

Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609

Canberra +61 2 6163 1000
Brisbane +61 7 3367 6900
Melbourne +61 3 8459 2276

www.moulislegal.com

Brisbane
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia



commercial + international

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The Director
Investigations 1
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Director

Shanghai Taisheng Wind Power Equipment Co., Ltd Comments on SEF487 - margin calculation

We write on behalf of Shanghai Taisheng Wind Power Equipment Co., Ltd (“TSP”) in relation to the continuation inquiry (“the Inquiry”) concerning wind towers exported from China and Korea.

The Statement of Essential Facts No 487 (“the SEF”) was published on 25 January 2019. The confidential calculation of the dumping margin arrived at by the Commission, as it pertains to the SEF in relation to the wind towers exported by TSP to Australia (“the GUC”) during the inquiry period (“the POI”), was 8.8%

In this submission, we respectfully draw the Commission’s attention to several methodological errors in the margin calculation.

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A Incorrect determination of the amount of profit for normal value

1. Regulation 45(2) is not suitable and cannot be applied to TSP

Almost invariably, wind towers are uniquely designed products. The SEF recognises this. They need to be made to specifications that suit the project concerned. Therefore, the wind towers for any particular project are unique:

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.¹

This circumstance is clearly applicable to TSP, whose Australian sales of the GUC were different to the wind towers it sold in the domestic market during the POI. As such, the Commission is correct to refer to Section 269TAC(2)(c) of the *Customs Act 1901* ("the Act") for a constructed normal value:

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...

The SEF then proceeded to determine the amount of profit based on Regulation 45(2) of the *Customs (International Obligations) Regulation 2015* ("the Regulation"):

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.²

We respectfully submit that the SEF's profit calculation approach is incorrect, because (a) there were no sales of like goods in the market of the country of export, and (b) the OCOT test could not be carried out for the purposes of the Regulation in the circumstances of this case.

Regulation 45(2) provides:

(2) *The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade. [underlining supplied]*

The Regulation acknowledges that the method prescribed by Regulation 45(2) is not always applicable, and that alternative methods should be adopted, as provided in Regulation 45(3):

(3) *If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:*

(a) *identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of*

¹ The SEF, at page 30.

² *Ibid*, at page 33.

export; or

(b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information.

Applying the Regulation to TSP's circumstances, it was established that TSP did not have any domestic sales of *like goods* to the GUC it exported to Australia during the POI. Therefore using Regulation 45(2) is either not possible, because there are no sales of like goods, or "not reasonably practicable", on its own terms, for the same reason. This view is supported by the Commission's finding in the on-going investigation concerning railway wheels from China, where the Commission confirmed that Regulation 45(2) is not applicable where there is an absence of domestic sales of like goods:³

A profit may be unable to be determined under Regulation 45(2) of the Customs (International Obligations) Regulation 2015 (the Regulation) in the absence of sales of like goods by the exporter or producer of the goods in the ordinary course of trade.

The verification team has determined profit [] as per Regulation 45(3)(a) of the Regulation.

This view is reaffirmed in the Commission's Statement of Essential Facts No. 466, in the same investigation:⁴

As the Commission's view is that Masteel does not sell like goods in China, it has not been able to work out an amount for SG&A costs under subsection 44(2) of the Regulation. The Commission has worked out an amount for SG&A under subsection 44(3)(a) of the Regulation by identifying the actual amounts of SG&A costs incurred by the exporter in the production and sale of the same general category of goods in China.

The Commission calculated an amount for profit under subsection 45(3)(a) of the Regulation. The Commission calculated an amount of profit by identifying the actual amounts realised by Masteel from the sale of the same general category of goods (other types of railway wheels sold by Masteel) on the domestic market of China.

Further, due to the nature of the wind tower product, each being a unique product, it is also not possible or practicable to conduct the ordinary course of trade test as required by Regulation 45(2). This obstacle was recognised in the Commission's previous investigation concerning power transformers, which are project-based products, each with a unique design. In that investigation the Commission noted:⁵

The Commission is satisfied that power transformers are complex items of capital equipment built to the specifications of the purchaser where it is unlikely that any two power transformers

³ See, Verification Report for Maanshan Iron and Steel company Ltd, at page 11.

⁴ See SEF 466, at page 25.

⁵ See ADC Report 219, at pages 42 and 43.

are identical. Therefore, as each power transformer is unique the weighted average cost of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated. Consequently, because the recovery test cannot be conducted meaningfully the ordinary course of trade test cannot be fulfilled.

...

The Commission has adopted the position it proposed in the Issues Paper No. 2014/01. The ordinary course of trade provisions at s. 269TAAD are an important element of those provisions in determining whether the cost of goods sold at a loss are recoverable within a reasonable period. The recovery test is at s. 269TAAD(3). In the case of power transformers, each unit is uniquely constructed and the costs and prices can differ significantly from one unit to another. It is the inability to make reasonable adjustments to prices of models sold domestically, to ensure fair comparison with export prices, that explains why the Commission has not established normal values on the basis of domestic selling prices using s. 269TAC(1). Furthermore, the Commission considers that a "weighted average cost" of goods contemplated in s. 269TAAD(3) is not meaningful for power transformers. Consequently, the recovery test cannot be conducted and the ordinary course of trade test cannot be fulfilled. The Commission considers it is not reasonably possible to calculate the profit on the sale of the goods made in the ordinary course of trade in accordance with Regulation 181A(2).

The Commission considers it is necessary to calculate the profit for use in constructed normal values using one of the provisions in regulation 181A(3). The Commission notes there is no hierarchy and each of these alternatives is equally available. Accordingly, the Commission has determined a profit in accordance with Regulation 181A(3)(a) which refers to the actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country.

As you know the "Regulation 181A" applied in Report 219 has been replaced by Regulation 45 of the present Regulations, with identical text and structures. Therefore the Commission's rationale as cited above should equally apply to the present case in relation to TSP's wind towers. The Commission has fully verified the domestic and Australian sales reported by TSP and can be satisfied that there are indeed no domestic sales of like goods. The Commission has also determined that the ordinary course of trade test cannot be fulfilled in relation to TSP's domestic sales of wind towers, in the same way as the Commission found that test could not be fulfilled in the power transformer investigation:⁶

The verification team considers that when calculating profit under subsection 45(2) of the Customs (International Obligations) Regulation 2015 (the Regulation), each domestic sale is a unique product (but still are like goods) and each sale as a model of wind tower. In the absence of weighted average CTMS data to conduct a recoverability test, sales at a loss are also considered not recoverable in this case.

As such, we submit that the opinion expressed in SEF, to apply Regulation 45(2) despite the lack of domestic sales of like goods and despite the inability to conduct any ordinary course of trade test, is not sustainable.

⁶ See verification report for TSP, at page 13.

We respectfully submit that the correct view is that Regulation 45(2) is not suitable for the determination of the amount of profit for TSP. Instead, Regulation 45(3)(a) should be applied, by reference to the actual amount of profit realised by TSP from the sale of the same general category of goods in the domestic market. For this purpose, all of TSP's domestic sales of wind towers can be regarded as the universe for the "sale of the same general category of goods". Such approach is supported by the Commission's practices in previous and other ongoing investigations, as identified above.

2. Incorrect SG&A used in profit calculation

In this regard, we refer to the situation in which TSP Shanghai's actual SG&A has not been applied on a project by project basis in the *Confidential Appendix 3 – Domestic Sales – Domestic CTMS Summary*, being part of the margin calculation spreadsheets. We observe that this approach (using average SG&A for the whole POI) has resulted in a distortion to the CTMS for individual projects and for the purpose of calculating the profit for each project. Accordingly, consistent with the use of CTMS from TSP's subsidiary for each project, the per project CTMS should be stated using the verified, actual TSP SG&A for each project, for the purpose of profit determination. The *Domestic CTMS Summary* in Appendix 3 should be amended to reflect the by-project CTMS. In any case, if a weighted average SG&A is to be applied, the calculation should at least apply the average SG&A percentage for 2017 and 2018 separately and respectively to the projects which fall within the relevant period.

3. Incorrect exclusion of TSP's domestic sales

In this regard we note that the SEF's profit calculation is based on a confined universe of TSP's domestic sales, being those which were manufactured by TSP and those manufactured by TSP's subsidiaries, [CONFIDENTIAL TEXT DELETED – corporate arrangement]. On the other hand, some of TSP's domestic sales were [CONFIDENTIAL TEXT DELETED – commercial arrangement involving third party processors], and have been excluded from the profit calculation.

As advised during the verification, TSP is the seller of all of the domestic sales of wind towers reported in the exporter questionnaire response ("the EQR"). TSP maintained full control of the project tendering, negotiation, sales, organisation of production, and the invoicing processes, and takes ultimate responsibility for quality control and compliance under the relevant contractual requirements with TSP's domestic wind tower customers. [CONFIDENTIAL TEXT DELETED – commercial arrangement involving third party processors]

Accordingly, we submit that all of TSP's domestic sales of wind towers should be treated as equally relevant for the determination of the amount of profit for normal value purposes, regardless of the type of [CONFIDENTIAL TEXT DELETED – commercial arrangement] involved.

B Incorrect and unreasonable determination of cost of production

At the outset, and without detracting from our primary submission, which we explain in detail below, we would like to point out a simple calculation error concerning the "cost uplifting" applied in the dumping margin calculation. The uplifted steel plate cost worked out in the SEF was based on TSP's average steel plate purchase in each quarter of the POI. However, as TSP's steel plate purchases are specific for each project, this approach does not correctly reflect the steel plate cost in relation to the GUC exported to Australia. Accordingly, if such uplifting is required, then it should be worked out based on

the actual and specific steel plate costs relating to TSP's Australian sales, rather than using an average cost.

We now turn to our primary submission concerning this issue. Firstly, TSP express its disappointment and disagreement with the SEF determination that the *"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"*. This is not true. Moreover, we are bewildered by the enormous level of "uplifting" applied to arrive at a cost which is said to reflect competitive market cost for plate steel. The uplifted cost was over [CONFIDENTIAL TEXT DELETED – number]% higher than the SEF's competitive market benchmark, being the SBB plate steel index. We explain our concerns in detail as follows.

The SEF indicates that its finding concerning "competitive market cost" is mostly due to the Commission's broad view of the so called "GOC involvement in steel industry":

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. 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.

It would appear to us that none of these observations and concerns on the overall level of government involvement provide any evidence that TSP's cost for plate steel is somehow artificially low and must be "uplifted". It is one thing to find that the cost may not reflect competitive market cost, but quite another to find the cost is *necessarily* low and requires an "uplifting".

Further, the question of whether an exporter's cost of production *"reflect[s] competitive market costs associated with the production or manufacture of like goods"* is a question with which the Commission must genuinely engage for each exporter and in each investigation or inquiry. This question cannot be answered by default, such as by making a high-level observation of the kind of industrial policy and government involvement in the Chinese steel industry as a whole. It must be accepted that even in a market affected by any such "distortions", actual prices of raw materials paid by a particular exporter, at a particular level, may indeed be in line with the price of a competitive market not affected by the same distortions.

Therefore, it is incorrect and without basis for the SEF to bypass a genuine examination of TSP's particular situations, and to simply apply an uplift based on information that is now more than 5 years old, for the purpose of determining the cost of production for TSP for the POI.⁷

The SEF describes the "steel plate uplift methodology" as follows:

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.

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.

We have reviewed the Confidential Attachment 4, and have the following observations:

- The SEF determined that the Platts benchmark of the Plate CFR East Asia ("the Platts benchmark") is the benchmark for competitive market cost for plate steel.
- The "uplifted plate steel cost from 2013 wind towers investigation" was compared to the Platts benchmark for the same period, being Q1 2012 to Q4 2012, which shows the former was on average **[CONFIDENTIAL TEXT DELETED – number]**% higher than the competitive market benchmark.
- This **[CONFIDENTIAL TEXT DELETED – number]**% was then effectively applied as an uplift to the Platts benchmark for the POI, to arrive at the "competitive market cost" for the POI. That is, the competitive market cost, as reflected in the Platts benchmark was inflated by **[CONFIDENTIAL TEXT DELETED – number]**%, for the purpose of imputing the steel plate cost applicable for TSP.
- When TSP's steel plate cost is compared to the actual Platts benchmark over the POI, it shows that TSP's steel plate cost was sometimes **[CONFIDENTIAL TEXT DELETED – comparison]**

⁷ The uplift being applied is said to be based on Investigation 221 and Investigation 198. The information pertaining to Investigation 221 related to the period of 1 January 2012 to 30 June 2013, the information pertaining to Investigation 198 related to the period of 1 January 2012 to 31 December 2012

than the Platts benchmark, ranging from **[CONFIDENTIAL TEXT DELETED – comparison outcome]**. On average, TSP's plate steel cost was **[CONFIDENTIAL TEXT DELETED – comparison]** than the Platts benchmark.

- The inflated Platts benchmark cost was then used to uplift TSP's quarterly average plate steel costs, resulting in a weighted average cost increase of **[CONFIDENTIAL TEXT DELETED – number]**%.

In our view the above observations fatally impact upon the correctness of the cost determination for TSP. It would appear that a fixed uplift derived from a very dated investigation, with clear flaws (given how much higher the uplifted costs were in comparison to the competitive market cost from the Platts benchmark), was applied without proper examination, rather than using the market data of much more relevance to both the POI and TSP's situation.

For the Commission's consideration, we refer to the following facts:

- During the POI, TSP purchased plate steel both from domestic private suppliers (not SOEs) and from imported sources. This is because, for certain projects, the customer would specify the use of steel produced by a foreign supplier – such as steel produced in Japan. During the POI, the price charged for the steel plate imported from Japan was **[CONFIDENTIAL TEXT DELETED – price comparison]** to the steel plate purchased during the corresponding period – **[CONFIDENTIAL TEXT DELETED – price comparison]**. This indicates the plate steel cost as incurred by TSP in relation to the GUC did reflect the competitive market cost.
- The Commission recently conducted an investigation concerning wind towers from Vietnam, with an investigation period of 1 January 2015 to 31 December 2016. Thus, the Commission has access to the verified steel plate cost which it considered to reasonably reflect competitive market cost for the production of *wind tower*,⁸ and for a period which is much more proximate to the POI than those in Investigations 198 and 221 in 2013.
- The Commission also has access to and verified the steel plate cost for the Korean producer Win&P both in Investigation 221 and in this Inquiry.⁹ Win&P's information in this inquiry would have provided the Commission with the steel plate cost which reflected competitive market cost for the production of wind towers, for the POI.
- The Commission also has verified information relating to the plate steel cost of the Australian industry, which presumably also reasonably reflected competitive market cost – even though TSP is aware that some of the plate steel the Australian industry procured was indeed imported from China.
- TSP has obtained a copy of the daily SBB Steel prices (the same Platts information as referred to in the SEF) covering the POI, and observes that its plate steel cost is comparable to and **[CONFIDENTIAL TEXT DELETED – price comparison]** than the Platts benchmark during the POI.

TSP respectfully submits that all of the above factors, and the actual steel plate cost in TSP's record during the POI, would have provided the Commission with relevant, contemporary and accurate information for the purpose of determining whether TSP's plate steel cost reasonably reflected

⁸ As compared to the steel plate benchmark derived from Report 198, which is not specifically relevant to wind towers.

⁹ DOC012, Verification Report for Win&P.

competitive market cost and, if not, what that cost should have been. TSP is confident that these relevant information benchmarks will show that TSP's cost of production in relation to the GUC indeed reasonably reflected a competitive cost of production.

By contrast, in our view the information relied on by the SEF is deeply flawed, and not relevant information for the determination of TSP's cost of production of the GUC during the POI.

Firstly, as noted above, the starting point of the cost uplifting is based on "uplifted plate steel cost from 2013 wind towers investigation". The SEF described this starting point as follows:

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. [underlining supplied]

However this description is different the method described in Report 221, which states:

The Commission constructed a normal value with plate steel purchase costs adjusted using information from REP198 that the Commission considers reflects competitive market costs.

A competitive market cost for plate steel was established using verified domestic selling prices in China for plate steel from INV198. These prices were then compared to the unadjusted normal values established in INV198. The difference in these prices was then applied to the purchase cost of plate steel as reflected in TSP's records. [underlining supplied]

This discrepancy brings into question the precise method that was adopted in Report 221 and its logic.

Secondly, as noted in Termination Report 198, the Commission was of the view that Jigang Steel, being the only cooperative Chinese exporter in that investigation, had a cost of production for the plate steel reflective of the competitive market cost, as long as an adjustment to the coking coal cost was made:¹⁰

Following the finding of market situation, the Commission has calculated the normal value for JIGANG pursuant to s.269TAC(2)(c). The final report for Investigation 193a and Investigation 193b (REP 193) contained the finding that coking coal was provided by SIEs to manufacturers of galvanised steel and aluminium zinc coated steel at less than adequate remuneration. Given the overlap of the investigation periods for INV193a/193b and this investigation (6 months), the Commission considers that the cost of coking coal in JIGANG's records does not reflect a competitive market cost. On this basis, a normal value was constructed, with plate steel production costs adjusted for a cost of coking coal that the Commission considers reflects competitive market costs.

The subsidy margin determined for Jigang was 2.6% - indicating that any attempt to bring Jigang's cost of production for plate steel to a level that reflected competitive market cost would have been in line

¹⁰ See, Termination Report No 198, at page 11.

with the 2.6% subsidy margin, as compared to the [CONFIDENTIAL TEXT DELETED – number] % uplift the SEF is imposing on TSP.

Thirdly, it is clear from Report 198 that any calculation that referred to the kind of goods sold by Jigang or indeed any steel plate sales in that investigation could have been highly distorted due to the different types of plate steel involved. For instance, Report 198 noted that Jigang only exported a special type of plate steel to Australia, being the “Q&T green feed plate steel”, which is not used for producing wind towers. Jigang also sold both prime and non-prime grade steel plate in the domestic market, meaning that its domestic selling prices could have been affected by the different grades of products it sold.

The bottom line is that the method adopted in Report 221 appears to be highly questionable – and is completely at odds with the Commission’s approach towards the use of benchmark to determine “competitive market cost” or “cost uplifting” in every other investigation of which we are aware.

In any case, even if the Commission considers that the principle behind the “uplifting” method – based on a comparison of a Chinese producer’s actual cost of steel plate with the selling prices in other markets - is correct, then the Commission is still obliged to use relevant information. The information we identified above, at “a” to “e”, is information which is contemporary and relevant for the goods under consideration (plate steel used for producing wind towers). Any comparison outcome or differentials derived from Report 198 and Report 221 can only have historical value, and cannot fulfil the Commission’s objective of determining the cost of production for TSP for the POI in *this inquiry*. We urge the Commission to make its determination using the verified information it collected in this inquiry.

TSP submits that once the errors as identified above are corrected, the Commission will find that TSP’s Australian sales of the GUC were not “dumped”. In fact, they were sold at a very high profit level, both in absolute terms (being the level of net profit) and relative terms (when comparing the average profit TSP achieved in Australian sales with its domestic sales of wind towers). Further, given TSP’s high capacity utilisation rates during the POI and the fact that the Australian market for wind towers has expanded significantly in comparison to 2012, the Commission should form the view that there is insufficient evidence that TSP’s exports to Australia were dumped or that such dumping is likely to continue or recur in the future.

We respectfully request the Commission to reinstate the correct dumping margin for TSP – which we believe will be a “negative margin” or “not dumping”, and to recommend to the Minister that the dumping measures on wind towers exported by TSP either be discontinued or set at a zero percentage level.

Yours sincerely



Charles Zhan
Senior Associate