

21 Jan 2020

Mr Reuben McGovern
Assistant Director
Anti-Dumping Commission

TOSHIBA

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Case No. 507 – Power Transformers exported from PRC

Dear Mr McGovern,

As previously advised, Toshiba International Corporation Pty Ltd (TIC) supports the Commission's proposal to terminate the investigation on the grounds that any injury caused to the Australian industry by exports from China is negligible, in accordance with 269TDA(13)

In its submission dated 26 November 2019, WTC's arguments on the issue of arms length transactions turn upon the use of the word "appears" in sect 269TAA(1)(b) of the Customs Act 1901 (i.e. a transaction is not to be treated being at arms length if it "appears" that the price is influenced by a commercial relationship). WTC's submission argues that as exporters and importers are related bodies corporate that this in and of itself means that prices must have been influenced by the relationship.

WTC neglect to mention that in each verification report for each exporter the Commission found that there was no evidence that the relationship between exporter and importer influenced prices. The question of "appearance" does not arise when there is no such evidence.



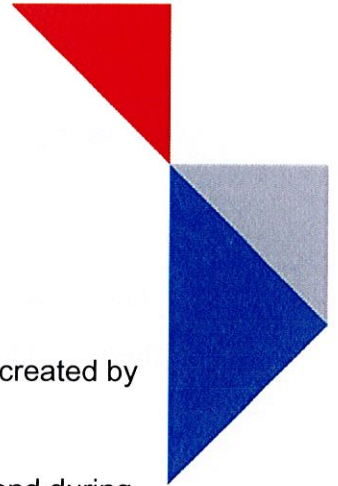
In particular, WTC's further submission dated 19 December 2019 provides no information on the causal link, if any, between the claimed lost opportunity/chance to tender and the alleged dumping. Mere speculation does not constitute evidence of material injury or causation in the context of a dumping investigation.

It is clear that WTC's response to the SEF and subsequent submissions are heavy on speculation and light on actual evidence.

In WTC's latest submission an "expert" opinion is provided on the question "Would prices between relevant related entities of the following multinationals suppliers of power transformers be influenced by their commercial, structural or other relationship?" TIC submits, with respect, that the question should be: Have prices been influenced by the relationship and, if so, to what extent? This question has not been answered by the "expert" and he has merely speculated on what he considers would be or should be the case based on his experience. On the other hand the ADC actually investigated the suppliers and concluded that there was no evidence to suggest that prices were influenced, and that the transactions were indeed arms length transactions.

Re-iterating the Commissions findings in the SEF:

Based on the Commissions analysis of 62 tenders awarded in the investigation period, relating to the supply of 102 Power Transformers only 27 projects (involving 39 transformers) were won by Chinese manufacturers for which WTC had bid. Only 8 of these projects involved alleged dumping and further analysis by the commission led to the findings



- (i) The Commission finds that injury in the form of price suppression was not created by dumping;
- (ii) The Commission finds that injury in the form of price depression experienced during tender negotiations was not caused by dumping;
- (iii) The Commission finds that injury in the form of reduced sales volume and reduced market share was not caused by dumping; and
- (iv) The Commission finds that injury in the form of reduced profits and profitability was not caused by dumping;

TIC submits that based on the Commission's analysis, the Commissioner cannot be satisfied that material injury has been caused by dumped goods from China.

TIC supports the Commission's findings in this regard and believes that the Commission is obligated to terminate the investigation under section 269TDA(13) of the Customs Act 1901.

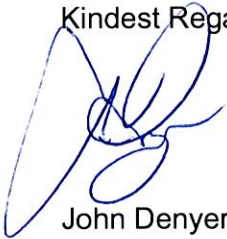
As a final comment TIC would like the record to reflect that although there have been a number of extensions granted during the investigation to allow further enquiry into various issues, that no such consideration was given to TIC(CTC) who were deemed an uncooperative exporter because the Commissioner was satisfied that "CTC did not provide the information he considered relevant to the investigation within a reasonable period" despite requests extensions of time being made both formally and informally.

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Any review of the records will show that different parties to the investigation have been treated differently which is a matter of great concern.

We would be happy to discuss any of these points further if required.

Kindest Regards



John Denyer

General Manager, Energy Systems and Solutions

Toshiba International Corporation