

**Comments of the Government of the Republic of Korea**  
**on the Anti-Dumping Review by ADRP**  
**on Imports of Wind Tower**

4 July 2014

**I. Introduction**

1. The Korean Government hereby presents the following comments with respect to the Anti-Dumping review initiated on 4 June, 2014 by the Anti-Dumping Review Panel (“ADRP”) against imports of wind towers, classified in 7308.20.00, 7308.90.00 and 8502.31.10 in Schedule 3 to the Customs Tariff Act 1995.
  
2. The Australian Government determined a dumping margin of 17.2 percent on products imported from Win&P, a Korean producer, in the Final Report published on 16 April, 2014.
  
3. Believing that ADRP will conduct the review in a fair and objective manner in accordance with the relevant international rules, especially the Agreement of Implementation of Article VI of the General Agreement of Tariff and Trade 1994 ("the WTO Anti-Dumping Agreement"), the Korean Government requests that the following points regarding the exports of the Korean producer, Win&P, be fully taken into consideration.

## II. Scope of the Product : Embeds should be excluded.

4. The goods that are subject to an investigation can only be those that are described in the application by the petitioner. The Anti-Dumping Commission (ADC) should not narrow or broaden the scope of the investigation beyond the application. Thus, the scope of the goods under consideration should not be affected by any change in description that the ADC has made in the process of the investigation.
  
5. The petitioner in the application described the goods 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*".<sup>1</sup> This evidently implies that the subject of the investigation could refer to either: (1) *wind towers including an embed* or (2) *wind towers not including an embed*.
  
6. The Government of Korea would like to point out that, commercially and practically, the wind towers and embeds were separately priced, separate purchase orders were made, and they were shipped at a different time. Win&P also entered into separate contracts with its Australian customers for the sales of wind towers and for those of embeds, as other manufactures do. Therefore, it is reasonable to assume that Win&P has exported "*wind towers not including an embed*" to Australia.

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<sup>1</sup> Initiation(Consideration) Report No.221, 2.2.1.

7. Other descriptions regarding the scope of the investigation in the application provide further evidences that the petitioner did not state inclusion of embeds in the wind tower. First of all, it is stated that "*Goods specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof*".<sup>2</sup> As it defines only wind towers and sections for the goods under consideration, embed which is not attached to a wind tower should be excluded.
8. Moreover, a wind tower section "*consists of, at a minimum, multiple steel plates*"<sup>3</sup> according to the applicant. We note that embeds, normally made with one steel plate, cannot satisfy the definition of a section by the petitioner.
9. Furthermore, in the description regarding the height of the tower in the application, it is stated that the minimum height should be "*50 meters measured from the base of the tower to the bottom of the nacelle*".<sup>4</sup> In this context, the base of the tower is the upper face of its foundation (or embed), meaning that the embed is not included in the definition of wind tower.
10. Despite all these evidences, ADC extended the definition of the wind tower in the Final Report with the inclusion of the embed, and worked out the normal value and dumping

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid., 2.2.2

<sup>4</sup> Ibid., 2.2.1.

margin. This is inconsistent with the applicant's definition of the goods under investigation.

11. Hence, the Korean Government requests that ADRP exclude non-subject goods (embeds) in working out dumping margin and recognize the reasonable interpretation of the applicant's description of the subject.

### **III. Conversion of Currencies at Date of Sale**

12. Article 2.4.1 of the WTO Anti-Dumping Agreement states that when the comparison between the export price and normal value requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale. Furthermore, footnote 8 of Article 2.4.1 states, "*Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale*".
13. Moreover, Section 269TAF(1) of the Customs Act 1901, domestic regulation of Australia, directly reflects the obligation mentioned above, providing that "*If, for the purpose of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), 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 establishes the material terms of the sale of the exported goods*".

14. With respect to the anti-dumping investigation on the imports of wind towers, ADC has considered the contract date as the effective date of sale through the whole course of the investigation. In the preliminary determination, ADC considered that the date that the contract was awarded should be regarded as the effective date of sale as it reflects when a sale was won or lost by the Australian industry.<sup>5</sup> And in Statement of Essential Facts(SEF) 221, again released by ADC, the Commission considers that the date that contracts were awarded should be regarded as the effective date of sale as it reflects the date that the buyer and seller agree to the terms of sale.<sup>6</sup>
15. However, despite the fact that ADC explicitly considered the contract date as the effect date of sale, ADC conducted the conversion of currency using the rate of exchange on the shipment date, which lacks consistency in its investigation and does not conform to Article 2.4.1 of the WTO Anti-Dumping Agreement.
16. Win&P submitted that the date for currency conversion for the Mt Mercer export sales must be 17 October 2012. That was the date of the contract, at which time the material terms of the sale were fixed. Some later dates - defined only by the fact that a document was required to be printed out for the purposes of receiving payment - cannot be considered to be the relevant dates for the purpose of currency conversion in this case.

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<sup>5</sup> *Preliminary Affirmative Determination Report No. 221*, p.9.

<sup>6</sup> *Statement of Essential Facts(SEF) 221*, p.19.

17. Hence, the AUD value of its export sale of wind towers to REpower for the Mt Mercer project should be converted to KRW at the date of the contract with REpower, namely 17 October 2012, instead of the date of the shipment, namely 18 June 2013.

## **V. Conclusion**

18. The Korean Government believes that all investigations related to anti-dumping measures should be carried out in a fair and objective manner in accordance with the principles and obligations of the WTO. In this regard, the Korean Government kindly requests that, in its investigation, ADRP thoroughly review the aforementioned comments as well as the Win&P's Submission to the ADRP and reconsider its calculation of dumping margin. The Korean Government hopes ADRP will exert its utmost effort to ensure that a fair decision is made in this case. /End/