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Non-confidential submission

Mr Geoff Gleeson
Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

By email: Operations1@adcommission.gov.au
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Dear Geoff

**Alstom Grid Australia Limited, PT. Unelec Indonesia, SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd. and SEC Alstom Wuhan Transformers Co., Ltd.
Investigation into alleged dumping of 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**

We refer to our letter dated 26 August 2014 advising that we have recently commenced representing Alstom Grid Australia Limited and its related entities, PT. Unelec Indonesia ("**Unindo**"), SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd. ("**Alstom Shanghai**") and SEC Alstom Wuhan Transformers Co., Ltd. ("**Alstom Wuhan**") (to be collectively referred to as "**Alstom**") in regards to the abovementioned investigation ("**Investigation**").

We note that we had attempted to arrange a meeting with the Anti-Dumping Commission ("**ADC**") prior to the release of the Statement of Essential Facts for the Investigation to discuss Alstom's position in regards to the Investigation. However, we understand that the ADC was unable to facilitate that request, given the status of the Investigation.

At the outset, we advise that Alstom is able to provide a unique perspective in regards to the Investigation, as Alstom was an Australian manufacturer of the goods under consideration during the Investigation Period of 1 July 2010 to 30 June 2013 ("**Investigation Period**"). Alstom closed its local manufacturing operations due to commercial reasons not related to the alleged dumping.

Accordingly, we wish to provide you with a concise summary of Alstom's current position in relation to the Investigation. This submission does not detract from submissions previously provided by or on behalf of Alstom in relation to the Investigation. In addition, we reserve the right to make further comments in relation to the Investigation.

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1. General

Alstom is not involved in the alleged dumping of power transformers (refer Ernst & Young ("**EY**") letter 17 March 2014).

2. Application by Wilson Transformer Company Pty Ltd

Wilson Transformer Company Pty Ltd's ("**Wilson**") constructed export and normal values were fundamentally flawed and should not lead to any expectation of a finding of dumping (refer EY letter 17 March 2014).

3. Goods the subject of the Investigation

- (a) The goods subject of the Investigation should include all power transformers with power ratings of equal to or greater than 10MVA and voltage ratings of less than 500kV, regardless of the manufacturer's description of such goods as "distribution transformers" (refer EY letter 10 June 2014).
- (b) Wilson's definition of the excluded "distribution transformers" is inadequate, as it did not define the excluded goods in terms of their capacity. As such, it is not possible to distinguish distribution transformers from the goods under consideration. Alstom submits that the capacity of the goods is more accurate than voltage in identifying the goods under consideration. Each nation has its own standard for classifying the transformer as a distribution transformer. As such, a specific definition referring to the capacity of the goods should be adopted by the ADC.

4. Volume of exports and termination

- (a) In accordance with Section 269TDA(3) of the *Customs Act 1901* (Cth) ("**Act**"), where the total volume of allegedly dumped goods from a particular country of export is negligible, the Commissioner must terminate the Investigation to the extent it relates to that country. The volume of allegedly dumped goods from China was minimal compared to other countries subject to the Investigation. Alstom submits that given these circumstances, the Investigation should be terminated in accordance with Section 269TDA(3) insofar as it related to China.
- (b) If the ADC is not of the view that the Investigation should be terminated in accordance with Section 269TDA(3), Alstom Shanghai and Alstom Wuhan should still not be subject to dumping duties as they did not export the goods under consideration during the Investigation Period. [REDACTED]
[Commercial-in-confidence. Confidential reference to business operations.]

5. No causation of material injury and termination

The Investigation should in any event be terminated insofar as it relates to Alstom, because Alstom did not cause material injury to the Australian industry. In addition to the position outlined in the EY letter dated 17 March 2014, we further submit that:

- (a) Alstom was a manufacturer of the goods under consideration during the Investigation Period. Alstom ceased local manufacturing operations due to commercial reasons not related to the alleged dumping of the goods under consideration. This should not be considered as being part of any alleged material injury.
- (b) If the Investigation is not terminated on the basis that the total volume of allegedly dumped goods from China is negligible, as outlined in paragraph 4(a) above, it should be

terminated on the basis that such a low volume of Chinese exports could not have caused material injury to the Australian Industry.

- (c) In the alternative, the Investigation should be terminated insofar as it relates to Alstom on the basis that Alstom's import volumes were so low that they could not have caused material injury to Australian Industry.
- (d) Specifically, Alstom Shanghai and Alstom Wuhan did not export the goods under consideration to Australia during the Investigation Period. Therefore they have not caused material injury.
- (e) Unindo only exported 1 shipment of the goods under consideration to Australia during the Investigation Period. Therefore it has not caused material injury.
- (f) Other interested parties, including those who purchase power transformers, have shared similar views to those outlined in the EY letter dated 17 March 2014 in regards to the cause of injury to the Australian Industry.

6. Downstream effects of imposing dumping duty

Further to the comments in the preceding paragraph 5 regarding causation of material injury, in our view the ADC must also have regard to the downstream effects of imposing dumping duty.

- (a) The ADC must have regard to the expected effect that dumping duty measures might have on the Australian market, as referred to in section 6.2 of the document titled 'Streamlining Australia's anti-dumping system – An effective anti-dumping and countervailing system for Australia', which was published by the Australian Customs and Border Protection Service in June 2011.
- (b) The imposition of dumping duty measures would limit competition in the domestic market for the goods under consideration. This would give Australian manufacturers a competitive advantage and be detrimental to other Australian businesses which purchase the goods under consideration.
- (c) The imposition of dumping duty would have an adverse impact on Australian importers, such as Alstom. The increased costs of importing would adversely impact those importing the goods under consideration, especially where projects involving the goods under consideration have commenced. This is because the additional costs would not have been factored in at the planning stage of these projects. The ADC should consider this potential adverse impact.
- (d) The imposition of dumping duty might also increase costs for Australian consumers, as importers might elect to pass the additional costs on to consumers.

7. Date of export

If the Investigation is not terminated in respect to Alstom for the above reasons, we submit that the ADC should adopt the date of contract as the date of export of the goods in question. Alstom will argue the following in this regard:

- (a) Alstom's physical exports fall outside the Investigation Period and also fall outside the requisite period for an accelerated review. Therefore Alstom would not be afforded the chance to have an individual assessment of dumping duty.
- (b) This does not appear to be the intended result of the legislation. In our view, the intent is to afford all affected parties the opportunity to make submissions and have an individual rate determined, provided they actively participate. Alstom has actively and cooperatively participated and should therefore be provided the opportunity to have an individual rate

determined. Adopting an approach based on the physical export of the goods would deny our client opportunities for review, notwithstanding that it may be affected by the measures.

- (c) This approach is inconsistent with the ADC's stated exchange rates approach in its Issues Paper. The ADC states that in converting prices for exported power transformers into local currency, it intends to use the exchange rate at the contract date. Clearly, the subject of the Investigation is the price of the goods, not their physical movement.
- (d) The alleged cause of material injury is the dumped price of the exported goods. The price of the goods is determined at the date of the contract for the sale of goods, not their physical shipment. Therefore, the date of export should be the contract date, as this is when the alleged injury occurred.

8. Determination of profit

Alstom reserves its position on whether assessment under regulation 181A(3)(a) of the *Customs Regulations 1926* ("**Regulation**") is appropriate, but notes the following (refer EY letter 10 June 2014):

- (a) the Regulation does not either expressly or impliedly incorporate the ordinary course of trade test; and
- (b) where there are no profitable domestic transactions, or the net amount realised as loss, the amount to be added for profit should be zero.

9. File Note published 15 August 2014

The ADC published a file note on 15 August 2014 ("**File Note**") regarding the possible use of Section 269TACB(3) of the Act ("**Issue**"). We note that submissions in relation to the Issue were due on or before 22 August 2014. However, given the recent change to Alstom's representation, we still wish to express the following concerns in relation to the Issue:

- (a) It is unreasonable that the ADC is introducing this new approach at such a late stage.
- (b) Introducing this new approach at such a late stage limits the time available for interested parties to comment.
- (c) The ADC has not provided reasons as to why it is changing its approach.
- (d) The calculation of the dumping margin appears to be reverting to comparing prices with normal value, as opposed to profits. Having regard to profit provides a consistent analysis, whereas price is meaningless in relation to the goods under consideration, due to their bespoke nature and the long lead times on ordering the goods.
- (e) A long term approach is required in calculating dumping margins, rather than focusing on individual transactions.

10. Response to the ADC's request for further information regarding Unindo

[Redacted]

[Confidential direct question to the ADC in relation to Unindo.]

Should you have any questions or wish to discuss this submission further, please contact me on (03) 9252 7765.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'Andrew Hudson', with a stylized flourish at the end.

Andrew Hudson

Partner