



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

---

*CUSTOMS ACT 1901 – PART XV B*

# **TERMINATION REPORT NO. 507**

**ALLEGED DUMPING OF  
POWER TRANSFORMERS**

**EXPORTED TO AUSTRALIA  
FROM THE PEOPLE'S REPUBLIC OF CHINA**

**31 January 2020**

**TER 507 - Power Transformers - China**

|                 |
|-----------------|
| <b>CONTENTS</b> |
|-----------------|

|          |  |           |
|----------|--|-----------|
| <b>1</b> | <b>SUMMARY .....</b>   | <b>6</b>  |
| 1.1      | SUMMARY .....  | 6         |
| 1.2      | AUTHORITY TO MAKE DECISION .....                                     | 7         |
| 1.3      | APPLICATION .....  | 7         |
| 1.4      | PRELIMINARY AFFIRMATIVE DETERMINATION .....                          | 7         |
| 1.5      | STATEMENT OF ESSENTIAL FACTS .....                                   | 8         |
| 1.6      | FINAL REPORT .....   | 8         |
| <b>2</b> | <b>BACKGROUND .....</b>  | <b>9</b>  |
| 2.1      | INITIATION .....   | 9         |
| 2.2      | SUBMISSIONS IN RESPONSE TO THE INITIATION OF THE INVESTIGATION ..... | 10        |
| 2.3      | OTHER CASES INVOLVING POWER TRANSFORMERS .....                       | 13        |
| 2.4      | CONDUCT OF THE INVESTIGATION .....                                   | 14        |
| 2.5      | SUBMISSIONS RECEIVED FROM INTERESTED PARTIES .....                   | 23        |
| <b>3</b> | <b>THE GOODS AND LIKE GOODS .....</b>                                | <b>26</b> |
| 3.1      | FINDING .....  | 26        |
| 3.2      | LEGISLATIVE FRAMEWORK .....  | 26        |
| 3.3      | THE GOODS .....  | 26        |
| 3.4      | TARIFF CLASSIFICATION OF THE GOODS .....                             | 27        |
| 3.5      | LIKE GOODS ASSESSMENT .....  | 28        |
| <b>4</b> | <b>THE AUSTRALIAN INDUSTRY .....</b>                                 | <b>31</b> |
| 4.1      | FINDING .....  | 31        |
| 4.2      | LEGISLATIVE FRAMEWORK .....  | 31        |
| 4.3      | PRODUCTION PROCESS .....   | 31        |
| 4.4      | PRODUCTION OF POWER TRANSFORMERS IN AUSTRALIA .....                  | 32        |
| 4.5      | CONCLUSION .....   | 33        |
| <b>5</b> | <b>AUSTRALIAN MARKET .....</b>                                       | <b>34</b> |
| 5.1      | FINDING .....  | 34        |
| 5.2      | BACKGROUND .....   | 34        |
| 5.3      | SOURCES OF PRODUCT DEMAND .....                                      | 35        |
| 5.4      | ELECTRICITY TRANSMISSION AND DISTRIBUTION BUSINESSES .....           | 35        |
| 5.5      | MARKETING AND DISTRIBUTION ARRANGEMENTS .....                        | 36        |
| 5.6      | SALES PROCESS .....  | 36        |
| 5.7      | MARKET SEGMENTATION .....  | 37        |
| 5.8      | DEMAND VARIABILITY .....   | 40        |
| 5.9      | MARKET SIZE .....  | 41        |
| 5.10     | CONCLUSION .....   | 43        |
| <b>6</b> | <b>DUMPING INVESTIGATION .....</b>                                   | <b>44</b> |
| 6.1      | FINDINGS .....   | 44        |
| 6.2      | INTRODUCTION AND LEGISLATIVE FRAMEWORK .....                         | 44        |
| 6.3      | SUBMISSIONS RECEIVED IN RELATION TO DUMPING ASSESSMENTS .....        | 45        |
| 6.4      | DUMPING ASSESSMENT – ABB CHONGQING .....                             | 51        |
| 6.5      | DUMPING ASSESSMENT – ABB ZHONGSHAN .....                             | 53        |
| 6.6      | DUMPING ASSESSMENT – CHINT .....                                     | 54        |
| 6.7      | DUMPING ASSESSMENT – CTC .....                                       | 55        |
| 6.8      | DUMPING ASSESSMENT – GE WUHAN .....                                  | 58        |
| 6.9      | DUMPING ASSESSMENT – JIANGSU HUAPENG .....                           | 61        |
| 6.10     | DUMPING ASSESSMENT – SIEMENS JINAN .....                             | 62        |
| 6.11     | DUMPING ASSESSMENT – SIEMENS WUHAN .....                             | 63        |
| 6.12     | UNCOOPERATIVE EXPORTERS AND ALL OTHER EXPORTERS .....                | 65        |
| 6.13     | VOLUME OF DUMPED IMPORTS .....                                       | 65        |
| 6.14     | LEVEL OF DUMPING .....   | 66        |

## **PUBLIC RECORD**

|           |   |            |
|-----------|---|------------|
| <b>7</b>  | <b>ECONOMIC CONDITION OF THE INDUSTRY .....</b>                 | <b>67</b>  |
| 7.1       | FINDING .....   | 67         |
| 7.2       | INTRODUCTION .....  | 67         |
| 7.3       | APPROACH TO INJURY ANALYSIS .....                               | 67         |
| 7.4       | VOLUME EFFECTS .....  | 68         |
| 7.5       | PRICE EFFECTS .....   | 72         |
| 7.6       | PROFITS AND PROFITABILITY .....                                 | 74         |
| 7.7       | OTHER ECONOMIC FACTORS .....                                    | 74         |
| 7.8       | SUBMISSIONS FOLLOWING THE PUBLICATION OF THE SEF – INJURY ..... | 78         |
| 7.9       | CONCLUSION .....  | 78         |
| <b>8</b>  | <b>HAS DUMPING CAUSED MATERIAL INJURY?.....</b>                 | <b>80</b>  |
| 8.1       | FINDING .....   | 80         |
| 8.2       | LEGISLATIVE FRAMEWORK AND APPROACH TO CAUSATION ANALYSIS .....  | 80         |
| 8.3       | SIZE OF THE DUMPING MARGINS .....                               | 81         |
| 8.4       | TENDERS .....   | 82         |
| 8.5       | EFFECTS OF DUMPING .....  | 100        |
| 8.6       | MATERIALITY OF INJURY .....                                     | 104        |
| 8.7       | CONCLUSION .....  | 104        |
| <b>9</b>  | <b>TERMINATION OF INVESTIGATION .....</b>                       | <b>105</b> |
| <b>10</b> | <b>APPENDICES AND ATTACHMENTS.....</b>                          | <b>106</b> |

**PUBLIC RECORD**

**ABBREVIATIONS**

|                        |   |
|------------------------|---|
| \$                     | Australian dollars  |
| ABB Australia          | ABB Australia Pty Ltd   |
| ABB Chongqing          | ABB Chongqing Transformer Co., Ltd  |
| ABB Zhongshan          | ABB Zhongshan Transformer Co., Ltd  |
| ABF                    | Australian Border Force   |
| ABS                    | Australian Bureau of Statistics   |
| ADA                    | World Trade Organisation Anti-Dumping Agreement   |
| ADN                    | Anti-Dumping Notice   |
| the Act                | <i>Customs Act 1901</i>   |
| ADRP                   | Anti-Dumping Review Panel   |
| Ampcontrol             | Ampcontrol Pty Ltd  |
| AMQ                    | Australian market questionnaire   |
| the applicant or WTC   | Wilson Transformer Company Pty Ltd  |
| ChAFTA                 | China Australia Free Trade Agreement  |
| China                  | the People's Republic of China  |
| CHINT                  | CHINT Electric Co., Ltd   |
| the Commission         | the Anti-Dumping Commission   |
| the Commissioner       | the Commissioner of the Anti-Dumping Commission   |
| CON 507                | <i>Consideration Report No. 507</i>   |
| CTC                    | Changzhou Toshiba Transformer Co., Ltd.   |
| CTMS                   | cost to make and sell   |
| the Customs Direction  | <i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>  |
| EPC                    | engineering procurement and construction  |
| EPR                    | electronic public record available via <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a>             |
| FOB                    | free on board   |
| GE Australia           | GE Grid Australia Pty Ltd   |
| GE Wuhan               | GE High Voltage Equipment (Wuhan) Co., Ltd  |
| GWh                    | giga watt hours   |
| the goods              | the goods the subject of the application as outlined at section 3.3 (also referred to as the goods under consideration) |
| Indonesia              | the Republic of Indonesia   |
| injury analysis period | from 1 January 2014   |
| investigation period   | 1 January 2016 to 31 December 2018  |
| INV 219                | Investigation No. 219   |
| Jiangsu Huapeng        | Jiangsu Huapeng Transformer Co., Ltd  |
| Korea                  | the Republic of Korea   |

**PUBLIC RECORD**

|                       |   |
|-----------------------|---|
| kVA                   | kilo volt ampere  |
| the Manual            | <i>Dumping and Subsidy Manual, November 2018</i>                      |
| the Minister          | the Minister for Industry, Science and Technology                     |
| Ministerial Direction | <i>Ministerial Direction on Material Injury 2012</i>                  |
| MVA                   | mega volt ampere  |
| NEM                   | National Electricity Market   |
| OCOT                  | ordinary course of trade  |
| PAD                   | Preliminary Affirmative Determination                                 |
| PAD Direction         | <i>Customs (Preliminary Affirmative Determination) Direction 2015</i> |
| R&D                   | research and development  |
| the Regulation        | <i>Customs (International Obligations) Regulation 2015</i>            |
| REP 219               | <i>Anti-Dumping Commission Report No. 219</i>                         |
| REQ                   | response to the exporter questionnaire                                |
| RFT                   | request for tender  |
| ROI                   | return on investment  |
| SEF                   | statement of essential facts  |
| SG&A                  | selling, general and administration                                   |
| Siemens Australia     | Siemens Australia Pty Ltd   |
| Siemens Jinan         | Siemens Transformer (Jinan) Co., Ltd                                  |
| Siemens Wuhan         | Siemens Transformer (Wuhan) Co., Ltd                                  |
| Thailand              | the Kingdom of Thailand   |
| TIC                   | Toshiba International Corporation Pty Ltd                             |
| Transgrid             | NSW Electricity Networks Operations Pty Ltd                           |
| Tyree                 | Tyree Transformers Pty Ltd  |
| UNINDO                | PT. Unelec Indonesia  |
| Vietnam               | the Socialist Republic of Vietnam                                     |
| WTO                   | World Trade Organisation  |

# 1 SUMMARY

## 1.1 Summary

This Termination Report No. 507 (TER 507) is in response to an application lodged by Wilson Transformer Company Pty Ltd ('WTC', or 'the applicant') for the publication of a dumping duty notice in respect of certain power transformers<sup>1</sup> ('power transformers' or 'the goods') exported to Australia from the People's Republic of China (China).

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) reasons for terminating the investigation.

In relation to the investigation, the Commissioner has found that:

- for the goods exported by ABB Chongqing Transformer Co., Ltd (ABB Chongqing) and Siemens Transformer (Jinan) Co., Ltd (Siemens Jinan), there has been no dumping of any of those goods. Therefore, the investigation must be terminated in accordance with section 269TDA(1)(b)(i) of the *Customs Act 1901* (the Act)<sup>2</sup> in so far as it relates to these exporters;
- for the goods exported by ABB Zhongshan Transformer Co., Ltd (ABB Zhongshan) and Siemens Transformers (Wuhan) Co., Ltd (Siemens Wuhan), the dumping margin for each exporter, worked out under section 269TACB, when expressed as a percentage of the export price, or weighted average of export prices, used to establish that dumping margin, was less than two per cent. Therefore, the investigation must be terminated in accordance with section 269TDA(1)(b)(ii), in so far as it relates to these exporters; and
- on the basis that the injury to the Australian industry that has been caused by exports from China from all other exporters is negligible, the investigation as it relates to China must be terminated in accordance with section 269TDA(13).

The effect of the above decisions is that the investigation is terminated in its entirety.

The dumping margins assessed by the Anti-Dumping Commission (the Commission) are summarised in Table 1 below:

| Exporter   | Dumping margin <sup>3</sup> |
|--|-----------------------------|
| ABB Chongqing  | -4.6%                       |
| ABB Zhongshan  | -1.0%                       |
| Changzhou Toshiba Transformer Co., Ltd (CTC)           | 16.1%                       |
| CHINT Electric Co., Ltd (CHINT)                        | 20.6%                       |
| GE High Voltage Equipment (Wuhan) Co., Ltd (GE Wuhan)  | 42.4%                       |
| Jiangsu Huapeng Transformer Co., Ltd (Jiangsu Huapeng) | 40.5%                       |

<sup>1</sup> The goods are defined at section 3.3.

<sup>2</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

<sup>3</sup> Dumping margins are expressed as a percentage of the export price.

## PUBLIC RECORD

| Exporter                              | Dumping margin <sup>3</sup> |
|---------------------------------------|-----------------------------|
| Siemens Jinan                         | -10.2%                      |
| Siemens Wuhan                         | -3.7%                       |
| Uncooperative and all other exporters | 42.4%                       |

Table 1 Dumping margins

### 1.2 Authority to make decision

Division 2 of Part XVB describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations, in relation to the goods covered by an application, under section 269TB(1). Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

### 1.3 Application

On 24 January 2019, the applicant lodged an application under section 269TB(1) alleging that the Australian industry for like goods has experienced material injury caused by exports of the goods to Australia from China at dumped prices.

Having considered the application and further information provided by the applicant, the Commissioner decided not to reject the application and on 18 March 2019 initiated an investigation into the alleged dumping of the goods from China.

*Consideration Report No. 507* (CON 507) and a public notice (Anti-Dumping Notice (ADN) No. 2019/35) provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission (the Commission) electronic public record (EPR) via [www.adcommission.gov.au](http://www.adcommission.gov.au).<sup>4</sup>

### 1.4 Preliminary affirmative determination

In accordance with section 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice, or a countervailing duty notice, or it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation day 60 was 17 May 2019). The Commonwealth may require and take securities at the time a PAD is made, or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

The Commissioner was not satisfied at day 60 of the investigation that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to exports of

---

<sup>4</sup> Case 507 at EPR item nos. 02 and 03 respectively.

## PUBLIC RECORD

the goods from China. The Commission published a Status Report on 17 May 2019 detailing the Commissioner's reasons for not making a PAD.<sup>5</sup>

Section 9 of the *Customs (Preliminary Affirmative Determination) Direction 2015* (PAD Direction) requires the Commissioner to reconsider making a PAD after the publication of a Status Report, at least once prior to the publication of the SEF. In preparing the SEF, the Commissioner reconsidered whether to make a PAD in view of the additional evidence available. However, this evidence did not establish sufficient grounds for the publication of a PAD.

As the Commissioner was not satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from China, no PAD under section 269TD(1) was made.

### 1.5 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister for Industry, Science and Technology (the Minister) allows under section 269ZHI(3),<sup>6</sup> place on the public record a statement of essential facts (SEF) on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.<sup>7</sup>

The SEF was originally due to be placed on the public record by 8 July 2019. However, the due date for the SEF was extended on two occasions.<sup>8</sup> The Commissioner published SEF 507 on 17 October 2019.<sup>9</sup>

In the notice initiating the investigation, and the subsequent notices which advised of an extension to the deadline for the publication of the SEF, interested parties were advised that they would have 20 days to respond to the SEF.

### 1.6 Final report

The Commissioner's final report and recommendations in relation to this investigation were scheduled to be provided to the Minister by 31 January 2020,<sup>10</sup> unless the investigation was terminated earlier.<sup>11</sup>

As a result of the findings in this report, the Commissioner will not be providing a report to the Minister and is terminating the investigation in its entirety.

---

<sup>5</sup> Case 507, ADN No. 2019/70 at EPR item no. 23.

<sup>6</sup> This power has been delegated to the Commissioner. ADN No. 2017/10 provides further explanation.

<sup>7</sup> Section 269TDAA(1).

<sup>8</sup> Case 507, ADN No. 2019/75 at EPR item no. 26 and ADN No. 2019/107 at EPR item no. 55. The reasons for the extensions are outlined in the respective ADNs.

<sup>9</sup> Case 507, EPR item no. 58.

<sup>10</sup> The recommendation to the Minister was originally due by 20 August 2019, however, three extensions to the final report were granted. Refer to Case 507, EPR items 26, 55 and 68.

<sup>11</sup> Under section 269TEA.



## 2 BACKGROUND

### 2.1 Initiation

#### 2.1.1 Background

On 24 January 2019, WTC lodged an application under section 269TB(1) for the publication of a dumping duty notice in respect of the goods exported to Australia from China. The applicant alleged that the Australian industry had experienced material injury caused by exports of the goods from China at dumped prices.

The applicant claimed that the Australian industry has been injured through:

- loss of sales volume;
- reduced market share;
- price depression;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced cash flow;
- reduced employment;
- reduced wages;
- reduced capacity utilisation;
- reduced return of investment (ROI);
- reduced ability to raise capital; and
- reduced capital investment.

On a number of occasions, up to and including 20 February 2019, the applicant provided further information and data in support of the application, without having been requested to do so, as provided for in section 269TC(2A).

Subsequent to receiving further information, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of the goods exported to Australia from China.

Public notification of initiation of the investigation was made on 18 March 2019. ADN No. 2019/35<sup>12</sup> and CON 507<sup>13</sup> provide further details relating to the initiation of the investigation.

In respect of this investigation:

- the investigation period<sup>14</sup> for the purpose of assessing dumping is 1 January 2016 to 31 December 2018; and

---

<sup>12</sup> Case 507, EPR item no. 03.

<sup>13</sup> Case 507, EPR item no. 02.

<sup>14</sup> As that term is defined in section 269T(1).

- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped goods from China is from 1 January 2014 onwards.<sup>15</sup>

## **2.2 Submissions in response to the initiation of the investigation**

### **2.2.1 Submissions**

In response to the initiation of this investigation, the Commission received submissions from Toshiba International Corporation Pty Ltd (TIC)<sup>16</sup> and its related entities<sup>17</sup>, and from Siemens Australia Pty Ltd (Siemens Australia)<sup>18</sup> and its related entities.<sup>19</sup>

Siemens Australia and TIC submitted that the investigation should not have been initiated, mainly because there was no merit in WTC's claims regarding dumping, material injury and causation. It was further submitted that the Commissioner initiated the case based on false premises and assumptions that do not comply with Australia's anti-dumping legislation, nor with the World Trade Organisation (WTO) Anti-Dumping Agreement (ADA).

Siemens Australia submitted that the investigation should be terminated under section 269TDA(1) or section 269TDA(13).

TIC noted that the Commission had terminated a previous investigation in relation to the goods from China (Investigation No. 219 (INV 219)) and questioned what had changed to warrant a new investigation.

WTC made a submission<sup>20</sup> in response to the submissions from TIC and Siemens Australia.

CON 507 outlines the Commissioner's consideration of whether there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of the goods. A summary of the applicant's claims and further details of the various submissions are below.

#### The applicant's claims in relation to dumping – reasonable grounds

In its application, WTC estimated export prices and normal values for imports of the goods from China, in order to demonstrate that there appeared to be reasonable grounds that the goods were dumped.

---

<sup>15</sup> The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the market, which in turn assists the Commissioner in the determination of whether material injury has occurred over the investigation period.

<sup>16</sup> Case 507, EPR item nos. 04 and 13.

<sup>17</sup> TIC is the Australian importer of the goods exported to Australia by related entity CTC.

<sup>18</sup> Case 507, EPR item no. 05.

<sup>19</sup> Siemens Australia is the Australian importer of the goods exported to Australia by related entities Siemens Jinan and Siemens Wuhan.

<sup>20</sup> Case 507, EPR item nos. 20 and 21.

## PUBLIC RECORD

WTC's estimates relied on information obtained in relation to a number of transactions, each representing a contemporaneous procurement of power transformers in the Australian market. These transactions related to instances where WTC was unsuccessful in a tender process and where a Chinese supplier had been identified as the preferred tenderer. WTC relied on its market knowledge or post-tender discussions with the purchaser in Australia to inform its estimated export prices and normal values.

WTC estimated the export prices at a free on board (FOB) basis by deducting Australian selling costs from the estimated winning tender price.

WTC estimated normal values using its own sales and cost data relating to the relevant tenders, and adjusted for differences of cost of labour, overhead and freight between China and Australia. TIC submitted that the estimates were unsubstantiated and inconsistent with Australian legislation and Article 5.2 of the ADA.

Siemens Australia submitted that WTC's estimates, based on unsuccessful bids as a starting point, are speculative. Siemens Australia submitted that an unsuccessful bid may be much higher than the applicant's costs, plus realistic profit margins. Siemens Australia considered that WTC's estimates of normal values on this basis are likely to be overestimated. Siemens Australia considered that a more appropriate method to estimate normal values would have been to use the applicant's costs in successful tenders as a starting point.

Siemens Australia also submitted that the applicant, by relying on World Bank 2017 data to make adjustments for labour, manufacturing, engineering and administration cost differences, may have overestimated costs in China. Siemens Australia further submitted that WTC's estimates were not adjusted for exchange rate variations and Chinese manufacturers' lower cost of sourcing components.

Siemens Australia and TIC both submitted that, by basing the estimations on WTC's own bids, the estimated normal values and export prices did not reflect the specific terms and conditions that vary for each project and each company.

In response to Siemens Australia and TIC, WTC noted that it does not have access to actual exporter data, and therefore its calculations must be based on estimates. It also noted that its approach for this application was consistent with its application for INV 219.

WTC further submitted that:

- unsuccessful bids are the only logical basis for calculating injury, as lost business is the basis of its injury. Price depression and suppression, and the injury resulting from them, occur when contracts are lost when awarded to lower price tenders;
- World Bank 2017 labour costs are a reasonable basis for making adjustments to the relative costs between Australia and China, and are consistent with those that were accepted in INV 219;
- there is no basis for adjusting for exchange gain or loss variations; and
- there is no basis for the claim that no allocation of administrative costs has been made.

## PUBLIC RECORD

### The applicant's claims in relation to material injury – reasonable grounds

TIC and Siemens Australia submitted that WTC had incorrectly measured the Australian market size and also incorrectly calculated WTC's market share as a percentage of sales value and not sales volume in its application. The importers submitted that this is inconsistent with the ADA, which refers in certain Articles to sales volumes.

Siemens Australia's submission provided its own analysis of the applicant's injury claims and stated that there was no evidence that the applicant has suffered material injury.

### The applicant's claims in relation to material injury caused by dumping – reasonable grounds

TIC submitted that WTC does not compete with it in the same market sector for power transformers in Australia, because WTC cannot produce the power transformers required by its purchasers. TIC submitted that, if the Australian industry does not compete with certain imports, then it cannot claim injury from those imports.

Siemens Australia submitted that, to the extent that the applicant has suffered injury, it was not because of dumping, but due to other injury factors such as:

- removal of import tariffs as part of the China Australia Free Trade Agreement (ChAFTA);
- the Australian industry's slow response to the requirements of the renewable energy sector; and
- competition from imports of competing products manufactured at greater scale in countries with lower manufacturing costs.

### **2.2.2 The Commission's assessment**

#### Reasonable grounds to initiate the investigation

The Commission notes that there is no prescribed methodology that an applicant must adopt in making an application for a dumping duty notice. It is also noted that Article 5.2 of the ADA states that '*the application shall contain such information as is reasonably available to the applicant*'. The Commission acknowledged this in CON 507.

The Commission further noted in CON 507 that, due to the bespoke nature of the goods, and the confidential nature of the tendering process, there is limited information available in the public domain for the purpose of estimating export prices and normal values, and by extension, dumping margins.

In CON 507, the Commission reviewed the applicant's methodology, evidence and assumptions, and found that the estimated export prices and normal values were reasonable and reliable for the purpose of making an application for a dumping duty notice.

Similarly, in CON 507, the Commission reviewed the applicant's claims relating to material injury caused by dumping and found that there appeared to be reasonable grounds to support those claims.

The Commissioner remains satisfied that it was appropriate to initiate the investigation.

Other matters raised in submissions in response to the initiation of the investigation are discussed in greater detail throughout this report. For example, the submissions as they relate to material injury are discussed in greater detail in chapter 7 and chapter 8.

## **2.3 Other cases involving power transformers**

### **2.3.1 Investigation No. 219**

On 29 July 2013, following an application by WTC, the Commissioner initiated INV 219 into whether power transformers had been exported to Australia from China, the Republic of Indonesia (Indonesia), Korea, Taiwan, the Kingdom of Thailand (Thailand) and the Socialist Republic of Vietnam (Vietnam) at dumped prices.<sup>21</sup> INV 219 examined an investigation period of 1 July 2010 to 30 June 2013.

On 1 December 2014, the Commissioner terminated the investigation in relation to China and Korea.<sup>22</sup> The Commissioner also terminated the investigation in relation to PT. Unelec Indonesia (UNINDO), an exporter from Indonesia.<sup>23</sup>

In relation to all other imports 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 power transformers exported to Australia from Indonesia (except by UNINDO), Taiwan, Thailand and Vietnam by public notice on 10 December 2014. The notice was made by the then Parliamentary Secretary to the then Minister for Industry, following consideration of *Anti-Dumping Commission Report No. 219* (REP 219).

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

---

<sup>21</sup> Case 219, ADN No. 2013/64 at EPR item no. 02.

<sup>22</sup> ADN No. 2014/130 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 three per cent of the total Australian import volume as prescribed in section 269TDA(4).

<sup>23</sup> 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).

### **2.3.2 Continuation Inquiry No. 504**

The anti-dumping measures imposed as a result of INV 219 were due to expire on 10 December 2019. In accordance with section 269ZHB(1), the Commissioner invited eligible persons to apply for a continuation of the measures.

On 11 February 2019, following the Commissioner’s consideration of an application lodged by WTC seeking continuation of measures applying to the goods exported to Australia, Continuation Inquiry No. 504 was initiated.

The Final Report (REP 504) for Continuation Inquiry No. 504 was provided to the Minister on 4 October 2019. REP 504 recommended that the Minister take steps to continue the measures in relation to Indonesia and Taiwan (with some alterations to the notice). REP 504 also recommended that the measures in respect of Thailand be allowed to expire.

On 1 November 2019, the Minister accepted the recommendation contained within REP 504. REP 504 and the Notice detailing the findings of Continuation Inquiry No. 504 are available on the Commission’s website.<sup>24</sup>

The anti-dumping measures applying to power transformers exported to Australia following the Minister’s decision are set out in Table 2 below:

| <b>Country</b> | <b>Exporter</b>                     | <b>Interim Dumping Duty (IDD)</b> | <b>Form of measures</b> |
|----------------|-------------------------------------|-----------------------------------|-------------------------|
| Indonesia      | PT CG Power Systems Indonesia       | 28.3%                             | Ad valorem              |
|                | All other exporters (except UNINDO) | 28.3%                             | Ad valorem              |
| Taiwan         | Fortune Electric Co Ltd             | 7.6%                              | Ad valorem              |
|                | All other exporters                 | 8.8%                              | Ad valorem              |

**Table 2 - Existing measures on power transformers**

## **2.4 Conduct of the investigation**

### **2.4.1 Preliminary affirmative determination**

In accordance with section 269TD(1), the Commissioner may make a PAD if satisfied that:

- there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice or;

---

<sup>24</sup> On 16 December 2019 the Anti-Dumping Review Panel initiated a review of the Minister’s decision following applications by PT CG Power Systems Indonesia and Fortune Electric Co Ltd. Details of the review are available on the Anti-Dumping Review Panel website.

## PUBLIC RECORD

- it appears that there will be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, 17 May 2019). The Commonwealth may require and take securities at the time a PAD is made, or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with the PAD Direction, 60 days after the initiation of such an investigation, the Commissioner must either make a PAD or provide a Status Report outlining the reasons why a PAD has not been made.

On day 60 of this investigation, in accordance with section 269TD(2), the Commissioner considered making a PAD, but elected to issue a Status Report, after having regard to:

- WTC's application;
- an on-site visit to WTC;
- submissions received by day 37 of the investigation, being 24 April 2019, concerning publication of the dumping duty notice in response to the initiation of the investigation;
- responses to importer, exporter and end-user questionnaires (noting that, at this stage of the investigation, the information and data contained within these responses had not been fully analysed and verified); and
- any other matters considered relevant.

Section 9 of the PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a Status Report at least once prior to the publication of the SEF. In preparing the SEF, the Commissioner reconsidered whether to make a PAD in view of the evidence available. However, the available evidence did not establish sufficient grounds for the publication of a PAD.

### Submissions in respect of the consideration of a PAD

TIC's submission of 26 April 2019<sup>25</sup> and GE Australia's submission of 17 May 2019<sup>26</sup> both referred to consideration of a PAD. WTC responded to GE Australia's submission on 25 June 2019.<sup>27</sup>

### TIC and GE Australia

TIC and GE Australia both stated in their submissions that any injury claimed by the Australian industry is incurred at the time when it is not the successful tenderer, and that

---

<sup>25</sup> Case 507, EPR item no. 13.

<sup>26</sup> Case 507, EPR item no. 24.

<sup>27</sup> Case 507, EPR item no. 35.

## PUBLIC RECORD

any such injury cannot subsequently be remedied by securities on imports pursuant to contracts that have been awarded.

TIC queried what evidence the Commission would have, such that the taking of securities might prevent injury from occurring during the remainder of the investigation and what injury would be prevented from occurring to the Australian industry.

In respect of sufficient grounds for the publication of a dumping duty notice, GE Australia submitted that, where the Commission believes that it has identified instances of dumping, it can only be satisfied that the initial threshold has been met, if the following inquiries have been made:

- a. whether WTC in fact tendered for the particular contract;
- b. if WTC did in fact tender, was it a transformer of specifications of which WTC is viewed as a proven supplier;
- c. if WTC lost the tender, did it lose on price to a lower priced tender;
- d. if WTC did lose on price to a lower priced tender, were there any other tenders priced between the winning dumped price and the unsuccessful WTC tender. If so, were these lower priced unsuccessful bids:
  - from the Australian industry;
  - from a third country;
  - from a Chinese exporter that was not found to be dumping.

### WTC

WTC submitted that the reasons suggested by GE Australia for the Commissioner not to consider the imposition of a PAD are not convincing, and that a PAD would have the desired effect of ensuring the Australian industry is not subjected to further injury.

WTC submitted that the Commissioner is required to be satisfied that sufficient grounds exist for the publication of a dumping duty notice. WTC stated that, based upon the available information sourced from the verification visit with WTC, the exporter questionnaire responses, and visits with Australian importers, the Commissioner was well positioned to form a view as to the appropriateness of a PAD in advance of publication of the SEF. WTC further proposed that it had provided evidence to the Commission that it has experienced material injury in the form of price suppression, and impact on profits and profitability during the investigation period.

WTC stated that the GE Australia submission did not contain sufficient, or adequate, evidence that would prevent the Commissioner from considering the publication of a PAD at the earliest opportunity.

WTC urged the Commissioner to publish a PAD as soon as practicable, prior to the publication of the SEF, to minimise further injury to the Australian industry manufacturing like goods.

### The Commission's assessment

The Commissioner was not satisfied at day 60 of the investigation that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to exports of



## PUBLIC RECORD

the goods from China. The Commission published a Status Report on 17 May 2019 detailing the Commissioner's reasons for not making a PAD.<sup>28</sup>

Section 9 of the PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a Status Report at least once prior to the publication of the SEF. In preparing the SEF, the Commissioner reconsidered whether to make a PAD in view of the evidence available. However, the available evidence did not establish sufficient grounds for the publication of a PAD.

As the Commissioner is not satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from China, no PAD under section 269TD(1) has been made.

### **2.4.2 Statement of essential facts**

The SEF was published on 17 October 2019. The Commissioner proposed to terminate the investigation in its entirety, subject to submissions received in response to the SEF. Submissions were received in response to the SEF, as detailed in section 2.5 of this report.

### **2.4.3 Australian industry**

WTC's application lists the Australian industry as consisting of itself, Ampcontrol and Tyree.

The Commission contacted Ampcontrol and Tyree during the investigation to seek further information about production and sales of power transformers. Ampcontrol partially 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, the Commission is satisfied that WTC accounts for the majority of power transformers produced in Australia.

The Commission conducted a verification visit to WTC's premises in March 2019. A verification report in relation to the visit is available on the EPR.<sup>29</sup>

### **2.4.4 Importers**

The Commission identified several listed importers in the Australian Border Force (ABF) import database that declared imports of the goods from China during the investigation period. The Commission forwarded importer questionnaires to the largest listed importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers who were not contacted directly. The Commission received fully completed questionnaire responses from four importers:

- Siemens Australia;

---

<sup>28</sup> Case 507, ADN No. 2019/070 at EPR item no. 23.

<sup>29</sup> Case 507, EPR item no. 50.

## PUBLIC RECORD

- GE Grid Australia Pty Ltd (GE Australia);
- ABB Australia Pty Ltd (ABB Australia); and
- TIC.

The Commission verified the information provided by Siemens Australia, GE Australia and TIC by undertaking on-site verification visits. Verification reports relating to these three importers are available on the EPR.<sup>30</sup>

### 2.4.5 Exporters

At the outset of the investigation, the Commission forwarded exporter questionnaires to major exporters of the goods from China via their Australian importer(s) of the goods and also placed a copy of the exporter questionnaire on the Commission's website for completion by other exporters who were not contacted directly.

After granting various extensions of time to the initial deadline for the receipt of questionnaires (24 April 2019),<sup>31</sup> the Commission received completed responses to the exporter questionnaire (REQ) from the following exporters:

- ABB Zhongshan;
- ABB Chongqing;
- CTC;
- CHINT;
- GE Wuhan;
- Jiangsu Huapeng;
- Siemens Jinan; and
- Siemens Wuhan.

The Commissioner undertook in-country verification visits to the following exporters:

- CTC;
- GE Wuhan; and
- Siemens Jinan.

At the visit to Siemens Jinan, the Commission had access to the financial records of Siemens Wuhan, and conducted a targeted verification of the information contained in Siemens Wuhan's REQ.

According to verified sales data and data obtained from the ABF import database, the four exporters verified in-country represent approximately 70 per cent of the volume of goods (and approximately 80 per cent of the value of the goods) exported to Australia from China during the investigation period.

Given the relatively small volume of exports from the remaining four exporters that submitted a REQ, the Commission elected to conduct remote verifications.

---

<sup>30</sup> Case 507, EPR item nos. 39, 44 and 46.

<sup>31</sup> Case 507, EPR item no. 12.

## PUBLIC RECORD

### Uncooperative exporters

An uncooperative exporter, in relation to an investigation, is defined in section 269T(1) as an exporter that did not cooperate by providing information considered to be relevant to the investigation within a reasonable period, or an exporter that significantly impeded the investigation.

The Commissioner had regard to both section 269T(1) and the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) and determined CTC to be an uncooperative exporter.

CTC provided a REQ to the Commission. However through follow up emails and a verification visit conducted by the Commission between 27 May 2019 and 31 May 2019, it was identified that CTC's REQ was materially deficient. It was deficient in particular, in relation to domestic sales and domestic costs. These deficiencies are directly relevant to determining the normal value of the goods in China in accordance with the Act and regulations.

As a result of CTC's failure to rectify these deficiencies, the Commissioner was satisfied that CTC did not provide the information considered to be relevant to the investigation within a reasonable period. Furthermore, the deficiencies that remained could not be rectified quickly and easily by a further response.

The Commissioner notified CTC of his decision to treat it as an uncooperative exporter, pursuant to section 269T(1) on 18 June 2019.

In addition to CTC, the Commissioner considers all other exporters, other than those listed above, to be uncooperative exporters.

This finding is on the basis that the uncooperative exporters did not provide information considered to be relevant to the investigation within a reasonable period.

Assessments in relation to the variable factors for uncooperative exporters will be based on all relevant information.

In a submission dated 30 July 2019,<sup>32</sup> CTC argued that the Commissioner's finding that CTC is an "uncooperative exporter" is incorrect.

CTC claimed that:

- the Commission was able to verify the completeness, accuracy and reliability of CTC's domestic sales and domestic cost to make and sell (CTMS) through management accounts and audited financial accounts;
- the fact that the Commission was not provided with the domestic sales listing and domestic CTMS listing in the preferred format, that is in the format of worksheets D2 and G3 of the REQ, should not disadvantage CTC; and

---

<sup>32</sup> Case 507, EPR item no. 48.

## PUBLIC RECORD

- the Commissioner's finding that he was not provided with "relevant" domestic sales and domestic CTMS information lacks logic, given that all power transformers are unique and the terms and conditions on which they are supplied are unique.

The Commission undertook an on-site verification of the information contained in CTC's REQ in May 2019. The verification team attempted to reconcile the values in worksheets 'B-4 Upwards Sales' and 'G-8 Upwards Costs' by tracing the domestic sales and costs listings to audited financial statements in accordance with ADN No. 2016/30.

Having regard for all information provided by CTC to the verification team, the verification team identified that material variances existed between worksheet D-2 domestic sales listing and worksheet B-4, and between the G-3 Domestic Cost listing and worksheet G-8. These issues are described in Chapter 3.1 of the CTC exporter verification report.<sup>33</sup> As a result, the verification team was unable to reconcile worksheets D-2 and G-3 to the financial statements, in accordance with ADN No. 2016/30. The verification team could, therefore, not be satisfied that the information was complete and relevant.

Through the verification process, it was found that CTC provided domestic sales and costs for a sample only. CTC had opportunities to provide complete and relevant information via worksheets D-2 and G-3, including all sales of like goods in the investigation period, having been requested to do so in the exporter questionnaire, before the verification visit via email and during the verification visit. CTC provided the worksheets with additional sales on 7 June 2019, after the conclusion of the on-site verification, limiting the verification team's opportunity to verify this additional information.

The Commission accepts that entities may not always provide information in the Commission's preferred format. The Commission considers that, in respect of CTC, reasonable flexibility was employed in assessing the information provided regardless of format — as has been the case with other exporters who have cooperated with this investigation. To that end, the Commissioner's finding goes to whether he can be satisfied that the domestic sales and domestic costs data is complete, relevant and accurate. In relation to CTC, that level of satisfaction has not been achieved, because the data in worksheets D-2 and G-3 could not be reconciled to audited financial statements in accordance with ADN No. 2016/30.

In accordance with ADN No. 2016/30, the verification team assessed the relevance of domestic sales and domestic costs. The purpose of verification of these matters being to assess whether the data in worksheets D-2 and G-3 relates only to like goods sold on the domestic market during the investigation period, and not including items that do not meet these characteristics. The Commission assesses whether an exporter has provided relevant data on domestic sales and domestic costs in order to establish a normal value under section 269TAC.

The Commission considers that like goods are power transformers sold by CTC on the domestic market that are identical to, or have characteristics closely resembling, the goods exported to Australia. The Commission considers that CTC's sales of like goods

---

<sup>33</sup> Case 507, EPR item no. 45.

## **PUBLIC RECORD**

constitute its domestic sales of liquid dielectric power transformers with power ratings of equal to, or greater than, 10 MVA and a voltage rating of less than 500kV, whether assembled or unassembled, complete or incomplete. This definition is consistent with the goods description set out in ADN No. 2019/35. The Commission notes that CTC did not object to this definition of like goods during the verification visit and CTC had attempted to complete its worksheets D-2 and G-3 on the basis of this definition.

The Commission is satisfied that CTC sold like goods on the domestic market during the investigation period. In establishing a normal value under sections 269TAC(1) or 269TAC(2)(c), the Commission requires data regarding like goods sold on the domestic market during the investigation period. In order to rely on CTC's data, the Commission must be satisfied that the data is complete, relevant and accurate. However, having regard to all information provided by CTC, the Commission could not be satisfied that the domestic sales and domestic costs data was complete, relevant and accurate.<sup>34</sup>

### **2.4.6 Purchasers**

In addition to information received from the applicant, importers and exporters, the Commission sought the participation of purchasers of power transformers in Australia during the investigation period, by requesting the completion of an Australian Market Questionnaire (AMQ).

The Commission received AMQs from the following purchasers of power transformers in the Australian market:

- Ausgrid Operator Partnership;
- BHP Billiton Iron Ore Pty Ltd;
- Endeavour Energy;
- Energy Queensland;
- Essential Energy;
- Hydro Tasmania;
- NSW Electricity Networks Operations Pty Ltd (Transgrid);
- Powerlink Queensland;
- RJE Global Pty Ltd (RJE); and
- Zenviron.

Following the Commission's evaluation of the information contained in the AMQ's, teleconferences were held between the Commission and:

- Endeavour Energy;
- Hydro Tasmania;
- Powerlink Queensland;
- RJE;

---

<sup>34</sup> While the Commission is satisfied that CTC provided sales data for some of its domestic sales of goods, the Commission could not be satisfied that this list included all sales or that all the goods listed were, in fact, like goods. This finding is in relation to domestic sales (and domestic costs associated with those sales) and does not relate to other areas of the REQ that the Commission considers are complete, relevant and accurate, such as export sales and costs.

## PUBLIC RECORD

- Transgrid; and
- Zenviron.

These teleconferences were conducted for the purpose of gaining further information about the Australian market and the procurement decisions of purchasers in the market. File notes for each of these teleconferences are available on the EPR.

The Commission summarised the information gathered from the AMQ's and follow up teleconferences, and published a file note on 24 July 2019.<sup>35</sup> This information is also summarised below:

- Generally power transformers are purchased through a competitive tendering process, however, purchasers may also approach a supplier directly, from time to time, depending on the circumstances of the procurement;
- Purchasers may implement standing offer arrangement contracts (panel supply arrangements or panels). The Commission understands that panels consist of approved suppliers that have confirmed their ability to build to a required specification and agreed delivery schedules. Pricing is included, but generally with some flexibility allowable for changes in input costs. Several purchasers advised that while the panels are a convenient vehicle for supply, there are instances when suppliers outside of the panel are invited to bid for a power transformer. The Commission understands that the panels are not exclusive arrangements. Delivery and installation costs are also not typically included in the original agreement and these additional costs may impact the final bid price;
- There was a general consensus from purchasers that WTC's like goods are built to an acceptable standard. A minority of purchasers discussed issues with WTC's like goods, acknowledging that these occurred prior to the investigation period;
- Some purchasers commented that WTC is slow to provide bids for transformer projects. The Commission understands from the purchasers that this is an issue when a project has a short deadline. The purchasers recognised some suppliers as being more responsive than WTC; and
- Some purchasers indicated that they will approach WTC for power transformers in the small and medium range, but have less confidence in WTC's ability to supply large transformers (above 180MVA). There appeared to be some consensus among purchasers that large, international manufacturers, including Chinese manufacturers, have more experience with larger sized power transformers.

### Submissions in respect of the AMQ

#### TIC

TIC submitted<sup>36</sup> that the information published in the Commission's file note correlated closely with the information it had furnished to the Commission.

---

<sup>35</sup> Case 507, EPR item no. 41.

<sup>36</sup> Case 507, EPR items no. 43 and no. 47.

## PUBLIC RECORD

TIC asserted that purchasers have considerable concerns regarding WTC's performance. TIC stated that WTC does not respond to purchaser requests for bids on projects in a timely manner, and presumably is then excluded from such bids, and that purchasers are not confident that WTC has the ability to reliably supply large power transformers (i.e. those above 180 MVA).

TIC also asserted that, according to its understanding, WTC did not bid on 50 per cent of the projects that were won by TIC during the investigation period. TIC also claimed that there was a large project in which the purchaser raised issues regarding WTC's capability.

TIC does not believe that WTC can credibly claim injury caused by TIC, given the circumstances.

TIC submitted that, on the basis of information it has submitted to the Commission, and the information contained in the file note, the investigation should be terminated, at least insofar it relates to TIC.

### WTC

WTC submitted that:<sup>37</sup>

- it had experienced a small number of manufacturing issues in the past, however, these issues were addressed and the transformers were fully tested and despatched. It noted that all manufacturers of power transformers have issues from time to time in manufacture and test due to the complex nature and variability of the products;
- it supports the Australian market with more bids than any other supplier and rebutted claims by its competitors that it is not actively competing; and
- demand for power transformers 180MVA and above has been higher internationally than in Australia, providing some international suppliers with more experience. While only a minority of WTC's sales have exceeded 180MVA capacity, WTC has proven experience supplying power transformers above this power rating.

### The Commission's assessment

The Commission has had regard to the information gathered from purchasers of power transformers and the submissions received from TIC and WTC, on the subject, when analysing the Australian market and factors that may have caused injury to Australian industry. The Commission's findings in this regard are set out in Chapters 7 and 8.

## **2.5 Submissions received from interested parties**

The Commissioner received the submissions listed below in relation to the investigation.

---

<sup>37</sup> Case 507, EPR item no. 54.

## PUBLIC RECORD

The Commissioner had regard to all submissions in response to the SEF that were received within 20 days after it was placed on the public record. This is consistent with the matters that the Commissioner must have regard to under section 269TEA(3) when deciding on the recommendations to be made to the Minister.

The Commissioner also had regard to a number of submissions that were received later than 20 days after the SEF was placed on the public record (with the exception of EPR item nos. 73-75).

The submissions recorded as EPR item nos. 73-75 were not considered because the Commissioner is required to terminate the investigation (or particular aspects of the investigation) if satisfied of one or more of the matters in section 269TDA. When the Commissioner reached the requisite state of satisfaction, he took steps to terminate the investigation and did not consider any further submissions or proceed to providing a report to the Minister as would otherwise be required by section 269TEA(1). If the Commissioner had not terminated the investigation, he was scheduled to provide a report to the Minister on or before 31 January 2020.

| EPR No. | Entity            | Entity type         | Subject                                       | Date published on the EPR |
|---------|-------------------|---------------------|---|---------------------------|
| 04      | TIC               | Importer            | Initiation                                    | 15 April 2019             |
| 05      | Siemens Australia | Importer            | Initiation                                    | 26 April 2019             |
| 13      | TIC               | Importer            | Further submission                            | 26 April 2019             |
| 20      | WTC               | Australian industry | Response to TIC submissions                   | 16 May 2019               |
| 21      | WTC               | Australian industry | Response to Siemens Australia's submission    | 16 May 2019               |
| 22      | TIC               | Importer            | Letter to ADC                                 | 17 May 2019               |
| 24      | GE Australia      | Importer            | PAD   | 17 May 2019               |
| 30      | GE Australia      | Importer            | Injury to Australian industry                 | 13 June 2019              |
| 31      | WTC               | Australian industry | Response to GE Australia Injury submission    | 18 June 2019              |
| 34      | TIC               | Importer            | No title (concerns anti-competitive conduct)  | 25 June 2019              |
| 35      | WTC               | Australian industry | Response to GE Australia PAD submission       | 25 June 2019              |
| 37      | TIC               | Importer            | Response to WTC submission                    | 28 June 2019              |
| 40      | GE Australia      | Importer            | Causation                                     | 23 July 2019              |
| 43      | TIC               | Importer            | Grounds for termination                       | 29 July 2019              |
| 47      | TIC               | Importer            | Response to ADC file note re AMQ              | 31 July 2019              |
| 48      | CTC               | Exporter            | Response to verification report               | 31 July 2019              |
| 51      | WTC               | Australian industry | Response to GE Australia causation submission | 2 August 2019             |
| 52      | GE Wuhan          | Exporter            | Calculation of normal value                   | 6 August 2019             |
| 53      | TIC               | Importer            | Case issues                                   | 6 August 2019             |
| 54      | WTC               | Australian industry | Response to Toshiba submission                | 8 August 2019             |



**PUBLIC RECORD**

|    |              |                     |   |                  |
|----|--------------|---------------------|---|------------------|
| 60 | TIC          | Importer            | Response to SEF 507                     | 6 November 2019  |
| 61 | GE Australia | Importer            | Response to SEF 507                     | 11 November 2019 |
| 62 | WTC          | Australian industry | Response to SEF 507                     | 12 November 2019 |
| 63 | GE Australia | Importer            | Response to WTC submission              | 21 November 2019 |
| 64 | Voith Hydro  | Exporter            | Case issues                             | 22 November 2019 |
| 65 | WTC          | Australian industry | Further response to SEF 507             | 26 November 2019 |
| 66 | GE Australia | Importer            | Response to WTC submission              | 29 November 2019 |
| 67 | Siemens      | Importer            | Response to WTC submission              | 2 December 2019  |
| 69 | WTC          | Australian industry | Response to GE and Siemens submissions  | 13 December 2019 |
| 70 | WTC          | Australian industry | Further response to SEF 507             | 20 December 2019 |
| 71 | Siemens      | Importer            | Further response to WTC submissions     | 14 January 2020  |
| 72 | GE Australia | Importer            | Further response to WTC submission      | 15 January 2020  |
| 73 | WTC          | Australian industry | Expert opinion on related party pricing | 20 January 2020  |
| 74 | TIC          | Importer            | Response to WTC submission              | 21 January 2020  |
| 75 | Siemens      | Importer            | Response to WTC expert opinion          | 23 January 2020  |

**Table 3 - Submissions received from interested parties**

## 3 THE GOODS AND LIKE GOODS

### 3.1 Finding

The Commissioner considers that locally manufactured power transformers are a like good to the goods (the subject of the application) and is satisfied that there is an Australian industry producing the like goods. The Australian industry is comprised of WTC, Ampcontrol and Tyree.

### 3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, amongst other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that 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”.*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports, even if the goods it produces are not identical to those imported. The industry must, however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other in accordance with the following considerations:

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

### 3.3 The goods

#### 3.3.1 Goods under consideration

The goods that are under consideration 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, 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.

### **3.3.2 Submissions in respect of the goods under consideration**

#### TIC

TIC submitted<sup>38</sup> that WTC had not bid on various projects involving large power transformers, because in TIC's view WTC lacks the capability to manufacture such power transformers. TIC questioned WTC's objective in applying for anti-dumping measures over an extended range of power transformers, and if this range of power transformers match the goods that the applicant is capable of producing.

TIC further submitted that the Commission should request WTC to provide details on what requests for tenders it bid on, and to verify information relating to the sizes of power transformers that WTC produces.

#### The Commission's assessment

As part of the Commission's analysis of the Australian market, the Commission requested and analysed all of WTC's tender submissions by power rating expressed in MVA during the investigation period. The Commission found that WTC had bid for contracts for large power transformers of the type referred to by TIC. More detail of the analysis can be found at section 7.4.1 of this report.

### **3.4 Tariff classification of the goods**

The goods are generally 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.<sup>39</sup>

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 kVA);
- 8504.22.00 (liquid dielectric transformers having a power handling capacity exceeding 650 kVA but not exceeding 10,000 kVA);

---

<sup>38</sup> Case 507 at EPR item no. 04.

<sup>39</sup> The Commission notes that the tariff subheadings are provided for administrative convenience and customs purposes. The written goods description in section 3.3 defines the goods under consideration.

## PUBLIC RECORD

- 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).

### 3.5 Like goods assessment

#### 3.5.1 WTC's application

In its application, WTC stated that, although power transformers are engineered to order products, the imported and locally produced goods are fundamentally the same, noting that, among other things, they:

- are assembled from the same or similar core components;
- compete directly in the Australian market;
- have identical end uses, being engineered to meet the requirements of each purchaser;
- are manufactured using similar processes;
- are manufactured in accordance with a range of Australian standards, including the standards numbered 2374, 2312, 60044, 60076, 60137 and 9001; and
- are manufactured to meet the purchasers' specifications in relation to power handling capacity, voltage ratio, efficiency and durability.

#### 3.5.2 Submissions in respect of like goods

##### Submission from TIC

TIC submitted<sup>40</sup> that the application is 'over-simplified' to the extent that it proposes to treat the imported and locally made goods as fundamentally the same in regard to their performance characteristics of power handling, voltage ratio, efficiency, durability, ability to meet the purchaser's specifications and delivery lead times. TIC again noted that power transformers are engineered to order. In TIC's view, this means that the power transformers are designed and engineered in accordance with skills and technologies available to the manufacturing company, and that it is quite possible for power transformers to have a number of differences for the same functional requirements of any given project.

#### 3.5.3 The Commission's assessment – like goods

The Commission's *Dumping and Subsidy Manual* (the Manual) states that:

---

<sup>40</sup> Case 507, EPR item no. 04.

## PUBLIC RECORD

*“Where two goods are identical they are like goods. In many applications differences may be identified between the locally produced goods and the imported goods. Where two goods are not alike in all respects, the Commission will assess whether they have characteristics closely resembling each other against the considerations below.”<sup>41</sup>*

The following analysis is based on information gathered by the Commission from INV 219, the application, AMQs, REQs and verifications and submissions received. The analysis sets out the Commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods (the subject of the application) and whether they are, therefore, like goods.

### **Physical likeness**

While power transformers can vary significantly due to differing purchaser specifications in relation to power handling capacity, voltage ratio, efficiency and durability, the product engineered for each purchaser will be physically alike, or bear a close resemblance to the goods, whether those products be made locally or imported. The Commission notes the existence of Australian standards that need to be met by the manufacturers supplying the Australian market.

The Commission is satisfied that both the imported goods and the goods produced by the Australian industry are physically alike.

### **Commercial likeness**

The Commission assessed whether the goods are directly competitive in the market. The Commission found that locally produced and imported power transformers compete directly within the Australian market through a bid and contract award process, open to domestic and foreign manufacturers.

The Commission further assessed to what extent the purchasers were willing to switch between sources of the goods and like goods. Based on the Commission’s extensive research of the Australian market (refer to chapter 5) and information received from purchasers in response to the AMQs (refer section 2.4.4), the Commission is satisfied that the large purchasers of power transformers, such as utilities companies (for example), procured power transformers from domestic as well as imported sources during the investigation period.

The Commission is satisfied that, in respect of commercial likeness, the locally produced power transformers closely resemble the power transformers (the subject of the application).

---

<sup>41</sup> *Dumping and Subsidy Manual* (November 2018), available via the Commission’s website.

**Functional likeness**

The Commission found that power transformers are capital products that are procured by the purchaser through a tender process. The successful tenderer must demonstrate the capacity to meet tender specifications, to which end the imported and locally produced power transformer must be functionally identical.

The Commission is satisfied that imported power transformers and those produced locally are functionally alike.

**Production likeness**

The Commission received production process charts from WTC and the cooperative Chinese exporters, in addition to conducting factory tours as part of the on-site verification visits to WTC, GE Wuhan, CTC and Siemens Jinan. The Commission has compared the respective processes and is satisfied that imported and locally produced power transformers are alike in regards to their production.

**3.5.4 Conclusion – like goods**

Based on the above assessment, the Commission considers that the locally produced goods closely resemble the goods (the subject of the application).

The Commission is satisfied that the Australian industry produces ‘like’ goods to the goods (the subject of the application), and that the domestically produced goods are ‘like goods’ as defined in section 269T(1).

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

The Commissioner 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.

### 4.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are in fact 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. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Production process

Power transformers are custom designed capital goods engineered to order and manufactured to the specifications of the purchaser. 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 and pre-handover testing is undertaken. Smaller power transformers may be delivered complete.

## **4.4 Production of power transformers in Australia**

### **4.4.1 Application**

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 includes the following:

- electrical design;

## **TER 507 - Power Transformers - China**



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

#### **4.4.2 TIC submission**

TIC submitted<sup>42</sup> that WTC imports most, if not all, of the components it uses to assemble power transformers in Australia and questioned whether WTC is a manufacturer of power transformers, or simply assembles the components of power transformers that it imports.

#### **4.4.3 The Commission's assessment**

WTC manufactures power transformers at its Glen Waverley 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. Despite sourcing some components from overseas, WTC operates a capital intensive facility in Australia and undertakes substantial processes relating to the design, manufacturing, testing and installation of power transformers in Australia.

The Commission contacted Ampcontrol and Tyree during the conduct of the investigation to seek further information about production and sales of power transformers. Ampcontrol partially completed an Australian industry financial information questionnaire. No response was received from Tyree.

Based on information contained in the application, information obtained from Ampcontrol, information obtained from purchasers of power transformers, and that gathered during INV 219, the Commission is satisfied that Ampcontrol and Tyree are also members of the Australian industry.

The Commission is further satisfied, based on information gathered, that WTC accounts for the majority of power transformers produced in Australia.

### **4.5 Conclusion**

Having regard to the available information, the Commissioner 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 Australian industry meet the requirements of sections 269T(2) and 269T(3), and therefore there is an Australian industry producing like goods.

---

<sup>42</sup> Case 507, EPR item no. 04.

## 5 AUSTRALIAN MARKET

### 5.1 Finding

The Commissioner has found that the Australian market for power transformers is supplied by the Australian industry and imports from a number of countries, including China.

### 5.2 Background

#### 5.2.1 Procurement and manufacture of power transformers

Power transformers are custom designed equipment engineered to suit the requirements of each application, and manufactured to the specifications of the individual utilities, generating facilities, and industrial users, that purchase the product. Power transformers involve significant capital expenditure and long manufacturing lead times. The purchase of power transformers is generally through a competitive tender process. When a purchaser plans a new or replacement transformer, it puts out 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 timeline for delivery and installation. For the bidders, the process is quite opaque. On occasion they may receive feedback about the tender processes but may not always know who they are competing against and, if they lose, who won the contract.

#### 5.2.2 Estimating the size of the Australian market – data and methodology

The Commission has analysed the Australian market for power transformers based on two sets of data. One set of data is based on sales during the investigation period and one which is based on tender activities during the same period.

The market segmentation analysis in section 5.7 is based on data relating to tender activities during the investigation period. Due to manufacturing lead times, not all of these projects would have been delivered in the investigation period.

The market size analysis in section 5.9 is based on actual sales data during the investigation period.

#### 5.2.3 The Australian electricity market

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.<sup>43</sup>

### **5.3 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
- Other miscellaneous requirements, such as hydro stations, commercial developments etc.

### **5.4 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 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.

---

<sup>43</sup> [AER: State of the Energy Market, May 2017, page 22.](#)

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).

### 5.5 Marketing and distribution arrangements

WTC outlined the marketing and distribution arrangements in its application:

- 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 following steps outlined in Figure 1 below. WTC stated that the lead times indicated in Figure 1 below are indicative for very large power transformers. For small and medium transformers, the lead times are shorter, particularly when required for renewable projects.

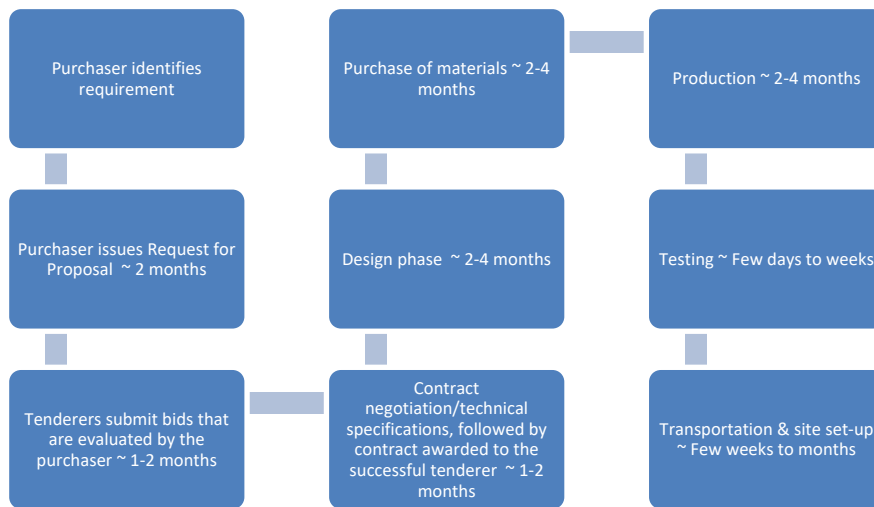


Figure 1 - Procurement and manufacturing process chart for large power transformers<sup>44</sup>

<sup>44</sup> This process chart was created by the Commission based on the process chart contained in WTC's application. The Commission has added some additional words 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.

## **5.6 Sales process**

Based on findings from INV 219, WTC's application, submissions received, and information gathered by the Commission during the course of this investigation, the Commission finds that power transformers are generally purchased 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 timeline for delivery and installation.

Public utilities normally advertise requests for tender (RFT). 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 RFT process.

A RFT 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 particular supplier, when it has a requirement for a power transformer.

The RFT may be for:

- supply of a single power transformer only,
- supply and delivery to site,
- supply, installation and commissioning, or
- 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 RFT. There are many design options that may satisfy the specifications, 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.

## **5.7 Market segmentation**

WTC identified the following market segmentation in relation to power transformers:

- the market for transformers is frequently segmented between power transformers and distribution transformers. This can be caused by different organisations requiring the different products (e.g. transmission utilities purchase primarily power transformers, and distribution utilities purchase primarily distribution transformers);
- specification and purchase quantity differences can also segment the market( e.g. power transformers are usually purchased in quantities of less than five, but

## PUBLIC RECORD

distribution transformers are frequently purchased in quantities greater than ten); and

- there is little, if any, geographic market segmentation of power transformers.

During the course of the investigation, the Commission collected data in relation to over 400 power transformer tender activities, representing in excess of 700 individual power transformers within the investigation period. The data was collated, and cross referenced to avoid duplication, from material received from the applicant, importers, exporters and purchasers. The bulk of the data was sourced from the applicant who provided a list of all tenders won and lost during the investigation period. ABB Australia, GE Australia, TIC and Siemens Australia also provided lists of their lost tenders during the period. Information from purchasers was obtained through the AMQ.

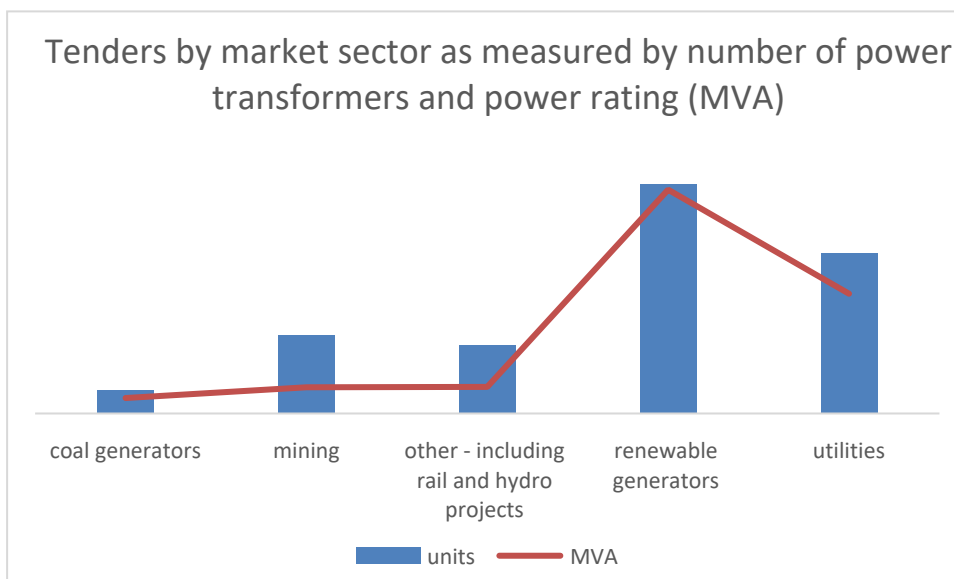
The following should be noted in respect of this data:

- tender activity data included purchaser details, project name, power rating expressed in MVA, voltage ratio expressed in kV, quantities requested by the purchaser, and usually tender closing date;
- not all tenders involved a Chinese bidder, however, for the purposes of the investigation, the Commission focussed its analysis on those tenders involving Chinese bidders;
- one project may be tendered by multiple entities where EPCs are involved;
- not all requests for tenders result in a contract (for example when purchasers approach the market for pricing for equipment prior to securing finance and the relevant approvals for the project);
- the Commission was unable to access price data for all of these tender activities and the analysis made for the purpose of market segmentation is, therefore, expressed in quantity (units) and power rating (MVA); and
- WTC, or other Australian industry members, did not tender for all of the identified tender activities during the investigation period.

The Commission has analysed the data by size of power transformer (as represented by MVA) and by market sector.

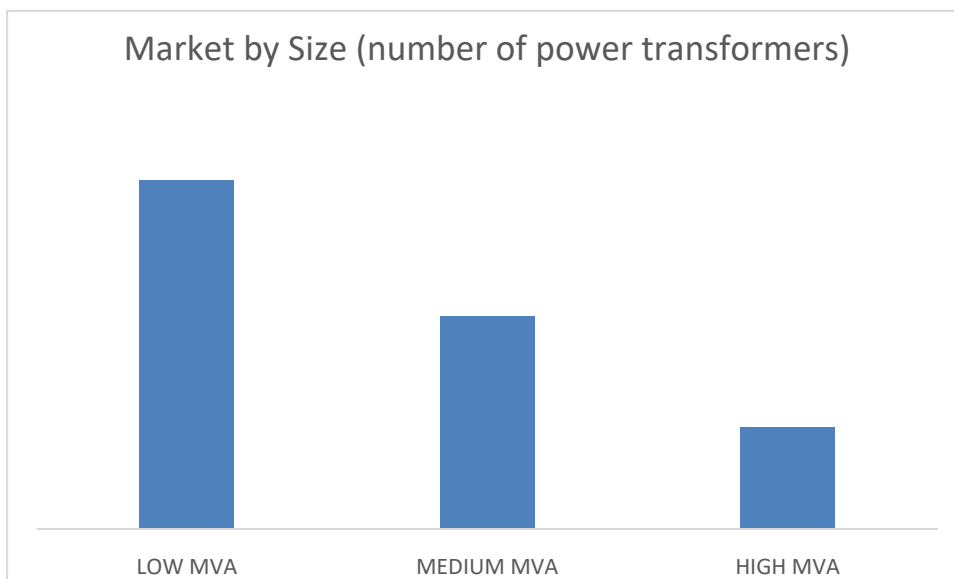
The Commission's analysis is located at **Confidential Attachment 1**.

## PUBLIC RECORD



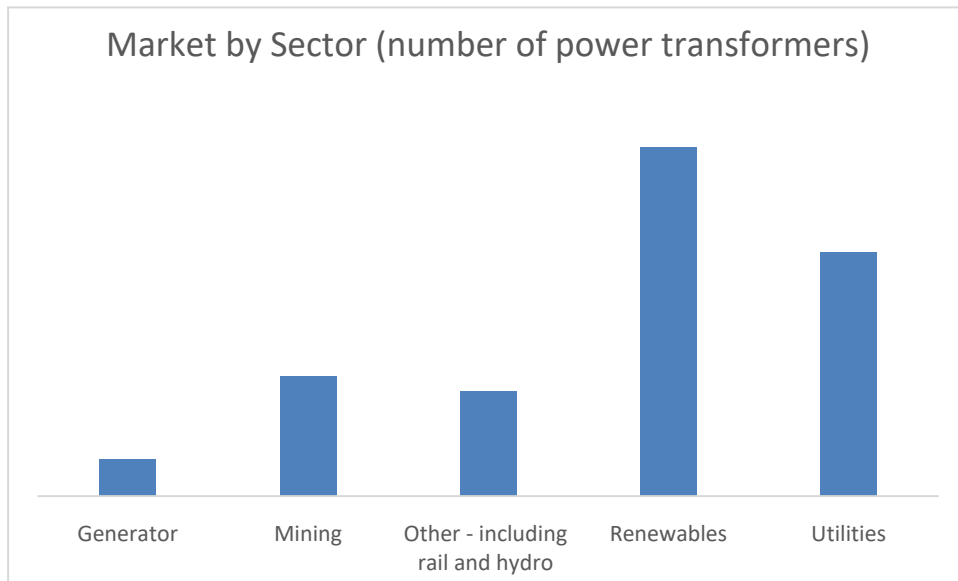
**Figure 2 - Power transformer sales by market segment in the investigation period as measured by units and power rating (MVA)**

Figure 2 (above) breaks down the market by purchaser category, as measured in units of power transformers. The chart illustrates that the renewable generators, and utilities, made up the largest categories during the investigation period, both by units and by MVA. Since MVA is an indicator of size, and by extension price, of a power transformer, the data shows that, on average, the large transformers were purchased by the renewables sector.



**Figure 3 - Number of tenders during the investigation period by size of power transformer**

In Figure 3 (above), the Commission categorised the projects by power rating. For the purpose of this analysis, 'low MVA' is considered to be less than 100 MVA, 'medium MVA' between 100 and 200 MVA, and 'high MVA' to be 200 MVA and above. Figure 3 indicates that power transformers under 100MVA are the most commonly tendered power transformers in the Australian market.



**Figure 4 - Number of tenders during the investigation period by market sector**

Figure 4 indicates that the utilities and renewables sectors are responsible for the greatest number of tenders in the Australian market during the investigation period.

The Commission found that the Australian market for power transformers can be segmented by power rating, expressed in MVA, and by purchaser category. The Commission found that utilities and renewable generators generally purchased larger power transformers, whilst purchasers from the other segments tended to purchase transformers of lower power ratings.

## **5.8 Demand variability**

In its application, WTC identified the following contributors to demand variability:

- Economic growth generally, particularly in different States/jurisdictions of Australia;
- 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 (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 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.

## **5.9 Market size**

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

### **5.9.1 Submissions in respect of market size**

TIC's submission of 12 April 2019<sup>45</sup> noted that the applicant's claims relating to the Australian market were based on "sales value". TIC contested this, proposing that it is incorrect, and inconsistent with Article 3.1 of the ADA.

### **5.9.2 The Commission's assessment**

Based on findings from INV 219, and information gathered by the Commission during the course of this investigation, the Commission finds that 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 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.

Therefore, for the purposes of this report, and in the absence of capacity data, the Commission 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:

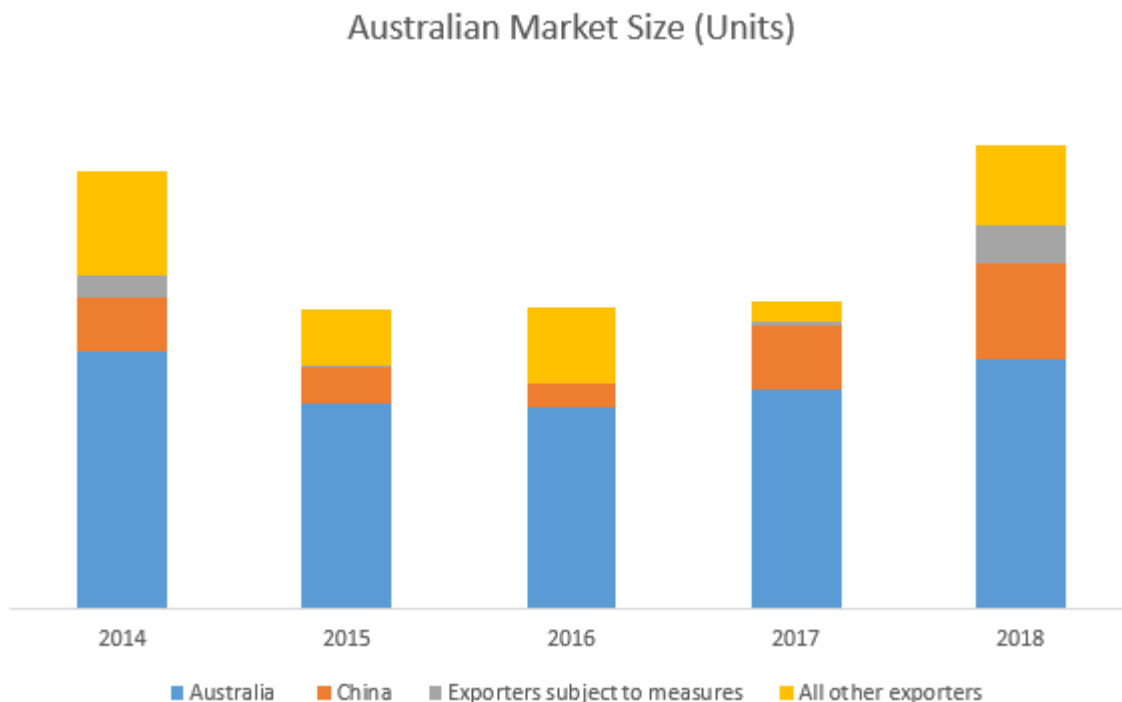
---

<sup>45</sup> Case 507, EPR item no. 04.

## PUBLIC RECORD

- 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(although, it did not receive a response);
- importation and sales information provided within questionnaire responses received from four importers;
- production, sales and exportation information provided within REQs received from eight Chinese exporters, as well as two exporters that submitted questionnaire responses in relation to the continuation inquiry recently concluded;
- purchasing information provided within AMQ responses received from ten purchasers; and
- importation data obtained from the ABF import database under the tariff classifications detailed at section 3.4 above. The ABF data was cleansed/filtered by reference to the description of the goods provided and by value. Line items with a final line Customs value of under \$150,000 per unit were excluded.

The estimated size of the Australian market during the injury analysis period in terms of the number of power transformers sold is illustrated in Figure 5 below:



**Figure 5 - The Australian market for power transformers (by number of units sold)**

The estimated size of the Australian market during the injury analysis period in terms of the value of power transformers sold is illustrated in Figure 6 below.

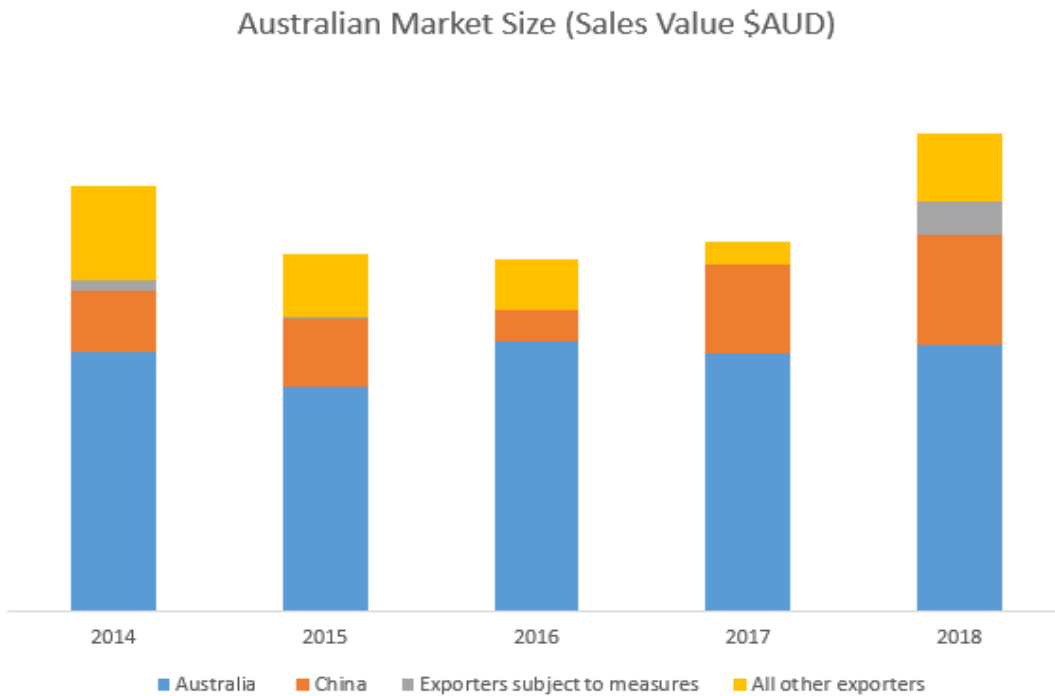


Figure 6 - The Australian market for power transformers (by \$AUD sales value)

The Commission noted that the size of the Australian market as measured by both units and value increased considerably in 2018. The Commission further noted that the market has also grown significantly (i.e. more than the growth in the Australian industry's sales).

### 5.10 Conclusion

The Australian market for power transformers is supplied by the Australian industry and imports from a range of countries including China, countries subject to measures and other countries not subject to measures. China supplied approximately 20 per cent of the Australian market (as measured by both the number and value of power transformers sold) during the investigation period.

The Commission found the procurement of power transformers is usually conducted through a tender process, which may be open to all or a select number of suppliers.

Each power transformer is manufactured to meet individual technical specifications.

The utilities and renewables sectors are the largest sectors in the Australian market, while the bulk of power transformers tendered for are under 100MVA.

The Commission estimated the size of the market by transformer size (as measured by power rating and expressed in MVA) and by value.

The Commission's market size analysis is contained in **Confidential Attachment 2**.

## **6 DUMPING INVESTIGATION**

### **6.1 Findings**

The Commission has found that the goods:

- exported to Australia from China, on a weighted average basis, by ABB Chongqing, ABB Zhongshan, Siemens Jinan and Siemens Wuhan were not at dumped prices; and
- exported to Australia from China, on a weighted average basis, by CHINT, CTC, GE Wuhan and Jiangsu Huapeng were at dumped prices, and that the dumping margins were not negligible (e.g. they were above two per cent).

The dumping margins are summarised in Table 4 below:

| <b>Exporter</b>     | <b>Dumping margin</b> |
|---------------------|-----------------------|
| ABB Chongqing       | -4.6%                 |
| ABB Zhongshan       | -1.0%                 |
| CHINT               | 20.6%                 |
| CTC                 | 16.1%                 |
| GE Wuhan            | 42.4%                 |
| Jiangsu Huapeng     | 40.5%                 |
| Siemens Jinan       | -10.2%                |
| Siemens Wuhan       | -3.7%                 |
| All other exporters | 42.4%                 |

**Table 4 - Dumping margins**

The Commission's calculations of export prices, normal values and dumping margins are confidential.

### **6.2 Introduction and legislative framework**

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

The Commission notes that power transformers are engineered-to-order capital goods. As such, the Commission considers that each power transformer is a unique product and that, because of the many variables and differences in technical specifications, which would affect proper comparison, it is not possible to accurately adjust domestic prices to make them comparable with export prices.

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 of the exported goods under section 269TAC(1).

## PUBLIC RECORD

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 that 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.

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

Dumping margins are determined under section 269TACB.

In SEF 507, the Commission stated that for all dumping margins calculated in this investigation, the Commission compared the weighted average of export prices over the whole of the investigation period, with the weighted average of corresponding normal values over the whole of that period, in accordance with section 269TACB(2)(a).

Following a submission from WTC<sup>46</sup>, the Commission has reviewed the method by which dumping margins have been calculated. The Commission notes that for all exporters, each export transaction price has been compared to each corresponding normal value, under section 269TACB(2)(b). This method produces as many dumping margins as there are export transactions, and these are amalgamated using a weighted average in order to calculate a single dumping margin for each exporter over the investigation period.<sup>47</sup>

The Commission notes that there has been no change to the dumping margins as a result of this review.

### **6.3 Submissions received in relation to dumping assessments**

In a submission<sup>48</sup> made in response to SEF 507, WTC disputed the negative dumping margins assessed for the Siemens and ABB entities.

WTC requested the Commission reassess whether:

- all manufacturing costs in China have been captured in determining normal values;
- all SG&A costs in China have been captured in determining normal values;
- any Australian rework costs, site test failure costs, and liquidated damages have been charged back to the exporter;

---

<sup>46</sup> Case 507, EPR item no. 62.

<sup>47</sup> The Manual, p. 123.

<sup>48</sup> Case 507, EPR item no. 62.

## PUBLIC RECORD

- proper corporate overhead costs had been included from the China Head Office and the European Head Office; and
- in relation to costs incurred in Australia, the full costs of importation, transport, installation and selling, including corporate overheads between the Australian Head Office and European Head Offices, have been captured.

In a further submission<sup>49</sup> made in response to SEF 507, WTC asserted that the Commission:

- failed to recognise the importance of properly establishing whether relevant transactions should be treated as ‘arms length’ transactions;
- failed to apply the correct (or any) statutory test for whether exporter / importer transactions should be treated as ‘arms length’ transactions;
- failed to properly characterise the commercial relationships between related parties of multinational importers/exporters;
- wrongly treated transactions as ‘arms length’ transactions and, consequently, failed to use the correct provision for determining export prices; and
- failed to correctly calculate export prices and dumping margins.

WTC also submitted that it had received information casting doubt upon the reliability of Siemens Jinan’s<sup>50</sup> and ABB Zhongshan’s<sup>51</sup> financial data. WTC relied upon data obtained from a subscription business intelligence service in making these assertions.

GE Australia and Siemens made submissions in response to WTC’s various submissions.

Siemens asserted in its submissions<sup>52</sup> that:

- WTC provided no reasons or evidence for asserting that the Commission failed to recognise the importance of determining whether transactions were made on an ‘arms length’ basis;
- if the Commission found no evidence that the price was influenced in the way referred to in section 269TAA, then the price cannot “appear to be influenced” in that way; and
- WTC’s submission proceeds from an assumption that sales between related entities cannot be at ‘arms length’ within the meaning of section 269TAA(1).

Siemens identified the confidential documents provided in its submission to the Commission during verification activities in support of its assertion that its imports are both, in fact, and under section 269TAA(1), ‘arms length’ transactions.

---

<sup>49</sup> Case 507, EPR item no. 65.

<sup>50</sup> Case 507, EPR item no. 70.

<sup>51</sup> Case 507, EPR item no. 62.

<sup>52</sup> Case 507, EPR item no. 67 and 71

## PUBLIC RECORD

GE Australia submitted that the Commission had applied the correct analysis as to whether the relevant sales/transactions were at 'arms length' and set out some considerations about the evidence and discretions available under the legislation.

GE Australia further submitted that:

- the pricing of all transformers purchased by GE Australia from GE Wuhan is not influenced by the relationship between the parties;
- GE Wuhan's pricing outcomes are determined by set methodologies, which apply equally to all power transformer sales, regardless of whether the sales are to related or unrelated parties; and
- the Commission undertook verification activities in relation to these issues in reaching its conclusion, which supported the findings in relation to the 'arms length' nature of the transactions.

### The Commission's assessment

The submissions made by WTC in response to the SEF questioned the application by the Commission of the legislative provisions as they relate to the calculation of export prices, and the Commission's acceptance of information supplied by exporters and importers for the purposes of calculating export prices and normal values. The Commission's response to these submissions will be addressed in terms of:

- the Commission's approach to determining export prices, including considerations of whether transactions between related parties were at 'arms length';
- the Commission's approach to determining normal values; and
- the verification processes undertaken to satisfy the Commission that information relied upon for the determination of export prices and normal values was complete, relevant and accurate.

### *The Commission's approach to determining export prices*

When determining export prices under section 269TAB(1)(a), the Act requires that the relevant sales comprise 'arms length' transactions.

Section 269TAA sets out the provisos and conditions for determining whether or not a transaction be treated by the Commission as an 'arms length' transaction. A transaction will not be considered to be at 'arms length', if:

- there is any consideration payable for, or in respect of, the goods, other than their price; or
- the price appears to be 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
- in the opinion of the Minister, the buyer (or an associate of the buyer), will, subsequently to the purchase or sale (directly or indirectly), be reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

## PUBLIC RECORD

The Commission considers that section 269TAA does not exhaustively set out the criteria for determining whether a transaction is, or is not, 'arms length'. Even if none of the circumstances in section 269TAA exist, the Commission may still examine the relevant information in order to determine whether there has been genuine bargain between buyer and seller.

In practical terms, the mere fact that parties are legally associated is not taken to automatically mean that they cannot be engaged in 'arms length' transactions. In assessing whether transactions between related parties comprise 'arms length' transactions, the Commission looks beyond the legal or functional relationship. It will determine whether the parties deal with each other as parties at 'arms length' would, and whether the outcomes are the result of real bargaining.

Based on these considerations, whether a transaction is an 'arms length' transaction is a matter of fact to be determined having regard to all the circumstances of the sale in question.

To enable the Commission to make this determination, the Commission sought information from exporters through the completion of REQs, and importers through the completion of RIQs. Both documents were available on the case page for the investigation at the initiation of the investigation.

As detailed in section 2.4 above, the Commission received responses from eight exporters and four importers. All eight exporters were subject to verification, either on site or remotely. The Commission undertook verification visits to three importers.

Verification reports for each of the verifications conducted during the investigation are available on the case page. These reports detail the Commission's findings in regard to the 'arms length' nature of transactions between the relevant exporters and importers based on the application of the three statutory tests set out in section 269TAA. The Commission notes that the data of the fourth importer was verified during Investigation 219.<sup>53</sup> The Commission is satisfied, on the basis of the information provided by the exporter and importer relevant to the current investigation, that the findings from Investigation 219 remain relevant in regards to the 'arms length' nature of the transactions under this investigation.

These findings inform the broader findings for each exporter as summarised in SEF 507.

On the basis of the publicly available information published by the Commission, WTC's assertion that the Commission gave scant regard to considerations about the genuine basis of the relevant bargains, and failed to apply any statutory test to determine the 'arms length' nature of the transactions is without foundation.

WTC's submission raised specific concerns about the Commission's application of section 269TAA(1)(b). WTC asserted that the Commission incorrectly 'applied a test of whether price *was* influenced by certain relationships'. WTC also asserted that 'the

---

<sup>53</sup> Case 219, EPR item no. 95.



## PUBLIC RECORD

correct statutory application is whether price *appears to be* influenced by those relationships'. In other words, WTC asserted that the Commission should not look behind the appearance of the relevant transactions in making its assessment as to whether or not they were made at arms length.

As detailed in the Manual, in assessing the nature of transactions under section 269TAA(1)(b), the commercial or other relationship between the relevant parties is examined. The Commission considers that there must be evidence that the price appears to be influenced by the commercial or other relationship. To assess whether a price appears to be influenced by a relationship, the Commission will seek to compare the price of related party sales to the price of non-related party sales.<sup>54</sup>

In relation to this investigation, such a comparison was not possible, because in each instance, the exporter did not sell the goods to both related and unrelated parties in Australia.

Where it is not possible to assess whether prices negotiated with related entities are comparable to those set by parties at arms length, because no benchmark exists due to the circumstances, a determination is made by the Commission, having regard to all of the available evidence.

Given the prevalence of related party transactions in the exportation and importation of power transformers, the Commission sought detailed information from the relevant parties to inform its consideration of whether the transactions were a result of real bargaining. Information considered, included the nature of the negotiation between the buyer and seller, and the manner in which the relevant prices were determined, as a result of that negotiation. The Commission's findings in relation to the 'arms length' nature of the transactions for each exporter and importer are contained in the published verification reports. The confidential information relied upon by the Commission, and the Commission's assessment of that information in making its finding for each exporter and importer, is contained in the work programs forming confidential attachments to those verification reports.

The Commission does not agree with WTC's proposition that the Commission has applied the wrong statutory considerations required by section 269TAA(1)(b). The Commission considers that section 269TAA(1)(b) directs the Commission to interrogate the nature of the commercial relationships, as between parties, to assess whether their transactions are 'arms length,' by examining whether the commercial relationship between the parties has, in fact, influenced the negotiated/settled price of a given transaction. Section 269TAA does not require the Commission to disregard a sale or purchase between two related entities solely because they are related as such. The Commission considers that the argument submitted by WTC is founded on the principle that related corporate entities are incapable of engaging in 'arms length' transactions, solely because of the nature of the commercial relationship. The Commission rejects this argument.

---

<sup>54</sup> The Manual, page 24.

## PUBLIC RECORD

The Commission is satisfied that proper consideration has been given to assessing whether the transactions between related party exporters and importers was at 'arms length', in accordance with the statutory considerations set out in section 269TAA.

The findings in relation to each exporter are detailed in the following sections. Verification reports detailing the Commission's assessment of the information provided by each exporter and importer are available on the case page.

Based on these findings, the Commission considers that export prices, as detailed in each section below, have been determined under the correct legislative provisions.

### *The Commission's approach to determining normal values*

As detailed in section 6.2 above, due to an absence of sales of like goods in China that would be relevant for the purposes of determining a price for the exported goods under section 269TAC(1), the Commission has constructed normal values having regard to section 269TAC(2)(c). This section 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 OCOT in the country of export, SG&A costs associated with the sale, and an amount for profit.

Pursuant to the provisions of section 269TAC(2)(c), the Commission has calculated normal values in accordance with the conditions set out in sections 43, 44, and 45 of the Regulations.

WTC has queried whether the Commission has captured the entirety of the relevant costs associated with the manufacture and export of the power transformers exported to Australia by Chinese manufacturers. As detailed previously, the Commission undertook verification activities in relation to eight exporters. The findings in relation to each exporter are detailed in the following sections. Verification reports detailing the Commission's assessment of the information provided by each exporter are available on the case page.

WTC also submitted that information it has obtained from a subscription market intelligence source undermined the reliability of the financial information relied upon by the Commission in relation to Siemens Jinan and ABB Zhongshan. The Commission has reviewed the audited statements, management reports and REQ's submitted and verified for these entities.

The Commission is satisfied that normal values have been appropriately determined based on complete, accurate and relevant financial data.

### *The Commission's approach to verification*

ADN No. 2016/30 - Verification Procedures and Reporting, outlines the practices and procedures followed by the Commission in relation to verification of financial and other information relevant to the conduct of an investigation.

## **PUBLIC RECORD**

The verification practices and procedures employed by the Commission seek to provide satisfaction that the information submitted by relevant parties, and ultimately used by the Commission in making determinations, is complete, relevant and accurate.

Determinations made by the Commission in reliance on information submitted by relevant parties includes the appropriate legislative provisions under which export prices and normal values are made, as well as the calculation of those export prices, normal values and relevant adjustments to ensure fair comparison between domestic prices and export prices.

Verification of relevance (and completeness) of financial information is conducted by reconciling selected data submitted through management accounts and audited financial accounts.

The total sales value and quantity is reconciled to management reports with particular attention given to ensuring that all relevant transactions are included and irrelevant transactions have been excluded. The total value from the management reports is then reconciled to the total revenue figure reported in the audited income statement.

Similarly, the total cost-to-make data is reconciled to the cost of production in the management reports, with particular attention given to ensuring that all relevant costs are included and irrelevant costs have been excluded. The cost-of-production data is then reconciled, through relevant account ledgers, to the 'cost of goods sold' figure, reported in the audited income statement. Additionally, SG&A expenses are reconciled to income statements, with particular attention given to specific expenses that have been excluded or should be excluded.

The accuracy of data is verified by reconciling volume, value and other key information fields within the sales and cost data, including source documentation.

The Commission notes that its verification processes detailed in ADN No. 2016/30 were applied to eight exporters. In relation to CTC and Jiangsu Huapeng, the Commission made determinations that it could not be satisfied that the submitted financial data was complete, relevant and accurate. The Commission considers that this finding evidences the robustness of its verification procedures and preparedness to disregard financial information that it determines is not complete, relevant and accurate. WTC did not provide persuasive evidence that the financial information provided by the other verified exporters was not complete, relevant and accurate.

### **6.4 Dumping assessment – ABB Chongqing**

#### **6.4.1 Verification**

Based on the volume of ABB Chongqing's exports relative to the total export volume during the investigation period, the Commission elected to verify ABB Chongqing's REQ via a desktop verification.

The desktop verification satisfied the Commissioner that the information contained in ABB Chongqing's REQ is accurate, relevant and complete. This data was used to calculate a dumping margin.

A report covering the verification findings is available on the EPR.<sup>55</sup>

#### **6.4.2 Export price**

Having regard to the findings contained in the verification report, the Commission is satisfied that:

- ABB Chongqing was the exporter of the goods to Australia; and
- the export sales between ABB Chongqing and its Australian purchaser were the result of arms length transactions.

Therefore, the export price for ABB Chongqing has been established at the FOB level under section 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

#### **6.4.3 Normal value**

The Commission is satisfied that, because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

For ABB Chongqing, the normal value has been calculated as:

- the cost to make of the goods exported to Australia in accordance with section 43(2) of the Regulation;
- the SG&A 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; and
- an amount of profit, in accordance with section 45(2) of the Regulation, based on the production and sale of like goods by ABB Chongqing in the OCOT.

#### **6.4.4 Adjustments to normal value**

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9)<sup>56</sup> as follows:

| <b>Adjustment Type</b>               | <b>Deduction/addition</b>                            |
|--------------------------------------|--|
| Domestic credit                      | Deduct the cost of domestic credit                   |
| Export inland transport and handling | Add the cost of export inland transport and handling |
| Export credit                        | Add the cost of export credit                        |

**Table 5 - Adjustments to ABB Chongqing's normal value**

---

<sup>55</sup> Case 507, EPR item no. 57.

<sup>56</sup> For all exporters where the normal value was calculated under section 269TAC(2)(c), to ensure the comparability of normal values to export prices, the Commission considers that adjustments are required for maintaining price comparability pursuant to section 269TAC(9).

#### **6.4.5 Dumping margin – ABB Chongqing**

The Commission has calculated the dumping margin for ABB Chongqing as **negative 4.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 3**.

### **6.5 Dumping assessment – ABB Zhongshan**

#### **6.5.1 Verification**

Based on the volume of ABB Zhongshan's exports relative to the total export volume during the investigation period, the Commission elected to verify ABB Zhongshan's REQ via a desktop verification.

The desktop verification satisfied the Commissioner that the information contained in ABB Zhongshan's REQ is accurate, relevant and complete. This data was used to calculate a dumping margin.

A report covering the verification findings is available on the EPR.<sup>57</sup>

#### **6.5.2 Export price**

Having regard for the findings contained in the verification report, the Commission is satisfied that:

- ABB Zhongshan was the exporter of the goods to Australia; and
- ABB Zhongshan sold the goods bound for export to Australia to an unrelated trading company, who then sold the goods to the Australian purchaser.

Based on the above, the Commission is unable to calculate the export price under sections 269TAB(1)(a) or (b). The export price for ABB Zhongshan has been established under section 269TAB(1)(c), having regard to all the circumstances of the exportation. The Commission has calculated an ex-works export price being the price paid by the unrelated trading company to ABB Zhongshan.

#### **6.5.3 Normal value**

The Commission is satisfied that, because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

For ABB Zhongshan, the normal value has been calculated as:

- the cost to make the goods exported to Australia in accordance with section 43(2) of the Regulation;

---

<sup>57</sup> Case 507, EPR item no. 57.

## PUBLIC RECORD

- the SG&A 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; and
- an amount of profit in accordance with section 45(2) of the Regulation, based on the production and sale of like goods by ABB Zhongshan in the OCOT.

### 6.5.4 Adjustments to normal value

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:

| Adjustment Type | Deduction/addition                 |
|-----------------|------------------------------------|
| Domestic credit | Deduct the cost of domestic credit |

Table 6 - Adjustments to ABB Zhongshan's normal value

### 6.5.5 Dumping margin – ABB Zhongshan

The Commission has calculated the dumping margin for ABB Zhongshan as **negative 1.0 per cent**.

The Commission's calculations are included at **Confidential Attachment 4**.

## 6.6 Dumping assessment – CHINT

### 6.6.1 Verification

Based on the volume of CHINT's exports relative to the total export volume during the investigation period, the Commission elected to verify CHINT's REQ via a desktop verification.

The desktop verification satisfied the Commissioner that the information contained in CHINT's REQ is accurate, relevant and complete. This data was used to calculate a dumping margin.

A report covering the verification findings is available on the EPR.<sup>58</sup>

### 6.6.2 Export price

Having regard for the findings contained in the verification report, the Commission is satisfied that CHINT was the exporter of the goods to Australia and all sales were undertaken on arms length terms.

In respect of Australian sales of the goods by CHINT to the Australian purchaser listed in the REQ, the Commission considers that the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b), because CHINT is responsible for the importation of the goods and sells them on DDP terms. The export price has been

---

<sup>58</sup> Case 507, EPR item no. 56.

## PUBLIC RECORD

calculated under section 269TAB(1)(c), having regard for all the circumstances of the exportation, specifically the DDP invoice price less all post exportation costs.

In respect of Australian sales of the goods by CHINT made through a related trading company, the Commission considers that the export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b) as CHINT did not sell the goods to the importer. The export price has been calculated under section 269TAB(1)(c), having regard for all the circumstances of the exportation, specifically the price paid to CHINT by the trading company.

### 6.6.3 Normal value

The Commission is satisfied that, because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

For CHINT, the normal value has been calculated as:

- the cost to make the goods exported to Australia in accordance with section 43(2) of the Regulation;
- the SG&A 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; and
- an amount of profit in accordance with section 45(2) of the Regulation, based on the production and sale of like goods by CHINT in the OCOT.

### 6.6.4 Adjustments to normal value

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:

| Adjustment Type                      | Deduction/addition                                   |
|--------------------------------------|--|
| Domestic credit                      | Deduct the cost of domestic credit                   |
| Export inland transport and handling | Add the cost of export inland transport and handling |
| Export credit                        | Add the cost of export credit                        |

**Table 7 - Adjustments to CHINT's normal value**

### 6.6.5 Dumping margin – CHINT

The Commission has calculated the dumping margin for CHINT as **20.6 per cent**.

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

## 6.7 Dumping assessment – CTC

### 6.7.1 Verification

The Commission conducted an in-country visit to CTC's facility in China during May 2019 to verify the information disclosed in its REQ.

## PUBLIC RECORD

The Commission toured CTC's facility and is satisfied that it is the producer of the goods and like goods.

A report covering the visit findings is available on the EPR.<sup>59</sup>

As outlined in section 2.4.3 above, the Commissioner determined that CTC is an uncooperative exporter pursuant to section 269T(1).

As such, the Commissioner has relied on all relevant information available in making recommendations and findings in relation to CTC.

### **6.7.2 Export price**

As an uncooperative exporter, the Commission has determined the export price for CTC having regard for all relevant information, in accordance with section 269TAB(3).

The Commission is satisfied that the goods imported by TIC from CTC:

- have been exported to Australia otherwise than by the importer;
- have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arms length transactions.

Therefore, the export price for CTC has been established at the FOB level, as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

### **6.7.3 Normal value**

As an uncooperative exporter, the Commission has determined the normal value for CTC having regard for all relevant information in accordance with section 269TAC(6). The Commission notes that, while CTC has been determined to be an uncooperative exporter, certain information provided by CTC was considered to be complete, relevant and accurate, and has been used in determining the normal value for CTC.

For CTC, the normal value has been calculated as:

- CTC's cost to make the goods exported to Australia; plus
- CTC's SG&A amounts on the assumption that the goods, instead of being exported, were sold domestically (at ex-works terms); and,
- an amount for profit based on the weighted average of the verified actual amounts realised by cooperating exporters from the sale of like goods in the OCOT in the domestic market.

### **6.7.4 Adjustments to normal value**

To ensure the comparability of normal values to export prices, the Commission made adjustments as follows:

---

<sup>59</sup> Case 507, EPR item no. 45.



## PUBLIC RECORD

| Adjustment Type                      | Deduction/addition                                   |
|--------------------------------------|--|
| Export packing                       | Add the cost of export packing                       |
| Export inland transport and handling | Add the cost of export inland transport and handling |
| Export credit expenses               | Add the cost of export credit expenses               |

**Table 8 - Adjustments to CTC's normal value**

### 6.7.5 Dumping margin – CTC

The Commission has calculated the dumping margin for CTC as **16.1 per cent**.<sup>60</sup>

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

### 6.7.6 Submissions in relation to CTC's dumping margin calculation

#### CTC

CTC lodged a submission<sup>61</sup> in relation to the calculation of its dumping margin, specifically in regard to profit and adjustments.

In relation to profit, CTC asserted that the Commission has determined a profit for CTC based on section 45(3)(b) of the Regulation, whereas the profit should have been determined based on section 45(3)(a) of the Regulation, being no profit. CTC asserted that this is the level of profit that CTC made a commercial decision to achieve, and was verified by the Commission. CTC further asserted that no explanation was given in relation to the cooperative exporters the Commission relied upon for determining a profit for CTC, nor how that was determined.

In relation to adjustments, CTC asserted that the Commission made positive adjustments for export packaging, inland transport and handling charges at port of export and export credit terms, but has failed to make negative adjustments for the equivalent domestic costs. CTC requested that the appropriate negative adjustments be made for domestic packaging, domestic inland transport and handling charges and domestic credit terms.

#### The Commission's assessment:

As discussed above, the Commission could not be satisfied that CTC's domestic sales and costs were complete, relevant and accurate, and was unable to verify CTC's information concerning its amount of domestic profit. On 11 July 2019, the Commissioner determined CTC to be an uncooperative exporter. As a result, the Commission must calculate the normal value for CTC under section 269TAC(6), having regard to all relevant information.

In determining the normal value under section 269TAC(6), the Commission calculated an amount for profit based on the weighted average of the verified actual amounts

---

<sup>60</sup> The dumping margin for CTC has increased from the verification report due to a change to the profit used in calculating a normal value. The profit applied increased following the verification of additional cooperating exporters.

<sup>61</sup> Case 507, EPR item no. 48.

realised by cooperating exporters from the sale of like goods in the OCOT in the domestic market. The Commissions had regard to all relevant information and considers that this amount for profit is relevant information for the determination of CTC's normal value.

The Commission confirms that it has not provided CTC with information regarding specifications of the power transformers included in the calculation, or the specific sales revenue and profit values used in the calculation. The Commission has not provided this information in the interests of preserving relevant stakeholder confidentiality.

The Commission notes that section 45 of the Regulation on profit determination is not relevant to the assessment of normal value under section 269TAC(6). Section 45(1) of the Regulation states that Regulation 45 relates to sections 269TAC2(c)(ii) and 4(e)(ii) only.

In relation to adjustments, the Commission considers that it would be inappropriate to apply negative adjustments for domestic selling expenses, given that the amount for SG&A used to construct the normal value is at ex-works terms, and is exclusive of direct selling expenses, being domestic packaging, domestic inland transport and handling charges, and domestic credit terms.

## **6.8 Dumping assessment – GE Wuhan**

### **6.8.1 Verification**

The Commission conducted an in-country visit to GE Wuhan's facility in China during May 2019 to verify the information disclosed in its REQ.

The Commission toured GE Wuhan's facility and is satisfied that it is the producer of the goods and like goods.

A report covering the visit findings is available on the EPR.<sup>62</sup>

### **6.8.2 Export price**

Having regard for the findings contained in GE Wuhan's verification report, the Commission is satisfied that:

- GE Wuhan was the exporter of the goods to Australia; and
- the export sales between GE Wuhan and its Australian purchaser were the result of arms length transactions.

Therefore, the export price for GE Wuhan has been established at the FOB level under section 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

---

<sup>62</sup>Case 507, EPR item no. 49.

### **6.8.3 Normal value**

The Commission is satisfied that, because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

For GE Wuhan, the normal value has been calculated as:

- the cost to make the goods exported to Australia in accordance with section 43(2) of the Regulation;
- the SG&A 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; and
- an amount of profit in accordance with section 45(2) of the Regulation, based on the production and sale of like goods by GE Wuhan in the OCOT.

### **6.8.4 Submissions in relation to GE Wuhan's dumping margin calculation**

With regard to the calculation of profit under section 45(2) of the Regulation, GE Wuhan argued that the OCOT test cannot be applied due to the nature of the goods, which limits the calculation of recoverability under section 269TAAD(3). GE Wuhan notes that in INV 219, the Commission found that it was not reasonably possible to calculate the profit on the sale of the goods made in the OCOT, in accordance with section 45(2) of the Regulation.

GE Wuhan argued, in the alternative, that section 45(2) of the Regulation cannot apply, as the profit margin was based on a single sale which GE Wuhan alleges was not in the OCOT, due to the specific characteristic of that transaction.<sup>63</sup>

In a further submission, following the SEF, GE argued that the Commission's approach to the normal value calculation was contrary to the position communicated by the ADRP in ADRP Investigation 100.<sup>64</sup> Furthermore, GE expanded on the reasons to exclude the domestic sale relied upon to ascertain an amount for profit, due to the assertion that it was outside of the OCOT.<sup>65</sup>

#### **Normal value calculation**

In relation to the first issue raised by GE, the Commission acknowledges that the methodology applied in this investigation differs to that employed for the purposes of INV 219.

The Commission considers the calculation of an amount of profit under section 45(2) of the Regulation is preferable, where it is practicable to do so.

---

<sup>63</sup> Case 507, EPR item no. 52.

<sup>64</sup> Case 507, EPR item no. 61.

<sup>65</sup> Ibid.

**Inclusion of profitable sale**

The second issue raised by GE concerns whether the circumstances of the single profitable domestic sale preclude it from being in the OCOT. SEF 507 sets out the Commission’s preliminary view that the transaction was entered into with an unrelated party, and although GE Wuhan may have had a competitive advantage in obtaining the contract, it had not been demonstrated that the transaction was settled in a way that lacked genuine negotiation. Furthermore, the Commission considered that it had not been established that other parties could not have satisfied the “Dual Site End Use Requirement” of the transformer. As such, the Commission considered that the price would have still been set through a competitive process, that the purchaser was not precluded from sourcing from a third party supplier had the negotiations been unreasonable, and that the transaction was not so unusual as to be considered outside the OCOT.

In response to the SEF, GE argued that the Commission had essentially limited its OCOT assessment to whether the transaction was ‘arms length’, and the Commission should have had regard to additional factors relevant to the sale, such as the terms and conditions which GE regarded as being abnormal.

As noted by GE in its submission, the Manual provides examples of profitable sales that may be considered to be outside of the ordinary course of trade, including but not limited to, samples, promotional sales and low quality sales. However, the Commission does not consider that the “Dual Site End Use Requirement” clearly distinguishes this sale in a way that is abnormal. Rather, power transformers are bespoke products, engineered to specific customer requirements, with varying levels of complexity. In this regard, while the “Dual Site End Use Requirement” may have created increased complexity in the design, it is not considered abnormal in the market of the goods for customers to include very specific project requirements.

As such, the Commission considers the profitable sale to be in the OCOT, and has included it for the purpose of ascertaining an amount of profit.

**6.8.5 Adjustments to normal value**

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:

| <b>Adjustment Type</b>               | <b>Deduction/addition</b>                            |
|--------------------------------------|--|
| Export packing                       | Add the cost of export packing                       |
| Export inland transport and handling | Add the cost of export inland transport and handling |
| Export warranty expenses             | Add the cost of export warranty expenses             |

**Table 9 - Adjustments to GE Wuhan's normal value**

**6.8.6 Dumping margin – GE Wuhan**

The Commission has calculated the dumping margin for GE Wuhan as **42.4 per cent**.

The Commission’s calculations are included at **Confidential Attachment 7**.

## **6.9 Dumping assessment – Jiangsu Huapeng**

### **6.9.1 Verification**

Based on the volume of Jiangsu Huapeng's exports relative to the total export volume during the investigation period, the Commission elected to verify Jiangsu Huapeng's REQ via a desktop verification.

As part of this process, the Commission sought additional information from Jiangsu Huapeng in support of its REQ.

The Commission assessed Jiangsu Huapeng's responses and identified that the REQ contained deficiencies. The Commission considered that the nature and scope of the deficiencies were extensive.

Pursuant to the Customs Direction, the Commission notified Jiangsu Huapeng by letter, on 30 September 2019, that it could not be satisfied that certain key information was accurate and reliable. The letter additionally set out that the Commission was unable to reliably determine individual variable factors (including a dumping margin) for Jiangsu Huapeng, based on the information it had provided. Additional time to provide a further response was not provided, on the basis that it would significantly impede the proper conduct of the investigation in a timely and efficient manner.

The Commission notified Jiangsu Huapeng that findings in respect of it may be made on the basis of all relevant information.

### **6.9.2 Export price**

Section 269TAB(4) provides that the Minister, for the purposes of determining export price, may disregard any information considered unreliable. The Commissioner proposes to disregard the export sales information provided by Jiangsu Huapeng, on the basis that it is unreliable. The Commissioner is also satisfied, pursuant to section 269TAB(3), that sufficient information has not been furnished, or is not available to enable the export price to be ascertained under the preceding sections.

As such, the export price for Jiangsu Huapeng must be determined under section 269TAB(3), having regard for all relevant information.

Specifically, the export price has been determined as the weighted average export price of the two cooperating exporters found to be dumping during the investigation period.

### **6.9.3 Normal value**

Section 269TAC(7) provides that the Minister, for the purposes of determining normal value, may disregard any information considered unreliable. The Commissioner proposes to disregard the normal value information provided by Jiangsu Huapeng, on the basis that it is unreliable. The Commissioner is satisfied, pursuant to section 269TAC(6), that sufficient information has not been furnished, or is not available to enable the normal values to be ascertained under the preceding sections.

## **PUBLIC RECORD**

As such, the normal value for Jiangsu Huapeng must be determined under section 269TAC(6), having regard for all relevant information.

Specifically, the normal value has been determined as the weighted average normal value of the two cooperating exporters found to be dumping during the investigation period.

### **6.9.4 Dumping margin – Jiangsu Huapeng**

The Commission has calculated the dumping margin for Jiangsu Huapeng as **40.5 per cent**.

The Commission's calculations are included at **Confidential Attachment 8**.

## **6.10 Dumping assessment – Siemens Jinan**

### **6.10.1 Verification**

The Commission conducted an in-country visit to Siemens Jinan's facility in China during May 2019 to verify the information disclosed in its REQ.

The Commission toured Siemens Jinan's facility and is satisfied that it is the producer of the goods and like goods.

A report covering the visit findings is available on the EPR.<sup>66</sup>

### **6.10.2 Export price**

Having regard for the findings contained in the combined Siemens Jinan's verification report, the Commission is satisfied that:

- Siemens Jinan was the exporter of the goods to Australia; and
- the export sales between Siemens Jinan and its Australian purchaser were the result of arms length transactions.

Therefore, the export price for Siemens Jinan has been established at the FOB level under section 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

### **6.10.3 Normal value**

The Commission is satisfied that, because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

For Siemens Jinan, the normal value has been calculated as:

---

<sup>66</sup> Case 507, EPR item no. 42.

## PUBLIC RECORD

- the cost to make the goods exported to Australia in accordance with section 43(2) of the Regulation;
- the SG&A 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; and
- an amount of profit in accordance with section 45(2) of the Regulation, based on the production and sale of like goods by Siemens Jinan in the OCOT.

### 6.10.4 Adjustments to normal value

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:

| Adjustment Type                      | Deduction/addition                                   |
|--------------------------------------|--|
| Domestic credit                      | Deduct the cost of domestic credit                   |
| Export packing                       | Add the cost of export packing                       |
| Export inland transport and handling | Add the cost of export inland transport and handling |
| Export credit                        | Add the cost of export credit                        |

**Table 10 - Adjustments to Siemens Jinan's normal value**

### 6.10.5 Dumping margin – Siemens Jinan

The Commission has calculated the dumping margin for Siemens Jinan as **negative 10.2 per cent**.

The Commission's calculations are included at **Confidential Attachment 9**.

## 6.11 Dumping assessment – Siemens Wuhan

### 6.11.1 Verification

As detailed at section 6.9.1 above, the Commission conducted an in-country visit to Siemens Jinan's facility in China during May, 2019. At that visit, the Commission had access to the financial records of Siemens Wuhan, and conducted a targeted verification of the information contained in Siemens Wuhan's REQ.

While the Commission was not able to conduct a tour of Siemens Wuhan's facility for this investigation, the Commission has previously done so during verification for INV 219, and is satisfied that Siemens Wuhan is the producer of the goods and like goods.

A report covering the visit findings is available on the EPR.<sup>67</sup>

---

<sup>67</sup> Case 507, EPR item no. 42.

### 6.11.2 Export price

Having regard for the findings contained in the combined Siemens Wuhan's verification report, the Commission is satisfied that:

- Siemens Wuhan was the exporter of the goods to Australia; and
- the export sales between Siemens Wuhan and its Australian purchaser were the result of arms length transactions.

Therefore, the export price for Siemens Wuhan has been established at the FOB level under section 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

### 6.11.3 Normal value

The Commission is satisfied that, because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

For Siemens Wuhan, the normal value has been calculated as:

- the cost to make the goods exported to Australia in accordance with section 43(2) of the Regulation;
- the SG&A 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; and
- an amount of profit in accordance with section 45(2) of the Regulation, based on the production and sale of like goods by Siemens Wuhan in the OCOT.

### 6.11.4 Adjustments to normal value

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to section 269TAC(9) as follows:

| <b>Adjustment Type</b>               | <b>Deduction/addition</b>                            |
|--------------------------------------|--|
| Domestic credit                      | Deduct the cost of domestic credit                   |
| Export packing                       | Add the cost of export packing                       |
| Export inland transport and handling | Add the cost of export inland transport and handling |
| Export credit                        | Add the cost of export credit                        |

**Table 11 - Adjustments to Siemens Wuhan's normal value**

### 6.11.5 Dumping margin – Siemens Wuhan

The Commission has calculated the dumping margin for Siemens Wuhan as **negative 3.7 per cent**.

The Commission's calculations are included at **Confidential Attachment 10**.



## **6.12 Uncooperative exporters and all other exporters**

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under section 269TAB(3) and normal values are to be calculated under section 269TAC(6).

The Commission has, therefore, determined an export price, pursuant to section 269TAB(3), after having regard for all relevant information. Relevant information in these circumstances was considered to be the export price of the cooperating exporter with the highest dumping margin. Accordingly, the Commission ascertained an export price for uncooperative and all other exporters at the same amount as that exporter.

The Commission has determined normal value for the uncooperative exporters, pursuant to section 269TAC(6), after having regard to all relevant information. Relevant information in these circumstances was considered to be the normal value of the cooperating exporter with the highest dumping margin. Accordingly, the Commission ascertained a normal value for uncooperative and all other exporters at the same amount as that exporter.

This dumping margin for uncooperative and all other exporters is **42.4 per cent**.

The Commission notes that while CTC was determined to be an uncooperative exporter, as detailed in section 6.6 above, certain information provided by CTC was considered to be complete, relevant and accurate and was used in determining variable factors for CTC. For this reason, CTC is not subject to the uncooperative and all other exporter rate detailed in this section.

## **6.13 Volume of dumped imports**

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period if section 269TDA(5)(c) does not apply. Pursuant to section 269TDA(6), the volume of goods at negligible dumping margins are not prevented from being taken into account for the purposes of section 269TDA(3).

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of allegedly dumped goods from China was greater than three per cent of the total import volume and is therefore not negligible.

Accordingly, the Commissioner does not propose to terminate this investigation against China under section 269TDA(3).

The Commission's assessment of the volume of imported goods in the Australian market is at **Confidential Attachment 11**.

## **6.14 Level of dumping**

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate an investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods.

The Commission is satisfied that there has been no dumping of any of the goods exported by ABB Chongqing and Siemens Jinan.

Accordingly, the Commissioner is satisfied that it necessary to terminate the investigation in relation to these exporters, pursuant to section 269TDA(1)(b)(i).

Section 269TDA(1)(b)(ii) provides that the Commissioner must terminate an investigation, in so far as it relates to an exporter of the goods, if satisfied that the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices, used to establish that dumping margin, is less than two per cent.

The Commission is satisfied that, in relation to ABB Zhongshan and Siemens Wuhan, the dumping margin for each exporter, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than two per cent.

Accordingly, the Commissioner proposes to terminate the investigation in relation to these exporters, pursuant to section 269TDA(1)(b)(ii).

## 7 ECONOMIC CONDITION OF THE INDUSTRY

### 7.1 Finding

Based on an analysis of the information contained in the application, and obtained and verified during the Australian industry verification visit, the Commission considers that the Australian industry has experienced injury in the form of:

- reduced sales volumes;
- reduced market share;
- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced cash flow;
- reduced capacity utilisation;
- reduced ROI;
- reduced productivity; and
- reduced revenue.

### 7.2 Introduction

Analysis of injury is based on verified data provided by the applicant, WTC. The Commission has found that the applicant's sales consistently accounted for over 85 per cent of the Australian industry's sales during the injury analysis period. As a result, the following assessment is considered indicative of injury to the Australian industry as a whole.

In its application, WTC claimed that material injury arising from the price effects of the allegedly dumped goods from China commenced in financial year 2012/13 and that material injury arising from the volume effects of the allegedly dumped goods commenced in financial year 2013/14. WTC states that the reason price effects predate the volume effects is due to long lead times between tender submissions to the purchaser and the final delivery date of the product.

The injury analysis period is from 1 January 2014, with an investigation period from 1 January 2016 to 31 December 2018.

### 7.3 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 application<sup>68</sup> 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

---

<sup>68</sup> Case 507, EPR item no. 01.

time between the issue of requests for tender by purchasers and delivery, resulted in the injury being experienced some time after the lost tender.

WTC<sup>69</sup> submitted that there is a flow on effect between a lost 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 any of the flow-on impacts on sales volumes and market share. The Commission has limited the tenders analysed to the investigation period. Sales are also reviewed for the investigation period. It is noted that some of the sales are related to tenders won prior to the investigation 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 depicted in Figures 5, 6, 10 and 11 are provided as a guide only.

## **7.4 Volume effects**

### **7.4.1 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 investigation period. The Commission analysed these by project and by the estimated sales revenue to the business, based on WTC's bid price (inclusive of delivery and installation).

In its submission dated 11 April 2019, TIC argued that, as Ampcontrol and Tyree (the other Australian industry producers) manufacture smaller power transformers and TIC has generally bid for larger power transformers, it cannot be said to be injuring the Australian industry.<sup>70</sup> While the following analysis is based on bids by the applicant only, the Commission has found that the applicant's sales consistently accounted for over 85 per cent of the Australian industry's sales during the injury analysis period. As a result, the following is considered indicative of injury in the form of reduced volumes experienced by the Australian industry.

---

<sup>69</sup> Case 507, EPR item no. 20.

<sup>70</sup> Case 507, EPR item no. 04.

## PUBLIC RECORD

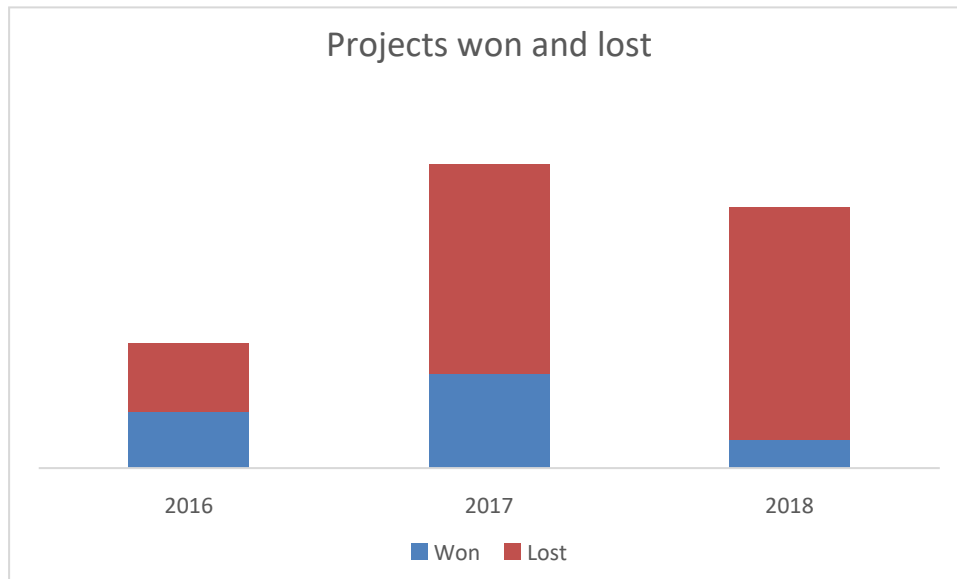


Figure 7 - Outcome of WTC's bids (by project)

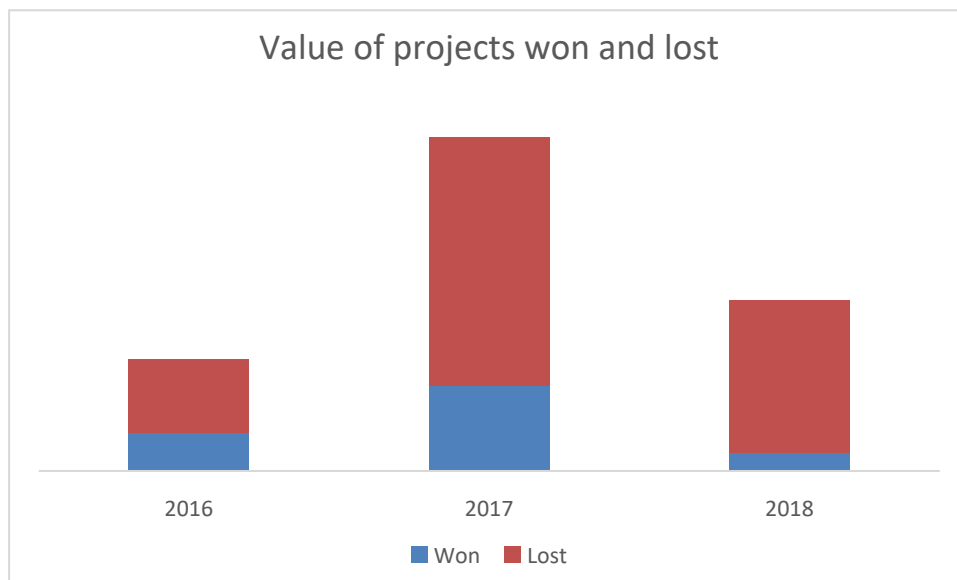


Figure 8 - Outcome of bids by value

Figure 7 and 8 above show that the Australian market experienced a significant increase in tender activity during 2017 in terms of the number of projects and value of those projects. While WTC was successful in winning an increased number of projects in 2017, its proportion of won projects diminished. WTC's winning proportion further diminished in 2018.

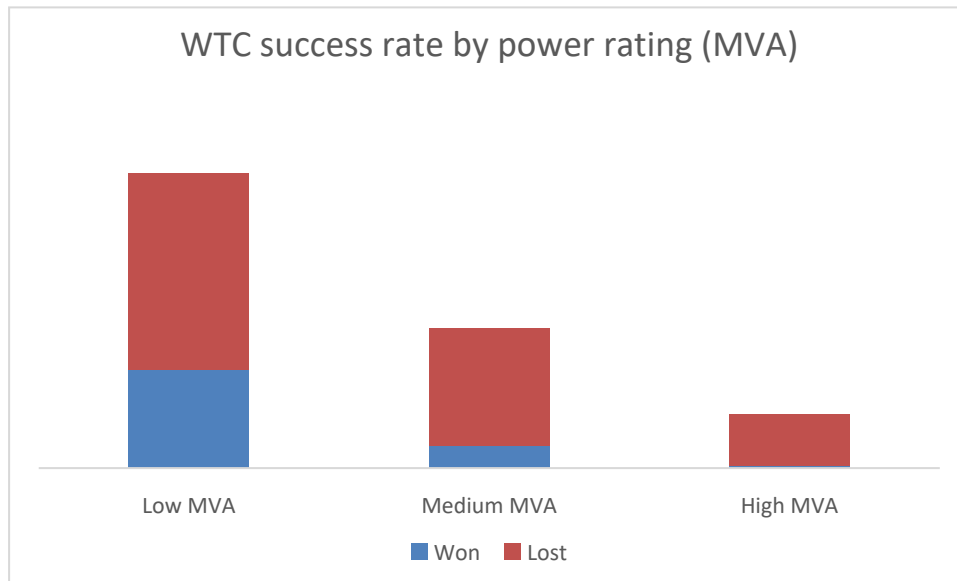


Figure 9 - WTC tender success rate by power rating (MVA)

Figure 9 (above) demonstrates the Commission’s analysis of projects for which WTC had bid for in the investigation period by size of power transformer. For the purpose of this analysis ‘low MVA’ is considered to be less than 100 MVA, ‘medium MVA’ between 100 and 200 MVA, and ‘high MVA’ to be 200 MVA and above. The Commission found that WTC had been proportionally more successful in winning tenders when the requirement was for a low MVA transformer.

During the course of the investigation, the Commission sourced further information from other parties to these tenders. The Commission also requested further information from purchasers in order to ascertain the importance of various evaluation criteria in their purchasing decisions. The analysis of tenders that WTC lost to Chinese imports or won against competing bids for Chinese sourced transformers is provided in section 8.4.

The Commission’s analysis of WTC’s tender information is provided at **Confidential Attachment 12**.

#### 7.4.2 Sales

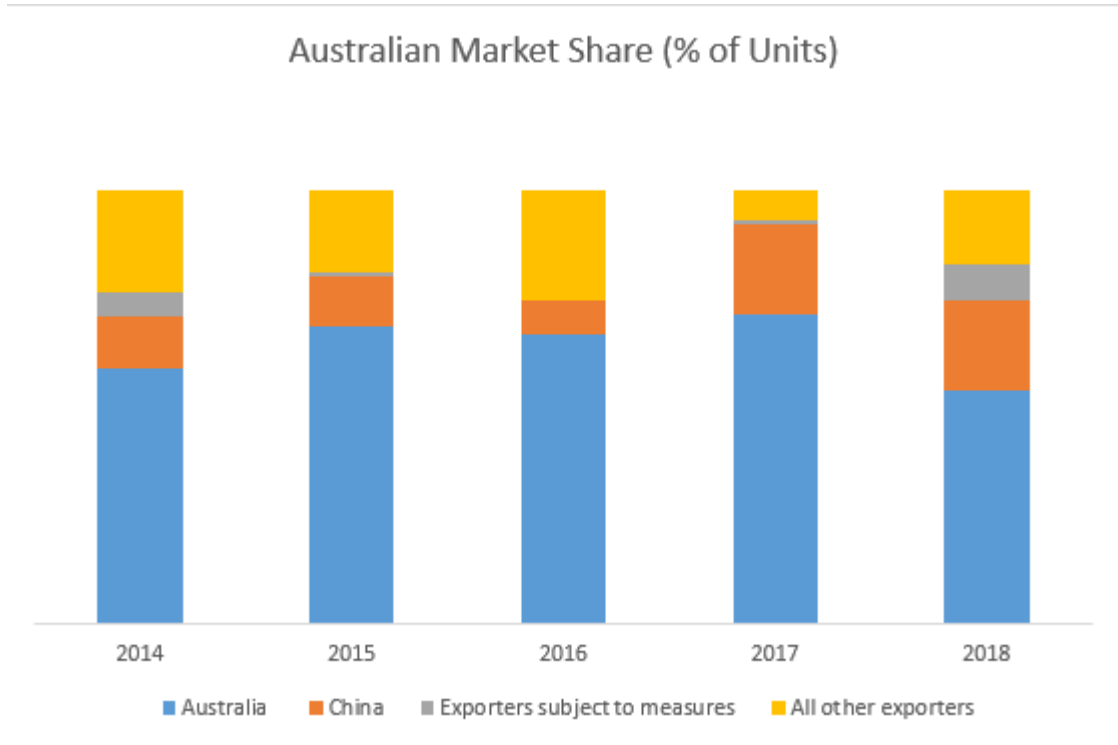
In the application, WTC claims that the market share of Chinese exporters has increased during the injury analysis period. WTC assessed this based on ‘value’ rather than ‘volume’. As each power transformer is built to its own specifications and value varies significantly from project to project, a simple 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 5 and 6, in section 5.9. It is observed that, while Australian industry’s volume increased during the investigation period, and the value of those sales increased marginally, the market increased to a significantly greater extent. The increase in value and volume of the sales of Chinese exporters was significantly greater than Australian industry’s gains. In accordance with the *Ministerial Direction on Material Injury*

2012 (Ministerial Direction),<sup>71</sup> a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline.

**7.4.3 Market share**

The Commission analysed the share of the market that the sales volume and value represents.

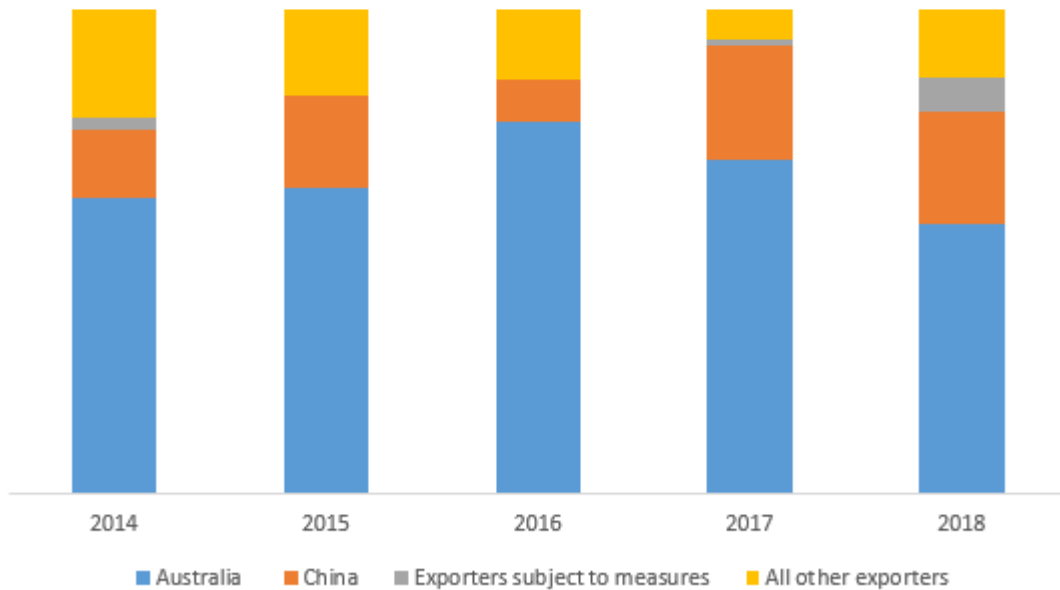


**Figure 10 - Australian market share (units)**

---

<sup>71</sup> [Ministerial Direction on Material Injury 2012](https://www.industry.gov.au) available at <https://www.industry.gov.au>.

Australian Market Share (% of Value)



**Figure 11 - Australian market share (\$AUD sales value)**

The decline in the market share of the Australian industry is most pronounced in the analysis of sales value, where there has been a consistent reduction during the investigation period.

The Commission’s market share analysis is contained in **Confidential Attachment 2**.

**7.4.4 Conclusion**

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

**7.5 Price effects**

WTC provided sales and 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.

**7.5.1 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.



## PUBLIC RECORD

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.

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 investigation period.

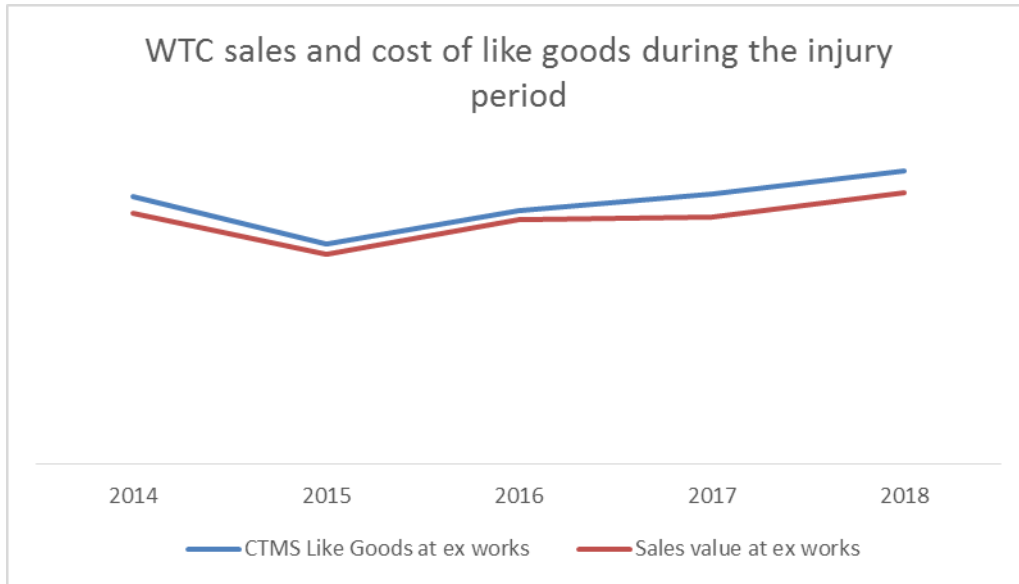


Figure 12 - Yearly CTMS and yearly sales revenue

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

### 7.5.2 Price depression

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

As previously set out, because each power transformer is built to unique specifications and pricing may vary significantly between each transformer, 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 for the won and lost tender documentation provided by WTC for all tenders that it participated in during the investigation 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 provided at **Confidential Attachment 13**.

## 7.6 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 12 (above), yearly costs have consistently been above yearly sales values in relation to like goods, leading to reduced profit margins. In addition, WTC has experienced a smaller proportion of successful tenders over the investigation period (Figures 3 and 4 refer). The Commission is also satisfied that WTC reduced its bid prices during the course of tender negotiations for certain projects in the investigation 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.

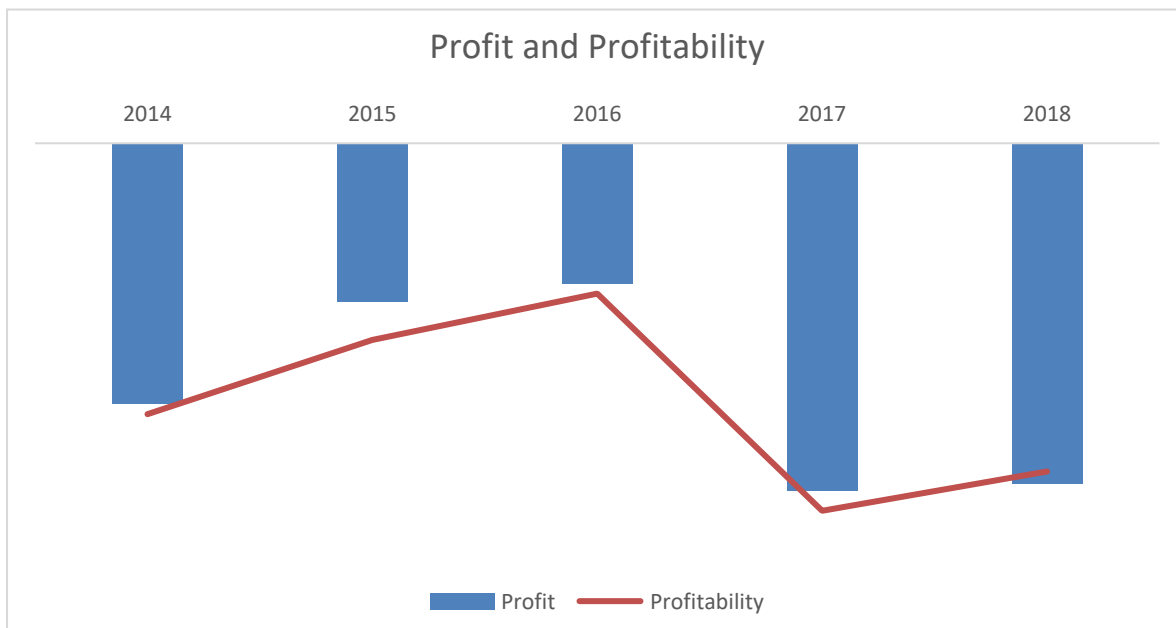


Figure 13 - WTC's Australian profit and profitability of like goods

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 provided at **Confidential Attachment 13**.

## 7.7 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 research and development (R&D) expenditure; and

- reduced capital investment.

### 7.7.1 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 14 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. Siemens Australia’s comments concerning cash flow following the publication of CON 507<sup>72</sup> was based on the cash flow position deteriorating while profits improved. As seen in section 7.6 and below, both cash flow and profit and profitability have declined over the period. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced cash flow.

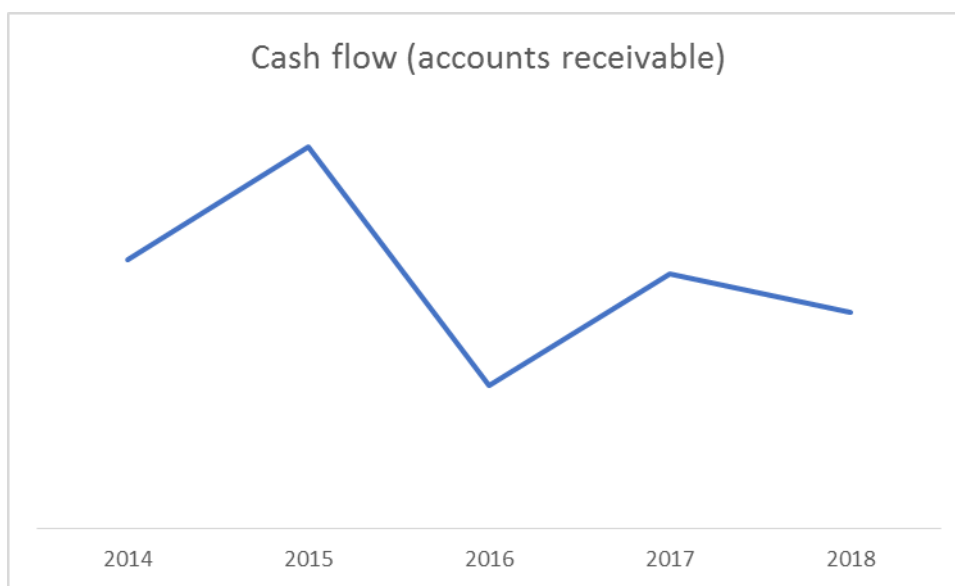


Figure 14 - WTC's Cash flow

### 7.7.2 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 power transformers. It has worked out total 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 15 below. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced capacity utilisation.

---

<sup>72</sup> Case 507, EPR item no. 05.

## PUBLIC RECORD

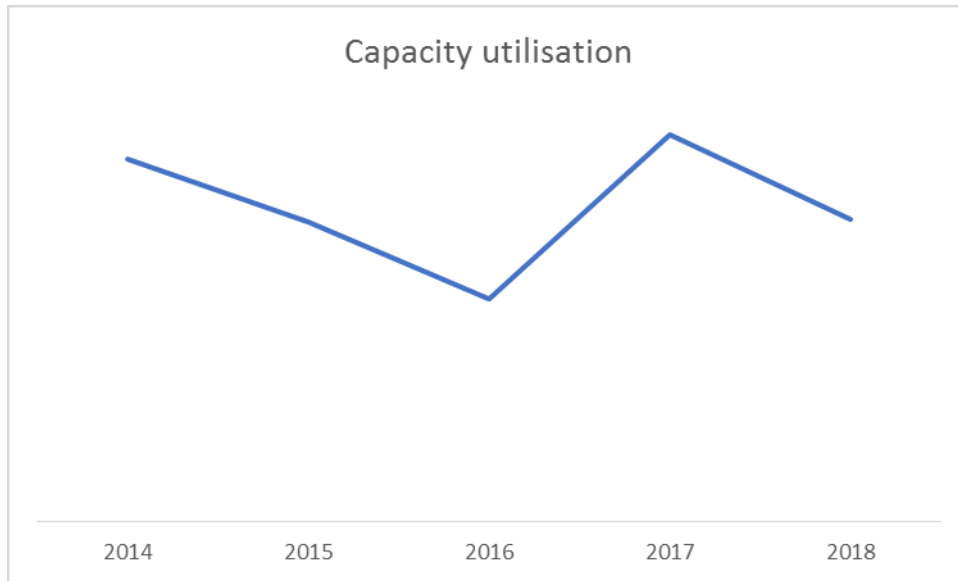


Figure 15 - WTC's Capacity utilisation

### 7.7.3 Return on investment

WTC claimed injury in the form of reduced 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.

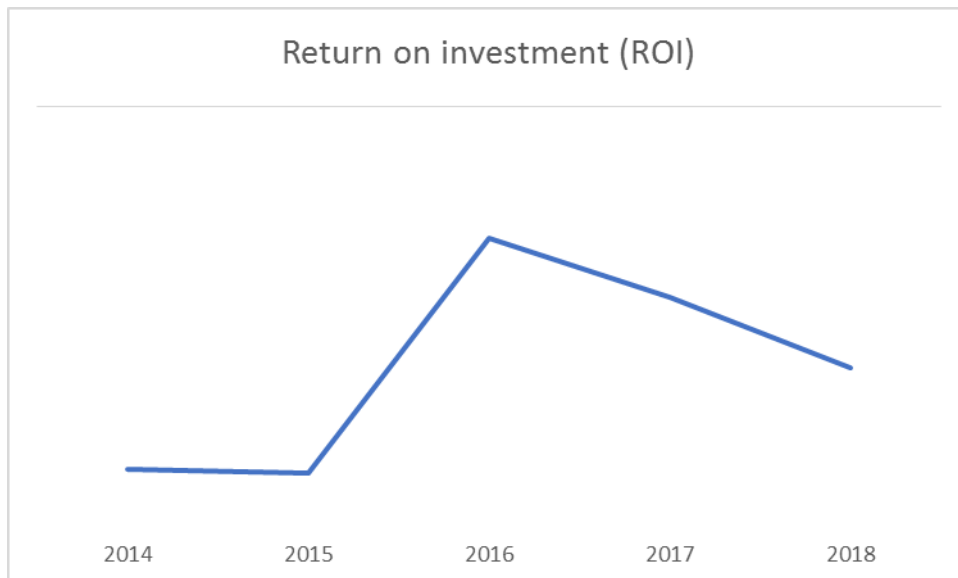


Figure 16 - WTC's return on investment

### 7.7.4 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

## PUBLIC RECORD

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.

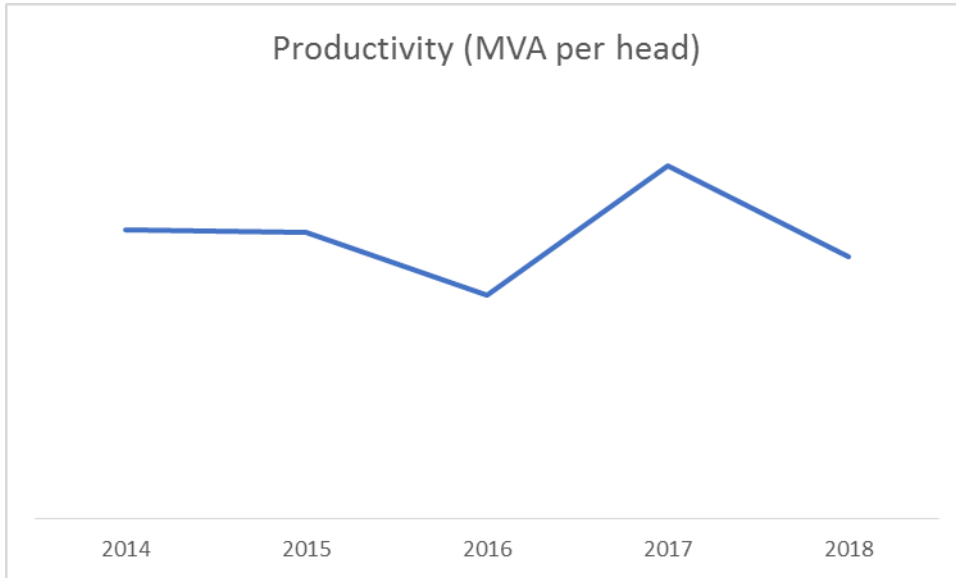


Figure 17 - WTC's productivity

### 7.7.5 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 7.4 of this report. The Commission is satisfied that the Australian industry has experienced injury in the form of reduced revenue.

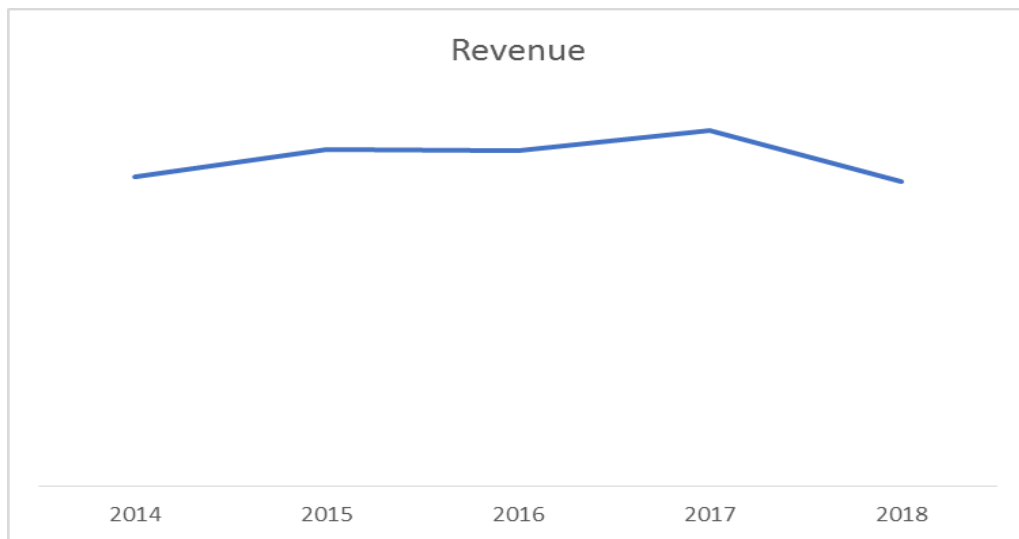


Figure 18 – WTC's revenue

### 7.7.6 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 investigation period.

**R&D Expense** – While WTC has experienced a decline in R&D expense during the investigation 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 provided at **Confidential Attachment 14**.

## **7.8 Submissions following the publication of the SEF – Injury**

WTC submitted that the Commission’s interpretation of events is commercially naïve and that the loss of tenders, loss of revenue and loss of profit has been extremely injurious.

WTC submitted further that “the ADC assessment of injury is very narrow and applicable more to commodity type products”.

Despite these statements, WTC appears on the whole to agree with the injury findings in the SEF. It provided some further detail concerning the reasons for the apparent improvement in employment and assets.

### The Commission’s response

As specified in section 7.3 of this report, the Commission assessed the injury experienced by Australian industry by analysing its tender bids, as well as the flow-on effects on its sales volumes, market share, price, profits and profitability, as well as the other factors in section 7.7. This analysis was due to the Commission’s acknowledgment in section 7.3 that power transformers are not commodity products and a simple trend analysis is not suitable. The sales depicted in figures 5, 6, 10 and 11 were provided as a guide only.

## **7.9 Conclusion**

Based on an analysis of the information provided in the application and verified during and after the visit, the Commission is satisfied that the Australian industry has experienced injury in the form of:

- reduced sales volumes;
- reduced market share;
- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced cash flow;
- reduced capacity utilisation;
- reduced return on investment;

## **PUBLIC RECORD**

- reduced productivity; and
- reduced revenue.

The Commission is not satisfied that the Australian industry has experienced injury in the form of:

- reduced employment;
- reduced wages;
- reduced assets;
- reduced R&D expense; and
- reduced capital investment.

## 8 HAS DUMPING CAUSED MATERIAL INJURY?

### 8.1 Finding

As part of the investigation, the Commission sought information from the Australian industry, importers, exporters and purchasers. The Commission analysed 68<sup>73</sup> tenders won and lost by the Australian industry during the investigation period for the supply of 102 power transformers.

The Commission is satisfied that injury to the Australian industry as a result of dumped goods from China was negligible. This conclusion is based on the following findings:

- WTC's largest competitors in terms of tenders lost were Siemens Jinan and Siemens Wuhan. Both exporters were found not to be dumping during the investigation period;
- Analysis of won and lost tenders, as well as responses from purchasers, show that the lowest priced bidder is not always successful, and non-price factors are often considered to be as important as price, in tender evaluations for power transformers; and
- Analysis of tenders lost by the Australian industry to Chinese manufacturers found to be dumping indicates that, even in the absence of dumping, the Australian industry is unlikely to have won these tenders based on the submitted bid prices.

### 8.2 Legislative framework and approach to causation analysis

Under section 269TG, one of the matters the Minister must be satisfied of, in order to publish a dumping duty notice, is that, because of the dumping, material injury has been (or is being) caused, or threatening, the Australian industry producing like goods.

Section 269TAE(1) outlines the factors to which the Commissioner has had regard, that may be taken into account in determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that consideration must be given, as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

In this Chapter, the Commission analyses the cause of the injury factors detailed in Chapter 7.

Due to the complex nature of the goods, the Commission has, for the purposes of this report, assessed injury and causation by examining:

---

<sup>73</sup> The Commission set out in the SEF that it analysed 62 tenders. The Commission wishes to correct this statement. The number of individual tender projects was 68. The number of transformers remains unchanged. The difference is explained as a miscount of the number of projects.



## PUBLIC RECORD

- 68 tenders awarded in the investigation period, relating to the supply of 102 power transformers (including, tenders won and lost by WTC when in competition with Chinese exports, tenders won by Chinese exports where WTC was not in competition, and tenders won by non-Chinese exports where WTC believed those tenders had been won by Chinese exports);
- price and volume effects during the investigation period in conjunction with ABF data; and
- the broader context of the economic conditions of the Australian industry.

### 8.3 Size of the dumping margins

Section 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins, worked out in respect of goods of that kind, that have been exported to Australia.

As concluded in section 6 above, ABB Chongqing, ABB Zhongshan, Siemens Jinan and Siemens Wuhan were not found to be dumping during the investigation period. Exports from these exporters accounted for approximately 38 per cent of the number of units exported from China during the investigation period, and approximately 36 per cent of the value. The Commission has not attributed injury to the Australian industry in relation to exports from China by ABB Chongqing, ABB Zhongshan, Siemens Jinan and Siemens Wuhan.

The remaining dumping margins range from 16.1 to 42.4 per cent. Of the 68 tenders awarded during the investigation period that were evaluated by the Commission, these margins were relevant in the Commission's assessment of eight tenders won by Chinese exporters when in competition with WTC. In relation to the dumped goods exported from China, the following considerations have informed the Commission's analysis:

- the goods are capital intensive, and are not commodity products;
- price is only one factor taken into consideration when awarding tenders in the Australian power transformers market;
- the Commission's price undercutting analysis, as outlined in the section below; and
- the Commission's analysis of bid prices in the absence of dumping.

Based on the Commission's analysis, the Commissioner is not satisfied that the size of the dumping margin was determinative in decisions to award tenders for goods from China during the investigation period.

Consequently, the Commission considers that the size of the dumping margins have not materially impacted the Australian industry's overall economic performance, including volumes, prices or profits.

Analysis of the effect of the dumping margin on bid prices is included at **Confidential Attachment 15**.

## **8.4 Tenders**

### **8.4.1 Approach to assessing tenders**

In order to understand the extent of WTC's participation in the Australian market during the investigation period, the Commission requested a full listing of all tenders for which WTC submitted a formal bid during this time. WTC provided a listing, including:

- the year of the bid;
- purchaser and project name;
- number of power transformers and technical specifications being sought;
- WTC's preliminary bid, separated into an ex-works value for the power transformer, as well as delivery and installation components;
- any subsequent bid, again separated into the various components; and
- the outcome of the bid.

The Commission cross referenced this listing against information obtained from the ABF import database, as well as information obtained from other participants in the Australian market, including:

- sales and forward order information contained in RIQs submitted by importers;
- listings of lost bids requested by the Commission from importers that had submitted an RIQ;
- sales information contained in REQs submitted by exporters;
- purchase information provided by purchasers who submitted an AMQ, as well as other purchasers identified by the Commission that did not submit an AMQ but provided information concerning relevant purchases.

By consolidating and analysing this information, the Commission was able to isolate 68 tenders awarded in the investigation period, relating to the supply of 102 power transformers for installation, either during or after the investigation period for detailed evaluation. The Commission categorised these into four categories:

1. projects won by Chinese manufacturers for which WTC had submitted a formal bid;
2. projects won by WTC for which Chinese manufacturers, through their Australian affiliates, had submitted a formal bid;
3. projects won by non-Chinese overseas manufacturers for which WTC had submitted a formal bid; and
4. projects won by Chinese manufacturers for which WTC had not made a formal bid.

For the first two categories, where the Commission had established that WTC was in direct competition for the supply of power transformers with Chinese manufacturers, the Commission sought from WTC, and the entity bidding on behalf of the Chinese

manufacturer, source documents evidencing its final bid. Where the Commission established that WTC had made revised bids for a particular project, the Commission also sought source documents for the initial bid made by WTC.

The following details the Commission's assessment of the four categories.

#### **8.4.2 Projects won by Chinese manufacturers for which WTC had submitted a formal bid**

As submitted by WTC,<sup>74</sup> the Commission considered that unsuccessful tenders are the logical starting point for assessing injury, due to the flow-on effects from tenders to other economic indicators, as discussed in section 7.4. The Commission's evaluation of projects won by Chinese manufacturers for which WTC submitted a formal bid is provided at **Confidential Attachment 15**.

By collating and cross referencing data obtained using the methodology described in section 1 above, the Commission identified 27 projects that were won by Chinese manufacturers of power transformers, for which WTC had submitted a formal bid.

These 27 projects involved the manufacture of 39 power transformers, 24 of which were delivered during the investigation period, and the remaining 15 were contracted for delivery in 2019, or thereafter. Nine of these projects involved bids from WTC in competition with multiple Chinese manufacturers.

Of these 27 projects, 17 were won by Siemens Jinan and Siemens Wuhan, and one by ABB Chongqing.

As detailed in section 6 above, neither of the Siemens entities, nor ABB Chongqing, were found to be dumping during the investigation period. As such, the Commission does not attribute injury to Australian industry from the loss of these tenders to dumping. These 18 projects were removed from the Commission's causation analysis. While CTC was found to be dumping during the investigation period, one of the power transformers exported by CTC was found to be undumped. Again, as injury is not attributed to dumping, this project was removed from the causation analysis.

After the removal of these projects, eight projects remained. For these remaining eight projects, the Commission adjusted the bid prices for the exported power transformers to reflect the impact of dumping. To do this, the Commission added the amount of dumping to the FOB value of the goods, using:

- the amount of dumping calculated for each individual power transformer where verified information was available; or
- where the amount of dumping could not be calculated (such as in the case of a project won in the investigation period, for which manufacture and delivery had not been completed as at the time of the verification), the weighted average dumping margin as detailed in Chapter 6 for the relevant entity.

---

<sup>74</sup> Case 507, EPR item no. 20.

## PUBLIC RECORD

The Commission then compared these adjusted bid prices to the bid prices of WTC. The results of the Commission's analysis are presented in Figure 19 below:

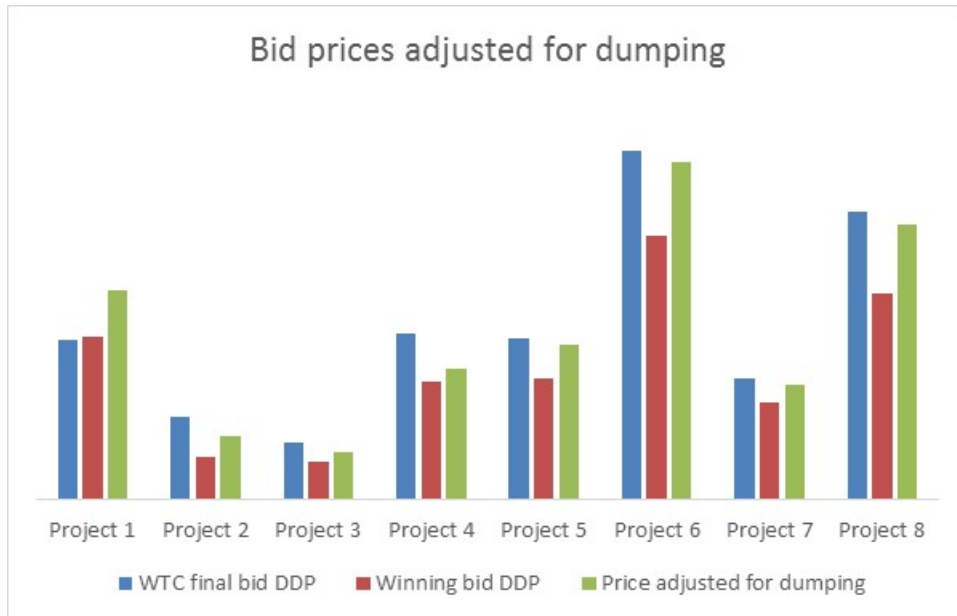


Figure 19 - WTC tenders lost against dumped imports

Following the publication of the SEF, WTC submitted that it was unclear whether the WTC bids were compared with the actual bids of its competitors, or the adjusted bid prices. As can be seen in the graph above, the Commission compared the WTC bids with the actual bid by its competitor, the 'winning bid DDP' and then adjusted this price for the dumping margin, which is the 'price adjusted for dumping' for a further comparison.

Following this analysis, the Commission identified the following scenarios:

- a project where WTC would have been the less expensive bidder, once the Chinese competitor's price had been adjusted for dumping; and
- projects where WTC would have remained the more expensive bidder, once the competitor's price had been adjusted for dumping.

A project where WTC would have been less expensive than its Chinese competitor

### Project 1

In respect of Project 1, WTC was the lower priced offer, but was still unsuccessful in the tender. The purchaser of the power transformer elected not to participate in the investigation and as such the Commission does not have information directly from the purchaser concerning the factors contributing to the decision not to award the project to WTC. However, the Commission received information from both WTC and the winning bidder which demonstrates that non-price factors were the determining factor in WTC losing this tender. The evidence and the non-price factors are discussed in more detail in **Confidential Appendix 1**. Given the evidence provided, the Commission considers it is unlikely that WTC would have won this tender in the absence of dumping.

## PUBLIC RECORD

The Commission does not consider that WTC suffered injury in relation to Project 1 due to dumped exports from China.

### Projects where WTC remained more expensive

The Commission determined that, in relation to seven projects, WTC's final bid remained above that of the winning bid, adjusted for dumping.

The Commission has verified information relevant to the investigation period concerning the difference between WTC's and its competitor's bid price where WTC had won the tender, despite being the higher priced bidder. This provided the Commission with a threshold within which it is possible to assume that WTC might still win a tender, despite being the higher priced bidder (refer **Confidential Attachment 16** for analysis of WTC's winning bids). Of the remaining seven projects where WTC was the higher priced bidder, once the competitor bid is adjusted for dumping, the Commission separated these into projects where the difference is within this threshold, and those that are above.

The price difference in Projects 2, 3, and 4 was above this threshold. If the tender evaluations were based solely on price, the Commission considers that WTC was unlikely to have won these tenders. The Commission does not consider that WTC suffered injury in relation to Projects 2, 3, and 4 due to dumped exports from China.

Following the publication of the SEF, WTC<sup>75</sup> submitted that the Commission's assessment lacks consistency and provides as an example Projects 2, 3 and 4.

*"It is not clear for example when the ADC's analysis uses actual tender prices or adjusted bid prices. The ADC's assessment lacks consistency, for example it discounts injury in projects 2, 3 and 4 on the basis that the "tender evaluations were based solely on price"."*

The Commission did not state that the tender evaluations in Projects 2, 3 and 4 were based solely on price but, as set out above, if the tender evaluations were based solely on price, the Commission considers that WTC was unlikely to have won these tenders. This was due to the price difference between its own and its competitors' bids being significant even after the competitors' prices are adjusted for dumping.

WTC claimed in its application<sup>76</sup> that the decline in pricing, caused by dumped imports, has been a major driver of WTC's injury. The Commission's analysis assesses the likely outcome of tenders in the absence of the dumping margin. If WTC is likely to have won the tenders in the absence of dumping, then it is reasonable to assume that the dumping caused injury to WTC. However, in the case of Projects 2, 3 and 4, the Commission found that, in the absence of dumping, WTC is still unlikely to have won the tenders.

For clarity, the Commission did not find that these tender evaluations were based solely on price. But that "if" they were, WTC are unlikely to have won. Therefore dumping is unlikely to have been the cause of the injury experienced by WTC as a result of losing these tenders. In relation to Projects 5, 6, 7 and 8, the Commission found that once

---

<sup>75</sup> EPR 507, item no. 65, p10.

<sup>76</sup> EPR 507, item no. 01, p29

## PUBLIC RECORD

adjusted for dumping, while WTC's bid price remained above the adjusted bid price, the price differential narrowed to within the threshold in respect of won tenders, as explained above. This being the case, the Commission requested further information in order to ascertain the likelihood of WTC being successful in these tenders. Due to the confidential nature of the information obtained, the Commission has reviewed these projects in more detail in **Confidential Appendix 1**. However, a summary follows.

### Project 5

In respect of Project 5, the Commission obtained tender evaluation documentation from the purchaser, which the Commission was able to compare against bid information provided by WTC and multiple Chinese suppliers.

The Commission found that the winning entity was the second most competitive bidder on price, however it was awarded the contract on a "value for money" principle that incorporated both technical and commercial considerations. Further, the tender evaluation documents indicated that WTC ranked lower on the "value for money" principle than suppliers from countries other than China, indicating that had the Chinese supplier not won the tender, a supplier from a country other than China would likely have done so rather than WTC.

The Commission is satisfied that the purchaser engages broadly with local and foreign manufacturers of the goods, and employs a tender evaluation strategy that incorporates a range of factors beyond pricing.

In addition, the Commission notes that this purchaser had purchased other power transformers from WTC during the investigation period, including the awarding of a contract to WTC, despite WTC being the higher priced bid. The Commission considers that this evidences the purchaser's use of an objective, broad-ranging, evaluation criteria that encompasses various technical and commercial considerations.

The Commission does not consider that WTC suffered injury in relation to Project 5 due to dumped imports from China.

### Project 6

Project 6 involved the supply of a large power transformer. The purchaser had a transformer panel for this size category in place. This panel did not include WTC. Panel arrangements and reasons why WTC were not on this panel are discussed further in section 8.4.6. The purchaser decided to source bids more widely and, as a result, WTC and other non-panel manufacturers submitted bids for this project in addition to panel members. The purchaser provided the Commission with internal documentation indicating its shortlisting of the bidders. Based on this evidence, the Commission has concluded that, if this tender evaluation was based solely on price, and if the winning entity's price was adjusted for dumping, the project would have been awarded to the second placed bidder which was not WTC. The second placed bidder was not a Chinese manufacturer of power transformers. The Commission considers that WTC would not have won this project in the absence of dumping.

The Commission does not consider that WTC suffered injury in relation to Project 6 due to dumped exports from China.

## **PUBLIC RECORD**

### Project 7

The Commission reviewed bids from WTC, as well as two other suppliers of Chinese transformers. The winning bid was a supplier of Chinese transformers and was the lowest bid the purchaser received. The Commission discussed tender evaluations with this purchaser and has received internal tender evaluation documentation for this project. The Commission was satisfied that the tender evaluation included an analysis of technical and commercial considerations before awarding the tender. In this case, the technical considerations appeared to have been satisfied by both parties and the tender was awarded to the lower priced bidder. The Commission has not seen any evidence that indicates that had the price been closer (while still higher) the project would have been awarded to WTC instead.

As such, on the basis of the evidence before the Commission, the Commission cannot come to a conclusion concerning the outcome of this tender in the absence of dumping.

### Project 8

The Commission is aware of only two parties that participated in the tender (an importer of Chinese power transformers and WTC). Once the competitor price is adjusted for dumping, it is still lower than the WTC bid, however, there is a smaller price difference. This project is in the low MVA size category of power transformers where WTC generally tends to be more successful (Figure 9 in section 7.4.1 refers). The purchaser advised the Commission that while it tries to purchase locally where possible, this is one of several considerations in its purchasing decision. The tender evaluation weighted the technical and non-technical criteria equally. However the significant price difference appears to have influenced the purchaser's decision to select the Chinese producer. While price appears to be the deciding factor in this tender, the Commission cannot assume that, in the absence of dumping, the smaller difference in price would have been close enough to sway the purchaser to accept the higher priced bid from WTC.

In this instance, the Commission cannot come to a conclusion concerning the outcome of this tender in the absence of dumping.

### Conclusion

The analysis of the tenders lost by WTC where the Commission is aware that the transformers were supplied from China found that:

- the majority of these transformers were undumped (19 of 27);
- once the competitor bids in the remaining eight tenders are adjusted for dumping, in one of the eight WTC is the lower priced bid. However, in this case there is evidence that non-price factors resulted in WTC not winning the tender;
- of the remaining seven projects:
  - three projects involved a large price disparity, once the competitor bids were adjusted for dumping. The Commission established a threshold based on WTC's winning bids against Chinese exporters, within which it is possible to assume WTC may still have won these tenders despite being higher priced.

## **PUBLIC RECORD**

The price disparity in these three projects is above this threshold, and WTC were unlikely to have won these tenders in the absence of dumping;

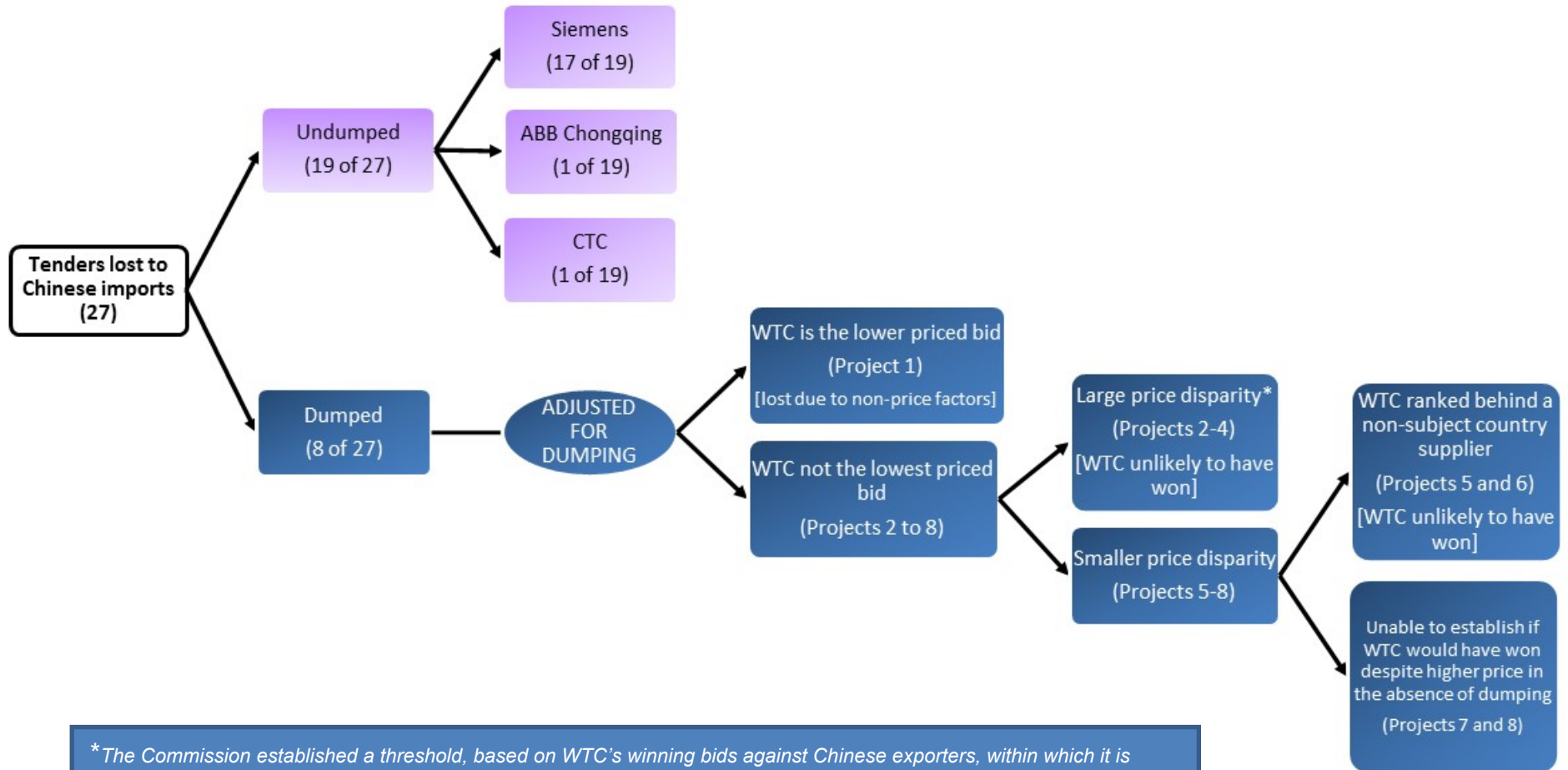
- for two projects, WTC ranked behind a supplier from a non-subject country and WTC would not have won these projects in the absence of dumping;
- for two projects there is insufficient evidence to establish that the purchaser would have purchased from WTC where it was the higher priced bidder, in the absence of dumping.

These findings are set out graphically in Figure 20 below.



**PUBLIC RECORD**

**Figure 20 – Graphical presentation of the analysis of tenders lost by WTC to Chinese imports**



*\*The Commission established a threshold, based on WTC's winning bids against Chinese exporters, within which it is possible to assume that WTC may still win a tender despite being the higher priced bidder. Projects 2-4 were above this threshold.*

## PUBLIC RECORD

### Submissions concerning other factors in tender evaluations

TIC, in its submissions dated 11 and 26 April 2019, claimed that a variety of considerations are involved in tender decisions, and that it is an over-simplification to state that the producer that offers the lowest price and can meet the specifications and delivery will receive the order.<sup>77</sup>

From the above analysis, the Commission has concluded that, while the applicant has experienced injury as a result of losing these 27 projects, the Commission cannot be satisfied that the injury was caused by dumping.

The Commission further notes that, when purchasers refer to 'price' it is not generally the cost of the asset, but is a 'total cost of ownership' which includes 'load losses' (loss of electricity and a function of the efficiency of the design) which is calculated for the life of the transformer. While the asset price will form a part of the total cost of ownership, the end user may choose to award the contract to a more efficient design, despite the higher asset price.

TIC submitted<sup>78</sup> that, as exporters supply power transformers to importers, the appropriate point of comparison is the supply price of exporters and the prices of Australian industry to the end user. It argues that, sales by importers to end users are irrelevant to an assessment of injury. The Commission disagrees with this view. The decision point, where any injury in the form of lost volumes are crystallised, is when a tender is evaluated and a winning party is chosen. Those submitting bids to a tender are Australian industry and importers. While importers may discuss supply pricing with the exporter, it will then add any additional costs and margins on to this supply price, before making the bid. This is the point of head-to-head competition.

#### **8.4.3 Projects won by WTC for which Chinese manufacturers, through their Australian affiliates, had submitted a formal bid**

The Commission gathered bid information from various parties to tenders in which WTC was the successful bidder. In some of these cases there were multiple bids from importers. The Commission also discussed the evaluation criteria with the purchasers. Of the ten tenders for which the Commission was able to gather bid information, in four tenders, WTC was successful despite being the higher priced bid. This supports the Commission's understanding of the importance of non-price factors in the evaluation of tenders.

Of these four tenders, three were won in competition against Siemens entities (undumped), and the fourth against a supplier than has been found to be dumping. In relation to this fourth tender, the Commission found that while WTC was the higher priced bid, it was successful on a 'value for money' basis.

The Commission's evaluation of projects won by WTC against Chinese competitors is provided at **Confidential Attachment 16**.

---

<sup>77</sup> Case 507, EPR item nos. 04 and 13.

<sup>78</sup> Case 507, EPR item no. 43.

#### **8.4.4 Projects won by non-Chinese overseas manufacturers for which WTC had submitted a formal bid**

In its application, WTC identified 22 tenders that, based on its market knowledge, it believed were lost to Chinese manufacturers.

The Commission established, by cross referencing ABF import data against information obtained from importers and purchasers, that eight of these tenders had in fact been lost to manufacturers in countries other than China, including: Thailand, Korea and India. None of these manufacturers are subject to anti-dumping measures.

The Commission considers that WTC cannot have suffered injury as a result of dumping from China in relation to these projects.

The Commission's identification of these projects is provided at **Confidential Attachment 17**.

#### **8.4.5 Projects won by Chinese manufacturers for which WTC had not made a formal bid**

By cross referencing information obtained from importers and purchasers against the listing of tenders submitted by WTC during the investigation period, the Commission established that WTC did not bid on multiple projects in the market.

The Commission sought additional information from WTC in relation to these projects. WTC indicated that, due to the complexity of designing and manufacturing power transformers, preparing a formal bid can be a costly enterprise, and as such, a level of commercial pragmatism is required in allocating resources toward projects with the greatest chance of success.

With this in mind, the Commission identified three categories of project where WTC did not make a formal bid:

- WTC was aware of a competitive market tender and elected not to submit a formal bid;
- WTC was aware of a competitive market tender and submitted a budget or indicative price rather than submitting a formal bid; and
- WTC was unaware of the project or was not invited to submit a bid.

The Commission's evaluation of projects won by Chinese competitors for which WTC had not made a formal bid is provided at **Confidential Attachment 18**.

#### ***WTC elected not to submit a formal bid***

The Commission established that six projects were supplied by Chinese manufacturers during the investigation period, and that WTC did not bid for these projects.

The Commission sought reasons from WTC concerning why it did not bid for these projects. These reasons are discussed at **Confidential Appendix 1** for each of these projects.

## PUBLIC RECORD

The Commission considers that WTC cannot claim to have been materially injured by dumped exports from China where they elected not to participate in the competitive tendering process for those projects.

### ***WTC submitted a budget or indicative bid rather than a formal bid***

WTC advised the Commission that, due to its position as the premier supplier of Australian made power transformers, it will from time to time be approached, prior to the release of a tender, to provide an indicative price to a purchaser.

The Commission identified four projects during the investigation period where such indicative pricing was provided by WTC for a project that was ultimately supplied by a Chinese manufacturer. In these instances, a formal bid was not sought from WTC after the indicative price was provided. The Commission gathered information concerning two of these projects. These are discussed further in **Confidential Appendix 1**. The Commission is satisfied that the reasons why these bids did not progress are not related to lower priced offers from Chinese exporters.

### ***WTC was unaware of the project***

The Commission identified six projects during the investigation period for which WTC had no market knowledge and therefore did not make a formal bid.

The Commission identified two categories where WTC did not have knowledge of these projects:

- Projects supplied through a panel arrangement which did not include WTC; and
- Power transformers supplied outside of an open tender process.

### **8.4.6 Panel arrangements**

The Commission assessed the impact of panels on the ability to supply new projects. Some purchasers provided the Commission with information concerning the use of panels for the purchase of power transformers. The purchaser sets out the required specifications and invites bids from potential suppliers. The purchasers 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 purchaser. A 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. In its submission, GE Australia<sup>79</sup> provided examples of tenders that it believes WTC was excluded from, due to it not being included on the purchaser panel.

---

<sup>79</sup> Case 507, EPR item no. 30.

## PUBLIC RECORD

Following discussions with purchasers and suppliers in the market, the Commission observed that panels are not exclusive arrangements. The applicant and other suppliers have been approached to bid for transformers even when they are not included 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 purchasers' ability to approach the market.

The Commission identified two projects involving the use of panels during the investigation period. One was for the provision of large power transformers (Project 6 discussed in section 8.4.2). The Commission understands that WTC was not on this panel. In discussions with the Commission, the purchaser claimed that the reason that WTC was not on this panel was that the upper limit of the size of the transformers to be supplied by the panel was above what it considered was in WTC's capability to produce. It is noted that the upper limit, as discussed with the purchaser, includes power transformers that do not meet the goods description for this investigation. The purchaser ultimately purchased the transformer from a member of the panel.

The Commission was not able to access any information concerning the second tender that was through a panel agreement from the purchaser.

### **8.4.7 Power transformers supplied directly rather than through a tender process**

The Commission identified four projects that appear to have been supplied directly, rather than through a tender process.

GE Australia<sup>80</sup> provided an example of a power transformer supplied as part of a turn-key project. The Commission understands that the purchaser did not seek tenders for the standalone supply of the power transformers. As WTC could not supply the entire sub-station, it could not tender for the supply of the power transformers.

A second overseas entity advised the Commission that it had undertaken several projects in Australia without tendering for the supply of power transformers. The Commission has sought information concerning these projects from WTC and importers, and (other than the ultimate supplier) no other parties have submitted bids for these projects. It appears that this purchaser approached its preferred supplier directly and agreed terms.

In one project, which was a replacement of a transformer at the end of its life, WTC suggested the purchaser may have approached the original supplier of the transformer. While WTC was not aware of the details of this project, it stated that it would not be unusual for a purchaser to approach the previous supplier of a power transformer should a replacement be required.

The Commission accepts that there may be reasons for a purchaser to source the supply of power transformers directly from a supplier rather than through a competitive tender process. In the context of the overall size of the Australian market for power transformers during the investigation period, in the Commission's view, they form a small minority of purchases. The Commission does not consider that a purchaser's decision to source

---

<sup>80</sup> Case 507, EPR item no. 30.

## PUBLIC RECORD

power transformers directly from a supplier, rather than through a competitive tender process, and to the exclusion of WTC, is injury caused by dumping as there is no evidence of price comparison with dumped imports.

### **8.4.8 Providing transformers as a part of a suite of products**

One of the importers, Siemens Australia, advised that EPC contractors purchase various components for projects and must contract with several suppliers. It claimed that the ability to contract with one supplier for multiple assets provides it (and similar businesses) with an advantage over the applicant that is a producer of transformers only.<sup>81</sup> The Commission found three projects during the investigation period that were won by importers where the power transformer formed a part of a much larger purchase by the EPC contractor. The importer provided the full suite of assets. WTC was not invited to bid for these projects. The Commission agrees that the ability to offer multiple assets to one project may be an advantage for some suppliers.

### **8.4.9 Australian industry's response to a changing market**

In its submission, dated 24 April, Siemens Australia<sup>82</sup> claimed that Australian industry has been slow to respond to the requirements of renewable energy projects, such as faster delivery times. It also claimed that Australian industry has lagged behind in responding to a change in the market that has shifted away from resources projects, due to the downturn in the mining sector. In the absence of evidence to support this claim, and as the Commission has observed that Australian industry has bid for, and been successful in winning, renewable energy projects, the Commission did not find that this factor has impacted Australian industry to any great degree.

### **8.4.10 Ability to produce various internal core structures**

GE Australia<sup>83</sup> questioned WTC's ability to produce a 5 limb design, as opposed to the 3 limb design that it currently supplies. WTC<sup>84</sup> advised that it had offered 5 limb designs and intends to build a 5-limb core in the near term. In its analysis of tenders, the Commission found that the lack of experience producing a 5 limb internal core did adversely affect WTC in certain tenders.

### **8.4.11 Requirement for experience producing larger transformers**

In its submission, dated 13 June 2019,<sup>85</sup> GE Australia advised the Commission that in several of its transactions during the investigation period, WTC was not invited to bid, as it was not a proven supplier of transformers with a MVA/kV rating of a larger size. The Commission cannot comment on these specific transformers due to confidentiality considerations (discussed further in **Confidential Appendix 1**). However, during the course of the investigation the Commission found that WTC has the ability to produce

---

<sup>81</sup> Case 507, EPR item nos. 04 and 41.

<sup>82</sup> Case 507, EPR item no. 05.

<sup>83</sup> Case 507, EPR item no. 40.

<sup>84</sup> Case 507, EPR item no. 51.

<sup>85</sup> Case 507, EPR item no. 30.

larger sized power transformers, as also advised by WTC in its submission, dated 18 June 2019.<sup>86</sup>

In view of WTC's sales of large transformers, reservations concerning WTC's production of larger transformers are not held by some purchasers in the market. The Commission has not received any evidence to suggest that WTC is unable to build larger transformers (still within the goods description), as suggested in TIC's submissions, dated 17 May and 26 July 2019.<sup>87</sup>

GE Australia questioned WTC's capability to perform temperature rise and impulse testing for larger transformers<sup>88</sup> and WTC claimed that it is able to perform both types of tests for transformers within the goods description.<sup>89</sup> The Commission requested and was provided with examples of larger transformers built by WTC. Examples were also submitted by WTC in its submission, dated 18 June 2019.<sup>90</sup> The Commission also noted that one of the units won through a tender during the investigation period was a 255MVA 220kV/33kV power transformer.

Despite this, the requirement in many RFT documents for references of similar transformers hampers WTC's ability to win these contracts. The exporters the Commission met with have a global purchaser base and have had the opportunity to produce many larger power transformers with differing internal core structures. This in turn provided the purchaser with comfort around the supplier's production abilities.

WTC provided the Commission with evidence of RFT requirements for references of larger transformers built in the recent past (in one case a requirement for a large number of transformers built in this category). In one instance, WTC declined to bid as it expected that the purchaser would not award the tender to WTC due to its relatively less experience with larger transformers. One purchaser informed the Commission that WTC was not included in its panel of suppliers for larger transformers, as it claimed that WTC did not have the capability to produce transformers that were on the upper end of its scale (section 8.4.6 refers). The Commission observes that these larger transformers are also the higher priced contracts, the loss of which has caused injury to Australian industry.

#### **8.4.12 Imperfect knowledge in the market**

The Commission notes that WTC's imperfect knowledge of its competition was consistent with the imperfect knowledge of other participants in the market.

The Commission obtained listings of lost tenders from importers during the investigation period, which included their views as to who the successful entity was. The importers incorrectly assessed the successful bidder on multiple occasions. WTC also provided its views on successful bidders to a tender, which was incorrect in several instances. Tenders in this industry are blind tenders, and feedback from purchasers, if provided, is

---

<sup>86</sup> Case 507, EPR item no. 31.

<sup>87</sup> Case 507, EPR item nos. 22 and 43.

<sup>88</sup> Case 507, EPR item no. 40.

<sup>89</sup> Case 507, EPR item no. 51.

<sup>90</sup> Case 507, EPR item no. 31.

several months following a tender. In some instances, there is a Best and Final Offer process, where the bidder puts forward their best offer, and there is no further opportunity to negotiate or provide a revised offer. Due to the bespoke nature of power transformers, it is not possible for a supplier to base its pricing on power transformers that have been imported in prior periods.

The Commission's findings in relation to imperfect market knowledge are informed by **Confidential Attachment 17**.

#### **8.4.13 Submissions following the publication of the SEF**

##### *Non-price factors*

WTC submitted that other matters, such as importer cost over-runs in Australia, and transformer loss cost assessments, should also have been factored into the tender bid comparisons.<sup>91</sup>

GE agreed with WTC's comments that price alone is not the right metric for evaluating tender outcomes.<sup>92</sup> GE commented, however, that "in suggesting that the ADC should depart from focusing on price, WTC is arguing that factors other than dumping should be taken into account when considering whether dumping has caused injury".

WTC commented that, based on the views expressed by the Commission in the SEF, "tender dumping appears unlikely to ever be found due to the ADC's inability to understand commercial reality by linking material injury to dumping." WTC also acknowledged that it understands the requirements of section 269TG, which requires the Minister to be satisfied of the causal link between material injury and dumping.

##### The Commission's response

Section 269TG, as discussed in the Manual, requires the Commission to analyse the link between material injury and dumping. While the Commission has found that the Australian industry experienced injury as a result of lost tenders (section 7.4 refers) the majority of the tenders analysed were lost to imports that had not been dumped. The Commission also found that, in the minority of projects (eight of 27) where the Australian industry lost tenders to dumped imports, most of these appear to have been lost due to factors other than dumping.

The Ministerial Direction on Material Injury<sup>93</sup> directs that injury caused by other factors must not be attributed to dumping.

Two factors raised by WTC that are unrelated to dumping are post-tender cost over-runs and the transformer loss cost assessments.

---

<sup>91</sup> Case 507, EPR item no. 62

<sup>92</sup> Case 507, EPR item no. 63

<sup>93</sup> Ministerial Direction on material injury 2012, available on the Commission's website



## PUBLIC RECORD

It is the Commission's view that, in order to assess the injury experienced by Australian industry and caused by dumping, a like-for-like comparison must be made. A fair comparison of the options available to a buyer should be based on the 'decision point' for the buyer. In this industry that is at the point where tender bids are made and Australian industry either wins or loses the tender. The Commission aims to ascertain if dumping has impacted on the decision made by the customer, thereby causing the injury experienced by Australian industry.

Post-tender cost over-runs is not knowledge that is available to the buyer at the time it chooses a supplier. It is also not known what cost over-runs Australian industry may also have experienced, had it won the tender instead of the importer. The Commission understands that the buyer agrees to a price at tender, and for the most part, cost over-runs are worn by the supplier of the tenders, impacting its profit position.

The customer also makes an assessment concerning the efficiency of the design it chooses. As was found by the Commission in the assessment of the eight tenders lost to dumped imports, price was only one factor that is reviewed by the customer. The load losses resulting from the design of the transformer over its life was another consideration. In the Commission's view, injury experienced by Australian industry as a result of a customer choosing an alternate design than the one offered by Australian industry cannot be attributed to dumping.

### *Proportion of Chinese exports from Siemens*

In its submission, WTC disputed the finding in the SEF that, during the investigation period, its largest competitor was Siemens. To support its argument, WTC referenced the Commission's assessment of imports, where Siemens contributed 36 per cent by value of imports from China, during the investigation period.

### The Commission's response

The Commission notes that the imports that arrived during the investigation period are not perfectly correlated to the tenders lost by WTC during the same period. There is a time lag between the loss of a tender and when the finished good is shipped to Australia. Some of the imports that arrived during the investigation period were lost to a Chinese supplier, before the commencement of the investigation period. Some of the tender losses during the period will not be supplied until after the investigation period.

In order to ascertain the impact of dumping on injury experienced by Australian industry, the Commission analysed 68 tenders in the industry during the investigation period. As stated in section 8.4.2, of the 27 tenders lost by Australian industry during the investigation period, 17 of these were won by Siemens. Two others were lost to undumped exports from China (refer figure 20 in section 8.4.2).

In other words, Siemens was responsible for winning 63 per cent (by project) and 46 per cent (by value) of the tenders that Australian industry lost. Overall, 70 per cent of projects and 58 per cent (by value) were lost to undumped suppliers. The remaining projects are discussed in detail in section 8.4.2, where the Commission concluded that these projects were either lost due to non-price factors, or that WTC would have been unlikely to have won the tenders in the absence of dumping.

*Loss of “commercial opportunities”*

WTC submitted<sup>94</sup> that the Commission had failed to recognise the nature of the injury experienced by WTC, which it described as “the loss of commercial opportunities”. It argues that “the counterfactual is not a world where WTC wins every bid but a world where WTC competes fairly with transformers that are not dumped”.

Siemens submitted<sup>95</sup> that, even if dumping affected “the competitive process,” or “WTC’s opportunity to compete fairly,” this would not amount to material injury, as “the dumping made no practical difference to tender outcomes”.

It further argued that it is wrong to state that material injury was caused merely because the Australian industry lost a chance that it probably would never have enjoyed in the absence of dumping.

GE submitted<sup>96</sup> that the supposed opportunity is given by the customer and cannot be given or taken away by WTC’s competitors. It argues that the “alleged dumping” did not cost WTC its chance to tender.

Both Siemens and GE argued that the submissions concerning loss of opportunity (relevant to contract law) were less applicable to an anti-dumping case.

The Commission’s response

The Commission does not agree that dumping has resulted in WTC experiencing injury in the form of loss of commercial opportunities, or the opportunity to compete fairly with undumped goods. In the Commission’s analysis of lost tenders in section 8.4.2, the Commission concluded that WTC would have been unlikely to be successful in winning these tenders even in the absence of dumping. In other words, even if it was competing with competitors that were not dumping (which the Commission analysed by adjusting for dumping margins), it is unlikely to have won these tenders.

Further, the Commission has not been provided with any evidence that supports the view that the existence of dumped goods has resulted in WTC being precluded from tendering for a power transformer project because of the customer’s perception that WTC will likely tender a higher priced power transformer.

WTC, in its submission concerning Project 6, argues that, absent the dumping supplier, WTC would have had the “real and valuable opportunity to bid against undumped PTs”. The Commission finds that WTC did, in fact, bid against all parties to the tender. By ranking WTC behind a non-subject country’s supplier, the customer has considered the WTC bid, the dumping supplier’s bid and all other bids and come to a decision. In effect, WTC was ranked below the second ranked supplier, and above any other suppliers. Therefore the Commission does not agree that WTC has experienced injury in the form of loss of commercial opportunity.

---

<sup>94</sup> Case 507, EPR item no. 70.

<sup>95</sup> Case 507, EPR item no. 71.

<sup>96</sup> Case 507, EPR item no. 72.

## PUBLIC RECORD

### *Submissions concerning specific projects*

Following the publication of the SEF, WTC provided its views concerning the eight projects of the 27 lost tenders that the Commission found were supplied by dumped imports.

Project 1: While WTC acknowledges that there was a non-price issue involved, it claims that dumping duties would have provided WTC with an opportunity to win the tender. No evidence has been provided to support this view. The Commission maintains that, due to the non-price factors involved, it is unlikely that WTC would have won this tender in the absence of dumping.

Projects 2, 3 and 4: WTC claims that dumping duties would have put WTC in a position to negotiate. Given the large price disparity involved even after the competitor's price was adjusted for dumping, it is unlikely that WTC would have been able to win these tenders based on price.

Project 5 and 6: WTC argues that dumping duties would have put it within the threshold to negotiate and win these contracts. It further argues that, if the second placed bidder was from South Korea, it is "highly likely they are dumping," as there are currently measures imposed on South Korea by the US and Canada. The Commission found that, following the dumped Chinese price, the next lowest price was from a non-subject country. If the supplier was chosen solely based on price, and the Chinese supplier did not win, it is likely that the customer would have chosen the second ranked supplier by price ahead of WTC. As this investigation was into allegations of dumping relating to China, the Commission has not investigated and therefore cannot arrive at any conclusions concerning allegedly dumped transformers from South Korea.

Project 7: WTC contends that dumping duties would have put it within the threshold to win the tender. While the Commission has acknowledged that the competitor's price in the absence of dumping is close to, albeit lower, than WTC's price, WTC has not provided any positive evidence to support its claim that, in the absence of dumping, the customer would have awarded the contract to WTC. The customer also did not provide any evidence that WTC may have won this tender had the pricing been closer. Therefore, the Commission maintains its view that, in the absence of dumping, on the basis of the evidence before the Commission, it cannot come to a conclusion concerning the outcome of this tender.

Project 8: Both bidders to this tender provided further commentary following the publication of the SEF. WTC argued that a comparison that took into account "loss cost difference, T&Cs, true freight costs, and like-for-like scope of works would have changed the outcome".<sup>97</sup> The other bidder's comments related to the particular circumstances of this project and the non-price factors that in its own opinion resulted in a successful bid (discussed further in **Confidential Appendix 1**).

A further discussion concerning the Commission's comparison of tenders is above. However, in brief, it is the Commission's view that a fair comparison of the options

---

<sup>97</sup> Case 507, EPR item no. 62.

## **PUBLIC RECORD**

available to a buyer should be based at the 'decision point' for the buyer. In this industry that is at the point where tender bids are evaluated and Australian industry either wins or loses the tender. The Commission aims to ascertain if dumping has impacted on the decision made by the customer, thereby causing the injury experienced by Australian industry.

From evidence presented to the Commission, it appears that customers will make a decision based on the efficiency of the competing designs, as well as various other technical and commercial considerations. The Commission aims to ascertain what impact dumping has had on the outcome of the tender, or more specifically the potential causal link between dumping and the injury experienced by Australian industry. Injury experienced as a result of non-price factors cannot be attributed to dumping.

Submissions provided by both parties to this tender have not furnished the Commission with any positive evidence that demonstrates that in the case of the Chinese supplier, other factors resulted in the Chinese supplier being successful and price was not a significant factor. Or, in the case of WTC, that the absence of dumping would have resulted in WTC winning the tender.

As such, the Commission maintains its view that, on the basis of the evidence before it, the Commission cannot come to a conclusion concerning the outcome of this tender in the absence of dumping.

### **8.5 Effects of dumping**

#### **8.5.1 Price suppression**

The Commission finds that injury in the form of price suppression was not caused by dumping.

The Commission detailed its observations concerning price suppression in section 7.5.1. While there are other Australian industry manufacturers, the Commission has found that WTC's sales consistently accounted for over 85 per cent of the Australian industry's sales during the injury analysis period. As such, the findings for injury in the form of price suppression is considered indicative of injury to the Australian industry.

Figure 7 shows that the Australian industry's annual CTMS was consistently higher than the annual sales revenue across the injury analysis period, with the gap widening since 2016. An increase in sales revenue, or a reduction in costs, would be required to reduce the margin. The sales revenue, as depicted in Figure 7, is a result of tenders that have been won by the applicant. In the Commission's analysis of lost tenders in sections 8.4.2 and 8.4.4 (27 tenders and eight tenders respectively), it was found that WTC lost these tenders to Chinese suppliers who were not dumping, or to suppliers from other countries or due to non-price factors. The Commission has not found that these tenders were lost due to dumping.

Consequently, the Commission finds that injury experienced by the Australian industry, in the form of price suppression, was not caused by dumping.

### **8.5.2 Price depression**

The Commission finds that injury in the form of price depression experienced during tender negotiations was not caused by dumping.

The Commission discussed its observations of price depression in section 7.5.2.

Siemens Australia<sup>98</sup> submitted that there are revisions to bid prices in some tenders and that there may be several bids before the final bid is submitted. WTC<sup>99</sup> claimed that there is a practice of purchasers soliciting lower prices during a tender negotiation.

The Commission noted, within the context of tenders lost by WTC to Chinese manufacturers (discussed in section 8.4.2), that WTC provided revised bids that were lower than the original bid on nine occasions. Seven of these nine revised bids related to projects won by Siemens entities with undumped prices. On this basis, the Commission considers that the price reductions are an attempt by WTC to position itself to be competitive in the course of a sale negotiation, and there is no clear link between dumped prices from China and WTC's reduced bids during the investigation period.

The Commission noted, within the context of tenders won by WTC that were in competition with Chinese manufacturers (discussed in section 8.4.3), that WTC provided revised bids that were lower than the original bid on seven occasions. In two instances a single bid only was provided, and in the final project, pricing was increased due to specification changes.

The Commission notes from information gathered during the investigation that tenders in the power transformers market are generally blind tenders, and that purchasers are seeking bids from both local and Chinese manufacturers, as well as a range of other international suppliers. The Commission considers that it is a key feature of the process that suppliers may provide multiple revised bids, either voluntarily, or in response to purchaser prompting. The Commission considers that the opaque nature of the tender process during the investigation period, as discussed in the section above, reduces the potential for a causal link between dumped prices, and the bids submitted by the Australian industry. Consequently, the Commission does not find that dumping has caused injury in the form of price depression experienced during tender negotiations.

### **8.5.3 Volume effects**

The Commission finds that injury in the form of reduced sales volume and reduced market share was not caused by dumping.

The Commission discussed its observations of volume related injury in section 7.4, as well as related injury in the form of reduced capacity utilisation and productivity (among others) in section 7.7.

---

<sup>98</sup> Case 507, EPR item no. 05.

<sup>99</sup> Case 507, EPR item no. 21.

WTC claims in its application that the reduced volumes are a result of its inability to compete with dumped prices in tenders.

As discussed in the sections above, the Commission did not find a clear link between lost tenders and dumped imports from China. As a result, the Commission finds that injury in the form of reduced sales volumes and reduced market share were not caused by dumping.

#### **8.5.4 Profit effects**

The Commission finds that injury in the form of reduced profits and profitability was not caused by dumping.

In section 7.6, the Commission found that the Australian industry has experienced injury in the form of reduced profits and profitability. While it is reasonable that the sales revenue lost as a result of lost tenders will impact on the Australian industry's profitability, following the analysis detailed in section 8.4, the Commission cannot be satisfied that the loss of tenders to Chinese imports was caused by dumping. As a result, the Commission finds that injury in the form of reduced profits and profitability were not caused by dumping.

#### **8.5.5 Other economic factors**

As detailed in section 7.7, the Commission found that the Australian industry experienced injury in the form of other economic factors relating to the production of power transformers.

However, these other economic factors are largely a function of either volume, price or profit, and flow-on from lost tenders. Noting the findings outlined in section 8.4 and above in sections 8.5.1 to 8.5.4, the Commission does not attribute injury experienced in the form of reduced cash flow, capacity utilisation, ROI, productivity and revenue to dumped exports from China.

#### **8.5.6 Submissions following the SEF – Effects of dumping**

WTC submits<sup>100</sup> that the Commission's acknowledgment that WTC lowered its bid in seven of 10 bids won by WTC (section 8.4.3 refers) demonstrates "price depression on won contracts and injury".

WTC also questions the Commission's assessment that the opaque nature of the tenders limits the effects of dumping on tender bids, as bidders are unaware of which suppliers are bidding for the same contract (section 8.4.12 refers). In its view, "as far as WTC is concerned, it was competing against dumping manufacturers in most tenders". It further claims that taking the ADC's argument to its logical conclusion would mean that injury in the form of price depression caused by dumping could never occur in a tender process.

---

<sup>100</sup> Case 507, EPR item no. 62.

## PUBLIC RECORD

In a further submission<sup>101</sup> WTC adds that the presence of dumped prices in the market become apparent over time, causing WTC and other non-dumping suppliers to reduce prices in anticipation of dumped prices. It claims that “the ADC considers that only a direct response to a known dumped price in the context of a single bid can amount to injury caused by dumping”.

Siemens, in its response to this submission<sup>102</sup> argues that it is incorrect that the Commission has assumed that injury is caused “only” as a “direct response” to a “known dumped price in the context of a single bid” but where Australian industry is aware of the prices of its competitors. This does not necessarily need to be in the context of a single bid. It further argues that this is less likely to occur in the power transformers market where prices are not commonly known.

### The Commission’s assessment

In section 7.5.2 of this report, the Commission found that the Australian industry experienced injury in the form of price depression. In this respect, the Commission agrees with WTC. The Commission has not, however, found that the injury in the form of price depression has been caused by dumped Chinese imports.

The Commission analysed the tender bids in comparison with WTC’s closest competitors in the ten tenders won by WTC, as detailed in section 8.4.3 and section 8.5.2. Of the nine tenders where WTC revised its bid, in seven of these, WTC’s closest competitor was Siemens. Siemens was not found to be dumping. Of the remaining two bids, in one instance WTC raised its bid price and in the other, its closest competitor’s bid was higher than WTC’s. Consequently, the Commission could find no causal link between dumping and injury in the form of price depression experienced by WTC during these tenders.

In its submission, WTC provides an analysis of the ‘per MVA’ price, and claims that it has experienced price suppression since 2012 and price depression since 2016.

Due to the complex, engineered-to-order nature of power transformers, it is the Commission’s view that the average ‘per MVA’ price can only be a guide to pricing in the market. Further, from the table provided in its submission, it is not possible to ascertain if the reducing average ‘per MVA’ price is due to dumped imports, or merely the existence of competition in the market.

Alternatively, price negotiations and bid price reductions and their causes related to tender projects, that have been supported by evidence, were relied on to arrive at a conclusion that there is no causal link between dumping and price suppression and depression.

The Commission also found that the opaque nature of tenders in this industry means that a bidder is unaware of its competitors at the time of bidding. The Commission noted that WTC and its competitors had imperfect knowledge of its competitors in a tender process (section 8.4.12 refers). WTC’s argument that, as far as it is concerned, it was competing

---

<sup>101</sup> Case 507, EPR item no. 70.

<sup>102</sup> Case 507, EPR item no. 71.

## **PUBLIC RECORD**

with dumped goods, refers to an assumption that WTC has made concerning its competitors. This view is not supported by evidence of the tenders analysed by the Commission. In both won and lost tenders, WTC's major competitor was Siemens which was not found to be dumping. The Commission did not find a causal link between dumping and injury in the form of price suppression or depression.

The Commission does not agree that taking this argument to its logical conclusion would mean that injury in the form of price depression can never be caused by dumping in a tender process. In less opaque tender processes, and where participants are generally aware of their competitors' pricing and factor this into their own bids, and where their competitors are found to be dumping, it will be more likely that dumping has caused injury in the form of price depression. This is not the case, as observed in the power transformers market, involving supply from China. This is further complicated by the ability of suppliers to design a power transformer that, while in keeping with the required specifications, may be considerably different to their competitor's, in terms of operational efficiency. This may result in disparity of asset prices and will limit WTC's ability to make an informed assessment of its competitor's pricing for a particular project.

### **8.6 Materiality of injury**

In the analysis of 68 tenders, the Commission concluded overall that injury was not caused by dumping. Most of the tenders lost were to undumped imports, or due to non-price factors.

Overall, the Commission has found that purchasers evaluated tenders based on price and non-price factors, and in some instances technical considerations, such as the ability to produce a specific internal core, or timely delivery, held greater weight in tender evaluations. The Commission observed several instances where the higher priced bidder was awarded the tender (discussed in section 8.4.2 and 8.4.3) due to non-price factors.

Furthermore, the tenders in this market appeared to be blind tenders where bidders had imperfect knowledge of competitors and their pricing when placing a bid (section 8.4.2 refers). Power transformers are bespoke assets and the specific design to meet the requirements of the technical specifications may vary, and this may result in significantly disparate bids from potential suppliers.

It is the Commission's view that, based on analysis of tenders lost to dumped imports from China, these tenders were evaluated using price and non-price factors. The Commission does note that the importance of price may vary from tender to tender. More significant is the fact that based purely on price WTC would not have been successful in most of the tenders evaluated in section 8.4.2, as it was undercut by undumped imports or remained the higher priced bidder, once its competitor's bid was adjusted for dumping. In the context of all the tenders evaluated in section 8.4, the Commission cannot be satisfied that material injury has been caused by dumping.

### **8.7 Conclusion**

The Commission has analysed information relating to 68 tenders awarded in the investigation period, relating to the supply of 102 power transformers for installation either during, or after, the investigation period. Based on the Commission's analysis, the



## **PUBLIC RECORD**

Commissioner is satisfied that the injury to the Australian industry that has been caused by exports from China, if any, is negligible.

## **9 TERMINATION OF INVESTIGATION**

Under section 269TDA(1), if the Commissioner is satisfied that there has been no dumping, or negligible dumping, by the exporter of any of those goods, the Commissioner must terminate the investigation, in so far as it relates to the exporter.

Based on the findings in Chapter 6, no evidence was found that dumping had occurred in relation to any the goods exported to Australia by ABB Chongqing and Siemens Jinan. Therefore, the investigation must be terminated in accordance with section 269TDA(1)(b)(i), in so far as it relates to these exporters.

Based on the findings in Chapter 6, for the goods exported by ABB Zhongshan and Siemens Wuhan, the dumping margin for each exporter, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, was less than two per cent. Therefore, the investigation must be terminated in accordance with section 269TDA(1)(b)(ii), in so far as it relates to these exporters.

Further, under section 269TDA(13), as the Commissioner is satisfied that the injury to the Australian industry that has been caused by exports from China is negligible, the investigation as it relates to China must be terminated.

**10 APPENDICES AND ATTACHMENTS**

|                                   |                                      |
|-----------------------------------|--------------------------------------|
| <b>Confidential Appendix 1</b>    | Procurement evaluation approach      |
| <b>Confidential Attachment 1</b>  | Market segmentation analysis         |
| <b>Confidential Attachment 2</b>  | Market size analysis                 |
| <b>Confidential Attachment 3</b>  | ABB Chongqing dumping calculations   |
| <b>Confidential Attachment 4</b>  | ABB Zhongshan dumping calculations   |
| <b>Confidential Attachment 5</b>  | CHINT dumping calculations           |
| <b>Confidential Attachment 6</b>  | CTC dumping calculations             |
| <b>Confidential Attachment 7</b>  | GE Wuhan dumping calculations        |
| <b>Confidential Attachment 8</b>  | Jiangsu Huapeng dumping calculations |
| <b>Confidential Attachment 9</b>  | Siemens Jinan dumping calculations   |
| <b>Confidential Attachment 10</b> | Siemens Wuhan dumping calculations   |
| <b>Confidential Attachment 11</b> | Volume of dumped imports analysis    |
| <b>Confidential Attachment 12</b> | WTC's tender analysis                |
| <b>Confidential Attachment 13</b> | Price and profit effects analysis    |
| <b>Confidential Attachment 14</b> | Other injury factor analysis         |
| <b>Confidential Attachment 15</b> | WTC lost tender analysis             |
| <b>Confidential Attachment 16</b> | WTC won tender analysis              |
| <b>Confidential Attachment 17</b> | Supplier market knowledge analysis   |
| <b>Confidential Attachment 18</b> | Projects for which WTC did not bid   |