

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry
10 Binara Street
CANBERRA CITY ACT 2601

20 February 2015

ADRP Review: Power Transformers exported from Indonesia, Taiwan, Thailand and the Socialist Republic of Vietnam

We act for Siemens Ltd., and related entities including Siemens Transformer (Guangzhou) Co. Ltd; Siemens Transformer (Jinan) Co Ltd. and Siemens Transformer (Wuhan) Co. Ltd (together **Siemens China**) and refer to the review application made to the Anti-Dumping Review Panel (**ADRP**) by ABB Thailand and Vietnam (**ABB**) dated 18 January 2015 relating to investigation 219.

Siemens recognises that the majority of ABB's submissions deal with specific methodological issues related to the Anti-Dumping Commission's (**ADC's**) determinations relating to goods exported from Thailand and Vietnam by ABB specifically. However, as an interested party, Siemens considers that certain matters raised by ABB are relevant to and were applied by the ADC to Siemens' detriment in the investigation.

This submission responds generally to, adopting the naming convention of ABB's submissions:

- Findings 1 to 5 - responding to the ADC's use of ss.269TACB(3) of the *Customs Act 1901* (Cth) (**Act**) for the purposes of calculating dumping margins; and
- Finding 6 - termination as against the Kingdom of Thailand on the basis of negligible volume.

The use of TACB(3)

The findings of significant concern to Siemens are those that are reliant on the ADC's highly contentious use of ss.269TACB(3) of the Act for the purposes of calculating dumping margins.

The history of communication between the ADC and various interested parties in relation to this issue is documented on the electronic public record.¹ The ADRP will be cognisant of them. Siemens re-affirms its view that there is no proper legal basis to apply ss.269TACB(3) to the circumstances of investigation 219.

Siemens considers that the ADRP ought to approach this issue with an eye keenly attuned to proper statutory interpretation and application of ss.269TACB(3), including the verified data in relation to exports from Siemens China, and other affected exporters. Having done so, the ADRP will conclude that:

- The subsection caters for a specific purpose and operates in specific circumstances. It requires evidence that export prices differ significantly among different purchasers, regions or periods. The ADC did not perform the requisite comparison of export price but made an assessment that relies on a ratio involving export price measured against Cost to Make and Sell (**CTMS**). That is not what Parliament prescribed. Consequently, the use of ss.269TACB(3) was not open for use in the circumstances of this investigation.

¹ See for example, EPR doc 141, 149, 161, 175, 180, 185, 189, 190 and 191.

- The ADC chose to pursue an examination of export practices by adopting a comparison of an inappropriate, constructed variable as a proxy for the comparison of export prices. Whilst the ADC's calculations of cost-price difference rely on export price information, the data that is produced in relation to a transaction (or group of transactions) to any customer, region or time period **is not** a relevant substitute for a comparison of, and only of, *export prices*.
- The ADC has failed to demonstrate how differences in cost-price ratio make the ss.269TACB(2) methodologies inappropriate for use in the circumstances.
- Even if ss.269TACB(3) applied, there is no basis under the Act, nor clear WTO guidance, upon which the ADC can justify the zeroing of 'undumped' transactions for the purposes of establishing product dumping margins for the goods under consideration. More specifically, we consider that the ADC has overreached in its interpretation of the interaction between ss.269TACB(3) and ss.269TACB(6) to support the implementation of 'zeroing' in determining the dumping margin for the exporters concerned.
- The application of ss.269TACB(3) is not warranted and should only be utilised for unvarying or identical goods. Indeed the ADC itself admitted that "[t]he uniqueness of each power transformer provides a challenge for meaningful comparisons of export process per unit."²

The ADRP's review also provides a timely, and much needed, opportunity to provide guidance regarding the issue of 'zeroing' in relation to situations of 'targeted dumping'.

It is critically important that, in the course of its review, the ADRP carefully consider the ADC's use of ss.269TACB(3) in relation to Investigation 219 including its approach to analysing differences in export prices among purchases, periods or regions. In the context of this assessment, the ADRP should also examine the ADC's interpretation of, and reliance upon, the terms of ss.269TACB(6) to justify the implementation of 'zeroing' practice when determining dumping margins for exporters pursuant to ss.269TACB(3). In doing so the ADRP will recognise that the ADC could not point to any legislative provision within the Act that *authorises* zeroing. In the absence of express legislative power, the ADC was not entitled to apply a zero rate to imports that had a negative dumping margin.

The ADC's approach to the calculation of export 'volume' in relation to Investigation 219

Siemens notes the claim in ABB's submission regarding the methodology adopted by the ADC to calculate 'volume' for the purpose of determining whether the investigation should be terminated pursuant to s.269TDA in relation to Thailand.

The ADC's approach to the quantification of 'volume' given the unique nature of the goods under consideration is summarised in the context of the ADC's assessment of the Australian transformer market and is set out in section 5.5 of SEF219 in the following terms:

The Commission decided that capacity (measured using the power rating) rather than number of units is the most appropriate measure of volume. ACBPS' import database only records value and quantity. The quantity figures that are recorded are not meaningful for a number of reasons. For example, a single power transformer may be imported in different shipments or brokers may enter the number of packages rather than the number of power transformers.

The Commission does not have power ratings for exports from the nominated countries outside the investigation period, for exports from other countries or for sales by other

² See SEF at page 45.

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Australian producers. The Commission has relied on value as the best available measure of volume and the size of the Australian market.

Siemens submits that the ADC's approach to defining the size and shape of the Australian market by capacity is the correct and preferable approach and provides a more accurate and relevant picture of the unique market for power transformers. Siemens does not consider that the mere *number* of units would be an accurate and relevant metric for assessing the Australian transformer market.

Siemens would be happy to expand upon any of the above matters should the ADRP wish it to do so.

Kind regards



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