

4 September 2014

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By email

Dear Director

Alleged dumping of power transformers - “potential for use of alternative approach to dumping margin assessments”

We write on behalf of ABB Limited of Thailand (“ABB Thailand”) in response to your letter dated 29 August 2014.

The letter states that ABB Thailand may comment on an amended analysis to the one that was included in the letter from the Commission dated 20 August 2014, in these circumstances:

*After your submission was received, the Commission noticed that the materials provided in support of Attachment A to my letter of 20 August 2014 contained inaccuracies. Please refer to confidential **Attachment 1** to this letter for further details including amended analysis of export price data for your consideration.¹*

Our client’s comments have been requested by today, 4 September 2014, and they now follow.

- 1 In our letter dated 27 August 2014, we pointed out that:
 - (a) there are not and cannot be different export prices amongst different purchasers because ABB Thailand does not have different purchasers;
 - (b) ABB Thailand’s exports were negotiated and transacted directly with ABB Australia on an arms’ length basis.
- 2 Even if the Commission suggests that it can compare ABB Thailand’s export prices depending on who the ultimate end-user might have been, instead of the purchaser, the amended analysis shows that ABB Thailand’s export prices are not significantly different.²
- 3 In furtherance of the previous point, and again in the context that we reject the idea that ABB Thailand has different purchasers, or that an “FOB CTMS/export ratio” measures different prices, we note that the words of the relevant Section refer to a satisfaction that the export

¹ We note that we had identified these inaccuracies in our letter dated 27 August 2014.

² The Commission’s analysis does not safely identify the ultimate end-users to whom ABB Australia sold the power transformers concerned. For example the EPC contractor supplied by ABB Australia for [CONFIDENTIAL TEXT DELETED – name of project] was the same EPC contractor supplied by ABB Australia for [CONFIDENTIAL TEXT DELETED – name of project]. In the time available further cross-matching by ABB Australia has not been undertaken.

prices “*differ significantly among different purchasers*”. The amended analysis shows:

- (a) in the case of **[CONFIDENTIAL TEXT DELETED – name of end-user]**, ratios that are above ratios for transformers that ABB Australia purchased from ABB Thailand and which were ultimately sold to other end users; and
- (b) in the case of **[CONFIDENTIAL TEXT DELETED – name of end-user]**, examples of ratios that in **[CONFIDENTIAL TEXT DELETED – number]** are above the lowest **[CONFIDENTIAL TEXT DELETED – name of end-user]** ratios and in **[CONFIDENTIAL TEXT DELETED – number]** is **[CONFIDENTIAL TEXT DELETED – number]**% below the next lowest ratio for a transformer that ABB Australia purchased from ABB Thailand and which was ultimately sold to an end user other than **[CONFIDENTIAL TEXT DELETED – name of end-user]**.

4 Accordingly:

- (a) ignoring the fact that ABB Thailand’s export prices for purchases made only by ABB Australia are not susceptible to an analysis of whether they were “*significantly different*” depending on the ultimate end-user customer of ABB Australia; and
- (b) noting also that the analysis the Commission has provided does not use or otherwise take into account ABB Australia’s price to the end-user, nor could it,³

the upshot of the observations in 3 above is that “prices” to “purchasers” marked in orange and brown on the chart representing the Commission’s amended analysis cannot be significantly different because:

- (c) “prices” to a “purchaser” that are more AND less than prices to other “purchasers” cannot be said to be “significantly different”; or
- (d) ignoring the “prices” to one other “purchaser”, **[CONFIDENTIAL TEXT DELETED – number]**% is not “significant”.

ABB Thailand maintains its legal objections to any application of Section 269TACB(3).

The analysis suggested by the Commission is not the analysis called for by Section 269TACB(3) at all. It cannot be applied to ABB Thailand’s export prices.

Moreover, and setting aside ABB Thailand’s objections to that application merely for the purposes of argument, we respectfully submit that no “significance” presents itself on the basis of the amended analysis.


Our client requests that the Commission:

- recognise that the pursuit of any consideration of ABB Thailand’s exports to Australia under Section 269TACB(3) is futile, at law and in fact;
- confirm, in the Statement of Essential Facts, the very significant no dumping margin in respect of ABB Thailand which has already been arrived at; and

³ We have used the label “end-user”, but it is not strictly correct. ABB Australia’s customers operate at different levels, such as end-users (eg electricity utilities); turbine manufacturers; principal EPCs; sub-contractor EPCs; developers; etc. The ratio analysis sometimes refers to ABB Australia’s customers, and sometimes to projects.

- subsequently terminate this investigation as against ABB Thailand as required under Section 269TDA(1) of the *Customs Act 1901*.

Yours sincerely

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

Daniel Moulis
Principal