

16 May 2019

Mr Reuben McGovern
Assistant Director
Anti-Dumping Commission

Our ref: RXW/RXW
Matter no: 9627025

By email: reuben.mcgovern@adcommission.gov.au

Dear Mr McGovern

Investigation 507 – Power transformers exported from the People's Republic of China

We act from GE Grid Australia Pty Ltd (**GE AU**) and GE High Voltage Equipment (Wuhan) Co.,Ltd (**GE Wuhan**) in relation to Anti-Dumping Commission (**ADC**) investigation 507 concerning certain power transformers exporter from the People's Republic of China.

This submission is in respect of whether the ADC should on day 60 of the Investigation make a preliminary affirmative determination (**PAD**) under section 269TD of the *Customs Act 1901 (Act)*. Section 269(1) of the Act limits the ADC's power to make a PAD to those circumstances where there is, or it appears that there will be, sufficient grounds for the publication of a dumping duty notice (**Initial Threshold**).

If the circumstances set out in section 269(1) of the Act are met, the ADC has a discretion whether or not to make a PAD (**Discretion**). In this letter we address whether the Initial Threshold has been met and if so, how the ADC should exercise the Discretion.

It is noted that in exercising the Discretion the ADC is not obliged to have regard to this submission if to do so would prevent the timely consideration of whether or not to make a PAD. Taking this into account, the purpose of this submission is not to provide new factual information that requires ADC analysis, but rather, draw attention to key information already obtained by the ADC that is relevant to the assessment of whether there has been satisfaction of the Initial Threshold and the exercise of the Discretion.

1. Initial Threshold

It is submitted that the ADC could not at this point in time reasonably form the view that there is currently, or there is likely to be, sufficient grounds for the publication of a dumping duty notice in the Investigation.

At this stage, the information available to the ADC primarily consists of:

- the initial application by Wilson Transformer Company Pty Ltd (**Wilson**);
- information contained in the importer and exporter questionnaires;
- information obtained from importer and exporter verification visits;
- submissions lodged by interested parties; and
- information provided to the ADC in response to a specific information request by the ADC.

Letter.dotm_

For the reasons set out below, it is submitted that in respect of this particular Investigation, and at this particular stage of the Investigation, the above listed information is insufficient to enable satisfaction of the Initial Threshold.

1.1 Wilson's Application

Wilson's application has been heavily criticised in the submissions lodged on behalf of Toshiba International Corporation Pty Ltd (**Toshiba Submissions**) and Siemens Ltd (**Siemens Submission**). We will not repeat these criticism. However, we note that we agree with the comments made, in particular:

- (a) the repeated observation that Wilson's alleged evidence of dumping is based on mere speculations, involves not objective factual claims and involves a methodology that is extremely flawed;
- (b) the same methodology adopted by Wilson in its 2013 application was found to produce fundamentally erroneous estimated dumping margins in respect of Chinese exports;
- (c) the claimed material injury needs to be closely tested given the contrary evidence of increasing profits in Wilson's transformer business, increasing volumes and increasing market share;
- (d) assessment of material injury and its cause, is likely to be extremely difficult and take careful analysis given the long term impact of dumping by countries other than China that was found to have occurred in the previous investigation. We note that due to the long timeframe between tendering and actual supply of the goods, dumped goods from third countries will have been entering Australia during the investigation period of this Investigation;
- (e) the impact of the China Australia Free Trade Agreement (**ChAFTA**) needs to be fully reviewed. In this respect it is noted that Wilson claims that it believes its pricing was in some instances only 2% higher than a successful tender (see page 31 of the Consideration Report) while the impact of ChAFTA on imports after 1 January 2017 was a removal of a 5% tariff on the FOB price of transformers of Chinese origin;
- (f) the difficulty of actually comparing an unsuccessful bid by Wilson with a successful bid by a Chinese importer. The ADC will be well aware that power transformers are bespoke equipment, that sale price does not equate to total evaluated cost and that the product offered by each manufacturer will be different. The ADC may after careful and close consideration be able to make necessary adjustments to enable a comparison. However, prior to this in depth review, it could not be satisfied that the Initial Threshold has been met.

1.2 Information in the importer and exporter questionnaires

The ADC has received numerous importer and exporter questionnaires. However, given that the exporter questionnaires were only received in May 2019, it is very unlikely that the ADC has had adequate time to review the vast amount of data provided by exporters.

In this respect we note the following:

- (a) the ADC is still in the process of conducting verification visits;

- (d) if Wilson did lose on price to a lower priced tender, were there any other tenders priced between the winning dumped price and the unsuccessful Wilson tender. If so, were these lower priced unsuccessful bids:
- (1) from the Australian industry;
 - (2) from a third country;
 - (3) from a Chinese exporter that was not found to be dumping.

It is considered very unlikely that the ADC could have made sufficient inquiries to address these issues at this stage of the Investigation. [REDACTED]

[REDACTED] **[GE SPECIFIC DETAILS OF THE CONDUCT OF THE INVESTIGATION]** In the absence of these inquiries, the ADC should not form the view there it appears that will be sufficient grounds for the publication of a dumping notice.

2. Exercise of the Discretion

It is submitted that even if the Initial Threshold is satisfied, the ADC should at this stage, not exercise its Discretion to issue a PAD and impose security measures. We say this because:

- (a) security measure would not provide any protection to the Australian industry in respect of this Investigation. Any power transformers imported in the next 4-6 months will have resulted from contracts awarded prior to the commencement of the Investigation, possibly as early as 2016. To the extent material injury was suffered, the Australian industry suffered this injury at the time of losing the tender to a foreign manufacturer. It is not commercially conceivable that the imposition of securities would at this stage result in the cancelling of an existing contract and the awarding of the contract to the Australian industry;
- (b) equally, security measures will not have an impact on tenders awarded during the conduct of the Investigation. Such goods will almost certainly be imported after the conclusion on the Investigation at which stage there either will be a dumping notice in place or no notice will ultimately have been made. If it is the former, the imported goods will be subject to dumping duties imposed by that notice. If it is the later, there will be no dumping duty paid and the effect of interim securities would have been an unfair theoretical burden on importers and Chinese exporters;
- (c) the complexity of this case indicates that there is a high probability that initial assessments as to whether the Initial Threshold is satisfied will be incorrect. This complexity relates to both the calculation of dumping margins and whether any dumping caused material injury. In the past Investigation following a PAD, the ADC imposed heavy security measures in respect of power transformers exported from China only for the Minister to ultimately not make a dumping duty notice in respect of China.

In the circumstances, the lack of practical protection to the Australian industry afforded by security measures, combined with the risk that an assessment at day 60 of the Investigation will be materially incorrect, favours an exercise of the Discretion against the making of a PAD and the imposition of securities.

Please feel free to contact us if you have any questions.

Yours faithfully
Hunt & Hunt



Russell Wiese
Principal

Contact:
Russell Wiese
D +61 3 8602 9231
E RWiese@huntvic.com.au