



**CUSTOMS ACT 1901 - PART XVB**

**REPORT 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**

**2 December 2014**

# PUBLIC RECORD

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### ABBREVIATIONS & SHORTENED FORMS

ABB Australia	ABB Australia Pty Ltd
ABB Chongqing	ABB Chongqing Transformer Co., Ltd
ABB Group	ABB Australia, ABB Chongqing, ABB Thailand, ABB Vietnam and ABB Zhongshan
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 Systems 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
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FCM	full cost modelling
FOB	free-on-board
Fortune	Fortune Electric Co. Ltd
GAAP	generally accepted accounting principles
Hyosung	Hyosung Corporation
Hyundai	Hyundai Heavy Industries Co., Ltd
Hyundai Australia	Hyundai Australia Pty Ltd
IAS	International Accounting Standards
Indonesia	Republic of Indonesia
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

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

<b>1 SUMMARY AND RECOMMENDATIONS</b>
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## **1.1 Introduction**

This investigation by the Anti-Dumping Commission (Commission) is in response to an application by Wilson Transformer Company Pty Ltd (WTC) alleging 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 the subject of the application is set out in chapter 3 of this report.

This report sets out the findings of the Commissioner of the Anti-Dumping Commission (Commissioner) and related recommendations by the Commissioner to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in relation to the application<sup>1</sup>.

## **1.2 Recommendation**

The Commissioner recommends the Parliamentary Secretary publish a dumping duty notice in respect of power transformers exported to Australia from Indonesia (except goods exported by PT Unelec Indonesia (UNINDO)), Taiwan, Thailand and Vietnam.

If the Parliamentary Secretary accepts these recommendations, the Parliamentary Secretary must sign Schedule 1 and the relevant notices under s. 269TG(1) and s. 269TG(2) of the *Customs Act 1901*<sup>2</sup> and s. 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) to give effect to the decision.

## **1.3 Application of law to facts**

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.

## **1.4 Application and investigation**

### **1.4.1 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

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<sup>1</sup> The Minister for Industry delegated responsibility for anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation

<sup>2</sup> 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.

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by a person entitled to make the application and that there appeared to be reasonable 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.

### **1.4.2 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 and the volume of dumped imports were found to be negligible at the time of making the PAD.

### **1.4.3 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 to the Parliamentary Secretary in relation to the application.

The initiation notice advised that the statement of essential facts (SEF) for the investigation would be placed on the public record by 18 November 2013. There have since been four extensions granted by the Parliamentary Secretary, with the last extension amending the due date for publication of the SEF to 22 September 2014. The SEF was placed on the public record on 18 September 2014.

### **1.4.4 Termination report 219**

On 1 December 2014, in accordance with s.269TDA(1) the Commissioner terminated the investigation so far as it related to ABB Chongqing, ABB Zhongshan, Toshiba CTC, CHINT, Jiangsu, UNINDO and Hyundai on the basis of finding that dumping margins were negligible. In accordance with s.269TDA(3), the Commissioner terminated the investigation so far as it related 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.

A notice regarding the terminations was published in *The Australian* newspaper on 1 December 2014. Anti-Dumping Notice (ADN) 2014/130 also relates to the termination.

### **1.4.5 Report 219**

In formulating the final report the Commissioner must have regard to the application; any submissions concerning the publication of a dumping duty notice to which the Commissioner has had regard to for the purpose of formulating SEF No. 219; SEF 219; and any submission in response to the SEF No. 219 received by the

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Commission within 20 days of the publication of the SEF. The Commissioner may also have regard to any other matters considered relevant.

### 1.5 Findings and conclusions

The Commissioner's findings and conclusions as set out in this report are based on available information considered during the course of the investigation.

#### 1.5.1 The goods and like goods (chapter 3 of this report)

Locally produced power transformers are like goods to the goods the subject of the application.

#### 1.5.2 Australian industry (chapter 4 of this report)

There is an Australian industry producing like goods to the goods the subject of the application.

#### 1.5.3 Australian market (chapter 5 of this report)

The Australian market is supplied by WTC, other Australian producers and imports from a number of countries.

#### 1.5.4 Dumping (chapter 6 of this report)

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

**Figure 1: Dumping margins**

Country	Exporter	Dumping margin
China	ABB Chongqing Transformer Co., Ltd (ABB Chongqing)	-2.7%
	ABB Zhongshan Transformer Co., Ltd (ABB Zhongshan)	-2.7%
	Changzhou Toshiba Transformer Co., Ltd (Toshiba CTC)	-4.2%
	CHINT Electric Co., Ltd (CHINT)	< -5%
	Jiangsu Huapeng Transformer Co., Ltd (Jiangsu)	< -5%
	Siemens Transformer (Guangzhou) Co., Ltd (Siemens Guangzhou)	5.5%
	Siemens Transformer (Jinan) Co., Ltd (Siemens Jinan)	5.5%
	Siemens Transformer (Wuhan) Co., Ltd (Siemens Wuhan)	5.5%
	All other exporters	5.5%
Indonesia	PT CG Power Systems Indonesia (CG Power)	8.7%
	UNINDO	-4.2%
	All other exporters except UNINDO	8.7%
Korea	Hyosung Corporation (Hyosung)	12.3%
	Hyundai Heavy Industries Co., Ltd (Hyundai)	-8.2%
	All other exporters except Hyundai	12.3%



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Taiwan	Fortune Electric Co., Ltd (Fortune)	15.2%
	Shihlin Electric & Engineering Corp (Shihlin)	21.0%
	Tatung Company (Tatung)	37.2%
	All other exporters	37.2%
Thailand	ABB Limited, Thailand (ABB Thailand)	3.6%
	Tirathai Public Company Limited (Tirathai)	39.1%
	All other exporters	39.1%
Vietnam	ABB Limited, Vietnam (ABB Vietnam)	3.8%
	All other exporters	3.8%

In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it related to ABB Chongqing, ABB Zhongshan, Toshiba CTC, CHINT, Jiangsu, UNINDO and Hyundai on the basis of finding that dumping margins were negligible. In accordance with s. 269TDA(3), the Commissioner terminated the investigation so far as it related 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.

### 1.5.5 Injury assessment (chapter 7 of this report)

The Commission 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.

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

The Commission 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.

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

The Commission 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.

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### 1.5.8 Non injurious price (chapter 10 of this report)

The Commission 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.

### 1.5.9 Recommended measures (chapter 11 of this report)

The Commissioner recommends that dumping duties be calculated using the *ad valorem* duty method in accordance with Regulation 5(7) of the *Customs Tariff (Anti-Dumping) Regulations 2013*; that is as a proportion of the export price, as outlined in Figure 2 below.

**Figure 2: Proposed interim dumping duty**

Country	Exporter	Effective rate of duty
Indonesia	CG Power	8.7%
	All other exporters except UNINDO	8.7%
Taiwan	Fortune	15.2%
	Shihlin	21.0%
	Tatung	37.2%
	All other exporters	37.2%
Thailand	ABB Thailand	3.6%
	Tirathai	39.1%
	All other exporters	39.1%
Vietnam	ABB Vietnam	3.8%
	All other exporters	3.8%

Any dumping securities that have been taken on and from 27 November 2013 and have not lapsed may be converted to interim dumping duty. Clarification about how anti-dumping measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at <http://www.adcommission.gov.au>.

## **2 BACKGROUND**

### **2.1 Initiation**

Following consideration of the application lodged by WTC, 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 No. 219 was placed on the public record for the investigation and sets out the Commissioner's consideration of the application.

Anti-Dumping Notice (ADN) No. 2013/64 provides further details of the investigation and is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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 dated 29 July 2013 advised that the SEF for the investigation would be placed on the public record by 18 November 2013.

On 6 November 2013, ADN No. 2013/89 advised of the decision by the Minister for Industry to extend the deadline for publication of the SEF until 18 March 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 and the volume of dumped imports were found to be negligible at the time of making the PAD.

On 18 March 2014, ADN No. 2014/23 advised of the decision by the Parliamentary Secretary to extend the deadline for publication of the SEF until 16 July 2014.

On 27 May 2014, the Commission published Issues Paper No. 2014/01 inviting interested parties to comment on certain 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 Issues Paper No. 2014/01 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;

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- calculation of a credit adjustment for differences between domestic and export sales; and
- exchange rates used for converting currencies in dumping margin calculations.

These issues are discussed in more detail in Sections 3.5 and 6.5 of this report.

On 14 July 2014, ADN No. 2014/56 advised of the decision by the Parliamentary Secretary to extend the deadline for publication of the SEF until 8 September 2014.

On 15 August 2014, the Commission placed a note for file on the public record advising interested parties 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). This method compares the weighted average normal value to transaction export price. The Commission noted that it recognised that dumping margin assessments calculated under s. 269TACB(3) may vary significantly from dumping margin assessments that had previously been calculated under s. 269TACB(2).

On 8 September 2014, ADN No. 2014/84 advised of the decision by the Parliamentary Secretary to extend the deadline for publication of the SEF until 22 September 2014. The SEF was placed on the public record on 18 September 2014.

On 30 October 2014, ADN No. 2014/116 advised of the decision by the Parliamentary Secretary to extend the due date for providing him the final report to 2 December 2014. This extension was required so that the Commission could finalise its analysis using the alternative approach under s. 269TACB(3) to determine dumping margins. Also, it would ensure the final report provides a comprehensive account of all aspects the investigation.

On 1 December 2014, the Commissioner terminated the investigation in so far as it related to goods exported by certain exporters in China, Indonesia and Korea and in so far as it related to all exporters in China and Korea.

### **2.3 Report to the Parliamentary Secretary**

This report to the Parliamentary Secretary had regard to:

- the application;
- any submissions concerning the publication of the dumping duty notice to which the Commissioner has had regard to for the purpose of formulating SEF No. 219;
- SEF No. 219;
- any submission in response to the SEF No. 219 received by the Commission within 20 days of the publication of the SEF; and
- any other matters considered relevant.

The Commissioner is not obliged to have regard to any submission made in response to the SEF that is received after the end of the 20 day period if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Parliamentary Secretary. In this case, given the several extensions to the

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investigation that occurred, the Commissioner had regard to all submissions made in response to the SEF.

### **2.3.1 Submissions to the investigation**

Interested parties made numerous submissions to the investigation. Submissions received prior to publication of the SEF are listed at **Attachment 1**. The Commission has considered the issues raised in these submissions. All relevant issues are discussed in the appropriate sections of this report.

### **2.3.2 Submissions in response to the SEF**

The Commission received submissions from the following entities in response to SEF No. 219 which were taken into account in preparing this report:

- ABB Australia Pty Ltd (ABB Australia), ABB Chongqing, ABB Thailand, ABB Vietnam and ABB Zhongshan (collectively referred to as the ABB Group);
- Government of Indonesia;
- Toshiba International Corp Pty Ltd (Toshiba International);
- Shihlin;
- importers represented by Gadens;
- CG Power;
- WTC;
- Alstom Grid Australia (Alsom Australia);
- Fortune;
- ABB Vietnam;
- ABB Thailand; and
- Siemens Ltd, Australia (Siemens Australia), Siemens Guangzhou, Siemens Guangzhou and Siemens Guangzhou (collectively referred to as the Siemens Group).

### **2.3.3 Public record**

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. Documents are available online at <http://www.adcommission.gov.au/cases/EPR219.asp> or on request in hard copy in Canberra. Documents on the public record should be read in conjunction with this report.

### **3 THE GOODS AND LIKE GOODS**

#### **3.1 Finding**

The Commissioner found that locally produced power transformers are like goods to power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam that are the subject of the application.

#### **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. In the case of non-identical goods, the industry must produce goods that are like to the imported goods in accordance with the definition of like goods under s. 269T(1) set out above. 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 the subject of the application referred to in this report as 'power transformers' 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.*

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 the subject of the application.

### 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 Commission found that some power transformers were incorrectly classified to 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 also notes that a power transformer imported as part of a substation may be imported under tariff concession order number TC 1045898 using classification 8537.20.90.

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. Instead 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

#### Incomplete power transformers

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 of this report 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.

Rio Tinto did not make a further submission following publication of SEF No. 219.



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The Commission is aware that there are other producers of power transformers in Australia. Also, the Commission is aware that, until recently, certain multinational suppliers produced power transformers in Australia and the Commission 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 and includes incomplete power transformers. However, the Commission found no evidence that incomplete power transformers were imported during the investigation period.

### Scope of the goods

Alstom Australia submitted that the description of the goods is so broad that it is almost meaningless and unworkable. Toshiba International submitted that there are many variations of possible power transformers within the nominated range and that WTC 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 stated in the SEF that it is satisfied that WTC has the ability to manufacture power transformers within the range defined by the description of the goods.

The following comments were made in response to the SEF.

- Toshiba International stated that it submitted in February 2014 that WTC does not manufacture power transformers at the upper level of the range nominated by WTC, namely over 330 kV and 250 MVA. It claims this was not addressed in the SEF.
- The importers represented by Gadens share the view of other interested parties that the description of the goods is so broad as to almost render it meaningless and unworkable especially given that WTC did not, and could not, manufacture the full range of those goods during the investigation period.
- Alstom Australia again submitted that the description of the goods is so broad as to almost render it meaningless and unworkable especially given that WTC did not, and could not, manufacture the full range of those goods during the investigation period.

The Commission notes that WTC's application described how power transformers worked and the role of power transformers in the transmission of electricity.

- Transmission lines transmit electricity at very high voltages but at reduced current (amperage). The higher the amperage the greater the size of the conductor needed to carry the current, resulting in increased costs and power losses. Power transformers are used to increase the voltage and proportionately reduce the amperage so that large quantities of electricity can be transported efficiently with minimal power losses.
- All power transformers use the principle of electromagnetic induction. When electricity is flowing through a conductor, it creates an electromagnetic field around it. When an electromagnetic field moves across an electrical conductor, it induces a voltage in the conductor. Electricity flows into one



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conductor (input), creating a magnetic field which induces a voltage in a second conductor (output). Thus, transformers change electrical current to an electromagnetic force and back to electrical current again.

- Power transformers consist of a core of electrical steel, around which primary input and secondary output windings of a conductor (typically copper) are wound. (In auto power transformers, the same winding acts as both the primary and secondary winding, but the principles are the same.) If the primary winding has more turns than the secondary winding, it will decrease the output voltage but increase the output current proportionately. If the primary winding has fewer turns than the secondary winding, it will increase the output voltage but lower the current proportionately.
- Power is typically generated at 5 to 30 kV, but transmission normally occurs at 66 to 500 kV. Power transformers that increase the output voltage from the generator for long distance transmission are known as step-up transformers and can have very large power ratings, often 100 to 600 MVA.
- Power transformers may also connect two high voltage transmission systems or may take the high transmission voltages and convert them to lower voltages suitable for distribution systems (step-down transformers). These power transformers also have large power and voltage ratings.
- Power transformers with lower power ratings are used in the distribution system and may be located in country towns or suburban areas.

The Commission observed the production of power transformers during visits to WTC and exporters and discussed production processes with interested parties. It is satisfied that any producer, including WTC, can design and manufacture power transformers to satisfy the many and varied requirements of purchasers within the range nominated in the application.

The Commission notes that some of the submissions from interested parties on this issue had referred to documents from WTC's website that had not been updated. The Commission also notes that WTC tendered for power transformers in the upper level of the range nominated in the application. The Commission also observed that for larger power transformers material handling capabilities become important and is satisfied that WTC has the necessary facilities to manufacture power transformers at the upper level of the range nominated in the application. In a recent submission WTC advised that it had manufactured and successfully tested a 550 MVA 330/132 kV power transformer, which has a greater voltage rating than the power transformers that are the goods the subject of the application.

The Commissioner has considered the responses to the SEF and is satisfied that the description of the goods is not so broad as to be meaningless. The Commissioner is also satisfied that WTC has the ability to manufacture like goods to the power transformers the subject of the application, including power transformers within the entire range defined by the description of the goods.

### Distribution transformers

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

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investigation. One of those issues was 'the goods and like goods', where the particular issue of discussion had a focus on distribution transformers.

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).*

Issues Paper No. 2014/01 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 No. 2014/01, 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 consumer;
- 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 producer might call them that, they are distribution transformers because of their unique features and purposes.

The following comments were made in response to the SEF.

- The ABB Group submitted that the definition of distribution transformers, being transformers that are expressly excluded from the goods under consideration, is not merely a function of their capacity. The definition of a distribution transformer is composed of a number of technical facts as to what a distribution transformer is, and cannot be dictated by capacity or by the production capabilities of the Australian industry or indeed of any other producer.
- Alstom Australia and the importers represented by Gadens note the extent of the uncertainty regarding whether the investigation applies to distribution transformers and the nature of those transformers. While they agree with the observations by the Commission at Section 3.5 of the SEF regarding the characteristics of distribution transformers and that they are not like goods,

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they believe that this confusion further emphasises the problems associated with the breadth of the description of the goods.

The Commission considers that there is no generally accepted definition of distribution transformers. For example, Hyosung stated it defines distribution transformers as those transformers having a capacity up to 66 kV. The Commission notes that in Australia the distribution transformers and the power transformers are supplied to different markets. In Australia distribution transformers typically have a power rating of less than 1 MVA. 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.

The Commission is satisfied 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 consumer; and
- are produced using different production process – WTC manufactures distribution transformers in a different production facility.

The Commission has considered the responses to the SEF as well as all earlier submissions and is satisfied that distribution transformers are not like goods to power transformers the subject of the application. The Commission decided to treat all power transformers with a power rating of equal to or greater than 10 MVA and a voltage rating of less than 500 kV as the goods the subject of the investigation.

### 3.6 Like goods

#### 3.6.1 WTC's claims

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

#### 3.6.2 The Commission's assessment

##### Physical likeness

Power transformers are individually designed and engineered to meet the purchaser'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.

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### Commercial likeness

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

### 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 has treated 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 Finding**

The Commissioner found that:

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

### **4.2 Legislative framework**

The Commissioner must be 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.

There are currently two other Australian producers 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.

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 previously manufactured power transformers in Australia. In 2001, ABB Australia closed its large power transformer production facility (greater than

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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 of power transformers 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 engineered to order and manufactured to the specifications of the purchaser. 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.

**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

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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 manufactured by WTC meet the requirements of s. 269T(2) and s. 269T(3).



## 5 AUSTRALIAN MARKET

### 5.1 Finding

The Commissioner 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 consumers across Eastern Victoria. United Energy distributes electricity to consumers 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 consumers 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.

### Retailers

Retailers buy electricity from distributors and sell it to consumers. 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 of electricity such as heavy industry and resource projects often require power transformers, other end users of electricity 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 purchaser 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 purchaser 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 purchasers. Overseas suppliers may deal directly with purchasers but some have an Australian office that handles contract negotiations. These offices prepare tenders in consultation with the suppliers. 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.

The Commission attempted to contact all identified importers and purchasers of power transformers, but many did not respond to the Commission's correspondence. However, the Commission spoke to and visited a number of purchasers of power transformers during the investigation. Purchasers evaluate and rank tenders received and the evaluation process varies from purchaser to purchaser. Some purchasers provided general comments about the tender evaluation process, such as the ability to meet specifications, commercial requirements, price, and other qualitative and quantitative criteria.

Once the evaluation is complete the purchaser 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 purchaser will sign a contract with, or issue a purchase order to, the supplier. For period contracts the purchaser 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 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 Consumers. It claimed that there was also reluctance from purchasers, particularly utilities, to purchase power transformers from foreign producers 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 purchasers became more willing to purchase power transformers from foreign producers. Alstom Australia also attributed this increased willingness to the rise in the Australian dollar, a greater local presence of foreign producers, a reduction in tariffs in respect of Indonesia and Vietnam and a diversification of purchaser requirements.

Alstom Australia submitted that prior to 2008-09, capacity utilisation was very high. This led to Alstom Australia deciding to increase capacity and likely caused WTC to expand capacity as well. After the capacity increases occurred, demand fell and the Australian dollar gained in value making foreign producers more competitive. Alstom Australia stated that 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.

Importers and exporters visited during the investigation also claimed that the size of the Australian market had fallen.

- 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

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- ENERGEX stated that demand for electricity in South East Queensland has been experiencing a downturn.

In response to the SEF interested parties confirmed their views that demand had fallen.

- Toshiba International referred to the contraction in demand.
- The importers represented by Gadens stated that a significant cause of the fall in the Australian market is a large decrease in demand for electricity and other sources of demand for power transformers such as has occurred in heavy industry and major resources projects.
- WTC referred to the exceptionally low demand for power transformers in the current Australian market.
- Alstom Australia stated that a significant cause of the fall in the Australian market is a large decrease in demand for electricity.
- The ABB Group submitted that the Commission has not properly evaluated the implications of the over-expenditure on power transformers by utilities in the lead up to the investigation period and the major contractions in demand that have followed.

The Commission has considered the responses to the SEF and previous submissions made. It considers that the size of the Australian market for power transformers is influenced by movements in the demand for electricity. The Commission found 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. The problem of how best to measure volume is illustrated in the following example. If a producer has an annual capacity of 10,000 MVA, it could manufacture 20 500 MVA power transformers or 400 25 MVA power transformers using similar production time frames and factory resources.

The Commission reviewed the websites of a number of exporters visited during the investigation and noted that they referred to the power rating and voltage rating of power transformers that they can manufacture. Further, some producers, such as ABB Chongqing, CG Power, Hyundai and WTC, referred to annual capacity or output in terms of MVA and not the number of power transformers manufactured.

The Commission decided that capacity (measured using the power rating) rather than number of units is the most appropriate measure of volume. ACBPS' import database only records value and quantity. The quantity figures that are recorded are not meaningful for a number of reasons. For example, a single power transformer may be imported in different shipments or brokers may enter the number of packages rather than the number of power transformers.

The Commission does not have power ratings for exports from the nominated countries outside the investigation period, for exports from other countries or for

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sales by other Australian producers. The Commission has relied on value as the best available measure of volume and the size of the Australian market.

The Commission has considered the responses to the SEF and previous submissions made. It 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 transformers exceeding 0.65 MVA but not exceeding 10 MVA);
- 8504.23.00 (dielectric power transformers exceeding 10 MVA);
- 8504.33.00 (other power transformers exceeding 0.016 MVA but not exceeding 0.5 MVA); and
- 8504.34.00 (other power transformers exceeding 0.5 MVA).

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

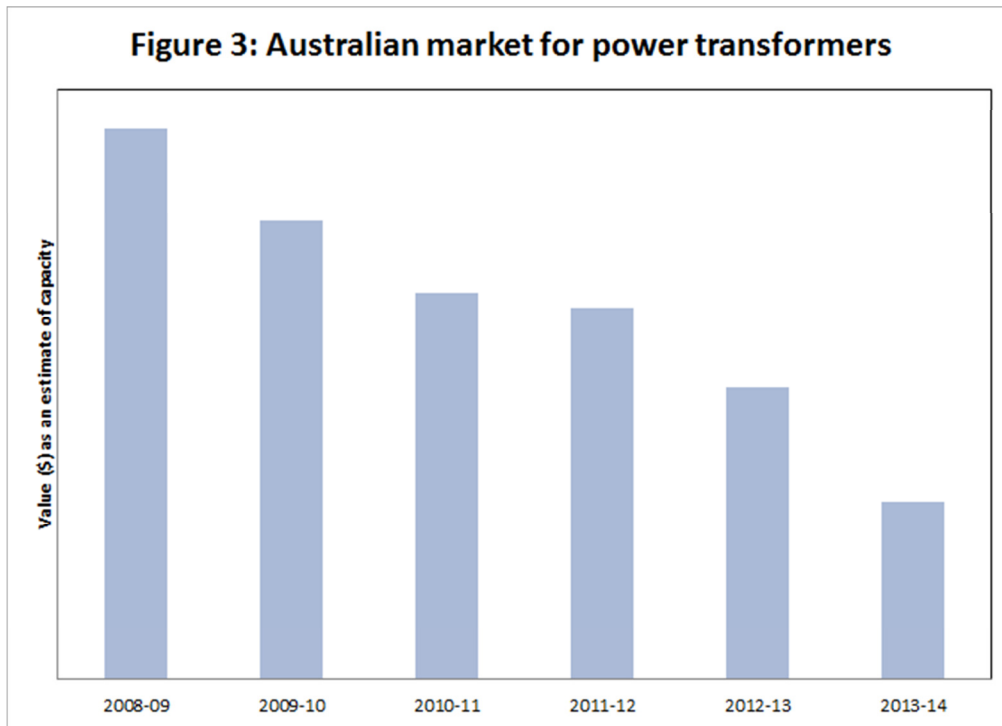
- where the unit free-on-board (FOB) value was less than \$150,000; and
- where the description indicated that they were not the goods.

The Commission's estimate of the size of the Australian market from 2008-09<sup>3</sup> to 2013-14 is illustrated in Figure 3 below.

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

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## 6 DUMPING INVESTIGATION

### 6.1 Findings

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

Figure 4: Dumping margins

Country	Exporter	Dumping margin
China	ABB Chongqing	-2.7%
	ABB Zhongshan	-2.7%
	Toshiba CTC	-4.2%
	CHINT	< -5%
	Jiangsu	< -5%
	Siemens Guangzhou	5.5%
	Siemens Jinan	5.5%
	Siemens Wuhan	5.5%
	All other exporters	5.5%
Indonesia	CG Power	8.7%
	UNINDO	-4.2%
	All other exporters	8.7%
Korea	Hyosung	12.3%
	Hyundai	-8.2%
	All other exporters	12.3%
Taiwan	Fortune	15.2%
	Shihlin	21.0%
	Tatung	37.2%
	All other exporters	37.2%
Thailand	ABB Thailand	3.6%
	Tirathai	39.1%
	All other exporters	39.1%
Vietnam	ABB Vietnam	3.8%
	All other exporters	3.8%

On 1 December 2014, in accordance with s.269TDA(1), the Commissioner terminated the investigation so far as it related to ABB Chongqing, ABB Zhongshan, Toshiba CTC, CHINT, Jiangsu, UNINDO and Hyundai on the basis of finding that dumping margins were negligible. In accordance with s.269TDA(3), the Commissioner terminated the investigation so far as it related 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 respectively.

Usually, the normal value reflects the price paid for like goods sold in the ordinary course of trade in the domestic market of the country of export. However, when like goods are not sold in that market, or the price paid in that market cannot, for some reason, be relied upon, s. 269TAC gives several alternate methods by which normal values may be obtained, depending on 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 using the cost to make and sell the goods in the country of export, and s. 269TAC(2)(d) provides for the normal value to use 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. The *transaction to transaction* method is provided for at s. 269TACB(2)(b) and requires that each export transaction price be compared to each corresponding normal value. 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<sup>4</sup>.

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 of this report.

This chapter explains the 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

There are domestic sales of power transformers in the domestic markets of the countries subject to the investigation. However, while electrical steel and copper

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<sup>4</sup> Anti-Dumping Commission *Dumping and Subsidy Manual* (December 2013), p115.



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conductor are the most significant cost components of power transformers, many other variables affect price. For example, depending on whether the power transformer is single or three phase, the design costs, lead times and ancillary options (such as tap changers) can significantly affect price. The Commission considers that because of these many variables it is unable to meaningfully adjust relevant domestic prices of power transformers to make them comparable with export prices. Subsection 269TAC(2)(c) allows for the constructed method when there is an absence of relevant sales or because of the situation in the market the sales are not suitable. The Commission has constructed normal values because of the lack of relevant domestic sales.

Interested parties, including WTC and exporters, agree with this approach. For example, 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.*

No interested party made any submissions in response to the SEF regarding the Commission's decision to construct normal values.

### 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;

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- 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 Shenyang Transformer Group Co., Ltd (TBEA);
- Tirathai;
- Toshiba CTC;
- Changzhou Toshiba Shudian Transformer Co., Ltd (Toshiba CTS);
- UNINDO;
- XD Jinan Transformer Co., Ltd (Jinan); and
- 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 for the purposes of the investigation. Accordingly, the Commissioner considers that CG Power is an uncooperative exporter as defined under s. 269T(1).

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.

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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 for Import & Export of Machinery & Electronic Products (China Chamber of Commerce);
- Fortune;
- Government of China;
- Hyosung;
- Hyundai;
- Siemens Group;
- TBEA;
- Toshiba International; and
- WTC.

A further important consideration in relation to the investigation was identified following the publication of Issues Paper No. 2014/01 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

Issues Paper No. 2014/01 proposed that the Commission 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 report.

#### 6.5.2 Shipments used for dumping calculations

Issues Paper No. 2014/01 proposed that the Commission 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 versus 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):*

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- *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, but did seek to ensure exporters provided sufficient information in response to the exporter questionnaire. An example is the date of sale which can 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<sup>5</sup>. It stated that as far as it was aware, some of the transactions used in the dumping margin calculations for wind towers 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 submitted that the Commission's position is inconsistent with Australia's obligations under the World Trade Organization Agreement on Implementation of Article VI of the GATT (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 that case.

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<sup>5</sup> Investigation No. 221

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No interested party made any submissions in response to the SEF regarding the date of sale and the date of export.

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 determined on a different date.

Accordingly, the Commission has determined the date of export as that date which best represents the physical movement of the goods in the act of exportation. In practical terms, the Commission decided this is the date shown on the bill of lading, as proposed in Issues Paper No. 2014/01. The Commission has 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 affect 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 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 SEF 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 after the investigation period but before the SEF is placed on the public record, and none in the investigation period, then the exporter is not eligible for an accelerated review.

The Commission notes that affected parties have rights under Divisions 4 and 5 of Part XVB. Division 4 enables a reconciliation of interim duty paid by an importer 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 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 based on using the bill of lading date as the date of export.

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No interested party made any submissions in response to the SEF regarding the Commission's decision to calculate dumping margins for power transformers only in relation to power transformers exported to Australia during the investigation period.

### 6.5.3 Profit for constructed normal value

Issues Paper No. 2014/01 proposed that the Commission 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, Fortune, Hyosung and the Siemens Group supported the use of Regulation 181A(3)(a) to determine the profit to be included in constructed normal values.

- 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.
- The Siemens Group 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). The Siemens Group submitted that the determination of profit with reference to the same general category of goods is appropriate in the circumstances.

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.

In its submission of 24 July 2014 WTC stated it strongly disagrees with the use of Regulation 181A(3)(a).

- WTC submitted that the Commission has taken a very narrow 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:
  - 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



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- 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.
  - 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. It stated in its submission that:

*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 Issues Paper No. 2014/01 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.

The Siemens Group responded to the submission by WTC.

- The Siemens Group 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. The Siemens Group submitted that in the case of power transformers this assessment cannot be undertaken with any degree of reliability.

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- The Siemens Group 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.

In a supplementary submission on 15 August 2014, WTC referred to a US Department of Commerce investigation into power transformers. It assessed recoverability, for the purpose of assessing whether domestic sales were in the ordinary course of trade, by comparing weighted average unit selling prices with weighted average unit costs. WTC considered that averaging prices and costs for power transformers can be misleading and distortive because of the unique nature of power transformers. It 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. WTC proposed that domestic sales should not be used to calculate the profit used in constructed normal values where:

- 20% or more of the sales of a model are at prices less than the costs; 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.

The Siemens Group, in response to WTC's supplementary submission, 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 following comments were made in response to the SEF.

- Shihlin submitted that the profit margin on sales to Taiwan's domestic utility customers should be used instead of the profit margin for all domestic sales in constructing normal values:
  - most of Shihlin's Australian sales were of power transformers of less than 50 MVA, while in the domestic market power transformers of that MVA range were mostly sold to non-utility customers;
  - utility and non-utility sales have different profit levels - fewer than 25% of non-utility transactions have profit margins comparable to utility sales, while a large majority of non-utility sales enjoy much higher profits; and
  - to use the profit margin for all domestic sales in the calculation of the constructed normal value will inflate the constructed normal value and will not allow a fair comparison between the constructed normal value and the export price.
- WTC submitted that the Commission's inclusion of all exporters' domestic sales of the same general category of goods (including sales at a loss) using regulation 181A(3)(a) in determining the amount of profit to be included in constructed normal values provides inadequate protection against future



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injury from dumped imports. It submitted that it would be more appropriate to use regulation 181A(2) to determine the amount of profit to be included in constructed normal values using data relating to the production and sale of like goods sold in the ordinary course of trade.

- WTC provided an analysis of publically available financial results for five Chinese producers of power transformers, which all showed falling trends of sales and profits, with very low or negative profits in 2012. WTC considers that it is highly likely that all of these suppliers have domestic sales at a loss.
- WTC noted that in the case of Toshiba CTC, zero profit has been included in the constructed normal value, but considers that it is likely that there were domestic sales sold at a profit.
- WTC notes that in determining the amount of profit using Regulation 181A(3)(a) the Commission has relied solely upon its consideration that the recovery required by s. 269TAAD(3) cannot be conducted meaningfully and that it could not be determined whether domestic sales of like goods by exporters were in the ordinary course of trade. WTC considers that:
  - it is open for the Commission to consider sales of like goods by exporters at or above their fully absorbed cost to be in the ordinary course of trade and those at below fully absorbed cost to not be in the ordinary course of trade;
  - Regulation 181A(3) can only be used for the determination of the amount of profit to be included in constructed normal values if it is not reasonably possible to work out an amount in accordance with Regulation 181A(2); and
  - in this case, it is reasonably possible to determine whether domestic sales are in the ordinary course of trade and to use those sales to calculate the amount of profit to be included in constructed normal values.
- Fortune supported the use of Regulation 181A(3)(a) to calculate the profit to be included in constructed normal values, but it does not agree with how the Commission has calculated amount of profit. Fortune has previously submitted that certain sales should be excluded from the same general category of goods:
  - domestic sales of power transformers with a capacity greater than 100 MVA; and
  - domestic sales to Taiwan Power Company.
- The Siemens Group agreed with the calculation of profit for constructed normal value in accordance with regulation 181A(3)(a).
- The Siemens Group made a further submission in response to WTC's submission. The Siemens Group:
  - supports the Commission's decision to determine profit for the purposes of s. 269TAC(2)(c) in accordance with Regulation 181A(3)(a);
  - believes that the Commission's decision is justified by reason of:
    - the unique nature of the goods under consideration;
    - the matters outlined in Issues Paper No. 2014/01; and
    - SEF No. 219.

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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, the Commission 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 purchaser where it is unlikely that any two power transformers are identical. Therefore, as each power transformer is unique the weighted average cost of goods contemplated in s.269TAAD(3) cannot be meaningfully calculated. Consequently, because the recovery test cannot be conducted meaningfully the ordinary course of trade test cannot be fulfilled.

The Commission stated in Issues Paper No. 2014/01 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 close proximity. This assumption was based on the Commission's visits to the Australian industry and exporters.

The Commission reviewed the examples provided by WTC in its supplementary submission. The methodology proposed by WTC does not adequately provide for the recovery test and 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 and 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 Issues Paper No. 2014/01. The method 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 No. 2014/01, 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

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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 No. 2014/01. The ordinary course of trade provisions at s. 269TAA(3) are 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. 269TAA(3). In the case of power transformers, each unit is uniquely constructed and the costs and prices can differ significantly from one unit 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 has not established normal values on the basis of domestic selling prices using s. 269TAA(1). Furthermore, the Commission considers that a “weighted average cost” of goods contemplated in s. 269TAA(3) is not meaningful for power transformers. Consequently, the recovery test cannot be conducted 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 has determined 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.

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.

The Commission considers that in determining 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 it must use all sales and cannot exclude sales of power transformers of certain power ratings or sales to particular customers as submitted by Fortune and Shihlin.

### **6.5.4 Calculation of credit adjustment**

Issues Paper No. 2014/01 proposed that the Commission 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. The Siemens Group supported the Commission’s

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proposal, in so far as a credit adjustment is required to enable a reasonable comparison between export prices and domestic prices.

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.

The Siemens Group disagrees with both models submitted by WTC and submitted that the revised methodology proposed in Issues Paper No. 2014/01 best achieves a reasonable comparison between constructed normal values and export prices.

In response to the SEF, the Siemens Group stated it agreed with the calculation of the credit adjustment explained in the SEF.

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 the WTC suggested 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 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 purchaser has not been invoiced and/or the purchaser has no liability to make any payments.

The Commission has adopted the position it proposed in Issues Paper No. 2014/01. 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 Commissioner

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used the actual credit terms. This means that the first approach suggested by WTC has already been accommodated by the Commission's preferred approach.

### 6.5.5 Exchange rates for converting currencies

Issues Paper No. 2014/01 proposed that the Commission, in converting prices for exported power transformers into local currency, use 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 generally accepted accounting principles (GAAP) and International Accounting Standards (IAS) 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.

In response to the SEF, Fortune again referred the Commission to the GAAP and IAS applied by Fortune and submitted that the Commission should use the spot rate on the date of revenue recognition. Fortune considers that if the Commission maintains this position, an adjustment to the cost to make and sell will be required to adjust for difference between exchange gains and losses based on the date when the material terms of the export sale were finalised compared to the date of revenue recognition.

The Commission accepts that Fortune may use the spot rate on the date of revenue recognition when converting foreign currencies, but this is a different issue to determining the date that that best establishes the material terms of sale. Both parties to a sales transaction agree on the price when the contract is signed or the purchase order is accepted. It is open to Fortune to enter into a foreign exchange contract at that time to ensure the agreed price in the foreign currency will be reflected in Fortune's accounts when the revenue is eventually recognised. 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 has adopted the position it proposed in Issues Paper No. 2014/01. The Commission considers that the material terms of sale are established when the contract is signed or the purchase order accepted and has used the exchange rate at the contract date or purchase order date, unless it is satisfied that an alternative exchange rate should be used (such as the rate established in a foreign exchange



contract). The Commission considers that an adjustment to the cost to make and sell to account for exchange gains and losses is not warranted.

### 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. In any investigation it is common to find various types or models of the goods the subject of the application. In these circumstances, the Commission's approach is to aggregate the results of the model comparisons into a single overall *product dumping margin* for the exporter. It is only in rare circumstances that the Commission deviates from the *weighted average to weighted average* method.

The Commission will, for example, 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 methodology applied by the Commission for the majority of exporters of power transformers. Consistent with the WTO Appellate Body decision in *Softwood Lumber, WT/DS264/AB/RW, August 2006*, when using the *transaction to transaction* method, the Commission will aggregate the transaction specific comparisons for all export prices and all corresponding normal values in order to calculate the overall *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 treated the WTC submission as 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's analysis of the verified exporter data had identified significant fluctuations in the dumping margins calculated using the *transaction to transaction* methodology. As the Commission neared completion of its exporter verification exercises, it considered that such observations were 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 examined whether it was more appropriate to use the *weighted average to transaction* method to work out whether dumping had occurred.

## 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:*

*(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*

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*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.*

### **6.6.2 Submissions in response to the Commission file note**

WTC supported the use of s. 269TACB(3) in the case of power transformers exported to Australia. Its main concern was the considerable differences in costs and prices for power transformers sold in 'package' or 'turnkey' projects, which includes the power transformer itself and a range of 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 DS322 <sup>6</sup>:

*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.

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<sup>6</sup> 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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Toshiba considered there was perceived procedural unfairness arising from the proposed approach. It submitted that the Commission did not advise how it proposed 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. 269TACB(3) it should ensure that there is clear evidence for using that provision.

Corrs Chambers Westgarth, 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;
- 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, 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.

The Siemens Group 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.

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

The Siemens Group also submitted that:

- Issues Paper No. 2014/01 clarified the final outstanding issues of contention that were raised throughout the exporter verification process;

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- 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 did not provide guidance as to why the threshold criteria for s. 269TACB(3) are enlivened or how the Commission proposed 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 purchaser.

### 6.6.3 Exporters for which the Commission proposed to determine dumping margins using subsection 269TACB(3)

After analysing the export prices for all exporters that cooperated with the investigation, the Commission found that the following exporters exhibited export prices that differed significantly among different purchasers, regions or periods:

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

#### ABB Thailand

In accordance with the proposal outlined in the Commission's file note of 15 August 2014, the Commission wrote to ABB Thailand on 20 and 29 August 2014 advising that it was considering whether dumping margins should be determined for that exporter using s. 269TACB(3). The Commission invited ABB Thailand to comment on why export prices differed significantly among purchasers and it invited a submission on the issue of whether it is appropriate to use s. 269TACB(3) for dumping margin calculations.

In response, ABB Thailand made submissions on 27 August 2014 and 4 September 2014. The Commission considers that some of the points raised by ABB Thailand may be incorporated in this section of the report, while others are more appropriately addressed in **Confidential Attachment 7** to this report. The confidential attachment is summarised in the dumping margin section for ABB Thailand.

In its letter of 27 August 2014, ABB Thailand submitted that:

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- 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 its letter of 4 September 2014, ABB Thailand 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.

After considering the submissions of ABB Thailand, the Commission wrote to ABB Thailand again on 17 September 2014. In that letter, the Commission outlined the analysis it had undertaken and it provided reasons for why it proposed to rely upon a dumping margin calculation using s. 269TACB(3) instead of a method using s. 269TACB(2). The Commission provided ABB Thailand the revised dumping calculations and explained that this changed the dumping margin assessment for ABB Thailand to positive 3.6%. The Commission allowed ABB Thailand 21 days to respond, which aligned with the due date for responses generally to the SEF.

### ABB Vietnam

In accordance with the proposal outlined in the Commission's file note of 15 August 2014, the Commission wrote to ABB Vietnam on 17 September 2014. In that letter, the Commission outlined the analysis it had undertaken and it provided

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reasons for why it proposed to rely upon a dumping margin calculation using s. 269TACB(3) instead of a method using s. 269TACB(2). The Commission provided ABB Vietnam the revised dumping calculations and explained that this changed the dumping margin assessment for ABB Vietnam to positive 3.8%. The Commission allowed ABB Vietnam 21 days to respond, which aligned with the due date for responses generally to the SEF.

### Siemens Guangzhou, Siemens Jinan and Siemens Wuhan

In accordance with the proposal outlined in the Commission's file note of 15 August 2014, the Commission wrote to Siemens Guangzhou, Siemens Jinan and Siemens Wuhan on 17 September 2014. In that letter, the Commission outlined the analysis it had undertaken and it provided reasons for why it proposed to rely upon a dumping margin calculation using s. 269TACB(3) instead of a method using s. 269TACB(2). The Commission explained that this changed the dumping margin assessment for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan to positive 5.5%. The Commission also provided Siemens Guangzhou, Siemens Jinan and Siemens Wuhan the revised dumping calculations. The Commission allowed Siemens Guangzhou, Siemens Jinan and Siemens Wuhan 21 days to respond to the letter and confidential attachments, which aligned with the due date for responses generally to the SEF.

Notwithstanding the revised dumping margin calculation for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan, in accordance with s. 269TDA(3), the Commissioner has terminated the investigation so far as it related to China because of the finding that the total volume of goods exported at dumped prices from China was negligible. See Termination Report 219 (TER 219) on the Commission website.

#### **6.6.4 The Commission's approach in the SEF**

The SEF explained the Commission's findings that for certain exporters the export prices differed significantly among different purchasers, regions or periods. The SEF findings were made in relation to the export prices of ABB Thailand, ABB Vietnam, Siemens Guangzhou, Siemens Jinan and Siemens Wuhan.

The SEF also outlined the Commission's reasons for the findings that it was inappropriate to use s. 269TACB(2) to determine dumping margins for those exporters.

Furthermore, the SEF outlined the Commission's approach to the calculation of dumping margins when using the *weighted average to transaction* methodology under s. 269TACB(3).

The Commission explained in the SEF that in moving from a *transaction to transaction* approach to a *weighted average to transaction* approach to calculating dumping margins, the dumping margin assessments changed. The revised dumping margins and reasons for using the *weighted average to transaction* methodology were published in the SEF. Details of the revised dumping margins were also provided to the relevant exporters, ABB Thailand, ABB Vietnam, Siemens Guangzhou, Siemens Jinan and Siemens Wuhan on 17 September 2014. Each of these exporters was given 21 days to respond to the Commission's calculations and

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the reasons for using the *weighted average to transaction* approach. That 21 day period coincided with the due date for responses to the SEF.

### 6.6.5 Responses to the SEF

#### Submissions in response to the SEF

- The Siemens Group, 8 October 2014;
- ABB Vietnam, 9 October 2014;
- ABB Thailand, 9 October 2014;
- ABB Thailand, 13 October 2014;
- ABB Thailand and ABB Vietnam, 11 November 2014;
- ABB Thailand and ABB Vietnam, 18 November 2014; and
- The Siemens Group, 20 November 2014.

#### Summary of submissions in response to the SEF

This section of the report outlines the general points made in submissions by interested parties concerning the use of s. 269TACB(3) to determine dumping margins. Where the submissions related to the circumstances of a particular entity, or entities, and/or involved confidential information, those submissions are discussed in summary form in the relevant sections of the dumping chapter of this report. The confidential attachments of this report contain more detailed information.

ABB Thailand and ABB Vietnam made the following points in joint submissions:

- the Commission has practised zeroing despite the law not permitting zeroing and the WTO Dispute Settlement Body rejection of zeroing – the most recent rejection of zeroing by a WTO panel was in *United States – Anti-Dumping Measures on Certain Shrimp from Vietnam* (WT/DS429/R, 17 November 2014);
- the ABB companies have been denied procedural fairness;
- subsection 269TACB(3) can have no application to ABB Thailand because ABB Thailand only had one purchaser, namely ABB Australia;
- the end users were not the purchasers with whom ABB Thailand or ABB Vietnam negotiated export price, they are remote to those export prices and did not pay those export prices, and they are customers of ABB Australia under separate and distinct contracts;
- ABB Australia's sales were separate arms length transactions;
- end users buy power transformers, installation and services – not power transformers – and they have no beneficial ownership in the power transformers prior to the time at which legal title is transferred;
- export prices for ABB Thailand and ABB Vietnam do not differ significantly in a way that would render the methods of working out whether dumping has occurred [under s. 269TACB(2)] inappropriate;
- the transaction to transaction methodology is appropriate for calculating dumping margins; and
- the Commission has not used a transaction to weighted average normal value methodology. It has used the transaction to transaction methodology,

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and has merely labelled it as a transaction to weighted average normal value methodology.

In separate and additional letters, ABB Thailand also submitted:

- the Commission's export price to CTMS ratio is not an appropriate measure of price behaviour, and its approach ignores cost past the FOB point;
- the correct manner to compare export price and cost to make and sell would involve a comparison of estimated cost to contract pricing; and
- a comparison of "*ABB Thailand's full up revenue against its full up cost for each individual transformer*" shows the price behaviour of ABB Thailand [ABB Thailand's "full up" costs and revenues included all costs and all revenue for the sale concerned from the exporter's perspective, including those elements past the FOB point].

In a further separate letter, ABB Vietnam submitted:

- the Commission's export price to CTMS ratio does not represent ABB Vietnam's appreciation of the CTMS at the time the price is set; and
- the proper gauge of ABB Vietnam's mindset when considering the price is the estimated cost to make and sell the goods, which is represented by its full cost modelling (FCM).

The Siemens Group reaffirmed its view that there is no proper basis to apply s. 269TACB(3) and it made the following submissions:

- the Siemens Group was denied procedural fairness;
- the SEF suggests that the Commission has an unalterable view on the issue and will not be persuaded;
- the Commission has misunderstood, incorrectly interpreted, and misapplied the legislation;
- export price cannot be easily compared and any difference would result in a misinterpretation of the data-set;
- the 'export price/CTMS ratio' is a test with no basis in the Act and is separate and distinct from the export price of the goods;
- the Commission has not provided any real explanation as to why the export price differences asserted to exist make the use of s. 269TACB(2) inappropriate;
- an amalgamation exercise is required to determine a single margin of dumping and the Dumping and Subsidy Manual suggests an identical process for such amalgamation under s. 269TACB(2) and (3);
- nothing in the Act or the Dumping and Subsidy Manual suggest the amalgamation involves only those transactions found to have positive dumping margins;
- the Commission relies upon silence in the Act to justify 'zeroing' and such reliance is wrong in law;
- the Commission has provided no guidance or further explanation as to the source of the jurisprudence when stating its approach 'is consistent with WTO jurisprudence';



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- the common theme in the WTO Appellate Body is that zeroing is unfair and created an undue inflation of dumping margins; and
- the WTO appellate body jurisprudence is overwhelming – zeroing is inconsistent with the text of the Anti-Dumping Agreement and thereby inconsistent with a proper application of s. 269TACB(3)(b).

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

#### Procedural fairness

The Commission has provided adequate procedural fairness to affected exporters in relation to its consideration of using s. 269TACB(3) to calculate dumping margins for power transformers. The Commission accepts that these matters were raised relatively late in an extended investigation. It also recognises that this issue provided 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 during the course of the investigation, especially when the potential consequences are significant. As discussed earlier, the issue of whether to consider using the *weighted average to transaction* methodology followed (i) an allegation of targeted dumping; and (ii) the Commission's analysis of verified exporter data that identified significant fluctuations in the dumping margins calculated using the transaction to transaction methodology.

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 the SEF, the Commission provided advance notice to interested parties of the Commission's considerations concerning dumping methodology 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 the 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 the SEF to invite comment on the Commission's observations.

In all cases, the exporters were provided with a minimum of 21 days to respond to the Commission's reasons for using the *weighted average to transaction* approach, and to the detailed calculations that underpinned the dumping margin assessments.

The Commission also presented preliminary findings in the SEF in relation to its assessment of whether to use the *weighted average to transaction* method to determine dumping. Interested parties were provided 20 days after publication of the SEF to lodge submissions in response to that statement. The Commission has had regard to all of the submissions made in response to the SEF.



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In the case of ABB Thailand and ABB Vietnam, representatives for these exporters met with the Commission on 30 October 2014 to clarify elements of their submissions in response to the SEF. These entities also provided (on 29 October 2014) copies of all final quotation FCMs (documents detailing the budgeted costs and revenues) for all Australian export transactions in the investigation period. They also provided a further submission and evidence on 11 November 2014 that addressed questions arising from the 30 October 2014 meeting.

The Commission does not accept the Siemens Group view that the SEF suggested the Commission had an unalterable view on this issue. The Commission had advised interested parties from initiation of an investigation that the purpose of the SEF is to set out the essential facts on which the Commissioner proposes to base a recommendation to the Minister. That statement invites interested parties to respond to the issues raised within 20 days of the statement being placed on the public record. The Siemens Group took the opportunity to make a submission in response to the SEF on the issue that included arguments with respect to the legal, policy and practical considerations pertaining to whether to assess dumping margins using s. 269TACB(3). The Commission has had regard to all submissions made in this investigation in formulating this final report and recommendations.

### Addressing the elements of subsection 269TACB(3)

In deciding to use s. 269TACB(3) the Commission considered the terms of that subsection. 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.

Each power transformer is uniquely constructed, which makes it more difficult to compare export prices between purchasers, regions or periods for each transaction than if, for example, the goods were homogenous. In these circumstances, the 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 understanding the differences between export prices for power transformers when deciding if the methods under s. 269TACB(2) are inappropriate for use.

In the SEF, the Commission stated that it considered that this approach is reasonable for analysing export price patterns because the estimated cost to make

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and sell the goods was clearly a consideration for producers when pricing the goods. The Commission did not say, as claimed by ABB Thailand, that:

*...the approach that should be used is one which considers the “estimated cost to make and sell the goods” in terms of the exporter’s consideration “when pricing the goods” [emphasis added]*

It is important to note that the Commission’s analysis of the ratios of export price to cost to make and sell would also reveal whether an exporter’s export prices were different simply because of differences in the exporter’s costs from one unit to another. If this was the case, it would be reflected in reasonably consistent ratios among different purchasers, regions or periods.

The Commission is of the view that the *actual* export price and *actual* cost to make and sell data are the most appropriate values for the purpose of establishing the ratios. Further, the Commission considers it is reasonable to calculate the ratios with reference to values established at the FOB point. This is consistent with the usual practice for measurement of export price under s. 269TAB and for dumping margin assessments under s. 269TACB. The Commission’s analysis is therefore focused on the export price of the goods as it is unaffected by the ratio of revenue to cost for post exportation expenses such as overseas freight charges.

The Commission therefore measured the ratios of actual export price with actual 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 ensured that the comparisons of the export price and the full cost to make and sell data were 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. Discussion of these exporter-specific assessments is contained in the relevant dumping margin section of this report and in the associated confidential attachments to this report.

Having identified those export prices for ABB Thailand, ABB Vietnam, Siemens Guangzhou, Siemens Jinan and Siemens Wuhan that differed significantly among different purchasers, region or periods, the Commission then considered whether it is inappropriate to use the methods for working out whether dumping has occurred in terms of s. 269TACB(2). The Commission has taken account of its export price analyses, its assessments in the SEF, and the submissions from all parties in response to the SEF.

The Commission considered whether the export prices that differ significantly among purchasers, regions or periods had been ‘masked’, that is 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.

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In certain circumstances, the Commission may determine 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 determine that it is inappropriate to use s. 269TACB(2) for working out any dumping.

In this case, the *weighted average to weighted average* methodology is not appropriate because of the nature of the products that have significantly variable export prices and normal values prices among different power transformers. The *transaction to transaction* methodology is not appropriate because the significantly different export prices, including export prices that differed significantly among different purchasers, regions or periods, are masked when the range of dumping margins are amalgamated into one product dumping margin for each exporter. The dumping margin of the goods found to be at export prices that differed significantly were significant, and the volume of those goods exported at dumped prices was material.

In the SEF the Commission stated that, in the case of power transformers, it 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. It also stated that 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.

Some interested parties contested the view that the loss of a sale for a single power transformer due to dumping may be sufficient to cause material injury. The Commission has not changed its view expressed in the SEF, but it is not an issue needing resolution in the present factual situation. This is because the total number of power transformers found to be at export prices that differ significantly was not limited to a single power transformer. This can be said of each of the analyses for ABB Thailand, ABB Vietnam, Siemens Guangzhou, Siemens Jinan or Siemens Wuhan.

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.<sup>7</sup>*

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

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<sup>7</sup> ABB Australia – importer visit report – Electronic public record, document 95, p. 12

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*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.<sup>8</sup>*

The Commission has also gathered evidence relating to the negotiation process and information exchange that occurs between ABB Thailand and ABB Australia with respect to sales and supply of power transformers to Australian purchasers. This confidential information (discussed in Confidential Attachment 7) has been taken into account when determining which parties have been treated by the Commission as the purchasers for the purpose of s. 269TACB(3)(a).

It is also clear that each power transformer is designed, produced and sold to the Australian end user in accordance with the specific requirements of that end user.

The Commission therefore considers it is 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.

### 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 (actuals figures, not estimates), calculated for all power transformers exported in the investigation period. These were measured at FOB delivery terms.

The analysis indicated that the significant differences in export prices among purchasers, regions or periods resulted in the methods under s.269TACB(2) being inappropriate for use to calculate dumping margins for the following five exporters:

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

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

The Commission therefore used 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 report. The Commission's overviews of its exporter-specific analyses and findings are outlined in each of the relevant sections of this report dealing with dumping margins.

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<sup>8</sup> ABB Australia – importer visit report – Electronic public record, document 95, p. 11

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### Dumping margin calculations using the weighted average to transaction method

Where the Commission is satisfied as to the elements set out in s. 269TACB(3)(a) and (b), it has calculated 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 the weighted average of *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. That is, in 'weighting', the Commission has properly taken account of the importance of each relevant and corresponding normal value by applying a weighting factor of 1.

To establish the weighted average of corresponding normal values, the Commission used the same constructed normal values that had been determined to compare to the export price in the *transaction to transaction* method. The resulting weighted average corresponding normal value (based on a weighting factor of 1) is therefore the same as the corresponding normal value used in the *transaction to transaction* method.

This approach is not at odds with the view expressed earlier 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 normal values, the weighted average required is for corresponding normal values. The weighted average corresponding normal values used in the *weighted average to transaction* method are meaningful for the purposes of dumping margin calculations in relation to power transformers.

The Commission considers its approach is a reasonable and practical application of the legislative provisions. If the provisions were interpreted otherwise it means that if an investigation involves products that are unique in each transaction it would render the *weighted average to transaction* methodology in s. 269TACB(3) without purpose when it is clear that exporters can, in relation to any type of goods, have practices which result in export prices that differ significantly among different purchasers, regions or periods.

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, which in this case is taken to be the investigation period. This view represents



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a departure from the Commission's file note of 15 August 2014, where the Commission indicated that it may base the dumping margin on particular export transactions while setting aside the results for other export transactions.

However, the Commission considers that s. 269TACB(6) prescribes the manner of determining a dumping margin in relation to circumstances where a comparison is made under s. 269TACB(3), and only in relation to the particular transactions with export prices that are less than the weighted average of corresponding normal values. Subsection 269TACB(6)(a) provides that the goods exported to Australia in each such transaction are taken to have been dumped. It also provides at s. 269TACB(6)(b) 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 the particular transactions where the individual export price is less than the weighted average of corresponding normal values. Subsection 269TACB(6) is silent on how to treat the goods exported to Australia in other transactions. In these circumstances, the Commission considers when it is using the method under s. 269TACB(3) and (6) it must 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 these provisions 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' or 'masked' dumping that can cause material injury. The Commission considers that this approach is available under Australian law and that it is consistent with WTO jurisprudence.

The Siemens Group is of the view that the Commission relied upon the fact the Act is silent in relation to the treatment of goods found not to be dumped to justify 'zeroing'. This is not the case. The Commission identified 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 the corresponding normal values. The Commission has therefore summed the positive dumping margins in accordance with that provision.

The Commission must then decide how to express that total dumping amount as a percentage of export value. There would appear to be only two logical choices in this respect for each exporter. The total dumping amount might be expressed as a percentage of the export value of only those transactions that were at dumped prices; or the total dumping amount might be expressed as a percentage of the total export value of all goods exported in the investigation period.

The Commission applied the second option because it is consistent with its standard approach to amalgamating the results to arrive at one product margin for the exporter for the investigation period. The first approach, which involves expressing the same total dumping amount as a percentage of a lower export value (lower denominator), would of course have resulted in a significantly higher dumping margin.

The Siemens Group submitted that the Commission, in its SEF, provided no guidance or further explanation as to the source of the jurisprudence when stating its

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approach 'is consistent with WTO jurisprudence'. The Siemens Group expressed the view that the common theme in the WTO Appellate Body is that zeroing is unfair and created an undue inflation of dumping margins.

The Commission recognises that the practice of 'zeroing' has been the subject of a long history of WTO decisions. The WTO Panels and Appellate Body have considered 'model zeroing' and 'simple zeroing' in the context of a range of different anti-dumping inquiries and circumstances. The Appellate Body has been consistent in not supporting zeroing in original investigations, reviews, and assessments for the *weighted average to weighted average* and the *transaction to transaction* methodologies. However, there has been no ruling to date prohibiting zeroing when applying the alternative methodology for calculating dumping margins in accordance with the second sentence of Article 2.4.2 of the WTO Anti-Dumping Agreement<sup>9</sup>. It is this sentence that gives rise to the provisions of s. 269TACB(3). The Commission therefore does not agree with Siemen's view that the recommended method in this report is inconsistent with WTO jurisprudence.

### 6.7 China

#### 6.7.1 ABB Chongqing and ABB Zhongshan

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 was negative 2.7%. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it related to ABB Chongqing and ABB Zhongshan.

#### 6.7.2 Toshiba CTC

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

#### 6.7.3 CHINT

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

#### 6.7.4 Jiangsu

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Jiangsu was lower than negative 5%.

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<sup>9</sup> "A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison" WTO Anti-Dumping Agreement, Article 2.4.2



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In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it related to Jiangsu.

### **6.7.5 Siemens Guangzhou, Siemens Jinan and Siemens Wuhan**

The dumping margin was determined under s. 269TACB(3) using the *transaction to weighted average* method. The dumping margin for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan was 5.5%.

### **6.7.6 China - all other exporters**

The Commission established the dumping margin for all other Chinese exporters of power transformers using the dumping margin for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan.

Subsection 269TDA(3) provides that if negligible volumes of dumping are found the Commissioner must terminate the investigation so far as it relates to that country.

The ABB Group was the only interested party to comment on this issue in response to the SEF. It stated that

*The Commission has not properly considered the question of termination of the investigation against certain exporters on the basis of negligible volumes, because it appears that it has used value and not volume in that consideration.*

At Section 5.5, the Commission explained that capacity rather than number of units is the most appropriate measure of volume and that it has relied on value as the best available measure of volume. In deciding whether to terminate the investigation against a particular country the Commission has determined volume in the same manner described in Section 5.5.

The Commission found that the volume of power transformers exported at dumped prices from China was negligible. In accordance with s. 269TDA(3), the Commissioner terminated the investigation so far as it related to China.

## **6.8 Indonesia**

### **6.8.1 CG Power**

In the SEF the Commission stated that CG Power did not give the Commissioner information the Commission considered to be relevant to the investigation. Accordingly, the Commission considered CG Power was an uncooperative exporter. and determined a preliminary dumping margin of 11.1% in accordance with s. 269TACB(1) using all relevant information under s. 269TAB(3) and s. 269TAC(6), including information submitted by WTC in its application.

Following publication of the SEF, CG Power met with the Commission on 30 September 2014 to discuss the dumping margin calculations previously submitted to the Commission and to seek to persuade the Commission that the information provided by CG Power could and should be relied upon by the Commissioner.

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On 2 October 2014, CG Power wrote to the Commission and acknowledged that, if CG Power is an uncooperative exporter, export prices and normal values for CG Power must be determined having regard to all relevant information. CG Power asked to meet with the Commission to assist the Commission by explaining and reconciling data already submitted and to satisfy the Commission that this data was reliable. It stated it was not looking to submit any new information to the Commission.

On 8 October 2014, in response to the SEF, CG Power submitted that the most, and perhaps only, relevant information available to the Commission was the information provided by CG Power. It noted that:

- on 21 July 2014 CG Power submitted calculations that demonstrated that the dumping margin was negative; and
- on 11 September 2014 CG Power submitted further calculations that demonstrated that the dumping margin remained negative.

CG Power stated that it would separately submit copies of export invoices to the customer used by WTC to calculate the dumping margins and CG Power's bank statements showing the invoicing to and payments by the relevant purchaser. It also provided:

- copies of export invoices and bank statements showing the invoices issued to, and payments made by, another two customers to which CG Power exported power transformers during the investigation period; and
- extracts from CG Power's accounting system and supporting documents evidencing the purchase and cost of key components in the manufacture of certain selected projects.

CG Power further submitted that:

- the information submitted by CG Power is reliable and capable of verification;
- the data provided by CG Power is clearly more relevant than the estimates provided by the applicant with regard to a single transaction; and
- if the Commission has difficulties in following the data submitted by CG Power, it would be appropriate for it to meet with CG Power to allow it to assist the Commission to understand the data.

At the meeting with CG Power, the Commission explained that at this stage of the investigation it was not appropriate to commence a verification process. It indicated that it may consider relying on certain data provided by CG Power where such data could be corroborated with information provided by other parties that had been verified by the Commission during the investigation.

On 27 October 2014, the Commission advised CG Power that it had decided not to meet again with representatives of CG Power and that CG Power had ample opportunity to satisfy the Commission with respect to its information needs in this investigation, but it has not done so satisfactorily. The Commission confirmed that CG Power was an uncooperative exporter. However, the Commission undertook to review the information separately submitted by CG Power and consider whether it is

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appropriate to use any of it as relevant information for determining export prices and normal values.

In response to the Commission's letter, CG Power submitted that the Commission has not provided CG Power with a fair opportunity to satisfy the Commission with respect to its information needs. CG Power stated that it would have been in a position to meet with the Commission and to explain the data:

- at least as early as February 2014, if the Commission had responded to CG Power's email of 5 February 2014 by letting it know what concerns it had at that stage about the information submitted; and
- as early as March 2014, if the Commission had responded to CG Power's letter of 14 March 2014 requesting that the Commission let it know if the Commission considered that the information provided was not relevant, or whether the Commission considered that there was some other data that was more relevant.

The Commission reviewed the most recent dumping margin calculations provided by CG Power on 11 September 2014. It noted that:

- the revised dumping margin calculations only included transactions where detailed costs for selected transactions were requested and there were a number of additional transactions with MVA ratings within the nominated range;
- there is other information in the data provided that required explanation;
- CG Power had previously submitted that only two costs had changed:
  - it acknowledged that costs had changed from those originally submitted due to other numbers in the spreadsheet being dependent on costs that had changed;
  - however, CG Power provided no further explanation; and
- no explanation was provided how the ex-works price used to calculate the dumping margins was established.

The Commission considers that all the information separately submitted following the submission of 8 October 2014 is new information. Nevertheless, the Commission reviewed the information provided and noted:

- the values in the invoices did not reconcile to revenue information previously submitted for two of the three invoices provided;
- bank statements to verify payment by the customer do not appear to have been provided; and
- no explanation was provided as to what the supporting documents evidencing the purchase and cost of key components related to, and what information currently before the Commission these documents supported.

The Commission considers that it has provided CG Power sufficient opportunities to rectify deficiencies identified in its response to the exporter questionnaire, and that it did not do so satisfactorily. Accordingly, verification of the data submitted was not warranted. Correspondence between the Commission and CG Power is summarised at **Confidential Attachment 2**.

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The Commission is satisfied that CG Power did not give relevant information in terms of the definition of an uncooperative exporter in s. 269T(1) and considers that CG Power is an uncooperative exporter.

### Export price

The Commission compared information provided by CG Power and WTC and found the deductive export price provided by WTC was very similar to export prices provided by CG Power. As noted above, the Commission is not satisfied that information provided by CG Power is relevant. The Commission established FOB export prices for CG Power under s. 269TAB(3) having regard to all relevant information, being information provided by WTC.

### Normal value

As noted above, the Commission is not satisfied that information provided by CG Power is relevant. The Commission has established normal values under s. 269TAC(6) having regard to all relevant information. It 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 has been revised since the SEF because the Commission used all estimates provided by WTC where the transactions could be matched to export data provided by CG Power. The revised dumping margin for CG Power is 8.7%. Dumping margin calculations are summarised at **Confidential Attachment 3**.

## 6.8.2 UNINDO

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

## 6.8.3 Indonesia – all other exporters

The Commission established the dumping margin for all other Indonesian exporters of power transformers using the dumping margin for CG Power.

## 6.9 Korea

### 6.9.1 Hyosung

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

## **6.9.2 Hyundai**

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

## **6.9.3 Korea - all other exporters**

The Commission established the dumping margin for all other Korean exporters of power transformers using the dumping margin for Hyosung.

The Commission found that the volume of power transformers exported at dumped prices from Korea was negligible. In accordance with s. 269TDA(3), the Commissioner terminated the investigation so far as it related to Korea.

## **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 purchasers were the importers. It is satisfied that export sales from Fortune to its Australian purchasers 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.

Fortune submitted that, when converting currencies, the Commission should use the spot rate on the date of revenue recognition. As discussed in Section 6.5.5, the Commission has used the exchange rate at the contract date or purchase order date, unless it is satisfied that an alternative exchange rate should be used.

Fortune stated that in relation to exports to Australia, some contracts were for multiple power transformers with different delivery dates. Such contracts may have included multiple purchase orders raised on various dates, with each purchase order price being recalculated with reference to the original contract, but adjusted for prevailing charges and for any additional work. Fortune stated that in some instances the Commission had used the incorrect date for converting exchange rates. The Commission reviewed its calculations and found that while the incorrect date for exchange rate purposes had been identified in its spreadsheet, the correct exchange rate had actually been used. However, the Commission found that for one contract the incorrect exchange rate had inadvertently been used. It revised its export price calculations using the correct exchange rate.

#### 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

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

In response to the SEF, Fortune submitted that certain sales should be excluded from the same general category of goods in determining the amount of profit to be used in constructed normal values. As discussed in Section 6.5.3, the Commission has used all sales of the same general category of goods in the domestic market of the exporting country.

The Commission made adjustments to the constructed normal values under s. 269TAC(9). It made positive adjustments for commission expenses in relation to some power transformers exported to Australia, bank charges incurred by Fortune in relation to its sales to Australia and credit costs for export credit terms. The Commission made a negative adjustment for credit costs for domestic credit terms.

### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The revised dumping margin for Fortune is 15.2%. Dumping margin calculations are summarised at **Confidential Attachment 4**.

### 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 of Shihlin Australia to a person who is not an associate of Shihlin Australia less prescribed deductions.

In response to the SEF, Shihlin submitted that no profit for Shihlin Australia should be included in dumping margin calculations because Shihlin Australia did not make a profit on its sales in Australia during the investigation period. The Commission notes that s. 269TAB(2)(c) provides for the deduction for profit in calculating deductive export prices, as follows:

*the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.*

The Commission's Dumping and Subsidy Manual also addresses the deduction for profit in calculating deductive export prices. The manual states the Commission may have regard to a number of factors, including

*the profit achieved by other importers at the same level of trade for the goods during the investigation period.*



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The Commission has calculated a rate of profit based on profits achieved by other importers using information from the respective importer visit reports.

### 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 Shihlin's domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Shihlin.

Shihlin reimbursed Shihlin Australia for certain costs. The Commission deducted these costs from the cost to make and sell when constructing normal values for projects where the Commission identified these costs in the cost to make and sell. In response to the SEF, Shihlin submitted further information confirming that all these costs were in the cost to make and sell. The Commission has revised the constructed normal values by excluding all reimbursed costs from the cost to make and sell.

In response to the SEF, Shihlin submitted that certain sales should be excluded from the same general category of goods in determining the amount of profit to be used in constructed normal values. As discussed in Section 6.5.3, the Commission has used all sales of the same general category of goods in the domestic market of the exporting country.

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 revised dumping margin for Shihlin is 21.0%. Dumping margin calculations are summarised at **Confidential Attachment 5**.

### 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 37.2%. Dumping margin calculations are summarised at **Confidential Attachment 6**.

#### **6.10.4 Taiwan – all other exporters**

The Commission established the dumping margin for all other Taiwanese exporters of power transformers using the dumping margin 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.

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

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- 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 and subsequently each separate margin for this exporter is amalgamated, the result is a dumping margin of negative 10.0%. The dumping margin published in the exporter visit report was negative 3.5%. The difference arises from a different approach to calculating the credit adjustment and to a lesser extent the profit used in constructing normal values.

As discussed in Section 6.6 of this report, the Commission considered whether to determine dumping margins in accordance with s. 269TACB(3) and s. 269TACB(6).

In the case of ABB Thailand, the Commission's re-examination of the preliminary export prices in the investigation period revealed certain export prices that differed significantly among purchasers. This analysis was based on comparisons of the ratios of FOB export price to full FOB cost to make and sell the goods exported to Australia during the investigation period. The reasons for this approach are set out in section 6.6 of the report.

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. That is, in undertaking the aggregation of each transaction-to-transaction dumping margin the differential pricing is effectively masked. The Commission considers that export prices that 'differ significantly' for certain ABB Thailand transactions 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 caused injury to the Australian power transformer industry.

In these circumstances, the Commission considers that injurious dumping would 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 7** to this report.

The Commission has calculated the dumping margin using s. 269TACB(3), instead of s. 269TACB(2). The Commission's dumping margin assessment for ABB Thailand for the purposes of this report is 3.6%. Dumping margin calculations are summarised at **Confidential Attachment 8**.

## 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 and selling, general and administrative expenses, based 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%. Dumping margin calculations are summarised at **Confidential Attachment 9**.

## 6.11.3 Thailand – all other exporters

The Commission established the dumping margin for all other Thai exporters of power transformers using the dumping margin for Tirathai.

## 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.

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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 purchasers and, therefore, cannot determine if these sales were arms length transactions. The Commission established FOB export prices under s. 269TAB(3) having regard to all relevant information.

### 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 and subsequently each separate margin for this exporter is amalgamated, the result is a dumping margin of negative 5.1%. The dumping margin published in the exporter visit report was 5.9%. The difference arises from changes in the approach to calculating the profit used in constructing normal values and to a lesser extent to changes in 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) and s. 269TACB(6).

In the case of ABB Vietnam, the Commission's re-examination of export prices in the investigation period revealed certain export prices differed significantly among purchasers, regions or periods. This analysis was based on comparisons of the ratios of FOB export price to full FOB cost to make and sell the goods exported to Australia during the investigation period. The reasons for this approach and why it is considered to be consistent with the Act have been set out in section 6.6 of the report.

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. That is, in undertaking the

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aggregation of each transaction-to-transaction dumping margin the differential pricing is effectively masked. The Commission considers that export prices that 'differ significantly' for certain ABB Vietnam transactions 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 caused injury to the Australian power transformer industry.

In these circumstances, the Commission considers that injurious dumping would 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 10** to this report.

The Commission has calculated the dumping margin in terms of s. 269TACB(3) instead of the approach under s. 269TACB(2). The Commission's dumping margin assessment for ABB Vietnam for the purpose of this report is 3.8%. Dumping margin calculations are summarised at **Confidential Attachment 11**.

### 6.12.2 Vietnam – all other exporters

The Commission established the dumping margin for all other Vietnamese exporters of power transformers using the dumping margin 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 exported to Australia from a particular country that have been dumped is negligible. Subsection 269TDA(4) defines a negligible volume as 3% of the total Australian import volume during the investigation period.

As noted in Section 5.5, the Commission decided that capacity (measured using the power rating) rather than number of units is the most appropriate measure of volume. The Commission does not have power ratings for exports from the nominated countries outside the investigation period or for exports from other countries. The Commission has relied on value as the best available measure of volume and the size of the Australian market.

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.

## **7 ECONOMIC CONDITION OF THE INDUSTRY**

### **7.1 Findings**

The Commission 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 report 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.

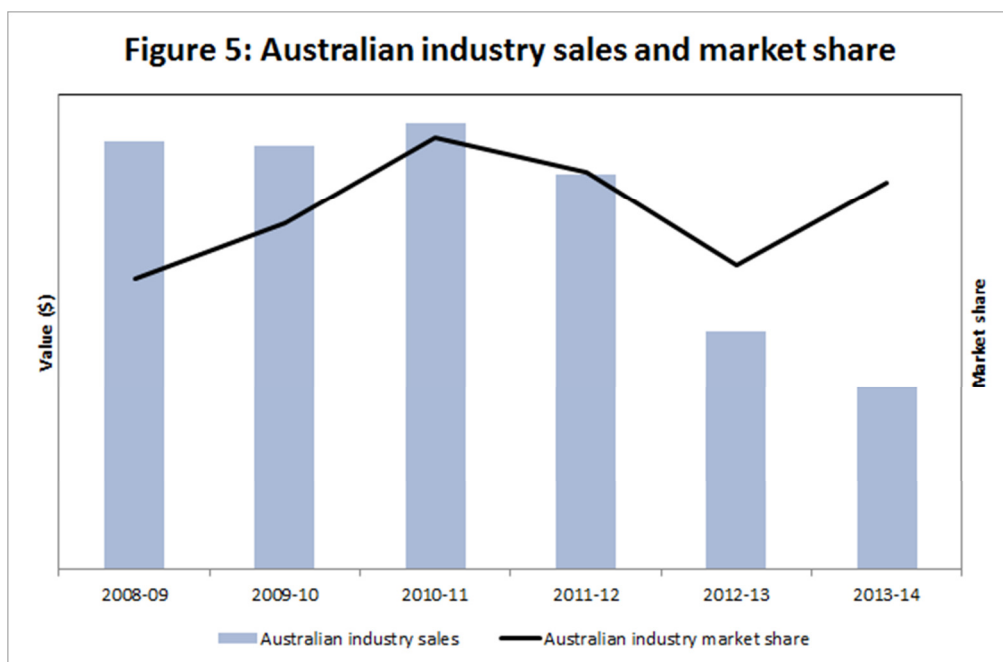
WTC accounted for over 75% of Australian production during the investigation period (using information provided in the application for other Australian producers). The Commission is satisfied that the performance of WTC reflects the performance of the Australian industry.

### **7.4 Volume effects**

Figure 3 in Section 5.5 indicates the Australian market for power transformers fell each year from 2008-09 to 2013-14.

Figure 5 below illustrates that the sales volume 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 2013-14 was about 60% of the volume achieved in 2012-13. Figure 5 also illustrates movement in market shares. The Australian industry's market share rose from 2008-09 to 2010-11 then fell each year until 2012-13. The Australian industry's market share rose in 2013-14.





Some interested parties stated that it is not clear from the SEF whether the Australian industry's market share included sales by Alstom Australia up until the end of 2012. They claimed that if so, this would be another reason why the Australian industry's market share would have fallen.

The volumes and market share for the Australian industry include all Australian producers, including Alstom Australia. WTC's sales volume fell each year from 2010-11 to 2013-14. WTC's market share was relatively stable from 2010-11 to 2012-13, but rose in 2013-14 (in a market that fell by 40%). The market share held by imports rose from 2010-11 to 2012-13, but fell in 2013-14.

#### **7.4.1 Conclusion – volume effects**

The Commission is satisfied that the Australian industry lost sales volume and market share during the investigation period. The Commission's analysis of sales volumes and market shares is at **Confidential Attachment 12**.

### **7.5 Price effects**

#### **7.5.1 Price undercutting**

In its application, WTC provided details of 40 tenders it claimed it had lost to exports from the nominated countries. WTC identified its bid price and the estimated winning bid. It advised that its estimates were based on:

- discussions with the purchaser;
- Australian Bureau of Statistic import statistics; and
- in two cases, estimates were based on its knowledge of the market.

Exporters that responded to the exporter questionnaire provided information of all power transformers exported to Australia during the investigation period. The Commission visited, and gathered information from, a number of importers. The

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Commission also visited a number of purchasers of power transformers. The Commission analysed information collected during the investigation with information supplied by WTC in its application and noted:

- in one case the delivery date was before the investigation period;
- in seven cases the Commission could not match information submitted by WTC with information collected during the investigation; and
- in 29 cases the Commission confirmed that the price of imports undercut WTC's prices.

Most purchasers did not provide specific tender evaluation reports, claiming this information was confidential. However, three purchasers provided six specific tender evaluation reports. In five of the six cases the price of imported power transformers undercut WTC's prices.

The Commission's price under cutting analysis is at **Confidential Attachment 13**.

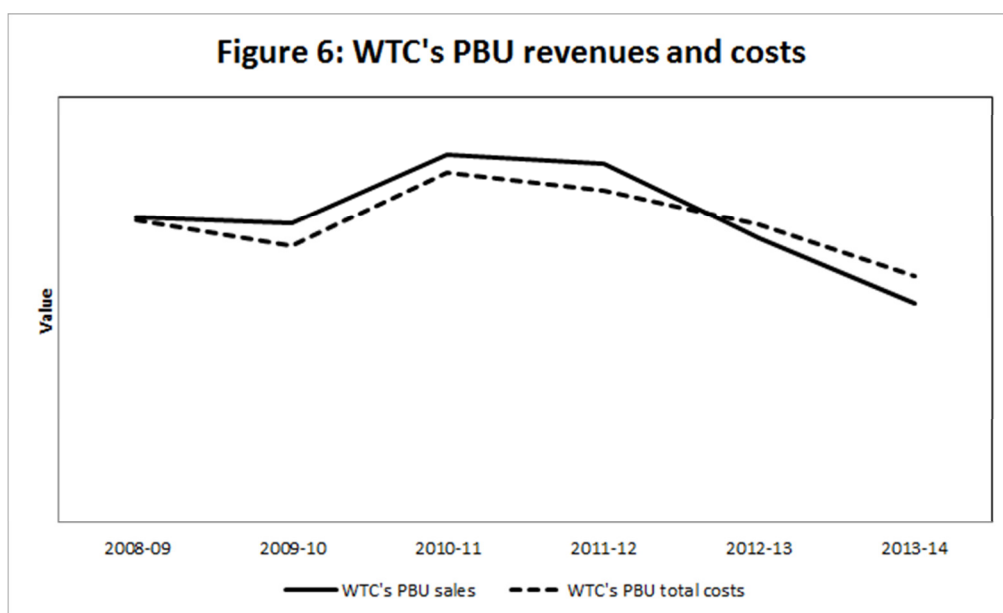
### 7.5.2 Price depression

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 6 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.



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In response to the SEF, Shihlin stated that in analysing price suppression, the Commission found that the Australian industry suffered price suppression on the basis that WTC's selling prices were lower than its costs. Shihlin claimed that the Commission failed to consider the fact that in practice the selling price of power transformers is fixed when the contract is signed, while the production cost is recorded during production or at the end of production. Accordingly, Shihlin claimed that the Commission should have considered whether an adjustment to the comparison of WTC's total revenue and cost is required given the considerable period between signing of a contract and importation of power transformers.

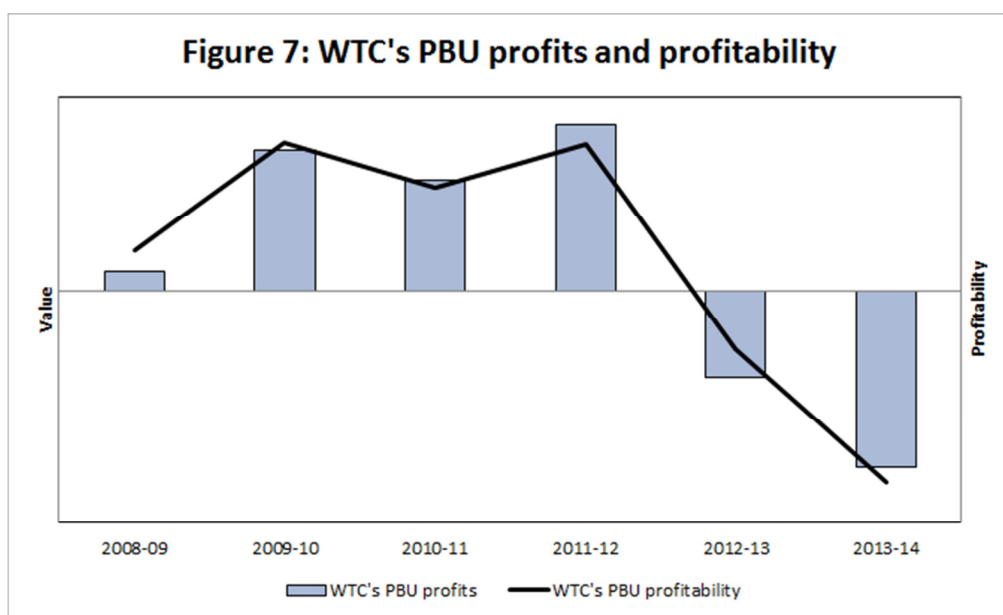
The Commission reviewed WTC's production process and costing methodology during its industry verification visit. As stated in the visit report, when WTC wins a tender it prepares a detailed design model involving electrical, mechanical and control design issues. When complete production is scheduled and required raw materials are ordered. The main cost components are the steel core and the copper conductor and WTC is aware of movements in these raw material costs. The Commission is satisfied that no adjustment to the comparison of WTC's total revenue and cost is required.

### 7.5.4 Conclusion – price effects

The Commission is satisfied that the Australian industry has experienced price undercutting and price suppression.

## 7.6 Profit effects

Figure 7 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 2013-14 were negative.



### **7.6.1 Conclusion – profit effects**

The Commission is satisfied 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.

### 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.

<b>8 HAS DUMPING CAUSED MATERIAL INJURY?</b>
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## **8.1 Findings**

The Commission found that exports of power transformers at dumped prices from 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 Energy Resources Limited (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; and
- there is not a link between a party missing out on a tender and the time of importation of goods as 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:

- 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)....*

- submitted that if WTC participates in BAFO negotiations any unfavourable outcome is unrelated to material injury caused by dumping;
- referred to a High Court statement in the context of trade practices law that competition is healthy and necessary; and



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- 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.

Interested parties made further submissions in response to the SEF.

Toshiba International submitted that findings of material injury in the SEF are not based on positive evidence. It submitted that the Commission:

- in considering causality between allegedly dumped power transformers and the claimed injury, is required to examine of all the relevant evidence, including any known factors other than the dumped imports that are also injuring the domestic industry; and
- needs to give greater consideration to the following factors:
  - the volume and prices of imports not sold at dumped prices;
  - contraction in demand;
  - changes in the patterns of consumption;
  - trade restrictive practices of and competition between the foreign and domestic producers;
  - developments/differences in technology; and
  - the export performance and productivity of the domestic industry.

Shihlin submitted that the Commission's assessment of injury and causation was flawed. It submitted that:

- the SEF indicated that the volume and market share of the dumped imports fell in 2012-13 after rising in 2011-12 and Shihlin is unclear on what basis the Commission concluded that dumped imports caused volume injury to the Australian industry;
- the Commission did not provide any evidence to support the finding of price undercutting;
- that figure 7 in the SEF indicated that the volume of dumped imports were significantly and constantly lower than the volume of undumped imports and the volume of sales by WTC and Shihlin claimed any material injury was caused by undumped imports; and
- the Commission should provide information on the number of tenders that WTC lost to dumped imports due to price, the total value of those tenders and the percentage of WTC's sales that the lost tenders represented.

Alstom Australia and importers represented by Gadens raised a number of similar concerns and made a number of submissions. They submitted that:

- the fall in the size of the Australian market is due to a large decrease in demand for electricity;
- similar falls have occurred in heavy industry and major resources projects, other sources of demand for power transformers;
- future demand for electricity will continue to contract according to the Australian Energy Market Operator's National Electricity Forecasting Report;
- the Australian industry maintained volume from 2008-09 and only after 2010-11 was there any fall in volume;

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- there is no evidence that the Australian industry has lost market share for reasons relating to dumping:
  - the Australian industry's market share rose between 2008-09 and 2010-11 and then returned to 2008-09 levels and this does not support a finding of loss of market share;
  - the Australian industry's market share was above 2008-09 levels for the entire investigation period;
  - the decrease in the Australian industry's market share in 2012-13 was due to undumped imports; and
  - the increase in the Australian industry's market share in 2013-14 is not consistent with the idea of a business being adversely affected by dumping;
- the Commission did not provide any evidence to support the finding of price undercutting and the parties claimed the mere tendering of prices which are less than the prices proposed by the Australian industry does not of itself constitute price undercutting;
- the Commission provided no explanation on the change in WTC's profitability between 2011-12 and 2012-13:
  - the only differences appears to be a market share increase for undumped imports and the commercial decision by WTC to increase capacity in a falling market;
  - profits were already narrowing due to the increased market share by undumped imports; and
  - it is unreasonable to cumulate the effect of dumped and undumped imports as evidence of injury to the Australian industry;
- the Commission has not provided an assessment of the expected effect of measures on the Australian market as required by paragraph 6.2 of the *Streamlining Australia's anti – dumping system. An effective anti – dumping and countervailing system for Australia*;
- the Commission stated that demand fell at the same time capacity increased but does not comment on what impact that this had on the economic performance of the Australian industry and the parties claimed the effect on capacity and capacity utilisation appears to be caused by a lack of demand rather than by any alleged dumping; and
- the parties made the following comments on other possible causes of injury:
  - given that WTC has significant underutilised capacity and that exports to Australia have fallen, there must be a significant question regarding the competitiveness of prices offered by WTC;
  - over investment reflected in ongoing depreciation costs should be seen as the reason for the losses rather than dumping;
  - Alstom Australia withdrew from the Australian market for reasons other than dumping; and
  - the Commission considered that dumping and injury are likely to continue, but the parties reject this proposition as it does not believe that it exists at this point.

WTC submitted that the exceptionally low demand for power transformers in the current Australian market makes any imports, whether dumped or otherwise, injurious to WTC.

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The Siemens Group submitted that the analysis of material injury in the SEF is scant and little significance has been given to the fact that the applicant's market share increased by a very substantial margin between 2012-13 and 2013-14, particularly since the increase was achieved in a falling market.

The ABB Group made a number of submissions about WTC's economic performance:

- the Commission's assessment of the Australian industry's over-investment in its manufacturing facility is not convincing;
- the Commission has not properly evaluated the implications of over expenditure on power transformers by utilities in the lead up to the investigation period, and the major fall in demand that has followed, in its consideration of whether material injury was caused by dumping;
- injury caused by power transformers that the Commission believes were not dumped must have been severe given the fact that they far exceed the number of allegedly dumped power transformers;
- injury caused by other factors should be considered to have reduced any injury caused by dumping to a negligible level; and
- the ABB Group obtained information from the Australian Securities and Investment Commission about companies related to WTC and considers that these companies have generated significant returns to its investors over the investigation period.

### 8.3 The Commission's assessment

The Commission found that the Australian market for power transformers fell by about 25% during the investigation period and has since fallen by a further 40%. The Commission is satisfied, based on evidence gathered during the investigation, that the contraction of the Australian market is due to a fall in demand for electricity. The Commission notes submissions that referred to demand exceeding supply and to over expenditure on power transformers by utilities in the lead up to the investigation period. It does not consider these claims address the fall in demand for electricity and do not detract from its finding that the Australian market for power transformers has fallen significantly since the beginning of the investigation period.

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 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. Particularly considering

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claims by interested parties that Australian purchasers have become more willing to purchase power transformers from foreign producers.

Power transformers are normally sold into the Australian market through a tender process where the purchaser issues a request for tender. 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.

Most purchasers did not provide specific tender evaluation reports, claiming this information was confidential. However, three purchasers provided specific tender evaluation reports.

One purchaser provided evaluation reports identifying the weighting allocated to each evaluation criteria: one equally ranked the technical evaluation and financial proposals, but all others gave greatest weight to the financial proposal.

Origin is the importer and end user of power transformers for the Australia Pacific LNG Pty Ltd (APLNG) project. It developed a request for information for pre-qualification of bidders and invited approved bidders to tender. Origin advised that WTC was one of the approved bidders. Origin evaluated compliance with technical and commercial criteria separately. The technical evaluation was based on six criteria with various weightings. Origin advised that compliance with technical criteria was critical to further consideration of commercial criteria. Siemens Australia and ABB Australia had the highest technical rankings and were the short listed suppliers; they were also the lowest bidders.

Horizon Power submitted that when evaluating tenders, compliance with design and health and safety requirements were mandatory pre-qualifiers. If the tendering supplier meets compliance criteria, qualitative factors are then assessed in order to shortlist tenders received. Once these factors are assessed, the shortlisted tenders will then be commercially evaluated to determine value for money in terms of price and transformer losses. The Commission noted that in relation to a specific project, all proposals conformed to specifications. Horizon Power stated that the recommended supplier was the lowest bid in terms of price although the design provided for greater operating costs due to greater load losses.

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. It is satisfied that these tender evaluation reports and the verified export and import price data provide evidence that the price of power transformers from the nominated countries undercut WTC's prices. It considers that this supports the finding reported in Section 7.5.1 that in 29 cases the Commission confirmed that the price of imported power transformers undercut WTC's prices. The Commission notes that in 23 cases the power transformers were supplied by exporters found to have been dumping.

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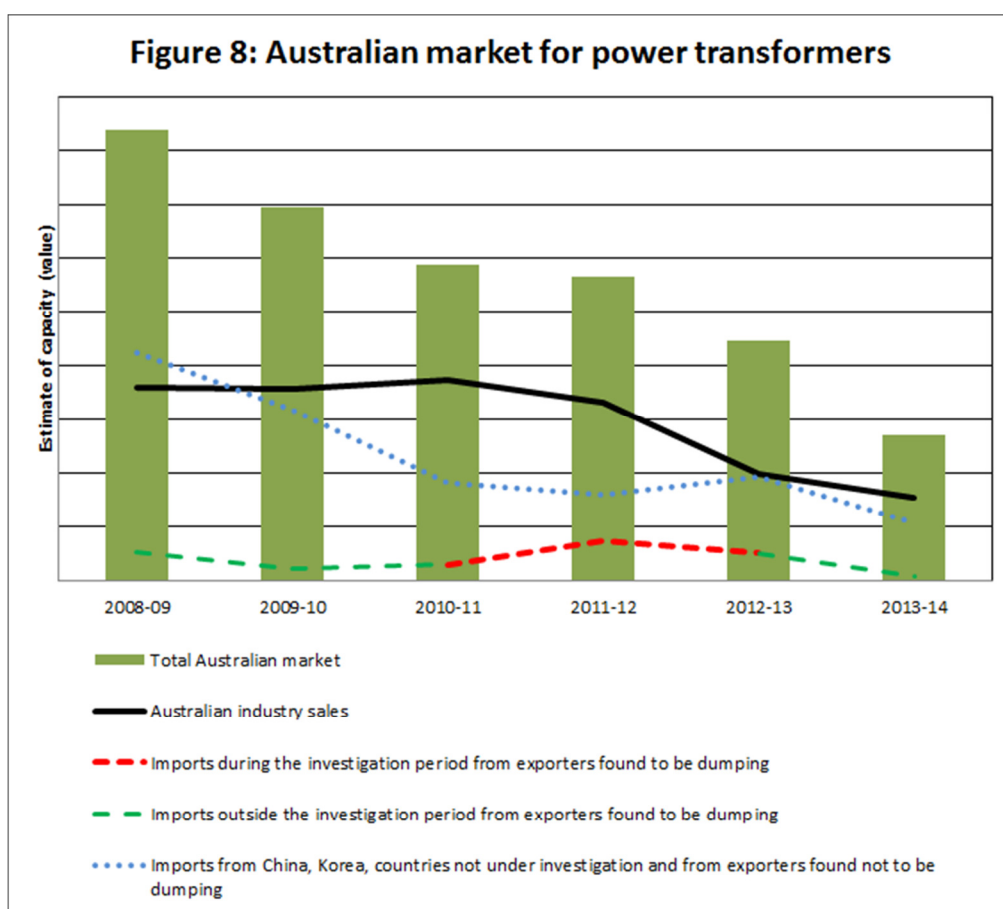
The Commission does not consider that it must establish that WTC would have, in the absence of dumping, won every contract tendered for during the investigation period. It must establish that dumping has contributed to the injury suffered by the Australian industry and that this injury is material.

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 contribute to injury to the Australian industry.

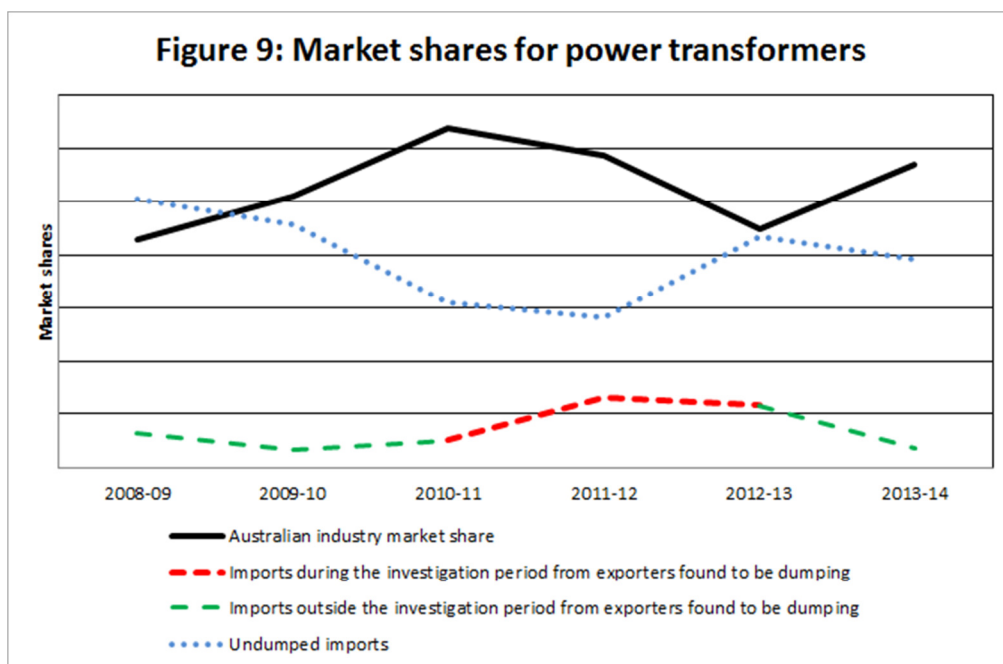
The Commission is aware that the negotiating technique referred to as BAFO is common in Australia during the tender evaluation process. Similarly it notes statements that competition is healthy and necessary. However, the Commission considers if the BAFO process results in power transformers being imported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

Figure 8 below illustrates the Australian market for power transformers, identifying sales by the Australian industry, sales of dumped imports and sales of undumped imports.



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Figure 9 below illustrates market shares for the Australian industry, dumped imports and undumped imports.



The Australian industry's sales volume fell each year during the investigation period. The sales volume of dumped imports rose in 2011-12 but fell in 2012-13. The sales volume of undumped imports fell slightly in 2011-12 and rose in 2012-13. Movements in market shares followed a similar trend.

The Commission considers that undumped imports contributed to the injury suffered by the Australian industry and recognises that this injury cannot be attributed to dumping. The Commission found that the value of dumped imports during the investigation period was about \$80 million and considers that this is material.

The Commission found that certain exporters from Indonesia, Taiwan, Thailand and Vietnam exported power transformers to Australia during 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 during the investigation period was material. 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.

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



## **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
- 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 and 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, including through their Australian offices, compete for the same 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**

As noted in Section 8.3, the Commission considers that undumped imports contributed to the injury suffered by the Australian industry, but this does not detract from the Commission's findings that dumped imports have caused material injury to the Australian industry.

Interested parties submitted that manufacturing costs in Australia 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 found that labour costs represent a relatively small percentage of the total cost to manufacture power transformers.

In its application, WTC stated that about 55% of total material costs are subject to exchange rate variation and the impact of currency fluctuations can be considerable. The Commission found during the investigation that prices for imported components were generally expressed in US dollars or Euros and that exchange rate movements

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affected the price paid for materials by the Australian industry in Australian dollars. However, the Commission recognises that exchange rate movements also affect the price charged by exporters in Australian dollars for finished power transformers that include components purchased in foreign currencies.

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. In view of the significant fall in the size of the Australian market, the Commission took the 2012 Ministerial direction into account and is satisfied that the facts in this case warrant considering material injury to the Australian industry at a time when it is weakened by other events.

WTC commenced a major plant expansion and refurbishment program at its power transformer plant in 2009 that resulted in an increase in the production capacity for power transformers by 40%. Interested parties claimed that the Commission should examine whether this expansion caused injury to WTC.

WTC provided details of the construction and equipment expenditure on this project in its application.

The Commission reviewed WTC's manufacturing overhead costs, which include depreciation, from 2008-09 to 2013-14 and expressed them as a percentage of revenue. It found that the percentages were relatively stable until 2011-12, but increased in 2012-13 and 2013-14 as WTC's sales volume and the total market fell.

The Commission also reviewed WTC's corporate and financial costs from 2008-09 to 2013-14 and expressed them as a percentage of revenue. It found that these percentages were relatively small throughout the period and the percentages were relatively stable until 2011-12, but increased in 2012-13 and 2013-14 as WTC's sales volume and the total market fell.

The Commission is satisfied that the plant expansion has not materially affected WTC's economic performance. It attributes the increase in the ratio of manufacturing overhead, corporate and financial costs to revenue in 2012-13 and 2013-14 to the fall in the Australian market. The Commission found that even if these costs were removed from the financial analysis, the Commission would still find 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 findings.

## **8.6 Conclusion**

The Commission recognises that factors other than dumping have contributed to the injury suffered by the Australian industry, but it is satisfied that exports of power transformers at dumped prices from Indonesia, Taiwan, Thailand and Vietnam, of themselves, have caused injury to the Australian industry and that this injury is material.

<b>9 WILL DUMPING AND MATERIAL INJURY CONTINUE?</b>
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### **9.1 Findings**

The Commission 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 purchasers 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 export prices that are dumped and therefore more competitive than they would be if export prices were 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 economic condition of the Australian industry.

### **9.4 Conclusion**

The Commission 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.

<b>10 NON-INJURIOUS PRICE</b>
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### **10.1 Findings**

The Commission found that NIPs for power transformers exported to Australia should be set by reference to the corresponding normal values.

### **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 Dumping Duty Act.

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 purchaser, 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.

## **11 ANTI-DUMPING MEASURES**

### **11.1 Responses to the SEF**

Shihlin submitted that securities should not be required or taken on power transformers exported to Australia pursuant to contracts entered into with Australian customers before 27 November 2013. It claimed that:

- securities should only be taken if it is necessary to prevent material injury to an Australian industry;
- it is unclear what material injury to an Australian industry could be prevented by the taking of securities where a contract was entered into on or before the PAD as the time at which the Australian industry would have incurred any injury would have been when the contract was awarded, because that was the time at which the Australian industry lost a potential sale; and
- it would like to be advised what material injury will be prevented by the taking of such securities.

### **11.2 The Commission's position**

The Commission considered this issue during the investigation, particularly given the fact that the date of sale and the date of export were likely to be different. Section 269TD provides that after a PAD has been made securities under s. 42 can be taken in respect of any interim duty that may be payable 'if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues'.

Subsection 269TG(1) has the effect of applying s. 8 of the Dumping Duty Act to goods exported after the PAD. The date of export of the goods is the date they left the country of origin, and this may be different to the date of sale. When recommending to the Minister that securities be converted to interim dumping duty through a s. 269TG(1) notice, the Commissioner's recommends that securities apply to all goods the subject of the application. It does not look to certain transactions in order to decide if some goods should be subject to a security and others not subject.

Shihlin claims that certain contracts should be exempted from security because they had been made before the PAD date. Shihlin submitted that the injury had already occurred and, for that reason, there could be no continuing injury warranting the taking of securities. No information has been provided to the Commission about the nature of the contracts entered into after initiation of the investigation.

The Commission agrees that injury could have occurred at the time of the contract being lost to the overseas producer prior to PAD date. However, the Commission considers there remains a likelihood of ongoing material injury from those lost contracts. Subsection 269TAE(1) refers to material injury that has been or is being caused or is threatened or would or might have been caused.

This injury may be remedied when an importer, faced with the prospect of paying duty consequent to the taking of the security, decides to break the contract because of the costs incurred in paying the additional duty, and finds an Australian supplier



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whose products are now more competitive with the dumped imports. In this circumstance the ongoing injury can be prevented.

The Commission notes that the PAD was made on 20 November 2013 and securities were imposed from 27 November 2013. However, public notification of initiation of the investigation was made on 29 July 2013 in *The Australian* newspaper and ADN No. 2013/64. The Commission considers that at that time importers and exporters should have been aware that it was possible that securities could have been imposed.

### **11.3 Parliamentary Secretary's discretion to not impose measures**

The Parliamentary Secretary has discretion to not impose measures after considering the expected effect of the measures on the Australian market. In this case, interested parties have not made claims that the Minister should exercise such discretion. The Commission does not consider there is evidence or circumstances that warrant the Minister exercising such discretion.

### **11.4 Retrospective notices**

When considering the publication of a dumping duty notice, the Minister may, pursuant to s. 269TN, issue a retrospective notice on goods that entered home consumption up to 90 days before securities were taken. Section 269TN reflects Article 10.6 of the WTO Anti-Dumping Agreement which provides that dumping duties can be imposed retroactively where injury is caused by massive quantities of dumped imports of a product in a relatively short time that is likely to have seriously undermined the remedial effect of the dumping duty applied.

There have been no allegations of such large quantities of imports, and the evidence available to the Commission indicates there have not been such large quantities of imports in this case.

### **11.5 Interim dumping duties**

The Commissioner recommends the Parliamentary Secretary publish a dumping duty notice in respect of power transformers exported to Australia from Indonesia, Thailand, Taiwan and Vietnam.

The Commissioner recommends that interim dumping duties be determined as a proportion of the export price of those particular goods as specified in subregulation 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, as outlined in Figure 10 below.

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**Figure 10: Recommended interim dumping duty**

Country	Exporter	Effective rate of duty
Indonesia	CG Power	8.7%
	All other exporters except UNINDO	8.7%
Taiwan	Fortune	15.2%
	Shihlin	21.0%
	Tatung	37.2%
	All other exporters	37.2%
Thailand	ABB Thailand	3.6%
	Tirathai	39.1%
	All other exporters	39.1%
Vietnam	ABB Vietnam	3.8%
	All other exporters	3.8%

Any dumping securities that have been taken on and from 27 November 2013 and that have not lapsed will be converted to interim dumping duty.

## **12 RECOMMENDATIONS**

The Commissioner recommends the Parliamentary Secretary be satisfied:

- in accordance with s. 269TAB(3), that sufficient information has not been furnished, or is not available, to enable the export price of power transformers exported to Australia from Indonesia by CG Power and from Vietnam by ABB Vietnam (through ABB Hong Kong) to be ascertained under the preceding subsections;
- in accordance with s. 269TAC(6), that sufficient information has not been furnished or is not available to enable the normal value of power transformers exported to Australia from Indonesia by CG Power to be ascertained under the preceding subsections;
- in accordance with s. 269TACB(3), that for power transformers exported to Australia from Thailand by ABB Thailand and from Vietnam by ABB Vietnam during the investigation period:
  - the export prices differ significantly among different purchasers, regions or periods; and
  - 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;
- in accordance with s. 269TACB(5), that the export prices in respect of individual transactions for power transformers exported to Australia from Indonesia (excluding goods exported by UNINDO), Taiwan and Thailand (excluding goods exported by ABB Thailand) during the investigation period are less than the corresponding normal values during that period;
- in accordance with s. 269TACB(6), that the export prices in respect of particular transactions for power transformers exported to Australia from Thailand by ABB Thailand and from Vietnam by ABB Vietnam during the investigation period are less than the weighted average of corresponding normal values during that period;
- in accordance with s. 269TAE(2C), that the effects of the exportation of power transformers to Australia can be assessed cumulatively from Indonesia, Taiwan, Thailand and Vietnam, having had regard to:
  - the conditions of competition between those goods; and
  - the conditions of competition between those goods and like goods that are domestically produced;
- in accordance with s. 269TG(1) the amount of the export price of power transformers exported to Australia from Indonesia (excluding goods exported by UNINDO), Taiwan, Thailand and Vietnam is less than the amount of the normal value of those goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused; and
- in accordance with s. 269TG(2) the amount of the export price of power transformers exported to Australia from Indonesia (excluding goods exported by UNINDO), Taiwan, Thailand and Vietnam is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from Indonesia, Taiwan, Thailand and Vietnam in the future may be less than the normal value of the goods and because of that,

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material injury to the Australian industry producing like goods has been, or is being caused.

The Commissioner recommends the Parliamentary Secretary determine:

- in accordance with s. 269TAB(3), the export prices for power transformers exported to Australia from Indonesia by CG Power and from Vietnam by ABB Vietnam (through ABB Hong Kong) be determined having regard to all relevant information;
- in accordance with s. 269TAC(2)(c), normal values for power transformers exported to Australia from Taiwan by Fortune, Shihlin and Tatung, from Thailand by ABB Thailand and Tirathai and from Vietnam by ABB Vietnam be determined by the sum of:
  - the cost of production or manufacture of the goods in the country of export; and
  - on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export - such amounts that would be the administrative, selling and general costs associated with the sale and the profit on that sale; and
- in accordance with s. 269TAC(6), normal values for power transformers exported to Australia from Indonesia by CG Power be determined having regard to all relevant information.

The Commissioner recommends the Parliamentary Secretary directs:

- in accordance with s. 269TAB(2)(c), the rate of profit used for to calculate the deductive export price for Shihlin is based on profits achieved by other importers that are related to the exporter;

The Commissioner recommends the Parliamentary Secretary make adjustments:

- in accordance with s. 269TAC(9), to the costs of power transformers exported to Australia from Taiwan, Thailand and Vietnam as are necessary to ensure that the normal values so ascertained are properly comparable with the export prices of those goods.

The Commissioner recommends the Parliamentary Secretary declare:

- in accordance with s. 269TG(1), by public notice, that s. 8 of the Dumping Duty Act applies to:
  - power transformers exported from Indonesia (except UNINDO), Taiwan, Thailand and Vietnam to the extent permitted by s. 269TN; and
  - like goods that were exported to Australia from Indonesia (except UNINDO), Taiwan, Thailand and Vietnam, after the Commissioner made a PAD under s. 269TD on 27 November 2013 but before publication of the notice, to the extent permitted by s. 269TN; and
- in accordance with s. 269TG(2), by public notice, that s. 8 of the Dumping Duty Act applies to like goods that are exported to Australia by all exporters

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from Indonesia, Taiwan, Thailand and Vietnam after the date of publication of the notice.

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### 13 ATTACHMENTS

Attachment 1	Submissions on public record
Confidential attachment 2	Summary of correspondence between the Commission and CG Power
Confidential attachment 3	Dumping margin calculations for CG Power
Confidential attachment 4	Dumping margin calculations for Fortune
Confidential attachment 5	Dumping margin calculations for Shihlin
Confidential attachment 6	Dumping margin calculations for Tatung
Confidential attachment 7	Alternative dumping margin calculation for ABB Thailand
Confidential attachment 8	Dumping margin calculations for ABB Thailand
Confidential attachment 9	Dumping margin calculations for Tirathai
Confidential attachment 10	Alternative dumping margin calculation for ABB Vietnam
Confidential attachment 11	Dumping margin calculations for ABB Vietnam
Confidential attachment 12	Commission's analysis of the Australian mark
Confidential attachment 13	Commission's price undercutting analysis

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 Group, 24 September 2013;
- 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, 12 December 2013;
- Hyosung, 16 January 2014;
- Alstom Australia, 4 February 2014;
- Toshiba International, 11 February 2014;
- ABB Australia, 18 February 2014;
- Hyosung, 21 February 2014;
- Siemens Group, 21 February 2014;
- Siemens Group, 28 February 2014;
- Siemens Group, 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 Group, 30 May 2014;
- Alstom Australia, 10 June 2014;
- Hyundai, 10 June 2014;
- TBEA, 10 June 2014;
- Hyosung, 10 June 2014;
- Siemens Group, 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, 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 Group, 4 August 2014;
- WTC, 15 August 2014;
- Toshiba International, 18 August 2014;
- WTC, 20 August 2014;



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- Corrs Chambers Westgarth on behalf of a number of interested parties, 21 August 2014;
- Fortune, 21 August 2014;
- Siemens Group, 22 August 2014;
- WTC, 22 August 2014;
- Siemens Group, 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.