



10 September 2014

Professor Ian Harper  
Chair  
Competition Policy Review Panel  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Chair and Panel Members,

**Submission in response to the Competition Policy Review Issues Paper  
Australia's anti-dumping laws are an affront to competition policy**

ABB is a global leader in power and automation technologies. Internationally, the ABB group of companies employs 150,000 people across 100 countries. In 2013 we enjoyed revenues of USD42 billion which delivered an operational EBITDA margin of 14.5%.

ABB has been operating in Australia since the late nineteenth century. We presently employ over 2,000 people at our 13 sites in Australia. Our recent and our planned power and automation systems support:

- huge projects such as the Ichthys LNG project in Western Australia, all three major Queensland LNG projects - QGC's Curtis Island, APLNG, and Santos Gladstone;
- Rio Tinto's massive electrical network infrastructure in the Pilbara;
- the majority of Australia's recent large wind farm projects, including Collgar, Mt Mercer, Musselroe, Bocco Rock, Taralga, Morton's Lane, Cape Nelson, Capital and Waubra;
- major power substations at Beaconsfield and Loganlea; and
- city and community projects such as the Barangaroo development at Darling Harbour, the Gold Coast light rail, and the Hervey Bay hospital.

ABB is committed to a high standard of integrity in its business practices and its business relationships. In particular, we believe in a competitive, free enterprise system, because it guarantees that our work and innovation will be rewarded. This echoes the recognition of the benefits of competition that are referred to in the Introduction to your Issues Paper:

*For the most part, more competitive markets lead to greater efficiencies in the use of scarce resources. The benefits of competitive markets include lower resource costs and overall prices, better services and more choice for consumers and businesses, stronger discipline on businesses to keep costs down, faster innovation and deployment of new technology, and better information allowing more informed consumer choices. Competitive markets are dynamic and innovative, which can benefit Australians both now and into the future.*

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Paragraph 2.1 of the Issues Paper identifies that “[c]ompetition may be affected by restrictions that are not designed for competition purposes but for some other public policy objective”. One of the restrictions identified at paragraph 2.2 is anti-dumping measures. With regard to such restrictions, the Issues Paper poses these questions:

*Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?*

*Are there import restrictions, bans, tariffs or similar measures that, on balance, are adversely affecting Australians?*

We note that other submissions to your Inquiry have held that Australian competition arrangements, especially with regard to mergers, should in some cases define markets internationally and not domestically.

As both a product and systems manufacturer in Australia and an importer, ABB is intimately aware of the reality of doing business in a globalised economy. Anti-dumping measures, if they become used as a device to protect local industry against imports, can have the effect of rendering imported competition incapable of exerting price and service quality disciplines on local industry. ABB submits that the institutional arrangements and administration of anti-dumping in Australia have become anti-competitive constraints on the normal functioning of markets.

These constraints on competition arise where there is uncertainty and inconsistency in administrative processes and decision making, and where the salient issues effectively become uncontestable or are divorced from business reality and the national interest. The effect of this is to cause investment decisions to be deferred both by importing businesses and by their customers; to force up costs for industry; to increase prices for consumers; and to prevent and distort market outcomes.

In this submission, we will provide some insights into the specific experiences and observations of ABB that we believe demonstrate these concerns.

At present, ABB is directly involved in an anti-dumping investigative process – concerning power transformers - which has itself constituted an unwarranted regulatory impediment to competition. As well, ABB observes that the energy and resources sectors have been afflicted by similar processes, and by resultant import restrictions, that ABB would have no doubt are also adversely affecting Australians. Further, ABB notes that the guidelines for injury findings that favour Australian industry are so lacking in rigour and logic as to be exclusionary in their effect. Lastly, ABB wishes to draw attention to another facet of the anti-dumping laws – so-called “anti-circumvention” laws – that actively prevent and penalise fair competition and open investment.

***A statutory process meant to be completed in 185 days has persisted for 406 days - and is still continuing.***

ABB Australia is an importer of power transformers from its related group companies in China, Thailand and Vietnam. On 29 July 2013, at the behest of the Australian industry manufacturing power transformers, the Anti-Dumping Commission initiated an investigation into the alleged dumping of transformers from those countries, and from Indonesia, Korea and Taiwan. The investigation has now been extended by the ADC on no less than four occasions. A 14 month investigation such as this is economically inefficient. It creates market uncertainty, delays procurement decisions, suppresses commercial activity and forces up prices.

ABB's customers have responded to these delays with frustration and worse. One customer (who cannot be identified) indicated that it now has to consider the impact of a potentially large increase in market prices for transformers, which is a major proportion of its capital investment, on the viability of its renewable energy project.

At present, renewable energy policy is politically fraught. The Australian resources industry is at a very low ebb. An unprecedented level of electricity subscribers face true hardship. Disconnections are at an all-time high. The community cost is not only financial, it is human as well, with fires and suffocations being caused by indoor cooking and heating with outdoor gas appliances. Against this background ABB just cannot accept that a Federal instrumentality is so apparently fixated on increasing the cost of the capital investment that contributes to increased electricity retail tariffs.

ABB asks – Is an investigation that interferes with normal competition for more than a year “warranted”? What recognition is given to the interests of the community and of the wider economy over those of one small private business and its desire for higher profits on top of its higher costs?

***A number of exporters, including the ABB exporters, have been told they do not have dumping margins – but the investigation against them still has not been terminated.***

ABB Thailand, ABB Vietnam and ABB China (Chongqing and Zhongshan) have all been informed by the ADC of “no dumping” margins, but each of them remains under investigation. Indeed, in respect of ABB Thailand, which was advised of a no-dumping margin in November 2013, of another no-dumping margin in February 2014, and then of an even higher no-dumping margin in July 2014, there are suggestions that the position is being reviewed. The ADC has now advised interested parties that the dumping margins may now “vary significantly” from those previously calculated.

ABB asks – Is it warranted that an investigation should continue against exporters that have been exculpated? Is it warranted that dumping margins should be allowed to vary significantly depending on the adoption of some obscure and different methodology? In the power transformer investigation, where comprehensive evidence of dumping has not been found in either a normal or a timely sense, have the processes and the parameters been changed in an active effort to construct such evidence?

***The deleterious effects of anti-dumping on the energy and resources industries, which must significantly impact on their international competitiveness.***

ABB finds that entities involved in two of its major customer areas – the energy and resources industries – are very significantly impacted by anti-dumping procedures and measures. Imported steel and aluminium used for mines, fabrication, structures, equipment, rail and pipelines routinely suffer from anti-dumping imposts. The materials used for exposing ore deposits and for the processing of minerals such as bauxite and gold are also frequent targets of anti-dumping action. In terms of energy and electricity, cables, solar panels and wind towers have been caught up in these processes, as well as power transformers.

ABB asks – How can these core Australian industries remain competitive – or even viable – if they are continually being denied access to capital equipment and production inputs at the prices available to their international competitors?

***Dumping must cause injury that is material, however the policy guidelines for this are far too easily satisfied.***

ABB is advised that over the past two to three years no anti-dumping investigation has been terminated except in cases where no or minimal dumping was found. (Minor exceptions to this general rule have been the structural timbers case, where some dumping was detected, but only amongst smaller exporters, and the quicklime case, where dumping was detected but the exporter's market penetration was evidently quite trivial.) In other words, the experience seems to be that there is little chance of establishing that material injury was not caused by dumping. The 2012 Ministerial Direction issued by the relevant Minister gives these mandatory decision-making guidelines to the ADC, amongst others:

*I note that anti-dumping or countervailing action is possible in cases where an industry has been expanding its market rapidly, and dumping or subsidization has merely slowed the industry's rate of growth, without causing it to contract. In cases where it is asserted that the Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. I direct that it is possible to find material injury where an industry suffers a loss in market share in a growing market without a decline in profits.*

...

*I note that in cases where the dumped or subsidised imports hold a small share of the Australian market, it may be difficult to demonstrate material injury. I direct that no minimum standard should be used to determine whether dumped or subsidised imports have a sufficient share of the Australian market to cause material injury.*

The likelihood flowing from these guidelines is that even an impact on a healthy Australian industry, from a minimal volume of dumped imports, could be considered to be "material".

ABB asks – Is a test that could be taken to suggest that nothing less than unrestrained profiteering will contradict a finding of material injury conducive to the efficient operation of markets for goods in Australia, and to the optimisation of costs and prices of input-user industries and consumers? Is the question of whether material injury has been caused to an Australian industry at all contestable, or is it just a fact that is accepted by the investigating authority without question if "dumping" is detected?

***Anti-circumvention laws prevent and penalise fair competition and open investment.***

Assume that dumping duties are imposed on imported goods, and the importer pays the duties but absorbs part of those duties in its on-selling price. Good competitive practice, right? Wrong. If an importer does this it can be investigated - on the application of the Australian industry - for not increasing its price commensurate with the total amount of duty paid.

Of equal concern is the anti-circumvention law that would prevent ABB re-establishing a power transformer manufacturing capability in Australia, should dumping duties be imposed on imported transformers themselves. In that case the law says that ABB's imports of parts for transformers could themselves be subject to dumping duties, without evidence of their dumping and without evidence of material injury to the Australian parts makers.

ABB asks – Surely, from the competition perspective – indeed, from any domestic "freedom of trade" perspective - these laws must be considered to be nothing short of outrageous? Are they not completely at odds with the proposition that Australian consumers and industry should benefit from being exposed to international competitive markets, and that foreign investment and job creation are important policy goals?

As will be evident from the strength of our comments, ABB advocates a wholesale reconsideration and substantial recalibration of the operation of the Australian anti-dumping system. In ABB's opinion, it has been overtaken by interest groups that do not represent the views of the community and that care more about their own self-interest than the interests of the nation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Axel Kuhr', written in a cursive style.

**Axel Kuhr**  
**Country Manager**  
**ABB Australia Pty Ltd**