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Anti-Dumping Commissioner
Anti-Dumping Commission
5th Floor Customs House
5 Constitution Avenue
Canberra ACT 2601
Forwarded by e-mail

Dear Commissioner

25 July, 2014

Request for Meeting of Parties between TIC and Wilson- Power Transformer Investigation

We have been instructed by Toshiba International Corporation Pty Ltd ("TIC") to formally make a procedural request (outlined below) to the Anti-Dumping Commission ("ADC") concerning its dumping investigation on certain power transformers imported into Australia.

Background on TIC

TIC is a 100% owned Australian subsidiary of Toshiba Corporation Japan ("Toshiba"). Toshiba itself is a world leader and innovator in pioneering high-technology. It is also a diversified manufacturer and developer of advanced electronic and electrical products which include electronic devices and components through to power systems and infrastructure.

In Australia and New Zealand, Toshiba services the power industry through its subsidiary TIC which has established itself as a market leader in the power sector providing generators, turbines, transformers and associated power infrastructure for the Australian industry.

TIC's corporate structure reflects its domestic "turnkey" commercial strategy. It employs 162 people including a mix of professions/skills to enable it to successfully implement its "turnkey" contracts. TIC advises that its total Australian staff is 800.

TIC's Importations During Investigation and Injury Analysis Periods

During the "investigation period" TIC imported 3 units of goods under consideration.

During the "injury analysis period" TIC imported 8 units of goods under consideration. Four of these units were from China and 4 were from Japan.

There are 2 suppliers to TIC of the goods under consideration from China namely: CET Toshiba (Changzhou) Transformer Co. Ltd and Changzhou Toshiba Shudian Transformer

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Co..There is 1 supplier to TIC of the goods under consideration from Taiwan: namely: Tatung Company.

TIC has supplied to the ADC completed importer questionnaires and its exporters have similarly supplied completed exporter questionnaires. They are "interested parties" as that term is defined within the Australian law and the 2 relevant WTO Agreements.

TIC's Observation

TIC and its exporters have noted the ADC's extended date for the publication of the Statement of Essential Facts from 16 July to 8 September 2014 at which time it is understood that the ADC will set out its recommendations and findings and provide particulars of the material evidence relied on in its deliberations.

It is further understood that the ADC is not bound to investigate each and every avenue suggested by an interested party but rather will conduct its investigation having regard to the evidence that is material so that the investigation can be concluded within the time now available.

TIC and its exporters are concerned that because they represent such a minor element in this overall investigation that, relevant issues that are material to them and impact directly on the viability of TIC's commercial existence within Australia may be construed by the ADC as not "material" having regard to the timeframe between today's date and 8 September 2014.

Request

As the ADC is aware, the procedural and administrative aspects of Australia's anti-dumping law are required to comply with and not depart from Article 6 of the Agreement on Implementation of Article VI of the GATT 1994 ("the Agreement").

The principal objectives of the procedural requirements within Article 6 of the Agreement are to ensure transparency of proceedings, a full opportunity for parties to defend their interests and adequate explanation by investigating authorities of their determinations.

Article 6.1 of the Agreement (and the Australian law) provide TIC and its exporters with the opportunity to "present in writing all evidence which they consider relevant in respect of the investigation in question." TIC and its exporters have already provided such evidence in writing to the ADC.

Article 6.2 of the Agreement in addition, relevantly provides:

"Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally."

TIC and its exporters therefore request the ADC to facilitate the opportunity for a meeting between the applicant industry and TIC in its capacity of being an "interested party" with adverse interests so that opposing views may be presented and rebuttal arguments offered. TIC makes this request having regard to Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organisation ("WTO Agreement") which relevantly provides:

"4.... Each Member shall ensure the conformity of its laws, regulations and **administrative procedures** with its obligations as provided in the Annexed Agreements."

The Agreement from which Article 6.2 is quoted above is one of the Annexed Agreements to the WTO Agreement (see Annex 1A). Accordingly, Australian dumping administrative procedures are bound to conform with Article 6.2 of the Agreement.

It is noted that section 269U of the Customs Act 1901 provides for such meetings between relevant interested parties in the context of "Inquiries in Relation to Undertakings".

Conclusion

For the reasons arising from the WTO procedural and administrative obligations within Article 6.2 of the Agreement (confirmed in the Panel decision in *Guatemala Cement II*) TIC requests the ADC to convene and preside over a meeting between the applicant and TIC for the purposes discussed in this correspondence.

Should you be able to provide us with an in principle agreement to this request TIC will work with the ADC to formulate the scope and agenda for this meeting.

Yours sincerely

A handwritten signature in blue ink that reads "Alan Bennett".

Alan Bennett Legal