

**For Publication**

Mr Geoff Gleeson  
Director, Operations 1  
Anti-Dumping Commission  
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9 October 2014

Dear Mr Gleeson

**Investigation 219****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 Statement of Essential Facts dated 18 September 2014**

We act for Siemens Ltd and its related entities including Siemens Transformer (Guangzhou) Co. Ltd; Siemens Transformer (Jinan) Co. Ltd and Siemens Transformer (Wuhan) Co. Ltd. We make the following submission in response to the Statement of Essential Facts No. 219 issued dated 18 September 2014.

Our client welcomes the finding that the Anti-Dumping Commission (**ADC**) proposes to terminate the investigation in so far as it relates to the Peoples Republic of China. Having said that, our client also agrees with the following relevant findings:

1. Calculation of profit for constructed normal value - this being assessed in accordance with regulation 181A(3)(a) of the *Customs Regulation 1926 (Cth) (Regulations)*. The ADC's adoption of the position stated in its issues paper dated 27 May 2014 is inescapable having regard to the impossibility of meaningfully applying the recovery test in s.269TAAD(3) of the *Customs Act 1901 (Act)*. This being so because "*in the case of power transformers, each unit is uniquely constructed and costs and prices differ significantly from one model to another*".<sup>1</sup>
2. Credit adjustment.<sup>2</sup>

Our client records its disagreement with following matters:

1. The application of weighted average to transaction method for dumping - ss. 269TACB(3) of the Act. Our client's disagreement is more fully explained in our letter dated 8 October 2014. We note that our client's position was initially explicated in its submission dated 22 August 2014 in response to the ADC file note dated 15 August 2014. Our client does not resile from its original submission and further relies upon its submission of yesterday's date. In short, our client submits that there is no proper basis to consider the methods specified in ss. 269TACB(2) to be inappropriate and it rejects the claim that dumping is masked if the weighted average to weighted average or transaction to transaction method is applied.
2. Our client rejects the ADC's claim that it *has* provided adequate procedural fairness in relation to ss. 269TACB(3) of the Act.<sup>3</sup> As stated in our submission of yesterday, the ADC's letter concerning its possible application against our client was sent 1 day before the date of the SEF. Additionally, it is evident that the ADC has decided to apply this methodology and will

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<sup>1</sup> Page 37, SEF. See also Siemens submission dated 10 June 2014 - 118 EPR at part 1.

<sup>2</sup> Page 37-38, SEF. See also Siemens submission dated 10 June 2014 - 118 EPR at part 2.

<sup>3</sup> Page 37, SEF.

not be persuaded otherwise. The 20 days given to address the issue during the time period within which to respond to the SEF does not provide sufficient time to fully investigate the circumstances of each project sale and the reasons for the asserted export price/CTMS ratio difference. Indeed we note the ADC's claim in this respect is flawed because the type of transformers which commanded different export prices cannot be meaningfully compared amongst different purchasers. They were unique and 'unlike'.

3. Our client rejects the notion that the loss of a sale of one power transformer due to dumping could cause material injury to Australian industry.<sup>4</sup> Indeed that claim is overly simplistic and would run counter to the de-minimis principle. Moreover, the analysis of material injury in the SEF is scant and little significance has been given to the fact that the applicant's market share increased by a very substantial margin in the period 2012/13 and 2013/14. More startling is that the increase was achieved against a backdrop of a declining market.

We look forward to the formal termination of the investigation insofar as it relates to China (and thereby our client) and the application of s. 269TACB(2) of the Act to determining dumping margins and not s. 269TACB(3).

Please note that any matter not addressed in this submission is not to be regarded as an acceptance, waiver of, or acquiescence to any matter or finding made by the ADC as recorded in the SEF.

Yours sincerely

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<sup>4</sup> Page 46 and 71, SEF.