

Canberra
6/2 Brindabella Circuit
Canberra International Airport
ACT Australia 2609

Telephone **+61 2 6163 1000**
Facsimile +61 2 6162 0606
Email: info@moulislegal.com
www.moulislegal.com

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Brisbane
Level 7, 320 Adelaide Street
Brisbane
QLD Australia 4000
+61 7 3010 9265



commercial+international

The Hon Michael Moore
Senior Panel Member
Anti-Dumping Review Panel
c/- Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra
Australian Capital Territory 2601

By email

Dear Mr Moore

Win&P., Ltd

Review of Ministerial decisions concerning wind towers

This submission is made on behalf of Win&P., Ltd (“Win&P”), under Section 269ZZJ of the *Customs Act 1901* (“the Act”).

The matters to which it refers are the subject of the review initiated by the Anti-Dumping Review Panel (“the Review Panel”) concerning wind towers exported from Korea (“the review”).

The public notice announcing the initiation of the review was published on 4 June 2014.

Win&P has set out its position in relation to the matters raised for the ADRP’s consideration in this review in its application dated 16 May 2014 (“the Application”).

The Application set out the five findings which resulted in the flawed dumping margin determination by the Anti-Dumping Commission (“ADC”) and ultimately the decision by the Parliamentary Secretary to impose a dumping duty of 17.2% in relation to the wind towers imported to Australia from Win&P, specifically:

- Finding 1 – “embeds” as the goods under consideration, or as part thereof;
- Finding 2 – conversion of currency on the date of sales revenue recognition in Win&P’s accounts;
- Finding 3 – use of incorrect SG&A under Section 269TAC(2)(c);
- Finding 4 – the finding that the SG&A amounted to **[CONFIDENTIAL TEXT DELETED – number]**%, including:
 - Issue 1 - SG&A (selling and general expenses) calculation issue;
 - Issue 2 – the R&D expense issue;
 - Issue 3 – the forex gains and losses issue;

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- Finding 5 – profit used in the construction of normal value.

In relation to each of the above findings, Win&P stated in the Application the reasons for its belief that the reviewable decision was not the correct or preferable decision.

It is not the intention of this submission to repeat those reasons. Instead, Win&P would like to take this opportunity to further demonstrate the errors and to provide the ADRP with a guide to the corrections that would need to be made in order to correct the calculations and arrive at the proper margin determination. In order for these corrections to be easier to understand and identify, Win&P presents the corrected margin calculations using the original spreadsheets prepared by the ADC for its recommendation to the Parliamentary Secretary. These are the spreadsheets that the ADC provided to Win&P on 21 March 2014.

These dumping margin calculation spreadsheets (“the error correction spreadsheets”) are provided at **Attachment 1 [CONFIDENTIAL ATTACHMENT]**. The corrections made by Win&P are identified in the spreadsheets in green coloured cells.

Further, a summary table listing the findings as identified in the Application and explaining how the corrections need to be made to arrive at the proper margin determination is provided at **Attachment 2 [CONFIDENTIAL ATTACHMENT]**.

Win&P appreciates the opportunity to provide its comments and views in the review process. Win&P submits that all information provided in the Application and in this submission is relevant information and/or conclusions based on the relevant information under Section 269ZZK of the Act, being the information to which the ADC had regard or was required to have regard when making its findings in Report 221.

Win&P considers that the Application has clearly set out the factual and legal issues that need to be reviewed by the Review Panel. This involves a review of the merits and the law. The error correction spreadsheets as attached to this submission further illustrate the manifest errors. They demonstrate the correct information and methodologies that should be adopted in the margin calculation.

Lastly, we wish to emphasise that we see no latitude for ADC “policy” to operate in such a way as to frustrate decisions that would otherwise be made in Win&P’s favour in this review. The claims made by our client are plain and straightforward. The accounting adjustments that need to be made in order to accept those claims may well be complicated. However any complication of that nature is a secondary matter, and cannot count against Win&P in the acceptance of its claims in the first place. Persons with the requisite technical skills can make those adjustments, and report to the ADRP as to their accuracy or otherwise, as we have done in the enclosed Attachments. The ADRP need only make those adjustments itself, or instruct those who are technically adept about the result it wants the adjustments to achieve so that they can make those adjustments.

Based on a proper understanding of the facts, and application of the applicable law, we respectfully submit that the ADRP should adjust the margin calculations, either itself or by way of instruction, so that the following results are achieved:


- “embeds” are to be removed from the margin calculations, on the basis that they were not and could not be the “goods under consideration” (Finding 1);
- the conversion of the currency of the export sales is to take place using the rate of exchange in place on the date that best establishes the material terms of those sales, which in the circumstances of this case was **[CONFIDENTIAL TEXT DELETED – commercial information]** (Finding 2);
- the selling, general and administration expenses that were not associated with the sale of the like goods should not be attributed as costs of the like goods (Finding 4 Issue 1);

- that research and development expenses not related to the sale of the like goods should not be attributed as costs of the like goods (Finding 4 Issue 2);
- that foreign exchange gains and losses cannot be said to be related to the sales of the like goods to Australia if they took place over a period where there were no sales to Australia, and that foreign exchange gains and losses from the purchase of imported inputs cannot be said to be part of the cost of the goods exported to Australia if the inputs do not form part of the goods (Finding 4 Issue 3);
- that even if the normal value must be worked out under Section 269TAC(2)(c) of the Act - noting that acceptance of the above means that domestic sales *are* available for normal value purposes under Section 269TAC(1) - the use of "steel fabrication industry in Korea in 2010" data to work out a rate of 3.5% as the profit amount cannot be justified under Regulations 181A(3)(c) and 181A(4). The normal value would need to be worked out by way of construction under Section 269TAC(2)(c), with the profit amount being the actual amount realised by Win&P from sales of the same general category of goods in its domestic market (Regulation 181A(3)(a) refers).

Win&P believes that the issues raised in the Application are to be assessed and determined on the basis of whether they were the correct or preferable decisions, based on the merits and the applicable law. Any policy which suggests that the correct or preferable decisions should not be made in any given case cannot guide either the Anti-Dumping Commission in its original decision making or the ADRP in its review function.

Win&P will continue to provide full assistance to the Review Panel, and offer to provide any further information, explanations or clarifications as may be required by the Review Panel.

Yours sincerely



Daniel Moulis
Principal



Charles Zhan
Lawyer

Encs