Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 11 July 2018 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10 and/or 11 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. **Applicant's details**

Applicant's name:	**Shanghai Taisheng Wind Power Equipment Co., Ltd (hereinafter "TSP")**
Address:	**1988 Wei Qing East Road;** **Jinshan District** **Shanghai 201508** **China**
Type of entity (trade union, corporation, government etc.):	**TSP is registered as a limited liability company, and is listed on the Shenzhen Stock Exchange.**

2. **Contact person for applicant**

Full name:	**Mr Charles Zhan**
Position:	**Senior Associate**
Email address:	**Chares.zhan@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

3. **Set out the basis on which the applicant considers it is an interested party:**

Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

The reviewable decision in this case relates to the decision of the Minister under Section 269ZHG(1)(b) to secure the continuation of anti-dumping measures.

Under Section 269T of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

TSP is a manufacturer and exporter, to Australia, of the goods to which the decision relates, namely wind towers. TSP is thus an "interested party" for the purposes of the Act and this application.

4. **Is the applicant represented?**

Yes ☒ **No** ☐

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the Customs Act 1901 the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods are described as:

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.

Goods specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Any internal or external components which are not attached to the wind towers or sections thereof are also excluded.

7. Provide the tariff classifications/statistical codes of the imported goods:

Report 487 provides that the goods may be classified to the following subheadings of Schedule 3 to the Customs Tariff Act 1995:

7308: STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, LOCK-GATES, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, SHUTTERS, BALUSTRADES, PILLARS AND COLUMNS), OF IRON OR STEEL; PLATES, RODS, ANGLES, SHAPES, SECTIONS, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES, OF IRON OR STEEL:			
7308.20.00	**Towers and lattice masts:**		
	03	tonnes	Tubular, whether or not tapered
	04	tonnes	Other
7308.90.00	**Other:**		
	Columns, pillars, posts and beams, girders, bracing, gantries, brackets, struts, ties and similar structural units:		
	.Roll formed structures:		
	52	tonnes	..Hot rolled
	53	tonnes	..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness less than 1.2 mm
	54	tonnes	..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness of 1.2 mm or more
	55	tonnes	..Other
	56	tonnes	.Other
	63	tonnes	Sectional components, prepared for use in towers and lattice masts
	65	tonnes	Other
8502: ELECTRIC GENERATING SETS AND ROTARY CONVERTERS:			
8502.31.10	**Other generating sets:**		
	-- Wind-powered:		
	31	no.	--- AC generating sets of an output exceeding 500 kVA

8. **Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number:	**ADN 2019/33**
Date ADN was published:	**27/03/2019**

9. ***Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application***

Please refer to Attachment 1 – ADN 2019/33.

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

10. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

See Attachment 2, in respect of which confidential and non-confidential versions have been provided.

11. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

See Attachment 2, in respect of which confidential and non-confidential versions have been provided.

12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision:**

    <u>Do not</u> answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

See Attachment 2, in respect of which confidential and non-confidential versions have been provided.

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and

- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: **Charles Zhan**

Position: **Senior Associate**

Organisation: **Moulis Legal**

Date: **26 April 2019**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:	**Charles Zhan**
Organisation:	**Moulis Legal**
Address:	**6/2 Brindabella Circuit** **Brindabella Business Park** **Canberra International Airport** **Australian Capital Territory 2609** **Australia**
Email address:	**Charles.zhan@moulislegal.com**
Telephone number:	**+61 2 6163 1000**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

See Attachment 3 – letter of authority.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

ANTI-DUMPING NOTICE NO. 2019/33

Customs Act 1901 – Part XVB

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

Findings of the Continuation Inquiry into Anti-Dumping Measures

Notice under subsection 269ZHG(1) of the *Customs Act 1901*[1]

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 16 July 2018, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to wind towers exported to Australia from the People's Republic of China (China), and the Republic of Korea (Korea), is justified.

Recommendations resulting from the inquiry completed by the Commissioner, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 487* (REP 487).

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered REP 487 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of facts and law therein.

Under subsection 269ZHG(1)(b) of the Act, I have decided to **secure the continuation** of the anti-dumping measures currently applying to wind towers exported to Australia from China from 17 April 2019.

Under subsection 269ZHG(1)(a) of the Act, I have decided **not to secure the continuation** of the anti-dumping measures currently applying to wind towers exported to Australia from Korea. The measures relating to exports of wind towers from Korea will expire on 17 April 2019.

I have determined that, pursuant to subsection 269ZHG(4)(a)(ii) of the Act, the notice continues in force after 16 April 2019, but after this day:

i. ceases to apply in relation to exports of wind towers from Korea; and
ii. has effect as if different specified variable factors had been fixed in relation to exports from China.

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[1] All legislative references are to the *Customs Act 1901* (the Act), unless otherwise stated.

Particulars of the dumping margins established for each of the exporters and the effective rates of duty payable are also set out in the following table.

Country	Exporter	Dumping Margin and Effective Rate of Duty	Duty Method
China	Shanghai Taisheng Wind Power Equipment Co. Ltd and / or supplied by: • Baotou Taisheng Wind Energy Equipment Co., Ltd; • Nantong Blue Island Marine Engineering Co., Ltd; • Shanghai Taisheng (Dongtai) Power Engineering Machinery Co., Ltd; • Xinjiang Taisheng Wind Energy Equipment Co., Ltd	6.4%	*ad valorem* rate
	All other exporters	10.9%	

REP 487 has been placed on the public record, which may be examined on the Anti-Dumping Commission website at www.adcommission.gov.au. Enquires about this notice may be directed to Client Support at clientsupport@adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Dated this 25th day of March 2019

KAREN ANDREWS
Minister for Industry, Science and Technology

NON-CONFIDENTIAL

26 April 2019

In the Anti-Dumping Review Panel

Application for review – continuation inquiry concerning wind towers from China and Korea

Shanghai Taisheng Wind Power Equipment Co., Ltd

Introduction

By way of notice published on 23 April 2018 the Anti-Dumping Commission ("the Commission"), invited certain persons to apply for the continuation of anti-dumping measures applying to the export of wind towers from China and Korea to Australia.[1]

The applicable dumping duty notice was due to expire on 16 April 2019. The original investigation, applied for by Keppel Prince Engineering Pty Ltd ("KPE") and Haywards Steel Fabrication &

[1] See ADN 2018/65.

Construction ("Haywards"), led to the imposition of anti-dumping measures on the goods on 16 April 2014.

On 18 June 2018, in response to the invitation, KPE applied to the Commission for the continuation of the anti-dumping measures applicable to the exportation of the goods from China and Korea.[2]

On the basis of KPE's application, the Commission initiated a continuation inquiry ("the inquiry") in respect of:

> *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) is justified.*[3]

Based on recommendations contained in the Final Report,[4] ("Report 487") the Minister for Industry, Science and Technology ("the Parliamentary Secretary") decided on 25 March 2019 to continue the anti-dumping measures imposed on the goods exported to Australia from China.[5] The decision of the Parliamentary Secretary was published on the Commission website on 27 March 2019.

Specifically, the Parliamentary Secretary decided to publish the notice in relation to exports of wind towers exported from China under Section 269ZHG(1) of the *Customs Act 1901* ("the Act").[6] This notice had the effect of continuing the dumping duties on all exporters from China, based on different variable factors to those that had previously applied.[7] It also had the effect of discontinuing the measures as they had previously applied to exporters from Korea.

Shanghai Taisheng Wind Power Equipment Co., Ltd ("TSP") is a Chinese manufacturer and exporter of wind towers.

As outlined in this application, TSP seeks review by the Anti-Dumping Review Panel ("ADRP"), under Section 269ZZA(1)(d) and 269ZZC of the Act, of the decision made by the Parliamentary Secretary to continue the measures against the exportation of the goods by TSP from China to Australia.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2), in relation to our client's grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the ADRP.

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2 See INV 487 Doc 001 – Application.
3 See ADN 2018/115 at page 1.
4 See INV 487 Doc 019 – Final Report 487
5 See ADN 2019/33.
6 See ADN 2019/33.
7 See ADN 2019/33.

A First ground – errors in the determination of dumping margin

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The dumping margin calculated for TSP in the inquiry was 6.4%.[8] This represents a reduction of the dumping margin as published in the Statement of Essential Facts ("SEF 487") for the inquiry. The reduction is a result of the acceptance by the Commission of one aspect of TSP's submission in response to the margin calculation in SEF 487 dated 13 February 2019 ("the SEF margin submission"). A confidential version of this submission is attached for the Review Panel's reference.

TSP's SEF margin submission raised two major issues with the margin calculation in SEF 487, namely:

- incorrect determination of the amount of profit for normal value – particularly, the incorrect application of Regulation 45(2); and
- incorrect and unreasonable determination of cost of production;

Report 487 rejected TSP's submission concerning profit determination.

With respect to TSP's submission concerning cost of production, Report 487 also rejected TSP's primary claims regarding the cost of production determination, but agreed to make corrections to a relatively minor and mathematical aspect of the issue,[9] concerning how "cost uplifting" should have been applied.

In our view, Report 487's rejection of TSP's claims was incorrect and unreasonable. We will now address each issue in turn.

(a) Determination of the amount of profit for normal value purpose

In summary, the issue here is that Report 487 has not correctly calculated the dumping margin for TSP, due to the incorrect determination of the amount of profit for normal value purposes, as required under Section 269TAC(2)(c) of the Act. We respectfully refer the Review Panel to Part A-1 of TSP's SEF margin submission, which contains a detailed analysis and explanation of the relevant issues.

Without repeating what was already discussed in the SEF margin submission, we consider that it suffices to summarise the issue as now follows.

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8 See ADN 2019/33.

9 This minor aspect was raised at the first paragraph under Part B of the SEF margin submission.

The Commission correctly resorted to Section 269TAC(2)(c) for the calculation of normal value, noting that: [10]

> *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.*

and:

> *[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).*

Despite the absence of like goods sold in TSP's domestic market, the Commission insisted that it should apply Regulation 45(2) of the *Customs (International Obligations) Regulation 2015* ("the Regulation") for the determination of the amount of profit.

In the SEF margin submission, TSP pointed out that the Commission's application of Regulation 45(2) was incorrect, for two major 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.*

We respectfully refer the Review Panel to pages 1 to 5 of the SEF margin submission, for the detailed explanation and reasoning presented therein.

In response, Report 487 rejected TSP's claim with some brief comments:

> *In response to SEF 487, TSP Shanghai has submitted that there were no sales of like goods during the inquiry period, and therefore subsection 45(3)(a) of the Regulation (having regard to the actual amounts realised by TSP Shanghai from sales of the same general category of goods in the domestic market) is the preferred approach to establishing a profit amount.*
>
> *As noted in section 6.4.2 of this report, the Commission has found that, whilst wind towers may vary from project to project and have different technical properties, they nevertheless are like goods. However, these differences mean that there are no relevant sales of like goods on the domestic market to enable matching to the goods exported to Australia.*
>
> *The difference between TSP Shanghai's proposed approach and the approach taken by the Commission in SEF 487 is that, if there are sales of like goods, the profit amount is impacted by the presence (or otherwise) of sales in the OCOT, and whether those sales which were at a loss are recoverable. TSP Shanghai submits that the OCOT test should not be applied, and to do so would be inconsistent with other cases before the Commission (pointing to the Statement of*

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[10] See Report 487 at page 32.

Essential Facts No. 466 concerning railway wheels and Anti-Dumping Commission Report No. 219 concerning power transformers).

The Commission observes 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.

Subsection 269TAAD(1) states that when sales are made at a loss in substantial quantities, those loss making sales will not be considered to be in the OCOT unless they are also recoverable (as set out in subsection 269TAAD(3)). The Commission notes that it conducted a recoverability test on TSP Shanghai's domestic sales by comparing the net invoice revenue to the weighted average CTMS over the inquiry period. However, due to the nature of wind towers being produced on a project by project basis, the CTMS, which in this case is calculated on a project specific basis, is equal to the weighted average CTMS over the inquiry period.

The Commission therefore affirms that it has conducted the OCOT test in accordance with section 269TAAD. As a result, the Commission has calculated a profit margin based on the domestic sales of like goods in the OCOT (i.e. that were profitable and / or recoverable) that were manufactured by TSP Shanghai, in accordance with subsection 45(2) of the Regulation. [citation omitted]

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. Further, in our view the comment also does not address the issues concerning the practical obstacles in completing the OCOT test for a product like wind towers, as has been recognised by the Commission in the past, and the inconsistency of the methodology with the Commission's own approach in other investigations.[11]

Accordingly, we submit that Report 487's determination of the amount of profit is affected by the same incorrectness and unreasonableness as TSP highlighted in the SEF margin submission.

(b) Determination of the cost of production for normal value purposes

The issue here is that Report 487 has not correctly calculated the dumping margin for TSP due to the incorrect and unreasonable determination of TSP's cost of production of the goods under consideration. This is because, in our view, the Commission has incorrectly determined that TSP's financial records for the cost of plate steel do not reasonably reflect competitive market costs associated with the production of like goods under Regulation 43(2) of the Regulation. Further, and in any case, the "surrogated cost" or the so called "cost uplift" as determined by the Commission was incorrect and unreasonable.

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[11] These were discussed at the bottom of page 3 to the top of page 5 of the SEF margin submission.

We respectfully refer the Review Panel to Part B of the SEF margin submission, which contains a detailed analysis and explanation of the relevant issues.[12] In summary, TSP pointed out that the Commission's determinations were incorrect and unreasonable, because:

- the Commission failed to genuinely engage with the facts related to TSP and the period of inquiry in determining the question of whether TSP's cost of production *"reflect[s] competitive market costs associated with the production or manufacture of like goods"*;

- TSP's steel plate cost was indeed comparable to the "competitive market" benchmark identified by the Commission;

- the Commission's "cost uplift" methodology results in determining a cost of plate steel raw material for TSP that is at a level that is **[CONFIDENTIAL TEXT DELETED]**% higher than the benchmark for competitive market cost as identified by the Commission;

- the Commission ignored relevant and more up to date facts for the determination of "competitive market cost" in preference for a method that essentially and entirely arbitrarily fixed the outcome of any determination to the Commission's calculation and determination back in 2013.

Report 487 simply brushed off or ignored TSP's claims by way of repeating the Commission's position and methodology as stated in SEF 487. For instance, Report 487 continues to state:

> *The Commission selected Flat Products / Plate CFR East Asia / East Asia import CFR $ / ton, (which is reported on Cost and Freight (CFR) terms in USD per tonne) as its benchmark because it is comprised of non-China import prices, and is therefore likely to be the most representative of competitive plate steel prices in the region. The Commission notes that it examined a number of other potential plate steel benchmarks, all of which showed similar and consistent price movements over the period examined.*
>
> *The benchmark indicates that competitive market steel prices were significantly higher during the manufacturing period than the costs set out in the exporter's records.*

As TSP pointed out, the published East Asia benchmark as selected by the Commission was **[CONFIDENTIAL TEXT DELETED – cost comparison]** than TSP's own steel plate cost. The only reason enabling the Report to claim that the *"competitive market steel prices were significantly higher"* than those recorded in TSP's accounts was the Commission's inflation of the contemporary competitive market cost benchmark by **[CONFIDENTIAL TEXT DELETED]**%. The Report refers to this inflationary effect as an "index" on the pretext that calling it such gives it some legitimacy, when in substance it has no legitimacy at all in working out a contemporary competitive cost benchmark.

Report 487 states:

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[12] See SEF margin submission at pages 6 to 10

> *Of the other methodologies proposed by TSP Shanghai, the Commission observes that the Australian industry's steel purchase costs are consistently and significantly higher than the benchmark. In addition, TSP Shanghai purchased only a small proportion of its plate steel requirements from Japan during the inquiry period, and there is insufficient information available to the Commission to rely on these purchases to establish a benchmark that would account for grade differences. Finally, the plate steel sourced from Japan by TSP Shanghai was not used in the production of wind towers exported to Australia during the inquiry period. In the circumstances, the Commission considers the approach taken to be appropriate.*

We wish to provide the following responses with respect to these statements for the Review Panel's consideration:

- The comments relating to the "small proportion" of plate steel purchases from Japan during the inquiry period cannot dismiss the relevance of those purchases. The fact that that plate steel was used to produce wind towers for Japan, and not for Australia, does not diminish the evidentiary value of using the cost of that plate steel in determining whether TSP's costs of producing wind towers for Australia was likely to be a reasonable reflection of competitive market cost. The Commission has not sought to determine or account for any grade differences. In any case, any grade related cost differences would have been minimal, due to the similar usage of the steel for producing wind towers, and would be nowhere near the over [CONFIDENTIAL TEXT DELETED]% uplift Report 487 decided to impose.

- With respect to the statement that *"Australian industry's steel purchase costs are consistently and significantly higher than the benchmark"* – which "benchmark" is the Commission referring to? The one it inflated by [CONFIDENTIAL TEXT DELETED]%? Or the one which TSP has also identified to be comparable and slightly lower than its own steel plate costs? More importantly, how does the Australian industry's steel purchase cost compare to TSP's? [CONFIDENTIAL TEXT DELETED – comments relating to cost comparison]. As noted in the SEF margin submission, TSP considers that the Australian industry's procurement cost could be one of the relevant and contemporary factors that the Commission could consider in determining whether TSP's cost of production reasonably reflected competitive market cost:[13]

  > *The Commission also has verified information relating to the plate steel cost of the Australian industry, which presumably also reasonably reflected competitive market cost* – [CONFIDENTIAL TEXT DELETED – comments regarding steel prices].

Accordingly, in our view Report 487's determination of TSP's cost of production is affected by the same illogicality and incorrectness as we identified and complained about in the SEF submission in relation to SEF 487.

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[13] SEF margin submission, at page 8.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

In relation to the **determination of the amount of profit** for normal value purposes, TSP submits that the correct and preferable decision is to calculate the amount of profit under Regulation 45(3)(a) of the Regulation, being the actual amount of profit realised by TSP on its domestic sales of wind towers.

In relation to the **determination of the cost of production** for normal value purposes, TSP submits that the correct or preferable decision is to conduct the assessment of whether TSP's plate steel cost reasonably reflected competitive market cost by taking into consideration the contemporaneous and relevant data as identified in the SEF margin submission. Specifically, the Minister should find that TSP's recorded plate steel costs reasonably reflect competitive market costs, and must therefore be used in the determination of TSP's normal value under Section 269TAC(2)(c). As an alternative, even if the Minister is still of the view that TSP's plate steel cost does not reasonably reflect competitive market cost, the correct and preferable decision is for the competitive market cost to be determined having regard to the contemporaneous and relevant data, and without the use of methods which generate outcomes that have no legitimacy in contemporary reality.

11 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Based on TSP's estimation, the making of the correct or preferable decision referred to under 11 above would result in a decision that is materially different from the reviewable decision, because it would result in a change to the variable factors and a substantial reduction to the dumping margin with respect to the exported goods.

In relation to the profit issue, the current profit amount calculated under 45(2) is based on a profit ratio of **[CONFIDENTIAL TEXT DELETED]**%. A profit ratio determined based on the "actual amount realised" under Regulation 45(3)(a) would likely be under **[CONFIDENTIAL TEXT DELETED]**%. This would result in a "negative" dumping margin, ie no dumping with respect to TSP's Australian sales in the relevant period.

In relation to the cost of production issue, it is TSP's belief the correct and reasonable decision would show that TSP's plate steel cost did indeed reasonably reflect competitive market cost. In any case, and in light of the competitive market benchmark data as used by the Commission, the over **[CONFIDENTIAL TEXT DELETED]**% "cost uplift", which materially affected the dumping margin calculation, is unsustainable.

B Second Ground – expiration would not be likely to lead to dumping and material injury attributable to TSP

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

TSP submits that it was not correct or preferable for Report 487 to recommend, nor was it correct or preferable for the Minister to secure, the continuation of the anti-dumping measures in relation to TSP's exports.

Section 269ZHF(2) of the Act provides:

> *The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.*

In response to the proposal in SEF 487 to secure the continuation of the measure in relation to wind towers exported from China, TSP made detailed submissions ("the SEF expiry submission")[14] in support of its view that the anti-dumping measure should cease to apply to TSP on two major grounds:

- because TSP's exports to Australia were not dumped, and that injurious dumping on TSP's part was unlikely to recur – pointing to the fact that TSP's dumping margin, once correctly calculated, would show TSP's exports were not dumped, and that the particular circumstances surrounding TSP's Australian sales indicated the unlikelihood of any recurrence of dumping;

- because injurious dumping on TSP's part was unlikely to recur – pointing to the fact that the particular circumstances surrounding TSP's Australian sales indicated the unlikelihood of any recurrence of dumping.

A confidential version of the SEF expiry submission is attached for the Review Panel's convenience.

The SEF expiry submission explained in detail the unique factual circumstances surrounding TSP's Australian sales, and why the Commission should not recommend that the Minister secure a continuation of the measures as against TSP. Most importantly, it explained the fact that TSP [CONFIDENTIAL TEXT DELETED - effect of TSP's export to Australia is non-injurious]. We respectfully refer the Review Panel to the following paragraphs in the SEF expiry submission:[15]

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14 See INV 487 Doc 16, submission by TSP dated 20 February 2019.

15 See SEF expiry submission, at pages 6 to 8.

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

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

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

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

> *However, dumped prices for wind towers conferred a price advantage in the market to Chinese exporters. The evidence before the Commission indicates that KPE's ability to win tenders was impacted as a result, such that it either reduced its prices or lost the tender altogether.*

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

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

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

   [CONFIDENTIAL TEXT DELETED – confidential correspondence].

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

   [CONFIDENTIAL TEXT DELETED – confidential correspondence]

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

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

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

> *arrangement]. TSP has proven from its conduct that it [CONFIDENTIAL TEXT DELETED – effect of TSP's export to Australia is non-injurious].*
>
> *An expiration of the anti-dumping measures against TSP can only benefit KPE, rather than injure KPE. [CONFIDENTIAL TEXT DELETED – effect of TSP's export to Australia is non-injurious].* [footnote omitted]

Report 487 rejected TSP's claims with this brief response to the facts put forward by TSP:

> *In the Commission's view, whilst the commercial arrangements between KPE and TSP Shanghai are relevant to the Commission's task in this inquiry, and have been in place in the inquiry period, they are somewhat isolated to the circumstances of those arrangements. KPE is not the sole Australian industry member producing like goods. These commercial arrangements provide limited guidance as to the impact of future dumping by TSP Shanghai on the Australian industry generally.*

TSP respectfully submits that this comment fails to address the situation surrounding TSP's exports and whether they would have a detrimental impact on the Australian industry, for the purpose of determining whether the Commission could be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation or recurrence of the dumping and the material injury that the anti-dumping measure is intended to prevent. The facts put forward by TSP, and acknowledged by KPE, clearly puts the basis for each such "satisfaction" in extreme doubt, or at least enough doubt so as to rob that potential outcome of the standard of "probability" that such a determination must meet.

The meaning of Report 487's comment that the commercial arrangement between KPE and TSP *"are somewhat isolated to the circumstances of those arrangements"* is unclear to us. The arrangement, as explained in the SEF expiry submission and demonstrated by the documents attached thereto, is self-explanatory as to its coverage and relevance to the goods under consideration. As TSP explained, **[CONFIDENTIAL TEXT DELETED - effect of TSP's export to Australia is non-injurious]**. These arrangements are evidence pointing against the likelihood that TSP's exports would be injurious to KPE, either during the inquiry period or in the future.

Further, we take issue with Report 487's comment that *"KPE is not the sole Australian industry member producing like goods"*. As noted in SEF 487:

> *Based on the substantial processes of manufacture undertaken, the Commission has established that the applicant, KPE, is the only current member of the Australian industry producing wind towers.*[16]

KPE's information was also the sole basis of the Commission's assessment of the Australian industry and in forming its view as to the likelihood of whether material injury would continue or recur. Accordingly, we

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16 See SEF 487, at page 17.

respectfully submit that this comment – which simultaneously acknowledges the significance of TSP's arrangement with KPE but at the same time attempts to "water them down" - is unsustainable.

It is undisputed that TSP's exports to Australia, and its continued supply of wind towers to the Australian market, has been and will continue to be beneficial to the Australian industry, and indeed are [CONFIDENTIAL TEXT DELETED - effect of TSP's export to Australia is non-injurious]. There is *no evidence* to suggest otherwise. TSP has proven from its conduct that it [CONFIDENTIAL TEXT DELETED - effect of TSP's export to Australia is non-injurious].

The evidence before the Minister shows that expiration of the anti-dumping measures as against TSP can only benefit KPE, rather than injure KPE. [CONFIDENTIAL TEXT DELETED - effect of TSP's export to Australia is non-injurious].

These unique facts mean that it was incorrect and unreasonable for the Commission to be satisfied that the anti-dumping measure should be continued as against all Chinese exporters, including TSP. The facts surrounding TSP's exports to Australia mean that such satisfaction was not warranted.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

TSP submits that the correct and preferable decision is that the Minister should declare that the anti-dumping notice continues in force after the specified expiry day but that, after that day, the notice ceases to apply in relation to a particular exporter, being TSP.

11 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The proposed decision referred to above would result in a decision that is materially different from the reviewable decision because it would result in the discontinuation of measures that apply to TSP for the export of the goods from china to Australia.

Conclusion and request

The decision to which this application refers is a reviewable decision under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that our client seeks to have reviewed.

TSP is an interested party in relation to the reviewable decision.

TSP's application is in the approved form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct and preferable decision that should result from the grounds that are raised in the application are dealt with above.

The Review Panel is requested to requested to recommend to the Parliamentary Secretary that, in accordance with Section 269ZZM that the reviewable decision (being the decision to publish notice under Section 269ZHG(1) of the Act) be revoked and substitute another decision to publish a notice that declares:

(a) that the anti-dumping measures cease to apply in relation to TSP; or

(b) in the alternative, as may be applicable, new variable factors in relation to TSP.

Lodged for and on behalf of Shanghai Taisheng Wind Power Equipment Co., Ltd by:

Charles Zhan
Senior Associate