487, the Minister determined that the subject measure should be allowed to expire with respect to exports from Korea but will continue with respect to exports from China.⁴ Subsequently, following a review conducted by the Anti-Dumping Review Panel (“ADRP”), the Minister decided that the measure should also be allowed to expire with respect to the exports by TSP.⁵ That is, the subject measure was allowed to expire with respect to the only two exporters from the original investigation, whose exports were the basis of the imposition of the measure. Again, Chengxi Shipyard did not export wind towers to Australia during the inquiry period.⁶ However, the anti-dumping measures continue to apply with respect to other exporters from China, including Chengxi Shipyard.

On 24 June 2022, following an accelerated review, the Minister determined that Chengxi Shipyard’s exports to Australia were not at a dumping price, and that the dumping duty applicable to wind towers exported from Chengxi Shipyard should be revised to 0%, effective from 14 January 2022.⁷

[CONFIDENTIAL TEXT DELETED – commercial market information].

On 13 April 2023, KPE lodged an application under Section 269ZHC of the *Customs Act 1901* (“the Act”), seeking a continuation of the dumping duty notice with respect to wind towers exported from China, except those from TSP. On 12 May 2023, the Commissioner decided not to reject the application and initiated Continuation Inquiry 621.

B KPE’s Application does not meet the legal requirements for continuation inquiry

Section 269ZHC of the Act provides the specific requirements that an application for continuation of measure must comply with:

(1) *An application under section 269ZHB must:*

(a) *be in writing; and*

(b) *be in a form approved by the Commissioner for the purposes of this section; and*

¹ EPR 221-41, Anti-Dumping Commission, *Anti-Dumping Notice*, No. 2014/33, 16 April 2014.

² EPR 221-40, Anti-Dumping Commission, *Report Number 221 Dumping of Wind Towers exported from the People’s Republic of China and the Republic of Korea*, 16 April 2014, p. 8.

³ EPR 487-2, Anti-Dumping Commission, *Anti-Dumping Notice*, No. 2018/115, 16 July 2018.

⁴ EPR 487-20, Anti-Dumping Commission, *Anti-Dumping Notice*, No. 2019/33, 27 March 2019.

⁵ EPR 487-23, Anti-Dumping Commission, *Anti-Dumping Commission Second Preliminary Report to the Anti-Dumping Review Panel for the reinvestigation of certain findings in Report No 487*, 6 January 2020.

⁶ The investigation period is from 1 January 2017 to 30 June 2018.

⁷ EPR 597-6, Anti-Dumping Commission, *Anti-Dumping Notice*, No. 2022/39, 27 June 2022.

- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form; and
- (e) be lodged in the manner approved under section 269SMS. [underlining supplied]

The mandatory nature of the section 269ZHC requirements, and the evidentiary threshold expected from such application is further supported by section 269ZHD of the Act.

The KPE Application did not contain information as required by the approved form and therefore failed to meet the requirements under section 269ZHC(1)(c) of the Act. Specifically, we refer to KPE's response to section 4 of the Commission's approved form ("the Form")⁸, which requires that the "application must include a detailed statement setting out the reasons for seeking the continuation of the antidumping measures", by "provid[ing] evidence addressing whether, in the absence of measures, dumped or subsidised imports would cause material injury to the local industry producing like goods".⁹ The Form further specifies that "Applicants should refer to the "Guidelines for Preparing an Application for Continuation of Measures" for assistance".¹⁰ The "Instructions and Guidelines for applications for the continuation of measures" ("the Guidelines")¹¹ provides a list of factors considered to be relevant for establishing reasonable grounds. We refer to the following:¹²

(i) *Will the dumping or subsidisation continue, or recur?*

Reasons must be given as to why dumping, or subsidisation, would be expected to continue were the anti-dumping measure to expire. When addressing continuation of dumping, relevant information may be:

- *anti-dumping actions by other countries;*
- *relevant evidence as to the current normal values in the exporting country;*
- *whether exports have continued following imposition of the measure and estimates of export price;*
- *whether the exporter has retained distribution links in Australia;*
- *whether the exporter retains an excess capacity that may be directed to Australia.*

...

(ii) *Will the material injury recur?*

Applicants must provide evidence that in the absence of the measures, the dumped or subsidised goods would cause, or be likely to cause, material injury to the Australian industry producing the goods in question. In considering this question applicants should provide

⁸ Anti-Dumping Commission, *Form B600 - Application for the continuation of a dumping and/or countervailing notice or continuation of an undertaking*, September 2017.

⁹ *Ibid* p. 3.

¹⁰ *Ibid*.

¹¹ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018.

¹² *Ibid* pp. 3-4.

information on key indicators such as profitability, price trends, and market share. The application should provide:

- Information on market trends for the goods in question for the last three years, addressing in particular:
 - volume and value of imports and sources of imports
 - sales and market shares of all suppliers
 - performance of the local industry, showing key indicators such as profits, price trends, investment, and employment.
- Information addressing the likelihood of material injury in the absence of the anti-dumping measures. Alternative sources of export supply that may have arisen following imposition of the measure, or production capacity in the country concerned, may be relevant.

Clearly, the Guidelines identify the specific key factors that an application pursuant to Section 269ZHC is expected to address, in order to establish that the application contains the necessary evidence to establish that there are “reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent”.¹³

Failure to provide the kind of information identified by the Guidelines in responding to section 4 of the Form would be a strong indication that the application does not contain the kind of substantive reasons and evidence as required for the purpose of a continuation inquiry. This is consistent with the “reasonable grounds” requirements that the Commission must consider under section 269ZHD(2) of the Act.

This requirement and implications appear to be well understood by KPE. This is evident by the structure of the “Attachment A” to the KPE Application,¹⁴ which sought to include or repeat almost all of the factors as identified in the Guidelines. However, the compliance was merely in “form” – because the KPE Application’s Attachment A failed to or refused to provide relevant information in relation to several key factors as required by the Guidelines.¹⁵ We identify each of these deficiencies in turn.

1 Failure to provide information regarding “volume and value of imports and sources of imports”

This is one of the specific categories of information relating to question of “will the material injury recur”, which the application “should provide”.¹⁶

¹³ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 3.

¹⁴ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023.

¹⁵ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 4.

¹⁶ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 4.

KPE Application's Attachment A acknowledged this requirement, but simply responded that it had "no meaningful import data"¹⁷, and that "China is one of the main sources of wind tower exports to Australia"¹⁸. This clearly fell short of the requirement for the application to provide "information on market trends for the goods in question for the last three years"¹⁹ with respect to the volume and value of imports. The deficiency in KPE's response is particularly significant, given that the measure it is seeking to continue does not apply to all exports from China.

2 Failure to provide information regarding "sales and market shares of all suppliers"

This is also one of the specific categories of information relating to the question of "will the material injury recur", which the application "should provide".²⁰

The KPE Application did not identify or address this factor at all. This deficiency is also of particular significance, given that the anti-dumping measure that KPE seeks to continue no longer applies to Win&P and TSP, whose exports formed the basis of the imposition of the measure in the first place.

By contrast, KPE's first continuation of measure application in 2018 contained an array of information about the sales and shares of the Australian market.²¹ This indicates that it is at least reasonable to expect that such information would be available to KPE. Again, this also highlights KPE Application's critical deficiency and non-compliance with the requirement under Section 269ZHC and ZHD of the Act.

3 Refusal to provide information regarding "performance of the local industry"

This is also one of the specific categories of information relating to the question of "will the material injury recur", which the application "should provide".²²

In this regard, the KPE Application recognised the information requirements, but expressly refused to provide the necessary information in the application, stating "KPE will provided [sic] Confidential Appendix A-6 and Confidential Appendix A-7 at a later stage"²³.

Obviously, without any information about the "performance of the local industry" in the application at all, it would be impossible for the Commission to consider the KPE Application contains the necessary information to establish the causative effect of the expiry of the measure and the likelihood of material injury. By stating that the necessary information would be provided at a later stage – presumably once the continuation inquiry is initiated – the KPE Application cannot be said to comply with section 269ZHC or meet the "reasonable grounds" criteria provided in section 269ZHD of the Act.

¹⁷ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 15.

¹⁸ *Ibid.*

¹⁹ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 4.

²⁰ *Ibid* p. 4.

²¹ EPR 487-1, Keppel Prince Engineering Pty Ltd, *Application for the continuation of a dumping notice*, 18 June 2018, p. 6.

²² Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 4.

²³ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 15.

It is not clear to Chengxi Shipyard whether KPE ultimately provided these appendices to the Commission. However, to the extent that this information was not provided at the time of application, Chengxi Shipyard submits that the application was materially deficient.

4 Insufficient information regarding “likelihood of material injury in the absence of the anti-dumping measures”

This is also one of the specific categories of information relating to the question of “*will the material injury recur*”, which the application “*should provide*”.²⁴

In this regard, the KPE Application claims that “*expiration of the measures would likely lead to material injury to the Australian industry in the form of reduced sales and reduced market share*”, without any evidence.²⁵ Naturally and logically, any alleged likelihood of “*reduced sales*” and “*reduced market share*” would necessarily require an assessment to be made against the industry’s performance whilst the measures are in place. However, as identified above, KPE simply failed or refused to provide such critical information in its application.

Chengxi Shipyard takes note of the “*recent report by the US ITC*” included in the KPE Application.²⁶ KPE does not explain how such a report supports its “*likelihood of material injury*” claim with respect to wind towers from China. Nor is this possible – because the report explicitly states that its data *exclude* wind towers.²⁷ As such, any reliance on the report should be dismissed as irrelevant and misleading.

Further, under the subheading of “*The Likely Price Effects Would be Significant*” the KPE Application asserts that if the measure was allowed to expire, “*a significant volume of dumped subject goods from China would again substantially undersell the domestic like product to win tenders and gain market share*”.²⁸ This is again without any basis in so far as exports from Chengxi Shipyard is concerned. The record evidence shows that Chengxi Shipyard has never engaged in dumping of wind towers to the Australian market, regardless of the existence of the measure or the level of duty. Relevantly, KPE does not claim that the expiry of the measure with respect to both Korea and TSP has resulted in a significant volume of dumped subject goods from Korea and TSP. KPE also does not claim that the Commission’s decision to terminate the investigation with respect to Vietnam led to any continuation or recurrence of material injury. Based on Chengxi Shipyard’s own understanding of the Australian market, TSP has been and continues to be a main source of wind tower supply to Australia, undisrupted by the imposition of the measure in 2014, or the expiry of the measure from 2019. The KPE Application completely failed to address the effect of these alternative sources of supply not subject to the measure – being a factor clearly specified in the Guideline as relevant information that should be provided in the application.²⁹

²⁴ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 4.

²⁵ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 17.

²⁶ Ibid.

²⁷ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment 12 – US ITC Chinese wind turbine export growth continued in 2021*, 12 May 2023, p. 1, fn 1.

²⁸ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 19.

²⁹ Anti-Dumping Commission, *Instructions and Guidelines for Applicants on the Application for Continuation of Measures*, October 2018, p. 4.

5 Lack of "relevant evidence as to the current normal values in the exporting country"

The KPE Application also failed to address key factors under the "Will the dumping... continue, or recur?" part of the Guidelines.³⁰

Under the heading "current normal values in the exporting country"³¹, KPE claims that "Chinese normal values are difficult to obtain"³², and went on to cite statements from Report 221, Report 487 and Report 597. However, KPE fails to acknowledge the fact that, as established in the Commission's Report 597, Chengxi Shipyard's exports to Australia was not dumped – which is the only "relevant evidence" in so far as Chengxi Shipyard is concerned. Further, as noted above, the underpinning facts of Report 221 and Report 487 do not apply to Chengxi Shipyard, as it did not export any wind towers during the corresponding periods of investigation/inquiry. Accordingly, the KPE Application does not contain relevant evidence to support its assertion that dumping will likely to continue or recur with respect to Chengxi Shipyard.

KPE's reference to the Commission's Report 590 concerning hollow structural sections ("HSS")³³ also cannot qualify as "relevant evidence". KPE cannot be seriously suggesting, nor does it offer any evidence for suggesting, that the wind tower market is somehow analogous or related to the HSS market.

As KPE would be aware, wind towers demand is driven entirely by wind farm developments – backed by important government policies for the development of renewable energy and emission reduction. This unique feature of renewable energy sector is recognised, although in a different context of subsidy investigation, by the Appellate Body Report in *Canada-Feed – In Tariff Program*:³⁴

5.186. Similarly, considerations relating to the choice of energy supply-mix by a government, including wind- and solar PV-generated electricity, may be crucial to the viability and sustainability of the electricity market in the long term. Governments intervene by reducing reliance on fossil energy resources and promoting the generation of electricity from renewable energy resources to ensure the sustainability of electricity markets in the long term. Fossil energy resources are exhaustible, and thus fossil energy needs to be replaced progressively if electricity supply is to be guaranteed in the long term. Government intervention in favour of the substitution of fossil energy with renewable energy today is meant to ensure the proper functioning or the existence of an electricity market with a constant and reliable supply of electricity in the long term...

5.187. Government intervention ensures that electricity markets may exist in the current form where consumers have a constant and reliable access to electricity. However, the regulation of electricity markets by governments is guided not only by immediate and short-term considerations relating to the nature of electricity and electricity systems, and requiring the management of "dispatchable" and "non-dispatchable" generators and loads, but also by long-term considerations aimed at ensuring that consumers have stable access to electricity in the

³⁰ Ibid p. 3.

³¹ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 3.

³² Ibid.

³³ Ibid p. 8.

³⁴ Appellate Body Report, *Canada — Measures Relating to the Feed-in Tariff Program*, WT/DS426/AB/R, 24 May 2013, paras 5.176-5.188.

coming years and increasingly from renewable sources. It is in the latter situation that the government's management of the energy supply-mix plays a key role.

5.188. Nevertheless, a distinction should be drawn between, on the one hand, government interventions that create markets that would otherwise not exist and, on the other hand, other types of government interventions in support of certain players in markets that already exist, or to correct market distortions therein. Where a government creates a market, it cannot be said that the government intervention distorts the market, as there would not be a market if the government had not created it...[underlining supplied]

This unique feature of renewable energy market – which is the sole source of demand for wind towers - was also acknowledged by the Commission in Report 221, where it recognised that the demand for wind towers in Australia has significantly fluctuated since the market's inception in 2000, largely driven by changes in government policies and legislation.³⁵ Chengxi Shipyard considers its production and sales of wind tower – whether in China or in Australia to be entirely commercial oriented and market based. On the other hand, it is also undisputable that wind power market itself is intrinsically linked to and influenced by government policies initiatives and regulatory environment. This is the case in Australia, in the USA, in China and in other jurisdictions in the world. State governments in Australia also take a significant role in the supply and demand for wind farm projects, including wind towers, and implement local content rules to regulate the supply chain and market participation.³⁶

KPE's own situation presents a compelling example of the influence of government policy in the wind power sector. As pointed out in Chengxi Shipyard's submission in the Commission's Review 615, KPE's entire wind tower operation has been solely reliant on government backed projects.³⁷ Further, KPE's 2020 financial statement states that **[CONFIDENTIAL TEXT DELETED – extract from the financial report]**.³⁸ It is undeniable that KPE's target market, production capacity, and its financial performance are closely linked to government decisions relating to the wind power sectors and government backed projects.

Influences of government policy extends to KPE's access to raw materials as well. **[CONFIDENTIAL TEXT DELETED – commercial market information]**.³⁹ This rule effectively creates a monopolistic supply scenario, where KPE's material procurement is shaped by policy rather than by the conditions of the open market. In this regard, it is noteworthy that there are currently *no* anti-dumping duties applicable to plate steel. The anti-dumping measures with respect to China, Indonesia, Japan, and Korea expired on 19 December 2018 in the absence of an application for continuation of the measure.

Once again, KPE's opportunistic reliance on the Commission's Report 590 must be dismissed as not providing relevant evidence indicating that dumping will "*continue or recur*" with respect to Chengxi

³⁵ EPR 221-40, Anti-Dumping Commission, *Report Number 221 Dumping of Wind Towers exported from the People's Republic of China and the Republic of Korea*, 16 April 2014, p. 19.

³⁶ For example, see <https://www.energy.vic.gov.au/renewable-energy/offshore-wind-energy>.

³⁷ EPR 615-9, Chengxi Shipyard Co., Ltd, *Application for revocation review – Review 615 Chengxi Shipyard Co., Ltd*, 5 April 2023, pp. 3-6.

³⁸ EPR 615-9, Chengxi Shipyard Co., Ltd, *Application for revocation review – Review 615 Chengxi Shipyard Co., Ltd*, 5 April 2023, citing Confidential Attachment 6 - Keppel Prince Engineering Pty Ltd, *Financial Report – Year End 31 December 2021*, 7 April 2022, p. 2

³⁹ EPR 615-9, Chengxi Shipyard Co., Ltd, *Application for revocation review – Review 615 Chengxi Shipyard Co., Ltd*, 5 April 2023, citing Confidential Attachment 6 - Keppel Prince Engineering Pty Ltd, *Financial Report – Year End 31 December 2021*, 7 April 2022, pp. 3-4.

Shipyard's exports to Australia. KPE's request for continuation of the measure with respect to Chengxi Shipyard should be rejected.

6 Misleading claims regarding "whether exporters retain excess capacity for direction to Australia"

Chengxi Shipyard would like to address several points made in the KPE Application in this regard.⁴⁰

Firstly, due to the unique nature of wind towers as a highly customised product designed individually for each wind farm project, "excess capacity" does not translate into excess production or oversupply. Production and output are entirely determined by the wind tower supply projects secured and the requirements of the customers.

KPE's reliance on the Commission's Report 590 concerning HSS in this regard is also misguided. Wind towers are not and cannot be stockpiled. There are no "rapidly rising inventory levels" as KPE alleges,⁴¹ because each wind tower can only be built to order and produced for a specific project, at a specific location and in anticipation of a specific delivery window. Further, KPE's argument that exporters have thus far been prevented from exporting the subject goods to Australia as a result of COVID-19, and that the market conditions would change in the post-COVID era is also unsupported by evidence.⁴² The record evidence proves the opposite. In fact, throughout 2020 and 2021 KPE pointed to COVID-19 as the very reason for its lacking financial performance:

[CONFIDENTIAL TEXT DELETED – extract from financial report].⁴³

[CONFIDENTIAL TEXT DELETED – extract from financial report].⁴⁴

Secondly, KPE bases its assertion of an oversupply of wind towers on the purported steel oversupply.⁴⁵ Oversupply of steel, if any, does not directly translate into oversupply of wind towers – and is certainly not the reason for KPE's lack of capacity and lack of production for supply wind projects in Australia. Again – this is because wind tower demand and supply are driven by wind farm development and the broader energy market and government policies on energy and climate change issues, rather than steel prices.

C Conclusion

Chengxi Shipyard respectfully submits that, as established in this submission, the KPE Application has materially failed to comply with the requirements for the application for continuation under sections 269ZHC and 269ZHD of the Act. There are significant deficiencies in the KPE Application, in the form of its refusal to provide required information, and its failure to provide reasonable grounds and evidence

⁴⁰ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 8.

⁴¹ *Ibid* p. 18.

⁴² *Ibid*.

⁴³ EPR 615–9, Chengxi Shipyard Co., Ltd, *Application for revocation review – Review 615 Chengxi Shipyard Co., Ltd*, 5 April 2023, citing Confidential Attachment 5 - Keppel Prince Engineering Pty Ltd, *Financial Report – Year End 31 December 2020*, 6 April 2021, pp. 2–3.

⁴⁴ EPR 615–9, Chengxi Shipyard Co., Ltd, *Application for revocation review – Review 615 Chengxi Shipyard Co., Ltd*, 5 April 2023, citing Confidential Attachment 6 - Keppel Prince Engineering Pty Ltd, *Financial Report – Year End 31 December 2021*, 7 April 2022, p. 2.

⁴⁵ EPR 621-1, Keppel Prince Engineering Pty Ltd, *Attachment A – Wind Towers Continuation application*, 12 May 2023, p. 12.

for the assertions that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

By contrast, Chengxi Shipyard has presented ample evidence, both in Continuation 621 and in Review 615 demonstrating that the current measure was not intended to apply to exports from Chengxi Shipyard, should be revoked,⁴⁶ and should not be continued with respect to Chengxi Shipyard.

Chengxi Shipyard respectfully submits that the Commission should recommend the Minister to revoke, and not to secure continuation of the measure in so far as exports from Chengxi Shipyard is concerned.

Lodged for and on behalf of Chengxi Shipyard Co., Ltd



Charles Zhan
Partner



Susie Li
Lawyer

⁴⁶ EPR 615-9, Chengxi Shipyard Co., Ltd, *Application for revocation review – Review 615 Chengxi Shipyard Co., Ltd*, 5 April 2023.