

For Publication

Mr Geoff Gleeson
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30 May 2014

Dear Mr Gleeson

Investigation 219

Alleged Dumping of Power Transformers exported from the People's Republic of China, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam
Visit Report - Exporter
Siemens Wuhan, Siemens Jinan and Siemens Guangzhou

We refer to the meeting held on 29 April 2014 between Messrs Vincent, Sharma, Walsh and yourself of the Anti-Dumping Commission (ADC), Messrs Kahl, Jaggi, Schmidt, and Ms Madder, of our client, and the author.

We write to further address issues raised at that meeting relevant to the ADC Visit Report - Exporter dated November 2013 (**Report**).

The submissions made below, where relevant, supplement and synthesise submissions made previously on behalf of our client in correspondence issued to the ADC on 21 and 28 February (Siemens submission 87 (f.151) and 89 (f.208) respectively on the public file) and 11 March 2014.

We otherwise address the topics discussed at the meeting with you subject to one caveat - our client reserves the right to supplement, modify or withdraw any argument or information in this letter given the publication of Issues Paper 2014/01 on 27 May 2014.

Our client will formally respond to the Issues Paper, to the extent the topics raised in it are relevant to Siemens.

Selling, General and Administration (SGA) costs

- 1.1 The ADC's use of the PRC GAAP to calculate SGA costs but otherwise utilise Siemens' IFRS accounts for all other components of the COGS has created a double counting of certain costs due to an overlap in the way that certain costs are treated under IFRS and PRC GAAP.
- 1.2 As discussed during the meeting, the current methodology leads to cost elements being allocated to COGS by IFRS which are treated as SGA by the PRC GAAP. As previously submitted, this leads to an unreasonable 'double-counting' of costs in the construction of the CTMS and, consequently, normal value.¹ The ADC has acknowledged the double counting in the Report.²

¹ See Siemens submission No 87 (f.151) dated 21 February 2014 at, inter alia, [2.3] which stated that "*In particular, certain expense items which are allocated to COGS under IFRS are allocated to SGA costs under PRC GAAP. As a result, the Commission's approach in drawing COGS from accounts prepared in accordance with PRC GAAP results in double counting of some critical expenses ... increasing the adjusted CTMS.*"

² Page 49 of Report.

- 1.3 Siemens demonstrated how the IFRS and PRC GAAP financial statements could be reconciled during the meeting. The PRC GAAP financial statements are derived from IFRS. The demonstration ought to have satisfied the ADC that the IFRS financial statements accurately and completely reflected the costs for each factory - that is, there was no material difference between the underlying data reflected in the PRC and IFRS practices: see **confidential attachment - SGA**
- 1.4 Having satisfied the ADC that the IFRS statements are reliable and accurate, Siemens submits that the most reasonable, and verifiable method for removing the double-counting of costs from the CTMS calculated by the ADC, is to use the IFRS financial statements as the basis for calculating SGA.
- 1.5 Siemens has recalculated SGA for each factory in China using the data reflected in IFRS financial statements for FY 2011 and 2012. The adjusted SGA calculations are attached at **confidential attachment - SGA**.

2. Cost of goods sold (COGS)

Warranty non-conformance costs

- 2.1 As outlined in Siemens submission No 89 (f.208) dated 28 February 2014, warranty (non-conformance) costs should be excluded from the calculation of adjusted CTMS in calculating profit for the constructed normal value. The bifurcated and inconsistent manner in which the ADC has treated warranty costs in the calculation of adjusted CTMS has led to an exaggerated (and erroneous) profit calculation and normal value. The proper methodology for the ADC to adopt is to deduct the warranty non-conformance costs on a line by line basis.
- 2.2 As to the correctness of our client's submission it is notable that the ADC recorded that warranty costs were to be excluded from the weighted average profit calculations.³ Unfortunately however, the actual calculations in confidential appendix 5 to the Report did not reflect that.
- 2.3 The error appears to be the result of a clerical error in the original CTMS calculations (which form the basis for the calculation of normal values) provided by the ADC. Siemens has amended the 'Adjusted CTMS' calculation formula to ensure that these expenses are *deducted* from the COGS: see **confidential attachment - dumping calculations**.

Start-up costs

- 2.4 In its Report the ADC accepted that our client has a valid claim for start-up costs. The ADC noted that such costs include the [REDACTED]
[REDACTED].⁴
- 2.5 The ADC did not make an adjustment for start-up costs in the Report but called for a submission from our client.

³ See page [REDACTED].

⁴ See page [REDACTED].

- 2.6 For the purposes of determining the costs of production pursuant to s.269TAAD of the *Customs Act 1901 (Customs Act)*, when read with regulation 180 of the *Customs Regulations 1926 (Regulations)*, the Minister *must*:
- (a) take account of information available to him concerning, inter alia, allowances for capital expenditures and development costs; and
 - (b) adjust the costs if he identifies a circumstance in which costs during the investigation period are affected by start-up operations (but which are not identified by the information in sub-paragraph (a) above).
- 2.7 Our client has notified the ADC (Minister) of the circumstances which give rise to its entitlement to an adjustment for start-up costs. The ADC, as stated above, has acknowledged that entitlement. It follows that the ADC is obliged to consider and determine our clients claim and allow the adjustment(s) based on the quantification set out below or estimate them as best as the ADC reasonably can.
- 2.8 Our client submits that start-up costs can be quantified for, at least, the following categories:
- (a) [REDACTED]; and
 - (b) [REDACTED].
- 2.9 Each of the above start up categories will be dealt with in turn below and we submit a downward adjustment ought to be made to the COGS on a line by line basis for the purpose of calculating normal values [REDACTED].
- 2.10 *[Category (a)]*: certain [REDACTED] costs' were incurred in relation to [REDACTED]. These expenses were incurred as a result of [REDACTED].
- 2.11 Siemens submits that, for the purposes of reasonable comparison between the calculated normal values and the verified export prices to Australia, these [REDACTED] costs must be removed from the COGS [REDACTED].
- 2.12 Siemens has verified that the total value of [REDACTED]. Furthermore, our clients have been able to trace the total value of costs [REDACTED].
- 2.13 Siemens submits that the value of these costs must be deducted from the COGS, where applicable, in the calculation of the CTMS. We have included a column in into 'Siemens CTMS Australia' tab in **confidential attachment - dumping calculations** to reflect the [REDACTED].
- 2.14 *[Category (b)]*: Siemens submits that the start-up costs incurred [REDACTED] 2011 and [REDACTED].

⁵ See [REDACTED].

2012. These expenses relate to [REDACTED]
- 2.15 The [REDACTED] expenses for the [REDACTED] is demonstrated in the attached SGA calculation (**confidential attachment SGA**). The data reflects that the total value of [REDACTED]
- 2.16 Siemens submits that the significant disparity between the [REDACTED] expenses of [REDACTED] and the [REDACTED] reflects the impact of the 'start-up' costs incurred by [REDACTED] that are not normally incurred by an [REDACTED].
- 2.17 Siemens submits that the CTMS for [REDACTED] should be appropriately adjusted to remove the distorting effects of the [REDACTED] start up [REDACTED] expenses incurred by the [REDACTED].
- 2.18 We submit on behalf our client that the ADC can perform this adjustment by utilising the following methodology:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 2.19 A column has been inserted into 'Siemens CTMS Australia' tab in **confidential attachment - dumping calculations** to reflect this methodology.
- 2.20 We have outlined and quantified the start-up costs which we say Siemens is entitled to claim. We have demonstrated the methodology by which adjustments can be made to the CTMS data to reflect the start-up expenses incurred by [REDACTED]. The methodology outlined above conforms to regulation 180(5). Indeed, the legislative purpose of regulation 180 is to 'reflect' and allow for start-up costs. The items claimed reflect those start-up costs.

Cost to make and sell - summary

- 2.21 Siemens has incorporated the above adjustment methodologies into a revised version of the ADC's dumping spreadsheets attached as **confidential attachment - dumping calculations**.
- 2.22 The spreadsheets illustrate how our client's claimed SGA re-calculations and start-up cost adjustments can be integrated into the calculation of 'adjusted CTMS'. We submit that the adjusted CTMS should be calculated by applying the following formula:

CTMS = [REDACTED]

3. Profit allocation

General

- 3.1 The Report reflects the calculation performed by the ADC of profit on transformers sold domestically by Siemens [REDACTED]. Those profit calculations constitute a component of the constructed normal value determined by the ADC for the purposes of section 269TAC(2)(c) of the Act.
- 3.2 The ADC concluded that Siemens [REDACTED] achieved a profit of [REDACTED] on transformers it sold in the domestic market. It is apparent that the calculation was performed by reference to regulation 181A(2). The ADC is aware of our client's concern regarding the reliability of the methodology adopted by the ADC for the purposes of calculating profit, [REDACTED]
- 3.3 The Issues Paper traverses the proposed (preferred) position of the ADC that profit for the purposes of constructing the normal value should be undertaken with reference to regulation 181A(3)(a) - general category of goods. Our clients will prepare a submission in response to this proposal but indicates now (and re-affirms the submission made orally at the meeting) that they support the ADC's use of general category of goods to calculate profit.

[Confidential profit analysis]

4. Credit adjustment

General

- 4.1 The Issues Paper traverses the proposed (preferred) position of the ADC that credit adjustment calculations be performed by determining separate weighted average credit periods for domestic and export sales (with reference to invoice or contract credit terms applied to each progress payment) and thereafter factoring in an adjustment for difference.
- 4.2 Our clients will prepare a submission in response to the ADC proposal regarding credit adjustment.
- 4.3 In the meantime however, Siemens adheres to the position it has previously put to the ADC in submission 89, that is, no credit adjustment is necessary nor warranted because the difference in terms between domestic and export sales do not affect price comparability.
- 4.4 If however Siemens' prime contention is not accepted, it promulgates the adjustment methodology set below.

Mr Geoff Gleeson, Anti-Dumping Commission

30 May 2014

[Confidential credit adjustment comments]

5. **Conclusion**

5.1 We consider that this submission is compelling and addresses the outstanding matters as discerned in the Report or discussed during the meeting. If however there is any matter or issue:

- (a) which is not, or has not been adequately addressed; and
- (b) about which you require further and better detail or explanation,

please let us know. Otherwise, having invited the ADC to identify any remnant issue which is or may be relevant to a proper determination of the investigation, we consider that our analysis (which is conservative in many respects) results in [REDACTED]. In this way the investigation against our client ought to be terminated or a speedy indication ought to be given that our client will not be the subject of any dumping duty.

Yours sincerely



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Our ref 11276/80154429