

# 中华人民共和国商务部

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA  
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## **GOC's Supplemental comments to the TBEA issue in the Power Transformer AD investigation - Policy and Practice concerning "date of sale"**

With regard to the anti-dumping investigation into power transformer exported from the People's Republic of China, the GOC would like to make the following supplemental comments concerning TBEA's eligibility for an individual dumping rate in that investigation, further to our position paper as submitted on June 24, 2014. These comments and arguments are mainly based on Australia's established policy and practice on "date of sale".

### **1. Policy**

According to the Dumping and Subsidy Manual, December 2013, it is stated that<sup>1</sup>:

*"In establishing the date of sale, the Commission will normally use the date of invoice as it best reflects the material terms of sale. For the goods exported, the date of invoice also usually approximates the shipment date.*

*Where a claim is made that an exporter claims a date other than the date of invoice better reflects the date of sale, the Commission will examine the evidence provided.*

*For such a claim to succeed it would first be necessary to demonstrate that the material terms of sale were, in fact, established by this other date. In doing so, the evidence would have to address whether price and quantity were subject to any continuing negotiation between the buyer and the seller after the claimed contract date.*

*This arises because there can be circumstances where an exporter and importer agree on price and quantity and make a sales agreement to that effect, but this may not establish the date on which terms were finally agreed upon because an element of informality continues, and conditions can be changed." [emphasis added]*

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<sup>1</sup> These paragraphs are Under 14.3, "Due Allowance, Practice", of the Dumping and Subsidy Manual, at page 60.

We reiterate that, considering the nature of tender sale, the material terms of sale were established by the date of contract, and the price and quantity were not subject to any continuing negotiation or change after the date of contract. The date of delivery, namely the bill of lading date as preferred by your authority, is obviously less relevant to the establishment of material terms of sale.

Moreover, in the review of a decision to publish a dumping duty notice in respect of hollow structural sections<sup>2</sup>, the Trade Measures Review Officer (TMRO) has previously considered and addressed this issue:

*“Price is a material term, but other terms are also material, for example, the type and quantity of the goods subject to the order. The time and terms of delivery may also be considered to be material. It seems reasonable to assume that these terms are fixed at the time the offer is accepted. Although price may not be fixed, it seems very likely that the mechanism by which the price is to be determined will be set out in the contract.”*

In relation to the sale of power transformer by TEBA, we found the various terms established in the contract, the subsequent commercial invoices and the actual shipping documents shows that:

- (1) The quantity of power transformer to be shipped as per the contract reconciled the quantity identified on the commercial invoice;
- (2) The quantity of power transformer identified on the commercial invoices as being shipped reflected the quantity that was actually shipped;
- (3) The payment received by TBEA Shenyang Transformer Group Co., Ltd. (TBEA) which accounted for the quantity of power transformer identified on the commercial invoice was the quantity actually shipped; and
- (4) The scheduled delivery term identified on the contract is basically reconciled with the actual delivery date.

For the reasons outlined above, the date of contract is a suitable date to use as the date that best establishes the material terms of sale.

## **2. Practice**

We also noted that, in the Report No. 221 concerning dumping of wind towers exported from PRC and the Republic of Korea, the below practices have been followed by your authority:

- (1) The sale of wind towers is also under tender;
- (2) The date of contract is adopted as the date of sale; and
- (3) As far as we know, some of the transactions that involved into the dumping margin calculation are invoiced and delivered after the period of investigation (POI), however,

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<sup>2</sup> [http://www.adreviewpanel.gov.au/site/2012\\_7.asp](http://www.adreviewpanel.gov.au/site/2012_7.asp) - 12 Sept 2012. Para. 177

its date of contract is within the POI.

The wind tower case and the subject investigation are similar in the following aspects:

- (1) project or tender driven;
- (2) the long lead time between when a tender is called and when the goods are delivered; and
- (3) different in their technical properties between domestic and export products.

Considering the above, and to ensure the reasonable foreseeability and legal consistency, the GOC hereby request that the Commission to take the date of contract as the date of sale for TBEA, and calculate an individual dumping rate for it in the final determination.