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

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

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia

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

www.moulislegal.com

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20 February 2019

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

By email

Dear Director

Shanghai Taisheng Wind Power Equipment Co., Ltd
Comment on SEF487 - proposed continuation of measures

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 GUC").

The Statement of Essential Facts No 487 ("the SEF") proposes to recommend that the measures be continued as they apply to TSP and all exporters from China. For TSP specifically, it is intended that the variable factors will be revised in line with a dumping margin of 8.8%.

TSP submits that the anti-dumping measures should not be continued in relation to exports by TSP.

Section 269ZHF(2) of the *Customs Act 1901* ("the Act)" provides the pre-conditions that must be satisfied for any proposed continuation of anti-dumping measures:

> *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 measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*

TSP submits that the Commissioner should not recommend to the Minister that the measures should be continued as against TSP. TSP is not like other exporters from China who are amongst the anonymous group of "other exporters" with respect to whom the SEF expresses considered reservations and concerns. Those "other exporters" have not contributed to the well-being of the Australian industry and market, have not come forward in the same cooperative and considerate manner as has TSP, and have not demonstrated facts and circumstances to suggest that the measures should be discontinued against them.

Contrastingly, TSP has done all of these things. It has contributed to the well-being of the Australian industry and market. It has come forward, cooperatively and considerately, in the original investigation, various duty assessments, and this inquiry, because of its interest in ensuring that it both understands

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the Australian anti-dumping system and so that it can collaborate with the applicant and with other Australian and international developers in renewable energy investment and generation in Australia. The facts and circumstances that pertain to TSP are far removed from those with respect to other Chinese wind tower manufacturers, who have shown themselves to be disinterested in the Australian industry and in the Commission's inquiry, and whose engagement with the Australian market in the future is likely to be opportunistic rather than knowledgeable.

TSP sincerely and respectfully submits that it would not be correct or preferable, in an evidentiary sense, and unreasonable in a discretionary sense, to find that the continuation of the measures against TSP is justified. It is submitted that the Commissioner should not be satisfied that the expiration of the measures against TSP would lead to or would be likely to lead to a recurrence of material injury caused by dumping.

We note that it is both of the two factors – the likelihood of dumping and the likelihood that such dumping would cause injury – that must be the subject of the Commissioner's positive satisfaction.

We address each of these factors in turn.

A We maintain that TSP's exports to Australia were not dumped, and that injurious dumping on TSP's part is unlikely to recur

In relation to the dumping margin assessment, we respectfully refer the Commission to our submission on behalf of TSP dated 13 February 2019. TSP hopes that the clarity and the reasoning in that submission are recognised by the Commission, with the end result being a finding that TSP's exports to Australia during the POI were not dumped. Instead, we believe that the information TSP has already provided and those submissions firmly demonstrate that TSP's sales were [CONFIDENTIAL TEXT DELETED – level] profitable in both the Chinese and Australian markets, both in absolute and comparative terms, and that TSP is unlikely to export to Australia at dumped prices in the future.

Added to that, and independently of that, it appears to us that the SEF's assessment of the "likelihood" of any continuation or recurrence of dumping relies on two matters. The first of these is the dumping margin calculation itself. The second is this observation in the SEF regarding production capacity:

> *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.*[1] [underlining supplied]

Concerning the "attractiveness" of the Australian market to exporters, and their "spare capacity", the SEF also states:

> *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*

1 See the SEF, at page 44.

> *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.*[2]

These comments are probably correct with respect to other Chinese exporters *but they do not apply to TSP*. TSP's capacity utilisation rate during the POI was over [CONFIDENTIAL TEXT DELETED – numberl]%. Given the nature of the wind tower products and project delivery requirements, this means TSP has been running at its full capacity. This high utilisation rate is expected to continue. For 2019, TSP currently estimates that its actual production will be around [CONFIDENTIAL TEXT DELETED – numberl] tonnes, which represents a utilisation rate of about [CONFIDENTIAL TEXT DELETED – numberl]%. This is consistent with the high utilisation rate of [CONFIDENTIAL TEXT DELETED – numberl]% in 2017 and [CONFIDENTIAL TEXT DELETED – numberl]% for the whole POI. As an example that TSP's capacity in the near future will continue at levels of high demand, please see attached [CONFIDENTIAL TEXT DELETED – confidential documentl], which shows that TSP currently is expected to produce [CONFIDENTIAL TEXT DELETED – numberl] sections in 2019 and [CONFIDENTIAL TEXT DELETED – numberl] in 2020 for [CONFIDENTIAL TEXT DELETED – customer].[3] Converting to a tonnage-based capacity using an average [CONFIDENTIAL TEXT DELETED – numberl] tonnes per section,[4] the [CONFIDENTIAL TEXT DELETED – confidential document] alone translates into about [CONFIDENTIAL TEXT DELETED – numberl]% of TSP's total capacity for 2019, and about [CONFIDENTIAL TEXT DELETED – numberl]% for 2020.

This [CONFIDENTIAL TEXT DELETED – confidential document] provides an indication of the level of capacity that [CONFIDENTIAL TEXT DELETED – customerl] expects from TSP. With the inclusion of orders from TSP's other major long term customers' orders, both actual and mooted, it will be apparent that TSP is not a manufacturer that has a need or incentive to "dump" wind towers in order to enter markets. Further, and importantly, as we explain below [CONFIDENTIAL TEXT DELETED – commercial arrangement], with respect to KPE's Australian market position.

The SEF also acknowledges that TSP has a strong focus on its domestic market, with the majority of its export sales made to [CONFIDENTIAL TEXT DELETED – third country markets].[5] Markets for the goods around the world are growing, in line with the global shift to renewable technology and government support for renewable outcomes. There is no reason to believe that the Australian market will be of higher prominence to TSP than it currently is, nor that it needs to be a priority market into which TSP must inevitably "dump" wind towers. TSP has maintained a steady low-volume of exports to Australia since the original investigation, made possible by TSP's [CONFIDENTIAL TEXT DELETED – commercial relationship].

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2 See the SEF at page 40.

3 Please see Attachment 1. **[CONFIDENTIAL TEXT DELETED – explanation of confidential attachment]**

4 This is based on the average per section weight of wind towers TSP produced for **[CONFIDENTIAL TEXT DELETED – customer]** during 2018

5 *Ibid,* at page 40.

B It would be highly *unlikely*, not *likely*, for exports by TSP to cause material injury to the Australian industry

The SEF confirms that Keppel Prince Engineering ("KPE") is now Australia's *"largest (and now only) manufacturer of wind towers and sections"*.[6] It is reported in the SEF that KPE returned to profit during the POI for the first time since 2008, in the face of increasing competition from imports since 2015.

As we explain below, TSP contributed to KPE's improved performance.

The Australian market for wind towers is vastly different to the one that the Australian industry faced when the original measures were imposed. As noted in the Commission's Termination Report No 405:

> *Demand for wind towers in Australia has fluctuated significantly since the market commenced in 2000. These fluctuations have coincided with changes in government policies and legislation.*
>
> *Demand for wind towers in Australia during the injury analysis period (from 1 January 2013) was particularly volatile. In June 2015, it was confirmed by the Australian Government that the RET was 33,000 gigawatt hours (GWh) and that it would continue until 2020. Demand for wind energy and thus wind towers in Australia recovered following confirmation of the RET.*
>
> *4.4.2 Future trends in Australian market demand*
>
> *The Australian renewable energy market has experienced growth following the end of the investigation period as demonstrated in figure 3 below, which shows a steady increase in committed projects.*
>
> [graph omitted]
>
> *The Commission understands that this strong demand is a consequence of stability in the RET as well as support by state governments for renewable energy. For example, Victoria's recently enacted Renewable Energy (Jobs and Investment) Act 2017, sets a goal of 25 per cent renewables by 2020 and 40 per cent by 2025.*
>
> *Consistent with this, the applicants predict demand:*
>
> - *for the calendar year 2017 to be 722 wind towers. During the course of this investigation the Commission received a revised estimate of 740 from KPE. KPE also indicated that approximately half of these tenders have been awarded.*
> - *for the calendar year 2018 to be 717 towers. A revised estimate of 753 towers was subsequently provided by KPE.* [footnotes omitted]

This fast expansion of the Australian market is recognised again in the SEF:

> *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*

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[6] *Ibid*, at page 20.

Renewable Energy Target (RET). The figure below demonstrates an expanding trend of RET requirements from 2001 to 2030.

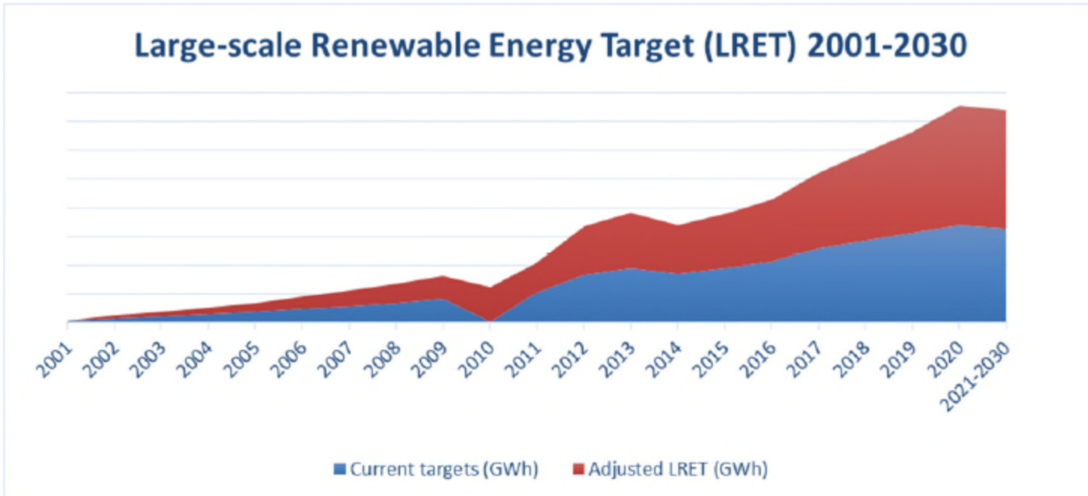

Figure 1 - Large-scale RET 2001-2030
Source: Clean Energy Regulator[21]

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.

In particular, the SEF observed that the sub-sector of the Australian market for wind towers of most relevance to KPE has become ever more supportive of the Australian industry:

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.

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, <u>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. Subsequently, six wind farm projects were awarded.</u>

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.

The Victorian specific policies are of particular relevance to KPE because, as noted by the SEF, KPE's ability to supply is relatively restricted to Victoria:

The Commission notes that KPE <u>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</u>. 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] [underlining supplied]

The advantage afforded to KPE for Victoria-based projects is not limited to its geographical location. The Victorian Government operates the Victorian Industry Participation Policy ("VIPP"). This was strengthened in 2018.[8] The VIPP mandates local content and other requirements for designated projects where the Victorian Government is involved – projects such as those conducted under the Victorian Renewable Energy Auction Scheme.[9] The SEF identifies this to be the case.[10]

The "safety net" effect of the VIPP and VRET to the Australian industry is confirmed by major wind turbine OEMs such as Vestas:[11]

> *Vestas claimed the Victorian Renewable Energy Target (VRET) will mean that the Australian industry (specifically KPE) will have sufficient volumes going forward.*
>
> …
>
> *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. Subsequently, six wind farm projects were awarded. The verification team understands that VREAS is aiming to achieve a higher proportion of local content and contribute to the development of skills and employment in Victoria.*
>
> *Due to the requirement for a large percentage of locally sourced supply in order to be successful in the VREAS, Vestas claims that there will be sufficient wind tower projects to ensure KPE can utilise its full capacity.* [footnote omitted]

We respectfully submit that nationwide policies and market changes together with Victoria's specific energy policy and local content requirements have provided clarity and assurance for KPE, so that the material injury it faced when the measure was originally put in place will not arise if the measure is allowed to expire as against TSP.

Given the particular relevance of the Victorian market, we note the following statements in the verification report for KPE:

> *The verification team also accepts that, while KPE has a geographical advantage for projects in south-eastern Australia, a substantial proportion of the Victorian towers market have been supplied from China. In the absence of the anti-dumping measures, KPE claims that it would lose an even greater proportion of the wind tower projects available in this region.*[12]

KPE's concern regarding competition from China in absence of the anti-dumping measure might be a valid one. However the Commission's statement does not apply to TSP, for a number of reasons.

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7 See the SEF, at page 44

8 See https://www.premier.vic.gov.au/local-jobs-first-now-the-law/ and https://localjobsfirst.vic.gov.au/ for further information.

9 See https://www.energy.vic.gov.au/renewable-energy/victorian-renewable-energy-auction-scheme.

10 See the SEF, at page 19

11 See Doc 010 - Vestas verification report, at page 8.

12 See Doc 009 – KPE Verification Report at page 20.

Firstly, the premise upon which it is based is not correct with respect to TSP, because TSP did not supply any Victoria-based projects during the POI. Therefore, during that time TSP did not engage in the kind of opportunistic competition that is evidently of concern to the Commission.

Secondly, and more recently, when TSP did participate in the Victorian wind tower market it did so in an orderly way. The **[CONFIDENTIAL TEXT DELETED – project name]** was supplied by TSP, after the POI **[CONFIDENTIAL TEXT DELETED – commercial arrangement]**. [13] **[CONFIDENTIAL TEXT DELETED – commercial arrangement]**. Due to the technical demands of projects, KPE is often not capable of supplying the full project.[14] **[CONFIDENTIAL TEXT DELETED – commercial arrangement]**, TSP's collaboration with TSP assisted KPE to supply the White Rock project in the northern tablelands of New South Wales during the POI.[15]

Because of that collaboration, the following comments in the SEF concerning the price effects of imports from China also cannot apply to TSP:

> *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.*[16]

In this regard we refer the Commission to the following evidence:

1 Email exchanges **[CONFIDENTIAL ATTACHMENT 2]**, in which **[CONFIDENTIAL TEXT DELETED – confidential correspondence]**;

2 Email exchanges **[CONFIDENTIAL ATTACHMENT 3]**, concerning **[CONFIDENTIAL TEXT DELETED – confidential correspondence]**. These emails clearly show:

  [CONFIDENTIAL TEXT DELETED – confidential correspondence].

3 Email exchanges **[CONFIDENTIAL ATTACHMENT 4]**, concerning **[CONFIDENTIAL TEXT DELETED – confidential correspondence]**. Relevantly, the emails show:

  [CONFIDENTIAL TEXT DELETED – confidential correspondence]

4 **[CONFIDENTIAL ATTACHMENT 5]**, which **[CONFIDENTIAL TEXT DELETED – commercial arrangement]**.[17]

Thirdly, **[CONFIDENTIAL TEXT DELETED – other project supplied during the POI]**.

All of these facts strongly indicate that TSP's exports to Australia, and its continued supply of wind towers to the Australian market, has been and will continue to be *beneficial* to the Australian industry, and indeed are **[CONFIDENTIAL TEXT DELETED – commercial arrangement]**. TSP has proven from

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13 See TSP's EQ response, at B-2(h), and the Attachments thereto.

14 As noted in the SEF, at page 44.

15 http://www.australianmanufacturing.com.au/41440/keppel-prince-engineering-wins-14m-tower-supply-contract-for-white-rock-wind-farm

16 *Ibid*, at page 45.

17 See **[CONFIDENTIAL ATTACHMENT]**

its conduct that it [CONFIDENTIAL TEXT DELETED – effect of TSP's export to Australia is non-injurious].

An expiration of the anti-dumping measures against TSP can only *benefit* KPE, rather than *injure* KPE. [CONFIDENTIAL TEXT DELETED – effect of TSP's export to Australia is non-injurious].

***

In conclusion, we respectfully request the Commission to revisit and reconsider the broad-brush approach towards all Chinese exporters that is set out in the SEF. The Commission has made assumptions about the likely behaviour of other Chinese exporters, which TSP can understand and does not seek to upset. However TSP believes that its market behaviour has been quite different, and that it is its *own behaviour* and its *own circumstances* that should inform the Commissioner's decision as to how TSP will conduct itself in the future.

We respectfully submit that the Commission should find that it cannot be satisfied that expiration of the measures as against TSP's exports would lead or would be likely to lead to a recurrence of the dumping and the material injury that the measures are intended to prevent. And we wish to remind the Commission that assumptions of both dumping and a recurrence of injury must be arrived at with respect to TSP in order to support a decision to continue the measures as against TSP.

TSP stands behind its submissions with respect to the inaccuracy of the dumping margin that has been assessed against it. At the same time, we maintain that even with that margin stated in the SEF, the Commission cannot reach the state of satisfaction required to continue the measures against TSP, for the cogent reasons outlined in this submission.

We trust that the Commission will recognise that the circumstances of TSP's exports raise individual and different considerations to those of "other exporters".

Accordingly, if the Commissioner cannot reach the state of satisfaction as required by Section 269ZHF of the Act, it should be recommended that the dumping duty notice cease to apply to TSP after its expiration on 16 April 2019.

Yours sincerely

Charles Zhan
Senior Associate

+61 2 6163 1000