



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

**Anti-Dumping
Commission**

Exemption Inquiry Report: EX0061

Wind Tower Sections

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

Applicant:

Keppel Prince Engineering Pty Ltd

February 2018

Table of contents

- Abbreviations 3**
- 1. Summary and recommendations 4**
 - 1.1 Application of law to facts 4
 - 1.1.1 Authority to make the decision 4
 - 1.1.2 Initiation of inquiry 4
 - 1.2 Findings and conclusions 4
 - 1.3 Recommendation 4
- 2. Background 5**
 - 2.1 Original investigation 5
 - 2.2 Exemption application 5
 - 2.3 The exemption goods 5
 - 2.4 Exemption inquiry 5
 - 2.5 Legislative requirements for an exemption 6
- 3. The anti-dumping measures and exemption goods 7**
 - 3.1 The goods subject to anti-dumping measures 7
 - 3.2 Tariff classification 7
- 4. Goods subject to Tariff Concession Order 9**
 - 4.1 Assessment 9
 - 4.2 Conclusion 9
 - 4.3 Effective date of exemption 9
- 5. Attachments 10**

Abbreviations

Abbreviations	Full reference
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the Dumping Duty Act	Customs Tariff (Anti-Dumping) Act 1975
the duties	interim dumping duty and dumping duty.
exemption goods	the goods subject of the inquiry as described in section 2.3
Haywards	A.C.N. 009 483 694 trading as Haywards Steel Fabrication & Construction Crisp Bros. Structural Steel & Metal Work
Keppel Prince	The applicant, Keppel Prince Engineering Pty Ltd
Korea	Republic of Korea
Ottoway	Ottoway Fabrication Pty Ltd
Parliamentary Secretary	the Assistant Minister for Science, Jobs and Innovation and the Parliamentary Secretary to the Minister for Jobs and Innovation
REP 221	Anti-Dumping Commission Report Number 221, Dumping of Wind Towers Exported from the People's Republic of China and the Republic of Korea
the Tariff Act	<i>Customs Tariff Act 1995</i>
TCO	Tariff Concession Order

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by Keppel Prince Engineering Pty Ltd (Keppel Prince) requesting an exemption from interim dumping duty and dumping duty (the duties) under subsection 8(7)(b) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act) in relation to the export of certain wind tower sections from the People's Republic of China (China) and the Republic of Korea (Korea).

This report sets out the Commission's findings upon which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied on to make a recommendation to the Assistant Minister for Science, Jobs and Innovation and the Parliamentary Secretary to the Minister for Jobs and Innovation² on whether or not to exempt goods from the duties.

1.1 Application of law to facts

1.1.1 Authority to make the decision

Subsection 8(7) of the Dumping Duty Act sets out, amongst other things, the matters to be considered by the Parliamentary Secretary in deciding whether to exercise their discretion to exempt goods from the duties.

1.1.2 Initiation of inquiry

After examining the application, the Commission initiated an inquiry on 20 October 2017. The details of the initiation are contained in Anti-Dumping Notice (ADN) No. 2017/141.³

1.2 Findings and conclusions

The Commission has found that a Tariff Concession Order (TCO) under Part XVA of the *Customs Act 1901* (the Act) is in force in respect of the goods subject to the inquiry (referred to as the 'exemption goods' in this report).

The Commission considers the conditions of subsection 8(7)(b) of the Dumping Duty Act for granting an exemption are satisfied.

1.3 Recommendation

The Commissioner recommends to the Parliamentary Secretary that the exemption goods be exempted from the duties.

¹ All legislative references in this report are to the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Sciences, Jobs and Innovation. For the purposes of this inquiry, the Minister is the Parliamentary Secretary to the Minister for Jobs and Innovation.

³ Available at the Commission's website www.adcommission.gov.au.

2. Background

2.1 Original investigation

On 21 March 2014, the Commission completed an investigation into the alleged dumping of wind towers exported to Australia from China and Korea.

The then Parliamentary Secretary to the Minister for Industry accepted the Commissioner's recommendations and found that wind towers from China and Korea had been dumped and that the dumping had caused material injury to the Australian industry. Dumping duty notices were published on 16 April 2014.

The reasons for the Parliamentary Secretary's decision in this case are contained in Anti-Dumping Commission Report 221 (REP 221).

2.2 Exemption application

On 21 September 2017, Keppel Prince wrote to the Commission requesting an exemption from the duties in relation to its imports of the exemption goods.

Keppel Prince requests that the Parliamentary Secretary exercise his discretion to exempt the exemption goods from the duties on the basis that a TCO under Part XVA of the Act in respect of the exemption goods is in force. In their application, Keppel Prince submitted that TC 1761480, which is currently in force covering the exemption goods, provides grounds for the Parliamentary Secretary to grant an exemption from the duties.

2.3 The exemption goods

The goods the subject of this exemption inquiry (the exemption goods) are certain wind tower sections, having all of the following characteristics specified in TCO *TC 1761480*:

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

2.4 Exemption inquiry

On 20 October 2017, the Commissioner initiated an inquiry by publishing ADN No. 2017/141, which advised that an inquiry had been initiated, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

The Commission sent Australian industry participants, Ottoway Fabrication Pty Ltd (Ottoway), A.C.N. 009 483 694 trading as Haywards Steel Fabrication & Construction Crisp Bros. Structural Steel & Metal Work (Haywards) and BlueScope Steel Pty Ltd

(which was nominated by the applicant as one of the affected parties, the provider of major steel material inputs to wind towers), invitations to complete a '*Response to an Application for an Exemption from anti-dumping measures under the Customs Tariff (Anti-Dumping) Act 1975*' questionnaire and requested that responses be received by 23 November 2017.

No responses were received by the due date. Ottoway, a member of the Australian Industry, requested and was granted a one week extension of time to provide a response. However, no response was received by the extended due date.

2.5 Legislative requirements for an exemption

Keppel Prince has applied for an exemption under subsection 8(7)(b) of the Dumping Duty Act.

Subsection 8(7) provides:

(7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:

...

(b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

In determining whether a TCO in respect of the exemption goods is in force, regard is given to whether the exemption goods are correctly classified to the tariff heading to which the TCO is linked. Close scrutiny will then be made of the terms of the TCO to ensure that the exemption goods meet each of those terms. If the exemption goods do more than what is described in the TCO, but otherwise meet its terms and are classified correctly to the tariff heading to which the TCO is linked, legal authority supports the eligibility of those particular goods for that TCO.⁴

⁴ *Robert Bosch Australia Pty Ltd v Collector of Customs*, AAT, 29 August 1986; *Re Klockner Moeller Pty Ltd v Collector of Customs*, AAT, 18 January 1989.

3. The anti-dumping measures and exemption goods

3.1 The goods subject to anti-dumping measures

The goods exported from China and Korea covered by the current dumping duty notices are:

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

The 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. where 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 or external 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.

Goods specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classification table in Schedule 3 to the Tariff Act.

The general rate of duty is currently 4 per cent for goods imported from China and Korea under tariff subheadings 7308.

For goods imported under the tariff subheading 8502.31.10, statistical codes 31, the general rate of duty for goods imported from China and Korea is zero per cent.

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			- Towers and lattice masts	
	03	T	Tubular, whether or not tapered	
	04	T	Other	5% DCS: 4% DCT: 5%
7308.90.00			- Other	
			<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 mats</i>	
			<i>Other</i>	
Previous tariff classification				
The Commission notes that, as at 1 July 2015:				
<ul style="list-style-type: none"> • statistical code 02 pertaining to tariff sub-heading 7308.20.00 has been replaced with statistical codes 03 and 04; and • statistical code 61 pertaining to tariff sub-heading 7308.90.00 has been replaced with four statistical codes. Two of these (statistical codes 63 and 65) are relevant to the goods.⁵ 				

⁵ These changes are 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

4. Goods subject to Tariff Concession Order

4.1 Assessment

The Commission has found that, on 20 September 2017, the decision to grant tariff concession TC 1761480 was published in the *Commonwealth of Australia Tariff Concessions Gazette*. TC 1761480 has been operative from 9 June 2017 and corresponds to tariff classification 7308.90.00.

Accordingly, the conditions for granting an exemption are satisfied.

4.2 Conclusion

The Commission recommends that the Parliamentary Secretary exempt the exemption goods from the duties, under subsection 8(7)(b) of the Dumping Duty Act on the basis that a TCO in respect of the exemption goods is in force.

4.3 Effective date of exemption

Keppel Prince's application for exemption, examined in this report, was made on 21 September 2017.

The timing in relation to the granting of an exemption is at the discretion of the Parliamentary Secretary. Subsection 8(8A) of the Dumping Duty Act provides that if an exemption is given because of an application for exemption, then the date of effect must not be earlier than the day the application is made.

The Commission recommends that the exemption, if granted, have effect from the date of the application, that is, on and from 21 September 2017.

5. Attachments

Attachments	Confidentiality	Title	Electronic public record identifier
Attachment 1	Not confidential	Application	001