Non-Confidential

Shihlin Electric & Engineering Corp (SEEC)

Submission on Statement of Essential Facts – Power Transformers

8 October 2014

We refer to the Statement of Essential Facts No. 219 (**SEF**) published by the Australian Anti-Dumping Commission (**Commission**) on 18 September 2014. In the SEF, the Commission preliminarily finds that

- Shihlin Electric & Engineering Corp. (**SEEC**) had a dumping margin of 23.9% (Page 8); and
- allegedly dumped imports have caused material injury to the Australian industry (Page 9).

SEEC makes the following submission in relation to the above-mentioned preliminary findings. Further, SEEC wishes to reiterate its position on the application of securities to SEEC.

I. Securities should not Apply to Existing Contracts for the Supply of Power Transformers

SEEC refers to its submission, published by the Commission on the Public Record on 9 December 2013, in response to the Preliminary Affirmative Determination No. 219 (**PAD**). The PAD requires the taking of securities in respect of the subject goods entered for home consumption on or after 27 November 2013.

In its submission, SEEC contended that

> *securities should not be required or taken on power transformers exported to Australia pursuant to contracts entered into with Australian customers before 27 November 2013.*

SEEC submitted that

> *in accordance with [Section 269TD(4)(b) of] the Customs Act 1901, securities will only be taken in relation to any particular import if the officer of Customs actually taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian*

industry while the investigation continues.

It is unclear to us what material injury to an Australian industry would or could be prevented by the taking of securities in circumstances where the supply of the power transformer being supplied is pursuant to a contract entered into on or before the date of publication of the [PAD]. The time at which the Australian industry would have incurred any injury would have been when the contract was awarded to a competitor, because that was the time at which it lost a potential sale.

The subsequent taking of a security on a transformer exported to Australia pursuant to that contract could obviously not prevent the injury that has had already occurred.

If, contrary to this submission, you are of the view that the taking of securities in respect of power transformers entered for home consumption on or after 27 November 2013 is necessary to prevent material injury to an Australian industry, SEEC would be grateful if you would advise us what material injury will be prevented by the taking of such securities, and how.

We note that no such explanation has been provided. In assessing the causal link between dumping and injury in the SEF, the Commission considered the tendering process in relation to the purchase and sale of power transformers and considered that "the loss of a sale for one power transformer due to dumping could cause material injury to the Australian industry" (Page 71). However, it remains unclear to SEEC "what material injury will be prevented by the taking of such securities, and how". SEEC requests that the Commission consider its position on the taking of securities as elaborated in the previous submission and summarized above.

II. "Reimbursement" should be Deducted from CTMS of all the Relevant Power Transformers

SEEC refers to its comment on Mr Chris Vincent's draft dumping margin assessment submitted on 20 August 2014. The reimbursements made by SEEC to SeA for the three invoices 102057, 102117 and 102308 were already included in the raw material costs reported in the Australia CTMS database. For the same reason, the reimbursements of these three invoices should be deducted from the total CTMS in the calculation of the constructed normal

value.

III. SEEC and SeA's profit ratios should be Reconsidered

SEEC refers to its comment on Mr Chris Vincent's draft dumping margin assessment submitted on 20 August 2014. SEEC submitted that in calculating the constructed normal value, SEEC's profit margin for sales to Taiwan domestic utility customer should be used instead of the profit margin for all domestic sales. As explained, the main reasons for this are that

- "most of SEEC's Australian sales were of power transformers of less than 50 MVA, and in the domestic market power transformers of that MVA range were mostly sold to non-utility customers"; and
- "utility and non-utility sales have different profit levels. Fewer than 25% of non-utility transactions have profit margins comparable to utility sales, while a large majority of non-utility sales enjoy much higher profits."

Accordingly, to use the profit margin for all domestic sales in the calculation of the constructed normal value will inflate the constructed normal value and will not allow a fair comparison between the constructed normal value and the export price.

In addition, SEEC submitted that the Commission should not add a profit margin in its calculation of the constructed normal value for SeA because SeA did not make a profit on its sales in Australia during the period of investigation. If the Commission disagrees and decides to add a profit margin to the constructed normal value, then the Commission must make a due allowance to the constructed normal value in determining the dumping margin to ensure fair comparison between the constructed normal value and the export price.

IV. The Commission's Assessment of Injury and Causation is Flawed

1. Volume effects:

In its assessment of "Volume effects" in section 7.4 of the SEF, the Commission has only considered the sales and market share of the Australian industry and as a result, has failed to examine the "volume of the dumped imports" as required under Article 3.1 of the WTO Antidumping Agreement (**ADA**). However, as shown in Figures 7 and 8 on page 72 of the SEF, the volume and market share of the dumped imports decreased since 2012-2013

following an increase in 2011-12. Accordingly, it is unclear to SEEC on what basis the Commission concluded that the dumped imports caused the alleged volume effects on the Australian industry given that the volume of the dumped imports and their market share continued to decline since 2012-13.

2. Price effects:

In section 7.5.1 "Price Undercutting" of the SEF (page 66), the Commission stated that "[i]t was able to confirm that in a number of instances exports from the nominated countries had undercut the Australian industry's prices." However, the Commission did not provide any evidence in support of the statement. SEEC requests that the Commission provide relevant information on the stated price undercutting so that SEEC can review and comment.

Further, in section 7.5.3 "Price suppression" of the SEF (page 67), the Commission found that the Australian industry suffered price suppression on the basis that WTC's selling prices were lower than its costs. However, the Commission has failed to consider the fact that in practice the selling price of power transformers is fixed when the contract is signed, while the production cost is recorded during production or at the end of production. Accordingly, the Commission should have considered whether an adjustment to the comparison of WTC's total revenue and cost is required given the considerable period between signing of a contract and importation of power transformers. For example, if we move the revue curve in Figure 5 (page 67) back by around 6 months, WTC's revenue will be higher than its cost.

3. Causation assessment:

In assessing whether it was the dumping that has caused the alleged material injury to the Australian industry, the Commission found that:

> *The Commission does not consider that it must establish that WTC would have, in the absence of dumping, won every contract tendered for during the investigation period. Power transformers are expensive items of capital equipment and large units may cost millions of dollars. The Commission considers that the loss of a sale for one power transformer due to dumping could cause material injury to the Australian industry. Where there are several or many lost sales due to dumping, the Commission considers the injury caused by that dumping is likely to be material.* (page 71)

The finding is unjustifiable given the volume of the dumped imports during 2008-09 and 2013-14. As shown in Figure 7 (page 72), the volume of dumped imports were significantly and constantly lower than the volume of undumped imports and the volume of sales by WTC. Accordingly, if there was any material injury suffered by WTC, that material injury cannot be said to be caused by the dumped imports but by undumped imports. Further, given the total sales of power transformers in the Australian market in which the dumped imports had a much smaller market share than WTC or undumped imports had, it is difficult to see how "the loss of a sale for one power transformer due to dumping could cause material injury to the Australian industry". For SEEC to comment on the materiality of the alleged injury, SEEC requests that the Commission provide information on the number of tenders that WTC lost to the dumped imports due to price, the total value of those tenders and the percentage that the lost tenders account for WTC's total sales.