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Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 2600

12 December. 2013

Attention: Director Operations 1

Dear Ms. Garabed and Mr.Vincent,

I am writing on behalf of TBEA Shenyang to make the following arguments regarding to the preliminary determination of the power transformers anti-dumping case. There are four arguments in total. The two arguments of “FOB price” and “exchange rate” in the previous email dated on 22 Nov. 2013 are repeated below. Besides that two new issues regarding to the “oil price” and “installation expenses” shall take part in section iii) and iv):

i) Regarding to the Exchange rate

The exchange rate of the contract day should be applied on. This argument is based on the following reasons:

1) As stipulated in (1) 269TAF Currency conversion Customs Act 1901,

“*If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.*”

The date of agreement is [ ], so the exchange rate from AUD to RMB on that day should apply on. According to the Reserve Bank of Australia, the exchange rate on [ ] from AUD to RMB is [ ].

2) The whole contract is established on the exchange rate of the contract day. When TBEA Shenyang was assessing whether they shall make profit or not at the moment of signing the contract, the exchange rate of the contract day was their fundamental tools.

Please refer to clause 5 of the “*Specification Contract*”. The “*Specification Contract*” is a fundamental framework agreement which sets up basic principles for each contract reached afterwards concerning with specific purchase orders. The contract dated on [ ] is a contract reached after the “*Specification Contract*” concerning with specific purchase orders. Clause 5 of “*Specification Contract*” concerns with the pricing which provides that “*Tender prices shall be either firm or variable……*”.

On the page 29 & 30 of the contract signed on [ ], the schedule of rates suggests the fixed prices applying to the contract. The fixed price indicates that the tender prices are firm. Moreover, no other contract clauses including in the contract signed on [ ] concerns with the tender prices variation.

Thus, as the tender price is firm and the exchange rate of the contract day shall be applied on.

3) The exchange rate variation is unpredictable. The conversion variation caused by exchange rate fluctuation should be avoided from assessing the dumping margin. We claim that a single rate should be applied on. As the fluctuation is unforeseeable, the exchange rate on the contract day should be considered as a standard to calculate the dumping margin.

Therefore, in order to make a fair comparison, the exchange rate [ ] on the contract day should be applied on to convert AUD to RMB to avoid the conversion loss caused by the exchange rate variation.

ii) Regarding to the FOB price

As shown on the worksheet-Australian Sales, the Commission calculated the FOB price as [ ] AUD by deducting the cost incurred within Australia from [ ] AUD shown at unit Z9. Please note that the data provided at unit Z9 is FOB price already. The difference between [ ] AUD and [ ] AUD is [ ] AUD which equals to the total cost incurred within Australia.

According to the Incoterms and international practice, to calculate the FOB price, the overseas freight, overseas insurance, and the cost incurred within Australia should be deducted from the DDP invoice value, which is [ ] AUD shown at unit N9.

Therefore, we allege that the dumping margin should be calculated using [ ] AUD to compare with the normal value rather than using [ ] AUD by deducting the cost incurred within Australia twice.

iii) Regarding to the Oil price

The oil price is included in the contract value (please refer to column "Amount for All Other Costs", page 29&30 of the contract signed on [ ]) and now the oil invoice has been issued.

So we suggest that the oil price should be calculated into the export price.

Please refer to the attached Tax invoice issued by TBEA Shenyang.

The Tax Invoice issued by TBEA Shenyang demonstrates the value of oil sold by TBEA Shenyang to [ ]. As the oil price is included in the contract, the exchange rate of the contract day should apply, so the oil price taking part of the export price equals to [ ] RMB.

The calculation is that [ ] AUD is for two transformers, then [ ] AUD is for one transformer, which equals to [ ] RMB.

iv) Regarding to the Installation fees

In the contract, the installation fees are included in the contract amount which is [ ] AUD (please refer to “Tender Price” column, page 29&30 of the contract signed on [ ]). We allege that the export price should include the installation fees based on the following reasons.

TBEA Shenyang has confirmed that the installation fees is included in the domestic sales. When the DDP invoice value needs to be adjusted to FOB, the cost occurred between FOB and DDP level during the delivery of the goods should be deducted, such as-international freight, international insurance, and the freight occurred within Australia, the import duties and the cargo handling fees. The definition of Incoterms from wikipedia sustains this argument “*the Incoterms rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods.*”[1] No matter whether it is a domestic sale or export, the installation fees are happened either way. So the installation fees should be included in the FOB price.

On the other hand, if the installation fees are not included in the FOB value, then the [ ] AUD should be deducted from the “cost to sell”. This argument is based on the following reasons. As the normal value using the Australia CTM+SG&A incurred in domestic sales+profit, in this formula the erection cost of domestic sales is included in the selling cost. In order to make a fair comparison, either the erection fees should be included in the FOB value or the erection cost should be deducted from the SG&A incurred in domestic sales. When the installation fees are not included in the FOB value, it should be deducted from the SG&A incurred in domestic sales.

In the light of fairness and integrity, we are willing to prepare and submit all the documents required to support our defense.

Please feel free to contact us for any other questions.

Best regards,

Simin Yan
Beijing DeHeng Law Offices

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1 Please refer to 1st paragraph of Incoterms, available at http://en.wikipedia.org/wiki/Incoterms.

TBEA

AlwaysReliable

ABN: 54 323 050 472

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E-mail : shenbianwenmi@tbea.com.cn
http:// www.tbea-sb.com.cn

Customer:

Tax Invoice

Invoice No. TBEA –PLQ-AUD 03

Invoice Date:

Order detail:

Customer:
Project Name:
Contract No.:
Purchase Order No.: 2066627

ITEM	DESCRIPTION	QTY	UNIT PRICE	TOTAL
1	Transformer Oil			

Subtotal: $
GST: $
Total: $
All prices in Australian Dollar

TBEA Electronic Funds Transfer (EFT) Detail:

Bank: Bank of China Branch: Shenyang Branch
Account Name: **TBEA Shenyang Transformer Group Co., Ltd**
Account No.:
Swift:
Fax No. for Remittance: