

**FOR PUBLIC RECORD**

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29 November 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  
Wilson Transformers Company's Further Response to Statement of Essential Facts**

We act for 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 exported from the People's Republic of China (**Investigation**).

The purpose of this letter is to provide GE AU's and GE Wuhan's comments on the submission lodged by Wilson Transformer Company Pty Ltd (**WTC**) dated 26 November 2019 (**WTC Further Submission**).

**1. Requested reinvestigation and delay on the provision of the ADC's report**

The WTC Further Submission makes various unjustified criticisms of the ADC's analysis of whether the relationship between various Chinese suppliers and their Australian customers should be treated as arms length. In the WTC Further Submission, WTC requests that the ADC re-conduct its investigation into arms length issues between Chinese exporters and their related party Australian customers. WTC requests that this reinvestigation include the following involvement by WTC's lawyers:

- a) the drafting of questions for the ADC to put to Chinese exporters;
- b) attendance at further interviews with Chinese exporters; and
- c) being supplied with the information provided by Chinese suppliers to the ADC.

The above activities are not minor. They involve substantial reinvestigation of complex issues with the added complexity of the significant involvement of WTC's lawyers.

GE does not believe that the reinvestigation demanded by WTC is required or will produce a different outcome than set out in the exporter and importer verification reports. However, GE's primary concerns is the impact the proposed reinvestigation would have on the timing of the ADC's report to the Minister (**Report**) required under section 296TEA(1) of the *Customs Act 1901 (Act)*. The Report was originally due by 20 August 2019. The date has already been extended to 2 December 2019.

It is impossible that the ADC could take that steps requested by WTC without significantly extending the date by which the Report will be lodged.

In preparing the Report, section 269TEA(4) of the Act expressly provides that the ADC is not obliged to have regard to any submission made in respect to a statement of essential facts that is received by the ADC more than 20 days after the placing of the statement of essential facts on the public record, if to do so would prevent the timely preparation of the Report.

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The WTC Further Submission was received more than 20 days after the publication of the SEF. There can be no doubt that consideration of the matters in the WTC Further Submission would significantly delay the preparation of the Report.

In deciding whether to exercise its discretion and consider the WTC Further Submission we submit that the ADC should take into account the following points:

- a) importer and exporter verification reports for all exporters have been published since 1 October 2019, with Siemens' report being available since 30 July 2019. These reports set out the ADC position regarding whether the transactions were arm's length. WTC has had months to raise its concerns with the ADC and has elected not to do so until 26 November 2019;
- b) the approach taken by the ADC to assessment of whether transactions were arms length is the same as the approach taken in Investigation 219. The position adopted in the SEF regarding arms length issues could not have been a surprise to WTC; and
- c) extending the investigation to conduct the reinvestigation requested by WTC will cause uncertainty for end users, importers and exporters of power transformers. As the ADC is aware, the supply of a power transformer has a long lead time. While interim dumping duties have not been imposed, the uncertainty caused by the investigation impacts supply decisions for transformers that would be imported 6 -12 months from now. All parties in the supply chain value certainty and this includes certainty regarding the landed cost of a power transformer. GE respects WTC's right to request a dumping investigation and the ADC's obligation to conduct that investigation. However, it cannot be denied that the uncertainty of a dumping investigation has a negative impact on international trade. The length of this impact should not be prolonged to accommodate a reinvestigate of issues that could have been raised by WTC in August 2019.<sup>1</sup>

## **2. Correct application of section 269TAA(1)(b)**

WTC claims that the ADC incorrectly applied section 269TAA(1)(b) of the Act. Relevantly, that section provides:

*(1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:*

*(a) ...*

*(b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller ...*

WTC appears concerned that in applying the test, the ADC assessed whether or not the price "was" as opposed to "appears to be" influenced by the relationship. It is submitted that the difference in terminology used by the ADC is of no consequence and did not prevent the correct application of section 269TAA(1)(b) of the Act.

Section 269TAA(1)(b) of the Act is a test to be applied by the Minister. The test of whether the "the price appears to be influenced" is whether it appears to the Minister that the price was influenced. So much is clear from the nature of the investigation to be conducted, the purpose of

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<sup>1</sup> WTC seems to hold the greatest concerns regarding Siemens. The Siemens report was published on 30 July 2019.

the legislation and the wording of article 2.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.<sup>2</sup>

In forming his or her opinion as to whether the price appears to have been influenced, the Minister must take into account all available information. If the ADC conducting its investigation finds that the price was not influenced by the relationship, this must be the most important information on which the Minister bases his or her opinion as to the existence of the appearance of influence. To ignore this finding by the ADC would be a failure to take into account a relevant consideration.

It is contended that there will never be a scenario where the ADC has found that the relationship did not influence price yet the Minister is able to form an opinion that it appeared to him or her that the price was influenced by the relationship.

### **3. Baseless assertions do not justify reinvestigation**

The WTC analysis of the arms length issue is infected by its view that the starting point is the viewpoint of a casual member of the public and subsequent assertion that to such a person, a relationship of influence is "beyond obvious".

Fortunately, the task of carrying out dumping investigations involves more than mere hunches and speculation of uninformed members of the public. The person who must form the relevant view is the Minister and he or she forms this opinion based on all available information. This includes the outcome of the ADC investigation.

The companies involved are long established multinationals. It goes without saying that their related party transactions have been closely reviewed, especially in recent years, by taxation and customs authorities. The WTC view that multinationals, due to this fact alone, do not trade on an arms length basis is simplistic, outdated, baseless and mere speculation. While a relationship is noted by WTC, no evidence has been given that the parties do not in fact supply on arms length terms.

The WTC claim does not justify the reinvestigation demanded by WTC one week prior to the ADC's report being due.

Please contact us if you would like to discuss these issues further.

Yours faithfully

**Hunt & Hunt**



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Principal

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<sup>2</sup> This article specifically uses the words "appears to the authorities concerned"