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10 June 2014

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commercial+international

By email

Dear Director

ABB Group - power transformers Submission in response to Issues Paper 2014/01

We refer to Issues Paper 2014/01 in this matter.

On behalf of the ABB respondents in this matter, we wish to make the following comments.

1 The goods and like goods

In relation to the “distribution transformers” issue, the question is: what are the goods under consideration? In its application, the Australian industry stated that:

Distribution power transformers are NOT the subject of this application.

It was also stated that:

[Distribution transformers] are manufactured in greater quantities and have design and manufacturing technology which is different from [power transformers].

And:

Distribution transformers are generally used at the lower end voltages of the power distribution system.

In “*setting out particulars of the goods the subject of the application*” in his notice under Section 269TC(4) the Commissioner stated *inter alia*:

Distribution transformers are not the subject of this application. Distribution transformers are smaller transformers that have design and manufacturing technology which is different from power transformers.

We submit that the conclusion which must be reached is that distribution transformers are not under investigation. On no objective assessment of the situation could it be said that these multiple references to the exclusion of distribution transformers was not meant to exclude them.

The idea that distribution transformers that have power handling capacities within the ranges stipulated

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for the goods under consideration are under investigation is inconsistent with these clear statements.

Whether this occurred by reason of a mistake or because of confusion generated by the Australian industry or the Commission is of no moment. The goods under consideration were clearly stated not to include distribution transformers.

When regard is had to the design, production and actual usage of distribution transformers, it will be obvious why this was intended to be the case. There are fundamental identifiers applicable to distribution transformers. Those identifiers clearly differentiate distribution transformers in terms of their function, production and design:

- Distribution transformers are the final transformer in the electric power distribution system. They step down the voltage received so that the electricity that has been delivered to the location by the high voltage transmission lines can be distributed and used by domestic and light industrial electricity consumers. In contrast, power transformers are used in generation, transmission and sub-transmission networks. Power transformers are not used to connect to domestic consumers, and distribution transformers are not used in the generation, transmission or sub-transmission networks themselves.
- Distribution transformers can be mass produced according to standard designs. This is a significant difference to power transformers which are unique items that need to be specially designed and made to the specific requirements of the specific usage required.
- The component technologies – such as the insulation, core, conductor and winding arrangements - within distribution transformers are substantially different from the component technologies within power transformers. An example of this is that the low voltage windings used in a distribution transformer are wound from a single sheet rather than using multiple conductors, as is the case with power transformers. Similarly, a distribution transformer uses foil as the low volume conductor, whereas a power transformer will not.
- Because of the clear differences in the design and construction of distribution transformers, they are constructed through different production processes. This is best illustrated in the example of ABB Vietnam – the only ABB entity subject to this investigation which also produces distribution transformers. ABB Vietnam manufactures distribution transformers and power transformers in completely separate factories.

Because of the differences in the design, production and function of distribution transformers, the cost models, cost structures and pricing policies used for distribution transformers are vastly different from those applied to power transformers. It was correct for the Australian industry to exclude distribution transformers from its application, and for the Commission to expressly exclude them from the description of the goods under consideration.

The comments in the ADC's Issues Paper about the separation of distribution transformers from power transformers:

Wilson Transformers, in its application, uses the expression "distribution transformers" in the context of describing the transformers it manufactures in Wodonga (as distinct from power transformers it manufactures at its Glen Waverly production facilities). Wilson Transformers goes on to distinguish distribution transformers as smaller transformers with different design and manufacturing technology that are generally used at the lower end voltages of the power distribution system.

is correct. However the conclusion proposed to be reached based on those comments is contradictory to them:

Given the distinctions evident for distribution transformers in the application, the ADC sees no reason to exclude certain power transformers from the investigation merely because a company describes them as distribution transformers. Rather, the ADC proposes to treat all power transformers with power ratings of equal to or greater than 10 MVA and voltage ratings of less than 500kV as the goods the subject of the application. It follows that if dumping duties were imposed they would apply to the goods the subject of the application.

Distribution transformers are not “distribution transformers” merely because a manufacturer might call them that. They *are* “distribution transformers” because of their unique features and purposes. So far as our client and ourselves are concerned, it is abundantly clear that they have been excluded from the investigation by both the Application itself and by the terms of the initiation of this investigation.

We submit that it would be improper and unlawful for this to now be recanted.

2 Export shipments to be used for dumping margin calculations

The universe of exported goods for dumping margin calculation purposes can only be the goods exported during the period of investigation. We are not aware of the basis for any contrary view.

3 Determination of profit for constructed normal values

We have consistently disagreed with the idea that the profit to be used in any constructed normal value would be the profit on the profitable sales in the domestic market. Our client supports the adoption of Regulation 181A(3)(a) to determine a profit for this purpose, noting that it is accepted by the Australian investigating authorities that the “*actual amounts realised*” by the exporter include both profits made and losses incurred.

4 Calculation of a credit adjustment

An adjustment for credit terms is exactly that – an adjustment for different terms of sales. A credit adjustment is not accomplished and must not be attempted by way of a cost increase/profit reduction.

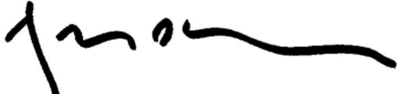
5 Exchange rates

As the Issues Paper points out, Section 269TAF of the Customs Act 1901 requires the Commission to use 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. This correctly states the applicable law, and it will always be a question of fact as to what this date might be in any particular case. We would expect the Commission to administer this on a well-considered basis, and to carefully verify the circumstances and the terms of the transactions concerned where that is possible.

On the basis of the Commission’s proposed positions, the Commission must conclude that there are no dumping margins applicable to the exports of the goods under consideration by the ABB exporters involved in this investigation.

Our client requests the Commission to terminate this investigation so far as it concerns the ABB exporters immediately at such time as the Commission arrives at that conclusion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DM', with a long horizontal flourish extending to the right.

Daniel Moulis
Principal