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**CUSTOMS ACT 1901 - PART XVB**

**Anti-Dumping Commission  
Reinvestigation Report for 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**

**5 March 2020**

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## 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>
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
OCOT	ordinary course of trade
Option A	An option for normal value calculation that adjusts domestic selling prices by the difference between the weighted average of all domestic costs and weighted average of all export costs. Refer to sections 4.1.3.1 and 4.3.3.1 for further details.
Option B	An option for normal value calculation that adjusts selected surrogate model domestic selling prices by the difference between the cost to make of that model and the exported model. Refer to sections 4.1.3.2 and 4.3.3.2 for further details.
Option C	An option for normal value calculation that adjusts the weighted average of all domestic selling prices by the difference between those selling prices and a domestic market price for each export model. Refer to sections 4.1.3.3 and 4.3.3.2 for further details.
the 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

**PUBLIC RECORD**

TSP	Shanghai Taisheng Wind Power Equipment Co. Ltd and its subsidiaries: <ul style="list-style-type: none"><li>• Baotou Taisheng Wind Energy Equipment Co., Ltd;</li><li>• Nantong Blue Island Marine Engineering Co., Ltd;</li><li>• Shanghai Taisheng (Dongtai) Power Engineering Machinery Co., Ltd; and</li><li>• Xinjiang Taisheng Wind Energy Equipment Co., Ltd</li></ul>
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)<sup>1</sup> declare that:

- pursuant to section 269ZHG(1)(b) of the *Customs Act 1901* (the Act)<sup>2</sup>, 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 section 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.<sup>3</sup>

### 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.<sup>4</sup>

On 4 July 2019, the ADRP requested that the Commissioner undertake a reinvestigation<sup>5</sup> under section 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

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

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

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

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

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

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 sought<sup>6</sup>, and was granted<sup>7</sup>, an extension of 60 days to allow interested parties to make submissions on a preliminary report to the ADRP. The result of that extension was that the reinvestigation would have been due to the ADRP on 1 November 2019. The Commissioner sought<sup>8</sup>, and was granted<sup>9</sup>, a subsequent extension of 95 days to respond to submissions made to the preliminary reinvestigation report. The Commissioner sought<sup>10</sup>, and was granted<sup>11</sup>, a subsequent extension of 95 days to respond to submissions made to the preliminary reinvestigation report. The reinvestigation report is now due to the ADRP on 5 March 2020.

### **1.3 Approach to the reinvestigation**

This report sets out revised 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).<sup>12</sup> In conducting the reinvestigation, the Commission has had regard to:

- the grounds for review as published by the ADRP notice<sup>13</sup> under section 269ZZI;
- the ADRP reasons for requesting the reinvestigation;
- the application for a review of the Minister's decision from TSP; and
- submissions made by TSP and the ADRP to the first and second preliminary reinvestigation reports.

The ADRP requested the reinvestigation of the finding as to the normal value determined for TSP's exports.<sup>14</sup> The key areas that the reinvestigation has focussed upon, as per the ADRP's request, are as follows:

- the methodology that the Commission used to determine the normal value;
- whether the Commission incorrectly determined the amount of profit for normal value purposes and whether the use of the *Customs (International Obligations) Regulation 2015* (the Regulation) section 45(2) was incorrect;<sup>15</sup>
- whether there were sales of like goods in the market of the country of export;<sup>16</sup>

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<sup>6</sup> [Letter from ADC to ADRP requesting extension of time](#)

<sup>7</sup> [Approval of extension of time by the ADRP panel member](#)

<sup>8</sup> [Letter from ADC to ADRP requesting extension of time](#)

<sup>9</sup> [Approval of extension of time by the ADRP panel member](#)

<sup>10</sup> [Letter from ADC to ADRP requesting extension of time](#)

<sup>11</sup> [Approval of extension of time by the ADRP panel member](#)

<sup>12</sup> The report has been prepared in accordance with section 269ZZL(2)

<sup>13</sup> [Anti-Dumping Review Panel Notice under section 269ZZI published 8 May 2019](#)

<sup>14</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) refers, pages 2-9.

<sup>15</sup> [TSP Application to the ADRP](#), page 3.

<sup>16</sup> [TSP Application to the ADRP](#), page 4.

## PUBLIC RECORD

- whether the ordinary course of trade (OCOT) test could not be carried out in the circumstances of TSP's exports;<sup>17</sup> and
- Whether 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 if the previous finding as to TSP's normal value were to be revised.

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".<sup>18</sup> 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.*<sup>19</sup>

The reinvestigation request by the ADRP requested that the Commission reinvestigate 'the finding as to normal value'.<sup>20</sup>

The Commission published a preliminary reinvestigation report on the electronic public record (EPR) on 6 September 2019 and invited submissions to that preliminary reinvestigation report. The Commission received one submission by TSP<sup>21</sup> in relation to the preliminary reinvestigation report, which is available on the public record.

The ADRP clarified its views on the scope of the reinvestigation request in a letter to the Commission<sup>22</sup> on 9 September 2019. The Commission has considered the approach to normal value in accordance with the reinvestigation request and clarification by the ADRP.

The Commission published a second preliminary reinvestigation report on the EPR<sup>23</sup> on 6 January 2020 and invited interested parties to make submissions on that second preliminary reinvestigation report. The Commission received one submission by TSP<sup>24</sup> in relation to the preliminary reinvestigation report, which is available on the public record. The Commission has considered both submissions when preparing this final reinvestigation report.

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<sup>17</sup> [TSP Application to the ADRP](#), page 5.

<sup>18</sup> [TSP Application to the ADRP](#), page 4.

<sup>19</sup> [TSP Application to the ADRP](#), page 4.

<sup>20</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 30 refers.

<sup>21</sup> [EPR 487 document 22](#)

<sup>22</sup> [Letter from ADRP to the Commissioner on 9 September 2019](#)

<sup>23</sup> [EPR 487 document 23](#)

<sup>24</sup> [EPR 487 document 24](#)

## **1.4 Summary of reinvestigation 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 determining the normal value. This is considered in chapter 4. The Commission finds that the normal value can be determined under section 269TAC(1) with relevant adjustments under section 269TAC(8). As such, the Commission has not examined whether REP 487 incorrectly determined the amount of profit for normal value purposes and that the use of section 45(2) of the Regulation was incorrect. This has not been reinvestigated as those provisions are no longer required when the normal value has been determined under section 269TAC(1).

The ADRP also noted a potential for further grounds for reinvestigation in the event 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. Assuming this had transpired, the Commission was requested to 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 and material injury that the anti-dumping measures are intended to prevent. Given the findings resulted in no change to the normal value, and therefore no change to the dumping margin, the Commission does not consider that this aspect of the reinvestigation is required. This aspect is addressed in chapter 5.

## **1.5 Submissions**

The Commission invited submissions to the first and second preliminary reinvestigation reports. The Commission received two submissions, both of which are available on the EPR for case 487 as follows:

<b>EPR No.</b>	<b>Submission Title</b>	<b>Date on EPR</b>
22	Shanghai Taisheng Wind Power Equipment Co Ltd - Response to Preliminary Reinvestigation Report 487	26/09/2019
24	Shanghai Taisheng Wind Power Equipment Co Ltd - Response to second preliminary reinvestigation report 487	21/01/2020



## 2 SALES OF LIKE GOODS

### 2.1 Introduction

TSP contends that the Commission's calculation of profit, pursuant to section 45(2) of the Regulation, was incorrect because there were no sales of like goods in the market of the country of export. While the conditions of section 45(2) of the Regulation are no longer relevant (as discussed in chapter 4), the Commission has examined TSP's claims that there were no sales of like goods in the market of the country of export.

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".<sup>25</sup> TSP, however, disagreed with the Statement of Essential Facts (SEF) and subsequent REP 487 profit calculation approach, which it described as incorrect, because "there were no sales of like goods in the market of the country of export".<sup>26</sup> 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"<sup>27</sup> and that "due to the nature of the wind tower product, each being a unique product"<sup>28</sup>, a calculation of a profit margin under section 45(2) "is not suitable".<sup>29</sup> 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"<sup>30</sup> 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).<sup>31</sup> It is on this basis that TSP believes that like goods do not exist on the domestic market and that "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".<sup>32</sup>

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<sup>25</sup> [TSP Application to the ADRP](#), page 4

<sup>26</sup> [TSP Application to the ADRP](#), page 4

<sup>27</sup> [EPR 487 document 15](#), page 2

<sup>28</sup> [EPR 487 document 15](#), page 3

<sup>29</sup> [EPR 487 document 15](#), page 5

<sup>30</sup> [EPR 487 document 15](#), page 3

<sup>31</sup> [EPR 487 document 19 \(REP 487\)](#), page 32

<sup>32</sup> [EPR 487 document 15](#), page 3

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.<sup>33</sup>*

## 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 if there were, or were not, like goods available for the Commission to use for the purposes of calculating a profit margin in accordance with section 45(2) of the Regulation. While the preliminary findings contained in this report no longer relate to the applicability of section 45 of the Regulation, the Commission has reinvestigated whether TSP sells like goods on the domestic market in China as part of its reinvestigation of the normal value finding.

The Commission has used the framework for assessing like goods as outlined in Chapter 2 of the Dumping and Subsidy Manual (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).<sup>34</sup>

### 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.

While the goods description provides examples of items that can be attached or included within a wind tower (e.g., flooring/decking, ladders, lifts, electrical junction boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers), the Commission understands that steel plates formed into the cylindrical wind tower shape form a large component of the cost of wind towers.

In both the domestic and export markets, wind towers are comprised of various sections, each with different specifications, but when assembled they form a wind tower unit

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<sup>33</sup> [TSP Application to the ADRP](#), page 5

<sup>34</sup> [EPR 487 document 2](#).

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.

### 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"*<sup>35</sup>

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<sup>35</sup> [EPR 487 document 4](#), page 36.

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.<sup>36</sup> TSP's production costs are not recorded to the tower or tower section level, but rather on 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.*<sup>37</sup>

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

*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.*<sup>38</sup>

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. The Commission considers that while two models may not be directly comparable to each other, this does not detract from the view that the different models remain like goods.

While REP 487 stated that it was “*not possible to accurately adjust domestic prices to make them comparable with export prices*”,<sup>39</sup> the reinvestigation has examined whether this was possible. This is discussed further in chapter 4 of this report.

## 2.5 Like goods

The term ‘like goods’,

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<sup>36</sup> [EPR 487 document 13](#), page 9.

<sup>37</sup> [EPR 487 document 4](#), page 18

<sup>38</sup> [EPR 487 document 19 \(REP 487\)](#), page 38.

<sup>39</sup> [EPR 487 document 19 \(REP 487\)](#), page 38.

*“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”.*<sup>40</sup>

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.

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. As measures apply to future exports of like goods if future wind towers exported to Australia once measures are imposed were not identical to those exported during the investigation period, if the Commission agreed with TSP’s view, those towers would not be subject to the notice. 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’.

## 2.6 Submissions to the first preliminary reinvestigation report

The Commission received one submission on behalf of TSP in relation to the preliminary reinvestigation report findings. In relation to the assessment of like goods, the Commission has considered the submission as follows.

TSP claimed that the preliminary reinvestigation report confirmed “the unique, highly customised and project-based nature of wind towers”.<sup>41</sup> TSP went on to state that

*“[it] is therefore undisputed that each wind tower project has its own highly specific design requirements, both in terms of the engineering designs of the tower sections as well as the internal parts install[ed] in the tower sections (sic).”*<sup>42</sup>

The Commission agrees with TSP 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. However the Commission does not agree with TSP’s opinion that:

*“insisting on describing all wind towers in highly generalised terms [...] ignores the clear differences and non-substitutability of wind towers between projects, and the special physical and commercial nature of the goods under consideration”.*<sup>43</sup>

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<sup>40</sup> Section 269T

<sup>41</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 3

<sup>42</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 3

<sup>43</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 3



TSP's submission in relation to like goods concludes by requesting that the Commission find that "TSP's domestic sales of wind towers are not "like goods" to the goods exported by TSP to Australia for the purpose of normal value calculation".<sup>44</sup> TSP claims that the Commission's approach is characterised by what it described as "hybrid reasoning", which it submits cannot be correct as a matter of law. The reasoning is presumably characterised as 'hybrid' because of what is perceived to be a conflation of "likeness" and "close resemblance". According to TSP, this conflation inherent in the Commission's reasoning occurs because:

*goods sold domestically can have "likeness in characteristics" that do not disqualify them from being sales of like goods to those exported for the purpose of Section 269TAAD of the Act, but also (disqualify them) for not having "characteristics closely resembling" the exported goods for the purpose of Section 269TAC(1).*<sup>45</sup>

The Commission has considered the argument raised by TSP in relation to whether the domestic sales by TSP are like to those goods which are exported.

The Commission previously found in REP 487<sup>46</sup> (and REP 221<sup>47</sup>) that Australian manufacturers produce goods that are like to the goods under consideration. The Commission considers that TSP's argument for why it considers the domestic sales are not like goods, raised in the submission, revolves primarily around the physical characteristics of the different towers. The Commission contends that the goods description assists by setting out the generically physical/functional quality of the goods:

*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.*

*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.*

*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.*

The goods description reflects the fact that the wind towers (subject to the measures) are unlikely to be identical in each and every respect between different projects and applications, although they are functionally/structurally alike. The Commission does not

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<sup>44</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 9

<sup>45</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 4

<sup>46</sup> [EPR 487 document 19 \(REP 487\)](#), page 16

<sup>47</sup> [EPR 221 document xx \(REP 221\)](#), page 16

disagree that the wind towers sold domestically by TSP, exported by TSP, and those sold by Australian Industry members, have physical differences. The goods description provided by the applicant for investigation clearly anticipated this possibility.

The Manual sets out considerations required in situations where goods sold on the domestic market are found not to be identical. In these circumstances, it is necessary to determine whether the goods would still fall within the ambit of like goods having characteristics closely resembling those of the goods under consideration. TSP claims that the differences between its domestic sales and export sales are so great that they no longer have characteristics closely resembling each other.

An assessment of the physical differences (section 2.3.1) identifies that there are some physical differences, but when considered as a generic functional product, the physical characteristics of those wind towers sold domestically do have characteristics that are like to, or closely resemble, the wind towers being exported. While TSP argues that this is a “highly generalised”<sup>48</sup> approach to take, the Commission considers that the goods description required that all wind towers that met the goods description should be (and were) assessed.

TSP argues that, from project-to-project, the wind towers themselves are not directly substitutable.<sup>49</sup> The Commission considers that this is due to factors that do not relate to the physical characteristics of the tower, but to the requirements and preferences of the end user. The commercial reality of the wind towers market is that the tower design is specified by the end user, and potential suppliers bid for the production of that tower. As a result, a tower produced by TSP can be substituted by a tower produced by any other potential supplier *for that project*. There is no need to provide for the direct substitutability of wind towers produced for different projects. In essential respects, the goods under consideration can be substituted despite what may be considered to be incidental differences in style design features. Nor do specification differences that may be preferred by particular purchasers override the material functional and physical resemblance of the goods under consideration.

As a result of the analysis of the physical, commercial, functional and production likeness conducted in section 2.3 (above) between domestic sales and export sales, and the consideration of the submission made by TSP, the Commission remains satisfied that wind towers sold on the domestic market by TSP *have characteristics closely resembling those of the goods under consideration* that were exported by TSP to Australia.

## 2.7 Submissions to the second preliminary reinvestigation report

The Commission received one submission on behalf of TSP in relation to the second preliminary reinvestigation report findings.<sup>50</sup> In relation to the assessment of like goods, the submission referred to the original submission<sup>51</sup> made by TSP and raised two new

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<sup>48</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 3

<sup>49</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 3

<sup>50</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#)

<sup>51</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#)

points of contention. The Commission has revisited the original submission, as set out above in section 2.6, and has considered the new points raised by TSP's most recent submission, as follows:

TSP proposes that the Commission has misunderstood the meaning of "like goods" in its assessment of whether the physical characteristics of the wind towers sold domestically are like to those exported to Australia. TSP contends that it was improper for the Commission "to characterise the clear physical differences as *"due to factors that do not relate to the physical characteristics of the tower, but to the requirements and preferences of the end user"*".<sup>52</sup> TSP elaborates on the argument as follows:

*Such differences render wind towers having different specifications as not substitutable for each other – because they are designed for different projects, to reflect the particular geographical conditions and the specific wind farm requirements. The attempt to characterise these real physical and commercial differences as insubstantial and a matter of "preference of end users" is incorrect and inappropriate.*<sup>53</sup>

In the second preliminary reinvestigation report, the Commission acknowledged TSP's contention that the individual wind towers were not directly substitutable between export and domestic sales. The rationale for this lack of substitutability was said (by the Commission) to be due to the "requirements and preferences of the end users". In its latest submission, TSP observes that:

*The "requirements and preferences of the end users" mean that the design of a particular tower project is a unique specification. This extends to each section of that tower design. Such "requirements and preferences" are completely and squarely reflected by the specific engineering requirements that have to be complied with by TSP in order to manufacture tower sections with the correct physical characteristics.*<sup>54</sup>

The Commission maintains that the wind towers sold domestically by TSP are not necessarily identical goods to those exported, although they closely resemble them. A lack of direct, identical substitutability of a product does not, in and of itself, mean a good is not a 'like good' nor does specification differences that are preferred by particular purchasers. In the case of wind towers, customer requirements and preferences are documented in engineering design documents and these detailed designs are similar to those found for other types of goods. TSP contends that the detailed design documents prepared for each particular procurement of a wind tower takes the goods under consideration beyond the realm of resemblance as a class or category of 'like goods'. But this would mean that every specification, despite containing material functional and physical similarities, is also fundamentally different.

The Commission disagrees with this view, as it would mean that non-identical goods could not also be 'like goods'. The definition of like goods, as provided in the legislation,

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<sup>52</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#) page 4

<sup>53</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#) page 4

<sup>54</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#) page 4



anticipates situations where the goods sold domestically and the goods exported, although close in resemblance, are not necessarily identical. The Commission remains satisfied that specification differences for different wind tower projects have a generic quality of similarity such that minor physical differences from project to project are less relevant than their common appearance and functional and engineering purpose across a range of projects.

TSP goes on to argue that the ““goods description” is a distinct concept and cannot replace the identification of the “like goods” to the GUC”.<sup>55</sup> The Commission notes that the two concepts cannot be mutually exclusive. In order for a good to be investigated, it must fall within the goods description. In order to determine what a ‘like good’ is in relation to the goods exported, it follows that one must first understand what the characteristics of the goods under consideration are. TSP conclude their argument as follows:

*Therefore, for the purpose of normal value determination, the identification of “like goods” must be guided by the “goods exported to Australia”. This requires the Minister to engage in an objective and evidence-based examination of the actual physical characteristics of the goods exported and of the goods sold in the domestic market by any particular exporter. Such requirement cannot be bypassed by simply stating that both the domestic sales and the Australian sales fall within the “goods description” and therefore must be “like” to each other.*<sup>56</sup>

The Commission contends that this is the approach it has undertaken. The Commission has found that the goods sold domestically have characteristics that, while not identical, closely resemble the goods exported by TSP. The Commission has also found those domestic goods to be like to the export goods.

TSP has also claimed that the differences between (and within) projects was not fully appreciated by the Commission. TSP states that:

*Each “project” of TSP’s domestic or Australian sales typically involves sales of multiple wind tower products. The precise nature and scope of each project varies greatly. The fact that the content of these projects were very different from each other, necessarily infers that those different projects are not “like goods” with each other.*

The Commission has used the information provided by TSP in its exporter questionnaire response to identify the goods sold domestically. The Commission notes that the sales and cost data presented by TSP does not identify, nor does it differentiate between different types of towers sold *within* each project:

- Sales data provided by TSP and verified by the Commission lists each domestic customer, the quantity of sales and a singular model / product code for each sale.
- Cost data provided by TSP (verified by the Commission) was based on project cost reports as set out by TSP. TSP claimed that this was the method according to which it accounts for the cost of each wind tower project. TSP has never been able

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<sup>55</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#) page 4

<sup>56</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#) page 5

to provide costing relevant to the level of each wind tower, as the TSP accounting system only records costs at a project level.

As such, the Commission contends that TSP's claim that the individual wind towers within each project are significantly different from each other, does not appear to be supported by the evidence provided to the Commission throughout the course of the continuation inquiry and reinvestigation. While TSP has provided diagrams of selected exported wind towers, it has not provided similar diagrams of domestic towers. The Commission has observed in contracts provided for domestic sales that design diagrams do not form part of the contract and that the domestic sales listing only lists one model for each contract.

If the wind towers were so significantly different within projects, the Commission would expect that both price and cost differences between the towers would exist and TSP would record these accordingly. However, the Commission has found (through verified data) that TSP does not record any such differences in cost or price within each project and instead costs and prices each project individually. The Commission considers that, when considering price effects, TSP's accounting records do not appear to support the view that there are material differences within each wind tower project.

In the absence of any data that sets out the price and cost of each individual wind tower, the Commission has used the data in the format that TSP keeps its accounting records.

Finally, TSP also claims that:

*...to treat each such "model"/"project" as a "unit" of goods for the purpose of any "averaging" or "quantity" related calculation is also incorrect and inappropriate. This is because such "units" lack the necessary commonality and uniformity for one unit to be comparable to another unit, or for a number of different units of tower sections or full towers to be "weight averaged". These features further support TSP's consistent submission – that TSP's domestic sales of wind tower "projects" are not like goods to the goods under consideration exported to Australia for normal value purposes.<sup>57</sup>*

The unit of measurement of the components of each wind tower does not form the basis of the Commission's view on whether domestic goods are like to the exported goods. Whether a wind tower is sold as a complete tower, wind tower sections or a combination of these, does not affect the comparison of the characteristics of such parts to each other. The Commission has, however, addressed the claims on how the units affect calculations of unit price in subsequent chapters of this report.

## 2.8 Reinvestigation Finding

The Commission maintains that while 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

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<sup>57</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#) page 6

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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.

As such, the Commissioner **affirms the findings** in REP 487, in that there were like goods sold on the domestic market by TSP.

A list of sales of like goods made by TSP is at **Confidential Appendix 3**.

### 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 section 45(2) of the Regulation), 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 test.

*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.<sup>58</sup>*

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

*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.<sup>59</sup>*

The submission concluded on this topic by stating that:

*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).<sup>60</sup>*

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<sup>58</sup> [Submission by TSP to Continuation 487 \(EPR 487 – Document 13\)](#) page 6

<sup>59</sup> [EPR 487 document 15](#), page 13.

<sup>60</sup> [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.<sup>61</sup>*

*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.<sup>62</sup>*

*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).<sup>63</sup>*

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”<sup>64</sup> 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.<sup>65</sup>*

For clarity, the Commission provides the following commentary on how the two components of the OCOT calculation were 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).

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<sup>61</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 21 refers.

<sup>62</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 24 refers.

<sup>63</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 25 refers.

<sup>64</sup> [EPR 487 document 19 \(REP 487\)](#), page 36

<sup>65</sup> [EPR 487 document 15](#), page 15.

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 taken not to have occurred in the OCOT

A definition of sales taken not to have occurred in the OCOT is set out 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) [of the regulation] (or for that matter s.269TAC(1)). However, s.269TAAD provides one instance of when goods will be taken not to have been sold in the OCOT”.<sup>66</sup>

### 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:*

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<sup>66</sup> [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<sub>1</sub> , P<sub>2</sub> ... P<sub>n</sub> means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.*

*Q<sub>1</sub> , Q<sub>2</sub> ... Q<sub>n</sub> means the number of units of the goods involved in each of the respective transactions.*

### 3.6 Reinvestigation of sales taken not to have occurred 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 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 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 amount 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 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 for assessing which transactions are not in the OCOT 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”.<sup>67</sup>

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.*<sup>68</sup>

### **3.6.2 Substantial Quantities**

Section 269TAAD(2) defines substantial quantities, for the purpose of the section, in the following way:

*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 fall within the description of the goods under consideration, the Commission understands they are also a unit of measure when measuring 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 each project also comprises a ‘model’. Therefore the Commission is of the view that, consistent with the Commission's practice, the OCOT test can be undertaken at the project level.

In the instance of TSP’s domestic sales of wind towers, there are [redacted] [number of projects] 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 tower projects 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

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<sup>67</sup> Section TAAD(1) refers.

<sup>68</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 24 refers.



without reference to models would invariably cause all lower cost models to not be recoverable and higher cost models to always be recoverable.

The Commission considers it is 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 below. In the same records, the sales quantity used is designated as being comprised of 'sections,' which are recorded against the costs 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, section 45(2) of the Regulation does not state whether costs have to be at the 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). Taking 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 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 equivalent to a model). This approach finds 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 set out in section 269T(5A) would be as follows, where  $Q$  is the number of sections in each project:

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

The Commission applied the formula above to determine the cost, price and quantity required for the purpose of calculating a weighted average set out in section 269T(5A). This approach would then enable 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 used 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 be applied in the formula set out in 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 the sales that were deemed to be in the OCOT in REP 487 are the same as those that the reinvestigation has found to have been in the OCOT.

### 3.7 Submissions to the first preliminary reinvestigation report

The Commission received one submission on behalf of TSP in relation to the preliminary reinvestigation report findings. In relation to the assessment of sales made in the ordinary course of trade, the Commission has considered the submission as follows.

TSP asserts that the methodology provided in the preliminary reinvestigation report of how the Commission applied the formula for calculating a weighted average<sup>69</sup> “artificially bypassed the legislative requirement”<sup>70</sup> and that the “approach adopted involves no consideration of the relevant elements of the OCOT test under Section 269TAAD(1) having to do with “substantial quantities”, the “extended period”, and “recoverability within a reasonable period”.<sup>71</sup>

The Commission reiterates that the “relevant elements” for consideration of sales made in the OCOT, as specified in section 269TAAD(1) are outlined in section 3.5.1 of this report and the assessment of these factors is examined in detail in section 3.6. It also elaborates that the ‘extended period’ in which relevant analysis has been conducted was the inquiry period, consistent with the position as published in the Manual.<sup>72</sup>

TSP directed the Commission to consider the interpretation of 269TAAD(1) as follows:

*“...the relevant question under Section 269TAAD(1) would have to relate to TSP’s domestic sale of all wind towers that are like goods to the goods exported to Australia. This question cannot be addressed by limiting the exercise to TSP’s domestic sale of a particular project or model...”<sup>73</sup>*

The Commission considers it is appropriate, and consistent with the legislation and policy position set out in the Manual, that the test conducted in 269TAAD(1) is required to be conducted at the model level. The description by TSP of its own business model states that: “Each wind tower project is treated as one sale of wind towers by TSP”<sup>74</sup> The Commission’s approach is consistent with this. TSP produces and sells wind towers by project, costs its wind towers by project, and each project is different to other wind tower projects.

If the Commission adopted the approach proposed by TSP and conducted the OCOT testing at the ‘all like goods level’, the resulting test would produce results that undermine the purpose of assessing whether each sale is in the OCOT and the objectives when comparing normal values with export prices. As described earlier, taking this non model based approach, would result in lower cost models being found to be unrecoverable and higher cost models being found to be recoverable. The Commission maintains that section 269TAAD(1) is used to determine which sales, of all like goods, are sold at a price

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<sup>69</sup> Weighted average calculation formula as specified in section 269T(5A)

<sup>70</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 7

<sup>71</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 7

<sup>72</sup> The Manual, page 24

<sup>73</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 7

<sup>74</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 7

which is less than the cost of such goods. To assist in setting out the Commissions view, a simplified example is provided, as follows:

### 3.7.1 Principles of TAAD(1): Worked Example

A company sold two like goods, one of which was painted blue and one painted red. The cost of red paint is different to blue paint, with red paint costing more than blue paint. The company charged different prices for each sale, with the red good being more expensive than the blue good. The sale of the blue good was profitable, making \$1 profit on the sale. In terms of OCOT, the blue good would pass the first test as it has been sold at a price greater than the cost of such goods, and recoverability (or sufficiency) would not be required.

However, the red good was sold at a \$1 loss. In terms of OCOT, the sales of red goods at a loss would fail the first OCOT test and require a sufficiency test to be conducted. As there was only 1 sale of the red good, all the red goods were sold at a loss, so the sufficiency test also fails and the recoverability test is required. If the recoverability test is done using the weighted average of all like goods, then the red good would be recoverable, but despite being profitable, the blue good would not be recoverable.

Model	Quantity	Cost	Revenue	Profit	Total Cost	WA Cost	Recovered
Blue	1	10	11	1	10	12.50	No
Red	1	15	14	-1	15	12.50	Yes
<i>Totals</i>	<i>2</i>				<i>25</i>		

The nature of the tests in section 269TAAD(1) that examine individual profitability, substantial losses and, recoverability align with the Commission's position that section 269TAAD(1) aims to determine which sales (at an individual level) were made in the ordinary course of trade. As such, the Commission applies the tests to each individual transaction and within each subset (model) of the total of like goods where substantiality and recoverability are concerned.

### 3.7.2 The Commission's approach

The Commission notes that, conceptually, sales of wind towers taken to have occurred in the OCOT is not as easy to understand when compared to sales of other commodity based products. Nonetheless, the Commission considers that the legislation as drafted, must be applied consistently to wind towers.

For commodity type products where hundreds or thousands of blue and red products are sold across an investigation period, the functions of substantiality and recoverability are easier to understand. In these cases, it is not out of the ordinary course of trade for small volumes of sales to be made at a loss, or for sales in some period within the investigation period to be made at a loss due to various factors. In these cases, the concepts of determining the materiality of the number of losses (substantial volumes) and comparing each selling price to a weighted average cost over the period (recoverability) are clear.

TSP argues that these principles should be applied in a particular way for wind towers. The Commission disagrees. There is a difficulty with accepting the logic that each model of wind tower is so unique and different that they are not even comparable, yet also

proposing that it is reasonable to treat all wind towers together when determining which were sold in the OCOT. The Commission does not consider that this approach is sustainable in relation to the application of the OCOT test in this reinvestigation.

### 3.8 Submissions to the second preliminary reinvestigation report

The Commission received one submission on behalf of TSP<sup>75</sup> in relation to the second preliminary reinvestigation report findings. In relation to the assessment of sales made in the ordinary course of trade, the submission referred to the original submission<sup>76</sup> made by TSP and made three new claims. The Commission has considered the claims made in the original submission in section 3.7 and addresses the new claims as follows.

In response to the submission made by TSP to the first preliminary reinvestigation report, the Commission provided a worked example of the application of the OCOT test to assisting in understanding how the test is conducted. TSP made the following remarks on that example and analysis:

*Given that the only sale, which is the “total” sale, of the Blue model is entirely profitable, the sale would not be considered as being not in the ordinary course of trade under Section 269TAAD(1) of the Act. No recoverability test would be required for the sales of Blue model. On the other hand, whilst the only and total sale of the Red model was unprofitable, the cost of such sale was recoverable by comparison to the weighted average cost of all like goods, being both Blue and Red models. The result is that the OCOT test for both sales would have been passed according to Section 269TAAD of the Act. Such an outcome is unremarkable and cannot justify SPRR 487’s proposed deviation from the Act.<sup>77</sup>*

While TSP argues that the Commission has deviated from the Act in how it has applied section 269TAAD, the Commission disagrees. As was outlined in the second preliminary reinvestigation report, the nature of the tests in section 269TAAD(1) that examine individual profitability, substantial losses and, recoverability align with the Commission’s position that section 269TAAD(1) aims to determine which sales (at an individual level) were made in the ordinary course of trade. As such, the Commission applies the tests to each individual transaction and within each subset (model) of the total of like goods where substantiality and recoverability are concerned.

TSP claims that “[if], for some reason, the OCOT test is not appropriate or cannot be performed for legal or practical reasons –then the conclusion should be that the OCOT test cannot be applied.”<sup>78</sup> TSP goes on to provide an alternative for where, “in such circumstances, the normal value can still be calculated based on Section 269TAC(2)(c) of the Act, with the profit component worked out under Regulation 45(3)(a) of the *Customs (International Obligations) Regulation 2015*. This allows the calculation of normal value

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<sup>75</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#)

<sup>76</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#)

<sup>77</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 13

<sup>78</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 14



without the difficulties of undertaking an OCOT analysis as protested by the Commission”.<sup>79</sup>

In the ADRP member’s letter to the Commissioner, clarifying the scope of the reinvestigation, the member clarified 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)”.<sup>80</sup> The ADRP notes in its request for reinvestigation that it was satisfied that there were some sales of goods in the OCOT, but there may also be other sales.<sup>81</sup> As such, the Commission considers that the trigger in section 269TAC(2)(a)(i), being an absence or low volume of sales in the OCOT, does not occur in this case. This is due to the Commission finding that there are sales in the OCOT. As such, the Commissioner does not consider it appropriate in this case to depart from a normal value determined under section 269TAC(1).

TSP also refers to the first submission made by TSP when arguing that a low volume of sales could not be treated as separating like goods. TSP elaborates that “the analysis and reasoning in ADRP Report 110 is also applicable to any OCOT test that the Commission proposes to undertake in relation to TSP’s domestic sales of like goods”.<sup>82</sup> The Commission disagrees with this interpretation of ADRP Report 110. In that report, the ADRP found that:

*practical difficulties in determining an appropriate adjustment cannot operate to exclude sales of like goods available for consideration under s.269TAC(1), for the purposes of s.269TAC(2)(a) or (b). The legislation goes some way to address such difficulties by requiring investigating authorities to make adjustments for differences and by providing a fallback position where such adjustments cannot practicably be made. In such circumstances the Minister may determine normal values by having regard “to all relevant information.”<sup>83</sup>*

The ADRP finding that TSP has quoted in its submission to the second preliminary reinvestigation report does not discuss the application of section 269TAC(1). In this reinvestigation, the Commission has not disregarded a subset of like goods due to low volume provisions, which was the matter that the ADRP was addressing in its decision. As such, the Commission does not consider that the section quoted by TSP of ADRP 2019/110 is relevant in this case, as the provisions of section 269TAC(2) have not been engaged. While the Commission does note that the “fallback” position outlined in ADRP 2019/110 is that section 269TAC(6) may be an alternative, in this case, the normal value can still be calculated using section 269TAC(1), with adjustments under section 269TAC(8). This differs from the earlier argument by TSP that, in the event “the OCOT test is not appropriate or cannot be performed for legal or practical reasons”<sup>84</sup>, that a normal value would be required under section 269TAC(2)(c).

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<sup>79</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 14

<sup>80</sup> [Letter from ADRP to the Commissioner on 9 September 2019](#) page 2

<sup>81</sup> [Letter from ADRP to the Commissioner requesting reinvestigation on 4 July 2019](#) paragraph 24

<sup>82</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 15

<sup>83</sup> [Anti-Dumping Review Panel – Decision No. 2019/110](#) (paragraph 36)

<sup>84</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 14

Should the ADRP consider a normal value under section 269TAC(6), the Commission considers that it would be open to consider an examination of the profitability and recoverability of all like goods sold by TSP and, in order to conduct fair comparison between export and domestic sales, conducted the profitability and recoverability tests at a model level. This would result in the same outcome as the Commission has proposed.

As per the reinvestigation request and clarification from the ADRP, the Commission has found that there were sales of like goods and has conducted an OCOT test, which it considers is consistent with section 269TAAD.

### **3.9 Reinvestigation Finding**

The Commission has reinvestigated how the OCOT assessment was conducted in REP 487. The Commission has also considered the submission by TSP to the first and second preliminary reinvestigation report. The approach undertaken by the Commission in this 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 NORMAL VALUE

On 5 September 2019, the ADRP wrote to the Commissioner to clarify the scope of the reinvestigation request. The ADRP stated 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 section 269TAC(2)(c) and whether the factual findings require that section 269TAC(1) (or possibly section 269TAC(6)) of the Act be used to ascertain the normal value.<sup>85</sup>

The Commission has examined the process by which a normal value was determined for TSP and how relevant provisions applied or did not apply.

### 4.1 Normal Value based on Exporter's Domestic Sales

The requirement of section 269TAC(1) is reproduced below, with emphasis added to show the stages the Commission has followed to determine if the provision applies to determine a normal value.

*Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not sold by the exporter, by other sellers of like goods.<sup>86</sup>*

Firstly, the Commission examined whether or not there were like goods sold on the domestic market in China. As discussed in chapter 2, the Commission has found that there were like goods sold on the domestic market in China (as it did in REP 487).

Having established that there are like goods sold on the domestic market, the Commission is required to determine whether there were sales of those like goods made in the OCOT. As TSP also challenged the OCOT methodology, detailed analysis of whether the sales were in the OCOT has been conducted in chapter 3.

Having established that there were sales of like goods in the OCOT, the Commission had to examine whether those sales transactions were at arms length. REP 487 was silent on this finding. However, the Commission refers to the exporter verification report which found the following, and which was not contested:

*"The verification team therefore considers that all domestic sales made by TSP Shanghai to domestic customers during the period were arms length transactions."<sup>87</sup>*

In the course of the reinvestigation, the Commission has not been provided with any evidence to suggest that the finding on whether the sales made were arm's length transactions was not correct. As such, the Commission maintains the view that the sales

<sup>85</sup> [Anti-Dumping Review Panel – Letter to Commissioner of the Anti-Dumping Commission](#), page 1

<sup>86</sup> Section 269TAC(1) refers

<sup>87</sup> [EPR 487 document 15](#), page 15.



made by TSP Shanghai to domestic customers during the period were arm's length transactions.

Where the Minister is satisfied that, because of the absence, or a low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1), the normal value cannot be ascertained under section 269TAC(1), the normal value is calculated under section 269TAC(2)(c) or section 269TAC(2)(d). A low volume is defined under section 269TAC(14) for the purpose of an investigation. However, the Commission will generally apply this threshold in other case types because it is a helpful indicator.

The Commission has reviewed TSP's sales data and is satisfied that the volume of sales of like goods on TSP's domestic market is five per cent or greater than the volume of the goods under consideration that TSP exported to Australia during the inquiry period [Confidential Appendix 3]. The Commission is therefore satisfied that there is not an absence or low volume of sales that would be relevant for the purposes of section 269TAC(1).

In REP 487, the Commission considered whether there were sufficient volumes of each model sold on the domestic market to enable a proper comparison to export sales. However, following the ADRP's clarification of the scope of the reinvestigation, the Commission has reviewed this approach in light of its policy. Given the unique nature of each wind tower project (as previously discussed) the Commission is of the view that there were no comparable models on the domestic market and therefore analysis of sufficiency at the model level is not required (see page 34 of the Manual, which notes that consideration of whether there are sufficient volumes of each model, is only conducted where comparable models exist).

In isolation, the findings outlined above would indicate that the requirements of section 269TAC(1) have been achieved and the conditions of section 269TAC(2) have not been found and therefore, a normal value under 269TAC(1) would be possible. The ADRP Senior Member also noted that it may be possible to determine a normal value under section 269TAC(1).<sup>88</sup>

However, as set out in chapter 2, the Commission found that there are physical characteristics that differ between the domestic and export wind towers sold by TSP. The Commission, therefore, considers it is preferable to take into account these differences, and has considered appropriate adjustments, in accordance with section 269TAC(8), which are likely to be required. The adjustments are necessary to achieve a fair comparison with the export price.

#### **4.1.1 Adjustment so differences do not affect price comparison**

The reinvestigation draws attention to the provisions within section 269TAC(8) which are set out below, with emphasis added:

*Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:*

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<sup>88</sup> [Anti-Dumping Review Panel – Letter to Commissioner of the Anti-Dumping Commission](#), page 2

- a) *relate to sales occurring at different times; or*
- b) *are not in respect of identical goods; or*
- c) *are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;*

*that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.*

A normal value under section 269TAC(1) requires a price to be paid (or payable). The “price paid” in section 269TAC(1) assumes that a fair comparison can be made between that price, and the price of the goods under consideration sold on the export market. There are various reasons why a price may not be comparable, as specified in section 269TAC(8). This includes where the domestic price of the goods and the price of the goods exported to Australia are not in respect of identical goods. The Commission considers this reason is relevant in this case because of its earlier finding that the goods sold domestically and exported are not identical. These physical characteristics of the goods sold in the domestic market and export market has been discussed in detail in chapter 2.

Section 269TAC(8) contemplates situations in which like goods are not necessarily identical. It provides that in those circumstances, the price paid is a price adjusted so *that those differences would not affect its comparison with that export price*. The legislation does not specify the methodology by which such price adjustment must occur, other than “in accordance with directions by the Minister so that those differences would not affect its comparison with that export price”.<sup>89</sup>

#### **4.1.2 Establishing factors that affect price**

The Commission considered whether such an adjustment, as prescribed in section 269TAC(8), was necessary to ensure a fair comparison between export prices and normal values. The Manual outlines approaches for due allowance in chapter 15, setting out the following:

*Adjustment is allowed for differences in physical characteristics where the differences can be quantified to ensure fair comparison. Relevant differences include quality, chemical composition, structure, or design.*

*Evidence should be provided of different selling prices for products with different physical characteristics or quality. In such cases, the size of the price difference may be used as the basis for any adjustment.*<sup>90</sup>

Comparing the price of a domestic model to that of an exported model does not allow the Commission to isolate what part of the price difference is due to differences in physical characteristics (or other relevant factors) and what may be due to dumping. The Manual predicts this scenario and continues as follows:

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<sup>89</sup> Refer to Section 269TAC(8)

<sup>90</sup> [Dumping and Subsidy Manual](#), page 67

*However, there may be situations where direct evidence of price differences cannot be provided (e.g. models sold domestically and exported to Australia are different). In these situations, adjustments for differences in physical characteristics or quality, where it reasonably affects price comparability, may be based on production cost differences plus the addition of the gross margin (i.e. the administrative, selling and general costs and profit) to the production cost difference. This is a means for calculating an adjustment that reflects the market value of the production cost difference.<sup>91</sup>*

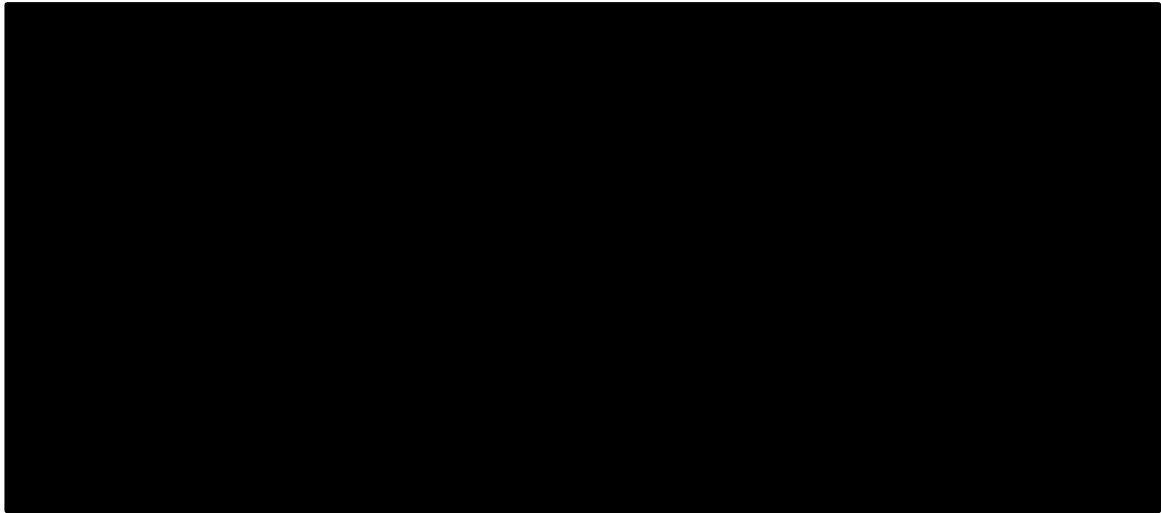
The Commission has examined whether it is possible to conduct a comparison based on cost differences, and whether these cost differences necessarily affect price comparability. The cost differences arise due to a range of factors that cannot easily be separated. However, the Commission understands that a major factor that drives the differences in design and the changes in costs, relates to steel. In the first instance, the relationship between physical characteristics and cost has been assessed. Then the Commission has assessed the relationship between cost, price and margin, within TSP's sales in the Chinese domestic market.

As set out earlier, in the discussion of 'like goods', the main raw material input into the production of wind towers is steel. The Commission considers that it is reasonable to conclude that larger wind towers require more steel than smaller wind towers. Likewise, wind towers that are designed to require higher strength requirements than those with lower strength requirements would have either more steel, or a higher grade of steel, and the taller the wind tower is required to be, the more steel would be required. The Commission, therefore, considers that there is a relationship between the amount (or quality) of steel used in the production of wind towers and the cost to produce such towers.

Having established a relationship between physical characteristics and costs, the Commission has used costs as a proxy to determine the effect of the physical characteristics on price. As outlined in the Manual, an adjustment would need to be made between physical differences between the domestic and export markets. The approach taken by the Commission below attempts to isolate the influence of the two different markets, in order to first establish whether cost can be correlated to price considerations in the domestic market.

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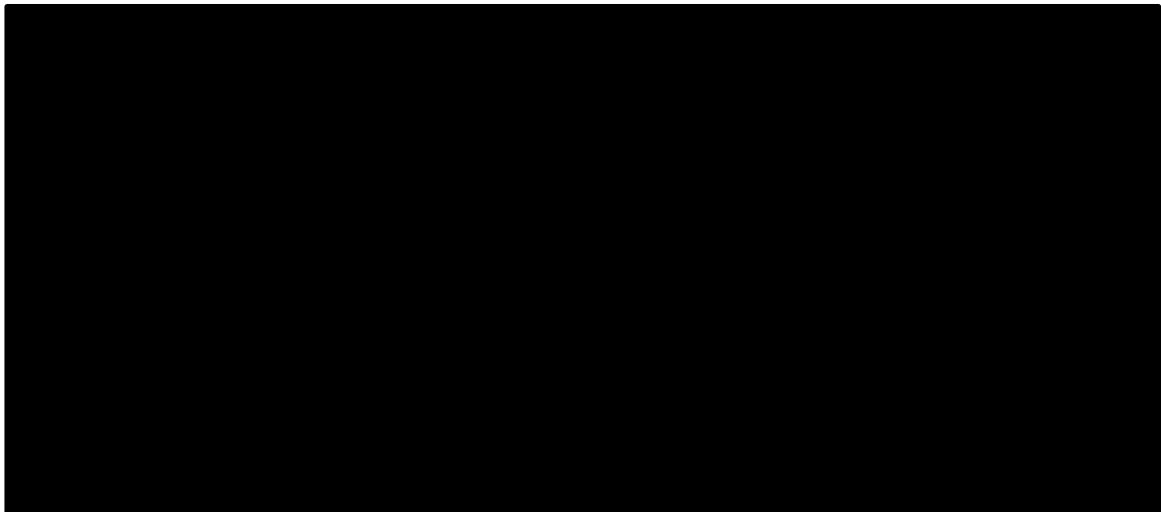
<sup>91</sup> [Dumping and Subsidy Manual](#), page 67



**Confidential Figure 1: TSP Domestic Unit Sales Revenue vs Unit Cost to Make and Sell**

Confidential Figure 1 (above) plots the unit revenue (orange) and the unit cost to make and sell (blue) for each domestic project. While the two parameters follow a similar trend, ( i.e. as unit costs increase, the unit price generally also increases), it is not a uniform trend. For some projects, the unit revenue deviates from the unit cost to make and sell, resulting in larger profits for these projects.

The Commission also examined the profit margins achieved on each domestic project as shown in Confidential Figure 2 (below). The Commission's interpretation of these two charts is that, while cost is likely to be a factor that influences prices, other factors are also likely to influence prices, which is reflected in the non uniform relationship between cost and price, and the significantly differing profit margins received across various projects.



**Confidential Figure 2: TSP Project Margins (per cent per section)**

The Manual contemplates situations where, if adjustments for differences in physical characteristics are based on cost differences, it would be relevant to add a profit margin and SG&A to the cost difference to translate this into a price difference. The Commission

concludes that cost differences between wind towers sold domestically and those exported can be calculated, and can be used as a mechanism to adjust for physical characteristics that affect price.

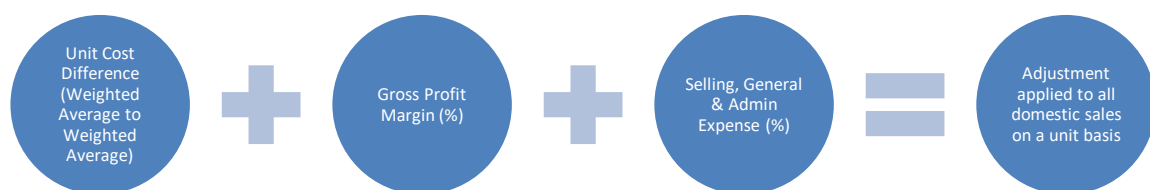
Having established a correlation between physical characteristics and cost, and then having identified a relationship between cost and price, the Commission considers that physical differences in wind towers are a factor that affects price, and that this is a factor for which an adjustment could be determined using section 269TAC(8). While there may be factors other than cost that drive price comparability, in the absence of information as to how to reliably quantify such adjustments, the Commission considers it would be preferable to not use factors other than cost that may affect price when determining an adjustment under section 269TAC(8).

#### 4.1.3 Calculation of an adjustment for physical differences

In the second preliminary reinvestigation report, the Commission considered how to calculate an adjustment to the normal value for the physical differences between like goods sold on the domestic market and the goods exported to Australia. As stated earlier, the legislation does not specify the methodology by which such price adjustment must occur, other than “in accordance with directions by the Minister so that those differences would not affect its comparison with that export price”.<sup>92</sup> As such, the Commission has considered various methods to make an adjustment to the normal value under section 269TAC(8) in regards to physical differences.

##### 4.1.3.1 Option A - Comparison of the weighted average of domestic cost to make like goods and export cost to make the goods exported to Australia

The Commission calculated the cost difference between the weighted average cost to make all domestic like goods and the weighted average cost to make all exported goods during the inquiry period. The Commission then applied a gross profit margin and an amount for SG&A from TSP’s income statement to the cost difference. The resulting specification adjustment was applied to all domestic selling prices of like goods by TSP to determine the normal value for TSP’s sales of like goods.



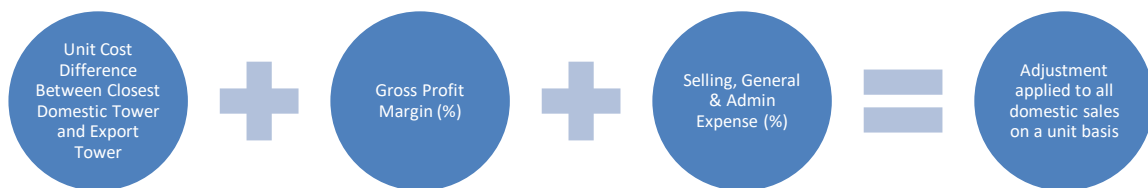
Due to the difference between the size and design of the towers sold on the domestic and export markets, the Commission considers that this approach in this instance does not remove differences in physical characteristics. As such, an adjustment using this methodology does not result in a specification adjustment that adjusts for physical difference so that those differences would not affect its comparison with the export price, as required by section 269TAC(8), or allow a fair comparison between export prices and

<sup>92</sup> Refer to Section 269TAC(8)

normal values. As such, the Commission has considered this is not a preferable methodology and considered alternate approaches to calculating the adjustment.

**4.1.3.2 Option B - Comparison of the closest domestic project and adjust according to differences between the weighted average of all export costs.**

The cost to make data presented by TSP reflects that the major cost component of wind towers is the steel input to production. The cost differences between models are largely driven by the cost differences of steel, with larger, more complex towers containing more steel and fit out than smaller less complex towers. Using this information as a basis, the Commission has selected the closest domestic model, based on cost, to the export models and used this a surrogate model for normal value calculations.



The Commission has then calculated the cost difference between the surrogate model and the weighted average of all export models to determine the cost basis for the specification adjustment. Once the cost basis was determined, the Commission then added gross profit and SG&A expense to arrive at an adjustment to the normal value. This one normal value is then compared to all export sales.

The Commission considers that this approach is consistent with the approach for adjustments based on physical characteristics as outlined in the manual. The Commission also notes that, in the case of wind towers, this approach creates doubt as to whether making this adjustment reasonably adjusts for physical differences. The Commission would generally use the closest model with sales of like goods using the physical characteristics that affect price as provided in the model control code (MCC) structure.

In the case of wind towers, there is no MCC structure to assist in the selection of a surrogate. As such, this approach introduces an assumption when determining which model is the closest to the exported towers. In this case, the Commission has chosen the wind tower with the closest cost to that of the exported model. As discussed, when addressing TSP's submission in section 4.3.3.1, while the models appear to be costed at a similar level, due to the way in which TSP captures its cost records, the Commission considers that the timing of production and reporting of costs may be influencing the comparability.

As each wind tower project has only one sale, this introduces a potential factor of timing that may also need to be considered in the adjustment. In this instance, the surrogate model is sold at one point in time, but is then compared to export prices across the period. It is possible that both prices and costs are affected by the time in which they are sold. When using this approach with goods that have a MCC structure, the effect of timing is removed, where possible, by using a surrogate price in the same period to ascertain the difference in price movements between the surrogate and the selected model. In the



case of wind towers, the surrogate model is only sold once, and as such, calculating a timing adjustment in this manner is not possible.

Even if a timing adjustment were possible through some other methodology, it may result in a double adjustment being required (i.e. one of both timing and physical characteristics) making it difficult for the Commission to quantify the effects of these factors. While such an adjustment may be appropriate in some cases, the Commission does not consider it the most reasonable approach in this inquiry.

While generally this approach is consistent with the approach outlined in the Manual, the Commission considers, for the reasons above, that this approach is not the preferred approach for this inquiry and has therefore considered alternate approaches.

***4.1.3.3 Option C - Calculating the difference between domestic and export selling prices (constructed market price comparison).***

The Commission considered an alternative approach to achieve the objective of removing physical characteristic 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), plus the profit achieved in the sales of all like goods made in OCOT, and the SG&A expenses for like goods sold on the domestic market.

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 the OCOT 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. If a different profit was applied, the domestic prices would need to be further adjusted to account for the difference in profit achieved in the domestic OCOT sales and the 'market price'; and,
- 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.

While it may be argued that this approach is using the methodology that would have occurred using section 269TAC(2)(c), the Commission considers that it is open to the Minister to take an approach of determining a 'market price' as part of the equation for determining price differences for physical difference within section 269TAC(8), if it achieves the objective of removing differences that affect price in relation to like goods

that are not identical to the exported goods. The Commission considers that by using a 'market price' as part of the specification adjustment, this allows for a comparison between like goods as if they are identical to the goods exported, while still using sales of like goods as the basis for the comparison. This approach also eliminates the timing based issue raised in the previous option, as the actual cost to make the goods is used as part of the equation.



For clarity, the actual selling prices shown in the diagram above are the weighted average normal values, based on domestic selling prices, without any specification adjustment for physical characteristics. 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.

#### **4.1.3.4 Preliminary finding**

The Commission, having undertaken the analysis above, considers that the market price constructed adjustment method outlined in option C above is the most preferable method for adjusting the price paid, so that the physical differences no longer affect price comparability. It considers that this is the most appropriate method of calculating an adjustment because:

- The weighted average to weighted average method produces an adjustment that, if applied to an export sale, would result in some export sales having no cost of production;
- The selection of a surrogate model, in the case of wind towers, which does not have a defined MCC is subjective and the Commission considers the information less reliable than the construction of a market price adjustment model; and,
- The use of the constructed market price model provides a method to adjust for differences that affect price comparability between like goods that are not identical, by adjusting between that price to one that, on a physical basis, would be identical.

As a result, while the methodology for determining the normal value has changed, the result of that calculation has no effect on the dumping margin found in REP 487. Should this recommendation for a change in methodology be adopted by the ADRP in its report to the Minister, the Minister may be required to make appropriate directions in accordance with section 269TAC(8).

## **4.2 Should the Minister have been satisfied that the conditions of section 269TAC(6) are met?**

In the request for reinvestigation, the ADRP Senior member noted that section 269TAC(6) may be available to the Commission to determine the normal value. The reinvestigation request noted:

Reinvestigation Report 487 – Wind Towers – China and Korea



*“An absence of sufficient information to make the necessary adjustments under s.269TAC(8) may mean that the Minister has insufficient information to enable the normal value to be ascertained under s.269TAC(1)”.*<sup>93</sup>

In this instance, the Commission considers there is sufficient information to make the necessary adjustments under section 269TAC(8) and therefore considers it preferable, rather than determining normal value under section 269TAC(6).

However, while the Commission has been able to calculate an amount for an adjustment based on the information available, should the ADRP consider that that information was insufficient, the Commission considered how a normal value may be able to be determined having regard to all relevant information. In this instance, the Commission considers that, in order to make a fair comparison, the most reasonable approach would be the same approach as the approach outlined in this report.

### **4.3 Submissions to the second preliminary reinvestigation report**

The Commission received one submission on behalf of TSP<sup>94</sup> in relation to the second preliminary reinvestigation report findings on the methodology for determining normal value. The arguments raised in that submission in relation to normal value methodology have been addressed as follows.

#### **4.3.1 Like goods taken into account**

TSP argues that the Commission must utilise “the full universe/scope of TSP’s domestic sales of like goods”.<sup>95</sup>

*In light of SPRR 487’s proposal to determine normal value under Section 269TAC(1) of the Act, and in light of the ADRP’s instruction that domestic sales of like goods must not be improperly disregarded, the Commission must ensure that the reinvestigation report correctly includes all domestic sales of like goods by TSP during the period of inquiry that fall within Section 269TAC(1). The fact that some sales involved toll manufacture by an entity unaffiliated with TSP is not a proper basis to exclude such sales. TSP submits that there is no basis for such sales to be disqualified or excluded from the universe of prices paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm’s length transactions by TSP.*<sup>96</sup>

Once like goods are established, the Commission must undertake a proper comparison between like goods and the exported goods. It is the Commission’s established policy, supported by section 269TACB, to utilise model matching to achieve this. Therefore, in calculating a dumping margin there are often many normal values and export prices compared to each other. The collection of each of these comparisons together results in the dumping margin for all goods exported to Australia. The Commission has had regard to all sales of like goods, however for the purposes of calculating a dumping margin and

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<sup>93</sup> [Anti-Dumping Review Panel Request for Reinvestigation](#) paragraph 18 refers.

<sup>94</sup> [EPR 487 document 24 \(Submission by TSP to Second Preliminary Reinvestigation Report\)](#)

<sup>95</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 14

<sup>96</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 14

comparing export prices with corresponding normal values, it has compared only sales of goods produced by TSP (including its related subsidiaries).

The Commission has consistently excluded the sales of some like goods where the production of such goods were outsourced to unrelated third parties in the calculation of the dumping margin. This approach was taken in the SEF 487 and the REP 487. The Commission has been satisfied that the sales of goods produced by TSP and its related subsidiaries were sales made by TSP. In SEF 487,<sup>97</sup> the Commission found that TSP Shanghai:

- is the manufacturer for all wind tower sales made to Australia and is the manufacturer for a number of domestic wind tower projects in China;
- has full control, as the parent company and sole shareholder, in the management of the subsidiaries, such as appointing directors and senior executives, and acts as the headquarters for the whole group;
- exercises a high degree of control over the activities of the four subsidiaries that manufacture wind towers for the Chinese domestic market;
- takes overall responsibility for the management of each domestic project;
- negotiates with customers to determine the kind of raw material to be used and arranges for the purchase of raw materials of steel plate and flanges for the projects that are to be subcontracted for manufacture by a subsidiary;
- manages how the raw materials are consumed for production and liaises with customers regarding the production schedule;
- takes ultimate responsibility for quality control and ensuring compliance with relevant contractual requirements, with the subsidiary being responsible for manufacturing goods, as instructed and agreed to, by TSP Shanghai;
- is responsible for the marketing, contract negotiation and sale of all onshore domestic wind tower sales;
- coordinates with customers for the delivery schedule, provides instructions for delivery to the subsidiary and receives confirmation delivery from the relevant customers;
- takes responsibility for invoicing collection and payment for each project;
- has full access to the accounting records of its subsidiaries, and takes ultimate control for the accounting practices of its subsidiaries; and
- for the purposes of verification by the Commission, TSP Shanghai has provided the underlying costs (raw materials, overheads, labour) borne by its subsidiaries in the manufacture of domestic projects.

The Commission has not been provided with evidence by TSP to satisfy the Commission that the domestic sales of wind towers produced by unrelated third parties were made by TSP. The Commission understands that none of the wind towers exported to Australia were produced by third parties. In these circumstances, the Commission considers that it is appropriate to consider domestic sales manufactured by TSP Shanghai and its subsidiaries in the normal value. As such, the Commission in this reinvestigation has continued to exclude sales of goods produced by third parties from the normal value calculations.

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<sup>97</sup> [EPR 487 document 14 SEF 487](#) (section 6.4.2.2)

#### 4.3.2 Unit calculations

TSP made an observation that the analysis by the Commission “has been affected by a misunderstanding of the data pertaining to TSP’s domestic sales of wind towers. As the Commission is aware, all of TSP’s domestic sales projects are on a “complete tower” basis”.<sup>98</sup> The Commission acknowledges this misunderstanding and has recalculated using the data provided by TSP in the submission to undertake a ‘per section’ analysis.

#### 4.3.3 Adjustments under Options B and C have no basis

##### 4.3.3.1 Discussion on Option B

TSP commented on the proposed options considered by the Commission for calculating the normal value, as outlined in the second preliminary reinvestigation report.

*We support SPRR 487’s view that Option B is unsuitable, given the arbitrary distinction involved between TSP’s domestic sales under such approach, despite the fact that not one domestic sales project can be considered to be more “like” to the Australian sales than any other.*<sup>99</sup>

When the Commission considered the approach outlined under Option B, it was on the basis of comparison of unit cost data. As TSP has subsequently provided further information regarding the unit basis (from towers to sections), the Commission has reassessed the analysis conducted.

The Commission remains of the view that, in general, this approach is consistent with the approach for adjustments based on physical characteristics as outlined in the manual. The Commission would generally use the closest model with sales of like goods using the physical characteristics that affect price as outlined in the MCC structure.

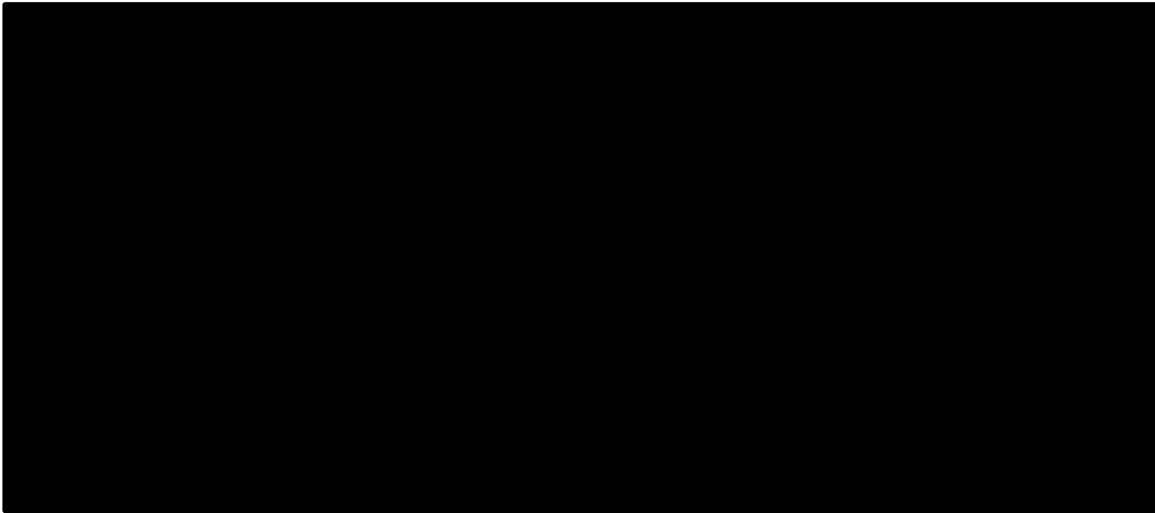
In the case of wind towers, there is no MCC structure to assist in the selection of a surrogate. As such, this approach introduces an assumption when determining which model is the closest to the exported towers. The Commission has reanalysed the unit cost to make of all projects to determine if any domestic and export projects have similar unit costs, as shown in the diagram below (figure 4). The analysis shows that for the export projects, there were two domestic projects where the cost-to-make was between negative 1.3 per cent and positive 0.8 per cent from the cost to make of the export model. This suggests that the two projects, on a section average, were similar.

While the models appear to be costed at a similar level, due to the way in which TSP captures its cost records, the Commission considers that the timing of production and reporting of costs may be influencing the comparability. The Commission reviewed the description for each of these projects listed as “model” in the sales listings provided by TSP and noted that the description of towers with similar costs had different MW and height details. This suggests that, while the cost per section may be similar, it may not correlate directly to similar physical characteristics.

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<sup>98</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 17

<sup>99</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 19



**Confidential Figure 3: Comparison of Average Cost per Section by Project**

As such, the Commission maintains the view that, in this case, with the information available to the Commission, it was not appropriate to select a surrogate model as the basis for a normal value under section 269TAC(1). TSP appears to support the view that a surrogate methodology is not appropriate for TSP in its submission to the second preliminary reinvestigation report.

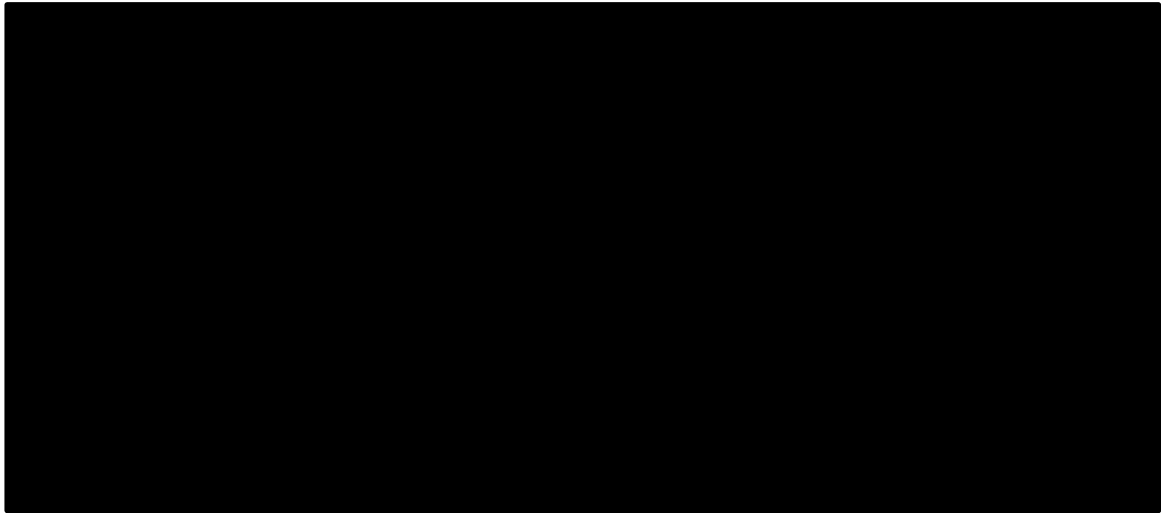
#### ***4.3.3.2 Discussion on Options A and C***

As was found in section 4.3.3.1, when attempting to identify a surrogate model, while costs of other sections may suggest physical similarities, the Commission is not satisfied that these cost comparisons are not affected by factors other than physical characteristics. As such, the Commission maintains that determining a market price with reference to the cost to make the actual towers exported is the most appropriate methodology to determine a normal value for the towers exported by TSP to Australia.

TSP argues that “Option A” proposed in the second reinvestigation report was more appropriate, because it “starts with a domestic selling price which incorporates the domestic profit, and then adjusts such price by the cost difference between goods exported and the like goods”.<sup>100</sup> The Commission updated the analysis conducted in the second preliminary reinvestigation report to account for the new data on sections provided by TSP. While the analysis has changed, the difference between the weighted average cost of export and domestic towers remains significantly different as shown below (figure 5).

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<sup>100</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 19



**Confidential Figure 4: Comparison of Weighted Average Cost to Make of Export and Domestic Projects**

Given the objective of the specification adjustment is to remove physical differences that affect price, the Commission considers that the result of using a weighted average difference between the export and domestic projects would not satisfactorily adjust for such differences. Additionally, the analysis conducted above, in attempting to identify a surrogate model shows that even if models have a similar cost, the descriptions of the projects differ. This suggest that, while cost is a factor, in general, physical characteristics; differences between models; and other factors (such as timing or specific characteristics) may also affect cost.

The Commission considers that using a 'market price' as part of the specification adjustment enables a comparison between like goods, as if they are identical to the goods exported, while still using sales of like goods as the basis for the comparison. Unlike attempting to select a surrogate model based on cost similarities (as an assumption for physical characteristics), the market price methodology uses the exact physical characteristic of the exported goods and then adds domestic profit and SG&A to determine the market price for which that model would have sold, if it had been sold on the domestic market. That market price is then compared to the sale prices of wind towers sold on the domestic market, which are then adjusted to account for the difference between their sale price and the market price.

TSP claims in its response to the second preliminary reinvestigation report that the use of the uplifted costs in the calculation of the fair market price was inappropriate and that the Commission should instead use actual costs as recorded by TSP.<sup>101</sup> The Commission found in REP 487 that the raw material costs provided by TSP do not reasonably reflect competitive market costs in accordance with section 43(2)(b)(ii) of the Regulation. As such the Commissioner was not required to work out an amount for the cost of production using the information as set out in TSP Shanghai's records.<sup>102</sup> While section 43(2)(b)(ii) of

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<sup>101</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 20

<sup>102</sup> [EPR 487 document 19 \(Final Report 487\)](#) page 33

the Regulation is no longer relevant, the Commission's view on the need for this uplift has not changed from REP 487.

In terms of determining a fair market price for comparison between export and domestic sales, the Commission considers that the use of uplifted costs remains appropriate. Having established that the cost of raw material input does not reflect market prices, it would be inappropriate to ignore this finding when trying to establish what a market price, free from distortion was, to compare to the domestic sales made in the OCOT.

TSP claims that the normal value calculated under option A or C would be the same.<sup>103</sup> The Commission has calculated normal values under both methods and note that they are different. The reason why they are different is that option A compares the selling prices of all domestic sales in the OCOT (weighted by number of sections) with the selling prices of all export sales (also weighted by sections). This produces a different result to option C which compares the selling prices of all domestic sales in the OCOT, adjusted for the difference between those prices and the market price calculated for the export model, with all export sales (weighted by sections).

#### **4.4 Normal Value Finding**

The Commission has calculated a normal value under section 269TAC(1) with relevant adjustments made in accordance with section 269TAC(8).

Normal value calculations are contained in **Confidential Appendix 4 – Normal Value.**

#### **4.5 Effect on the Dumping Margin**

As a result of the change in the normal value, the Commission has recalculated the dumping margin applicable for TSP Shanghai. The dumping margin for TSP remains at **6.4 per cent.**

Dumping margin calculations are contained in **Confidential Appendix 5 – Dumping Margin.**

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<sup>103</sup> [EPR 487 document 22 \(Submission by TSP to Preliminary Reinvestigation Report\)](#) page 21



## 5 MATERIAL INJURY

### 5.1 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 that resulted in no change to the normal value, and therefore no change to the dumping margin, the Commission does not consider that this aspect of the reinvestigation is required.

## **6 CONCLUSION**

### **6.1 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.

In accordance with section 269ZZL(3)(a), as the Commissioner is of the view that certain findings the subject of reinvestigation should be affirmed, he affirms the findings as set out in chapters 2, 3 and 5 of this report, relating to sales of like goods made in the ordinary course of trade and material injury.

In accordance with section 269ZZL(3)(b), as the Commissioner is of the view that certain new findings can be made as a result of the reinvestigation, he makes new findings as outlined in chapter 4 in relation to like goods sold by TSP and the determination of normal value. In accordance with section 269ZZL(3)(c), the evidence and other material for which new findings are based is contained within this report and its attachments.

This report sets out the reasons for the Commissioner's decision in accordance with section 269ZZL(3)(d).

## **7 APPENDICES**

<b>Confidential Appendix 1</b>	TSP Shanghai Export Price
<b>Confidential Appendix 2</b>	TSP Shanghai Cost to Make and Sell
<b>Confidential Appendix 3</b>	TSP Shanghai dumping margin calculation - Domestic sales listing including OCOT testing
<b>Confidential Appendix 4</b>	TSP Shanghai Normal Value
<b>Confidential Appendix 4A</b>	Uplift Calculations
<b>Confidential Appendix 5</b>	TSP Shanghai Dumping Margin