



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

FINAL REPORT NO. 597

ACCELERATED REVIEW

**OF THE DUMPING DUTY NOTICE APPLYING TO
CERTAIN WIND TOWERS
EXPORTED TO AUSTRALIA FROM THE PEOPLE'S
REPUBLIC OF CHINA**

BY

CHENGXI SHIPYARD CO., LTD

26 April 2022

PUBLIC RECORD

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ABBREVIATIONS

the accelerated review period	1 July 2020 to 31 December 2021
the Act	<i>Customs Act 1901</i> (Cth)
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Chengxi	Chengxi Shipyard Co., Ltd
China	People's Republic of China
CIF	cost, insurance and freight
the commission	Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
CTM	cost to make
Customs Tariff Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i> (Cth)
EPR	electronic public record
FAS	Free Alongside Ship
the goods	the goods the subject of the accelerated review (also referred to as the goods under consideration)
GOC	Government of China
IDD	interim dumping duty
MCC	Model Control Code
the Manual	Dumping and Subsidy Manual, November 2018. Available on the commission's website at www.adcommission.gov.au .
the Minister	relevant portfolio Minister for anti-dumping matters
NIP	non-injurious price
the notice	the dumping duty notice
OCOT	ordinary course of trade
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 487	<i>Anti-Dumping Commission Report No. 487</i>
REQ	response to the exporter questionnaire
SG&A	selling, general and administrative costs
USP	unsuppressed selling price

1 SUMMARY AND RECOMMENDATION

1.1 Introduction

On 14 January 2022, Chengxi Shipyard Co., Ltd (Chengxi) made an application to the Commissioner of the Anti-Dumping Commission (the Commissioner), seeking an accelerated review of the dumping duty notice (the notice) applying to certain wind towers (wind towers, or the goods) exported to Australia from the People's Republic of China (China).¹

Chengxi is currently subject to the '*All other exporters*' interim dumping duty (IDD) rate of 10.9%, as determined by the then Minister for Industry, Science and Technology, after consideration of the findings and recommendations in *Anti-Dumping Commission Report No. 487* (REP 487).

The commission calculated a dumping margin of **negative 5.1 per cent** in respect of the goods from Chengxi.

The Commissioner recommends that the Minister alter the notice, so as to apply to Chengxi, as if different variable factors had been fixed and the IDD be worked out in accordance with the *ad valorem* method at a rate of **zero per cent**.²

This report sets out the facts on which the Commissioner is basing these recommendations to the Minister.

1.2 Applicant's claims

Chengxi submits in its application that it did not export the goods during the period subject to the original investigation (Investigation No. 221), in which the current measures were first imposed.³

The measures were continued and revised as a result of Continuation Inquiry No. 487. Subsequently, the revised measures were subject to review by the Anti-Dumping Review Panel (ADRP). As a result of the ADRP's recommendations the then Minister for Industry, Science and Technology, revised the normal value calculation applied to the relevant Chinese exporter involved in the continuation inquiry.⁴ Chengxi submits via its application that the ADRP's recommendations are of direct relevance to the appropriateness of the dumping duty rate applicable for all other exporters from China.

Chengxi's application seeks an accelerated review on the basis that the notice is inappropriate so far as Chengxi is concerned.

¹ Electronic Public Record (EPR) 597, document no. 001. The EPR can be accessed at www.adcommission.gov.au

² The methodology for calculation of the ad valorem duty method is defined in *Customs Tariff Regulation 5(7)*

³ Anti-Dumping Commission Report 221 (REP 221), period of investigation was 1 January 2012 to 30 June 2013

⁴ Anti-Dumping Review Panel (ADRP) Report 2019/100

1.3 Findings

The commission has confirmed that Chengxi did not export the goods to Australia during the period subject to the original investigation (Investigation No. 221).⁵ Chengxi is therefore a 'new exporter' as defined in section 269T(1) of the *Customs Act 1901* (the Act).⁶

Based on all relevant and available information, the Commissioner, in relation to the variable factors for Chengxi's exports of the goods to Australia, considers that:

- the export price should be determined under section 269TAB(1)(a), as the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation
- the normal value should be determined pursuant to section 269TAC(1).
- the non-injurious price (NIP) should be equal to Chengxi's normal value.

1.4 Application of law to facts

Division 6 of Part XVB of the Act allows eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner when conducting accelerated reviews for the purpose of making a report to the Minister; and
- enables the Minister, after consideration of such reports, to leave the notice unchanged or to modify them as appropriate.

1.5 Recommendation

Based on the above findings and pursuant to section 269ZG(1)(b), the Commissioner recommends that the Minister alter the notice, so as to apply to Chengxi, as if different variable factors had been fixed.

Further, the Commissioner recommends, in relation to Chengxi's exports of the goods to Australia:

- the IDD be worked out in accordance with the *ad valorem* method at a rate of **zero per cent** pursuant to section 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Customs Tariff Regulation)
- the Minister is not required to apply the lesser duty rule.⁷

If accepted by the Minister, the IDD rate applicable to Chengxi will take effect retrospectively from 14 January 2022 (the date the application was lodged).

⁵ Investigation No. 221, period of investigation was 1 January 2012 to 30 June 2013.

⁶ All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

⁷ Refer section 7.2 for explanation of the lesser duty rule.

2 BACKGROUND

2.1 The goods

2.1.1 Description

The goods subject to anti-dumping measures (the goods), in the form of the notice, are outlined in the table below.

Full description of the goods the subject of the application
<p>Certain utility scale wind towers, whether or not tapered, and sections thereof (whether exported assembled or unassembled), and whether or not including an embed being a tower foundation section.</p> <p>Wind turbines that have electrical power generation capacities equal to or in excess of 1.00 megawatt (MW) and with a minimum height of 50 metres measured from the base of the tower to the bottom of the nacelle (i.e. where the top of the tower and nacelle are joined) when fully assembled.</p> <p>A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical junction boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section.</p>
Further information
<p>Goods specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Any internal or external components which are not attached to the wind towers or sections thereof are also excluded.</p>

Table 1 – Goods description

Further details on the goods and existing measures are available on the Dumping Commodity Register on the commission’s website (www.adcommission.gov.au).

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2.1.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* (Cth):⁸

Tariff classification (<i>Schedule 3 of the Customs Tariff Act 1995</i>)			
Tariff code	Stat Code	Unit	Description
7308: STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, LOCK-GATES, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, SHUTTERS, BALUSTRADES, PILLARS AND COLUMNS), OF IRON OR STEEL; PLATES, RODS, ANGLES, SHAPES, SECTIONS, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES, OF IRON OR STEEL:			
7308.20.00	Towers and lattice masts:		
	03	tonnes	Tubular, whether or not tapered
	04	tonnes	Other
7308.90.00	Other:		
	Columns, pillars, posts and beams, girders, bracing, gantries, brackets, struts, ties and similar structural units:		
	.Roll formed structures:		
	52	tonnes	..Hot rolled
	53	tonnes	..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness less than 1.2 mm
	54	tonnes	..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness of 1.2 mm or more
	55	tonnes	..Other
	56	tonnes	.Other
	63	tonnes	Sectional components, prepared for use in towers and lattice masts
65	tonnes	Other	
8502: ELECTRIC GENERATING SETS AND ROTARY CONVERTERS:			
8502.31.10	Other generating sets:		
	-- Wind-powered:		
	31	no.	--- AC generating sets of an output exceeding 500 kVA
Notes:			
<ul style="list-style-type: none"> Statistical code 02 pertaining to tariff sub-heading 7308.20.00 was replaced with statistical codes 03 and 04; and Statistical code 61 pertaining to tariff sub-heading 7308.90.00 was replaced with four statistical codes. Two of these (statistical codes 63 and 65) are relevant to the goods. 			

Table 2 - Relevant tariff subheadings for wind towers

⁸ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

2.2 Accelerated reviews

The legislative framework that underpins the making of, and the consideration of, an application for accelerated review of dumping and countervailing duty notices is contained in Divisions 1 and 6 of Part XVB of the Act.

If the Commissioner does not reject an application, or terminate an accelerated review, the Commissioner must, no later than 100 days after the application is lodged, provide the Minister a report recommending:⁹

- (a) that the dumping duty notice and countervailing duty notice the subject of the application, remain unaltered;¹⁰ or
- (b) that the dumping duty notice and countervailing duty notice the subject of the application be altered, so as to apply to the applicant as if different variable factors had been fixed;¹¹

and set out the reasons for so recommending.¹²

Following the Minister's decision, a notice is published on the Commission's website advising of the decision.¹³

2.3 Existing measures

On 25 March 2019, with an effective date of 17 April 2019, the existing anti-dumping measures in the form of IDD were varied on wind towers exported from China following Continuation Inquiry 487.

The table below outlines the measures in place on exporters of the goods from China, at the time this report was provided to the Minister on 26 April 2022.

Country	Exporter	Interim dumping duty (IDD) (%)	Duty method
China	Shanghai Taisheng Wind Power Co. Ltd	Exempt	Ad Valorem Rate
	All other exporters	10.9%	

Table 3 - Current rates of IDD

Further details of the measures in place on exports from China are available in the Dumping Commodity Register on the commission's website.¹⁴

2.4 Notification and participation

On 14 January 2022, Chengxi lodged an application for an accelerated review of the notice applying to the goods exported to Australia from China, in so far as the notice affects Chengxi.

⁹ Section 269ZG(2).

¹⁰ Section 269ZG(1)(a).

¹¹ Section 269ZG(1)(b).

¹² Section 269ZG(1).

¹³ Section 269ZG(3).

¹⁴ www.adcommission.gov.au

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The Commissioner considered the application to determine if it was made in accordance with sections 269ZE and 269ZF. The Commissioner did not reject the application because:

- the circumstances in which an accelerated review can be sought under section 269ZE(1) have been satisfied;
- there are no grounds to reject the application under section 269ZE(2);
- the application satisfies the requirements of section 269ZF.

The commencement of this accelerated review was notified in ADN No. 2022/013. This notice was published on 3 February 2022 on the public record on the commission's website, and provides more information about the decision not to reject Chengxi's application.

ADN No. 2021/013 advised that the Commissioner's recommendation will be made in a report on, or before, **24 April 2022**.¹⁵

For the purposes of the accelerated review, the period examined is 1 July 2020 to 31 December 2021 (the accelerated review period).

2.5 Information gathered

2.5.1 Exporter questionnaire

Upon the commencement of the accelerated review, the commission sent an exporter questionnaire to Chengxi for completion.

On 28 February 2022, the Commission received a completed response to the exporter questionnaire (REQ) from Chengxi.

Chengxi cooperated with the accelerated review and provided financial data in its REQ within the required timeframe.

2.5.2 Verification of exporter questionnaire

The commission verified Chengxi's REQ in March 2022. During verification, the commission examined data relating to Chengxi's sales and production of the goods and like goods.¹⁶ The commission's findings in relation to specific matters is outlined further in this report.

Following the verification of Chengxi's REQ, the commission was satisfied, with the exception of certain information detailed in the table below, that the information provided by Chengxi was relevant, complete and accurate and therefore suitable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

	Exception	Resolution
1	In relation to Australian sales, the verification team identified that 'Add-on Shackles' were part of transport fixtures for a specific project but not reported in invoice price of the relevant sale.	Chengxi submitted an itemised selling price of the project and a revised Australian sales listing.

¹⁵ As this date falls on a Sunday prior to a public holiday, the recommendation is due on Tuesday 26th April 2022.

¹⁶ Refer to Chapter 2 of the Manual for the commission's methodology for determining like goods.

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2	The verification team identified Chengxi did not report export sales inventory costs in the Australian sales listing. Also, the verification team identified a discrepancy between the calculated average inventory period and the value reported in the revised sales listing for one sale.	Chengxi submitted the calculation method for the average inventory period and added inventory costs to the Australian sales listing. The verification team rectified the error by amending the reported average inventory period in the revised sales listing.
3	The verification team identified dates of sale for some projects were incomplete in the sales listing and therefore the verification team could not verify the total quantity of sales for the review period.	Chengxi submitted a revised domestic sales listing with a complete list of dates of sale.
4	The verification team identified a material discrepancy between the REQ and source documentation regarding the timing of warranty payments.	Chengxi submitted a schedule of payment milestones and the verification team revised the calculation accordingly. This revision resulted in a material change to payment terms.
5	The verification team identified that Chengxi allocated inventory costs for only some of its domestic sales in the sales listing.	Chengxi submitted additional information and allocated inventory costs for all domestic sales. The also submitted a revised domestic sales listing.
6	The verification team identified a material amount of Research & Development (R&D) expense in the selling, general and administrative costs (SG&A) listing was deducted from total SG&A expense. The verification team requested Chengxi substantiate what the total R&D expense related to.	Chengxi submitted supporting evidence demonstrating some of the R&D expense related to the goods. The SG&A % increased as a result of including this R&D expense in the SG&A.

Chengxi's exporter verification work program at **Confidential Attachment 1** details the commission's findings and conclusions regarding the verification of Chengxi's data.

2.6 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission's website via www.adcommission.gov.au.

2.7 Submissions received

With the exception of the questionnaire responses, no additional submissions were received during the conduct of this accelerated review.

3 THE GOODS AND LIKE GOODS

3.1 Production Process

The commission considers that the like goods manufactured for domestic consumption are identical to, or have characteristics closely resembling the goods exported to Australia if they are physically alike, share a production likeness, are commercially alike and are functionally alike.

In order to determine the production likeness of the goods, the commission obtained an understanding of Chengxi's production processes.

A summary of the production process for the goods is provided below:

- Cutting and Bevelling – Chengxi staff cut steel plates into the shape consistent with the technical designs, and bevel the edges of plates in preparation for the next process.
- Rolling - Chengxi staff roll the steel plates into steel “cans”.
- Welding - Chengxi staff weld the long seam on each steel can and arrange the non-destructive testing inspection for the welding seam.
- Fitting-up - Chengxi staff weld a certain amount of steel cans together to form one wind tower section, and install the steel flange on the two ends of each section.
- Blasting and Painting - Chengxi staff use the steel blasting machine to remove the rust on the inner and outer surface of each section, and then spray the paint on the surface.
- Internals - Chengxi staff install the internal components for each section.

3.2 Model Control Codes (MCCs)

Chengxi produces and sells wind towers to order, which are specific to the customer and its project requirements. Considering the uniqueness of each project, it is not appropriate to establish a MCC for these goods.¹⁷

3.3 The goods exported to Australia

The commission was satisfied that Chengxi produced and exported the goods to Australia.

3.3.1 Like goods sold on the domestic market

The commission was satisfied that Chengxi sold like goods in the domestic market. However, the commission identified there are no identical goods sold on the domestic market in China due to differences in tower designs, including height, weight, circumference and the tower internals.

¹⁷ Refer to Chapter 14 of the Manual for the commission's model matching methodology.

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The commission notes that wind towers vary from project to project and have different technical properties and specifications. However, the commission considers that the goods produced by Chengxi for domestic sale have characteristics closely resembling those of the goods exported to Australia. All wind tower sections share common characteristics, have comparable end use applications and are produced at the same facilities, using the same raw material inputs and manufacturing processes.

3.4 Like goods – assessment

The commission considers that the goods produced by Chengxi for domestic sale have characteristics closely resembling those of the goods exported to Australia and are therefore 'like goods' in accordance with section 269T(1).

4 EXPORT PRICE

4.1 Finding

The commission recommends that the export price be determined under section 269TAB(1)(a), as the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation.

4.2 The importers

The commission considers General Electric International, Inc. – Australia (GE) to be the beneficial owner of the goods at the time of importation and therefore the importer as GE is:

- named as the purchaser on the commercial invoice
- declared as the importer on the Certificate of Origin
- responsible for wharfage and importation charges (incoterm Free Alongside Ship (FAS), and
- responsible for arranging delivery from the Australian port.

4.3 The exporter

The commission considers Chengxi Shipyard Co., Ltd. (Chengxi) to be the exporter of the goods,¹⁸ as Chengxi is:

- the manufacturer of the goods located in the country of export, knowing that they are destined for Australia
- named on relevant commercial documentation as the supplier (e.g. commercial invoices and purchase orders)
- named as the exporter on Certificate of Origin, and
- responsible for arranging and paying for the inland transport to the port of export.

4.4 Arms length assessment

In determining export prices under section 269TAB(1)(a) and normal values under subsection 269TAC(1), the Act requires that the relevant sales are arms length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price

¹⁸ The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

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- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.¹⁹

4.4.1 Unrelated customers

In respect of Chengxi's Australian sales of the goods to its unrelated customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all export sales made by Chengxi to its unrelated Australian customers during the period were arms length transactions.²⁰

4.5 Conclusion

In respect of Australian sales of the goods by Chengxi, the commission recommends that the export price be determined under section 269TAB(1)(a), as the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation

The commission's export price calculations are at **Confidential Appendix 1**.

¹⁹ Refer to Chapter 5 of the Manual for the commission's approach to assessment of arms length transactions.

²⁰ Section 269TAA refers.

5 NORMAL VALUE

5.1 Finding

The commission found that there were sufficient domestic sales that were arms length transactions and sold at prices that are in the ordinary course of trade (OCOT).²¹ Due to the unique nature of this good and to calculate the price differences that affect comparison of like goods that are not identical in all respects, the commission has applied the market price comparison methodology outlined in section 5.6.1 of this report. Accordingly, the commission has ascertained the normal value in accordance with section 269TAC(1).

5.2 Assessment of domestic sales

Section 269TAC(1) provides the general rule for calculating normal value. For sales to be relevant for the purpose of section 269TAC(1), they must be sales of like goods sold in the exporter's domestic market for home consumption that are at arms length and in the OCOT.

5.3 Arms length assessment

5.3.1 Related party customers

In respect of Chengxi's domestic sales of like goods to its related customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.²²

The commission analysed unit prices between unrelated and related customers and determined prices were comparable.

The commission confirmed that Chengxi's sales to both related and unrelated customers arise from Chengxi successfully bidding in competitive tender processes.

The commission therefore considers that all domestic sales made by Chengxi to its related customers during the period were arms length transactions.

5.3.2 Unrelated customers

In respect of Chengxi's domestic sales of like goods to its unrelated customers during the period, the commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price

²¹ Section 269TAAD

²² Section 269TAA

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- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The commission therefore considers that all domestic sales made by Chengxi to its unrelated domestic customers during the period were arm's length transactions.

5.4 Ordinary course of trade

Section 269TAAD states that domestic sales of like goods are not in the OCOT if arms length transactions are both:

- unprofitable in substantial quantities over an extended period
- unlikely to be recoverable within a reasonable period.²³

The commission tested profitability by comparing the net invoice price against the relevant cost for each domestic sales transaction.

The team then tested whether the unprofitable sales were in substantial quantities (not less than 20 per cent) by comparing the volume of unprofitable sales to the total sales volume, for each MCC over the period.

The team tested recoverability by comparing the net invoice price against the relevant weighted average cost over the period for each domestic sales transaction.

The following table sets out further detail:

OCOT particulars	Details
Price	Net invoice price
Cost	Quarterly cost to make and sell, including direct selling expenses for each transaction.
Weighted average cost	Weighted average cost to make and sell over the period, including direct selling expenses for each transaction.

Table 4 - OCOT details

5.4.1 Assessment of market competitive costs

To determine the cost of production or manufacture, section 43(2) of the Regulation requires that if:

- an exporter or producer keeps records relating to like goods that are in accordance with generally accepted accounting principles in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the cost of production or manufacture using information set out in the exporter or producer's records.

²³ In general, the commission will consider 'extended period' and 'reasonable period' to be the investigation, review or inquiry period.

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As per the Manual, the phrase ‘reasonably reflect competitive markets costs’ may refer to the situation where there is government influence on the costs of inputs.

When examining whether the input is supplied at a normal competitive market price the commission may inquire whether the government had influenced the price of any major cost inputs.

The commission has not been presented with any evidence to suggest that the GOC’s involvement in the industry has changed since the previous inquiry. Therefore, Chengxi’s cost of production records are considered to not be determined in competitive market conditions, and do not reasonably reflect competitive market costs associated with the production of wind towers for the purposes of regulation 43(2).

As established in REP 221 and REP 487, the commission is of the view that the Government of China’s (GOC) involvement and influence over the steel industry and the markets for raw materials used in the production of wind towers has created distortions that make them unsuitable to use for determining the cost of production in China.

As a result, the commission uplifted the prices of raw material steel plate used to calculate the cost of production of Chengxi’s domestically sold wind towers.

5.4.1.1 Steel plate uplift methodology²⁴

In order to calculate the uplift applied to Chengxi’s cost to make data, the commission had regard to uplifted plate steel costs as reported in REP 487, where the commission previously established a competitive market cost for plate steel. The commission indexed the uplifted plate steel costs from REP 487 with reference to movements in the S&P Global (Platts) benchmark in the current review period. The commission referred to *Flat Products / Plate CFR East Asia / East Asia import CFR \$ / ton*, (CFR terms, USD per tonne) as its benchmark to index the cost.²⁵ The benchmark indicates that competitive market steel prices were significantly higher during the inquiry period than the costs set out in Chengxi’s records. Therefore, Chengxi’s steel plate costs have been uplifted accordingly in its cost to make data.

The raw material steel plate purchases in Chengxi’s records were compared to the corresponding quarterly benchmarked prices. The difference in these prices was then applied to the cost of plate steel, as reflected in Chengxi’s records, as a proportional uplift that would be inclusive of any relevant grade differences.

The commission’s indexation methodology and workings can be found at **Confidential Appendix 2A**.

5.5 Volume of relevant sales

Section 269TAC(2) provides alternative methods for calculating the normal value of goods exported to Australia where there is an absence, or low volume, of relevant sales of like goods in the market of the country of export. An exporter’s domestic sales of like goods are taken to be in a low volume where the total volume of sales of like

²⁴ Consistent with findings made in ADRP Report 100

²⁵ Steel price obtained from S&B Global (Platts), refer to <https://www.steelbb.spglobal.com/steelprices/>

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goods for home consumption in the country of export by the exporter is less than 5% of the total volume of the goods under consideration that are exported to Australia by the exporter (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).

The commission assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of domestic sales was 5 per cent or greater and therefore was not a low volume.

Due to the unique nature of this good a proper comparison between the goods exported to Australia and the goods sold on the domestic market is not possible. As stated in Chapter 3 of this report, a MCC structure was not established and therefore no model volume analysis was undertaken.

5.6 Adjustments to normal value

The commission considers adjustments under section 269TAC(8) are necessary to ensure that the normal value ascertained is properly compared with the export price of those goods.

5.6.1 Market price calculation

The commission considered an alternative approach to achieve the objective of removing differences that affect price in relation to like goods that are not identical to the exported goods. In this approach, the commission first started with the weighted average sales prices of like goods, sold in arms length transactions in the OCOT.

The commission then established a 'market price' in the domestic market for identical goods to those exported and then compared the difference between these two prices to adjust the sales of all like goods sold in OCOT. In establishing what the 'market price' in the domestic market would have been, the commission based the price as the sum of:

- the cost to make the goods sold on the export market (being the identical model)²⁶
- the SG&A expenses for like goods sold on the domestic market;²⁷
- plus the profit achieved in the sales of all like goods that is profitable or recoverable.

The commission considers that this approach creates a reasonable estimate of the price for which the goods exported to Australia, would have been sold at if they were sold on the domestic market. This is based on the following factors:

- Using the cost to make the goods on the export market accounts for cost based differences between the domestic and exported wind towers;
- Using this profit allows a fair comparison between the actual prices achieved in the domestic market and the 'market price', noting that section 269TAC(1) requires domestic sales used to determine normal value to be in the OCOT and;

²⁶ Refer Confidential Appendix 2 for the export cost to make data

²⁷ Refer Confidential Appendix 2 for domestic SG&A data

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- It is reasonable to assume that there is a cost to sell the goods on the domestic market which would be accounted for in the market price, and that this cost may be different to that of export sales.

The commission considers that this is the most reasonable approach to calculating the price differences that affect comparison of like goods that are not identical in all respects. As these circumstances apply to this accelerated review, the commission has applied the above stated methodology to calculate the dumping margin.

To ensure the normal value is comparable to the export price of goods exported to Australia at FAS terms, the commission has considered the following adjustments in accordance with section 269TAC(8). This approach is consistent with the findings made in ADRP Report 100.

5.6.2 Rationale and Method

Adjustment type	Rationale for adjustment	Calculation method and evidence	Claimed in REQ?	Adjustment required?
Market price calculation	To calculate the price differences affecting comparison of like goods that are not identical in all respects, pursuant to 269TAC(8).	Described in section 5.6.1 of this report.	N	Y

Table 5 - Assessment of adjustment

5.6.3 Adjustments

The commission considers the following adjustment under section 269TAC(8) is necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Market price calculation	Described in section 5.6.1 of this report.

Table 6 - Summary of adjustment

The commission's adjustment calculations are included in normal value calculations at **Confidential Appendix 3**.

5.7 Conclusion

The commission found that there were sufficient volumes of sales of like goods sold for home consumption in the country of export that were arms length transactions and at prices that were within the OCOT. The commission is therefore not satisfied that there is an absence, or low volume, of sales relevant for the purpose of determining a price under section 269TAC(1).

The commission has applied the market price comparison methodology outlined in section 5.6.1 of this report and has calculated a normal value under section 269TAC(1). In using domestic sales as a basis for normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure that differences between the normal value of goods exported to Australia and the export price of the exported goods would not affect comparison of domestic prices with export prices.

The commission's approach is consistent with the findings made in ADRP Report 100.

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The commission's normal value calculations are at **Confidential Appendix 3**.

6 DUMPING MARGIN

6.1 Findings

The commission has calculated a dumping margin by comparing the export price with the corresponding normal value in accordance with section 269TACB(2)(a).

The dumping margin in respect of the goods for Chengxi is **negative 5.1 per cent**.

The dumping margin calculation is provided at **Confidential Appendix 4**.

7 NON-INJURIOUS PRICE

7.1 Non-Injurious Price

The NIP is defined in section 269TACA as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury” caused by the dumped goods the subject of a dumping duty notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry is not affected by dumping.

7.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).²⁸

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

However, pursuant to section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Neither of those circumstances (being the composition of the Australian industry or the method of ascertaining normal value in circumstances of a particular market situation in the country of export) are relevant to the present inquiry.

7.3 Calculation of the non-injurious price

The commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The commission’s preferred approach to establishing the USP is set out in Chapter 24 of the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the commission then calculates a NIP by deducting the costs incurred in getting the goods from the export Free on Board point (or another point if appropriate – in this instance, FAS) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

7.4 The commission’s assessment

In considering whether a constructed USP is appropriate, the commission notes the following factors:

- wind towers supplied by the Australian industry are unique in their technical specifications;
- each original equipment manufacturer in the industry has a range of tower designs unique to its needs (driven mostly by the turbine requirements) and the

²⁸ Section 8(5B) of the Dumping Duty Act.

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project characteristics, and these tower designs differ significantly by cost and price; and

- there are a range of free issue items, including flanges and internals that affect the cost and final pricing of the wind tower.

The commission concludes that, given the unique design of each wind tower, it is not practicable to calculate a meaningful USP under any of the commission's usual three approaches. Therefore, the commission considers that it is appropriate to recommend that the NIP of the goods exported to Australia be set by reference to the corresponding normal values during the inquiry period. As a result the NIP is not operative.

8 FORM OF MEASURES

8.1 Current form of measures

Chengxi's is currently subject to a fixed rate of 10.9 per cent of IDD, reflecting the duties applicable to 'all other exporters' from China.²⁹

In respect of any IDD that may become payable, duty is collected using the *ad valorem* duty method.

8.2 Recommended form of measures

The commission notes that there is substantial variation in the prices of wind towers exported to Australia, and that this is primarily a result of differences in the tower specifications. These specifications change from project to project, which means that there is a high variability in prices over time. In these circumstances, the commission considers that the *ad valorem* duty method is the most appropriate form of measures for wind towers exported from China.³⁰

The NIP, established by reference to the normal value of the exporter, will not be the operative measure. There is therefore no requirement for the Commissioner to make a recommendation regarding whether the Minister should consider the desirability of fixing a lesser amount of duty than the dumping margin found, pursuant to section 8(5BAA) of the Dumping Duty Act.

The Commissioner recommends to the Minister that duties on imports of the goods from Chengxi be calculated in respect of any IDD that may become payable, using the *ad valorem* method.

²⁹ As determined in REP 487.

³⁰ As per the [Guidelines on the Application of Forms of Dumping Duty November 2013](#).

9 EFFECT OF THE ACCELERATED REVIEW

If the Minister accepts the recommendations in this report, in respect of the goods exported by Chengxi to Australia from China:

- the notice will be altered so as to apply to Chengxi as if different variable factors had been fixed;
- IDD will be worked out using the *ad valorem* duty method, at a rate of **zero per cent**;

If the Minister accepts the recommendations in this report, these changes will take effect retrospectively from 14 January 2022 (being the date the application was lodged).

The commission notes that if the Minister declares that the Act and Dumping Duty Act have effect as if the notice had applied to Chengxi, but the Minister had fixed specified different variable factors relevant to the determination of duty, pursuant to section 269ZG(3)(b), Chengxi will not be eligible to seek another accelerated review.³¹

³¹ Section 269ZE(1)

10 RECOMMENDATIONS

The Commissioner found that, in relation to the goods exported to Australia from China by Chengxi, the:

- ascertained export price should be altered
- ascertained normal value should be altered
- ascertained NIP should be altered.

The Commissioner recommends that the Minister consider this report and declare:

- under section 269ZG(3)(b) that, with effect from 14 January 2022, relevant to the determination of duty for the purposes of the Act and the Dumping Duty Act, the dumping duty notice in relation to the goods exported to Australia from China by Chengxi is taken to have effect as if different variable factors had been fixed relevant to the determination of duty.

The Commissioner recommends that the Minister determine:

- the export price of the goods exported to Australia from China by Chengxi under section 269TAB(1)(a), is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in **Confidential Appendix 1**
- the normal value of the goods exported to Australia from China by Chengxi under section 269TAC(1), is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter, as adjusted in accordance with section 269TAC(8), as set out in **Confidential Appendix 3**
- in accordance with section 8(5) of the Dumping Duty Act, that the IDD payable in respect of certain wind towers exported to Australia from China by Chengxi is an amount which will be worked out in accordance with the ad valorem method at a rate of **zero per cent**, pursuant to section 5(7) of the Customs Tariff (Anti-Dumping) Regulation 2013.

The Commissioner recommends that the Minister direct that:

- in accordance with section 269TAC(8), adjustments, as listed in Table 6, are necessary to ensure a fair comparison of normal values and export prices for the goods exported to Australia from China by Chengxi.

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11 APPENDICES

Confidential Appendix 1	Export Price
Confidential Appendix 2A	Cost Uplift Calculation
Confidential Appendix 2	Cost to Make and Sell
Confidential Appendix 3A	Profit
Confidential Appendix 3	Normal Value
Confidential Appendix 4	Dumping Margin Calculation
Confidential Attachment 1	Chengxi Shipyard Exporter Verification Work Program