

For Publication**Email**

23 January 2020

Mr Reuben McGovern
Assistant Director
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
investigations3@adcommission.gov.au

Dear Mr McGovern

**Anti-Dumping Commission (ADC) Investigation 507
Power Transformers exported from the People's Republic of China**

1. We refer to the report of Ms Shannon Smit dated 20 January 2020, which expresses the opinion that "*the price between related parties is invariably influenced by the commercial, structural and other relationships within the entities*".
2. Ms Smit's opinion is not based on any actual evidence or data concerning the entities referred to in Appendix 1, but rather the asserted knowledge and experience of the author. The opinions expressed in the report constitute mere conjecture, surmise and speculation. They do not relate to the relevant exporters or transactions or to the investigation. For example, Ms Smit's assertion that "*[she has] never seen a transaction that has not been influenced by the relationships within the entities*" implies an absurd conclusion that every related party transaction engages the deeming provision in section 269TAA(1) of the *Customs Act 1901* (Cth). The mere fact that parties are associated is not taken to automatically mean that they cannot be engaged in arms length transactions: *Dumping and Subsidy Manual* at p 25. This disposes of the entire premise of Ms Smit's report.
3. The *Dumping and Subsidy Manual* also notes, at pp 25–26, that the ADC's consideration of whether relevant sales are arms length transactions turns on questions of fact and is to be determined having regard to all the evidence and circumstances of the sales in question. Ms Smit's report is not based in fact and does not consider the evidence and circumstances of the sales in question.
4. In particular, the *Manual* notes at p 26 that, in order to find that a price appears to be influenced by a commercial or other relationship between the buyer and the seller, there must be evidence that the price appears to be influenced by the commercial or other relationship. It states that the ADC seeks to compare the price paid or payable for the goods where there is a relationship between a buyer and a seller with the price paid or payable for the goods between a buyer and a seller where there is no relationship. Ms Smit's report does not take into account the fact that there is no evidence that the price appears to be influenced between a relationship between the buyer and the seller. It also does not seek to compare sale prices between related parties with sale prices between unrelated parties.
5. Indeed, the whole scheme of Part XVB of the *Customs Act* is premised on the ADC making decisions based on facts and evidence. Ms Smit's report, however, is not based on facts or evidence that relate to the relevant transactions, to the relevant exporters, or even to the investigation. It has no probative value.

Mr Reuben McGovern, Anti-Dumping Commission

23 January 2020

- 6. The whole report and the opinions expressed in it ought be accorded no weight by the ADC. Instead, the ADC should rely on its own findings, which are based on an actual investigation and consideration of relevant evidence.

Yours sincerely



Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Tom Gardner, Lawyer
+61 2 9353 4212
tgardner@claytonutz.com

Our ref: 11276/19979/80204863