

15 May 2019

Mr Reuben McGovern
Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne VIC 3000

Dear Reuben,

Power Transformers exported from China (Investigation No 507) – Submissions by Toshiba International Corporation Pty Ltd

1. Toshiba submissions

I refer to the submissions on behalf of Toshiba International Corporation Pty Ltd (“Toshiba”) dated 11 April and 26 April 2019 recently placed on the Public File.

2. Submission of 11 April 2019 (Doc 507-004)

The Toshiba submission seeks to dispute the basis for Wilson Transformer Co Pty Ltd (“WTC”) prima facie normal values that were examined in Consideration Report No. 507 by the Anti-Dumping Commission (“the Commission”). The Commission concluded that WTC’s *prima facie* normal values were adequate for the purpose of asserting dumping and were sufficient for initiation of an investigation.

It is also asserted by Toshiba that WTC’s application contained deficiencies including information as to the deductive export price calculations that did not contain relevant supportive evidence. Whilst Toshiba may seek to assert that WTC’s application did not include supportive information, the assertions are incorrect. In respect of WTC’s constructed normal value, the information relied upon by WTC was considered reasonable by the Commission.

Toshiba further argues that WTC’s application contains “technical deficiencies” which relate to interpretive matters. Toshiba contends that WTC “fails to mention” that the former investigation – based upon an investigation of five years earlier – did not reference Chinese exports with negligible margins of dumping. WTC’s application relates to exports from 1 January 2016 to 31 December 2018 – a new investigation period. Toshiba’s comments regarding the earlier investigation are irrelevant for the purposes of the current investigation.

Toshiba accuses WTC of “over-simplification” in its description of power transformers and their application. In levelling accusations of this nature, Toshiba has redacted comments at Pages 5, 6 and top of P. 7 relating to a select tender(s). WTC is prevented from commenting on these assertions as an insufficient summary of the redacted information has been provided. WTC requests the Commission to require Toshiba to provide sufficient detail as to the redacted information to permit the reviewer a reasonable understanding of what has been redacted¹. Alternatively, the Commissioner is required to exclude the information from consideration in the investigation.

Toshiba criticises the Commission that it has not examined injury to the Australian industry as per Article 3 of the WTO Anti-Dumping Agreement. Toshiba fails to recognise that the conduct of the investigation will establish dumping and whether any injury that can be considered material was caused and that a causal link exists. The Commission was satisfied that, for the purposes of initiation, WTC had demonstrated *prima facie* dumping, injury and causation and sufficient grounds for the publication of a dumping duty notice existed.

3. Submission of 26 April 2019 (Doc 507-013)

WTC agrees with Toshiba that power transformers exported to Australia may not be directly comparable with power transformers sold domestically in China due to “*a variety of considerations such as warranties, compliance with specifications, various terms and conditions for supply, history of supply and other factors.*” To permit a fair comparison, adjustments under subsection 269TAC(8) may be made by the Minister.

WTC disagrees with Toshiba’s interpretation that the injury sustained by the Australian industry can **only** occur at the time of the loss of the tender and that any provisional measures will not prevent further injury from occurring. Injury to WTC occurs both at the time of awarding of the tender and also in the subsequent period where, had WTC been successful, it would be manufacturing the power transformer lost in the tender bid. WTC’s application also indicated that it is threatened with future injury due to the “increasing level of dumped imports from China” and that a Preliminary Affirmative Determination (“PAD”) is therefore required at the earliest opportunity from Day 60 of the investigation. Toshiba’s opposition to a PAD (suggesting a PAD is ineffective in addressing injury) is contrary to the positive impact that the dumping measures imposed in Investigation No. 219 have had in addressing injurious dumping from Indonesia, Taiwan and Thailand.

Toshiba further criticises the Commission for undertaking a weighted-average of values (i.e. normal values and export prices) to determine dumping margins. The Minister is required by Nicholas J findings in *PanAsia Aluminium (China) Limited v Attorney General of the Commonwealth of Australia FCA 870 (30 August 2013)* to calculate a weighted-average dumping margins across all models exported by the subject exporter.

¹ Refer ADN 2012/42 – Provision of information for the public record.

Toshiba has again critiqued the Commission's Consideration Report No. 507 concerning the acceptance of WTC's injury claims – in relation to market share, sales volumes and price undercutting. Notwithstanding, the Commission was satisfied with WTC's claims for the purposes of initiating an investigation.

4. Closing Remarks

Toshiba has failed to demonstrate that the Commission's initiation of Investigation No. 507 is flawed or legally incorrect. WTC has worked with the Commission during the Australian industry verification visit to validate claims of injury as detailed in its application for measures.

Yours sincerely,



Robert Wilson
Executive Chairman