Wilson Transformer Co Pty Ltd
ABN 73 004 216 979 ACN 004 216 979

Corporate Office
310 Springvale Road (PO Box 5)
Glen Waverley, Vic 3150, Australia

T: +61 (0) 3 9560 0411
F: +61 (0) 3 9560 0499
E: corporate@wtc.com.au
www.wtc.com.au

7 October 2015

Ms. Melinda Cilento
Commissioner,
Productivity Commission,
Australian Government,
Level 2,
15 Moore Street
Canberra City,
ACT 2600.

Re: *Submission to Productivity Commission Research Paper – Developments in Anti-dumping and Countervailing ('Anti-dumping') Arrangements*

Dear Melinda,

We very much appreciate the opportunity to provide a submission and contribute our thoughts, feedback and experiences with regards to developments in Australia's Anti-dumping and Countervailing system. Wilson Transformer Company (WTC) has been manufacturing transformers in Australia since 1933, and has grown to become Australia's largest domestic producer and supplier of power transformers and related products to a broad array of Australasian and international markets.

We currently employ 515 Australian workers across two sites in Australia, and have a well-established international presence through our joint venture partnerships with companies in Malaysia, Saudi Arabia and the Philippines, and our offices and subsidiaries in the United Kingdom and the US.

Whilst we are very proud of our achievements in Australia for over 82 years, we have never been complacent and have continued to transition our manufacturing operations into a modern, high performing world class business through cutting edge technology and our people. We maintain a very high degree of confidence that our manufacturing plants can compete extremely well on the international stage against the range of global competitors - if we are competing on a 'level playing field.'

Therefore the Australian Anti-dumping system and laws are crucial to support our very significant investment in our people, highly advanced manufacturing systems and operations, and world class and highly productive processes.

Understanding the scope of the Productivity Commissions self-initiated review into the Anti-dumping system, I will address our key inputs under the following sub headings.

1. *A brief summary of WTCs case experience with the AD system – how measures have impacted Transformer market segments.*

WTC made an Anti-dumping application which was initiated on the 29th July, 2013.[1] The investigations relating to China and Korea were terminated due to the volumes of dumped imported goods from these countries being identified as negligible [2], whilst the Commissioner found exports of Power Transformers at dumped prices had caused material injury to the Australian industry from a number of exporting countries and subsequently determined a wide range of dumping margins.[3]

The investigation period was determined to be from July 2010 to June 2013, and, whilst during this period the Power Transformer market in Australia declined due to lower levels of power utility capital expenditure and electricity demand, it remained attractive to predatory overseas exporters due to resource and mining led major projects. WTC contends that whilst some fair and well supported results in our case for dumping were determined by the Commissioner, Power Transformers were being dumped into the Australian market during this period at much higher levels by some overseas exporters than was found in the final report. We therefore contend the Australian Anti-dumping system is not working as well as it should, and we also believe there are a number of clear issues impacting the systems performance, which I will outline shortly.

One key finding made during the preparations of the submission was that some Power Transformers were recorded under incorrect tariff codes on import. A number of corrections needed to be made, some resulting in country dumped imports being increased from below the minimum 3% threshold to above it.

Additionally Power Transformers imported under the auspices of the Enhanced Project By-law Scheme (EPBS) and the Tariff Concession System (TCS) are able to bypass the normal tariffs when imported as part of a larger system. Examples are when imported as part of a 'substation' or 'power supply system' resulting in the granting of Tariff Concession Orders (TCO's). The issue of the definition of a 'Functional Unit' under the EPBS is significant and is used by some importers as a means of avoiding tariffs and dumping duties. Furthermore, various incomplete Power Transformers are not all classified under the appropriate general classification codes.[4] This area of incorrect import code classification of imported Transformers is of a great concern to WTC as this enables exporting parties to avoid duties they are obliged to pay.

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[1] Anti-Dumping Commission, Case 219, Power Transformers Exported from the Peoples Republic of China, Republic of Indonesia, Republic of Korea, Taiwan, Thailand, and the Peoples Republic of Vietnam; <www.adcommission.gov.au>

[2] Anti-dumping Notice No. 2014/132, 10th July 2014; www.adcommission.gov.au; the case against China and Korea were terminated on the grounds that dumped volumes were below the legislated 3 percent threshold

[3] As above No 1; dumping margins of 8.7 percent for two exporters from Indonesia; from 15.2 to 37.2 percent relating to three exporters from Taiwan; 3.6 percent and 39.1 percent pertaining to two exporters from Thailand; and 3.8 percent dumping margins in relation to two exporters from Vietnam.

[4] ADC Final Report, Case 219, Power Transformers Exported from the Peoples Republic of China, Republic of Indonesia, Republic of Korea, Taiwan, Thailand, and the Peoples Republic of Vietnam, 2nd December 2014; <www.adcommission.gov.au>

A significant current concern of WTC is the Environmental Goods Agreement (EGA) that is currently being negotiated and which is likely to result in tariffs on transformers being removed completely.

During the conduct of our application and since it was concluded in December 2014, we have experienced mixed behaviours from predatory overseas exporters. In tandem we have seen fluctuating levels of key market sector demand.

2. Brief thoughts on recent changes to the AD system and related developments.

It is our understanding that changes to Australia's Anti-dumping system over recent years have emanated from the Productivity Commission's 2009 inquiry into Australia's Anti-dumping and Countervailing System[5], the Federal Governments response to the 2009 inquiry[6], recommendations from a report conducted by the Hon John Brumby released in 2012,[7] and the Governments policy announcements in 2014.[8]

In principle, WTC particularly supports the following amendments to Australia's Anti-dumping system, which were introduced in six Tranches from October 2011, to December 2014:

- Imposed time limit on Ministerial decision making – Tranche 1 October 2011
- Improvements to case merits review by establishing a new appeals process, Anti-Dumping Review Panel (ADRP) replacing the Trade Measures Review Officer (TMRO) – Tranche 2 June 2013
- Establishing the International Trade Remedies Forum (ITRF) – Tranche 2 June 2013
- Allowing the inclusion of profit when constructing a normal value – Tranche 3 June 2013
- Allowing the minister to utilise additional forms of duty (such as the combination method) extending such options beyond the original single form available – Tranche 3 June 2013
- Introduction of *Circumvention Inquiry* provisions, including assembly of parts in Australia, assembly of parts in a third country, export of goods through one or more third countries, and arrangements between exporters – Tranche 4 June 2013
- Strengthening the provisions dealing with non-cooperating parties in investigations – Tranche 4 June 2013
- Removal of the mandatory consideration of the Lessor Duty Rule, which allows the Commissioner to recommend the setting of a duty at a lower level than the dumping margin, if this level is sufficient to remove injury encountered by the Australian industry – Tranche 6 July 2013
- Clarification of the application of retrospective duties – Tranche 6 July 2013
- Introduction of a new type of anti-circumvention inquiry to address 'sales at a loss' cases – Tranche 6 July 2013
- Circumvention activities to address the slight modification of goods exported to Australia – 'Levelling the Playing Field' policy December 2014

[5] Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, "Terms of Reference to the Productivity Commission to Undertake an Inquiry into Australia's Anti-dumping and Countervailing System", Canberra, March 26, 2009;

[6] The Commonwealth Government of Australia, "Streamlining Australia's Anti-dumping system – an effective Anti-dumping and countervailing system for Australia", report released June 2011

[7] Review into Australia's Anti-dumping Arrangements, The Hon John Brumby, November 2011

[8] The Commonwealth Government of Australia, "Levelling the playing field – changes to Australia's Anti-dumping laws", December 2014

- Wherever possible imposing provisional measures at day 60 of an investigation - 'Levelling the Playing Field' policy December 2014
- Reducing the deadline for the submission of information at the start of investigations - 'Levelling the Playing Field' policy December 2014

Whilst we support these stipulated changes our experience is that they are not being applied as effectively as they could be. There continue to be case delays and extensions to the length of investigations, mixed and weak standards of exporter verifications, issues pertaining to methodologies used with regards to constructed normal values, and predatory exporters being able to circumvent Australia's trade laws. We support the relocation of the Commissions personnel to Melbourne although it did generate a number of issues relating to staff changes and introduction of relatively inexperienced staff and the loss of experienced staff who wished to stay in Canberra.

There is no doubt our recent case was quite complicated due to engineered to order capital goods nature of the product and the number of countries and exporters being investigated. It did result in a case with a duration of 416 days and a limit on the number of verification visits undertaken. The low level of duties imposed and the exclusion of China and Korea, despite dumping being determined in some cases, were disappointing. However, we were pleased with the Commission's willingness to invoke section 269TACB(3) as a result of the behaviour of some of the WTC competitors.

3. Comments on overseas Anti-dumping system in similar Jurisdictions to our system.

There are two recent like cases to ours in the similar jurisdictions of United States and Canada to which I wish to draw your attention.

(i) Recent US Power Transformers Case Example:

During 2012 US manufacturers of Power Transformers brought a dumping case against two prominent exporters from the Republic of Korea.[9] The final determination under section 735 of the US *Tariff Act*, 1930, was that sales were being dumped at less than fair value. The weighted average dumping margins applied to the two Korean companies were 29.04 and 14.95 percent.[10] These dumping margins were reduced to 6.43 and 9.53 percent on review in March 2015.

(ii) Recent Canada Power Transformers Case Example:

In March 2014 Canadian authorities found dumping had caused injury to domestic manufacturers of Power Transformers and initiated dumping margins of 34.8 and 9.1 percent against two exporters from the Republic of Korea.[11]

In both of these cases significant dumping margins were found in relation to the same product as ours, within very similar markets and jurisdictions to our own. In order to assist with the avoidance or

[9] Large Power Transformers from the Republic of Korea; Federal Register Vol. 77, No. 133; International Trade Administration, US Department of Commerce; 11th July, 2012; <www.enforcement.trade.gov>

[10] Ibid

[11] Liquid Dielectric Transformers Originating from the Republic of Korea; AD/1395, File No. 4214-35; <www.absa-asfc.ga.ca>

circumvention of duties, both the US and Canadian cases found for the Applicant in relation to Power Transformer products whether 'assembled or unassembled', 'complete or incomplete'.

WTC is perplexed about the injury to the domestic industry and significant dumping margins applied to the Korean exporters by both US and Canadian Anti-dumping authorities, yet in the Australian case much lower dumping margins were found. When similar like for like industries and products involved with Australian Anti-dumping cases are compared to other similar US cases, broad disparities in the duties are often found. [12]

Our understanding of the reputation of the US Anti-dumping system is that their authorities conduct very strong, rigorous and thorough exporter verification and investigation processes. We understand that Industry has high confidence in US Anti-dumping officers, and the US system has a reputation of being relatively progressive in testing WTO Rules in order to support their local industry, if this is seen as warranted. Whilst we firmly believe that our Anti-dumping system should not generate 'protectionist' policies, we strongly contend our Anti-dumping system needs to use the full force of our current laws and recent changes to provide appropriate support for local industry when required.

4. WTCs view on current Bills and previously considered amendments to the AD System.

(i) Public Interest Test

The 2009 Productivity Commission's recommendation on providing a limited access or 'free ticket' to dumped imports in certain cases where it could be of "public interest" and meet competition tests would in our view be a significant concern if this was introduced to the Australian Anti-dumping system. We consider that the Australian system contains sufficient safeguards, particularly the "lesser duty rule" which ensures that no unnecessary costs are imposed on customers.

The Public Interest Test would introduce a further range of processes and impose additional costs and delays in the procedure. The delays experienced in our case were considerable and further delays would be most undesirable. In addition, it is likely that the Public Interest Test would require additional economists' reports which would impose further costs and delays.

Opening the gate to 'allowable dumping' which would cause injury to Australian companies and sustainable overseas exporters to Australia has no fit with our Anti-dumping system, and smaller industry scale and structure as compared to many other much larger economies in our view. We cannot see the justification in allowing cheap dumped imports from larger economies into the country in order to gain some short term cost savings for the general population, in exchange for the long term price the economy would face with the potential shut down of significant industries and jobs. In the case of Power Transformers, there are significant infrastructure support and potential defence support ramifications.

[12] In its Final Determination in December 2012, the US Department of Commerce announced dumping duties on Wind Towers exported from China of 44.99 to 70.63 percent; <www.ictds.org>; In its final report 221 during April 2014, Australian Anti-dumping Commission announced final dumping duties from Peoples Republic of China of 15.0 to 15.6 percent; <www.adcommission.gov.au>

Australian companies have enough administrative burden to bear at present without adding further unnecessary analytical requirements should a Public Interest Test be introduced. Providing necessary safety net measurement and information requests which would come with such a policy would simply add further complexity and wasted efforts. Further, we view previously touted test measures such as "significantly reduced competition" and "reasonable profit margins" as being subjective and ambiguous. We simply see no place for the Public Interest Test in the Australian system.

(ii) The International Trade Remedies Forum (ITRF)

The ITRF, which has not met for some time, consists of a broad range of industry members, associations, unions and government officials. In our view, it has an important role to play as a barometer which regularly measures the effectiveness of our Anti-dumping system. Due to its broad representation of constituents and the need for impartial feedback on our Anti-dumping system, the ITRF has an important role to play on how the system is working in an increasingly competitive global market.

We would also recommend the Manufacturers Trade Alliance as being a worthy and suitable member of the ITRF in order to provide this advisory group with real time information on the levels of effectiveness of our Anti-dumping system by its manufacturing members.

(iii) Introduction of fees for applications to the Anti-dumping Review Panel (ADRP)

We disagree with *Customs Tariff (AD) Amendment Bill 2015,* which requires companies wanting to Appeal a decision by the Commissioner to pay fees with the lodgement of the Appeal. We contend if the ADRP is being confronted with an increasing number of frivolous and costly Appeal applications, a better approach to preventing such waste whilst enabling optimal access to companies for the right of Appeal is via more stringent and effective application hurdles and thresholds.

In essence, we would like to see a heightened degree of consultation with industry with regards to all potential changes and amendments to Australia's Anti-dumping system.

5. Our thoughts on opportunities to improve Australia's AD system.

(i) Small dumping duties are often meaningless to predatory overseas exporters for high capital made to order goods such as Power Transformers

Our Transformer products are high value, engineer to order capital goods, which are tailored to our clients individual project needs. When injury to our industry and dumping activities are proven, *Ad Velorum* measures are usually applied because it is not practical to set an on-going floor price or use 'combination methods' when the products usually change for each individual order. Therefore when such low dumping duties are applied as they have been to some exporters in the Power Transformer Dumping case, we consider that those exporters are likely to continue predatory behaviour as the small duties provides little disincentive to continue this behaviour.

When injury to the domestic market is proven, as it was in our case[13], we contend full and rigorous interpretation of Anti-dumping laws in relation to dumping duties must be applied in order to support the local industry more fully. Furthermore we would recommend further exploration of combination methods of applying duties to high capital made to order goods, such as floor prices which could be substantiated based on production cost per product output ratios, particularly when the manufacturing processes and product components are identical or very similar.

(ii) Applications regarding Circumvention require a shorter time frame

In recent times WTC has become more aware of the various circumvention methods used by overseas Transformer exporters to avoid both duties and detection of dumping activities. We have experienced this through the miss-use of import tariff codes by overseas exporters; and through "country hopping "or "re-packaging" where exporters are value adding to Transformers in some way via subsidiaries in other countries before the products are being brought into Australia.

Currently Circumvention cases have a time frame of 155 days, which along with the case preparation needs can add significant burdens and lengthy time periods endured by Australian manufacturers when preparing such cases. This important stream of the Anti-dumping system needs to be shortened and simplified where possible in order to encourage Anti Circumvention case applications where such activity is creating injury to Australian industry, and to reduce any unnecessary work impacts on the Commission and participants.

(iii) Review of import tariff codes to be much more closely monitored

As previously discussed, our recent case investigation found Power Transformer exporters into Australia have not been using appropriate Tariff codes for their products. This totally unacceptable practice has obvious negative consequences for the local industry and Government revenue where Tariffs are being avoided.

We would like to see greater transparency and accuracy of imported product codes so that the Government and local industry can more readily monitor import product trends. We recommend there needs to be a sweeping review of policy, practices and legislation relating to imported product and tariff codes in relation to the systems accuracy, transparency and suitable access to information for local industry.

(iv) The determination of exporter profit when verifying the exporters constructed normal value

Our recent case raised the key issue of how an appropriate amount for exporter profit should be determined by the Commission when calculating the constructed normal value of the exported product. Regulation 181A contained in the Dumping and Subsidy Manual (December 2013 edn) was used to apply an amount for profit to the *ordinary course of trade test* for the profitability and recoverability of the

[13] The Commissioner found the Australian Power Transformer industry had suffered injury in the form of loss of sales volumes, loss of market share, price undercutting, price suppression, decreased revenues, decreased profitability, decreased return on investment, reduction in capacity utilisation, and decreased levels of employment; ADC Final Report December 2014, Case 219, Power Transformers Exported from the Peoples Republic of China, Republic of Indonesia, Republic of Korea, Taiwan, Thailand, and the Peoples Republic of Vietnam;

exporter's domestic sales, (Section 181A has since been replaced by Regulation 45 Determination of Profit). If the Minister is unable to work out an amount for profit in the exporter's domestic market using relevant available data in the *ordinary course of trade*;

(2) the Minister must work out an amount by:
   (a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
   (b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of the like goods in the domestic market of the country of export; or
   (c) using any other reasonable method and having regards to all relevant information.[14]

In industries and markets such as ours, it is often difficult for the Commission to ascertain profit using the *ordinary course of trade test* in the first instance because every made to order Transformer product is often different from others. However, as we have witnessed in other cases, the Commission must continue to work towards using the full intent of this Regulation for calculating and adding a suitable amount for profit in the exporters constructed normal value calculation, which requires at the very least a calculation for profit based on using "any other reasonable method".

(v) Standards of verification

Whilst our case, which involved a large number of overseas exporters, would have stretched the resources of the Anti-dumping Commission, we have no doubt the standard of exporter verifications conducted varied significantly, and we are concerned this has caused some dumping margin calculations to be grossly undervalued. As previously discussed, when dumping margin results in our industry and products by the same exporters are compared to the same industry and products in other jurisdictions such as the US and Canada, the results are significantly lower. We maintain one of the key causes of this is the rigour and standards of exporter verification applied by officers in our system vary greatly. From the documents relating to our case on the ADC web site it is evident that some exporter questionnaires and businesses were never verified.

We also wish to raise that in our view one of the key issues which is impacting the effectiveness of Australia's Anti-dumping system is that officers of the Commission do not interpret the intent of the laws fully in a manner in which they were designed to support local industry. Whilst WTC, like the large majority of other Australian enterprises, are not looking for preferential treatment and protectionist policies underpinned by Australian Anti-dumping laws, we are eager to compete on a highly competitive global stage. What we are seeking is support by the full force of the law as it should be applied when injury is occurring to local manufacturers through dumped imports.

(vi) There needs to be a tougher stance on unco-operating exporters

We maintain our Anti-dumping system can be improved, case time delays can be reduced and more productivity efficiencies gained by the Commission if there is a tougher stance on unco-operating exporters. In our recent experience case delays occurred because some exporters were tardy at completing questionnaires fully. In our view the Commission needs to apply a tougher stance and only

[14] Regulation 45 of the *Customs (International Obligations) Regulation 2015 ("the 2015 Regulations)*

provide one instance if an exporter does not provide a fully compliant public file version of the exporter questionnaire, and if they then fail to meet the required new deadline the exporter is categorised as unco-operating. Furthermore, if by day 60 of the investigation no compelling evidence is provided by the exporter which contradicts the local industries injury case, securities should be applied immediately in order the safe guard the domestic companies involved from further injury.

(vii) Abolition of "*Lesser Duty Rule*"

In its final report on the Power Transformer Dumping case, the Commissioner stated:

> "The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury." [15]

This is known as the *Lesser Duty Rule*. We agree with recent changes and see no place in Australia's Anti-dumping system for the mandatory application of this rule as there is a risk that even though injury to our industry is found, such insignificant lessor duties may be applied as to have no impact on the continued predatory behaviour of exporters who are dumping products into the Australian market. The *Lesser Duty Rule* should only ever be considered for its use if the Commission has absolute confidence lesser duties will change the behaviour of exporters who are dumping and thus remove the risk of injury to the local industry.

In summary, we thank the Productivity Commission for this opportunity to provide our submission to the current research project examining recent developments in Australia's Anti-dumping arrangements. WTC has a good degree of confidence that generally the Australian Anti-dumping laws and related mechanisms are in place which can be used to support and safeguard local industry from the debilitating impacts on our economy and local jobs of dumped imports. It is critical to all Australians that the Anti-dumping Commission strives to ensure the current laws are used to their full effect and intent, using efficient and transparent processes. Whilst we applaud the Productivity Commissions current research and interactions with industry, we strongly support the need for the Federal Government to be highly consultative with local manufacturers and industry with regards to Australia's Anti-dumping system which plays a very critical role in our economy.

Yours sincerely

Robert Wilson
Executive Chairman

[15] ADC Final Report, Case 219, Power Transformers Exported from the Peoples Republic of China, Republic of Indonesia, Republic of Korea, Taiwan, Thailand, and the Peoples Republic of Vietnam, 2nd December 2014