

Mr Geoff Gleeson
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 Anti-Dumping Commission
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26 August 2014

Dear Mr Gleeson

Alleged Dumping of Power Transformers exported from the People's Republic of China, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam

**Response to submission by Wilson Transformer Corporation (WTC) dated 15 August 2014
 Siemens China**

We refer to the 'supplementary submission' dated 15 August 2014 prepared by WTC in relation to investigation 219 and published by the Anti-Dumping Commission (ADC) on 18 August 2014.

In summary WTC's views are directed to the methodology for the calculation of profit under regulation 181A(2) for the purposes of constructing normal values under section 269TAC(2) of the *Customs Act 1901 (Act)*.

WTC posits a methodology that, it suggests, alleviates the difficulties that led the ADC to determine that it could not meaningfully test OCOT in relation to domestic sales of power transformers as required by section 269TAAD. Having exhausted its arguments on this topic, and perhaps appreciating that its suggested OCOT methodology is inconsistent with the requirements of the Act and must be rejected, WTC offers a position in relation to the calculation of profit under Regulation 181(A)(3).

Our client strongly believes that WTC's arguments are not substantiated, are clearly inconsistent with the statutory requirements of the Act, and fail to appreciate the factual circumstances of the present investigation.

1. Calculation of profit and OCOT issues revisited

1.1 In constructing normal values, pursuant to section 269TAC(2)(c) of the Act, the primary position is that normal value is the sum of the:

- cost of production or manufacture of the (exported) goods; and
- on the assumption that the goods had (instead of being exported) been sold on the domestic market in the *ordinary course of trade*, amounts for the administrative selling and general costs and **the** profit on those sales.

1.2 Regulation 181A sets out the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii), work out an amount to be **the** profit on the sale of goods.

1.3 As WTC has intimated in its submission, the preferred approach for profit calculation is specified under regulation 181A(2), which states that the Minister must, **if reasonably possible**, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods **in the ordinary course of trade**.

1.4 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(3) of the Act which 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.

1.5 Section 269TAAD(3) provides the test to be applied to determine the recoverability of the costs of good sold for the purposes of OCOT analysis. It requires the comparison of transactional selling prices with:

- (a) costs of production correlative to the specific transaction; and
- (b) weighted average costs of production over the period.

1.6 As set out in the ADC's recent issues paper, the application of the recoverability test under section 269TAAD(3) is complicated by the unique circumstances of the goods under consideration. These unique complexities include, but are not limited to, the fact that:

In the case of power transformers, each unit is uniquely constructed and the costs and prices can differ significantly from one model to another.

1.7 The materiality of these unique issues in the context of the investigation conducted by the ADC is underscored by the ADC's conclusions (summarised in the issued paper) that

The ADC considers that a "weighted average cost" of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated for power transformers. Consequently, the recovery test cannot be conducted meaningfully and the ordinary course of trade test cannot be fulfilled.

WTC's proposed alternative

1.8 WTC's 'alternative' method, it suggests, somehow circumvents the issues encountered by the ADC in determining weighted average costs for the purposes of testing recoverability by comparing transactional profit/loss margins with a weighted average margin of profit achieved over the period.

1.9 This method is patently inconsistent with the parameters of the test set out under section 269TAAD(3) which clearly sets out the test for recoverability as one based upon a comparison of selling prices and costs.

1.10 WTC's proposed alternative therefore cannot be employed so as to allow the application of regulation 181A(2).

2. Profit construction under regulation 181A(3)

2.1 The summary of the WTO Panel's interpretation of the section of the Anti-Dumping Agreement upon which regulation 181A(3) is mirrored is noted. The WTO Panel's discussion of the issue does no more than support the orthodox view that no hierarchy can be read into the terms of regulation 181A(3).

2.2 Beyond providing general comments regarding the appropriate reading of the section, our client does not believe the reference to the Panel's discussions in any way supports WTC's argument that the ADC should follow a methodology that accords with regulation 181A(3)(c) instead of the current methodology under regulation 181A(3)(a).

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- 2.3 The ADC's use of regulation 181(3)(a) is not based on a rigid reading of the regulation, but an appreciation of the facts of this investigation and the body of verified evidence it has before it relating to each cooperative exporter individually.

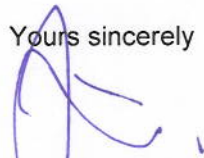
Any other reasonable method

- 2.4 The terms of sub-paragraph (c) of regulation 181A(3) include specific reference to 'reasonableness' - that is, it demands that the 'other method' to be applied must be reasonable.
- 2.5 It is not clear whether WTC is simply repeating its previous submission of 24 July 2014 in relation to the application of regulation 181A(3)(c). If so, our client repeats the matters in our letter of 4 August 2014 as to why that proposal is not reasonable.
- 2.6 Alternatively, if WTC is suggesting that the method which it seeks to employ for the purposes of regulation 181A(2) can in the alternative be used for the purposes of regulation 181(3)(c), that method based on profit margin comparison is clearly **unreasonable** in the circumstances of this investigation and therefore does not conform with the requirements of regulation 181A(3)(c).

Conclusion

- 2.7 Our client disagrees with WTC's submission regarding the ADC's prevailing views on the determination of profit for the purposes of constructed normal values.
- 2.8 It is submitted, with respect, that WTC's arguments do not convincingly substantiate:
- (a) that the ADC should adopt an alternative method for testing recoverability (the mechanics of which are in no way sanctioned by the Act); and
 - (b) why the ADC should alter its view regarding the determination of profit under regulation 181A(3)(a).
- 2.9 The ADC's position regarding the calculation of profit under regulation 181A(3)(a) should remain unchanged.

Yours sincerely



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Our ref 11276/80154429