

3 July 2014

**Non-confidential**

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**Your reference:**  
**Our reference:**  
2804481

Dear Mr Gleeson

**Anti-dumping investigation 219 - Alstom Grid Australia Limited**

We refer to our letter to the Anti-Dumping Commission (**ADC**) dated 4 February 2014 and the ADC's response to that letter dated 11 June 2014. We also refer to Wilson's application for dumping duties dated 4 July 2013 (**Wilson's Application**), the ADC's Consideration Report No. 219 dated July 2013 (**Consideration Report**) and the ADC's Preliminary Affirmative Determination report published on 20 November 2013 (**PAD**).

We are instructed to make the following comments in response to the ADC's letter dated 11 June 2014 and, in particular, in relation to a number of the documents referred to in that letter which are said to be confidential:

**1 Wilson's Application**

1.1 We note that the ADC has stated that the following attachments are to remain confidential:

- (1) Attachment 3-1-2, being an example of a technical specification of the goods under consideration;
- (2) Attachment A-3-6, being a summary of the production process for the goods under consideration; and
- (3) Attachment A-4-2, being information regarding the production of the goods under consideration in Australia from 1970 to 1999.

1.2 Whilst our client acknowledges that these documents may contain some information that is confidential to Wilson, we are instructed to request that the ADC consider whether the entirety of those documents is confidential. Please let us know if redacted, non-confidential versions of these documents are able to be placed on the public record.

1.3 Attachment A-4-2 relates to the production of the goods under consideration from 1970 to 1999. Our client queries whether information that is between 44 and 15 years old is still commercially sensitive or relevant. In our client's view, it is of most relevance in assessing whether Wilson's current claimed change in sales and profits is consistent with a cyclical trend of the power transformer industry rather than being attributable to any alleged dumping.

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- 1.4 In relation to attachments A-8-1 and A-8-2, being summaries of the dumping investigations in the USA and Canada, our client does not see how these documents contain information that is confidential to Wilson such that they can be claimed to be confidential in their entirety. Even if Wilson prepared these documents, they appear to be summaries of publically available information and should properly be placed on the public record.
- 1.5 In our client's view, the references by Wilson to the findings of the US Investigation on pages 19-20 of Wilson's application are inaccurate. Given this, our client is concerned that the summary of the US and Canadian investigations prepared by Wilson may also be inaccurate. We are instructed to again request that a copy of this document be provided and in any event, request that the ADC exercise significant caution before relying on Wilson's summary.
- 1.6 In relation to Table 1 in section A-4 (page 13), the table is almost meaningless without the information our client originally requested, being the precise quantity and value of the imported transformers for each of the years set out in the table. We assume the table comprises an aggregation of various importers' sales data and not solely Wilson's sales data. We are instructed to request the ADC reconsider its position in relation to the provision of this information, or alternatively, provide the scale and unit of measurement used on the Y-axis of the table. If this is not aggregated, please explain why a table setting out levels of imports includes only Wilson's sales data.
- 1.7 In relation to Table 2 in section A-4 (page 14), it appears that the table refers to the entirety of the Australian market. That market consists of sales by Wilson and three other domestic manufacturers together with imports from a range of countries. If this is the case, our client would have assumed that the table does not contain information confidential to Wilson and requests the ADC reconsider its position in relation to the provision of a complete copy of this table.
- 1.8 Our client is particularly interested in knowing the claimed change in market share by quantity, including how quantity is measured. Quantity could be measured in either number of units or total MVA. It is submitted that the ADC should pay particular attention to number of units as Wilson has traditionally been successful in producing a large number of low MVA units. Focusing only on total MVA may distort Wilson's level of market share or changes in market share.
- 1.9 It is submitted that the ADC should also make inquiries as to what market is being measured in Table 2 in section A-4. Is it the market for all power transformers, the goods defined in the Application, relevant "like goods" (as defined by the *Customs Act 1901*) or only those goods traditionally produced by Wilson (up to 250MVA)? This will determine how relevant Table 2 is to the issue being considered in the investigation.

## 2 Consideration Report

- 2.1 In relation to the graphs on pages 13 and 22, the ADC has stated that the scales were removed 'to protect confidential information that could otherwise be estimated.' Could you please let us know what information is claimed to be confidential and why it is claimed to be confidential. We are instructed to once again request that the ADC provide the scale used on the Y-axis in these graphs.
- 2.2 In respect of the dates of the relevant tenders, it is requested that the ADC at least provide the range of tender dates. As the ADC has access to the precise dates of the tenders, we are instructed to request that it carefully consider which of those tenders would have resulted in an export of goods to Australia during the investigation period. Given the long production lead times, it is reasonable to consider that most tenders awarded after early 2012 would not have resulted in an export to Australia during the investigation period. Our client notes that in the Issues Paper recently released it was made clear that it is the ADC's view that only goods physically exported during the investigation period that are relevant. Clearly such a principle should be applied consistently.
- 2.3 In relation to the table titled 'Wtd average profit margin' (page 23), our client would appreciate if the ADC could offer an explanation as to why it has not provided the scale used on the Y-axis. Once we have that explanation, our client will be able to consider whether it agrees that information is confidential.



- 2.4 You have informed us that the graph sets out the gross profit margin over the relevant period. Gross margin excludes key costs that are being assessed in the case of exporters. Gross margin is affected by the accounting treatment of different expenses. This could vary from business to business and from accounting period to accounting period. A net profit measure removes the impact of these differences and is a better measure of overall business performance. It is suggested that the ADC exercise caution before placing significant reliance on the "Wtd average profit margin".
- 2.5 We assume that the comments made at numbered point 5 (page 2) of the ADC's letter dated 11 June 2014 relate to the table titled 'Potential sales volume' (page 24 of the Consideration Report) and not to the table titled 'Wtd average profit margin' which the ADC addressed in the previous paragraph of its letter. In relation to the 'Potential sales volume' graph, it would be appreciated if the ADC could offer an explanation as to why it has not provided both the scale used on the Y-axis and the date of each of the lost tenders. Once an explanation is received, our client can consider whether it agrees that the information is confidential. One compromise may be to provide the range of dates covered by graph.
- 2.6 We are instructed to again ask that the ADC pay careful attention to whether the relevant sales relate to exports to Australia during the investigation period. In this respect we refer back to and repeat our comments in paragraph 2.2 above.
- 2.7 Additionally, it is not clear to our client the basis on which it is concluded that Wilson would have been successful had the tender not been awarded to the successful tenderer. Was Wilson informed by the customer that it was the customer's second choice? It would be interesting to compare Wilson's success rate in tenders outside of the investigation period or in relation to other products to obtain a guide as to, in normal circumstances, how often Wilson is successful in the tender process.
- 2.8 It is also note that the "Potential sales volume graph" refers to the CIF value of goods as the potential lost sale volume. This is likely to overstate the potential loss. The CIF value includes international freight and insurance. If the relevant sales had been provided by the Australian industry the sale price would be lower as it would not include international freight and insurance.

### 3 PAD

- 3.1 We refer to the graph titled 'Price undercutting' on page 11 of the PAD (**Graph**). The ADC has stated that 'the graph was prepared before any exporter visits were undertaken and is based on information submitted in the application'.
- 3.2 Our client has serious concerns that the ADC has taken the information in Wilson's Application at face value for the purposes of issuing the PAD. It follows that the provisional dumping measures in the PAD were imposed relying on unverified information. As the graph is based on unverified information, our client assumes that it will not form part of the material on which the ADC Statement of Essential Facts is based.
- 3.3 The ADC states that it was 'satisfied that sufficient evidence was provided in the application to support claims of dumping' and material injury. We are instructed to request that the ADC explain why it elected not to verify the data contained in Wilson's Application prior to issuing the PAD, especially in circumstances where it had the time and opportunity to do so, given a period of over 4 months elapsed between the lodgement of Wilson's application and the publication of the PAD.
- 3.4 Having verified information relating to relevant tenders and exports we expect that the ADC is now in a position as assess whether:
- (1) the goods the subject of each of the 18 tenders in the Graph were in fact imported into Australia during the relevant investigation period. In this respect we refer back to and repeat the comments in paragraph 2.2 above;
  - (2) in each of the 18 tenders contained in the Graph, the goods were exported at dumped prices and not simply at a price lower than the price offered by Wilson;



- (3) for each of the 18 tenders in the Graph, the difference between the successful tender price and the price offered by Wilson was less than the alleged dumping margin;
  - (4) for each of the 18 tenders in the Graph, Wilson would have been successful if it submitted a lower price;
  - (5) for each of the 18 tenders in the Graph, the tender was awarded to the lowest bidder;
  - (6) the successful tender and the Wilson tender were for comparable goods (eg similar levels of losses), and if not, what impact did that have on the tender price; and
  - (7) for the purposes of its material injury analysis in the Statement of Essential Facts, any tenders were lost by Wilson to imports from other locations (for example, Japan and Europe) during the investigation period and injury analysis period, as well as the reason for these losses.
- 3.5 The ADC has stated that it does not intend to amend the PAD or provide any further explanation until after the publication of the Statement of Essential Facts. Notwithstanding this, we are instructed to kindly request that if the ADC has assessed the matters at paragraph 3.4 above, it let us know the outcome of that assessment. That information may have a direct and immediate impact on our client and any further submissions it may choose to make prior to the publication of the Statement of Essential Facts.
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- 3.6 In relation to the information requested at paragraph 3.5 of our letter, our client would appreciate if the ADC could further explain why:
- (1) the name of the relevant exporter for each of the 18 tenders is said to be confidential especially given Wilson seemingly knows this information;
  - (2) it has not provided the specific power ratings and voltages of the power transformers the subject of each of the 18 tenders; and
  - (3) it has not provided the scale used on the 'Value' axis of the graph.
- Accordingly, we are instructed to request that the ADC reconsider the request for information contained in paragraph 3.5 of our letter dated 4 February 2014.
- 3.7 In response to our client's request at paragraph 3.6 of our letter that the ADC explain what review was undertaken to determine whether the successful bid and the Wilson bid related to identical goods (in particular, whether the anticipated power losses of the tendered goods were identical), the ADC has stated that 'the information was provided in the application and the Commission was satisfied sufficient evidence was provided'. We trust that now the investigation is nearing its conclusion, the ADC will have undertaken this review and the Statement of Essential Facts will only be based on verified information.
- 3.8 As noted earlier, it appears that the ADC has taken the information in Wilson's Application at face value for the purposes of issuing the PAD. It follows that the provisional dumping measures in the PAD were imposed relying on unverified information.
- 3.9 Once again, we are instructed to request that the ADC explain why it elected not to verify the data contained in Wilson's Application prior to issuing the PAD, especially in circumstances where it had the time and opportunity to do so, given a period of over 4 months elapsed between the lodgement of Wilson's application and the publication of the PAD.
- 3.10 Hopefully the ADC can consider the issues raised in this letter prior to the Statement of Essential Facts. Given the progress of the investigation since the publication of Consideration Report and the PAD, our client anticipates that the Statement of Essential Facts will be based only on verified information and will not merely replicate unverified assertions by Wilson. A failure to adequately review the assertions made by Wilson is likely to result in an exercise of our client's right to challenge any adverse outcome of the investigation.

3 July 2014

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Please contact us if you have any queries.

Yours faithfully



Stephen Klotz  
Partner  
Norton Rose Fulbright Australia