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11 September 2013

The Director
 Operations 1
 Anti-Dumping Commission
 5 Constitution Avenue
 Canberra ACT 2600

Our ref: ATH
 Matter nos: 9565878

By email: Operations1@adcommission.gov.au

Dear Sir or Madam

**Power Transformers exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam
 Investigation into alleged dumping
 Submission by Hyosung Corporation to Consideration Report Number 219
 Non-Confidential Version**

We refer to our previous correspondence and discussions and confirm we act on behalf of Hyosung Corporation ("**Hyosung**"). We have now been instructed to make the following submission in relation to the Consideration Report. Please note that this submission does not exclude further comments in the Exporter Questionnaire and otherwise throughout the Investigation.

For the purposes of this response, all defined terms have the same meaning as set out in the attached Schedule of Definitions.

1. Executive Summary

- (a) Hyosung appreciates that the current Investigation is extremely complex given the nature of the GUC, the procedures undertaken by purchasers prior to decisions to purchase their goods and the steps taken to determine final configuration of goods and price.
- (b) Hyosung is of the view that there will be associated difficulties with the calculation of Normal Value and Export Price which should therefore be calculated based on actual goods produced and exported to Australia.
- (c) Hyosung believes that there needs to be significant additional disclosure by the ADC as to:
 - (1) allegations by Wilson as to sales practices by Hyosung in the application and its Consideration Report; and
 - (2) the actual figures adopted by Wilson in its calculations of Normal Value, Export Price and dumping margins.

Given that this material either relates to Hyosung's business or the "construction" of values and margins which do not rely on confidential material then there is no reason why there should not be full disclosure.

- (d) Even after resolving issues with Normal Value and Export Price, Hyosung is of the view that there are other causes for any alleged material injury suffered by Wilson. Contrary to the representations by Wilson to the ADC in the Application and referred to in the Consideration Report, the experience of Hyosung in Australia and overseas is that price is by no means the sole determinant of a decision by a purchaser to acquire a Power Transformer. In the view of Hyosung, the vast majority of purchasers make their decisions based on the total evaluated cost (after consideration of energy losses), not the bid price. They also consider product specifications, delivery terms, lead times, prior performance, quality, reliability, technical support and warranty when deciding which bidder to select for a contract award. In short, the decision to award a contract to a producer involves a complex matrix of consideration that varies from purchaser to purchaser which is not surprising considering the extremely high average price of a transformer. Such Power Transformers are required to perform a critical energy transmission function, which requires absolute reliability under high stress conditions. Accordingly, utility companies cannot afford to simply buy the cheapest product that is offered, and Hyosung is of the view that they almost never acquire Power Transformers on that basis. Further, Hyosung is of the view that Wilson has not competed with it for any of the tenders during which Hyosung has participated. The failure of Wilson to pre-qualify for many of the tenders (which bars them from even submitting their bids) was for other reasons not related to price. Further information will be provided below and in the response to the exporter questionnaire.

2. Hyosung's business in Australia

Hyosung produces Power Transformers at its Changwon, Korea, plant. The plant is capable of producing standard step up/step down Transformers up to 1100MVA with voltage ratings up to 765KV. High rated Power Transformers from 160MVA to 600MVA constitute a significant percentage of Hyosung's total sales in Australia. Hyosung has sold the Power Transformers through a tender process, whether that operated on an official or unofficial basis. That process included pre-qualification stage, RFI submission stage and final RFT submission stage. The pre-qualification stage is generally considered by the purchasers for assessing each supplier's capabilities, especially when they are purchasing a high rated Power Transformer as reliability becomes a critical issue. A valuation criteria generally comprised of Quality Assurance Structure, design parameters, design capability, numbers of engineers, locations, track record, local support and many other aspects taken into account by the potential purchasers of the relevant Power Transformers. After the pre-qualification stage, only a handful of suppliers are invited to submit a response to the purchaser's RFI or RFT. In many successful tenders, Hyosung was first pre-qualified in accordance with the purchaser's requirements and was awarded an opportunity to submit a response to the RFI or RFT. All these processes were completed officially but without any access to information relating to other participants. Hyosung could not gain access to other participants' prices, design details or even their identity. For example, even if Hyosung is successful on a tender due to a short lead-time, Hyosung cannot establish comparisons to other tenderers. In the experience of Hyosung, this rule generally applies in the same manner to every potential purchaser during the tendering process.

3. Section 4.2 of the Consideration Report - Goods and Like Goods

- (a) Hyosung notes the description of the GUC in the Consideration Report at Section 4.2.1 and is of the view that the crucial issue in considering the nature of "Like Goods" in the Investigation relates to capacity and not voltage. Hyosung will take into account the specific capacity issues associated with the GUC and complete all responses accordingly.
- (b) Hyosung also notes that Distribution Transformers are excluded from the Investigation (pursuant to Section 4.2.1 of the Consideration Report) and will respond to requests for information from the ADC on that basis.

4. Section 7 of the Consideration Report - Reasonable Grounds - Dumping

Hyosung wishes to make the following comments in response to the issues raised in Section 7 of the Consideration Report:

- (a) In relation to tenders awarded during the Investigation Period, Hyosung believes that the invoice date associated with the sale and purchase of a Power Transformer is the appropriate date to best represent the material terms of sale. Given the long lead times in decisions to purchase the GUC and the variations which could take place to the nature of the GUC being constructed and the terms of other commercial arrangements, the relevant invoice date is the only entirely accurate representation of the value of the sale of a Power Transformer.
- (b) If a date of sale reflects a date prior to the physical shipment of goods from the country of export, Hyosung does not believe it is reasonable to consider that the goods are taken to have been exported at that date of sale. Exportation of goods requires physical movement of the goods and the terms of agreement on sale in respect of such technical and complex equipment can often take place over a significant period of time before the date they are actually exported. All relevant legislative and other direction suggest that the physical date of export of the goods is the relevant date.
- (c) Hyosung agrees with the position of the ADC in section 7.4 of the Consideration Report that calculating Export Prices and Normal Values for each Power Transformer is the most appropriate method to determine if the GUC have been exported to Australia at dumped prices.
- (d) In respect of the methodology and outcomes from the calculation of Export Prices and Normal Values (Sections 7.5 and 7.6 of the Consideration Report), Hyosung advises further that it would be pleased to receive details of the actual calculation of Normal Values and Export Prices undertaken by Wilson as a basis upon which the ADC made its determination that there was prima facie evidence of dumping. While the ADC has provided the methodology by which the Prices (and therefore the dumping margins) could be established, Hyosung believes that, as a matter of natural justice and proper practice, it should be provided with the actual calculations. This has also been referred to in paragraph 2(c) above.
- (e) We note that in Section 7.6 of the Consideration Report, in constructing a Normal Value, Wilson commenced with a price it submitted in an unsuccessful bid. Hyosung is of the view that this is an unreliable basis given that:

- (1) it was unsuccessful;
- (2) the lack of success may have been for other reasons other than price; and
- (3) details and verification of the price have not been provided to the parties for review.

Hyosung is of the view that if the ADC proposes to proceed on the basis of actual sales of individual Power Transformers, then the appropriate process to adopt would be the actual cost to produce and sell by our client, rather than relying on the price set by Wilson in an unsuccessful tender for different goods.

5. Section 8 of the Consideration Report – Material Injury Caused by Dumped Imports

- (a) Hyosung would draw the attention of the ADC to the commentary in paragraph 2 above regarding the views of Hyosung as to the reasons for the alleged material injury suffered by the Applicant. Further details are set out below.
- (b) In the Consideration Report, the ADC has indicated that it will consider the impact of the cost to refurbish property in Victoria undertaken by the Applicant as a potential cause of injury. Hyosung looks forward to the assessment by the ADC of the effect of this expenditure and would question why, if the Applicant was claiming it had suffered injury of the course of a number of years, it would undertake such expenditure.
- (c) Hyosung requests that the ADC undertake an assessment of the effect of the recent and continuing depreciation of the Australian Dollar including its impact on the potential future sales of the Applicant. As the relative price of exported goods increases with the depreciation of the Australian Dollar this, presumably, would make the product of the Applicant as relatively less expensive compared to that provided by exporters.
- (d) In undertaking any assessment as to the material injury occasioned by allegedly dumped exports, Hyosung requests that the ADC specifically address any alleged impact from exports from each exporter from each of the countries subject to the Investigation so that specific alleged injury can be identified (if any). The presence of dumping and material injury caused by one exporter should not translate to the imposition of measures against all exporters. Given that specific assessment is to be undertaken in relation to each GUC exported then the alleged injury from specific exports can be assessed.

For example, according to information secured by Hyosung, ABB Vietnam, ABB Taiwan and ABB Thailand are probably the most regular competitors to the Applicant as those entities focus on Power Transformers with 120 MVA or less which are used by most distribution utilities.

- (e) In undertaking any assessment of alleged material injury, Hyosung requests that the ADC take into account paragraphs 6 and 6.2 of the Dumping Policy Statement reflecting that the Minister has an unfettered discretion not to impose measures. Further, in reporting findings and recommendations to the

Minister, the ADC is now required to include an assessment of the expected effect that any measures might have on the Australian market for the GUC and like goods manufactured in Australia and in particular any potential significant impacts on this market. This would include an assessment of the expected effect of the measures on market concentration and domestic prices and would also require the ADC to report on any claims regarding impacts on downstream industries. It is the view of Hyosung that the imposition of measures would have extremely disadvantageous effects on the Australian industries which use the GUC in terms of making the product more expensive, which costs would ultimately be passed on to and borne by Australian consumers of electrical power.

- (f) Hyosung requests that the ADC take into account the fact that the Australian market for GUC has generally fallen over the last few years (as set out in material in the Consideration Report) for a variety of other reasons. One of those reasons would appear to be as a result of the increased reliance by users of electrical power of the availability of solar power which reliance will increase over time. Accordingly, the significant impact in the changes in consumption of electrical power and use of alternative sources of electrical power needs to be properly incorporated into the injury aspects of the Investigation.
- (1) For these purposes, Hyosung would refer to the following available research. There has been a recent decrease in energy consumption as indicated in the graph set out in section 3-3 of the Forecasting Report. According to the Forecasting Report, the total energy consumption fell on average by 1.7% from 2009 to 2012. Again, according to the Forecasting Report, the main factors contributing to such decreased consumption as set out in section 3-1 of the Forecasting Report are as follows:
- (A) A slower than expected forecast increase in consumption from large industrial customers. From 2011-12 to 2012-13 energy use in the large industrial sector is expected to decline by 3%.
 - (B) The significant penetration of roof top PV. South Australia has the highest penetration of roof top PV of all the regions. The impact of roof top PV penetration is expected to offset mass market energy. In 2011-12, roof top PV systems are estimated to have generated 1,702 GWh or 0.9% of estimated annual energy. Over the 10 year outlook period of the Forecasting Report, the average annual growth rate of roof top PV energy is expected to be 13.2%. More information is set out in the Roof Top PV Information Paper issued by the AEMO.
 - (C) Reduced manufacturing consumption in response to the high Australian dollar. An expected increase in cheaper imports is expected to partially offset domestic growth.
 - (D) Changes in the economic outlook. Expected lower energy forecasts are consistent with changes in economic forecasts

from the 2011 estimates in particular a moderation in gross domestic product especially in the short term. In 2011-12 when the Australian economy was expected to grow at 2.8%, the 2011 forecast an equivalent higher growth of 3.6%. Over the 10 year outlook period annual average growth rates are forecast to be similar (3% for the Forecasting Report and 2.9% for the 2011 ESOO).

- (E) Increasing (real) residential electricity prices. In 2011-12 and 2012-13, electricity prices are expected to increase and then (on average) to moderate from 2013-14 until the end of the outlook period for all regions of the NEM.
- (2) According to the Development Plan, the 20-year forecast for capital invested in transmission and distribution networks for the NEM has decreased from \$72 billion in 2010 to \$51 billion in 2012 (see page 2-3 of the Development Plan).

According to the Development Plan, the main reasons attributable to such downward forecasts are as follows as set out in section 2-3 of the Development Plan:

- (A) Following the interconnector upgrade of the Haywood facility, (currently at the final stage of a regulatory test transmission) further upgrades involving individual interconnector augmentations are not required because of lower projected demand growth. On the basis of delivering net market benefits, the need for further increase in power transfer capacity between regions has not emerged for the outlook period of the Development Plan.
- (B) Under least-cost expansion plan, demand growth in each zone is largely met by new generators in the same zone resulting in less need for intra-regional transmission augmentations.

As a result, the need for significant transmission augmentation can be avoided if new generation development occurs according to the least-cost expansion plan.

6. Basis for Imposing Any Interim Dumping Duty

In Section 7.7 of the Consideration Report, the ADC has disclosed dumping margins calculated by Wilson, but not the basis on which they were calculated or the ADC's view on that approach. Hyosung is of the view that in any assessment of interim dumping duty payable (which Hyosung does not concede should be payable), the appropriate approach would be to adopt the "ad valorem" methodology to be reviewed (if needed) according to individual Power Transformers.

7. Consideration of Discretionary Factors

Please see our comments above in paragraph 6 in respect of the consideration of discretionary factors by the ADC in any recommendation to the Minister as to the application of any measures.

8. Provisional Measures

- (a) Hyosung is aware that the ADC has the option to issue a Preliminary Affirmative Determination (ie usually impose provisional measures) on the import of the GUC at any time after 60 days from the initiation of the Investigation pursuant to section 269TD of the Act
- (b) Hyosung is of the view that there are no grounds to support the imposition of such provisional measures for the following reasons.
- (1) Given the significant complexity in assessing Normal Values, Export Prices and any potential interim dumping duty, it would be inappropriate for the ADC to impose any provisional measures until it has received the answers to all Exporter Questionnaires, other questionnaires from importers and all or other inquiries are completed and verification has been completed. Hyosung also believes it would also first require the publication of a Statement of Essential Facts and any responses to that Statement of Essential Facts. Anything imposed prior to that time would be entirely speculative and be an unsound basis upon which to impose preliminary securities.
 - (2) The imposition of provisional measures would create significant confusion in the Australian market for the GUC. Potential purchasers would be unsure of the effect of any such securities on the potential purchase price for the GUC. To the same effect, it would be an unfair imposition on exporters such as Hyosung to accommodate (either by itself or through its customers) for securities given that after a detailed assessment, interim dumping duties may not be applied, or the Investigation may be terminated against any one of a number of exporters. That would create a significant disadvantage to our client (among others) which would far outweigh any alleged material injury by Wilson, taking into account that Wilson alleges it has been suffering material injury for a number of years but has waited until now to initiate the Investigation.
 - (3) The imposition of provisional measures by itself could have an adverse effect on the reputation and market of Hyosung.
 - (4) There is nothing in the Application or the Consideration Report reflecting specific urgency required in this matter to support the imposition of provisional measures.

Accordingly, Hyosung is of the view that the basis for the imposition of provisional measures is not satisfied in this Investigation.

9. Effect of US decision

The Consideration Report refers to proceedings in the United States regarding the imposition of duties on GUC exported to the United States. However, given that the United States proceedings included an assessment of Normal Value on the GUC on different basis, Hyosung requests that the ADC exercises particular care in relying on the results of the Investigation in the United States.

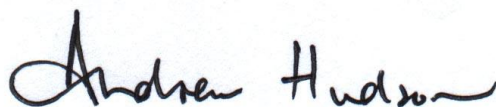
10. Conclusion

At this preliminary stage, for the reasons set out above, Hyosung is of the following view:

- (a) The ADC needs to undertake significant additional assessment of various factors associated with the Investigation including review of the basis to calculate Normal Values and Export Prices. That should be undertaken with close involvement by Hyosung.
- (b) Hyosung is of the view that any material injury alleged to have occurred to the Applicant has been occasioned by factors other than the alleged dumped prices charged by exporters. Indeed, Hyosung reminds the ADC that it has requested that specific attention be paid to exports from Hyosung in determining whether they have caused material injury to the Australian industry.
- (c) The ADC should provide additional disclosure as to actual calculations of Normal Value, and Export Price by Wilson and claim of injury so far as they relate to Hyosung. Failure to do so jeopardises the ability of Hyosung to properly respond to the allegations in the Investigation.
- (d) It would be inappropriate to apply provisional measures to the GUC pending a full review of the complex issues associated with the Investigation, the provision of all required information and verification of that information together with an opportunity for the parties to assess and respond to any preliminary conclusions reached by the ADC.

As discussed in our earlier correspondence and in our recent meetings, Hyosung will be completing an exporter questionnaire and will make itself available for a verification visit by the ADC at the earliest opportunity. In addition, Hyosung is prepared to work with the ADC as required by the ADC to ensure that an appropriate Investigation is conducted.

Yours faithfully
Hunt & Hunt



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Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901* (Cth).
- (b) "**AEMO**" means the Australian Energy Market Operator ABN 9 072 010 327.
- (c) "**ADC**" means the Anti- Dumping Commission.
- (d) "**ADN**" means the ADC's Anti-Dumping Notice No 2013/64.
- (e) "**Application**" means the application dated 4 July 2013 by Wilson seeking publication of dumping duty notices in respect of Power Transformers exported to Australia from the PRC, Indonesia, Korea, Taiwan, Thailand and Vietnam as referred to in the ADN.
- (f) "**Australian Industry**" has the same meaning as in the Application and in the Consideration Report.
- (g) "**Consideration Report**" means Report Number 219 issued by the ADC in response to the Application.
- (h) "**Customs**" means the Australian Customs and Border Protection Service.
- (i) "**Development Plan**" means the 2012 National Transmission Network Development Plan for the NEM issued by the AEMO.
- (j) "**Dumping Investigation**" means the investigation into alleged dumping of Power Transformers arising out of the Application.
- (k) "**Dumping Policy Statement**" means the "*Streamlining Australia's Anti-Dumping System. An Effective Anti-Dumping and Countervailing System for Australia*" issued by the Australian Government, June 2011.
- (l) "**ESOO**" means the Electricity Statement of Opportunities issued by the AEMO.
- (m) "**Export Price**" has the same meaning as in the Act.
- (n) "**Forecasting Report**" means the National Electricity Forecasting Report for the NEM for 2012 issued by the AEMO.
- (o) "**GUC**" means those Power Transformers the subject of the Application.
- (p) "**Indonesia**" means the Republic of Indonesia.
- (q) "**Investigation**" means the investigation by the ADC in response to the Application.
- (r) "**Investigation Period**" has the same meaning as in the Consideration Report
- (s) "**Korea**" means the Republic of Korea.
- (t) "**Material Injury Direction**" means the ministerial direction on material injury dated 1 June 2012 published in Australian Customs Dumping Notice No. 2012/24.
- (u) "**Minister**" means the Minister for Home Affairs or such other Minister who is provided with responsibility for making decisions on the imposition of measures in the Investigation or the Dumping Investigation.

- (v) **"MVA"** has the same meaning as in the Consideration Report.
- (w) **"NEM"** means the National Electricity Market.
- (x) **"Normal Value"** has the same meaning as in the Act.
- (y) **"Power Transformers"** means power transformers as described in the Application, the ADN and the Consideration Report.
- (z) **"PRC"** means the People's Republic of China.
- (aa) **"Public File"** means the public file maintained by ADC in relation to the Investigation.
- (bb) **"PV"** means photovoltaic.
- (cc) **"RFI"** means Request for Interest.
- (dd) **"RRT"** means Request for Tender.
- (ee) **"Vietnam"** means the Socialist Republic of Vietnam.
- (ff) **"Wilson"** or **"Applicant"** means Wilson Transformer Co Pty Ltd being the applicant for the measures.