



Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel
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By email

Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
55 Collins Street
MELBOURNE VIC 3000

Dear Commissioner,

**ADRP Review No. 100: Wind Towers exported from the People's Republic of China
and the Republic of Korea**

I refer to my letter dated 4 July 2019 requiring a reinvestigation in relation to this review pursuant to s.269ZZL(1) of the *Customs Act* 1901(the Act) and to the Preliminary Report posted on the Commission's website on 3 September 2019 on EPR 487.

I am writing to you to clarify an apparent misunderstanding as to the scope of the review being conducted by the Review Panel and the reinvestigation required.

The scope of the review being conducted by the Review Panel includes the ascertainment of the normal value for the exports of wind towers by Shanghai Taisheng Wind Power Equipment Co., Ltd (TSP) from the People's Republic of China (China). The issue of the normal value of TSP's exports arises from the first of the grounds which I accepted, namely that there were errors in the determination of the dumping margin and, in particular, the determination of the amount of profit for the purpose of the normal value¹.

As set out in my letter dated 4 July 2019, one of the reasons I required that there be a reinvestigation of the finding as to the normal value for TSP's exports was that I agreed with TSP that the approach by the Commission with respect to the determination of profit was

¹ Public Notice pursuant to s.269ZZI dated 8 May 2019

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inconsistent with the reason given by the Commission for using s.269TAC(2)(c) of the Act to construct the normal value. If there were no domestic sales of like goods by TSP in the ordinary course of trade (OCOT) then Regulation 45(2)² was not available to be used. It follows that, if the reinvestigation finds that there are domestic sales of like goods in the OCOT, then there must be a reconsideration of the application of s.269TAC(2)(c) and whether the factual findings require that s.269TAC(1) (or possibly s.269TAC(6)) of the Act be used to ascertain the normal value.

Both the scope of the review and the reinvestigation request raises the inconsistent approach identified by TSP in its application and the issue I identified in the course of the review of the misapplication of s.269TAC(2). As I am sure you will appreciate, the view of TSP that the Commission correctly resorted to s.269TAC(2)(c) cannot bind either the Review Panel or the Commission in the correct application of the legislation to the facts.

In the event that you determine that as a result of the reinvestigation (as presently indicated by the Preliminary Report) that there were sales of like goods in the OCOT, then there needs to be a consideration of whether this finding means that the normal value has to be ascertained under s.269TAC(1) or possibly under s.269TAC(6). Otherwise, there will be a risk that the reinvestigation is tainted by the same mistake as made in Report 487 regarding the misapplication of s.269TAC(2).

If you consider it helpful to have a conference to clarify the scope of the reinvestigation request, please advise the Secretariat. If you need more time for the reinvestigation as a result of this clarification of the reinvestigation request, please advise me.

Yours sincerely,



Joan Fitzhenry
Senior Member
Anti-Dumping Review Panel
5 September 2019

² S.45(2) of the Customs (International Obligations) Regulation 2015