



Australian Government
Anti-Dumping Review Panel

**APPLICATION FOR REVIEW
OF A DECISION BY THE MINISTER
WHETHER TO PUBLISH
A DUMPING DUTY NOTICE OR
A COUNTERVAILING DUTY NOTICE**

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City
ACT 2601
P: +61 2 6275 5868
F: + 61 2 6275 6784
E: ADRP_support@customs.gov.au

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Australian Customs and Border Protection Service (ACBPS), or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice;
- not to publish a countervailing duty notice;

Review inquiries, including decisions

- to alter or revoke a dumping duty notice following a review inquiry;
- to alter or revoke a countervailing duty notice following a review inquiry;
- not to alter a dumping duty notice following a review inquiry;
- not to alter a countervailing duty notice following a review inquiry;
- that the terms of an undertaking are to remain unaltered;
- that the terms of an undertaking are to be varied;
- that an investigation is to be resumed;
- that a person is to be released from the terms of an undertaking;

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry;
- to secure the continuation of countervailing measures following a continuation inquiry;
- not to secure the continuation of dumping measures following a

- continuation inquiry;
- not to secure the continuation of countervailing measures following a continuation inquiry;

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- 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 a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing

duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An "interested party" may be:

- if an application was made which led to the reviewable decision, the applicant;
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a person directly concerned with the importation or exportation to Australia of the goods;
- a person directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of "interested party" in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review;
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)); or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision; or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP_support@customs.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6275 6784**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6275 5868
Facsimile: +61 2 6275 5784

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

**APPLICATION FOR REVIEW OF
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish : a dumping duty notice(s), and/or

a countervailing duty notice(s)

OR

not to publish : a dumping duty notice(s), and/or

a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- Full description of the imported goods to which the application relates.
- The tariff classification/statistical code of the imported goods.
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

- [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:.....

Name: Ross Becroft

Position: Principal, Gross & Becroft

Applicant Company/Entity:

For and on behalf of Senvion Australia Pty Ltd and Senvion Systems SE

Date: 16 May 2014

ATTACHMENT A – FORMAL INFORMATION REQUIREMENTS.

APPLICATION FOR REVIEW
ANTI-DUMPING COMMISSION INVESTIGATION NO. 221
WIND TOWERS EXPORTED FROM
KOREA AND CHINA

1 APPLICANT

1.1 The applicants are:

- Senvion Australia Pty Ltd

- Senvion Systems SE

1.2 Senvion Systems SE is a German-registered company and Senvion Australia Pty Ltd is a related body corporate registered in Australia. Until January 2014 the Applicants were respectively known as REpower Australia Pty Ltd and REpower Systems SE.

1.3 Senvion Systems SE is the entity that has purchased wind towers from Korea and which arranges the transportation to and undertakes the importation into Australia. Senvion Australia Pty Ltd is the importer of record on customs entries. It does so on behalf of Senvion Systems SE.

1.4 Both Senvion entities (collectively referred to as '**Senvion**') are directly concerned with the importation of the goods subject to the reviewable decision, and is therefore an 'interested party' within the definition of that term prescribed in section 269 ZX of The Customs Act 1901 ('the **Act**'). As such Senvion has standing to apply for a review of the decision to publish a dumping notice under section 269 ZZC of the Act.

2 APPLICANTS CONTACT DETAILS

2.1 The applicant's contact details are as follows:

Senvion Australia Pty Ltd

George Kladouhos

Chief Financial Officer

Senvion Australia Pty Ltd - ABN 70 149 671 081

Level 29, 80 Collins Street

Melbourne, Victoria, Australia 3000

Tel: (03) 8660 6512

Fax: (03) 8660 6500

Email: george.kladouhos@senvion.com

Senvion Systems SE

Lars Rytter

Lines Operating Officer

Senvion Systems SE

Überseering 10

22297 Hamburg, Germany

Tel: +49 40 5555 090-3404

Fax: +49 40 5555 090-3999

Email: lars.rytter@senvion.com

3 APPLICANT'S REPRESENTATIVE

3.1 Senvion is represented by Ross Becroft Principal of Gross & Becroft Lawyers.

3.2 The contact details of Gross & Becroft are:

Address: Level 17, 390 St Kilda Road, Melbourne, Victoria, 3004

Tel: +61 3 9866 5666

Fax: +61 3 9866 5644

Email: ross@grossbecroft.com.au

A copy of the authorisation of Gross & Becroft is at Attachment **A-1**.

4 DESCRIPTION OF IMPORTED GOODS

4.1 This application for review relates to wind towers imported from Korea. A review is sought of the decision to impose dumping duties that is the subject of Anti-Dumping Notice No. 2014/33.

4.2 Anti-Dumping Commission ('ADC') Report No. 221 describes the goods in paragraph 3.3 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.'

5 TARIFF CLASSIFICATION OF IMPORTED GOODS

5.1 The reviewable decision affects imported goods with the following tariff classifications:

- 7308.20.00 – towers and lattice masts
- 7308.90.00 – other

Tariff heading 7308 covers goods including 'Structures and parts of structures of iron or steel'.

6 REVIEWABLE DECISION

6.1 The reviewable decision is the decision made by the Parliamentary Secretary to the Minister for Industry on 14 April 2014 in respect of wind towers exported from Korea and China.

6.2 The reviewable decision was notified on 16 April 2014. It was published in the Australian newspapers and in the Commonwealth of Australia Gazette on 16 April 2014.

6.3 On 16 April 2014, the ADC also published:-

- (a) Anti-Dumping Notice No. 2014/33;
- (b) Report Number 221.

6.4 A copy of the reviewable decision is set out in Attachment **A-2**.

Anti-Dumping Review Panel
C/- Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Senvion Australia Pty Ltd
ABN 70 149 671 081
Level 29, 80 Collins Street
Melbourne, Victoria 3000
Australia
T +61 3 8660 6555
F +61 3 8660 6500
www.senvion.com/au

Date: 9 May 2014

Dear Sir/Madam,

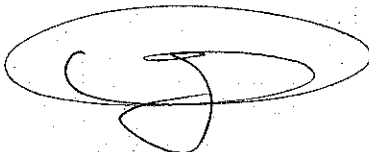
**Application to ADRP to review findings in ADC 221 as given effect in Anti-Dumping Notice 2014/33
Wind Towers exported from the People's Republic of China and the Republic of Korea**

We confirm that Senvion Australia Pty Ltd appoints the following organisation to act on its behalf in relation to the review by the Anti-Dumping Review Panel of the findings of the Anti-Dumping Commission in relation investigation number 221:

Gross & Becroft Lawyers
Level 17, 390 St Kilda Road
Melbourne, Victoria, 3004
Contact: Dr Ross Becroft

We authorise the Australian Dumping Review Panel to communicate with Gross & Becroft regarding any aspect of this matter on behalf of our company and its corporate affiliates.

Yours faithfully
Senvion Australia Pty Ltd



George Kladouhos
Chief Financial Officer

Anti-Dumping Review Panel
C/- Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601

Senvion SE
Überseering 10
22297 Hamburg
Germany
T +49 40 5555 090-3404
F +49 40 5555 090-3999
Info@senvion.com
www.senvion.com

Date: 12 May 2014

Dear Sir/Madam,

**Application to ADRP to review findings in ADC 221 as given effect in Anti-Dumping Notice 2014/33
Wind Towers exported from the People's Republic of China and the Republic of Korea**

We confirm that Senvion SE (formerly known as Repower Systems SE) appoints the following organisation to act on its behalf in relation to the review by the Anti-Dumping Review Panel of the findings of the Anti-Dumping Commission in relation investigation number 221:

Gross & Beroft Lawyers
Level 17, 390 St Kilda Road
Melbourne, Victoria, 3004
Contact: Dr Ross Beroft

We authorise the Australian Dumping Review Panel to communicate with Gross & Beroft regarding any aspect of this matter on behalf of our company and its corporate affiliates.

Yours sincerely,
Senvion SE



Lars Rytter
Chief Operating Officer



Livia Musso
Vice President Compliance & Legal

Executive Board: Andreas Nauen (Chairman), Marcus A. Wassenberg, Russell Stoddart, Lars Rytter, Alex De Ryck. Chairman of the Supervisory Board: Tullio R. Tanti
Head Office: Überseering 10, 22297 Hamburg, Germany, T: +49 40 5555 090-0; F: +49 40 5555 090-3999
Register court: County Court Hamburg, HRB No.: 118644 - VAT ID.: DE214727696

Bayern LB
IBAN: DE74 7005 0000 0003 2647 75
Swift-Code (BIC): BYLADEM3333

Commerzbank AG
IBAN: DE11 2008 0000 0902 8808 00
Swift-Code (BIC): DRESDEFF200

Deutsche Bank AG
IBAN: DE06 2007 0000 0574 0006 00
Swift-Code (BIC): DEUTDE33

*Customs Act 1901 – Part XVB***Wind towers****Exported from the People's Republic of China and the
Republic of Korea****Findings in relation to a Dumping Investigation***Public notice under subsections 269TG(1) and (2)
of the Customs Act 1901*

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of wind towers ("the goods"), exported to Australia from the People's Republic of China (China) and the Republic of Korea (Korea).

The goods may be classified to subheading 7308.20.00 (statistical code 02) in Schedule 3 to the *Customs Tariff Act 1995*. This applies to complete towers, unassembled or assembled and applies to a basic tower that includes doors, ladders, landings and embed or tower foundation.

Steel tower sections, including sections with doors etc, are classified to 7308.90.00/49, assembled or disassembled, providing there aren't enough in a shipment to be judged to be a complete tower.

Combinations of towers and tower sections may vary on a case by case basis for assessment of tariff classification. Classification may vary when there is more of one thing than another, for example a tower section and lift or a tower section with lift, electrical junction boxes and other equipment.

An assembled complete wind powered generator is a composite machine consisting of two or more machines fitted together to form a whole; e.g. wind engine, generator, gearbox, yaw controls etc. fitted in a steel tower and nacelle, classification is to subheading 8502.31.10/31.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2012/68 (relating to the initiation) and is available on the internet at <http://www.adcommission.gov.au>

The Commissioner reported the findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in Anti-Dumping Commission Report No. 221 (REP 221) which outlines the investigation carried out by the Commission and recommends the publication of a dumping duty notice in respect of the goods.

The Parliamentary Secretary has considered REP 221 and has accepted the Commission's recommendations and reasons for the recommendations, including all material findings of fact or law on which the Commission's recommendations were based, and particulars of the evidence relied on to support the findings.

Particulars of the dumping margin established and an explanation of the method used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Manufacturer / exporter	Dumping margin	Method to establish dumping margin
China	Shanghai Taisheng	15.0%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of subsection 269TACB(2)(a) of the <i>Customs Act 1901</i> .
	All other Chinese exporters	15.6%	
Korea	Win&P	17.2%	
	All other Korean exporters	18.8%	

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commission, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 221.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under subsection 269TG(1) of the *Customs Act 1901* (the Act), I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods; and
- (ii) like goods that were exported to Australia after 6 December 2013 (when the Commissioner made a Preliminary Affirmative Determination under paragraph 269TD(4)(a) of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused, is being caused, or maybe

caused in the future. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from China and Korea.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price suppression and price depression and the consequent impact on the Australian industry including loss of sales volume, loss of revenue, reduced market share, loss of profits and profitability, reduced production capacity, reduced employment and reduced return on investment.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

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

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice 2012/34, available at www.adcommission.gov.au

REP 221 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the case manager on telephone number (02) 6245 5434, fax number 1300 882 506 or +61 2 6275 6888 (outside Australia) or ops1@adcommission.gov.au.

Dated this 14th day of April 2014

ROBERT CHARLES BALDWIN

Parliamentary Secretary to the Minister for Industry



Customs Tariff (Anti-Dumping) Act 1975

Wind towers

**Exported from the People's Republic of China
and The Republic of Korea**

**Notice under subsection 8(5) of the
*Customs Tariff (Anti-Dumping) Act 1975***

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, having decided to issue a notice pursuant to subsections 269TG(1) and 269TG(2) of the *Customs Act 1901* in respect of wind towers described in that notice (the goods), **DETERMINE**, pursuant to subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), that the interim dumping duty be determined as a proportion of the export price of those particular goods as specified in subregulation 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Pursuant to subsection 8(5BA) of the Dumping Duty Act, I have had regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (i) the export price of those particular goods, and
- (ii) that amount of the interim dumping duty as so fixed,

does not exceed the non-injurious price of goods of that kind as ascertained.

This notice applies to the goods and like goods entered for home consumption on and after 6 December 2013.

Dated this 14th day of April 2014

ROBERT CHARLES BALDWIN

Parliamentary Secretary to the Minister for Industry

ATTACHMENT B – APPLICANT'S REASONS.

APPLICATION FOR REVIEW
ANTI-DUMPING COMMISSION INVESTIGATION NO. 221
WIND TOWERS EXPORTED FROM
KOREA AND CHINA

1 Introduction

- 1.1 On 14 April 2014, The Parliamentary Secretary to the Minister for Industry made a decision pursuant to sections 269TG(1) and (2) of the Act to impose dumping duties on wind towers exported from Korea and China (**'The Reviewable Decision'**).
- 1.2 Senvion requests that the Anti-Dumping Review Panel (**'ADRP'**) review the reviewable decision.
- 1.3 Senvion is an importer of wind towers from Korea.
- 1.4 Senvion considers that the reviewable decision was not the correct or preferable decision.
- 1.5 Senvion relies upon a number of grounds in support of the proposition that the reviewable decision is not the correct or preferable decision, which are summarised as follows:
 - (a) The ADC erred in failing to carry out a currency conversion of the export price on the date when the material terms of the sale were concluded and instead undertook the currency conversion at a later time being the date when goods were exported from Korea;
 - (b) The ADC erroneously included embedments in its dumping investigation, which represents a part of a wind turbine not covered by the description of the Goods Under Consideration;

- (c) The ADC failed to adequately take into consideration factors other than price, which if properly considered, would mean that any dumping in respect of exports from Korea would not be found to have caused material injury to the Australian industry; and
- (d) The ADC failed to adequately take into consideration the workings of the tendering process for selecting wind tower suppliers in that there was inadequate consideration of whether the Australian industry would have been awarded the tender to supply wind towers in the absence of dumping.

1.6 Senvion has expanded upon its reasons in section 2-5 below.

2 The ADC's failure to carry out a currency conversion on the Date of Sale

2.1 Senvion entered into a contract with a Korean supplier, WIN&P, to supply 64 wind towers for a wind farm at Mt. Mercer and it entered into a separate contract with the same supplier to supply 64 embedments for the same project.

2.2 As the contract price was expressed in Australian Dollars, the ADC was required to convert the export price to Korean WON in order to compare the export prices to normal values to ascertain if dumping was occurring.

2.3 In section 6.6.1 of its Report dated 21 March 2014 ('**Report**') the ADC concludes:

'The Commission considers that the date that best establishes the material terms of sale is the date of sales revenue recognition in WIN&P's accounts'.

2.4 The basis for this conclusion is stated in section 6.6.1 of the Report to be that the ADC did not consider the date of the purchase orders to be a suitable date that best establishes the material terms of sale because:

- (a) The number of tower sections to be shipped did not reconcile with the number of sections identified in commercial invoices;
- (b) The number of sections identified in commercial invoices as being shipped did not reflect the number of sections actually shipped;
- (c) The scheduled delivery dates identified on amended purchase orders differed to the actual delivery dates; and
- (d) 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.

2.5 It is Senvion's contention that the factors relied upon by the ADC as set out in paragraph 2.4 above are based upon an incorrect assessment of the facts and that the ADC's conclusions are also incorrect.

- 2.6 Section 269TAF of the Act requires the ADC to undertake a currency conversion on the date upon which the material terms of sale were established.
- 2.7 In Senvion's case, the material terms of sale are recorded in purchase orders issued for wind towers on 12 October 2012 and for embedments on 27 September 2012. The purchase orders include a description of the goods to be supplied (including technical specifications), quantity, price and payment terms and terms of delivery.
- 2.8 Senvion finds it implausible for the ADC not to take the date of the Purchase Orders as the Date of Sale given that Purchase Orders are a universally accepted document in the commercial world and would be accepted by a Court of Law as evidence of the existence of a contract of sale.
- 2.9 In section 5.1 of the Importer Verification Report, Senvion made it clear that invoicing normally occurs when the goods are completed and are ready for shipment. There is usually a lead time of several months between entering into a contract and the actual supply and delivery of the goods.
- 2.10 WIN&P issued invoices for the supply of wind towers as follows:

Date	Quantity
28 May 2013	25
4 September 2013	20
16 September 2013	19
Total	64

These invoices have been supplied to the ADC. The number of invoices do match the number of towers contracted to be supplied in the purchase order. There were several invoices issued for embedments but as with the wind towers, the total number of embedments do match the number of embedments contracted to be supplied in the purchase order.

- 2.11 It is common for wind towers and embedments contracted to be supplied to be shipped in a number of separate shipments and at different times. This is governed by the requirements of the wind tower project and is not in any way connected to the terms of supply between Senvion and its supplier. For example: Senvion may request that a supplier not send part

of an order because the site is not yet ready for delivery. This was made clear to the ADC in section 5.1 of the Importer Report where it is stated that:

'the number of wind towers that are actually shipped at any one time will depend upon a number of factors such as ship availability, economics for batching for shipping and onsite project requirements. Over the course of the project the total number of wind towers being invoiced and shipped will match up'.

2.12 The ADC is incorrect in stating that the total number of towers and embedments referred to in commercial invoices does not match the purchase orders. It is possible that the ADC are also confusing the commercial invoice with the proforma shipping invoice which is used for customs and shipping purposes.

2.13 In support of this contention, Senvion relies upon:

- Confidential emails to the ADC dated 17 October 2013 and 22 November 2013;
- Importers Verification Report dated October 2013 for Senvion;
- Submission of Senvion dated 24 February 2014 (section 3);
- Various submissions by Moulis Legal on behalf of WIN&P to the ADC regarding this issue.

2.14 Accordingly, Senvion requests that the ADRP direct the ADC to calculate the currency conversion of the export price on the correct Date of Sale being the dates of the Purchase Orders.

3 Embedments Should be Excluded from Dumping Investigation

3.1 In sections 3.6 and 3.7 of the Report the ADC considered the question of whether embedments should be excluded from the dumping investigation.

3.2 The ADC concluded that embedments fall within the description of the Goods Under Consideration in the Consideration Report being:

'certain utility scale wind towers, whether or not tapered, and sections thereof (whether exported assembled or un-assembled), and whether or not including an embed being a tower foundation section'.

3.3 The ADC reasoned that the express inclusion of the phrase 'whether or not including an embed being a wind tower foundation' means that embeds fall within the scope of the investigation.

- 3.4 Senvion asserts that the ADC is incorrect in its conclusions on this issue in that Goods Under Consideration restricts the scope of the investigation to 'certain utility scale wind towers' and such goods are described as possibly including embedments. However, embedments are not part of the wind tower. The wind tower is comprised of wind tower sections plus the installations and accessories within those sections. An embedment is more properly part of the foundation of the wind turbine. It is a transition piece that enables the wind tower to be joined to a concrete foundation.
- 3.5 Senvion relies upon and repeats the matters raised by it in section 1 of its submission dated 24 February 2014. In short, Senvion relies upon the fact that an embedment is physically different from the wind tower, has a distinct purpose and is costed and ordered separately in wind farm projects.
- 3.6 The error with the ADC's interpretation is that by referring to embedments in the description of the GUC and intending for embedments to be part of the investigation does not make it so. Embedments must be considered part of the wind tower in order for them to be included in the investigation. Senvion and WIN&P have provided information to the effect that they ought not be included and the ADC has failed to adequately take this into account in arriving at its findings on this issue.
- 3.7 Senvion requests that the ADRP direct the ADC to exclude embedments from the investigation.

4 ADC's Failure to Adequately Consider Factors Other Than Price That Influence the Choice of Wind Tower Supplier

- 4.1 In section 7.8 of its Report, the ADC stated its view that price was the predominant factor in the awarding of tenders and the choice of supplier.
- 4.2 Senvion, via its submissions to the ADC dated 7 November 2013 and 24 February 2014 described in detail the factors that it considers when selecting a wind tower supplier for a wind farm project. This includes:
- Current Suppliers' Accreditation;
 - The need for suppliers to meet International Design Certification;
 - The need for suppliers to meet a customer's project deadlines;
 - The ability of suppliers to manufacture complete wind towers; and
 - Price.

The important consideration regarding this issue is that wind towers are part of a capital intensive global supply chain for the emerging wind power industry. Hence, all of these

factors are relevant and it cannot be said that price is the primary or determinative factor in selecting suppliers. Other original equipment manufacturers such as GE and Titan have made similar submissions to the ADC on this issue.

- 4.3 Senvion asserts that the ADC has failed to adequately consider and reasonably take into account these claims by Senvion and other companies. In section 7 of the Report (which deals with causation) the ADC has not analysed this issue and set out the basis for its conclusion. Instead it has simply recited the submissions received from interested parties.
- 4.4 The ADC has a responsibility to properly establish the proposition that any dumping that is found to have occurred has caused material injury to the Australian industry. This is a requirement under Article 3.5 of the WTO Anti-Dumping Agreement and section 269TG(1)(b)(i) of the Act. The ADC has not provided a rigorous assessment of this issue as is legally required.
- 4.5 The ADRP should redirect the ADC to take these matters into account, which if taken into account would result in a finding that no material injury was caused by dumping.

5 ADC's Failure to Adequately Consider Whether the Australian Industry Would Have Been Awarded Tenders

- 5.1 In section 7.11.2 of its Report the ADC considered the issue of tender dumping, and in particular, Senvion's claim that in the absence any alleged dumping the Australian industry would not have won the tender to supply the Mt. Mercer project.
- 5.2 The ADC concluded in section 7.11.2 of the Report that it could not make this assessment because to do so would 'enter a difficult area' and presumably would be speculative. The ADC recited a number of matters which it claimed constituted difficulties in making this assessment. These were:
- The importance of factors other than price as a purchasing decision;
 - The lack of documentation;
 - The distortion to the market and prices by an awareness of other bidders of dumped goods.
- 5.3 The ADC then concluded 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'.
- 5.4 Senvion does not agree with this approach of the ADC and asserts that a proper assessment of this issue would have resulted in the preferred conclusion that the Australian industry has not suffered material injury.

5.5 In support of this proposition Servion notes:

- (a) It is unreasonable for the ADC to assert that price is the predominant factor in the choice of wind tower suppliers (see section 3 of the reasons to this application) yet factors other than price are relevant to a comparison of tenderers;
- (b) There is no lack of documentation. Servion has supplied tender analysis documents comparing bids for the Mt. Mercer project;
- (c) There is no evidence of price distortions in the event of dumping as the bids are made confidentially and if distortions were occurring then all the bids would be similar (at or near the bid by the party alleged to be dumping);
- (d) It is not proper or correct for the ADC to require evidence to prove the negative i.e. that the Australian industry would not have won the tender. Rather, the ADC are required to rely on positive evidence that the Australian industry in all the circumstances would have won the tenders. This case has not been made out in the Report.

5.6 Accordingly, the correct or preferable finding is that there is no evidence that the Australian industry has suffered any injury as a result of dumped reports.

We respectfully submit that the ADRP give due regard to the matters raised in this application, which in the Applicant's view ought to result in the elimination of anti-dumping measures now imposed.