



FILE NOTE

POWER TRANSFORMERS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF INDONESIA, THE REPUBLIC OF KOREA, TAIWAN, THAILAND AND THE SOCIALIST REPUBLIC OF VIETNAM

Potential for use of an alternative approach to dumping margin assessments in terms of subsection 269TACB(3) of the *Customs Act 1901*

Purpose

The purpose of this file note is to advise interested parties that the Anti-Dumping Commission will soon be revisiting all preliminary exporter dumping margin assessments to determine whether there are grounds to work out dumping in accordance with subsection 269TACB(3) of the *Customs Act 1901* (the Act).

It is important to recognise that dumping margin assessments calculated under subsection 269TACB(3) of the Act may vary significantly from dumping margin assessments calculated under subsection 269TACB(2) of the Act.

Legislation and policy

Section 269TACB of the Act (see full text at Attachment A) contains the relevant provisions for working out whether dumping has occurred and the levels of dumping. Subsection 269TACB(3) is set out below:

(3) If the Minister is satisfied:

(a) that the export prices differ significantly among different purchasers, regions or periods; and

(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

It is also relevant to note subsection 269TACB(6), as follows:

(6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:

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(a) the goods exported to Australia in each such transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

The dumping and subsidy manual (p.115) provides the following :

The weighted average to transaction method of comparison is provided for in s. 269TACB(3) and this method may only be used where the export prices vary significantly between purchasers, regions or over time. An amalgamation exercise is also required in this circumstance in order to work out a single margin of dumping for the product from the exporter concerned.

The Commission considers that where the weighted average [normal value] to transaction [export price] (weight-to-transaction) method is justified and applied, then it is entirely appropriate to base the dumping margin on the export prices in respect of the particular transactions used in the weight-to-transaction method. It is important to recognise that this means basing the dumping margin assessment on particular export transactions and setting aside the results of other export transactions. The Commission considers this approach to be consistent with the Australian legislation and the WTO Anti-Dumping Agreement (refer Article 2.4.2).

Commission approach to revision of dumping margins

The Commission will soon reassess dumping margins, for all cooperating exporters of power transformers, in terms of the provisions of subsection 269TACB(3) of the Act. Where considered necessary, the Commission will write to certain exporters that may be considered as fitting those conditions described in subsections 269TACB(3)(a) and (b) of the Act. The Commission will provide the exporter an opportunity to provide reasons for the observed price differences; and reasons for why such differences may or may not make the other methods for undertaking dumping calculations inappropriate.

Submissions on this issue

Should any interested parties wish to make a submission on this issue, they are encouraged to do before **22 August 2014**.

Interested parties should attach relevant evidence to support the views expressed in their submissions. A non-confidential version of submissions must be provided. Submissions can be provided:

by mail to: Director Operations 1
 Anti-Dumping Commission
 Customs House
 5 Constitution Avenue
 CANBERRA CITY ACT 2601

or by email to: operations1@adcommission.gov.au

or by fax to 02 6275 6990.

BACKGROUND TO INVESTIGATION

Refer to www.adcommission.gov.au/cases/ADC219.asp

The Commission still intends to publish the statement of essential facts (SEF) on 8 September 2014 and interested parties have an opportunity to make submissions in response to the SEF.