Percival Legal

Telephone: 0425 221 036

Email: Andrew.percival@percivallegal.com.au

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By email: operations 3@adcomission.gov.au

Director, Operations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
Australia

Dear Sir, Non - **Confidential**

Anti-Dumping Investigation – Exports of Power Transformers from China

As you would be aware, I act for Toshiba International Corporation Pty Ltd and its related bodies corporate in relation to this investigation.

This submission is made on their behalf in relation to Wilson Transformer's (WTC) Application and the Commission's Consideration Report.

1. Dumping

It is common ground, as acknowledged in the Application and the Consideration Report, that each power transformer is unique to meet the customer's specifications and requirements, both in relation to export sales and domestic sales in the country of export, plus in the Australian market.

Also, the terms and conditions of sale are significantly different for domestic sales and export sales.

The issue that this gives rise to is that it is not logically or legally possible to compare domestic sales in the country of export with export sales without significant adjustments to the domestic selling price to account for the difference in specification and the terms and conditions to make them comparable to export sales.

In the previous investigation into exports of power transformers to Australia, the Commission calculated a normal value based on the weighted average of domestic sales in the country of export. This methodology was fundamentally flawed. This was because the calculation was based on power transformers sold in the domestic market in the country of export, each of which power transformer was unique and not comparable to power

transformers being exported to Australia, each of which was also unique and failed to take into account differences in specifications and the terms and conditions in the supply of power transformers in the different markets to different customers.

This was a fundamental misunderstanding of the dumping regime, which is a comparison between export prices of the goods under consideration and sales of like goods in the country of export with appropriate adjustments to ensure a like-for-like comparison. This is especially the case given that the power transformers sold for export and in the domestic market are each unique. Neither is comparable with the other on a transformer-transformer basis without appropriate adjustments so that the comparison is on like-for-like bases, including specifications and terms and conditions of sale.

2. Deficiencies in WTC's Application

WTC's application, in so far as it relates to alleged dumped exports from China, is based on a deductive export price and a constructed normal value using WTC's cost to make and sell.

This does not comply with rules under the WTO Antidumping Agreement. Article 5.2 of the WTO Dumping Agreement makes it clear that an application for the imposition of antidumping measures must not be:

> "*Simple assertion, unsubstantiated by relevant evidence…*"

It is evident that WTC's application is simple assertion, unsubstantiated by relevant evidence.

For example, no justification is given for the calculation of a deductive export price that is consistent with Australian legislation or WTO rules. There is no legal justification for a deductive export price and no legal justification has been given. In other words, the so-called export price advanced by WTC does not reflect the export prices of each power transformer exported from China.

Further, the deductive export price calculated by WTC is based on "estimated" deductions – that is, they are simply speculative and not supported by any relevant probative evidence. For this reason alone, the application should be rejected.

Also, the normal value calculation is a constructed normal value base on WTC's sale price in Australia for power transformers. A comparison of WTC's sales prices for its power transformers in Australia to exported Chinese transformers with simple adjustments for labour and overheads with no attempt to adjust for differences in specifications and terms and conditions have no relevance to domestic sales prices of power transformers in China by exporters, each of which sale is unique as is commonly acknowledged.

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Again, for this reason the application must be rejected as not complying with Australian legislation or Article 5.2 of the WTO Anti-Dumping Agreement.

In this regard, reference is made to WTO jurisprudence in *Guatemala – Cement II* and *Mexico – Steel Pipes and Tubes* regarding the requirements that must be met as to the "sufficiency" of evidence before a dumping investigation may be initiated under the WTO Anti-Dumping Agreements. These requirements do not appear to have been met here.

The Commission's acceptance of WTC's deductive export price and normal value calculations are of concern as neither comply with Australian legislation or WTO rules and the Application must be rejected for these reasons. If the Commission is of a different view, please let me know and provide details.

3 Technical deficiencies with WTC's Application

References to Sections below are references to WTC's Application

Section A3. (1)

It is mentioned that "As PT's are engineered to order products, the imported and locally produced goods are fundamentally the same and the explanations of PT uses, functionality, components and manufacturing processes are essentially the same for the imported and the domestic product".

This is an over-simplification in many respects. Indeed, as the paragraph notes PTs are engineered to order. This means that the PTs are designed and engineered in accordance with skills and technologies (IP) available to the manufacturing company. It is quite possible to have a number of differences for the same functional requirements of any given PT.

Section A3. 2(e)

It is mentioned that "during the analysis of import statistics that many apparent coding anomalies exist in import data. The import information used in this report includes many assumptions on the correct tariff classification of imported goods."

Query as to what right do WTC have to make assumptions, presumably favourable to their aims, on import statistics that have been collated by the relevant government authorities based on import data supplied by importers. Surely if there are errors in classification then it is for the relevant authorities to ensure these are addressed and that is a matter between Australian Border Protection and the relevant importers.

Section A3. 2 (f)

It is mentioned "As a result of past decisions of the Parliamentary Secretary, antidumping measures are currently in place in respect of PT's imported into Australia from a number of sources but not including PT's exported from China."

What this paragraph fails to mention is that at time of the investigation into PTs from these other sources, the investigation also included China and that the investigation was terminated in relation to several Chinese exporters '*on the basis of finding that dumping margins were negligible'* (in fact significant negative margins) or that *'the total volumes of goods exported at dumped prices from each of those countries were negligible'*. Refer to 1.4.4 and 1.5.4 of Report No 219 of 2 December 2014. The Applicant has presented no evidence to show circumstances have changed so significantly to warrant an assertion that dumping is now occurring at a dumping margin '*likely to be closer to 25%'.* Refer Section B-6 of WTC's application.

Also, it is further worth noting that the dumping measures introduced against these other sources stemming from the same investigation are still applicable up until Dec 2019. Is it unreasonable to expect that the same period should apply for the "countries/sources" which were investigated as part of the same investigation should not also apply?

Section A4 (a)

It is mentioned that "the WTC products are designed and manufactured to equal the performance and quality levels of the products subject to application."

Quality and performance issues are in reality judged by the end customers. It is well known in the industry for example that certain manufacturers struggle at higher voltage level transformers and have repeatedly failed testing at factory acceptance stage. This needs to be investigated.

Section A4 (e)

It is mentioned that "generally speaking, the producer that offers the lowest price and can meet the specifications and customer delivery requirements will receive the order although utilities may take account of a range of other considerations including the cost of losses, strategic risk, local support, technical conformance with the specification, quality, health, safety and environment (HSE) and other considerations".

Again, this is an over-simplification. In fact, it's not true to say that utilities may only take account of other considerations as listed above.

It is true to state that utilities will always take into account a whole range of other considerations including those listed by WTC in its Application but also other considerations including past experience, past performance on similar contracts, previous failure data etc. It would also be very true to say that as you move up the voltage and size (MVA) scale that these other considerations take on ever more important weightings in evaluation of bids.

Again, this needs to be investigated.

Section A4 (k)

It is stated that "the imported goods will be fundamentally the same in their performance characteristics of power handling capability, voltage ratio, efficiency durability, meeting the

customers specification and cycle time between issue of the tender and delivery of the product."

In general, and insofar as the comments in (k) above relate to the previous point (j) this is another example of over-simplification.

A2.2 EVALUATION OF LOSSES

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[**Customer confidential information redacted**]

TIC submits that the only logical conclusion which can be drawn is that TIC cannot be causing material harm or injury to WTC who purport to represent themselves as the transformer industry in Australia, given that AmpControl and Tyree, who were nominated as the other Australian Producers, produce power transformers at the bottom end of the goods under consideration i.e. "liquid dielectric power transformers with power ratings equal to or greater than 10MVA and a voltage rating less than 500kV". The maximum voltage level that either of these manufactures can produce is 132kV.

This means that neither Ampcontrol nor Tyree are capable of bidding for Large Power Transformers of the type that Toshiba International is typically involved with.

[**Customer confidential information redacted**]

Each of these points can be verified by the Commission but it is of concern that these issues were not addressed in WTC's Application nor addressed in the Commission's Consideration Report.

Toshiba International respectfully suggests that the Commission consider engaging an expert with relevant experience and expertise on power transformers and the Australian market, to assist and provide independent advice to the Commission.

4. Injury & Causation

In the absence of a finding of dumping on individual power transformers exported to Australia and that WTC transformers do not compete across the Australian power transformer market (see submissions above), then it is difficult to see how individual exports of power transformers could have caused material injury from dumping or otherwise. In fact, the injury and causation claims would seem irrelevant and should be disregarded and the investigation terminated.

This has not been addressed in WTC's Application, nor in the Consideration Report.

Nevertheless, WTC's injury claims have been addressed below.

In the Consideration Report, the Commission has stated that WTC has claimed material injury in the form of:

- loss of sales volume;
- reduced market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced cash flow;
- reduced employment;
- reduced wages;
- reduced capacity utilisation;
- reduced return on investment;
- reduced ability to raise capital; and
- reduced capital investment.

Several issues arise from this, namely what injury has actually been incurred by WTC, whether it was material, whether it was caused by imports from China at allegedly dumped prices or due to other economic factors. These have not been addressed in the Consideration Report and should have been, especially as each power transformer is unique, which is commonly acknowledged.

Regard does not appear to have been had to Article 3 of the WTO Anti-Dumping Agreement that sets out how injury is to be determined for dumping purposes and, in particular, attention is drawn to Article 3.1 of the WTO Anti-Dumping Agreement that refers to the volume of alleged dumped imports and not their value.

Further, the analysis does not distinguish between injury, the causes of the injury and the consequences of the injury.

Actual injury is the loss or revenue and profits. That is the reason why commercial entities are in business – to earn revenue and make profits.

If an Australian industry does not compete with certain imports, as outlined above, then it cannot claim injury from those imports. Further, because each power transformer is unique, whether imported or domestically assembled, then any injury analysis must be based on individual power transformers and not on an aggregated basis.

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Price depression, price suppression, loss of market share, etc., are simply causes of injury and are not in themselves injury. Similarly, reduced capacity utilisation, return on investment, etc, are simply the consequences of injury and there could be other consequences.

The issue here is whether the claimed reduced revenues and profitability by WTC was caused by Chinese individual imports power transformers at alleged dumped prices, and if so, which ones or whether other economic factors caused the claimed injury.

Several points need to be noted, namely:

- WTC imports most if not all of the components it uses to assemble power transformers in Australia and query whether it is a manufacturer of power transformers or simply assembles the components of power transformers that it imports. This is not clear from its Application;
- it does not appear from WTC's application that it exports power transformers. Does this mean that the power transformers that WTC assembles in Australia are not internationally competitive due to the cost of imports, labour costs, energy costs, leasing costs or other matters;
- is WTC seeking customs tariff protection in the form of antidumping measures for its power transformers that are not competitive due to high costs;
- WTC has been the dominant entity in the Australian power transformer market since 2013/2014 but the Australian market has varied since then as have imports from several counties. This has not been addressed in the Consideration Report; and
- WTC does not compete in the same market for power transformers in Australia as, for example, imports by Toshiba international and we believe has not bid on a number of contracts for the supply of power transformers, as outlined above, presumably because it cannot produce the power transformer required by the customer.

In Section 4.5 of the Consideration Report, the Commission assessed WTC's claims that it had incurred loss of sales volume and reduced market share. The problem with this analysis is that it takes no account of changes in the Australian power transformer market and, in particular, that segment of the market supplied by WTC. Nor does it address purchasing decisions made by purchasers of power transformers and which individual power transformers were being purchased and on what terms.

Consequentially, the analysis in Section 4.5 of the Consideration Report is essentially meaningless as it does not relate to the Australian power transformer market and assumes all power transformers are the same, which is commonly acknowledged is not the case, (each power transformer being unique), and WTC competes in all segments of the power transformer market, which clearly is not the case.

Finally, it is noted that the Australian market is based on "sales value". This is clearly incorrect, especially when the calculation of "sales vale" has not been detailed or verified. It is a meaningless measure in a dumping investigation. Further, it is inconsistent with Article 3 or the WTO Anti-Dumping Agreement, which is confined to "volumes" which is confined to allegedly dumped imports.

The claims made in the Application and the analysis in the Consideration Report in this regard are inconsistent with the rules under the WTO Anti-Dumping Agreement. This another reason why this investigation should be terminated,

5. Conclusion

For the reasons given above, this investigation should be terminated because there is no merit in WTC's claims on dumping, material injury and causation in its Application and its Application proceeds on false premises and assumptions that do no comply with Australia's antidumping legislation nor with WTO antidumping rules under the WTO Anti-Dumping Agreement.

Yours sincerely

Kind regards

Andrew Percival

T: +61 (0) 425 221 036
E: andrew.percival@percivallegal.com.au
W: www.percivallegal.com.au

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