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By email: operations.3@adcomission.gov.au

Mr Reuben McGovern
Assistant-Director, Operations 3
Anti-Dumping Commission
GPO Box 2013
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Australia

Dear Sir,

Non-Confidential

Anti-Dumping Investigation – Exports of Power Transformers from China

I refer to recent correspondence regarding the draft CTC exporter verification visit report and the Commission's publication of that report on the Commission's electronic public file today.

This is unfortunate as the verification visit report remains factually incorrect.

The Commission considers that CTC is an uncooperative exporter. The basis for this is that the Commissioner is unsatisfied that CTC's domestic sales data and CTMS is "complete, relevant and accurate" and the Commissioner is unable to reconcile that data to CTC's audited accounts.

CTC disagrees that it has been "uncooperative". It has provided all information requested of it by the Commission, in particular in relation to its domestic sales and CTMS and this information was verified by the Commission's verification team to CTC's audited accounts during verification. In other words, it has been fully cooperative and continues to do so.

Incorrect finding by Commissioner

The finding that CTC has been "uncooperative" is incorrect and based on the following false premise:

"That level of satisfaction has not been achieved [by the Commissioner], regardless of the presentation of the data, because the data has not been reconcilable back to the audited statements."

The verification team verified each of the values in worksheets B-4 Upwards Sales and G-8 Upwards Costs. The values for each category requested by the Commission in each of these worksheets was verified through CTC's management accounting system to tie back to the total revenue and total costs reported in the audited financial accounts. This included breaking the values down to the

goods under consideration for domestic sales, export sales to Australia and export sales to third countries.

The Commission has been able to verify the completeness, accuracy and reliability of CTC's domestic sales and CTMS through management accounts and audited financial accounts. The fact that it doesn't have the domestic sales listing and domestic CTMS listing in the format that the Commission desires, that is in the format of D2 and G3 of the Exporter Questionnaire Response Spreadsheet, should not disadvantage CTC.

Not all companies operate a management accounting system such as SAP that can readily produce reports in a format that may neatly fit the Commission's desired testing methodology. CTC is not one of those companies. Nevertheless, it should not be disadvantaged for using a management accounting system which does not neatly link various accounting data and produce the desired reports.

Point 5 of Annex II of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* states that *even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability*. CTC acted to the best of its ability to demonstrate that its domestic sales and CTMS data are complete, relevant and accurate. While the data may not be in the Commission's preferred format, nevertheless, the Commission has the data and has verified it. If the verification team has not been able to elucidate the verified data to the case management team or the case management team is struggling to follow the team's verification process this is not a matter for CTC.

CTC should not be disadvantaged because of its accounting system or by any deficiencies in the Commission's verification process. CTC has fully cooperated in the verification process and once it understood what the verification team required, despite its cultural concerns over the confidentiality of its data, it facilitated the verification and provided all the information that the verification team sought to verify.

The key word in the determination that the Commissioner is not satisfied that CTC's domestic sales data and CTMS is "complete, relevant and accurate" is "relevant". The issue is how logically can CTC's domestic sales of power transformers and its CTMS for such power transformers be "relevant" when, as it is commonly acknowledged, that all power transformers are unique and the terms and conditions on which they are supplied are unique.

What is the "relevance" of CTC's domestic sales and CTMS to its exports of power transformers to Australia when appropriate adjustments have not been made to account for domestic sales and export sales to Australia to ensure a "fair comparison". This would require an adjustment to each domestic sale of a power transformer and its CTMS to ensure that each is comparable to each power transformer exported to Australia by CTC. Absent such adjustments, a fair comparison between power transformers supplied on the domestic market and those supplied for export to Australia cannot be made.

In this regard, determining a weighted average dumping margin is absurd and fails to take into account the unique nature of the power transformer industry, both in terms of exports and domestic

sales. How does the Commission justify this approach with Articles 2.1 & 2.2 of the WTO Anti-Dumping Agreement?

What is the “like product” having regard to the definition of “like goods” in section 269T(1) of the *Customs Act 1901*? What are the characteristics of the power transformers being exported to Australia and what characteristics of domestic sales of power transformers by CTC “closely resemble” those of such exports? This does not seem to have been addressed by the Commission.

This would seem necessary to determine which domestic sales by CTC are “relevant” for the purposes of comparison with exports of power transformers by CTC. A weighted average dumping margin that fails to make a fair comparison between domestic sales of power transformers in China with export sales of power transformers on power transformer by power transformers fails to make a fair comparison and is in breach of relevant domestic and international legal requirements.

Has such an analysis been undertaken? It does not appear in the draft verification report for CTC. If the Commission is of a different view, please provide details.

Who is being “uncooperative” in not complying with domestic and international legal obligations in effecting a fair comparison between exports and domestic sales?

Preliminary dumping margin calculation

We disagree with the Commissions finding of dumping and its preliminary dumping margin calculation we make the following comments.

1. Adjustments

- i) The commission has made positive adjustments for export packaging, inland transport and handling charges at port of export and export credit term but has failed to make negative adjustments for the equivalent domestic costs. If the Commission is to maintain its finding we request that the appropriate negative adjustments be made for domestic packaging, domestic inland transport and handling charges and domestic credit terms.

- ii) Profit

The Commission determined a profit for CTC domestic sales based on “an amount for profit based on the weighted average of the verified actual amounts realized by cooperating exporters from the sale of like goods in the ordinary course of trade in the domestic market”. This would seem to be based on Regulation 45(b) of the Customs (International Obligations) Regulations 2015. It is unclear why this approach was adopted. The Commission is aware of the profit levels made by CTC during the investigation period due to prevailing market conditions. This would have been verified by the verification team. The profit levels it achieves is a commercial decision by CTC subject to the current market conditions. There is no legal requirement that it makes a particular level of profit or indeed any profit at all on domestic sales, just as there is no legal requirement for the Australian industry to make particular profits on its domestic sales. In either case, it is a commercial decision for the companies concerned and not a matter for government regulation.

Consequently, profit margins in the constructed normal value should have been based on Regulation 45(a), that is, no profit. This would be consistent not only with Regulation 45(a) but also the Commission's guidelines in its Dumping and Subsidy Manual (see pages 48 to 50).

Further, it is unclear how cooperative exporters from China achieved the high weighted average profit margin on domestic sales as calculated by the Commission. No explanation is given as to who the 'cooperative exporters' were, precisely on what power transformers this calculation was made, what the terms and conditions of supply were, how they were comparable to CTC's export sales and what adjustments were required for a fair comparison given the prevailing competitive domestic market conditions during the period of investigation. Adding a profit in the calculated normal value, particularly such an unrealistically high level of profit would simply be to create an artificial dumping margin while ignoring the competitive market conditions in the country of export.

Publication of the draft CTC verification visit report

The CTC draft exporter verification report has been published on the Commission's electronic public file despite concerns with the accuracy and inadequacies of that report as addressed above and in provisions submissions.

Also, it is noted that other verification visit reports for exporters and importers have been published on the Commission's electronic public file but verification visit reports for members of the Australian industry have not been published on the Commission's electronic public file.

What is of concern, amongst other matter addressed in this submission, is the fact that verification visit reports of Australian industry members, including the applicant, Wilson Transformer, have not been published on the Commission's electronic public file. This gives rise to the differential treatment by the Commission to importers and exporters compared with members of the Australian industry. Has the Commission had problems verifying the data in Wilson Transformer's application for the imposition of antidumping duties? Why has this not been disclosed if it is the case and, if it is not the case, why has the verification visit report not been published by the Commission?

Why are members of the Australian industry being treated more favourably by the Commission. Why has the Commission not disclosed its working programme in verifying the claims by the Australian industry in its application for the imposition of antidumping measures. Your attention is drawn to relevant administrative law principles that apply in a government favouring an entity over other others in an investigation being conducted by it. No doubt which you are not aware of such administrative law principles.

The publication of the CTC verification visit report with its inaccuracies and inadequacies obviously will have a detrimental effect on our clients. Presumably the Commission

understands this and will takes responsibility for any detrimental effects it causes due to the publication of a defective exporter visit report.

If you have any queries, please let me know.

Kind regards

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A'.

Andrew Percival

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