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24 July 2014

Mr Geoffrey Gleeson
Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
CANBERRA CITY, ACT 2601

Dear Mr Gleeson,

Anti-dumping investigation into power transformers exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam

This submission is made in response to the issues paper published by the Anti-Dumping Commission (the Commission) on 27 May 2014 and sets out the views of Wilson Transformer Company (WTC).

1. The goods and like goods to the goods subject of the application

WTC supports the Commission's proposed position of including all power transformers falling within the parameters of the goods subject of the application and under investigation in its determination of dumping margins for individual exporters.

It was WTC's clear intention to have all power transformers equal to and exceeding 10MVA included in the investigation, irrespective of whether they are commonly referred to in other exporting countries as 'large distribution transformers'.

2. Identification of which export shipments are used for dumping margin calculations

WTC supports the Commission's proposed position of determining dumping margins on the basis of exportations that took place during the investigation period, irrespective of when the goods were contracted and/or the material terms of sale established.

3. Determination of profit for constructed normal values

WTC strongly disagrees with the Commission's proposed position on determination of profit in constructed normal values.

The Commission appears to be conceding that it is unable to meaningfully determine whether unprofitable domestic sales are recoverable over a reasonable period of time as required by s.269TAAD(3). Accordingly, the Commission considers that it is unable to determine whether domestic sales of like goods were made in the ordinary course of trade (OCOT) and therefore unable to determine a rate of profit on such sales for the purposes of constructing normal values.

WTC disagrees with the Commission's very narrow interpretation of the OCOT provisions and submits that the Commission has overlooked other reasonable methods for testing the recovery of unprofitable sales that would fit within the provisions of s.269TAAD(3).

Section 269TAAD and subparagraph 269TAAD(3)

Firstly, WTC considers that the Commission has taken a very narrow view of the available methods for determining whether unprofitable sale were made in the ordinary course of trade. The Appellate Body[1] made the following observations in respect of Article 2.2.1 of the WTO Anti-Dumping Agreement and the determination of unprofitable sales being in the ordinary course of trade:

> *We note that Article 2.2.1 of the Anti-Dumping Agreement itself provides for a method for determining whether sales below cost are "in the ordinary course of trade". However, that provision does not purport to exhaust the range of methods for determining whether sales are "in the ordinary course of trade", nor even the range of possible methods for determining whether low-priced sales are "in the ordinary course of trade"*

This is further supported by the Commission's own policy which recognises 'ordinary course of trade' as a broader concept than a simple comparison of a single price with a weighted average cost.

An example of alternative methods endorsed by a WTO Panel[2] is the approach adopted by the European Communities (EC) in its investigation into farmed salmon from Norway. In that dispute, the EC outlined the following methodology used in that case for determining whether sales were sold in the ordinary course of trade:

> *In cases where the sales volume of a type of farmed salmon, sold at a net sales price equal to or above its cost of production, represented more than 80 per cent of the total sales volume of that type, and where the weighted average price of that type was equal to or above its cost of production, normal value was based on the actual domestic price. This price was calculated as a weighted average of the prices of all domestic sales of that type made during the IP, irrespective of whether these sales were profitable or not.*
>
> *Where the volume of profitable sales of a type of farmed salmon represented 80 per cent or less of the total sales volume of that type, or where the weighted average price of that type was below its cost of production, normal value was based on the actual domestic price, which was calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 per cent or more of the total sales volume of that type.*
>
> *Finally, where the volume of profitable sales of any type of farmed salmon represented less than 10 per cent of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value."*

It is clear then that alternative methods exist for examining whether domestic sales are recoverable.

WTC does not intend proposing any alternative methods for the Commission to consider at this time. It simply wishes to highlight that the Commission's proposed position in the issues paper is unnecessarily restrictive and narrow in its interpretation and application.

Repealed subparagraph 269TAC(13)

The Commission's restrictive interpretation is even more evident in light of recent legislative changes[3] designed to 'provide more discretion to the CEO and the Minister in determining an appropriate amount of profit in the construction of normal value'. The explanatory memorandum further explains that the repeal of subparagraph 269TAC(13) of the Act removes 'the limitations to determining profit when constructing a normal value because of subsection 269TAAD.'

Section 269TAC(13) required a zero of rate of profit to be included in constructing a normal value because of the operation of s.269TAAD. That is, where all domestic sales were found to have not been made in the ordinary course of trade. It is then unreasonable for a potential zero rate of profit to be included in the

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[1] United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan: WT/DS184/AB/R; para 147, page 53.

[2] European Communities – Anti-Dumping Measure on Farmed Salmon from Norway: WT/DS337/R; para 7.225, page 160.

[3] Customs Amendment (Anti-Dumping Improvements) Bill (No. 2) 2012,

construction of normal values for power transformers when there are clearly domestic sales by the various exporters that are profitable and as a result in the ordinary course of trade.

The potential zero rate of profit arises because the words 'actual amounts realised' in Regulation 181A(3)(a) have been interpreted by the Appellate Body as including both profitable and unprofitable domestic sales. So where the losses are greater than the profits on domestic sales, it is conceivable that the Commission will consider including a zero rate of profit.

Therefore, WTC considers it illogical that the Government would repeal a particular provision to provide more flexibility in determining profit, yet the Commission's narrow interpretation of the OCOT provisions restrict the discretion of the Minister to determine a rate of profit. Further the repeal of s.269TAC(13) had the effect of removing the use of a zero rate of profit where all domestic sales were found to be unprofitable or non-recoverable, yet the Commission's proposed interpretation could result in a zero rate of profit when there are domestic sales that are profitable and in the ordinary course of trade.

Regulation 181A(3)(a)

WTC notes that the Commission did not elaborate in the issues paper on the scope of products that would be covered by same general category of goods. For example, it is unclear whether distribution transformers would fall within this description. If so, given that exporters were not required to provide costs and sales for domestic sales of distribution transformers with power ratings less than 10MVA, WTC questions whether the Commission has all the necessary information to establish the amount of profit normally realised by exporters on the same general category of goods.

It is also unclear whether power transformers with voltage ratings equal to or exceeding 500kV are to be included in the parameters of the same general category of goods. Once again, as exporters were not required to provide costs and sales information for domestic sales of power transformers with voltage ratings equal to or exceeding 500kV, WTC queries whether the Commission has the necessary information to determine the normally realised profits of the same general category of goods sold domestically.

In the issues paper, the Commission proposes to base its profit calculations on like goods, being power transformers equal to or exceeding 10MVA and not equal to or greater than 500kV. WTC understands this to mean that the Commission does not have all the necessary information on products falling within the same general category of goods to work out the amounts actually realised by exporters, other than the available information provided by exporters in relation to like goods. So presumably the decision to limit its examination of profits to like goods, as outlined above, is due to the lack of cost and sales information in relation to domestic sales of products that would fall within the description of the same general category of goods.

If this is the case, then it is clearly inconsistent for the Commission to consider that profit is unable to be determined under Regulation 181A(2) because it cannot work out whether unprofitable domestic sales are sold in the ordinary course of trade, but for it to consider that profit can be determined under Regulation 181(3)(a), even though it is unable to work out the amount of profit actually realised by exporters on the same general category of goods.

WTC contends that if the Commission is unable to work out the amount of profits actually realised by exporters from the sale of the same general category of goods in the domestic market, then profit is unable to be determined under Regulation 181A(3)(a).

Regulation 181A(3)(c)

For all the reasons outlined above, WTC considers that if for the purposes of Regulation 181A(2), the Commission was still unable to meaningfully determine whether unprofitable domestic sales were made in the ordinary course of trade after considering alternative methods for assessing 'recovery' of sales, then profits should be determine in accordance with Regulation 181A(3)(c), using any other reasonable method.

WTC notes that the profit under this provision is limited to 'the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export'. Therefore, WTC submits that the amount of profit to be included in constructed normal values should be the highest rate of profit achieved by any exporter in each of the countries of export, on sales of goods of the same general category in the domestic market.

Conclusion

In conclusion, WTC considers the Commission's interpretation and application of the OCOT provisions is too narrow and restrictive, when compared to the findings of WTO dispute bodies, the practices of other administrations and the intent behind recent legislative changes to the Act. WTC contends that alternative methods should be considered by the Commission in examining whether unprofitable sales are recoverable.

If the Commission is to continue to hold the view that profit is unable to be determined under Regulation 181A(2), then WTC contends that the amount of profit should be determined under Regulation 181A(3)(c), having regard to all relevant information. WTC considers that the highest rate of profit achieved by any exporter in the country of export on the same general category of goods in the domestic market to be reasonable.

4. Calculation of credit adjustment

WTC supports a credit adjustment, however the Commission's proposed approach is overly simplified and only addresses payments terms associated with milestone payments. Using the Commission's example in the issues paper,

a) Without credit adjustment, the dumping margin would be 3.4%
b) With the credit adjustment shown, the dumping margin is 3.7%
c) If all export sale payments for all milestones were 30 days, the dumping margin would be 3.2%
d) If all export sales had only one milestone payment 30 days after commissioning and handover, the dumping margin would again be 3.2%
e) Further, if all export sales had only one milestone payment 12 months after handover and commissioning, and payable within 7 days, the dumping margin would be 3.0%.

Examples d) and e) in particular above, which clearly are associated with a larger dumping margin, demonstrate why the Commission also needs to take into account the difference in milestone payments between domestic and export sales as part of a credit adjustment approach. Two possible approaches to addressing this issue might be –

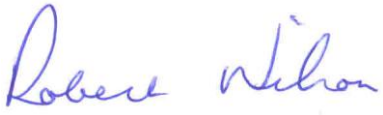
i. To treat delayed milestone payments as a further credit period, or
ii. To combine milestone payments and credit terms together similar to the proposed credit adjustment based around a common date of despatch or delivery to port.

5. Exchange rates

WTC supports the Commission's proposed position to convert prices for exported power transformers into local currency by using the exchange rate at the contract date, unless the Commission is satisfied that an alternative exchange rate should be used, such as the rate on the date of invoice or a rate established in a foreign exchange contract. As most customer payments would be in Australian dollars, WTC suggests the appropriate RBA published exchange rate be adopted as the fall-back rate.

We would be pleased to discuss any of these matters further.

Yours sincerely



Robert Wilson
Managing Director