



Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Ms Joan Fitzhenry
Senior Panel Member, Anti-Dumping Review Panel
c/o- ADRP Secretariat

By e-mail: ADRP@industry.gov.au

Dear Ms Fitzhenry

Wind towers exported from the People's Republic of China

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (the Act) published on 8 May 2019 advising of your intention to review the decision of the Minister for Industry, Science and Technology (the Minister) to publish a notice under section 269ZH(1) of the Act (the Reviewable Decision). The Reviewable Decision was published on the website of the Anti-Dumping Commission (the Commission) on 27 March 2019, referred to in Anti-Dumping Notice No. 2019/33.

I understand that the Commission has provided you with the information that was requested of me in your correspondence of 8 May 2019, that is:

1. confidential attachments to the Statement of Essential Facts (SEF) relevant to the grounds of the review application;
2. submissions to the Commission, commenting on the SEF including confidential attachments relevant to the grounds of the application for review;
3. confidential attachments to the Final Report; and
4. any other relevant information (as defined in section 269ZZK(6) of the Act) pertinent to the grounds of review.

I have considered the application submitted by Shanghai Taisheng Wind Power Equipment Co., Ltd for a review of the Reviewable Decision and make submissions, pursuant to section 269ZZJ(aa) of the Act, in response. Please find my submissions enclosed as **Attachment A**.

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

Dale Seymour
Commissioner
Anti-Dumping Commission

7 June 2019

Attachment A

I make the following submissions in response to the grounds set out in the notice published on 26 April 2019. These grounds are with respect to the consideration by the Anti-Dumping Review Panel (ADRP) of the Reviewable Decision by the Minister for Industry, Science and Technology to publish a notice under section 269ZHG(1) of the *Customs Act 1901* (the Act)¹ in respect of certain wind towers exported from the People's Republic of China (China).

Shanghai Taisheng Wind Power Equipment Co., Ltd (TSP Shanghai) has raised two grounds in its application to the ADRP.

Ground 1: The Commission erred in determining the dumping margin

TSP Shanghai submits that the Commission erred in its calculation of the dumping margin, specifically with regard to the calculation of profit and the cost of production in the context of the constructed normal value (per section 269TAC(2)(c)).

Profit

In *Anti-Dumping Commission Report No. 487* (REP 487), I considered the wind towers produced and sold in China to be like goods to the wind towers exported to Australia. Wind towers are projects with unique technical properties, hence there are no comparable sales in the domestic market to enable an exact match to the goods exported to Australia. Therefore, the Commission found there was “an absence of sales of like goods in the market of the country of export **that would be relevant** for the purposes of determining a price under subsection 269TAC(1)” (emphasis added).²

Section 45(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation) states that “the Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.”

Accordingly, I worked out an amount for profit using data relating to the production and sale of like goods by TSP Shanghai that were in the ordinary course of trade.

Cost of production

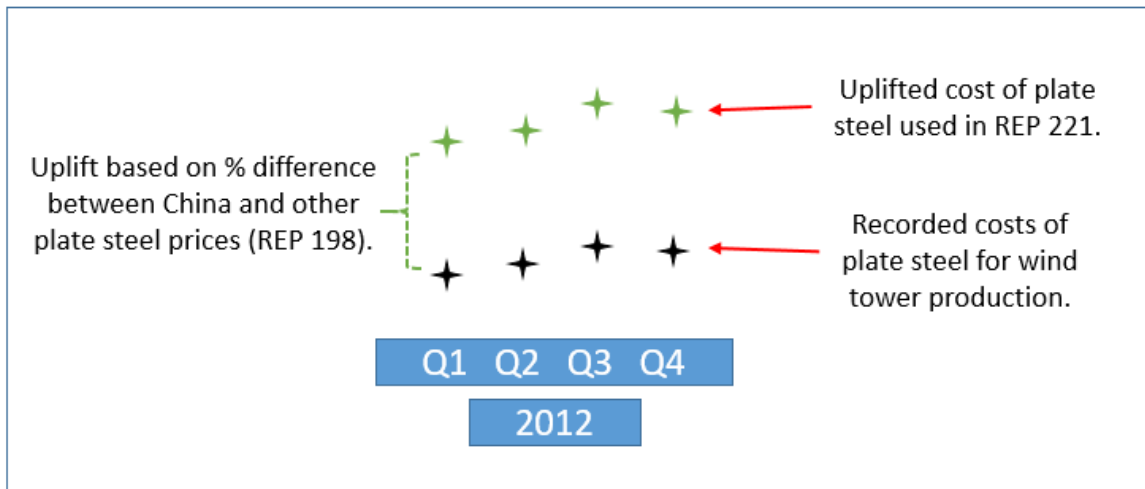
The Commission's analysis of Government of China (GOC) involvement and influence over the steel industry and the markets for raw materials used in the production of steel in China is contained in section 6.4.2.1 and Appendix A of REP 487. On the basis of this analysis, I decided that TSP Shanghai's records concerning its plate steel purchases did not reasonably reflect competitive market costs associated with the production of wind towers.

The Commission had regard to TSP Shanghai's uplifted plate steel costs in *Anti-Dumping Commission Report No. 221* (REP 221) where a competitive market cost for plate steel was established using verified domestic selling prices in other markets for plate steel from a concurrent investigation (reported in *Anti-Dumping Commission Report No. 198* (REP 198)). These selling prices were then compared to the unadjusted Chinese normal values established in the same case.

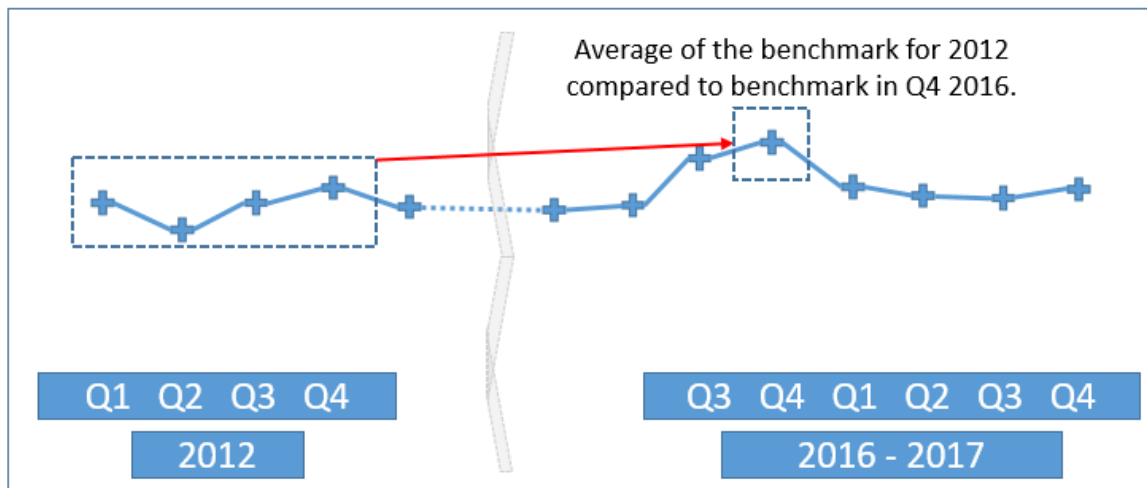
¹ All legislative references are to provisions of the *Customs Act 1901* unless otherwise indicated.

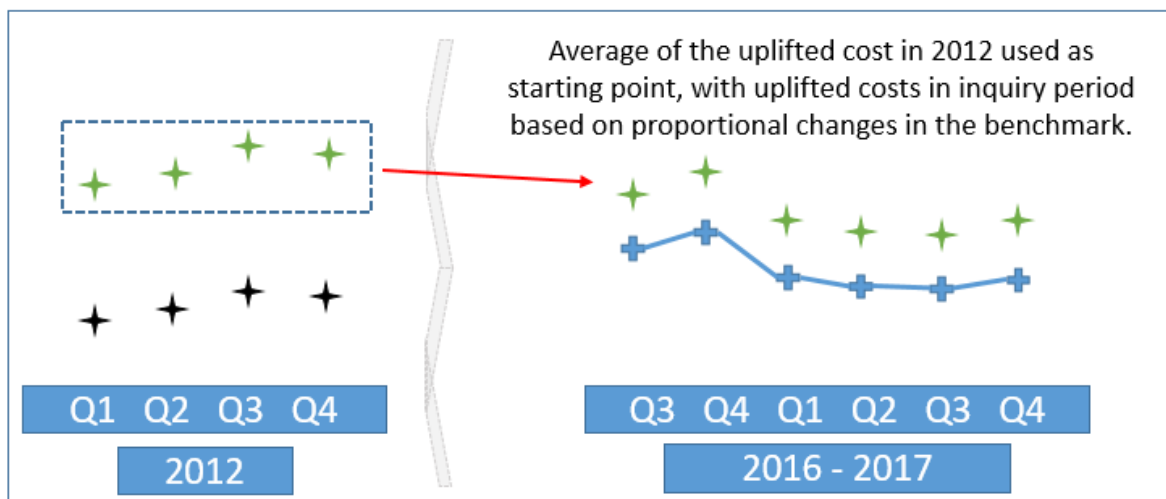
² This is in line with the methodology applied in the initial investigation set out in *Anti-Dumping Commission Report No. 221*.

The difference in these prices was then applied to the purchase cost of plate steel as reflected in TSP Shanghai's records for REP 221, as a proportional uplift that would be inclusive of any relevant grade differences. This approach is illustrated in the following chart.



For REP 487, the Commission indexed the uplifted costs from REP 221 by reference to movements in the Steel Bulletin Board (Platts) benchmark from the original investigation period in REP 221 to the current inquiry period. The Commission selected *Flat Products / Plate CFR East Asia / East Asia import CFR \$ / ton* (which is reported on Cost and Freight (CFR) terms in USD per tonne) as its benchmark. This was because this price series comprised of non-China import prices and is therefore likely to be the most representative of competitive plate steel prices in the region. Again, this approach is illustrated in the following charts.





In its application to the ADRP, TSP Shanghai proposes alternative methodologies that the Commission ought to have used. These were the subject of its submission following the publication of the SEF and were addressed in REP 487, in particular in *Confidential Attachment 4* to that report. The Commission disagreed with TSP Shanghai's suggestions that plate steel purchased from Japan, or the Australian industry's procurement costs, should be relied upon to determine a competitive market cost. The Commission's task is to establish a cost that would be reflective of a competitive market cost of steel *in China* that is relevant to the steel used in the towers exported to Australia.

The volume of steel purchased by TSP Shanghai from Japan was a relatively small share of its total steel purchases (and less than the volume purchased for the towers exported to Australia). The Commission observes that the recorded grades are different to those for the steel used to produce the towers exported to Australia, and the Commission did not receive any information that would enable it to account for these grade differences in establishing a competitive market cost.³

With respect to the Australian industry's steel purchases, the Commission did not have any means of adjusting these costs to reflect a competitive market cost of steel in China. Again, the Commission was unable to account for relevant grade differences.

The Commission considered (and I agreed) that the most reasonable methodology available was that set out in REP 487.

Ground 2: Expiration would not be likely to lead to dumping and material injury attributable to TSP Shanghai

TSP Shanghai claims its exports of wind towers to Australian were not dumped. As noted in my submissions with regard to Ground 1, the Commission found that the exports from TSP Shanghai were at dumped prices. I recognise that, should the ADRP support TSP Shanghai's views regarding Ground 1, this would result in a lower dumping margin.

³ This can be observed from the electronic file *487 – TSP – GP13 – Raw material trace to system.xlsx*, in the "Steel – purchases" tab of the workbook, which was part of the Commission's verification work program and is included with this submission as a confidential attachment.

I note that the existence of the commercial arrangement between TSP Shanghai and Keppel Prince Engineering Pty Ltd (KPE) was brought to my attention in the submission of TSP Shanghai in response to the SEF. A subsequent submission by KPE challenged TSP Shanghai's interpretation of the arrangement, and which is now the subject of further commentary by TSP Shanghai in its application to the ADRP.

I have accepted the existence of the commercial arrangement, but I consider that the existence of the commercial arrangement does not mean that injury is not being caused to the Australian industry. This is because:

- 1) The Australian industry does not solely consist of KPE.
- 2) The commercial arrangement is not exclusive, and, as was shown in *Confidential Attachment 7* to REP 487, there are projects for which KPE, TSP Shanghai and other wind tower suppliers have bid and for which the commercial arrangement was of limited (if any) benefit to KPE.
- 3) In circumstances where the commercial agreement has benefited KPE, I do not consider that this has resulted in no injury being caused. On the contrary, I consider that the commercial agreement has resulted in *less* injury than might have otherwise occurred in the absence of the commercial agreement. As noted in the KPE visit report:

KPE observed that it is not out of the ordinary to negotiate a price that would see it ultimately making a loss on its towers, but noted that there are substantial costs associated with slowing down or ramping up production (e.g. training new staff) and that it was better to maintain production throughput in these circumstances.⁴

⁴ [Document 009](#) on the electronic public record, page 8.