



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 219

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**

18 September 2014

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ABBREVIATIONS & SHORTENED FORMS

ABB Australia	ABB Australia Pty Ltd
ABB Chongqing	ABB Chongqing Transformer Co., Ltd
ABB Hong Kong	ABB Limited, Hong Kong
ABB Thailand	ABB Limited, Thailand
ABB Vietnam	ABB Limited, Vietnam
ABB Zhongshan	ABB Zhongshan Transformer Co., Ltd
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
Alstom Australia	Alstom Grid Australia Ltd
Alstom Shanghai	SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd
Alstom Wuhan	SEC Alstom Wuhan Transformers Co., Ltd
Ampcontrol	Ampcontrol Pty Ltd
BAFO	best and final offer
Baoding	Baoding Railway Transformer Co., Ltd. of Electrification Bureau Group of China Railway
CG Power	PT CG Power System Indonesia
Changzhou	Changzhou XD Transformer Co., Ltd
China	People's Republic of China
China Chamber of Commerce	China Chamber of Commerce for Import & Export of Machinery & Electronic Products
CHINT	CHINT Electric Co., Ltd
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
FOB	free-on-board
Fortune	Fortune Electric Co. Ltd
Hyosung	Hyosung Corporation
Hyundai	Hyundai Heavy Industries Co., Ltd
Indonesia	Republic of Indonesia
Hyundai Australia	Hyundai Australia Pty Ltd
Jiangsu	Jiangsu Huapeng Transformer Co., Ltd
Jinan	XD Jinan Transformer Co., Ltd
Korea	Republic of Korea
kV	kilo volts
MVA	mega volt amperes
NIP	non-injurious price
NSW	New South Wales
Origin	Origin Energy Resources Limited
PAD	preliminary affirmative determination
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry
R&D	research and development
Regulations	<i>Customs Regulations 1926</i>
Rio Tinto	Rio Tinto Limited
SEF	statement of essential facts
Shihlin	Shihlin Electric & Engineering Corp
Shihlin Australia	Shihlin Electric Australia Pty Ltd

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Siemens Australia	Siemens Ltd, Australia
Siemens Guangzhou	Siemens Transformer (Guangzhou) Co., Ltd
Siemens Jinan	Siemens Transformer (Jinan) Co., Ltd
Siemens Wuhan	Siemens Transformer (Wuhan) Co., Ltd
Tatung	Tatung Company
TBEA	TBEA Shenyang Transformer Group Co., Ltd
Tirathai	Tirathai Public Company Limited
Toshiba	Toshiba International Corp Pty Ltd
Toshiba CTC	Changzhou Toshiba Transformer Co., Ltd
Toshiba CTS	Changzhou Toshiba Shudian Transformer Co., Ltd
Tyree	Tyree Transformer Co. Pty Ltd
USP	unsuppressed selling price
Vietnam	Socialist Republic of Vietnam
WTC's PBU	WTC's power business unit
WTC	Wilson Transformer Company Pty Ltd
UNINDO	PT. Unelec Indonesia
WTO Anti Dumping Agreement	World Trade Organization Agreement on Implementation of Article VI of the GATT
Xi'an	Xi'an XD Transformer Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This investigation by the Anti-Dumping Commission (Commission) is in response to an application by Wilson Transformer Company Pty Ltd (WTC) in relation to the allegation that certain power transformers exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Taiwan, Thailand and the Socialist Republic of Vietnam (Vietnam) at dumped prices caused material injury to the Australian industry producing like goods. A full description of the goods is included in chapter 3 of this report. WTC is the largest Australian producer of power transformers.

This statement of essential facts (SEF) sets out the preliminary findings of the Commissioner of the Anti-Dumping Commission (the Commissioner) subject to any submissions received in response to this SEF.

1.2 Findings

The Commissioner has preliminarily found that:

- goods exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam during the investigation period by certain exporters were at dumped prices;
- goods exported from China, Indonesia and Korea during the investigation period by certain exporters were not at dumped prices;
- the volumes of goods exported at dumped prices from Indonesia, Taiwan, Thailand and Vietnam were not negligible volumes pursuant to s. 269TDA(4) of the *Customs Act 1901*¹;
- the total volumes of goods exported at dumped prices from China and Korea were negligible volumes pursuant to s. 269TDA(4);
- exports of power transformers from Indonesia, Taiwan, Thailand and Vietnam at dumped prices have caused material injury to the Australian industry; and
- exports of power transformers from Indonesia, Taiwan, Thailand and Vietnam in the future may be at dumped prices and the continued dumping may cause further material injury to the Australian industry

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to:

- recommend to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary)² to publish a dumping duty notice in respect of power transformers exported from Indonesia, Taiwan, Thailand and Vietnam;

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

² Since the investigation was initiated there have been changes to the administration of Australia's anti-dumping system. The Parliamentary Secretary is now responsible for making decisions concerning the publication of dumping and countervailing duty notices.

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- terminate the investigation in so far as it relates to certain exporters in China, Indonesia and Korea that did not export power transformers to Australia at dumped prices; and
- terminate the investigation in so far as it relates to China and Korea.

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB sets out, among other matters, the procedures to be followed, and the matters to be considered, by the Commissioner in conducting investigations in relation to the goods covered by an application for the purpose of making a report to the Minister.

1.3.2 Application

On 8 July 2013, an application was lodged by WTC requesting that the relevant Minister publish a dumping duty notice in relation to power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam. The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application and that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods the subject of the application. On 29 July 2013, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of power transformers from the nominated countries.

1.3.3 Preliminary affirmative determination

On 20 November 2013, the Commissioner made a preliminary affirmative determination (PAD) that there appeared to be sufficient grounds for the publication of a dumping duty notice. Securities were imposed against exporters from China, Indonesia, Korea, Taiwan and Vietnam from 27 November 2013. Thailand was excluded from the PAD as the level of dumping from the largest exporter from Thailand was found to be negligible at the time of making the PAD and the volume of dumped imports was negligible.

1.3.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows, place on the public record a statement of the facts on which the Commissioner proposes to base a recommendation in relation to the application.

In formulating the SEF, the Commissioner must have regard to the application and any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation of the investigation. The Commissioner may also have regard to any other matters he considers relevant.

The initiation notice advised that the SEF for the investigation would be placed on the public record by 18 November 2013. There have since been four extensions granted

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by the Parliamentary Secretary, with the last one providing for a due date for publication of the SEF as 22 September 2014.

Interested parties are invited to make submissions to the Commission in response to this SEF within 20 days of it being placed on the public record.

1.4 Preliminary findings and conclusions

1.4.1 The goods and like goods (chapter 3 of this report)

The Commission has preliminarily found that locally produced power transformers are like to the goods the subject of the application.

1.4.2 Australian industry (chapter 4 of this report)

The Commission has preliminarily found that there is an Australian industry producing like goods.

1.4.3 Australian market (chapter 5 of this report)

The Commission has preliminarily found that the Australian market is supplied by WTC, other Australian producers and imports from a number of countries.

1.4.4 Dumping (chapter 6 of this report)

The Commission has calculated the following preliminary dumping margins for power transformers exported to Australia during the investigation period.

Figure 1: Preliminary dumping margins

Country	Exporter	Dumping margin
China	ABB Chongqing Transformer Co., Ltd (ABB Chongqing)	-4.5%
	ABB Zhongshan Transformer Co., Ltd (ABB Zhongshan)	-4.5%
	Changzhou Toshiba Transformer Co., Ltd (Toshiba CTC)	-4.2%
	CHINT	< -5%
	Jiangsu	< -5%
	Siemens Guangzhou	5.5%
	Siemens Jinan	5.5%
Indonesia	CG Power	11.1%
	UNINDO	-4.2%
	All other exporters	11.1%
Korea	Hyosung Corporation (Hyosung)	12.3%
	Hyundai	-8.2%
Taiwan	Fortune Electric Co. Ltd (Fortune)	17.2%
	Shihlin	23.9%

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	Tatung	35.3%
	All other exporters	35.3%
Thailand	ABB Limited, Thailand (ABB Thailand)	3.6%
	Tirathai	39.1%
	All other exporters	39.1%
Vietnam	ABB Limited, Vietnam (ABB Vietnam)	4.7%
	All other exporters	4.7%

1.4.5 Injury assessment (chapter 7 of this report)

The Commission has preliminarily found that the Australian industry has suffered injury through:

- loss of sales volume;
- reduced market share;
- price undercutting;
- price suppression;
- reduced revenues;
- reduced profits;
- reduced profitability;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced employment.

1.4.6 Has dumping caused material injury (chapter 8 of this report)

The Commission has preliminarily found that exports of power transformers at dumped prices from certain exporters in Indonesia, Taiwan, Thailand and Vietnam have caused material injury to the Australian industry.

1.4.7 Will dumping and material injury continue (chapter 9 of this report)

The Commission has preliminarily found that exports of power transformers from certain exporters in Indonesia, Taiwan, Thailand and Vietnam in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

1.4.8 Non injurious price (chapter 10 of this report)

The Commission has preliminarily found that the non-injurious price (NIP) for power transformers exported to Australia should be set by reference to the corresponding normal values during the investigation period.

1.4.9 Proposed measures (chapter 11 of this report)

Based on the preliminary findings in this SEF, the Commissioner proposes to recommend that the dumping duties be calculated in accordance with the ad valorem duty method; that is as a proportion of the export price.

2 BACKGROUND

2.1 Initiation

Following consideration of the application, the Commissioner decided not to reject the application and initiated the dumping investigation. Public notification of initiation of the investigation was made in *The Australian* newspaper on 29 July 2013. Consideration report CON 219 was placed on the public record for the investigation and sets out the Commissioner's consideration of the application.

In respect of this investigation:

- the investigation period for the purpose of assessing dumping is July 2010 to June 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from July 2008.

2.2 Investigation

The initiation notice advised that the SEF for the investigation would be placed on the public record by 18 November 2013. ADN 2013/89 advised of the decision by the Minister for Industry to extend the deadline for publication of the SEF until 18 March 2014. ADN 2014/22 advised of the decision by the Parliamentary Secretary to further extend the deadline for publication of the SEF until 16 July 2014. ADN 2014/56 advised of the decision by the Parliamentary Secretary to further extend the deadline for publication of the SEF until 8 September 2014. ADN 2014/84 advised of the decision by the Parliamentary Secretary to further extend the deadline for publication of the SEF until 22 September 2014.

On 20 November 2013, the Commissioner made a PAD in relation to power transformers. Securities were imposed against exporters from China, Indonesia, Korea, Taiwan and Vietnam from 27 November 2013. Thailand was excluded from the PAD as the level of dumping from the largest exporter from Thailand was found to be negligible at the time of making the PAD and the volume of dumped imports was negligible. The level of securities will be revised following publication of this SEF.

On 27 May 2014, the Commission published Issues Paper No. 2014/01 inviting interested parties to comment on certain significant issues identified during the investigation. Issues papers afford interested parties the opportunity to comment on significant issues relating to the investigation so that the Commission may consider those views before publishing the SEF. The purpose of this paper was to outline the background, and the Commission's proposed position, in relation to:

- the goods and like goods;
- identification of which export shipments are used for dumping margin calculations;
- determination of profit for constructed normal values;
- calculation of a credit adjustment for differences between domestic and export sales; and

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- exchange rates used for converting currencies in dumping margin calculations.

These issues are discussed in more detail in sections 3.5 and 6.5.

On 15 August 2014, the Commission advised interested parties through the placement of a note for file on the public record that the Commission would be revisiting all preliminary exporter dumping margin assessments to determine whether there are grounds to calculate dumping and the level of dumping in accordance with s. 269TACB(3); that is, using the weighted average [normal value] to transaction [export price] method. The Commission noted that it recognises that dumping margin assessments calculated under s. 269TACB(3) may vary significantly from dumping margin assessments calculated under s. 269TACB(2).

2.2.1 Responding to this SEF

This SEF sets out the facts gathered by the Commission during the course of the investigation. It represents an important stage in the investigation and informs interested parties of the facts established, and the preliminary findings based on those facts, and allows interested parties to make submissions in response to the SEF. It is important to note that the SEF may not represent the final views of the Commissioner. Interested parties have 20 days to respond to the SEF.

Responses to this SEF should be received by the Commission no later than **8 October 2014**. The Commissioner is not obliged to have regard to any submissions made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary. The Commissioner must report to the Parliamentary Secretary by **2 November 2014**.

Submissions should be emailed to operations1@adcommission.gov.au. Alternatively they may be sent to:

Director Operations 1
Anti-Dumping Commission
Customs House
1010 LaTrobe Street
MELBOURNE VIC 3008.

Submissions can also be faxed to 1300 882 506 or +61 3 9244 8902 (outside Australia).

Confidential submissions must be clearly marked “in-confidence” and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available on the Commission’s website at <http://www.adcommission.gov.au/notices-reports/acdn/documents/ACDN201317-Howtomakeasubmission-UPDATE2.pdf>.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission’s visit reports and other publicly available documents. It is available by request in hard copy in Canberra

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(phone 1300 884 159 to make an appointment) or online at <http://www.adcommission.gov.au/cases/EPR219.asp>. Documents on the public record should be read in conjunction with this SEF.

2.3 Submissions to the investigation

Interested parties have made numerous submissions to the investigation, in response to the issues paper, and to the 15 August 2014 note for file. The Commission has considered issues raised in submissions and relevant issues are discussed in the appropriate sections of this SEF. Submissions received are listed at **Attachment 1**.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commission considers that locally produced power transformers are like goods to power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam.

3.2 Legislative framework

Subsection 269TC(1) provides that the Commissioner shall reject an application for a dumping duty notice if, *inter alia*, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner firstly determines that the goods produced by the Australian industry are like to the imported goods. Subsection 269T(1) defines like goods as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for the publication of dumping and countervailing duty notices even if the goods it produces are not identical to those imported. The industry must however, produce goods that are like to the imported goods. Where the locally produced goods and the imported goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

3.3 The goods

The goods are:

liquid dielectric power transformers with power ratings of equal to or greater than 10 MVA (mega volt amperes) and a voltage rating of less than 500kV (kilo volts) whether assembled or unassembled, complete or incomplete.

The goods are referred to as power transformers in this report.

Incomplete power transformers are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of power transformers. The active part of a power transformer consists of one or more of the following when attached to or otherwise assembled with one other:

- the steel core;
- the windings;

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- electrical insulation between the windings; and
- the mechanical frame.

Gas filled and dry type power transformers are not included in the goods.

3.4 Tariff classification

Power transformers are classified to tariff subheadings 8504.22.00 (statistical code 40) and 8504.23.00 (statistical codes 26 and 41) of Schedule 3 to the *Customs Tariff Act 1995*. The general rate of duty is 5% and applies to power transformers imported from China, Korea and Taiwan. Indonesia, Thailand and Vietnam are subject to the ASEAN-Australia-New Zealand free trade agreement and the rate of duty for power transformers from these countries is free.

The various potential combinations of incomplete power transformers are not all classifiable to these classifications. For example, the relevant parts heading, 8504.90.90, would cover a number of components and insulated winding wire (with or without connections) is classifiable under 8544.1, if imported without the core.

The Commission notes that the tariff subheadings are provided for administrative convenience and customs purposes, but it is the written description in section 3.3 that defines the goods the subject of the investigation.

3.5 Submissions in respect of the goods

Rio Tinto Limited (Rio Tinto) questioned whether a subassembly of a power transformer that lacks one or more of the active parts described in section 3.3 can be described as a power transformer or whether they are more accurately described as parts for a power transformer. It submitted that incomplete power transformers do not have the essential characteristics of a power transformer.

The Commission notes that the description of the goods is very similar to that used in a US investigation into large power transformers. WTC advised that it understands these words were used because Hyundai was building a US production facility and indications were that many of the parts, including windings, were initially being imported. WTC also advised that in some parts of the world such as Italy and Turkey, contract core builders and winders supply cores and windings to assemblers and testers of power transformers.

The Commission is aware that there are other producers of power transformers in Australia and that until recently certain multinational suppliers produced power transformers in Australia. It considers that it may be possible to establish an assembly and testing facility using existing premises. The Commission is satisfied the description of the goods adequately describes incomplete power transformers. However, the Commission found no evidence that incomplete power transformers were imported during the investigation period.

Alstom Grid Australia Ltd (Alstom Australia) submitted that the description of the goods is so broad that it is almost meaningless and unworkable. Toshiba International Corp Pty Ltd (Toshiba International) submitted that there are many variations of possible power transformers within the nominated range and that WTC

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did not manufacture the full range during the investigation period. It claimed that the scope of the inquiry should be restricted to types of power transformers that WTC manufactured.

The Commission observed the production of power transformers and discussed production processes with interested parties. It is satisfied that producers can design and produce power transformers to satisfy the many and varied requirements of customers. The Commission observed that for larger power transformers material handling capabilities become important. The Commission is satisfied that WTC has the ability to produce power transformers within the range defined by the description of the goods.

The Commission published Issues Paper No. 2014/01 on 27 May 2014 to give interested parties the opportunity to comment on significant issues relating to the investigation. ABB Australia Pty Ltd (ABB Australia) and Hyosung had previously submitted that distribution transformers were not the goods as the application stated that distribution transformers were not the subject of the application. The Commission's report on its visit to WTC stated:

Wilson Transformer believes there is no clear definition of a distribution transformer, but that they are power transformers under this definition. It claims that in Australia, the generally accepted definition of a distribution transformer is one that is the last point of connection to a residential and often commercial consumer. They have a power rating less than or equal to 2 MVA, a primary voltage of 11 kV or 22 kV, and a secondary voltage of between 400 volts and 433 volts three phase (equivalent to 230 volts to 250 volts single phase).

The issues paper stated that the Commission's proposed position was that there is no reason to exclude certain power transformers from the investigation merely because a company describes them as distribution transformers.

In response to the issues paper ABB Australia submitted that distribution transformers are not under investigation. It claimed that distribution transformers are fundamentally different from power transformers because:

- distribution transformers are the final transformers in the electric power distribution systems; they step down the voltage for use by the customer;
- distribution transformers can be mass produced according to standard designs;
- 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;
- there are clear differences in the design and construction of distribution transformers (ABB Vietnam manufactures distribution transformers and power transformers in completely separate factories); and
- 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.

Hyosung did not respond to the issues paper on this matter, but a number of exporters supported the Commission's proposed position. The Commission

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considers that there is no generally accepted definition of distribution transformers. For example, Hyosung stated it defines distribution transformers by the capacity as being up to 66 kV. The Commission will treat all power transformers with a power rating of equal to or greater than 10 MVA as the goods the subject of the investigation.

Alstom Australia submitted that because the description of the goods was so broad, the only common characteristic is that power transformers transform power and therefore the range of like goods is extremely wide and includes power transformers and distribution transformers of any specification.

The Commission notes that in Australia the market for distribution transformers is separate from the market for power transformers. In Australia distribution transformers typically have a power rating of less than 1 MVA. The Commission has established that distribution transformers:

- physically, have a much lower power rating, are smaller than power transformers and are often pole mounted;
- commercially, are sold in greater quantities and tend to be a more standard design that avoids the complicated design processes required for power transformers;
- functionally, rather than being part of the power transmission network are generally used at the lower end voltages of the power distribution system to provide the final connection to the customer; and
- are produced using different production process – WTC manufactures distribution transformers in a different production facility.

The Commission interrogated the Australian Customs and Border Protection Service's (ACBPS) import database and observed that where the goods were described as distribution transformers and the description included the power rating, that power rating was in most cases less than 2 MVA.

Having regard to submissions made and evidence presented, the Commission is satisfied that what are generally referred to as distribution transformers in the Australian market are not like goods to power transformers the subject of the application.

3.6 Like goods

3.6.1 WTC's claims

WTC claimed that the power transformers it produces are directly comparable to imported power transformers. They are designed and manufactured to the customers' specifications, as are imported power transformers. Further, the sales and manufacturing process for locally produced and imported power transformers are similar.

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3.6.2 The Commission's assessment

Physical likeness

Power transformers are individually designed and engineered to meet the customer's specifications. However, both locally produced and imported power transformers share basic physical characteristics. The assembled core and windings are placed in a tank and are connected to external power lines by bushings.

Commercial likeness

Locally produced and imported power transformers compete directly for supply to customers.

Functional likeness

Locally produced and imported power transformers have comparable or identical end use applications.

Production likeness

Locally produced and imported power transformers are manufactured in a similar manner. The design and manufacturing process include the following:

- electrical design;
- mechanical design;
- winding;
- core cut and build;
- assembly;
- drying;
- tank manufacture;
- tanking;
- final assembly; and
- testing.

The Commission 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, regardless of the description of the goods by the exporter.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commission has preliminarily found that:

- like goods were manufactured in Australia; and
- there is an Australian industry that produce like goods in Australia.

4.2 Legislative framework

The Commissioner shall reject an application if he is not satisfied that like goods are produced in Australia. Subsections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

Subsection 269TB(6) provides that an application is taken to be supported by a sufficient part of the Australian industry if the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50% of the total production of like goods by that proportion of the Australian industry that has expressed either support for or opposition to the application; and
- account for not less than 25% of the total production or manufacture of like goods in Australia.

4.3 The Australian industry

The WTC visit report described the Australian industry.

WTC commenced manufacturing in South Melbourne in 1933. In the early 1950's the company moved its operations to Glen Waverley, the present site of its power transformer manufacturing operations. This plant has expanded over the years, with the latest major plant expansion in 2009-10 increasing the production capacity for power transformers by 40%.

Between 1963 and 1982, WTC operated a small distribution transformer manufacturing plant in South Australia to supply the South Australian market. In 1981, WTC established a distribution transformer plant in the Albury/Wodonga National Growth Centre. The South Australian plant was closed after the establishment of this facility.

Currently there are two other Australian manufacturers of power transformers, Ampcontrol Pty Ltd (Ampcontrol) and Tyree Transformer Co Pty Ltd (Tyree). Ampcontrol started manufacturing power transformers primarily to support mining activity, but is now also looking to supply power utilities. Tyree started manufacturing distribution transformers in the mid 1980's, but has more recently started manufacturing power transformers at the smaller end of the range.

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Ampcontrol provided a letter supporting the application. WTC advised that Tyree supported the application and provided production information to be included in the application.

Alstom Australia manufactured power transformers during the investigation period, but announced in 2012 that it was ceasing Australian manufacture. Although Alstom Australia manufactured power transformers during the investigation period it no longer manufactures power transformers in Australia and it did not support the application.

ABB Australia Pty Ltd (ABB Australia) previously manufactured power transformers in Australia. In 2001, ABB Australia closed its large power transformer production facility (greater than 25 MVA) and in 2004 ceased Australian manufacture of all power transformers other than smaller power transformers which it manufactures in Western Australia.

Information provided in the application indicated that WTC accounted for over 75% of Australian production during the investigation period. No information has been presented to the Commission to suggest that the application was not supported by a sufficient part of the Australian industry that produces power transformers. Accordingly, from the information available the Commission is satisfied that the application meets the requirements of s. 269TB(6).

4.4 Production process

Power transformers are custom designed capital goods that are engineered to order and are manufactured to the specifications of the customer. Following is a brief generic description of the production process.

The steel core. Thin electrical steel of various widths is cut into shaped laminations that are stacked to form legs and yokes.

Windings. Material used for windings is normally purchased to the required dimensions and length for each power transformer. The windings are formed by winding conductors of insulated wire over a cylindrical framework, typically by hand. Depending on the type, voltage and winding current of a power transformer, different types of conductor and patterns of winding will be used.

Frame. A frame is fabricated from mild steel to support the core, windings and other internal parts of the power transformer.

Assembly. The windings are dried, adjusted to length and placed over the legs of the core. The core and windings are secured to form the active part of the power transformer. On load tap changers switch between the various taps of the windings of the power transformer under load conditions to maintain the desired output voltages.

Drying. The active part of the power transformer is placed in a drying chamber to remove the moisture in the insulation.

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Tank manufacture. A transformer tank is fabricated from mild steel. The interior is usually coated with epoxy and the exterior coated with high performance paint due to the long life expectancy of the product.

Tanking. After drying, the windings are compressed and the active part lowered into the tank. External style tap-changers are fitted during this process. The tank is filled with transformer oil.

Final assembly. All components such as turrets, bushings, the cooling system, controls, indicators and conservator are added. Bushings connect the external power cables through the tank to the internal windings of the power transformer.

Test. Testing is performed to ensure the accuracy of voltage ratios, measure electrical losses and impedances, verify power ratings, and measure sound levels and partial discharge levels. If a power transformer fails testing, it may be necessary to drain oil, disassemble and rectify the problem. The power transformer is then re-assembled and re-tested.

Delivery. When the power transformer passes testing, the oil is drained, the external components are disassembled for shipment and the power transformer is delivered to site. When on-site, the external components are re-assembled and pre-handover testing is undertaken. Smaller power transformers may be delivered complete.

WTC manufactures power transformers at its Glen Waverly production facility where it performs all of the processes described above. Accordingly, the Commission is satisfied that at least one substantial process in the manufacture of the goods is carried out in Australia, and that the power transformer produced by WTC meet the requirements of s. 269T(2) and s. 269T(3).

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commission has preliminarily found that the Australian market for power transformers is supplied by the Australian industry and imports from a number of countries, including China, Indonesia, Korea, Taiwan, Thailand and Vietnam.

5.2 Market structure

The electricity network involves the generation, transmission, distribution and sale of electricity. Power transformers are required at various points in this network.

Power generators

Power is generated by numerous sources, including power stations, hydro-electric schemes, wind farms and solar farms. Power is typically generated at 5 to 30 kV, but transmitted at very high voltages (at reduced current) to reduce costs and losses. Power transformers are used to increase the voltage and proportionately reduce the amperage. These power transformers are known as step-up transformers and can have very large power ratings.

The power transmission network

Once generated, power must be transmitted to the location where demand exists. At each point where power is transferred between electrical systems the electricity passes through a power transformer. The major power transmission companies in Australia are outlined below.

- **New South Wales (NSW).** TransGrid is a state government owned corporation which owns, operates and manages the NSW high voltage electricity transmission network.
- **Victoria.** SP AusNet is listed on the Australian and Singapore stock exchanges and operates three high voltage electricity transmission networks in Victoria.
- **Queensland.** Powerlink is a state government owned corporation that operates and maintains Queensland's high-voltage electricity transmission network.
- **South Australia.** ElectraNet is the principal transmission network service provider in South Australia.
- **Western Australia.** Western Power is a state government owned corporation that maintains and operates the electricity network in the south west corner of Western Australia. Horizon Power is a state government owned corporation that manages 38 systems in Western Australia, including the North West interconnected system in the Pilbara, the connected network between Kununurra, Wyndham and Lake Argyle and 34 stand-alone systems in regional towns and remote communities of Western Australia.
- **Tasmania.** Transend Network is a state government owned corporation that owns and operates the electricity transmission system in Tasmania. On

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1 July 2014 Transend Networks merged with Aurora Energy's distribution network to form TasNetworks.

- **Northern Territory.** Power & Water Corporation is owned by the Northern Territory Government and provides electricity network services.

The power distribution network

Power transformers that take high transmission voltages and convert them to lower voltages suitable for distribution are known as step-down transformers. The major power distribution companies in Australia are outlined below.

- **NSW.** Ausgrid is a state government owned company that owns and operates the electrical distribution networks in Sydney, Central Coast, Hunter and Newcastle regions of NSW. Endeavour Energy is a state government owned company that owns and operates the electrical distribution networks in Western Sydney, the Southern Highlands and the Illawarra regions of NSW. Essential Energy is a state government owned company that owns and operates the electrical distribution networks in regional NSW, covering about 95% of the state.
- **Victoria.** CitiPower and Powercor own and operate the electrical distribution network in Melbourne and through Central and Western Victoria. The Cheung Kong Group (listed on the Hong Kong Stock Exchange) owns 51% of CitiPower and Powercor, with the balance owned by Spark Infrastructure (listed on the Australian Stock Exchange). SP AusNet is a distributor as well as a transmission company, distributing electricity to customers across Eastern Victoria. United Energy distributes electricity to customers across East and South East Melbourne and the Mornington Peninsula. The DUET Group owns 66% of United Energy, with Singapore Power International holding the remaining shares.
- **Queensland.** ENERGEX is a state government owned company that distributes electricity in South East Queensland. Ergon Energy is a state government owned company that distributes electricity in regional Queensland.
- **South Australia.** SA Power Networks is the operator of the South Australian electricity distribution network. It has the same ownership structure as CitiPower and Powercor.
- **Western Australia.** Western Power and Horizon Power are distributors as well as a transmission companies, distributing electricity to customers in Western Australia.
- **Tasmania.** Until July 2014 Aurora Energy operated the Tasmanian electricity distribution system. It has since merged with Transend Networks to form TasNetworks.
- **Australian Capital Territory.** ActewAGL Distribution is owned equally by ACTEW Corporation (an Australian Capital Territory Government owned corporation) and SPI Assets (Australia) Pty Ltd and distributes electricity in the Australian Capital Territory.
- **Northern Territory.** Power & Water Corporation distributes electricity in the Northern Territory.

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Retailers

Retailers buy electricity from distributors and sell it to customers. In some cases the retailer is part of a distribution company. Power transformers are not used in the retail network.

End users

Large end users such as heavy industry and resource projects often require power transformers, other end users typically do not.

5.3 Market supply

The Australian market for power transformers is supplied by the Australian industry and imports from a number of countries, including China, Indonesia, Korea, Taiwan, Thailand and Vietnam. Power transformers are normally sold into the Australian market through a tender process where the customer issues a request for tender. Public utilities normally advertise request for tenders, but private companies may simply approach selected suppliers. The tender may be for a single power transformer, for multiple power transformers or for a period contract (applying to purchase for a number of years). A period contract may select a single supplier or include a panel of suppliers where the customer may request quotes from all panel suppliers or simply select a supplier when it has a requirement for a power transformer. The request for tender may be for the supply of a power transformer only, supply and delivery to site, supply, installation and commissioning, or for the supply of a power solution or turn-key project (projects which include items additional to power transformers, such as switchgear, transmission lines, power generators and power plant construction).

Suppliers develop and submit tenders that meet the specifications in the request for tender. There are many design options available that satisfy each specification and suppliers may submit a number of options. The Australian industry deals directly with customers. Overseas suppliers can deal directly with customers but the larger suppliers normally have an Australian office that handles contract negotiations. These offices prepare tenders in consultation with the supplier. The Australian offices of overseas suppliers can be responsible for installation and commissioning or this work may be contracted to independent service providers. Overseas suppliers can also provide personnel during the installation and commissioning of power transformers.

Customers evaluate and rank the tenders received. The evaluation process normally examines a number of factors that generally includes:

- price;
- technical compliance;
- delivery timeframes;
- experience and past performance;
- service and spare parts; and
- feedback from referees.

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The Commission spoke to and visited a number of purchasers of power transformers during the investigation and found that typically price was the largest single factor considered by customers, followed by technical compliance. It observed two examples where the contract was not awarded to the lowest priced tenderer. In one case the tender did not meet the technical specifications and in the other case the ranking of the lowest price tender was affected by a number of factors, including a low technical evaluation score and low proportion of Australian content.

Once the evaluation is complete the customer may approach some or all of the tenderers and request a best and final offer (BAFO). The BAFO negotiation is now an accepted negotiating technique. When negotiations are complete the customer will sign a contract with, or issue a purchase order to, the supplier. For period contracts the customer will typically issue a purchase order for requirements within the period of the contract.

5.4 Demand

WTC stated in its application that the demand for electricity in Australia has been declining over the past few years. The fall in demand has occurred in all states but has been particularly pronounced in NSW. WTC provided a number of possible explanations for this fall in demand:

- changes in weather patterns;
- increased implementation of off-grid generation including photo voltaic and solar hot water;
- shutdowns of large industrial facilities like blast furnaces and refineries;
- shutdowns of smaller industrial facilities; and
- reduced consumption due to price increases.

Alstom Australia submitted that prior to 2008-09 very strong demand was attributable to increased demand for electricity from both utility and industrial customers. It claimed that there was also reluctance from customers, particularly utilities, to purchase power transformers from foreign manufacturers as they were largely unproven.

Alstom Australia submitted that after 2008-09 demand fell due to a decrease in demand for electricity. At the same time Australian customers became more willing to purchase power transformers from foreign manufacturers. Alstom Australia also attributed this increased willingness to the rise in the Australian dollar, a greater local presence of foreign manufacturers, a reduction in tariffs in respect of Indonesia and Vietnam and a diversification of customer requirements.

Alstom Australia submitted that prior to 2008-09, capacity utilisation was very high because of demand. This led to Alstom Australia deciding to increase capacity and it assumes this also led to WTC's decision to expand. Capacity increased, demand fell, the Australian dollar rose making foreign manufacturers more competitive. This led to the Australian industry having significant over capacity.

Alstom Australia submitted that prior to the global financial crisis global demand was strong. As global demand fell Australia became a more attractive market for international producers.

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Importers and exporters visited during the investigation also claimed that the Australian market had declined.

- ABB Australia considers that the market has been steadily declining for the last few years.
- Hyundai Australia Pty Ltd (Hyundai Australia) considers that overall demand declined during the investigation period;
- Shihlin Electric Australia Pty Ltd (Shihlin Australia) considers demand has slowed considerably over the past few years; and
- ENERGEX stated that demand for electricity in South East Queensland has been experiencing a downturn.

The Commission considers that the size of the Australian market for power transformers is influenced by movements in the demand for electricity. It notes that WTC and interested parties stated that the demand for electricity fell during the period examined.

5.5 Market size

The Commission notes that power transformers vary in size. A power transformer may be 10 MVA and weigh 20 to 25 tonnes or 500 MVA and weigh over 200 tonnes. It considers that capacity (measured using the power rating) rather than number of units is the most appropriate measure of volume. Import statistics only record value and quantity and the Commission does not have power ratings for exports from other countries. Further, the Commission does not have power ratings for sales by other Australian producers. The Commission considers that value is the best available measure of volume and the size of the Australian market.

The Commission has estimated the size of the Australian market using:

- verified information on sales by WTC;
- information supplied by WTC for sales by other Australian producers;
- verified information on sales during the investigation period by exporters visited by the Commission;
- information provided by exporters that were not visited by the Commission; and
- information from ACBPS' import database.

The Commission noted that some importations appeared to be classified to incorrect tariff subheadings. Liquid dielectric power transformers should be classified to 8504.2 and other power transformers should be classified to 8504.3. The Commission noted instances where the goods had been classified to 85.04.33.00 and 8504.34.00. It downloaded details of all imports under the following tariff subheadings from ACBPS' import database:

- 8504.21.00 (dielectric power transformers not exceeding 0.65 MVA);
- 8504.22.00 (dielectric power transformer exceeding 0.65 MVA but not exceeding 10 MVA);
- 8504.23.00 (dielectric power transformer exceeding 10 MVA);

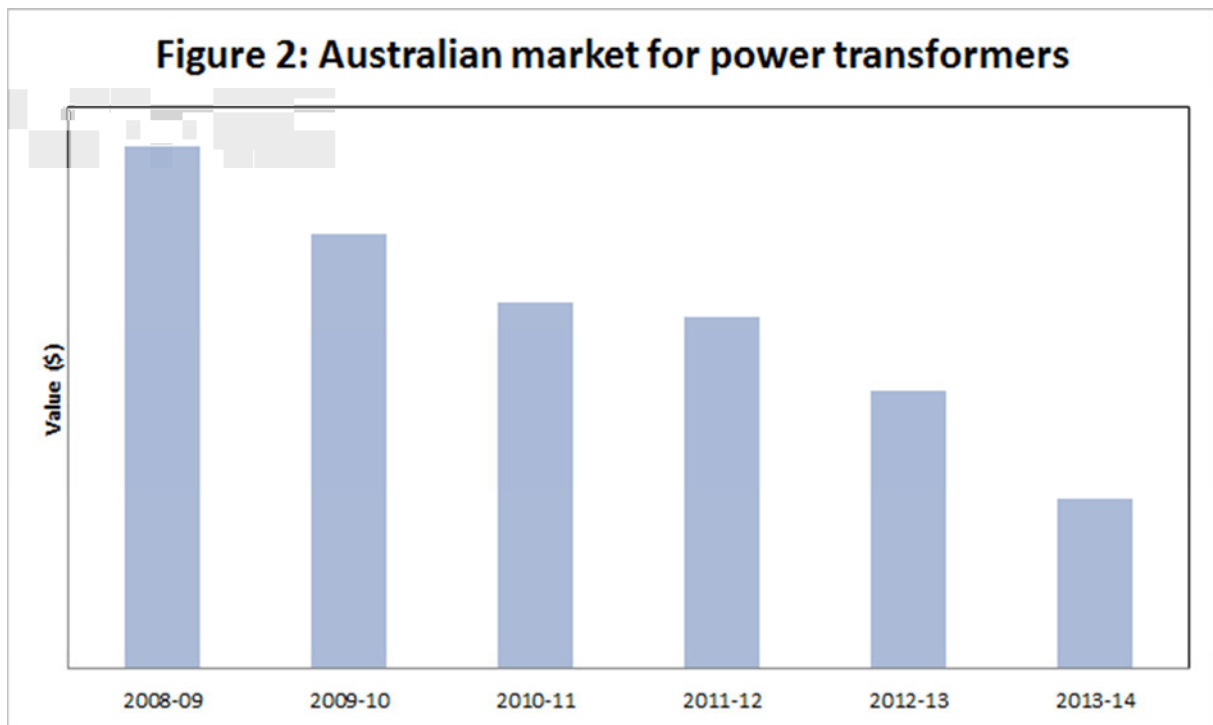
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- 8504.33.00 (other power transformer exceeding 0.016 MVA but not exceeding 0.5 MVA); and
- 8504.34.00 (other power transformer exceeding 0.5 MVA).

The Commission reviewed this data and excluded the following imports from its analysis:

- where the unit free-on-board (FOB) value was less than \$150,000; and
- where the description indicated that they were not the goods.

The Commission's estimate of the size of the Australian market from 2008-09³ to 2013-14 is illustrated in figure 2. The Commission recognises that the Australian market in 2013-14 may have been affected by the commencement of this investigation in that supply of imported power transformer units may be being held over pending an outcome from the investigation.



³ References to years such as 2008-09 is a reference to the financial year.

6 DUMPING INVESTIGATION

6.1 Preliminary finding

Preliminary dumping margins for power transformers exported to Australia during the investigation period were calculated by comparing export prices with the corresponding normal values. Preliminary weighted average dumping margins are summarised in the following table.

Figure 3: Preliminary dumping margins

Country	Exporter	Dumping margin
China	ABB Chongqing	-4.5%
	ABB Zhongshan	-4.5%
	Toshiba CTC	-4.2%
	CHINT	< -5%
	Jiangsu	< -5%
	Siemens Guangzhou	5.5%
	Siemens Jinan	5.5%
	Siemens Wuhan	5.5%
	Indonesia	CG Power
UNINDO		-4.2%
All other exporters		11.1%
Korea	Hyosung	12.3%
	Hyundai	-8.2%
Taiwan	Fortune	17.2%
	Shihlin	23.9%
	Tatung	35.3%
	All other exporters	35.3%
Thailand	ABB Thailand	3.6%
	Tirathai	39.1%
	All other exporters	39.1%
Vietnam	ABB Vietnam	4.7%
	All other exporters	4.7%

In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to ABB Chongqing, ABB Zhongshan, Toshiba CTC, CHINT, Jiangsu, UNINDO and Hyundai on the basis of finding dumping margins that are negligible. In accordance with s. 269TDA(3), the Commissioner proposes to terminate the investigation so far as it relates to China and Korea on the basis of finding that the total volumes of goods exported at dumped prices from each of those countries were negligible.

6.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under s. 269TAB and s. 269TAC of respectively.

Usually, the normal value reflects the price paid for like goods in the domestic market of the country of export. But sometimes the goods are not sold in that market, or the price paid in that market cannot, for some reason, be used. Section 269TAC gives several methods by which normal values may be obtained, with the choice of methods being determined by the circumstances of the case.

Subsection 269TAC(1) states that, subject to certain conditions, the normal value is the price at which like goods are sold in the domestic market of the country of export. Paragraph 269TAC(2)(c) provides for the normal value to be constructed from the cost to make and sell the goods in the country of export, and s. 269TAC(2)(d) provides for the normal value to be based on the price of exports from the country of export to a third country.

Dumping margins are determined under s. 269TACB. The Commission considers that the *transaction to transaction* method provided for in s. 269TACB(2)(b) best suits those circumstances where there are not a large number of transactions, such as capital equipment made to specific requirements where the normal value may vary from *transaction to transaction* with significant technical variation between each sale. This method produces as many dumping margins as there are export transactions and these are amalgamated using a weighted average in order to calculate a single dumping margin for each exporter over the investigation period. The *transaction to transaction* method is provided for at s. 269TACB(2)(b) and requires that each export transaction price be compared to each comparable normal value.

However, s. 269TACB(3) provides that if the Minister is satisfied that export prices differ significantly among different purchasers, regions or periods and those differences make the methods referred to in s. 269TACB(2) inappropriate, the Minister may compare export prices with the weighted average of corresponding normal values. This issue is further discussed in section 6.6.

This chapter explains the preliminary results of investigations by the Commission into whether power transformers were exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam to Australia at dumped prices during the investigation period.

6.3 Constructed normal values

While electrical steel and copper conductor are the most significant cost components of power transformers, there are many other variables that affect price. Certain aspects such as whether the power transformer is single or three phase, design costs, lead times and ancillary options (such as tap changers) can significantly affect price. The Commission considers that because of the many variables it is not meaningful to adjust domestic prices of a unit to make them comparable with export prices of a unit. It has therefore constructed normal values because of the lack of relevant domestic sales.

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Interested parties, including WTC and exporters, agree with this approach. Hyundai provided the following comments in its exporter questionnaire response:

The goods are of a complex nature and are customised to a degree in which no two transformers are identical and they all include a large number of variables, for example: number of phases; type of tap changer and percentage regulation; low line voltage; power efficiency (ie, load/no-load loss); cooling class designation.

In our view, it would be totally unrealistic and inimical to both the Anti-Dumping Agreement and Australian law to compare domestic market sales with export sales to Australia.

6.4 Exporters

At the commencement of the investigation, a number of potential exporters of power transformers from the nominated countries were identified. The Commission wrote to all identified exporters advising them of the investigation and inviting them to participate in the investigation through completion of an exporter questionnaire. During the investigation additional exporters were identified and asked to complete exporter questionnaires.

The Commission received questionnaire responses from the following entities:

- ABB Chongqing;
- ABB Thailand;
- ABB Vietnam;
- ABB Zhongshan;
- Baoding Railway Transformer Co., Ltd. of Electrification Bureau Group of China Railway (Baoding);
- CG Power;
- Changzhou XD Transformer Co., Ltd (Changzhou);
- CHINT;
- Fortune;
- Hyosung;
- Hyundai;
- Jiangsu;
- SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd (Alstom Shanghai);
- SEC Alstom Wuhan Transformers Co., Ltd (Alstom Wuhan);
- Shihlin;
- Siemens Guangzhou;
- Siemens Jinan;
- Siemens Wuhan;
- Tatung;
- TBEA;
- Tirathai;
- Toshiba CTC;
- Changzhou Toshiba Shudian Transformer Co., Ltd (Toshiba CTS);
- UNINDO;
- XD Jinan Transformer Co., Ltd (Jinan); and

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- Xi'an XD Transformer Co., Ltd (Xi'an).

Baoding, Changzhou, Alstom Shanghai, Alstom Wuhan, TBEA, Jinan, Toshiba CTS and Xi'an did not export power transformers to Australia during the investigation period and the Commission did not calculate individual dumping margins for these exporters. This matter is discussed further below.

The Commission considers that CG Power's response to the exporter questionnaire was not substantially compliant with the information requirements of the exporter questionnaire and that CG Power did not give the Commissioner information the Commission considered to be relevant to the investigation. Accordingly, the Commissioner considers that CG Power is an uncooperative exporter as defined under section 269T.

The Commission conducted exporter verification visits to the following exporters:

- ABB Thailand;
- ABB Vietnam;
- CHINT;
- Fortune;
- Hyosung;
- Hyundai;
- Shihlin; and
- Siemens Wuhan (where the Commission also verified information for Siemens Guangzhou and Siemens Jinan).

Verification visit reports are available on the Commission's website at <http://www.adcommission.gov.au/> and provide additional detail to what is discussed below.

The Commission wrote to ABB Chongqing and ABB Zhongshan requesting documents to verify information in their exporter questionnaire responses. The Commission's report of this verification is also available at the Commission's website.

Dumping margin calculations were conducted for the remaining smaller entities based on the information provided in the exporter questionnaire responses and benchmarked against verified export price and normal value data.

6.5 Issues identified during the investigation

On 27 May 2014, the Commission published Issues Paper No. 2014/01 inviting interested parties to comment on certain significant issues identified during the investigation. Submissions were received from the following entities:

- ABB Australia;
- Alstom Australia;
- China Chamber of Commerce;
- Fortune;
- Government of China;
- Hyosung;

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- Hyundai;
- Siemens Australia;
- TBEA;
- Toshiba International; and
- WTC.

A further important consideration in relation to the investigation has developed since publication of the issues paper and that is whether dumping margins for certain exporters should be calculated under s. 269TACB(3). This matter is discussed in section 6.6 of this report.

6.5.1 The goods and like goods

The Commission 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, regardless of the description of the goods by the exporter. This issue is discussed in section 3.5 of this SEF.

6.5.2 Shipments used for dumping calculations

The Commission proposes to calculate dumping margins for power transformers only in relation to power transformers exported to Australia during the investigation period. The China Chamber of Commerce, the Government of China, TBEA and Toshiba International expressed concern in relation to this proposal.

Date of sale v date of export

TBEA submitted that the Commission appeared to have changed its position in relation to determining which shipments fall within the investigation period. It referred to the instructions in the exporter questionnaire that stated:

*You should provide details of **all** goods under consideration (the goods):*

- *invoiced during the investigation period; and*
- *subject to tenders that were won during the investigation period, even in circumstances where the goods were not invoiced or **shipped** to Australia during the investigation period. In this circumstance, please provide details of any expenses already incurred with respect to the goods shipped outside of the investigation period,*

For tender sales, the Commission considers the contract date will normally be taken to be the date of sale. To ensure that the Commission can make a proper assessment of date of sale, we request the contract date, invoice date and delivery date. If you consider that a date other than the contract date is the appropriate date of sale, please provide a response outlining your reasons for this.

The Commission did not have a definitive position on a number of technical issues at the commencement of the investigation and sought to ensure exporters provided sufficient information to enable the Commission to calculate dumping margins. For example, it considers that the date of sale is the date when the material terms of sale

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are established and this may be important for issues such as determining the date to use for currency conversions.

TBEA notes that s. 269TACB(1) refers to export prices of goods exported to Australia during the investigation period. It considers that the Commission's interpretation that this is the date of the physical movement of goods from one country to another is incorrect. However, TBEA did not provide any arguments to support this position.

The China Chamber of Commerce submitted that the date of sale for a power transformer exported to Australia by TBEA was when the material terms of sale were established and that this occurred during the investigation period. It also submitted that most of the work for that contract was undertaken during the investigation period.

The Government of China submitted that the Commission's approach in this case appears to differ from that in the wind towers investigation. It stated that as far as it was aware, some of the transactions used in the dumping margin calculations were delivered after the investigation period, but the date of contract was within the investigation period.

The Commission confirms that in the wind towers investigation it only used goods exported during the investigation period to calculate dumping margins, although some exporters provided details of goods exported after the investigation period.

Toshiba International also submitted that the Commission's proposed position is inconsistent with Australia's obligations under the WTO Anti-Dumping Agreement and Australian law. It considered that the Minister is not constrained by s. 269TACB when deciding, for the purpose of s. 269TG whether dumping is likely to occur in the future. It claimed that this is supported by the decision of the Federal Court in *Pilkington (Australia) Ltd v Minister for Justice and Customs [2002] FCA 770 (18 June 2002)* and the subsequent decision of the full Federal Court in this case.

The Commission considers that the date of sale of goods and the date of export of goods can be, and often are, different. It also considers that the physical movement of the goods from one country, with another country being the destination, is clearly an important consideration for determining the date of export. This does not detract from any finding that the material terms of sale may well have been settled on a different date.

Accordingly, the Commission proposes to determine the date of export as the one that best represents the physical movement of the goods in the act of exportation. In practical terms, it will consider such date to be the one shown on the bill of lading. Therefore, the Commission has adopted the position it proposed in the issues paper and calculated dumping margins only in relation to power transformers exported to Australia during the investigation period. This may include goods exported for which the contract, and date of sale, occurred before the investigation period. However, it will not include goods exported after the investigation period, regardless of contract date.

The Commission recognises that this may disadvantage certain exporters who exported after the investigation period. A new exporter can request an accelerated review of a dumping duty notice so far as it affects that exporter (refer Division 6 of

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Part XVB). Subsection 269T(1) defines a new exporter as an exporter who did not export the goods to Australia during the period beginning at the start of the investigation period and ending immediately before the day the statement of essential facts is placed on the public record. However, where the physical shipment date is relied upon for determining the export date, and the exporter makes one or more shipments of the goods in this period, and none in the investigation period, then the exporter is not eligible for an accelerated review.

The Commission notes that relief is available to affected parties under Divisions 4 and 5 of Part XVB. Division 4 enables a reconciliation of interim duty paid and final duty payable. Division 5 enables an affected party to request a review of anti-dumping measures no earlier than 12 months after the publication of a dumping duty notice.

Calculation of individual dumping margins

The Government of China submitted that the Commission is obliged to calculate an individual dumping margin for TBEA and failure to do so would breach Australia's obligations under Article 6.10 of the World Trade Organization Agreement on Implementation of Article VI of the GATT (WTO Anti-Dumping Agreement), which states that:

The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation...

The Commission considers that the 'product under investigation' is the goods exported during the investigation period. It established that TBEA did not export power transformers to Australia during the investigation period.

6.5.3 Profit for constructed normal value

The Commission proposes to calculate the profit to be included in constructed normal values using Regulation 181A(3)(a) of the Customs Regulations 1926 (the Regulations) which refers to the actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country. Submissions from a number of entities commented on the Commission's proposed approach.

ABB Australia and Fortune supported the use of Regulation 181A(3)(a) to determine the profit to be included in constructed normal values. Alstom Australia reserved its position on whether the use of Regulation 181A(3)(a) is appropriate, but submitted that such a test requires consideration of both profitable and unprofitable sales. Hyosung submitted that the Commission should take into account all of Hyosung's domestic sales of the same general category of goods to determine the profit to be included in constructed normal values, including both profitable and unprofitable sales.

Siemens Australia submitted that because of the unique nature of power transformers, the Commission cannot reliably conduct the ordinary course of trade test and therefore it is not possible to work out the profit to be included in constructed normal values using Regulation 181A(2). Siemens submitted that the determination

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of profit with reference to the same general category of goods is appropriate in the circumstances.

WTC disagrees with the Commission's interpretation of the ordinary course of trade provisions in calculating an amount for profit used in constructed normal values. It submitted that Article 2.2.1 of the WTO Anti-Dumping Agreement does not provide an exhaustive range of methods for determining if sales were in the ordinary course of trade.

WTC provided an example of an alternative method endorsed by a WTO Panel:⁴

- where the sales volume of a particular type, sold at a sales price equal to or above its cost of production, represented more than 80% of the total sales volume of that type, and where the weighted average price of that type was equal to or above its cost of production, normal value was based on the actual domestic price;
- where the volume of profitable sales of a type represented 80% or less of the total sales volume of that type, or where the weighted average price of that type was below its cost of production, normal value was based on the weighted average of profitable sales of that type, provided that these sales represented 10% or more of the total sales volume of that type; and
- where the volume of profitable sales of any type represented less than 10% of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

Siemens Australia responded to the submission by WTC. It submitted that the definition of sales that are regarded to be in the ordinary course of trade is provided in s. 269TAAD, and that s. 269TAAD(3) provides that costs are taken to be recoverable within a reasonable period of time if the selling price is above the weighted average cost of such goods over the investigation period. Siemens Australia submitted that in the case of power transformers this assessment cannot be undertaken with any degree of reliability.

The Commission recognises that Article 2.2.1 of the WTO Anti-Dumping Agreement does not provide an exhaustive range of methods for determining if sales were in the ordinary course of trade. However, it considers that the example provided by WTC cannot be used in respect of power transformers. The Commission is satisfied that power transformers are complex items of capital equipment built to the specifications of the customer where it is unlikely that any two power transformers are identical. Therefore, each power transformer is unique and the weighted average cost of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated. Consequently, the recovery test cannot be conducted meaningfully and the ordinary course of trade test cannot be fulfilled.

⁴ WTC – Submission – Electronic public record, document 131, p. 2

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WTC submitted that recent legislative changes were designed to provide more discretion to the Parliamentary Secretary in determining an appropriate amount of profit to be included in constructed of normal values.

The Commission's restrictive interpretation is even more evident in light of recent legislative changes designed to 'provide more discretion to the CEO and the Minister in determining an appropriate amount of profit in the construction of normal value'. The explanatory memorandum further explains that the repeal of subparagraph 269TAC(13) of the Act removes 'the limitations to determining profit when constructing a normal value because of subsection 269TAAD.'

Section 269TAC(13) required a zero of rate of profit to be included in constructing a normal value because of the operation of s.269TAAD. That is, where all domestic sales were found to have not been made in the ordinary course of trade. It is then unreasonable for a potential zero rate of profit to be included in the construction of normal values for power transformers when there are clearly domestic sales by the various exporters that are profitable and as a result in the ordinary course of trade.

WTC also noted that the Commission did not elaborate in the issues paper on the scope of products that would be covered by the same general category of goods and questions whether the Commission has all the necessary information to establish the amount of profit normally realised by exporters on the same general category of goods. It contends that if the Commission is unable to calculate the amount of profit actually realised by exporters from the sale of the same general category of goods in the domestic market, then profit is unable to be determined under Regulation 181A(3)(a). WTC submitted that the profit to be included in constructed normal values should be determined in accordance with Regulation 181A(3)(c), using any other reasonable method and that the amount of profit to be included in constructed normal values should be the highest rate of profit achieved by any exporter in each of the countries of export.

Siemens Australia submitted that the method proposed by WTC under Regulation 181A(3)(c) using the highest profit achieved by any exporter in the relevant country of export is self-serving and not reasonable.

The Commission stated in the issues paper that the sales of like goods are such a high proportion of the same general category of goods that it is reasonable to assume that the amounts realised on sales of like goods, and sales of the same general category of goods, are in very close proximity. This assumption was based on the Commission's visits to the Australian industry and exporters.

In a further submission, WTC referred to the US Department of Commerce's power transformer investigation when it assessed recoverability for the purpose of assessing ordinary course of trade by comparing weighted average unit selling prices with weighted average unit costs. WTC considered that the averaging of prices and costs for power transformers can be misleading and distortive because of the unique nature of power transformers and submitted that it is more appropriate to compare the margins achieved on unprofitable sales with the average margin achieved on all domestic sales over the investigation period. It proposed that domestic sales should not be used to calculate the profit used in constructed normal values where:

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- 20% or more of a model are at prices less than the cost; and
- the margins on such sales are less than the weighted average margin for all domestic sales over the investigation period.

WTC provided examples of 16 domestic transactions with hypothetical selling prices, corresponding costs and the profit or loss positions to illustrate its proposed methodology.

Siemens Australia suggested that WTC's alternative methodology somehow circumvents the issues encountered for the purposes of testing recoverability by comparing the margin on transactions with a weighted average margin of profit achieved over the period. It submitted that this method is inconsistent with s. 269TAAD(3) which clearly states that the recovery test is based on a comparison of selling prices and costs.

The Commission notes that s. 269TAAD(3) refers to a comparison of selling prices and costs, but recognises that Article 2.2.1 of the WTO Anti-Dumping Agreement does not provide an exhaustive range of methods for determining if sales were in the ordinary course of trade.

The Commission reviewed the examples provided by WTC and found inconsistencies between the wording of the methodology and the profit calculations in the examples. The Commission considers that the methodology proposed by WTC does not adequately provide for the recovery test and it noted that only when the weighted average profit margin for all sales was less than zero was it possible to consider that unprofitable sales were recoverable.

The Commission considered a similar but alternative approach to WTC's alternative methodology (which assumes that the Commission accepted that the ordinary course of trade could be assessed by means other than that set down in s. 269TAAD):

- where domestic sales at a loss represent less than 20% of the total sales volume during the investigation period, then all sales are in the ordinary course of trade; no recovery test is required and the profit from all domestic sales, including offsets for unprofitable sales, would be used to calculate a profit used in constructed normal values;
- where domestic sales at a loss represent more than 20% of the total sales volume during the investigation period, but the total cost of these sales is less than the total net revenue, then sales at a loss are recoverable and all sales are in the ordinary course of trade; the profit from all domestic sales, including offsets for unprofitable sales, would be used to calculate a profit used in constructed normal values; and
- where domestic sales at a loss represent more than 20% of the total sales volume during the investigation period, but the total cost of these sales is greater than the total net revenue, then sales at a loss are not in the ordinary course of trade; then only the profit from profitable domestic sales would be used to calculate a profit used in constructed normal values.

The methods proposed in the first two dot points result in the same profit as if the Commission adopted the position it proposed in the issues paper. The method

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proposed in the third dot point is similar to example 1 in WTC's submission of 15 August 2014. The profit on profitable sales in that example is 11.6%. If profit was calculated using the position proposed in the issues paper, the profit used in constructed normal values would be zero. However, the Commission notes that in WTC's example 1 the difference between total revenues and costs was only 1.5% of total costs. That is, a very small amount of increased revenue or reduced costs could affect whether the profit used to construct normal values is zero or around 15%. Therefore, the approach outlined in the last dot-point above may lead to a large step-up in profit measurement in certain circumstances, and the Commission does not consider that this approach is reasonable.

The Commission has adopted the position it proposed in the issues paper. The ordinary course of trade provisions are at s. 269TAAD and an important element of those provisions is determining whether the cost of goods sold at a loss are recoverable within a reasonable period. The recovery test is at s. 269TAAD(3). In the case of power transformers, each unit is uniquely constructed and the costs and prices can differ significantly from one model to another. It is the inability to make reasonable adjustments to prices of models sold domestically, to ensure fair comparison with export prices, that explains why the Commission will not establish normal values on the basis of domestic selling prices using s. 269TAC(1). Furthermore, the Commission considers that a "weighted average cost" of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated for power transformers. Consequently, the recovery test cannot be conducted meaningfully and the ordinary course of trade test cannot be fulfilled. The Commission considers it is not reasonably possible to calculate the profit on the sale of the goods made in the ordinary course of trade in accordance with Regulation 181A(2).

The Commission considers it is necessary to calculate the profit for use in constructed normal values using one of the provisions in regulation 181A(3). The Commission notes there is no hierarchy and each of these alternatives is equally available. Accordingly, the Commission intends to determine a profit in accordance with Regulation 181A(3)(a) which refers to the actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country.

The Commission notes that it is only in certain circumstances where the Commission's approach resulted in a zero profit. These circumstances are where the total costs exceed revenue for the exporter's domestic sales of the same general category of goods.

6.5.4 Calculation of credit adjustment

The ADC proposes to calculate credit adjustments by determining the weighted average credit periods separately for domestic and export sales. Submissions from a number of entities commented on the Commission's proposed approach.

ABB Australia submitted that an adjustment for credit terms is an adjustment for different terms of sale and it should not be an adjustment of costs. Fortune supported the Commission's proposal. Siemens Australia supported the Commission's proposal, in so far as a credit adjustment is required to enable a reasonable comparison between export prices and domestic prices.

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WTC submitted that the Commission's proposed approach is overly simplified and only addresses payment terms associated with milestone payments. It submitted that the Commission also needs to take into account differences in the milestone payments between domestic and export sales as part of a credit adjustment. WTC suggested possible approaches may be to:

- treat delayed milestone payments as a further credit period; or
- base a credit adjustment on a common date such as despatch or delivery to port.

Siemens Australia disagrees with both models submitted by WTC and submitted that the revised methodology proposed in the issues paper best achieves a reasonable comparison between constructed normal values and export prices.

The Commission had regard to the second approach proposed by WTC, but considered that it was no more reasonable than the Commission's proposed approach. It noted that using this approach generated some large negative credit periods for payments made before the delivery date. The Commission did not observe any factors during the investigation that suggested adopting this approach would result in materially different dumping margins. It calculated an approximate revised dumping margin for one of the larger exporters using this approach and found that the dumping margin was marginally lower.

The Commission's original position was to calculate export credit costs by comparing the date payment was received for each progress payment to the date of the contract, and then weighting the calculation in accordance with payment amounts. This approach was taken partly because the Commission accepted that the contract date is the date of sale as it best represented the date on which the material terms of the sale were established. The Commission has reviewed its approach to calculation of credit adjustments and does not consider its original methodology is preferable for the following reasons:

- the adjustment made is not an adjustment to ensure normal values are comparable with export prices;
- the adjustment does not reflect considerations that are likely to affect a price difference between export sales and domestic sales; and
- the Commission may be calculating a credit cost when the customer has not been invoiced and/or the customer has no liability to make any payments.

The Commission has adopted the position it proposed in the issues paper. It has calculated credit adjustments by determining weighted average credit periods separately for domestic and export sales. For each progress payment the Commission used the credit period identified on the invoice or in the contract unless it was satisfied that a different period should be used. Where the actual period of credit was significantly different to the scheduled credit terms, the Commission used the actual credit terms. This means that the first approach suggested by WTC has already been accommodated.

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6.5.5 Exchange rates for converting currencies

In converting prices for exported power transformers into local currency, the Commission proposed using the exchange rate at the contract date (the date when the material terms of the export sale were finalised), unless it was satisfied that an alternative exchange rate should be used.

The Commission received a number of submissions on this issue.

- ABB Australia submitted that the Commission must use the exchange rate that best established the material terms of sale.
- Fortune referred the Commission to the GAAP and IAS accounting standards applied by Fortune. It submitted that the Commission should use the spot rate on the date of revenue recognition.
- Hyosung submitted that the Commission should determine the exchange rate to be used on a case by case basis and that in Hyosung's case it should use the rate on the date the sales was recognised in the accounts. It claimed that using the rate at the date of contract results in an unfair comparison between Hyosung's domestic and export sales.
- TBEA submitted that the date of contract is the date of sale for exports to Australia. It claimed that this was especially the case for sales by tender and the material terms of sales were established when the contract was signed.

The Commission has adopted the position it proposed in the issues paper. Export sales are typically made in a currency other than the domestic currency of the exporter. In the case of power transformers, the effect of foreign exchange fluctuations is important because of the long lead times between the date a contract is signed and the date payments are received. The Commission considers that the material terms of sale are established when the contract is signed and has used the exchange rate at the contract date, unless it is satisfied that an alternative exchange rate should be used (such as the rate established in a foreign exchange contract).

6.6 Using subsection 269TACB(3) to determine dumping margins

Section 269TACB describes the methods for comparing export prices and normal values to work out whether dumping has occurred and if so, the levels of dumping. It includes an outline of the following three methodologies:

- *weighted average to weighted average;*
- *transaction to transaction;* and
- *weighted average to transaction.*

In applying the *weighted average to weighted average* approach, the Commission includes all export prices and all corresponding normal values in the calculation of dumping. As it is common for there to be various types/models of products subject to investigation, the Commission calculates a *product dumping margin* that measures the overall margin of dumping for the exporter by aggregating the margins of dumping for the discrete types or models. It is only in rare circumstances that the Commission deviates from the *weighted average to weighted average* method.

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The Commission will consider using the *transaction to transaction* method where the products being investigated involve relatively small numbers of transactions, such as in the case of capital equipment with significant variation in specifications, costs and price. This is the approach proposed by the Commission for the majority of exporters in this power transformers case. The *transaction to transaction* method also involves aggregation of the comparisons for all export prices and all corresponding normal values in the calculation of a *product dumping margin*.

The *weighted average to transaction* method can only be used in certain circumstances, which are discussed in detail in the following sections of this report.

In a submission of 10 June 2014, WTC raised the issue of ‘targeted dumping’ in respect of exporters from Thailand. The Commission considered the WTC submission to be an allegation that certain exporters may have been selling power transformers to Australia during the investigation period at export prices that differed significantly among different purchasers, regions or periods in terms of s. 269TACB(3).

In addition, the Commission had identified significant fluctuations in the dumping margins calculated using the *transaction to transaction* methodology when comparing individual transactions for certain exporters. As the Commission neared completion of its exporter verification exercises, it considered that such observations might also be indicative of instances where export prices differed significantly among purchasers, regions or periods.

Given the WTC submission of 10 June 2014 and the Commission’s own observations arising from exporter verification exercises, the Commission set about considering whether circumstances exist to justify the use of the *weighted average to transaction* method to determine dumping.

6.6.1 Commission file note

On 15 August 2014, the Commission placed a file note on the public record that advised interested parties that the Commission would be revisiting exporter dumping margin assessments to determine whether there are grounds to work out dumping in accordance with s. 269TACB(3) – that is, by using the *weighted average to transaction* method.

The Commission emphasised in that file note that dumping margin assessments calculated under s. 269TACB(3) may vary significantly from dumping margin assessments calculated under s. 269TACB(2). Subsection 269TACB(2) describes the *weighted average to weighted average and transaction to transaction* methods.

The file note also set out the following outline of the relevant legislation and policy.

Legislation and Policy

Section 269TACB of the Act (see full text at Attachment A) contains the relevant provisions for working out whether dumping has occurred and the levels of dumping. Subsection 269TACB(3) is set out below:

(3) If the Minister is satisfied:

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(a) that the export prices differ significantly among different purchasers, regions or periods; and

(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;

the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.

It is also relevant to note s. 269TACB(6), as follows:

(6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:

(a) the goods exported to Australia in each such transaction are taken to have been dumped; and

(b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

The dumping and subsidy manual (p.115) provides:

The weighted average to transaction method of comparison is provided for in s. 269TACB(3) and this method may only be used where the export prices vary significantly between purchasers, regions or over time. An amalgamation exercise is also required in this circumstance in order to work out a single margin of dumping for the product from the exporter concerned.

The Commission considers that where the weighted average [normal value] to transaction [export price] (weight-to-transaction) method is justified and applied, then it is entirely appropriate to base the dumping margin on the export prices in respect of the particular transactions used in the weight-to-transaction method. It is important to recognise that this means basing the dumping margin assessment on particular export transactions and setting aside the results of other export transactions. The Commission considers this approach to be consistent with the Australian legislation and the WTO Anti-Dumping Agreement (refer Article 2.4.2).

Commission approach to revision of dumping margins

The Commission will soon reassess dumping margins, for all cooperating exporters of power transformers, in terms of the provisions of subsection 269TACB(3) of the Act. Where considered necessary, the Commission will write to certain exporters that may be considered as fitting those conditions described in subsections 269TACB(3)(a) and (b) of the Act. The Commission will provide the exporter an opportunity to provide reasons for the observed price differences and reasons for why such differences may or may not make the other methods for undertaking dumping calculations inappropriate.

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6.6.2 Submissions in response to the Commission file note

WTC supports the use of s. 269TACB(3) in the case of power transformers exported to Australia. It is primarily concerned by the considerable differences in costs and prices for power transformers sold in part of a 'package' or 'turnkey' project, which can include equipment other than power transformers.

WTC considers that the "respective export prices" referred to in s. 269TACB(3) should only relate to the "targeted exports". To support its view, WTC submitted the following extract from WTO Appellate Body Report DS322⁵:

The emphasis in the second sentence of Article 2.4.2 is on a "pattern", namely a "pattern of export prices which differs significantly among different purchasers, regions or time periods." The prices of transactions that fall within this pattern must be found to differ significantly from other export prices. We therefore read the phrase "individual export transactions" in that sentence as referring to the transactions that fall within the relevant pricing pattern. This universe of export transactions would necessarily be more limited than the universe of export transactions to which the symmetrical comparison methodologies in the first sentence of Article 2.4.2 would apply. In order to unmask targeted dumping, an investigating authority may limit the application of the W-T comparison methodology to the prices of export transactions falling within the relevant pattern.

WTC considers the *weighted average to weighted average* or *transaction to transaction* methodologies for calculating dumping do not properly address any potential concealing of dumping.

Toshiba considered there is perceived procedural unfairness arising from the proposed approach. It submitted that the Commission did not advise how it proposes to calculate dumping margins using s.269TACB(3), nor did the Commission provide any plausible reason for proposing the potential usage of s. 269TACB(3). Toshiba further submitted that the time provided for affected parties to offer any considered comment was grossly inadequate.

In terms of the relevant law, Toshiba submitted that when considering comparison methodologies arising from s. 269TACB(2) or s. 269TACB(3) there is a general obligation for the Commission to make a fair comparison between export prices and normal values. Toshiba expressed the view that relevant WTO jurisprudence has determined that normally the two general methodologies provided within s. 269TACB(2) shall be used. Toshiba also submitted that where the Commission is considering the comparison methodology provided at s. 269TAB(3) it should ensure that there is clear evidence for using that provision.

Corrs Chambers Westgarth, submitting on behalf of several interested parties, considered that the file note did not advise:

- why this alternative approach is being considered, particularly at this late stage of the investigation;

⁵ WTO Report of the Appellate Body, *United States – Measures relating to zeroing and sunset reviews*, WT/DS322/AB/R, 9 January 2007, paragraph 135, page 56.

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- how the Commission anticipates that dumping margins would be calculated using this methodology;
- on what basis the Commission anticipates the Minister could be satisfied that export prices for power transformers differ significantly for different purchasers, regions or periods, taking into account that each power transformer is unique; and
- why the Commission considers those differences might make the methodologies for dumping margin assessments in s.269TACB(2) unsuitable.

Corrs Chambers Westgarth submitted that without an explanation from the Commission on these matters, his clients are not able to express a view on the approach that the Commission is proposing to take. They also queried the grounds or basis for only selected export transactions being used in the dumping margin calculation.

Siemens submitted that there is no proper basis to consider that the method specified in s.269TACB(2) is inappropriate. It considered the proposal to use s.269TACB(3) reflects an unwarranted departure from the Commission's prevailing view regarding the unique aspects of the manufacture and sale of power transformers.

Siemens also submitted that publication of the file note proposing the possible use of s.269TACB(3) was late in the investigation. It considers that this delay and the failure to identify reasons for the departure from the methodology adopted to date is extremely unfair.

Siemens also submitted that:

- Issues Paper No. 2014/01 clarified the final outstanding issues of contention that were raised throughout the exporter verification process;
- the Commission has not, at any stage during the exporter verification process, raised any concerns with the methodology for calculating dumping margins;
- the file note does not provide guidance as to why the threshold criteria for 269TACB(3) are enlivened or how the Commission proposes to ascertain relevant variable factors;
- s.269TACB(3) operates secondarily to s.269TACB(2) and can only be used when circumstances in s.269TACB(2) are inappropriate;
- the legislation and the Dumping and Subsidy Manual clearly require that there is a tangible and quantifiable difference in export prices observable across the whole or part of the investigation period;
- the determination of such difference requires a metric for testing the existence and degree of a variation from a defined 'norm'; and
- the Commission has acknowledged that each unit is uniquely constructed and the costs and prices can differ significantly from one model to another and therefore the Commission cannot fairly or meaningfully measure variations in export prices, whether by period, region or customer.

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ABB Thailand made a submission on 27 August 2014 in response to the Commission's letter of 20 August 2014, which was particular to ABB Thailand and the possible use of s. 269TACB(3) to calculate dumping margins. The Commission considers that some of the points raised by ABB Thailand can appropriately be incorporated in this section of the SEF, while others are more appropriately addressed in confidential attachment 3 to this SEF. The confidential attachment is discussed in the dumping margin section for ABB Thailand. In its letter of 27 August 2014, ABB Thailand submitted that:

- the Commission's timing on this matter is inappropriate in the circumstances of a "normal" investigation, but even more disproportionate in this extended investigation;
- the Commission has not identified the parties who are said to have purchased power transformers at export prices that "differ significantly";
- the export price to cost to make and sell ratio can never be relevant to the operation of s. 269TACB(3) and it does not measure differential pricing at all;
- the application of subsection 269TACB(3) to this case where the Commission has conceded that each power transformer is unique and cannot be compared in other contexts is especially difficult;
- prices always vary, thus one would expect the difference to be exceptional and consistent;
- the Commission does not explain what it proposes to do if it maintains its allegation that "export prices differ significantly amongst different purchasers";
- if the Commission finds there were significant differences, then it is only the period in which the differences took place that could be relevant to s. 269TACB(6) and there is no basis for the exclusion of any export transactions from the dumping margin calculation.

In a further submission by ABB Thailand on 4 September 2014 in response to a letter from the Commission of 29 August 2014, ABB submitted that:

- there are not and cannot be different export prices amongst different purchasers because ABB Thailand does not have different purchasers;
- ABB Thailand's exports were negotiated and transacted directly with ABB Australia on an arm's length basis;
- even if the Commission suggests it can compare ABB Thailand's export prices depending on who the ultimate end-user might have been, instead of the purchasers, the analysis shows that ABB Thailand's export prices are not significantly different;
- the Commission's amended analysis does not safely identify the ultimate end-users to whom ABB Thailand sold the power transformers concerned; and
- the Commission's amended analysis does not present significantly different prices.

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6.6.3 The Commission's preliminary assessment of whether to use the *weighted average to transaction* method to determine dumping

Procedural fairness

The Commission has provided adequate procedural fairness in relation to its consideration of using s.269TACB(3) to calculate dumping margins. The Commission accepts that these matters have been raised relatively late in an extended investigation. It also recognises that this issue has the potential for substantial change to earlier preliminary dumping margin assessments. However, it would be inappropriate for the Commission to fail to have regard to relevant issues in the investigation, especially when the potential consequences are significant.

With regard to the concerns about the timing of this issue being raised, the Commission considers that it has met its obligations under the Act and under the WTO Anti-Dumping Agreement in terms of transparency and providing interested parties an opportunity to defend their interests. In publishing the 15 August 2014 note for file in advance of the publication of this SEF, the Commission has sought to provide advance notice to interested parties of the Commission's considerations in this area and in doing so has arguably exceeded its obligations in this regard.

In the case of one exporter where the Commission identified export prices that appeared to differ significantly among different purchasers, regions or periods it wrote to the exporter concerned and provided opportunity for the exporter to comment on the Commission's observations prior to this SEF. In the case of four other exporters, where the Commission identified export prices that appeared to differ significantly among different purchasers, regions or periods, it wrote to these parties shortly before this SEF to invite comment on the Commission's observations.

The Commission has made preliminary findings in this SEF in relation to its assessment of whether to use the *weighted average to transaction* method to determine dumping. Interested parties have 20 days after publication of the SEF to lodge submissions in response to that statement. The Commission must have regard to such submissions received within 20 days after placing the SEF on the public record.

Addressing the elements of subsection 269TACB(3)

In terms of establishing the grounds for using s.269TACB(3) the Commission focused on the elements for which the Minister must be satisfied:

- that the export prices differ significantly among different purchasers, regions or periods; and
- that those differences make the methods referred to in s.269TACB(2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period.

The uniqueness of each power transformer unit provides a challenge for meaningful comparisons of export prices per unit. The Commission therefore considered other measures against which power transformer prices could be compared. The

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Commission has considered a range of approaches for comparing export prices for each power transformer exported to Australia, including comparisons of:

- prices per tonne (dry weight) – however the Commission is not in possession of sufficient information from exporters to make this assessment;
- prices per MVA – however the Commission recognises that the size and power rating of the power transformers impacts the cost and price, which also impacts the price per MVA; and
- the ratio of export price to the full cost to make and sell the exported unit.

The approach of using the ratio of export price to the full cost to make and sell was considered the most meaningful method available for comparison of export prices for power transformers. The Commission considers that this approach is reasonable for analysing export price patterns because the estimated cost to make and sell the goods was clearly a consideration for manufacturers when pricing the goods.

The Commission therefore measured the ratio of export price with full cost to make and sell for all power transformers exported in the investigation period by all exporters that provided responses to the exporter questionnaire except for the uncooperative exporter. The Commission sought to ensure that the comparisons of the export price and the full cost to make and sell data was undertaken at the same delivery terms (eg. FOB).

Where the Commission identified a pattern of export prices, as indicated by a pattern of ratios for export prices to the full cost to make and sell, which was significantly different among different purchasers, region or periods, it contacted the exporter for comment.

The Commission has taken account of its export price analysis, and in the case of one exporter – its comments on that analysis, then considered whether it is inappropriate to use the methods for working out whether dumping has occurred in terms of s. 269TACB(2).

In particular, the Commission has considered whether the export prices that differ significantly among purchasers, regions or periods have been masked and not taken into account appropriately by the *weighted average to weighted average* and the *transaction to transaction* methodologies for calculating dumping. The Commission has also considered the potential for dumping of particular transactions to have caused material injury to the Australian power transformer industry. In certain circumstances, the Commission may consider that injurious dumping has been masked by the *weighted average to weighted average* or the *transaction to transaction* approaches to calculating dumping margins. In circumstances where export prices differ significantly to different purchasers, regions or periods; those export prices were dumped; and the export of those goods at dumped prices may have caused material injury, the Commission may consider it is inappropriate to use s. 269TACB(2) for working out whether dumping has occurred.

In the case of power transformers, the Commission is of the view that the loss of a sale for a single power transformer due to dumping may be sufficient to cause material injury. Where there are several or many lost sales due to dumping, the Commission considers the injury caused by that dumping is likely to be material.

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The Commission notes claims by ABB Thailand that there are not and cannot be different export prices amongst different purchasers in its case because ABB Thailand does not have different purchasers. The Commission considers it would be a narrow and inappropriate reading of the provision of 269TACB(3) that would restrict the definition of purchasers to only those entities involved in the purchase of the goods directly from the exporter, especially when that entity is related to the exporter.

The Commission notes that in its visit report for ABB Australia, it stated that:

In summary, we were satisfied that each Australian sale could be traced to specific Australian tenders and associated supply contracts which in turn could be linked directly to specific importations by ABB Australia.⁶

The Commission also notes the visit report for ABB Australia states, in relation to the manufacturer providing a quote to ABB Australia:

If the quote is not acceptable to ABB Australia, the supplier may be requested to re-quote. The supplier may then re-quote subject to suitable profitability considerations being satisfied.⁷

In the circumstances, and noting that ABB Thailand and ABB Australia are related parties, it is not unreasonable to expect that ABB Australia and ABB Thailand discuss competitive conditions in the Australian market including the details of particular tenders and the levels of prices to particular customers of ABB Australia. Information exchange of this nature would be common even where sales are found to be arms length transactions, as was the Commission's finding for the sales between ABB Thailand and ABB Australia.

The Commission therefore considers it is entirely reasonable to compare the export prices from ABB Thailand in groupings according to the Australian purchasers of those goods, even though those entities purchased the goods from ABB Australia.

Preliminary analysis and findings for certain exporters

The Commission conducted detailed export price comparisons for all exporters that provided responses to the exporter questionnaire except for the uncooperative exporter. The comparisons were based on the ratio of export price with full cost to make and sell, calculated for all power transformers exported in the investigation period. The analysis indicated that export prices were significantly different among different purchasers, regions or periods for the following five exporters:

- ABB Thailand;
- ABB Vietnam;
- Siemens Guangzhou;
- Siemens Jinan; and
- Siemens Wuhan.

⁶ ABB Australia – importer visit report – Electronic public record, document 95, p. 12

⁷ ABB Australia – importer visit report – Electronic public record, document 95, p. 11

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The Commission did not identify any such patterns in export prices over the investigation period for other exporters.

The Commission is therefore only considering using the *weighted average to transaction* method to determine dumping in relation to these five exporters. The Commission's detailed assessments of whether s. 269TACB(2) is inappropriate for use in respect of the whole investigation period for each of these exporters, based on the methodology and approach outlined above, are contained in confidential attachments to this SEF. The Commission's overviews of its exporter-specific analyses and findings are outlined in each of the relevant sections of this SEF dealing with dumping margins.

Dumping margin calculations using the weighted average to transaction method

Where the Commission is satisfied of the elements set out in s. 269TACB(3)(a) and (b), it proposes to calculate dumping margins for those exporters by comparing the respective export transactions determined in relation to individual transactions during the investigation period with the weighted average of corresponding normal values over that period. This means applying the *weighted average to transaction* method to determine dumping margins.

Subsection 269TACB(3) requires export prices to be compared with *corresponding* normal values. As stated elsewhere in this report the Commission considers that the normal value for each export transaction can only be determined by reference to the constructed cost to make and sell the power transformer in that transaction. Each and every normal value was therefore constructed specifically to correspond to an individual export transaction. In these circumstances, the Commission considers the weighted average of corresponding normal values may, in relation to each individual export transaction, be based on a single observation of corresponding normal value. To establish the weighted average of corresponding normal values, the Commission used the same constructed normal values established for each export price in the *transaction to transaction* method. The resulting weighted average corresponding normal value is therefore the same as the corresponding normal value used in the *transaction to transaction* method.

The Commission does not consider this approach to be at odds with an earlier view expressed in relation to the use of weighted averages in the context of assessing ordinary course of trade. At section 6.5.3 of this report the Commission stated that "...each power transformer is unique and the weighted average cost of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated." The legislative requirements in that subsection are prescriptive, requiring the weighted average cost of certain goods to be established over the investigation period. In the case of the normal values, the weighted average required is for corresponding normal values. The Commission considers that the weighted average corresponding normal values that it is proposing to use in the *weighted average to transaction* method are meaningful for the purposes of dumping margin calculations.

The Commission interprets s. 269TACB(3) as requiring that the *weighted average to transaction* comparison is to be used in relation to all export sales in the relevant period, in this case the investigation period. This view represents a departure from the view expressed in the file note of 15 August 2014, where the Commission

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indicated that it may base the dumping margin assessment on particular export transactions while setting aside the results for other export transactions.

However, the Commission considers that s. 269TACB(6) provides guidance only in relation to circumstances where a comparison is made under s. 269TACB(3), and only in relation to transactions with export prices that are less than the weighted average of corresponding normal values. Subsection 269TACB(6) provides that the goods exported to Australia in each such transaction are taken to have been dumped. It also provides that the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

The Commission notes that the focus of s. 269TACB(6) is on those transactions and those goods where the export price is less than the weighted average of corresponding normal values – those being goods where export prices were dumped. The Commission considers it is important to recognise that s. 269TACB(6) is silent on how to treat the goods exported to Australia in other transactions – those being where export prices were equal to or higher than the weighted average of corresponding normal values. In these circumstances, the Commission considers it is reasonable to not take into account offsets for negative dumping margins arising from transactions where the export price was higher than the weighted average of corresponding normal values. The Commission considers this interpretation is consistent with the intention of this provision which is to unmask and take into account export prices that differ significantly among different purchasers, regions or periods. In doing so, the Commission has identified and addressed targeted dumping. The Commission considers that this approach is available under Australian law and that it is consistent with WTO jurisprudence.

6.7 China

6.7.1 ABB Chongqing and ABB Zhongshan

The Commission undertook a remote verification of ABB Chongqing and ABB Zhongshan to verify information in their exporter questionnaire responses.

Export prices

The Commission is satisfied ABB Chongqing and ABB Zhongshan were the exporters of power transformers to Australia and that ABB Australia was the importer. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from ABB Chongqing and ABB Zhongshan to ABB Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

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Normal values

The Commission reviewed costs submitted by ABB Chongqing and ABB Zhongshan and considered they appeared to be complete. It verified the 2012 costs to ABB Chongqing's and ABB Zhongshan's audited accounts.

The Commission found that the costs submitted by ABB Chongqing and ABB Zhongshan were reasonable. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on of the profit achieved on domestic sales of the same general category of goods) by ABB Chongqing and ABB Zhongshan.

The Commission made the following adjustments to the constructed normal values under s. 269TAC(9):

- less domestic credit terms;
- less domestic commissions;
- less domestic tax surcharges; and
- plus export credit terms.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for ABB Chongqing and ABB Zhongshan is negative 4.5%. In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to ABB Chongqing and ABB Zhongshan.

Following publication of the PAD securities were not collected on imports from ABB Chongqing and ABB Zhongshan as the initial dumping margin was negative or negligible.

6.7.2 Toshiba CTC

The Commission established export prices, normal values and dumping margins for Toshiba CTC based on the information provided in the exporter questionnaire responses.

Export price

The Commission is satisfied that Toshiba CTC was the exporter and established FOB export prices for Toshiba CTC under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

The Commission reviewed costs submitted by Toshiba CTC and considered they appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission did not include an amount for profit in the constructed normal value because the total cost of domestic sales was greater than

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the total net revenue. The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Toshiba CTC is negative 4.2%. In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to Toshiba CTC.

Following publication of the PAD securities were not collected on imports from Toshiba CTC as it had not been identified as exporters when the PAD was published.

6.7.3 CHINT

The Commission visited CHINT to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied that CHINT was the exporter of power transformers to Australia and that its Australian customers were the importers. It is satisfied that export sales from CHINT to its Australian customers were arms length transactions. The Commission established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

Constructed ex-works normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by CHINT.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for CHINT is lower than negative 5%. In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to CHINT.

Following publication of the PAD securities were not collected on imports from CHINT as the initial dumping margin was negative or negligible.

6.7.4 Jiangsu

The Commission established export prices, normal values and dumping margins for Jiangsu based on the information provided in the exporter questionnaire response.

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Export price

The Commission is satisfied that Jiangsu was the exporter and established FOB export prices for Jiangsu under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

The Commission reviewed costs submitted by Jiangsu which appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Jiangsu.

Jiangsu did not provide any information to enable the calculation of adjustments. The Commission did not pursue this issue considering the low volume of exports to Australia by Jiangsu and the size of the negative dumping margin.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Jiangsu is lower than negative 5%. In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to Jiangsu.

Following publication of the PAD securities were not collected on imports from Jiangsu as the initial dumping margin was negative or negligible.

6.7.5 Siemens Guangzhou, Siemens Jinan and Siemens Wuhan

The Commission visited Siemens Wuhan to verify information in the exporter questionnaire responses submitted by Siemens Guangzhou, Siemens Jinan and Siemens Wuhan. These companies are all independent legal entities operating in China with a common shareholder, Siemens Ltd China (Beijing). The Commission has treated these entities as a single exporter for the purpose of calculating a dumping margin.

Export price

The Commission is satisfied Siemens Guangzhou, Siemens Jinan and Siemens Wuhan were the exporters of power transformers to Australia and that Siemens Australia was the importer. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from Siemens Guangzhou, Siemens Jinan and Siemens Wuhan to Siemens Australia were arms length transactions. It

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established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the weighted average profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Siemens Guangzhou, Siemens Jinan and Siemens Wuhan.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms.

Dumping margin

If the dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method it would be negative 1.9%. The dumping margin published in the visit report was 30.85%. The Siemens Group made submissions to the Commission and provided additional information that demonstrated that a number of costs had been double counted in constructing normal values. The revised dumping margin was also affected by changes in the approach to calculating the credit adjustment and to a lesser extent the profit to be used in constructing normal values.

However, as discussed in section 6.6 of this report, the Commission considered whether to determine dumping margins in accordance with s. 269TACB(3).

In the case of Siemens Guangzhou, Siemens Jinan and Siemens Wuhan, the Commission's re-examination of the preliminary export prices and normal values in the investigation period revealed certain export prices that appear to differ significantly among purchasers, regions or periods. As discussed earlier, this analysis was based on comparisons of the ratios of FOB export price to full cost to make and sell the goods exported to Australia during the investigation period.

The Commission considers that the observed differences make the methods for comparison of export price and normal value under s. 269TACB(2) inappropriate for use in respect of the whole investigation period. The Commission considers that export prices that 'differ significantly' for certain Siemens Guangzhou, Siemens Jinan and Siemens Wuhan export prices are masked and not taken into account appropriately when the *weighted average to weighted average* or *transaction to transaction* methods for determining dumping are applied. The Commission also considers that the margin of dumping particular to those sales, and the volume of those sales at dumped prices, has the potential to have caused material injury to the Australian power transformer industry.

In these circumstances, the Commission considers that injurious dumping may have been masked by the *weighted average to weighted average* or the *transaction to transaction* approaches to calculating dumping margins. Therefore, the Commission considers it is inappropriate to use s. 269TACB(2) for working out whether dumping has occurred in relation to Siemens Guangzhou, Siemens Jinan and Siemens Wuhan export sales to Australia in the investigation period.

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The export price comparisons and the assessment of whether s. 269TACB(2) is inappropriate for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan are contained in **confidential attachment 2** to this report.

The Commission proposes to rely upon the dumping margin established in terms of s. 269TACB(3) instead of the approach under s. 269TACB(2) above. The Commission's dumping margin assessment for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan for the purpose of this SEF is a dumping margin of 5.5%.

6.8 Indonesia

6.8.1 CG Power

The Commission considers that CG Power did not give the Commissioner information the Commission considered to be relevant to the investigation. Accordingly, the Commission considers CG Power to be an uncooperative exporter.

Export price

The Commission has established FOB export prices for CG Power under s. 269TAB(3) having regard to all relevant information.

The Commission used information submitted by WTC in its application, being its estimated selling price for a power transformer exported to Australia by CG Power.

Normal value

The Commission has established normal values under s. 269TAC(6) having regard to all relevant information.

The Commission used information submitted by WTC in its application, being its estimated cost for a power transformer exported to Australia by CG Power, adjusted to reflect differences in costs between Indonesia and Australia. No amount for profit was added.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method during the investigation period. The dumping margin for CG Power is 11.1%.

Following publication of the PAD securities were imposed on imports from CG Power using a dumping margin of 5.4%. This dumping margin was based on information available at that time.

6.8.2 UNINDO

The Commission established export prices, normal values and dumping margins for UNINDO based on the information provided in the exporter questionnaire response.

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Export price

The Commission is satisfied that UNINDO was the exporter and established FOB export prices for UNINDO under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

The Commission reviewed costs submitted by UNINDO which appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by UNINDO.

UNINDO did not provide any information to enable the calculation of adjustments. The Commission did not pursue this issue considering the low volume of exports to Australia by UNINDO.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for UNINDO is negative 4.2%. In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to UNINDO.

Following publication of the PAD securities were imposed on imports from UNINDO using a dumping margin of 5.4%. This dumping margin was based on information for other Indonesian exporters.

6.8.3 Indonesia – all other exporters

The Commission has established the ‘all other exporters’ rate for exporters of power transformers from Indonesia using the rate for CG Power.

6.9 Korea

6.9.1 Hyosung

The Commission visited Hyosung to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied that Hyosung was the exporter of power transformers to Australia and that its Australian customers were the importers. It is satisfied that export sales from Hyosung to its Australian customers were arms length transactions. The Commission established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

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Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Hyosung.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms (net of domestic credit terms).

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Hyosung is 12.3%.

The dumping margin published in the visit report was 26.8%. Following submissions by Hyosung, the Commission recalculated the profit on domestic sales by including costs for all elements reflected in the invoice price. The revised dumping margin was also affected by the change in the approach to calculating the profit to be used in constructing normal values.

6.9.2 Hyundai

The Commission visited Hyundai to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied that Hyundai was the exporter of power transformers to Australia and that Hyundai Australia was the importer. However, Hyundai Australia purchased the goods from Hyundai Corporation. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from Hyundai to Hyundai Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(c) having regard to all the circumstances of the exportation. The Commission used the price paid by Hyundai Corporation less any charges incurred after exportation.

Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Hyundai.

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The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms (net of domestic credit terms).

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Hyundai is negative 8.2%. In accordance with s. 269TDA(1), the Commissioner proposes to terminate the investigation so far as it relates to Hyundai.

The dumping margin published in the visit report was negative 5.4%. The revised dumping margin was affected by the change in the approach to calculating the profit to be used in constructing normal values.

6.10 Taiwan

6.10.1 Fortune

The Commission visited Fortune to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied that Fortune was the exporter of power transformers to Australia and that its Australian customers were the importers. It is satisfied that export sales from Fortune to its Australian customers were arms length transactions. The Commission established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Fortune.

The Commission made the following adjustments to the constructed normal values under s. 269TAC(9):

- plus commissions;
- plus banking charges;
- plus export credit terms; and
- less domestic credit terms.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Fortune is 17.2%.

Following publication of the PAD securities were imposed on imports from Fortune using a dumping margin of 10.0%. This dumping margin was based on information available at the time.

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6.10.2 Shihlin

The Commission visited Shihlin to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied that Shihlin was the exporter of power transformers to Australia and that Shihlin Australia was the importer. However, the Commission is not satisfied that export sales from Shihlin to Shihlin Australia were arms length transactions. The Commission established FOB export prices under s. 269TAB(1)(b) using the selling price by Shihlin Australia less prescribed deductions.

Normal value

Constructed ex-works normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Shihlin.

The Commission made the following adjustments to the constructed normal values under s. 269TAC(9):

- less domestic credit terms; and
- plus export credit terms.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Shihlin is 23.9%.

The dumping margin published in the visit report was 38%. The revised dumping margin was affected by a number of factors, including a revised approach to calculating deductive export prices and the change in the approach to calculating the profit to be used in constructing normal values.

6.10.3 Tatung

The Commission established export prices, normal values and dumping margins for Tatung based on the information provided in the exporter questionnaire response.

Export price

The Commission is satisfied that Tatung was the exporter and established FOB export prices for Tatung under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

The Commission reviewed costs submitted by Tatung which appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on

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domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Tatung.

The Commission made a positive adjustment to the constructed normal value under s. 269TAC(9) for export credit terms using information from the exporter questionnaire response and a nominal interest rate of 5%.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Tatung is 35.3%.

Following publication of the PAD securities were not collected on imports from Tatung as it had not been identified as an exporter when the PAD was published.

6.10.4 Taiwan – all other exporters

The Commission has established the ‘all other exporters’ rate for exporters of power transformers from Taiwan using the rate for Tatung.

6.11 Thailand

6.11.1 ABB Thailand

The Commission visited ABB Thailand to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied ABB Thailand was the exporter of power transformers to Australia and that ABB Australia was the importer. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from ABB Thailand to ABB Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by ABB Thailand.

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The Commission made the following adjustments to the constructed normal values under s. 269TAC(9):

- less domestic credit terms; and
- plus export credit terms.

Dumping margin

If the dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method it would be negative 10.0%. The dumping margin published in the visit report was negative 3.5%. The difference arises from changes in the approach to calculating the credit adjustment and to a lesser extent the profit to be used in constructing normal values.

However, as discussed in section 6.6 of this report, the Commission considered whether to determine dumping margins in accordance with s. 269TACB(3).

In the case of ABB Thailand, the Commission's re-examination of the preliminary export prices and normal values in the investigation period revealed certain export prices that appear to differ significantly among purchasers. As discussed earlier, this analysis was based on comparisons of the ratios of FOB export price to full cost to make and sell the goods exported to Australia during the investigation period.

The Commission considers that the observed differences make the methods for comparison of export price and normal value under s. 269TACB(2) inappropriate for use in respect of the whole investigation period. The Commission considers that export prices that 'differ significantly' for certain ABB Thailand export prices are masked and not taken into account appropriately when the *weighted average to weighted average* or *transaction to transaction* methods for determining dumping are applied. The Commission also considers that the margin of dumping particular to those sales, and the volume of those sales at dumped prices, has the potential to have caused material injury to the Australian power transformer industry.

In these circumstances, the Commission considers that injurious dumping may have been masked by the *weighted average to weighted average* or the *transaction to transaction* approaches to calculating dumping margins. Therefore, the Commission considers it is inappropriate to use s. 269TACB(2) for working out whether dumping has occurred in relation to ABB Thailand export sales to Australia in the investigation period.

The export price comparisons and the assessment of whether s. 269TACB(2) is inappropriate for ABB Thailand are contained in **confidential attachment 3** to this report. The confidential assessment also takes into account the content of the following correspondence on this matter between the Commission and ABB Thailand:

- Commission letter to ABB Thailand dated 20 August 2014, which requested a response by 27 August 2014;
- ABB Thailand letter in response to the Commission dated 27 August 2014;

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- Commission letter to ABB Thailand dated 29 August 2014 to correct inaccuracies in its letter of 20 August 2014, seeking any further response by 4 September 2014; and
- ABB Thailand letter in response to the Commission dated 4 September 2014.

The Commission proposes to rely upon the dumping margin established in terms of s. 269TACB(3) instead of the approach under s. 269TACB(2) above. The Commission's dumping margin assessment for ABB Thailand for the purposes of this SEF is a dumping margin of 3.6%.

6.11.2 Tirathai

The Commission established export prices, normal values and dumping margins for Tirathai based on the information provided in the exporter questionnaire response.

Export price

The Commission is satisfied that Tirathai was the exporter and established FOB export prices for Tirathai under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

Normal value

Tirathai submitted that the original costs it presented were incorrect as they included re-work costs. The Commission has used the original costs as it considers re-work costs must be included in the normal value. The Commission reviewed costs submitted by Tirathai which appeared to be complete, although these costs did not include selling, general and administrative expenses. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit, including selling, general and administrative expenses, based on the profit achieved on domestic sales of the same general category of goods by Tirathai.

Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method during the investigation period. The dumping margin for Tirathai is 39.1%.

Following publication of the PAD securities were not collected on imports from Tirathai as the volume of exports from Tirathai was negligible.

6.11.3 Thailand – all other exporters

The Commission has established the 'all other exporters' rate for exporters of power transformers from Thailand using the rate for Tirathai.

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6.12 Vietnam

6.12.1 ABB Vietnam

The Commission visited ABB Vietnam to verify information in its exporter questionnaire response.

Export price

The Commission is satisfied ABB Vietnam was the exporter of power transformers to Australia. For sales to ABB Australia the Commission is satisfied that ABB Australia was the importer. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from ABB Vietnam to ABB Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

For sales to ABB Limited, Hong Kong (ABB Hong Kong) the Commission has insufficient information to determine who is the importer. The Commission found that overall sales between ABB Vietnam and ABB Hong Kong were profitable, but has no information on sales from ABB Hong Kong to its Australian customers and, therefore, cannot determine if these sales were arms length transactions. The Commission established FOB export prices under section 269TAB(3) having regard to all relevant information. Specifically, the Commission used the price paid by the importer less any charges incurred after exportation.

Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by ABB Vietnam.

The Commission made the following adjustments to the constructed normal values under s. 269TAC(9):

- less domestic credit terms; and
- plus export credit terms.

Dumping margin

If the dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method it would be negative 5.1%. The dumping margin published in the visit report was 5.9%. The difference arises from changes in the approach to

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calculating the profit to be used in constructing normal values and to a lesser extent to changes in the approach to calculating the credit adjustment.

However, as discussed in section 6.6 of this report, the Commission considered whether to determine dumping margins in accordance with s. 269TACB(3).

In the case of ABB Vietnam, the Commission's re-examination of the preliminary export prices and normal values in the investigation period revealed certain export prices that appear to differ significantly among purchasers, regions or periods. As discussed earlier, this analysis was based on comparisons of the ratios of FOB export price to full cost to make and sell the goods exported to Australia during the investigation period.

The Commission considers that the observed differences make the methods for comparison of export price and normal value under s. 269TACB(2) inappropriate for use in respect of the whole investigation period. The Commission considers that export prices that 'differ significantly' for certain ABB Vietnam export prices are masked and not taken into account appropriately when the *weighted average to weighted average* or *transaction to transaction* methods for determining dumping are applied. The Commission also considers that the margin of dumping particular to those sales, and the volume of those sales at dumped prices, has the potential to have caused material injury to the Australian power transformer industry.

In these circumstances, the Commission considers that injurious dumping may have been masked by the *weighted average to weighted average* or the *transaction to transaction* approaches to calculating dumping margins. Therefore, the Commission considers it is inappropriate to use s. 269TACB(2) for working out whether dumping has occurred in relation to ABB Vietnam export sales to Australia in the investigation period.

The export price comparisons and the assessment of whether s. 269TACB(2) is inappropriate for ABB Vietnam are contained in **confidential attachment 4** to this report.

The Commission proposes to rely upon the dumping margin established in terms of s. 269TACB(3) instead of the approach under s. 269TACB(2) above. The Commission's dumping margin assessment for ABB Vietnam for the purpose of this SEF is a dumping margin of 4.7%.

6.12.2 Vietnam – all other exporters

The Commission has established the 'all other exporters' rate for exporters of power transformers from Vietnam using the rate for ABB Vietnam.

6.13 Volumes

Pursuant to s. 269TDA(3), the Commissioner must terminate an investigation if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection 269TDA(4) defines a negligible volume as 3% of the total Australian import volume during the investigation period.

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The Commission is satisfied that, when expressed as a percentage of the total imported volume, the volume of dumped goods from Indonesia, Thailand and Taiwan and Vietnam were each greater than 3% of the total import volume and is therefore not negligible.

The Commission is satisfied that, when expressed as a percentage of the total imported volume, the volume of dumped goods from China and Korea were each less than 3% of the total import volume and is therefore negligible. In accordance with s. 269TDA(3), the Commissioner proposes to terminate the investigation so far as it relates to China and Korea.

7 ECONOMIC CONDITION OF THE INDUSTRY

7.1 Preliminary finding

The Commission has preliminarily found that, based on verified information and data, the Australian industry has experienced injury in the form of:

- loss of sales volume;
- reduced market share;
- price undercutting;
- price suppression;
- reduced revenues;
- reduced profits;
- reduced profitability;
- reduced return on investment;
- reduced capacity utilisation; and
- reduced employment.

7.2 Commencement of injury

WTC claimed that injury commenced with the significant increase in imports in 2007-08.

7.3 Approach to injury analysis

The injury analysis detailed in this SEF is based on the financial information submitted by WTC and verified by the Commission. The financial information is for WTC's power business unit (WTC's PBU). The analysis, unless otherwise stated, refers to domestic sales and production.

WTC accounted for over 75% of Australian production during the investigation period (using Information provided in the application for other Australian producers). The Commission is satisfied that the performance of WTC reflects the performance of the Australian industry.

7.4 Volume effects

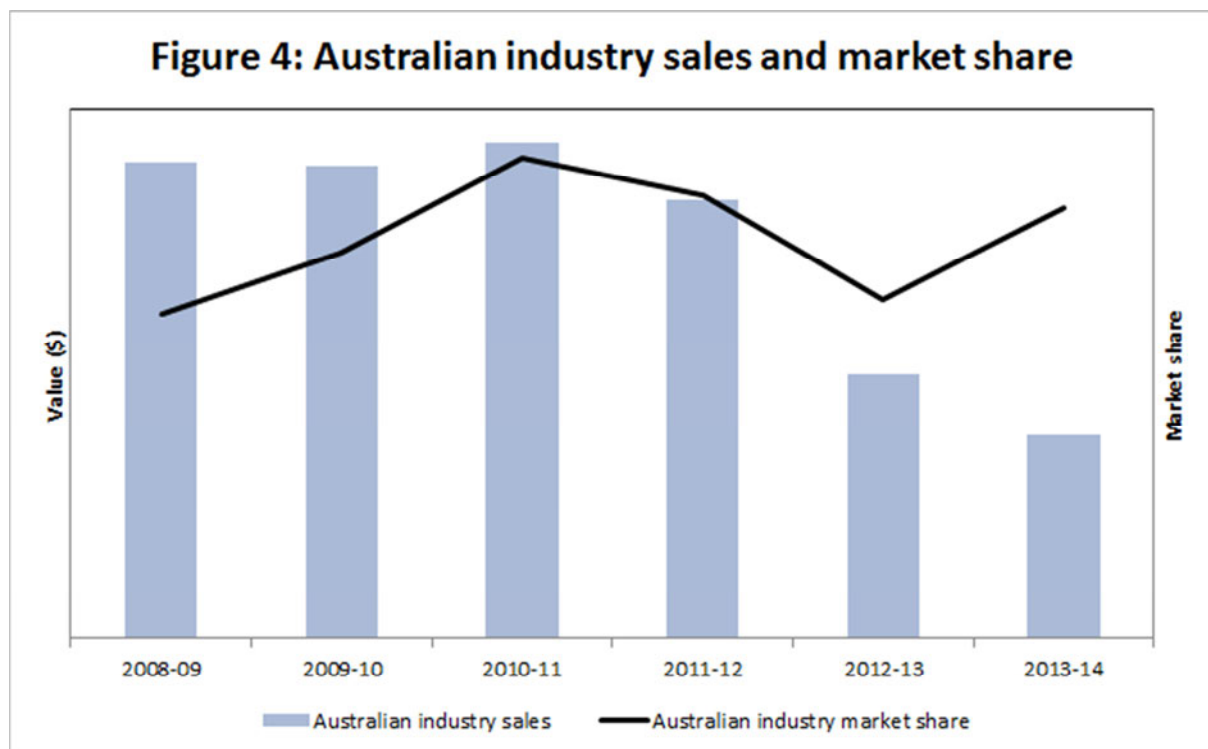
As noted in section 5.5, the Australian market for power transformers fell each year from 2008-09 to 2013-14.

Figure 4 below illustrates that the volume of sales of power transformers by the Australian industry fell slightly in 2009-10, rose in 2010-11 and then fell each year to 2012-13. The volume of sales in 2012-13 was about 60% of the volume achieved in 2011-12.

Figure 4 also illustrates that movement in market shares followed a similar trend. The Australian industry's market share rose from 2008-09 to 2010-11 then fell each year until 2012-13.

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The Commission considers that the rise in the Australian industry's sales volume and market share between 2008-09 and 2010-11, compared to a fall of 30% in the Australian market, may be attributable to completing orders on hand. The Commission considers that the Australian market in 2013-14 may have been affected by the commencement of this investigation in that supply of imported power transformer units may be being held over pending an outcome from the investigation.



7.4.1 Conclusion – volume effects

The Commission considers that there appears to be reasonable grounds to preliminarily find that the Australian industry has lost sales volume and market share in 2012-13.

7.5 Price effects

7.5.1 Price undercutting

In its application, WTC provided details of certain tenders it had lost to exporters from the nominated countries. It identified its bid price and the estimated winning bid which were based on import statistics and discussions with the customer. The Commission reviewed information collected from exporters to test the information provided in the application. It was able to confirm that in a number of instances exports from the nominated countries had undercut the Australian industry's prices.

The Commission also visited a number of purchasers of power transformers and some provided details of prices submitted by tenderers for certain projects. It confirmed that the price of imports from the nominated countries has undercut WTC's prices.

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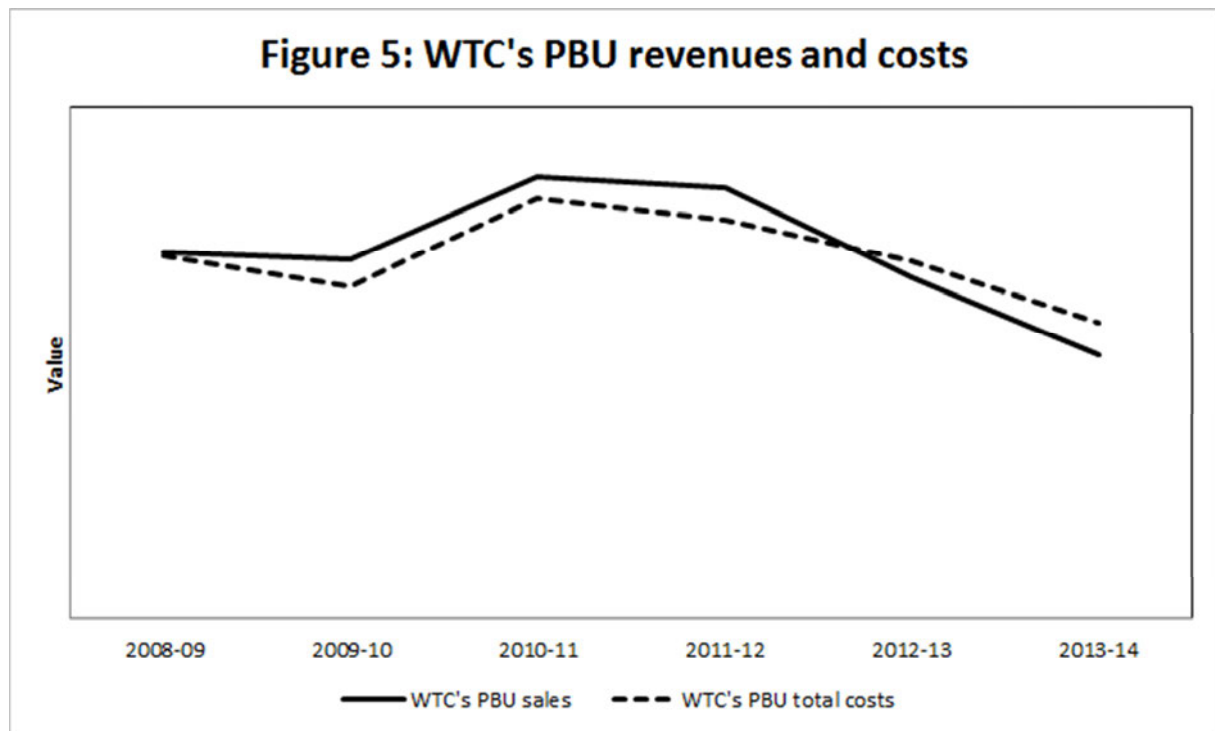
7.5.2 Price depression

The Commission has not examined price depression because trends in unit prices are not meaningful in the case of power transformers.

7.5.3 Price suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

Figure 5 below illustrates the relationship between WTC's total revenues and total costs for power transformers, including 2013-14. Total revenue exceeds total costs marginally in 2008-09. The margin increased in 2009-10, fell slightly in 2010-11 and increased again in 2011-12. Total costs exceeded total revenues in 2012-13 and 2013-14.



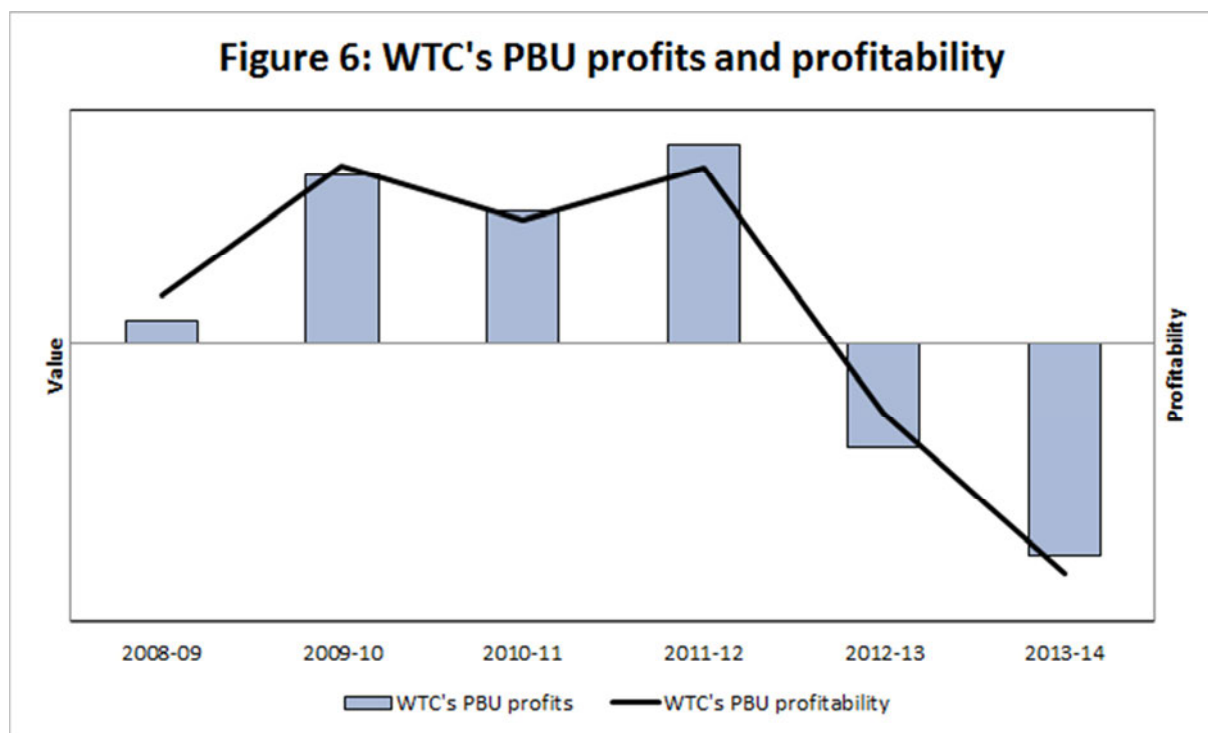
7.5.4 Conclusion – price effects

The Commission considers that there appears to be reasonable grounds to preliminarily find that the Australian industry has experienced price undercutting and price suppression.

7.6 Profit effects

Figure 6 below illustrates the profits and profitability for WTC's sales of power transformers, including 2013-14. Profits and profitability followed similar trends. They followed an upward trend from 2008-09 to 2011-12 but fell in both 2012-13 and 2013-14. Profits and profitability in 2012-13 and 2014-14 were negative.

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7.6.1 Conclusion – profit effects

The Commission considers that there appears to be reasonable grounds to preliminary find that the Australian industry's profits and profitability have fallen.

7.7 Other economic factors

Assets

The value of assets in the production of power transformers has risen since 2008-09. This is due to a major plant expansion undertaken by WTC. The effect of this expansion was to provide an increase in the production capacity for power transformers at the Glen Waverley production plant by 40%.

Capital investment

Capital investment increased significantly in 2009-10 as a result of a major plant expansion, but has steadily fallen since.

Research and development (R&D) expenditure

R&D expenditure was relatively stable throughout the period examined. Slight increases occurred in 2008-09 and 2009-10 in line with the plant expansion.

Revenue

Revenue fell slightly in 2009-10, rose in 2010-11 and fell each year to 2012-13.

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Return on investment

Return on income, measured as earnings before interest and tax over total assets, rose in 2009-10, but fell each year to 2012-13.

Capacity

Capacity, measured in MVA, has steadily risen since 2008-09 following the plant expansion. Capacity in 2012-13 was over 40% higher than in 2008-09.

Capacity utilisation

Capacity utilisation rose slightly in 2009-10 but has fallen each year to 2012-13. The Commission is satisfied that the reduced number and value of orders received is likely to result in significant underutilised production capability from 2012-13 onwards.

Employment

WTC's employment rose between 2008-09 and 2009-10 but has fallen since, with employment in 2012-13 the lowest in five years.

Productivity

Productivity remained relatively stable from 2008-09 to 2012-13.

Wages

WTC's wages bill increased from 2008-09 to 2011-12 and remained stable in 2012-13. The Commission considers that this is indicative of a rise in average wages rather than an increase in employment.

7.8 Conclusion

The Commission is satisfied that the Australian industry has experienced injury in the form of:

- loss of sales volume;
- reduced market share;
- price undercutting;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment;
- reduced revenues;
- reduced capacity utilisation; and
- reduced employment.

8 HAS DUMPING CAUSED MATERIAL INJURY

8.1 Preliminary finding

The Commission preliminarily found that exports of power transformers at dumped prices from certain exporters in Indonesia, Taiwan, Thailand and Vietnam have caused material injury to the Australian industry.

8.2 Submissions

A number of interested parties submitted that price is not the sole determinant of a decision by a purchaser to acquire a power transformer, rather the decision involves a complex matrix of issues. They claimed that the vast majority of purchasers make their decisions based on the total evaluated cost, after accounting for energy losses. Purchasers also consider product specifications, delivery terms, lead times, prior performance, quality, reliability, technical support and warranty.

Origin submitted that WTC must prove that for each project that it tendered for between July 2011 and June 2013 it would have been awarded the contract in the absence of dumping.

Origin also submitted that there is not a link between a party missing out on a tender and the time of importation of goods. The importation usually will occur between one and three years after the contract is awarded and any injury would pre-date the importation of goods.

Interested parties referred to the purchase of power solutions or turn-key projects, which include components such as switchgear, transmission lines, power generators and power plant construction. They claimed that WTC can only supply the power transformers, while other suppliers can provide the entire power solution. Hyosung submitted that power transformers are crucial components of these projects.

Toshiba International referred to negotiation techniques in the tender evaluation process. It submitted that BAFO negotiations are an accepted negotiating technique in Australia and provided the following reference from the Australian National Audit Office website:

... In most instances, only selected bidders may be invited to participate in subsequent bids, or may be asked to submit their best technical and financial proposal, commonly referred to as a Best and Final Offer (BAFO). Subsequent changes can be referred to as the Best and Revised Final Offer (BARFO)...

Toshiba International submitted that if WTC participates in BAFO negotiations any unfavourable outcome is unrelated to material injury caused by dumping.

Toshiba International also referred to a High Court statement in the context of trade practices law that competition is healthy and necessary.

Toshiba International considers WTC's exports have been adversely affected by the international contraction in demand and considers that this factor must be examined in the determination of causation.

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8.3 The Commission's assessment

The Commission visited a number of purchasers during the investigation and noted that a number of issues were considered before awarding a contract. The tender evaluation process varies between purchasers. Some purchasers initially evaluate a tender without considering price and determine a short list of suitable suppliers. The purchaser then negotiates with short listed suppliers on terms and conditions and pricing. Other purchasers give a weighting to the evaluation criteria and determine an overall weighting for each tender.

The Commission reviewed tender evaluation reports and noted that in one example technical and financial considerations were given equal weightings, but it was common for price to be the primary determinant of the decision to purchase a power transformer. It observed two examples where the contract was not awarded to the lowest price tenderer. In one case the tender did not meet the technical specifications and in the other case the ranking of the lowest price tender was affected by a number of factors, including a low technical evaluation score and low proportion of Australian content.

The Commission recognises that factors other than price affect purchasing decisions for power transformers, but is satisfied that price is a key determinant of the decision to purchase a power transformer.

The Commission does not consider that it must establish that WTC would have, in the absence of dumping, won every contract tendered for during the investigation period. Power transformers are expensive items of capital equipment and large units may cost millions of dollars. The Commission considers that the loss of a sale for one power transformer due to dumping could cause material injury to the Australian industry. Where there are several or many lost sales due to dumping, the Commission considers the injury caused by that dumping is likely to be material.

The Commission recognises that there may be a considerable period between the signing of a contract and importation of the power transformer. One of the reasons for selecting a three year investigation period was to enable the Commission to properly assess whether dumped power transformers caused material injury.

The Commission recognises that some contracts may be for the supply of a total power solution that includes components that WTC do not manufacture. However, it considers that where the power transformer component was imported at dumped prices it may cause material injury to the Australian industry producing power transformers. The Commission was provided evidence that demonstrated that WTC has been competitive with its price for the supply of power transformers in the context of larger power solutions.

The Commission is aware that the negotiating technique referred to as BAFO is common in Australia during the tender evaluation process. Similarly it notes statements that competition is healthy and necessary. However, the Commission considers if the BAFO process results in power transformers being imported at dumped prices those importations may cause material injury to the Australian industry.

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The Commission, in assessing injury to the Australian industry, has excluded the effects of WTC's economic performance in relation to its export sales.

Figure 7 below illustrates the Australian market for power transformers, identifying sales by the Australian industry, sales of dumped imports and sales of undumped imports.

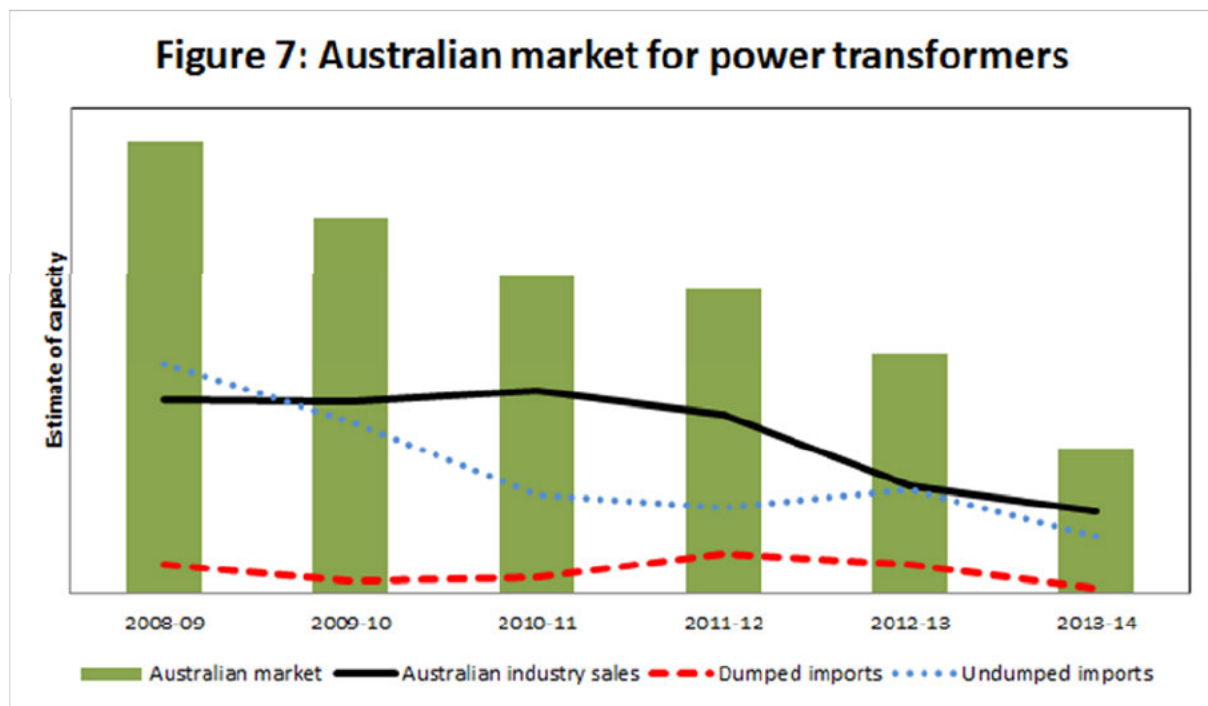
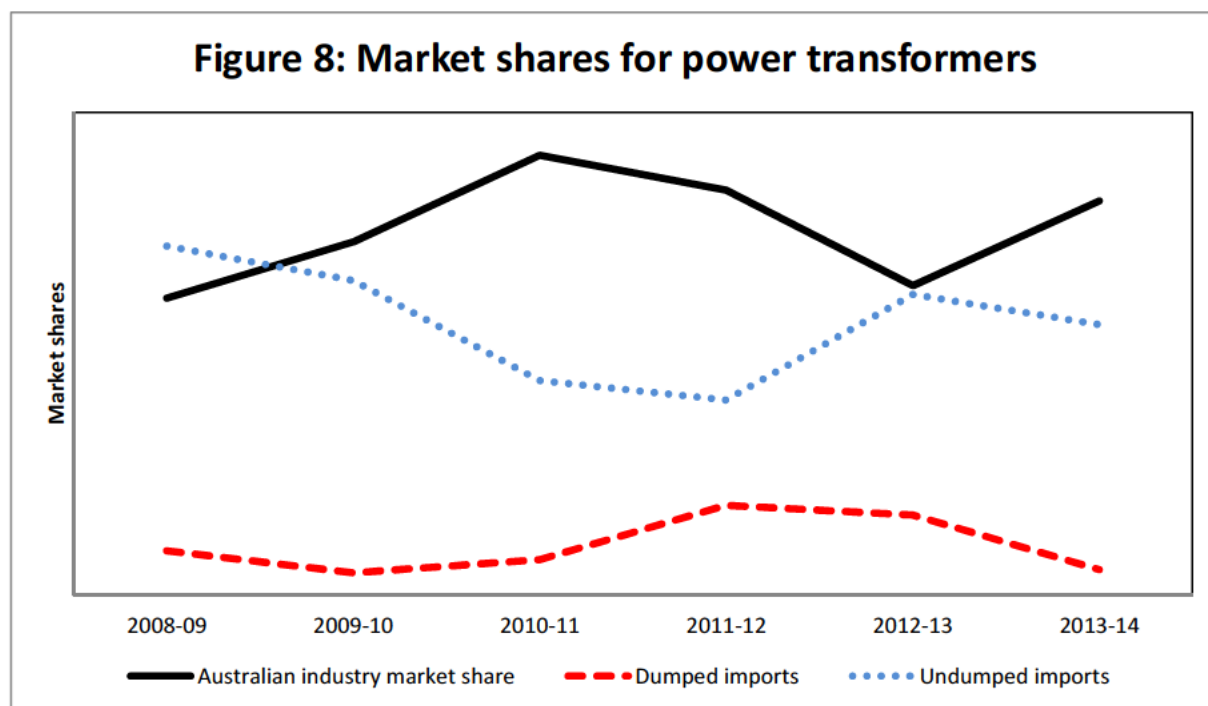


Figure 8 below illustrates market shares for the Australian industry, dumped imports and undumped imports.



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The Australian industry's sales volume fell each year during the investigation period. The sales volume of dumped imports rose 2011-12 but fell in 2012-13. The sales volume of undumped imports was stable between 2010-11 and 2011-12 and rose in 2012-13, despite the fall in the size of the Australian market. Movements in market shares followed a similar trend.

The Commission considers that undumped imports may be causing injury to the Australian industry and recognises that this injury cannot be attributed to dumping. However, it is satisfied that the volume of dumped imports is sufficient to cause material injury to the Australian industry. The Commission notes a 2012 direction by the then Minister for Home Affairs stated that:

I understand that the law does not prevent judging the materiality of injury caused by a given degree of dumping or subsidisation differently, depending on the current economic condition of the Australian industry suffering the injury. In considering the circumstances of each case I direct that you consider that an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation

The Commission considers that as a result of the fall in demand and the fall in the size of the Australian market, the facts in this case warrant considering material injury to the Australian industry at a time when it is weakened by other events.

The Commission found that certain exporters from Indonesia, Taiwan, Thailand and Vietnam exported power transformers to Australia in the investigation period at dumped prices, where the dumping margins ranged from 3.6% to 39.1%. The volume of the dumped goods entering the Australian market in the investigation period was significant. The Commission established that price is a key consideration for Australian purchasers of power transformers when making their purchasing decisions. Importantly, dumping allowed exporters and importers to quote prices in the price sensitive Australian market that were more competitive than they otherwise would have been. The Commission found evidence that the dumped goods undercut the prices of the Australian industry and it considers the availability and secured sales of dumped goods also caused the Australian industry to experience a significant degree of price suppression. As a consequence, the Australian industry experienced reductions in revenues, profits and profitability. The Commission considers the injury caused to the Australian industry by goods exported at dumped prices during the investigation period was material.

8.4 Cumulation of injury

Subsection 269TAE(2C) sets out the requirements for assessing the cumulative material injury effects of exports of goods to Australia from different countries. Where exports from more than one country are simultaneously the subject of an anti-dumping investigation, the Parliamentary Secretary may cumulatively assess the effects of such imports if:

- the margin of dumping established for exporters in each country is not negligible; and
- the volume of imports from each country is not negligible; and

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- cumulative assessment is appropriate in light of the conditions of competition as between the imported goods and between the imported goods and the like domestic goods.

As discussed in section 6, the margin of dumping for exporters in Indonesia, Taiwan, Thailand and Vietnam ranges from 3.6% to 39.1% and is not negligible. The volume of imports from each country is not negligible.

The conditions of competition between imported power transformers and between imported and domestically produced power transformers are similar. The Commission has established that exporters and WTC are both selling goods into the same markets, or alternatively that domestically produced power transformers can be substituted with imported power transformers.

The Commission is satisfied that domestic and imported power transformers are like goods and have similar end-uses. WTC and exporters compete for the same request for tenders. The Commission considers the conditions of competition are such that it is appropriate to consider the cumulative injurious effect of the dumped imports from Indonesia, Taiwan, Thailand and Vietnam.

8.5 Other possible causes of injury

Interested parties submitted that manufacturing costs have increased because of increased labour costs and the effect of the depreciation of the Australian dollar. The Commission recognises that labour costs in the nominated countries are lower than in Australia, but notes that labour costs represent a relatively small percentage of the total cost to produce power transformers. The Commission notes that electrical steel and copper conductor are the largest cost components of power transformers. It found that during the investigation period prices for these components were generally expressed in US dollars and that exchange rate movements affect the price paid by the Australian industry in Australian dollars. The Commission notes that exchange rate movements also affect the price charged by exporters in Australian dollars for finished power transformers. The Commission is satisfied that labour costs and the effect of exchange rate movements do not detract from the Commission's findings that dumped imports have caused material injury to the Australian industry.

Interested parties submitted that WTC's economic performance has been affected by the fall in the size of the Australian market. The Commission recognises that the Australian market for power transformers has fallen, but notes that the Australian industry's market share fell at a greater rate than the fall in the overall market size for power transformers between 2010-11 and 2012-13. The Commission is therefore satisfied that factors other than the fall in the size of the market have affected WTC's economic performance. The Commission notes that the Australian industry's market share rose in 2013-14, but it also notes that the size of the Australian market fell further. The Commission also considers that the Australian market in 2013-14 may have been affected by this investigation in that supply of imported power transformer units may be being held over pending an outcome from the investigation.

WTC undertook a major plant expansion increasing in the production capacity for power transformers at the Glen Waverley production plant by 40%. Interested parties claimed that the Commission should examine whether this expansion caused

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injury to WTC. The Commission noted that WTC's corporate and financial costs have increased each year since 2008-09, but found that even if these additional costs were removed from the financial analysis undertaken, the Commission would still have found that WTC suffered injury in the form of price and profit effects.

The Commission noted an example in a 2009 tender evaluation report where the delivery time offered by WTC was double that offered by the successful tenderer. It notes that this occurred before the expansion of WTC's plant and before the fall in the Australian market. The Commission does not consider that this is a relevant issue following completion of the expansion.

The Commission noted an occasion where the Australian industry lost sales because it did not finalise contract negotiations with the purchaser. It considers that this was an isolated issue and does not detract from its overall injury findings.

The Commission notes that undumped imports may have contributed to the injury suffered by the Australian industry. However, as outlined above, the Commission considers that the loss of one sale due to dumping could cause material injury to the Australian industry.

8.6 Conclusion

The Commission preliminarily assessed that exports of power transformers at dumped prices from certain exporters in Indonesia, Taiwan, Thailand and Vietnam have caused material injury to the Australian industry.

9 WILL DUMPING AND MATERIAL INJURY CONTINUE

9.1 Preliminary finding

The Commission has preliminarily found that exports of power transformers from certain exporters in Indonesia, Taiwan, Thailand and Vietnam in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

9.2 Dumping

The Commission's dumping analysis found that power transformers exported from Indonesia, Taiwan, Thailand and Vietnam during the investigation period were at dumped prices, with dumping margins ranging from 3.6% to 39.1%.

The Commission understands that tender contracts continue to be assessed by customers and that exporters of the dumped goods continue to submit tender offers for the supply of those contracts. The Commission notes that exporters of power transformers at dumped prices collectively account for a significant share of the Australian market. It is reasonable to expect that some or many of these exporters will continue to export at dumped prices to remain competitive in the price sensitive Australian market. The Commission therefore considers that exports at dumped prices from Indonesia, Taiwan, Thailand and Vietnam will continue if anti-dumping measures are not imposed.

9.3 Material injury

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that power transformers exported from Indonesia, Taiwan, Thailand and Vietnam at dumped prices have caused material injury to the Australian industry.

The Commission considers that it is reasonable to expect that those exporters found to be dumping would continue to bid for, and at times win, contracts for the supply of power transformers in Australia at prices that are dumped and therefore more competitive than they would be if undumped. It considers that the continuation of price competition from dumped imports from Indonesia, Taiwan, Thailand and Vietnam is likely to have a continuing adverse impact on the Australian industry.

The Commission is satisfied that exports of power transformers from certain exporters in Indonesia, Taiwan, Thailand and Vietnam in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

10 NON-INJURIOUS PRICE

10.1 Preliminary finding

The Commission has preliminarily found that the NIP for power transformers exported to Australia should be set by reference to the corresponding normal values during the investigation period.

10.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. 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. This lesser duty provision is contained in the WTO Anti-Dumping Agreement and s. 8(6) of the *Customs Tariff (Anti-Dumping) Act 1975*.

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is defined in s. 269TACA and is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation. Anti-dumping measures are based on FOB prices and therefore NIPs are also calculated in FOB terms.

10.3 Unsuppressed selling price

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The Commission's preferred approach to establishing the USP observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of undumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

10.4 The Commission's assessment

The Commission considers that power transformers are complex items of capital equipment built to the specifications of the customer, where it is unlikely that any two power transformers are identical. Accordingly, neither sales nor constructed USPs are considered an appropriate method for calculating NIPs for power transformers. In the absence of reliable information to establish a USP using one of the primary methods outlined above, the Commission considers that it is appropriate to recommend that NIPs for power transformers exported to Australia be set by reference to the corresponding normal values during the investigation period.

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11 PROPOSED MEASURES

Based on the preliminary findings in this SEF, and subject to any submissions received in response to this SEF, the Commissioner proposes to:

- recommend to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) to publish a dumping duty notice in respect of power transformers exported from Indonesia, Taiwan, Thailand and Vietnam;
- terminate the investigation in so far as it relates to certain exporters in China, Indonesia and Korea that did not export power transformers to Australia at dumped prices; and
- terminate the investigation in so far as it relates to China and Korea.

The Commissioner proposes to recommend that the dumping duties be calculated in accordance with the ad valorem duty method; that is as a proportion of the export price.

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12 ATTACHMENTS

Non confidential attachment 1	Submission on public record
Confidential attachment 2	Alternative dumping margin calculation for Siemens Guangzhou, Siemens Jinan, and Siemens Wuhan
Confidential attachment 3	Alternative dumping margin calculation for ABB Thailand
Confidential attachment 4	Alternative dumping margin calculation for ABB Vietnam

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Non confidential attachment 1

The following submissions are on the public record.

- Taipei Economic and Cultural Office, 20 August 2013;
- WTC, 30 August 2013;
- Hyosung, 11 September 2013;
- Siemens Australia, 24 September 2013;
- Origin Energy Resources Limited (Origin), 10 October 2013;
- Hyosung, 17 October 2013;
- WTC, 12 November 2013;
- WTC, 12 November 2013;
- Rio Tinto, 4 December 2013;
- Shihlin, 5 December 2013;
- WTC, 11 December 2013;
- TBEA Shenyang Transformer Group Co., Ltd (TBEA), 12 December 2013;
- Hyosung, 16 January 2014;
- Alstom Australia, 20 January 2014;
- Alstom Australia, 4 February 2014;
- Toshiba International, 11 February 2014;
- ABB Australia, 18 February 2014;
- Hyosung, 21 February 2014;
- Siemens Australia, 21 February 2014;
- Siemens Australia, 28 February 2014;
- Siemens Australia, 11 March 2014;
- Alstom Australia, 17 March 2014;
- TBEA, 12 May 2014;
- TBEA, 12 May 2014;
- Hyosung, 16 May 2014;
- Shihlin, 19 May 2014;
- Siemens Australia, 30 May 2014;
- Alstom Australia, 10 June 2014;
- Hyundai, 10 June 2014;
- TBEA, 10 June 2014;
- Hyosung, 10 June 2014;
- Siemens Australia, 10 June 2014;
- WTC, 10 June 2014;
- Toshiba International, 10 June 2014;
- Fortune, 10 June 2012;
- ABB Australia, 10 June 2014;
- China Chamber of Commerce for Import & Export of Machinery & Electronic Products (China Chamber of Commerce), 12 June 2014;
- the Government of China, 24 June 2014;
- the Government of China, 7 July 2014;
- Powercor, 9 July 2014;
- WTC, 24 July 2014;
- Siemens Australia, 4 August 2014;
- WTC, 15 August 2014;

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- Toshiba International, 18 August 2014;
- WTC, 20 August 2014;
- Corrs Chambers Westgarth on behalf of a number of interested parties, 21 August 2014;
- Fortune, 21 August 2014;
- Siemens, 22 August 2014;
- WTC, 22 August 2014;
- Siemens Australia, 26 August 2014;
- ABB Thailand, 27 August 2014;
- CG Power, 29 August 2014; and
- ABB Thailand, 4 September 2014

The Commission also received submissions commenting on certain matters in exporter visit reports.