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17 October 2013

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

Our ref: ATH
 Matter no: 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
 Further Submission by Hyosung Corporation to Consideration Report Number 219
 Non-Confidential Version**

We refer to our letter of 11 September 2013 ("**Letter**") to the ADC on behalf of Hyosung Corporation ("**Hyosung**") in response to the Consideration Report.

We have now been instructed to make the following submission to supplement the matters raised in the Letter regarding the alleged material injury suffered by the Applicant. Please note that this submission does not exclude further comments in the Exporter Questionnaire and otherwise throughout the Investigation.

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

1. The tender process and decision making criteria used in the Australian market

In paragraphs 1(d) and 2 of the Letter Hyosung provided a detailed explanation of the tender process that Hyosung has experienced in Australia and overseas. The commentary demonstrates that the bid price is by no means the sole determinant of a decision by a purchaser to acquire a Power Transformer but rather the vast majority of purchasers make their decisions based on the total evaluated cost which takes into account a variety of other factors.

As such, any material injury alleged to have occurred to the Applicant has been occasioned by factors other than the alleged dumped prices charged by exporters.

1.1 Overview of the Australian tender process and decision making criteria

We have spoken to a number of Hyosung's Australian clients that have purchased GUCs during the Investigation period. They have provided further clarity of the following:

- (a) the way in which the Australian market conducts its tender process in purchasing GUCs; and
- (b) the criteria on which a decision to award a contract is made.

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Notwithstanding that they wish to remain anonymous at this point in time, one of Hyosung's clients has provided comments in support of Hyosung's position that its exports to Australia have not caused material injury to the Australian Industry for the GUCs.

1.2 Tender process

Hyosung's client has provided the following explanation of the steps which it undertakes during the tender process to acquire GUCs. We are instructed that these steps reflect the practices of other purchasers of CUGs.

- (a) Business requirements and technical specifications are developed.
- (b) A Procurement Strategy is developed which addresses the procurement objectives, market approach, market research and risks. At this stage the type of contract is determined (for instance, whether it is a standing offer or a once-off purchase).
- (c) A cross-business Buying Team is created. For instance, this can include representatives from Procurement, Engineering, and Project Management teams.
- (d) Depending on the Procurement Strategy, purchasers will apply a mixture of traditional open tendering and / or selective tendering in the majority of tenders. Offers are sought globally based on internal market research.
- (e) The Buying Team clarifies and assesses the offers made as independent experts (for instance, the Engineering team will assess the Technical parts of the offers). The Buying Team will work together to arrive at a procurement solution that mirrors the approved Strategy.
- (f) The Buying Team will undertake contract negotiations and select the most appropriate offer.
- (g) A recommendation is prepared, and following approval a contract is formed for execution.

This is an extensive and technical process which demonstrates that a significant amount of work is undertaken to ensure the client's technical and engineering specifications are met irrespective of the bid price.

1.3 Decision Criteria

Further, the same client also commented that procurement decisions aim at achieving the best value for money by using a Value Index methodology (a calculation of the present value of the expected future cash flows minus the cost).

The decision to award a contract is based on the following three main criteria:

- (a) Technical matters (compliance to the specification, quality and Occupational Health and Safety standards);
- (b) Commercial matters (compliance to conditions of contract, risk and value-adds); and

(c) Financial matters.

The Technical and Commercial criteria are then scored and combined, and divided into the total cost amount, therefore providing a balanced "value for money" indication.

These comments further support Hyosung's position that price is not the sole determinant but rather the vast majority of purchasers make their decisions based on the total evaluated cost (as explained by Hyosung in paragraph 1(d) of the Letter). As a result, Hyosung maintains that it is a number of factors and not the alleged dumped prices charged by exporters that have caused any alleged material injury to the Applicant.

We have outlined the basis for this position below.

1.4 The bid price is not the determining factor in awarding a contract

Based on the comments provided by an Australian purchaser of GUCs, the overwhelming determinants in deciding which company to award a contract are the technical and commercial criteria. The bid price of a GUC is only considered once those two criteria are satisfied.

As such, the determining factor is not the motivation to simply acquire the cheapest price offered by competing producers of GUCs but rather it is the product that can offer the best value for money once the technical and commercial components are satisfied that procures the contract.

Each Australian purchaser has specific technical and commercial requirements that the producers of GUCs must meet that are unique to each project. The Australian tender process seemingly does not have a blanket technical pre-qualification basis that a producer must meet in order to be involved in the tender process as is the case in markets in other countries. One of the consequences of a market that uses a blanket technical pre-qualification basis is that a majority of competing producers would already meet this basis and as such, price becomes the determining factor.

This is in contrast to the Australian tender process which, based on the above comments, assesses each participant of the tender process on criteria that is relevant to the unique project. The influence of the bid price is not made in the early stages of the process, but is the final factor considered to enable the purchaser to make an ordinary commercial decision to provide the greatest value for money once the unique specifications are met.

Hyosung is of the view that any evaluation of bidding events in which Hyosung was involved during the Investigation Period will find that the bid price was not the determining factor but rather it was the value for money once the purchaser's technical and commercial criteria were satisfied that influenced the purchasers in awarding contracts to Hyosung.

1.5 Information regarding the competition in the tender process is not disclosed

According to the Australian Industry Visit Report, the Applicant has stated that it is now customary for purchasers to provide bidders with feedback on their initial bid and do a “best and final offer” round.

We reiterate the point made by Hyosung in the Letter that from its experiences in the Australian tender process, Hyosung has not been provided with any feedback or access to information relating to other competitors (global or Australian) during or after the process. Hyosung has been unable to gain access to other participants' prices, design details or even their identity. Even if Hyosung has been successful on a tender due to a short lead-time, Hyosung has been unable to gain feedback of its involvement in the bidding process in relation to its competitors.

Further, we reiterate the point made in the Letter that Hyosung is of the view that the Applicant has not competed with it for any of the tenders during which Hyosung has participated.

The tender process in markets in other countries is commonly open, particularly for public utilities. In these circumstances, an awareness of the price being offered by the competition would likely result in price being driven down. Further, by knowing who the competitors are in the process prior to deciding to prepare a bid, producers of GUCs would be more likely to take into account various factors, including who the other likely bidders are on a particular project given the time and cost involved in making a bid. These differences increase the extent of price competition over other influencing factors in contrast to the Australian tender process where the tender process in Hyosung's experience is closed.

2. Other potential causes of material injury

2.1 Decreased demand for electricity

According to the Australian Industry Visit Report, the Applicant stated that the demand for electricity in Australia has fallen in the past few years. That report lists some possible explanations for the fall in demand including changes in weather patterns, the availability of alternative energy and price increases. However, the ADC has not provided an analysis of the effect of this as a potential cause of material injury (if any) suffered by the Applicant.

Hyosung wishes to remind the ADC of the significant data it has made available to the ADC in its previous submission contained in the Forecasting Report and Development Plan issued by the AEMO, a body that was created by the Council of Australian Governments to manage the NEM and gas markets. The AEMO's findings support Hyosung's view that the decrease in demand across the Australian market for GUCs is a significant issue that the ADC needs to consider in assessing any other factors that may have contributed to the alleged material injury suffered by the Applicant.

2.2 Wilson's expansion of the Glen Waverly facility

We note that the ADC's consideration of the Applicant's major plant expansion in 2009-2010 in the Australian Industry Visit Report only acknowledges the fact that this added value to the Applicant's assets by increasing the production capacity of the Glen Waverly facility by 40%. The ADC's consideration does not extend to the impact of the

cost to refurbish property in Victoria undertaken by the Applicant as a potential cause of injury (if any).

We request that the ADC provide a detailed analysis of how this decision to refurbish the facility has or has not contributed to causing material injury to the Applicant.

2.3 The high Australian dollar and the downturn in the mining and other industries

The Australian Industry Visit Report also briefly notes that the high Australian dollar during the Investigation Period limited the Applicant's opportunities in export markets and the downturn in industries such as mining, oil and gas production has seen a reduction in demand for Power Transformers. The report does not provide any further analysis of how these factors have or have not contributed to causing material injury to the Applicant.

Hyosung reiterates its 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. Hyosung also requests that the ADC undertake an assessment of the downturn of production in the resource sector and its impact on demand of the industrial market.

2.4 Support from Australian importer of GUC

We also seek to reiterate the points made by Origin (an Australian purchaser and importer of the GUC) in its submission to the ADC dated 10 October 2013. Hyosung agrees with a number of the points raised by Origin in its submission, specifically that:

- (a) The requirements of design and functionality of the GUC and the tender process would make it unlikely for a foreign exporter to sell the goods at less than the normal value in their home market.
- (b) To establish that dumping did in fact occur, the Applicant would need to demonstrate in each project during the Investigation Period in which it participated, that in the absence of the alleged dumping, the Applicant would have been awarded the tender. This would require Wilson to establish through the Investigation that all of the bidders who participated in the tender process and who would have been chosen ahead of it or other local producers were also dumping. In addition, the Applicant would need to demonstrate that the each tender was awarded solely or principally based upon competing prices.
- (c) As a purchaser of the GUC, Origin also confirms that it does not award tenders solely or principally on competing prices.
- (d) The decline in market share may be due to a multitude of factors and Hyosung encourages the ADC to thoroughly examine the Applicant's own cost structures and financial position.

3. Proposed ADC Issues Paper for material injury issues

In previous Investigations, where there have been specific issues that attract significant attention and are vital to the decision whether or not to impose measures, the ADC has provided an Issues Paper and sought submissions on the specific issue from all parties.

We propose that a similar approach be taken in the current Investigation in relation to the matter of material injury as there appear to be a number of aspects that require further assessment and exploration that relate to material injury, as discussed above.

4. Summary

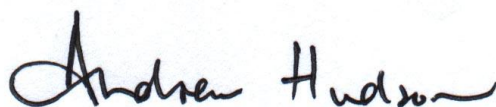
- (a) Hyosung is of the view that any material injury alleged to have occurred to the Applicant has been occasioned by factors other than the alleged dumped prices charged by exporters.
- (b) Price is by no means the sole determinant of a decision by a purchaser to acquire a GUC but rather is one of many factors considered. This is supported by the comments provided by an Australian producer of GUCs and the fact that the competition in the Australian tender process is not disclosed.
- (c) Hyosung requests that the ADC undertake an assessment of the impact of the following factors as other potential causes of the material injury the Applicant alleges to have suffered:
 - (1) the decrease of the demand of electricity in the Australian market ;
 - (2) the Applicant's expansion of the Glen Waverly facility;
 - (3) the high Australian dollar; and
 - (4) the downturn in the mining and other industries.
- (d) We reiterate that Origin, an Australian purchaser and importer of the GUC does not award tenders solely or principally on competing prices. This confirms the position of Hyosung.
- (e) Hyosung proposes that the ADC initiate an Issues Paper on the matter of material injury for all parties to make submissions.

As discussed in our earlier correspondence and meetings, Hyosung will be submitting its exporter questionnaire by the agreed date of 16 October 2013.

Please advise at your earliest convenience the date the ADC will be completing the verification visit to Hyosung so that it may make all appropriate arrangements.

We also wish to reiterate that 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



Page 7
Australian Anti-Dumping Commission

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Schedule of Definitions

- (a) **"ADC"** means the Anti- Dumping Commission.
- (b) **"AEMO"** means the Australian Energy Market Operator ABN 9 072 010 327.
- (c) **"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.
- (d) **"Australian Industry"** has the same meaning as in the Application and in the Consideration Report.
- (e) **"Australian Industry Visit Report"** means the Visit Report – Australian Industry Wilson transformer Company Pty Ltd issued by the ADC, August 2013.
- (f) **"Consideration Report"** means Report Number 219 issued by the ADC in response to the Application.
- (g) **"Development Plan"** means the 2012 National Transmission Network Development Plan for the NEM issued by the AEMO.
- (h) **"Dumping Investigation"** means the investigation into alleged dumping of Power Transformers arising out of the Application.
- (i) **"Forecasting Report"** means the National Electricity Forecasting Report for the NEM for 2012 issued by the AEMO.
- (j) **"GUC"** means those Power Transformers the subject of the Application.
- (k) **"Indonesia"** means the Republic of Indonesia.
- (l) **"Investigation"** means the investigation by the ADC in response to the Application.
- (m) **"Investigation Period"** has the same meaning as in the Consideration Report
- (n) **"Korea"** means the Republic of Korea.
- (o) **"NEM"** means the National Electricity Market.
- (p) **"Origin"** means Origin Energy Resources Ltd being an importer and purchaser of the GUC.
- (q) **"Power Transformers"** means power transformers as described in the Application, the ADN and the Consideration Report.
- (r) **"PRC"** means the People's Republic of China.
- (s) **"Vietnam"** means the Socialist Republic of Vietnam.
- (t) **"Wilson"** or **"Applicant"** means Wilson Transformer Co Pty Ltd being the applicant for the measures.