



Anti-Dumping Commission  
Customs House  
5 Constitution Ave  
CANBERRA ACT 2601

Mr Alan Bennett  
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By email: [abennett@ablegal.com.au](mailto:abennett@ablegal.com.au)

Dear Mr Bennett

**INVESTIGATION INTO THE ALLEGED DUMPING OF  
POWER TRANSFORMERS – PROPOSAL FOR A MEETING OF PARTIES**

I refer to your letter of 25 July 2014 concerning the investigation into the alleged dumping of power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam.

I note your client, Toshiba International Corporation Pty Ltd (TIC), has requested that the Anti-Dumping Commission (the Commission) convene and preside over a meeting between Wilson Transformer Company Pty Ltd and TIC. You refer to the procedural and administrative obligations of Article 6.2 of the Agreement on Implementation of Article VI of the GATT 1994.

In the context of the Australian anti-dumping system, Part XVB of the *Customs Act 1901* (the Act) establishes the substantive and procedural requirements for anti-dumping investigations conducted by the Commission. It is not the usual practice for the Commission to hold meetings of parties during the course of an investigation. Indeed, such meetings are rarely requested by interested parties given the open and transparent investigation process established in the Act that provides ample opportunities for interested parties to defend their interests. In this context, it is unclear to the Commission why TIC believes the proposed meeting of the parties is necessary or required in this investigation.

As you are aware, interested parties can make written submissions to the Commission during the course of an investigation, and such submissions (provided they are timely and meet the requirements of the Act in terms of the provision of a non-confidential version for the public record) must be considered in formulating the statement of essential facts – refer section 269TDAA of the Act. I note that TIC provided submissions dated 11 February 2014, 6 March 2014, 15 April 2014, and 10 June 2014, all of which will be taken in to account by the Commission.

Interested parties are provided a further opportunity to make submissions to the Commission within 20 days of the statement of essential facts being placed on the public record – refer section 269TEA of the Act. Indeed, the Commissioner must have regard to submissions made within that 20 day period in deciding on the recommendations to be

made to the Minister in the Commissioner's report – refer subsection 269TEA(3)(a) of the Act.

In this context, it is not clear to the Commission why TIC is:

*'...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 has [sic] not "material" having regard to the timeframe between today's date and 8 September 2014'.*

To be clear, the Commission is presently of the view that submissions made by **close of business 20 August 2014** may, depending on the nature and content of the information, still be taken into account for the purposes of formulating the statement of essential facts in this case.

Any meeting of the parties in the Australian system would need to be documented, and a suitable written account of the meeting placed on the public record. In these circumstances it is difficult to see what advantages the proposed meeting has over the open and transparent process that is currently being observed, either in terms of the timeliness of the process, or the Commission's consideration of the "material" facts in this case.

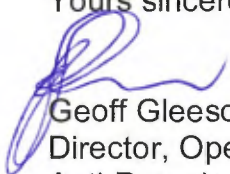
Unlike other jurisdictions, the Australian anti-dumping system does not hold hearings in which parties present evidence for consideration in the decision-making process. Instead, the Australian system considers, *inter alia*, evidence submitted in writing, including public record accounts of such submissions, to promote open and transparent examination of the issues. This approach has proven to be an efficient and effective mechanism to allow parties to participate and defend their interests in a way that does not introduce additional costs that might be inherent in a formal hearing process.

The preceding commentary should not be construed as a denial of TIC's request for a meeting of parties in this investigation. Rather, the Commission is hoping to provide TIC with a better understanding of the usual operation of the Australian anti-dumping system so that TIC can fully avail itself of the opportunities to participate in the investigation.

Should TIC still consider that there is a need for a meeting of parties as proposed, I request that TIC provide further details of the proposal including detailed agenda items, suggested meeting format, time allocated, presentation style, handling of confidential matters, and intended outcomes.

I look forward to your response.

Yours sincerely



Geoff Gleeson  
Director, Operations 1  
Anti-Dumping Commission

8 August 2014