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20 August 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

Please accept a submission by Wilson Transformer Company (WTC) in response to the Anti-Dumping Commission's (the Commission) note for file relating to the possible use of subsection 269TACB(3) of the Customs Act (the Act) in determining dumping margins.

In our submission of 10 June 2014, WTC highlighted concerns about the treatment of differing power transformers exported from Thailand in the calculation of dumping. These concerns centred specifically on the export of power transformers [REDACTED]

[REDACTED] The scope of a "package" or "turn-key" project can be variable and include a whole substation or power supply system, or a relatively limited range of switchgear with the power transformer.

The primary reason for our concern with power transformers to be sold as part of a "packaged" or "turnkey" project is the ability to reasonably establish accurate costs, sale prices and dumping margins. In our view, the costs and prices of such power transformers differ considerably from the traditional power transformers which are purchased by customers on a "Supply, Install and Commission" basis.

Targeted dumping

Subsection 269TACB(3) of the Act allows the Minister to compare the respective export prices determined in relation to individual transactions during the investigation period with the weighted average corresponding normal values, where the Minister is satisfied:

- (a) that the export prices differ significantly among different purchasers, regions, or periods; and
- (b) that those difference make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or part of the investigation period.

The above methodology is commonly referred to as a weighted-average-to-transaction (W-T) comparison and differs from the primary methodologies outlined at subsection (2) which cover weighted-average-to-weighted-average (W-W) and transaction-to-transaction (T-T) comparisons.

WTC submits that the provisions of s.269TACB(3) apply in the case of power transformers exported to Australia that will form part of a "packaged" or "turnkey" project. Therefore, WTC fully supports the



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Health & Safety
 AS 4801
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Environment
 ISO 14001
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Commissions efforts to reassess dumping margins for cooperating exporters in accordance with subsection 269TACB(3) of the Act.

Scope of export transactions for calculation of dumping

In using the W-T methodology set out in s.269TACB(3), WTC agrees with the Commission's interpretation that the "respective export prices" referred to in that subsection should only relate to the "targeted exports". As a result, power transformers exported as part of, or destined for sale as, a "packaged" or "turnkey" project should be excluded from the dumping margin calculation.

This issue of limiting the application of the W-T methodology to certain export transactions has been addressed by the Appellate Body in *US – Zeroing (Japan)*¹. The Appellate Body noted the following:

The emphasis in the second sentence of Article 2.4.2 is on a 'pattern', namely a 'pattern of export prices which differs significantly among different purchasers, regions or time periods'. The prices of transactions that fall within this pattern must be found to differ significantly from other export prices.

We therefore read the phrase 'individual export transactions' in that sentence as referring to transactions that fall within the relevant pricing pattern. This universe of export transactions would necessarily be more limited than the universe of export transactions to which the symmetrical comparison methodologies in the first sentence of Article 2.4.2 would apply. In order to unmask targeted dumping, an investigating authority may limit the application of the W-T comparison methodology to the prices of export transactions falling within the relevant pattern.

Therefore WTC supports the view that the scope of export transactions that may be used under the W-T method is limited to those that have the specific pricing pattern targeted towards purchasers, regions or time periods.

Conclusion

WTC supports the Commission's proposal that the weighted-average-to-weighted-average or transaction-to-transaction methodologies for calculating dumping do not properly address and eliminate any potential concealing of dumping that may have occurred through the use of transactions across the investigation period. WTC therefore agrees with the Commission's decision to examine whether a significant pattern of prices exists between purchasers, regions or periods and if so, apply the alternative methodology provided for in s.269TACB(3), which would measure the amount of dumping that actually occurred with respect to the targeted customers, regions or periods.

Yours sincerely



Robert Wilson
Managing Director

¹ US- Zeroing (Japan) – (WT/DS322/AB/R), para 135, page 56.