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Australian Government
Department of Industry,
Innovation and Science

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT No. 504

**CONTINUATION INQUIRY
INTO ANTI-DUMPING MEASURES APPLYING TO CERTAIN
POWER TRANSFORMERS**

**EXPORTED TO AUSTRALIA FROM
THE REPUBLIC OF INDONESIA, TAIWAN AND
THE KINGDOM OF THAILAND**

4 October 2019

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ABBREVIATIONS

ABB Thailand	ABB Limited Thailand
ABF	Australian Border Force
ABS	Australian Bureau of Statistics
the Act	the <i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AER	Australian Energy Regulator
Ampcontrol	Ampcontrol Pty Ltd
AMQ	Australian market questionnaire
CG Power	PT CG Power Systems Indonesia
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
DDP	delivery duty paid
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Endeavour	Endeavour Energy
EPC	Engineering, procurement and construction
EPR	electronic public record
FOB	Free on Board
Fortune	Fortune Electric Co., Ltd
the goods	certain power transformers exported from the subject countries as defined in Chapter 3 – the goods the subject of this inquiry
GOI	Government of Indonesia
GWh	gigawatt hours
IDD	interim dumping duty
Indonesia	the Republic of Indonesia
injury analysis period	the period from 1 July 2014
inquiry period	the period from 1 January 2016 to 31 December 2018

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INV 219	Investigation No. 219
INV 507	Investigation No. 507
Korea	the Republic of Korea
kV	kilo volts
kVA	kilovolt ampere
LRET	Large-scale Renewable Energy Target
the Manual	<i>Anti-Dumping Commission – Dumping and Subsidy Manual</i>
the Minister	the Minister for Industry, Science and Technology
the Ministerial Direction	<i>Ministerial Direction on Material Injury 2012</i>
MVA	mega volt amperes
NEM	National Electricity Market
NIP	non-injurious price
OCOT	ordinary course of trade
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REQ	response to the exporter questionnaire
REP 219	<i>Anti-Dumping Commission Report No. 219</i>
REP 383	<i>Anti-Dumping Commission Report No. 383</i>
REV 383	Review No. 383
REP 487	<i>Anti-Dumping Commission Report No. 487</i>
RFT	request for tender
ROI	return on investment
Shihlin	Shihlin Electric & Engineering Corporation
SEF	statement of essential facts
SG&A	selling, general and administrative
subject countries	Indonesia, Taiwan, and Thailand, collectively
Tatung	Tatung Company
Thailand	the Kingdom of Thailand
Tirathai	Titathai Public Company Limited
Tyree	Tyree Transformer Co Pty Ltd
UNINDO	PT Unelec Indonesia
USP	unsuppressed selling price
Vietnam	the Socialist Republic of Vietnam
WTC	Wilson Transformer Company Pty Ltd
WTO	World Trade Organization

1 SUMMARY

1.1 Introduction

This report concerns an inquiry into whether the Minister for Industry, Science and Technology (the Minister) should decide to continue the anti-dumping measures, in the form of a dumping duty notice (the notice), applying to power transformers (the goods) exported to Australia from the Republic of Indonesia (Indonesia), Taiwan and the Kingdom of Thailand (Thailand) (the subject countries) by all exporters other than PT. Unelec Indonesia (UNINDO) from Indonesia and ABB Limited Thailand (ABB Thailand) from Thailand.

This report sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendations to the Minister.

The anti-dumping measures currently applicable to exports of the goods to Australia from the subject countries are due to expire on 10 December 2019.

This inquiry was initiated on 11 February 2019 following the Commissioner's consideration of an application lodged by Wilson Transformer Company Pty Ltd (WTC), the largest Australian manufacturer of power transformers, seeking the continuation of the anti-dumping measures.

1.2 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act)¹ sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.

Section 269ZHE(1) requires that the Commissioner must, within 110 days after the publication of the notice or such longer period as allowed, place on the public record a statement of the essential facts (SEF) which the Commissioner proposes to base his recommendations to the Minister concerning the continuation of the measures.

Section 269ZHF(1) requires that the Commissioner must, after the conduct of this inquiry, give the Minister a report which recommends that the relevant notice:

- remain unaltered;
- cease to apply to a particular exporter or to a particular kind of goods;
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or
- expire on the specified expiry day.

Under section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner

¹ All legislative references are to the *Customs Act 1901*, unless otherwise specified.

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is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

1.3 Findings

Following analysis of the available evidence and giving due consideration to submissions made by interested parties in response to *Statement of Essential Facts No. 504* (SEF 504), the Commissioner is satisfied that:

- in relation to Indonesia, the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent;
- in relation to Taiwan, the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent; and
- in relation to Thailand the expiration of the measures would not lead, or would not be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

1.4 Recommendations

The Commissioner recommends that:

- the Minister take steps to secure the continuation of the notice on and after 10 December 2019 in respect of the goods exported from Indonesia and Taiwan;
- the notice with respect to power transformers exported to Australia from Thailand cease to have effect on and after 10 December 2019;
- the variable factors remain unaltered for PT CG Power Systems (Indonesia) (CG Power); and
- the variable factors be altered in relation to all exporters from Taiwan and the category of 'all other exporters' from Indonesia.

2 BACKGROUND

2.1 Initiation

The present inquiry was initiated on 11 February 2019, following the Commissioner's consideration of an application lodged by WTC seeking continuation of anti-dumping measures relating to the goods exported to Australia from the subject countries.

ADN No. 2019/20² on the electronic public record (EPR)³ sets out the Commissioner's reasons for initiating this inquiry.

2.1.1 Submissions regarding the application

The Government of Indonesia (GOI) submitted⁴ that the application lodged by WTC failed to provide sufficient evidence to justify the initiation of this inquiry, let alone the extension of anti-dumping measures in relation to exports of the goods to Australia from Indonesia.

CG Power also submitted⁵ that the application was devoid of grounds, reasonable or otherwise.

2.1.2 Commission's assessment

As per section 269ZHD(2)(b), in considering an application for the continuation of anti-dumping measures, one of the matters on which the Commissioner is required to be satisfied is "whether there *appear* to be reasonable grounds for *asserting* that the expiration of the anti-dumping measures to which the application relates *might* lead, or *might be likely* to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent" (Commission's emphasis).

As explained at the time of initiation of this inquiry, the Commissioner examined the information in WTC's application together with other relevant information and concluded that the relevant evidentiary threshold had been met.⁶

2.2 Current anti-dumping measures

2.2.1 Investigation No. 219

On 29 July 2013, following an application by WTC, the Commissioner initiated Investigation No. 219 (INV 219) into an allegation that power transformers had been exported to Australia from the People's Republic of China (China), Indonesia, the Republic of Korea (Korea), Taiwan, Thailand and the Socialist Republic of Vietnam

² Case 504 EPR item No. 2.

³ The EPR is available via www.adcommission.gov.au.

⁴ Case 504 EPR item No. 6.

⁵ Case 504 EPR item No. 16.

⁶ ADN No. 2019/20 refers.

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(Vietnam) at dumped prices.⁷ The investigation period examined in INV 219 was 1 July 2010 to 30 June 2013.

On 1 December 2014, the Commissioner terminated the investigation in relation to China and Korea.⁸ The Commissioner also terminated the investigation in relation to UNINDO, an exporter from Indonesia.⁹

In relation to all other exports during the investigation period, the Commissioner found that:

- the goods were dumped, with dumping margins ranging from 3.5 per cent to 39.1 per cent;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Consequently, anti-dumping measures were imposed on the goods exported to Australia from Indonesia (except by UNINDO), Taiwan, Thailand and Vietnam by public notice on 10 December 2014 by the then Parliamentary Secretary to the then Minister for Industry following consideration of *Anti-Dumping Commission Report No. 219* (REP 219).

Subsequent to applications from certain affected parties, the findings of INV 219 were subject to review by the Anti-Dumping Review Panel (ADRP). Following the ADRP review, the anti-dumping measures were revoked in relation to ABB Thailand, ABB Vietnam and all other Vietnamese exporters.¹⁰

2.2.2 Review No. 383

On 7 November 2016, the Commission initiated a review of the anti-dumping measures applying to the goods exported to Australia from Indonesia by CG Power (REV 383). *Anti-Dumping Commission Report No. 383* (REP 383) contains the recommendations resulting from the review, reasons for the recommendations and material findings of fact and law.

The then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science accepted the recommendations contained in REP 383 and the dumping duty notice as applicable to CG Power was amended to reflect the variable factors determined in REV 383. This decision was subsequently reviewed by the ADRP following an application by CG Power.

⁷ ADN No. 2013/64 at Case 219 EPR item No. 2.

⁸ ADN No. 2014/130 at Case 219 EPR item No. 192 refers. The investigation was terminated in relation to particular exporters on the basis that there has been no dumping of any of those goods the subject of the application, in accordance with section 269TDA(1). The investigation was also terminated pursuant to section 269TDA(3) against China and Korea on the basis that the total volume of goods exported from those countries that have been, or may be, dumped is less than 3 per cent of the total Australian import volume as prescribed in section 269TDA(4).

⁹ ADN No. 2014/130 refers. The investigation was terminated in relation to this exporter on the basis that there has been no dumping of any of those goods the subject of the application, in accordance with section 269TDA(1).

¹⁰ ADRP Review No. 24 available via www.industry.gov.au.

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Following the ADRP review, the notice was altered, resulting in a minor reduction in the normal value and dumping margin for CG Power.¹¹

2.2.3 Investigation No. 507

On 18 March 2019, following the Commissioner's consideration of an application lodged by WTC seeking the publication of a dumping duty notice in respect of the goods exported to Australia from China, Investigation No. 507 (INV 507) was initiated.

The Commissioner's reasons for initiating this investigation are detailed in ADN No. 2019/35 which is available on the EPR for INV 507.

The SEF for INV 507 was originally due to be placed on the EPR by 8 July 2019, however the due date for the SEF and final report was extended on two occasions¹².

The Commissioner is now required to place the SEF for INV 507 on the EPR by 17 October 2019.

2.2.4 Current anti-dumping measures

The current anti-dumping measures applying to the goods exported to Australia are set out in Table 1 below:

	Exporter	Interim Dumping Duty (IDD)	Form of measures
Indonesia	PT CG Power Systems Indonesia	28.3%	Ad valorem
	All other exporters (except UNINDO)	8.7%	Ad valorem
Taiwan	Fortune Electric Co Ltd	15.2%	Ad valorem
	Shihlin Electric and Engineering Corporation	21.0%	Ad valorem
	Tatung Company	37.2%	Ad valorem
	All other exporters	37.2%	Ad valorem
Thailand	Tirathai Public Company Limited	39.1%	Ad valorem
	All other exporters (except ABB Thailand)	39.1%	Ad valorem

Table 1 - Existing anti-dumping measures on power transformers

2.3 Conduct of this inquiry

For the purposes of this inquiry, the Commission established an inquiry period of 1 January 2016 to 31 December 2018 (the inquiry period). The Commission has also examined data from the ABF import database, financial data submitted with the application by WTC and other Australian industry members and data from the INV 219 for

¹¹ ADRP Review No. 60 available via www.industry.gov.au.

¹² Case 507 ADN No. 2019/075 at EPR item no. 26 and ADN No. 2019/107 at EPR item no. 55.

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the purpose of analysing trends in the market for the goods and assessing potential injury factors in the period from 1 July 2014 (the injury analysis period).

2.4 Australian industry

The Commission must be satisfied that “like” goods are produced in Australia. Sections 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. The Commission is satisfied that like goods are wholly manufactured in Australia. The Commission is aware of three Australian producers of power transformers: WTC, Tyree Transformer Co Pty Ltd (Tyree) and Ampcontrol Pty Ltd (Ampcontrol).

The Commission sought information from Ampcontrol and Tyree to determine the role of those companies in the production of power transformers. Ampcontrol completed an Australian industry financial information questionnaire. No response was received from Tyree.

Based on information contained in the application, information obtained from Ampcontrol and that gathered during INV 219 and INV 507, the Commission is satisfied that WTC accounts for the majority of power transformers produced in Australia which are “like” to the goods subject to the notice.

The Commission conducted a verification visit to WTC’s premises in March 2019. The report in relation to this visit is available on the EPR.¹³

2.5 Importers

The Commission identified a single importer of the goods from the subject countries during the inquiry period from the ABF import database. The Commission established that this entity did not have a geographic Australian presence and had been incorporated for taxation purposes.

2.6 Exporters

2.6.1 Exporters in the inquiry period

The Commission identified a single exporter of the goods from the subject countries during the inquiry period from the ABF import database, being Fortune Electric Co. Ltd (Fortune) in Taiwan.

The Commission attended Fortune’s offices in April 2019 to verify information and data provided in its response to the exporter questionnaire (REQ). A public version of the verification report is available on the EPR.¹⁴

¹³ Case 504 EPR item No. 17.

¹⁴ Case 504 EPR item No. 10.

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2.6.2 Other exporters subject to the anti-dumping measures

The Commission received an REQ from CG Power which indicated that, while CG Power had not exported during the inquiry period, it had a contracted to deliver a power transformer in 2019. However, as CG Power did not export the goods to Australia during the inquiry period, the Commission did not undertake a verification visit to CG Power.

2.7 Submissions received

The Commission received the following submissions from interested parties during the course of the inquiry and has had regard to these submissions in formulating this report. Non-confidential versions of these submissions are available on the EPR.

EPR No.	Party	Date published on EPR
6	Government of Indonesia	4 April 2019
9	Fortune Electric Co., Ltd	29 May 2019
13	Wilson Transformer Company Pty Ltd	18 June 2019
15	Fortune Electric Co., Ltd	24 July 2019
16	PT CG Power Systems Indonesia	31 July 2019
18	PT CG Power Systems Indonesia	19 August 2018
20	Wilson Transformer Company Pty Ltd	12 September 2019
21	Fortune Electric Co., Ltd	19 September 2019
22	PT CG Power Systems Indonesia	19 September 2019
24	Government of Indonesia	26 September 2019

Table 2 - Submissions

3 THE GOODS, LIKE GOODS AND THE AUSTRALIAN INDUSTRY

3.1 Finding

The Commission considers that locally produced power transformers are like to the goods subject to the anti-dumping measures. The Commissioner considers that power transformers manufactured by the Australian industry are like goods, as defined in section 269T(1).

3.2 Legislative and policy framework

In assessing whether expiration of measures would lead, or would likely lead, to a continuation or recurrence of dumping, the Commissioner must first assess whether the goods produced by the Australian industry are like to the imported goods. Section 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.

The Commission's framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidy Manual* (the Manual). The Commission assesses whether locally produced goods and imported goods have characteristics closely resembling each other in terms of:¹⁵

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

The Commission must also assess whether there is an Australian industry in respect of like goods. The framework for making that assessment is set out in the following provisions:

- Section 269T(4) provides that there is an Australian industry in respect of like goods if there is a person or persons who produce like goods in Australia and the Australian industry consists of that person or persons.
- Section 269T(2) provides that goods are not to be taken to have been produced in Australia unless they were wholly or partly manufactured in Australia.
- Section 269T(3) provides that goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods must be carried out in Australia.

The term "substantial process" is not defined in the legislation. The Commission considers that a substantial process must add some essential or vital quality or character to the goods.¹⁶

¹⁵ Manual at section 2.3.

¹⁶ Manual at section 1.2.

3.3 The goods

The goods that are the subject of this inquiry 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;
- 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.

3.3.1 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995*:

- 8504.22.00: 40; and
- 8504.23.00: 26 and 41.

The Commission identified instances where the goods had been classified to the following tariff subheadings:

- 8504.21.00 (liquid dielectric transformers having a power handling capacity not exceeding 650 kilovolt amperes (kVA));
- 8504.22.00 (liquid dielectric transformers having a power handling capacity exceeding 650 kVA but not exceeding 10,000 kVA);
- 8504.23.00 (liquid dielectric transformers having a power handling capacity exceeding 10,000 kVA);
- 8504.31.00 (other transformers having a power handling capacity not exceeding 1 kVA);
- 8504.33.00 (other transformers having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA); and
- 8504.34.00 (other transformers having a power handling capacity exceeding 500 kVA).

3.3.2 Submission from GOI

The GOI¹⁷ submitted that there is an inconsistency in the definition of the goods in the notice announcing the initiation of the inquiry and that contained in the application, as the notice refers to two tariff classifications while the application refers to five tariff

¹⁷ Case 504 EPR item No. 10.

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classifications. The GOI asserted that failure to correctly define the goods would affect the objectivity of the inquiry.

3.3.3 Commission's assessment

The Commission notes that the goods description contained in the initiation notice (ADN No. 2019/20) and that detailed in the application are consistent. The initiation notice outlines the goods subject to this inquiry. The initiation notice notes that the goods are generally, but not exclusively, classified to certain tariff subheadings.

3.4 Like goods

The Commission has considered the application and findings of previous investigations and publicly available information in its assessment of like goods.

Physical likeness

The Commission is satisfied that locally produced and imported power transformers are physically alike. The imported and locally produced power transformers are assembled from the same or similar core components – bushing, windings, conservator, tank and steel core. While power transformers generally can share common product characteristics, the wide array of potential product elements and performance attributes means that each power transformer is unique for a particular purchaser, and therefore the product engineered for that purchaser will be physically alike whether it be produced locally or imported.

Commercial likeness

The Commission is satisfied that locally produced and imported power transformers are commercially alike. Locally produced and imported power transformers compete directly within the Australian market. When a purchaser plans to purchase a new or a replacement transformer, it issues a request for quotation, typically open to both foreign and domestic producers. Such a request will include the specifications of the unit. Manufacturers of power transformers will then bid on the project and confirm their ability to meet the specifications within the required time line. The Commission is satisfied that locally produced and imported power transformers compete directly within the Australian market through a bid and contract award process open to both domestic and foreign manufacturers.

Functional likeness

The Commission is satisfied that imported power transformers and those produced locally are functionally alike. Power transformers are complex, technical, engineered-to-order capital products. The successful tenderer must demonstrate the capacity to meet the end use requirements of the purchaser, to which end the imported and locally produced power transformer must be functionally identical.

Production likeness

The Commission is satisfied based on information contained within the application and that gathered during INV 219 that imported and locally produced power transformers are alike in regards to their manufacture. While power transformers are complex, engineered-

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to-order products, the underlying technology necessitates a consistency of material inputs and manufacturing processes common to both locally produced and imported products.

Based on the analysis above, the Commission, is satisfied that the goods produced by the Australian industry are like to the imported goods.

3.5 Australian industry in respect of like goods

The Australian industry producing power transformers is comprised of WTC, Ampcontrol and Tyree.

3.5.1 Production process

Power transformers are custom designed capital goods engineered to order and manufactured to the specifications of the purchaser. The following is a brief description of the production process:

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.

Testing

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

Delivery

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

3.5.2 WTC

WTC stated in its application that power transformers are manufactured from imported and domestically sourced raw materials. Imported raw materials that are not available in Australia include:

- core steel - high quality grain orientated electrical steel;
- conductor - copper wire manufactured to exacting specifications and covered by either paper or enamel;
- insulation – highly specialised paper based material;
- bushings;
- on-load tap changes;
- transformer oil; and
- sundry other components.

WTC stated that the Australian design and manufacturing process include the following:

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

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- final assembly; and
- testing.

WTC manufactures power transformers at its Glen Waverly production facility. The Commission undertook an inspection of this facility during a verification visit conducted in March 2019 and observed the performance 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 transformers manufactured by WTC meet the requirements of sections 269T(2) and 269T(3).

3.6 Conclusion

The Commission considers that there are strong physical, commercial, functional and production likenesses between the goods and the goods produced by the Australian industry.

The Commission is satisfied that at least one substantial process in the manufacture of power transformers is carried out in Australia and therefore there is an Australian industry producing like goods.

4 THE AUSTRALIAN MARKET

4.1 Findings

The Commission has found that, during the inquiry period, the Australian market for the goods was supplied by the Australian industry, imports from certain subject countries and imports from other countries.

4.2 Market size

In its application, WTC estimated the size of the Australian market in terms of sales value using its own production and sales data, estimated sales of other Australian producers and import statistics sourced from the Australian Bureau of Statistics (ABS). WTC made adjustments, based on its market knowledge, to account for instances where it believed that importations had been incorrectly classified in the import statistics.

In terms of assessing the size of the Australian market, power transformers can be aggregated in terms of dollars, units, and total capacity (expressed in mega volt amperes (MVA)). A power transformer may be 10 MVA and weigh 20 to 25 tonnes or over 500 MVA and weigh over 200 tonnes. Because of the diversity of size and capacity of power transformers, the Commission considers that capacity would be the most appropriate measure of the size of the Australian market. Import statistics however only identify the number of units and sales value. The Commission has therefore, for the purposes of this report, and in the absence of capacity data, considered market size in terms of both the number of units sold and the total sales value of those units.

For the purposes of estimating the size of the Australian market for power transformers the Commission has analysed:

- WTC's verified sales data;
- production and sales information provided by Ampcontrol;
- WTC's estimate of the value of sales by Tyree, noting that the Commission contacted Tyree to obtain sales and production data, however did not receive a response;
- importation and sales information provided within questionnaire responses received from four importers;¹⁸
- production, sales and exportation information provided within questionnaire responses received from eight exporters;¹⁹
- purchasing information provided within questionnaire responses received from ten end users; and
- import data obtained from the ABF import database under the tariff classifications to which the goods are typically classified, in addition to tariff classifications identified by WTC as potentially including the goods. The data obtained was cleansed by reference to the description of the goods provided in declarations and

¹⁸ This information includes information obtained from this inquiry and from INV 507.

¹⁹ Ibid.

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by value. Line items with a final line customs value of under \$150,000 per unit were excluded.

The Australian market for power transformers, as estimated by the Commission, by value is illustrated below:

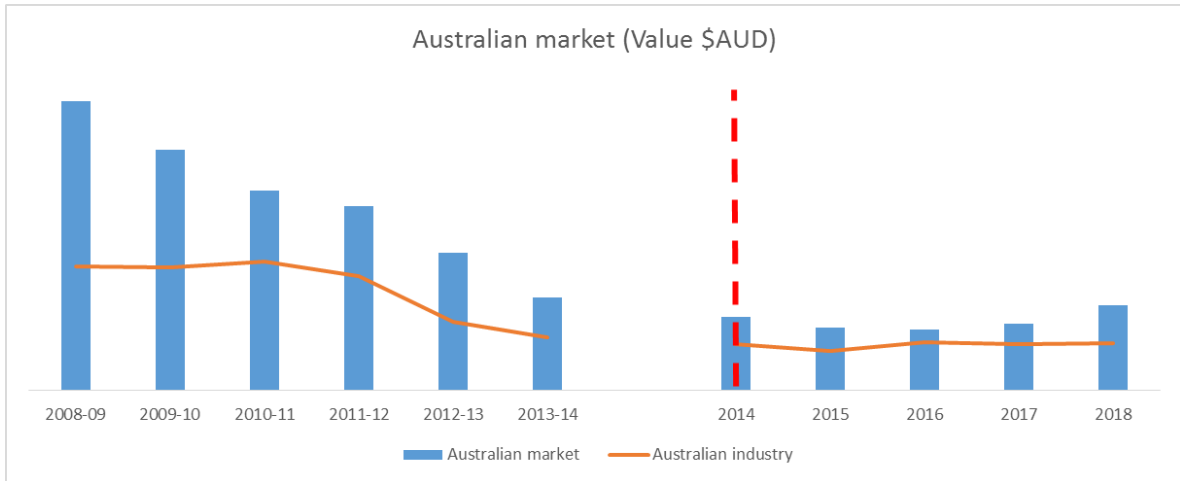


Figure 1 – The Australian market for power transformers by value (\$AUD) since 1 July 2008²⁰

Based on the Commission’s estimates, the Australian market for power transformers has contracted almost continually since 2008, however has seen a slight recovery since 2016. The Australian industry’s share of the market by value has recovered marginally since 2015 following the imposition of measures.

The estimated size of the Australian market in terms of the number of power transformers supplied by source is illustrated in Figure 2 below:

²⁰ The injury examination period for REP 219 was 1 July 2008 to 30 June 2013 (financial years). The injury examination period for this continuation inquiry is 1 January 2014 to 31 December 2018 (calendar years). Figure 1 includes an overlap of 6 months between 1 January to 30 June 2014. The dotted red line represents imposition of the anti-dumping measures.

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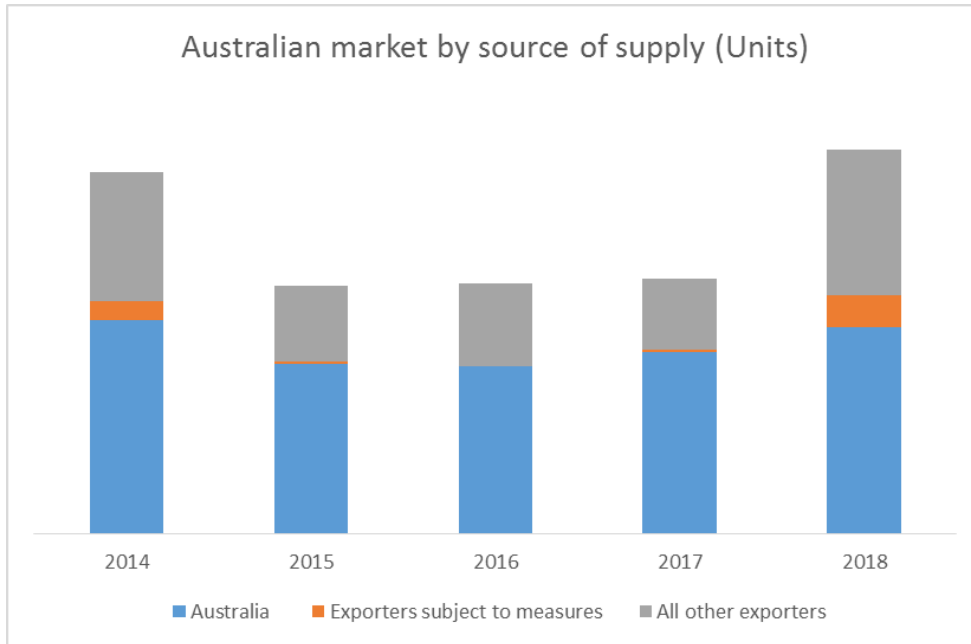


Figure 2 – The Australian market for power transformers (by number of units sold)

In terms of units the Australian sales volume has increased. The overall size of the market in units has increased significantly more than the Australian industry’s increase. Exporters subject to measures have re-entered the market in 2017 and have taken a larger share of the market in 2018.

The estimated size of the Australian market in terms of the value of power transformers sold is illustrated in the Figure 3 below:

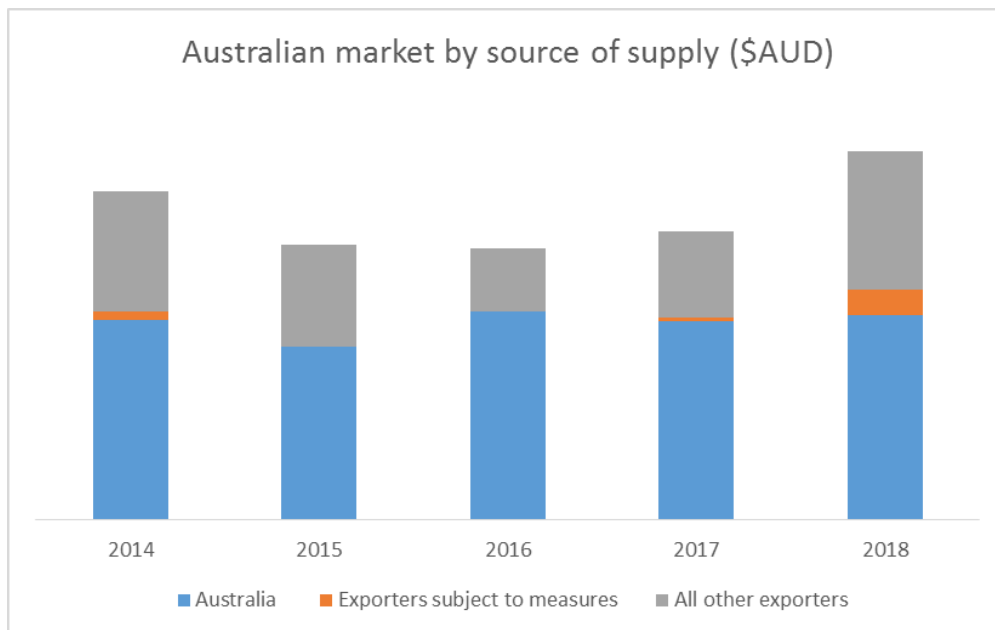


Figure 3 – The Australian market for power transformers (by sales value)

The Australian industry has not seen as clear an improvement in terms of value of power transformers sold. Again, the slight increase in the Australian industry’s sales in terms of

value is minimal in comparison to the overall growth in the market as well as the growth in the sales value of exports subject to measures.

The Commission's market analysis is contained in **Confidential Attachment 1**.

4.3 Market structure

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

Generation

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, often 100 to 600 MVA.

Transmission and distribution

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. Transmission of electricity usually occurs at 66 to 500 kV, but distribution is made at below 66 kV. Power transformers that take high transmission voltages and convert them to lower voltages suitable for distribution are known as step-down transformers. There are numerous power transformers in a distribution network.

Distribution transformers, finally, are the last point of connection to a residential or commercial consumer in the distribution network. Distribution transformers have low power ratings (below 10 MVA) and are therefore not subject to this investigation. Retailers buy electricity from distributors and sell it to purchasers. In some cases the retailer is part of a distribution company. Power transformers are not used in the retail network, although some retailers own generating facilities.

National Electricity Market (NEM)

With the exception of Western Australia and Northern Territory, the remainder of Australian electricity consumers get their electricity from the NEM which combines the electricity grids of Queensland, New South Wales, Victoria, South Australia and Tasmania.²¹

4.4 Sources of product demand

WTC identified the following sources of product demand in its application:

- Electricity transmission and distribution businesses;
- Generation businesses, traditionally large coal fired power stations, but more recently renewables generation, particularly wind and solar;
- Large industrial developments, including mining and Liquefied Natural Gas; and

²¹ [AER: State of the Energy Market, May 2017, page 22.](#)

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- Other miscellaneous requirements including hydro stations and commercial developments.

4.5 Electricity transmission and distribution businesses

The Commission has identified the major power transmission companies in Australia which include Transgrid, SP AusNet, Powerlink, ElectraNet, Western Power and TasNetworks.

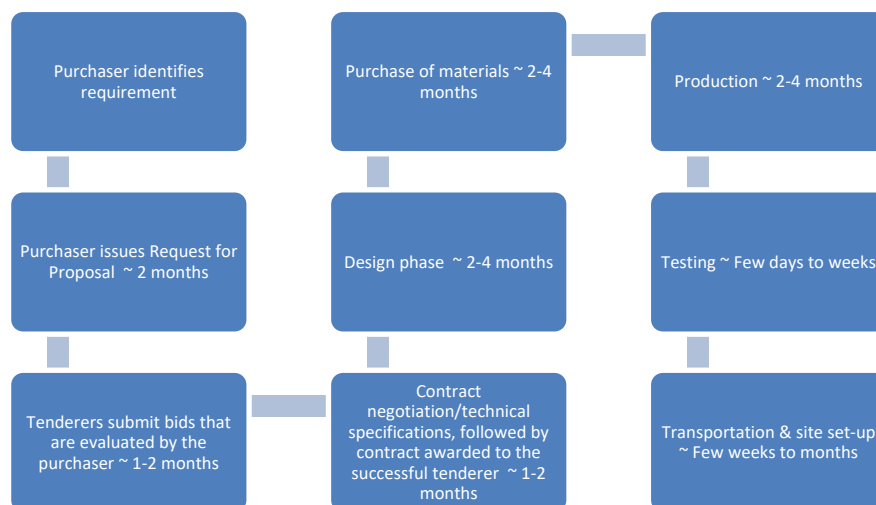
The major power distribution companies in Australia identified by the Commission include Ausgrid, Endeavour Energy, Essential Energy, CitiPower, Powercor, Energy Queensland and SA Power Networks. AusNet, Western Power and TasNetworks are distributors as well as transmission companies.

Transmission and distribution businesses are referred to as utilities in this report. The utilities that operate in the NEM are regulated by the Australian Energy Regulator (AER).

4.6 Marketing and distribution arrangements

WTC outlined the marketing and distribution arrangements in its application:

- As the power transformers are highly complex products, sales are generally made directly by the manufacturers to the end user, particularly where the purchasers are utilities;
- Where large projects are engineered by organisations other than the end purchaser, the sales are frequently made to those engineering organisations;
- Overseas manufacturers may make the sales through their own employees employed in Australia or employees who travel to Australia to arrange the sale with the Australian purchasers. Sometimes local agents or trading houses are used;
- Where a multi-national organisation is involved, the Australian arm of the company is most likely to interface with the Australian purchasers;
- The procurement process for power transformers typically includes the steps outlined in Figure 4. WTC stated that the lead times indicated in Figure 4 are indicative for very large power transformers. For small and medium transformers the lead times are shorter, in particular when required for the renewable projects.



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Figure 4 – Procurement and manufacturing process chart for large power transformers²²

Based on findings from INV 219, WTC's application, submissions received, and information gathered by the Commission during the course of this inquiry, the Commission finds that power transformers are purchased by the purchasers through a tender process where the purchaser issues a request for quotation, detailing the specifications of the unit. Manufacturers, both domestic and international, will then bid on the project and confirm their ability to meet the specifications and required time line for delivery and installation.

Public utilities normally advertise request for tenders, however private companies may simply approach selected suppliers. Large projects may be managed by engineering, procurement and construction (EPC) contractors rather than the end owner, in which event sales are frequently made to the EPC contractor.

Depending on the market segment there may be an informal bid process prior to formal bids. This is generally in the renewables sector where the potential purchaser of the power transformers is initially bidding for an EPC contract. The successful EPC contractor will then commence the formal request for quote process.

A request for tender may be for a one-off purchase or for a period contract (applying to purchases for a number of years). A period contract may select a single supplier or 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 while some have an Australian office that handles contract negotiations.

4.7 Demand variability

WTC identified the following contributors to demand variability:

- Economic growth of the country generally, but more specifically of different states;
- Regulation. As transmission and distribution utilities are natural monopolies, they are regulated in many ways and the five-yearly regulation reviews have a significant impact on the investment decisions of the utilities;
- Resource cycles and related mining and gas export projects;
- National energy policy and associated legislation particularly related to renewable energy. Of particular significance is the Large-scale Renewable Energy Target

²² This process chart was created by the Commission based on the process chart contained in WTC's application. The Commission has added some additional comments to some of the text boxes for purpose of clarity. However, the steps involved, sequencing and lead times correspond with the original process chart supplied.

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(LRET), a federal government policy which encourages investment in renewable power stations to achieve 33 000 gigawatt hours (GWh) of additional renewable electricity generation by 2020. WTC claims that due to the deadlines associated with the financial incentives of the LRET, there is a peak of demand for power transformers that commenced in 2017 and will end in 2020;

- State based energy policy related to renewable energy may increase demand and lead to more import activity;
- Capacity utilisation; as manufacture of power transformers is capital intensive, and requires a skilled workforce, the manufacturers endeavour to ensure that their factory utilisation is high and stable. This provides strong incentives for manufacturers to find alternative sources of demand when their local, or traditional export, demand declines. The application states that the USA and Canada have dumping duties in place against power transformers exported from Korea;
- Chinese manufacturers of power transformers have experienced declining demand associated with the slowing of Chinese infrastructure development, and that the US-China trade dispute is impacting the Chinese local economy; and
- Competition between the Australian and imported product is essentially on a tariff free basis as virtually all Asian countries, except India and Taiwan, are able to export transformers to Australia without tariffs.

5 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

5.1 Approach to injury analysis

Power transformers are complex, engineered-to-order capital products with an operating life ranging from 30 to 50 years. WTC submitted in its application²³ that the costs and sales of power transformers were not directly comparable across periods or between products due to their specifications and complexity. It also submitted that the slow cycle time between the issue of requests for tender by purchasers and delivery, resulted in the injury being experienced some time after a lost tender.

In its application WTC submitted that there is a flow on effect between the loss of a tender and its subsequent impact on sales volume, revenue and profit, as well as on other economic indicators. In order to assess volume related injury the Commission has taken the approach of analysing the tenders as well as the flow on impact on sales volumes and market share. The Commission has limited the tenders analysed to the inquiry period. Sales are also reviewed for the inquiry period. It is noted that some of the sales are related to tenders won prior to the inquiry period. This is due to the delay between the winning of a tender and the sale of the power transformer. While the Commission has observed that this will be a minority of sales in 2016, the Australian industry sales figures depicted in Figures 1, 2, 3, 7 and 8 are provided as a guide only.

5.2 Findings of Investigation No. 219

In INV 219²⁴ the Commissioner found that dumped imports had caused material injury to the Australian industry 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.

The Commission considered it appropriate, having regard to the conditions of competition, to consider the cumulative injurious effect of the dumped imports from Indonesia, Taiwan, Thailand and Vietnam for the purposes of REP 219. It is noted that the subsequent ADRP²⁵ review removed ABB Thailand and Vietnam from the notice.

²³ Case 504 EPR Item No. 01.

²⁴ Case 219, EPR Item No. 194.

²⁵ ADRP Report No. 24, 30 September 2015.

5.3 Volume effects

5.3.1 Tenders

In order to assess injury in the form of reduced volumes as a result of lost tenders, the Commission requested a complete listing of all tenders for which the applicant submitted a bid during the inquiry period. The Commission analysed these by project and by the estimated sales revenue to the business based on WTC’s bids (inclusive of delivery and installation). While the following analysis is based on bids by the applicant only, as discussed above, the Commission accepts that injury to WTC is indicative of injury to the Australian industry as a whole.

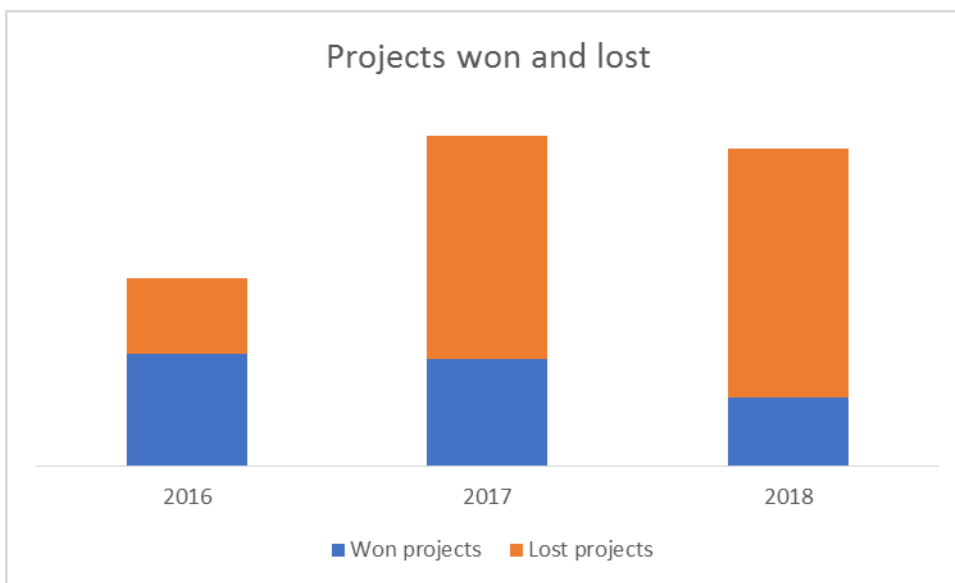


Figure 5 - Outcome of WTC's bids (by project)

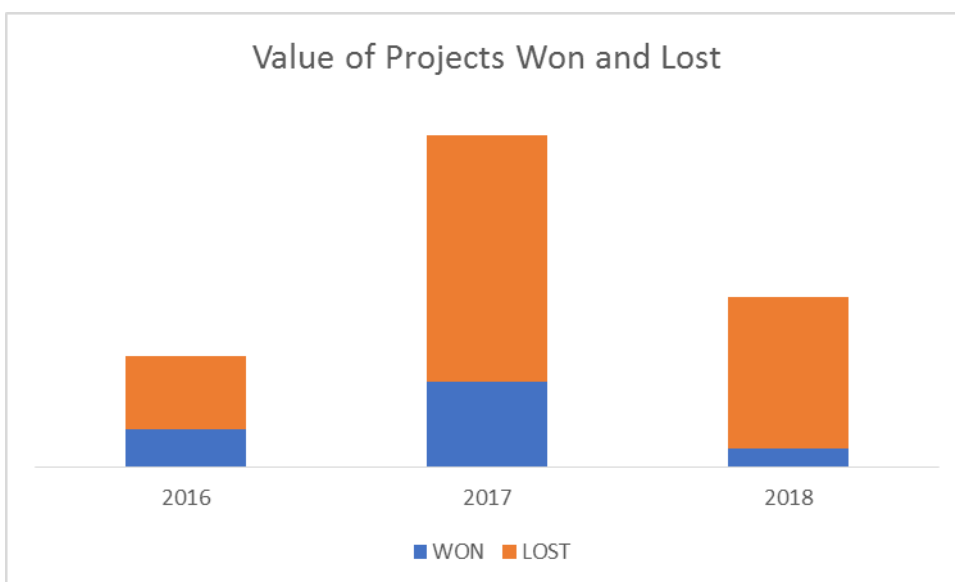


Figure 6 - Outcome of bids by value

During the course of the inquiry the Commission sourced further information from other participants to these tenders. The Commission also requested further information from

end users (the tenderers) in order to ascertain the importance of various evaluation criteria in their purchasing decisions.

The Commission’s consideration of WTC’s tender information is contained at **Confidential Attachment 2**.

5.3.2 Sales

In the application, WTC claimed that dumped imports from subject countries had entered the market during the inquiry period. WTC assessed this based on ‘value’ rather than ‘volume’. As each power transformer is built to its own specifications and value varies significantly from project to project a simple volume analysis could be misleading in assessing injury.

The Commission reviewed the sales in terms of volume (units) and value (sales value \$AUD) as illustrated in Figures 2 and 3 in section 4.2. It is observed that while Australian industry’s volume increased during the inquiry period, and the value of those sales increased marginally, the market increased significantly more. The increase in value and volume of the sales of exporters subject to measures was significantly greater than Australian industry’s gains. In accordance with the *Ministerial Direction on Material Injury 2012* (Ministerial Direction),²⁶ a decline in an industry’s rate of growth may be just as relevant as the movement of an industry from growth to decline.

5.3.3 Market share

The Commission analysed the share of the market by both sales volume and value.

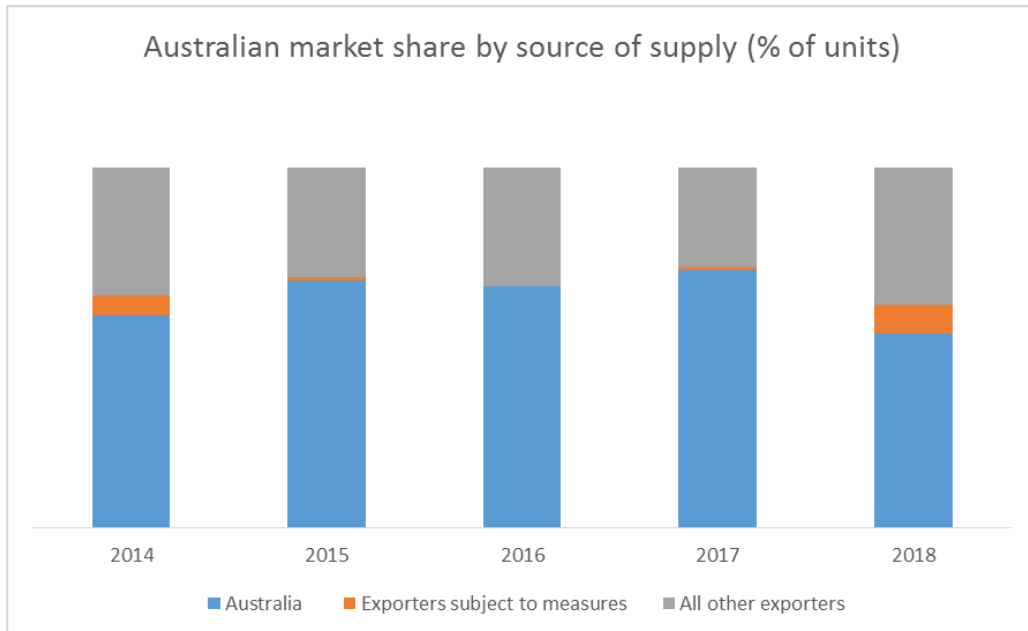


Figure 7 - Australian market share (% of units)

²⁶ [Ministerial Direction on Material Injury 2012](https://www.industry.gov.au) available at <https://www.industry.gov.au>.

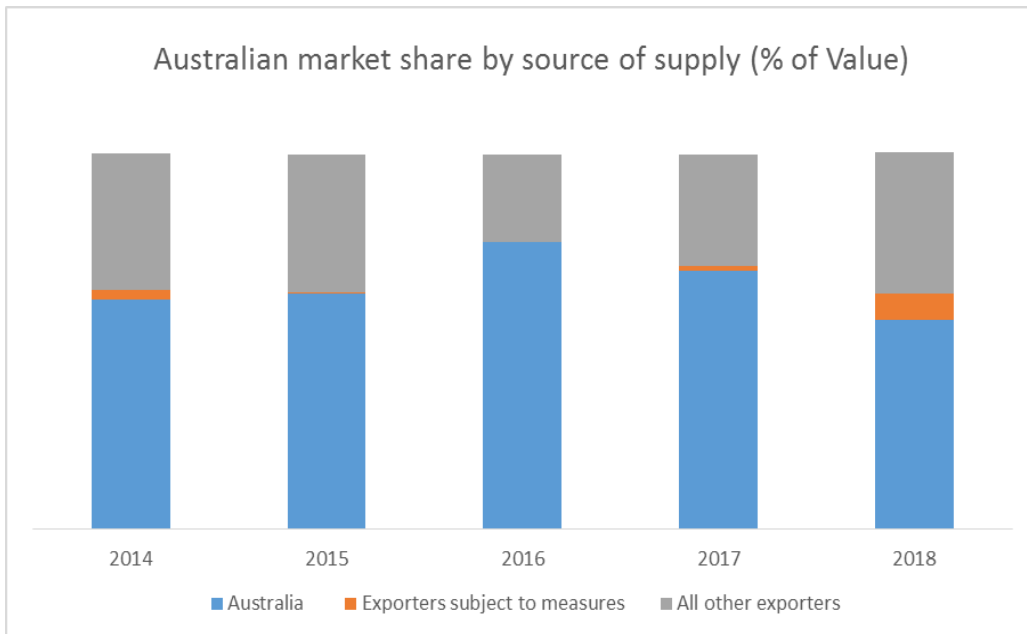


Figure 8 - Australian market share (% of sales value)

The decline in the market share of the Australian industry is most pronounced in the analysis of sales value in the market, where there has been a consistent reduction in market share during the inquiry period. In Figures 7 and 8 above, it is clear that following the measures, imports from the subject countries ceased entering the Australian market. At the end of the inquiry period dumped imports from Taiwan had resumed.

5.3.4 Conclusion

The Commission is satisfied that the Australian industry has experienced injury in the form of reduced sales volume and reduced market share.

5.4 Price effects

WTC provided sales and cost to make and sell (CTMS) data that was verified by the Commission. The Commission filtered out all data that was not directly related to the production and sale of power transformers in Australia to analyse the sales and CTMS of like goods during the injury analysis period.

5.4.1 Price suppression

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. In determining whether price suppression has occurred the Commission typically compares prices with costs over time.

Due to the unique specifications of individual power transformers, which vary considerably, there is limited value in analysing weighted average unit prices and weighted average costs in order to assess trends.

In this instance the Commission considers it more meaningful to analyse the total sales values and total CTMS at ex-works for like goods on a yearly basis over the injury analysis period.

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The Commission found that the yearly CTMS was consistently higher than the yearly sales value across the injury analysis period. The gap between yearly CTMS and yearly sales value widened after 2016, which coincides with the inquiry period.

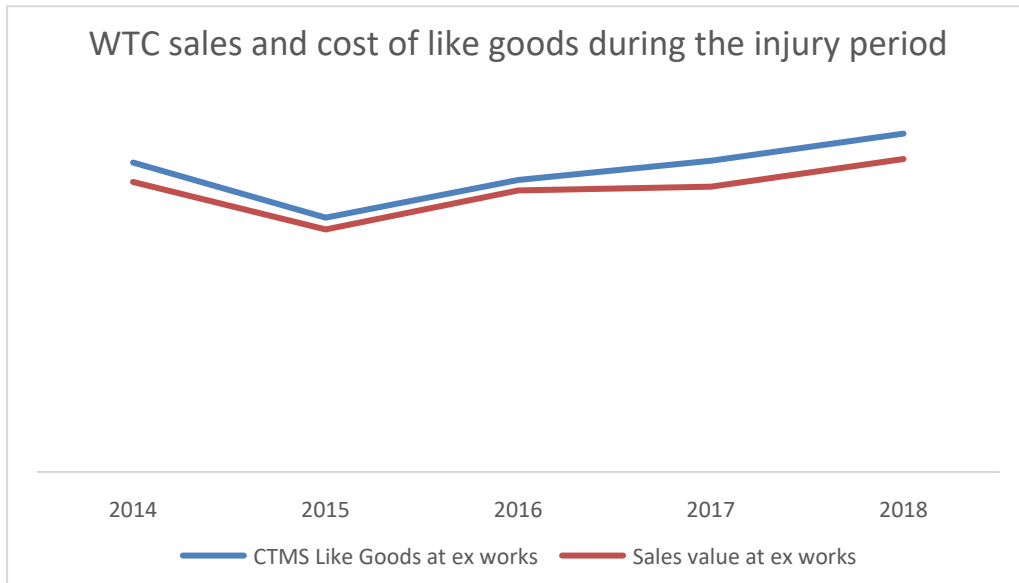


Figure 9 - Yearly CTMS and yearly sales revenue

CG Power²⁷ argued that as costs for manufacturing a transformer are not known at the time of tendering, and the difference between sales value and CTMS can be impacted by subsequent changes in the cost of raw materials, the comparison of CTMS to sales value tells us nothing about price competition.

The Commission agrees that price is an important factor in the evaluation of tenders and that the exact costs of manufacture are not known at the time of tendering. However, the Commission reviewed internal documents relating to the estimated costs, revenue and profit that is constructed by the Australian industry prior to making a bid. The Commission is satisfied that generally the Australian industry enters a bid with the view to making a profit on the supply of a power transformer. There is a flow on effect of winning the tender that then impacts sales revenue, profit, capacity utilisation and other factors as discussed below in section 5.6. In analysing the sales revenue and costs associated with the manufacture of power transformers limited to the goods under consideration, the Commission found that the sales revenue is consistently below the CTMS and that the gap has widened between 2016 and 2018. While the Commission accepts that there may be unforeseen costs that were not accounted for in the original budgeted figures, it is unlikely that this would have resulted in the sustained difference as illustrated in Figure 9. It is also reasonable to assume that an experienced producer of power transformers such as WTC, would account for as many variables as possible in its estimation of costs.

The Commission is satisfied that the Australian industry has experienced injury in the form of price suppression.

²⁷ Case 504 EPR Item No. 18.

5.4.2 Price depression

Price depression occurs when a company, for some reason, lowers its prices.

As previously outlined, because each power transformer is built to unique specifications and pricing may vary significantly different between transformers. For this reason trends in prices over time are of limited significance in assessing price depression.

The Commission considers it more meaningful to analyse price depression having regard to the won and lost tender documentation provided by WTC for all tenders that it participated in during the inquiry period. This documentation provides evidence to support claims that the Australian industry's prices were reduced during the course of tender negotiations, in some instances multiple times prior to winning a tender.

The Commission is satisfied that the Australian industry has experienced injury in the form of price depression.

The Commission's consideration of price effects is at **Confidential Attachment 3**.

5.5 Profits and profitability

WTC was unprofitable on its sales of like goods throughout the injury analysis period. WTC's profit and profitability improved between 2014 and 2016 before deteriorating.

As demonstrated in Figure 8 above, yearly costs have consistently been above yearly sales values in relation to like goods, reducing profit margins. In addition, WTC has experienced a smaller proportion of tender wins over the inquiry period (Figures 5 and 6 refer). The Commission is also satisfied that WTC reduced its bid prices during the course of tender negotiations for certain projects in the inquiry period. The flow through effect on volumes and prices has meant reduced sales revenues as well as a smaller number of projects for apportioning fixed costs. All of these factors have resulted in a net loss position for WTC during the injury analysis period.

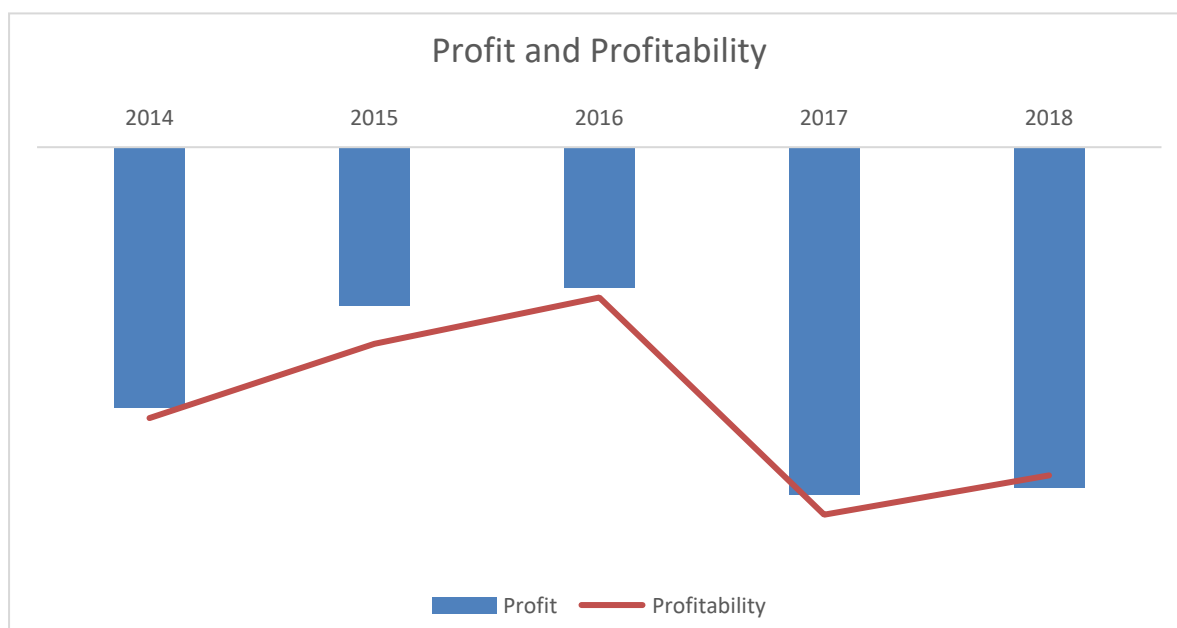


Figure 10 - WTC's Australian profit and profitability of like goods

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The Commission is satisfied that the Australian industry has experienced injury in the form of reduced profit and profitability.

The Commission's consideration of profit and profitability is at **Confidential Attachment 3**.

5.6 Other economic factors

In its application, WTC claimed that it had experienced injury in the form of:

- reduced cash flow;
- reduced capacity utilisation;
- reduced return on investment;
- reduced productivity;
- reduced revenue;
- reduced employment;
- reduced wages;
- reduced assets;
- reduced R&D expenditure; and
- reduced capital investment.

5.6.1 Reduced cash flow

WTC provided a cash flow index based on its accounts receivables balances across the injury analysis period to substantiate its claim. It was found that the balances have fluctuated in the injury analysis period as evidenced in Figure 11 below. The cash flow position has deteriorated between 2015 and 2016 and again between 2017 and 2018 and has not recovered to pre-2015 levels. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced cash flow.

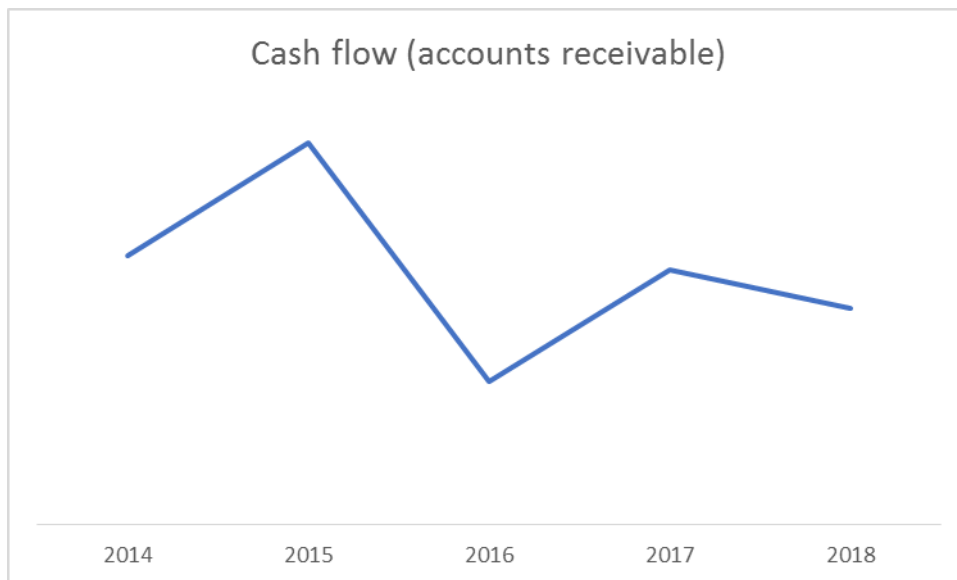


Figure 11 - WTC's Cash flow

5.6.2 Capacity utilisation

WTC's capacity remained unchanged during the injury analysis period. WTC advised that capacity is based on standard cycle times for each of the processes in the manufacture of

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power transformers. It has calculated output in MVA that can be produced at full capacity. Capacity utilisation reduced in the first half of the injury analysis period, and increased again in 2017. From the peak in 2017 capacity decreased in 2018 as illustrated in Figure 12 below. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced capacity utilisation.

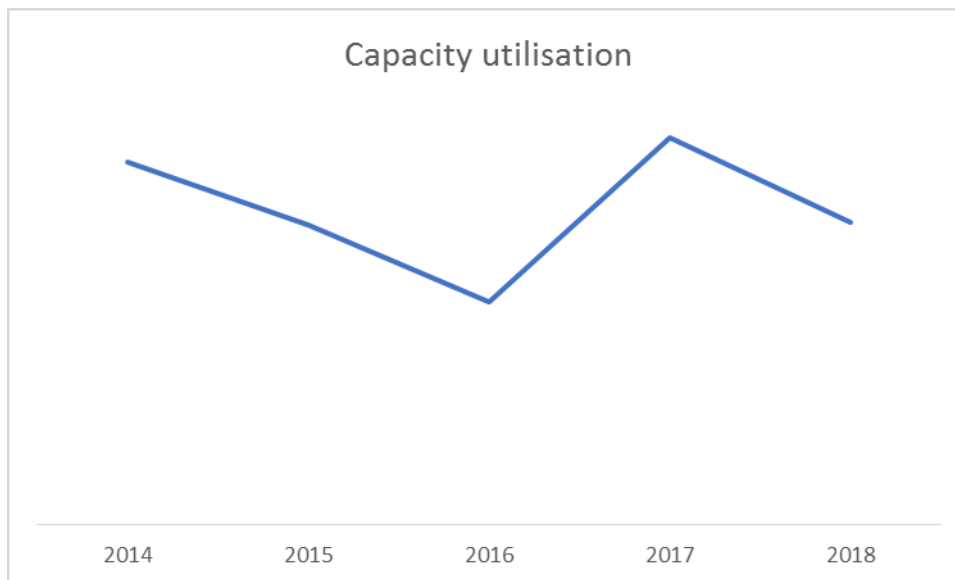


Figure 12 - WTC's Capacity utilisation

5.6.3 Return on investment

WTC claimed injury in the form of reduced return on investment (ROI). WTC calculated ROI across the injury analysis period based on earnings before interest and tax over revenue. WTC has experienced a negative ROI during the injury analysis period. There was an improvement between 2015 and 2016 (while still negative) before deteriorating again between 2016 and 2018. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced ROI.

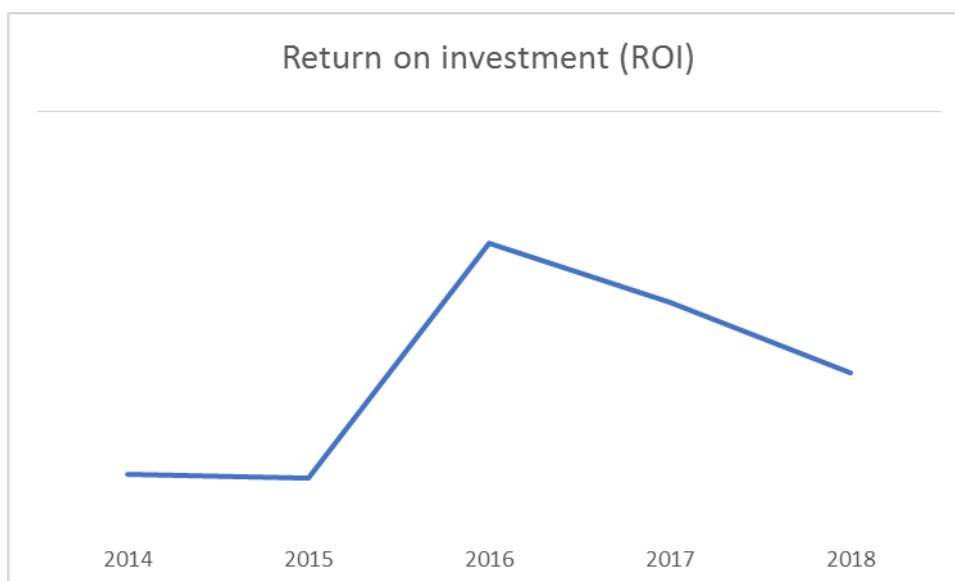


Figure 13 - WTC's return on investment

5.6.4 Productivity

Productivity has declined between 2015 and 2016 and again between 2017 and 2018. Productivity is the measure of output (in MVA) by the number of employees. The Commission found that employee numbers were relatively stable over the injury analysis period while output follows a similar trend to productivity. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced productivity.

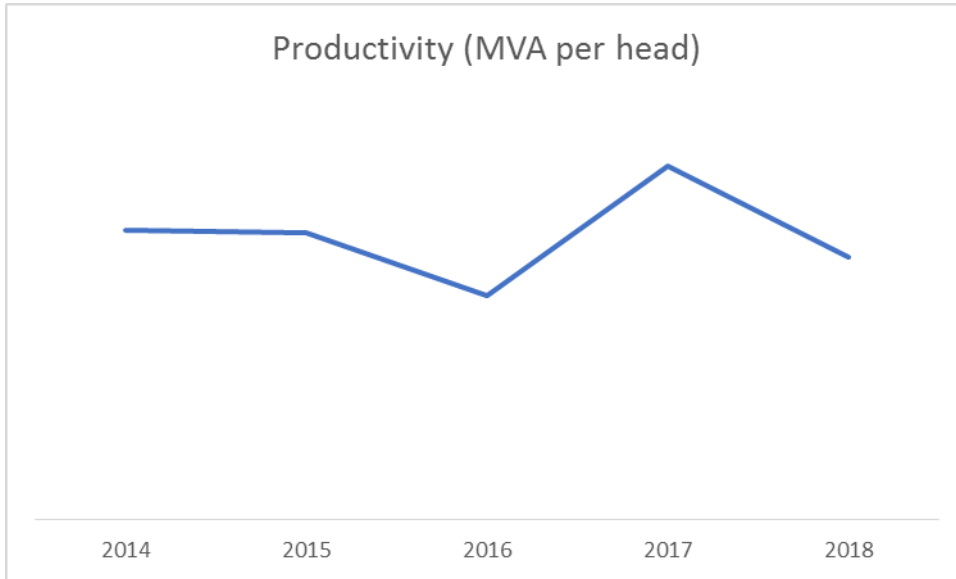


Figure 14 - WTC's productivity

5.6.5 Revenue

The revenue has remained relatively stable during the injury analysis period with a decline in 2018. The Commission considers the decline in 2018 to be in response to the volume effects identified in section 5.3 of this report. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced revenue.

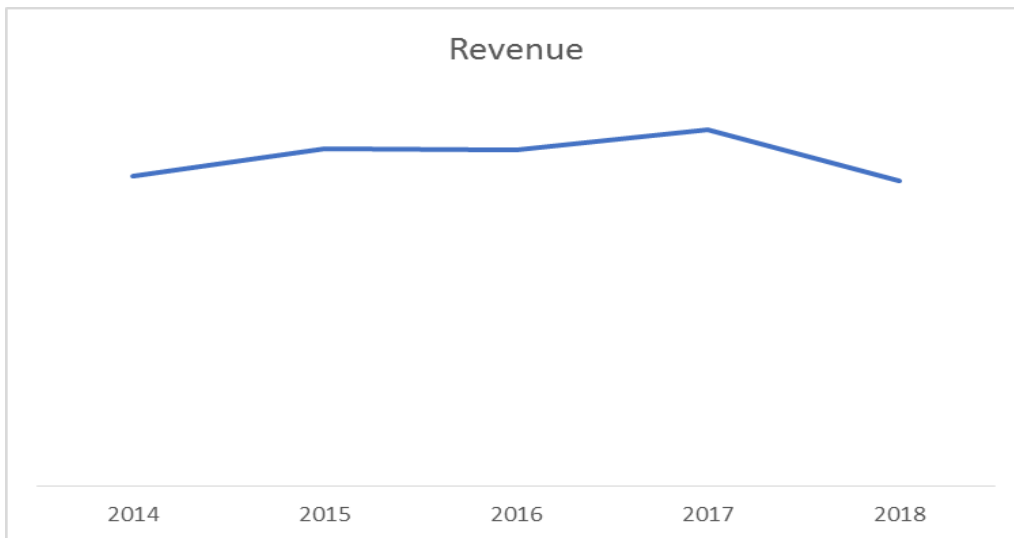


Figure 15 – WTC's Revenue

5.6.6 Other indicators

Employment - WTC has experienced a minor decline in employment numbers over the injury analysis period, with a recovery from 2016.

Reduced wages - On an average basis wages have remained fairly stable.

Assets – After an initial decline in assets relating to like goods, WTC has experienced a recovery during the inquiry period.

Research and development expense – While WTC has experienced a decline in research and development expenses during the inquiry period, there has been a recovery since 2017.

Capital investment – Capital investment declined between 2014 and 2015, however has since recovered.

The Commission's consideration of injury factors is at **Confidential Attachment 4**.

5.7 Conclusion – economic condition of the Australian industry

The Commission's has found that the economic performance of the Australian industry generally improved from FY14 to FY16. However there was some deterioration of economic performance, in particular through reduced sales volumes and market share, price depression and price suppression and reduced profit and profitability after FY 2016.

The Ministerial Direction notes that an industry which at one point is 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 the analysis in Chapter 5 indicates that the Australian industry is susceptible to injury from dumped imports.

6 EXPORT PRICE AND NORMAL VALUE

6.1 Findings

For the purpose of assessing whether the continuation of the anti-dumping measures is required to prevent the continuation or recurrence of dumping, and to assess what recommendations are appropriate regarding potential alterations to the notice, the Commissioner has examined information available in relation to the variable factors relevant to the taking of the measures.

The Commissioner has found that the variable factors have changed for all exporters from Taiwan and the category of 'all other exporters' from Indonesia.²⁸ The variable factors for CG Power and Thailand remain unchanged.

6.2 Legislative framework

Section 269ZHF(1) requires that the Commissioner must, after the conduct of an inquiry, give the Minister a report with recommendations which may include whether the dumping duty notice should:

- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or
- remain unaltered.

Variable factors in relation to a dumping duty notice include the export price, normal value and NIP.

The examination of export prices and normal values in this chapter and the NIP in chapter 8 are therefore relevant to the recommendations of the Commissioner in chapter 10.

In addition, in accordance with section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of dumping. A finding of dumping in the inquiry period might be a relevant factors, among others, that there is a likelihood of a continuation or recurrence of dumping.

Dumping occurs when a product from one country is exported to another country at an export price less than its normal value. The export price and normal value of the goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB.

²⁸ The variable factors are export price and normal value, as examined in this chapter and non-injurious price as examined in Chapter 8.

6.3 Categorisation of exporters

6.3.1 Cooperating exporters

The Commission has categorised exporters that provided a REQ as cooperative exporters. The Commission has analysed the information submitted by these exporters.

6.3.2 Uncooperative exporters

Section 269T(1) provides that an exporter is an uncooperative exporter where the Commissioner is satisfied that the exporter did not give the Commissioner information that the Commissioner considered relevant to the inquiry, within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that the exporter significantly impeded the inquiry.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) provides that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails within the legislated period to provide a response or to request a longer period to do so (section 8).

After having regard to the Direction, the Commission has determined that any exporters that did not within the legislated period provide a response to the exporter questionnaire or did not request a longer period to provide a response are uncooperative exporters for the purposes of this inquiry.

As provided for in section 269TACAB(1), for uncooperative exporters, export price and normal value is worked out in accordance with section 269TAB(3) and section 269TAC(6) respectively, by having regard to all relevant information.

6.4 Export price and normal value - Indonesia

6.4.1 CG Power

The Commission assessed the data submitted by CG Power in its REQ. However as CG Power did not export the goods during the inquiry period, a verification visit was not undertaken.

If the Minister decides to secure the continuation of the notice with respect to CG Power, the Commissioner recommends that the notice remains unaltered with respect to CG Power. The Commissioner recommends that the Minister does not re-determine variable factors for CG Power on the basis that there is no contemporary information available to do so.

6.4.1.1 Export price

The Commissioner recommends that the Minister does not re-determine an export price for CG Power. CG Power did not export the goods to Australia during the inquiry period. Therefore, there is no contemporary information available to re-determine an export price of the goods.

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The Commission is of the view that the most reliable and relevant information it possesses in relation to the export price for CG Power is the export price currently applicable to the notice. This reflects the previously verified export price of goods exported to Australia by CG Power over the period 1 July 2013 to 30 June 2016.

The Commission does not consider the export price for the power transformer produced by CG Power exported to Australia in 2019, after the end of the inquiry period, can be used to re-determine the export price. While this power transformer is of a power rating in the range of the goods exported previously by CG Power, the export occurred in 2019, after the end of the inquiry period (1 January 2016 to 31 December 2018).

6.4.1.2 Normal value

The Commissioner recommends that the Minister does not re-determine a normal value for CG Power. From CG Power's REQ, it was established that CG Power sold like goods on the domestic market during the inquiry period. The Commission considered whether it is appropriate for the Minister to re-determine the normal value for the inquiry period using information contained in the REQ.

However, noting the findings above at section 6.4.1.1, i.e. that CG Power did not export the goods to Australia during the inquiry period; and that the most relevant information regarding CG Power's export prices is that of previously exported goods to Australia by CG Power, it is necessary that any corresponding normal value reflect the specifications of those particular goods.

The Commission considers that each power transformer is a unique capital item engineered to meet each purchasers' specific technical requirements. Differences in technical specifications include power ratings expressed in MVA, voltage ratings expressed in kV, type of cooling (natural, fan, water), electrical impedance and sound level limits. Transformers can range in size from 20 tonnes to over 200 tonnes and in price from hundreds of thousands of dollars to millions of dollars. The designated specifications affect the selling prices of goods and like goods.

The sales of like goods made by CG Power on the domestic market of Indonesia during the inquiry period were of particular designs that do not match the goods previously exported to Australia.

The Commission considers that because of the many variables and differences in technical specifications which would affect proper comparison between the export price and the corresponding normal value, it is not possible to accurately adjust domestic prices from the inquiry period to make them comparable with goods upon which the export price is based.

Therefore, the Commission is of the view that there is an absence of sales of like goods in the market of the country of export that would be relevant for the purposes of determining a price under section 269TAC(1). Further, there are no other exporters of the goods from Indonesia that have cooperated with this inquiry, and no other exports from Indonesia, and as such the Commission is unable to have regard to the prices achieved by other sellers of like goods.

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There is also no basis on which to construct a normal value relevant to the inquiry period under section 269TAC(2)(c), noting that the constructed normal value ordinarily relies on the cost of production for goods exported to Australia and CG Power did not export the goods to Australia during the inquiry period. It would also be inappropriate to construct the normal value for the inquiry period based on CG Power's domestic production costs, as those costs relate to different goods not previously exported to Australia and it is not possible to accurately adjust these costs to reflect the goods upon which the export price relates.

While CG Power did provide sales data for third country sales in its REQ, the Commission could not determine a normal value for the inquiry period based on those sales under section 269TAC(2)(d), due to the unique nature of each power transformer.

The Commission therefore considers that sufficient information is not available to determine a normal value of the goods for the inquiry period.

The Commission is of the view that the most reliable and relevant information it possesses in relation to the normal value for the goods exported by CG Power is the normal value currently applicable to the notice. This reflects previously verified normal values of particular goods exported to Australia by CG Power.

6.4.1.3 Dumping margin

As CG Power did not export power transformers in the inquiry period, the Commission considers that the export price and normal value relevant to the existing notice is the more reliable and relevant information available. The Commission has not determined a dumping margin for CG Power in relation to the inquiry period. The Commission considers that in these circumstances the most appropriate course of action is to leave the notice unchanged as it relates to CG Power.

6.4.1.4 Submissions received in respect of CG Power

CG Power asserted in its submission of 18 September 2019²⁹, that the re-adoption of the dumping margin relevant to the current notice without modification for intervening facts and circumstances is unprincipled and prejudicial to CG Power. CG Power claim that the margin is irrelevant to the inquiry as all of the events leading to the determination of that margin occurred prior to the imposition of measures and is not representative of CG Power's current practices. CG Power asserted that the Commission has not found that the power transformer CG Power contracted to deliver in 2019 is dumped. CG Power stated that an REQ had been submitted to the inquiry and it would have hosted the Commission for purposes of verifying the information contained in the REQ.

6.4.1.5 The Commission's assessment

The Commission acknowledges that CG Power has fully cooperated with the inquiry.

For the purpose of assessing whether the continuation of the anti-dumping measures is required to prevent the continuation or recurrence of dumping, and in assessing

²⁹ Case 504 EPR Item No. 22.

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appropriate recommendations regarding potential alterations to the notice, the Commissioner has considered the relevant information available regarding the variable factors relevant to the taking of the measures, including those relevant to CG Power.

In the absence of exports of the goods by CG Power during the inquiry period, and noting the unique nature of each power transformer manufactured, the Commission is of the view that it does not have available to it information that would allow a more contemporaneous determination of variable factors. In this case, the Commission remains satisfied that the most reliable and relevant information it possesses in relation to the export price and normal value for power transformers exported by CG Power are those currently on the notice. The Commission does not consider an alteration to the variable factors is appropriate in such circumstances.

While there were no exports by CG Power during the inquiry period, the dumping margin currently on the notice remains relevant to the taking of interim dumping duties in relation to future exports. While the previous findings of dumping in INV 219 and REV 383 have informed the Commission's assessment of the likelihood of future dumping as discussed below in section 7.5, the size of the dumping margin currently on the notice does not "*underpin the recommendation to continue the measures against CGP*" as claimed by CGP in its submission. The Commission's findings regarding whether dumping may continue or recur are outlined at section 7.5.

6.4.2 All other exporters from Indonesia

If the Minister decides to secure the continuation of the notice, the Commissioner recommends that the notice have effect in relation to all other exporters, as if different variable factors had been ascertained.

In light of insufficient data being available for the inquiry period in relation to exports from Indonesia, the Commission has established an export price for all other exporters under section 269TAB(3), and a normal value under section 269TAC(6), being those applicable to CG Power. The export price and normal value for CG Power relates to a more contemporaneous period (1 July 2013 to 30 June 2016 from REV 383) than the period used to establish the export price and normal value currently applicable to the category of all other exporters from Indonesia (1 July 2010 to 30 June 2013 from INV 219).

The Commission has established a dumping margin of **28.3 per cent** for all other exporters from Indonesia.

6.5 Export price and normal value - Taiwan

6.5.1 Fortune

If the Minister decides to secure the continuation of the notice, the Commissioner recommends that the notice have effect in relation to Fortune, as if different variable factors had been ascertained.

Fortune exported the goods to Australia during the inquiry period and submitted a REQ. The Commission conducted an on-site verification visit to Fortune during April 2019 to verify the information contained in its REQ.

A report covering the visit findings is available on the public record.³⁰

6.5.1.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are arms length transactions under section 269TAA. Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where, inter alia, the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in arm's length transactions.

The importer

Fortune had one Australian purchaser in the inquiry period, Endeavour Energy (Endeavour).

In relation to the sales to Endeavour, the Commission observed that:

- Endeavour is named as the purchaser on the contract, purchase orders, commercial invoices and export declaration forms;
- Commercial invoices to Endeavour are on delivery duty paid (DDP) terms, with Fortune being responsible for the importation of the goods;
- Fortune is named as the shipper and consignee on the bill of lading;
- Fortune is named as the importer on the ABF import database; and
- Fortune is liable for the payment of all customs duties (including anti-dumping duties), brokerage fees and all charges up to the point of delivery and instalment of the goods.

Having regard to this information, the Commission is satisfied that Fortune is the beneficial owner of the goods at the time of importation into Australia, and therefore the importer of the goods.

The exporter

The Commission will generally identify the exporter as a principal in the transaction located in the country of export from where the goods were shipped, and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.³¹

The Commission is satisfied that for all Australian export sales identified during the inquiry period, Fortune was the exporter of the goods.

³⁰ Case 504 EPR item No. 10.

³¹ The Manual, page 29.

Arms length

In respect of Fortune's Australian sales of the goods during the inquiry period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.³²

The Commission therefore considers that all export sales to Australia made by Fortune during the period were arms length transactions.

Export price assessment

In respect of Australian sales of the goods by Fortune, the Commission considers that the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b) as the goods have not been exported to Australia otherwise than by the importer (Fortune is both the importer and exporter). The Commission has determined the export price pursuant to section 269TAB(1)(c) having regard to all the circumstances of the exportation. The Commission considers this the appropriate method of calculating export price as Fortune is responsible for importation of the goods and sells them on DDP terms.

The Commission has calculated an export price at free on board (FOB) terms based on the invoice price of the goods minus all relevant deductions. These deductions include shipping costs, marine insurance, post CIF expenses, installation costs, Australian customs duties and final anti-dumping duties preliminarily calculated based on information submitted by Fortune in support of the duty assessment application currently under consideration.³³

6.5.1.2 Normal value

As noted above at section 6.4.1, power transformers are engineered-to-order capital goods. The Commission considers that the many variables and differences in technical specifications affect the selling prices of the goods and like goods.

³² Section 269TAA of the Act refers.

³³ Fortune lodged a duty assessment under section 269V, in regards to a number of exports the subject of this continuation inquiry. The deductions relevant to Fortune's export price were revised following the SEF, to take into account all relevant information available to the Commission. In this instance, the Commission considers that the likely final duties payable based on the preliminary calculations for the duty assessment should be taken into account in determining the export price for Fortune. This is considered necessary because the Minister is required to have regard to all the circumstances of the exportation (one of the circumstances being the duty assessment which is almost complete).

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The sales of like goods made by Fortune on the domestic market of Taiwan during the inquiry period were of particular designs that do not match the goods exported to Australia.

Therefore, the Commission is of the view that there is an absence of sales of like goods in the market of the country of export that would be relevant for the purposes of determining a price under section 269TAC(1). Further, as no other Taiwanese exporters of the goods have cooperated with this inquiry, the Commission is unable to have regard to the prices achieved by other sellers of like goods.

In these circumstances, the Commission considers it appropriate to have regard to section 269TAC(2)(c), which provides that a constructed normal value is to be calculated as the sum of:

- such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade (OCOT) in the country of export, the selling, general and administrative (SG&A) costs associated with the sale, and an amount for profit.

The Commission is in possession of verified data from Fortune which satisfies the above requirements and allows for a constructed normal value of goods exported to Australia by Fortune.

Pursuant to the provisions of section 269TAC(2)(c) the Commission has calculated Fortune's normal value in accordance with the conditions set out in sections 43, 44, and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

6.5.1.3 Cost of production

To determine the cost of production or manufacture, section 43(2) of the Regulation requires that if:

- an exporter or producer keeps records relating to like goods that are in accordance with generally accepted accounting principles in the country of export; and
- those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the cost of production or manufacture using information set out in the exporter or producer's records.

The Commission is satisfied the cost of production can be worked out using information set out in Fortune's records, in accordance with section 43(2).

6.5.1.4 SG&A expenses

As required by section 269TAC(5A)(b), in ascertaining the normal value of the goods under section 269TAC(2)(c), the SG&A costs for Fortune have been determined in accordance with section 44(2) of the Regulation having regard to SG&A as a proportion of revenue of domestic sales of like goods, and applying this proportion to the export sales of the goods based on the revenue of each sale.

6.5.1.5 Profit on the domestic sales

As required by section 269TAC(5B), in ascertaining the normal value of the goods under section 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation. Section 45(2) of the Regulation requires that, where reasonably practicable, the amount of profit must be worked out using data relating to the production and sale of like goods by the exporter or producer of the goods in the OCOT.

The Commission found that Fortune sold like goods in the OCOT on the domestic market of Taiwan.

The Commission has calculated an amount of profit on the domestic sales of like goods in the OCOT that were produced by Fortune, in accordance with section 45(2) of the Regulation.

6.5.1.6 Submission received in relation to profit on domestic sales

Following publication of the SEF, Fortune submitted its objections to the calculation of an amount for profit under section 45(2) of the Regulation, specifically in regard to assessing the likelihood of whether Fortune were able to recover the costs of certain unprofitable sales of like goods, for the purpose of testing if sales were in the OCOT.³⁴

Fortune argued that the Commission's preliminary calculation of profit is flawed and inconsistent with the OCOT provisions (section 269TAAD). Fortune highlighted an issues paper from Investigation No. 219 which discussed among other things the meaning of a weighted average cost of goods for the purposes of section 269TAAD(3) in the context of assessing the recoverability of unprofitable sales. Fortune consider that it is not possible to calculate a weighted average cost of its domestically sold power transformers. Fortune asserted that a weighted average calculation can only be achieved with multiple observations and all of its sales are of "discrete unique unit[s]".³⁵ Fortune referred to the formula included with the definition of the term weighted average at section 269T(5A) to support its view that, to calculate a weighted average, there must be more than one unit. Fortune also referred to a finding in relation to a WTO Appellate Body report, *EC – Bed Linen*³⁶, regarding Article 2.2.2(ii) of the Anti-Dumping Agreement (ADA), as further support of its claims.

Fortune asserted that the Commission erred by calculating a weighted average on single units.

Fortune also contended that the Commission had incorrectly calculated a weighted average for certain sales of like goods by grouping units without a sufficient understanding of the key differences between the units. Fortune provided additional

³⁴ Case 504 EPR Item No. 21.

³⁵ Refer to p. 2 of Fortune's submission. Fortune provided a confidential appendix to its submission (Confidential Appendix A) setting out minor physical and/or specification differences between models that were considered as being of identical specifications based on the verification of Fortune's information.

³⁶ WT/DS141/AB/R, EC – Bed Linen, para 74-76, pages 23-24.

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information in a confidential attachment highlighting the differences between the relevant units to support its views that the units cannot reasonably be grouped together.

Fortune noted that the approach taken in the SEF is inconsistent with that taken in the REP 219, whereby an amount of profit was calculated based on the actual amounts realised from the domestic sales of the same general category of goods, and requested that the Commission provide justification of its departure to the approach taken in REP 219.

The Commission's assessment – amount of profit under section 45(2) of the Regulation

The Commission acknowledges that the methodology applied in this continuation inquiry differs to that employed for the purposes of REP 219. The methodology applied in this continuation inquiry is however consistent with the Commission's current policy and practice in relation to this issue, which has evolved in the intervening period of time, and which is detailed in *Anti-Dumping Commission Report No. 487* (REP 487). In REP 487 the Commission found that "having established that like goods are sold in the [Chinese] domestic market, there is no basis for derogating from section 45(2) of the Regulation"³⁷.

Similarly here, having found that Fortune has domestic sales of like goods in Taiwan, the Commission is required to calculate a profit margin using data relating to the production and sale of like goods in the OCOT in accordance with section 45(2) of the Regulation, where reasonably practicable.

Fortune provided data relating to the production and sale of like goods, which the Commission verified and found to be accurate, relevant and complete.

The Commission assessed whether the sale of like goods by Fortune were in the OCOT.

In regard to the sales information submitted by Fortune in its REQ, the Commission found significant specification differences between all domestic and export models which did not allow for the direct comparison of domestic and export sales prices for the purposes of determining a dumping margin under section 269TACB(1). Furthermore, Fortune was unable to quantify the impact of specification differences to allow for fair comparison under section 269TAC(8).³⁸

However, it was identified that Fortune had multiple domestic sales of certain units in accordance with the same specifications, which made it suitable to group them suitable when testing recoverability in accordance with section 269TAAD(3)³⁹, for the purposes of determining a profit under section 45(2) of the Regulation.

The Commission had regard to the additional specification data submitted by Fortune in response to the SEF, but considered that the physical and/or specification differences identified by Fortune were minor (relating to external design, minor componentry etc.).

³⁷ *Anti-Dumping Commission Report No. 487* at page 36.

³⁸ 504 – Fortune – Exporter Visit Report, p. 5, EPR item 10, uploaded on 31 May 2019.

³⁹ Based on the specification data submitted in Fortune's REQ, Confidential attachment "Exhibit C2 – Domestic sales specification". In the verification of Fortune's information, it was communicated that material price differences between sales were due to differences in the specifications as provided at Exhibit C2.

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The key physical and/or specifications of the relevant units (e.g. MVA rating and KVA rating) were identical and did not justify a departure from the approach outlined in the SEF. Furthermore, in its submission, Fortune did not identify how any of these minor specification differences would lead to material price differences.

For these sales, the Commission therefore conducted the recoverability test by comparing the net invoice revenue to the weighted average CTMS of domestic sales of units with identical or nearly identical specifications. Where substantial quantities of these units were found to be sold at a loss, and were not recoverable pursuant to section 269TAAD(3), those sales were considered not to be in the OCOT.

With regard to domestic sales of single units in the inquiry period, the Commission notes that it has similarly conducted a recoverability test by comparing the net invoice revenue to the weighted average CTMS over the inquiry period.

Section 269T(5A) defines weighted average as follows:

For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

$$\frac{P_1Q_1 + P_2Q_2 + \dots + P_nQ_n}{Q_1 + Q_2 + \dots + Q_n}$$

where:

P₁ , P₂ ... P_n means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.

Q₁ , Q₂ ... Q_n means the number of units of the goods involved in each of the respective transactions.

For the purpose of calculating a weighted average cost of goods, section 45(2) of the Regulation does not state whether costs have to be at aggregate or unit level, only that *the Minister must work out the amount by using the information set out in the records.*

The Commission considers that the values requested in Q in the formula for calculating a weighted average can refer to each model. This ensures that the revenue from each model is compared to the cost of the same model. Any comparison without reference to models would invariably cause all lower cost models to not be recoverable and higher cost models to always be recoverable. If each unit is considered its own model, the example below outlines how the test, as defined in section 269T(5A) would apply to each model. In this example, *n* takes the value of 1, as there is only 1 transaction of any model over the inquiry period, therefore the formula is simplified as:

$$\frac{P_1Q_1}{Q_1}$$

As section 269T(5A) requires a *P* and *Q* to be defined at 'unit' level, it is open to the Commissioner to use the costs as recorded by Fortune to derive the unit cost. In this approach, before calculating the weighted average, the Commission is required to first calculate the unit cost using information set out in the cost records.

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To determine the weighted average, P is equal in this case to the cost of each model. Therefore the value of Q is the number of projects for that model (in this inquiry, the Commission notes that one unit is the equivalent to a model). This arrives at a weighted average cost of that model. The definition of weighted average under section 269T(5A) does not preclude the possibility that n can equal 1. The practical implication is that the outcome of the recoverability assessment for single units is the same as the profitability assessment. This outcome does not detract from the fact that the test itself, as defined in section 269TAAD, is applied.

As unprofitable sales of single units are also under this approach unrecoverable, these sales were not considered to be in the OCOT.

Having satisfied the requirements of section 269TAAD the Commission considers that it is reasonably practicable to calculate the profit under section 45(2) of the Regulation. It would not be correct or preferable to calculate the profit under section 45(3)(a) as submitted by Fortune.

6.5.1.7 Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the adjustments detailed in table 3 below, in accordance with section 269TAC(9), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit costs	Deduct domestic credit costs
Duty drawback	Deduct the amount of duty drawback refundable for exports
Export packing	Add the cost of export packing
Export inland transport	Add the cost of export inland transport
Export inland insurance	Add the cost of export inland insurance
Handling and other	Add the cost of export inland handling and other costs
Product liability insurance	Add the cost of product liability insurance
Guarantee deposit	Add the cost of guarantee deposits

Table 3 – Adjustments to normal value for Fortune

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Fortune for the inquiry period. The dumping margin is **7.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 5**.

6.5.2 All other exporters from Taiwan

If the Minister decides to secure the continuation of the notice, the Commissioner recommends that the notice have effect in relation to all other exporters from Taiwan, as if different variable factors had been ascertained.

The Commission established an export price for all other exporters under section 269TAB(3), based on verified information from Fortune. The Commission established a normal value under section 269TAC(6), having regard to information verified with Fortune, but exclusive of any favourable adjustments.

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The Commission has established a dumping margin of **8.8 per cent** for all other exporters from Taiwan⁴⁰.

The Commission's calculations are included at **Confidential Attachment 6**.

6.6 Export price and normal value - Thailand

The Commissioner is recommending that the notice expire in relation to Thailand as outlined in chapter 10. However, if the Minister decides to secure the continuation of the notice with respect to exporters from Thailand, the Commissioner recommends that the notice remains unaltered.

The Commission did not receive REQs from Thai exporters. The Commissioner therefore recommends that the Minister does not re-determine variable factors for Thailand on the basis that there is no contemporary information available to do so.

6.7 Conclusion

Based on the export prices and normal values, the dumping margins for Indonesia, Taiwan and Thailand that would be relevant to the taking of measures if continued are as follows.

Country	Exporter	Current Dumping Margin	Recommended Dumping Margin
Indonesia	PT CG Power Systems Indonesia	28.3%	28.3%
	All other exporters (except UNINDO)	8.7%	28.3%
Taiwan	Fortune Electric Co., Ltd	15.2%	7.6%
	All other exporters	37.2%	8.8%
Thailand	All other exporters (except ABB Thailand)	39.1%	39.1%

Table 4 – Dumping margins

⁴⁰ As the dumping margin for all other exporters is derived from Fortune, changes to the variable factors determined for Fortune has also resulted in a change to this dumping margin.

7 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Finding

The Commissioner is satisfied that the expiration of the measures applying to the goods exported to Australia from Indonesia (except UNINDO) and Taiwan would lead, or would be likely to lead, to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.

On the basis of the evidence available, the Commissioner is satisfied that the expiration of the measures applying to power transformers exported to Australia from Thailand would not be likely to lead to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.

7.2 Legislative framework

In accordance with section 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping and the material injury that the anti-dumping measures are intended to prevent.

The Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendation must nevertheless be based on facts.⁴¹

7.3 The Commission's approach

In assessing the likelihood of whether dumping and material injury will continue or recur, a number of factors are relevant as outlined in the Manual.⁴² The Commission's view is that the relevance of each factor varies depending on the nature of the goods being examined and the market into which the goods are being sold. No one factor can necessarily provide decisive guidance. The following analysis therefore examines a range of factors that the Commission considers relevant to this inquiry.

⁴¹ ADRP [Report No. 44](#) (Clear Float Glass) refers.

⁴² Pages 175-176 refers.

7.4 Australian industry's claims

Following are claims made by Australian industry in its application⁴³ concerning the continuation or recurrence of dumping and material injury. These claims are addressed in sections 7.5 and 7.6.

- Following the imposition of measures in 2014, Indonesia vacated the Australian market, imports from Taiwan declined, and imports from Thailand that are not subject to measures have maintained a steady share of the Australian market;
- stakeholders from Indonesia, Thailand and Vietnam took legal and other actions in response to the original investigation, indicating a desire to continue exporting into the Australian market;
- the power transformer industry is a global one with large multinational organisations, some with distribution links to the Australian market;
- the geographic location of Australia and the overlapping time zones, short travel time limiting shipping time and cost, all combine to make Australia an attractive market for Asian manufacturers;
- there is overcapacity in the global power transformer industry due to production capacity increasing at a time when significant markets are inaccessible due to protective measures, or experiencing reduced demand;
- the continuation of measures in the USA and Canada, resulting in significant limitations to import penetration in those markets;
- the decline in the Middle East market, particularly in Saudi Arabia;
- the decline in the Korean domestic market;
- the reduction in demand in China, particularly associated with reductions in infrastructure development and declines in the pace of economic growth;
- the ability of multinational organisations to source supply from the most suitable location;
- the fact that the multinational organisations are generally prequalified with purchasers and will be able to immediately compete directly in most of the Australian market;
- the commercially active presence of all the multinational PT manufacturers in Australia, with access to sources of power transformers in a number of Asian countries; and
- the progressive decline in the value of the Australian market since the imposition of measures, except for the recent increase in the size of the Australian market as a result of renewables projects.

7.5 Will dumping continue or recur?

At page 187, the Manual provides that, in assessing the likelihood of dumping continuing or recurring, the inquiry may gather facts relevant to a number of matters including, but not limited to, historical import volumes and values, effectiveness of the measures, exporter's production capacities, historic dumping margins, and other trends.

⁴³ Case 504 EPR Item No. 01

7.5.1 Analysis of dumping margins

Dumping in relation to the inquiry period

As shown in section 6.5, during the inquiry period, the Commission found that Fortune exported power transformers from Taiwan to Australia at dumped prices. Fortune accounted for the entirety of exports from the subject countries during the inquiry period.

As outlined in chapter 6, the Commission did not calculate a dumping margin for CG Power relevant to the inquiry period. The Commission notes that CG Power was contracted during the inquiry period to supply a power transformer to Australia from Indonesia for delivery in 2019. The Commission understands that this power transformer from Indonesia was pursuant to a contract signed in 2015 following a request for tender (RFT) process that commenced in 2013. The order was placed late in the inquiry period. The Commission considers that this transformer was exported after the inquiry period. As the inquiry established an inquiry period of 1 January 2016 to 31 December 2018, the Commission has not assessed whether that power transformer was dumped.

Similarly, in relation to Thailand, there was an absence of information to establish a finding of dumping during the inquiry period.

Notwithstanding, the Commission has had regard to all information available to assess the likelihood of a recurrence of dumping in relation to Indonesia and Thailand.

Historical dumping margins

The dumping margins from the INV 219, REV 383 and this continuation are reproduced below:

Country	Exporter	Dumping Margin INV 219 ⁴⁴	Dumping Margin - Subsequent review	Dumping Margin – CON 504 ⁴⁵
Indonesia	CG Power	8.7%	28.3% ⁴⁶	NA
	All other exporters	8.7%		28.3%
Taiwan	Fortune Electric Co. Ltd	15.2%		7.6%
	All other exporters	37.2%		8.8%
Thailand	All other exporters	39.1%		NA

Table 5 - Dumping margins in inquiry period

Likelihood of a recurrence of dumping

Indonesia

⁴⁴ INV 219 examined an investigation period of 1 July 2010 to 30 June 2013.

⁴⁵ CON 504 examined an inquiry period of 1 January 2016 to 31 December 2018.

⁴⁶ REV 383 examined a review period of 1 July 2013 to 30 June 2016. This dumping margin was determined in REV 383, as amended for the reasons outlined in ADRP Report No. 60.

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In submissions on 23 July 2019 and 18 September 2019, and in a meeting with the Commission on 19 September 2019, CG Power indicated that it would like to maintain the option to export to Australia if doing so were a profitable endeavour, and provided information about the nature of the goods it would seek to export, its production capacity utilisation, cost modelling and profitability expectations.

CG Power indicated that with highly profitable sales domestically and to third countries there would be no reason for sales to be made to Australia if they are not profitable, and by extension that there would be no likelihood that future exports would be dumped.

The Commission undertook an analysis of CG Power's total company profitability during the financial years 2010 to 2018 using audited financial statements provided by CG Power in relation to INV 219, REV 383 and the current inquiry. The Commission notes that CG Power maintained a consistent level of profitability at the total company level over the nine financial years evaluated. The Commission further notes that during the conduct of INV 219 and REV 383, the Commission examined the exportation of 11 power transformers exported between 2011 and 2014. Of those 11 power transformers, 11 were found to have been dumped, with dumping margins ranging between 6.5 per cent and 48 per cent.

The Commission is of the view that those exportations indicate that CG Power engaged in dumping despite maintaining a consistently profitable business at the total company level.

The Commission also considered CG Power's specific claims regarding the profitability it targets on individual power transformer sales.

CG Power submitted that it models its costs associated with a design and then mitigates the impact of cost fluctuations to avoid eroding its targeted margins. CG Power stated that it targets and generally obtains a certain margin.⁴⁷ CG Power provided data relating to its domestic sales for 2018-2019 and New Zealand sales for 2018 to demonstrate that it achieves its desired target. CG Power claims that the New Zealand profits are higher than its domestic profits. It considers the New Zealand sales are analogous to any future sales that CG Power might pursue within Australia if the measures were to be revoked.

The Commission notes that the profit figures reported in relation to the domestic sales for 2018-2019 show an overall level of net profit consistent with CG Power's claimed target. Although not fully aligned to the inquiry period, the data underlying the profit figures can be cross referenced to other attachments submitted with the REQ.

However, in contrast, the data provided by CG Power in relation to its New Zealand sales was limited to 2018 only, which is a subset of the goods reported in CG Power's REQ at Attachment F-2. The data is also limited to a comparison between the cost to make the goods and the revenue generated. E.g. the data provided by CG Power shows a gross profit (not net profit), which does not take into account SG&A expenses. The underlying data behind the New Zealand profitability was not provided with CG Power's submissions, and cannot be cross referenced to other areas of CG Power's REQ. Therefore the validity of the New Zealand profitability data is unable to be further tested, but on balance, when

⁴⁷ EPR 504, Item No. 22.

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SG&A costs are factored in, this data does not demonstrate CG Power's claims that the profitability of its New Zealand sales are comparable to the profitability of its domestic sales.

Similar to the New Zealand profitability data, CG Power also submitted estimated costs and targeted profitability in relation to the power transformer CG Power contracted to deliver to Australia in 2019 as part of its REQ at Attachment G-5. This data shows a targeted profit margin similar to domestic sales from 2018-2019, however similar to the New Zealand sales data, Attachment G-5 does not factor in SG&A costs, therefore the targeted profit is a gross profit (not a net profit). If the indicative SG&A of domestic sales and the Australian operations is included in CG Power's Attachment G-5 calculations (as reported at Attachment G-4 of the REQ and Attachment 1 to CG Power's submission of 18 September 2019), the sale to Australia would be significantly less profitable than the domestic sales from 2018-2019. This is an indicator that the power transformer would likely be dumped.

In addition, in the context of previous export sales to Australia, CG Power was found to incur higher costs than it budgeted for. The Commission notes the findings of REP 383 at pages 15 and 16 in particular, which outline that, although CG Power budgets and invoices its Australian customers at the DDP level (which includes amounts for delivery, unloading, crantage, erection and site testing charges), the verified costs actually incurred can differ significantly from the estimated amounts. CG Power acknowledge in its submissions to this inquiry that costs are not known until power transformers are installed.⁴⁸ This in turn means that the actual profitability of export sales to Australia can, as has occurred in the past in relation to Australian sales, be lower than targeted.

On the basis of the above, the Commissioner cannot be satisfied that the profitability targeted by CG Power supports a claim that it is unlikely to dump in the future.

The Commission's analysis of CG Power's profitability is at **Confidential Attachment 7**.

Thailand

The Commission notes that, other than information relating to INV 219, there is a lack of other information to establish the likely export prices and normal values of power transformers from Thailand in the absence of measures.

7.5.2 Export volumes and effectiveness of measures

The Commission notes that the majority of imports from Thailand prior to measures were from ABB Thailand. Figure 16, below, illustrates the value of imports from Thailand that are subject to measures (non-ABB Thailand volumes) and Indonesia (non-UNINDO volumes), as well as the value of imports Taiwan before and after measures were imposed.

⁴⁸ EPR 504, Items Nos 16 and 18.

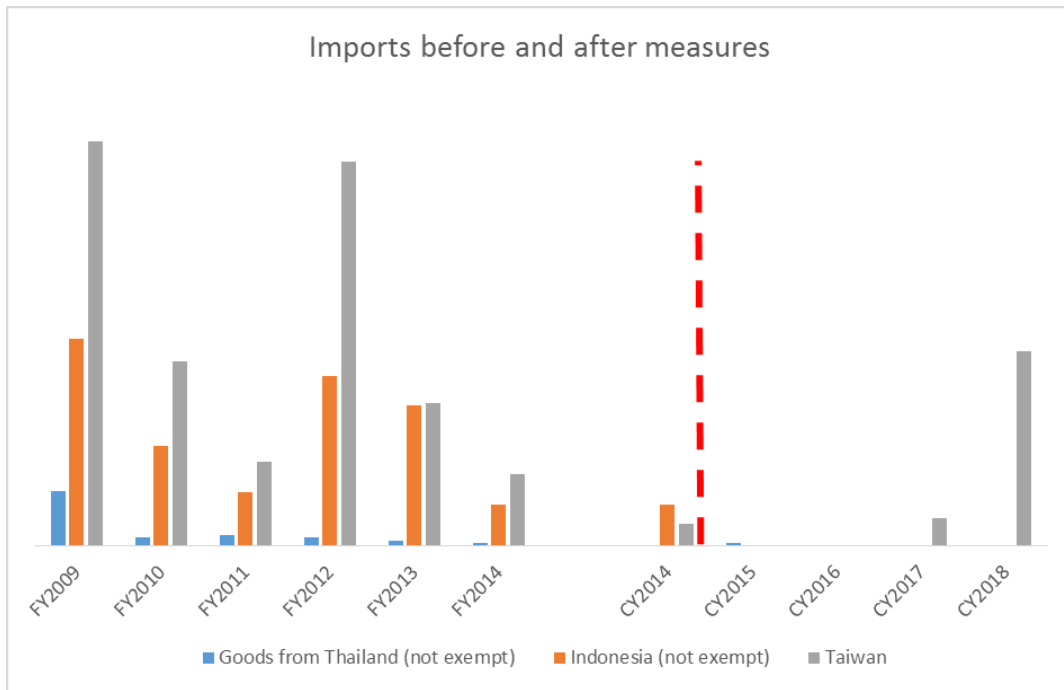


Figure 16 - Value of imports pre and post measures⁴⁹

A small volume was exported in 2015 by Thai exporters subject to measures following the imposition of duties before ceasing altogether during the inquiry period. In comparison with Thai exports a much higher value of imports were received from Indonesia and Taiwan prior to measures. Taiwan has also supplied the Australian market with dumped imports during the inquiry period. The Commission has been provided with evidence of imports from Indonesia that will arrive following the inquiry period. Measures appear to have been largely effective in relation to Indonesia and Taiwan.

The Commission has established, as illustrated in Figures 7 and 8, that the volume of exports from the subject countries to Australia and their respective shares of the Australian market have changed since the measures were imposed.

7.5.3 Maintenance of distribution links

Taiwan

Following the imposition of measures, exports of power transformers from Taiwan ceased in 2016, however recommenced in 2017 with exports by Fortune. The Commission’s verification of Fortune indicated that in the inquiry period, Fortune supplied the same purchaser it has previously supplied prior to the imposition of measures. The Commission considers that this indicates an ongoing relationship between the exporter and Australian purchaser, and that Australia remains an attractive market for Taiwanese exporters. Furthermore, it was ascertained that Fortune has continued to tender for supply agreements with Australian purchasers.

⁴⁹ The injury examination period for REP219 was 1 July 2008 to 30 June 2013 (financial years). The injury examination period for this continuation inquiry is 1 January 2014 to 31 December 2018 (calendar years). Figure 1 includes an overlap of 6 months between 1 January to 30 June 2014.

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Indonesia

Following the imposition of measures there have been no exports of power transformers from Indonesia. CG Power indicated in its REQ that, while no exports were made during the inquiry period, an order was received to manufacture and install a power transformer in Australia in 2019. In its submission dated 18 September 2019⁵⁰, CG Power reiterated that this export was under a contract that arose from a RFT in 2013. The contract commenced in 2015. The purchaser of this power transformer is the same party that CG Power had previously supplied to at dumped prices prior to the imposition of measures. The order from the customer under this contract was towards the end of the inquiry period. The Commission considers that this ongoing relationship contributes to a finding that exports from Indonesia is likely to recur were the measures to expire.

In its application,⁵¹ WTC claimed that Indonesia, Thailand and Vietnam took legal and other actions in response to INV 219, indicating a desire to continue exporting into the Australian market. CG Power⁵² submitted that an exporter exercising its legal right to apply for a variable factors review should not weigh against the discontinuation of measures, and, further, that a desire to maintain a presence in the market is not a basis for continuation of the measures.

In this submission CG Power also stated that its presence in the Australian market has reduced significantly since 2015. CG Power noted that the SEF did not comment on the fact that CGP closed down a sales office in Australia in 2016 and had reduced the number of staff in Australia.

CG Power asserted that the reason for the reduced presence was that Australia is not a key market for CG Power, however CG Power would like the option to export to Australia if it proves profitable to do so in the future. This reduced presence in the Australian market was reiterated during CG Power's meeting with the Commission on 19 September 2019⁵³. During this meeting CG Power also confirmed that it had participated in recent tenders in the Australian market however had been unsuccessful.

The Commission accepts that maintaining a presence in the market should not be the *sole* basis for continuation of measures. However, CG Power's decision to close a sales office and reduce the number of staff in Australia does not detract from its ongoing presence in the Australian market, noting that CGP Power maintains a staff member in Australia. Its ongoing presence in the Australian market is also demonstrated by CG Power's recent bids in competitive tenders. The Commission also notes that maintenance of a sales office or a certain number of staff in Australia is not a prerequisite to bidding for tenders in Australia. It is noted that other competitors operate business models which do not involve Australian sales offices.

Thailand

⁵⁰ Case 504 EPR Item No. 22.

⁵¹ Case 504 EPR Item No. 01.

⁵² Case 504 EPR Item No. 16.

⁵³ Case 504 EPR Item No. 23.

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During the investigation period for Investigation No. 219, there were minimal exports of the dumped goods (once ABB Thailand was excluded). Following the imposition of measures there has continued to be minimal exports of power transformers from Thailand by producers subject to measures. The Commission's analysis of the ABF import database indicates that power transformers have continued to be exported from Thailand by ABB Limited, which is exempt from measures.

Apart from ABB, Thai exporters subject to measures exported a minimal quantity in 2015 prior to ceasing supply altogether for the remainder of the inquiry period. As illustrated in Figure 16, the Commission analysed trends of imports from Thailand (currently subject to measures) and found that they had declined significantly prior to the imposition of measures.

In addition, information obtained from the ten purchasers that provided an Australian Market Questionnaire (AMQ) in relation to INV 507 did not indicate the existence of relationships with Thai exporters other than ABB Thailand. The Commission is not aware of any competition from Thai exporters subject to measures in tenders during the inquiry period. There are currently no indications that Thai exporters are likely to supply the Australian market with dumped goods. Purchasers in the Australian market know the major suppliers domestically and overseas and approach them with requests for tenders. There will be natural barriers to new entrants from Thailand (other than ABB Thailand) in accessing these tenders due to established relationships in the market. For these reasons the Commission does not expect Thai exporters subject to measures to resume exporting if the measures were to expire.

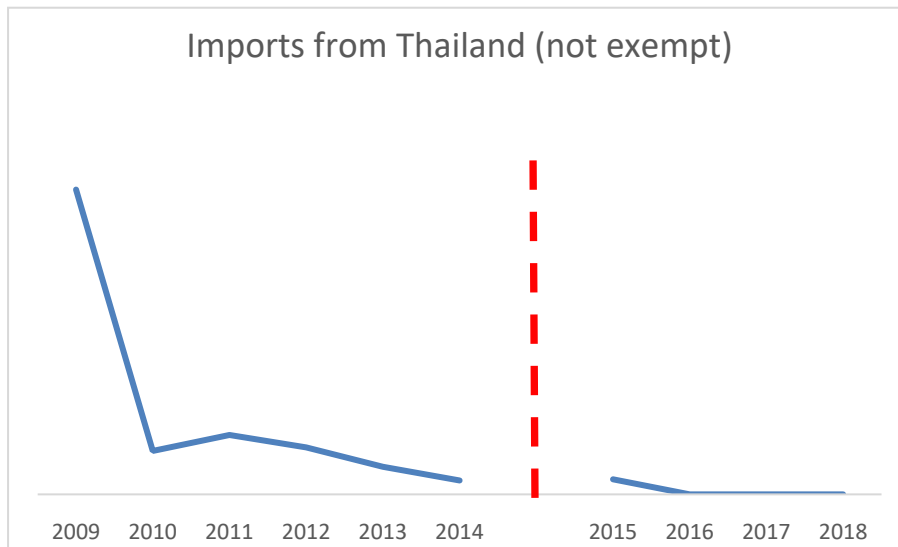


Figure 17 - Imports from Thailand (excl. exempt exporters)⁵⁴

⁵⁴ The Commission notes that in the original investigation 219, a Preliminary Affirmative Determination (PAD) was issued and securities taken from 27 November 2013 for imports from China, Korea, Taiwan and Vietnam. Thailand was not included in this notice. Exporters of the goods from Thailand were subject to measures upon the Parliamentary Secretary accepting the Commissioner's recommendations in [REP219](#) on 10 December 2014. The injury examination period for REP219 was 1 July 2008 to 30 June 2013 (financial years). The injury examination period for this continuation inquiry is 1 January 2014 to 31 December 2018 (calendar years). Figure 1 includes an overlap of 6 months between 1 January to 30 June 2014.

7.5.4 Production capacity and capacity utilisation

Taiwan

The Commission obtained information about Fortune’s production capacity as part of its on-site verification.

The Commission notes that Fortune calculated its actual production as exceeding production capacity in 2016 and 2017. The Commission determined during the on-site verification that Fortune estimates production capacity based on one shift per day, while more than one shift per day could be undertaken, significantly increasing production capacity. This was the case in 2016 and 2017.

The Commission considers that based on Fortune’s preparedness to operate above its nameplate capacity by undertaking additional shifts, as occurred during 2016 and 2017, and based on a fall in 2018 to below its nameplate capacity, Fortune has excess production capacity.

The Commission has not been able to obtain information concerning the capacity of other Taiwanese producers of power transformers.

Indonesia

The Commission notes from the REQ submitted by CG Power that it records its production capacity and actual production in MVA per calendar year. CG Power had excess capacity in each year of the inquiry period.

The Government of Indonesia⁵⁵ submitted that Indonesian capacity utilisation was “reaching over 80%”. It claimed further that Indonesian local demand will result in further increases in capacity utilisation. CG Power⁵⁶ claimed that servicing the Indonesian domestic market was its priority and that it would not focus its sales on markets where it is likely to make less profit than in its domestic market. In its submission dated 16 August 2019⁵⁷ CG Power provided further information concerning the Indonesian Government’s plans concerning electricity infrastructure to the year 2024. CG Power⁵⁸ further submitted that it targeted a capacity utilisation rate below full capacity to account for events such as unplanned staff absence and maintenance and repairs. Its submission dated 18 September 2019⁵⁹ expanded on this and provided an attachment setting out the unforeseen reasons that may impact capacity and arguing that CG Power is essentially at full capacity. This was further discussed at its meeting with the Commission on 19 September 2019⁶⁰ where CG Power claimed that its current production schedule meant that it is functionally at full capacity until February 2020.

⁵⁵ Case 504 EPR Item No. 06.

⁵⁶ Case 504 EPR Item [No. 16](#).

⁵⁷ Case 504 EPR Item No. 18.

⁵⁸ Case 504 EPR Item [No. 16](#).

⁵⁹ Case 504 EPR Item [No. 22](#).

⁶⁰ Case 504 EPR Item No. 23.

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WTC, in its application⁶¹ argued that the increase in domestic demand would have the effect of cross-subsidising exports to Australia at low prices.

The Commission accepts CG Power's arguments concerning its current production schedule and its capacity. However, due to the long lead times between an RFT bid and production, the Commission notes that it is possible for CG Power to forward plan with the aim of maintaining full capacity utilisation. It is the Commission's understanding that the Sales and Production arms of the business discuss the possibility of the manufacturing timeline ahead of an RFT bid. It is the Commission's view that this scheduling of work allows CG Power to forward plan to account for upcoming production for exports. The same is true for domestic government initiatives that are expected to increase domestic demand through until 2024. Despite CG Power's claims that Australia is not a key market, it has participated in recent tenders in the Australian market. This points to CG Power's intention to continue to supply the Australian market.

The Commission did not receive information from other Indonesian producers of power transformers regarding capacity during the course of the inquiry.

Thailand

The Commission did not receive information from Thai producers of power transformers regarding capacity during the course of the inquiry.

7.5.5 Measures imposed by other countries

The Commission notes that the subject countries in this inquiry are not subject to anti-dumping measures by any other country.⁶²

The Canadian and US cases outlined in the application relate to Korea. There is no evidence provided to support the claims in the application that limitations placed on other Asian producers of power transformers through measures will necessarily result in increased exports of dumped power transformers from Indonesia, Taiwan and Thailand to the Australian market.

7.5.6 Australia's geographical location

In its application,⁶³ WTC argued that Australia's geographical location, overlapping time zones, short shipping time and cost, all combine to make Australia an attractive market for Asian manufacturers.

While the Commission can see that there have been exports from one of the subject countries and other Asian countries during the inquiry period and agrees that Australia's proximity may be a benefit to suppliers, there is no evidence provided that the Australian market will be more attractive to an exporter of power transformers than any other country in the region. It is also noted that the measures attempt to remedy the injury caused by

⁶¹ Case 504 EPR Item No. 01.

⁶² [World Trade Organisation Data, https://i-tip.wto.org/goods/Forms/TableView.aspx](https://i-tip.wto.org/goods/Forms/TableView.aspx)

⁶³ Case 504 EPR Item No. 01.

dumped imports as detailed in REP 219⁶⁴ and are not intended to limit imports of power transformers in general.

7.5.7 Conclusion

Indonesia

In the absence of information in the inquiry period suitable for ascertaining the variable factors relevant to CG Power, the Commission considers that the dumping findings from INV 219 and REV 383 (as outlined at section 7.5.1) remain informative in relation to whether dumping is likely to recur.

The Commission has illustrated in Figure 16 that Indonesia exporters subject to measures that had a high value of imports prior to the measures, ceased supply to Australia in 2014 and did not export again during the inquiry period. However, the Commission was made aware through CG Power's REQ that a power transformer was due to be delivered to Australia during 2019.

The Commission has found that all exports by CG Power over the period 2011 to 2014 that were examined during INV 219 or REV 383, were dumped during periods of consistent profitability at a total company level. Data supplied by CG Power during this inquiry indicates that the power transformer delivered in 2019 is likely dumped.

In addition, CG Power's maintenance of an Australian sales office, its ongoing tendering for business, and its ability to forward plan for capacity given the long lead times for the manufacture of power transformers, indicates that exports by CG Power to Australia are likely to continue if the measures were to expire.

These factors lead the Commissioner to conclude that the expiration of measures currently imposed would be likely to lead to a recurrence of dumping that the measures are intended to prevent.

Taiwan

Figure 16 shows that Taiwan, also a high value exporter of power transformers prior to the measures, ceased exporting to Australia shortly after the measures were imposed. Fortune supplied the Australian market again in 2017 demonstrating that it has maintained its distribution links that it had prior to the imposition of measures. Fortune also has the capacity to increase the number of shifts it runs thereby producing in excess of its stated production capacity. Based on the verification visit to Fortune, the Commission found that the exports assessed in the inquiry period were at dumped prices. These factors show that the expiration of measures would be likely to lead to a continuation of, or recurrence of dumping that the measures are intended to prevent.

Thailand

The Commission found that prior to (and following) the imposition of measures, the majority of exports of power transformers from Thailand were from ABB Thailand which is

⁶⁴ Case 219 EPR Item No. 194.

exempt from measures. Thai exports from other exporters, which was already of a low volume, had reduced further prior to the imposition of measures, and apart from a very low value export in 2015 there has been no further attempt to enter the Australian power transformers market. The Commission has concluded that it is unlikely that the expiration of measures on Thailand will lead to a continuation of, or recurrence of dumping that the measures are intended to prevent.

7.6 Will material injury continue or recur?

7.6.1 The ability of multinational organisations to source supply from other countries

As part of the inquiry, the Commission received AMQs from purchasers in the Australian power transformers market. The Commission also spoke with some of these purchasers to gain a further understanding of their relationships with suppliers in Indonesia, Taiwan and Thailand. The Commission understands that there are no restrictions on purchasers sourcing supply from foreign sources. It is noted, however, that supply is generally through a competitive tender process.

7.6.2 Prequalification of multinational organisations

WTC claimed that multinational organisations are generally pre-qualified to supply power transformers. From its discussions with purchasers and the applicant, the Commission understands that this applies mainly to the renewables sector. Due to WTC's long history of supplying the Australian utilities market, it is already pre-qualified to access this sector. Global suppliers of power transformers will have some advantage in the renewables sector as they may have supplied the same purchaser in another location. The Commission did not find that this was an advantage to exporters subject to measures during the inquiry period.

7.6.3 Reduced demand for the goods in Asian markets

The Australian industry claims that the decline in the Middle East, Korean and Chinese domestic markets will make Australia a more attractive market for the export of power transformers, resulting in the continuation or recurrence of material injury that the measures were intended to prevent. The applicant has not provided evidence of direct links between these markets and the exporters currently subject to measures, in order to assess the impact. There are currently no measures on Indonesia, Taiwan and Thailand imposed by other countries (section 7.5.5 refers) and no reason to assume that the Australian market will be more attractive to an exporter of power transformers than any other country in the region. It is also noted that the measures attempt to remedy the injury caused by dumped imports as detailed in REP219⁶⁵ and are not intended to limit imports of power transformers in general.

⁶⁵ Case 219 EPR Item No. 194.

7.6.4 Impact of measures on market share

The Manual provides that the inquiry may gather facts relevant to whether the expiration of the measures is likely to lead to a continuation or recurrence of material injury to the Australian industry, such as reduced sales volumes and reduced market share.⁶⁶

Figures 7 and 8 in section 5.3.3 shows that dumped imports from one of the subject countries re-entered the Australian market in 2017. This has contributed to WTC's reduced market share in that year.

The analysis of bids submitted by WTC over the inquiry period shows that it is generally more successful in the small to medium sized transformer tenders (Confidential Attachment 2 refers). This appears to also be the market segment that is supplied by Fortune and CG Power, both prior to and following the imposition of measures. Both suppliers have participated in competitive tenders during the investigation period and more recently. While the Commission is satisfied, as highlighted in CG Power's submission,⁶⁷ that a range of factors are evaluated during a tender process by purchasers, the Commission is also satisfied that dumped pricing will provide these exporters with an advantage in head to head competition with Australian industry.

As a percentage of bids submitted during the inquiry period, the second largest segment of importance to Australian industry is the renewables market (Confidential Attachment 2 refers). Over the coming years this segment is expected to grow.⁶⁸ Growth in the renewables market is likely to lead to growth in the demand for power transformers. WTC claimed that due to the deadline of the RET to achieve 33000 GWh of additional electricity through renewables by 2020 there will be a peak demand for power transformers between 2017 and 2020. The combination of the increased demand in the market, the continuing relationships maintained by exporters from Indonesia and Taiwan together with the findings concerning dumping (Table 4 refers) indicates that the expiration of measures is likely to lead to a continuation of, or recurrence of material injury that the measures are intended to prevent.

7.6.5 Impact of measures on prices

CG Power argued that there is disconnect between tender prices and dumping, such that dumping does not confer a price advantage, and there is limited damage caused by lost tenders.⁶⁹

The Commission received AMQs detailing the tender evaluation criteria of ten purchasers in the power transformers market. It was apparent to the Commission that a range of factors are considered of which price is one. The price considered by many of the purchasers was a 'total cost of ownership' which is the initial asset price plus load losses. This is the lost electricity over the life of the transformer and is a result of the efficiency of its design. The ability to offer a lower price may offset a less efficient design and result in

⁶⁶ The Manual, pages 175-176.

⁶⁷ Case 504 EPR Item No. 16.

⁶⁸ Geoscience Australia, available at <https://aera.ga.gov.au/#!/energy-resources-and-market> and Australian Energy Market Regulator (AEMO), 2018 Electricity Statement of Opportunities, August 2018.

⁶⁹ Case 504 EPR Item No. 16.

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a lower cost of ownership. In the absence of measures, Taiwanese and Indonesian exporters will be able to offer a price reduced by the current margin, providing them with a competitive advantage in tenders. Purchasers of power transformers supplied by Fortune and CG Power awarded contracts with the knowledge that dumping duties will be required to be paid for the importation of these transformers. If the measures expire it is reasonable to predict that the price advantage to CG Power and Fortune would be greater. Lost tenders have a flow through impact on sales volumes, profitability and capacity utilisation of the Australian industry.

On a related matter, Fortune argued that their exports to Australia in the inquiry period could not be injurious, due to their bids including an amount for the dumping duties based on the dumping margin ascertained in REP219.⁷⁰ Based on the assessment of the variable factors relevant to Fortune, the Commission did not find that the exports assessed in the inquiry period were at un-dumped prices or at prices which fully accounted for the dumping margin relevant to such exports. CG Power⁷¹ claimed that as the price of transformers are set at the time of the tender bids and the transformers are not produced until several months later, it cannot be said to be at dumped prices.

Due to the price advantage that dumping will afford CG Power in bidding for new contracts, and as CG Power has been found to be dumping in a prior investigation and review (INV219 and REV 383), it is the Commission's view that the expiration of measures will result in a recurrence of dumping and material injury.

INV 219⁷² found material injury to the Australian industry was caused by dumped imports from Indonesia (except UNINDO), Thailand (except ABB Thailand) and Taiwan. The continuation of measures is intended to prevent the continuation or recurrence of that injury.⁷³

7.6.6 Panel agreements

The Commission assessed the impact of panels on the ability to supply new projects. Some end users of power transformers provided the Commission with information concerning the use of panels for the purchase of power transformers. The end user sets out the required specifications and invites bids from potential suppliers. The end user will select some of these suppliers to be on its panels. These panels appear to be delineated by size of transformer with the parameters set by the end user. The panel agreement is for a period of time with some provisions for extending the period. While prices may be agreed at the time the panels are selected, the Commission was advised that the price will have underlying rise and fall provisions for raw materials. Installation and delivery costs are generally not included and are provided on a project by project basis. These factors will impact the final pricing significantly and as such all new projects that are put to a panel will also require pricing to be re-submitted. Following discussions with end users and suppliers in the market, the Commission observed that panel agreements are not exclusive arrangements. The applicant and other suppliers have been approached to bid

⁷⁰ Case 504 EPR Item No. 15.

⁷¹ Case 504 EPR Item No. 16.

⁷² REP 219, p. 80 and ADRP Report [No. 24](#).

⁷³ REP 219, p. 80.

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for transformers when they are not in the relevant panel. While the panels provide convenience for the purchaser as all panel participants are able to supply to the specification and have been vetted, they do not limit the purchaser's ability to approach the market.

The Commission understands that Fortune is currently on a panel as a secondary supplier and maintains a contract with the end user.

Fortune⁷⁴ claimed that its exports during the inquiry period, which occurred in its capacity as a secondary supplier to its purchaser cannot be considered injurious to the Australian industry. It claims these exports only occurred as the local producers decided to not supply the power transformers. Both Fortune and WTC⁷⁵ forward potential reasons for the inability of the primary supplier (an Australian industry producer) to supply the transformers. In the Commission's view, regardless of the reasons, the primary supplier did not supply and Fortune, as the secondary supplier was requested to supply the transformers in accordance with its contract negotiated in 2013-2014 and signed in 2015. In its response to Fortune's submission, WTC argued that the contract was tendered before and during INV 219, for which a dumping margin of 15.2 per cent was found in relation to Fortune's exports of the goods from Taiwan, and that the presence of dumped exports in the market affected tender negotiations through price suppression. Furthermore, WTC claimed that it was unsuccessful in winning a supply contract for this panel as a secondary supplier in competition with a dumped price from Fortune.

Despite the reasons for supply (as the secondary supplier), Fortune supplied dumped goods to the Australian market, as determined in section 6.5.1.

7.6.7 Submissions received in relation to material injury

In a submission of 25 September 2019⁷⁶, the GOI submitted that Australian industry suffered no injury or threat thereof, and even if the Commission found that Australian industry had suffered injury, or the threat thereof, it could not be attributable to exports from Indonesia.

The GOI argued that the market size graphs presented in SEF 504 indicate that the Australian industry has experienced increased sales volumes and sales values during a period where exports from Indonesia had not occurred. The GOI asserted that under these circumstances any loss experienced by Australian industry cannot be attributed to Indonesia.

The GOI further asserted that pursuant to Articles 3.1 and 3.2 of the ADA, the Commission is required to examine if there has been a significant increase in imports of the goods, either in absolute terms of relative to production nor consumption in Australia. The GOI noted that there had been no exports from Indonesia during the inquiry period, and therefore any claim of injury cannot be attributable to Indonesia.

⁷⁴ Case 504 EPR Item No. 09.

⁷⁵ Case 504 EPR Item No. 04.

⁷⁶ Case 504 EPR Item No. 23.

The Commission's assessment

The Commission notes that Articles 3.1 and 3.2 of the ADA relate to the conduct of investigations, rather than continuation inquiries. A continuation inquiry requires an assessment of what will likely occur in the future if measures are allowed to expire. As a result, while the Commission will consider the volume of imports as part of its analysis, an absence or low volume of exports during the continuation inquiry period is not decisive in determining whether the expiration of measures would be likely to lead to a recurrence of the dumping and material injury that the measures are intended to prevent.

As detailed in this report, the Commission accepts that Indonesia did not export the goods to Australia during the inquiry period, and therefore has not contributed to any injury experienced by Australian industry during the inquiry period. The Commission has, however, concluded, for the reasons detailed in sections 7.5 and 7.6 of this report that relate to Indonesia, that the expiration of measures currently imposed would be likely to lead to a recurrence of the dumping and material injury that the measures are intended to prevent.

7.6.8 Conclusion

Indonesia

Over the inquiry period, CG Power participated in competitive tenders and maintained its relationship with one of its customers throughout the period. As discussed in section 7.6.5, whilst the tender evaluation decision is impacted by a range of factors, price remains a consideration for power transformer purchasers.

Although CG Power has stated that it retains only a reduced presence in the Australian market, and its market strategy is focused on the domestic market and third countries,⁷⁷ the Commission considers that CG Power remains active in the Australian market, as a direct competitor to WTC, having supplied to an Australian purchaser in 2019, in a market segment that WTC competes in. CG Power has stated that this sale was in accordance with a contract signed in 2015 based on a RFT in 2013. The Commission was able to verify this. The order for this power transformer occurred in 2018 pursuant to that contract. In addition, CG Power has bid in recent tenders.

In addition to these ongoing relationships in the market, and having regard to the previous findings concerning dumping by CG Power, the Commission considers it likely that future exports of power transformers from Indonesia will be at dumped prices and would be likely to result in a continuation or recurrence of the material injury that the measures were intended to prevent.

Taiwan

As discussed in section 7.6.6 the Commission is aware that Fortune supplied power transformers in 2018 in its capacity as a secondary supplier. Fortune was able to supply at a price acceptable to the purchaser despite the measures. The purchaser chose to purchase from Fortune at a dumped price rather than an alternate Australian industry

⁷⁷ Case 504 EPR Item No. 16.

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supplier thereby displacing Australian industry volumes. As discussed above, while panel agreements are established for the convenience of the purchaser, the Commission has found that purchasers are not limited to the suppliers in the panel and can source widely. The purchaser supplied by Fortune is one that it has supplied prior to the imposition of measures. Section 7.5.4 explained that Fortune has the ability to increase the number of shifts and access a greater capacity in order to meet potential orders from Australia. In the absence of measures, the Commission considers it likely that Fortune will supply power transformers at dumped prices and have an advantage in competing with WTC in a segment that it has been successful in since the imposition of measures. The Commission considers it likely that the expiration of measures on Taiwan would be likely to lead to a continuation or recurrence of the material injury that the measures were intended to prevent.

Thailand

The Commission noted in section 7.5.2 that exports from Thai exporters subject to measures had already decreased to minimal levels prior to the imposition of measures. These exporters have not supplied the Australian market during the injury analysis period and none of the ten end users advised the Commission of any relationships with Thai exporters that are subject to measures. The Commission is not aware of any competition from Thai exporters subject to measures in tenders during the inquiry period. There are currently no indications that Thai exporters are likely to supply the Australian market with dumped goods. Power transformer purchasers in Australia know the major suppliers domestically and overseas and approach them with requests for tenders. There will be natural barriers to new entrants from Thailand (other than ABB Thailand) in accessing these tenders due to the well established relationships in the market. Both Indonesia and Taiwan have maintained their relationships from before the measures were imposed. The Commission considers it unlikely that the expiration of measures on Thailand will lead to a continuation or recurrence of the material injury that the measures were intended to prevent.

8 NON-INJURIOUS PRICE AND LESSER DUTY RULE

8.1 Non-injurious price

The NIP is defined in section 269TACA as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury” caused by the dumped goods the subject of a dumping duty notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry is not affected by dumping.

8.2 Lesser duty rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).⁷⁸

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

However, pursuant to section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Neither of those circumstances (being the composition of the Australian industry or the method of ascertaining normal value in circumstances of a particular market situation in the country of export) are relevant to the present inquiry.

8.3 Calculation of the non-injurious 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 is set out in Chapter 24 of the Manual and 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 un-dumped 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.

8.4 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

⁷⁸ Section 8(5B) of the Dumping Duty Act.

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. Where normal values have changed as a result of the review of variable factors detailed in section 6 above, the NIP has also changed to correspond with the normal value. Otherwise the NIP remains unchanged.

8.5 Submissions received in relation to NIPs

8.5.1 Fortune submission⁷⁹

Fortune stated that a “non-injurious price must be calculated using an unsuppressed selling price...” and for the USP “...to be based on the Australian industry’s tender prices for equivalent transformers supplied by Fortune.”

In its submission, Fortune contended that the circumstances surrounding its exports enable the calculation of a USP, namely that Fortune only supplied the goods to one Australian purchaser in the period, of which Australian producers were selected as major suppliers, and Fortune was a backup supplier.

8.5.2 WTC Submission⁸⁰

In its response to Fortune’s submission, WTC argued that the contract was tendered for before and during INV 219, for which a dumping margin of 15.2 per cent was found in relation to Fortune’s exports of the goods from Taiwan, and that the presence of dumped exports in the market affected tender negotiations through price suppression. Furthermore, WTC identified that it did not win a supply contract for the models of power transformers that Fortune was ultimately awarded a contract as backup supplier.

8.5.3 The Commission’s assessment

The Commission had regard to the circumstances of the contract, including through a meeting with the purchaser.

As set at section 8.3, the Commission may ordinarily consider deriving a USP from industry selling prices at a time unaffected by dumping.

INV 219 had an inquiry period of 1 July 2010 to 30 June 2013, falling immediately before the date of initial bids for the contract in question. In INV 219, it was determined that dumping had caused material injury to the Australian Industry.

REV 383 had a review period of 1 July 2013 to 30 June 2016. Likewise, the Commission found dumped imports during that review period, including during the negotiation period of the contract in question, and at rates higher than that found in INV 219, in relation to the single exporter the subject of that review.

⁷⁹ Case 504 EPR Item No. 09

⁸⁰ Case 504 EPR Item No. 13

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With regard to the circumstances of the contract negotiations, the Commission rejects Fortune's position that the Commission need only focus on exports from Fortune in its consideration of whether a USP can be ascertained based on industry selling prices.

The Commission considers that the presence of dumped imports in the market both immediately prior to, and during the tender negotiation, make tender prices for that contract unsuitable for deriving a USP from industry selling prices.

In this event, as detailed 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. If the recommendation regarding changes to the normal values as outlined in chapter 6 are accepted by the Minister, the Commissioner also recommends a change to the corresponding NIPs.

9 FORMS OF DUTY

9.1 Findings

The Commission recommends that the Minister continue the dumping duties on Indonesia and Taiwan in the form of the *ad valorem* duty method.

9.2 Forms of duty available – dumping

The forms of duty available to the Minister when imposing anti-dumping measures are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013*:

- fixed duty method (\$X per tonne);
- floor price duty method;
- combination duty method; or
- *ad valorem* duty method (i.e. a percentage of the export price).⁸¹

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the *Guidelines on the Application of Forms of Dumping Duty November 2013*⁸² and relevant factors in the market for the goods.

9.2.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods. The fixed duty is determined when the Minister exercises powers to ascertain an amount for the export price and the normal value.

9.2.2 Floor price duty method

The floor price duty method sets a “floor” – for example a normal value of \$100 per tonne – and duty is collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever becomes applicable under the duty collection system.

This duty method does not use an ascertained export price as a form of “floor price” as occurs with the combination and fixed duty methods.

9.2.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* dumping duty is determined for the product as a whole, meaning that a single ascertained export price is required when determining the dumping margin.

⁸¹ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

⁸² Available on the Commission's [website](#).

9.2.4 Combination duty method

The combination duty comprises two elements: the “fixed” element and the “variable” duty element. The fixed element is determined when the Minister exercises powers to “ascertain” an amount (i.e. set a value) for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* on the ascertained export price.

The variable component stems from a feature of this form of duty whereby, having ascertained the export price for the purposes of imposing the dumping duty, if the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount (i.e. the difference between the ascertained export price and the actual export price).

It is called a “variable” element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

9.3 Consideration of form of measures

The Commission notes that there is substantial variation in the prices of power transformers exported to Australia, and that this is primarily a result of differences in power transformer specifications. These specifications change subject to the requirements of the purchaser which means that there is a high variability in prices over time.

In these circumstances, the Commission considers that the *ad valorem* duty method is the most appropriate form of measures for power transformers exported from the subject countries.

The NIP, if established by reference to the normal value of the exporter, will not be the operative measure. There is therefore no requirement for the Commissioner to make a recommendation regarding whether the Minister should consider the desirability of fixing a lesser amount of duty than the dumping margin found, pursuant to section 8(5BAA) of the Dumping Duty Act.

The recommended measures relating to the goods are summarised below.

Country	Exporter	Dumping Margin
Indonesia	PT CG Power Systems Indonesia	28.3%
	All other exporters (except UNINDO)	28.3%
Taiwan	Fortune Electric Co., Ltd	7.6%
	All other exporters	8.8%

Table 6 – Proposed measures

9.4 Existing measures

The method of interim dumping duties currently applying to the goods exported from Indonesia and Taiwan is the *ad valorem* duty method.

10 RECOMMENDATIONS

10.1 Findings

On the basis of the reasons contained in this report, and in accordance with section 269ZHF(2), the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to the goods exported to Australia from Indonesia and Taiwan would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measures are intended to prevent.

On the basis of the reasons contained in this report, and in accordance with section 269ZHF(2), the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to the goods exported to Australia from Thailand would **not** lead, or would **not** be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measures are intended to prevent.

10.2 Recommendations

The Commissioner recommends that the Minister **declare**:

- pursuant to section 269ZHG(1)(b), that she has decided to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from **Indonesia** and **Taiwan** with effect from 11 December 2019; and
- pursuant to section 269ZHG(1)(a), that she has decided not to secure the continuation of the anti-dumping measures relating to the goods exported to Australia from **Thailand** with effect from 11 December 2019.

The Commissioner recommends that the Minister **be satisfied that**:

- pursuant to sections 269T(2) and (3), like goods are wholly manufactured in Australia;
- pursuant to section 269TAB(3), sufficient information has not been furnished, or is not available, to enable the export price of the goods exported to Australia by “**all other exporters**” from **Indonesia** and **Taiwan** to be ascertained under the section 269TAB(1); and
- pursuant to section 269TAC(2)(a), the normal value of the goods exported to Australia from **Taiwan** by **Fortune** cannot be ascertained under section 269TAC(1) due to an absence of relevant sales of like goods in the country of export;
- pursuant to section 269TAC(6), sufficient information has not been furnished, or is not available, to enable the normal value of the goods exported to Australia by “**all other exporters**” from **Indonesia** and **Taiwan** to be ascertained under the preceding sections of section 269TAC;

The Commissioner recommends that the Minister **determine**:

- the **export price**
 - for exports by **Fortune** from **Taiwan** under section 269TAB(1)(c), having regard to all of the circumstances of the exportation, specifically the DDP

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price of the goods minus all relevant deductions, as set out in **Confidential Attachment 5 of this report**;

- for exports by from **Indonesia** under section 269TAB(3), having regard to all relevant information, specifically the export price applicable to CG Power;
- for exports by ‘**all other exporters**’ exporters from **Taiwan** under section 269TAB(3), having regard to all relevant information, specifically the export price applicable to Fortune;
- the **normal value**
 - for the goods exported from **Taiwan** by **Fortune** under section 269TAC(2)(c), as the cost of production or manufacture of the goods in Taiwan, and, on the assumption the goods, instead of being exported, had been sold for home consumption in the OCOT of the country of export, the SG&A costs associated with the sale, and an amount for profit, as adjusted in accordance with section 269TAC(9) and as set out in **Confidential Attachment 5 of this report**;
 - for the goods exported from **Indonesia** by ‘**all other exporters**’, under section 269TAC(6), having regard to all relevant information, specifically the normal value applicable to CG Power;
 - for the goods exported from **Taiwan** by ‘**all other exporters**’, under section 269TAC(6), having regard to all relevant information, specifically the normal value applicable to Fortune disregarding any favourable adjustments, as set out in **Confidential Attachment 6 of this report**;
- pursuant to section 269TACB , the goods exported to Australia by all exporters from Taiwan are taken to **have been dumped** over the inquiry period, and the **dumping margins** for exporters in respect of those goods in that period is the difference between the weighted average of export prices over that period and the weighted average of corresponding normal values over that period as set out in **Chapter 6 of this report**;
- pursuant to section 269ZHG(4)(iii), the notice continues in force after 10 December 2019 but that, after that day, the notice has effect, in relation to **all exporters from Taiwan**, and ‘**all other exporters**’ from **Indonesia**, as if the Minister had fixed different specified variable factors, relevant to the determination of duty, being those variable factors set out in **Confidential Attachment 5 and 6 of this report**; and
- in accordance with section 8(5BB) of the Dumping Duty Act, and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), that the interim dumping duty is an amount which will be worked out in accordance with the *ad valorem* duty method pursuant to section 7 of the Regulation as applied to all exporters from Indonesia and Taiwan.

11 LIST OF APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Market analysis
Confidential Attachment 2	WTC tender information
Confidential Attachment 3	Price and profit effects
Confidential Attachment 4	Other injury factors
Confidential Attachment 5	Fortune calculations
Confidential Attachment 6	Taiwan all other exporter calculations
Confidential Attachment 7	CG Power profitability analysis