

Public record

Email

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The Director — Investigations 3
Anti-Dumping Commission
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Dear Sir

Power transformers exported from China (Investigation No 507)

We act for Siemens Ltd and its related entities Siemens Transformer (Jinan) Co. Ltd and Siemens Transformer (Wuhan) Co. Ltd (collectively, **Siemens**) and refer to:

- The application by Wilson Transformer Company Pty Ltd (**Applicant**) dated 19 February 2019 (**Application**) for the publication of a dumping duty notice in relation to power transformers exported from China.
- Consideration Report 507 (**Consideration Report**) dated 12 March 2019.
- Anti-Dumping Commission Notice No 2019/35 dated 18 March 2019 by which the Anti-Dumping Commission (**Commission**) commenced Investigation No 507 (**Investigation**) into alleged dumping of power transformers exported to Australia from the People's Republic of China (**China**).

This is Siemens' preliminary submission in relation to the Investigation.

1. **Executive summary**

1.1 In summary:

- (a) we do not expect that any positive dumping margin will be found against Siemens; and
- (b) the Australian industry has suffered no injury, or at any rate no injury attributable to dumping.

1.2 The Commission should terminate the investigation (or terminate the investigation so far as it concerns Siemens) pursuant to ss 269TDA(1) or 269TDA(13) of the *Customs Act 1901* (Cth) (**Act**), or both.

2. **Measure of dumping**

2.1 Siemens is confident that it has not dumped power transformers during the investigation period. Since Siemens' negative or negligible dumping margin cannot be proved until the Commission conducts a dumping analysis, dumping measures are discussed only briefly in Siemens' preliminary submission.

2.2 In seeking to establish that dumping has occurred, the Applicant attempts to calculate a constructed normal value based on its own domestic sales.¹ Although this is appropriate for a

¹ Application at p 41.

Consideration Report, the Commission should, upon verification of export market prices, calculate normal values under ss 269TAC(1) of the Act for the purpose of the Statement of Essential Facts.

2.3 Without access to the constructed normal value calculations, it is not possible for Siemens to address them specifically. It is clear enough, however, that the constructed normal value calculations, as presently described, are unsatisfactory. Some examples of their problems include:

- (a) The Applicant has used its unsuccessful bids as a starting point for calculating normal value.² An unsuccessful bid may be much higher than the Applicant's costs plus realistic profit margins. The Applicant's cost estimate in an unsuccessful tender is speculative and, based on the fact that the tender was unsuccessful, is likely to be an overestimate: see 3.17–3.24 below. In any event, it does not reflect the actual cost of making and selling an actual power transformer. Ordinarily, normal values are constructed based on actual sale prices. While standard list prices might be appropriate sources for some anti-dumping investigations, the Commission would not accept as evidence, for example, a few offers made by Australian industry to local customers who declined them; but that is, in effect, the Applicant's approach. A more appropriate method to calculate normal value would have been to use the Applicant's successful tenders as a starting point.
- (b) The Applicant relies on World Bank 2017 labour, manufacturing, engineering and administration costs and may thereby significantly overestimate actual costs in China. Section 269TAC(2)(c) of the Act requires the Commission to calculate normal value by reference to real costs as to which Siemens can provide direct evidence.
- (c) The Applicant has made no allowance for exchange gains and losses. It has also made no allocation of administrative costs so that they only include general administration costs that contribute to bring inventories to their present location and condition: see the *Dumping and Subsidy Manual* (November 2018) at p 43.
- (d) The Applicant has made no allowance for foreign manufacturers' lower costs of sourcing components.
- (e) The amounts of the adjustments proposed at p 42 of the Application are unnecessarily redacted and Siemens therefore cannot comment on their accuracy.
- (f) More generally, any constructed normal value calculation should be conducted based on actual material cost premiums, freight costs and tender profit margins evidenced by Siemens, and not estimates made by the Applicant.

2.4 In assessing export prices for the purpose of calculating dumping margins, it will be necessary to account for differences in contract terms between different transactions. This is because:

- (a) Power transformers are designed and manufactured to order. No two power transformer orders are alike, as each has different specifications, quality requirements, materials and accessories. It is therefore necessary to calculate any dumping margin on a transaction to transaction basis.

² See Application at pp 24, 41.

- (b) Contract terms and conditions vary significantly between contracts. The Application states (reproduced verbatim):³

We understand that the Terms and Conditions (T's & C's) are likely to be the same for WTC PBU and the exporters as Customers will wish to use their T's & C's. This is because the purchasing organisations are generally large with significant standardised procedures and conditions which they have developed to suit their circumstances. During the tender process, there is negotiation between the potential customer about these conditions but based on the customer conditions.

Several customers use the AS 4910 standard conditions of contract as the basis for the purchase contract...

This may well represent the Applicant's experience with other competitors. In Siemens' experience, however, contract terms and conditions vary substantially and are heavily negotiated. Although boilerplate clauses may be included, power transformer specifications, scopes of supply, price structures and other bespoke terms vary, [confidential contract information] . This means that contract prices can only be compared on a case-by-case basis and after accounting for differences in contract terms and scope.

- 2.5 Once a dumping margin for China has been properly calculated, it is likely to be negligible or negative. If a dumping margin is calculated for Siemens, it is also likely to be negligible or negative. The Commission would then terminate the investigation (or terminate the investigation so far as it concerns Siemens) pursuant to s 269TDA(1) of the Act.

3. **Material injury**

- 3.1 The Consideration Report notes at [4.1] that the alleged material injury will be more closely examined during the course of the Investigation. On a closer examination of the industry, the Commission would find that:

- (a) the Australian industry is faring well and has not suffered any injury;
- (b) to the extent that the Australian injury has sustained some injury over the injury analysis period, that injury cannot be attributed to dumping; and
- (c) the Investigation (or the Investigation so far as it concerns Siemens) should therefore be terminated pursuant to s 269TDA(13) of the Act.

Australian industry is prospering

- 3.2 It is difficult to see any real injury to the Applicant or to the Australian industry. They are currently enjoying, over the injury analysis period and into the future:

- (a) significantly declining imports;⁴

³ At p 38.

⁴ Application at p 19, Table 3a.

- (b) stable or increasing sales volumes;⁵
 - (c) increasing market share;⁶
 - (d) increases in demand;⁷ and
 - (e) increasing profitability in the Applicant's power transformers business.⁸
- 3.3 The Commission should assess material injury holistically and take these factors into account in determining whether, on the whole, any injury has been sustained.
- 3.4 Siemens reiterates the emphasis in the preliminary submissions made on behalf of Toshiba International Corporation Pty Ltd (**Toshiba Preliminary Submissions**) on the necessity, in the Statement of Essential Facts, for the ADC to follow Art 3.1 of the *Agreement on Implementation of Article VI of the GATT* (1994). Article 3.1 requires an objective analysis on positive evidence as to the volume and price effects of alleged dumping and the consequent impact on domestic producers. This requires clear distinctions between injury, causes of injury and consequences of injury.

Volume effects

- 3.5 The Applicant claims that it has sustained injury in the form of lost sales volume and reduced market share.
- 3.6 The following matters demonstrate that there has been no injury in the form of lost sales volume or reduced market share:
- (a) When measured in sales by MVA, the Applicant's sales volumes have remained stable or increased slightly over the course of the injury analysis period.⁹
 - (b) Total import volumes have significantly decreased over the injury analysis period, both in absolute terms and as a proportion of the total market.¹⁰
 - (c) Table 18 of the Application ('China share of total imports based on Value') shows that non-Chinese import volumes have significantly decreased both relative to Chinese import volumes and in absolute terms, principally due to the imposition of anti-dumping measures on non-Chinese importers. While China's share of total imports has increased over the injury analysis period, this mostly reflects China taking market share from other exporting countries.

⁵ Consideration Report at Figure 2.

⁶ Consideration Report at Figure 3.

⁷ Consideration Report at Figure 1; Application at p 18.

⁸ Consideration Report at Figure 5.

⁹ Consideration Report at Figure 2.

¹⁰ Application at p 19, Table 3a.

- (d) Figure 3 of the Consideration Report shows that:
 - (i) the Applicant and the Australian industry (each and also when added together) have increased their market share by value over the course of the injury analysis period; and
 - (ii) the Applicant and the Australian industry have both increased their market share in all but one year of the injury analysis period (for the Applicant, the exception was FY2017–2018, and for the rest of the Australian industry, FY2014–2015).
- (e) The large gains in market share by value made by the Australian industry over the injury analysis period show that increases in Chinese exporters' market share have not come at the expense of the Australian industry.¹¹ Rather, the increase in Australian and Chinese market share has been the consequence of duties imposed on manufacturers in Indonesia, Taiwan and Thailand.

3.7 The Applicant's reliance on volume effects essentially seeks to evade the China–Australia Free Trade Agreement (**ChAFTA**). ChAFTA offers enormous benefits to Australian industry, but requires reciprocity of free trade from Australia. Increased import volumes from China is the expected, and intended, effect of ChAFTA.

3.8 The Application states:

There is virtually no tariff protection for Australian PT manufacturers as most Asian manufacturers are able to import PT's [sic] into Australia tariff free, either under Free Trade Agreements (FTA's [sic]), Developing Country (DC) preferences or other reasons. The basic tariff on imported PT's is 5% which provides minimal support.¹²

3.9 This passage is included in the Application's response to a question about demand variability, but clearly does not address demand variability. The passage shows that the Applicant's true motive is to reapply the 5% tariff that recently applied to Chinese exports, before ChAFTA came into effect, and that continues to apply to other exports.

3.10 The data as to Chinese import volumes and market share show that any increases in volume or market share are the natural and intended consequence of ChAFTA and are not attributable to dumping. Table 1 and table 17 of the Application show that since FY2013–2014:

- (a) the market share of imported power transformers has decreased continuously in every year except for in FY2017–2018, which was the second full financial year in which ChAFTA was in force; and
- (b) the market share of power transformers imported from China has followed a significant downward trend except for in FY2017–2018, which was the second full financial year in which ChAFTA was in force.

¹¹ See Table 1 of the Application.

¹² Application at p 16. The Application similarly refers to reduced tariff protections at pp 18 and 34.

3.11 The foregoing data show that Chinese import volumes are following an underlying downward trend, but show a recent upward correction (in FY2017–2018) reflecting the commencement of ChAFTA. To impose dumping duties on the basis of that volume data would essentially negate the decision of the Australian and Chinese governments to ensure free trade of power transformers by their inclusion in ChAFTA.

Price effects

3.12 The Applicant claims that it has experienced price depression and price suppression due to price undercutting by dumped Chinese imports.

Price suppression and depression

3.13 So far as price suppression is concerned:

- (a) Figure 4 of the Consideration Report shows that the Applicant's average selling price per MVA has closely tracked its average cost of production per MVA. For the purposes of a Statement of Essential Facts, it does not provide probative evidence of margin erosion, let alone price suppression.
- (b) It is inappropriate to rely on prices per MVA to assess price suppression since power transformers are designed and manufactured to order; they have unique specifications; and the size and power rating of a power transformer affects its cost and price, which then affects the price per MVA.
- (c) The Application relies on US Dollar average sale price trends. The Australian Dollar has depreciated by more than 25% against the US Dollar since the beginning of the injury analysis period. Since the Applicant ultimately earns Australian dollars, it is necessary to either assess the alleged price suppression in Australian dollars or, if the assessment is conducted in US Dollars, to account for the depreciation of the Australian dollar. In addition, there is no particular reason for average sales per MVA to be expressed in US Dollars since relatively few recent bids are denominated in US currency.
- (d) While the Applicant may have provided sufficient evidence of price suppression for the purposes of the Consideration Report, it is not enough for the Commission to find that price suppression occurred in the injury analysis period, and has been caused by dumping. A finding that price suppression is caused by dumping would require more probative evidence, such as the existence of a pricing policy by importers to undercut the prices of domestic producers, or parallel price trends between the Australian industry and Chinese exporters.
- (e) The requirement for specific evidence that injury is caused by dumping is all the more relevant where, as described at 3.45–3.48 below, any injury is readily attributable to factors other than dumping. A comparison of the Applicant's selling prices per MVA against costs per MVA does not establish that any price suppression is caused by dumping.¹³

¹³ Material injury in the form of price suppression is not caused by dumping unless there is evidence of a connection between alleged price suppression and dumping: see *China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada* (WTO Panel Report, 25 April 2017) at [7.79].

- 3.14 So far as price depression is concerned, the Commission need not investigate price depression for the same reasons as given in Statement of Essential Facts 219,¹⁴ namely, that trends in unit prices are not meaningful in the case of power transformers.
- 3.15 For these reasons, the Commission should find that there is no price suppression or depression — and at any event, no price suppression or depression caused by dumping — during the injury analysis period.

Undercutting

- 3.16 In addition to the matters noted above regarding the lack of evidence as to price suppression and price depression, the Commission should find that there was no price undercutting by Chinese exporters during the injury analysis period.
- 3.17 The first problem with the Applicant's undercutting analysis is that it compares the Applicant's unsuccessful tender bids with importers' successful tender bids. But the Application also states:

Generally speaking, the producer that offers the lowest price and can meet the specifications and Customer delivery requirements of the PT unit will receive the order although utilities may take account of a range of other considerations...¹⁵

- 3.18 If this is accepted, then it obviously follows that the tender prices of successful bidders will be lower than those of unsuccessful bidders. Any analysis of the alleged differences in bids is not a comparison of like for like, and is not evidence of undercutting. A cogent analysis of dumping or price effects would need to compare successful bids of Australian industry with successful bids of Chinese exporters. Siemens is confident that such an analysis (at least so far as Siemens' imports are concerned) will show no evidence of dumping or undercutting.
- 3.19 A second, more fundamental, problem with using alleged prices from unsuccessful bids by either the Australian industry or exporters is that the tender process is more complicated than merely bidding at a single price. Customers may ask for revised or better prices, and tenderers may offer (or customers may ask for) different bids for alternative designs. This means that:
 - (a) there is no single price, so far as unsuccessful bids are concerned, to be used in an undercutting analysis or a dumping analysis;
 - (b) the prices of a successful tenderer may be lower than their bid for the original design, whereas the unsuccessful tenderers may never have bid for the alternative design proposed by the successful tenderer;
 - (c) the prices of a successful tenderer may have been revised, at the invitation of the customer, so as to provide a more competitive offer and win the contract, but the unsuccessful tenderer may never have been invited to make a more competitive bid.

¹⁴ At [7.5.2].

¹⁵ Application at p 10.

- 3.20 As a result, even if a model matching exercise is undertaken to address the problem at 3.19(b) above (which the Applicant has not done in relying on its own unsuccessful tender prices as evidence of undercutting), prices of unsuccessful tenders are still incommensurable with prices of successful tenders.
- 3.21 To illustrate how alternative bids may be made in a tender, and the variation in prices and specifications for each alternative, we have attached **Confidential Attachment 1** which is a customer loss analysis for an unsuccessful utility tender for power transformers submitted by Siemens during the investigation period.
- 3.22 The observations above concerning the incommensurability of unsuccessful tender bids and the unfairness in comparing successful bids against unsuccessful bids apply equally in a dumping analysis as they do in a material injury analysis.
- 3.23 Thirdly, the Applicant's analysis of lost sales is based on speculation as to the margin by which it has lost tenders.¹⁶ It is very doubtful whether the Applicant has reliable information as to the prices of lost sales in a engineered-to-order market such as the power transformers market.
- 3.24 The Commission's preliminary assessment of price effect data is sufficient to support a decision to commence an investigation. If, however, the strength of that data is not improved in the way outlined above then, after publishing its Statement of Essential Facts, the Commission would be required to terminate the investigation under s 269TDA(13) of the Act. That is because, for the reasons outlined above and in the absence of probative evidence of price effects, there is no material injury (or negligible or immaterial injury) to the Australian industry, and any material injury is caused by factors other than dumping.

Profits and profitability

- 3.25 Figure 5 in the Consideration Report shows that the Applicant's power transformers business unit (**PBU**) has increased its profitability over the injury analysis period.
- 3.26 The fact that the PBU has not been as profitable as other lines of business carried on by the Applicant does not show that the PBU's profitability has been affected in any way by dumping. It is an irrelevant consideration.
- 3.27 Since the profit and profitability data before the Commission show that the Applicant's PBU profitability has increased, the Applicant has not suffered material injury in the form of profit and profitability effects. Indeed, this data calls into question the reality of all of the Applicant's alleged material injury.
- 3.28 The Applicant's allegations of injury to profits also rely on the combined effect of import volumes and "*the decline in the total Australian market*".¹⁷ But:
 - (a) total import volumes have significantly decreased over the injury analysis period;¹⁸
and

¹⁶ Application at p 32.

¹⁷ Application at p 32.

¹⁸ Application at p 19, Table 3a.

(b) the Australian market has been expanding since at least 2016¹⁹ and domestic demand is likely to increase substantially in the future.²⁰

3.29 In the sections of the Application dealing with demand variability, the Applicant outlines factors that are likely to significantly increase medium-term demand for power transformers and concludes that "*these developments will encourage import competition*".²¹ This conclusion is baseless and self-serving. Increasing domestic demand for power transformers will be a boon for Australian industry and is likely to fortify its dominant market position.

3.30 Accordingly, even if the Applicant could demonstrate decreased profits or profitability (which it cannot), the connections drawn by the Applicant between profit effects and dumping are misconceived.

Employment and wages

3.31 The Applicant's employment and cost of average wages are inversely correlated with its profits and profitability over the course of the injury analysis period. This is unsurprising: in a reasonably labour-intensive industry, labour costs are likely to have a significant effect on profitability.

3.32 For the purposes of the Consideration Report, the data furnished by the Applicant might show reasonable grounds for establishing material injury in the forms of both profitability effects and reduced employment. It would be wrong, however, for the Commission to rely on:

(a) FY2013–2014 to FY2016–2017 increases in profitability, together with a FY2017–2018 decrease; and

(b) FY2013–2014 to FY2016–2017 decreases in employment and wage costs, together with a FY2017–2018 increase,

as substantiating injury in the form of reduced employment and wage costs. In truth, the Applicant benefited from the reduced wage costs in the form of increasing profits from FY2013–2014 to FY2016–2017 and did not wear those costs as a material injury, let alone injury caused by dumping. In other words, the Applicant could have maintained even levels of profitability and employment levels over the course of the injury analysis period, but chose instead to allow profits to increase, which required reduced employment and wage costs.

Reduced cash flow

3.33 The Applicant claims that it has suffered reduced cash flow for the PBU over the injury analysis period.

3.34 First, it is by no means clear that cash flow has decreased over the injury analysis period. The only cash flow data on the public record shows that the Applicant's cash flow increased from FY2014–2015 to FY2017–2018.²²

¹⁹ See also Consideration Report 507 at p 15, Figure 1.

²⁰ Application at p 18.

²¹ Application at p 18.

²² Application at p 27.

- 3.35 Second, even assuming that cash flow has, in fact, decreased, then it would have moved in the opposite direction to profitability over the injury analysis period. The most likely explanations for this would be that the PBU engaged in activities such as prepayment, lending, investing or paying dividends that, while reducing cash flow, do not reflect material injury.
- 3.36 As a result, although there may be a prima facie indication of material injury in the form of reduced cash flow:
 - (a) the Commission would not find, in a Statement of Material Facts, that there has been a reduction in cash flow, since it appears to have increased over the injury analysis period; and
 - (b) in the absence of an explanation as to why cash flow might have decreased in the face of increasing profits, any reduction in cash flow cannot be attributed to dumping.

Assets, and research and development expenditure

- 3.37 The Applicant claims that it has experienced reduced assets and reduced research and development (**R&D**) expenditure over the injury analysis period.
- 3.38 This claim is hollow and, on closer examination, does not suggest any injury. The information before the Commission shows that the Applicant chose not to maintain its assets and to reduce R&D expenditure even as its profitability and ROI increased over most of the injury analysis period, namely FY2013–2014 to FY2016–2017: see 3.25–3.30 above and 3.39–3.40 below. The Applicant could have afforded to maintain or improve its assets and R&D expenditure but chose not to.

Return on investment

- 3.39 Figure 6 of the Consideration Report shows that the Applicant's PBU return on investment (**ROI**) has not decreased over the injury analysis period. There is no evidence of material injury in the form of reduced ROI.
- 3.40 Moreover, the Applicant's PBU ROI has increased relative to companywide ROI. This suggests that companywide factors have suppressed ROI whereas factors relating to the Australian power transformers market have sustained or increased ROI.

Other injury factors

- 3.41 The Commission did not find, in the Consideration Report, that there were reasonable grounds to support the Applicant's claims for injury in the form of:
 - (a) reduced capacity utilisation;
 - (b) reduced ability to raise capital; or
 - (c) reduced capital investment.
- 3.42 Siemens agrees that there is no basis to support these claims.
- 3.43 In addition, we note that the following considerations suggest that the Applicant has not sustained material injury in respect of these injury factors:

- (a) There has been no reduction in capacity utilisation in the injury analysis period.
- (b) There is no evidence of injury in respect of reduced ability to raise capital.
- (c) The Applicant's capital expenditure has increased markedly over the injury analysis period and continues to increase steadily.

3.44 The Application points to alleged evidence of material injury, or threatened material injury, other than what was considered in the Consideration Report. Most of that material can be disregarded without the need for it to be specifically addressed in this submission. We nevertheless observe:

- (a) Much of the data regarding material injury in the Application predates the injury analysis period. Naturally, that data should usually be disregarded.
- (b) The Applicant claims that:²³

The withdrawal from the Australian market by two multinationals (ABB and Alstom) in the past 20 years indicates the severe level of import competition.

Naturally, this observation points to events outside the injury analysis period. It has no connection to Chinese exports. More generally, the withdrawal of manufacturers from the Australian market shows that Australian electrical equipment manufacturing is not a growth industry. It is experiencing a period of transformation and partial decline, and that inevitably involves the cessation of some manufacturing in view of relatively high labour costs and other overheads.

- (c) The Applicant's completion of Section C–2 of the Application is misguided, since the Applicant did not intend to rely "*solely on threat of material injury*" in making the Application. Section C–2 is properly to be disregarded.
- (d) To the extent that the Application alleges that there is production overcapacity in China, in Section C–2 of the Application and elsewhere:
 - (i) That allegation is untrue and not supported by any evidence.
 - (ii) It is significant that to our knowledge no other country in the world, except perhaps Argentina,²⁴ imposes anti-dumping measures on like goods from China. That strongly suggests that there is no relevant production overcapacity in China.

²³ Application at p 27. See also p 33.

²⁴ These measures are under review.

- (e) The Applicant claims that certain forms of injury caused by dumping from countries including China before the Commission's investigation in Case 219 and that:²⁵

Although the above dates are some years ago, they were confirmed by the Anti-Dumping Commission (ADC) but imports from China were excluded under the de minimus [sic] rule.

This is incorrect:

- (i) The Commission found that material injury was caused by dumping from Indonesia, Taiwan, Thailand and Vietnam, but did not make that finding in respect of China.²⁶
 - (ii) Moreover, even if the Commission had been required to determine whether material injury was caused by dumping from China, it is important that the Commission found that the dumping margins and volumes of dumped goods from Chinese exporters were both negligible.²⁷ Naturally, any injury caused by negligible volumes of goods dumped at negligible dumping margins would very likely have been negligible.
- (f) The Application states:²⁸

...the Chinese Government is currently considering relaxing banking requirements and providing more tax and other fee cuts and additional tax rebates for exporters. These actions will all increase the Chinese manufacturers [sic] incentive to export and will increase their competitiveness.

There is no basis for this statement. Moreover, it goes without saying that, since the Applicant has not applied for countervailing duties,²⁹ any allegation of export subsidy must be disregarded. The Applicant has specifically omitted to provide particulars of subsidies,³⁰ in which circumstances the Commission should conclude that there are no subsidies.

Causes of injury other than dumping

3.45 To the extent that the Applicant may have suffered economic injury over the injury analysis period, that injury was not caused by dumping. There is no probative evidence linking the Applicant's situation to dumping.

²⁵ Application at p 25.

²⁶ Statement of Essential Facts 219 at Part 8.

²⁷ Termination Report 219.

²⁸ Application at p 34.

²⁹ Application at pp 2, 37.

³⁰ Application at p 44.

3.46 In addition, there are other considerations that are likely to be injurious to the Applicant and the Australian industry aside from dumping:

(a) First, there are some customers and projects where the Applicant's tenders are unlikely to be competitive. The Applicant's failure to win these tenders is attributable to factors other than pricing or dumping. These factors include that:

(i) [confidential customer information]

(ii) Australian customers, particularly on renewable energy projects, prefer to buy power transformers as part of integrated contracts together with a comprehensive set of electrical equipment. This helps to mitigate risk; improve efficiency in procurement and contract administration; and generally achieve better terms for the customers across the entire project. Siemens supplies power transformers as part of these packaged contracts, but the Applicant and the Australian industry do not.

(iii) More generally, the Australian industry has been slow to respond to other requirements of renewable energy projects, such as faster delivery times, in a market where demand has shifted away from resources projects, after the downturn in Australia's mining sector, and towards renewable energy.

(iv) [confidential customer information]

(b) Second, the Applicant has the benefit and the burden of ChAFTA, which both allows it increased export opportunities and removes protectionist tariffs that previously applied to Chinese imports. The Applicant³³ and Siemens agree that this has affected the Applicant's business. It is unsurprising that the removal of tariffs would have a short-term negative impact on the Applicant's local business. Conversely, the Applicant's Chinese has benefited. In any event, the impact of ChAFTA on the Applicant's business is separate from injury caused by dumping.

[footnotes to paragraph 3.46(a)(iv)]

³³ See Application at p 16.

- (c) Finally, in general terms, the Australian industry, for better or worse, is facing headwinds that are not attributable to dumping:
 - (i) As with most domestic manufacturing industries, the Australian electrical equipment manufacturing industry is increasingly competing with imports of competing products manufactured at greater scale in countries with lower manufacturing costs.³⁴
 - (ii) Conversely, the Australian electrical equipment manufacturing industry faces intense competition from technologically advanced manufacturers in developed countries, such as the United States, Germany and South Korea.³⁵
 - (iii) Australian manufacturing industries are midway through a long-term transition in the Australian economy towards more specialised and advanced manufacturing, and away from secondary industries in general.

3.47 The fact that the Applicant is faring well despite all these factors attests to the fact that it is not being injured by dumping.

3.48 After further analysing the Applicant's allegations of material injury and considering the matters set out above, the Commission would terminate the investigation (or terminate the investigation so far as it concerns Siemens) pursuant to s 269TDA(1) of the Act.

4. Conclusion

4.1 In view of the matters set out above, Siemens expects that the Commission will find that the dumping margin for China (or for Siemens) is negative or negligible. It would also find that the Australian industry has suffered no injury, or at any rate no injury attributable to dumping, over the injury analysis period.

4.2 The Commission should therefore terminate the investigation (or terminate the investigation so far as it concerns Siemens) pursuant to ss 269TDA(1) or 269TDA(13) of the Act, or both.

³⁴ IBISWorld Risk Rating report for the Australian electrical equipment manufacturing industry <<http://clients1.ibisworld.com.au/reports/au/riskrating/structuralrisk.aspx?entid=273>>.

³⁵ Ibid.

4.3 Finally, we note that the Applicant has not supplied adequate summaries of all redacted information for the public record as is required by s 269ZJ of the Act. Pages 28, 33 and 46 of the Application exemplify this. The Commission should disregard information that is redacted on the public record and for which the Applicant has supplied an inadequate summary.

Yours sincerely



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