



華城電機股份有限公司 FORTUNE ELECTRIC CO., LTD.

PUBLIC RECORD

11 September 2019

Director Operations 3
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Expiry review of power transformers exported from Taiwan

Dear Director,

Fortune Electric Co., Ltd. [Fortune] requests the Anti-Dumping Commission [ADC] to have regard to this submission as a response to the Statement of Essential Facts Report No. 504, in finalising its recommendations to the Minister.

Method of calculating profit for constructed normal values

SEF 504¹ outlines its methodology for calculating Fortune's profit for the purposes of constructing normal values:

As required by subsection 269TAC(5B), in ascertaining the normal value of the goods under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation. Subsections 45(1) and 45(2) of the Regulation require that, where reasonably practicable, profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT. The Commission has calculated a profit margin based on the domestic sales of like goods in the OCOT that were manufactured by Fortune, in accordance with subsection 45(2) of the Regulation.

Fortune notes that the ADC's proposed approach is inconsistent with the methodology and reasoning utilised by the ADC in the original investigation. Specifically, the current proposed methodology conflicts directly with the ADC's stated interpretation of the ordinary course of trade (OCOT) requirements contained in ss.269TAAD of the Act.

During the original investigation, the ADC published its interpretation of the OCOT provisions in an issues paper released on 27 May 2014². In that paper, the ADC stated its clear understanding of the OCOT requirements and the unique circumstances of power transformers that prevent the recovery test set out in ss.269TAAD(3) to be meaningfully undertaken.

The ordinary course of trade provisions are at s. 269TAAD and an important element of those provisions is determining whether the cost of goods sold at a loss are recoverable within a reasonable period. The recovery test is at s. 269TAAD(3). In the case of power transformers, each unit is uniquely constructed and the costs and prices

¹ SEF 504, page 42.

² Issues Paper, 2014/1.

can differ significantly from one model to another. Indeed, it is the inability to make reasonable adjustments to prices of models sold domestically, to ensure fair comparison with export prices, that explains why the ADC will not establish normal values on the basis of domestic selling prices (s. 269TAC(1)). Furthermore, 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. Accordingly the ADC considers it is not reasonably possible to work out the profit on the sale of the goods made in the ordinary course of trade in accordance with Regulation 181A(2).

The ADC maintained and adopted this position in its final report (Report 219) to the Minister.

Given the obviously contrasting and inconsistent application of the OCOT provisions in SEF 504, Fortune is disappointed that the ADC has made no attempt to explain the departure from its original interpretation in Report 219. Fortune therefore requests that the ADC publish an addendum to SEF 504 which clarifies its interpretation of ss.269TAAD(3) in the context of power transformers, and if revised from the original interpretation outlined in Report 219, provide clear justification.

Meaning of weighted average

Fortune contends that the ADC’s preliminary calculation of profit is flawed and inconsistent with the OCOT provisions as it is not possible to calculate a weighted average cost of its power transformers.

Weighted average is a type of average where each observation in the data set is multiplied by a predetermined weight before calculation. Therefore, a weighted average calculation can only be achieved with multiple observations. It stands to reason then that a weighted average cannot be calculated with a single observation.

This is confirmed by the definitions at s.269T(5A) of the Act which states:

(5A) For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

$$\frac{P_1 Q_1 + P_2 Q_2 + \dots + P_n Q_n}{Q_1 + Q_2 + \dots + Q_n}$$

where:

P1 , P2 ... Pn means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.

Q1 , Q2 ... Qn means the number of units of the goods involved in each of the respective transactions.

The formula confirms that to calculate a weighted average cost of power transformers, there must be more than one unit. However, as the ADC has confirmed that each power transformer is a discrete unique unit, it must follow that there cannot be a multiple number of units.

Finally, there is support for the ADC’s original interpretation that a weighted average cost of goods requires more than one transformer unit, from the WTO Appellate Body.

In *EC — Bed Linen*³, the Appellate Body overturned the Panel’s finding under Article 2.2.2(ii) that the existence of data for more than one other exporter or producer is not a necessary prerequisite for application of the approach using “weighted average” in calculating the amount for administrative, selling and general costs (“SG&A”) to determine the constructed normal value of subject products. The Appellate Body stated:

³ WT/DS141/AB/R, EC – Bed Linen, para 74-76, pages 23-24.

To us, the use of the phrase ‘weighted average’ in [Article 2.2.2\(ii\)](#) makes it impossible to read ‘other exporters or producers’ as ‘one exporter or producer’. First of all, and obviously, an ‘average’ of amounts for SG&A and profits *cannot* be calculated on the basis of data on SG&A and profits relating to only *one* exporter or producer. Moreover, the textual directive to ‘weight’ the average further supports this view because the ‘average’ which results from combining the data from different exporters or producers must reflect the relative importance of these different exporters or producers in the overall mean. In short, it is simply not possible to calculate the ‘weighted average’ relating to only one exporter or producer. Indeed, we note that, at the oral hearing in this appeal, the European Communities conceded that the phrase ‘weighted average’ envisages a situation where there is more than one exporter or producer.

...

In our view, then, the use of the phrase ‘weighted average’, combined with the use of the words ‘amounts’ and ‘exporters or producers’ in the plural in the text of [Article 2.2.2\(ii\)](#), clearly anticipates the use of data from *more than* one exporter or producer. We conclude that the method for calculating amounts for SG&A and profits set out in this provision can only be used if data relating to more than one other exporter or producer is available.

It is clear then that overwhelming support exists for the ADC’s original interpretation that the recovery test required to perform the OCOT tests, cannot be achieved in the case of power transformers due to the unique nature of each individual unit.

Fortune therefore urges the ADC to reconsider its altered position and revert to the original interpretation outlined in Report 219. In doing so, the ADC must calculate profit on the basis of actual amounts realised by Fortune on its domestic sales of the same general category of goods.

Recovery test of Fortune’s domestic sales

To further highlight the ADC’s inappropriate calculation of profit, Fortune notes that the table titled “Cost to make and sell - Domestic sales of the goods - Models for recoverability test” in Appendix 2 of Fortune’s dumping calculations lists the models used for performing the recoverability test. That table clearly identifies that only a single unit was used for the purposes of calculating the weighted average cost to make and sell. This is further confirmed by the actual unit cost to make and sell of certain transformers, being identical to the weighted average unit cost to make and sell.

For the reasons set out above, these do not constitute weighted average costs of each transformer unit. As such, the ADC has not undertaken the OCOT tests required by ss.269TAAD(3) of the Act. Accordingly, profit cannot be determined on the basis of domestic sales sold in the ordinary course of trade.

Incorrect grouping of certain models

For some of the transformers where units were grouped into model categories, it is apparent that the ADC has categorised transformers without sufficient understanding of key differences between units in terms of external design, internal components, and/or different harmonics. To ensure the ADC are fully aware of these differences, Fortune submits its remarks at **Confidential Appendix A**, highlighting these differences which do not allow for the units to be reasonably grouped together.