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Comments Regarding the Continuation Inquiry 621 Concerning Anti-dumping Measure on Wind Towers from GOC

The Government of the People's Republic of China ("GOC"), through the Ministry of Commerce ("MOFCOM"), would like to provide its comments regarding the abovementioned proceeding. In particular, the GOC shares its understanding of the supply and demand for wind towers in the Australian market, and conveys its concern regarding the assertions made by the domestic industry Applicant regarding "particular market situation" ("PMS").

A The removal of the anti-dumping measure on wind towers aligns with Australia's interests.

1 Chinese wind towers provide vital support for Australia's growing demands for wind power and for meeting Australia's emission reduction target.

The GOC notes the Australian Government's climate change commitment "2030 Emission Reduction Target" of greenhouse gas emissions by 43% below 2005 level by 2030, and commitment to net-zero emissions by 2050. Minister for Climate Change and Energy, the Hon. Chris Bowen acknowledged that there is a pressing need to increase the wind power installations by about 27 gigawatts by 2030 in order to meet such target. However, the data from Australia's Clean Energy Council indicates that by the end of 2022, the combined potential output from ongoing and planned wind and solar projects slated for completion by 2030 barely reaches 17 gigawatts (GW). The Australian National Electricity Market (NEM) anticipated a 300% increase in wind power installation capacity in Australia by 2030. This paints a clear picture of high demand for wind towers in Australian wind power market.

To meet the scale of this expansion, industry experts estimate that Australia will need approximately 350 sets of wind towers annually, assuming the addition of 2 gigawatts of new wind power projects each year. However, the Australian domestic producers only have an maximum annual output of under 80 towers, and are constrained in its capability to supply tower sections with larger diameters, therefore cannot meet Australia's wind power projects demands. In this context, Chinese wind towers provide beneficial and necessary supplement and the vital support for Australia's wind power market, rather than "injuring" or detrimental to the Australian domestic industries. The GOC believes that the supply of renewable energy products, such as wind towers from China, can contribute to Australia's successful development of wind energy capacity and for achieving Australia's climate change commitments. As such, the GOC considers that removal of the anti-dumping measures on Chinese wind towers is consistent with Australia's interests in achieving these important policy and economic targets.

2 Chinese wind tower suppliers are important contributors, not competitors to the Australian wind power industry.

The GOC notes that Chinese companies have actively invested and participated in Australian wind power projects, making significant contributions to Australia's renewable energy sector. Companies like Goldwind, Beijing Energy International ("BJEI"), China Energy Conservation and Environmental Protection Group ("CECP"), and Power Construction Corporation of China ("PowerChina") have invested in multiple wind power projects in Australia, with cumulative investments exceeding AUD 3 billion, creating more than 2000 jobs in Australia. These are significant contributions to not only the Australian wind power and renewable energy sector but also to the broader socio-economic development in Australia.

Based on the GOC's understanding, due to the unique nature of wind turbines as a significant capital assets with stringent safety standard for long term operation, when it comes to the procurement priorities for wind towers, the most important consideration for the OEM suppliers/developers of Australian wind power projects are product quality and technical expertise and support, project delivery – in terms of timeliness and reliability, and the need to meet installation requirements and logistical efficiency. It is for these reasons Chinese wind towers are often considered as preferred source of supply for wind power projects in Australia. These factors are ranked above the price of the tower itself.

In addition, the GOC notes that some Australian state governments have set local content requirements for renewable energy projects. Such requirements would have provided adequate protection for domestic suppliers. For example, we understand that in the State of Victoria, where the applicant for this continuation inquiry is located, the Victorian Government requires that renewable energy projects have a local content ratio of at least 60% during the construction phase and not less than 90% during the operation and maintenance phase, with a minimum 90% local content for steel products and components. Such local content policies are discriminatory for imported products, and would appear to be in consistent with the national treatment requirement under the WTO rules. Any further extension or continuation of trade restrictions on wind towers in the form anti-dumping measures would be detrimental to Australia as an investment and business destination for Chinese companies, hinder the progress of the ongoing and planned wind power projects in Australia, and is counterproductive for Australia to achieve its renewable energy and emission reduction target.

3 China and Australia should collaborate in responding to climate change, and promote free trade in renewable energy products.

The GOC considers that addressing climate change is a common responsibility that requires international collaboration to work towards the same goal and make concerted efforts. Given the complementary economic and trade dynamics between China and Australia, both possess distinct strengths in the industrial supply chain that are necessary for meeting the climate change commitments. Australia's mineral resources and huge potential for renewable energy and China's well established renewable energy products manufacturing sector can work together for mutual benefit and strengthen our efforts in meeting the emission reduction targets. As a recent example of such joint effort and partnership, we note that on 23 March 2023, the Department of Commerce of Hunan Province and Australia's FMG Group signed a "*Memorandum of Understanding on Advanced Green Energy Technology Supply Chain System Cooperation Projects*"(MOU) in Changsha. The key purpose of the MOU is to promote the development of clean energy industry, through the establishment of a Western Australia-Hunan advanced clean energy equipment supply industrial park in Western Australia, and the establishment of China-Australia clean energy industrial chain demonstrative supply bases in two cities in Hunan. In light of the strong demand for further collaborations in renewable energy sector between Australia and China, and our common goal in responding to the climate change challenge, we respectfully urge that Australia should refrain from imposing trade restrictions on wind towers, as important renewable energy products.

B Wind towers from China have not caused and will not cause material injury to the domestic industry.

1 The Applicant's injury claims do not meet the evidentiary requirements.

The GOC wishes to draw the Commission's attention that, according to Article 11.3 of the WTO Anti-Dumping Agreement ("ADA"), "any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition", unless the investigating authority determines that in the review period, "*that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury*". Further, ADA Article 6.5 provides that, the investigating authority "*shall require interested parties providing confidential information to furnish non-confidential summaries thereof...to permit a reasonable understanding of the substance of the information submitted in confidence*". The GOC is concerned to note that the Application for continuation inquiry lodged by the Applicant, being Keppel Prince Engineering Pty Ltd ("KPE") has either failed to provide key information regarding performance of the local industry, or has failed to provide non-confidential summary of such information, nor any reasons for its omission. In addition, interested parties have not been able to have access to the Applicant's response to any Domestic Industry Questionnaire. This has severely impaired interested parties' ability and rights to make comments with respect to the industry conditions and the Applicant's claims.

Further, the GOC notes that the Applicant attempted to claim that Chinese exports of wind *towers* are likely to cause continued or recurrence of material injury, based on a report prepared by the US International Trade Commission on export performance of Chinese wind *turbines*. The product subject to the anti-dumping measure is wind towers, not wind turbines. These are entirely different products and are incomparable in terms of raw material composition, physical properties, customs tariff classification, and manufacturers. KPE's Application has not provided any evidence reflecting the changes in the absolute or relative quantities of wind tower imports from China during the examination period. The Application's attempt to rely on the wind turbine report as the basis of its claim, by simply stating that "*there is a direct correlation between the growth in wind turbine and wind tower exports*", clearly falls short of the evidentiary requirement, and cannot serve as a basis for analysing any likelihood of material injury associated with wind tower. In any case, as the USITC report on wind *turbine* indicates, the primary markets for Chinese wind turbine exports are Asia, Europe, Latin America, and North America, not Australia. Indeed, the report shows that wind turbine exports from China to Oceania region has declined since 2019.

2 Financial reports of the Applicant and its supporter clearly indicate positive progress in the domestic industry over the past decade.

Despite the absence of clear data in the Application, publicly accessible data suggests a substantial improvement in the Applicant's financial performance. KPE reported an annual revenue of A$54.32 million in the financial year 2022, a year-on-year increase of 38%; another domestic industry member, Hayward, reported a profit of A$9.27 million in financial year 2022, a year-on-year increase of 7%, and a whopping 72% increase compared to the original investigation period in Investigation 211(INV 211). These overall financial data indicate that after ten years of protection, the existing protection measures have served their purpose and now potentially hamper further growth in the sector.

3 Australia is not a main destination for Chinese wind tower exports.

At the present, governments across the world are focusing on developing policies tackling climate change, developing energy-saving and emission-reduction plans, and promoting the development of renewable energy, including wind power. This has created significant international demand for wind tower products. According to Chinese customs statistics, the main export markets for Chinese wind tower products in 2022 include North America, Germany, Japan, India, Vietnam, etc. The Australian market accounted for only 2.6% of the total wind tower exports from China. There is insufficient evidence to suggest that termination of anti-dumping measures against Chinese wind towers will lead to an increase in exports to Australia.

4 Main factors affecting the local industry are unrelated to subject products from China.

Firstly, the GOC notes that, according to the Applicant's financial statement of 2022, its costs increased by 30%, primarily due to rises in raw material costs, wages, and administrative expenses. The raw material costs increased by 69% year-on-year, labour costs increased by 35%, and administrative expenses surged by 131%. Any financial pressure resulting from such increased operational costs cannot be attributed to the subject products for this inquiry. There are insufficient evidence suggesting any causal link between the Applicant's financial conditions and the subject wind towers imports from China.

Secondly, as mentioned above, the key factors valued by wind power projects in Australia are product quality, delivery efficacy and reliability. Wind tower price itself is not the main reason for KPE's inability to secure orders. The key disadvantage reasons are the domestic producer's limited capacity and capability in meeting project demands – both in qualitative and quantitative sense, and the logistical constraints. Based on the GOC's understanding, the domestic producers' limited ability to meet the customer's technical, quantitative and delivery timelines have been the most significant reason preventing the wind project OEM/developers from awarding orders to the domestic suppliers.

Thirdly, the GOC take note that, in the Anti-Dumping Review Panel (ADRP) Report No. 100, the ADRP noted that a significant reason for the ADC's recommendation for the continuation of measure in the Continuation Inquiry 487 ("Continuation 487") was its view that material injury would likely to continue or recur because of the exports from China at "dumped" prices. The GOC notes that, according to the submissions made by Chinese exporters such as Chengxi Shipyard Co., Ltd who are participating in the ADC's Review 615, also concerning wind towers, if the dumping margin for "all other exporters" was recalculated on the same basis as the correction applied to TSP in the ADRP review, then the resulting dumping margin for all Chinese exporters was likely to be a negative dumping margin, which would have removed the basis for the continuation of the measure. Further, in this regard, the GOC submit that – as will be discussed in further details below - if the ADC conduct the dumping margin calculation based on methodologies consistent with WTO rules, the export prices of Chinese exporters would not be at a "dumping" level. As such, there will be no proper basis for the ADC to find that dumping and injury caused by dumping would or would likely to continue or recur.

C Wind towers from China are not "dumped" and the ADC should calculate dumping margin based on correct methodology that is consistent with WTO requirements.

Consistent with the GOC's well established position in the WTO Dispute Settlement proceeding *Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China* ("DS603"), the GOC reiterates that the ADC should not reject the cost record kept by the Chinese wind tower exporters, provided that those cost records meet the two explicit conditions under the first sentence of ADA Article 2.2.1.1. In particular, the GOC is confident that the ADC will find that the cost records kept by the responding companies are "*in accordance with the generally accepted accounting principles*" of China, and "*reasonably reflect the costs associated with the* *production and sale of the product under consideration*" in China. As confirmed by several WTO Panel and Appellate Body reports, including *EU — Biodiesel (Argentina)*, the investigating authority should not apply any "reasonableness" test, in discharging its obligation under Article 2.2.1.1, that goes beyond examining the whether record of the exporters was kept in a way that ensure such record being a reasonable reflection of the cost of production and sale. Further, and fundamentally, ADA Article 2.2 requires that the cost so determined must be the cost of production in the country of origin. Therefore, the GOC urges the ADC not to resort to any method that result in substitution of the in-China cost with non-China cost or cost data.

The GOC urges the ADC to adopt the correct cost and normal value calculation methodologies in this Continuation Inquiry, and not to repeat the problematic methods as adopted in the previous investigations and reviews. The GOC respectfully submit that the ADC should find that there is insufficient evidence or legal basis for the current anti-dumping measure to continue with respect to wind towers exports from China.

D The Chinese wind tower industry operates in a market economy and is not affected by alleged "particular market situation" .

1 The renewable industry initiatives and policies of the GOC are comparable to its international counterparts.

The GOC considers that, in the context of making policy commitments in response to climate change challenges, developing and implementing industrial policy to achieve climate targets, and to promote sustainable economic growth and improving people's quality of life, the roles and responsibilities undertaken by the various departments of GOC are not dissimilar to other responsible governments across the world, including Australia. For example, the GOC notes that the Australian Government introduced the *Climate Change Act 2022* in July 2022. To facilitate its enactment, the Australian government also unveiled a series of roadmaps, strategies and plans including the "Powering Australia Plan" and "Net Zero 2050 Australia's long-term emission reduction plan" etc. The GOC notes that, since May 2022, the newly elected Australian Government has been ardently advancing a series of policies for addressing climate change, setting ambitious targets to reduce emissions by 43% by 2023, and to achieve net-zero emissions by 2050. From 2023 to 2026, almost A$25 billion from the federal budget will be spent to support the development of the renewable energy sector. It is expected that Australia's wind power installation capacity will increase by 27 gigawatts by 2030.

Wind towers, as a vital component for wind energy generation, is an important renewable energy product rather than a common "steel product". Wind towers industry is poised to benefit from Australian Government's climate change and policies for the renewable energy industries. The GOC supports such policies and initiatives and governmental support for renewable energy sector, as part of the joint global effort to fight climate change, a constructive step towards enhancing the well-being of both the Australian public and the global community, and do not consider such policies and government involvement in the wind energy industry should be viewed as a "market distortion". Like Australia, the GOC is also committed to advancing the low carbon transition of Chinese economy and energy sector in particular. The GOC has pursued policies and initiatives aimed at nurturing the growth in the wind and other forms of renewable energy in China – similar to the Australian Government's approach in Australia. The GOC considers that any allegation that, because of the GOC's support for the development of renewable energy and climate change actions in China, the wind tower sector is somehow "distorted" or affected by a "particular market situation" and that the prices of wind towers in China are therefore not a suitable basis for normal value calculation purpose, is unrealistic and irresponsible, and must be dismissed by the ADC.

2 The Applicant's "particular market situation" allegation is incorrect and unsubstantiated.

Firstly, the GOC notes that ADA Article 5.3 provides that "*the authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.*" The GOC considers that such evidentiary threshold should also apply with respect to the Applicant's "particular market situation" allegations. In the Applicant's submission to the ADC's Review 615 dated 19 July 2023 ("the PMS Submission"), it asserted that "*the Commission must establish its approach to the assessment of Chinese wind tower normal values on the premise of the existence of a PMS*"[1]. However, the only "evidence" submitted by the Applicant were references drawn from past reports from Investigation 211 and Continuation 487 – where the ADC did not find that there is a particular market situation affecting wind towers market in China, as well as assertions currently being investigated by the Canadian Border Services Agency. The Applicant has not provided sufficient evidence to substantiate its claims that pertain to the inquiry period and regarding the Chinese wind towers industry directly. We noted that the ADC's *Dumping and Subsidy Manual* clearly states that "*[w]hen relevant and reasonably reliable evidence supporting the proposition that domestic selling prices are unsuitable for normal values is set out in the application... one possible outcome is that the Commission will determine that a situation in the market has rendered domestic selling prices unsuitable for establishing normal values.*"[2] This requires that any allegations of "particular market situation" must be based on "relevant and reliable evidence", and not mere speculation, assumptions, or conjecture.

Secondly, the Applicant's PMS Submission, relied heavily on its alleged governmental "controls" over the iron and steel industry, and the allegations made by the Canadian domestic industry applicant in the CBSA investigation regarding government ownership or influence over the energy sector, including ownership in the wind turbine generator supplier companies. The Applicant has not provided any evidence to substantiate its assertion that the wind towers industry and the wind tower prices in China is subject to government controls. This is unsurprising. Because there is no such controls – either in the form of laws or policies – that regulate or control the production quantities and pricing of wind towers, or the steel plate used for producing wind towers in China. The production and sales of both wind tower and the steel plate are fully market oriented in China. The GOC advises that, in China, the only products and services subject to government guidance or price control are those identified in Article 18 of the *Price Law of the People's Republic of China* (the "*Price Law*"), which provides:

> *Article 18 The government may adopt the government-guided prices or government-set prices when necessary for the prices of the following commodities and services:*
>
> > *1. a very small number of commodities that have a vital bearing on the development of the national economy and the living of the people;*
> >
> > *2. a small number of commodities for which resources are scarce;*
> >
> > *3. the prices of commodities under natural monopoly management;*
> >
> > *4. important public utilities;*
> >
> > *5. important public welfare services.*

Neither wind towers nor steel plates are covered by this list.

Furthermore, under Article 6 of the *Price Law* "*commodity prices and service prices, with the exception of those subject to government-guided prices or government-set prices under Article 18 of the Law, shall be subject to market - regulated prices and set by operators on their own in accordance with the Law.*" Article 7 provides that

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[1] EPR 615-13, Applicant - Keppel Prince Engineering Pty Ltd - Particular Market Situation Submission, p. 15.

[2] Dumping and Subsidy Manual, p. 30.

"*operators shall follow the principles of fairness, lawfulness and good faith in determining prices.*" Further, Article 8 clarifies that "*production and operation costs and the market supply and demand situation shall be the basis for the determination of prices by operators.*" Therefore, it is clear that the pricing of wind towers and steel plates is entirely a market-driven activity, and not involve any government intervention or control.

E Conclusion

In accordance with Article 11.1 of the Anti-Dumping Agreement, anti-dumping duties should remain in force only as long as and to the extent necessary to counteract dumping that is causing injury. The GOC considers that the wind towers exported from China are not "dumped" and have not been the cause of material injury to the Australian industry, and is unlikely to be the cause of material injury in the future. Accordingly, it is the GOC's view that the anti-dumping measures concerning wind towers from China that is the subject of this inquiry is no longer "necessary" within the meaning of ADA Article 11.1, and should cease to apply or be terminated immediately. Such termination or removal will have the effect of promoting and achieving trade liberalization in renewable energy products and will be an important contribution to the collaborative global efforts to battle climate change.

Yours sincerely

王建峰

Wang Jianfeng

Deputy Director/First Secretary

Bureau of Trade Remedy

Ministry of Commerce, P.R.C.