

Response to Hunt & Hunt Lawyers submission on behalf of Hyosung Corporation dated 11 September 2013

	Hyosung Submission	WTC Response
1	Executive Summary	
	(a) Investigation complex	Notwithstanding the technical complexity of the GUC, power transformers as defined in the initiation notice, whether imported or produced in Australia, are made to the purchaser's specification on a project by project basis. As such power transformers may be considered <i>sui generis</i> .
	(b) Normal Value and Export Price should be based on the actual goods produced and exported to Aust.	<ol style="list-style-type: none"> 1. Dumping cases against Korean manufacturers were held in 2011 and 2012 in the United States of America and Canada. In both cases dumping was found to have occurred. 2. In both cases it was accepted that, as power transformers are highly complex and specialised products that are manufactured to customers' unique specifications, that they were <i>sui generis</i> and it was not possible to establish Normal Values for those products in the usual manner in accordance with Section 269TAC (1) of the Customs Act 1901 (the Act). 3. Accordingly, we consider that Section 269TAC (2)(a)(i) of the Act should apply and a Constructed Normal Value should be established in accordance with Section 269TAC (2)(c)(i) and (ii) of the Act . 4. The nature of the products subject to the Australian, American and Canadian investigations is essentially the same and therefore the Constructed Normal Value method should be used in all three situations.
	(c) The ADC should disclose: <ol style="list-style-type: none"> 1. Allegations by WTC as to Hyosung sales practices and the ADC response 2. Actual figures used by WTC in calculating the Normal Value, Export Price and dumping margins 	<ol style="list-style-type: none"> 1. The WTC Application is a public document with explanations of the nature of any deleted content. WTC costs are confidential and are not to be disclosed. We assume that Hyosung would not want their costs publicly disclosed. 2. The figures provided by WTC are for assessment by the ADC and are not for public review.
	(d) <ol style="list-style-type: none"> 1. Price is not the sole purchase determinant by purchasers. 2. Hyosung is of the view that WTC has not competed with it for any of the tenders during which Hyosung has participated. 3. Failure of WTC to pre-qualify for many tenders was for other reasons not related to price. 	<ol style="list-style-type: none"> 1. The role of "electrical losses" is clearly addressed in section A-8.3 of the application document. This clearly states that electrical losses are evaluated by purchasers and even provides the degree of importance, but does not detract from the primary importance of price in the purchasing decision. 2. This statement is clearly incorrect. The US case noted that "In many cases, firms that competed for bids did not know the names of the winning bidders". It is likely that Hyosung would not know if WTC prequalified or submitted a tender. 3. WTC is at a loss to understand the basis on which Hyosung makes this assertion given our response to the point above. All examples used by WTC in its submission were bids submitted by it. The expansion of the WTC GW plant has enabled WTC to participate in an increased range of tender opportunities. WTC tenders for the increased range of product were all accepted by purchasers. WTC has now procured an order for a 550MVA unit which is larger than many purchased by utilities.
2	Hyosung's business in Australia	
	Description of the Hyosung capability, pre-qualification process and confidentiality of	No comment, save to say that the investigation will need to assess the tendering process by considering the information of end-users.

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	tenders.	
3	Section 4.2 of the Consideration Report — Goods and Like Goods	
(a)	The crucial issue in considering the nature of “Like Goods” relates to capacity and not voltage.	This is simply incorrect as the GUC clearly are $\geq 10\text{MVA}$ and $< 500\text{kV}$.
(b)	Distribution Transformers are excluded from the investigation	No comment
4	Section 7 of the Consideration Report — Reasonable Grounds — Dumping	
(a)	Hyosung believes that the invoice date best represents the material terms of sale.	As the contract terms in Australia are usually determined by the Purchaser, issues of risk and ownership are usually defined in the contract. Progress payments should not confuse the issue. Terms of sale between parties could determine the basis of sale — eg DDU, FCA etc
(b)	Date of physical export of the goods should be the date of sale.	As for 4 (a) above
(c)	Calculating Export Prices and Normal Values for each transformer is the most appropriate method to determine if the GUC have been dumped.	<ol style="list-style-type: none"> 1. WTC submits that as the circumstances in paragraphs 269TAB(1)(a) and 269TAB(1)(b) were not met, the export price should be determined under paragraph 269TAB(1)(c). 2. Further, or in the alternative, subject to the outcomes of the investigation, should the Minister become satisfied that sufficient information has not been furnished, or is not available to enable the export price of goods to be ascertained, in circumstances where the value of design and installation cannot be determined, then WTC submits that the export price should be determined under subsection 269TAB(3).
(d)	The ADC should provide the actual WTC calculations of Normal Values and Export Prices.	Refer WTC’s response to 1 (c) above. The figures provided by WTC are for assessment by the ADC and are not for public review.
(e)	Hyosung is of the view that if the ADC proposes to proceed on the basis of actual sales of Power Transformers then the actual costs to make and sell should be used.	<p>WTC repeats its comments in response to section 1(c) above. This issue is a historic one now given the initiation of the investigation on reasonable grounds.</p> <p>Further, WTC notes:</p> <ol style="list-style-type: none"> 1. The methodology adopted by WTC is clearly stated in the Consideration Report. 2. The methodology is appropriate for high value, engineered to order capital goods. 3. The methodology is consistent with those used in both the USA and Canadian cases. 4. It is worth noting that the position of Korea Electric Power Corporation (KEPCO), the government-owned power authority, and largest purchaser of transformers in Korea, is that it will only procure transformers from domestic producers. (Canadian International Trade Tribunal – Dumping and Subsidizing Finding in respect of Liquid Dielectric Transformers – Inquiry No. NQ-2012-001)
5	Section 7 of the Consideration Report — Material Injury Caused by Dumped Imports	
(a)	Refer to paragraph 2 above	No comment
(b)	Hyosung notes that the ADC will consider the impact of the cost to refurbish the WTC property in Victoria.	<p>WTC notes that:</p> <ol style="list-style-type: none"> 1. In February 2010 Hyosung built a new facility adjacent to its existing facility, and anticipates that given the impact of the outcome of the USA and Canadian dumping cases, is likely to result in surplus capacity.

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		2. WTC's expenditure has enabled it to expand its capability to access market segments not previously accessible to it. The expenditure has enabled WTC to improve quality, efficiency and increased product range.
(c)	Comment on the impact on the depreciation of the Australian Dollar	Although the AUD has depreciated since its highest point, it has partially recovered, resulting in a slight improvement in WTC's competitive position.
(d)	The presence of dumping and material injury caused by one exporter should not translate to the imposition of measures against all exporters	This proposal is not permissible under the domestic legislation or the WTO Rules. If a specific exporter is found not to be dumping, then the termination provisions available should be exercised.
(e)	ADC should take account of the downstream impact of possibly higher costs and market concentration if dumping is determined.	Purchasers of GUC should only expect to benefit from prices available in a market where prices are not suppressed by dumped product.
(f)	Hyosung requests that the ADC take into account the fact that Australian power consumption and the market for GUC has generally fallen over the past few years – and provides information to support this proposition.	<ol style="list-style-type: none"> 1. The market for GUC has declined over the past few years as set out on page 13 of the Consideration Report. 2. The market share of Australian producers has also declined as set out on the same page. 3. The market share is impacted significantly by price rather than volume.
6	Basis for Imposing Any Interim Dumping Duty	
	Any interim dumping duty should be on the basis of the "ad valorem" methodology	<ul style="list-style-type: none"> • Both the USA and Canadian cases imposed dumping duties expressed as a "percentage of the export price". • Section 269 TACB of the Act describes the methods by which dumping duty should be calculated. Section 20 of the Dumping Manual 2012 outlines the ADC calculation method.
7	Consideration of Discretionary Factors	
	Refer to paragraph 6 above	No comment
8	Provisional Measures	
(a)	The ADC has the option to issue a Preliminary Affirmative Determination	Noted
(b)	<ol style="list-style-type: none"> 1. Any Provisional Measures imposed prior to the issue of the Statement of Essential Facts would be speculative. 2. Provisional Measures would create confusion in the Australian market and disadvantage Hyosung far more than any delay would injure WTC. 3. The imposition of Provisional Measures could have an adverse impact on the reputation and 	<p>At the outset, it is noted that the making of a preliminary affirmative determination under section 269TD is not contingent upon the verification of all interested parties information. Subsection 269TD(1) allows the delegate to make a preliminary affirmative determination and require and take securities under section 42, where there appear to be "sufficient grounds" for the publication of such a notice.</p> <p>Further, WTC specifically notes:</p> <ol style="list-style-type: none"> 1. The process and basis for Provisional Measures is clearly established. 2. The impact of any Provisional Measures on Hyosung, as only one of a number of potentially impacted exporters is likely to be less than the impact of dumping on WTC, the major Australian manufacturer.

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	market of Hyosung. 4. There is nothing in the Application or Consideration Report reflecting specific urgency required in this matter to support the imposition of Provisional Measures.	3. Noted 4. The fact that WTC considered it necessary to lodge the Application indicates that there is a significant issue and a need to act promptly.
9	Effect of the US decision	
	The US decision was based on an assessment of Normal Value on the GUC on a different basis and the results should therefore be treated with caution.	Noted, but WTC has no doubt that the Australian investigation will proceed on an independent basis, and rely on information from other jurisdictions, where appropriate, where such information constitutes the best available information.
10	Conclusion	
	(a) Normal Values and Export Prices should be assessed with close involvement of Hyosung	This has been addressed above
	(b) Any injury is due to causes other than alleged dumped prices charged by exporters.	Disagree — the primary driver for initiating the dumping case was as a consequence of significant price suppression and material injury.
	(c) The ADC should provide Hyosung the actual calculation of Normal Value and Export Price.	This has been addressed above
	(d) It would be inappropriate to apply Provisional Measures until the whole investigation process is complete.	Refer to 8 (b) 4 above.