

Level 26, 385 Bourke Street, Melbourne VIC 3000
GPO Box 1533N, Melbourne VIC 3001 | DX 252 Melbourne
T +61 3 8602 9200 | F +61 3 8602 9299

hunt & hunt
lawyers

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10 June 2014

The Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 6201

Our ref: ATH
Matter no: 9572278

By email: Operations1@adcommission.gov.au

Dear Sir

**Investigation into alleged dumping of 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
TBEA Shenyang Transformer Group Co. Ltd**

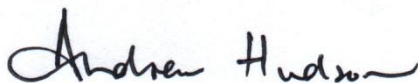
We refer to our previous correspondence to the ADC on behalf of TBEA Shenyang Transformer Group Co. Ltd ("**TBEA Shenyang**") in relation to the Investigation.

We have now been instructed to provide the ADC with TBEA Shenyang's submission in response to the Issues Paper, at "**Appendix 1**".

Please note that that submission does not exclude further comments made throughout the Investigation or further comments our client elects to make and does not limit our client's review rights.

TBEA Shenyang strongly urges that the ADC consider the information in **Appendix 1** and looks forward to its response.

Yours faithfully
Hunt & Hunt



Andrew Hudson
Partner
D +61 3 8602 9231
E ahudson@hunthunt.com.au

Appendix

1 TBEA Shenyang's comments in response to the Issues Paper

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 **INTERLAW.**

10 June 2014

The Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 6201

By email: Operations1@adcommission.gov.au

Dear Sir

**Investigation into alleged dumping of 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
TBEA Shenyang Transformer Group Co. Ltd**

We refer to the Issues Paper published by the ADC in relation to the Investigation.

We now make the following submission in response to the ADC's contention that as TBEA Shenyang did not physically export GUC to Australia during the Investigation Period, it is not entitled to receive an individual dumping margin rate.

Please note that this submission does not exclude further comments that have been or will be made throughout the Investigation or further comments on other issues and does not limit TBEA Shenyang's review rights.

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.

The Issues Paper clarified the ADC's proposed opinion on which export shipments are used for dumping margin calculations. The Issues Paper notes "*..... the ADC must decide which export shipments should be used in the calculation of dumping margins. That is, the ADC must decide which date or dates is/are critical for determining the shipments that fall within the investigation period. For example, relevant considerations might include date of export, date of invoice or date of sale.*"

The ADC's current position is to use the date of physical export (not the date of sale) to determine the shipments that fall within the Investigation Period. This is supported by the following statements of the ADC in the Issues Paper: "*Therefore, the ADC proposes to calculate dumping margins for power transformers only in relation to power transformers exported to Australia during the investigation period. This may include goods exported for which the contract, and date of sale, occurred before the investigation period. However, it will not include goods exported after the investigation period, regardless of contract date.*" That is, even if the date of sale is prior to the investigation period, when the date of export is within the Investigation Period, the ADC will calculate the dumping margin for such exports. Even if the date of sale is within the Investigation Period, when the date of export is not within the Investigation Period, the ADC will not calculate the dumping margin for such exports.

PUBLIC FILE
Appendix 1

Page 2
Anti-Dumping Commission

1. The ADC's proposed position appears to contradict the ADC's former position in this Investigation

The ADC's former position in this Investigation appears to have suggested that the date of sale would determine the shipments that fall within the Investigation Period. This is clearly supported by the Exporter Questionnaire and the email correspondence between TBEA Shenyang and the ADC, at "**Attachment A**".

1.1 Exporter Questionnaire

The instructions for Section B of the Exporter Questionnaire indicate that the date of contract should be the date of sale and that all contracts won during the Investigation Period would be included. Namely, we refer to the following extracts on page 14:

*"You should provide details of **all** goods under consideration (the goods):*

- *invoiced during the investigation period; and*
- *subject to tenders that were won during the investigation period, even in circumstances where the goods were not invoiced or **shipped** to Australia during the investigation period. In this circumstance, please provide details of any expenses already incurred with respect to the goods shipped outside of the investigation period,*

For tender sales, the Commission considers the contract date will normally be taken to be the date of sale."

It is clear from this extract that the ADC used the date of sale to determine whether the exports should be reported in the questionnaire response used for determination of export price. For normal sales the ADC used the date of invoice as the date of sale, and for tender sales the ADC used the date of contract as the date of sale.

1.2 E-mail correspondence between ADC and TBEA Shenyang

TBEA Shenyang noted that the date of shipment of its GUC exported to Australia occurred after the Investigation Period. On 14 August 2013, TBEA Shenyang wrote to the ADC inquiring whether it was eligible to answer the questionnaire and participate in the Investigation when its shipment date was after the Investigation Period. The ADC clearly answered that TBEA Shenyang "*exported the goods to Australia during the investigation period*" and recommended it "*participating in the investigation*" in the email dated 15 August 2013. Please see **Attachment A** for the e-mail correspondence between ADC and TBEA Shenyang.

1.3 Change of ADC's position

As acknowledged by the ADC in the Issue Paper, it is crucial which date is used to determine the shipments that fall within the Investigation Period. This issue decides who is eligible to receive an individual dumping margin. Such a crucial issue should be resolved at the time of initiation of the Investigation or in the PAD Report at the latest.

While there has been some staff and structure changes at the ADC while this Investigation has been conducted, TBEA Shenyang understands that perhaps different team members have different understandings of some issues.

However, TBEA Shenyang contends that:

PUBLIC FILE
Appendix 1

Page 3
Anti-Dumping Commission

- (a) as the Exporter Questionnaire and email correspondence at **Attachment A** clearly indicated that the date of sale was to be used to determine the shipments that fall within the Investigation Period; and
- (b) the ADC advised that TBEA Shenyang was eligible to receive an individual dumping margin rate in the PAD Report after reviewing the complete export sale information for the sales to Australia submitted by TBEA Shenyang in the Exporter Questionnaire,

it is not appropriate for the ADC to appear to have changed its position and use the date of export to determine the shipments that fall within the Investigation Period.

2. The current interpretation of the ADC on section 269TACB(1) is not correct

As the ADC is no doubt aware, section 269TACB(1) of the Act provides that in assessing if dumping has occurred, the ADC should refer to the export price of goods "exported to Australia during the investigation period". In the Issues Paper, the ADC interprets "export" as "the physical movement of the goods from one country, with another country being the destination", and the ADC "determine the date of export as the one that best represents the physical movement of the goods in the act of exportation. In practical terms, it will consider such date to be the one shown on the bill of lading." That is, the ADC deems that the date of export shall determine the shipments that fall within the Investigation Period, according to section 269TACB(1). However, TBEA Shenyang does not find any grounds to support the ADC's interpretation.

However, if this interpretation is correct, the ADC should have indicated that the date of export was to be used at the time of initiation and in the Exporter Questionnaire. Moreover, TBEA Shenyang has not found any previous anti-dumping investigations handled by the ADC (or the Australian Customs and Border Protection Service) in which the date of export was used to determine the shipments that fall within the Investigation Period instead of the date of sale.

The Exporter Questionnaire provides a detailed definition of the "date of sale" as follows:

"The Commission will normally use the invoice date as recorded in the exporter or producer's records. Another date may be used if this better reflects the material terms of sale. The questionnaire directs attention to matching data sets of domestic and export sales where some other date is used, as well as matching cost information."

However, the "date of export" is not defined.

Should the ADC deem, according to section 269TACB(1), that the date of export shall be used in determining the shipments that fall within the Investigation Period against its long-established practice, the ADC should provide justification for its practice in previous Investigations. The ADC's interpretation of section 269TACB(1) outlined in the Issues Paper does not justify its current position in this Investigation without any supporting evidence.

The date of sale is globally used by the relevant anti-dumping authorities around the world including the ADC to determine the shipments that fall within the Investigation Period. TBEA Shenyang does not find any other authorities that use the date of export to determine the shipments that fall within the Investigation Period.

PUBLIC FILE
Appendix 1

Page 4
Anti-Dumping Commission

3. Other Chinese exporters

Notwithstanding TBEA Shenyang's argument in the preceding two paragraphs, TBEA Shenyang wishes to bring to the ADC's attention the possibility that the Alstom Exporters may be affected in a similar way. As you are likely to be aware, the Alstom Exporters closed down their Australian factory in mid-2013. Therefore, it is likely that it would have manufactured its products in Australia up until that point and that it did not export the GUC to Australia during the Investigation Period.

If this is the case, and if the ADC maintains that the GUC submitted by TBEA Shenyang were not exported during the Investigation Period, we understand that the residual dumping margin rate for Chinese companies would be 2.6%, based on the most recent figures.

We look forward to the ADC's urgent response to this matter.

Yours faithfully
TBEA Shenyang Transformer Group Co. Ltd

Attachment

A E-mail correspondence between the ADC and TBEA Shenyang

Schedule of Definitions

- (a) "**Act**" means the *Customs Act 1901*.
- (b) "**ADC**" means the Anti- Dumping Commission.
- (c) "**Alstom Exporters**" means SEC Alstom (Shanghai Baoshan) Transformer Co Ltd and SEC Alstom (Wuhan) Transformer Co Ltd.
- (d) "**Applicant**" means Wilson Transformer Co Pty Ltd being the applicant for the measures.
- (e) "**Application**" means the application dated 4 July 2013 by the Applicant seeking publication of dumping duty notices in respect of Power Transformers exported to Australia from the PRC, Indonesia, Korea, Taiwan, Thailand and Vietnam.
- (f) "**Con Report** " means the Consideration Report Number 219 issued by the ADC in response to the Application dated 4 July 2013 by the Applicant
- (g) "**Exporter Questionnaire**" means TBEA Shenyang's exporter questionnaire submitted to the ADC on 30 September 2014.
- (h) "**GUC**" means those Power Transformers the subject of the Application.
- (i) "**Issues Paper**" means Issues Paper 2014/01 the ADC published on 27 May 2014.
- (j) "**Investigation**" means the investigation by the ADC in response to the Application.
- (k) "**Investigation Period**" has the same meaning as in Con Report 219.
- (l) "**PAD Report**" means the Preliminary Determination Report No. 219 made by the ADC on 20 November 2013.
- (m) "**Power Transformers**" means power transformers as described in the Application, the PAD Report and the Con Report.
- (n) "**PRC**" means the People's Republic of China.

发件人: [Anti-Dumping Commission Operations 1](#)
发送时间: 2013-08-15 10:42
收件人: [REDACTED]
主题: RE: Enquiries about investigation into alleged dumping
[DLM=For-Official-Use-Only]

Dear Mr Sun,

As you exported the goods to Australia during the investigation period we recommend participating in the investigation. The Anti-Dumping Commission provided TBEA Shenyang Transformer Co. Ltd with an exporter questionnaire on 31 July 2013. I have attached that email here for your information.

Please do not hesitate to contact me should you have any further questions.

Regards,

Pamela Garabed

Supervisor | Operations 1

Anti-Dumping Commission

Customs House, 5 Constitution Avenue, Canberra ACT 2600

T: +61 2 6275 5675 | F: +61 2 6275 6990 | W: www.adcommission.gov.au

From: [REDACTED]
Sent: Wednesday, 14 August 2013 6:15 PM
To: Anti-Dumping Commission Operations 1
Cc: [REDACTED]
Subject: Enquiries about investigation into alleged dumping

Dear Mr. Paul Benussi:

This is TBEA Shenyang Transformer Co. Ltd. , a power transformer manufacturer of China.

Regarding to the ANTI-DUMPIING NOTICE NO. 2013/64, we know that the Commissioner has initiated an investigation into Alleged Dumping, and the investigation period is 1 July 2010 to 30 June 2013.

Until now we have in total exported [REDACTED] power transformers to [REDACTED] and they are now on sea and will be shipped to Brisbane Port, Australia by the end of this month.

So may we know that whether the [REDACTED] transformers are still under investigation , and if it is necessary for TBEA to prepare for this investigation ?

Your reply will be highly appreciated !

With Best Regards!

██████████
██████████████████
██

TBEA 特变电工

TBEA Shenyang Transformer Group Co.,Ltd.

No.32, Kaifa Blvd, Economic and Technological Development Zone, Shenyang, Liaoning,
China 110144