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9 October 2014

Mr G Gleeson
Director, Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601

By email

Dear Director

Alleged dumping of power transformers - “potential for use of alternative approach to dumping margin assessments”

We refer to the letter from the Anti-Dumping Commission (“the Commission”) dated 17 September 2014, regarding the alleged targeted dumping of transformers exported to Australia by our client ABB Limited of Vietnam (“ABB Vietnam”).

A The Commission’s procedures concerning this matter

ABB wishes to record its complaint against the way it has been treated. Quite apart from the question of the legitimacy of this adverse conclusion, the process that has been adopted has been unfair and unreasonable.

ABB Vietnam was provided with the aforementioned letter only one day before the Statement of Essential Facts for the power transformers investigation (“the SEF”) was released. Under the *Customs Act 1901*, the SEF is required to be a statement of the facts upon which the Commission intends to base its recommendations to the Minister. The letter itself sets out facts that we were not able to comment upon in the 24 hour period before the SEF was issued. It does not provide full details of the legal or merits basis for the unprecedented margin calculation methodology that the Commission said it proposed to adopt.

Resultantly, ABB Vietnam was not given ample time to fully address the merits of the accusations laid against it. Any short-comings the Commission perceives with the information in this letter is a function of the limited opportunity that the Commission has allowed ABB Vietnam to defend itself against the unwarranted targeted dumping allegations.

Additionally, ABB Vietnam notes that the majority of the adverse factual assumptions the Commission has adopted to justify the use of the new methodology conflict with the experiences and the discussions ABB Vietnam had with the verification team in November 2013. It is one thing that ABB Vietnam has not been afforded a proper opportunity to defend itself, but it is a matter of the gravest concern that ABB Vietnam is now required to defend itself against new findings that recast or contradict the Commission’s appreciation of verified facts.

B The Commission's export price/CTMS ratio

The Commission has compared the export price for each transformers to the cost to make and sell ("CTMS") of that transformer, in order to determine whether export prices differ significantly among purchasers, within the meaning of that phrase in Section 269TACB(3) of the *Customs Act 1901*. The Commission undertook this analysis in order to:

[CONFIDENTIAL INFORMATION DELETED – description of alleged export price pattern]

According to the SEF, which was published the day after the letter was provided to ABB Vietnam, the consideration of the CTMS is appropriate because:

The Commission considers that this approach is reasonable for analysing export price patterns because the estimated cost to make and sell the goods was clearly a consideration for manufacturers when pricing the goods.¹

As the Commission is no doubt aware from its verification of ABB Vietnam's records, ABB Vietnam does consider the estimated cost to make and sell when pricing the goods. Indeed, the basis of the price that it negotiates with ABB Australia is a full cost modelling ("FCM") of the design of the transformer required for the tender. However, given the significant lead time between the design and the completion of production (which, as noted during the ABB Vietnam verification can span more than one accounting period) the estimate of costs in the FCM can differ from the actual CTMS. There can be a number of reasons for this, including [CONFIDENTIAL INFORMATION DELETED – details of post-contractual cost impacts on transformers]. The CTMS information used by the Commission does not represent ABB Vietnam's appreciation of the CTMS at the time of that the price is set. The proper gauge of ABB Vietnam's mindset when considering the price (in the Commission's words, "*the estimated cost to make and sell the goods... when pricing the goods*") is the FCM.

ABB Vietnam notes that it explained the FCM modelling process to the verification team in November 2013. [CONFIDENTIAL INFORMATION DELETED –description of the way in which ABB's commercial data was calculated] This requirement is also factored into ABB Vietnam's pricing decisions.

Having run its analysis, the Commission considered that export prices for transformers that were produced by ABB Vietnam, purchased by ABB Australia, and then on sold by ABB Australia to the following customers "*differ[ed] significantly*":

[CONFIDENTIAL INFORMATION DELETED – identity of customers of ABB Australia]

This covers the sale of [CONFIDENTIAL INFORMATION DELETED – number] transformers by ABB Vietnam to ABB Australia.

C The subject sales do not evidence "targeted dumping"

With regard to these transformers, ABB Vietnam has the following comments:

[CONFIDENTIAL INFORMATION DELETED – details of ABB Vietnam's cost estimates and the resultant margins that were anticipated by ABB Vietnam for each of the transformers it sold to ABB Australia that the Commission considers form part of an export pricing pattern for the purposes of Section 269TACB(3) of the *Customs Act 1901*]

¹ SEF, page 46.

[CONFIDENTIAL INFORMATION DELETED – details of post-contractual cost impacts on certain transformers] There was no “targeting” of customers.

We respectfully submit that the CTMS for transformers does not evidence the estimate of the cost to make and sell those transformers at the time the price was set. As we have shown by providing the relevant FCMs for each transformer that the Commission has identified as potentially being part of the Section 269TACB(3) “pattern”, it was always ABB Vietnam’s intention to make a profit on its sales of transformers. The FCMs document and evidence this fact.

Yours sincerely



Alistair Bridges
Lawyer

Encs [CONFIDENTIAL ATTACHMENTS – copies of relevant ABB Vietnam FCMs]