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16 January 2014

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
 Submission by Hyosung Corporation to the Preliminary Affirmative Determination Report
 No. 219**

We refer to our previous correspondence to the ADC on behalf of Hyosung Corporation ("Hyosung") in relation to the Investigation.

We have now been instructed to make the following submission in response to the PAD Report and comments made by the Applicant in response to Hyosung's September Submission and October Submission. Please note that this submission does not exclude further comments made 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. Calculation of Hyosung's dumping margin rate

Hyosung appreciates the ADC providing it with the calculations used to determine Hyosung's dumping margin rate (which the ADC has calculated to be 5.3%).

Hyosung has reviewed the ADC's calculations and is of the view that the ADC has mistakenly [redacted – explanation of calculation methods]. Notwithstanding this adjustment, Hyosung maintains its contention that no dumping has, in fact, occurred.

As the ADC has reviewed and altered certain dumping margin rates (as outlined in ADN No.2013/106) it requests that the ADC also review its calculation of Hyosung's dumping margin rate and adjust the rate accordingly.

Hyosung looks forward to the ADC's response to this matter.

2. The imposition of securities is unreasonable

Hyosung contends that the imposition of securities at this stage of the Investigation is not warranted. From the information available to Hyosung on the public file, it does not appear necessary to impose interim measures to prevent material injury to an Australian industry while the investigation continues (as required by section 269TD(4)(b) of the Act).

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INTERLAW.

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We have outlined the basis of Hyosung's position in the following paragraphs.

2.1 Method of calculation of the constructed normal value and export price

In Hyosung's view it is unreasonable to impose securities prior to undertaking a number of verification visits in this Investigation because of:

- (a) the particular complexities of the Investigation due to the number of interested parties, the complex tender process undertaken to acquire the GUC and the unique and technical nature of the GUC themselves; and
- (b) as a result of these intricacies, there is significant commentary on the Public Record regarding the approach taken by the ADC to accurately construct a normal value and export price to compare "like with like" goods. Accordingly, there is reasonable concern over the ADC's ability to accurately calculate dumping margin rates (if any) using this method.

Hyosung reiterates the point it has previously made and those made in the Rio Tinto Submission that as each GUC is unique, a single blanket constructed value and export price should not be used to determine any dumping margin rate for all exports of GUC to Australia. This does not provide an accurate or valid comparison between the two goods and creates artificial values. Rather, an individual constructed normal value and export price should be calculated to determine a dumping margin rate for each Power Transformer exported to Australia. This is the only way to reflect an accurate calculation of the dumping margin (if any).

Hyosung's concern over the ability to accurately calculate dumping margin rates (if any) using the current method is further increased by the changes made to certain calculations of dumping margins as specified in ADN 2013/106 and the mistake Hyosung has identified in paragraph 1 above.

In Hyosung's view, it is unreasonable for the ADC to have formed a view that securities are required to prevent material injury when it has not addressed the concerns of many as to the method of calculation of the dumping margin rate.

As such, Hyosung is supportive of the proposal for the ADC to issue an Issues Paper setting out how it proposes to calculate the export price, constructed normal value and dumping margin and to seek submissions from interested parties. Hyosung agrees that this is essential considering the history of price fixing in the Australian industry, as discussed in the Rio Tinto Submission.

2.2 Method used to determine "price" is artificial

Hyosung also supports the comments made in the Rio Tinto Submission and the Shinlin Submission that providing a comparison of the Applicant's prices with those of the exporter's solely for tenders that the Applicant lost produces a skewed and artificial result. As such, it is unreasonable to use these figures as the basis to determine whether the exports of the GUC undercut the Applicant's prices.

Hyosung agrees that the ADC should provide an analysis for each tender that was won during the Investigation Period. The ADC should also provide an analysis of why the tender was awarded and what factors were taken into account to award one participant over the others.

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2.3 The ADC's determination of causation

In Hyosung's view, the ADC's analysis of injury and causation does not adequately address the fact that each product in a tender process used to acquire GUCs is unique and each participant will offer a unique total end package.

In addition to the concerns raised in paragraphs 2.1 and 2.2, Hyosung is also concerned that the ADC is yet to provide an adequate analysis of causation. The other possible causes of injury to the Applicant have been identified but not addressed in any detail. The ADC states only that it is continuing to examine these factors.

In Hyosung's view, it is unreasonable for the ADC to have formed a view that securities are required to prevent material injury when it has not adequately addressed how it has determined that material injury has, in fact, been caused. Causation is a crucial aspect of the material injury analysis.

Accordingly Hyosung is supportive of the ADC issuing an Issues Paper setting out how it proposes to assess causation, as suggested in the Rio Tinto Submission.

2.4 Downstream effects

Further, Hyosung contends that it is unreasonable for the ADC to impose securities while the above issues are unresolved due to the likely disadvantageous downstream effects of the measures. Those likely to be affected include Australian purchasers of Power Transformers, Australian consumers of electrical power and downstream industries.

An article by the Financial Review titled "*Generators in write-down 'death-spiral'*" dated 11 December 2013 at "**Attachment A**" of this letter supports this position. That article outlines the Grattan Institute's findings in relation to the falling demand of electricity on government and privately owned networks. It makes particular mention of the impacts on the value of the distribution and transmission networks, which will result in significant financial losses to the industry. As such, it is clear that any interim measures that will increase the price paid by Australian purchasers of GUCs will place further burden on an already struggling industry.

Accordingly, Hyosung requests that the ADC appropriately consider these findings in making its assessment of material injury.

3. Comments made by the Applicant in response to Hyosung's Submissions

Please see Hyosung's response to the Applicant's comments in relation to Hyosung's September Submission and October Submission at "**Attachment B**".

4. Other matters

Hyosung is yet to receive a response to its proposal in its October Submission that the ADC provided an Issues Paper and seek submissions from all interested parties in relation to the matter of material injury.

5. Summary

- (a) Hyosung requests that the ADC review its calculation of the interim dumping margin rate imposed on Hyosung and amend the rate to 5.2%. Again,

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Hyosung notes that these measures are on an interim basis only and continues to contend that no dumping has occurred.

- (b) In Hyosung's view it is unreasonable for the ADC to have formed a view that securities are required to prevent material injury when:
- (1) It has not addressed the numerous concerns regarding the method of calculation of the constructed normal value and the export price (and therefore the calculation of the dumping margin rate). This is particularly so when a number of verification visits have not been undertaken.
 - (2) In Hyosung's view, the ADC's decision to compare the Applicant's and the exporters' prices for tenders that the Applicant lost (and none of which it won) has produced a skewed and artificial result. These calculations should not be relied upon as a basis for determining price undercutting and the ADC should provide an analysis for each tender that was won during the Investigation Period.
 - (3) The ADC has not adequately addressed how it has determined that material injury has in fact been caused as it has not yet addressed the other potential causes of injury.
 - (4) Measures that will increase the price paid by Australian purchasers of GUCs will place further burden on the electricity industry which is currently facing significant financial losses.
- (c) Hyosung is supportive of the ADC providing Issue Papers and seeking submissions from all interested parties in relation to:
- (1) how it proposes to calculate the export price, constructed normal value and dumping margin;
 - (2) how it proposes to assess causation; and
 - (3) how material injury will be determined.

As discussed in previous correspondence, please urgently confirm the ADC's verification visit dates so that Hyosung may make all appropriate arrangements.

We otherwise look forward to the ADC's response to the proposals outlined in this letter.

Yours faithfully
Hunt & Hunt



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**Attachment A - "*Generators in write-down 'death-spiral'*",
Australian Financial Review, 11 December 2013**

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Generators in write-down 'death spiral'

Angela Macdonald-Smith

Falling electricity demand is likely to hit the value of distribution and transmission networks, triggering billions of dollars of financial write-downs, according to the Grattan Institute.

The think-tank is advising governments to review the value of network assets and decide who should pay for any write-downs, among a package of recommendations to avoid a "death spiral" in the electricity market.

The networks, both government and privately owned, may already contain about \$4.9 billion in excess assets, it estimates. "If this continues it will become progressively politically unsustainable because prices will just keep going up and up and up," said Tony Wood, energy program director at the institute.

"There needs to be a circuit-breaker."

Consumers, private network owners or governments could have to bear the cost of write-downs, Mr Wood said.

Another option could be for network companies to start charging a disconnection fee for customers leaving the network.

As part of the solution, the institute is also urging governments to crack down on future investments by owners of power grids and transmission systems to prevent further overcapacity building, and to reform network tariffs so usage reflects the true cost.

Federal and state energy ministers are expected to tackle the issues around declining power demand in a meeting on Friday.

In the first of two reports dealing with the impact of the downturn in electricity demand, released late on Tuesday, the Grattan Institute points out that for years, regulators have allowed owners of grids and networks to earn "excessive" profits by setting tariffs that are too high given the low risk they face with their monopoly assets.

In many cases, the network owners have also over-invested in their grids. While that was less of a problem when demand was rising and costs were spread over more electricity users, it poses major issues when consumption

Key points

Falling electricity demand is likely to hit the value of distribution and transmission networks, triggering billions of dollars of financial write-downs.

The average household has used power 15.2 per cent more than in 2006 since 2007.

is falling and those costs are spread over a smaller volume of supply.

The institute says that risks a "death spiral", induced by customers disconnecting from the network to avoid high costs, and putting the whole funding model of the regulated power market at risk of collapse.

Against expectations, Australia's electricity demand peaked in 2008-09 and has since dipped 6.5 per cent. But prices have not conformed to normal market dynamics and have continued to rise. The average household has cut power use by more than 7 per cent since 2006, but the average electricity bill has surged more than 85 per cent.

A key driver of rising costs has been billions of dollars of investment in transmission infrastructure, made to cope with demand levels that never eventuated but under the protection of a regulatory system that ensured certain returns.

The popularity of solar panels, a shift to more efficient appliances, energy saving and the decline in the manufacturing sector have all contributed to the downturn in power demand.

The Grattan institute describes the drop in demand as "unprecedented" but says it could continue.

The overcapacity problem is also plaguing the generation sector, which AGL Energy chief executive Michael Fraser estimates has a surplus 9000 megawatts of baseload capacity, almost a third of the total baseload capacity in the national electricity market.

EnergyAustralia, the former TRUenergy which owns the Yallourn coal-fired generator in Victoria, has also warned of potential write-downs in the sector.

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Attachment B – Hyosung's response to the Applicant's comments in relation to Hyosung's Submissions

1. Hyosung's September Submission

Hyosung provides the following in response to the Applicant's comments regarding its September Submission, using the corresponding numbering in the Applicant's table:

- (a) In response to the point made at paragraph 1(b), Hyosung contends that it is irrelevant and unnecessary to mention that the dumping cases against Korean manufacturers held in 2011 and 2012 in the United States and Canada found dumping to have occurred. There are significant differences between these jurisdictions, particularly in terms of the domestic industries and the tender process used. As such, the assessment of whether duty has occurred is different in each jurisdiction. Hyosung strongly urges that the ADC assess the investigation on its own merits.
- (b) In response to point 1(c):
 - (1) Hyosung notes that the investigation processes used in the United States and Canada allow the calculations used to estimate the normal value, export price and dumping margins to be provided to all relevant parties on a confidential basis. In Hyosung's view, this provides a more transparent system under which more accurate determinations can be made by the authority. It understands however that this is not the case in Australia.
 - (2) Hyosung urges the ADC to examine the extent to which the cost of expanding the Applicant's factory has caused it material injury and provide an explanation of its findings that is substantiated by evidence, where possible.
 - (3) Hyosung also notes that it has shared all data requested by the ADC and will continue to cooperate with the ADC in full.
- (c) In response to point 1(d):
 - (1) Hyosung contends that "electrical losses" are not the only additional factor taken into account by purchasers of power transformers and repeats its contention that price is not the determinative factor considered by purchasers when evaluating tenders to awarding a contract for the GUC. Other tender requirements such as delivery times, quality, performance record and service requirements are considered and must be to a high standard. Hyosung believes that these elements should be assessed by the ADC together with the price and provide an explanation for its findings using evidence, where possible. Hyosung repeats the supporting comments provided by its client in its October Submission. It also notes that the Rio Tinto Submission provides a detailed explanation of its tender process, which supports the argument that price is not the determinative factor. Hyosung strongly believes this is the consistent opinion of most of Australian purchasers of GUC.

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- (2) Hyosung acknowledges that the identities of the companies competing in a tender or as a pre-qualified bidder are generally confidential. It merely stated that to its knowledge, it had no knowledge of competing with the Applicant for any of tender which Hyosung has won. Hyosung developed this belief because, in its experience, all purchasers execute a debrief meeting with the producers that failed to win a bid once the tender is awarded. In that meeting, the participants is often informally provided information on the winning company or the other participated in the bid together with advice on the necessary improvements required for future bids. Accordingly, Hyosung had not previously been provided any information to suggest that the Applicant was a competitor.
- (3) Hyosung maintains its contention that price is not the determinative factor considered by purchasers when evaluating tenders to awarding a contract for the GUC. The Applicant has invested in a substantial upgrade of its plant between 2009 and 2010 while the demand for electricity in Australia was declining. Further, the Applicant states in its application that its capacity has increased but production has remained stable. Accordingly, this must result in surplus capacity even though it provides the Applicant with an increased range of tender opportunities. This matter has not yet been dealt with by the ADC. Hyosung again requests 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.
- (d) In response to point 3(a), Hyosung repeats its previous statements that the capacity of the goods is a more accurate identification of the GUC than voltage. There is no absolute standard for the GUC and each nation has a standard of its own for classifying the transformer as GUC or Distribution transformer.
- (e) In response to point 4(c) and (d), Hyosung requests that the ADC provide additional disclosure as to actual calculations of Normal Value, and Export Price by the Applicant and to support its claim of injury as they relate to Hyosung.
- (f) In response to point 4(e), Hyosung notes that KEPCO usually procure transformers from domestic producers, but there is a difference in the number of domestic producers between Australia and Korea. In Korea, there are several companies from which it is possible to supply a whole range of GUCs. On the other hand, there are few other Australian manufacturers of the GUC in addition to the Applicant.
- (g) In response to point 5(b), Hyosung repeats the comments made in paragraph 1(c)(3) above.
- (h) In response to point 5(f), Hyosung strongly refutes the Applicant's statement that the market share is impacted significantly by price rather than volume. There is no evidence of this. Hyosung strongly believes that the purchasers consider comprehensive competitiveness of suppliers to be a priority. 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

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structures and financial position to make an accurate determination of these factors.

2. Hyosung's October Submission

Hyosung provides the following in response to the Applicant's comments regarding its October Submission, using the corresponding numbering in the Applicant's table:

- (a) In response to point 1.1, the client did not make a judgment on material injury to the Australian Industry but rather provided comments with respect to its decision making process in awarding a tender. Comments concerning the effect of that process on the material injury alleged to have been suffered by the Applicant are made based on an impartial analysis of the information provided.
- (b) In response to point 1.4, again Hyosung repeats its comments in paragraph 1(a) above that any findings in the United States are irrelevant to the Investigation because of the fundamental differences between that market and the Australian market.
- (c) In response to point 1.5, please see Hyosung's comments in relation to point 1(c)(2) above.

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Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901*.
- (b) "**ADC**" means the Anti- Dumping Commission.
- (c) "**Applicant**" means Wilson Transformer Co Pty Ltd being the applicant for the measures.
- (d) "**Australian Industry**" has the same meaning as in the Application and in the Consideration Report Number 219 issued by the ADC in response to the Application dated 4 July 2013 by the Applicant.
- (e) "**GUC**" means those Power Transformers the subject of the Application.
- (f) "**Investigation**" means the investigation by the ADC in response to the Application.
- (g) "**Investigation Period**" has the same meaning as in Consideration Report Number 219 issued by the ADC in response to the Application dated 4 July 2013 by the Applicant.
- (h) "**KEPCO**" means Korea Electric Power Corporation.
- (i) "**October Submission**" means the submission Hyosung made to the ADC dated 17 October 2013.
- (j) "**PAD Report**" means the Preliminary Determination report No. 219 made by the ADC on 20 November 2013.
- (k) "**Power Transformers**" means power transformers as described in the Application, the ADN and the Consideration Report.
- (l) "**Public Record**" means the public record for investigation 219.
- (m) "**Rio Tinto Submission**" means the submission made by Rio Tinto Limited on 10 December 2013.
- (n) "**September Submission**" means the submission Hyosung made to the ADC dated 11 September 2013.
- (o) "**Shinlin Submission**" means the submission made by Shinlin Electric & Engineering Corporation on 9 December 2013.
- (p) "**United States**" means the United States of America.

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