

**For Publication**

Mr Chris Vincent  
Manager Operations 1  
Anti-Dumping Commission  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

4 August 2014

Dear Mr Vincent

**Anti-Dumping Investigation (219) Power Transformers from China**

As you are aware, we act for Siemens.

We refer to the submission by Wilson Transformers (**Wilson**) placed on the public record in response to the Issues Paper 2014/01 (**Issues Paper**) (**submission**) and respond as follows.

By way of preliminary comment, the deadline to respond to the Issues Paper expired on 10 June 2014. The date of the submission exceeds the deadline by more than 6 weeks.

Notwithstanding the delay, the submission puts in issue two matters:

- (a) profit for constructed normal value; and
- (b) credit adjustment.

Each of the above will be addressed below.

**Profit for constructed normal value**

The submission made by Wilson that the ADC can, and should, use ordinary course of trade (**OCOT**) sales is, respectfully, a flawed argument. The *Customs Act 1901* (Cth) (**Act**) prescribes the methodology for testing OCOT in section 269TAAD of the Act.

The definition of sales that are regarded to be in the "ordinary course of trade" is provided (indirectly) pursuant to the terms of section 269TAAD of the Act. That provision defines sales that are **not in the ordinary course of trade** as sales of goods at a loss occurring in substantial quantities and which do not provide for the recovery of costs within a reasonable period. Section 269TAAD of the Act requires a dual-stage analysis of sales to be performed in order to test OCOT, that is whether the sale is:

- (a) profitable (comparison of unit sales price and unit CTMS for the relevant quarter of sale); and
- (b) recoverable within a reasonable period of time (typically taken to be a 12 month period).

In this regard section 269TAAD(3) of the Act provides that "*Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period*" (emphasis added).

The ADC has concluded that it cannot undertake that assessment with any satisfactory degree of accuracy/reliability. Siemens agrees with the ADC's position.

Mr Chris Vincent, Anti-Dumping Commission

4 August 2014

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Wilson submit that there are other mechanisms for testing recoverability open to the ADC but do not offer any suggested guidance as to what or how those other mechanisms operate or could be applied.

Wilson also submits that the ADC should, if it does not use OCOT sales, turn to the "any reasonable method" provision: see Regulation 181A(3)(c) of the *Customs Regulations 1926* (Cth) (**Regulations**). The "**reasonable**" method promulgated by Wilson is the use of the highest profit achieved by any exporter in the relevant country of export. That method is self-serving and not reasonable.

Siemens agrees with the ADC's approach to use profit calculated on sales of the general category of goods: see Regulation 181A(3)(a). The clear and logical approach in this regard would be to consider the "goods under consideration" to form the "category of goods" for this purpose. That is, profit should be the profit actually realised on the sales of the goods under consideration during the period of investigation.

### **Credit adjustment**

Section 269TAC(9) of the Act states that where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) (that is, where normal values are constructed by the ADC), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

Wilson has suggested two possible models to adjust cost for the purpose of constructing normal value. Siemens disagrees with those models and submits that the ADC's revised methodology set out in the Issues Paper is the one that best achieves a reasonable comparison between constructed normal values and export prices for the purposes of section 269TAC(9) of the Act.

If you have any questions or queries, please contact us.

Yours sincerely

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