Attachment A

Anti-Dumping Commission response

Applications for Review of Decision relating to Wind Towers exported from the People's Republic of China and the Republic of Korea

Abbreviations

ADRP	Anti-Dumping Review Panel
Act	*Customs Act 1901*
Applicants	Win&P Ltd, Senvion Australia Pty Ltd and Senvion Systems SE
Australian Industry	A.C.N. 009 483 694 Pty Ltd and Keppel Prince Engineering Pty Ltd
EPR 221	Electronic Public Record 221
EQR	Exporter Questionnaire Response
Keppel Prince	Keppel Prince Engineering Pty Ltd
Manual	Anti-Dumping Commission Dumping and Subsidy Manual
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry
Senvion Application	Senvion's Application for review of a decision by the Parliamentary Secretary whether to publish a dumping duty notice, dated 16 May 2014
Shanghai Taisheng	Shanghai Taisheng Wind Power Equipments Co Ltd
REP 221	Final Report 221
Win&P Application	Win&P's Application for review of a decision by the Parliamentary Secretary whether to publish a dumping duty notice by, dated 16 May 2014

Key points of note in reading responses to Applicant claims

(i) Whilst the Anti-Dumping legislation (Part XVB of the *Customs Act 1901* ("the Act") and the *Customs Tariff (Anti-Dumping Act) 1975* (the "Dumping Duty Act")) refers to the Minister, for the purposes of this response all references to the Minister or Parliamentary Secretary should be considered interchangeably. This approach reflects the Minister for Industry's delegation of responsibility for Ministerial decision-making (under the Act and the Dumping Duty Act) to the Parliamentary Secretary for the Minister for Industry.

(ii) On 16 April 2014, the Parliamentary Secretary's decision to publish a dumping duty notice for wind towers exported to Australia from the People's Republic of China and the Republic of Korea was published.

(iii) Two parties sought reviews of this decision to the Anti-Dumping Review Panel (ADRP). Win&P Ltd (Win&P) submitted its Application for review of a decision by the Parliamentary Secretary whether to publish a dumping duty notice, dated 16 May 2014 to the ADRP (Win&P Application). Senvion Australia Pty Ltd and Senvion Systems SE (Senvion) submitted its Application for review of a decision by the Parliamentary Secretary whether to publish a dumping duty notice, dated 16 May 2014 to the ADRP.

(iv) On 4 June 2014, the ADRP invited the Anti-Dumping Commission (the Commission) to address certain issues in respect of the review applications. This document details the Commission's responses to the relevant issues, as requested by the ADRP.

(v) In drafting responses to the issues raised by the applicants to the ADRP, the Commission has had regard to all information submitted to it in accordance with legislative timeframes during the investigation up until the day the Final Report 221 (REP 221) was submitted to the Parliamentary Secretary. This information includes the Statement of Essential Facts (SEF 221), visit reports and submissions from interested parties. In drafting this response the Commission has also had regard to the analysis the Commission performed during its investigation. The Commission confirms that, in drafting this response, no new information (that was not considered during the investigation) has been considered.

(vi) The response by the Commission is presented in a non-confidential format with reference to confidential attachments. In its response, the Commission has necessarily kept in mind to preserve the confidentiality of information provided to it by parties who have asked that they be kept confidential.

Order of responses

1. The Commission addresses the claims submitted to the ADRP in the Applications for Review by:
   - Win&P; and
   - Senvion,

   collectively referred to as "Applicants".

2. The Commission notes that the Applicants raised two similar claims (see Claims 1 and 2 below). The Commission has responded to these similar claims in a single response with relevant references.

3. The Commission has also addressed claims (excluding Claims 1 and 2) raised individually by Win&P and Senvion and these have been identified accordingly.

Similar claims made by Win&P and Senvion

Claim 1: Embeds as the goods under consideration, or as part thereof

Information that is not *relevant information* as defined

1.1 Nil

Factual claims disputed, commentary and background

1.2 The Applicants claim that embeds should not be considered to be either the goods under consideration or part of the goods under consideration.

1.3 The Commission received a number of submissions from the Applicants in relation to these claims.[1] As indicated in REP 221, the Commission did not agree with these claims. See page15 of REP 221. No other party raised the issue of embeds not being the goods or part of the goods.

1.4 The claim by the Applicants regarding embeds was not addressed until REP 221. Win&P, the exporter of the goods from Korea, did not provided submissions for the Electronic Public Record until six days before the Statement of Essential Facts was published. Senvion, the purchaser and importer of the goods from Win&P, did not raise the issue of embeds until after the Statement of Essential Facts.

1.5 In the application into the dumping of wind towers exported to Australia from China and Korea, A.C.N. 009 483 694 Pty Ltd and Keppel Prince Engineering Pty Ltd (Keppel Prince) (collectively referred to as Australian Industry), set out the following:

"The goods the subject of this application

The goods the subject of this application are 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". Application, item 001 in the Electronic Public Record 221 (EPR 221).

1.6 With respect to the Commission's standard practice of establishing the definition of the goods, the Commission's "Instructions and Guidelines for applications for anti-dumping and/or countervailing measures", state:

"…to carefully describe the imported goods that you allege are being dumped and/or subsidised and causing injury. Getting the definition right is important, as it will determine

[1] Win&P: Page 2 of item 28 of EPR 221; Page 2 of item 29 of EPR 221; Page 11 of item 32 of EPR 221; Page 2 of item 33 of EPR 221; item 37 of EPR 22.
Senvion: item 35 of EPR 221.

the scope of the investigation…The Commission will use your description to determine the breadth of the investigation…" See page 8-9.

1.7 The description of the goods (see paragraph 1.5) was provided by the Australian Industry in its application. The Commission discussed this description and scope of the goods with the Australian Industry, to seek clarification, prior to an investigation being initiated.

1.8 The Commission issued the Public Notice pursuant to section 269TC of *the Customs Act 1901* (Act) and indicated that the goods, the subject of the application, 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.

1.9 This description reflects the description of the goods contained in the Australian Industry's application.

1.10 Similarly, the Australian Dumping Notice No. (ADN) 2013/68 adhered to the Australian Industry's description of the goods under consideration.

1.11 The Australian Industry provided a submission to the Commission on this issue in response to the Statement of Essential Facts:

*"***Embeds form part of the definition of the goods**

The Australian industry refute the suggestion proposed in earlier submissions, that tower embeds cannot be considered part of the goods identity. Such a suggestion creates the fanciful notion, that if required in the design, embeds are not a component of the tower structure. The goods the subject of this investigation are defined 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. Certain wind towers are designed to support the nacelle (an enclosure for an engine) and rotor blades for use in wind turbines….' (p. 8, Application, Non Confidential version)*

A proportion of wind towers are designed with a steel embed or foundation section, whilst others are not. In essence if the design calls upon an embed, it is an additional steel cylindrical section which is used in the design as a foundation to support the other steel cylindrical sections which fundamentally make up the tower. Combined, these components form the tower which has the purpose of supporting the wind turbine generator (nacelle) and blades. Contingent to both, the embed and tower sections have the following characteristics:

• Both are fabricated cylindrical steel tower components produced in the same manner;

• Both are manufactured using identical production processes, facilities, and employee skill sets at each stage of production;

• Both are cylindrical, rolled steel cans, welded together by the same equipment and procedures;

• Both require the same surface treatment systems as specified;

• Both require the same generic quality requirements, with regards to reporting procedures and testing.

The Australian industry maintains that, as per the definition of the goods, *an embed (if required) is a fabricated steel cylindrical component or section which is categorically aligned with wind tower sections, and cannot be segregated as a separate product in this application".* See page 3 of item 036 of EPR 221.

1.12 **Confidential Attachment 1** is a sample technical drawing of a wind tower with an embed. The technical drawing was provided as Confidential Attachment C-1 "Sample Technical Material – Australian Export" of the Exporter Questionnaire Response (EQR) from Shanghai Taisheng Wind Power Equipments Co Ltd (Shanghai Taisheng). Shanghai Taisheng was an exporter of the goods from China. In the technical drawing, there is a notation referring to Item 1 "Embedded Steel Can", which specifically refers to embeds.

1.13 The Commission agrees with the Applicants' claim that embeds can be separately priced, shipped and subject to separate purchase orders. REP 221 noted:

"… that there were sales of towers that do not require an embed in the Australian and exporter market. The Commission also notes that embeds may be contracted and sold separate to sales of towers to different parties at different times".

1.14 However, the Commission noted that:

"The examined export tenders that took place during the investigation period included towers with embeds and towers and embeds were exported for tenders. The internal documents of the exporters show consideration of the towers with embeds. The different export dates, purchase orders and invoicing do not detract from this". (emphasis added) See page 15 of REP 221.

1.15 During the verification visits conducted by the Commission, the Commission received information and documentation that demonstrated that during the investigation period, the Australian Industry and exporters were involved in wind tower projects that required wind towers with embeds. Some of these documentation are described and attached as confidential attachments below:

- **Confidential Attachment 2** is documentation relating to the tender for the Mt Mercer project for which the wind towers that included embeds were ultimately

supplied by Win&P to Senvion. The documentation demonstrates that towers and embeds were priced and considered together in tender bids.

- **Confidential Attachment 3** is the "Mt Mercer Cost and Delivery Plan for Strategic Decision" from Senvion where the offers of potential suppliers were compared. This document further demonstrates that project managers, such as Senvion, considered towers with embeds in their purchasing decisions.

- **Confidential Attachment 4** contains documents relating to the Gullen Range Project. The Gullen Range Project was supplied with wind towers from China and Australia. The documents demonstrate that towers and embeds were priced and considered together in tender bids.

- **Confidential Attachment 5** is an example of a wind tower cost comparison sheet for bids of wind towers for the Gullen Range Project. This document further demonstrates the consideration of towers with embeds in the purchasing decision.

1.16 The Commission undertook an objective examination of the evidence before it and on this basis, the Commission calculated an export price based on the goods comprised of towers and embeds. Similarly, a normal value was constructed on like goods comprised of towers and embeds to compare to the price of the exported goods.

Claim 2: Conversion of currency

Information that is not relevant information as defined

2.1 Nil

Factual claims disputed, commentary and background

2.2 The Applicants assert that the Commission erred in its application of section 269TAF(1) of the Act for failing to identify the date of transaction or agreement that best establishes the material terms of the sale of the exported goods. The Commission established that the date of sale recognition by Win&P was the date that best reflects the material terms of sale.

2.3 The Applicants assert that the material terms of the sale were established on the date of the contract and therefore, the date of contract should be used as the date of currency conversion. In the Win&P Application and Senvion Application:

- Senvion asserted that the material terms of sale are recorded in the purchase orders; and

- Win&P asserted that the material terms of the sale of the exporter goods were established on the date of the contract that Win&P entered into with its customer.

2.4 During the investigation, the Commission received a number of submissions from the Applicants in relation to these claims. The Applicants' submissions to the Commission can be accessed at EPR 221.

2.5 As stated in pages 35-36 of REP 221, the Commission assessed the Applicants' claims, but ultimately did not agree with these claims.

2.6 The Commission determined, based on all the evidence before it, that the purchase orders presented to it by the Applicants did not reflect the delivery times, quantities shipped, the amounts invoiced and the payments actually received. As such, the Commission did not consider that the dates of the purchase orders were suitable for the purpose of determining the date that best establishes the material terms of the sale.

2.7 Page 35 of REP 221 states:

> *"Section 269TAF(1) provides that where a comparison of export prices and normal values requires a conversion of currencies, that conversion, subject to a forward rate of exchange being used, is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best established the material terms of the sales of the exported goods".*

2.8 As stated in page 35 of REP 221, the Commission was satisfied that Win&P did not enter into a forward exchange contract for its wind towers during the investigation period.

2.9 On page 36 of REP 221, the Commission considered that the date of invoice, the date of sale recognition by Win&P, be used as the date for the conversion of currencies as this date best establishes the material terms of sale.

2.10 Page 60 of the Commission's Dumping and Subsidy Manual (Manual) states the following:

> *"In establishing the date of sale, the Commission will normally use the date of invoice as it best reflects the material terms of sale. For the goods exported, the date of invoice also usually approximates the shipment date.*
>
> *Where a claim is made that an exporter claims a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.*
>
> *For such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date".*

2.11 The Commission has used the date of invoice, the preferred position as stated in the Manual, as the date that best reflects the material terms of sale. The Commission considers that the date that best establishes the material terms of sale is the date of sales revenue

recognition in Win&P accounts. This is the date that Win&P recognised the amount as a sale as stated in the audited accounts and reflects the date of invoice.

2.12 As stated on page 36 of Rep 221, the Commission referred to the Trade Measures Review Officer's (TMRO) decision in the hollow structural sections review which addresses the date of sale for the purpose of currency conversion. The TMRO observed that material terms of the sale of the exported goods may include price, type and quantity of the goods subject to the order. The time and terms of delivery may also be considered to be material. It seems reasonable to assume that these terms are fixed at the time the offer is accepted. The TMRO found that price was a material term, but it was only one of a number of material terms.

2.13 During the investigation, the Commission conducted a detailed examination of commercial documents relating to the sale of wind towers, such as purchase orders, amended purchase orders, commercial invoices and shipping documents during the Commissions verification visits with both Applicants. See page 16 of the Win&P Exporter Verification Report, item 026 of EPR 221 and page 14 of the Senvion Importer Verification Report, item 020 of EPR 221.

2.14 **Confidential Attachment 6** sets out the Commission's detailed examination of the purchase orders, invoices and receipt of payments, which formed the basis for the Commission's assessment.

2.15 The Commission recognised on pages 35-36 of REP 221 that "for certain types of tender and capital equipment sales, the date of contract may be the more appropriate and preferred date".

2.16 However, having regard to all the evidence before it, on page 36 of Rep 221, the Commission concluded that:

> *"In reviewing documents relevant to the sale of wind towers by Win&P, the Commission compared the various terms established in the amended purchase orders, the subsequent commercial invoices and the actual shipping documents. The evidence shows that:*
>
> - *The number of sections to be shipped as per the purchase orders did not reconcile the number of sections identified on the commercial invoice;*
> - *The number of sections identified on the commercial invoices as being shipped did not reflect the number of sections that were actually shipped;*
> - *payment for was received by Win&P from Senvion which accounted for the number of sections identified on the commercial invoice and not the number of sections actually shipped;*

- *the scheduled delivery dates identified on the amended purchase orders differed to the actual delivery dates; and*

- *a number of sections have not yet been shipped to Australia in line with the agreed delivery schedule even though payment has been received for those goods.*

For the reasons outlined above, the Commission does not consider that the purchases orders are a suitable date to use as the date that best establishes the material terms of sale.

Claims made by Win&P

Claim 3: SG&A used under section 269TAC(2)(c) of the Act

Information that is not relevant information as defined

3.1 Nil

Factual claims disputed, commentary and background

3.2 The Commission agrees with Win&P that an incorrect methodology was used for the amount of selling, general and administration (SG&A) under section 269TAC(2)(c) of the Act by working out an **export** SG&A and adding it to the cost of production of the exported goods.

3.3 The Commission notes that the correct method is to work out a domestic SG&A and add it to the cost of production as under section 269TAC(2)(c) of the Act and then adjust the **domestic** SG&A under Section 269TAC(9) to a comparable export SG&A. Section 269TAC(2) of the Act states the normal value of the goods for the purposes of this Part is:

"…(c) except where paragraph (d) applies, the sum of:

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale;…"

3.4 The amount of SG&A under section 269TAC(2)(c) of the Act is an amount for domestic SG&A and this amount should then be adjusted under 269TAC(9), which states.

"Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods".

3.5 In summary, the SG&A established under section 269TAC(2)(c) of the Act is domestic SG&A which is then adjusted under 269TAC(9) to an export SG&A so as to make the normal value properly comparable to the export price.

3.6 The Commission agrees with Win&P that, in this case, both methods arrive at the same results. The Commission, therefore, considers that the basis on which the reviewable decision was made is unaffected by this error and no further action is required.

Claim 4: Determination of the percentage amount of the selling, general, administration and other expenses (SG&A)

Information that is not relevant information as defined

4.1 Nil

Factual claims disputed, commentary and background

4.2 Win&P raised three issues relating to the calculation of its SG&A.

4.3 The Commission's assessment of SG&A, research and development (R&D) expenses and foreign exchange gains and losses is at **Confidential Attachment 7**. The spreadsheets showing the calculation of SG&A and the comparison between the Win&P allocation and the Commission's calculations is at **Confidential Attachment 8**.

Issue 1: SG&A (selling and general expenses) calculation

4.4 Win&P claims that the Commission incorrectly allocated certain company common expenses to the sale of the wind towers in its SG&A. Win&P also claims that the Commission allocated expenses which are unrelated to the goods under consideration in its SG&A.

4.5 The Commission disputes these claims.

4.6 During the exporter verification visit, the Commission examined Win&P's calculation of its SG&A, as set out in the EQR. See Exporter Verification Report, item 026 of EPR 221. In the EQR, Win&P's SG&A expenses consisted of direct expenses and indirect expenses (consisting of company common expenses). Direct expenses were expenses directly incurred by the department responsible for the manufacture of wind towers.

4.7 Win&P allocated common company expenses based on the company business plan.

4.8 The Commission's preferred method in calculating SG&A is to use costs as a percentage of sales revenue unless the exporter can demonstrate a different allocation methodology should be applied. On page 42, the Manual states:

"The Commission generally obtains selling, general and administrative expenses from profit and loss statements (P&L) for the most recent financial year covering the goods and

preferably in relation to domestic sales of like goods only. The selling, general and administrative expenses must include a fair allocation of other expenses incurred (e.g. research and development, head office, and regional sales offices). Such expenses must be included and allocations examined as to their reasonableness otherwise there may be an understatement of the expenses".

4.9 The Commission wrote in the Win&P Exporter Visit Report:

"We consider that the common expenses should be allocated based on actual turnover and have recalculated the allocations to reflect actual turnover for the investigation period." See page 24 of the Win&P Exporter Visit Report, item 032 of EPR 221.

4.10 During the verification visit, Win&P asserted that if the Commission were to allocate costs as a percentage of sales revenue, the Commission would, in effect, include common expenses of another department in the company common expenses.

4.11 In order for the Commission to assess Win&P's assertions, the Commission required supporting data and documentation from Win&P for verification. In particular, the Commission requested Win&P to provide supporting Excel worksheets that were fully translated into English.

4.12 On page 37of REP 221, the Commission described its attempts to obtain from Win&P source documents, including verifiable Excel worksheets, that were used in Win&P's calculation of its SG&A. Win&P provided some worksheets to the Commission, however, these could not be verified by the Commission as some data was missing or was not translated into English. Further details relating to the Commission's difficulties in obtaining complete, verifiable data relating to Win&P's SG&A are set out in **Confidential Attachment 7**.

4.13 Win&P was unable to demonstrate to the Commission that a different allocation methodology should be applied:

- The Commission found that Win&P's SG&A calculations were not linked to supporting worksheets and therefore, the Commission could not verify the supporting data;
- During the verification visit in December 2013, Win&P provided worksheets that were untranslated;
- During a meeting on 26 February 2014, the Commission explained to Win&P that it had not provided linked worksheets with its spreadsheets. The Commission also pointed out that its spreadsheets were still untranslated; and
- At the conclusion of the investigation, spreadsheets with the requested links to the other worksheets had still not been provided to the Commission.

4.14 Given Win&P's failure to provide complete and verifiable data relating to the allocation of SG&A expenses, the Commission formed the view that SG&A expenses should be allocated based on actual revenue. As a result, the Commission calculated these expenses to reflect actual turnover for the investigation period.

Issue 2: research and development (R&D) expense

4.15 Win&P asserts that no R&D expenses should have been included in the SG&A as all design of wind towers is undertaken by Win&P's customers. Win&P also asserts that it provided its business plan to the Commission which showed that R&D was a division specific to non-wind tower products.

4.16 The Commission disputes these claims.

4.17 As set out on page 38 of REP 221, during the verification visit, the Commission examined Win&P's Framework Supply Agreement relating to wind towers and documents relating to a "prototype tower" project that set out the following:

- Purchasers and providers of wind towers undertake to work together to develop lower cost solutions; and
- Win&P specifically developing a wind tower project with a purchaser.

4.18 While Win&P asserts that the R&D section of Win&P is an independent division to the wind power division based on the business plan provided to the Commission, the Commission considered that other information provided to the Commission (such as those described in section 4.16 above) suggests that research and development work was being applied to wind tower projects. In **Confidential Attachment 7**, the Commission sets out in greater detail its assessment of Win&P's R&D expenses.

4.19 In light of the information provided to it, the Commission allocated a reasonable proportion, based on actual sales revenue to expenses, of R&D expenses to its SG&A costs, thereby increasing Win&P's SG&A.

Issue 3: Foreign exchange gains and losses

4.20 Win&P asserts that the amount of foreign exchange gains and losses incurred during the investigation period should not have been included in the allocation of SG&A for wind towers.

4.21 Win&P reasons that three 2012 foreign exchange gains and losses had no relevance to the SG&A for wind towers exported to Australia.

4.22 The Commission disputes this claim.

4.23 On page 39 of REP 221*, the Commission stated:*

" It is clear that not all imported raw material for 2012 have been provided that would be clearly relevant to domestic and exported goods. Additionally, Win&P provided no explanation for how relevant expenses have been allocated".

4.24 The information provided by Win&P was incomplete, as stated above. The "for official use only" version of the Win&P Exporter Visit Report stated in further detail as to why the Commission considered foreign exchange gains and losses from 2012 should be included.

4.25 Further information on the Commission's assessment of Win&P's foreign exchange gains and losses is at **Confidential Attachment 7**.

Claim 5: Profit used in the construction of normal value

Information that is not relevant information as defined

5.1 Nil

Factual claims disputed, commentary and background

5.2 Win&P claims that if the Commission's SG&A calculations were corrected, the Commission would not need to determine a rate of profit in the constructed normal value as there would be sufficient domestic sales for the calculation of normal value.

5.3 However, if the Commission was required to determine a rate of profit, Win&P asserts that the amount of profit used, based on the Korean Statistical Information Service from 2010, was not reasonable as the profitability data was three years old and included manufacturers of doors, boilers, reservoirs, nuclear reactors and steam generators.

5.4 Finally, Win&P claims that it was not clear whether the requirements of Regulation 181A(4) of *Customs Regulations 1926* had been considered.

5.5 The Commission disputes these claims.

5.6 During the investigation, the Commission received submissions from Win&P on the Commission's determination of profit for use in the constructed normal value. The Commission responded to Win&P's submissions on page 39 of REP 221:

"'The Commission calculated a profit under regulation 181A(3)(c) which allows for a profit using any other reasonable method. The Commission considers that the profit calculated using data from the Korean Statistical Information Service is reasonable as it applies to the manufacture of fabricated and processed metal products. The information is the most relevant and recent information available to the Commission".

5.7 In Attachment 1, on page 63 of REP 221, the Commission described in detail how it applied Regulation 181A of *Customs Regulations 1926* in determining the rate of profit for Win&P's constructed normal value:

"The Commission downloaded from the site a table of Korean Statistical Information Service Indicators of profit and productivity and stability for 2010. Within the table was data relating to the manufacture of Fabricated and Processed Metal Products (excludes machinery and furniture).

The Commission calculated from this data a weighted average profit on sales revenue of 3.34%. This profit was then grossed up to 3.5% to apply to the calculated cost to make and sell for the normal value.

*The data used is the most up to date information that the Commission found on that was relevant to the industry segment that the Commission considers would apply for manufacturers of wind towers. The Commission considers that the profit calculated is reasonable as it applies to the manufacture of fabricated and processed metal products. The Commission considers this category would apply to the manufacturer of wind towers"***.**

5.8 Furthermore, Regulation 181A(4)(c) requires that where a method is used under regulation 181A(3)(c) such an amount worked out should not exceed the amount of profit normally realised by other exporters or producers on sales of the same general category of goods in the domestic market, and on this basis, the Commission calculated a weighted average profit from the data.

5.9 The Commission restates its view that the profitability data relating to the manufacture of Fabricated and Processed Metal Products was the closest category to manufacturers of wind towers.

5.10 No interested party has suggested other alternate benchmarks in the Commission's determination of profit as being more suitable.

5.11 The Commission set out the method for calculating the profit in Attachment 1, page 63-64 of REP 221. The rate of profit listed in the Korean Statistical Information Service is set out in a range, from less than -10% to greater than 10%. The Commission calculated a weighted average profit from the data.

5.12 The Commission considers that calculating a weighted average profit from the Korean Statistical Information Service is reasonable pursuant to Regulation 181A(3)(c). The calculation of a weighted average profit from the data in effect yields a rate of profit that the Commission considers would not exceed the amount of profit normally realised by other producers of the same general category of goods in the domestic market.

5.13 The Commission considers that the data used is relevant and the method of calculation complies with Regulations 181A(4)(c).

Claims made by Senvion

Claim 6: Consideration of factors other than price that influence the choice of wind tower supplier

Information that is not relevant information as defined

6.1 Nil.

Factual claims disputed, commentary, and background

6.2 Senvion claims that the Commission failed to adequately consider factors other than price that influence the choice of wind tower supplier.

6.3 The Commission disputes this claim.

6.4 During the investigation, the Commission received submissions relating to this issue and it addressed the issue of non-price related factors on pages 52-53 of REP 221:

"The Commission considers that price was the predominant factor in the awarding of tenders and choice of supplier. In the case of the Mt Mercer project, the Commission notes correspondence from Senvion advising Australian producers that their prices were not competitive and encouraging them to reconsider their offers. Further correspondence shows that after the tender was awarded to Win&P with the lowest tender price, Senvion informed Keppel Prince that it was unsuccessful and its price was significantly higher than the successful tender offer.

At no point during the tender negotiations did Senvion inform Keppel Prince that it had not met pre-qualification. In fact, the evidence appears to confirm that pre-qualification was not an issue as previous projects had involved towers being manufactured under supervision whilst the relevant suppliers were undergoing pre-qualification certification.

In the case of the Gullen Range project, the Commission also notes correspondence between the relevant parties during the tender process. In particular, Goldwind informing local suppliers that they were not competitive and urging them to consider making revised offers".

6.5 The Commission detailed its assessment of pricing and other exports at **Confidential Appendix 4** to REP 221; a copy of this assessment is at **Confidential Attachment 9**.

6.6 The Commission, in reaching its conclusion on prices in the market, also examined available evidence relating to bids for wind tower projects that showed examples of price signalling. These examples show that there is an awareness of prices in the market and that the dumped prices of wind towers from Korea would have created a distorting effect on prices offered by other bidders. Examples of price signalling are at **Confidential Attachment 10**.

6.7 Based on the information available to it, the Commission considered that factors other than price were relevant to the decision to award the tender, however, ultimately, price was a "critical and determinative factor" in the decision to award wind tower projects relevant to the investigation period, such as the Mt Mercer and Gullen Range Projects. See page 53 of the REP 221.

Claim 7: Consideration of whether Australian industry would have been awarded tenders

Information that is not relevant information as defined

7.1 Nil

Factual claims disputed, commentary, and background

7.2 Senvion asserts that in the absence of any alleged dumping, the Australian industry would not have won the tender to supply the Mt Mercer project.

7.3 The Commission disputes this claim.

7.4 The Commission received submissions on this issue and addressed this issue on page 52 of REP 221:

"Senvion claims that tender offers made by suppliers from countries not subject of the investigation were more competitive than those from Australian manufacturers. To conclude that the Australian industry would not have won the Mt Mercer tender in a market unaffected by dumping requires the Commission to enter a difficult area as it involves speculating on what might have happened in hypothetical situations.

The difficulty of this task is increased by:

- *the importance of factors other than price to the purchasing decision and the fact that the lowest priced option is not always preferred – therefore the Commission cannot deduce a likely outcome from the prices tendered;*
- *in most cases, the lack of documentation which would clearly indicate which party would have been successful in the absence of dumped goods; and*
- *the distortion to the market and prices offered in tenders by other bidders who were aware of the presence of dumped goods from Korea and the prices at which these goods were being offered to and selected by the Australian market.*

Senvion appears to be suggesting that the Commission should not regard as injury the tender won by Win&P unless there was evidence that the Australian industry would have won the tender in the absence of dumped goods".

7.5 The Commission concluded, based on the evidence before it, that unless there is strong and positive evidence that the Australian industry would not have won the tender, it is reasonable to conclude that the tenders won at dumped prices have caused or threatened injury to the Australian industry.