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Mr Matthew Williams

Director, Investigations 3
Anti-Dumping Commission
By email: matthew.williams@adcommission.gov.au

Dear Mr Williams

Investigation 507 – Power transformers exported from the People's Republic of China

We noticed that on July 9, 2020 the Anti-Dumping Review Panel published Report No. 100, which is relevant to a key issue affecting the dumping margin calculation of CHINT Electric Co., Ltd.

With respect to the determination of the amount of profit, the Review Panel found at paragraph 43 that if there are no domestic sales of "like goods", then the ordinary course of trade test in regulation 45(2) is not available to be used.

In the Termination Report 507 the ADC set out at section 6.2 that:

"the Commission is of the view that there is an absence of sales of like goods in the market of the country of export that would be relevant for the purposes of determining a price of the exported goods under section 269TAC(1)."

Despite this finding, the Anti-Dumping Commission (ADC) sought to calculate profit for CHINT in accordance with regulation 45(2) (see section 6.6.3) in the Termination Report 507. This calculation method is obviously contrary to the findings of the Review Panel in Report No. 100.

When there are no domestic like products, Regulation 45(3) sets out three other methods for profit determination. The alternatives are:

- identify the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export—Regulation 45(3)(a); or
- identify the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export—Regulation 45(3)(b); or

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- subject to Regulation 45(4), use any other reasonable method and have regard to all relevant information—Regulation 45(3)(c).

CHINT suggests the Commission to use the first alternative to work out the profit. The total domestic sales of product concerned should be reasonably regarded as the same general category of goods in the domestic market. There is no requirement to test for ordinary course of trade in any of these three alternatives, nor should the Commission read any ordinary course of trade requirement into them. Therefore, the weighted average profit rate of total domestic sales of product concerned should be the profit rate when the Commission constructs the normal value. Please be noted that the Commission should not exclude the unprofitable sales when calculating the profit under section 45(3) of the Regulation.

Please feel free to contact us if you would like to discuss this issue further.

Best Regards,

Jia Zheng

Senior Partner
Zhong Yin Law Firm
11-12th Floor, Building 2, Zhengda Center, No. 20 Jinhe East Road, Chaoyang District,
Beijing
Tel: 86-10-65876666-6
Fax: 86-10-65876666
Mobile: 86-18601076198
Email: jiazheng@zhongyinlawyer.com