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Mr Geoff Gleeson
Director Operations 1
Anti-Dumping Commission
Customs House
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By email: Operations1@adcommission.gov.au
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Dear Geoff

**Alstom Grid Australia Limited, PT. Unelec Indonesia, SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd. and SEC Alstom Wuhan Transformers Co., Ltd.
Investigation into alleged dumping of Power Transformers exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam**

We refer to our previous correspondence and confirm we act on behalf of the Alstom entities referred to in that correspondence.

Our client has now instructed us to made the following submissions in response to the SEF and for these purposes, defined terms have the same meaning as in the Schedule of Definitions to this letter.

At the outset, please note that none of these submissions are to be taken as detracting from previous submissions made on behalf of our client. The submission in this letter are made in addition to those previous submissions.

Further, our client also reserves the right to make further submissions, whether in response to the SEF or otherwise.

1. Findings of the Investigation (paragraph 1.2 of the SEF)

1.1. Our client notes that the ADC:

- (a) has found that there has been no dumping by UNINDO;
- (b) has found that no goods were exported by our client from PRC during the Investigation Period;

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- (c) proposes to terminate the Investigation in so far as it relates to certain exporters in the PRC, Indonesia and Korea that did not export the GUC to Australia at dumped prices; and
 - (d) proposes to terminate the Investigation in so far as it relates to the PRC and Korea.
- 1.2. Accordingly, we await confirmation as to when the Investigation, will, in fact, be terminated as contemplated by the SEF and when the security provided by our client will be released.
- 2. The Goods (paragraph 3 of the SEF)**
- 2.1. Alstom refers to the comments in its previous submissions regarding the breadth of the description of the GUC.
- 2.2. Without limiting the generality of the commentary in paragraph 2.1, Alstom remains of the view that the description of the GUC is so broad as to almost above render that description to be meaningless and unworkable especially given that WTC did not, and could not manufacture the full range of those types of GUC during the Investigation Period. As has been identified in many submissions in this Investigation, WTC does not manufacture many goods which could be covered by the description of the GUC. Accordingly, the imposition of any measures on all of the goods which fall within the GUC will confer an unnecessary additional expense to parties purchasing the GUC which are, not, in fact, manufactured by WTC. This would be contrary to the Act and the WTO Agreement as well as having an anti-competitive effect.
- 2.3. Alstom also notes the extent of the uncertainty regarding whether the Investigation applies to "distribution transformers". While Alstom agrees with the observations by the ADC at paragraph 3.5 of the SEF regarding the characteristics of distribution transformers and that they are not like goods to the GUC, Alstom believes that this confusion further emphasises the problems associated with the breadth of the description of the GUC.
- 2.4. As a consequence of the comments above in the event that the ADC is, in future, called upon to consider an application by WTC or other Australian manufacturer of the GUC, Alstom requests that the ADC adopt a more precise description of the goods subject to that application. That description should only relate to the goods actually produced by any applicant. Any concerns on proper identification of the goods could be addressed by adoption of additional statistical codes in the relevant tariff classification.
- 3. The Australian Market, the Economic Conditions of the Industry, whether Dumping caused Material Injury and whether that Injury is likely to continue (Chapters 5 – 7, 8 and 9 of the SEF)**
- 3.1. Alstom considers it appropriate to consider these issues together as there are many related issues.
- 3.2. Alstom is of the view that the claims by WTC that alleged material injury has been caused by alleged dumping have not been proved to a standard which to allow the imposition of measures.
- 3.3. Alstom is also of the view that the analysis of the ADC in the SEF is not compelling and has not provided adequate evidence to support its conclusion a material injury and causation.
- 3.4. For the purposes of the preceding paragraphs, Alstom wishes to make the following observations:
- (a) At paragraph 5.4 of the SEF, the ADC refers to a number of comments by our client as to reasons for decrease in demand for the GUC having been caused by a larger decrease in demand for electricity in the Australian market. It also refers to reasons provided by our client for the increased willingness to purchase the GUC overseas. We note that the ADC does not appear to have rejected any of those observations or claims which, in fact, have been confirmed by other parties as set out in the SEF.
 - (b) At paragraph 5.5 of the SEF, the ADC refers (in Figure 2) to a reduction in the size of the Australian market and states that the decrease in size of that market may have been affected by the commencement of the Investigation with the supply of the GUC being held pending an outcome from the Investigation. Alstom is concerned that no evidence has been provided by the ADC to support this conclusion. Alstom does not believe that

orders or imports of the GUC would have been held back pending the outcome of the Investigation. As has been made clear throughout the Investigation, decisions to order and supply the GUC are a very detailed and extensive process which take place over a long period of time to reflect actual and anticipated demand. In addition the term of the Investigation and its result were uncertain. In the absence of evidence, it seems unreasonable for the ADC to use this argument to explain a reduction in the size of the Australian market. Alstom is of the view that the decrease in the market size for the GUC reflected in Figure 2 does, in fact, reflect it was caused by a decrease in demand for the GUC and not for any other reason.

- (c) At paragraph 7.4 of the SEF, the ADC makes certain observations regarding the claims of injury through loss of sales volume as made by WTC. At the top of page 66 of the SEF (above Figure 4), the ADC appears to rationalise why the sales volume of the Australian industry has increased for the period between 2008-09 and 2010-11 compared to a fall of 30% in the Australian market. In doing so, the ADC identifies a number of other reasons for that conclusion notwithstanding that the actual findings are entirely inconsistent to the idea that there has been a loss of sales volume by the Australian industry. Alstom believes that this conclusion by the ADC is reliant on certain assumptions for which there is no evidence presented and that the ADC should, in fact, rely upon the information which has actually been provided as displayed in Figure 4. That information would not support the notion of a loss of sales volume caused by any alleged dumping. Indeed, the information supports the conclusion that the Australian Industry has continued to be successful notwithstanding falling demand and alleged dumping. For these purposes, Alstom would refer to the following factors:
- (i) The Australian Industry continued to increase its market share from 2008-09 to a peak at the commencement of the Investigation Period despite falling demand.
 - (ii) The Australian Industry has maintained volume from 2008-09 and only after 2010-11 was there any correction in the markets.
 - (iii) The decrease in the Australian Industry market share in 2012-13 was, in fact, due to non-dumped exports.
 - (iv) Alstom assumes that reference to the Australian Industry should include Alstom up until the end of 2012 so market share of the Australian Industry would have reduced automatically with that local manufacturer having closed. On that basis, the increase in market share for 2013-14 for the Australia Industry is extremely impressive and is not consistent to the idea of a market being adversely affected by dumping.
 - (v) The market share of the Australian Industry has maintained above 2008-09 levels for the entire Investigation Period.

Accordingly, Alstom believes that the information provided by the ADC to support its conclusions in the SEF and which can also be proved does not actually support the loss of sales volume having been caused by alleged dumping.

- (d) At paragraph 7.5.1 of the SEF, the ADC refers to alleged price undercutting. The ADC alleges that it was able to confirm that in a number of instances, exports from nominated countries had "undercut" the Australian industry's prices. However, details have not been provided. Alstom is of the view that "undercutting" suggests a positive and deliberate action by overseas exporters to reduce their prices below prices they knew were being proposed by the Australian industry. No evidence has been provided in the SEF of such deliberate actions. The mere tendering of prices which, eventually, prove to be less than the prices proposed by the Australian Industry does not of itself constitute undercutting.
- (e) In paragraph 7.5.3 of the SEF, the ADC refers to an analysis it has undertaken to support the claim that price suppression has been experienced by the Australian industry and is a cause of injury. However, Alstom has the following reservations regarding the analysis:
- (i) The ADC acknowledges demand has been falling and at the same time, the capacity for WTC has significantly increased (by approximately 40% or more) but it does not draw any conclusion that this has an effect on competitive

performance. It seems unreasonable for the ADC to conclude that profitability should be constant in those market conditions.

- (ii) Alstom believes that it is important to note that profitability (ie the difference between revenue and costs) was already narrowing due to the increased market share by non-dumped exports as opposed to dumped exports. To Alstom it appears unreasonable to cumulate the effect of dumped and non-dumped exports as evidence of injury to the Australian Industry.
 - (iii) No explanation has been offered by the ADC as to the change in profitability of WTC between 2011-12 and 2012-13 given the only difference is coming from a market share increase for non-dumped exports.
 - (iv) Alstom does not accept the suggestion by the ADC that the increase in the Australian Industry market share in 2013-14 was probably due to the announcement of the investigation because WTC was less profitable in 2013-14. Presumably, the ADC is concluding that WTC is driving prices down further and doing injury to itself? In the view of Alstom, it is more likely that the lack of profitability is due to under-utilisation of capacity in this instance.
 - (v) In paragraph 7.7 of the SEF, in considering other economic factors, the ADC refers to an increase in capacity and a decrease in capacity utilisation. Given the trend of decrease in the Australian market in terms of demand for the GUC, it seems more likely to Alstom that a decrease in capacity utilisation is purely a function of the increase in capacity which was undertaken by WTC at the same time as the demand had decreased. This appears to be the cause of an unsound economic decision regarding the demand for the product and the required capacity in the market for production of the GUC. The effect on capacity and its utilisation appears to be caused by a lack of demand and the fault of WTC rather than by any alleged dumping.
- (f) In paragraph 8.3 of the SEF, the ADC provides its assessment as to whether dumping has caused material injury to the Australian Industry.

Our client has the following reservations regarding the assessment contained in paragraph 8.3 of the SEF.

- (i) The ADC has formed the view that given the nature of the industry and the products, the loss of a sale of one power transformer due to dumping could cause material injury to the Australian industry. Given the specific unique requirements in relation to each power transformer and the significant risk of loss of any one tender in the competitive market, Alstom has difficulty with the conclusion that the loss of one sale could, in itself, constitute material injury.
 - (ii) The ADC states that it recognises the factors other than price affecting purchase decisions but is "*satisfied that price is a key determinate of the decision to purchase a transformer*". However, there does not appear to be significant evidence cited by the ADC in the SEF in support of that proposition.
 - (iii) Paragraph 8.3 sets out the ADC's assessment of effect on the measures on WTC. However, there is no assessment of the expected effect that any measures might have on the Australian market for the goods subject to those measures and like goods manufactured in Australia and in particular any potential for significant impact on this market as required by paragraph 6.2 of the Streamlining Document. Further, the assessment does not identify the expected effect of any measures on market concentration and domestic prices. Accordingly, on the assumption that the SEF will comprise the findings and recommendations to the Minister, Alstom is of the view that the SEF is deficient and that the ADC should have presented evidence of the likely effected measures to allow the Minister to weigh the impact of the measures on parties other than the Australian industry.
- (g) Alstom has the following additional observations regarding the discussion of other possible causes of injury as set out in paragraph 8.5 of the SEF:

- (i) The SEF refers to the effect of the labour costs and exchange rate movements and the ADC has concluded that they "do not detract from the Commission's findings that dumped imports have caused material injury to the Australian Industry". Alstom has the following specific concerns on this finding.
- (1) The ADC has not provided any analysis as to how it calculated the adverse effect to the Australian Industry of labour costs and exchange rate movements and compared to the effect of alleged dumping. This does not allow for review and challenge which appears unreasonable.
 - (2) Material costs being linked to USD means that the same costs are being experienced by everyone.
 - (3) For WTC, materials represent only 55% of the selling price (see page 15 of the application by WTC).
 - (4) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [Commentary on effect of exchange rate fluctuations and labour market costs].

Accordingly, our client believes that the ADC has erred in this conclusion.

- (ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [Commentary on reason for closure of Australian Operations].
- (iii) On page 75 of the SEF, the ADC noted that WTC's corporate and financial costs have increased each year. In the submission on material injury by our client, it pointed to costs of depreciation of the upgrade over a 20 year period impacting on WTC's results. However, this is not the entire explanation. That same depreciation would still apply even if the factory capacity utilisation remained high. If a party starts to under-utilise capacity (as in the case of WTC), then the fixed high operating costs become disproportionate to overall revenues (with profits going to paying of higher fixed costs). In this case, the decrease in demand for the product generally and the increase of capacity by WTC at the same time should be seen as the reason for the losses rather than dumping.
- (iv) The ADC has dismissed certain examples where WTC was unsuccessful in tenders or did not complete contractual negotiations as not detracting from overall injury findings. However, given the view of the ADC that even the loss of one sale could constitute material injury, then it appears unreasonable for the ADC to have dismissed the impact of those examples.
- (v) In paragraph 9 of the SEF, the ADC has formed the view that dumping and material injury are likely to continue. In so far as that is based on an assessment of alleged current dumping and material injury, Alstom rejects the proposition that it should continue in the future as it does not believe that it exists at this point. Alstom believes the decrease in the size of the Australian market, over – investment, ongoing depreciation costs, the lack of successful marketing and tendering procedures and under – utilisation of capacity as being more likely causes of injury to WTC other than any alleged dumping.

Given the commentary above, Alstom is of the view that the findings of the ADC are insufficient to support findings of alleged dumping having been the cause to material injury in the past and in the future.

4. Imposition of Measures

We refer to the commentary above in which we have identified concerns regarding the description of the GUC being beyond that which WTC produces. We also note the observations by the ADC that the loss of one sale, could, in itself, constitute material injury. In those circumstances, the imposition of measures on all of the GUC on an indiscriminate basis (presumably with the aim of stopping the loss of one sale alone) could lead to the imposition of measures on a range of GUC produced and exported to Australia which have not been the cause of material injury to the Australian Industry. The imposition of measures in those circumstances would be contrary to the provisions of the WTO Agreement and the terms of the Act to impose measures on goods which are not the cause of material injury to the Australian industry. It appears unreasonable for exporters to then be required to have recourse to the provisions to seek exemptions from the measures for their specific exports in the manner contemplated by the Anti – Dumping Act which is a complex and difficult procedure. As a result, even if there is the view that there has been alleged dumping causing alleged material injury to the Australian Industry, then the measures should only be applied to specific products within specific ranges produced by the Australian Industry. This would also be consistent to the notion that measures should not be applied in a way which is anti-competitive to exporters and cause undue additional costs for Australian purchasers.

We look forward to discussing these matters with you in more detail.

Yours faithfully



Andrew Hudson
Partner

Schedule of Definitions

In this letter, the following terms shall have the following meanings:

- (a) **Act** means the *Customs Act 1901*.
- (b) **ADC** means the Anti – Dumping Commission
- (c) **Alstom** means the Alstom entities referred to in earlier submissions.
- (d) **Anti-Dumping Act** means the *Customs Tariff (Anti – Dumping) Act 1975*.
- (e) **Australian Industry** has the same meaning as in the SEF
- (f) **GUC** means the goods under consideration being the goods the subject of the Investigation.
- (g) **Investigation** means Investigation 219 by the ADC into alleged dumping of power transformers from China, Indonesia, Korea, Taiwan, Thailand and Vietnam.
- (h) **Investigation Period** means the period referred to in the SEF
- (i) **PRC** means the People's Republic of China.
- (j) **SEF** means the Statement of Essential Facts No. 219 in relation to the Investigation.
- (k) **Streamlining Document** means the document entitled "Streamlining Australia's anti – dumping system. An effective anti – dumping and countervailing system for Australia" published by the Australian Government dated June 2011
- (l) **Unindo** means Pt.Unelec Indonesia.
- (m) **WTO Agreement** is the World Trade Organization Agreement on Implementation of Article VI of the GATT.
- (n) **WTC or Applicant** means Wilson Transformer Company Pty Ltd being the applicant for the measures referred to in the Investigation.