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Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**TERMINATION REPORT
NO. 405**

**ALLEGED DUMPING OF WIND TOWERS
EXPORTED TO AUSTRALIA FROM
THE SOCIALIST REPUBLIC OF VIETNAM**

February 2018

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| ABBREVIATIONS |
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| | |
|---------------------------|---|
| ABF | Australian Border Force |
| the Act | the <i>Customs Act 1901</i> |
| ADN | Anti-Dumping Notice |
| ADRP | Anti-Dumping Review Panel |
| ASX | Australian Securities Exchange |
| the applicants | Keppel Prince Engineering Pty Ltd and Ottoway Fabrication Pty Ltd |
| China | the People's Republic of China |
| the Commission | the Anti-Dumping Commission |
| the Commissioner | the Commissioner of the Anti-Dumping Commission |
| CON 405 | <i>Anti-Dumping Commission Consideration Report No. 405</i> |
| CS Wind Korea | CS Wind Corporation |
| CS Wind Vietnam | CS Wind Vietnam Limited Liability Company |
| CTMS | cost to make and sell |
| EXW | ex-works |
| the goods | the goods the subject of the application (also referred to as the goods under consideration) |
| EPC | Engineer Procurement and Construction firm |
| FAS | free alongside ship |
| FOB | free on board |
| GE | General Electric International, Inc. |
| Haywards | A.C.N. 009 483 694 trading as Haywards Steel Fabrication & Construction Crisp Bros. Structural Steel & Metal Work |
| injury analysis period | from 1 January 2013 |
| investigation period | 1 January 2015 to 31 December 2016 |
| IDD | interim dumping duty |
| KPE | Keppel Prince Engineering Pty Ltd |
| Korea | the Republic of Korea |
| the Manual | <i>Anti-Dumping Commission Dumping and Subsidy Manual</i> |
| Material Injury Direction | <i>Ministerial Direction on Material Injury 2012</i> |
| NIP | non-injurious price |
| OCOT | ordinary course of trade |
| OEM | original equipment manufacturer of wind turbines |
| OF | Ottoway Fabrication Pty Ltd |
| PAD | preliminary affirmative determination |
| PAD Direction | <i>Preliminary Affirmative Determinations) Direction 2015</i> |

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|-----------------------------|---|
| the Parliamentary Secretary | Assistant Minister for Science, Jobs and Innovation and Parliamentary Secretary to the Minister for Jobs and Innovation. ¹ |
| PNC Global Korea | PNC Global Co., Ltd |
| REP 221 | <i>Anti-Dumping Commission Report Number 221, Dumping of Wind Towers Exported from the People's Republic of China and the Republic of Korea</i> |
| RET | renewable energy target |
| ROI | return on investment |
| SEF 405 | The statement of essential facts for investigation 405 |
| SG&A | selling, general and administrative costs |
| Siemens Australia | Siemens Wind Power Pty Ltd; Siemens Ltd (both based in Bayswater Australia). |
| Siemens Denmark | Siemens Wind Power A/S, a Danish company. |
| TBR | tower base ring, also known as an embed |
| USP | unsuppressed selling price |
| Vietnam | the Socialist Republic of Vietnam |

¹ On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation.

1 SUMMARY

1.1 Introduction

This Termination Report No. 405 (TER 405) has been prepared in relation to Investigation 405.

Investigation 405 was initiated following an application by Keppel Prince Engineering Pty Ltd (KPE) and Ottoway Fabrication Pty Ltd (OF) (collectively, 'the applicants'), for the publication of a dumping duty notice in respect of certain wind towers or sections thereof (wind towers or 'the goods') exported to Australia from the Socialist Republic of Vietnam (Vietnam).

The applicants allege that the Australian industry for wind towers has suffered material injury caused by wind towers exported to Australia from Vietnam at dumped prices.

This termination report sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) based his decision to terminate the investigation.

1.2 Findings

The Commissioner is satisfied that:

- the goods exported to Australia from Vietnam during the period 1 January 2015 to 31 December 2016 (the investigation period) were at dumped prices; however,
- injury to the Australian industry that has been, or may be, caused by those exports is negligible.

Based on these findings, the Commissioner has terminated the investigation under subsection 269TDA(13) of the *Customs Act 1901* (the Act).²

Public notice of the Commissioner's termination decision was published on the Commission's website on 6 February 2018 (Anti-Dumping Notice (ADN) No. 2018/20 refers).

These findings have not changed since Statement of Essential Facts No. 405 (SEF 405).

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB of the Act describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to goods covered by an application under subsection 269TB(1).

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

1.3.2 Application

On 8 June 2017, the Commissioner initiated an investigation into the alleged dumping of the goods exported to Australia from Vietnam. The investigation followed an application from KPE and OF on 27 April 2017.

The applicants allege that the Australian industry has suffered material injury caused by the goods exported to Australia from Vietnam at dumped prices.

Subsequent to receiving further information and data from the applicants and having considered the application, the Commissioner decided not to reject the application. Further background to the initiation of this investigation is contained in *Anti-Dumping Commission Consideration Report No. 405* (CON 405). Public notification of the initiation of the investigation was made on 8 June 2017 in Anti-Dumping Notice (ADN) No. 2017/78.

A public record is available for this investigation on the Anti-Dumping Commission's (the Commission) website at www.adcommission.gov.au. A non-confidential version of the application, CON 405, ADN No. 2017/78 and all subsequent submissions by interested parties are available on the public record.

1.3.3 Preliminary affirmative determination

In accordance with subsection 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or if it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of an investigation (in relation to this investigation, 7 August 2017) and the Commonwealth may require and take securities at the time of a PAD or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry while the investigation continues.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction) directs the Commissioner to publish a Status Report providing reasons why a PAD was not made.

In accordance with section 6 of the PAD Direction, the Commissioner published a Status Report on 7 August 2017, being 60 days after the initiation of the investigation, providing reasons why a PAD was not made.³

Section 9 of the PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a Status Report at least once prior to the publication of the SEF.

³ Document 007, EPR 405.

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In preparing the Statement of Essential Facts No.405 (SEF 405), the Commissioner reconsidered whether to make a PAD in view of the additional evidence provided. However, this evidence did not establish sufficient grounds for the publication of a PAD.

As the Commissioner was not satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Vietnam, no PAD under subsection 269TD(1) was made.

1.3.4 Statement of essential facts

SEF 405 for this investigation was placed on the public record on 13 December 2017.⁴

In preparing SEF 405, the Commissioner had regard to the application, submissions received within 37 days after the date of initiation of the investigation and other matters considered relevant.

The Commissioner also had regard to submissions received after the 37 day timeframe that in the Commissioner's opinion did not prevent the timely placement of SEF 405 on the public record.

SEF 405 noted that, subject to submissions received from interested parties, the Commissioner proposed to terminate the investigation in accordance with subsection 269TDA(13).

1.3.5 Key changes since SEF 405

At SEF 405 a dumping margin of 8.0 per cent for all exports of the goods to Australia during the investigation period was calculated. This dumping margin has been revised to 4.8 per cent following a correction to the amount of profit included in the normal value calculation. Further information is provided in section 5.7.6.

1.3.6 Submissions received prior, and in response to, SEF 405

The Commission received 15 submissions from interested parties prior to the publication of SEF 405. Thirteen of these submissions were considered by the Commissioner in reaching the findings and conclusions contained within SEF 405. The remaining two submissions were received too late to be incorporated into SEF 405.⁵ Accordingly, these submissions have been considered in this termination report.

Following the publication of SEF 405, the Commission received two submissions from interested parties, which were taken into account in preparing this report.

Issues raised by submissions are addressed within the relevant chapter of this report.

⁴ SEF 405 was originally due to be placed on the public record by 20 September 2017. However, the due date for SEF 405 was extended on three occasions. Further details are contained in ADN No. 2017/126, ADN No. 2017/149 and ADN No. 2017/174, which are document numbers 009, 020 and 024 on the public record respectively.

⁵ A submission received from CS Wind Corporation on 11 December 2017 and a submission received from Siemens on 12 December 2017, documents 027 and 028 on EPR 405.

1.4 Findings

1.4.1 The goods and like goods (Chapter 3)

The Commissioner found that wind towers and sections thereof produced in Australia are 'like' to the goods subject of the application.

The Commissioner is satisfied that there is an Australian industry producing like goods to the goods the subject of the application, comprising of the applicants (KPE and OF). It is also noted that Haywards Steel Fabrication & Construction Crisp Bros. (Haywards) has previously produced like goods in Australia, and retains the ability to do so, however it did not produce like goods during the investigation period.⁶

The Commissioner is satisfied that the applicants carry out in Australia at least one substantial process in the manufacture of like goods.

1.4.2 Australian market (Chapter 4)

The Commission found that the Australian market for wind towers is supplied by the Australian industry and imported goods from Vietnam, the People's Republic of China (China) and the Republic of Korea (Korea).

Both Australian and overseas wind tower manufacturers supply wind towers directly to either original equipment manufacturer (OEM) wind turbine manufacturers or contracted Engineer Procurement and Construction (EPC) firms.

The size of the Australian market for wind towers (based on the number awarded) during the investigation period was:

- 189 towers and 75 embeds⁷ for the calendar year 2015; and
- 78 towers and 2 embeds for the calendar year 2016.

1.4.3 Dumping margin (Chapter 5)

The Commission has established that, during the investigation period, there was one exporter of the goods to Australia from Vietnam – CS Wind Corporation (CS Wind Korea).

The Commission found that the goods exported to Australia from Vietnam by CS Wind Korea during the investigation period were dumped. The volume of dumped goods, and the dumping margin, were not negligible.

⁶ Haywards is not party to the application but has written in support of it.

⁷ An embed provides a foundation for a wind tower and is also known as a tower base ring, or TBR. Note that not all tower projects require embeds.

The Commission’s assessment of dumping for the goods exported to Australia from Vietnam is at Table 1 below:

| Country | Exporter | Dumping margin |
|---------|---------------|-------------------|
| Vietnam | All exporters | 4.8% ⁸ |

Table 1: Dumping margin

1.4.4 Economic condition of the Australian industry (Chapter 6)

The Commissioner considers that the Australian industry as a whole has suffered injury in the form of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced sales revenue;
- reduced capacity utilisation;
- reduced employment;
- reduced wages; and
- reduced return on investment (ROI).

1.4.5 Causation assessment (Chapter 7)

The Commission found that injury to the Australian industry caused by the goods exported to Australia at dumped prices during the investigation period is negligible. This finding was based on an assessment of all relevant factors. In weighing up the evidence the Commission considered the following factors to be significant:

- non-price factors were determinative in the decision of OEMs to award tenders to CS Wind Korea during the investigation period;
- in the absence of dumping, exports from Vietnam would remain at prices significantly below Australian industry’s cost; and
- there was uncertainty and reduced market demand for wind tower projects in Australia during the injury analysis period and investigation period, which impacted upon the applicants.

1.4.6 Termination of investigation (Chapter 8)

Based on the Commission’s findings, the Commissioner has terminated the investigation in accordance with subsection 269TDA(13), because the injury to the Australian industry that has been, or may be, caused by dumped exports from Vietnam is negligible.

⁸ This dumping margin differs from that published in CS Wind Korea’s verification report due to the Commission’s reconsideration of the determination of profit relevant to the normal value, which is discussed in more detail at sections 5.7.6.

2 BACKGROUND

2.1 Initiation

On 10 April 2017, the applicants lodged an application under subsection 269TB(1) requesting that the Parliamentary Secretary publish a dumping duty notice in respect of wind towers exported to Australia from Vietnam.

After receiving further information and having considered the application, the Commissioner decided not to reject the application and initiated an investigation on 8 June 2017.

Public notification of initiation of the investigation was also made on 8 June 2017.

ADN No. 2017/78 provides further details relating to the initiation of the investigation and is available on the public record.

In respect of the investigation:

- the investigation period for the purposes of assessing dumping is 1 January 2015 to 31 December 2016;⁹ and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods from Vietnam is from 1 January 2013.¹⁰

2.2 Previous wind towers investigation

Investigation No. 221 was conducted into wind towers exported to Australia from China and Korea. Haywards and KPE were the applicants.

On 6 December 2013, a PAD in respect of Investigation No. 221 was made, which imposed securities at the rate of 16.2 per cent for China, and 12.1 per cent for Korea in respect of exports of wind towers entered for home consumption on or after 6 December 2013.

On 16 April 2014, ADN No. 2014/33 was published to give effect to the findings of Investigation No. 221. This notice provides for interim dumping duty rates of:

- 15.0-15.6 per cent for exports of wind towers from China to Australia; and
- 17.2-18.8 per cent for exports of wind towers from Korea to Australia.

2.3 Current exemption inquiry in respect of wind towers

On 20 October 2017, exemption inquiry EX0061 was initiated in respect of wind towers subject to measures as a result of Investigation No. 221.

⁹ Subsection 269T(1).

¹⁰ The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the Australian market which in turn assists the Commission in its examination of whether material injury has occurred or is threatened.

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The goods subject to the exemption inquiry are certain wind towers sections, having all of the characteristics specified in Tariff Concession Order TC 1761480. These characteristics are:

- (a) plate steel having a thickness of NOT less than 33 mm and NOT greater than 60 mm;
- (b) section length NOT less than 14,100 mm and NOT greater than 16,250 mm;
- (c) section weight NOT less than 60 metric tonnes and NOT greater than 105 metric tonnes;
- (d) diameter NOT less than 4,299 mm and NOT greater than 4,650 mm.

The goods subject to this exemption inquiry are classified under tariff subheading 7308.90.00 (statistical code 49), in Schedule 3 of the *Customs Tariff Act 1995*.

3 THE GOODS AND LIKE GOODS

3.1 Findings

The Commissioner considers that locally produced wind towers and sections thereof are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry, producing those like goods, which comprises of the applicants KPE and OF. The Commissioner is satisfied that the applicants carry out in Australia at least one substantial process in the manufacture of like goods.

3.2 Legislative framework

Subsection 269TC(1) provides that the Commissioner shall reject an application for a dumping duty notice if, *inter alia*, the Commissioner is not satisfied that there is, or is likely to be established, an industry in respect of like goods.

In his report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of is that there is an Australian industry producing like goods to the goods the subject of the application.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

"..goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration".

An Australian industry can apply for relief from injury caused by dumped imports even if the goods it produces are not identical to those imported. The Australian industry must, however, produce goods that are "like" to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

The Commissioner must be satisfied that the like goods are produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) provides that in order for the goods to be considered as partly manufactured in Australia,

at least one substantial process in the manufacture of the goods must be carried out in Australia.

3.3 The goods

The goods the subject of this investigation are:

Certain utility scale wind towers, whether or not tapered, and sections thereof (whether exported or assembled or unassembled), and whether or not including an embed being a tower foundation section.¹¹

Further information regarding the goods is outlined below:

Wind towers are designed to support the nacelle (an enclosure for an engine) and rotor blades for use in wind turbines that have electrical power generation capacities equal to or in excess of 1.00 megawatt (MW) and with a minimum height of 50 metres measured from the base of the tower to the bottom of the nacelle (i.e. whether the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end finish, painting, treatment or method of manufacture, and with or without flanges, doors, or internal components (e.g. flooring/decking, ladders, lifts, electrical junction boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

An “embed”, or TBR (tower base ring), is the term used to describe the foundation section of the wind tower. This section is manufactured in the same manner as a tower section only it is a lot shorter in height and usually comprises one or two steel plates rolled into barrels and joined with flanges attached. This section is usually cast into the ground as part of a towers’ foundation structure.

Wind towers and sections thereof (whether exported assembled or unassembled) are included within the scope of the goods the subject of this application whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject goods, or include an embed, being a tower foundation section.

Goods excluded from the application are:

- nacelles and rotor blades, regardless of whether they are attached to the wind tower.
- any internal or external components which are not attached to the wind towers or sections thereof.

¹¹ A more detailed explanation of an embed is provided below.

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Wind towers for different wind farm projects may or may not require a foundation section (embed) depending on the tower specifications.

3.4 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classification in Schedule 3 to the *Customs Tariff Act 1995*:

| Tariff classification | | | | |
|-----------------------|-----------|------|--|--------------------------|
| Tariff code | Stat Code | Unit | Description | Duty rate |
| 7308 | | | <i>Structures (Excluding prefabricated buildings of 9406 and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), or iron or steel; plates, rods, angles shapes, sections, tubes and the like, prepared for use in structures, or iron or steel:</i> | |
| 7308.20.00 | | | - <i>Towers and lattice masts</i> | |
| | 03 | T | <i>Tubular, whether or not tapered</i> | |
| | 04 | T | <i>Other</i> | 5% DCS: 4% DCT: 5% |
| 7308.90.00 | | | - <i>Other</i> | |
| | | | <i>Columns, pillars, posts and beams, girders, bracing gantries, brackets, struts, ties and similar structural units:</i> | |
| | | | <i>.Rolled formed structures:</i> | |
| | 52 | | <i>...Hot rolled</i> | |
| | 53 | | <i>..Plated or coated with zinc or aluminium-zinc alloys, of a thickness less than 1.2 mm</i> | |
| | 54 | | | |
| | 55 | | <i>..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness of 1.2 mm or more</i> | |
| | 56 | | <i>..Other</i> | |
| | 63 | | <i>.Other</i> | |
| | 65 | | <i>Sectional components, prepared for use in towers and lattice masts</i> | |
| | | | <i>Other</i> | |

| Tariff classification | | | | |
|--|-----------|------|--|--------------------------|
| Tariff code | Stat Code | Unit | Description | Duty rate |
| 8502 | | | <i>Electric Generating Sets and Rotary Converters:</i> | |
| 8502.31 | | | --Wind-powered: | 5% DCS: 4% DCT: 5% |
| 8502.31.10 | 31 | No | --AC generating sets of an output exceeding 500kVA | |
| Previous tariff classification | | | | |
| During the investigation period, the Commission notes that: | | | | |
| <ul style="list-style-type: none"> • statistical code 02 pertaining to tariff sub-heading 7308.20.00 was replaced with statistical codes 03 and 04; and • statistical code 61 pertaining to tariff sub-heading 7308.90.00 was replaced with four statistical codes. Two of these (statistical codes 63 and 65) are relevant to the goods.¹² | | | | |

Table 2: Tariff classification summary

3.5 Submissions regarding scope of goods description

The Commission received submissions from interested parties concerning exemption application (EX061), which was lodged after investigation 405 was initiated, in respect of existing anti-dumping measures in relation to wind towers exported from China and Korea.

These submissions are addressed in section 7 below.

3.6 Like goods

3.6.1 Applicants' claims

The applicants state that they manufacture wind towers and sections thereof matching the purchaser's specifications on a project-by-project basis and that these have characteristics that are alike to the imported goods.

Physical likeness

Although wind towers are built to each OEM's particular specifications, both imported wind towers and those produced in Australia share basic physical characteristics – all are tubular steel towers with components such as doors, ladders, flooring, cables and wiring, and lights, typically attached to the inner diameter of the welded steel plates.

Wind towers vary in size and are built to a number of specifications, relating to steel, welding, coating, and quality inspection standards. While OEMs may have certain specifications that differ from the standard specifications, standards are common within the global wind tower industry and have been adopted by most manufacturers. Both

¹² These changes was detailed in Australian Customs and Border Protection Notice No. 2015/19. This may be accessed at: https://www.border.gov.au/Customsnotices/Documents/ACN_2015-19.pdf

overseas and Australian manufacturers are required to meet those standards for a particular wind project.

Commercial likeness

The Australian industry's wind towers compete directly with imported wind towers in the Australian market. Wind towers are typically sold directly to the OEM, which incorporates them into wind turbines.

Functional likeness

Both the locally produced and imported wind towers have comparable or identical end-uses. All wind towers are used exclusively as the part of the wind turbine that supports and elevates the nacelle and blades for the generation of electricity.

Production likeness

Locally produced and imported wind towers are manufactured in a similar manner and via similar production processes. All wind towers are produced using carbon steel welded into sections, before they are transported to the wind project site for final assembly into wind towers.

3.6.2 Australian industry verification

The Commission visited KPE's Portland facility in Victoria and OF's facility in Whyalla, South Australia to examine their respective manufacturing processes and to verify the claims made in their application.

The Commission found that:

- both KPE and OF undertake at least one substantial process of manufacture in producing wind towers and sections thereof in Australia;
- the like goods are manufactured in Australia; and
- there is an Australian industry producing like goods.

Further information regarding KPE and OF's production processes is contained within their respective verification reports.¹³

3.6.3 Commissioner's assessment – like goods

The Commissioner considers that the Australian industry produces goods that are 'like' to the goods the subject of the application for the following reasons:

- the primary physical characteristics of the goods and locally produced goods are similar;
- the goods and locally produced goods are commercially alike as they are sold to common end users;
- the goods and locally produced goods are functionally alike as they have a similar range of end-uses; and

¹³ EPR 405, documents 015 and 022.

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- the goods and locally produced goods are manufactured in a similar manner.

Further details regarding the Commissioner's assessment of like goods can be found in CON 405.¹⁴

¹⁴ Case No. 405, document 002 on the EPR.

4 AUSTRALIAN MARKET

4.1 Finding

The Commissioner found that the Australian market for wind towers and sections thereof is supplied by the Australian industry and imports from Vietnam, China and Korea.

4.2 Australian market

The market for wind towers is driven by the demand for wind turbines, which is in turn driven by demand for wind energy, a renewable resource.

Wind farms are generally established under a Power Purchase Agreement (PPA) between a wind farm developer and a government authority. The developer will request bids for an EPC contract for a wind farm project. These are turn-key projects that are deliverable on a specific date to an agreed price. OEMs and EPC firms will bid for the EPC contract.

Both the Australian industry and overseas wind tower manufacturers in turn supply wind towers and sections thereof directly to the successful OEM or EPC for the project.

4.2.1 Purchasers of wind tower sections in Australia

There are seven OEMs of wind turbines, who purchase wind towers and sections thereof, operating in the Australian market:

- General Electric International Inc (GE);
- Goldwind Australia Pty Ltd (Goldwind);
- Senvion Australia (formerly REpower Australia);
- Siemens Wind Power Pty Ltd (Siemens);
- Acciona Energy Oceania Pty Ltd (Acciona);
- Vestas Wind Systems A/S (Vestas); and
- Suzlon Energy.

The demand for wind towers and sections thereof over the injury analysis period was met by the Australian industry and imports from Vietnam, Korea and China.

4.2.2 Australian producers

The application was lodged by KPE and OF as the Australian industry. The Commission understands that KPE and OF accounted for 100 per cent of Australian production of like goods during the investigation period, and therefore comprise the Australian industry as defined in subsection 269T(4).

Figure 1 below depicts the relative production volumes of KPE and OF, based on the number of towers awarded during the injury analysis period.

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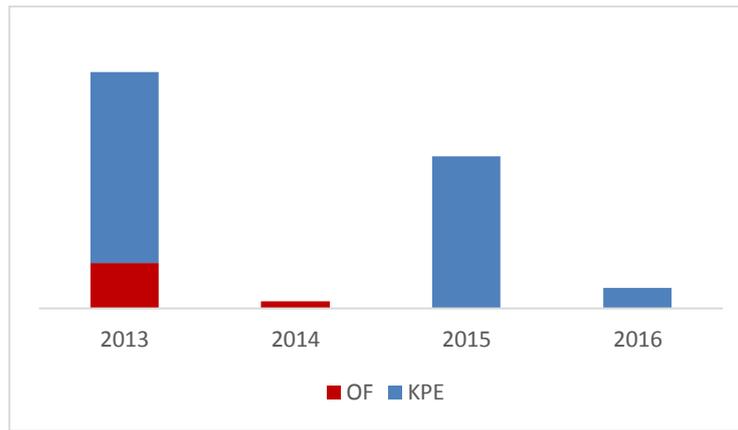


Figure 1 - Relative significance of KPE and OF production, based on volume of towers awarded

The application was also supported by Haywards, who have previously produced like goods and retains the capacity to do so in Australia.

KPE is the market leader in the production of wind towers and sections thereof in Australia. OF was established in 2012 when its parent entity E&A Limited purchased certain assets from RPG, a previous manufacturer of wind towers, which had been placed in administration.¹⁵

During the course of the investigation the Commission met with KPE (based in Portland Victoria) and OF (based in Whyalla, South Australia). The Commission did not meet with Haywards (based in Tasmania). While Haywards supported the application, it did not produce like goods during the investigation period and as such did not supply evidence of dumping and injury.

The Commission undertook verification visits to KPE and OF and is satisfied that the information provided by them is relevant, accurate and complete.¹⁶

4.2.3 Importers

Following the initiation of this investigation, the Commission identified GE and Siemens as importers of the goods from Vietnam during the injury analysis period. These importers accounted for 100 per cent of imports of wind towers and sections thereof from Vietnam during the investigation period.

Siemens and GE provided importer questionnaire responses and participated in verification visits. The information provided by GE and Siemens was found to be relevant, accurate and complete.¹⁷

¹⁵See: <http://www.adelaidenow.com.au/business/sa-business-journal/ea-buys-rpg-australias-wind-tower-fabrication-business-will-supply-towers-made-in-whyalla-to-snowtown-ii/news-story/44323d9d72fc7ff67920c0d18eb370f4>

¹⁶ Documents 016 and 022 respectively, EPR 405.

¹⁷ The verification reports for GE and Siemens are documents 019 and 021, EPR 405.

4.2.4 Key drivers of Australian wind energy demand

The Australian industry and OEMs that participated in this investigation agreed that the primary driver of renewable energy demand and thus wind energy growth (and in turn wind towers) in Australia is the *Renewable Energy (Electricity) Act 2000* (Cth), which requires electricity retailers to source a certain proportion of their electricity from accredited renewable sources. This requirement is referred to as the Renewable Energy Target (RET). The Australian industry also indicated that state and territory renewable energy targets are important drivers of demand.¹⁸

4.2.5 Substitutes for wind towers

The application identified substitutes for steel wind towers as either concrete towers or lattice steel towers. The Commission understands from the applicants that no contracts to supply wind towers during the injury analysis period involved these substitute products and that purchasers have a preference for steel wind towers at this time.¹⁹

4.3 Sales (tender) process

The Commission understands that wind towers and sections thereof are made to the purchasers' specifications on a project-by-project basis and that no two wind tower projects are identical.

A tender for wind towers may call for ex-works price offers, or pricing delivered to site.

Wind towers are purchased for the Australian market via a tender process for each wind farm project. The OEMs are invited to tender for the project. In order to submit a more accurate bid OEMs will make initial contact with suppliers of the various components of a wind turbine to obtain a first quote.

Once an OEM has won the project it will then request a further round of bids for various components of the wind turbine, of which wind towers are one. By this stage, the wind tower manufacturers have received specifications for the wind towers and are able to make a more accurate bid. At the end of the negotiation phase the OEM will award a purchase order to the successful supplier.

4.3.1 Pre-qualification

The nature of the product (expected lifespan, conditions under which it operates and consequences and expense of failure) necessitates rigorous quality controls. As such, OEMs require suppliers to satisfy qualification standards.

Potential suppliers tend to be pre-qualified, however, not all of them are.²⁰ It is possible for suppliers who have not previously been qualified with a particular OEM to achieve

¹⁸ Document 001, EPR 405.

¹⁹ As discussed in their respective verification reports, documents 016 and 022 respectively, EPR 405.

²⁰ Consistent with the findings of Final Report 221, and confirmed by the Commission's understanding of the prequalification status of suppliers who were awarded projects during the investigation period.

qualification during the course of delivering a project.²¹ Qualifications may also lapse after a defined period and need to be re-instated. The cost of the qualification process tends to be borne by the relevant OEM.

It is GE's standard practice globally to perform an assessment of all new potential tower suppliers. This involves a two-part qualification process. The first phase requires a Supplier Quality Engineer to visit and assess a new supplier for capacity, quality and price-competitiveness in the global market. If the supplier satisfies this first phase its bids are evaluated.

GE emphasised that the process it applies is concerned with qualifying a prospective supplier's capacity to supply product that conforms with mandatory technical and quality parameters and does not relate to a consideration of cost or price-related aspects of supply.²²

If successful, the supplier who is awarded the purchase order by GE undertakes a further qualification process, referred to as a First Piece Qualification.²³ GE described First Piece Qualification as a robust and intensive process, which is in part dependent upon the availability of a GE quality engineer (of which there is only one in the Australia-Pacific region). This limited availability can limit GE's ability to extend offers to tender in situations where there are timing concerns.²⁴

Similarly, in the case of Siemens, before a purchase order can be awarded, a potential supplier is required to undertake a pre-qualification process, which includes an assessment of its capacity to supply to the OEM's requirements in terms of quality and timeliness. This involves Siemens' team attending the manufacturer's production facilities for several months to perform quality audits.

Once a purchase order has been awarded a further qualification process is initiated, which involves Siemens attending the manufacturer's production facilities to perform various quality audits.²⁵

Both GE and Siemens indicated that the process of qualifying a new supplier is expensive and that satisfaction of their qualification process is a baseline requirement for the award of a tender. These claims are consistent with the Commission's previous consideration of the qualification process in the context of Investigation 221.

4.3.2 Global supply chains and the impact upon Australian market

While the Australian industry supplies the Australian market only, global suppliers such as CS Wind Korea manufacture and ship wind towers to various countries. As such, global

²¹ OF acknowledged during the verification visit that Siemens had assisted OF to gain its accreditation during the Snowtown 2 project to enable it to successfully bid for this project.

²² GE submission of 27 July 2017, p.4, document 005, EPR 405.

²³ Wind Towers – Importer Visit – General Electric, p. 6, document 019, EPR 405.

²⁴ GE submission of 27 July 2017, document 005, EPR 405.

²⁵ Wind Towers – Importer Visit – Siemens, p.6, document 021, EPR 405.

suppliers such as CS Wind Korea may experience some advantages over local suppliers in tendering for projects, including:

- global relationships – as OEMs such as General Electric (US), Goldwind (China), Vestas (Denmark) and Siemens Gamesa (Germany) operate globally, global suppliers of wind towers work with them on projects in various geographic locations, developing relationships over time;²⁶
- economies of scale – these arise as a result of supplying a larger, global market. Global suppliers may in turn benefit from larger production runs, specialisation and continuity of manufacture;²⁷
- less severe impact of local regulatory changes – global suppliers can mitigate the effects of reduced demand due to regulatory changes in one country by focusing supply on markets in other countries.

Some of the advantages enjoyed by the Australian industry over global suppliers include:

- lower transportation costs (provided that the distance of the Australian supplier from the location of the wind farm does not require Australian shipping or long road transportation);
- familiarity with Australian standards (for example in relation to electrical fit outs and work place health and safety);
- the ability to provide follow up services on site within a short time frame;
- the ability to provide storage of completed towers prior to transportation to the wind farm site (as opposed to the wharf); and
- the preference of some OEMs to work with Australian participants where possible.²⁸

4.4 Market size and characteristics

The Australian wind tower market size during the investigation period,²⁹ based on the number of towers awarded, was 189 in 2015 and 78 in 2016.

Figure 2 below depicts the size of the wind towers market for the calendar years 2013 to 2016.

²⁶ As discussed during verification visits at GE and Siemens, respective documents 019 and 021 on EPR 405. GE indicated that it has framework agreements in place with certain suppliers, including CS Wind Korea, on the basis of price for volume.

²⁷ Siemens submission dated 19 July 2017 and 22 September 2017, GE Submission dated 27 July 2017, Renewable Energy Policy Network for the 21st Century, *Renewables 2017 Global Status Report*, pp. 86-87. This report may be accessed at: http://www.ren21.net/wp-content/uploads/2017/06/17-8399_GSR_2017_Full_Report_0621_Opt.pdf

²⁸ For example, Siemens submitted that the Snowtown 2 project demonstrated that it has a preference for working with local manufacturers, where possible. See Siemens' submission 22 September 2017, document 017 on EPR 405. GE submitted that it looks for opportunities to work with local wind tower suppliers where possible, in order to share project benefits with the community and to broaden GE's supplier base. See GE's submission of 27 July 2017, document 005 on EPR 405.

²⁹ The size of the wind tower market is based on the Commission's analysis of ABF import data and of data provided by the applicants, Siemens and GE.

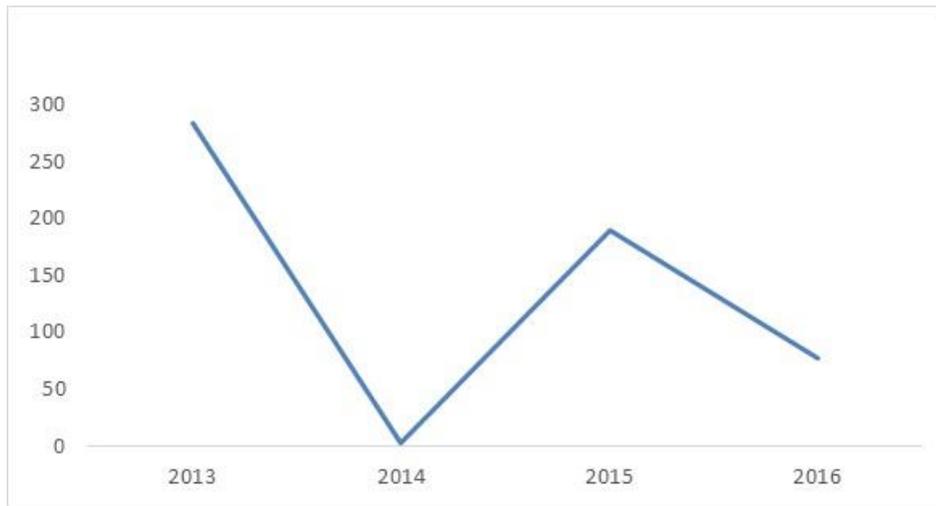


Figure 2: Australian wind tower market size (based on towers awarded)

The applicants used the date a contract was awarded for the supply of the wind towers as the effective date of sale when estimating the size of the market. The applicants advised that the date of sale used was obtained from the date of the contracts they had won, the date they were advised on contracts for which they were unsuccessful and an estimate based on the commission date for contracts they did not compete for.

The Commission considers that the date the contract was awarded should be regarded as the effective date of sale as it reflects when a sale was won or lost by the Australian industry. The Commission notes that there will be a time lag between the awarding of the contract and the physical supply of towers, whether the towers are imported or supplied by the Australian industry.

4.4.1 Fluctuations in Australian market demand

Demand for wind towers in Australia has fluctuated significantly since the market commenced in 2000. These fluctuations have coincided with changes in government policies and legislation.

Demand for wind towers in Australia during the injury analysis period (from 1 January 2013) was particularly volatile. In June 2015, it was confirmed by the Australian Government that the RET was 33,000 gigawatt hours (GWh) and that it would continue until 2020. Demand for wind energy and thus wind towers in Australia recovered following confirmation of the RET.

4.4.2 Future trends in Australian market demand

The Australian renewable energy market has experienced growth following the end of the investigation period as demonstrated in figure 3 below, which shows a steady increase in committed projects.

Renewable energy project pipeline progress

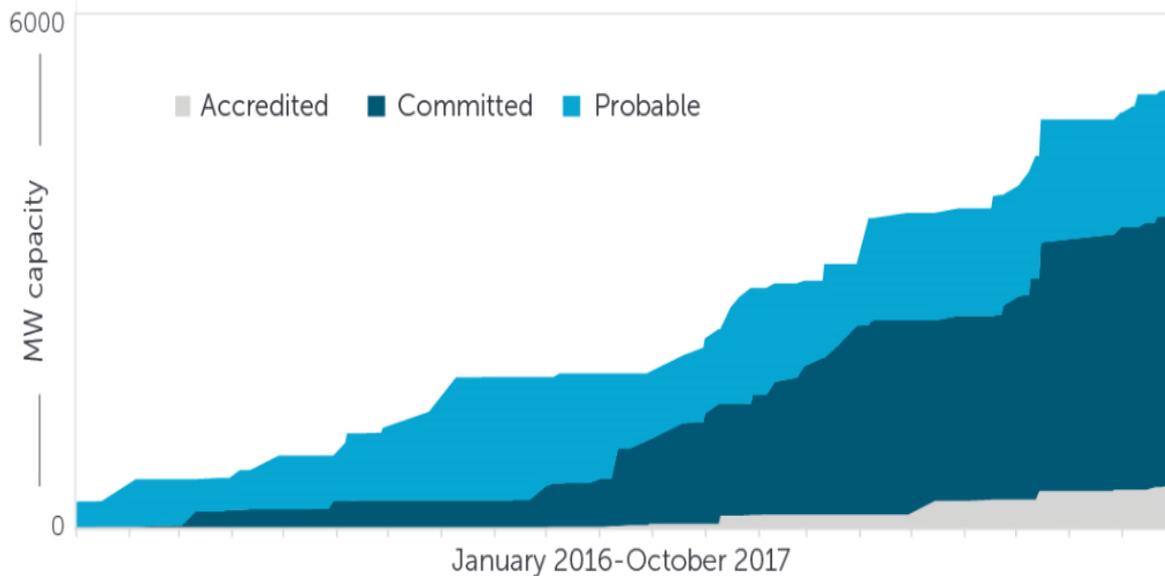


Figure 3 – Growth in Australian renewable energy projects³⁰

The Commission understands that this strong demand is a consequence of stability in the RET as well as support by state governments for renewable energy. For example, Victoria's recently enacted *Renewable Energy (Jobs and Investment) Act 2017*, sets a goal of 25 per cent renewables by 2020 and 40 per cent by 2025.³¹

Consistent with this, the applicants predict demand:

- for the calendar year 2017 to be 722 wind towers. During the course of this investigation the Commission received a revised estimate of 740 from KPE. KPE also indicated that approximately half of these tenders have been awarded.³²
- for the calendar year 2018 to be 717 towers. A revised estimate of 753 towers was subsequently provided by KPE.³³

4.4.3 Capacity of Australian industry to meet future demand

Figure 4 below based on the information provided by Australian industry in its application and during verification visits indicates it could nominally satisfy tender demand within the investigation period.³⁴ However, demand for wind towers in 2017 and projected for 2018 is significantly more than the stated capacity of the Australian industry to supply.

³⁰ Clean Energy Regulator, <http://www.cleanenergyregulator.gov.au/RET/About-the-Renewable-Energy-Target/Large-scale-Renewable-Energy-Target-market-data>

³¹ Section 7 of the *Renewable Energy (Jobs and Investment) Act 2017*, which may be accessed at <http://www.legislation.vic.gov.au>

³² The revised estimates and confirmed tenders for 2017 were provided by KPE on 23 October 2017.

³³ Ibid.

³⁴ The Commission notes that information provided from the time of the tender indicates that capacity fluctuated during the investigation period, particularly with respect to KPE.

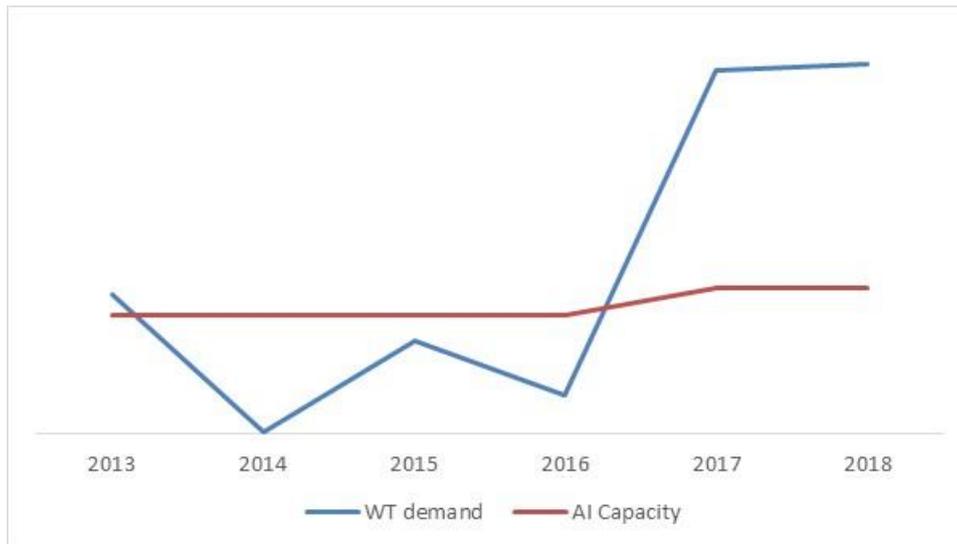


Figure 4: Demand for wind towers and Australian industry capacity³⁵

The Australian industry indicated that the capacity of CS Wind Korea is 900 wind towers per annum and observed that CS Wind Korea has sufficient capacity to supply all of the requirements of the Australian market.³⁶

4.4.4 Trend towards larger wind towers

The Commission understands that the general trend over time has been for larger wind tower turbines – including longer blades, higher hub heights and, in particular, larger rotor sizes in order to boost power output.³⁷ This increase in size has resulted in heavier nacelles that require larger wind towers to support them. Larger wind towers have in turn resulted in a trend towards wind towers with a larger number of sections (i.e. a move from three or four section towers to five section towers), which is necessary to allow for road transport to site due to size limits. The larger towers have wider bases, so that the bottom sections of the towers are increasing in diameter.

In view of this trend, the verification visit team inquired of KPE as to whether this created issues for production. KPE indicated that it was able to produce towers to the specifications currently being tendered for but noted that larger towers put a strain on its equipment.³⁸

³⁵ Australian mainland industry capacity (based on KPE and OF capacity). Demand based on number of wind towers awarded or expected to be awarded.

³⁶ Australian industry submission dated 7 August 2017, document 008 on EPR 405.

³⁷ Renewable Energy Policy Network for the 21st Century, *Global Status Report*, which may be accessed at http://www.ren21.net/wp-content/uploads/2017/06/17-8399_GSR_2017_Full_Report_0621_Opt.pdf

³⁸ Australian industry Verification report – KPE, at p.11, document 015 on EPR 405.

5 DUMPING INVESTIGATION

5.1 Findings

The Commissioner found that wind tower sections exported to Australia from Vietnam by the only exporter, CS Wind Korea, were at dumped prices during the investigation period. The Commissioner has also found that the volume of dumped goods from Vietnam was not negligible during the investigation period.

The dumping margin was calculated in accordance with subsection 269TACB(2)(a) by comparing the weighted average of export prices with the weighted average of corresponding normal values over the whole of the investigation period.

The dumping margin is summarised in table 3 below:

| Country | Exporter | Dumping margin |
|---------|---------------|--------------------|
| Vietnam | All exporters | 4.8% ³⁹ |

Table 3: Dumping margin

5.2 Introduction and legislative framework

In order to determine whether the goods have been dumped, the export price and normal value of the goods must be compared.⁴⁰ Dumping occurs when goods from one country are exported to another country at an export price less than the normal value of such goods. The export price and normal value are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value determinations for this investigation are set out below.

5.3 Exporter

The Commission identified CS Wind Korea as the only exporter of the goods to Australia from Vietnam.

The Commission contacted CS Wind Korea and invited it to complete an exporter questionnaire, which requested information relevant to the determination of whether the goods were exported at dumped prices.

CS Wind Korea cooperated with the investigation and provided the Commission with a substantially complete questionnaire response.

The Commission conducted verification visits in Vietnam and Korea to verify the sales data of CS Wind Korea and the cost data of the subsidiaries of the CS Wind group of

³⁹ The dumping margin has been revised as a result of a change in the profit calculation for CS Wind Vietnam. CS Wind Vietnam's profit on domestic sales was overstated since the CTMS did not include the full costs to make and sell. Further details are provided in 5.7.6.

⁴⁰ Subsection 269TACB(1).

companies that were involved in the production of the wind towers exported to Australia and sold domestically.

The role of each entity in the production and sale of the goods was determined by the Commission as follows:

1. CS Wind Korea, the marketer and beneficial owner of the goods (from raw materials to finished goods), until such time as ownership is transferred to the buyer of the wind towers.
2. CS Wind Vietnam, which assembles/manufactures the wind towers on an arm's length toll processing basis on behalf of CS Wind Korea.
3. PNC Global Korea, a related company which sources, coordinates and supplies certain wind tower internals on an arm's length transaction basis to CS Wind Korea.

The verification report for CS Wind Korea is available on the EPR.⁴¹

5.4 Export price

CS Wind Korea contracted with GE and Siemens. Export prices for contracts involving GE were determined under subsection 269TAB(1)(a) as the price paid by the importer, GE, other than any part of that price that represents a charge in respect of transportation or other matters arising after exportation.

Export prices for contracts involving Siemens were determined under subsection 269TAB(1)(c) having regard to all the circumstances of exportation, as the price paid by Siemens Wind Power A/S (a Danish company) that contracted with CS Wind Korea. Siemens Ltd (based in Australia) was declared as the importer for customs purposes. Siemens Wind Power Pty Ltd (also based in Australia) was listed as the customer and invoiced by Siemens Wind Power A/S, a Danish company. Therefore the Australian importer, did not purchase the goods from the exporter, CS Wind Korea, but from an intermediary, Siemens Wind Power A/S. This matter is discussed further in section 5.4.4.

Export prices were calculated at free alongside ship (FAS) terms.

The Commission's export price calculations are at **Confidential Appendix 1 – Export price calculations**.

5.4.1 Submissions made regarding export price in response to exporter verification report

The Australian industry made a submission in response to the publication of CS Wind Korea's verification report. The Australian industry expressed concern that certain additional items identified by the visit team, which were added to CS Wind Korea's

⁴¹ Document 023, EPR 405.

exports sales data spreadsheet, may not have been included in the constructed normal value.⁴²

The Australian industry also disagreed with the Commission's finding that flange bolts, in respect of the Ararat project, should be excluded from the export sales data spreadsheet and cost data spreadsheet on the basis that these were an essential part of the goods description and were generally included in the request for tenders for wind towers.⁴³

5.4.2 Commission's consideration of submissions on export price in SEF 405

In SEF 405, the Commission confirmed that the additional items referred to by the Australian industry in its submission have been included in the constructed normal value at a fully absorbed cost to make and sell (CTMS).

In relation to flange bolts, the Commission indicated that it had excluded these from the dumping margin on the basis that:

- the goods description excludes "any internal or external components, which are not attached to the wind towers or sections thereof";
- the flange bolts in relation to the Ararat project fall outside of the goods description as there is evidence to show that the flange bolts were not attached to the wind towers or sections thereof at the time of export;
- the flange bolts were supplied outside of the tender process for Ararat; and
- other essential parts of wind towers (including flange kits and internals) are not subject to dumping duties in respect of anti-dumping measures applied to wind towers following Investigation 221, where they have not been attached to a wind tower section.

5.4.3 Additional submissions received regarding export price

Export price should have been calculated as price paid by Siemens Australia

Shortly before SEF 405 was published, Siemens Wind Power Pty Ltd, an Australian entity, submitted that the export price for contracts involving Siemens should have been calculated pursuant to subsection 269TAB(1)(a) as the price paid by the Australian based entity, that purchased the goods from Siemens Wind Power A/S, a Danish entity, which contracted with CS Wind Korea.⁴⁴ Siemens stated that this should occur as:

- the Commission has been provided with all relevant information concerning the price paid by the Australian entity and can thereby quantify the export price after making the specified deductions; and
- to do so would not be precluded by s 269TAB(1)(a)(i) as there is no statutory requirement that the importer have "directly purchased" from the exporter on the basis of *Pilkington (Australia) Ltd v Anti-Dumping Authority* (1995) 56 FCR 424 (*Pilkington*).

⁴² Australian industry submission dated 5 December 2017, EPR 405, document 023.

⁴³ Ibid.

⁴⁴ Siemens' submission of 12 December 2017, document 030 on EPR 405.

Siemens further stated that the export price calculated should include engineering, project management and mark-up costs⁴⁵ that were paid by the Australian based Siemens entity to the Danish entity on the basis that these costs were directly referable to the goods themselves and intrinsically linked to the order of the goods.

Flange bolts and additional items

In response to the Commission's consideration of the export price in SEF 405, the Australian industry submitted that:

- the Commission has not addressed whether the provision of flange bolts by the exporter to the importer at a price less than the fully absorbed CTMS plus profit represents a consideration payable for the goods other than the price; and
- it disagrees that the flange bolts were supplied outside of the tender process for Ararat;
- it was concerned that if flange bolts had been excluded what other items had been excluded;
- the flange bolts are an additional item required to satisfy the project requirements;
- the provision of flange bolts below a normal market price would represent a benefit; and
- the Commission should re-examine its calculations of the export price to ensure that all items provided were at a market price.

The Australian industry also provided a confidential attachment which raised concerns that further items may have not been taken into account but which it considered was required to satisfy the project requirements.

5.4.4 Commission's response to additional submissions received regarding the export price

Export price should have been calculated as price paid by Siemens Australia

In respect of export sales from CS Wind Korea to Siemens Wind Power A/S, the Commission considers that the goods:

- have been exported to Australia otherwise than by the importer; and
- were sold through an intermediary, therefore have not been purchased by the importer from the exporter.

As such, the Commissioner does not consider that subsection 269TAB(1)(a) is available to calculate the export price in this case.

The Commission notes that the case of *Pilkington* did not consider whether there is a statutory requirement that the importer have 'directly purchased' from the exporter.

However, the later Federal Court decision in *Companhia Votorantim de Celulose e Papel v Anti-Dumping Authority & Ors* [1996] FCA 1048 (Companhia) did consider whether goods were purchased by an importer from the exporter in circumstances where an

⁴⁵ An amount of profit applied by Siemens Denmark, which it charges the Australian entity.

intermediary was involved in the transaction. In that case, the importer paid the intermediary for the goods, and the intermediary paid the exporter.

Furthermore, in *Companhia* the court indicated that subsection 269TAB(1)(c) is capable of covering a situation where there are sequential contracts with an intermediate party standing between the importer and a manufacturer/exporter.⁴⁶

In terms of the particular methodology adopted under subsection 269TAB(1)(c) to determine the export price, where an intermediary is involved, it is the Commission's general practice to determine the export price as the price received by the exporter when selling to the intermediary (even if the intermediary is in the same country as the exporter). In working out the dumping margin, the export price received by the exporter for the goods will typically be the FOB price but an export price at another point may have to be used depending on the circumstances, for example, a FAS price.⁴⁷

Accordingly, the Commission has had regard to all the circumstances of exportation and determined the export price paid to be calculated as the price paid, which was at the FAS level, by Siemens Denmark (the intermediary) to CS Wind Korea under subsection 269TAB(1)(c). The Commission notes that this is a verified arms length price between unrelated parties and relates solely to the price of the goods.

While it is claimed by Siemens that it provided all information allowing the Commission to calculate the price under subsection 269TAB(1)(a), the Commission notes that:

- only officers of the Australian-based entity were present at the verification;
- following the visit a detailed explanation as to the engineering, project management and mark up amounts applied to the cost borne by the Australian Siemens entity and paid to the related Danish Siemens entity was sought by the Commission, however, only a high level explanation could be provided as to what these amounts related to; and
- the allocation methodology for these amounts and the mark-up applied by the Danish Siemens entity was not provided.

As such, the Commission was unable to verify or fully understand the nature or relevance of these costs to the calculation of a dumping margin for wind towers produced by CS Wind Korea.

Flange bolts and additional items

As noted in SEF 405, the flange bolts do not fall within the definition of the goods. As such they have been excluded from the normal value, export price and dumping margin calculations.

The Commission understands that while the Australian industry accepts that the flange bolts do not form part of the goods, it contends that the provision of flange bolts by the exporter to the importer at a price less than the fully absorbed CTMS plus profit represents a consideration payable for the goods other than the price.

⁴⁶ See p. 23 of the judgment.

⁴⁷ Manual, p. 30.

The Commission's dumping manual indicates that 'any consideration payable for in respect of the goods other than their price' must be for or in respect of the goods (i.e. directly related and payable by the buyer to the seller of the goods).

The Commission examined the cost of the flange bolts and compared that cost to the price paid for the flange bolts between the importer and exporter. Based on this analysis the Commission does not consider there to be any consideration payable for, or in respect of, the wind towers other than their price.

The Commission has examined the other additional item raised by the Australian Industry in its confidential submission and has reached the same conclusion.

The Commission's analysis of the quantum of the loss involved is included in **Confidential Appendix 11 – Analysis on flange bolts.**

5.5 Normal value

The Commission notes that wind tower sales are project driven and differ in their technical properties as between projects. As such, the Commission considered that each wind tower is a unique product and that, because of the many variables and differences in technical specifications which would affect proper comparison, it would not be meaningful to adjust domestic prices to make them comparable with export prices. Therefore, the Commission is of the view that there is 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).

Accordingly, the Commission constructed the normal value of the goods in accordance with subsection 269TAC(2)(c) using:

- the cost to make the exported goods;
- the SG&A that would be incurred on the assumption that the exported goods were sold on the domestic market; and
- an amount for profit on the assumption that the exported goods were sold on the domestic market.

CS Wind Korea's verified domestic CTMS is available at **Confidential Appendix 2 – CTMS.**

CS Wind Korea's verified domestic sales listing and OCOT calculations are available at **Confidential Appendix 3 – Domestic sales.**

The Commission's normal value calculations are at **Confidential Appendix 4 – Normal value calculations.**

5.5.1 Submissions received regarding normal value

A summary of the submissions made in relation to normal value following the publication of CS Wind Korea's verification report is set out in this section. Submissions specifically relating to profit are considered in a separate section, 5.7.

Electricity costs

The Australian industry noted the Commission's comments in CON 405 that it would consider whether electricity costs, along with other costs, in the exporter's records are competitive market costs during the course of the investigation.

The Australian industry stated that there was no indication in CS Wind Korea's verification report that costs were examined to ensure that they reasonably reflect market costs as required by subsection 43(2)(ii) of the *Customs (International Obligations) Regulation 2015* (the Regulation).

The Australian industry notes that the Commission has recently found, with respect to steel rod in coil (SEF 416) that the price of electricity in Vietnam is subject to such a degree of government control that it does not reflect a competitive market cost.

On this basis, the Australian industry submits that the conclusions reached in SEF 416 should also apply in regard to the cost of electricity for wind towers produced in Vietnam. The Australian industry noted that the benchmark being requested by the applicant in SEF 416 would see CS Wind Vietnam's electricity costs in Vietnam uplifted by 243 per cent.⁴⁸

Price paid under tolling arrangements

The Australian industry expressed concern as to whether purchases made by related parties under tolling arrangements, which reflect the fully absorbed cost to make, included all relevant SG&A costs and whether these amounts are reflected in the normal value.

Exclusion of impairment losses from SG&A

The Australian industry questioned whether certain impairment losses were excluded from the SG&A calculations for CS Wind Korea and whether in fact these losses could be viewed as a cost of doing business and therefore should be included in the normal value.⁴⁹

Currency and finance costs

The Australian industry expressed concern that no mention was made in the exporter verification report regarding currency costs and finance costs. The Australian industry indicated that the CS Wind Group would be buying and selling in multiple currencies and that finance costs are relevant in view of recent expansions to the CS Wind Vietnam facilities. The Australian industry asked what basis was used to determine the relevant date of sale and exchange rate.

⁴⁸ Australian industry submission dated 5 December 2017, EPR 405, document 025.

⁴⁹ Ibid.

5.5.2 Commission's consideration of submissions made on normal value in SEF 405

Electricity prices

In SEF 405 the Commission noted that:

- as detailed in SEF 416, electricity is a major cost component for the production of steel billet, the main input to steel rod in coil, particularly if an electric arc furnace is used;⁵⁰
- electricity is a less significant cost component for the production of wind towers in Vietnam. In particular, it is noted that the main inputs used in the production of wind towers in Vietnam, e.g. steel plate, internals and flanges are imported. Therefore, there is considerably less Vietnamese electricity consumed in the production of wind towers in Vietnam compared to steel rod in coil; and
- despite being of the view in SEF 416, that the domestic prices of electricity may be distorted in Vietnam, this was not sufficient to find that a particular market situation exists for the domestic sales of rod in coil due to the conditions of competition evident in the market. For the purposes of SEF 416, the Commission made no modification to the CTMS of the Vietnamese exporters.

The Commission conducted a sensitivity analysis and determined that an uplift of CS Wind Vietnam's electricity costs, on the basis of the benchmark proposed by the applicant in Investigation 416, would result in a minor increase in the dumping margin, have a negligible effect upon the Commission's undercutting analysis and not impact the Commission's overall findings.

Price paid under tolling arrangements

In SEF 405, the Commission advised that it took the higher of the price under the tolling arrangements (where profitable), or the actual fully absorbed cost in respect of the sale of internals from PNC Global Korea where these were made at a loss. These fully absorbed cost included SG&A expenses for PNC Global Korea. As such, the Commission confirms that all relevant SG&A costs have been accounted in the normal value.

Exclusion of impairment losses from SG&A

In SEF 405, the Commission noted that the impairment losses are not actual expenses incurred by CS Wind Korea and that these losses were not related to the production and sales of the goods under consideration. Therefore, the Commission considers that it is appropriate to exclude impairment losses from the SG&A calculations and thus the normal value.

⁵⁰ SEF 416 – Steel rod in coils – Indonesia, Korea and Vietnam, p.26, item 024 on EPR 416.

Currency and finance costs

In SEF 405 the Commission confirmed that currency and finance costs were included in CS Wind Korea's SG&A allocation and normal value and that exchange rates were determined by reference to US Federal Reserve rates and are based on invoice date.

5.5.3 Further submissions regarding normal value made to SEF 405

The Australian industry raised a number of issues in response to the exporter verification report, which it indicated that it did not have time to respond to before the publication of SEF 405.

Price of electricity

The Australian industry submitted that the significance of a cost item is not a factor when determining whether costs reasonably reflect market costs. The Australian industry requested that an uplift of electricity costs be taken into account in any final calculation of the dumping margin.

SG&A expenses and impairment losses

The Australian industry submitted that the discussion of SG&A expenses in the exporter visit report (particularly the lack of data available for the 2015 year) was ambiguous and it was concerned since a large part of the SG&A costs in regard to production would have been incurred in sourcing raw materials and suppliers.

The Australian industry stated that the relevant consideration for the Commission when excluding expenses from SG&A is not whether impairment losses are actual expenses incurred but whether the impairment losses were expenses to the relevant accounts.

It was further submitted that it was contradictory for the Commission to accord substantive weight to submissions regarding concerns over the financial health of OF's parent when a large part of losses were due to impairment but exclude impairment losses from the CTMS for CS Wind Korea.

Allocation of production overheads and idle time

The Australian industry expressed concern with the statement in the exporter questionnaire that "the costs of finished goods, semi-finished goods and work in progress consisted of the raw materials, direct labour, other direct costs and allocation of production overheads based on normal operating capacity." In particular, the Australian industry was concerned that an allocation of production overheads based on normal operating capacity instead of the actual wind towers produced, can significantly understate the actual overheads of the project. On this basis, the Australian industry requested that the Commission check the allocation of overheads to ensure that the CTMS reflects a fully absorbed CTMS and whether idle or down time had been allocated to the goods.

5.5.4 Commission's consideration of submissions made on normal value made to SEF 405

Price of electricity

The verification undertaken by the Commission needs to be undertaken in an efficient and effective manner. Consistent with this, the Manual notes that dumping inquiries have to be conducted against a timetable that imposes limits on how much time can be spent verifying data.⁵¹ This statement is made specifically within the context of determining whether an input is at a competitive market price from a supplier on arms' length terms.⁵²

Electricity is sourced by CS Wind Vietnam on arms length terms. Moreover, and as noted by the Commission in SEF 405, electricity costs are not a significant cost component in the production of wind towers in Vietnam.

In applying subsection 43(2) of the Regulation, the Commission is satisfied that the exporter's records reasonably reflect competitive market costs associated with the production or manufacture of like goods.

This contrasts with investigation 416, where electricity is a major cost component for the production of steel billet, which is the main input to steel rod in coil. In investigation 416, the applicant has proposed that Vietnamese electricity prices be adjusted to make them equivalent with the price of electricity in the Philippines. This benchmark is the highest among selected ASEAN power companies.⁵³

As noted at SEF 405, the Commission's sensitivity analysis indicated that an adjustment to the exporter's records to increase the electricity costs incurred by reference to a Philippines benchmark price would result in a minor increase to the dumping margin.

SG&A expenses and impairment losses

The Commission is required to calculate the SG&A for the goods on the assumption that they had been sold for home consumption in the country of export. The Commission wishes to clarify that the domestic sales on which SG&A was constructed occurred in 2016 and that all work associated with these sales was undertaken in 2016. On this basis, the Commission considers that SG&A expenses from 2016 are appropriate to use in the construction of normal value.

The Commission has considered the available evidence regarding the allocation of SG&A and determined that the exclusion of impairment losses from this allocation is reasonable on the basis that these losses were not related to the production and sale of like goods on the domestic market.

⁵¹ See footnote 8 of the Manual.

⁵² See page 45 of the Manual.

⁵³ The electricity benchmark proposed by the applicant in case 416 is the price of electricity in the Philippines. A comparison of average retail tariffs for electricity among selected ASEAN power companies in 2015 shows that the Philippines has the highest electricity price in the region of those countries compared.

The Commission's consideration of impairment losses for the purposes of constructing normal value pursuant to Regulation 44 is not comparable to the treatment of E&A Limited's impairment losses.

The reporting and treatment of impairment losses by OF's parent, E&A Limited is governed by the Corporations Law (as well as the ASX listing rules during the time E&A was listed).

Allocation of production overheads and idle time

While not indicated in the exporter visit report, the way in which overheads were allocated by the exporter was more complex than that stated in its response to the exporter questionnaire.

During the exporter verification visits, the Commission verified that overheads were allocated on the basis of a number of different cost drivers, the majority of which reflected 'actual production' rather than 'normal operating capacity.' The Commission notes that CS Wind Vietnam, which manufactured the goods under the tolling arrangement, had a high rate or capacity utilisation during the investigation period.

Nevertheless, the Commission considered whether there was a potential for the understatement of certain overhead allocations. In doing so, the Commission took into account the tolling arrangements and confirmed that the production overhead costs were not understated.

In these circumstances, the Commission is satisfied that the cost allocation methodologies used to calculate CTMS are consistent with those recorded in CS Wind Korea and CS Wind Vietnam's accounting systems. The Commission is also satisfied with the accuracy, relevance and completeness of the cost information provided.

5.6 Adjustments considered to CS Wind Korea's normal value

In using constructed costs as a basis for normal value, in accordance with subsection 269TAC(2)(c), the Commission considered the following adjustments to normal values pursuant to subsection 269TAC(9) to ensure fair comparison of normal values with export prices.

Transport bracing costs

CS Wind Korea claimed that the cost of transport bracing for domestic sales should be a downward adjustment to normal value. The Commission was able to verify the cost information provided by CS Wind Korea in support of this adjustment claim, however, CS Wind Korea was unable to evidence that the costs were specific to the projects claimed. As such, this claim was not accepted.

Export inland transport

As export sales were made on an FAS basis and normal value construction was also calculated on an FAS basis due to the tolling contract being for construction services and including shipment to the FAS point, the Commission considers that there is no need to make an adjustment for inland transport.

Credit expense

The Commission considers that an upwards adjustment for export credit is necessary to ensure a fair comparison with the FAS export price.

Adjustments - conclusion

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustment to the normal value under subsection 269TAC(9). The Commission considered that this adjustment is necessary to ensure a fair comparison of normal values and export prices:

| Adjustment Type | Deduction/addition |
|-----------------|---|
| Credit expense | Add the credit expense for export sales |

Table 4: Adjustments to normal value

The Commission’s adjustment calculations are included in normal value calculations at **Confidential Appendix 4 – Normal value calculations**.

5.7 Determination of profit

5.7.1 Profit considered in exporter visit report

In constructing a normal value, an amount for profit will usually be included subject to the rules set out in section 45 of the Regulation. The primary method the Commission must use, in accordance with subsection 45(2) of the Regulation, is the profit achieved for sales of like goods sold by the exporter in the ordinary course of trade (OCOT).

It was found that none of the domestic sales made by CS Wind Korea in Vietnam were in the OCOT. As such, the verification team was unable to calculate profit under subsection 45(2) of the Regulation.

Where it is not possible to calculate profit under subsection 45(2) of the Regulation, subsection 45(3) of the Regulation sets out three alternative methods for profit determination, which involve:

- identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market or the country of export - subsection 45(3)(a) of the Regulation; or
- identifying the weighted average of the actual amount realised by other exporters from the sale of like goods in the domestic market of the country of export - subsection 45(3)(b) of the Regulation; or
- subject to Regulation 45(4), using any other reasonable method and having regard to all relevant information - subsection 45(3)(c) of the Regulation.

The exporter verification report indicates that as “the verification team was unable to determine a profit based under any of the options available under the Regulation, the

verification team considers it appropriate to use a zero rate of profit in the calculation of normal value.”⁵⁴

5.7.2 Submission regarding the determination of profit prior to SEF 405

The Australian industry disagreed with the exporter visit report findings, in particular that profit could not be worked out under subsection 45(3)(c) of the Regulation and stated that it was inappropriate to include a zero rate of profit. The Australian industry suggested that a rate of profit that it had identified in CS Wind Korea’s published accounts (10.3 per cent) was relevant information.⁵⁵ The Australian industry considers it appropriate to include this rate of 10.3 per cent profit in calculating the normal value.

5.7.3 Commission’s consideration of profit in SEF 405

The Commission reconsidered the determination of profit in SEF 405.

The Commission found that none of the domestic sales made by CS Wind Korea were in the OCOT.

On the basis of CS Wind Korea’s response to the exporter questionnaire and the verification, the Commission established that there was no information available related to the actual amounts realised by CS Wind Korea from the same general category of goods in the domestic market in Vietnam. As such, the Commission cannot apply subsection 45(3)(a) of the Regulation.

The Commission found that CS Wind Vietnam is a producer of wind towers in its own right and it sells into the Vietnamese domestic market.⁵⁶ However, other than CS Wind Vietnam, the Commission did not identify any other exporter or producer. As such, the Commission was unable to apply subsection 45(3)(b) of the Regulation as two or more other exporters (or producers) from the sale of like goods in the domestic market of the country of export are required to determine a weighted average profit.⁵⁷

Subsection 45(3)(c) of the Regulation provides that an amount of profit may be worked out *“using any other reasonable method and having regard to all relevant information.”*

The use of subsection 45(3)(c) of the Regulation is circumscribed by subsection 45(4) of the Regulation, which provides that the profit added must not exceed *“the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export.”*

Noting that wind towers are complex items of capital equipment, the Commission therefore considered that it was appropriate to use the profit achieved in sales by

⁵⁴ Australian industry submission dated 5 December 2017, p.15, document 023, EPR 405.

⁵⁵ See pp. 5-6, document 025, EPR 405. The rate of profit was calculated as a percentage of operating income/cost of sales in respect of 2015-2016. It does not cover the entire investigation period.

⁵⁶ Exporter response to questionnaire, document 006 on EPR 405.

⁵⁷ As per the Appellate Body’s consideration in *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, at p.24.

CS Wind Vietnam in the same general category of goods, e.g. wind towers, sold domestically, in determining the limit to profit set by subsection 45(4) of the Regulation.

In SEF 405 the Commission considered that while subsection 45(4)(b) of the Regulation refers to “exporters or producers” in a plural sense, section 23 of the *Acts Interpretation Act 1901* states that ‘...words in the plural number include the singular’. Therefore, the reference to ‘exporters or producers’ in subsection 45(4)(b) of the Regulation includes a reference to ‘an exporter’ or ‘a producer’. In addition, the WTO Appellate Body has indicated that the WTO Article on which subsection 45(4) of the Regulation is based can be applied in circumstances “*where there is data relating to only one other exporter or producer*”.⁵⁸

In view of the direction provided by this judgment, the Commission considered the profit realised by CS Wind Vietnam during the investigation period as the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of country. As such, any profit determined by the Commission under subsection 45(3)(c) of the Regulation must not exceed this amount, as required by subsection 45(4)(b) of the Regulation.

The Commission considered that in this case, a reasonable method of working out profit is to use the weighted average profit made in relation to all sales of wind towers during the investigation period in Vietnam by CS Wind Korea and CS Wind Vietnam. This rate of profit is below that realised by CS Wind Vietnam in the domestic market and is based on verified data.

The Commission considered that this rate is preferable to the rate of profit of 10.3 per cent, suggested by the Australian industry, which is based on CS Wind Korea’s worldwide sales, includes comprehensive income, and does not cover the whole investigation period.⁵⁹ Moreover, the rate of profit suggested by the Australian industry exceeds the amount of profit realised by other exporters or producers on sales of goods established under subsection 45(4) of the Regulation.

5.7.4 Submissions made to SEF 405 – determination of profit

The Australian industry submitted that the Commission appears to have appropriately taken the approach in the exporter verification report of treating the related entities of CS Wind as a single entity. However, the Australian industry further submitted it was incomprehensible that the Commission could find that CS Wind Vietnam was a seller of wind towers in its own right, particularly in view of findings of a US investigation where CS Wind Korea and CS Wind Vietnam were treated as a single entity.

The Australian industry submitted that the profit methodology provided in its submission of 5 December 2017, which reflects the profit that CS Wind Corporation achieves on wind towers globally, is the most appropriate approach. The Australian industry also provided a

⁵⁸ Ibid, at fn 43.

⁵⁹ This method of deriving profit is not in accordance with international accounting standards. Korea has adopted the IFRS as its generally accepted accounting principles. In accordance with IFRS, profit or loss is defined as “the total of income less expenses, excluding the components of other comprehensive income.” [IAS 1.7].

recalculated a profit rate of 13.5 per cent based on excluding global income and the last six months of 2016.

The Australian industry also stated that the Commission had not addressed a previous submission that CS Wind Korea's consolidated financial statements indicated that CS Wind Korea had noted that the loss encountered in the last six months of 2016 was abnormal.

5.7.5 Commission's consideration of submissions made to SEF 405 – determination of profit

The legislative provisions applied by the Commission to determine profit for the purposes of constructing the normal value are designed to determine the profit that would be achieved in the hypothetical situation that the goods, instead of being exported, were sold into the domestic market of the country of export.⁶⁰

For the purposes of calculating the dumping margin, the verification visit team treated prices paid by CS Wind Korea under the tolling arrangements as arms length transactions. These tolling arrangements have, embedded within them, amounts of profit applied by CS Wind Vietnam or PNC Global Korea. As such, CS Wind Vietnam, CS Wind Korea and PNC Global have been consistently treated as separate entities. Furthermore, and as noted in SEF 405, the Commission verified that during the investigation period, CS Wind Vietnam both provided a tolling manufacturing service, for the goods under consideration exported by CS Wind Korea, and produced and sold wind towers in its own right for the Vietnamese market.

The US findings in its investigation of utility scale wind towers from Vietnam, while of interest, are not persuasive in determining whether dumping has occurred under Australian law.⁶¹ Nor is it determinative of how entities should be assessed as part of that process.

The Anti-Dumping Review Panel (ADRP) has noted recently that under Australian law, the separate legal personality of companies in a corporate group has to be recognised. While legislation exists in certain circumstances allowing for the grouping of companies, absent such legislative provisions it is only in very rare circumstances that the "corporate veil" can be lifted and the corporate structure ignored.⁶²

The Commission has had regard to the approach adopted by the ADRP. The Commission considers that the CS Wind Korea is the exporter in this dumping inquiry (and not CS Wind Korea and CS Wind Vietnam treated as a single entity). Accordingly, and as noted in SEF 405, the Commission has applied the Regulations and has determined profit pursuant to subsections 45(3)(c) and 45(4) of the Regulation using the methodology above.

⁶⁰ This is reflected in subsection 269TAC(2)(c)(ii) and within the hierarchy of Regulation 45.

⁶¹ The US final determination regarding CS Wind Korea and CS Wind Vietnam (collectively treated the CS Wind Group) was revised effective 26 March 2017 following a US court decision. This resulted in the dumping margin being revised down from 17.07 per cent that to 0.00 per cent.

⁶² As noted by the ADRP Report No. 34 – Steel Reinforcing Bar Exported from the Republic of Korea, Singapore, Spain and Taiwan, 4 March 2016, at p.15.

The Commission has not used the profit figure contained in CS Wind Korea's consolidated accounts, which reflects CS Wind Korea's profit on worldwide sales. As such, the Commission has not investigated the issue of whether the last six months were abnormal.

5.7.6 Recalculation of profit following publication of SEF 405

Following publication of SEF 405, it was identified that the profit calculation for CS Wind Vietnam was incorrect as it did not take account of all its selling costs incurred in relation to the sales of wind towers in the domestic market.

As a consequence, the weighted average profit made in relation to all domestic sales of wind towers in the country of export (made by CS Wind Korea and CS Wind Vietnam) during the investigation period has changed. This in turn has resulted in a change to the dumping margin.

Applying this new rate of profit results in a dumping margin of 4.8 per cent.

5.8 Dumping margin

The dumping margin has been calculated in accordance with subsection 269TACB(2)(a) by comparing the weighted average of export prices with the weighted average of corresponding normal values over the whole of the investigation period.

The dumping margin in respect of wind towers exported to Australia by CS Wind Korea for the investigation period has been calculated at **4.8 per cent**.

The dumping margin differs from that published in SEF 405, due to a correction to the calculation of profit as discussed in section 5.7.6 above.

The dumping margin calculation is at **Confidential Appendix 5 – Dumping margin calculation**.

5.9 Volume of dumped imports

Pursuant to subsection 269TDA(3), the Commissioner must terminate an investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period if subsection 269TDA(5) does not apply.

Using the ABF import database and having regard to the information collected and verified from the importer and exporter, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from Vietnam was greater than 3 per cent of the total import volume and is therefore not negligible.

Accordingly, the Commissioner considers that there are no grounds to terminate this investigation under subsection 269TDA(3).

6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Findings

Based on an analysis of information and evidence obtained and verified during this investigation, the Commissioner found that, during the investigation period, the Australian industry as a whole suffered injury in the forms of:

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced sales revenue;
- reduced capacity utilisation;
- reduced employment;
- reduced wages; and
- reduced ROI.

6.2 Introduction and approach to injury analysis

6.2.1 Legislative background

Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that the Australian industry producing like goods has experienced or is experiencing material injury caused by dumping of the goods.

The matters that may be considered in determining whether an Australian industry has experienced material injury are set out in section 269TAE.

6.2.2 The Ministerial Direction on Material Injury

In assessing material injury, the Commission had regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).⁶³

Among other things, the Material Injury Direction makes it clear that:

- injury must be material in degree and greater than that likely to occur in the normal ebb and flow of business;
- identification of material injury must be based on facts and not assertions unsupported by facts;
- identifying material injury will differ from industry to industry;
- material injury from dumping can occur notwithstanding that there is also injury from other sources, however, injury caused by factors other than dumping must not be attributed to dumping; and

⁶³ Available at www.adcommission.gov.au

- the law does not prevent judging material injury caused by dumping differently depending on the current economic conditions of an industry.

6.2.3 Application

The Australian industry alleges that it has experienced material injury caused by exports of wind towers to Australia from Vietnam at dumped prices through:

- loss of sales volume;
- loss of market share;
- loss of revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced capacity utilisation;
- constraint on capital investment; and
- reduced ROI.

6.2.4 Approach to injury analysis

This chapter analyses the economic condition of the Australian industry as a whole and provides an assessment as to whether the Australian industry has experienced material injury.

Although the Commission has collected data from 1 January 2013 (injury analysis period),⁶⁴ it is noted that, for the purposes of examining injury and causal effects, earlier periods of the injury analysis were affected significantly by matters unrelated to dumping from Vietnam. As a result, the Commission's usual practice of examining injury and causal effects using a 'coincidence analysis' is less meaningful. Consequently, although there are figures provided in this chapter from the beginning of the injury analysis period, this is for context only.⁶⁵

Given the uniqueness of each tender and the variability in the wind tower specifications supplied for any given project, the Commission considers that it is most appropriate to assess injury by examining each tender individually.

Accordingly, the injury analysis detailed in this section is primarily based on information in respect of specific tenders during the investigation period, but also considers verified information submitted by the applicants, exporter, importers (OEMs) and data the Commission obtained from the ABF import database.

6.3 Volume injury

In its application, the Australian industry claimed that it lost sales volume and market share due to lost tenders. In assessing volume effects the Commission has examined the

⁶⁴ As permitted by subsection 269T(2AD), noting that subsection 269T(2AE) does not allow any determination that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

⁶⁵ All figures below compare years ending 31 December, unless otherwise specified.

number of wind towers awarded, the number of wind towers that the Australian industry bid for and the number of wind towers where Australian industry was unsuccessful.

6.3.1 Sales volume

Figure 5 below illustrates the sales volumes of the Australian wind towers market between 2013 and 2016.

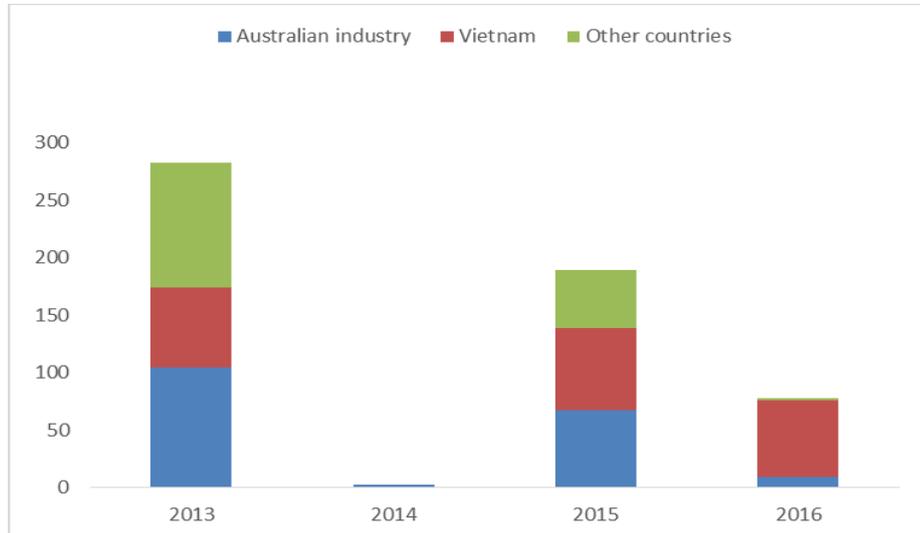


Figure 5: Australian wind tower market sales volume (based on number of towers awarded)

Figure 5 demonstrates that the Australian wind tower market declined during the injury analysis period. The Australian industry’s sales volume clearly reduced over the injury analysis period. It can also be observed that, in a declining market, with the exception of 2014, Vietnam has largely maintained its sales volume in the Australian wind tower market.

A total of 267 towers and 77 embeds were available for tender during the investigation period:

- Coonooer Bridge (6 towers, awarded in 2015);
- Ararat (75 towers, 75 embeds, awarded in 2015);
- Waterloo Stage 2 (6 towers, awarded in 2015);
- White Rock (70 towers, awarded in 2015);
- Hornsdale 1 (32 towers, awarded in 2015);
- Hornsdale 2 (32 towers, awarded in 2016);
- Hornsdale 3 (35 towers, awarded in 2016);
- Coober Pedy (2 towers, 2 embeds, awarded in 2016); and
- Kiata (9 towers, awarded in 2016).

During the investigation period, CS Wind Korea was successful in bidding for (and exported) towers from Vietnam, in respect of:

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- 40 of the 75 towers and all 75 embeds⁶⁶ for the Ararat project; and
- all 64 towers for the first two stages of the Hornsdale project.

The Australian industry was successful in tendering for the supply of the following projects during the investigation period:

- all six towers for the Coonooer Bridge project;
- 35 of the 75 towers in respect of the Ararat project;
- all six towers on the Waterloo Stage 2 project;
- 20 of the 50 towers for the White Rock project;
- two embeds on the Coober Pedy project; and
- all nine towers on the Kiata project.

A summary of outcomes for these tenders is provided in table 5 and 6 below:

| Project | Total Towers | Australian industry | CS Wind Korea | Other | Year Awarded | OEM |
|---------------------------------|--------------|---------------------|---------------|-------|--------------|----------|
| Coonooer Bridge | 6 | 6 | 0 | 0 | 2015 | Vestas |
| Ararat | 75 | 35 | 40 | 0 | 2015 | GE |
| Waterloo Stage 2 | 6 | 6 | 0 | 0 | 2015 | Vestas |
| White Rock | 70 | 20 | 0 | 50 | 2015 | Goldwind |
| Hornsdale Stage 1 | 32 | 0 | 32 | 0 | 2015 | Siemens |
| Hornsdale Stage 2 | 32 | 0 | 32 | 0 | 2016 | Siemens |
| Hornsdale Stage 3 ⁶⁷ | 35 | 0 | 35 | 0 | 2016 | Siemens |
| Coober Pedy | 2 | 0 | 0 | 2 | 2016 | Senvion |
| Kiata | 9 | 9 | 0 | 0 | 2016 | Vestas |

Table 5: Wind tower tender outcomes during the investigation period

| | Total TBRs | Australian industry | CS Wind Korea | Other | Year Awarded | OEM |
|-------------|------------|---------------------|---------------|-------|--------------|---------|
| Ararat | 75 | 0 | 75 | 0 | 2015 | GE |
| Coober Pedy | 2 | 2 | 0 | 0 | 2016 | Senvion |

Table 6: Embed tender outcomes during the investigation period

6.3.2 Market share by volume

Figure 6 below indicates the share of the Australian market (based on the number of towers awarded) held by suppliers during the injury analysis period. It demonstrates the

⁶⁶ While 75 TBRs were awarded to CS Wind Korea it should be noted that the value of this project as a percentage of the value of all wind tower projects awarded during the investigation period was less than two per cent. The value of this project represents less than six per cent of the value of projects awarded to the Australian industry during the investigation period.

⁶⁷ Stage 3 of the Hornsdale project was lost during the investigation period. However, the exports and invoicing of these exports fell outside of the investigation period. As such, stage 3 of the Hornsdale project was not considered in the Commission's analysis.

proportion of tenders for wind towers that were won by Vietnam, the Australian industry and other countries during investigation period.

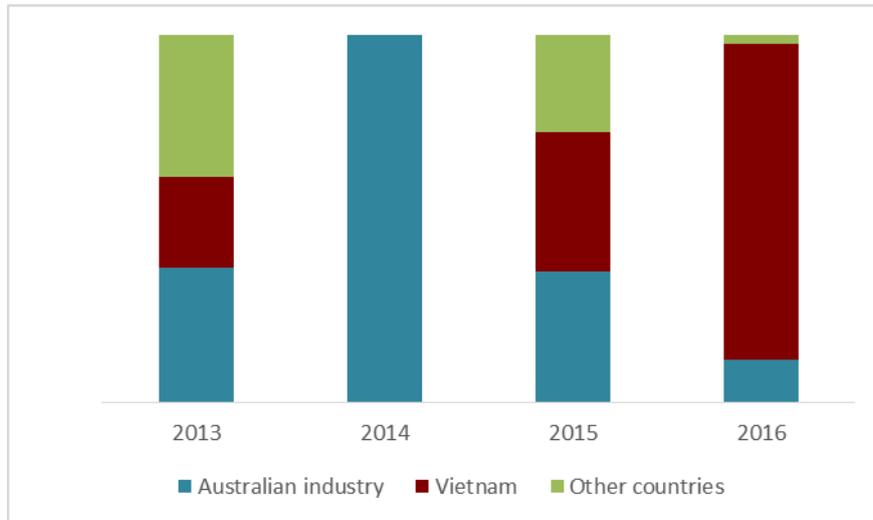


Figure 6: Australian market share held by suppliers based on towers awarded

Figure 6 can be broken down as follows:

- In 2013, 283 towers were awarded over five projects. The Australian industry won 104 (37%) of these towers, while Vietnam won 70 of these towers (35%), as part of the Snowtown 2 project.
- In 2014, only three towers were awarded in respect of a sole project. The Australian industry won these three towers.
- In 2015, 189 towers were awarded in respect of five projects. The Australian industry won 67 (35%) of these towers, while Vietnam won 72 towers (38%) of these towers as part of the Ararat project (40 towers) and the first stage of the Hornsdale project (32 towers).
- In 2016, 78 towers were awarded in respect of four projects. The Australian industry won 9 (12%) of these towers, while Vietnam won 67 towers in respect of the second stage of the Hornsdale project (32 towers) and the third stage of the Hornsdale project (35 towers) (86% of the market).

Figure 6 shows that, within the investigation period, the Australian industry and countries other than Vietnam lost market share in 2016, which coincided with a growth in Vietnam's market share.

The Commission's analysis is included at **Confidential Appendix 6 – Market Share and Volume Effects Injury Analysis**.

6.3.3 Conclusion – volume injury

Based on the information provided, the Commission considered that the Australian industry has experienced injury in the form of lost sales volume and lost market share.

6.4 Price injury

6.4.1 Background

Price depression occurs when a company, for some reason, lowers its prices.

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented.

Page 18 of the Manual states that, in determining whether price suppression has occurred the Commission may examine:

- a comparison of prices with costs to assess whether over time (e.g. the injury analysis period) or within a specified period (e.g. the investigation period) prices have not increased at the same rate as cost increases; and/or
- an assessment as to whether the prices for the Australian industry's product are lower than prices that may have been achieved in the absence of dumping (an unsuppressed selling price may be part of such analysis).

6.4.2 Price depression

KPE claims that, in bidding for tenders it has regard to import prices, and has experienced price depression because it has lowered its bids in response to import prices. KPE provided supporting evidence regarding its claims.

OF did not claim price depression in respect of the Hornsdale project as OF was unsuccessful in its bid for this project.

An analysis of correspondence between the Australian industry and the OEMs shows that the Australian industry reduced their prices during the tender process for the Ararat TBR project, Ararat Tower project, and stages 1 and 2 of the Hornsdale project.

6.4.3 Price suppression

KPE claimed that it experienced a decline in margins on projects affected by the dumped imports from Vietnam, and that as result, it suffered price suppression on the Ararat project and Kiata project.

OF did not claim that it had experienced injury in the form of price suppression.

Given the uniqueness of each tender and the variability in the wind towers supplied for each project, the Commission does not consider it appropriate to examine and assess price effects by comparing unit costs and unit selling prices over the injury analysis period.

In these circumstances, it is more meaningful to assess the Australian industry's claim of price suppression by comparing revenues and costs over time by examining the percentage difference between revenues and costs.

Figure 7 demonstrates that Australian industry's costs consistently exceeded revenues over the injury analysis period. However, the difference between revenue and costs was

most pronounced in 2013 and reduced over the injury period. In 2016, Australian industry almost broke even with total costs only slightly higher than revenue.

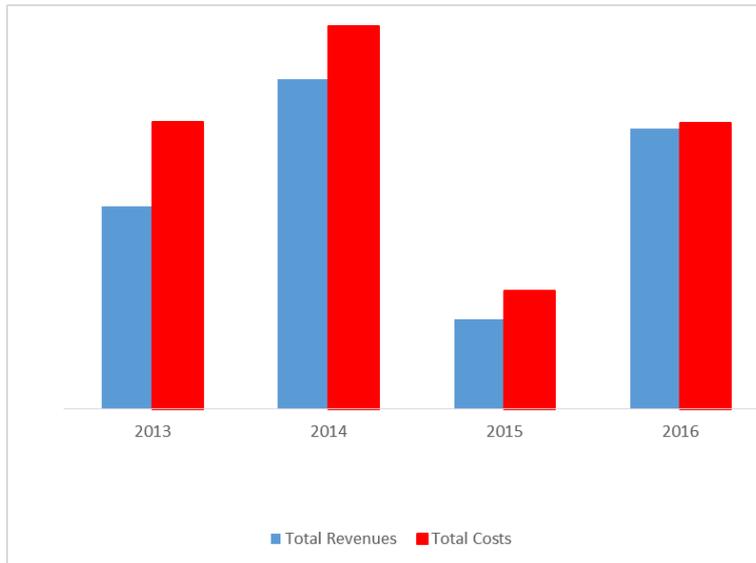


Figure 7 – Comparison of industry revenues and costs⁶⁸

6.4.4 Conclusion – price injury

Based on the above, the Commission finds that the Australian industry has experienced injury in the form of price depression. The Commission finds that the Australian industry suffered from price suppression during the injury analysis period, however, this situation improved, particularly in the second half of the investigation period. Nevertheless, costs exceeded revenues for the whole injury analysis period, including the investigation period.

The Commission’s assessment of price depression and price suppression is contained in **Confidential Appendix 7 – Price and profit injury analysis.**

6.5 Profit injury

6.5.1 Reduced profit and profitability

The Commission reviewed the profitability of the Australian industry over the injury analysis period. The Commission found that KPE and OF experienced a net loss in their wind tower manufacturing businesses, for each year of the injury analysis period as shown below in figure 8.

⁶⁸ This chart differs from the one provided in SEF405, particularly in relation to the 2014 year. This chart has changed following a correction to the underlying data provided by the Australian industry.

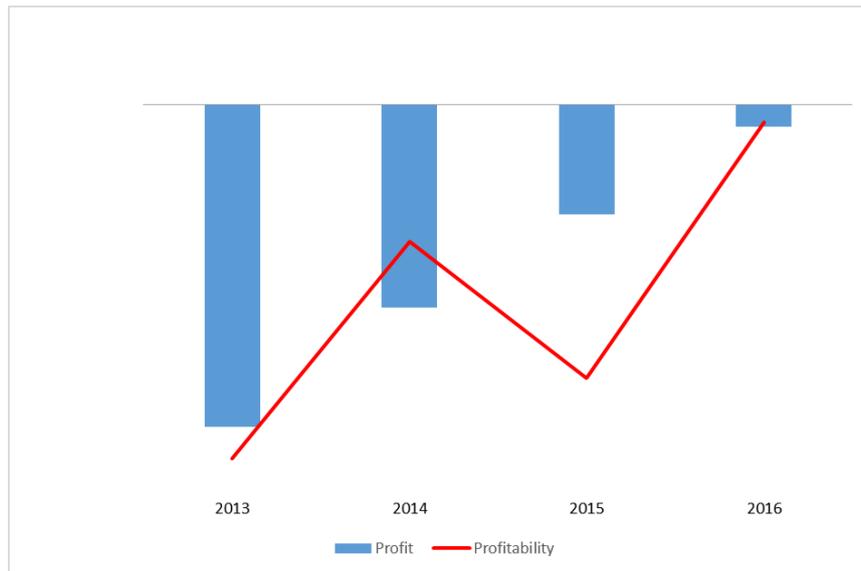


Figure 8 – Australian industry's profit and profitability⁶⁹

6.5.2 Conclusion – profit injury

The Commission considers that the Australian industry has experienced injury in the form of reduced profits and reduced profitability during the injury analysis period. However, the Commission notes that the Australian industry's profit situation improved during the investigation period.

The Commission's assessment of profit and profitability injury is contained in **Confidential Appendix 7 – Price and profit injury analysis**.

6.6 Other economic indicators

In the application, the Australian industry claimed that it had experienced injury in the form of other injury factors including:

- reduced capacity utilisation;
- constraint on capital investment;
- reduced ROI; and
- reduced revenues.

6.6.1 Reduced capacity utilisation

Capacity utilisation fluctuated significantly over the injury analysis period, increasing between 2013 and 2014 and then declining sharply. Notably, the Australian industry did not reach full capacity at any time during the injury analysis period.

⁶⁹ This chart differs from the one provided at SEF405, particularly in relation to the 2015 year. This reflects a correction to the way in which the Commission combined the information provided by KPE and OF.

6.6.2 Constraint on capital investment

During the injury analysis period, the Australian industry's capital investment trended down generally, with a slight increase between 2015 and 2016, mainly driven by an increase in KPE's capital investment in this period.

The value of assets related to wind tower manufacture also declined during the period. This decline was in part a result a write down of OF's wind towers business in 2016.⁷⁰

6.6.3 Reduced ROI

The Australian industry calculated ROI based on gross profit over assets. The Australian industry experienced negative ROI for the entirety of the injury analysis period, however, it saw a steady improvement over the injury analysis period.

The Commission notes that there are some marked differences in ROI for KPE and OF. Between 2013 and 2014, KPE experienced a decline in ROI while OF (the only Australian industry participant to win a contract in 2014) experienced an increase in ROI.

6.6.4 Reduced revenue

The Australian industry's revenue increased between 2013 and 2014 followed by a sharp decline between 2014 and 2015. Revenue recovered between 2015 and 2016.

6.6.5 Reduced employment

The Commission notes that KPE's employment levels decreased between 2013 and 2014, as a result of the retrenchment of employees as a consequence of temporarily ceasing its wind tower operations. Since 2014, the number of KPE's employees involved in the manufacture of like goods has risen but have not recovered to 2013 levels.

OF advised the Commission that it maintains a flexible workforce, which is redeployed to non-wind tower production when demand is low, however it did not provide the Commission with employment figures.

6.6.6 Reduced productivity

OF did not provide information relating to productivity of its wind tower manufacturing division.

KPE provided data regarding the productivity of the wind energy division. Productivity increased between 2013 and 2014 but declined sharply between 2014 and 2015, as productivity increased again between 2015 and 2016 but not to 2014 levels.

⁷⁰ Prior to the release of the 2016 half year results by OF's parent company, E&A Limited, the goodwill for the Heavy Mechanical and Electrical Engineering Division (of which OF is a part) was impaired "as a consequence of the continued delay in wind tower orders...and the uncertainty surrounding Arrium's operations in Whyalla." See E&A Limited 2016 Annual Report, p.ii.

The Commission observes that the sharp decline in productivity experienced by KPE from 2014-2015 coincided with market decline and the retrenchment of KPE staff.

6.6.7 Reduced wages

No trend in average wages per unit was discernible from the information provided by OF.⁷¹

KPE's wages for the wind towers division fell between 2014 and 2015, correlating with the reduction in employee numbers following the retrenchments at the end of 2014.

KPE's wages have increased in conjunction with the engagement of additional employees between 2015 and 2016 but have not recovered to 2014 levels.

6.6.8 Conclusion – other economic injury factors

The Commission considers that the Australian industry has experienced injury in the form of other economic indicators including:

- reduced capacity utilisation;
- constraint on capital investment;
- reduced ROI;
- reduced revenues;
- reduced employment;
- reduced productivity; and
- reduced wages.

The Commission's assessment of other economic indicators is contained in **Confidential Appendix 8 – Other injury effects analysis**.

6.7 Conclusion on injury

Based on an analysis of the information contained in the application and obtained and verified during the investigation period, the Commissioner considers that the Australian industry has experienced injury in the form of:

- reduced sales volumes;
- reduced market share;
- price suppression;
- price depression;
- reduced profits;
- reduced profitability;
- reduced capacity utilisation;
- constraint on capital investment;
- reduced ROI;
- reduced revenues;
- reduced productivity;
- reduced employment; and

⁷¹ See OF verification report, p.24 for further information, document 022 on EPR 405.

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- reduced wages.

7 HAS DUMPING CAUSED MATERIAL INJURY?

7.1 The Commissioner's findings

As discussed in section 6.7 above, the Commissioner considers that the Australian industry has experienced injury.

The Commissioner is satisfied that during the investigation period, while exports of the goods from Vietnam were dumped, the injury caused by dumping to the Australian industry was negligible.

The Commission considered that the Australian industry's economic performance was affected by other factors including that:

- non-price factors were determinative in the decision of Siemens and GE to award tenders to CS Wind Korea during the investigation period;
- in the absence of dumping, exports from Vietnam would remain at prices significantly below the Australian industry's cost; and
- there was uncertainty and reduced market demand for wind tower projects in Australia during the injury analysis period and investigation period.

7.2 Causation in the Australian wind tower market

The Material Injury Direction states that the identification of material injury will differ from industry to industry.

In relation to the Australian wind towers market, the Commission noted that, among other things:

- there is a high degree of transparency in the awarding of tenders. Accordingly, it is generally clear when the Australian industry has been unsuccessful for a tender;
- the production of wind towers is capital intensive and the success of an Australian industry is volume dependent; and
- the awarding of wind tower bids by GE and Siemens considered a number of factors, of which price is one. Factors other than price including timely delivery, quality, reliability, and supplier risk were also important.

The Commissioner took the above factors into consideration in assessing causation during the investigation period in the Australian wind towers market.

7.3 Legislative framework

In any report to the Parliamentary Secretary under subsection 269TEA(1), the Commissioner must recommend whether the Parliamentary Secretary ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG. Under section 269TG, one of the matters the Parliamentary Secretary must be satisfied of in order to publish a dumping duty notice is that, because of the dumping, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

Subsection 269TAE(1) outlines the factors that the Parliamentary Secretary may take into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened. The Commissioner also has regard to the *Ministerial Direction on Material Injury 2012*.⁷²

7.4 Size of the dumping margin

In determining whether material injury has been caused by dumping, the Parliamentary Secretary may have regard to the size of the dumping margin, worked out in respect of goods of that kind which have been exported to Australia.⁷³

As outlined in section 5 above, the Commission has calculated a dumping margin of 4.8 per cent for CS Wind Korea.

On the basis that:

- the goods are capital intensive, and are not commodity products;
- price is only one factor taken into consideration when awarding tenders in the Australian wind towers market; and
- the Commission's price undercutting analysis, as outlined at section 7.6.1,

the Commissioner is not satisfied that the size of the dumping margin was determinative in decisions to award tenders for goods from Vietnam during the investigation period. Consequently, the Commission considers that the size of the dumping margin has not materially impacted the Australian industry's economic performance, including volumes, prices or profits.

Analysis of the effect of the dumping margin on prices in the context of the Commission's price undercutting analysis is included at **Confidential Appendix 9 – Price Undercutting Analysis**.

7.5 Volume effects

As noted above, the Australian industry has experienced injury in the form of lost sales volume and lost market share. The Australian industry claims this was due to dumped imports from Vietnam.

As outlined previously, over the investigation period:

- 267 towers over nine projects were available for tender, with the Australian industry being awarded a total of 76 towers from these projects. 139 towers were awarded to CS Wind Korea, and 52 towers were awarded to other foreign suppliers not subject to this investigation; and
- 77 embeds over two projects were available for tender, with the Australian industry being awarded a total of 2 embeds, with 75 embeds being awarded to CS Wind Korea. It should be noted that the total value of the embeds represented two per

⁷² *Ministerial Direction on Material Injury 2012* (27 April 2012), available at www.adcommission.gov.au.

⁷³ Subsection 269TAE(1)(aa).

cent of the value of all wind tower projects available for tender during the investigation period.

The Commission examined the four tenders for which the Australian industry was unsuccessful, and for which imports were supplied by CS Wind Korea, during the investigation period.⁷⁴ The following is a breakdown of the projects:

- 2015 - Ararat TBRs (GE project) – Australian industry bid for the supply of 50 of the 75 TBRs for the Ararat project. All 75 TBRs were awarded to CS Wind Korea.
- 2015 - Ararat towers (GE project) – GE solicited tenders for this project. Australian industry bid for various numbers of the 75 towers for the Ararat project. Australian industry was awarded 35 of the 75 towers. CS Wind Korea was awarded 40 towers.
- 2016 - Hornsdale towers stage 1 (Siemens project) – Australian industry bid for various numbers of the 32 towers on offer for stage 1 of the Hornsdale project. CS Wind Korea was awarded all 32 towers.
- 2016 - Hornsdale towers stage 2 (Siemens project) – Australian industry bid for various numbers of the 32 towers on offer for stage 2 of the Hornsdale project. CS Wind Korea was awarded all 32 towers.

As noted below in section 7.6.1, the Australian industry was not undercut on its bids for TBRs. The Commission therefore considers that undercutting (and therefore pricing) was not a determinative factor in the loss of these volumes by the Australian industry.

The Commission determined that there was undercutting on the tower projects in the order of 15-27 per cent. The Commission then analysed the contracts as if the goods were imported at un-dumped prices. The Commission concluded that the Australian industry would have remained at a competitive disadvantage, because it would still be undercut on the wind tower tenders.

At SEF 405 the level of undercutting was calculated on wind towers in the order of 10-23 per cent (on the basis of adding back to export price a dumping margin of 8.0 per cent). The Commission has recalculated the level of undercutting, on the basis of the revised dumping margin of 4.8 per cent (section 5.8 refers), in the order of 12-25 per cent.

Moreover, the Commission notes that a number of non-price factors were also present in the consideration of tenders by GE and Siemens during the investigation period, as outlined below at section 7.9.

On balance, the Commission does not consider that dumping of the goods from Vietnam during the investigation period has caused a material loss of sales volume and loss of market share to the Australian industry.

⁷⁴ Stage 3 of the Hornsdale project was lost during the investigation period. However, the exports and invoicing of these exports fell outside of the investigation period. As such, stage 3 of the Hornsdale project was not considered in the Commission's analysis.

7.6 Price effects

In the application, the Australian industry made the following claims regarding price effects:

- that prices from CS Wind Korea undercut the Australian industry's prices on the Hornsdale and Ararat Wind Farm Projects;⁷⁵ and
- KPE experienced price suppression and price depression in relation to the Ararat project.⁷⁶

The Act states that the Parliamentary Secretary may have regard to the difference between:

- (i) the price that has been, or is likely to be, paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
- (ii) the price that has been, or is likely to be, paid for goods of that kind exported to Australia from the country of export and sold in Australia.⁷⁷

7.6.1 Price undercutting

Price undercutting occurs when imported goods are sold at a price below that of the domestically produced like goods.

The Commission calculated a weighted average price undercutting margin for the investigation period and a price undercutting margin for each project.

The level of undercutting was examined by comparing the Australian industry tender price to CS Wind Korea's successful tender price, at a comparable level of trade.⁷⁸

The weighted average undercutting margin found was 22 per cent.⁷⁹

Ararat TBR project

The Commission has determined that the Australian industry's TBR prices were not undercut by imported goods from Vietnam at the comparable level of trade. This analysis is based on the verified data from the Australian industry, the exporter and importers.

While the Australian industry was not undercut by CS Wind Korea on this project, CS Wind Korea was still successful. This is consistent with the Commission's finding that

⁷⁵ OF indicated in its application that the prices it achieved in the supply of 20 wind towers for the Snowtown 2 project were depressed by the prices of the 70 wind towers awarded to CS Wind Corporation. No documentary evidence was provided to substantiate that the price depression regarding Snowtown 2 was in relation to goods from Vietnam. Nevertheless, it is conceivable that OF's prices were negotiated down in view of the fact that CS Wind Corporation was ultimately successful in supplying the 70 wind towers.

⁷⁶ The Commission notes that KPE indicated in the application that it had experienced price depression in respect of the Kiata project due to dumped imports from Vietnam. However, no documentary evidence was provided to show that KPE was competing by CS Wind Korea in relation to the Kiata project. KPE won all 9 towers of the Kiata project.

⁷⁷ Subsection 269TAE(1)(e).

⁷⁸ This was established by reference to the level at which Australian industry bid. This varied from project to project. For some projects it was a delivered to site cost while for others it was a free on truck price.

⁷⁹ Weighted on the basis of the FAS export price of the project.

non-price factors were determinative in the decision of OEMs to award projects to CS Wind Korea during the investigation period.

Tower projects

The undercutting margins for each tower project ranged between 15.2 per cent and 27.2 per cent.

The Commission's analysis is included at **Confidential Appendix 9 – Price undercutting analysis.**

7.6.2 The Commission's assessment – price effects

The Commission considered whether, in the absence of the dumping, the Australian industry would have been more price competitive on the relevant projects. In conducting this analysis, the Commission had regard to the size of the dumping margin and the likely price increases that would have occurred had the imports been sold at un-dumped prices.

In SEF 405, the Commission calculated that a level of dumping of 8.0 per cent, which is assessed at a FAS level, if redressed, would, all else equal, result in a price increase at the comparable level of trade of less than 6 per cent.

In this termination report, the Commission has reassessed these pricing effects on the basis of a level of dumping of 4.8 per cent assessed at a FAS level. This level of dumping, if redressed, would, all else equal, result in a price increase at a comparable level of trade of less than 4 per cent.

In view of this the Commission considers that the price being offered by CS Wind Korea would not be materially different and that the dumping would not account for the undercutting observed.

In SEF 405, the Commission assessed that in the absence of dumping (at a level of 8.0 per cent), the undercutting margins for tower projects would have remained at between 10 and 23 per cent and the weighted average undercutting margin would have remained at 17.4 per cent.

In this termination report, the Commission has assessed that in the absence of dumping (at a level of 4.8 per cent), the undercutting margins for tower projects would have remained at between 12 and 25 per cent and the weighted average undercutting margin would have remained at 19.2 per cent.

This level of undercutting would still provide a significant competitive advantage to CS Wind Korea.

The Commission notes that GE awarded 35 of the 75 towers required for the Ararat project to the Australian industry, despite the fact that the price offered by CS Wind Korea was lower. This outcome is consistent with the Commission's finding (at section 7.9) that non-price factors were determinative in the award of tenders during the investigation period.

Based on the information and evidence provided by GE regarding the qualification and bidding process, the Commission considers that KPE was not in contention for the full

amount of towers, such that, if prices were higher by 4 per cent,⁸⁰ this would not have resulted in KPE winning the entirety of the Ararat project.

The Commission has reviewed the evidence provided by the Australian industry regarding instances where it had to lower its prices in response to bids by Vietnam on the towers it was in contention for. The amount of revenue lost by Australian industry on the Ararat project (i.e. the amount that it reduced its bid by to secure the 35 towers) represents less than two per cent of the Australian industry's revenues during the investigation period.

The Commission is therefore satisfied that price injury caused by dumping suffered by the Australian industry was negligible.

Further details of the quantification of price injury is included in **Confidential Appendix 7 – Price and profit injury analysis.**

7.6.3 Confidential submission received in response to SEF 405 regarding price undercutting

A confidential submission was received from the Australian industry regarding non-price considerations, which included material suggesting that the undercutting analysis should be modified on the basis of submissions it provided in a confidential attachment to its 8 January 2018 submission.⁸¹

7.6.4 Commission's consideration of response to SEF 405 regarding price undercutting

The Australian industry was unable to provide a summary of the confidential submission it made regarding price undercutting given the highly sensitive nature of the information provided.

[Redacted text: Commission's consideration of confidential information submitted by the Australian Industry regarding undercutting]

In these circumstances, the Commission does not propose to alter its undercutting analysis.

7.7 Profit effects

As explained in sections 6.3 and 6.4 of this report, the Commissioner has found that the Australian industry has experienced injury in the form of reduced volumes, price depression and price suppression, however the injury caused by sales of the goods exported from Vietnam at dumped prices was negligible. It follows, that the injury experienced in the form of reduced profits and reduced profitability caused by dumping is negligible.

⁸⁰ In SEF 405 this was calculated as 6 per cent on the basis of a dumping margin of 8.0 per cent.

⁸¹ The rationale for the modification is requested as being confidential. The Commission has endeavoured to state the substance of the submission while preserving confidentiality.

7.8 Other economic indicators

As explained in section 6.6 of this report, the Commissioner found that the Australian industry has experienced injury in the form of reduced capacity utilisation, constrained capital investment, reduced ROI and reduced revenues.

As noted above, the Commissioner found that the volume and price injury caused by sales of the goods exported at dumped prices from Vietnam was negligible. Consequently, injury caused by dumping, experienced in the form of reduced capacity utilisation, constrained capital investment, reduced ROI and reduced revenues is also negligible.

The Commission considers that a number of factors other than dumping also negatively impacted upon the Australian industry's performance in relation to these economic indicators during the injury analysis period and investigation period.

7.9 Injury caused by factors other than dumping

In assessing whether there has been material injury to the Australian industry, the Commission considers whether injury is being caused by a factor other than the exportation to Australia of the allegedly dumped goods. The Commission does not attribute any such injury to the exportation of dumped goods (subsection 269TAE(2A)).

7.9.1 Factors other than price relevant to the purchasing decision by OEMs

The Australian industry submitted that price is the determinative factor in the award of wind tower tenders.⁸² Due to the nature of the goods, Siemens, GE and CS Wind Korea submitted that quality and the ability to deliver on time were more important than price in tender decisions.⁸³ Both Siemens and GE noted the financial penalties that they would face in the event of delays in meeting its deadlines for a turn-key wind farm project.

GE and Siemens were the only two OEMs that awarded tenders to Vietnam during the investigation period. These OEMs were responsible for five of the 11 projects (made up of nine wind tower projects and two embed projects) awarded during the investigation period, which represent over 60 per cent of the value of projects awarded during the investigation period.

Ararat project

In the case of Ararat, GE stated that to award a contract in its entirety a new, unproven supplier constituted an unacceptable commercial risk.

GE submitted that it was always risky to work with a new supplier because most new suppliers underestimate the amount of effort involved. It is for this reason that GE will not give a new supplier a whole contract. GE indicated that as KPE was a new supplier it was not in the running for all of the Ararat contract. As supporting evidence of this, GE

⁸² Australian Industry Application, p.24, document 001 on the EPR.

⁸³ Siemens submissions 19 July 2017 and 21 August 2017, GE submission 27 July 2017 and CS Wind submission of 17 August 2017 – documents 004, 010

provided correspondence from KPE indicating that it was only asked to bid for 30-33 towers in January 2015.⁸⁴

All else equal, GE indicated that it would prefer to award tower contracts to only one supplier, as it is more resource-efficient from GE's perspective and generally results in more consistent quality across towers.⁸⁵

GE made the decision (in consultation with the project developer and project sponsors) to involve local industry in order to provide community benefits and increase support for wind farm developments and renewable energy generally.⁸⁶

A further factor that GE claims was relevant to its decision to award 40 towers and 75 TBRs to CS Wind Korea was capacity. In its submissions to the Commission, GE stated that it had concerns pertaining to KPE's capacity to supply if it was awarded the full Ararat contract. GE advised that due to the number of production lines available to CS Wind Korea it was possible for it to run multiple lines simultaneously if it was required in order to meet tight timeframes.⁸⁷

GE stated that it took a calculated risk by sharing close to 50 per cent of the project requirements with a local supplier although the supplier had not worked with GE previously.⁸⁸ GE submitted that it would be an "unacceptable distribution of commercial risk" to award 100 per cent of a contract to a new supplier. Due to the nature of the goods, GE stated that quality and the ability to deliver on time were more important than price in tender decisions and that the price related negotiations that it had with Australian industry, were based on a comparison with its "should-cost" model and not a comparison with a price from CS Wind Korea.⁸⁹ In response to these submissions, the Australian industry advised that its negotiations with GE focused on price rather than non-price factors.⁹⁰ KPE responded to GE's claim that local manufacturers require longer lead times, which creates timeliness concerns, by advising that the 35 towers that it produced for Ararat were produced ahead of the required deadline.

Hornsedale project

Siemens submitted that it was a prudent commercial decision to utilise overseas global manufacturers who are not subject to the same uncertainties and utilisation/production concerns as domestic manufacturers.⁹¹

⁸⁴ GE Verification report, document, p.6, document 019, EPR 405.

⁸⁵ GE submission 27 July 2017, document 005, EPR 405.

⁸⁶ Ibid.

⁸⁷ GE Verification report, p.7, document 019, EPR 405.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Australian industry submission 30 August 2017, document 011, EPR 405.

⁹¹ Siemens submission dated 19 July 2017, p. 5, document 004 on EPR 405.

Siemens claimed that there was publicly available information accompanied by a reducing share price that cast doubt on the financial viability of OF's parent entity E&A Ltd and therefore its desirability of OF as a wind tower supplier.⁹²

Siemens advised that a "critical factor" in its decision not to award the Australian industry the Hornsdale contracts was its "problematic experience" during the Snowtown 2 project and the financial viability of OF's parent.

In response, the Australian industry submitted that the timelines for Hornsdale did not support an argument for "short lead times" that the Australian industry would not be able to meet.⁹³

The Australian industry also submitted that it had not received feedback from the OEMs concerning quality or capability. OF further stated that it has been producing wind towers since 2013 and had received positive feedback from Siemens concerning its work on Snowtown 2. Siemens submitted that its feedback was misrepresented by OF. OF also submitted that it was requested to quote for all three stages of Hornsdale which demonstrates Siemens considered OF capable of supplying towers for the Hornsdale project.⁹⁴

In response, Siemens submitted that OF's claim that it could have met the manufacturing schedule was incorrect and not supported by evidence. Siemens also stated that the feedback received from Siemens in the press release for Snowtown was published before Siemens had assessed the quality of the wind towers produced.⁹⁵

7.9.2 Commission's consideration of factors other than price relevant to OEM purchasing decisions at the SEF

The Commission was provided with the following evidence regarding the importance of non-price factors:

Timely delivery

- correspondence between an OEM and an Australian industry member regarding delays that had occurred in relation to supply in the past, which predate the tenders conducted during the investigation period, which support the OEMs contention that delivery may be an issue with certain suppliers;
- penalty clauses pertaining to wind farm projects during the investigation period, which support both OEMs claims of the importance of timely delivery by a manufacturer of wind towers in considering whether to award a tender; and
- correspondence from OEMs showing that delivery schedules, timing and run-rates were discussed as part of tender negotiations.

⁹² Siemens submissions dated 19 July 2017 and 21 August 2017, documents 004 and 010 on EPR 405.

⁹³ Australian industry submission 5 September 2017, document 012, EPR 405.

⁹⁴ Australian industry submissions dated 7 August 2017, 30 August 2017, 5 September 2017 and 24 October 2017. These are documents 008, 011, 012 and 018 on EPR 405.

⁹⁵ Siemens submission of 12 December 2017, document 030 on EPR 405.

Quality

- correspondence between an OEM and an Australian industry member regarding quality issues experienced in the past, which predate the tenders conducted during the investigation period, which support the OEMs contention that quality may be an issue with certain suppliers; and
- correspondence from the same OEM showing that an import supply schedule needed to be brought forward to address an Australian industry member's delay in meeting quality requirements.

Prequalification

- documentary evidence of the extensive and costly pre-qualification process (borne by OEMs) and which emphasises quality and the ability of a supplier to deliver to schedule; and
- correspondence confirming how long it would take to qualify a new supplier and how this would impact on delivery times and the risk that it created.

Reliability and risk

- correspondence regarding the financial health of OF's parent company during the time that certain tender processes were underway;
- publicly available information confirming concerns regarding the financial health of OF's parent company;
- correspondence confirming as a new industry supplier KPE was being asked to bid for roughly half the number of Ararat towers by GE; and
- correspondence demonstrating the splitting of tenders to accommodate Australian industry bids and run-rates during the investigation period, which support OEMs contentions that supplying large wind tower projects to new, previously unqualified supplier is an unacceptable commercial risk.

This evidence is contained at **Confidential Appendix 10 – Evidence relating to factors other than price relevant to OEM purchasing decisions.**

Based on the evidence available, the Commission recognises that factors other than price, namely considerations regarding timely delivery, quality, pre-qualification status, and supplier reliability and risk were factors considered by GE and Siemens' in assessing tender offers.

The Commission notes that CS Wind Korea has a global presence and has established long term relationships with Siemens and GE and benefits from economies of scale due to its larger operation and export activity.

The Commission considers that CS Wind Korea's size, specialisation and past experience in meeting GE and Siemens delivery and quality requirements provided it with a significant advantage when bidding for Australian wind tower projects during the investigation period.

The Commission further considers that GE's claim that it would not award the full Ararat contract to KPE in view of the risk of working with a new supplier⁹⁶ is reasonable, in view of the fact that during the investigation period none of the 11 projects awarded were awarded in their entirety to new suppliers.

The Commission understands that wind tower supply involves a tender and manufacturing process that may take 1-2 years to complete. Therefore, the Commission considers that certainty of supply would be viewed preferably by OEMs. As such, in the case of Hornsdale, the Commission considers that non-price factors, including concerns regarding the financial health of OF's parent would have also been a significant consideration, notwithstanding OF's efforts to address Siemens' concerns about the financial viability concerns of OF's parent entity.

As such, the Commission does not consider price to be the determinative factor, in the decision by either Siemens or GE to award wind tower projects to CS Wind Korea during the investigation period.

7.9.3 Submissions made to SEF 405 relating to factors other than price relevant to OEM purchasing decisions

The Australian industry submitted that while there are a number of factors that OEMs take into account when making their decisions to purchase wind towers, the Commission has failed to take into account any of the evidence provided by both KPE and OF in their submissions and as part of their verification visits.

The Australian industry also submitted that GE and Siemens' submissions and the weight given to them demonstrate a degree of *ex post facto rationalisation*. The Australian industry referred to this phrase in the context of a Federal Court case involving a dumping investigation into mobile garbage bins,⁹⁷ referring to passages of the judgment that indicate that a decision maker is "not bound to accept statements made by end users who have an interest in the market-price being as low as possible" and that there was a "degree of *ex post facto rationalisation* in the contractor's statement that it was prepared to pay more, rather than it being a contemporaneous record of the factors taken into account."

The Australian industry submitted that there does not appear to be evidence to support a contemporaneous record of the importance of non-price factors considered by GE or Siemens and given weight by the Commission.

Ararat project

In summary, the Australian industry submitted, specifically with reference to the Ararat project, that:

⁹⁶ As per GE's contention at the verification visit and GE's submission dated 14 September 2017. The visit report is document 013 and the submission is document 014 on EPR 405.

⁹⁷ This is the Federal Court decision in *Schaefer Waste Technology Sdn Bhd v Chief Executive Officer, Australian Customs Service* [2006] FCA 1644.

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- the Commission does not appear to have had regard to KPE submissions demonstrating that it could meet the delivery schedules, timing and run-rates to supply the full volume of towers for Ararat within the required timeframes;
- the Ararat project had a long lead time for delivery as shown through the construction updates previously submitted to the Commission;
- the Commission has given undue weight to a single piece of correspondence from KPE indicating that it was only asked to bid for 30-33 towers in January 2015;
- the Commission has not taken account of KPE submissions that demonstrate that there is no mention in any of the process for Ararat that GE was considering splitting supply for Ararat;
- pre-qualification was not an issue that would affect the number of towers that KPE was considered for in respect of Ararat;
- the Commission has not taken into account the fact that KPE has been supplying wind towers to the Australian market since 2000, and has supplied wind towers to six of the seven OEMs currently active in the market as such it should not be regarded as a “new supplier”;
- the Commission’s statement that during the investigation period none of the 11 (nine wind tower and two TBR) projects awarded during the investigation period were awarded in their entirety to new suppliers is disingenuous and seeks to draw an unreasonable link;
- the Commission does not appear to have had regard to KPE’s submissions demonstrating that the focus of discussions between KPE and GE was on price and cost reductions.

The Australian industry also provided correspondence between it and GE, including material not previously provided to the Commission, as a confidential attachment to its submission of 8 January 2018.

Hornsedale

In summary, the Australian industry submitted that:

- no regard appears to have been had to OF’s submissions demonstrating that timely delivery was not an issue raised during the tender processes or considered critical to Siemens consideration of OF that would disqualify it as a supplier of wind towers;
- no regard appears to have been had to the OF submission that despite the delay in delivery for Snowtown 2 the project was completed ahead of schedule (by some two months) and that there were no penalties incurred;
- no regard appears to have been had to the OF submissions demonstrating that it could meet the schedules, timing and run-rates to supply the full volume of towers for the Hornsdale projects;
- no regard appears to have been had to the OF submission demonstrating that issues of quality had been resolved, that OF had met all of Siemens’s extensive quality assurance requirements on Snowtown and that Siemens had issued a press release praising the quality of the OF towers;
- if there were issues of timeliness or quality there would be no point of Siemens engaging OF in the tender process by requesting multiple quotations that involve a great deal of time, effort and cost by OF and time, effort and cost by Siemens in assessing such quotations.

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- the delay in meeting quality requirements on Snowtown did not affect the project deadlines and no financial penalties were incurred.
- no regard appears to have been had to the OF submission showing that it had met prequalification for Snowtown as part of the manufacturing process and that prequalification was also a part of the manufacturing process for the Hornsdale tenders.
- prequalification was not raised as an issue that would disqualify OF from the tender process.
- no regard appears to have been had to OF's submissions that the financial health of OF's parent had been discussed and resolved at a meeting with Siemens.
- no regard appears to have been had that the issues were not current for Hornsdale I and were raised nine months after Hornsdale I had been awarded.
- no regard appears to have been had to OF's submissions that concerns regarding non-price factors had been resolved by Siemens and OF, leaving price as the determinative factor;
- the Siemens submissions and the weight given to them demonstrate a degree of *ex post facto rationalisation*.
- there does not appear to be evidence to support a contemporaneous record of the importance of non-price factors considered by Siemens and given weight by the Commission.

The Australian industry also provided a further confidential submission, including material not previously provided to the Commission, as confidential attachments to its submission of 8 January 2018.

7.9.4 Commission's consideration of submissions made to SEF 405 relating to factors other than price relevant to OEM purchasing decisions

The Commission considers that the contemporaneous record of negotiations for the Ararat and Hornsdale projects, is the most probative evidence available regarding the weighting that should be accorded to price and non-price factors in the consideration of these tender decisions.

Ararat

As noted above, further information regarding the Ararat negotiations, which included email correspondence between KPE and GE, was provided by the Australian industry on 8 January 2018.

The Commission has reviewed this information along with previous evidence and submissions provided in respect of the Ararat tender and makes the following observations:

- email correspondence between GE and KPE indicates what the lead times and delivery schedule was for the TBRs and towers required by the Ararat project;
- the information confirms that there was a discussion regarding what KPE could realistically produce; and
- email correspondence included a discussion of perceptions regarding KPE's capacity and its actual ability to produce at that time.

PUBLIC RECORD

The Commission notes that this information was exchanged between the negotiating parties one month prior to the award of the Ararat contract. This information contrasts with the information previously provided by Australian industry in submissions and statements made during the verification visit involving KPE regarding its capacity and capability to fulfil the entire Ararat contract. In addition, correspondence referred to in section 7.9.2 demonstrates the OEM's concern relating to the qualification of KPE in a short time frame while producing only 35 of the towers.

The Commission's analysis of this information indicates that KPE did not have the capacity to fulfil the entire Ararat contract according to the timeframes set out as part of the tender negotiation process by GE and based on the information that KPE provided to GE regarding its capacity at that time.

While KPE has submitted that the Ararat project had long lead times, as evidenced by the construction updates for the project, this does not change the contemporaneous record of negotiations as to the required timeframes.

The Commission acknowledges KPE's submissions regarding its history of supplying the Australian market for wind towers. Nevertheless, the Commission understands that the qualification process for each OEM is distinct and at the time that KPE was tendering for the Ararat project it was not qualified. As such it was regarded as a new supplier by GE. Internal email correspondence from GE, which is contemporaneous with the award of the tender, confirms that KPE was regarded by GE at that time as a new supplier.

In view of the above, and given the nature of the product, the unique requirements of OEMs and the time required to qualify a new supplier, GE's claim that it would not award the full Ararat contract to KPE in view of the risk of working with a new supplier is reasonable and logical.

The Commission has reviewed the correspondence between GE and KPE regarding the Ararat project that it has in its possession. The Commission remains of the view that non-price factors were determinative in GE's decision not to award the whole of the Ararat contract to KPE.

Analysis regarding KPE's capacity at the time it was bidding for Ararat is contained at **Confidential appendix 12 – Capacity analysis – KPE.**

Hornsedale

The Commission wishes to clarify that:

- email correspondence regarding the financial health of OF's parent company occurred during the course of negotiations on Hornsdale 2; and
- publicly available information regarding contract difficulties and losses E&A Limited was experiencing were announced to the ASX and reported in the media from before the conclusion of the Hornsdale 1 tender.⁹⁸

Australian industry has claimed that all delivery, quality and qualification issues had been resolved and that it had shown it could meet the qualification and run-rate requirements of

⁹⁸ See for example ASX announcement of 18 May 2015 – Ottoway Engineering – Contractual Issues.

Siemens so that these issues could not have impacted the consideration of bids by Siemens for the Hornsdale project.

The Commission wishes to clarify that the documentary evidence regarding delays, quality and run-rates includes an audit document provided by Siemens detailing the previous performance of OF at the conclusion of the Snowtown project.

This document indicates that delivery, quality, qualification and run-rate concerns had not been resolved to the satisfaction of Siemens and OF. This document concludes that certain audit procedures would need to be undertaken with respect to E&A in the future.

[Redacted text: confidential business information regarding Siemens' internal processes]⁹⁹

The Commission has re-reviewed the material provided by the Australian industry and Siemens and remains of the view that non-price factors were determinative in Siemens' decision not to award both stages of the Hornsdale project to OF.

7.9.5 Submissions made to SEF 405 regarding the assessment of material injury

The Australian industry submitted that material injury caused by the dumped imports from Vietnam should be assessed on the basis of KPE having a proven ability to supply a minimum of 51 towers for the Ararat wind farm and OF having a proven ability to supply a minimum of 16 towers for both stage 1 and stage 2 of the Hornsdale project.

7.9.6 Commission's consideration of submissions made to SEF 405 regarding the assessment of material injury

As noted in section 7.9.4, the Commission is of the view that non-price factors were determinative in the award of the Ararat and Hornsdale projects. The Commission further considers that the claims made regarding the calculation of material injury cannot be sustained on the basis of information that it has in its possession regarding Australian industry's capacity and run-rates.

7.9.7 Injury attributable to market volatility and uncertainty in demand

Subsection 269TAE(2A)(c) directs the Commissioner to consider whether contractions in demand or changes in patterns of consumption is a factor that has caused injury.

Siemens stated that the injury that Australian suppliers are experiencing is a natural result of a market in decline and not dumping. Siemens further stated that price depression, price suppression, declining prices and revenue were "symptoms of a contracting market".¹⁰⁰ GE submitted that capacity utilisation and capital investment constraints experienced by Australian industry were a consequence of reduced demand.¹⁰¹

⁹⁹ Confidentiality has been claimed over these attachments. The Commission has endeavoured to state the substance of these confidential material while preserving confidentiality.

¹⁰⁰ Siemens submission 19 July 2017, pp. 7-8 GE Submission 27 July 2017.

¹⁰¹ Ibid.

In particular, Siemens submitted that the volatility caused by the extended period of uncertainty “impacted the capabilities of, and confidence in, domestic wind tower manufacturers”.¹⁰²

On this basis, Siemens expressed the view that the injury analysis period is inappropriate due to the market volatility pre and post June 2015.¹⁰³

CS Wind Korea highlighted the findings of the 2016 Clean Energy Report which noted that market uncertainty combined with long project lead times “continued to wash through the industry.”¹⁰⁴

7.9.8 Commission’s consideration of injury attributable to market volatility and uncertainty in demand

While the Australian industry experienced injury in the form of reduced profit and profitability during the investigation period, the Commission observes that the Australian industry’s losses were more pronounced during 2013 and 2014, coinciding with market volatility and uncertainty in demand, and at a time when Vietnam’s share of the market was the lowest. It is further observed that for the years in which Vietnam’s share of the market grew (2015 and 2016), the Australian industry’s profitability recovered.

The Commission observes that sporadic and inconsistent demand in Australia has meant that local suppliers are more likely to need re-accreditation and required rehiring and retraining of staff. The Commission considers that given the long project lead times involved, the effects of market uncertainty continued during the investigation period, beyond June 2015, when Australian market uncertainty was resolved.¹⁰⁵

7.9.9 Injury arising from the competitiveness of the Australian industry

Subsection 269TAE(2A)(f) directs the Commissioner to consider whether the export performance and productivity of the Australian industry is a factor that has caused injury.

Siemens and GE claimed that the Australian industry had been injured by its lack of competitiveness stemming from its high cost base, sole focus on the Australian market, constraints regarding capacity, restricted geographic operation and inability to produce the full range of goods covered by the goods description.

High cost base

Both Siemens and GE submitted that the Australian industry is injured by its high cost base.¹⁰⁶ Siemens submitted that the Australian industry’s ties to BlueScope Steel Limited result in higher material costs than overseas competitors. Similarly, GE submitted that price depression and price suppression by the Australian industry was due to a high cost

¹⁰² Siemens submission dated 19 July 2017, document 004 on EPR 405.

¹⁰³ Ibid.

¹⁰⁴ Clean Energy Council, *Clean Energy Report 2016*, p. 54, as referred to in CS Wind Korea’s submission of 11 August 2017, p. 3. CS Wind Korea’s submission is document 009 on EPR 405.

¹⁰⁵ In June 2015, the Australian Government announced a RET target of 33,000 GWh, which is locked in until 2020.

¹⁰⁶ Siemens submissions 19 July 2017 and 22 September 2017, GE submissions of 27 July 2017 and 14 September 2017. These are documents 004, 017, 005 and 014 on EPR 405.

base and that the Australian industry's reduced profit/profitability is partly due to a high cost base and does not meet the definition of injury according to 269TAE(1).

Australian industry advised that it has taken steps to reduce its cost base and increase efficiencies.¹⁰⁷ It also submitted that a loss of stable volumes has put pressure on its costs.

Focus on Australian market

Siemens stated that the Australian industry's sales of wind towers has experienced contraction due to its sole focus being the Australian market. It noted that while there was a contraction in the Australian market during the injury analysis period there has been growth in the global market for wind towers.

Siemens and GE both highlighted the benefits that CS Wind Korea as a global supplier of wind towers experienced due to its larger volumes, continuity of production and risk mitigation through supplying various geographic markets.¹⁰⁸

CS Wind Korea submitted that the applicants' "misreading of and lack of readiness for the market changes had resulted in injury to Australian industry."¹⁰⁹

Capacity and run-rate

Both Siemens and GE claimed that the capacity of the Australian industry was insufficient for the requirements of the Australian market during the injury analysis period.¹¹⁰ CS Wind Korea claimed that the Australian market for wind towers in 2017 is 900 towers and Australian industry capacity is 300 towers.¹¹¹

Siemens further claimed that even if the Australian industry could satisfy nominal capacity requirements, Australian producers were at a disadvantage regarding their run-rate and ability to produce at a consistent pace. GE advised that due to multiple production lines the CS Wind Group was well placed to meet tight deadlines and to respond to changes in production schedules. In contrast GE noted that KPE had only one production line, when qualifying, and producing, in respect of the Ararat project. GE also advised that CS Wind could run different types of wind towers for multiple orders with different specifications at one time, whereas KPE could not and would need to change the tools in order to produce a different wind tower. Siemens also stated that an increase in wind tower demand in 2017 and 2018 shows that the Australian industry will not be able to meet demand.

Australian industry claimed that there was sufficient capacity for it to produce all of the wind towers required within the injury analysis period, as well as the majority of wind

¹⁰⁷ Australian industry submissions 7 August 2017, 30 August 2017 and 24 October 2017. These are documents 008, 011, 018 on EPR 405.

¹⁰⁸ Siemens submissions dated 19 July 2017 and 21 August 2017, GE submission dated 27 July 2017. These are documents 004, 010 and 005 on EPR 405.

¹⁰⁹ CS Wind Korea's submission of 11 August 2017, p. 3-4, document 009 on EPR 405.

¹¹⁰ GE submission dated 27 July 2017, Siemens submissions dated 21 August 2017 and 22 September 2017, documents 005, 010 and 017 on EPR 405.

¹¹¹ CS Wind submission dated 17 August 2017, document 009 on EPR 405.

towers going forward.¹¹² KPE also advised that capacity was not raised as an issue by GE during negotiations for Ararat.

KPE also requested the Commission consider Boko Rock as being demonstrable of its capability, efficiency and qualifications during the injury analysis period on the basis that this project involved a similar number of wind towers (67) and that GE accepted bids from KPE for the full number of towers. In response, GE stated that the Boko Rock towers were awarded to Chinese suppliers and did not involve Vietnamese exporters and that the tower sourcing decisions were made around August 2013, which is well outside of the investigation period. On this basis GE submitted that the supply of wind towers on the Boko Rock project bears no relevance to the competitive dynamics of the Ararat project.¹¹³

OF also claimed that it advised Siemens that it could increase production from two to four towers per week if required for Hornsdale. It also claims that even at two towers per week it would have been possible to complete manufacture of the towers four weeks prior to the first delivery by CS Wind Korea.

Geographic location

Siemens and GE submitted that the location of the Australian industry and high road transport costs in Australia make the Australian industry uncompetitive in respect of certain project locations.¹¹⁴ Siemens also claimed that the Australian industry has found it difficult to find skilled workers to relocate to the manufacturer's production facilities.¹¹⁵

KPE acknowledged that the location of a wind farm from KPE's manufacturing facilities may determine whether it can submit a viable tender. KPE agreed that in some situations, trucking costs and distances within Australia may make it uncompetitive. The Australian industry submitted however that the Ararat and Hornsdale projects were both in proximity to either KPE (Ararat) or OF (Hornsdale).

OF also stated that while there were some early difficulties accessing skilled workers during production for Snowtown 2, these issues were resolved.¹¹⁶

TCO application and ability to supply goods description

An exemption application (EX 061)¹¹⁷ was recently lodged by KPE in respect of existing dumping duties on Korean and Chinese exporters with respect to certain bottom sections of towers for wind towers classified to tariff heading 7308.90.00.

¹¹² Australian industry submissions dated 7 August 2017, 30 August 2017, 5 September 2017 and 24 October 2017. These are documents 008, 011, 012 and 018 on EPR 405.

¹¹³ GE submission 14 September 2017, document 014 on EPR 405.

¹¹⁴ GE submission dated 27 July 2017 and Siemens submission dated 21 August 2017, documents 005 and 010 on EPR 405.

¹¹⁵ Siemens submission dated 22 September 2017, document 017 on EPR 405.

¹¹⁶ Australian industry submissions dated 30 August 2017, 5 September 2017 and 18 September 2017. These are documents 011, 012 and 016 on EPR 405.

¹¹⁷ Exemption 061. This may be accessed on the public register at EX061.

This exemption has been sought on the basis that a TCO in respect of the goods (TC 1761480) is in force.¹¹⁸ The TCO was sought by KPE. TC 1761480 was granted by ABF on the basis that substitutable goods are not manufactured in Australia. The exemption sought is in respect of goods that are captured by the existing measures and the goods description for this investigation.

GE submitted that KPE's TCO application:

- undermines the validity of the scope of the goods under consideration for the purposes of the present investigation;
- suggests that KPE is wholly reliant upon import sources for the manufacture of the sections that meet the description of TC 1761480; and
- creates added complexity and commercial uncertainty to KPE's value chain, impacting directly upon considerations of capacity and capability.¹¹⁹

Siemens submitted that the bringing of investigation 405 is inconsistent with the TCO application.¹²⁰

CS Wind Korea submitted that the TCO application evidences KPE's incapacity, on the basis of the legislative criteria applied for granting a TCO.¹²¹ In addition, CS Wind Korea stated that the scope of the goods covered by TC and subject to exemption inquiry EX061 raise profound and fundamental questions about the Australian industry's capacity and capability to produce wind towers. In particular, CS Wind Korea claimed that the dimensions in TC 1761480 are very similar to the dimensions of certain sections exported by CS Wind Korea during the investigation. On this basis, CS Wind Korea asserted that through the TCO application and EX061, KPE has admitted its inability to handle the dimensional, weight and steel processing requirements of wind tower production as demanded by the Australian market.

No further submissions were made post SEF regarding this issue.

7.9.10 Commission's consideration of the competitiveness of the Australian industry

The Commission accepts that the Australian industry has different input costs and is vulnerable to fluctuations in local wind tower demand.

The Commission accepts that the number of towers that the Australian industry claims it could produce per annum during the investigation period would have met the nominal capacity requirements of the Australian market during the injury analysis period. However,

¹¹⁸ Published in Gazette Number TC 17/40 of 20 September 2017.

¹¹⁹ GE Submission dated 13 September 2017, document 014 on EPR 405.

¹²⁰ Siemens submission dated 12 December 2017, document 030 on EPR 405.

¹²¹ The core criteria for a TCO application is if on the day on which the application was lodged, no substitutable goods were produced in Australia in the ordinary course of business: section 269C. Goods are taken to have been produced in Australia in the ordinary course of business if: (a) a producer in Australia could produce substitutable goods, in respect of goods the subject of the TCO application, with existing facilities; and (b) the substitutable goods the producer could produce would be made-to-order capital equipment; and (c) in the 5 years before the application was lodged, the producer has made goods requiring the same labour skills, technology and design expertise as the substitutable goods the producer could produce; and (d) the producer is prepared to accept an order to supply substitutable goods in respect of goods the subject of the TCO application: 269E.

the Commission considers that the claim made by the Australian industry that it will be able to meet the demand for the majority of wind tower projects being tendered for in 2017 and 2018 is optimistic in light of the information provided by the Australian industry regarding its current capacity and projected wind tower demand.

The Commission has examined the impact that the geographical location of the Australian industry and how this may impact on awarding of tenders. Due to the dimensions of wind towers and high road transport costs in Australia, the distance of the wind farm from the location of manufacture may impact on the Australian industry's competitiveness in some cases. This is further supported by submissions to the Commission from OEMs as well as the Australian industry, which indicate that the Australian industry is not competitive for certain locations.¹²²

Evidence before the Commission supports the claim by OEMs that the Australian industry is less competitive in some geographical locations.¹²³ While this was not an issue during the investigation period,¹²⁴ the Commission notes that a substantial share of tenders being offered in 2017 and 2018 will be outside of the geographic reach of the Australian industry. This will be a potential source of injury to Australian industry depending on the location of the proposed wind farm.

The Commission understands that the exemption sought by KPE (EX061) relates to a wind tower project that was tendered and awarded during the investigation period.¹²⁵ As such, the Commission considers that the exemption sought raises issues concerning the Australian industry's ability to produce sections of certain dimensions, particularly wider bottom sections of towers. In view of the continued trend towards heavier nacelles requiring larger towers with wider bases and the significance of KPE's share of Australian production and capacity, the Commission considers that this casts doubt as to whether Australian industry alone is able to satisfy the full market specifications required for wind towers being tendered for.¹²⁶ The Commission further considers that the inability of a supplier to provide heavier wind tower sections could detract from its desirability as a potential supplier.

7.9.11 Imports from countries not under investigation

The White Rock project comprised of 70 wind towers with the majority being awarded to a supplier from China. The Commission also understands that two towers in respect of the Coober Pedy project were awarded to an unknown, foreign, supplier. Accordingly, none of the injurious effects stemming from these tenders has been attributed to dumped exports from Vietnam.

¹²² GE submission dated 27 July 2017, Siemens submissions dated 21 August 2017 and 22 September 2017, Australian industry submission dated 18 September 2017.

¹²³ Australian industry submission dated 18 September 2017.

¹²⁴ Within the injury analysis period, geographical location alone could not have been a deciding factor for tenders, given OF's proximity to Hornsdale and KPE's proximity to Ararat.

¹²⁵ The "White Rock" project.

¹²⁶ As part of the application, KPE and Haywards suggest that they are not able to produce these sections described in the TCO due to constraints with workshop capacity and plate forming equipment. They also state that there are not aware of any other fabricators in Australia with the ability to manufacture these sections. The Commission notes that there are examples of where KPE has worked either with Australian industry or where the tender has been split between KPE and an importer.

7.9.12 Competition between the Australian industry

Subsection 269TAE(2A)(d) directs the Commissioner to consider, amongst other matters, whether competition between foreign and Australian producers of like goods is a factor that has caused injury.

The Commission considers that the project locations of the Ararat and Hornsdale projects resulted in limited price competition between the Australian industry members.

7.9.13 Injury to OF caused by factors other than dumping

OF entered the Australian wind tower market in 2013 through the purchase of certain assets of RPG, a wind tower manufacturer that had been placed in administration. OF's parent entity E&A Limited made significant initial investments into the wind tower manufacturing division. Its first wind towers project was 20 wind towers for the Snowtown 2 project for Siemens.¹²⁷

The Commission considers that a new company can generally be expected to incur losses in the first few years of its operation due to start-up costs. This is confirmed by E&A Limited's 2014 Half Year Report, which notes that OF's start-up costs were greater than forecast and that the "demanding quality specifications for both fabrication and painting" were greater than anticipated.¹²⁸ The Commission also observes that commencement of OF's wind towers division was followed by weakened market demand.

7.10 Commissioner's assessment – causal link

The Commission has established that:

- the Australian industry experienced injury in a number of forms as outlined in chapter 6 of the report. In particular, the Australian industry experienced injury in respect of loss of sales volume and market share, price depression, price suppression, reduced profits and profitability, reduced sales revenue, reduced capacity utilisation, employment, wages and ROI, which was material in degree.
- non-price factors were determinative in the decision of Siemens and GE to award tenders to CS Wind Korea during the investigation period;
- there were a number of factors, other than dumping, that caused injury to, and impacted the economic performance of the Australian industry, within the injury analysis period which includes the investigation period; and
- in the absence of dumping, exports from Vietnam would remain at prices significantly below the Australian industry's cost.

The Commissioner is satisfied that dumping of the goods from Vietnam caused negligible injury to the Australian industry during the investigation period.

¹²⁷ See OF verification report, EPR 405 document 022.

¹²⁸ See E&A Ltd FY14 Half Year Report at p.iv. A copy of the report may be accessed [here](#).

8 CONCLUSION

Under subsection 269TDA(13), if the Commissioner is satisfied that the injury to an Australian industry that has been, or may be, caused by dumped exports from Vietnam is negligible, the Commissioner must terminate the investigation.

The Commissioner is satisfied that the goods exported from Vietnam were dumped, and that the injury to the Australian industry caused by those dumped goods is negligible. Therefore the Commission must terminate the investigation.

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