



**Australian Government**  
**Anti-Dumping Commission**

---

**ANTI-DUMPING COMMISSION  
REPORT TO THE ANTI-DUMPING REVIEW PANEL**

**REINVESTIGATION OF CERTAIN FINDINGS  
IN REPORT No. 270  
WIND TOWERS  
EXPORTED TO AUSTRALIA FROM  
THE PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC  
OF KOREA**

26 September 2014

# CONTENTS

<b>CONTENTS</b> .....	<b>2</b>
<b>1 ACRONYMS AND ABBREVIATIONS</b> .....	<b>3</b>
<b>2 SUMMARY OF FINDINGS</b> .....	<b>5</b>
2.1 Findings .....	5
2.2 Summary of reasons .....	5
<b>3 BACKGROUND</b> .....	<b>6</b>
3.1 Original investigation .....	6
3.2 Legislative framework for review .....	7
3.3 Review by the ADRP .....	7
3.4 Specific findings to be considered in the reinvestigation .....	8
3.5 Approach to the reinvestigation .....	9
<b>4 DATA AND INFORMATION RELATING TO WIN&amp;P'S SG&amp;A</b> .....	<b>10</b>
4.1 Reconciliation to financial statements .....	10
4.2 [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] company structure .....	11
4.3 Win&P's SG&A calculations for [CONFIDENTIAL TEXT DELETED- CORPORATE BUSINESS STRUCTURE] .....	11
4.4 R&D expenses .....	13
<b>5 FINDINGS FROM THE REINVESTIGATION</b> .....	<b>15</b>
5.1 The Commission's findings .....	15
5.2 Sufficiency of supporting evidence .....	15
5.3 Fair and reasonable allocation .....	17
5.4 R&D Expenses .....	19
5.5 Exclusion of expenses from the common expenses .....	20
5.6 Foreign exchange gains and losses .....	21
5.7 Calculation of Win&P's SG&A .....	22

<b>1</b>	<b>ACRONYMS AND ABBREVIATIONS</b>
----------	-----------------------------------

Act	<i>Customs Act 1901</i>
ADRP	Anti-Dumping Review Panel
Commission	Anti-Dumping Commission
Commissioner	Anti-Dumping Commissioner
Customs Regulations	<i>Customs Regulations 1926</i>
investigation period	1 January 2012 to 30 June 2013
PAD 221	Preliminary Affirmative Determination 221
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry
R&D	research and development
RBA	Reserve Bank of Australia
REP 221	Final Report No 221
REQ	Response to the exporter questionnaire
SEF 221	Statement of Essential Facts 221
SG&A	selling, general and administrative
the goods	the goods the subject of the application (also referred to as the goods under consideration)
[CONFIDENTIAL TEXT DELETED – CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]
[CONFIDENTIAL TEXT DELETED - CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]
Win&P	Win&P., Ltd.
[CONFIDENTIAL TEXT DELETED - CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]
WTO	World Trade Organisation



## 2 SUMMARY OF FINDINGS

This report provides the results of the reinvestigation by the Commissioner of the Anti-Dumping Commission (Commissioner) of certain findings in Report No. 221, relating to the dumping of wind towers exported to Australia from the People's Republic of China (China) and the Republic of Korea (Korea).

### 2.1 Findings

The Commissioner, in accordance with s.269ZZL(3) of the *Customs Act 1901* (Act), affirms the findings subject to the reinvestigation. The reasons for this decision are set out in this report.

### 2.2 Summary of reasons

The Anti-Dumping Commission (Commission) reinvestigated the finding contained in Report No. 221 that the selling, general and administrative (SG&A) expenses to be used for the purposes of determining the normal value of the goods under consideration was [CONFIDENTIAL TEXT DELETED- NUMBER] of the cost to make those goods by Win&P., Ltd. (Win&P). As requested by the Anti-Dumping Review Panel (ADRP), the Commission reassessed the data and information provided by Win&P during the original investigation and determined whether it was appropriate to use that information to calculate the SG&A expenses.

The Commission's reinvestigation found that Win&P's data and information relating to certain SG&A expenses provided during the investigation:

- were incomplete and unverifiable;
- did not reflect a fair and reasonable allocation of expenses incurred; and
- resulted in the understatement of SG&A relating to the production of wind towers.

In accordance with Regulation 181(3)(c) of the *Customs Regulations 1926* (Customs Regulations), the Commission considers it appropriate to use any other reasonable method in determining Win&P's SG&A after having regard to all relevant information. The Commission has examined the calculation methodology applied in the original investigation and considers it reasonable in recalculating certain aspects of Win&P's SG&A.

After having regard to all relevant information, the Commission affirms the findings and calculations relating to Win&P's SG&A that were undertaken in REP 221.

## **3 BACKGROUND**

### **3.1 Original investigation**

On 28 August 2013, the Anti-Dumping Commission (Commission) initiated an investigation regarding the possible dumping of wind towers exported to Australia from China and Korea. The application was lodged by A.C.N. 009 483 694 Pty Ltd (trading as Crisp Bros Haywards) and Keppel Prince Engineering Pty Ltd. Pursuant to section 269T(1) of the Act, the investigation period for the purpose of assessing dumping is 1 January 2012 to 30 June 2013 (investigation period).

Win&P was identified as an exporter of wind towers from Korea. During the investigation, Win&P completed the exporter questionnaire and provided details to the Commission regarding the company, its exports, domestic sales and its cost to make and sell in relation to wind towers.

The Commission conducted a verification visit to verify Win&P's data and information provided in the exporter questionnaire. The verification visit was undertaken between 10 and 13 December 2013 and 16 December 2013 in Win&P's factory and main office in Seoul, Korea.

The Statement of Essential Facts, which sets out the facts on which the Commissioner proposes to base recommendations to the Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary), was published on 17 February 2014 (SEF 221).<sup>1</sup>

The Final Report, Report No. 221 (REP 221) sets out the facts on which the Commissioner based his recommendations to the Parliamentary Secretary.<sup>2</sup> The Parliamentary Secretary accepted the findings and recommendations in REP 221, which was published on 16 April 2014. Notice of the Parliamentary Secretary's decision to impose dumping duties was also published on this date. Anti-Dumping Notice No. 2014/33 was issued advising of the decision. The dumping duty rates are as follows:

Country	Manufacturer / exporter	Dumping margin	Effective rate of interim dumping duty	Duty method
<b>China</b>	Shanghai Taisheng	15.0%	15.0%	Ad valorem duty method
	All other Chinese exporters	15.6%	15.6%	
<b>Korea</b>	Win&P	17.2%	17.2%	

<sup>1</sup> Statement of Essential Facts – Wind towers, published on 17 February 2014 (<http://www.adcommission.gov.au/cases/documents/031-SEF221-Windtowers-Final.pdf>)

<sup>2</sup> Final Report 221, published on 16 April 2014 (<http://www.adcommission.gov.au/cases/documents/040-Report-FinalReport221.pdf>)

	All other Korean exporters	18.8%	18.8%	
--	----------------------------	-------	-------	--

**Table 1. Dumping duty rates for exporters of wind towers from China and Korea**

### **3.2 Legislative framework for review**

Division 9 of Part XVB of the Act sets out procedures for review by the Anti-Dumping Review Panel (ADRP) of certain decisions made by the Minister for Industry<sup>3</sup> or the Commissioner.

Interested parties can apply to the ADRP to review certain decisions in relation to anti-dumping and countervailing matters. If an application for review is not rejected, the ADRP must make a report to the Minister on the application either<sup>4</sup>:

- recommending that the Minister affirm the reviewable decision; or
- recommending that the Minister revoke the reviewable decision and substitute a specified new decision.

If the ADRP has not rejected an application for review, before making a recommendation under s. 269ZZK(1) of the Act, the ADRP may, by written notice, require the Commissioner to<sup>5</sup>:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within the specified period.

### **3.3 Review by the ADRP**

In May 2014, the ADRP received applications from Win&P, Senvion Australia Pty Ltd and Senvion Systems SE (the importer of wind towers from Korea) for review of a decision by the Parliamentary Secretary to publish a dumping duty notice in respect of wind towers.<sup>6</sup> The ADRP announced its intention to conduct a review of the decision on 4 June 2014.

The ADRP, in the course of its review, has asked the Commissioner under s.269ZZL to reinvestigate certain findings that formed the basis of the Parliamentary Secretary's decision. On 21 July 2014, the ADRP advised the Commissioner of the scope of the request for reinvestigation:

*Pursuant to s269ZZL I require that the finding about the SG&A be reinvestigated to address the matters raised in section E and as part of that reinvestigation, if another figure is arrived at for SG&A, the consequences of that on the dumping margin you assessed.*

*A. In its submissions (in its application for review of 16 May 2014, submissions of 27 June 2014 and submissions of 4 July 2014) Win&P*

---

<sup>3</sup> The Minister for Industry has delegated his decision-making authority to the Parliamentary Secretary – as a result, all references to “the Minister” should be interpreted as also referring to the Parliamentary Secretary.

<sup>4</sup> Under s.269ZZK(1) of the Act

<sup>5</sup> Under s.269ZZL(1) of the Act

<sup>6</sup> Details available on <http://www.adreviewpanel.gov.au/site/WindTowersexportedfromtheRepublicofKorea.asp>

*argued at length and in some great detail that it had provided the Commission with information to which the Commission's preferred method of calculating SG&A could be applied. It goes on to argue that the Commission failed to use that information correctly or misunderstood that information with the result that the calculation was incorrect. It appears to me desirable that as part of the reinvestigation, the Commission reconsider whether information of the type Win&P said it supplied, was in fact supplied and, if it was, to what extent and in what way that information should be used to calculate SG&A. Given that I am requiring a reinvestigation of SG&A, it would be convenient if you, as part of that reinvestigation, reviewed your findings and conclusions about Research and Development expenses and foreign exchange gains and losses in the light of Win&P's arguments in section E referred to above.<sup>7</sup>*

The reinvestigation was due to be completed by 18 August 2014, but the Commission sought an extension of time from the ADRP. The Reinvestigation Report was submitted to the ADRP on 25 September 2014.

### **3.4 Specific findings to be considered in the reinvestigation**

Based on the ADRP's written notice to the Commissioner, as set out in section 3.3 above, the Commissioner has been asked to reinvestigate a number of findings in REP 221.

#### **3.4.1 Observations regarding REP 221**

##### The exporter

Win&P is a [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. In its response to the exporter questionnaire (REQ), Win&P informed the Commission that Win&P and its parent company, [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE], should be considered as a single entity. Win&P explained that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] was the "factory" that manufactured the wind towers, while Win&P conducted the sales and exporting activities.<sup>8</sup> The [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] was the [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] business section responsible for the business, engineering, production and management of wind towers.

##### Legislative framework

In REP 221, the Commission found that all sales of wind towers were at a loss and there were no sales made in the ordinary course of trade. As a result, normal value could not be determined under section 269TAC(1). REP 221 explained that due to the unique nature of wind towers determined by their customised technical specifications, exports to third countries were not considered appropriate for establishing the normal value under section 269TAD(2)(d).

---

<sup>7</sup> Letter from the ADRP to the Commission, dated 21 July 2014.

<sup>8</sup> Win&P's Response to the Exporter Questionnaire, question 3, page 6.



The normal value was constructed under section 269TAC(2)(c) of the Act, which consisted of verified cost of production, profit level reached by the steel fabrication industry in Korea and SG&A expenses incurred in the domestic sale of wind towers during the investigation period.

The Commission determined Win&P's SG&A according to section 269TAAD(5) of the Act and Regulation 181 of the Customs Regulations.

For the purposes of calculating Win&P's SG&A, the Commission included Win&P's company SG&A and relevant SG&A from **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**, as the manufacturing arm in the production of the like goods.

### **3.4.2 The scope of the reinvestigation**

The Commission understands that it is being asked by the ADRP to determine generally whether the SG&A determined for Win&P (**[CONFIDENTIAL TEXT DELETED-NUMBER]**%) was correct. Specifically, the Commission understands that it is being asked to reinvestigate the following matters:

- a. the information provided by Win&P to the Commission;
- b. the appropriateness of using the information provided by Win&P to calculate the SG&A;
- c. findings and conclusions about the research and development (R&D) expenses; and
- d. findings and conclusions about the foreign exchange gains and losses.

As indicated in Win&P's application for review to the ADRP, Win&P disagrees with the Commission's calculation of Win&P's SG&A. The Commission addresses these matters in the sections below.

### **3.4.3 Matters outside the reinvestigation**

The Commission notes that Win&P's company SG&A and **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]** direct SG&A are not at issue and are outside the scope of this reinvestigation:

## **3.5 Approach to the reinvestigation**

In conducting a reinvestigation, the ADRP may only have regard to relevant information and any conclusions based on relevant information.<sup>9</sup> Relevant information is from the original investigation and comprises the application, submissions to the original investigation, Statement of Essential Facts No. 221 (SEF 221), submissions to SEF 221, REP 221 and any other matters considered relevant by the ADC in the course of the investigation.

The Commission has examined the documents from the original investigation (relevant information), applications and submissions to the ADRP received within the specified timeframes (conclusions based on relevant information) for the purposes of conducting this reinvestigation. Consideration has been given to the findings of facts, law and policy arising in the original investigation in the course of preparing this report.

---

<sup>9</sup> s. 269ZZK(4) of the Act

## 4 DATA AND INFORMATION RELATING TO WIN&P'S SG&A

The Commission's exporter questionnaire asks for cost data for domestic and export sales. The information is used in a number of ways, including:

- The cost to make the domestically sold goods and the associated SG&A related to the domestic sales are used when determining the profitability of the domestic sales as part of applying the ordinary course of trade test to the domestic sales; and
- The SG&A may be relevant when working out a normal value under the constructed method pursuant to section 269TAC(2)(c).

In the original investigation, data and information relating to Win&P's SG&A were used to apply the ordinary course of trade test and to construct the normal value.

SG&A expenses consist of direct expenses and allocated expenses. In this case, direct expenses are those directly incurred in the production of wind towers. Indirect expenses, on the other hand, are expenses indirectly incurred in the production of wind towers, such as expenses relating to insurance, electricity and heating and travel expenses. Indirect expenses are generally grouped under "common expenses" and are apportioned by percentage (generally based on revenue) to business areas.

As set out in the Dumping and Subsidy Manual, the Commission generally obtains SG&A expenses from profit and loss statements for the most recent financial year covering the goods and preferably in relation to domestic sales of like goods only. The Commission undertakes this verification as part of its 'upwards verification' in order to determine whether the calculated SG&A expenses reconcile with its financial statements.

The Commission then examines the company's SG&A expenses in greater detail to determine whether they include a fair allocation of other expenses incurred (e.g. R&D, head office, and regional sales offices). In its 'downwards verification', it examines source documents that support specific SG&A expenses in the company's SG&A calculations. In determining whether such allocations are reasonable, the Commission considers all of the available evidence on the proper allocation of costs, including methods that have been historically used by the exporter. Where other information is available about an allocation method for any cost item, the Commission may take account of that information, or compare the methods, as part of being satisfied that the SG&A expenses reasonably reflect the costs of the like goods.

### 4.1 Reconciliation to financial statements

During the original investigation, the Commission verified Win&P's calculated cost of goods sold (which included SG&A) in the production of wind towers. The Commission examined Win&P's reconciliation from its project workbooks to its audited accounts and financial statements. In the Commission's upwards verification, the Commission was satisfied that Win&P's cost to make and sell was reasonably complete and accurate.

#### 4.2 [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] company structure

As part of the Commission's examination of the SG&A expenses, Win&P provided a copy of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] internal business structure, a copy of which is attached at **Confidential Attachment 1**. While Win&P's company SG&A was reasonably straightforward to verify as all the expenses were incurred for the production of wind towers, [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] SG&A was not all attributable to wind towers because [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] also manufactured other goods. As shown in [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] company structure, [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] is organised into [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] main departments:

[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]

Win&P informed the Commission that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE], the "factory", has [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] manufacturing segments: [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. Win&P informed the Commission that:

- [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] is primarily concerned with the manufacture and sales of wind towers. The Commission and Win&P agreed that SG&A for this business department should be included in Win&P's total SG&A;
- [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]; and
- The [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE].

#### 4.3 **Win&P's SG&A calculations for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**

SG&A calculations presented to the Commission were comprised of:

- Win&P's company SG&A;
- [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]direct expenses (as [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] business department); and

- [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] common expenses apportioned to the production of wind towers.

Variations of Win&P’s SG&A calculations

Win&P provided to the Commission three varying versions of its SG&A calculations in the form of Excel workbooks on 8 November, 11 December and 13 December 2013. These three versions showed different calculations and allocations. Each time, the Commission examined the SG&A calculations and asked Win&P to provide the links to the supporting worksheets. The final version of Win&P’s SG&A calculation, provided on 13 December 2013, is the document called “SG&A Allocation\_Different Method\_Submission” and is at **Confidential Attachment 2**.

Broken links to worksheets

**Confidential Attachment 2** has broken links to worksheets that support the data in the spreadsheets, as did the two previous versions provided to the Commission. On a number of occasions, including during the verification visit and a face to face meeting on 26 February 2014, the Commission requested that Win&P provide the linked worksheets to the workbooks to enable the Commission to understand how the figures were constructed.

SG&A allocation based on business plan

The Commission understands that the original investigation team sought further information from Win&P regarding allocation of common expenses. The Commission refers to an email dated 16 December 2013 at **Confidential Attachment 3**, where the Commission asks Win&P, “Can Win&P provide supporting documents for the estimated turnover and the basis of the calculations?”

Initially, Win&P informed the Commission that it allocates its common company expenses and R&D expenses based on the business plan at **Confidential Attachment 4**.<sup>10</sup> Win&P informed the Commission that the business plan was a management decision that allocated its indirect SG&A between [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. Win&P’s SG&A allocation methodology resulted in the following ratio, as set out in Table 2 below.

	FY2012	FY2013
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]

**Table 2: Win&P’s proposed allocation ratio for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] common expenses**

---

<sup>10</sup> SG&A Allocation Shared Costs, dated December 2013.

Similarly, R&D was allocated based on the business plan resulting in the following allocation, as set out in Table 3 below:

	FY2012	FY2013
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]

**Table 3: Win&P’s proposed allocation ratio for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] R&D expenses**

Partially translated workbooks

After a meeting between the Commission and Win&P and its representatives on 26 February 2014, Win&P emailed the Commission with a final set of spreadsheets relating to [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] SG&A. A copy of this email and the attached Excel workbook are at **Confidential Attachment 5**.

Win&P did not provide a complete translated workbook, as only some of the words in the spreadsheets were translated from Korean into English. The Commission notes the difficulty in assessing the workbook, as most of the notations identifying expenses and cost departments are not in English. The Commission notes that Win&P states in its email at **Confidential Attachment 5** that a similar workbook had previously been provided to the Commission at the verification visit, however “the translation might have been missing”.

**4.4 R&D expenses**

At the verification visit, Win&P submitted to the Commission that it used the ratios set out in Table 3 to allocate [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] R&D expenses. Following the verification visit, however, Win&P amended its allocation methodology with respect to R&D expenses that was inconsistent with the data and information it had previously provided to the Commission. In its submission to the ADRP, Win&P wrote:

*Regarding the inclusion of R&D expenses in the SG&A, Win&P advised the ADC that its R&D expenses were not related to wind towers. The designing of wind towers is undertaken by Win&P’s customers... Therefore, it should have been abundantly clear to the ADC that there were no R&D expenses associated with the sale of the goods concerned, and that they*

*should not be included in any SG&A expenses for those goods.*<sup>11</sup>  
(emphasis added)

In Win&P's latter submissions to the Commission (dated 29 January 2014 and 26 February 2014), Win&P indicated to the Commission that R&D expenses should be excluded as they were solely incurred by **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**. Win&P indicated to the Commission that R&D expenses should not be treated as a general allocation of common expenses because all R&D expenses were incurred by **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**.

---

<sup>11</sup> Confidential Attachment A to the application for review, dated 16 May 2014, page 28.

## 5 FINDINGS FROM THE REINVESTIGATION

### 5.1 The Commission's findings

Regulation 181(2) of the Customs Regulations states that if records are in accordance with generally accepted accounting principles in the country of export and reasonably reflect the SG&A costs associated with the sale of like goods, the amounts must be worked out by using the information set out in the records.

In this reinvestigation, the Commission found that Win&P's records (ie profit and loss statements and SG&A calculations) do not satisfy Regulation 181(2) as they did not "reasonably reflect the administrative, general and selling costs associated with the sale of the like goods". The reasons for this finding are set out below.

Having regard to the evidence submitted to the Commission during the original investigation, the Commission considers that the data and information:

- relating to the calculation of Win&P's SG&A was not complete or verifiable;
- do not reflect fair and reasonable allocation of expenses; and
- understate the SG&A relating to the production of the like goods.

### 5.2 Sufficiency of supporting evidence

The Commission considers that relevant data was not provided to the Commission to enable the Commission to verify Win&P's SG&A calculations and to assess whether Win&P's SG&A reasonably reflect the SG&A associated with the sale of the like goods. In addition, the Commission could not be satisfied with the accuracy and completeness of Win&P's SG&A calculations due to the number of times it had varied its SG&A calculations and methodology. As stated in section 4.1.3, the Commission received three versions of Win&P's SG&A calculations. Win&P also changed its explanation during the original investigation for how it allocated its R&D expenses (ie from a business plan to no R&D expense allocation for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]). Win&P's changing calculations and allocations suggest that expenses can be allocated and reallocated without a sound basis for doing so.

#### Excel workbooks

As set out above, Win&P provided Excel workbooks without their linked worksheets. Without the supporting worksheets, the information provided to the Commission was incomplete and unable to be verified as it is required to do under Regulation 181(2) of the Customs Regulations. For example, the Commission is unable to examine the expenses allocated under R&D.

The Commission refers to page 7 of the exporter questionnaire sent to Win&P, which states:

- *Identify source documents and advise where they are kept. During on-site verification you should be prepared to substantiate all the information you have submitted. Every part of the response should be traceable to company documents that are used in the ordinary course of business.*
- *We recommend that you retain all work sheets used in answering the questionnaire, in particular those linking the information supplied with*

*management and accounting records. This will help us to verify the information.*

Win&P rejected the Commission's requests for a copy of the data supporting the SG&A figures provided by Win&P, including the Excel workbook provided on 26 February 2014 at **Confidential Attachment 5**. Win&P's submission to the ADRP reflects this sentiment:

*1 ...The ADC officer then accepted that it was presented during the verification but that it was not provided with written/printed translations of the headings included in the spreadsheet. The ADC officer also said that the spreadsheet previously provided did not include any worksheets...*

*2 Win&P's financial consultant explained to the ADC officer that those other worksheets were not relevant for the purpose of explaining [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] account structure to the ADC...<sup>12</sup>(emphasis added)*

It appears that Win&P misunderstood the Commission's requirement of verifying Win&P's information and allocation methodology to the Commission's satisfaction. The Commission refers to REP 221, which illustrates the investigation team's attempts to obtain the workbooks with the linked worksheets:

*The Commission considers that the worksheets help give an understanding of the costs and reasonableness of allocation and for tracing back to source documents.*

*Win&P undertook to email the workbook to the Commission with all associated worksheets. Two single work sheets were emailed with translations for the separate department headings however the requested associated worksheets were not included in the workbook.*

*The Commission considers that the associated worksheets were essential to understanding of Win&P's costs and allocations. Therefore the commission has relied on its understanding of the original worksheets by Win&P at the verification visit and allocated SG&A using actual revenue.<sup>13</sup>*

#### Information provided at meeting on 26 February 2014

The Commission notes that Win&P's application for review to the ADRP refers to explanations being provided to the Commission by Win&P especially during a meeting on 26 February 2014. The Commission notes that the meeting of 26 February 2014 resulted in the production of two documents: an email from Win&P's legal representatives (see **Confidential Attachment 5**) and a file note.<sup>14</sup> The Commission considers that the written information provided by Win&P resulting from the meeting of 26 February 2014 (ie the email from its legal representatives and the file note) do not provide the Commission with any greater understanding of the basis for Win&P's SG&A allocations and calculations. Win&P seems to suggest that the Commission should accept Win&P's SG&A at face-value because "the expenses

---

<sup>12</sup> Confidential Attachment A to the application for review, dated 16 May 2014, page 23.

<sup>13</sup> REP 221, page 37.

<sup>14</sup> File note, Moulis Legal, 26 February 2014 (<http://www.adcommission.gov.au/cases/documents/037-Submission-Exporter-MoulisLegalonbehalfofWinP.pdf>.)



were recorded for each department separately”.<sup>15</sup> The Commission considers that Win&P’s explanation is insufficient and does not enable the Commission to verify Win&P’s data and information.

### Win&P’s account books

In the application for review, Win&P wrote, “Win&P is perplexed...as to why the ADC would ignore the translated, detailed SG&A account – which is an audited account book verified by the ADC during the on-site visit...”<sup>16</sup>

The Commission has not ignored Win&P’s SG&A account set out in the audited accounts. Win&P’s SG&A accounts are set out as a single company account, however, they do not show the amounts for separate divisions (for example, [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]) as shown by Win&P in its Excel worksheets. The Commission has used the detailed accounts to assess the reasonableness of the allocation of SG&A as presented by Win&P.

It is incorrect for Win&P to imply that the Commission “verified” Win&P’s allocation methodology. While the Commission was able to verify the SG&A costs to its financial statements (as noted in section 4.1.1 above), it is clear that the Commission has been unable to verify the basis for Win&P’s SG&A allocations and calculations to their source documents in the Commission’s downwards verification.

### **5.3 Fair and reasonable allocation**

In assessing the reasonableness of Win&P’s SG&A calculation, the Commission had regard to the following sections from the Dumping and Subsidy Manual:

*The selling, general and administrative expense 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.*<sup>17</sup>

*The Commission will consider all of the available evidence on the proper allocation of costs including methods that have been historically used by the exporter. Where other information is available about an allocation method for any cost item, the Commission may take account of that information, or compare the methods, as part of being satisfied that the costs reasonably reflect the cost of the goods.*<sup>18</sup>

In accordance with the Dumping and Subsidy Manual, the Commission undertook several analyses of the available evidence to assess Win&P’s SG&A calculations:

---

<sup>15</sup> Confidential Attachment A to the application for review, dated 16 May 2014, page 22.

<sup>16</sup> Ibid.

<sup>17</sup> Dumping and Subsidy Manual, page 39  
(<http://www.adcommission.gov.au/reference-material/manual/default.asp>)

<sup>18</sup> Ibid.

1) Comparison of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]SG&A for the investigation period

The Commission compared the SG&A calculated for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]for the investigation period by Win&P and as recalculated by the Commission. Table 4 sets out the Commission’s findings:

	<b>Win&amp;P</b>	<b>Commission</b>
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]

Table 4: Comparison of Win&P and the Commission’s SG&A for the investigation period.

Table 4 shows that Win&P’s allocation for 2012 is heavily weighted towards [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] ([CONFIDENTIAL TEXT DELETED- NUMBER] for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]versus [CONFIDENTIAL TEXT DELETED- NUMBER] for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]).

2) Comparison of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] sales

The Commission examined the sales figures for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] relative to all the sales of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] total sales comprised of sales from its manufacturing arms, [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. The Commission’s findings are set out in Table 5 below.

	<b>2012</b>	<b>2013</b>	<b>Investigation Period</b>
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]
[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]
<b>Total</b> [CONFIDENTIAL TEXT DELETED-	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]	[CONFIDENTIAL TEXT DELETED- NUMBER]

<b>CORPORATE BUSINESS STRUCTURE]</b>			
<b>% [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] sales</b>	<b>[CONFIDENTIAL TEXT DELETED-NUMBER]</b>	<b>[CONFIDENTIAL TEXT DELETED-NUMBER]</b>	<b>[CONFIDENTIAL TEXT DELETED-NUMBER]</b>

**Table 5: Percentage of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] Sales**

The figures in Table 5 suggest that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] 2012 and 2013 sales were significantly greater than [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] sales for the same periods.

The Commission compared Win&P’s SG&A calculations in Table 4 with the sales figures in Table 5. The Commission is of the view that the SG&A proportion for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] as proposed by Win&P ([CONFIDENTIAL TEXT DELETED-NUMBER] %) is not supported by [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] sales figures in Table 5 ([CONFIDENTIAL TEXT DELETED-NUMBER] % of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] total sales). Win&P has not provided evidence to the Commission that explains why [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] SG&A allocation is heavily weighted towards [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. The Commission considers that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] SG&A, in light of its substantial share of the total revenue, was significantly understated and did not appear to be calculated in a reasonable manner.

#### **5.4 R&D Expenses**

Having regard to the information provided by Win&P, the Commission is not satisfied that all R&D work was solely undertaken for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] benefit. Win&P asserts that the Commission should put weight on the fact that R&D expenses are recorded in the “[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]” account. The Commission does not consider this to be adequate evidence to support Win&P’s contention that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] incurred all R&D expenses. In order to support Win&P’s contention, the Commission would expect to receive evidence from Win&P that shows R&D work is solely conducted for [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE], by way of research plans and reports, technological outcomes from the R&D work that show that they are not related to wind towers and management reports from scientists and engineers. The Commission is of the view that Win&P did not provide sufficient evidence to demonstrate to the Commission that R&D was solely undertaken for the production of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE].

The Commission also notes that Win&P initially submitted to the Commission that it allocated its R&D expenses (see section 4.3 above) according to its business plan. According to the business plan, [CONFIDENTIAL TEXT DELETED-NUMBER] % of the

total R&D cost was allocated to [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. Later on during the original investigation, Win&P amended its explanation to the Commission by submitting that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] did not incur any R&D expenses, as R&D work was solely undertaken for the benefit of its [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE].

The Commission examined an agreement between Win&P and an importer for the supply of wind towers. The Commission found that there were representations in the agreement that purchasers and providers would continually work together to develop lower cost solutions. The Commission considers that this is an indication of R&D work being undertaken by Win&P. Further, the Commission also notes that Win&P was involved in a wind tower project described as a “prototype” that was being developed in conjunction with another firm. A prototype project suggests ongoing R&D in [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE].

As set out in section 5.3, the Commission also examined [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] share in [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] sales and revenue. The Commission notes that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] had a significantly larger share of [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] revenue ([CONFIDENTIAL TEXT DELETED- NUMBER] % and [CONFIDENTIAL TEXT DELETED- NUMBER] % for 2012 and 2013, respectively). Given [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] significant share of the revenue, it does not seem reasonable that it would not have any R&D expenses. It does not seem reasonable to the Commission that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] would not continue to invest in R&D in the production of wind towers, given the importance of this business department to the company.

Win&P submitted to the Commission that R&D was a division specific to its non-wind tower products. The Commission considers that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] internal organisation chart at **Confidential Attachment 1** shows that [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] R&D department was an independent department from [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] organisational structure suggests that it provides R&D services to all its departments. The R&D department does not appear to be a division within [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE], as claimed by Win&P.

## 5.5 Exclusion of expenses from the common expenses

The Commission points out that it is not the case that it ignored or gave no consideration to information provided by Win&P in its assessment of the SG&A. Where verifiable evidence was provided it was considered and expenses were included or excluded, as appropriate, from the Commission’s SG&A calculations. For example, Win&P submitted to the Commission that certain SG&A expenses should not be allocated to [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]. Win&P argued that the following expenses should be excluded: audit expenses, travel expenses, commissions, export expenses, R&D expenses and warranty expenses.

The Commission considered the supporting evidence provided by Win&P and the Commission agreed with Win&P and excluded commissions, export expenses and warranty expenses from the SG&A calculations for the following reasons:

- commission were not payable on exports to Australia or domestic sales;
- that export expenses related to charges from factory to port and these were included in the constructed normal value in a separate calculation; and
- warranty expenses did not relate to Australian or domestic sales.

With respect to the remaining expenses (audit, travel and R&D), the Commission is of the view that they should not be excluded from the SG&A calculations as they are generally considered a normal part of conducting business. The Commission has reviewed [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE] internal organisation chart at **Confidential Attachment 1**. It considers that the Auditor's office (audit expenses) and the R&D Center (R&D expenses) were non-manufacturing departments that appeared to provide support services to the main manufacturing departments (ie [CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]).

## **5.6 Foreign exchange gains and losses**

In calculating Win&P's SG&A, the Commission considered other expenses and income, including income gains and losses on foreign exchange transactions. During the verification visit, the Commission considered Win&P's foreign exchange gains relating to the cost of production of the goods.

The Commission understands that Win&P purchases raw materials in foreign currency and exports the goods in foreign currency. The exporter visit report noted that Win&P arranges for these values to be booked to the accounts using the rate of exchange applying on invoice date and as a result, any foreign exchange gains and losses result in differences in the exchange rates from the invoice date and payment date.

Win&P provided information to the Commission showing that there was only one relevant foreign exchange gains and losses for 2013 which should be taken into account. It also argued that foreign exchange gains and losses are not relevant to wind towers because there were no exports to Australia during 2012.

Win&P provided two spreadsheets of purchases and forex gains and losses to the Commission, but it was incomplete as they did not include any information relating to Win&P's importation of raw materials for the embeds. For example, the Commission notes that raw materials relevant to wind towers were purchased in 2012, however, the details for the relevant forex gains and losses were not included in Win&P's spreadsheets. The Commission notes that Win&P disputed the inclusion of embeds in the definition of the goods under consideration. Further, Win&P did not provide details of its calculations, which prevented the Commission from verifying Win&P's data.

The Commission considers that Win&P had not provided sufficient information to satisfy the Commission that it had all relevant information regarding the import of raw materials. In addition, Win&P has not provided a written explanation setting out the

reasons for its allocation of relevant expenses. Like other items in Win&P's SG&A, the Commission considers that Win&P has not provided sufficient information. The Commission is not satisfied that forex gains and losses should be allocated according to Win&P's methodology.

## **5.7 Calculation of Win&P's SG&A**

As set out above, the Commission is not satisfied that certain aspects of Win&P's SG&A calculations were complete and verifiable and that Win&P's calculations reflected a fair and reasonable allocation of SG&A expenses. In accordance with Regulation 181(3)(c) of the Customs Regulations, the Commission considers that Win&P's SG&A should be determined by "using any other reasonable method and having regard to all relevant information".

The Commission examined the method applied in the original investigation and considers that the method applied in the original investigation is reasonable in recalculating certain aspects of Win&P's SG&A ( i.e. **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]** SG&A, R&D expenses and forex gains and losses).

The Commission notes the following:

- While the Commission found that **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]** share of the total revenue was **[CONFIDENTIAL TEXT DELETED- NUMBER]** %, it only applied **[CONFIDENTIAL TEXT DELETED- NUMBER]** % of the common expenses to **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]** because it took into consideration Win&P's submissions that certain SG&A expenses were directly incurred by **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**, the non-wind tower department of **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**, based on **Confidential Attachment 5**. As a result, the Commission's allocation of expenses has still resulted in the non-wind tower business receiving a larger share of the SG&A in proportion to its revenue share;
- The Commission reduced the amount of direct expenses assigned to **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]** because the Commission determined that certain R&D expenses were attributable to **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]**;
- The Commission considers that the SG&A calculation methodology, set out below, in the original investigation is reasonable:
  - After totalling the **[CONFIDENTIAL TEXT DELETED-CORPORATE BUSINESS STRUCTURE]** direct and indirect SG&A expenses (less any verified exclusions), the Commission added this to Win&P's company SG&A, resulting in a total SG&A figure for the production of wind towers;
  - The total SG&A for wind towers was then divided by the total revenue for wind towers to produce a percentage for the SG&A; and
  - The SG&A percentage was added to the finance percentage (finance expense divided by the total revenue) and grossed up. The resulting figure is **[CONFIDENTIAL TEXT DELETED- NUMBER]** %.

## **PUBLIC RECORD**

In the Commission's reinvestigation and analysis of the data and information provided by Win&P, the Commission considers that there is no basis for varying the SG&A calculations of REP 221. The Commission has re-examined the information provided to the Commission and it has reached the same findings as in the original investigation. Accordingly, the Commission affirms its findings in REP 221 relating to:

- a. the information provided by Win&P to the Commission;
- b. the appropriateness of using the information provided by Win&P to calculate the SG&A;
- c. findings and conclusions about the R&D expenses; and
- d. findings and conclusions about the foreign exchange gains and losses.