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28 February 2014

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

By Email

Dear Director

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 Submission by Siemens Wuhan, Siemens Jinan and Siemens Guangzhou on Exporter Visit Report – Warranty Costs, Credit Terms and Start-Up Costs

We refer to the draft Visit Report – Exporter prepared by the Anti-Dumping Commission in relation to Siemens Transformer (Wuhan) Co, Ltd (***Siemens Wuhan***), Siemens Transformer (Jinan) Co, Ltd (***Siemens Jinan***) and Siemens Transformer (Guangzhou) Co Ltd (***Siemens Guangzhou***) (together, ***Siemens China***). We also refer to Siemens China's submission on the draft Report dated 21 February 2014.

This further submission is made in relation to warranty costs, credit terms and start-up costs.

These issues have a significant impact on the manner in which the preliminary dumping margin of **[**dumping margin**]** is calculated and it is critical that the correct methodology is applied in the verification report prior to it being published on the electronic public record for this investigation.

1 Warranty costs

Warranty (non-conformance) (***NCC***)) costs should be excluded from the calculation of the Adjusted cost to make and sell (***CTMS***) in both the calculation of profit for constructed normal value in Appendix 3 to the draft Report and in the calculation of constructed normal value in Appendix 5 to the draft Report.

In Appendix 5, constructed normal value is calculated in Column X using a formula for which 'Adjusted CTMS' (Column T) is an input. Adjusted CTMS in Column T of Appendix 5 equals:

COGS (includes Warranty) + SG&A (including Finance Charges) + Absorption

OR

Column L + Column N + Column O

In Appendix 3, profit for the purpose of constructed normal value is calculated in Column U using a formula for which 'Adjusted CTMS' (Column T) is an input. Adjusted CTMS in Column T of Appendix 3 equals:

COGS – There in NCC (Warranty) + SG&A + Absorption

OR

Column L – Column M + Column N + Column O

Warranty costs are deducted from COGS in the calculation of profit on domestic sales for the construction of a normal value, resulting in a higher profit and a higher normal value.

Siemens China submits that the Commission's calculations of Adjusted CTMS in Appendix 3 and Appendix 5 should be consistent. The formula for Adjusted CTMS in Column T of Appendix 5 should be:

COGS (includes Warranty) – There in NCC (Warranty) + SG&A (including Finance Charges) + Absorption

OR

Column L – Column M + Column N + Column O

2 Start-Up Costs

In its draft Report, the Commission notes that Siemens Wuhan is a relatively new factory which commenced manufacture of power transformers in 2009. Accordingly, Siemens Wuhan incurred start-up costs during the investigation period which the Minister must take into account under Regulation 180(5) of the *Customs Regulations 1926* (Cth).

2.1 **[**Start-Up Cost**]**

Siemens Wuhan has previously informed the Commission that Siemens Wuhan's start-up costs include a **[**start-up cost**]** within the Investigation Period. **[**Start-up cost**]**.

We attach **Confidential Attachment 1 Siemens Wuhan Start-Up Costs [**start-up cost**]**. Confidential Attachment 1 contains **[**start-up cost**]**.

Siemens China submits that this start-up cost must be taken into account under Regulation 180(5) by reducing the costs included in the calculation of Siemens China's constructed normal value.

2.2 'Learning Curve' Costs: [start-up cost]

Siemens China further submits that start-up costs were incurred in the form of **[**start-up cost**]**.

We attach **Confidential Attachment 2 Siemens Wuhan Start-Up Costs [**start-up cost**]**. Confidential Attachment 2 identifies **[**start-up cost**]**.

Siemens submits that **[**start-up cost**]** should be excluded under Regulation 180(5) by reducing Siemens Wuhan's costs by **[**value**]**.

3 Credit Terms

In Appendix 5 to the draft Report, the Commission includes adjusted credit terms in its construction of Siemens China's constructed normal value. Siemens China has submitted to the Commission that no adjustment for credit terms is necessary because the difference in credit terms between domestic and export sales does not affect price comparability.

Section 269TAC(9) of the *Customs Act 1901* (Cth) provides that when calculating a constructed normal value, the Minister must make such adjustments as are necessary to ensure that the normal value is 'properly comparable' with the export price of the goods. The Act reflects article 2.4 of the WTO *Anti-Dumping Agreement*, which provides that 'due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale'. This is supported by the Commission's *Dumping and Subsidy Manual*, which states that adjustments should only be made where a difference in terms between export sales and domestic sales affects price comparability.

The *Dumping and Subsidy Manual* also states that for costs, adjustments will only be made where evidence indicates that price comparability has been affected.

Section 8.1 of the draft Report states that the fact that Siemens Australia **[**credit terms**]**.

Siemens China provided confidential spreadsheets to the Commission on 14 January 2014 following a telephone call with the Commission, to demonstrate that the difference in credit terms between Siemens China's export sales and domestic sales do not affect price comparability. Nonetheless, the Commission has indicated that it will not alter its position on credit terms in the draft Report. Siemens China disagrees with this approach and submits that the difference in credit terms between domestic and export sales does not affect price comparability and, as such, no adjustment to the normal value for Siemens China is justified.

We enclose **Confidential Attachments 3 and 4 Siemens Credit Costs** which demonstrate why the difference in credit terms does not affect price comparability, so that there is no basis upon which the Commission may make an adjustment for credit terms. **Confidential Attachment 5 Calculation of Credit Costs** explains how Confidential Attachments 3 and 4 were prepared from underlying source data.

If any adjustment is to be made for differences in credit terms, to reflect accurately the actual cost of the difference in terms to Siemens China, the Commission must also consider differences in payment terms for Siemens China's suppliers.

Confidential Attachments 3 and 4 show the cash inflows (payments from customer) and the cash outflows (including payments to suppliers) for two sample Siemens China projects and show that the projects are largely cash neutral, so there is only a negligible cost of credit.

Confidential Attachment 2 identifies **[**credit terms**]**.

The same is shown in Confidential Attachment 3 which shows **[**credit terms**]**.

The cost structure input into the spreadsheet reflects the Exporter Questionnaire spreadsheet, comprising **[**cost structure**]**.

Siemens submits that the difference in credit terms between domestic and export sales has no effect on price comparability so that no adjustment is justified.

In addition, the Commission has calculated credit costs based on assumptions rather than the actual credit position on the project, by calculating credit from the 'date of sale' which is taken to be the 'date of contract'. As shown in the IFRS (and PRC GAAP) accounting standards, the date of sale, which is when the sale can be shown in the financial accounts, is not the date of contract, but the date when the project is delivered and can be invoiced. From that point, the customer is given a period of credit in which to pay the invoice. Accordingly, any adjustment for credit terms should be applied only from the date of invoice (being the date of sale) to the date of payment.

We look forward to discussing these points with the Commission prior to the draft Report being finalised.

Yours faithfully

Allens