

By email: [Reuben.McGovern@adcommission.gov.au](mailto:Reuben.McGovern@adcommission.gov.au)

Reuben McGovern  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601  
Australia

Hi Reuben,

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.

The following submission is made on behalf of Toshiba International Corporation Pty Ltd and its related bodies corporate.

Further to our recent telephone conversations would you please advise:

- when a verification report for Wilson Transformers is expected to be published on the electronic public file given the initiation of this investigation on 18 March 2019 and the verification visit of Wilson Transformers some months ago?
- what are the reasons for the delay in publishing a verification report for Wilson Transformer and, if this due to additional requests for information from Wilson Transformers, the dates on which such additional requests were made and why they were made? Was Wilson Transformer's application deficient and subsequent provision of information to the Commission also deficient? If so, why has the investigation not been terminated; and
- how a uniform weighted average dumping margin can be applied to exports of power transformers when each power transformer is unique, as is commonly acknowledged, with a unique price and terms of conditions of supply over the life of the transformer and the Australian industry does not bid on all projects for the supply of power transformers?

In relation to the last dot point, it is commonly acknowledged by all interested parties and by the Commission that the supply of each power transformer is unique and the price for that power transformer is unique as are the terms and conditions on which it is supplied over the life of the power transformer and the site on which it is to be installed. It is unclear how a uniform weighted average dumping margin could conceivably apply in such circumstances. It ignores that each power transformer to be supplied is unique as are the terms and conditions on which it is to be supplied

and this reflected in the evaluation by end-users in the awarding of tenders as Information and documentation evidencing this has been supplied to the Commission. The supply of power transformers is not the supply of a commodity product.

Further, it is clear that the Australian industry does not bid for all tenders for the supply of power transformers. Why should antidumping measures apply to the supply of power transformers that the Australian industry has elected not to bid on? Seems to be an abuse of the antidumping system to impose antidumping measures on exports in such circumstances.

In this context is the application for antidumping measures by Wilson Transformers simply to obtain customs tariff protection even though it elects not supply power transformers on various projects and even though the supply of power transformers is not only pursuant to individual tenders and that each the power transformer to be supplied is unique to the tender as are its price, terms and conditions having regard to the life of the power transformer. Is this simply an industry seeking tariff protection which is not internationally competitive and seeking to transfer wealth through antidumping measures at the expense of importers, end users, consumers and the Australian economy generally, recognising that it elects not to supply power transformers for all projects. Is this in Australia's national interest?

Also, the issue is whether Wilson Transformer actually able to manufacture the power transformers it claims to be able to include to be able to manufacture including the large power transformers. It is one thing to claim a capability to manufacture a power transformer of large specifications and to actually manufacture such power transformers. Submissions from end users indicate that they have no confidence in Wilson Power Transformer's capability in this regard and meeting their specifications and testing requirements. This is not a dumping issue. It is simply a commercial issue that it is the commercial decision that is the basis of the decision of the purchasing decision and the evaluation criteria in making a purchasing decision by an end user. Presumably this has been verified.

As the Commission also would be aware, exporters do not supply power transformers to end users directly in the Australian market. It is importers who respond to requests for tender from end users in the Australian market, source power transformers from an exporter in China, Malaysia or another jurisdiction add to their price importation costs, SG&A and profits as well as taking into account cost for the supply of the power transformers over their operational life. Dumping is focused on the export price by exporters when compared to domestic selling prices (e.g. normal values). The point of comparison, therefore, is the price and other terms and conditions in the supply of power transformers to importers by exporters when compared to their domestic selling prices taken into account that each power transformer to be supplied in export sales and domestically and the terms and conditions are unique to that supply. Unless there is evidence of "hidden dumping" (i.e. sales at a loss by the importer that will be compensated for by the exporter, which clearly is not the case for TIC), then sales by importers to end users are irrelevant to the investigation. The injury investigation, therefore, needs to focus on supply of power transformers to importers as compared to the Australian industry supplying like goods, assuming it supplies like goods, to distributors in Australia. Otherwise it is not a comparison of like with like.

In relation to the Commission's discussions with end users placed on the electronic public file, the fundamental issue is that each power transformer being supplied in the export market or the domestic market is unique, as are the terms and conditions on which they are supplied. This is commonly acknowledged. Pricing for the supply of each power transformer reflects this – each is unique to each the supply of each power transformer and the terms and conditions on which it is being supplied.

Consequently, a weighted average dumping margin fails to recognize this fact. It is simply not possible to compare export prices for power transformers exported to Australia with power transformers sold in the Chinese domestic market without adjustments on a power transformer – power transformer basis to achieve a like-for-like comparison and a fair comparison as required by antidumping rules, both domestically and internationally.

Endusers have considerable concerns regarding Wilson Transformer's performance. This is reflected in the last three dot points in the file, namely that Wilson Transformer has issues which no doubt adversely affects customers confidence in them as a capable supplier, does not respond to requests for bids on projects in a timely manner and presumably is then excluded from such bids and that purchasers are not confident that Wilson Transformer has the ability to supply large power transformers (i.e. those above 180 MVA).

This reflects a concern with Wilson Transformer's performance and ability to supply power transformers required by end users if and when required by endusers and meeting end users specifications. Nothing to do dumping. Just a failure of performance and capacity by an Australian industry. No justification for the imposition of antidumping measures in relation to a non-performing Australian industry.

In the circumstances this investigation should be terminated as there is no basis for Toshiba's exports of power transformers from China could not be found on any legal basis to be at dumped prices given the unique supply of each power transformer for export and domestically without adjustments on a power transformer-power transformer basis (i.e. a weighted average dumping is not feasible in the circumstances) and that Toshiba's exports of power transformers could not have caused any material injury to the Australian industry given the quantity of such exports and when the Australian industry apparently, amongst other matters, is not capable of meeting the requirements of end users in the supply of power transformers.

Please let me know if you have any queries or concerns.

Yours sincerely

Kind regards



Blue 2 Pty Ltd trading as Percival Legal  
ABN 68 600 589 151

Liability limited by a scheme approved under Professional Standards Legislation



Andrew Percival

T: +61 (0) 425 221 036

E: [andrew.percival@percivallegal.com.au](mailto:andrew.percival@percivallegal.com.au)

W: [www.percivallegal.com.au](http://www.percivallegal.com.au)