

PUBLIC RECORD



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**Anti-Dumping Commission Preliminary
Report to the Anti-Dumping Review
Panel**

**Reinvestigation of Certain Findings in
Report No. 487**

**Wind Towers Exported to Australia from the People's Republic
of China and the Republic of Korea**

3 September 2019

PUBLIC RECORD

Contents

CONTENTS..... 2

ABBREVIATIONS..... 3

1 BACKGROUND..... 4

1.1 CONTINUATION INQUIRY 487 4

1.2 REVIEW OF THE MINISTER’S DECISION 4

1.3 APPROACH TO THE REINVESTIGATION 5

1.4 SUMMARY OF PRELIMINARY FINDINGS 6

1.5 SUBMISSIONS 7

2 SALES OF LIKE GOODS 8

2.1 INTRODUCTION 8

2.2 TSP’S APPLICATION FOR REVIEW 8

2.3 REINVESTIGATION OF SALES OF LIKE GOODS 9

2.4 MODEL MATCHING 11

2.5 LIKE GOODS FOR THE PURPOSE OF REGULATION 45(2) 11

2.6 PRELIMINARY REINVESTIGATION FINDING 12

3 ORDINARY COURSE OF TRADE 13

3.1 INTRODUCTION 13

3.2 TSP’S APPLICATION FOR REVIEW 13

3.3 ADRP REINVESTIGATION REQUEST 14

3.4 APPROACH IN REP 487 14

3.5 RELEVANT LEGISLATION 15

3.6 REINVESTIGATION OF SALES NOT IN THE OCOT 16

3.7 PRELIMINARY REINVESTIGATION FINDING 20

4 DETERMINING AN AMOUNT FOR PROFIT UNDER REGULATION 45 21

4.1 INTRODUCTION 21

4.2 TSP’S APPLICATION FOR REVIEW 21

4.3 RELEVANT LEGISLATION 21

4.4 REINVESTIGATION OF THE DETERMINATION OF PROFIT 22

4.5 PRELIMINARY REINVESTIGATION FINDING 24

5 MATERIAL INJURY 25

5.1 PRELIMINARY REINVESTIGATION FINDING 25

6 CONCLUSION..... 26

6.1 PRELIMINARY REINVESTIGATION FINDING 26

7 APPENDICES AND ATTACHMENTS..... 27

PUBLIC RECORD

Abbreviations

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
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
EPR	electronic public record
EXW	ex-works
the goods	wind towers exported from the China and Korea as defined in ADN 2018/115
inquiry period	the period from 1 January 2017 to 30 June 2018
Korea	the Republic of Korea
the Manual	<i>Dumping and Subsidy Manual</i>
the Minister	the Minister for Industry, Science and Technology
OCOT	ordinary course of trade
Regulation	the <i>Customs (International Obligations) Regulation 2015</i>
REP 221	<i>Anti-Dumping Commission Report No. 221</i>
REP 466	<i>Anti-Dumping Commission Report No. 466</i>
REP 487	<i>Anti-Dumping Commission Report No. 487</i>
REQ	response to the exporter questionnaire
SEF	statement of essential facts
SG&A	selling, general and administrative
TSP	Shanghai Taisheng Wind Power Equipment Co. Ltd and its subsidiaries: <ul style="list-style-type: none">• Baotou Taisheng Wind Energy Equipment Co., Ltd;• Nantong Blue Island Marine Engineering Co., Ltd;• Shanghai Taisheng (Dongtai) Power Engineering Machinery Co., Ltd; and• Xinjiang Taisheng Wind Energy Equipment Co., Ltd
USA	United States of America
USP	unsuppressed selling price
Win&P	Win&P., Ltd
WTO	World Trade Organization

1 Background

1.1 Continuation Inquiry 487

On 16 July 2018, the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of certain wind towers (the goods) exported to Australia from the People's Republic of China (China) and the Republic of Korea (Korea) was justified.

In *Anti-Dumping Commission Report No. 487* (REP 487) the Commissioner recommended that the Minister for Industry, Science and Technology (the Minister)¹ declare that:

- pursuant to subsection 269ZHG(1)(b) of the *Customs Act 1901* (the Act)², she has decided to secure the continuation of the anti-dumping measures relating to wind towers exported to Australia from China with effect from 17 April 2019; and
- pursuant to subsection 269ZHG(1)(a), she has decided not to secure the continuation of the anti-dumping measures relating to wind towers exported from Korea with effect from 17 April 2019.

On 25 March 2019, the Minister accepted the Commissioner's recommendations. Public notice of this decision was published on 27 March 2019.³

1.2 Review of the Minister's decision

The Anti-Dumping Review Panel (ADRP) accepted an application for a review of the Minister's decision from Shanghai Taisheng Wind Power Equipment Co., Ltd (TSP). The ADRP initiated its review of the decision by public notice on 8 May 2019.⁴

On 4 July 2019 the ADRP requested that the Commissioner undertake a reinvestigation⁵ under subsection 269ZZL(1) relating to TSP's grounds of review on:

1. the finding as to the normal value determined for TSP's exports; and
2. to the extent that there is any change in the dumping margin for TSP's exports as a result of any change to the normal value determined for such exports, the finding that the expiration of the anti-dumping measures applicable to wind towers exported to Australia from China by TSP would lead, or be likely to lead, to a

¹ For the purposes of the reviewable decision, the Minister is the Minister for Industry, Science and Technology.

² References to any section or subsection in this report relate to provisions of the Act, unless specifically stated otherwise.

³ [Anti-Dumping Notice No. 2019/33](#) refers.

⁴ [Anti-Dumping Review Panel Notice under section 269ZZI](#) refers.

⁵ [Anti-Dumping Review Panel Request for Reinvestigation](#) refers.

PUBLIC RECORD

continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measures are intended to prevent.

The ADRP requested that the Commissioner report the result of the reinvestigation by 2 September 2019. The Commissioner sought⁶, and was granted⁷, an extension of 60 days to allow interested parties to make submissions on a preliminary report to the ADRP. The result of the reinvestigation is now due on 1 November 2019.

1.3 Approach to the reinvestigation

This report sets out the preliminary findings of the Commissioner in response to the reinvestigation request by the ADRP. The reinvestigation by the Anti-Dumping Commission (Commission) has been conducted in accordance with section 269ZZL(2).⁸ In conducting the reinvestigation, the Commission has reviewed the grounds accepted for review as published by the ADRP notice⁹ under section 269ZZI, the ADRP reasons for requesting the reinvestigation and the application for a review of the Minister's decision from TSP.

The ADRP requested the reinvestigation of the finding as to the normal value determined for TSP's exports.¹⁰ The grounds accepted by the ADRP that TSP contends which were subject to the reinvestigation request are that:

- the Commission incorrectly determined the amount of profit for normal value purposes and that the use of the *Customs (International Obligations) Regulation 2015* (the regulation) section 45(2) was incorrect;¹¹
- there were no sales of like goods in the market of the country of export;¹²
- the ordinary course of trade (OCOT) test could not be carried out for the purpose of the regulation in the circumstances of TSP's exports;¹³ and
- the finding that the expiration of the anti-dumping measures applicable to wind towers exported to Australia from China for exports from TSP would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measures are intended to prevent if the finding as to TSP's normal value leads to a different amount.

Section 269ZZQA(5) restricts the ADRP member to only review the accepted grounds of the application. As such, the Commissioner has reinvestigated the findings that were both

⁶ [Letter from ADC to ADRP requesting extension of time](#)

⁷ [Approval of extension of time by the ADRP panel member](#)

⁸ The report has been prepared in accordance with section 269ZZL(2)

⁹ [Anti-Dumping Review Panel Notice under section 269ZZI published 8 May 2019](#)

¹⁰ [Anti-Dumping Review Panel Request for Reinvestigation](#) refers, pages 2-9.

¹¹ [TSP Application to the ADRP](#), page 3.

¹² [TSP Application to the ADRP](#), page 4.

¹³ [TSP Application to the ADRP](#), page 5.

PUBLIC RECORD

subject to the accepted grounds¹⁴ of the reviewable decision and the reinvestigation request¹⁵ by the ADRP.

TSP did not contest the Commissioner's recommendation to ascertain the normal value under section 269TAC(2)(c) in its application to the ADRP. TSP stated that “the Commission correctly resorted to Section 269TAC(2)(c) for the calculation of normal value”.¹⁶ The application made by TSP to the ADRP contested that the application of profit within the calculation of the normal value was incorrect for the following reasons:

*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.*¹⁷

The reinvestigation request by the ADRP requested the Commission reinvestigate ‘the finding as to normal value’.¹⁸ For the purposes of this reinvestigation, in accordance with the limitations of section 269ZZQA(5), the Commission has reinvestigated whether there were like goods sold in the domestic market for the purpose of regulation 45(2) and, whether any such sales were made in the ordinary course of trade in respect to the determination of the amount of profit to be applied to the section 269TAC(2)(c) normal value.

1.4 Summary of preliminary findings

The Commission reinvestigated whether like goods were sold on the domestic market during the inquiry period. This is considered in chapter 2. The Commissioner finds that the wind towers sold by TSP on the domestic market in China are like goods to wind towers exported to Australia.

The Commission then considered whether like goods were sold on the domestic market in the OCOT. This is considered in chapter 3. The Commissioner finds that TSP had sales of like goods in the OCOT, and sales of like goods that were not in the OCOT.

Finally, the Commission reinvestigated the methodology for working out an amount for profit in accordance with the regulations. This is considered in chapter 4. The Commissioner finds that because the conditions of regulation 45(2) are satisfied, he must ascertain an amount for profit in accordance with section 269TAC(5B).

The ADRP also requested that, to the extent that there is any change in the dumping margin for TSP's exports as a result of any change to the normal value determined for such exports, the Commission reinvestigate the finding that the expiration of the anti-dumping measures applicable to wind towers exported to Australia from China by TSP would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping

¹⁴ [Anti-Dumping Review Panel Notice under section 269ZZI published 8 May 2019](#)

¹⁵ [Anti-Dumping Review Panel Request for Reinvestigation](#)

¹⁶ [TSP Application to the ADRP](#), page 4.

¹⁷ [TSP Application to the ADRP](#), page 4.

¹⁸ [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 30 refers.

PUBLIC RECORD

and material injury that the anti-dumping measures are intended to prevent. This aspect of the reinvestigation is addressed in chapter 5.

1.5 Submissions

Interested parties are invited to make submissions in response to the Commissioner's preliminary findings as set out in this report.

Submissions shall be lodged no later than **23 September 2019**. The Commission's preference is to receive submissions by email to ADCQualityAssurance.&VerificationTeam@adcommission.gov.au.

Submissions may also be addressed to:

The Director, Quality Assurance and Verification
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2600

Interested parties claiming that information contained in their submissions is confidential, or that the publication of the information would adversely affect their business of commercial interests, must:

- provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality of adversely affect those interests; or
- satisfy the Commissioner that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY".

Interest parties must lodge a non-confidential version of their submission, clearly marked "PUBLIC RECORD".

2 Sales of Like Goods

2.1 Introduction

TSP contends that the Commission's calculation of profit pursuant to regulation 45(2) of the regulation was incorrect because there were no sales of like goods in the market of the country of export.

A condition precedent of using regulation 45(2) is that there are like goods sold on the domestic market. Therefore, the Commission has reinvestigated this question as part its reinvestigation request from the ADRP. The finding of profit is discussed at chapter 4, below.

The Commissioner's finding is that during the inquiry period, the wind towers sold by TSP on the domestic market in China were like goods to wind towers exported to Australia.

2.2 TSP's application for review

In TSP's application for review to the ADRP, TSP states that "the Commission correctly resorted to Section 269TAC(2)(c) for the calculation of normal value".¹⁹ TSP, however, disagreed with the Statement of Essential Facts (SEF) and subsequent REP 487 profit calculation approach which it described as incorrect as "there were no sales of like goods in the market of the country of export".²⁰ TSP relied on information provided as a submission to the SEF in its application to the ADRP, which is summarised below.

TSP argued that because its "Australian sales of the GUC were different to the wind towers it sold in the domestic market"²¹ and that "due to the nature of the wind tower product, each being a unique product"²², a calculation of a profit margin under subsection 45(2) "is not suitable".²³ In support of its argument, TSP referred to a previous investigation conducted by the Commission regarding power transformers (Investigation 219), "which are project-based products, each with a unique design"²⁴ which resulted in the OCOT test being either not possible or practical.

TSP argues that each wind tower is a unique product, and that the Commission used section 269TAC(2)(c) to construct normal value because there was "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)" (emphasis added).²⁵ It is on this basis that TSP believes that like goods do not exist on the domestic market and that

¹⁹ [TSP Application to the ADRP](#), page 4

²⁰ [TSP Application to the ADRP](#), page 4

²¹ [EPR 487 document 15](#), page 2

²² [EPR 487 document 15](#), page 3

²³ [EPR 487 document 15](#), page 5

²⁴ [EPR 487 document 15](#), page 3

²⁵ [EPR 487 document 19 \(REP 487\)](#), page 32

“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”.²⁶

TSP summarised its disagreement with the approach, as it relates to like goods in the application, as follows:

In our view, the comments in Report 487 do not address nor rectify the errors as identified in the SEF margin submission. In particular, the comment that “having established that like goods are sold in the domestic market, there is no basis for derogating from subsection 45(2) of the Regulation” remains at odds with the Commission’s view regarding the nature of the goods under consideration, which is that there is an absence of domestic sales of like goods, and which was the very basis for the application of Section 269TAC(2)(c) in the first place, as referred to above.²⁷

2.3 Reinvestigation of sales of like goods

An area of contention in the application to the ADRP by TSP, and the ADRP’s request for reinvestigation, was whether REP 487 considered there were, or were not, like goods available for the Commission to use for the purposes of calculating a profit margin in accordance with subsection 45(2) of the regulation.

The Commission has reinvestigated whether TSP sells like goods on the domestic market in China. The Commission has used the framework for assessing like goods as outlined in Chapter 2 of the Manual.

Like goods have been assessed by comparison to the goods currently subject to anti-dumping measures which were exported to Australia by TSP in the inquiry period. Goods currently subject to anti-dumping measures are defined in the public notice published pursuant to section s269ZHD(4).²⁸

2.3.1 Physical likeness

The wind towers sold on the domestic market comprised of wind towers of similar heights and similar megawatt capacities as some of the goods exported to Australia. As such, the wind towers sold domestically are not physically identical. Whilst wind towers vary in size and specification, the wind towers sold on the domestic market and the goods exported to Australia are similar in general composition and appearance, being made up of multiple sections of similar steel structural grades.

On both markets towers are comprised of various sections, each with different specifications, but when assembled formed a wind tower unit meeting the terms of the goods description (as set out in the section 269ZHD(4) notice). Accordingly, the Commission considers that wind towers sold domestically have characteristics of physical likeness to the wind towers exported to Australia.

²⁶ [EPR 487 document 15](#), page 3

²⁷ [TSP Application to the ADRP](#), page 5

²⁸ [EPR 487 document 2](#).

2.3.2 Commercial likeness

Wind towers sold on the domestic market have a commercial likeness to the goods exported to Australia. The wind towers and sections thereof are made to the purchasers' specifications on a project-by-project basis, and no two projects are identical. Wind towers are generally sold to customers in the energy generation market. In both the domestic and export markets, wind towers are sold on a project tender basis with various parties competing for projects, which can also include additional services such as delivery and installation. Wind towers are not offered for sale as a commodity product on the domestic market in China, or in Australia. Contract negotiations for each project are complex and can involve many parties in both markets. The Commission considers that, despite the unique nature of every project, there is commercial likeness between the way domestic and export sales are made.

2.3.3 Functional likeness

Wind towers sold on the domestic market and the goods exported to Australia 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. The Commission considers that there is a functional likeness between domestic and exported wind towers.

2.3.4 Production likeness

The wind towers sold on the domestic market and the goods exported to Australia are produced using largely identical processes, albeit to the different customised specifications for each project. The production process for wind towers sold on the domestic market and exported to Australia can be summarised as follows, reproduced from TSP's response to the exporter questionnaire:

- a) *"Cutting and [Bevelling] - cut steel plates into the shape as per technical design and bevel the edges of plates for next process*
- b) *Rolling - roll the steel plates into steel "cans"*
- c) *Welding - weld the long seam on each steel can and NDT inspection needed for the welding seam*
- d) *Fitting-up - weld a certain amount of steel cans together as one wind tower section and install the flange on the two ends of each section*
- e) *Blasting and Painting - using steel grids blasting machine to remove the rust on the inner and outer surface of each section and then spray the paint on surface*
- f) *Internals - install the internal parts for each section"*²⁹

TSP records production costs on a project basis for the wind towers sold on the domestic market and the goods exported to Australia. Raw material costs feed into a project based on the month in which the transfer from the raw material inventory is made, and overheads are allocated to projects based on that month's total steel consumption.³⁰ TSP's production costs are not recorded to the tower or tower section level, but rather on

²⁹ [EPR 487 document 4](#), page 36.

³⁰ [EPR 487 document 13](#), page 9.

a monthly basis for each project. The Commission considers that there is a production likeness between domestic and exported wind towers.

2.4 Model matching

As explained by TSP in its response to the exporter questionnaire the wind towers produced for each project are unique.

*Wind towers are highly customised products. They are designed by TSP's customers on a project by project basis. The tower is designed to suit the particular wind power projects and the local geographical conditions. Wind towers are not commodity-type of products, produced in large volumes to conform to certain standardised specification/grades. Each wind tower model is defined by drawings and technical specifications in great detail.*³¹

The Commission agreed with TSP in REP 487, which stated:

*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.*³²

Notwithstanding the likenesses in characteristics described above, the Commission noted that each project of wind towers may have different specifications based on the circumstances of a particular project, which makes no two wind tower projects directly comparable. The Commission considers each project to represent a model of wind towers.

2.5 Like goods for the purpose of Regulation 45(2)

The term 'like goods',

*"in relation to goods under consideration, means 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".*³³

TSP and the Commission agree that the goods sold on the domestic market by TSP and those exported to Australia were not identical. The goods sold on the domestic market have characteristics that closely resemble those of the goods currently subject to anti-dumping measures which were exported to Australia by TSP in the inquiry period. Both TSP's domestic sales and export sales are wind towers. TSP agree that normal values were correctly calculated with reference to section 269TAC(2)(c).

³¹ [EPR 487 document 4](#), page 18.

³² [EPR 487 document 19 \(REP 487\)](#), page 38.

³³ Section 269T

PUBLIC RECORD

The Commission considers that to exclude TSP's sales of wind towers domestically from being like goods would restrict the goods description to be only the models exported to Australia during the investigation period. The Commission does not consider that this is an appropriate application of the requirements for a finding for like goods. As such, the Commission finds that like goods, although not directly comparable to the goods under consideration because they constitute different models, are nonetheless 'like goods' for the purposes of regulation 45(2).

2.6 Preliminary Reinvestigation Finding

Though sizes and specifications of wind towers may vary from project to project, and the goods are not identical in all respects, the Commission considers that wind towers sold on the domestic market by TSP are like goods to those TSP exported to Australia. The Commission considers that the information provided in TSP's response to the exporter questionnaire and subsequent attachments supports this view. All wind towers described in TSP's domestic sales listing (appendix 3) are like goods. The Commissioner finds that like goods were sold by TSP on the domestic market in China.

3 Ordinary Course of Trade

3.1 Introduction

TSP contends that the Commission was not able to perform the OCOT assessment in relation to domestic sales of wind towers.

After considering the Commission's OCOT assessment (in the context of ascertaining an amount for profit in accordance with regulation 45(2)), the ADRP considered it possible that other sales of wind towers may have been sold in the OCOT but were not included.

The Commission has reinvestigated its approach to whether domestic sales of wind towers were in the OCOT.

The Commissioner's finding is that TSP had sales of like goods in the OCOT, and sales of like goods that were not in the OCOT. This analysis is set out at Confidential Attachment 3 of TSP's dumping margin calculation.

3.2 TSP's application for review

TSP's application to the ADRP for review referred the ADRP to a submission TSP made to the SEF on 13 February 2019 relating to the approach taken for the OCOT.

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.³⁴

In its submission, TSP quoted the exporter verification report, which stated:

The verification team considers that when calculating profit under subsection 45(2) [of 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 [cost to make and sell (CTMS)] data to conduct a recoverability test, sales at a loss are also considered not recoverable in this case.³⁵

The submission concluded on this topic stating:

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" (emphasis added).³⁶

³⁴ [Submission by TSP to Continuation 487 \(EPR 487 – Document 13\)](#) page 6

³⁵ [EPR 487 document 15](#), page 13.

³⁶ [Submission by TSP to Continuation 487 \(EPR 487 – Document 13\)](#) page 6

3.3 ADRP Reinvestigation Request

Relevant considerations by the ADRP relating to how OCOT was established in REP 487 are outlined below.

From information obtained at the conference and from a review of the spreadsheet “487- TSP-Appendix 3-Domestic Sales” it seems that what the ADC did is to include only those sales of the wind towers in projects which were profitable.³⁷

The approach taken by the ADC means that the sales included in the Regulation 45(2) calculation of profit were in the OCOT. However, it is possible that other sales of wind towers during the inquiry period may also have been sold in the OCOT but have not been included.³⁸

It is not clear that the legislation allows the ADC to include only those sales of wind towers in projects which were profitable in the calculation under Regulation 45(2) or for the purpose of s.269TAC(1).³⁹

The Commission has reinvestigated the OCOT assessment as part of the normal value finding, particularly whether or not transactions that were not found to be in the OCOT in REP 487, were in the OCOT.

3.4 Approach in REP 487

REP 487 states that “the Commission notes that it conducted a recoverability test on [TSP’s] domestic sales by comparing the net invoice revenue to the weighted average CTMS over the inquiry period”⁴⁰ with the analysis relying on the calculations contained in Confidential Attachment 3. The verification report for TSP stated the following:

The verification team compared the revenue (i.e. net sales value) for each domestic project of wind towers manufactured by [TSP] or one of its subsidiaries to the project CTMS to test whether those sales were profitable and suitable for use in a constructed normal value.⁴¹

For clarity, the Commission provides the following commentary on how the two components of the OCOT calculation was conducted in REP 487.

3.4.1 Profitability

In REP 487, the profitability of each project was calculated by comparing:

- the CTMS at Ex-Works (EXW) terms of each project; and
- the invoice price paid by the domestic customer, less delivery and handling expenses (i.e. at EXW).

³⁷ [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 21 refers.

³⁸ [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 24 refers.

³⁹ [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 25 refers.

⁴⁰ [EPR 487 document 19 \(REP 487\)](#), page 36

⁴¹ [EPR 487 document 15](#), page 15.

PUBLIC RECORD

REP 487 subtracted the cost of each project from the invoice price of each project to determine which projects were profitable. Where the result of this comparison was positive, the project was deemed profitable; if the result was negative, it was unprofitable. The formula for this calculation is illustrated below.

$$\text{Project Invoice Price} - \text{Project Cost} = \text{Profitability of Project}$$

3.4.2 Recoverability

In REP 487, the recoverability of each project was calculated by comparing the CTMS at EXW terms of each project and the invoice price, less delivery and handling expenses. REP 487 subtracted the cost of each project at EXW from the invoice price of each project, also at EXW to determine which projects were profitable. Where the result of this comparison was positive, the project was deemed recoverable and if negative, it was unrecoverable. The Commission notes that while the unit cost was calculated in REP 487 in Appendix 3, it was not used as the basis to compare with a unit selling price at the wind tower sections level.

3.5 Relevant Legislation

3.5.1 Sales not in the OCOT

A definition of what sales are not in the OCOT is provided below as outlined in section 269TAAD(1).

If the Minister is satisfied, in relation to goods exported to Australia:

(a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:

- for home consumption in the country of export; or*
- for exportation to a third country;*

at a price that is less than the cost of such goods; and

(b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period;

the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.

The ADRP notes that “there is no definition for OCOT for the purpose of regulation 45(2) (or for that matter s.269TAC(1)) but s.269TAAD provides one instance of when goods will be taken to not have been sold in the OCOT”.⁴²

3.5.2 Definition of weighted average

Section 269T(5A) defines weighted average as follows:

For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

⁴² [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 22 refers.

$$\frac{P_1Q_1 + P_2Q_2 + \dots + P_nQ_n}{Q_1 + Q_2 + \dots + Q_n}$$

where:

$P_1, P_2 \dots P_n$ means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.

$Q_1, Q_2 \dots Q_n$ means the number of units of the goods involved in each of the respective transactions.

3.6 Reinvestigation of sales not in the OCOT

"Ordinary course of trade" is not a defined term in the Customs Act. Section 269TAAD provides that when the Commissioner is satisfied that the conditions set out in subsections (1) to (3) are met, the price of those goods is taken to be *outside* the ordinary course of trade. This is not a definition of ordinary course of trade, but rather it prescribes instances in which when domestic sales are deemed to *not* be in the ordinary course of trade.

Section 269TAAD(1)(a) requires the Commissioner to determine sales of goods that are arms length transactions in substantial quantities during an extended period that were made 'at a price that is less than the cost of such goods'. The Commission generally refers to this consideration as a profitability assessment.

Section 269TAAD(1)(b) requires the Commissioner to be also be satisfied that it is unlikely the seller of the goods will be able to "recover the cost of such goods within a reasonable period".

Section 269TAAD(3) provides that goods are taken to be recoverable within a reasonable about of time if the selling price is above the weighted average cost of such goods over the investigation period. The Commission refers to this assessment as a recoverability assessment.

The Commission has reinvestigated whether the sales of wind towers by TSP on the domestic market in China were in the ordinary course of trade. The Commission has revised the calculations in which it conducts the OCOT assessment to align it with the understanding of the relevant legislative provisions, including section 269TAAD and the definition of weighted average in section 269T(5A). The following sections explain how the Commission has performed these calculations in this reinvestigation.

3.6.1 Profitability

The first calculation in determining which transactions are not in the OCOT test determines the profitability of each transaction. The Commission considers that as TSP accounts for its cost records at the wind tower project level, it is appropriate to determine profit on the goods at that same level. Despite there being multiple wind towers in one

project, the Commission considers making this assessment at the project level still demonstrates sales made “at a price that is less than the cost of such goods”.⁴³

As such, the Commission finds that the first arm of the OCOT test as undertaken in REP 487 (and described in section 3.4.1, above) accurately reflects the total of like goods that were profitably sold on the domestic market in the inquiry period. The ADRP confirmed this approach:

The approach taken by the ADC means that sales included in the Regulation 45(2) calculation of profit were in the OCOT. ⁴⁴

3.6.2 Substantial Quantities

Section 269TAAD(2) defines substantial quantities for the purpose of the section as:

For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.

In the profit analysis the records of TSP show how many sections were included in each project. However, the records do not show the cost of each section. While sections in themselves are goods under consideration, the Commission understands they are also a unit of measure when measuring quantity for wind towers, with multiple sections comprising a tower. The reinvestigation calculated the substantial quantities with reference to the number of sections within each project. The result of this test was that the sales of goods at a loss were found to be in substantial quantities.

3.6.3 Recoverability

As outlined in section 7.3 of the Manual, the Commission undertakes its ordinary course of trade test at the model level. As set out at section 2.5, above, the Commission considers that a project is a ‘model’. Therefore the Commission is of the view that, consistent with the Commission’s practice, the OCOT test can be done at the project level.

In the instance of TSP domestic sales of wind towers, there are [REDACTED] that were unprofitable during the investigation period to which a determination as to whether these would still be classed as in the OCOT is necessary. Based on the number of sections within each project, [REDACTED] per cent of wind towers were unprofitable.

The Commission considers that in accordance with 269TAAD(1)(b), the recoverability of the cost of such goods is in relation to each model of goods. This ensures that the revenue from each model is compared to the cost of the same model. Any comparison without reference to models would invariably cause all lower cost models to not be recoverable and higher cost models to always be recoverable.

⁴³ Section TAAD(1) refers.

⁴⁴ [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 24 refers.

PUBLIC RECORD

The Commission considers it's preferable to have regard to TSP's records when determining an amount for the 'cost of goods', pursuant to sections 269TAAD(3) and (4). The Commission finds that TSP keeps its records at the project level, as demonstrated by the CTMS data that was submitted in the REQ and consequently summarised into the tab '(b) Dom CTMS Summary' in Appendix 3.

For clarity, an example (using hypothetical data) of how the records are kept is demonstrated in the example below. In the same records, the sales quantity used is 'sections' which is recorded against the costs which are recorded for each project.

Project Number	Customer	Sales Quantity (sections)	Project Cost (RMB)	Project Invoice (RMB)
1	Example Customer A	120	120,000,000	132,000,000
2	Example Customer B	20	30,000	25,000

For the purpose of calculating a weighted average cost of goods, regulation 45(2) does not state whether costs have to be at aggregate or unit level, only that *the Minister must work out the amount by using the information set out in the records.*

The Commission considers that the values requested in Q in the formula for calculating a weighted average can refer to each model. If each project is considered its own model, the example below outlines how the test, as defined in section 269T(5A) would apply to each model. In this example, n takes the value of 1, as there is only 1 transaction of any model over the inquiry period, therefore the formula is simplified as:

$$\frac{P_1 Q_1}{Q_1}$$

As 269T(5A) requires a P and Q to be defined at 'unit' level, it is open to the Commissioner to use the costs as recorded by TSP to derive the unit cost (unit cost per section). In this approach, before calculating the weighted average, the Commission is required to first calculate the unit cost using information set out in the cost records.

To determine the weighted average, P is equal in this case to the cost of the each model. Therefore the value of Q is the number of projects for that model (in this inquiry, the Commission notes that one project is the equivalent to a model). This arrives at a weighted average cost of that model. The definition of weighted average under section 269T(5A) does not preclude the possibility that n can equal 1. The practical implication is that the outcome of the recoverability assessment is the same as the profitability assessment. This outcome does not detract from the fact that the test itself, as defined in section 269TAAD, is applied.

The formula for unit cost, using the same terminology as outlined in section 269T(5A) would be as follows where Q is the number of sections in each project.

$$P = \frac{\text{Cost recorded at Project Level}}{Q}$$

PUBLIC RECORD

The Commission applied the formula above to determine the cost, price and quantity required for the purpose of calculating a weighted average outlined in section 269T(5A). This would then allow the Commissioner to determine the weighted average using the formula provided for in section 269T(5A) (as shown below) and therefore meet the requirement to deem certain sales as not being in the OCOT by reason of price, based on a profitability and recoverability assessment.

For clarity, the table below demonstrates how the Commission used the information set out in TSP's records to determine the unit cost of production of each section and then use that information to calculate the weighted average for each model. The cells highlighted in green would be the values the Commission used to calculate a weighted average under section 269T(5A). The cells in the first five columns are the values that would come from the exporter's records. (Note: the values in the table are hypothetical).

Information set out in the records the Minister used to determine costs					Costs used for 269T(5A) calculation	
Project Number	Customer	Sales Quantity (sections) (Q)	Project Cost (RMB)	Project Invoice (RMB)	Unit Cost (P)	Unit Price
1	Example Customer A	120	120,000,000	132,000,000	1,000	1,100
2	Example Customer B	20	30,000	25,000	1,500	1,250

In the example above, project number 1 would have been found to be profitable and as such the recoverability test would not have applied. Example 2 however was unprofitable, and therefore the recoverability test would apply. The values required (highlighted in green) for the weighted average formula have been calculated using the formula for unit cost and these can then apply into the formula of section 269T(5A).

$$\text{Weighted Average Cost} = \frac{1,500 \text{ RMB} \times 20}{20} = 1,500 \text{ RMB}$$

This weighted average cost is then compared to the invoice price of 1,250 for each section of the project, which results in a loss of 250 RMB. The transaction is therefore not recoverable.

The Commission has adjusted Appendix 3 to follow the process described above to demonstrate that, as a result of the approach taken in this reinvestigation, there is no effect on the number of sales that would be excluded from the OCOT by reason of price. As such, the Commission finds that same sales that were deemed to be in the OCOT in REP 487 are the same as those that the reinvestigation has found to be in the OCOT.

3.7 Preliminary Reinvestigation Finding

The Commission has reinvestigated how the OCOT assessment was conducted in REP 487. The approach undertaken by the Commission in reinvestigation does not produce a different outcome in terms of which of TSP's domestic sales were made in the OCOT.

As such, the Commissioner **affirms** the findings in REP 487 that there were both like goods sold in the OCOT, and like goods that were not sold in the OCOT.

4 Determining an amount for profit under regulation 45

4.1 Introduction

Having affirmed that like goods were sold on the domestic market by TSP and that there were sales of such goods in the ordinary course of trade, the Commission now examines the approach taken to determine profit within the regulation. Therefore, the remaining question is whether regulation 45(2) is the correct or preferable provision to determine profit or if profit should be determined under regulation 45(3)(a) as proposed by TSP.

4.2 TSP's application for review

In its application to the ADRP, TSP claims that profit was incorrectly calculated based on its claim that there was an absence of sales of like goods sold on the domestic market and that the OCOT test could not be carried out. These claims have been addressed in previous chapters of this report. The Commission has also noted the submission TSP made to the SEF which stated the following:

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.⁴⁵

4.3 Relevant Legislation

In constructing a normal value, 269TAC(2)(c) requires the Minister to determine the cost of production⁴⁶ and administrative, selling and general costs associated with the sale and the profit on the sale.⁴⁷ Section 269TAC(5A) requires that the amounts determined must be worked out in such a manner as required by section 269TAAD(4) and the regulations respectively.

Thus, the Minister must, if reasonably practicable, determine profit under regulation 45(2), having regard to the sale of like goods in the OCOT. The relevant provisions of regulation 45 considered by the Commission and argued by TSP are outlined below.⁴⁸

(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.

⁴⁵ [EPR 487 document 16](#), page 5

⁴⁶ Section 269TAC(2)(c)(i) refers

⁴⁷ Section 269TAC(2)(c)(ii) refers

⁴⁸ Regulation 45 refers

PUBLIC RECORD

(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 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.*

4.4 Reinvestigation of the determination of profit

The Commission has found in this report that the requirements of regulation 45(2), being the sale of like goods (chapter 2) by the exporter or producer (being TSP) in the OCOT (chapter 3) are met. As such the Commissioner considers that it is reasonably practicable to determine a profit in accordance with regulation 45(2). As such it is not open to the Commissioner to work out an amount for profit under regulation 45(3), in the manner proposed by TSP.

The regulations clearly prescribe in regulation 45(2) that the Minister must, if reasonably practicable, calculate an amount for profit by using data relating to the production and sale of like goods by the exporter in the OCOT. While TSP claims that the profit should be calculated under regulation 45(3), that regulation specifically prohibits such an approach if it is reasonably practicable to work out a profit under regulation 45(2).

TSP made other claims as to why regulation 45(2) was not appropriate. While the Commission considers that the requirements of regulation 45(2) are met, the Commission has addressed these claims in coming to a finding.

4.4.1 Relevance of findings in REP 466

In a submission⁴⁹ to the SEF, TSP referred the Commission to a recent investigation of the dumping of iron ore railway carriage wheels into Australia from China (investigation 466) in support of TSP's claims that regulation 45(3)(a) is an appropriate method to calculate profit. The Commission examined details of that case and notes that the facts of investigation 466 are different to that of the current case.

In that case, the exporter that TSP referenced, Masteel did not sell like goods on the domestic market in China. The verification report, as referenced in the final report, states the following:

“During the inquiry period, Masteel did not sell like goods for domestic consumption to domestic customers in China. The goods sold to domestic

⁴⁹ [EPR 487 document 15](#), page 3

PUBLIC RECORD

customers differed from the like goods as they did not share all of the following characteristics:

- *38 inch or 966 mm to 970 mm diameter and of similar overall dimensional tolerances and shape;...*⁵⁰

In REP 466 the Commission “found that Masteel did not sell like goods to the goods under consideration in China in the investigation period”.⁵¹ Masteel, therefore, sold no goods on the domestic market that were like to the goods under consideration. As such, REP 466 correctly applied regulation 45(3)(a) as there were no sales for which regulation 45(2) would apply. In the current case, TSP did, as outlined in chapter 2 of this report, make sales of like goods in the domestic market. The Commission does not consider that TSP’s arguments for the Commission applying regulation 45(3)(a), as was applied in REP 466, are comparable to the circumstances in REP 487.

4.4.2 Reasonably Practicable

TSP also claimed that if it were not possible because of a lack of sales of like goods, that it would also not be “reasonably practicable” to calculate a profit using regulation 45(2). While the Commission disagrees with the premise of TSP’s argument, it has reviewed the “reasonably practicable” claims made by TSP.

The Commission considers that it is reasonably practicable and also appropriate to determine a profit under regulation 45(2). When constructing a normal value, the Commission must determine a price that, a sale of an exported model, would have been made at in the domestic market. This price (the normal value) is then compared to the price that the exported model was exported at (the export price), to determine if the exported model was dumped.

The Commission considers that, having determined the cost of production of the models exported to Australia and relevant SG&A expenses incurred on the domestic market, the Commission is required to determine what profit, if any, the sale of the model of wind tower exported to Australia would achieve if, it were sold on the domestic market.

Given the Commission had data available to it pertaining to TSP’s sales of wind towers, which are like goods sold in the OCOT on the domestic market, the Commission considers that it is reasonably practicable, and therefore consistent with regulation 45(2) to use that data to work out an amount for profit.

TSP’s submits that profit should be determined with reference to profits achieved on the sale by TSP of the *same general category of goods* under regulation 45(3)(a). The Commission notes that the *same general category of goods* that TSP claim should be used under regulation 45(3) are the same wind tower projects that the Commission has used for a profit under regulation 45(2), but for, that sales of those wind towers that were not made in the OCOT would also be included. This has the practical effect of lowering the profit achieved, and hence lowering the normal value and dumping margin.

⁵⁰ [EPR 466 document 45](#), page 4

⁵¹ [REP 466](#), page 23

PUBLIC RECORD

The Commission disagrees that this approach would result in a normal value that reflected the selling price of the exported wind tower into the domestic market. TSP's approach instead relies on a normal value including a profit on sales that were not made in the OCOT. In terms of reasonableness, this approach implies that, when setting prices on the domestic market, TSP would set a profit margin that includes sales of goods at a loss. The Commission does not find this argument compelling or reasonable.

4.5 Preliminary Reinvestigation Finding

The Commissioner:

- **affirms** the finding in REP 487 that an amount for profit is to be worked out in accordance with regulation 45(2), pursuant to ascertain the normal value under section 269TAC(2)(c).

5 Material Injury

5.1 Preliminary Reinvestigation Finding

In addition to the finding of normal value, the ADRP requested the Commissioner reinvestigate a subsequent matter, set out as follows:

The reinvestigation of the finding as to TSP's normal value may lead to a different amount and accordingly, a different dumping margin for TSP's exports. If this is the case, then it will be necessary to consider whether or not this affects the above findings with respect to TSP's exports.

Given the findings in the earlier chapters resulting in no changes to the normal value, and therefore the dumping margin, the reinvestigation does not consider that this aspect of the reinvestigation is required.

6 Conclusion

6.1 Preliminary Reinvestigation Finding

The Commission has conducted a reinvestigation of the reviewable decision in accordance with the direction made by the ADRP as is required by section 269ZZL(2). As a result of this reinvestigation, the Commission has not found reasons that would result in a materially different decision from the reviewable decision. As such, in accordance with section 269ZZL(3) as the Commissioner is of the view that the findings the subject of reinvestigation should be affirmed, he affirms the findings as outlined in chapters 2, 3, 4 and 5 of this report. This report sets out the reasons for the Commissioner's decision in accordance with section 269ZZL(3)(d).

7 APPENDICES AND ATTACHMENTS

Confidential Appendix 3	TSP Shanghai dumping margin calculation - Domestic sales listing including OCOT testing
--------------------------------	--