Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 487

INQUIRY INTO THE CONTINUATION OF ANTI-DUMPING MEASURES APPLYING TO WIND TOWERS EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC OF KOREA

25 January 2019

PUBLIC RECORD

CONTENTS

ABBREVIATIONS

ABF	Australian Border Force
the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
China	the People's Republic of China
the current measures	the anti-dumping measures currently applicable to exports of wind towers to Australia from China and Korea that are due to expire on 16 April 2019
the Direction	*Customs (Extensions of Time and Non-cooperation) Direction 2015*
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
EPR	electronic public record
FIS	Free into Store
FOB	Free on Board
GE	GE Electric International, Inc
GOC	Government of China
the goods	wind towers exported from the subject countries as defined in Chapter 3 – the goods the subject of the application
Haywards	Crisp Bros. and Haywards Pty Ltd
IDD	interim dumping duty
Indonesia	Republic of Indonesia
the Injury Direction	*Ministerial Direction on Material Injury 2012*
inquiry period	the period from 1 January 2017 to 30 June 2018
Korea	the Republic of Korea
KPE	Keppel Prince Engineering Pty Ltd
LRET	Large-scale Renewable Energy Target
the Manual	*Dumping and Subsidy Manual*
the Minister	the Minister for Industry, Science and Technology
NIP	non-injurious price
the Notice	the dumping duty notice published on 16 April 2014
OF	Ottoway Fabrication Pty Ltd

OEM	Original Equipment Manufacturer
OCOT	ordinary course of trade
the Regulation	*Customs (International Obligations) Regulation 2015*
REQ	response to the exporter questionnaire
REP 221	*Anti-Dumping Commission Report No. 221*
RET	Renewable Energy Target
ROI	return on investment
SG&A	selling, general and administrative
SOEs	State Owned Enterprises
TSP Shanghai	Shanghai Taisheng Wind Power Equipment Co. Ltd
SEF	statement of essential facts
subject countries	China and Korea, collectively
USA	United States of America
USP	unsuppressed selling price
Vestas	Vestas Asia Pacific & China
Vietnam	the Socialist Republic of Vietnam
VRET	Victoria Renewable Energy Target
VREAS	Victorian Renewable Energy Auction Scheme
Win&P	Win&P., Ltd
WTO	World Trade Organization

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) concerns an inquiry into whether the continuation of the anti-dumping measures, in the form of a dumping duty notice applying to wind towers (the goods) exported to Australia from the People's Republic of China (China), and the Republic of Korea (Korea), collectively referred to as the subject countries, is justified. This SEF sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister).

The anti-dumping measures currently applicable to exports of wind towers to Australia from China and Korea (the current measures) are due to expire on 16 April 2019.

1.2 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act)[1] sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.

Subsection 269ZHE(1) requires that the Commissioner publish a SEF on which he proposes to base his recommendations to the Minister concerning the continuation of the measures. Subsection 269ZHE(2) requires that in doing so the Commissioner must have regard to the application and any submissions received within 37 days of the initiation of the inquiry, and may have regard to any other matters that he considers relevant.

Subsection 269ZHF(1) requires that the Commissioner must, after conducting his inquiry, give the Minister a report which recommends that the relevant notice(s):

- remain unaltered;
- cease to apply to a particular exporter or to a particular kind of goods;
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or
- expire on the specified expiry day.

Pursuant to subsection 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

[1] All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

1.3 Findings

The measures were imposed as a result of the publication of a dumping duty notice (the Notice) on 16 April 2014.[2] The measures are due to expire on 16 April 2019.

The present inquiry was initiated on 16 July 2018 following the Commissioner's consideration of an application lodged by Keppel Prince Engineering Pty Ltd (KPE), and supported by Ottoway Fabrication Pty Ltd (OF) and Crisp Bros. and Haywards Pty Ltd (Haywards) representing the Australian industry, seeking the continuation of the anti-dumping measures.[3] For the purpose of this inquiry, the Commissioner established an inquiry period of 1 January 2017 to 30 June 2018 (inquiry period).

To assess whether dumping may continue or recur, the Anti-Dumping Commission (Commission) has obtained information relevant to the assessment of dumping. The Commission has therefore ascertained the variable factors relevant to the anti-dumping measures during the inquiry period.[4]

The Commission has also examined data from the Australian Border Force (ABF) import database, financial data from the Australian industry, data from the cooperating exporters of wind towers from the subject countries, and data from importers of those goods.

Based on the Commission's analysis of the data described above and the evidence currently available in respect of wind towers, the Commissioner is satisfied that the expiration of the measures in respect of China would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping of the goods exported to Australia from China and the material injury that the measures are intended to prevent.

However, the Commissioner is not satisfied that the expiration of the measures in respect of Korea would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping of the goods exported to Australia from Korea and the material injury that the measures are intended to prevent.

1.4 Proposed recommendations

The Commissioner proposes to recommend that the Minister take steps to secure the continuation of the Notice on and after 17 April 2019 in respect of the goods exported from China.

The Commissioner also proposes to recommend that:

- the variable factors be altered in relation to all exporters from China subject to the Notice; and
- the Notice with respect to wind towers exported to Australia from Korea cease to have effect on and after 17 April 2019.

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2 Anti-Dumping Notice (ADN) No. 2014/33 refers.

3 ADN No. 2018/115 refers.

4 The variable factors are the normal value, export price and non-injurious price (subsection 269T(4E)(a) refers).

1.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister. This SEF represents an important stage in the inquiry. It informs interested parties of the facts established to date and allows them to make submissions in response.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the anti-dumping measures should continue to apply.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is **14 February 2019**.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.[5]

The Commissioner must report to the Minister by **11 March 2019**.[6]

Submissions should preferably be emailed to investigations1@adcommission.gov.au.

Alternatively, they may be posted to:

Director, Investigations 1
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non- confidential versions of the Commission's verification reports and other publicly available documents on the Commission website.

Documents on the public record should be read in conjunction with this SEF.

1.6 Final report

The Commissioner's final report and recommendations must be provided to the Minister within 155 days after the publication of a notice under subsections 269ZC(4), (5) or (6), or such longer period as the Minister allows.[7]

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[5] Subsection 269ZDA(4).

[6] As this is a public holiday, the effective due date for the Commissioner to report to the Minister will be the next business day, 12 March 2019.

[7] Subsection 269ZDA(1) refers. It is noted that, on 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner; ADN No. 2017/10 refers.

On 30 October 2018, the Commissioner approved an extension of time to provide the Minister with the final report, in conjunction with the extension of time to publish the SEF.[8] The final report and recommendations must now be provided to the Minister on or before **11 March 2019** or within such longer period as may be allowed**.**

[8] ADN No. 2018/169 refers.

2 BACKGROUND

2.1 Initiation

The present inquiry was initiated on 16 July 2018, following the Commissioner's consideration of an application lodged by KPE seeking the continuation of the anti-dumping measures relating to wind towers exported to Australia from China and Korea. ADN No. 2018/115 on the electronic public record (EPR) sets out the Commissioner's reasons for initiating the current inquiry.[9]

2.2 Current anti-dumping measures

The current anti-dumping measures were imposed by public notice on 16 April 2014 by the then Parliamentary Secretary to the Minister for Industry, following consideration of *Anti-Dumping Commission Report No. 221* (REP 221).

Key cases relating to the goods are listed below.[10]

Case type and number	ADN No.	Date	Country of export	Findings
Investigation REP 221	2014/33	16 April 2014	China and Korea	Dumping duties imposed.
Exemption EX0061	2018/19	21 September 2017	China and Korea	Exemption granted[11]
Exemption EX0067	2018/148	24 September 2018	China and Korea	Exemption granted[12]

Table 1: List of past cases

Details of the anti-dumping measures that currently apply to all exporters of the goods from the subject countries are summarised below.

Country	Exporter	Rate for payment of interim dumping duty (IDD)	Form of measures
China	Shanghai Taisheng Wind Power Co. Ltd	15.0%	*ad valorem* rate
	All other exporters	15.6%	
Korea	Win&P., Ltd	17.2%	
	All other exporters	18.8%	

Table 2: Anti-dumping measures applying to wind towers

9 ADN No. 2018/115 refers.

10 Reports and documents relating to these cases are available on the public record on the **Commission** website.

11 Granted on the basis of the existence of a Tariff Concession Order (TCO) TCO1761480.

12 Granted on the basis of the existence of a Tariff Concession Order (TCO) TCO1813104.

2.3 Conduct of inquiry

The Commission established an inquiry period of 1 January 2017 to 30 June 2018. The Commission has also examined data from the ABF import database and financial data from KPE from 1 January 2008 onwards to 30 June 2018 for the purpose of analysing trends in the market for the goods.

2.3.1 Australian industry

The Commission received an application for continuation of the measures from KPE (the applicant in the context of REP 221) and letters of support from OF and Haywards. The Commission conducted a verification visit to KPE, the report of which is on the public record.[13]

2.3.2 Importers

The Commission identified several entities in the ABF import database that were declared as having imported wind towers during the inquiry period from the subject countries. Subsequently, the Commission forwarded importer questionnaires to those importers from each of the subject countries. Two major importers completed importer questionnaires.

The Commission conducted a verification visit to Vestas Asia Pacific & China (Vestas) and a desktop verification of data provided by GE Electric International, Inc (GE); reports of these verification processes are available on the public record.

Importer	Document No.[14]
Vestas Asia Pacific & China	010
GE Electric International, Inc	011

Table 3: Importers

2.3.3 Exporters

The Commission identified several exporters in the ABF import database that exported the goods from the countries the subject of the Notice. Exporters who accounted for a high volume of exports of the goods from the subject countries to Australia during the inquiry period were invited to complete an exporter questionnaire.

Two cooperating exporters completed a response to the exporter questionnaire (REQ). The REQs from the cooperating exporters are available on the EPR for this case. These two cooperating exporters accounted for approximately 20 per cent of exports of the goods from the subject countries during the inquiry period.

13 KPE visit report.

14 The visit reports are available on the EPR.

The Commission undertook verification of the data submitted by cooperating exporters, as set out in the following table:

Exporter	Country	Document No.[15]
Win&P., Ltd	Korea	012
Shanghai Taisheng Wind Power Equipment Co. Ltd	China	013

Table 4: Exporters

2.4 Submissions received from interested parties

The following submissions have been received from interested parties:

Interested Party	Date Received	Document No.[16]
General Electric International, Inc	12 September 2018	006
Win&P., Ltd	24 October 2018	007

Table 5: Submissions

The matters raised in these submissions have been addressed in the relevant chapters of this SEF.

[15] The visit reports are available on the EPR.

[16] The submissions are available on the EPR.

3 THE GOODS, LIKE GOODS & THE AUSTRALIAN INDUSTRY

3.1 Finding

The Commissioner considers that locally produced wind towers and sections thereof are "like" to the goods the subject of the application. The Commissioner is satisfied that there is an Australian industry, producing those like goods, which comprises KPE. The Commissioner is satisfied that KPE carries out in Australia at least one substantial process in the manufacture of like goods.

3.2 Legislative and policy framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of dumping, the Commissioner firstly determines whether the goods produced by the Australian industry are "like" to the imported goods. Subsection 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 respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

i. physical likeness;
ii. commercial likeness;
iii. functional likeness; and
iv. production likeness.

The Commissioner must also consider whether the "like" goods are produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under subsection 269T(3), for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia. The following analysis therefore establishes a framework for assessing whether dumping would cause injury to the Australian industry producing the like goods.

3.3 The goods

The goods subject to the anti-dumping measures and therefore this inquiry are:

> 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.
>
> 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.

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.

Goods specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Any internal or external components which are not attached to the wind towers or sections thereof are also excluded.

3.3.1 Tariff classification of the goods

The goods may be classified to 7308.20.00 in Schedule 3 to the *Customs Tariff Act 1995*. This applies to complete towers, unassembled or assembled, and applies to a basic tower that includes doors, ladders, landings and embed or tower foundation. Steel tower sections, including sections with doors etc. are classified to 7308.90.00, assembled or disassembled, provided there are insufficient sections in a shipment to be considered a complete tower.

Combinations of towers and tower sections may vary on a case by case basis for assessment of tariff classification. Classification may vary when there is more of one item than another, for example a tower section and lift or a tower section with lift, electrical junction boxes and other equipment. An assembled complete wind powered generator is a composite machine consisting of two or more machines fitted together to form a whole; wind engine, generator, gearbox, yaw controls etc. fitted in a steel tower and nacelle, and has a classification to subheading 8502.31.10.

The following table summarises this classification:

Tariff classification (*Schedule 3 of the Customs Tariff Act 1995)*			
Tariff code	**Stat Code**	**Unit**	**Description**
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:			
7308.20.00	**Towers and lattice masts:**		
	03	tonnes	Tubular, whether or not tapered
	04	tonnes	Other
7308.90.00	**Other:**		
	Columns, pillars, posts and beams, girders, bracing, gantries, brackets, struts, ties and similar structural units:		
	Roll formed structures:		
	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
8502: ELECTRIC GENERATING SETS AND ROTARY CONVERTERS:			
8502.31.10	**Other generating sets:**		
	-- Wind-powered:		
	31	no.	--- AC generating sets of an output exceeding 500 kVA

Notes:

- Statistical code 02 pertaining to tariff sub-heading 7308.20.00 was replaced with statistical codes 03 and 04; and
- 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.

Table 6 – Relevant tariff subheadings for wind towers

These tariff classifications and statistical codes may include goods that are both the subject and not the subject of this inquiry. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods the subject of this inquiry.

There are two tariff concession orders (TCOs) for wind towers under tariff classification 7308: TCO 1761480, and TCO 1813104.[17]

3.4 Like goods

KPE is the largest manufacturer of wind towers in Australia. The Commission has considered the application and findings of previous investigations and publicly available information in its assessment of like goods.

The definition of like goods is relevant in the context of this inquiry in determining the normal value of goods exported to Australia, the non-injurious price (NIP) and the goods subject to the Notice.

The Commission's framework for assessing like goods is outlined in Chapter 2 of the Manual.[18]

[17] Details of these TCOs are available on the Department of Home Affairs website.

[18] Available on the Commission website.

3.4.1 Physical likeness

Wind towers are built to particular specifications; wind towers produced by the Australian industry have a physical likeness to the goods exported to Australian from the subject countries. 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 vary in size and specification depending on the particular wind farm's requirements. Variations in specifications include characteristics such as 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.

The Commission is satisfied that whilst wind towers vary in size and specification, the goods and locally produced wind towers have similar composition and appearance.

3.4.2 Commercial likeness

Wind towers produced by the Australian industry have a commercial likeness directly with imported wind towers in the Australian market. The Commission understands that wind towers and sections thereof are made to the purchasers' specifications on a project-by-project basis and that no two projects are identical.

Wind towers are purchased for the Australian market via a tender process for each wind farm project. Generally, the local Australian arm of a global wind turbine Original Equipment Manufacturer (OEM) is invited to tender for the project. In order to submit a more accurate bid the Australian entity will make initial contact with suppliers of the various components of a wind turbine to obtain a first quote. If it wins the project it will then request a further round of bids for various components of the wind turbine, of which wind towers are one. At the end of the negotiation phase, the Australian OEM-related entity will award a purchase order to the successful supplier. The Australian industry's wind towers therefore compete directly with the imported wind towers in the Australian market to supply the same end-user.

3.4.3 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.

3.4.4 Production likeness

KPE purchases steel plate of specific grades for the purpose of manufacturing wind tower sections. The steel grade is selected based on the design of the tower and the relevant engineering specification. All other aspects of the towers (such as the lifts, stairs, floors and internals) are also required to meet relevant Australian safety standards.

The Commission visited KPE's production facility at Portland, Victoria, which is where its wind tower sections are produced, to observe its manufacturing process.
The manufacture of wind towers by KPE involves the following stages:

- rolling of the processed plate into individual cylindrical steel cans, or "strakes",
- meeting the precise specification diameter and curvature requirements;

- welding according to specification to join edges and seams to form a tower section, which is followed by the precise fitting up of steel flanges;
- surface treatment (including sand blasting) and then painting of steel surfaces; and
- internal fit out of mechanical parts (platforms are either bolted or welded in, along with ladders, cable trays and safety fall arrest devices. All electrical main power cables, junction boxes and electrical lighting are installed).

The finished towers are then readied for transportation to the wind project site for final assembly into wind towers. Having previously verified the production process that occurs in the subject countries in connection with REP 221 and through the verification of data in the present inquiry, the Commission is satisfied that the locally produced and imported wind towers are produced using largely identical processes.

3.5 Australian Industry

Subsections 269T(2) and (3) specify that "like" goods are produced in Australia if they are wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

The concept of "substantial process" is not defined in the legislation. However, the *Dumping and Subsidy Manual* (the Manual) explains that in order for a process to be substantial, it must add some essential or vital quality or character to the finished product of like goods.

In REP 221, the Commission found that there is an Australian industry producing like goods, comprising KPE (based in Victoria) and Haywards (based in Tasmania).

During the present inquiry period, the Commission found like goods continue to be produced by KPE. Haywards did not produce goods during the inquiry period. However, it has supported KPE's application and has indicated its commitment to continuing to manufacture wind towers with its current workforce and equipment in future. OF, a former manufacturer of wind towers and which supported the application, went into administration in July 2018.[19]

Based on the substantial processes of manufacture undertaken, the Commission has established that the applicant, KPE, is the only current member of the Australian industry producing wind towers.

3.6 Conclusion

For the purpose of considering whether there is an Australian industry producing like goods, the Commissioner makes this determination by considering the description of the goods as a whole. Noting the very similar physical, commercial, functional and production likenesses between the goods the subject of this continuation inquiry and the goods produced by the Australian industry, the Commissioner is satisfied that there is an Australian industry producing like goods.

The Commission is satisfied that the manufacture of wind towers is wholly carried out in Australia, and therefore there is an Australian industry (KPE) producing like goods.

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[19] Ottoway ASIC notice

4 THE AUSTRALIAN MARKET

4.1 Finding

The Commission has found that during the inquiry period the Australian market for wind towers was supplied by the Australian industry (KPE) and imports from China, Denmark, the Socialist Republic of Vietnam (Vietnam), the Republic of Indonesia (Indonesia) and numerous other countries.

4.2 Australian market

4.2.1 Key drivers of the market

The market for wind towers is driven by the demand for wind turbines, which is in turn driven by demand for wind energy, a renewable resource. The Commission notes that in Australia, there has been an increased focus on the use of renewable energy. This increase is likely to continue in coming years.

The primary driver of renewable energy demand in Australia is the *Renewable Energy (Electricity) Act 2000*, which requires electricity retailers to source an increasing proportion of their electricity from accredited renewable sources (principally wind and solar), via the Renewable Energy Target (RET).[20]

The figure below demonstrates an expanding trend of RET requirements from 2001 to 2030.

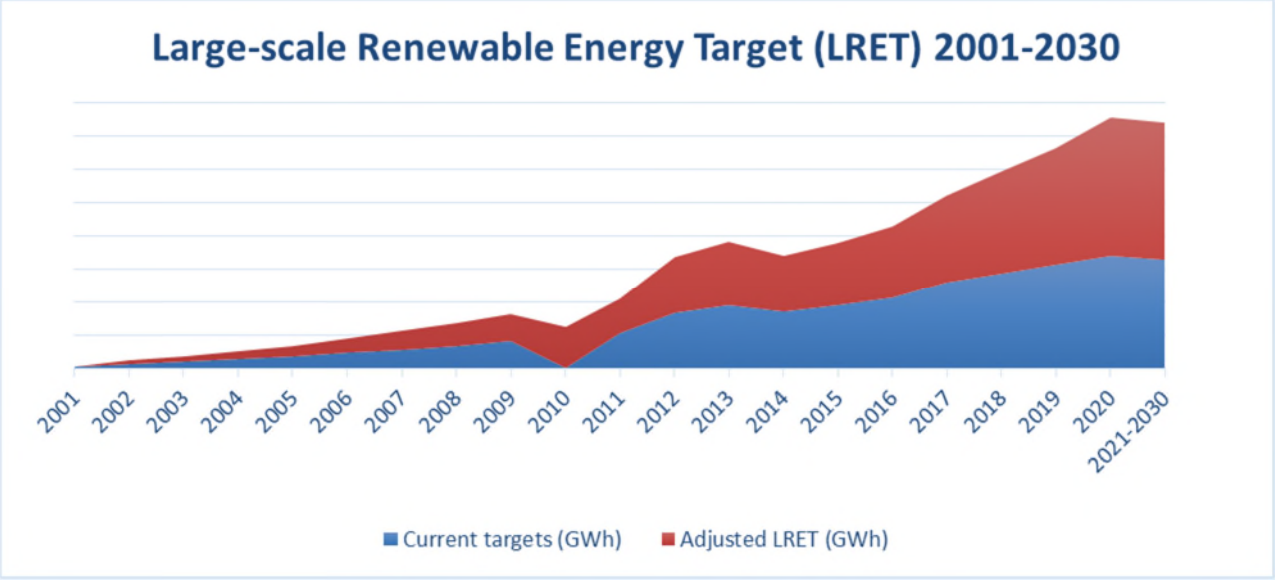

Figure 1 - Large-scale RET 2001-2030
Source: Clean Energy Regulator[21]

[20] The Renewable Energy Target scheme (RET)

[21] The LRET incentivises the development of renewable energy power stations (both solar and wind powered) in Australia through a market for the creation and sale of large-scale energy generation certificates. Clean Energy Regulator: LRET 2001-2030 Annual Targets and renewable power percentages.

State and territory renewable energy targets are also important drivers of demand. The Commission understands that every state and territory (except Western Australia) now has its own renewable energy and climate policy based on the RET.[22]

4.2.2 VRET and VREAS

In Victoria, the Victoria Renewable Energy Target (VRET) is the Victorian government's legislated target for renewable energy, which has been set to be 25 per cent of electricity generation by 2020 and 40 per cent by 2025.[23]

In order to implement the VRET delivery, the Victorian Government established the Victorian Renewable Energy Auction Scheme (VREAS). VREAS awards a Victorian Government 'support agreement' to successful bidders for Victorian projects.

The first energy auction was finalised in September 2018. From this auction, a local content target of 64 per cent was set for all projects, as well as a target of 90 per cent for local operations and 90 per cent for local steel.[24] Subsequently, six wind farm projects were awarded.

The Commission notes that VREAS aims to assist a higher proportion of local content and contribute to the development of skills and employment in Victoria. While the scheme has the potential to generate more demand for the goods in Victoria, at this early stage it is difficult to assess with any degree of certainty what the direct long term impacts might be.

4.3 Market structure

The wind tower market can be segmented according to scale into:

- large scale commercial wind farms; and
- community wind farms which are largely owned by local community members.

Regardless of segmentation, the development of a wind farm project is generally undertaken by an Australian entity which is a related party of an OEM.

There are a number of major wind turbine OEMs that are represented in the Australian market through a local entity:

- GE;
- Siemens Wind Power Pty Ltd;
- Goldwind Australia Pty Ltd;
- Senvion Australia Pty Ltd;
- Acciona Energy Oceania Pty Ltd;
- Vestas; and
- Suzlon Energy.

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22 Renewable Energy and net zero emissions targets of states and territories, Page 15

23 *Renewable Energy (Jobs and Investment) Act 2017*.

24 VRET September 2018 Auction Result

The development of a wind farm can take place over several years. There are two key phases, the first being the project planning and confirmation, the second being the delivery of components and construction of the wind farm.

Project phase

Wind farms are generally established under a Power Purchase Agreement between a wind farm developer and a government authority. Each wind farm project is specific to the proposed site, with completion of the wind farm anticipated to occur within a specific timeframe and on an agreed price. This process may take from one to two years and may also see changes in sizes and project managers.

As the wind farm developer is usually related to the OEM and can draw on experience from previous projects (both in Australia and internationally in terms of its related parties) when preparing a bid for a wind farm project, the developer usually has existing relationships with suppliers that it can utilise to refine its proposal. This process will generally involve an invitation to pre-qualified suppliers (e.g. KPE) to bid for components of the project, which then forms part of the information that the developer submits to try to win the project.

In respect of the wind towers, the wind farm developer usually approaches its preferred potential suppliers (typically, pre-qualified tower manufacturers both locally and overseas) with information about the number of towers, height and specifications and requests indicative pricing. The developer subsequently refines its request for the supply of the towers; it may call for ex-works price offers or pricing delivered to site, and an indicative delivery timeframe. The specification is usually very detailed, covering all dimensions of each component of the tower, its finish, internal components and engineering expectations.

Delivery phase

If successful on its bid, the wind farm developer is then responsible for the delivery of the project. It is the Australian entity that liaises with all of the relevant stakeholders (such as local and state government entities, wholesale electricity suppliers, and wind farm operators) and suppliers (such as road and services construction, electricity transmission infrastructure providers etc., including the suppliers of the towers). In almost all cases the wind turbine is supplied by the parent company OEM of the Australian entity, and it is the turbine specifications and the wind farm site requirements which substantially determine the wind tower specification.

4.4 Australian producers

KPE is Australia's largest (and now only) manufacturer of wind towers and sections, having supplied the Australian market since 2000. KPE has manufactured and supplied wind towers to six out of the seven OEM-related entities currently active in the Australian market.

OF had been manufacturing and supplying wind towers since 2013. However, OF went into administration in July 2018 and no longer supplies the market.[25]

[25] Ottoway ASIC notice.

Haywards (based in Tasmania) has been manufacturing wind towers and supplying to the market since 2003. It has supplied wind towers to three of the OEM-related entities active in the market. While Haywards supported the application, it did not produce any like goods during the inquiry period.

4.5 Australian importers

As noted at chapter 2.3 of this report, GE and Vestas were identified as importers of the goods from China during the injury analysis period and the inquiry period. There were no imports from Korea during the inquiry period. GE and Vestas accounted for the majority of imports of wind towers and sections thereof from China during the inquiry period.

4.6 Market size

During the inquiry period, the Commission has found that the Australian market for the goods comprised goods sold by KPE, imports from China, and imports from other countries.

Figure 2, below, depicts demand in the Australian wind tower market (based on the date of contract) from 2008 to 30 June 2018.

The Commission has found that demand for wind towers in Australia has fluctuated over the period examined. The imposition of the current measures appears to have occurred at the low point in the market.

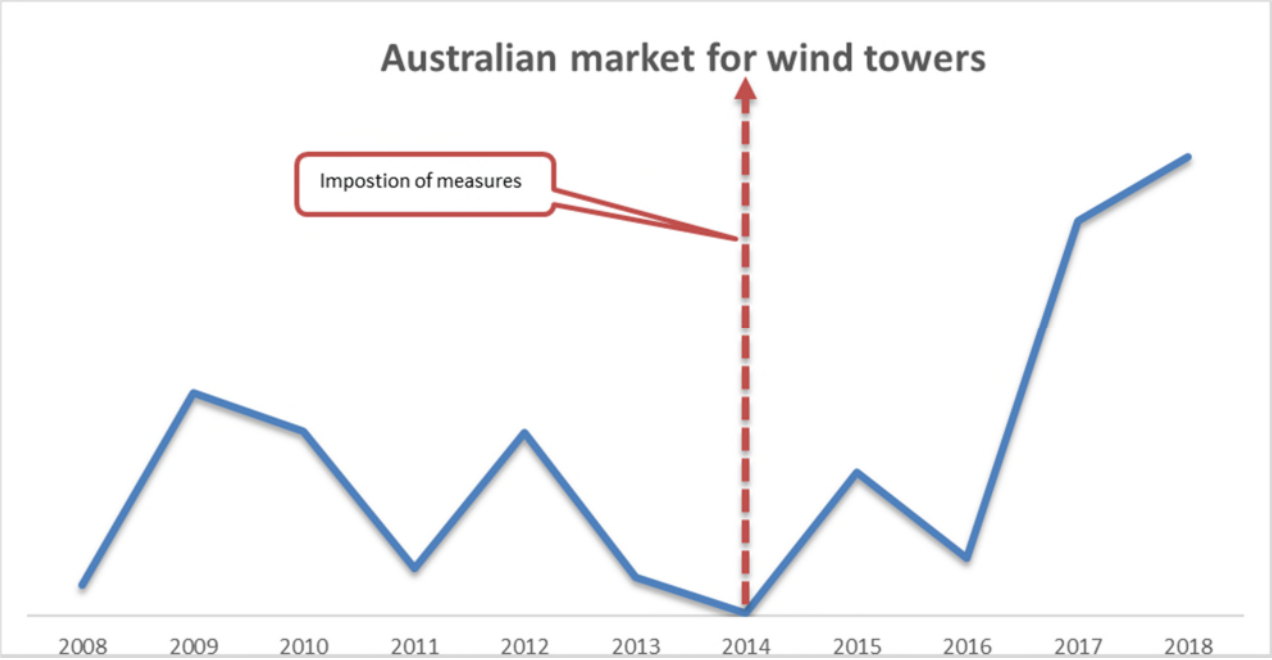

Figure 2 Size of Australian wind tower market – number of towers contracted for

The analysis in Figure 2 is based on the date of contract for supply for the wind towers using information provided in the application, gathered by the Commission and verified with industry, importers and exporters.

The applicant used the date a contract was awarded for the supply of the wind towers as the effective date of sale when estimating the size of the market. The Commission notes that the date of sale used was obtained from the date of the contracts the applicant had won, the date they were advised on contracts for which they were unsuccessful, and, for contracts for which KPE did not compete, an estimated contract date worked out from the date on which the wind farm started generating electricity.

As in REP 221, the Commission has adopted the same approach and used the date a contract was awarded as the effective date of sale to estimate market size, as that date best reflects when a sale was won or lost by the Australian industry. The Commission notes that there will be a time lag between the awarding of the contract and the physical supply of the towers, regardless of whether the towers are imported or supplied by the Australian industry.

4.7 Imports during inquiry period

During the inquiry period, China exported a significant amount of wind towers to Australia. Conversely, Korea has not exported wind towers to Australia since 2014.

Figure 3 - Imports of wind towers during the inquiry period

5 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

5.1 Approach to analysis

The analysis detailed in this chapter is based on verified financial information submitted by KPE during the original investigation and in the present injury analysis period. KPE has accounted for the vast majority of wind tower production in Australia throughout the period examined and, as stated in Chapter 3, KPE is the only current member of the Australian industry. The Commission therefore considers that KPE's performance is indicative of the performance of the Australian industry as a whole.

This analysis allows the Commission to identify trends in the economic condition of the Australian industry before and after the imposition of the anti-dumping measures.

KPE's financial year is recorded on a calendar year basis, from 1 January to 31 December. The Commission has therefore focused on data from 1 January 2008 to 31 December 2017 for the purpose of this inquiry. All graphs use a consistent scale to enable a comparison from year to year over the course of the whole period.

The original data and analysis on which the Commission has relied to assess the economic position of the Australian industry is at **Confidential Attachment 2**.

Consideration of whether it is likely, in the absence of the anti-dumping measures, that material injury caused by dumping (as opposed to other factors) will continue or recur is considered in Chapter 7 of this report.

5.2 Findings in original investigation

In REP 221 the Commissioner found that, during the investigation period, the Australian industry had experienced injury in the form of:

- loss of sales volume;
- loss of market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced capacity utilisation;
- decline in assets and capital investment;
- reduced return on investment (ROI); and
- loss of employment.

5.3 Volume effects

5.3.1 Sales volume

The figure below illustrates the Australian industry's total sales volume for wind tower projects since 2008 (inclusive of tower sales by Haywards and OF).

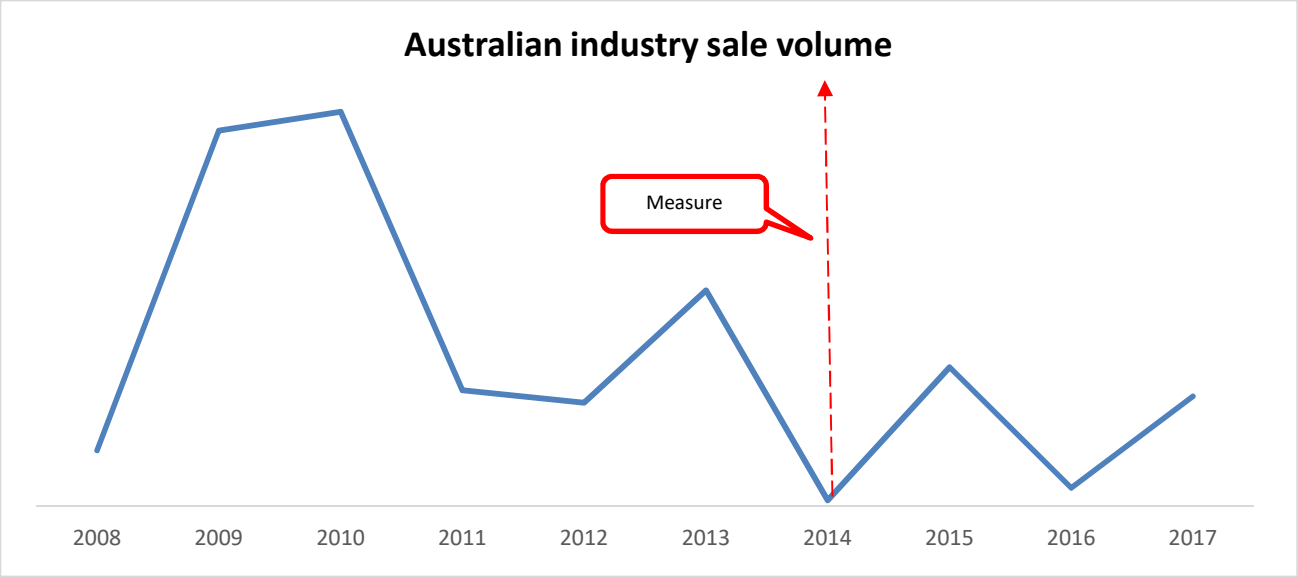

Figure 4 – Australian Industry sales volume (based on contract date)

Notwithstanding the implementation of the anti-dumping measures in 2014, the Australian industry sales volume has remained volatile. Further, as a proportion of the total wind tower market in Australia, the share held by the Australian industry remains low. This can be seen in Figure 5.

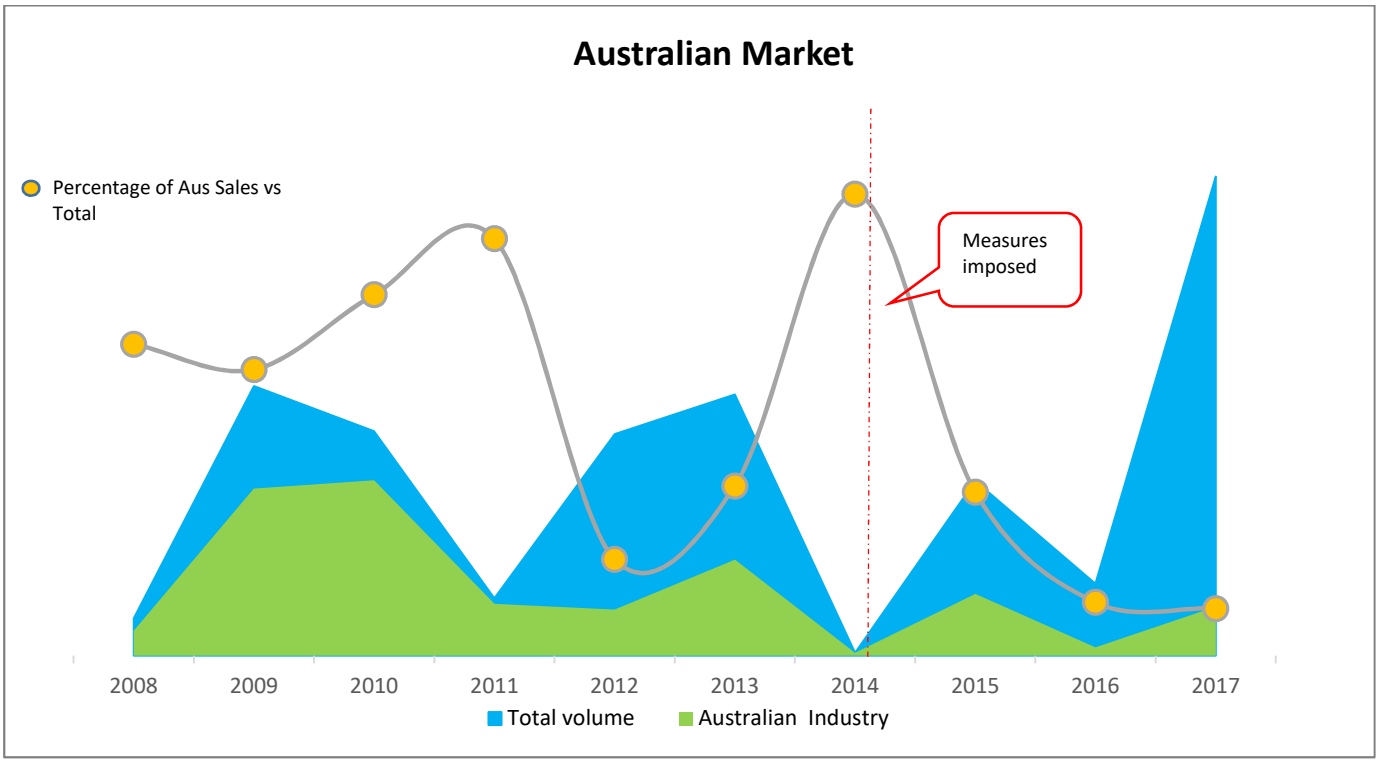

Figure 5 – Australian industry sales volume vs all wind tower projects available

5.3.2 Market share

The figure below shows the proportion of projects for wind towers that were won by the Australian industry compared to suppliers from China, Korea and other countries since 2008.

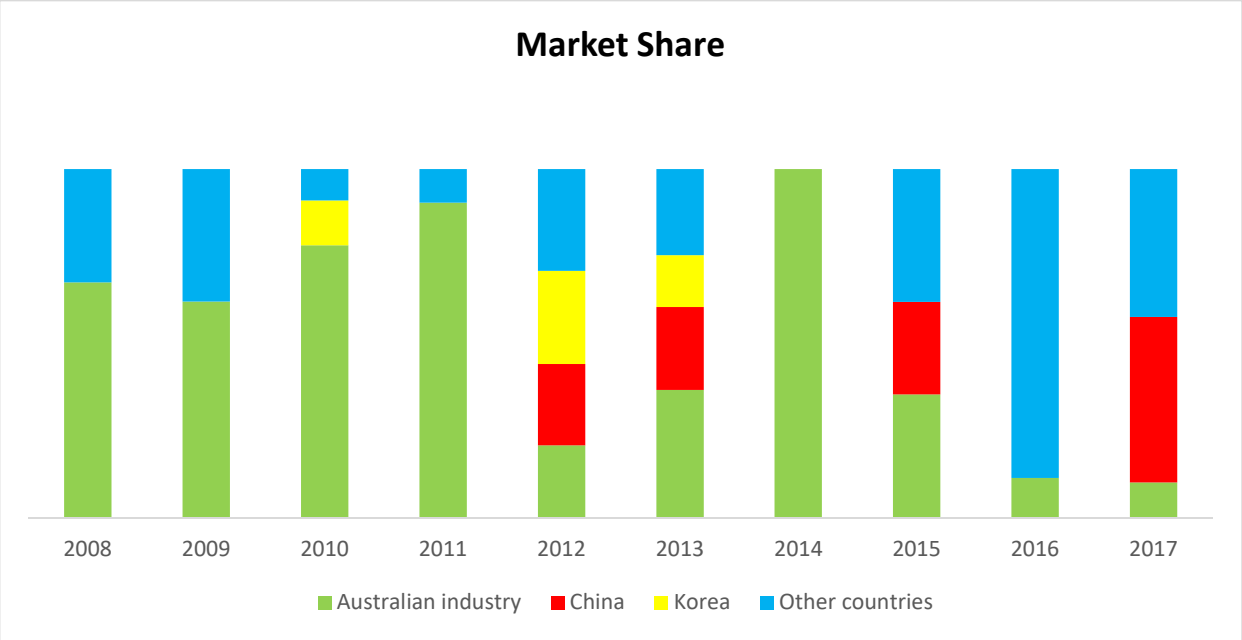

Figure 6: Market share – wind tower contracts awarded

The Australian industry started to lose market share to imports from 2011. Its share has remained historically low. Although the 2017 data suggests some improvement has occurred in a growing market (as per Figure 5).

Given the regular fluctuations in demand for wind towers, it is difficult to discern clear trends in this data. However, the Commission observes that exports from China, as a proportion of all wind tower projects awarded, frequently represent a significant part of the market. Exports from Korea ceased after 2013.

5.4 Price effects

The figure below shows that since the original investigation period and imposition of measures, KPE's unit sales revenue per wind tower has increased.

The figure below also shows that the gap between the unit cost to make and sell (CTMS) per wind tower and unit sales revenue per wind tower has narrowed since the original investigation period. Unit CTMS per wind tower was consistently higher than unit sales revenue per wind tower until 2015, after which time KPE has achieved improved margins.

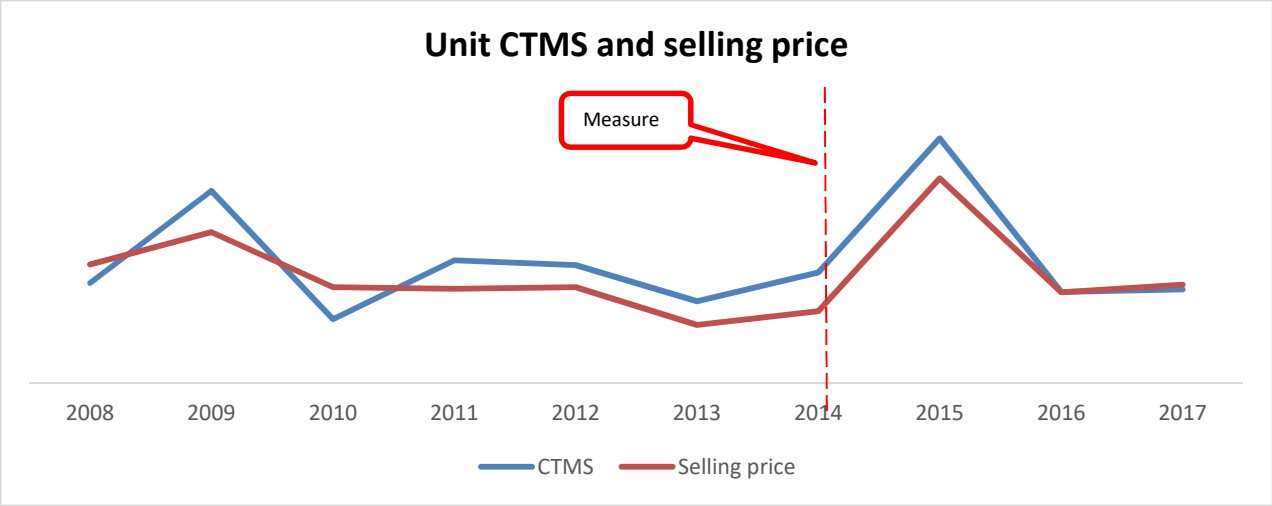

Figure 7: Comparison of KPE unit CTMS and unit sales revenue (per tower, by year of production)

5.5 Profit and profitability

The figure below shows that KPE's wind tower business was only profitable in 2008 and then again in 2017. KPE experienced some improvement in its profit and profitability position following the imposition of the anti-dumping measures in 2014.

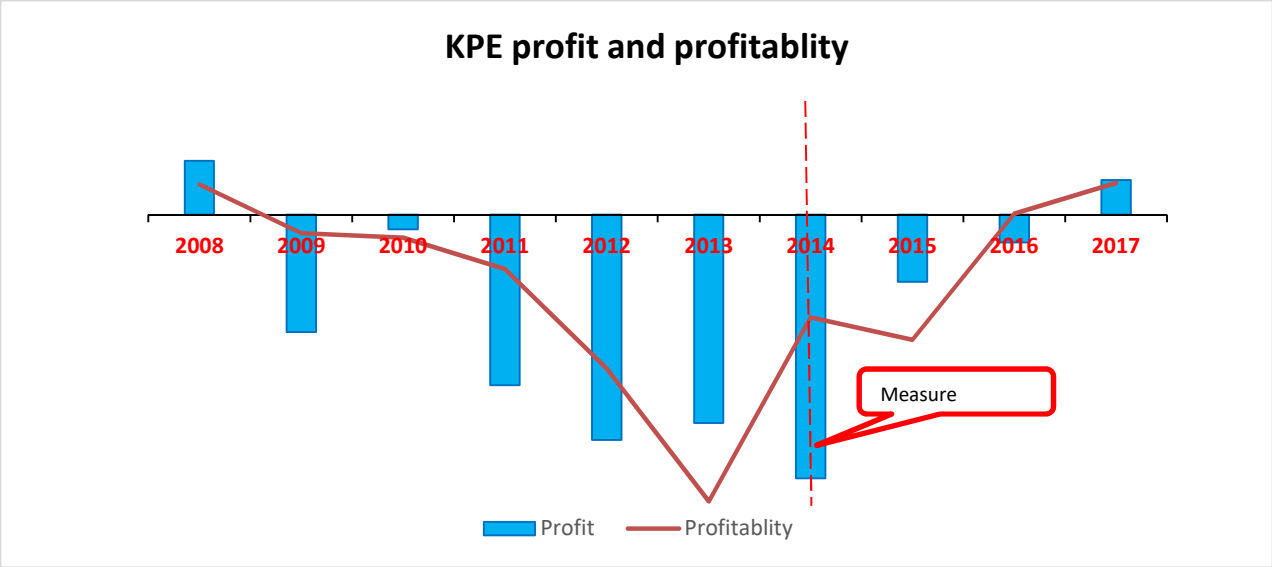

Figure 8: KPE profit and profitability of wind tower business

5.6 Other injury factors

Subsection 269TAE(3) sets out other relevant economic factors to have regard to in determining whether material injury to an Australian industry has been experienced.

The Commission has made the following observations from the information available and provided by KPE in relation to other injury factors. The Commission's detailed analysis is at **Confidential Attachment 2**.

Assets

KPE's asset values trended down between 2009 and 2014. Asset values increased from 2016.

Capital investment

Capital investment increased from 2009 to 2010, before declining sharply from 2011 to 2014. Since 2015, capital investment has increased.

KPE indicated that its parent company would consider further investment to respond to increasing Australian market demand for wind towers. However, no evidence was provided to substantiate this claim.

Revenue

As revenue is wholly influenced by the number of wind tower projects awarded to KPE, revenue appears to be in line with changes in Australian market demand.

Return on investment

ROI is calculated as gross profit over assets. The ROI has seen a consistent decline from 2009 to 2013, and then started to improve from 2015 to 2017 (coinciding with improved profit results).

Employment

Employment levels declined between 2009 and 2014. Employment decreased sharply in 2014, explained by the retrenchment of employees because KPE temporarily ceased its wind tower operations in 2014. Since 2014, employment levels have steadily improved.

Capacity

KPE maintained steady capacity between 2009 and 2015; it has marginally increased between 2016 and 2017.

Capacity utilisation

Capacity utilisation has been volatile, in line with production volumes. During the injury analysis period, KPE did not reach full capacity at any time.

Productivity

Productivity, measured as the number of wind tower units produced per employee, was relatively stable from 2009 to 2012. It dropped sharply in 2015, and has gradually increased through to the inquiry period.

Wages

Gross wages remained steady between 2009 and 2013, before becoming more volatile in line with production and sales volume changes during the period.

6 ASCERTAINMENT OF VARIABLE FACTORS

6.1 Finding

For the purpose of assessing whether the continuation of the anti-dumping measures is required to prevent the continuation or recurrence of dumping, the Commissioner has ascertained all variable factors relevant to the taking of the measures during the inquiry period.

The Commissioner has found that the variable factors have changed for all exporters from China.[26] The variable factors for all exporters from Korea remain unchanged.

6.2 Legislative framework

In accordance with subsection 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping. The existence of dumping during the inquiry period may be an indicator of whether dumping may occur in the future.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of the goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB.

6.3 Categorisation of exporters

6.3.1 Cooperating exporters

The Commission has categorised exporters that provided a REQ as cooperative exporters. The Commission has analysed the information submitted by these exporters, and assessed the relevant variable factors, as outlined below.

6.3.2 Uncooperative and all other exporters

Subsection 269T(1) provides that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that the exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation, within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so, within the legislated period.

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[26] The variable factors are export price and normal value, as examined in this chapter and non-injurious price as examined in Chapter 8.

After having regard to the Direction, the Commissioner has determined that all exporters which did not provide a response to the exporter questionnaire, or which did not request a longer period to provide a response within the legislated period, are uncooperative exporters for the purposes of this inquiry.

6.4 Shanghai Taisheng Wind Power Equipment Co. Ltd (China)

The Commission conducted a desktop verification of the data submitted by Shanghai Taisheng Wind Power Equipment Co. Ltd (TSP Shanghai) in its REQ.[27] The Commission is satisfied that the information provided by TSP Shanghai is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.4.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arms length transactions under section 269TAA. Subsection 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where, inter alia, the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arms length transactions.

The Commission will generally identify the exporter as: a principal in the transaction located in the country of export from where the goods were shipped, and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.[28]

TSP Shanghai:

- negotiated with the wind farm proponent for the delivery of the wind towers;
- manufactured and packed the goods in accordance with the relevant specifications;
- sent the goods to port for exportation to Australia;
- prepared the export documentations for the goods; and
- is the principal in the transaction located in the country of export where the goods were shipped.

The Commission is therefore satisfied that TSP Shanghai is the exporter, and the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. In respect of Australian sales of the goods by TSP Shanghai directly to the importer, the Commission has determined the export price under subsection 269TAB(1)(a).

The Commission considers that the purchase of the goods by the importer were arms length transactions as the Commission found no evidence that:

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[27] The visit report is Document 013 on the EPR.

[28] The Manual, pg 29.

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was 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; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.[29]

The Commission notes that certain Australian sales by TSP Shanghai involved multi-party transactions, with the effect that the goods were not purchased by the importer from the exporter and therefore the export price for these sales could not be calculated under subsection 269TAB(1)(a) or 269TAB(1)(b). The Commission has therefore assessed the export price by having regard to all the circumstances of the exportation under subsection 269TAB(1)(c). Specifically, the Commission calculated the export price as the price paid to TSP Shanghai plus the additional revenue achieved by a subsidiary involved in the multi-party transactions.

Export prices were established at Free Alongside Ship (FAS) terms.

6.4.2 Normal value

The Commission notes that wind tower sales are project driven and differ in their technical properties between projects. As such, the Commission considers that each wind tower is a unique product and that, because of the many variables and differences in technical specifications which would affect proper comparison, it is not possible to accurately adjust domestic prices to make them comparable with export prices.

Therefore, the Commission is of the view that there is an absence of sales of like goods in the market of the country of export that would be relevant for the purposes of determining a price under subsection 269TAC(1). Further, as no other exporters of the goods have cooperated with this inquiry, the Commission is unable to have regard to the prices achieved by other sellers of like goods.

In these circumstances, the Commission considers it appropriate to have regard to subsection 269TAC(2)(c), which provides that a constructed normal value is to be calculated as the sum of:

- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade (OCOT) in the country of export, the selling, general and administrative (SG&A) costs associated with the sale, and an amount for profit.

Pursuant to the provisions of subsection 269TAC(2)(c) the Commission has calculated TSP Shanghai's normal value in accordance with the conditions set out in sections 43, 44, and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

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[29] Section 269TAA of the Act refers.

6.4.2.1 Cost of production

To determine the cost of production or manufacture, subsection 43(2) 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.

In REP 221, the Commission found that the cost of plate steel and the cost of the flanges reflected in the records of TSP did not reasonably reflect competitive market costs. The Commission has reassessed this finding for the purposes of this inquiry.

GOC involvement in steel industry

The Commission notes that the GOC's involvement and influence over the steel industry and the markets for raw materials used in the production of steel in China has created distortions that mean TSPs records were not determined in competitive market conditions, and do not reasonably reflect competitive market costs associated with the production of wind towers. Further detail concerning the Commission's findings regarding the GOC's influence in the Chinese steel market can be found in **Appendix A**.

Although there have been no more recent investigations concerning wind towers or plate steel exported from China, the Commission has observed in several recently completed investigations and noticed the same intervention from GOC in its domestic steel markets.[30] These findings are highly likely to also be applicable to Chinese producers of plate steel. The Commission considers that raw material costs for plate steel recorded by TSP Shanghai did not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

Significant distortions in the plate steel market in China resulted in the uplift in plate steel costs in REP 221. Given the available evidence indicates that these distortions continue to exist, as a result, for this inquiry, the Commission uplifted the prices of raw material steel plate used in the constructed normal value for TSP Shanghai and its subsidiaries.

Steel plate uplift methodology

The Commission has had regard to TSP Shanghai's uplifted plate steel costs in REP 221, where a competitive market cost for plate steel was established using verified domestic selling prices in other markets for plate steel from a concurrent investigation (reported in *Anti-Dumping Commission Report No. 198*). These selling prices were then compared to the unadjusted Chinese normal values established in the same case. The difference in these prices was then applied to the purchase cost of plate steel as reflected in TSP Shanghai's records for REP 221, as a proportional uplift that would be inclusive of any relevant grade differences.

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30 See, for example, *Anti-Dumping Commission Report No. 419* (hollow structural sections, produced using hot rolled coil) and the *Anti-Dumping Commission Report No. 456 and 457* (zinc coated (galvanised) steel and aluminium zinc coated steels, both of which are produced using hot rolled coil).

The Commission has indexed these uplifted costs from REP 221 by reference to movements in the Steel Bulletin Board (Platts) benchmark from the original investigation period in REP 221 to the current inquiry period. The Commission selected *Flat Products / Plate CFR East Asia / East Asia import CFR $ / ton*, (which is reported on Cost and Freight (CFR) terms in USD per tonne) as its benchmark because it is comprised of non-China import prices, and is therefore likely to be the most representative of competitive plate steel prices in the region. The Commission notes that it examined a number of other potential plate steel benchmarks, all of which showed similar and consistent price movements over the period examined.

The benchmark indicates that competitive market steel prices were significantly higher during the manufacturing period than costs as per the exporter's records. Therefore TSP Shanghai's steel plate costs have been uplifted accordingly in its cost to make data. The Commission's index methodology and workings can be found at **Confidential Attachment 4**.

6.4.2.2 TSP subsidiaries as related party processors

The Commission notes that TSP Shanghai owns a number of subsidiaries, four of which manufactured certain domestic wind tower projects; a fifth was involved in the sale of certain wind tower sections exported to Australia.

From the TSP Shanghai exporter verification process, the Commission has determined that TSP Shanghai:

- is the manufacturer for all wind tower sales made to Australia and is the manufacturer for a number of domestic wind tower projects;
- has full control as the parent company and sole shareholder in the management of the subsidiaries, such as appointing directors and senior executives, and acts as the headquarters for the whole group;
- exercises a high degree of control over the activities of the four subsidiaries that manufacture wind towers for the domestic market;
- takes overall responsibility for the management of each domestic project;
- negotiates with customers to determine the kind of raw material to be used and arranges for the purchase of raw materials of steel plate and flanges for the projects that are to be subcontracted for manufacture by a subsidiary;
- manages how the raw materials are consumed for production and liaises with customers regarding the production schedule;
- takes ultimate responsibility for quality control and ensuring compliance with relevant contractual requirements, with the subsidiary being responsible for manufacturing goods as instructed and agreed to by TSP Shanghai;
- is responsible for the marketing, contract negotiation and sale of all onshore domestic wind tower sales;[31]
- coordinates with customers for the delivery schedule, provides instructions for delivery to the subsidiary and receives confirmation delivery from the relevant customers;
- takes responsibility for invoicing collection and payment for each project;

[31] Only one of TSP Shanghai's subsidiaries has its own sales team, which is limited to selling offshore structures and other equipment, not wind towers.

- has full access to the accounting records of its subsidiaries, and takes ultimate control for the accounting practices of its subsidiaries; and
- for the purposes of verification by the Commission, TSP Shanghai has provided the underlying costs (raw materials, overheads, labour) borne by its subsidiaries in the manufacture of domestic projects.

In these circumstances, the Commission considers that it is appropriate to consider domestic sales manufactured by TSP Shanghai and its subsidiaries in the construction of a normal value.

6.4.2.3 The Commission's assessment for flanges

The approach taken in REP 221 was to treat both plate steel and flange costs as non-competitive market costs.

Flanges are typically forged from a single slab of steel; whilst the cost of the slab might be distorted by GOC intervention, the Commission has no information which enables it to assess the degree to which this slab cost is representative of the final cost of the flange. Further, all wind tower producers examined in the course of this inquiry purchase flanges from unrelated suppliers, which means that recorded cost is inclusive of the supplier's conversion costs, delivery and other costs and any profit / margin achieved. Further, differences in flange costs recorded by TSP Shanghai and other examined producers of wind towers is likely to have also been influenced by the number of flanges purchased (e.g. volume discounts). Finally, there are no reported international benchmarks for flanges which would enable a comparison of prices paid in China with prices paid elsewhere to assess the competitiveness of the prices paid by TSP Shanghai.

As a result, the Commission considers that it has insufficient evidence to conclude that the cost of flanges as recorded by TSP Shanghai are not a competitive market cost. The Commission has not applied any uplift to this cost component in its normal value calculation.

6.4.2.4 SG&A expenses

As required by subsection 269TAC(5A)(b), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the SG&A costs for TSP Shanghai as well as its subsidiaries have been determined in accordance with subsection 44(2) of the Regulation.

6.4.2.5 Profit on the domestic sales

As required by subsection 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation. Subsections 45(1) and 45(2) of the Regulation require that, where reasonably practicable, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT.

The Commission has calculated a profit margin based on the domestic sales of like goods in the OCOT that were manufactured by TSP Shanghai or its subsidiaries, in accordance with subsection 45(2) of the Regulation.

6.4.2.6 Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit	**Deduct** the cost of domestic credit
Export inland transport	**Add** the cost of export inland transport
Export handling fees	**Add** the cost of export handling and other fees
Export credit	**Add** the cost of export credit

Table 7– Adjustments to normal value for TSP Shanghai

The Commission has calculated a dumping margin in respect of the goods exported to Australia by TSP Shanghai for the inquiry period. The margin is **8.8 per cent**.

The Commission's calculations are included at **Confidential Attachment 3**.

6.5 Win&P (Korea)

The Commission conducted a desktop verification of the data submitted by Win&P in its REQ. The Commission is satisfied that the information provided by Win&P is accurate and reliable.

6.5.1 Export price

As Win&P did not export wind towers to Australia during the inquiry period, sufficient information is not available to determine the export price of the goods using:

- the price paid or payable by the importer;[32]
- the price in Australia less prescribed deductions (deductive export price);[33] or
- the price having regard to all the circumstances of the exportation.[34]

The Commission has therefore established an export price under subsection 269TAB(3), having regard to all relevant information. The Commission is of the view that the most reliable and relevant information it possesses in relation to the export price for wind towers exported by Win&P is the export price currently on the Notice. The export price, therefore, remains unchanged.

[32] Subsection 269TAB(1)(a) refers.

[33] Subsection 269TAB(1)(b).

[34] Subsection 269TAB(1)(c).

6.5.2 Normal value

As previously noted, the Commission considers that each wind tower is a unique product and that, because of the many variables and differences in technical specifications which would affect proper comparison, it is not possible to accurately adjust domestic prices to make them comparable with export prices.

Therefore, the Commission is of the view that there is an absence of sales of like goods in the market of the country of export that would be relevant for the purposes of determining a price under subsection 269TAC(1). Further, there are no other exporters of the goods from Korea that have cooperated with this inquiry, and no other exports from Korea, and so the Commission is unable to have regard to the prices achieved by other sellers of like goods. There is also no basis on which to construct a normal value under subsection 269TAC(2)(c), such as by having regard to Win&P's domestic production costs, as it is not possible to accurately adjust these to reflect the towers actually sold in the Australian market.

While Win&P did provide sales and cost data for third country sales which were verified, the Commission could not determine a normal value under subsection 269TAC(2)(d), as an appropriate third country could not be identified that would enable comparison to the towers actually sold in the Australian market.

The Commission therefore considers that normal value is to be determined under subsection 269TAC(6), having regard to all relevant information. The Commission is of the view that the most reliable and relevant information it possesses in relation to the normal value for wind towers exported by Win&P is the normal value currently on the Notice. The normal value, therefore, remains unchanged.

6.5.3 Dumping margin

The Commission has not calculated a dumping margin for Win&P during the inquiry period as Win&P did not export the goods.

The Commission's analysis is included at **Confidential Attachment 5.**

6.6 Uncooperative and all other exporters

As provided for in subsection 269TACAB(1), for uncooperative and all other exporters, export price and normal value is worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively, by having regard to all relevant information.

The Commission's calculations are included at **Confidential Attachment 6.**

6.6.1 China

The Commission established an export price for uncooperative and all other exporters under subsection 269TAB(3), based on verified information from TSP Shanghai. The Commission established a normal value under subsection 269TAC(6), having regard to information verified with TSP Shanghai, but exclusive of any favourable adjustments.

The Commission has established a dumping margin of **11.6 per cent** for uncooperative and all other exporters from China.

6.6.2 Korea

In light of insufficient data being available for the inquiry period in relation to exports from Korea, the Commission has established an export price for uncooperative and all other exporters under subsection 269TAB(3), and a normal value under subsection 269TAC(6) to be the same as those currently on the Notice.

6.7 Conclusion

The Commission has ascertained the following dumping margins for China.

Country	Exporter	Dumping Margin
China	Shanghai Taisheng Wind Power Equipment Co. Ltd	8.8%
	All exporters	11.6%

Table 8 – Dumping margins in inquiry period

7 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Findings

On the basis of the evidence currently available, in respect of China, the Commissioner is satisfied that the expiration of the measures applying to wind towers exported to Australia from China would lead, or would be likely to lead, to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.

In respect of Korea, the Commissioner is not satisfied that the expiration of the measures applying to wind towers exported to Australia from Korea would lead, or would be likely to lead, to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.

7.2 Legislative framework

In accordance with subsection 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the Anti-Dumping Review Panel, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendation must nevertheless be based on facts.[35]

7.2.1 The Commission's approach

In assessing the likelihood of whether dumping and material injury will continue or recur, a number of factors are relevant as outlined in the Manual.[36] The Commission's view is that the relevance of each factor varies depending on the nature of the goods being examined and the market into which the goods are being sold. No one factor can necessarily provide decisive guidance. The following analysis therefore examines a range of factors that the Commission considers relevant to this inquiry.

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[35] Report No. 44 (Clear Float Glass) refers.

[36] Pages 170-171 refer.

7.3 Will dumping continue or recur?

7.3.1 Australian industry's claims

In its application, KPE claims that:

- there is no evidence to indicate that dumping from China has ceased;
- exports of the goods from China were at dumped prices and export volumes continued despite the imposition of measures, increasing during the period from 2015 to 2018;
- China maintained its distribution networks and relationships with major OEMs and their Australian entities;
- exports of the goods from Korea are likely to resume due to Korea's strong export focus and sophisticated global networks;
- there is excess capacity of the goods from China and Korea, that may lead more exports to Australia; and
- the United States of America (USA) International Trade Commission imposed anti-dumping measures on exports of the goods from China and Vietnam, and has recently announced a review of those measures.

7.3.2 Analysis of dumping within the inquiry period

The Manual provides that in assessing the likelihood of dumping continuing or recurring, the inquiry may gather facts relevant to whether exports are likely to continue or resume, such as the volume of exports before and after measures were imposed, or exporters' supply chains.

As shown in chapter 6.4, during the inquiry period, the Commission has found that TSP Shanghai exported wind towers from China to Australia at dumped prices. TSP Shanghai accounted for approximately 20 per cent of the total volume of exports from the subject countries. With respect to the uncooperative exporters from China, these exports were also at dumped prices (chapter 6.6) and accounted for the balance of the towers exported from the subject countries.

The dumping margins are reproduced below:

Country	Exporter	Dumping Margin
China	Shanghai Taisheng Wind Power Equipment Co. Ltd	8.8%
	All exporters	11.6%

Table 9: Dumping margins in inquiry period

As stated in REP 221, Win&P was the sole exporter of the goods from Korea. As shown in chapters 6.5 and 6.6, the Commission has found that there were no exports from Korea during the inquiry period. The Commission has therefore not established a dumping margin for exporters from Korea.

7.3.3 Export volumes and effectiveness of measures

The Commission has established in Chapter 5 (Figure 6) that the volume of exports from the subject countries to Australia and their respective shares of the market have changed since the measures were imposed.

For exports of wind towers from China to Australia, volumes have fluctuated since the imposition of the measures, albeit broadly in line with overall market demand. For exports of wind towers from Korea to Australia, exports ceased following the imposition of the measures.

7.3.4 Maintenance of distribution links

China

The Commission has compared ABF data for importers of the goods in the inquiry period with ABF data from REP 221. The Commission has found the importers of wind towers from China have remained the same. The Commission also found a substantial number of wind towers (accounting for 30 per cent of imported goods during the inquiry period) were supplied by a new exporter. The Commission considers that these facts demonstrate that Australia remains an attractive market for Chinese exporters.

Korea

Following the imposition of measures there have been no exports of wind towers from Korea. However, there was evidence that Win&P was invited by certain OEM-related entities to bid on some Australian projects during the inquiry period. The Commission considers this demonstrates some ongoing relationships which could be re-established relatively quickly if so desired.

7.3.5 Production capacity and capacity utilisation

China

The figure below shows the pattern of TSP Shanghai's capacity and production of the goods. The Commission notes that TSP Shanghai records its production capacity and actual production as per tonne of steel and as per calendar year.

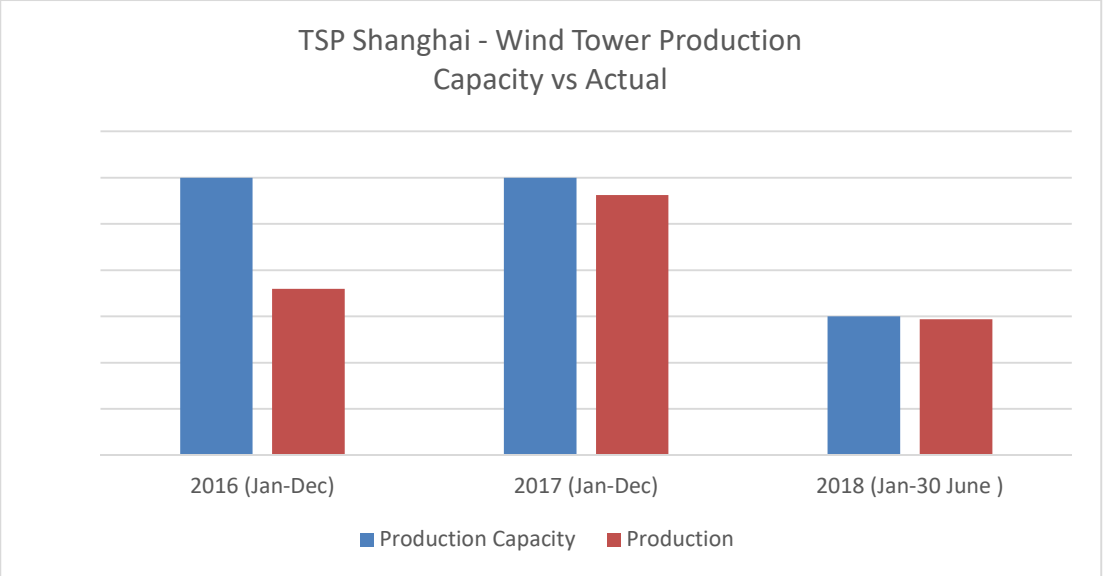

Figure 9: TSP Shanghai capacity utilisation (per tonne, per calendar year)

The Commission notes that TSP Shanghai's capacity utilisation increased significantly from 2016. As set out in chapters 3.6 and 0, there were increased imports from China from 2016 onwards.

The Commission also notes an emerging exporter from China based on the ABF records since 2014. Its market share has gradually increased and it supplied 30 per cent of the Australian wind tower market in the inquiry period. The Commission understands that this exporter claims it is able to supply up to 1000 towers annually and has a strong focus in export markets. It also claims to maintain a close working relationship with major OEMs.

The Commission considers it likely that there is excess production capacity for all exporters of wind towers from China. The Commission notes the significant economies of scale can lead to Chinese exporters offering competitive pricing, flexible terms of trade and shorter manufacturing lead-times.

Korea

The figure below shows the pattern of Win&P's capacity and production of the goods. The Commission notes that Win&P records its production capacity and actual production as per tower section and as per calendar year.

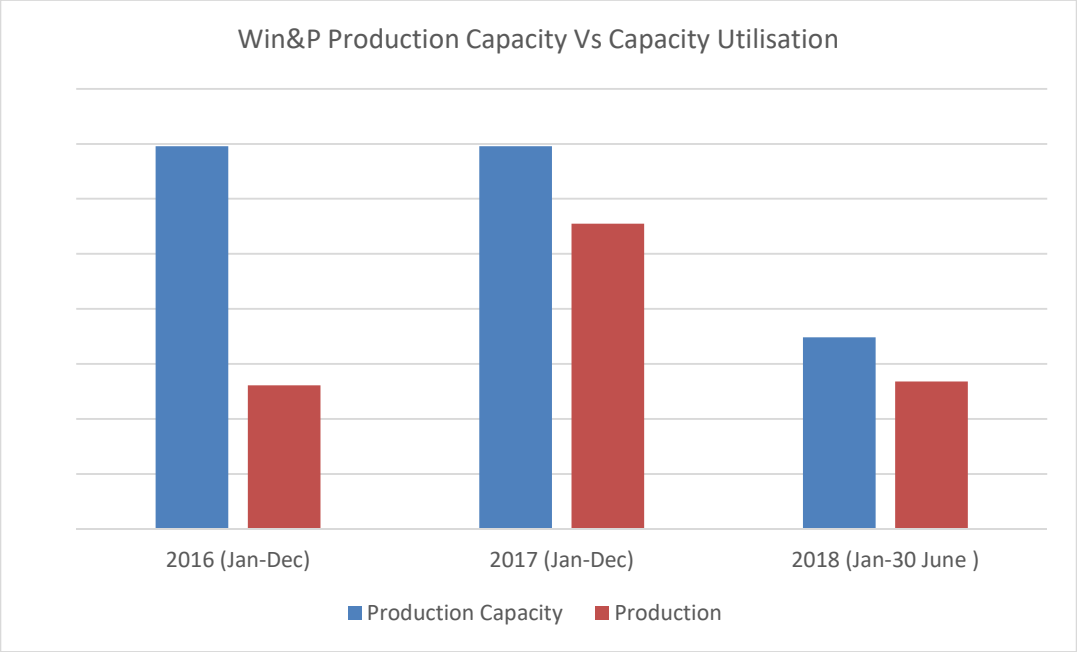

Figure 10: Win&P Production capacity vs capacity utilisation (per section, per year)

The Commission has obtained no information concerning the capacity of other Korean producers of wind towers.

7.3.6 Market orientation

China

During the inquiry, TSP Shanghai supplied approximately half of its production to its domestic market in China. In terms of third country sales, the majority was supplied to customers in South America and Asia. A smaller yet significant proportion was supplied to Australia. Noting the growing Australian market, the Commission considers it likely that TSP Shanghai will continue exporting to Australia.

Korea

During the inquiry, Win&P provided a submission[37] and detailed information and evidence relating to:

- its shifted business interest to the USA wind tower market due to strong price competition in the Australian market;
- the Korean government's increasing awareness of renewable energy may lead to rising domestic demand for wind towers, and Win&P may therefore become involved in more domestic wind tower projects;
- its project development and future plans in relation to production capacity to the USA market; and
- confirmed commitments in production and capacity to supply the USA market.

Win&P provided information regarding the Korean government's plan to engage more renewable energy. Win&P also outlined its strategic plan to be more involved in the domestic wind tower market, such as the Seonam Sea, and South West Offshore Project (a three stage project due for completion by 2030).[38]

The Commission notes that in recent years, the Korean government has revealed its plan to expand renewable energy to 20 per cent of the total power generation by 2030; and plans to increase the percentage of wind power from 8 per cent in 2017 to 34 per cent of the total energy generation by 2030.[39] On balance, the Korean government has shown its intention to move toward renewable energy, which may lead to the reduction of export capacity to supply wind towers.

Win&P provided a detailed weekly capacity status demonstrating its business commitment to the USA market. This commitment has been further supported by signed minutes between Win&P and relevant OEMs, which shows Win&P is committed to existing supply arrangements until the end of 2019.

7.3.7 Measures imposed by other countries

The Commission has observed that wind towers exported from China are also subject to anti-dumping measures in other jurisdictions. It appears that there are no measures at this stage relating to wind towers from Korea.

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37 Document no. 007 on the EPR.

38 Seonam Sea, South West Offshore Project , Korea

39 Renewable energy outlook in South Korea.

Country imposing measures	Product	Affected exporters
USA[40]	Wind towers	China: - Chengxi Shipyard Co., Ltd (47.59%) - Titan (Lianyungang) Metal Product Co., Ltd (44.99%) - Titan Wind Energy (Suzhou) Co., Ltd (44.99%) - CS Wind China Co., Ltd. (46.38%) - Guodian United Power Technology Baoding Co., Ltd (46.38%) - Qiangsheng Wind Equipment Co., Ltd (46.38%) - all other exporters (70.63%).

Table 9 - Anti-dumping measures applying to wind towers, other jurisdictions

Whilst the USA has recently imposed additional tariffs[41] and quotas[42] on a range of steel products, these do not appear to have any direct impact on the supply of wind towers into the USA market.

As a result, the Commission considers that Australia may become a comparatively more attractive destination for Chinese exporters that are subject to measures in other jurisdictions if the anti-dumping measures were to expire.

7.4 Will material injury continue or recur?

7.4.1 Australian industry's claims

As part of its application, KPE submitted that, if the dumping measures on wind towers from China and Korea were allowed to expire, KPE will suffer further material injury. The basis for this claim includes:

- the available size of the Australian wind tower market;
- the ongoing price competition in the market; and
- the ongoing injury of Australian industry in areas of production volume, profit and profitability.

7.4.2 GE's submission

During the inquiry period, regarding the material injury claimed by Australian industry, GE submitted that the Commission should consider local factors (such as capacity and high manufacturing cost) undermining industry competitiveness.

GE submitted that the demand for Australian wind towers in the market is changing, and the Commission should consider the flow on effects (such as impact on energy costs and further investment in the energy sector) of continuing the anti-dumping measures.

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40 Anti-dumping measures USA to China (Vol. 78, No. 32 / Friday, February 15, 2013 / Notices)

41 USA Summary/232-tariffs-aluminum-and-steel

42 The full list of products subject to the tariffs and the Korean products subject to quotas

7.4.3 Impact of measures on market share

The Manual provides that the inquiry may gather facts relevant to whether exports are likely to lead to a continuation or recurrence of material injury to the Australian industry, such as market size and share.[43]

Following the imposition of the measures, the size of the market has continued to fluctuate. The market share held by Chinese exporters has also been variable, but accounted for a large proportion of all sales during the inquiry period. As has been noted previously, the share held by Korean exporters has been zero.

7.4.4 Impact of measures on prices

As outlined in Chapters 4 and 5, the wind tower industry in Australia is extremely competitive. Each wind tower project is unique; each tender differs significantly based on the site characteristics of the wind farm, specification, transport and other factors.

KPE submitted in its application that the current measures provide greater opportunities to the Australian industry to compete with the goods imported from China on price. KPE has submitted confidential tender documents to support this view. KPE argues that, in the absence of the measures, Chinese wind tower exports will gain a substantial price advantage in the market.

The Commission examined confidential correspondence from Australian industry and importers concerning tenders to compare the price offers for wind towers in the market. The Commission's analysis is included at **Confidential Attachment 7**.

The Commission makes the following observations:

- the feedback provided by the OEM-related entities concerning lost tenders tends to focus on KPE's pricing in comparison with competing bids;
- KPE is regularly asked whether it is able to reduce its price to approach the prices offered for imported goods; and
- for the projects that KPE won the contract, the price difference between KPE and imports was minimal.

Whilst there were no exports of the goods from Korea, the Commission understands that Win&P did tender for at least one project during the inquiry period and was advised that its price was already higher than those of other potential suppliers *before* the dumping duty was factored into the cost to the importer.

7.4.5 Factors other than dumping

<u>Increasing demand</u>

As outlined in Chapter 4, the Commission understands that the current strong demand in the wind tower market is a result of greater stability in the RET as well as increasing support by state governments for renewable energy.

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43 The Manual, page 176.

The Commission is aware of a further 300 plus towers that have been sought from the market as at 30 June 2018, but which are not yet confirmed under contracts and will be delivered after the conclusion of the inquiry period. The Commission is also aware of further large numbers for wind towers that KPE anticipates will be sought from the market in 2019.

This increased demand is likely to continue in the foreseeable future. KPE does not presently have capacity to supply a substantially larger number of towers.

Trend towards larger wind towers

The Commission understands that the general trend over time has been for larger wind turbines – including longer blades, higher hub heights and, in particular, larger rotor sizes in order to boost power output. This increase in size has resulted in heavier nacelles that require larger wind towers to support them. Larger turbines have in turn resulted in a trend towards wind towers with a larger number of sections (i.e. a move from three or four section towers to five section towers), which is necessary to allow for road transport to site due to size limits. The larger towers have wider bases, so that the bottom sections of the towers are increasing in diameter.

In view of this trend, the Commission inquired of KPE as to whether this created issues for production. KPE indicated that it was able to produce towers to the specifications currently being tendered. However, KPE noted that producing large towers puts a strain on its equipment generally, and it would not be able to produce tower sections beyond certain dimensions.

Geographic location and transportation of wind towers

Due to the substantial size of wind towers, the cost of installation and road transportation costs being significant, KPE tends to work with projects closer to its own geographical location, while importers tend to ship the goods to the port nearest to the wind farm location.

The Commission notes that KPE has a natural geographic advantage for supply of towers in Victoria and across parts of South Australia and New South Wales, but beyond a certain range the cost of transport is prohibitive. This impacts on KPE's ability to bid for more distant projects, regardless of whether it is competitive on the price of the towers themselves.

7.5 Conclusion

China

The continued exportation of wind towers from China indicates that Australia remains a significant market for those goods. Chinese exporters collectively appear to have spare production capacity and will continue to export in the context of a growing Australian market. Whilst the decision to purchase is impacted by a range of factors, it is clear that price is a key consideration for wind farm proponents. The Commission notes that Chinese exporters for wind tower projects have won bids during the inquiry period at dumped prices. Accordingly, the Commission considers it likely that future exports of wind towers from China will be at dumped prices.

The Commission notes that the market is growing, and that KPE experiences practical limitations on its ability to supply wind towers beyond a certain distance or, potentially, beyond a certain scale. However, dumped prices for wind towers conferred a price advantage in the market to Chinese exporters. The evidence before the Commission indicates that KPE's ability to win tenders was impacted as a result, such that it either reduced its prices or lost the tender altogether. The continued export of wind towers at dumped prices is therefore likely to cause a continuation or a recurrence of the injury that the measures are intended to prevent.

Korea

In respect of exporters from Korea, the evidence before the Commission indicates that Korean exports are not price competitive with other suppliers in the market, regardless of the anti-dumping measures. The largest Korean exporter, Win&P, has some excess capacity but a clear bias towards its domestic market and to the USA. There is little evidence before the Commission that suggests dumping is likely to recur in the absence of the measures.

Noting the growth of wind tower supply from countries not subject to the Notice and the comparatively cheaper prices for exports from China, the Commission considers it unlikely that future exports of wind towers from Korea would cause a continuation or recurrence of the injury that the measures are intended to prevent.

8 NON-INJURIOUS PRICE AND LESSER DUTY RULE

8.1 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.

8.2 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).[44]

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.

However, pursuant to subsection 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 certain circumstances. Neither of those circumstances (being the composition of the Australian industry or the method of ascertaining normal value in circumstances of a particular market situation in the country of export) are relevant to the present inquiry.

8.3 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
- 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.

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[44] Subsection 8(5B) of the Dumping Duty Act.

8.4 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 and differ considerably to the wind towers imported from overseas;
- each OEM-related entity 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; and
- 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 has concluded 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 three approaches. Therefore, the Commission 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 inquiry period. As a result the NIP is not operative for all exporters.

9 PROPOSED RECOMMENDATIONS

9.1 Summary

Having established that dumping and material injury are likely to continue or recur in the absence of the anti-dumping measures, the Commissioner proposes to recommend that the Minister secure the continuation of the anti-dumping measures applying to certain wind towers exported to Australia from China on and after 17 April 2019.

The Commissioner proposes to recommend that the variable factors in relation to all exporters subject to the Notice be altered. The Commissioner also proposes to recommend that, in continuing the anti-dumping measures, IDD be calculated based on the *ad valorem* duty method. The NIP would not be the operative measure in these circumstances.

The Commissioner proposes to recommend that the Minister allow the anti-dumping measures applying to wind towers exported to Australia from Korea to expire.

9.2 Existing measures

The method of IDD currently applied to the goods is the *ad valorem* duty method.

9.3 Forms of duty available – dumping

The forms of duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013*:

- fixed duty method ($X per tonne);
- floor price duty method;
- combination duty method; or
- *ad valorem* duty method (i.e. a percentage of the export price).[45]

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the *Guidelines on the Application of Forms of Dumping Duty November 2013*[46] and relevant factors in the market for the goods.

9.3.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises powers to ascertain an amount for the export price and the normal value.

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[45] Section 5 of the *Customs Tariff (Anti- Dumping) Regulation 2013*.

[46] Available on the Commission website.

9.3.2 Floor price duty method

The floor price duty method sets a “floor” – for example a normal value of $100 per tonne – and duty is collected when the actual export price is less than that normal value of $100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

This duty method does not use an ascertained export price as a form of “floor price” as occurs with the combination and fixed duty methods.

9.3.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* dumping duty is determined for the product as a whole, meaning that a single ascertained export price is required when determining the dumping margin.

9.3.4 Combination duty method

The combination duty comprises two elements: the “fixed” element and the “variable” duty element. The fixed element is determined when the Minister exercises powers to “ascertain” an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* on the ascertained export price.

The variable component stems from a feature of this form of duty whereby, having ascertained the export price for the purposes of imposing the dumping duty, if the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price). It is called a “variable” element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

9.4 Consideration of 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.

The NIP, if 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 subsection 8(5BAA) of the Dumping Duty Act.

The proposed measures relating to the goods is summarised below.

Country	Exporter	IDD	Form of measures
China	Shanghai Taisheng Wind Power Equipment Co. Ltd	8.8%	*ad valorem* rate
	All other exporters	11.6%	

Table 10 – Proposed measures

10 APPENDICES AND ATTACHMENTS

Appendix A	Government of China influence in Chinese steel market
Confidential Attachment 1	Market analysis
Confidential Attachment 2	Economic condition of Australian industry
Confidential Attachment 3	TSP Shanghai dumping margin calculation
Confidential Attachment 4	Steel Cost uplift analysis (China)
Confidential Attachment 5	Win&P production capacity analysis
Confidential Attachment 6	Uncooperative exporter analysis (China)
Confidential Attachment 7	Injury and causation analysis (Australian Industry)

APPENDIX A - GOVERNMENT OF CHINA (GOC) INFLUENCE IN CHINESE STEEL MARKET

The Commission considers the GOC's involvement within and influence over the steel industry to be a primary cause of the prevailing structural imbalances within both the broader steel industry. This involvement includes the issuing of planning guidelines and directives along with provisions of direct and indirect financial support.[47, 48] These are discussed in further detail below.

1 Role and operation of State Owned Enterprises (SOEs)

Between 2010 and 2015, SOEs accounted for 44 per cent of total Chinese steel production,[49] however this may have been as high as 60 per cent.[50]

The World Bank has found that "state enterprises have close connections with the Chinese government. SOEs are more likely to enjoy preferential access to bank finance and other important inputs, privileged access to business opportunities, and even protection against competition."[51] While the Commission does not consider that the presence of these entities alone causes markets to be distorted, it does consider that the presence of these entities is likely to result in the GOC's plans and directives being adhered to. The Commission also considers that the support provided to these entities by the GOC has enabled many of them to be operated on non-commercial terms for extended periods, significantly impacting supply and pricing conditions within the domestic Chinese market.[52]

Examples of these support mechanisms include government subsidies, support from associated enterprises (through direct subsidy, interest-free loans or provision of loan guarantees) and loans from state-owned banks.[53]

The Commission considers these mechanisms have supported the rapid expansion of steel production capacity in the SOE segment, in spite of repeated attempts by the Central Government to reduce the scale of steel production. It is also the Commission's view that these support mechanisms have created rigidities in the way recipient firms respond to price and profit signals and hence have significantly contributed to the excessive investment in capacity, excess steel production and distorted prices.

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47 Support measures include stimulus programs, land and energy subsidies and soft lending policies.

48 Duke Centre on Globalisation, Governance & Competitiveness (Duke Centre), 2016. *Overcapacity in Steel: China's role in a global problem*, September 2016, p24.

49 Liu. H & Song. L, 2016, p349.

50 Platts Steel Business Briefing (Platts), *Global Market Outlook*, January 2016, p14.

51 World Bank, *China 2030: Building a Modern, Harmonious, and Creative Society*, Report No. 96299 (March 2013), p25.

52 Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016*, p47.

53 Liu. H & Song. L, 2016, p348.

The significance of SOEs to the broader Chinese economy, including the steel industry, is also reflected in the State Council of China's recent *Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation* (the *Guidance*).[54] In introducing the *Guidance*, the State Council notes the important role of SOEs in actively promoting structural adjustment, optimisation of structural layout and quality improvement within the Chinese economy. The *Guidance* also indicates that the State Council will deepen reform of SOE policies and arrangements to optimise state owned capacity allocation, promote transformation and upgrading. Details concerning the promotion of central enterprises restructuring and reorganisation include the 'safeguard measures' theme, the strengthening of the organisation and leadership of SOEs, strengthening of industry guidance, increased policy support and improved support measures more generally.

2 Initiatives influencing Chinese steel markets

Specific initiatives announced in recent years to address imbalances in the Chinese steel markets include the Central Government's supply-side reform initiatives, *Advice on Addressing Excessive Capacity and Relieving Hardship for the Steel industry* (*GOC Advice*) and *The Opinions of the State Council on Reducing Overcapacity in the Iron and Steel Industry* (*GOC Opinions*).

The *GOC Advice* proposes that SOE capacity be reduced by 100 to 150 million tonnes by 2020, via the banning of new steel projects and elimination of what are colloquially known as "zombie mills".[55] The Central Government has also pledged a RMB 100 billion fund for employee compensation, social security payments and plant closure incentives in the coal and steel sectors.[56]

The *GOC Opinions* strictly forbids the registration of new production capacity in any form and demands that any production that does not meet environmental, energy consumption, quality, safety or technical standards be taken offline.[57]

The Commission recognises the GOC's recent attempts to restructure and reorganise the industry to manage excess capacity, oversupply and environmental concerns. Examples of these capacity management measures announced include tightening bank lending to smaller mills, industry consolidation through mergers and acquisitions and use of stricter environmental requirements to forcibly shut down capacity.[58] While noting these efforts are targeted at correcting current imbalances and resulting distortions, the Commission considers them to be evidence of the extent of the GOC's involvement within and influence over the broader steel industry during the review period.

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[54] State Council issues guideline on reorganization of SOEs, http://english.gov.cn/policies/latest_releases/2016/07/26/content_281475402145108.htm.

[55] Liu. H & Song. L, 2016, pp338-339. AME Group, Steel 2016: June Quarter, Strategic Market Study. 2016, Q2. p9. These mills would be shut down under normal competitive market conditions, due to either poor profitability or insolvency.

[56] Duke Centre, op cit, p38.

[57] KPMG, 2016. *The 13th 5 Year Plan: China's Transformation and Integration with the World Economy*, p29. Sourced from *GOC Opinions*, State Council, 4 February 2016.

[58] Platts, 2016. Global Market Outlook, Steel Business Briefing. January 2016, p14.

The key concern with zombie mills is that they reflect capacity that is idle rather than capacity that has been removed from the market permanently. This means that, while the temporary removal of this capacity has helped support competitive market conditions, those same plants are likely to return to production when higher steel prices prevail, leading to further distortions.[59] The extent of this issue is reflected in the concern that a significant amount of the capacity removed in 2016 was already idle, and that the real capacity permanently removed is estimated to be in the range of 12 million to 20 million tonnes per year, compared to the reported 65 million tonnes.[60] As at April 2017, it was reported that China had an estimated 650 million tonnes of overcapacity, and favourable market conditions would likely extend the lifespan of zombie companies, delaying the GOC's steel industry reforms.[61]

The effectiveness of the GOC's attempts to address overcapacity through mergers and acquisitions have been constrained by its desire to promote:

- the replacement of older mills with new larger and more efficient mills; and
- closing smaller mills to offset the commissioning of new larger mills.

While this is likely to improve the industry's structure over the longer term, its impact to date has been to increase production and exacerbate the existing structural imbalances. For example, the announcement of the creation of the BAOWU Steel Group indicated that it would decommission 2.5 million tonnes of capacity to address overcapacity, however, it also commissioned nine million tonnes of new capacity at its Zhanjiang facility.[62]

In citing the GOC's ongoing interventions within the domestic steel industry, it is the Commission's view that these attempts to address existing structural imbalances have had limited success to date. Constraints in the effectiveness of these initiatives not only relate to the extent of the existing imbalances in the industry, but also difficulties in coordinating activities between central, provincial and local levels of government. The resistance of provincial and local governments to closing down mills relates to their role as major employers, sources of tax revenue and providers of social services within their respective regions.[63] Specific examples of these issues include the reliance of their tax systems on business revenue (including production based VAT) and gross domestic product (GDP) oriented performance measures which encourage over-investment.[64]

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59 Platts, 2017. Global Market Outlook, Steel Business Briefing. January 2017, p10.

60 Ibid.

61 DBS Asian Insights, China's steel sector supply reform, April 2017, p5

62 Platts, 2016. Global Market Outlook, Steel Business Briefing. June 2016, p11.

63 Platts, 2016. Global Market Outlook, Steel Business Briefing. April 2016 p16.

64 Duke Centre, op cit, p29.

Industry planning guidelines and directives China adopted its 13th *Five-Year Plan for National Economic and Social Development* (the Plan) on 15 March 2016. The Plan outlines China's goals, principles and targets for infrastructure, the environment, financial services, health and social and economic development for the five years to 2020. The Plan has a strong emphasis on supply-side structural reform that promotes the upgrade of industrial structures, strengthening market oriented reforms, reducing industrial capacity, inventory, financial leverage and costs, and correcting structural shortcomings.[65]

To support the Chinese steel industry's development in line with the Plan, the *Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)* was developed. It aims to raise the average annual growth rate of industrial added value from 5.4 per cent in 2015 to 6 per cent by 2020, raise the capacity utilisation rate from 70 per cent in 2015 to 80 per cent by 2020, and raise the industrial concentration in top ten producers from 34.2 per cent in 2015 to 60 per cent by 2020.[66] Examples of industry's response to these directives is reflected in the restructuring of Baosteel Group and Wuhan Iron and Steel Group, two large centrally controlled SOEs whose merger created the China Baowu Steel Group Corporation (BAOWU Steel Group). In 2016, BAOWU Steel Group was the largest producer of crude steel in China and the second largest worldwide.[67]

There have been a number of GOC policies, plans and initiatives relevant to the China steel industry published over many years, including the *National Steel Industry Development Policy* (2005), the *Blueprint for the Adjustment and Revitalisation of the Steel Industry* (2009) and the *2011-2015 Development Plan for the Steel Industry* (2011).[68] The Commission's view is that these have been largely superseded by other policies and plans.

Some of the key themes and objectives of major GOC planning guidance and directives used to influence the structure of the Chinese steel industry include:

1. Steel Industry Adjustment Policy (2015 Revision)

- Upgrading product mix.
- Rationalising steel production capacity.
- Adjustments to improving organisational structures.
- Energy conservation, emission reductions, environmental protection.
- Production Distribution.
- Supervision and administration.
- Guiding market exit.
- Methods of, orientation and oversight of mergers and reorganisations.
- Consolidate number of steel companies.
- Lift capacity utilisation rates to 80 per cent by 2017.

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65 KPMG, op cit, p3.

66 King & Spalding, China Issues 13th Five Year Plan for the Steel Industry, Yan, Linga, November 22, 2016.

67 Statista, Steel producers worldwide based on production volume 2016, June 2017.

68 In noting that some of the listed documents are now dated, the Commission considers that this further demonstrates long term involvement of the GOC within the Chinese steel industry.

2. **Circular of the State Council on Accelerating the Restructuring of the Sectors with Production Capacity Redundancy**

    - Promoting of economic restructuring to prevent inefficient expansion of industries that have resulted from blind expansion.
    - Intensify the implementation of industrial policies related to the iron and steel sector to strengthen the examination thereof and to improve them in practice

3. **State Council Guidance on the Promotion of Central Enterprises Restructuring and Reorganisation**

    - SOEs restructuring and reorganisation should serve national strategies, respect market rules, combine with reforms, follow laws and regulations, and stick to a coordinated approach.
    - State-owned capital should support SOEs, whose core businesses are involved in national and economic security and major national programmes, to strengthen their operations, and allow non state-owned capital to play a role, while ensuring the state-owned capital's leading position.
    - Related departments and industries requested to steadily promote restructuring of enterprises in fields such as equipment manufacturing, construction engineering, electric power, steel and iron, non-ferrous metal, shipping, construction materials, tourism and aviation services, to efficiently cut excessive overcapacity and encourage restructuring of SOEs.

4. **The Iron and Steel Industry Adjustment and Upgrade Plan (2016-2020)**

    - Removal of 100 to 150 million tonnes of capacity between 2016 and 2020.
    - Raising of capacity utilisation rates to 80 per cent by 2020.
    - Further industry consolidation leading to 10 largest producers accounting for 60 per cent of production by 2020.

In addition, broader industrial restructuring and reorganising directives of the GOC have an impact on the China steel industry.[69]

In assessing the relevance of these planning guidelines and directives, the Commission notes the importance of the GOC's national five year plans which provide the overarching framework for the industry and local government plans. Regarding industry specific planning guidelines and directives, the Commission notes, but does not agree with, the GOC's previously expressed view that they are for guidance and are not enforceable.[70] Mechanisms through which the Commission considers the GOC is able to enforce these guidelines and directives include the presence and role of SOEs within the broader steel industry, the role of the National Development and Reform Commission (NDRC) and explicit enforcement mechanisms.

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[69] For example, *Notice of Several Opinions on Curbing Overcapacities and Redundant Constructions in Certain Industries and Guiding the Healthy Development of Industries* (2009), *Guiding Opinions on Pushing Forward Enterprise M&A and Reorganisation in Key Industries* (2013), *Guiding Opinions on Resolving Serious Excess Capacity Contradictions* (2013) and *Directory Catalogue on Readjustment of Industrial Structure* (2013 Amendment).

[70] *International Trade Remedies Branch Report No. 177* (REP 177), p123 refers.

The GOC, where it is also the majority owner of an SOE, can exert its influence through the appointment of board directors and chief executives.[71]

SOEs' significant share of total Chinese steel production, and propensity to follow government guidance and directives, ensures that the GOC is able to influence broader trends in industry capacity and steel production. Similarly, the NDRC, through its dual role of developing planning guidelines and directives and approving large scale investment projects, has the capacity to ensure that the broader objectives of the central government are implemented. Explicit enforcement mechanisms detailed within directives, such as the State Council notice on *Further Strengthening the Elimination of Backward Production Capabilities and Guidelines*, includes a range of sanctions, such as revocation of pollutant discharge permits, restrictions on the provision of new credit support, restrictions on the approval of new investment projects, and restrictions on the issuing of new and cancelling of existing production licenses.[72]

A further example of the GOC's use of planning guidelines and policy directives to achieve its objective can be seen in the GOC's *Standard Conditions of Production and Operation of the Iron and Steel Industry*. It is the Commission's understanding that this document sets out the minimum requirements for production and operation in the Chinese steel industry. Firms are incentivised to comply with the standard conditions, as doing so provides the basis for policy support. In contrast, firms that do not conform are required to reform, and if they still fail to conform, must gradually exit the market.[73]

The Commission therefore considers that the GOC's historic and continued involvement within the Chinese steel industry, through its policies, planning guidelines, plans and directives, materially contributed to the steel industry's overcapacity, oversupply and distorted structure during the review period. It is the Commission's view that cost purchase plate steel would be substantially different in a market not characterised by GOC influence.

3 Direct and indirect financial support

Examples of specific support programs provided to Chinese steel producers by the GOC, as identified by the American Iron and Steel Institute and the Steel Manufacturers Association, include preferential loans and directed credit, equity infusions and/or debt-to equity swaps, access to land at little or no cost, government mandated mergers (permitting acquisition at little or no cost) and direct cash grants for specific steel construction projects.[74] Similar programs have been previously identified by the Commission in respect of the Chinese steel industry. It is the Commission's view that these programs have directly contributed to conditions within the Chinese steel industry during the review period by providing direct financial support to recipient steel producers.

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[71] Zhang, Dong and Freestone, Owen, China's unfinished state-owned enterprise reforms, https://treasury.gov.au/publication/economic-roundup-issue-2-2013-2/economic-roundup-issue-2-2013/chinas-unfinished-state-owned-enterprise-reforms/.

[72] REP 177, p128 refers.

[73] Announcement on the *Standard Conditions of Production and Operation of the Iron and Steel Industry*. Included in the context of REP 177 on the EPR for that case.

[74] Duke Centre, op cit, p25.

However, the Commission notes that, in respect of these reviews, countervailable subsidies have only been received by exporters referred to as “uncooperative exporters” from China. These subsidies and tax concessions reduce the operating costs of Chinese steel enterprises, confer a competitive advantage through the ability to offer steel products at lower prices, and increase the profitability of steel production.[75] It supports unprofitable producers, delaying or preventing their timely exit from the industry.

4 Taxation arrangements

The Commission has previously identified evidence of export taxes and export quotas on a number of key inputs in the steel making process including coking coal, coke, iron ore and scrap steel in *Anti-Dumping Commission Report No. 198*.[76] The Commission notes that the GOC provided a recent submission in connection with another investigation which is relevant to these previous findings.[77] The GOC has indicated that the export tariff and export quota on coke have been removed, but that export tariffs remain in place for other materials, namely iron ore (10 per cent), scrap steel (40 per cent) and steel billet (10 per cent). Base on the information available, the Commission has found that these measures would likely to continue to keep input prices artificially low and create significant incentives for exporters to redirect these products into the domestic market, increasing domestic supply and reducing domestic prices to a level below what would have prevailed under normal competitive market conditions.

The GOC has traditionally operated, amongst other taxation arrangements, a VAT and a VAT rebate system for certain exports. Under the Chinese VAT system, a 17 per cent tax is paid on consumption of goods, including the inputs used in the production of steel. For goods produced and sold within China, the tax is ultimately paid by the final consumers of the particular good. Because it is difficult for exporters to pass these taxes on, some steel exporters have traditionally been compensated for VAT paid during the production process through VAT rebates.

Through altering the VAT rebates and taxes applied to steel exports, the GOC is able to alter the relative profitability of different types of steel exports and of exports compared to domestic sales. For example, by either reducing VAT rebates or increasing export taxes on steel exports, the GOC is able to reduce the relative profitability of exports to domestic sales and hence provide significant incentives for traditional exporters to redirect their product into the domestic Chinese market. By using these mechanisms to alter the relative supply of particular steel products in the domestic market, the GOC is also able to influence the domestic price for those products.

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[75] Anti-Dumping Commission, *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission August 2016*, p45.

[76] Concerning hot rolled plate steel exported from China, the Republic of Indonesia, Japan, the Republic of Korea and Taiwan; pp. 41-43.

[77] Submission from GOC regarding the investigation on railway wheels exported from China and France; EPR 466, Document 073 refers.