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11 December 2013

Mr John Bracic  
Director Operations 1  
Anti-Dumping Commission  
C/o Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
Canberra ACT 2601

Dear John,

**ADC 219 —Power Transformers from China, Indonesia, Korea, Taiwan, Thailand and Vietnam**

WTC Company Pty Ltd (**WTC**) has lodged an application with the Anti-Dumping Commission (**ADC**) requesting that the Minister for Home Affairs publish dumping duty notices in respect of certain power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam.

We are writing to you to outline our initial assessment and our areas of concern in respect of Preliminary Affirmative Determination (**PAD 219**) issued by the ADC on 20 November 2013.

**Executive Summary**

Our concerns with the dumping margins and associated calculation assumptions include:

- The time when the injury to WTC occurs;
- The ADC's finding that the volume of exports from Thailand are negligible in contrast to our understanding of power transformers exported from Thailand during the investigation period (July 2010 to June 2013); and
- The dumping margins calculated by the ADC, which are significantly lower than the dumping margins anticipated by WTC given the demonstrated price differentials evident during the application period and using similar calculation methods to those used in the recent United States (US) and Canadian power transformer dumping cases.

We intend to follow up with an expanded submission detailing issues for your consideration prior to Christmas. As a matter of urgency and further to section 269TDAA(2)(a)(ii) of the Customs Act 1901 (**the Customs Act**), this submission provides additional information for your consideration prior to publishing the Statement of Essential Facts.



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## 1. Background to the power transformer tender process

- Power transformers are engineered to suit the requirements of each application. Each power transformer is manufactured to the specifications of the individual power utility, generating facility or industrial user that purchases the product. As such, power transformers are generally made to order based on each customer's requirements. While power transformers can share common characteristics, the wide array of potential system, voltage, design, location and other product attributes means that each power transformer is unique for that particular customer. Therefore, in most circumstances, power transformers will be produced to order and sold through a specification, bid and contract award process, eg. a tender process.
- In WTC's application, all sales of dumped power transformers are made via a tender process.
- A primary consideration arising from tender dumping is the timing between the tender process, the order or contract for the power transformer and the export of the power transformer. These factors make it difficult to establish and link normal value with the corresponding export price.

### *The tender process*

Our experience of the tender process in relation to power transformers is outlined below:

- In the event that a customer requires a new or replacement power transformer, the customer will put out a request to international and domestic producers of power transformers. The request will include the customer's specifications for the power transformer or transformers. This enables interested power transformer manufacturers to bid on the project and confirm their ability to meet the specifications within the required project time frame.
- In order to prepare a tender, a significant amount of engineering input is required to develop the tender design, price and other particulars. Broadly speaking, this process takes three to six weeks. Power transformers are highly engineered, customised products. The performance characteristics must be compatible with the customer's electricity system and requirements.
- While power transformers can share common product characteristics, the wide array of potential product, manufacturing and performance elements means that each power transformer is unique for a particular customer.
- The use of the request for tender process means that the market for power transformers is highly competitive.
- There has been an increasing incidence of 'supplier panel' contracts following a tender. The panel suppliers then compete for the right to supply each time the purchaser requires a power transformer. In our experience, each subsequent request for pricing by the purchaser from the supplier panel then results in further price suppression.
- Typically, the issue of the request for tender and the awarding of the contract will take three or more months.

- As previously described, power transformers are complex pieces of equipment. Once an order for a unit has been placed, the standard time for manufacturing and testing to be completed is between six to eight (or more) months.
- In this regard, it can take a year or more following the date of issue of the request for tender for delivery of the power transformer to be made to the customer. In some cases, delivery of the power transformer can extend over several years.
- As such, a power transformer manufacturer's production and profitability is highly dependent on successful tender bids and can be impacted prospectively by unsuccessful tender bids for one or more years. Therefore, there will be a significant time difference between the loss of a sale to dumped power transformers and the full impact on the domestic industry's financial and trade performance.

## **2. How should tender dumping be interpreted by the ADC in determining the appropriate normal values and export prices over the investigation period?**

The determinative factor for a successful tender bid will be the manufacturer that offers the lowest price. This is supported by the finding in PAD 219 where the ADC states that evidence gathered from interested parties during the investigation shows that whilst various factors were taken into consideration in the awarding of tenders (eg. technical conformance with the specifications, loss cost, quality, delivery, etc.), price was attributed the greatest weighting.<sup>1</sup>

Anti-dumping measures can only be imposed where the Minister is satisfied that power transformers exported to Australia have been dumped and because of that dumping, material injury is caused (or is threatening to be caused) to an Australian industry, ie. WTC.

Whilst material injury is not defined in Australia's legislation or in the WTO Anti-Dumping Agreement<sup>2</sup>, the WTO Anti-Dumping Agreement requires that a determination of injury based on positive evidence and involving an objective examination of the volume and price effects that constitute injury and the consequent impact on the Australian industry.<sup>3</sup>

In our view and in the current circumstances, the key costs applicable for the assessment of whether dumping has occurred arise at:

- The time of tender;
- The awarding of the contract; or
- The placing of an order.

As outlined previously, panel tendering is also a significant form of power transformer procurement and results in further distortions to competitor pricing.

In light of the above, we consider that the costs accrued at the time of issue of an invoice do not represent the true costs for the purpose of assessment of dumping as the invoice price and costs may represent a considerable variance from the original tender bid or order.

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<sup>1</sup> Anti-Dumping Commission, Preliminary Affirmative Determination Report No. 219, pg 11.

<sup>2</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

<sup>3</sup> Article 3.1 of the WTO Anti-Dumping Agreement

As a result, we submit that based on the current circumstances, injury to WTC is caused at the time of tender, execution of the contract or the placement of an order with the exporter. Therefore, the tender bid embodies the relevant costs for consideration by the ADC in the assessment of both injury and dumping.

### ***The ADC's position on tender dumping***

The ADC's Consideration Report No. 219 in respect of the Application for a Dumping Duty Notice – Power Transformers (**"the Consideration Report"**) discusses the Anti-Dumping Authority's 1992 report (**"the 1992 Tender Dumping Report"**) into tender dumping in Australia.

The 1992 Tender Dumping Report notes that an anti-dumping application for tender dumping is in conflict with section 269TG(1) of the Customs Act which states that an anti-dumping action can be made in respect of "any goods exported to Australia...". The 1992 Tender Dumping Report noted that in the case of tender dumping, injury occurs at the time the contract is awarded, therefore no relief is provided to the Australian industry if the injury is first said to occur at the time of export.

The position of the ADC in respect of when injury occurs in relation to tender dumping is also supported by guidance in the WTO Anti-Dumping Agreement.

Article 2.1 of the WTO Anti-Dumping Agreement states:

*"For the purpose of this Agreement, a product is to be considered as being dumped, ie. introduced into the commerce of another country at less than normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."*

The WTO Anti-Dumping Agreement does not define *"introduced into the commerce of another country"*. Where a word is not defined in legislation, we consider that the interpretation of the word should be guided by the ordinary and natural meaning of the word.

The ordinary meaning of "introduce" is "bring to a place for the first time; bring a subject to the attention of someone for the first time (ie. introduce something to); or present (a new piece of legislation) for debate in a legislative assembly", Oxford Dictionary.

Therefore, we consider that the act by a foreign entity of submitting a tender bid with a potential Australian customer at dumping prices, means that prima facie, the foreign entity will be introducing that product and pricing into the commerce of Australia, as an influence in a competitive market.

This view is also supported in the Australian Customs Service Preliminary Affirmative Decision No. 108, whereby the Australian Customs and Border Protection Service used the contract or 'tender' prices entered into with the purchaser of the goods to provide a reliable export price which Customs considered to be unaffected by any association or compensatory arrangement.<sup>4</sup>

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<sup>4</sup> Australian Customs Service, Trade Measures Branch, Preliminary Affirmative Determination No. 108, Certain Mobile Garage Bins exported from Malaysia, pg 16

### ***The US investigation into when is the date of sale in relation power transformers***

The Australian Anti-Dumping Authority's position is supported by the recent U.S. anti-dumping investigation into Large Power Transformers from the Republic of Korea (case A-580-867) ("**US Investigation**"). It was held in the US Preliminary Determination that, a date, other than the invoice date, can be used to determine the date of the sale if the alternative date better reflects the date on which the exporter or producer establishes the material terms of trade. Furthermore, in the case of large scale custom-made equipment or machinery in which the parties engage in formal negotiation and contracting procedures, a date, other than the invoice date can generally be used to determine whether dumping occurred. As such, the US Department of Commerce concluded that

*"... the date of sale is generally the date on which the parties establish the material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms."*<sup>5</sup>

The US Department of Commerce further sets out that the Department has the discretion to rely on a date other than the invoice date if there is a rational explanation as to why the alternative date 'better reflects' the date when the 'material terms' are established.<sup>6</sup>

### ***When does injury occur for WTC?***

Given that previous tender dumping applications in Australia and the US Investigation have concluded that the tender price or bid is the applicable cost to be considered in the assessment of injury, we submit that in the current case, the ADC must also assess whether injury has occurred at the submission of the tender bid by the exporter.

This is because an objective review of the material and information provided by WTC in its application for anti-dumping notices confirms that the volume and price outcome which undercut the Australian industry are a direct result of the exporters tender bids (and not the invoice price issued at a later date). As a result, we submit that power transformers are being exported to Australia at less than their normal value and the dumped power transformers are causing material injury to the Australian industry.

Therefore, in respect of WTC's application for anti-dumping notices, we consider that the ADC should assess whether injury has occurred at the time when the tender bid is submitted by the exporter to the purchaser.

Furthermore, costs of certain key materials including grain orientated electrical steel and copper conductor, have declined consistently over the past few years. Assessments of costs at the date of submission of tenders will therefore have significantly different outcomes from assessments of costs at the later dates of manufacture.

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<sup>5</sup> United States of America, Department of Commerce, International Trade Administration, Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, pg 9206, see also *USEC Inc. v. United States*, 31 C.I.T. 1049, 1055 (Ct. int'l Trade 2007)

<sup>6</sup> United States of America, Department of Commerce, International Trade Administration, Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, pg 9206, see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d at 1090-1092

### 3. Normal value calculation for exporters

In normal circumstances where there are suitable sales of like goods for home consumption in the country of export by the exporter, made in the ordinary course of business and at arm's length over the investigation period, subsection 269TAC(1) of the Customs Act would apply.

In this instance, the ADC has determined that the domestic selling price in the country of export cannot be used as a basis for determining the normal value for exporters. As a result, the Customs Act hierarchy of methods requires that the ADC use alternative methods to determine the normal value calculation.

We note that under PAD 219, the ADC has constructed normal values for exporters, in accordance with subsection 269TAC(2)(c). We agree that subsection 269TAC(2)(c) is the appropriate subsection for the determination of normal values. However, we consider that the ADC may not have had due regard to all the costs associated with the manufacture and sale of the goods subject to this action, or used costs at the time of tender.

In this regard, we consider that subsection 269TAC(2)(c) can only operate in accordance with the Customs Act if the information being applied to it is true and correct in the circumstances.

In light of these concerns, we request that the ADC review whether the costs listed below have been assessed for their reasonableness and adequacy in constructing normal values for the exporters:

- Whether the Bills of Materials (“**BOMs**”) used in the product costing for each exporter were complete. In particular, have all elements of the engineering or manufacturing BOMs and all components or materials required for final assembly and commissioning of the products been included into the normal value calculation? We consider it may be appropriate for a transformer industry expert to review the BOMs for each exporter to ensure that all components have been included;
- Whether the appropriate raw material costs were used. We note that electrical steel costs have reduced from a peak in 2009 by over 50% in USD (ZVEI Index for Grain Oriented Electrical Steel for power transformers) over the past 4 years, and consider there may be significant differences in the normal value calculation depending upon which date the costs were taken. Specifically we believe costs at the time of tender should be used;
- Whether total actual labour costs attributed to the manufacture of the subject goods have been used in the normal value calculation;
- Whether appropriate activity based costing methods have been used to attribute the correct amount of overhead costs (e.g. for the manufacturing plant, technology centre or corporate office) to the manufacture of the subject goods;
- Whether the appropriate depreciation or amortisation method and useful life determinations have been used in relation to the exporter's assets;
- Whether wastage costs or costs of reworking have been adequately factored into the normal value calculation;

- Whether any adjustments to the normal value should be made in relation to free issued materials or tooling;
- Whether any adjustments to the normal value should be made in relation to royalties, licence fees or other payments for intangible rights which may be made by the exporter to overseas entities. We note the ADC has only taken management fees/corporate allocations into consideration;
- Whether any duty drawbacks were obtained by exporters in relation the export of previously imported raw materials. If so, an adjustment to the normal value should be made to the extent of the duty drawback amount.
- Whether any costs relating to the manufacture of the goods have been disguised by the structure of the business;
- We note the ADC has added a “reasonable rate of profit” in the determination of normal values. We query whether the appropriate profit margin has been used by the ADC. We submit that a separate profit margin should be determined for each exporter, based on the actual profit realised by each exporter from the sale of the same general category of goods in the domestic market of the country of export (per Regulation 181A(3)(a) of the *Customs Regulations 1926* (“**Customs Regulations**”). The profit margin should also be taken at the time of tender;
- We note that a significant number of exporters are part of a multinational corporation. We query whether SGA expenses attributable to those exporters, but borne by an overseas related entity, have been included in the normal value (e.g. advertising development and expenses borne by a head office entity and used by the exporter free of charge); and
- We recommend that the ADC conduct a review of whether sales by power transformer multinationals (eg. ABB, Siemens, Hyundai) were made at arm’s length prices and are therefore comparable to the prices for non-affiliates. In this regard:
  - We suggest that the ADC compare, the starting prices of sales of power transformers to related parties and unrelated parties, net of all applicable billing adjustments, discounts, rebates, transportation/freight charges, direct selling expenses and packing expenses. Where the price paid to a related party is reasonably similar (eg. within a certain price range) to the price of comparable power transformers sold to unrelated parties (on average), we would assume that this will confirm that sales made to related parties were at arm’s length prices. Any sales by exporters to related parties in the home market that are not at arm’s length prices should be excluded from this analysis as they are outside the ordinary course of trade and therefore not appropriate for determining the normal value. This position is supported by the US investigation’s Preliminary Determination;<sup>7</sup> and
  - We also suggest that the ADC take into consideration the impact of any transfer pricing adjustments that have been made between the exporter and an overseas related entity. Specifically, we submit that credit transfer pricing adjustments may have an uplifting effect on exporter profit margins, which will affect normal value calculations. Transfer pricing

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<sup>7</sup> United States of America, Department of Commerce, International Trade Administration, Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, pg 9207-9208

adjustments may also disguise the true price of raw materials used by the exporter in the manufacture of goods.

#### **4. Due Allowance**

When determining whether goods have been dumped in the domestic market, a fair comparison must be made between export price and normal value. This comparison should be made at the same level of trade and in respect of sales made at as nearly as possible the same time. As such, due allowance should be made in each case for differences which affect price comparability.<sup>8</sup>

Section 269TAC(8) places a responsibility on the ADC to seek relevant data and make adjustments where evidence exists to establish that a particular difference has affected price comparability.

We submit that due to the specialised engineering of power transformers, including the highly customised specifications for each unit based on the purchaser's requirements, the ADC must ensure that adjustments are made to the calculations of the normal value to ensure a fair and reasonable comparison to the export price.

As such, we recommend that the ADC consider applying a transaction by transaction approach to the determination of the normal value and export price. This is supported by the ADC's list of non-exhaustive factors which may affect price comparability, including:

- Conditions and terms of sale
- Indirect taxes (GST/VAT, duty including duty drawback)
- Levels of trade
- Quantities
- Physical characteristics
- Sales at different points in time
- Price differences
- Any discounts or rebates
- Related party transactions
- Warranties
- Credit
- Delivery costs
- Packing and
- Commissions.<sup>9</sup>

This approach is supported by both the recent Canadian and US investigations into dumping of power transformers.

#### **5. Mismatch between Normal Values and Export Sales in the current investigation**

As outlined above, power transformers are highly engineered made-to-order capital goods that are generally ordered by a purchaser on a one-off basis. As a result, the loss of a tender bid to a foreign manufacturer can have severe and long-lasting effects on the domestic industry. Furthermore, it is frequently 12 months or more between the acceptance of a successful tender bid and delivery of the power transformer.

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<sup>8</sup> Anti-Dumping Commission, Draft Dumping and Subsidy Manual, November 2013, pg 58

<sup>9</sup> Anti-Dumping Commission, Draft Dumping and Subsidy Manual, November 2013, pg 58-75



As a result of the long time period between acceptance of the tender bid to delivery of the power transformer, we consider that some manufacturers of power transformers recognise the revenue associated to the sale of the power transformer at the time of delivery/installation of the power transformer. In this regard, we refer to the Canadian International Trade Tribunal's anti-dumping investigation into Liquid Dielectric Transformers (Inquiry Number NQ-2012-001) ("**the Canadian Investigation**") where it was found that power transformers were being dumped and causing injury to the Canadian industry. The Tribunal found that the delay in revenue recognition could result in certain price effects of dumping, such as price undercutting and price depression, materialising one to two years before the actual importation of the goods.<sup>10</sup>

In the Canadian Investigation, the Canadian International Trade Tribunal considered that as a result of the long time periods associated with the request for tender and delivery/installation of the power transformer, the manufacturer's production and financial data for the investigation period are likely to relate to pricing practices that pre-date the investigation period. To avoid misconstruing the alleged dumping prices, the Tribunal also reviewed financial periods outside the investigation period for the purposes of examining the volume of imports of the subject goods and the impact of the dumping on the domestic industry.<sup>11</sup>

We understand that in the current circumstances, the ADC is concerned that the matching of the exporter costs to the dumped export sales are incorrect, due to a constructed Normal Value based on lower costs incurred during the latter part of the investigation period being applied to compare export sales (ie. the price paid or payable for the power transformer) in the earlier part of the investigation period.

In light of the view of the Canadian International Trade Tribunal above, we submit that it is imperative for the ADC to consider applying a transaction by transaction approach to assess whether the margin of dumping for each transaction could have contributed to a lost sale or adverse price effects and as a result, whether any such injury was material.<sup>12</sup> This will avoid a fundamental flaw in the calculation of the dumping margin.

We consider that a transaction by transaction approach is imperative in the circumstances, given the importance of each transaction to the performance of the Australian industry.

However, as noted in the Canadian Investigation, an aggregate assessment of volumes and prices is also probative. This is because, over time, dumping of power transformers has also caused price depression and price suppression. To counteract this, the Canadian Investigation performed an aggregate analysis of the relevant data, supplemented by an examination of evidence of transaction specific allegations of price depression and lost sales with the results of the latter being compared to the former.<sup>13</sup>

A transaction by transaction approach will also identify any instances of separate shipments of the main transformer and accessories/components. To the extent that separate shipments have occurred during the investigation period, this may have split the value of the power transformers into a number of different amounts.

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<sup>10</sup> Canadian International Trade Tribunal, Inquiry No. NQ-2012-001, Findings, pg 10

<sup>11</sup> Canadian International Trade Tribunal, Inquiry No. NQ-2012-001, Findings, pg 10

<sup>12</sup> Canadian International Trade Tribunal, Inquiry No. NQ-2012-001, Findings, pg 10

<sup>13</sup> Canadian International Trade Tribunal, Inquiry No. NQ-2012-001, Findings, pg 10

As a result, we submit that a transaction by transaction approach will enable the ADC to calculate the appropriate Normal Values and Export Sales to be considered for the purpose of calculating dumping margins in respect of power transformers.

## 6. The calculation of dumping margins

Dumping occurs when the export price is less than the normal value, and the margin of dumping is the difference between them.

In order to determine whether goods have been “dumped” in Australia, the ADC calculates a dumping margin for the exporters under investigation. The dumping margin reflects the difference between the price of a product exported to Australia and the price of the product charged by the exporter in its home market. It is expressed as a percentage of the export price.

Article VI of the General Agreement on Tariffs and Trade 1994 (“**GATT 1994**”) and the WTO Anti-Dumping Agreement contains rules governing the calculation of dumping margins. This has been interpreted in Australian law under section 269TACB of the Customs Act which establishes the dumping margin on the basis of either:

- A weighted average of export prices with a weighted average of corresponding normal values over the investigation period; or
- The export prices with the corresponding normal values on a transaction by transaction basis; or
- A combination of the two methods above.

Accordingly, the findings that the ADC makes in respect of the normal value and export price of the goods sold by the exporters under investigation will affect the dumping margin calculated for those exporters.

### ***Product margins***

The product margin measures the margin of dumping by aggregating the margins of dumping for the discrete types of models (eg. on a made-to-order capital goods basis). While each model will be unique, the fair comparison requirement leads to the determination of ‘margins of dumping’ for each type or model. Therefore, depending on the number of types or models it may be possible that there are many such type ‘margins’. As such, an analysis of whether there is dumping at the product level requires that regard is given to the export volumes (ie. a method of aggregation across the various types to determine a single product margin for the exporter).<sup>14</sup>

### ***The dumping margins calculated in PAD 219***

Based on the information provided from various exporters of power transformers, the ADC has constructed normal values using the cost of production of the exported goods and selling, general and administration costs incurred in domestic sales plus a reasonable rate of profit.

On this basis, the ADC calculated the dumping margins by undertaking a comparison exercise of weighted average free-on-board (“**FOB**”) normal values with weighted average FOB export prices.

<sup>14</sup> Anti-Dumping Commission, Draft Dumping and Subsidy Manual, November 2013, pg 116

As such, the dumping margins are calculated as follows:

Country	Exporter	Dumping margin
China	ABB Chongqing Transformer Co., Ltd	De minimis
	ABB Zhongshan Transformer Co., Ltd	De minimis
	SEC Alstom (Shanghai Baoshan) Transformer Co Ltd	23.1%
	SEC Alstom (Wuhan) Transformer Co Ltd	23.1%
	CHINT Electric Co., Ltd	De minimis
	Jiangsu Huapeng Transformer Co., Ltd	De minimis
	Siemens Transformer (Guangzhou) Co., Ltd	2.6%
	Siemens Transformer (Jinan) Co., Ltd	2.6%
	Siemens Transformer (Wuhan) Co., Ltd	2.6%
	TBEA Shenyang Transformer Group Co Ltd	35%
	All other Chinese exporters	35%
Indonesia	PT CG Power Systems Indonesia	5.4%
	PT. Unelec Indonesia	5.4%
	All other Indonesian exporters	5.4%
Korea	Hyosung Corporation	5.3%
	Hyundai Heavy Industries Co., Ltd	5.9%
	All other Korean exporters	5.9%
Taiwan	Fortune Electric Co Ltd	10%
	Shihlin Electric & Engineering Corporation	20%
	All other Taiwanese exporters	20%
Thailand	ABB Thailand	De minimis
	Tirathai Public Company Limited	22.5%
	All other Thai exporters	TBA
Vietnam	ABB Vietnam	3.4%
	All other Vietnamese exporters	3.4%

We seek to understand how the dumping margins in respect of power transformers were calculated by the ADC as we consider that PAD 219 displays outcomes which are inconsistent with commercial reality in the Australian market. Our concerns are outlined below.

We consider that the dumping margins calculated by the ADC in respect of power transformers exported from Korea, Siemens China and ABB in Vietnam, Thailand and China appear to be

considerably lower than the dumping margins calculated by WTC in its application for anti-dumping notices.

Broadly speaking, the ADC's dumping margins reported in PAD 219 are inconsistent with WTC's understanding and experience in the market place, as well as generally accepted dumping margins arising from analogous actions in foreign jurisdictions.

### Korea

Of particular interest to WTC are the dumping margins calculated in the US and Canadian Investigations. WTC applied the same calculation principles as was applied in the US investigation into dumping of power transformers from Korea and obtained similar anti-dumping margins to the margins calculated by the US Department of Commerce.

Please find below a table listing the margins calculated by the US Department of Commerce, the Canadian Canadian International Trade Tribunal and WTC in contrast to those calculated by the ADC:

	US Investigation		Canadian Investigation	Current Australian Investigation	
	Preliminary	Final	Final	WTC Submission	PAD 219
Hyosung	38.07%	29.04%	44.4%	30.7%	5.3%
Hyundai	21.79%	14.95%	15.5%	30.7%	5.9%
Others	29.93%	22.00%	118.1%	30.7%	5.9%

### Thailand

We are concerned by the ADC's statement in PAD 219 that the volume of dumped goods from Thailand were estimated to be less than 3% and have detailed the reasons for our concerns below.

As previously advised, we agree with the use by the ADC of subsection 269TAC (2)(c) of the Customs Act to calculate the normal values. We consider that, if all the issues listed are taken into account in the calculation of normal values, the dumping margin for power transformers exported from ABB Thailand will definitely not be "de minimis". Accordingly, the power transformers exported from Thailand should be included in the PAD 219 dumping margins.

In addition, based on our analysis of the Australian Bureau of Statistics Import information provided to WTC in relation to the importation of power transformer for the period July 2010 to March 2013, we have calculated that the quantity of goods imported from Thailand in comparison to all imports of power transformers is:

- 8.6% by quantity
- 15.9% by CIF value (costs-insurance-freight)
- 15.7% by FOB value.

We submit that these calculations clearly indicate that the volume of dumped goods from Thailand exceeds 3%. We have made a number of modifications to the Australian Bureau of Statistics Import information due to errors that we consider to be contained within the data. We will be pleased to review the import statistics with you to resolve any uncertainties.

We request that the ADC reconsider their calculations in regard to the volume of exported goods from Thailand, including a re-examination of exports from ABB Thailand. Based on our calculations above, we consider that there is a material difference between our calculations and the ADC's calculations which needs to be resolved.

### Accounting and financials

We note that there are other areas of concern in the exporter questionnaires relating to accounting for cost and revenue that may not have been given appropriate weight by the ADC in considering the cost and revenue aspects of normal value. These are:

- Accounting policies of the exporters including the use of both accruals and cash accounting for the purposes of recognising both cost and revenue;
- Different accounting standards (eg. Vietnam Accounting Standards vs. Australian and international accounting standards); and
- Amortisation and valuation methods underpinning cost.

In addition to determining the method of calculating the normal value for exporters the subject of this action (and as discussed in 3), we note the following in relation to the exporter questionnaires:

- Responses were prepared using foreign accounting standards (eg US GAAP and Thai GAAP being included within a single response). Differences between these standards and Australian Accounting Standards were not fully considered or reconciled and may impact the comparability of responses.
- Significant accounting estimates, such as accrued costs, were referred to in costing methods. The method of determining these estimates were not considered in the questionnaire.
- Disclosure of key accounting policies, such as revenue recognition and inventory, was limited to a high-level summary of significant accounting policies. These policies did not contain sufficient information to form a view on the appropriate timing for recognition of revenue and associated costs.
- As a general comment we note that the questionnaires' focus on transactions between the parent entity and other related companies cannot contemplate a range of supplies and transactions that may be material to the cost outcomes in the questionnaire because it fails to apply an accounting based related party approach. The related party concept under Australian Accounting Standards is broader than transactions between parent entity and the group's related companies. This is supported by the provisions dealing with Arms Length Transactions set out in the Customs Act (section 269TAA).

It is our view that further examination of these issues is required to be undertaken by the ADC in order to confirm the appropriateness of the information provided by exporters and used by the ADC in its calculations.

## 7. Countervailing subsidy

We request the ADC review whether any materials or inputs have been subsidised by overseas governments. This may include the provision of free electricity, preferential tax policies for exporters, subsidised materials or provision of grants by the overseas government to certain exporters.

Where raw materials or input are found to be subsidised, we consider that a competitive price for the raw material or input (e.g. the price of the raw material/input exported to a third party purchaser or the market value of the raw material/input as determined by reference to the relevant market exchange) should be used as a substitute in the determination of normal values.

Please note, WTC is also in the process of reviewing whether to proceed with countervailing action in relation to the above.

Should you have any queries in relation to anything contained herein please don't hesitate to contact me on (03) 8544 2300 or Robin Winckworth on (03) 8544 2302.

Yours sincerely



**Robert Wilson**  
**Managing Director**