



Australian Government
Department of Industry,
Science and Resources

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

TERMINATION REPORT NO 507A

ALLEGED DUMPING OF POWER TRANSFORMERS

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

**EXCEPT FOR EXPORTS BY
ABB CHONGQING TRANSFORMER CO., LTD,
ABB ZHONGSHAN TRANSFORMER CO., LTD,
SIEMENS TRANSFORMER (JINAN) CO., LTD AND
SIEMENS TRANSFORMER (WUHAN) CO., LTD**

20 September 2022

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ABBREVIATIONS

ABB Chongqing	ABB Chongqing Transformer Co., Ltd
ABB Zhongshan	ABB Zhongshan Transformer Co., Ltd
the Act	<i>Customs Act 1901 (Cth)</i>
Ampcontrol	Ampcontrol Pty Ltd
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
ADRP Report 100	<i>ADRP Decision No 100</i>
ADRP Report 119	<i>ADRP Decision No 119</i>
ADRP Report 122/123	<i>ADRP Decision No 122 and 123</i>
China	People's Republic of China
CHINT	CHINT Electric Co., Ltd
the commission	the Anti-Dumping Commission
the Commissioner	the Anti-Dumping Commissioner
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>
DDP	delivered duty paid
EPR	electronic public record
FCA	Federal Court of Australia
FCAFC	Federal Court of Australia Full Court
FOB	free on board
the former Commissioner	the former Commissioner of the Anti-Dumping Commission
GE Wuhan	GE High Voltage Equipment (Wuhan) Co., Ltd
the goods	power transformers, as described at section 2.1.4
INV 507	<i>Investigation No 507</i>
INV 507A	<i>Investigation No 507A</i>
the investigation period	1 January 2016 to 31 December 2018
Jiangsu Huapeng	Jiangsu Huapeng Transformer Co., Ltd
OCOT	ordinary course of trade
the Regulations	<i>Customs (International Obligations) Regulation 2015</i>
REQ	response to the exporter questionnaire
SEF	statement of essential facts
SEF 507	<i>Statement of Essential Facts No 507</i>
SEF 507A	<i>Statement of Essential Facts No 507A</i>

PUBLIC RECORD

SG&A	selling, general and administration
Siemens (Jinan)	Siemens Transformer (Jinan) Co., Ltd
Siemens (Wuhan)	Siemens Transformer (Wuhan) Co., Ltd
the subject exporters	All exporters from China except ABB Chongqing Transformer Co., Ltd, ABB Zhongshan Transformer Co., Ltd, Siemens Transformer (Jinan) Co., Ltd and Siemens Transformer (Wuhan) Co., Ltd
TER 507	<i>Termination Report No 507</i>
TIC	Toshiba International Corporation Pty Ltd
Tyree	Tyree Transformers Pty Ltd
WTC	Wilson Transformer Company Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

The Anti-Dumping Commission (the commission) has prepared this *Termination Report No 507A* (TER 507A) in response to Wilson Transformer Company Pty Ltd's (WTC) application for the publication of a dumping duty notice (the application) in respect of power transformers (the goods) exported to Australia from the People's Republic of China (China).

TER 507A sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) based his decision to terminate the investigation.

TER 507A follows:

- the former Commissioner of the Anti-Dumping Commission's (the former Commissioner) decisions to terminate *Investigation No 507* (INV 507) in its entirety in *Termination Report No 507* (TER 507) on 31 January 2020
- the Anti-Dumping Review Panel's (ADRP) decision to affirm the former Commissioner's decision to terminate INV 507 for ABB Chongqing Transformer Co., Ltd (ABB Chongqing), ABB Zhongshan Transformer Co., Ltd (ABB Zhongshan), Siemens Transformer (Jinan) Co., Ltd (Siemens Jinan) and Siemens Transformer (Wuhan) Co., Ltd (Siemens Wuhan) on 22 May 2020¹
- the ADRP's decision to revoke the former Commissioner's decision to terminate INV 507 for all other exporters from China (the subject exporters)² on 22 May 2020
- the commission's publication of *Statement of Essential Facts No 507A* (SEF 507A) on 8 October 2021, which resumed INV 507 for the subject exporters (for convenience, the resumption of INV 507 is referred to in this report as *Investigation No 507A* (INV 507A)).

TER 507A details the Commissioner's consideration of the application, WTC's application for a review to the ADRP and the ADRP's reasons for revoking the former Commissioner's decision to terminate INV 507 for the subject exporters.

1.2 Findings

In relation to the subject exporters, the Commissioner's finds that:

- the dumping margins have changed from those set out in TER 507, but remain above negligible levels

¹ WTC subsequently appealed the ADRP's decision to the Federal Court of Australia (FCA) and the Federal Court of Australia Full Court (FCAFC), section 2.2.2 refers. As a result of these appeals, the ADRP's decision was set aside and remitted back to the ADRP for reconsideration. After reconsideration, the ADRP again affirmed the former Commissioner's termination decision on 4 July 2022. Accordingly, this report does not alter the former Commissioner's termination for these 4 exporters.

² Which covers all exporters except the 4 exporters listed in the above dot point.

- the injury, if any, caused to the Australian industry by dumped goods is negligible.

Accordingly, the Commissioner has terminated INV 507A for China under section 269TDA(13) of the *Customs Act 1901* (the Act).³

1.2.1 Dumping assessment (chapter 3)

As part of TER 507A, the commission has recalculated the normal values for the subject exporters to address matters arising from ADRP Reports⁴ and submissions to INV 507A. The commission's calculations confirmed that all subject exporters were dumping at above negligible levels. The dumping margins are set out in Table 1.

Exporter	Dumping margin
CHINT Electric Co., Ltd (CHINT)	6.9%
Changzhou Toshiba Transformer Co., Ltd (CTC)	3.9%
GE High Voltage Equipment (Wuhan) Co., Ltd (GE Wuhan)	12.1%
Jiangsu Huapeng Transformer Co., Ltd (Jiangsu Huapeng)	11.7%
Uncooperative exporters (except CTC)	12.1%

Table 1: Revised dumping margins⁵

A summary of the commission's approach to calculating the dumping margin for each subject exporter, where there have been changes since TER 507 is set out below.

GE Wuhan and CHINT

In TER 507, the commission considered that it was not practical to base a normal value for any exported goods using domestic sales of like goods. This was due to the difficulty in adjusting domestic prices to make them comparable with export prices. Power transformers are unique, engineered-to-order capital goods, with many variables and differences in technical specifications for each power transformer.

Therefore, in TER 507, the commission was of the view that there was an absence of sales of like goods in China that would be relevant for the purposes of determining a domestic price of the exported goods under section 269TAC(1). Instead, the commission constructed the normal values for exporters of the goods under section 269TAC(2)(c), using each exporter's costs and an amount of profit on the basis that the costs and profits accurately accounted for the differences in technical specifications for each power transformer.

However, in *ADRP Decision No 100* (ADRP Report 100), the ADRP stated that if goods sold domestically in the country of export are like goods and those goods are sold by the

³ All legislative references in TER 507A are to the Act unless otherwise stated.

⁴ ADRP Reports 100, 108, 110 and 120/121.

⁵ The dumping margins for INV 507 are summarised in TER 507, table 4 at page 44.

exporter in the ordinary course of trade (OCOT) and in sales that are arms length, then they are relevant sales for the purpose of section 269TAC(1).

Having considered ADRP Report 100, the commission now finds that GE Wuhan and CHINT sold like goods on the Chinese domestic market and that these sales are relevant for the purpose of determining a normal value of the exported goods under section 269TAC(1).

Additionally, having regard to the findings in *ADRP Decision No 119* (ADRP Report 119), the commission reconsidered its approach taken in TER 507 to determining which of GE Wuhan and CHINT's sales are in the OCOT.

For TER 507A, the commission is satisfied that there are sales of like goods in the OCOT and calculated the normal value for GE Wuhan and CHINT using the price paid for like goods sold in the OCOT for home consumption in China in sales that are arms length, under section 269TAC(1).

To ensure a fair comparison between the export price and normal value for GE Wuhan and CHINT, the commission made adjustments under section 269TAC(8). The basis of the adjustments are outlined in chapter 3.

The consequences of the change in approach, in this instance, has resulted in a lower dumping margin for GE Wuhan and CHINT.

CTC

The Commissioner considers that CTC is an uncooperative exporter for INV 507A. CTC provided an exporter questionnaire response (REQ), however through follow up emails and a verification visit to CTC, the commission identified that CTC's REQ was deficient. Only certain information provided by CTC is reliable in determining whether it exported dumped goods.⁶ The deficiencies in CTC's REQ relate to its domestic sales and domestic costs. The commission could not be satisfied that CTC's domestic sales and domestic costs are complete, relevant and accurate. Despite this finding, the commission considered that there was sufficient information to determine an individual dumping margin for CTC.

On the basis that CTC is an uncooperative exporter, the Commission is required to calculate the normal value for CTC under section 269TAC(6) using available information. In this instance, the commission considered the best available information is CTC's export cost to make, its selling, general and administrative (SG&A) expenses and an amount of profit taken from other exporters. The calculations utilise CTC's data only to the extent that it is relevant, accurate and complete. The calculations also utilise data from other cooperating exporters whose information was relevant, accurate and complete in order to overcome deficiencies in CTC's data.

The amount of profit used in the calculation relies on the actual profits realised by other exporters in China.⁷ This draws on the principles of section 45(3) of the *Customs (International Obligations) Regulation 2015* (the Regulations), on the basis that it was not

⁶ A full discussion of CTC's circumstances is outlined in section 2.4.3 of TER 507.

⁷ This includes the actual profit amounts realised by the all cooperating exporters in INV 507 and INV 507A.

practicable for the commission to work out an amount of profit using CTC's own data. CTC's normal value has changed from that in TER 507 as a result in changes in the approach to calculating the amount of profit for other exporters. In this instance the change in normal value has resulted in a reduction in CTC's dumping margin.

Jiangsu Huapeng and uncooperative exporters (except CTC)

Jiangsu Huapeng provided a REQ, however it contained extensive deficiencies. The commission was unable to reliably determine an individual dumping for Jiangsu Huapeng, based on the information it provided.⁸

The commission determined the normal value for Jiangsu Huapeng and uncooperative exporters (except CTC) under section 269TAC(6), having regard to all relevant information. This included information relevant to GE Wuhan, CHINT and CTC. Accordingly, changes to the normal values for GE Wuhan, CHINT and CTC had flow on effects for Jiangsu Huapeng and uncooperative exporters (except CTC). In this instance, it has resulted in a lower dumping margin.

1.2.2 Assessment of tenders (chapter 4)

Sales of power transformers in the Australian market are predominately awarded through tender processes. The commission isolated 68 tenders relevant to the investigation period (1 January 2016 to 31 December 2018) relating to the supply of 102 power transformers. The commission narrowed those 68 tenders down to 8 projects that involved the subject exporters. Accordingly, the commission focussed its assessment of whether injury was caused to the Australian industry by dumped goods for those 8 projects.

1.2.3 Injury caused by dumped goods is negligible (chapter 5)

Finding

The Commissioner is satisfied that the injury, if any, to the Australian industry that has been caused by dumped exports from the subject exporters is negligible.

Background

In *ADRP Decision No 122 and 123* (ADRP Report 122/123), the ADRP considered WTC's claim that it had a 'real chance' of being successful in tendering for projects 1, 5, 6, 7 and 8. Having reviewed the commission's evaluation of projects 1 to 8, lost by WTC in favour of exports of the goods by subject exporters, the ADRP considered that:

- the commission did not reach a definitive conclusion about whether WTC would likely have won projects 7 and 8 in the absence of dumping, which meant that the former Commissioner could not be satisfied that the injury to the Australian industry from dumped goods was negligible
- WTC would not have likely won projects 1 to 7
- WTC was more likely than not to have won project 8 (based on the dumping margins in TER 507).

⁸ Further discussion of Jiangsu Huapeng's circumstances is outlined in section 6.9 of TER 507.

Re-assessment of projects 1 to 8

The commission has re-assessed the tenders that WTC lost to goods exported by the subject exporters (as summarised in chapter 4) to take into account the revised dumping margins in chapter 3.

The commission adjusted the subject exporters' bid prices for each of the 8 projects to remove the effects of dumping and compared those to WTC's bid prices.

The commission's conclusions for projects 1 to 6 are unchanged from TER 507 – that is, it is unlikely that WTC would have won projects 1 to 6.

The revised dumping margins have also allowed the commission to be more definitive on the likely outcome of projects 7 and 8.

For project 7, the commission considers that the purchaser's decision to award the tender was based on the lowest bid, which belonged to a subject exporter. Given that the subject exporter's adjusted bid price remains lower than WTC's bid price, all things being equal, WTC would not have won project 7 in the absence of dumping.

For project 8, the commission found that the subject exporter's adjusted bid price remained lower than WTC's bid price. As a result of the revised dumping margins, the difference between the bid prices for project 8 is larger in TER 507A than TER 507. The difference in the bid prices was not within a range where WTC had won other tenders in the investigation period despite being the higher priced bidder.

Having regard to available evidence, the commission considers it unlikely that WTC would have won project 8 in the absence of dumping.

Therefore, the commission does not consider that the Australian industry suffered injury in relation to all 8 projects relevant to the subject exporters.

Accordingly, the commission considers that the injury, if any, experienced by the Australian industry from dumped goods exported from China by the subject exporters is negligible.

1.2.4 Conclusion

The Commissioner must terminate an investigation where the injury, if any, caused by dumped exports is negligible.

Based on the findings set out in TER 507A, the Commissioner has terminated INV 507A for China, in accordance with section 269TDA(13).

2 BACKGROUND

2.1 Background to Investigation No 507

2.1.1 Application

On 24 January 2019, WTC lodged an application alleging that the Australian industry is experiencing material injury caused by the goods exported to Australia from China at dumped prices.⁹

Having considered the application, the former Commissioner initiated INV 507 on 18 March 2019. Further details relating to the initiation of INV 507 are contained in *Consideration Report No 507* and Anti-Dumping Notice (ADN) 2019/035, available on the commission's website at www.adcommission.gov.au.¹⁰

2.1.2 Investigation period and injury analysis period

The investigation period is 1 January 2016 to 31 December 2018 (the investigation period).¹¹

The injury analysis period for determining whether dumped exports from China have caused material injury to the Australian industry is from 1 January 2014 onwards.¹²

2.1.3 Contact with interested parties

Australian industry

WTC listed itself, Ampcontrol Pty Ltd (Ampcontrol) and Tyree Transformers Pty Ltd (Tyree) as making up the Australian industry producing like goods in its application. WTC provided relevant economic data in its application and the commission requested similar economic data from Ampcontrol and Tyree. Ampcontrol responded to the commission's requests for further information, however the commission did not receive a response from Tyree. Based on information available to the commission, the commission is satisfied that WTC accounts for the majority of power transformers produced in Australia in the investigation period.

⁹ EPR 507, item 1.

¹⁰ EPR 507, items 2 and 3.

¹¹ 'Investigation period' is defined in section 269T(1) as 'in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under section 269TC(4) to be the investigation period in relation to the application.'

¹² 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.

Importers

The commission received completed importer questionnaires from 4 importers and elected to undertake on-site verification visits to Siemens Australia Pty Ltd, GE Grid Australia Pty Ltd and Toshiba International Corporation Pty Ltd (TIC).

Exporters

The commission received a REQ from the following 8 exporters:

- ABB Chongqing and ABB Zhongshan¹³
- CHINT¹⁴
- GE Wuhan¹⁵
- Jiangsu Huapeng¹⁶
- Siemens (Jinan) and Siemens (Wuhan)¹⁷
- CTC.¹⁸

The commission undertook in-country verification visits to CTC, GE Wuhan and Siemens (Jinan). During the visit to Siemens (Jinan), the commission had access to the financial records of Siemens (Wuhan), undertaking a targeted verification. The commission elected to verify the information provided by the remaining 4 exporters remotely.

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.

Purchasers

The commission sought information from purchasers of power transformers in Australia during the investigation period. The commission received responses to its Australian market questionnaire from:

- Ausgrid Operator Partnership
- BHP Billiton Iron Ore Pty Ltd
- Endeavour Energy
- Energy Queensland
- Essential Energy
- Hydro Tasmania
- NSW Electricity Networks Operations Pty Ltd
- Powerlink Queensland
- RJE Global Pty Ltd

¹³ EPR 507, items 17 and 16.

¹⁴ EPR 507, item 6.

¹⁵ EPR 507, item 11.

¹⁶ EPR 507, item 14.

¹⁷ EPR 507, items 8 and 9.

¹⁸ EPR 507, item 19.

- Zenviron.

Six purchases of power transformers attended a teleconference with the commission for the purpose of providing further information about the Australian market and tenders. File notes for each teleconference are available on the EPR.¹⁹

Submissions received from interested parties

The commission received 35 submissions from interested parties in relation to INV 507. Non-confidential versions of these submissions are available on the EPR.

Non-Confidential Attachment 1 lists the submissions received.

2.1.4 The goods under consideration and ‘like goods’ to those goods

The goods 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 500 kV (kilo volts) whether assembled or unassembled, complete or incomplete.

The general classification of the goods to tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995* are 8504.22.00: 40 and 8504.23.00: 26 and 41.²⁰

Through examining information as part of INV 507, the commission identified additional classifications to the tariff subheadings of the goods, as outlined below.

Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i>)	
<i>Tariff code</i>	<i>Description</i>
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
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
8504.34.00	other transformers having a power handling capacity exceeding 500 kVA

Table 2: Tariff classifications

¹⁹ EPR 507, items 27, 28, 29, 36, 38 and EPR 504, item 12 for *Continuation Inquiry No 504*.

²⁰ The commission provides tariff subheadings for administrative convenience and customs purposes. The written goods description in section 3.3 defines the goods under consideration.

The commission examined goods manufactured by WTC and was satisfied that:²¹

- power transformers manufactured by WTC are like goods to the goods under consideration²²
- at least one substantial process of manufacture of power transformers is carried out by WTC in Australia, and therefore, like goods were wholly or partly manufactured in Australia²³ and
- there is an Australian industry in respect of those like goods, consisting primarily of WTC.²⁴

As detailed above, the commission verified the information provided by the 8 exporters that provided a REQ. The commission found that the goods produced by these exporters for domestic sale have characteristics closely resembling those of the goods exported to Australia and are therefore 'like goods' in accordance with section 269T(1).

2.1.5 Australian market

The commission found that the Australian industry and imports from a number of countries, including China, supply the Australian market for power transformers.

2.1.6 Dumping findings

The commission found that the goods exported to Australia from China by:

- ABB Chongqing, ABB Zhongshan, Siemens (Jinan) and Siemens (Wuhan) were not at dumped prices²⁵
- CHINT, CTC, GE Wuhan, Jiangsu Huapeng and other uncooperative exporters were at dumped prices, and that the dumping margins were not negligible.²⁶

Based on the available information, the commission was satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods from China during the investigation period was greater than 3% of the total import volume and was therefore not negligible.

²¹ EPR 507, item 50.

²² Section 269T(1).

²³ Section 269T(2).

²⁴ Section 269T(4).

²⁵ While some individual power transformers were exported at dumped prices, exports by these exporters were not exported at dumped prices on a weighted average basis.

²⁶ An investigation may be terminated on the grounds that a margin is negligible (less than 2%) in respect to an exporter.

2.1.7 Economic condition of the Australian industry

Based on its examination of the Australian industry, the commission considered that the Australian industry 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
- reduced productivity
- reduced revenue.

2.1.8 Has dumping caused material injury

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

- WTC's largest competitors in terms of tenders lost were Siemens (Jinan) and Siemens (Wuhan), who were found not to be dumping
- an analysis of won and lost tenders, as well as responses from purchasers, show that the lowest price bidder is not always successful and non-price factors are often considered to be as important as price in tender evaluations
- an analysis of tenders lost by the Australian industry to the subject exporters indicates that, even in the absence of dumping, the Australian industry was unlikely to have won 6 of 8 projects based on the bid prices. For the other 2 projects, the commission could not reach a definitive conclusion on the likely outcome of the tender process.

2.1.9 Termination of INV 507

The Commissioner terminated INV 507 on 31 January 2020 for the reasons set out in TER 507.²⁷

2.2 Background to Investigation No 507A

2.2.1 ADRP Report 122/123

WTC applied to the ADRP for a review of the former Commissioner's decisions to terminate INV 507.²⁸ The ADRP summarised WTC's grounds for appeal as follows:

²⁷ ADN 2020/010 and EPR 507, item 76.

²⁸ ADRP Review No 122 and 123, published on the ADRP website:
<https://www.industry.gov.au/about-us/anti-dumping-review-panel>

PUBLIC RECORD

1. The former Commissioner failed to correctly apply section 269TAA(1)(b) and wrongly applied a test of whether the export sales were arms length transactions in fact, when the commission was required to consider whether the transactions 'appeared' to be influenced by the relationship between the parties.
2. The commission failed to properly inquire whether the transactions appeared to be influenced by the relationship between the parties.
3. The commission should have had regard to the evidence that transactions between related subsidiaries of multinational power transformer suppliers fell within s 269TAA(1)(b) and were not, therefore, arms length transactions.
4. The commission failed to properly assess injury suffered by the applicant and should not have concluded that the injury sustained by the Australian industry was negligible.²⁹

The ADRP found that the former Commissioner's conclusions in relation to whether the export sales were arms length transactions (grounds 1 to 3) was correct and preferable.

In respect of ground 4, relating to the former Commissioner's assessment of injury, the ADRP concluded that:

The decision to terminate the investigation in respect of the goods exported from China by all other exporters under s 269TDA(13) because the injury caused to the Australian industry was negligible was not the correct or preferable decision and I revoke it.³⁰

In particular, the ADRP commented on the former Commissioner's inability to conclusively decide whether or not the Australian industry might have won the tender for a particular project (project 8), absent dumping:

If the [former] Commissioner was unable to decide whether a tender... was lost because of dumping, it would be difficult for the Commissioner to be satisfied that injury caused by dumping was negligible...

It follows that I am not satisfied that the injury caused by the dumping was negligible.³¹

While the ADRP was not satisfied that the injury caused by dumping was negligible, the ADRP did not assess whether the loss of the tender due to dumping would amount to 'material injury' to the Australian industry.

²⁹ ADRP Report 122/123, paragraph 23.

³⁰ ADRP Report 122/123, paragraph 102.

³¹ ADRP Report 122/123, paragraphs 92 and 96.

2.2.2 Appeals to the Federal Court of Australia

WTC appealed the ADRP's decision in respect of ADRP Review No 122 as it applied to ABB Chongqing, Siemens Jinan and Siemens Wuhan³² to the FCA.³³ WTC's appeal was dismissed.

WTC subsequently appealed the ADRP's decision to the FCAFC.

On 31 March 2022, the FCAFC ordered that:

The first respondent's [ADRP] decision dated 18 May 2022 be set aside in so far as it relates to [ABB Chongqing], [Siemens (Jinan)] and [Siemens (Wuhan)].

The FCAFC ordered that the matter be remitted back to the ADRP for reconsideration in accordance with law.

A summary of the judicial proceedings is included in Table 3.

Reference number	Date	Summary	Court reference
VID409/2020	4 June 2021	Single Judgment, application dismissed	FCA 591
VID365/2021	21 January 2022	Appeal dismissed	FCAFC 4
VID365/2021	8 March 2022	First Full Court orders set aside and supplementary reasons given	FCAFC 30
VID365/2021	28 March 2022	Orders (updated on 31 March 2022) and costs	FCAFC 46
VID365/2021	31 March 2022	Orders from 28 March 2022 updated as follows: the ADRP's decision dated 18 May 2020 be set aside in so far as it relates to ABB Chongqing, Siemens (Jinan) and Siemens (Wuhan).	N/A

Table 3: Summary of judicial proceedings

As a result of the above orders, the ADRP recommenced its review into the decision of the former Commissioner to terminate INV 507 under section 269TDA(1) in relation to ABB Chongqing, Siemens (Jinan) and Siemens (Wuhan).³⁴

On 4 July 2022, the ADRP published *ADRP Decision No 122A*. The ADRP affirmed the former Commissioner's decisions to terminate INV 507 as it relates to ABB Chongqing, Siemens (Jinan) and Siemens (Wuhan).

³² ABB Zhongshan was not considered as part of the judicial proceedings. The ADRP affirmed the Commissioner's decision to terminate INV 507 in respect of ABB Zhongshan as part of *ADRP Decision No 122 and 123*.

³³ The grounds for the appeal predominantly centred on the application of section 269TAA (arms length transactions).

³⁴ *ADRP Review No 122A*.

Accordingly, the commission has not re-assessed the exports by ABB Chongqing, ABB Zhongshan, Siemens (Jinan) and Siemens (Wuhan) as part of INV 507A.

2.3 Legislative framework for resumed investigations

2.3.1 Statement of essential facts

Section 269ZZT(2) states that, as soon as practicable after a reviewable decision has been revoked, the Commissioner must publish a statement of essential facts (SEF).

On 8 October 2021, the Commissioner placed SEF 507A on the public record. Publication of SEF 507A resumed the investigation (INV 507A) regarding alleged dumping of power transformers from China in respect of the subject exporters, being those other than ABB Chongqing, ABB Zhongshan, Siemens (Jinan) and Siemens (Wuhan).

Subject to submissions received in response to SEF 507A, the Commissioner proposed to terminate INV 507A in its entirety on the basis that the injury, if any, to an Australian industry producing like goods caused by dumped exports was negligible.

2.3.2 Conduct of resumed investigations

Where the Commissioner resumes a terminated investigation after a decision by the ADRP under section 269ZZT(1)(b), the Commissioner must conduct the investigation according to the procedures for conducting an investigation set out in Part XVB.

Division 2 of Part XVB sets out, in part:³⁵

- (a) 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) for the purposes of making a report to the Minister
- (b) the circumstances in which the Commissioner must terminate such investigations.

2.4 Submissions from interested parties

The commission received submissions from interested parties prior to the publication of SEF 507A and throughout the course of INV 507A. These submissions are summarised in **Non-Confidential Attachment 4**. Non-confidential versions of all submissions received are available on the EPR.

The commission received 2 submissions from interested parties following the publication of SEF 507A. The Commissioner considered these submissions in reaching the conclusions contained within TER 507A.

³⁵ Section 269TBA.

PUBLIC RECORD

EPR number	Interested party	Date received
85	WTC	29 October 2021
87	GE Wuhan	9 March 2022

Table 4: Submissions considered after SEF 507A

3 DUMPING ASSESSMENT

3.1 Findings

The commission has calculated the following dumping margins in relation the goods exported to Australia from China during the investigation period.³⁶

Exporter	Dumping margin
CHINT	6.9%
CTC	3.9%
GE Wuhan	12.1%
Jiangsu Huapeng	11.7%
Uncooperative exporters (except CTC)	12.1%

Table 5: Dumping margins

3.2 Introduction and legislative framework

In any report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

In order to publish a dumping duty notice, the Minister, among other things, must be satisfied that goods exported to Australia, during the investigation period, are at dumped prices.

Dumping occurs when an entity exports a product from one country 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.

Dumping margins are determined under section 269TACB. For each export transaction price, the commission compared the corresponding normal value, in accordance with section 269TACB(2)(b). This method produces as many dumping margins as there are export transactions. Then the dumping margins are amalgamated using a weighted average in order to calculate a single dumping margin for each exporter over the investigation period. As outlined in the *Dumping and Subsidy Manual* (the manual), this method is suited to capital goods where there are not a large number of transactions.³⁷

³⁶ Except for exports by ABB Chongqing, ABB Zhongshan, Siemens (Jinan) and Siemens (Wuhan).

³⁷ The manual, p 95.

3.3 Re-assessment of determining normal values for CHINT and GE Wuhan

3.3.1 Normal values under section 269TAC(1)

In TER 507 the commission considered that it was not practicable to calculate normal values for CHINT and GE Wuhan based on domestic selling prices, due to difficulties associated in adjusting the domestic prices to make them comparable with export prices.³⁸ This was because there are many variables and differences in technical specifications of each power transformer sold on the relative markets.

The commission considered that there was an absence of sales of like goods in China that would be relevant in determining a normal value in accordance with section 269TAC(1). The commission determined normal values for both CHINT and GE Wuhan in TER 507 in accordance with section 269TAC(2)(c).

On 9 July 2020, the ADRP published ADRP Report 100 which relates to wind towers exported from China and the Republic of Korea. The report states, at paragraph 26, that:

There is no reference in the legislation to sales not being suitable for the ascertainment of normal value under s.269TAC(1) because technical differences mean the models of the goods sold domestically cannot be matched with the models exported to Australia. Those technical differences may mean that the goods are not like goods. If, however the goods sold domestically in the country of export are like goods and those goods are sold by the exporter in the OCOT and in sales that are arms length, then they are relevant sales for the purpose of s.269TAC(1).

Other reports and decisions by the ADRP endorse this statement.³⁹

The commission verified the information provided by GE Wuhan and CHINT and found that:

- both exporters produced power transformers for domestic consumption
- those power transformers have characteristics closely resembling those of the goods exported to Australia and are like goods.⁴⁰

Both CHINT and GE Wuhan, in response to ADRP Report 122/123, submitted that the commission made a finding in TER 507 that neither exporter had sales of like goods on the domestic market.⁴¹ As stated in the preceding paragraph, the commission found that both exporters had domestic sales of like goods. However, in TER 507 the commission

³⁸ The commission found similarly with regard to ABB Chongqing, ABB Zhongshan, Siemens (Jinan) and Siemens (Wuhan). As these 4 exporters are not subject to INV 507A, the impact of recent ADRP decisions on the relevant normal value determination is not considered in INV 507A.

³⁹ ADRP Reports 108, 110 and 120/121.

⁴⁰ EPR 507, items 49 and 56.

⁴¹ EPR 507, items 81 and 82.

considered that there is an absence of relevant sales of like goods suitable for determining a normal value.⁴²

The commission considers, for the purpose of INV 507A, that both GE Wuhan and CHINT sold like goods in accordance with section 269T(1). The commission accepts that such sales are relevant for determining a normal value of the exported goods.

Therefore, in response to submissions received, the commission re-assessed whether GE Wuhan's and CHINT's normal values can be determined in accordance with section 269TAC(1). The commission's determination of the normal values for CHINT and GE Wuhan are detailed below in sections 3.4.3 and 3.6.3 respectively.

3.3.2 Ordinary course of trade

If determining an exporter's normal value in accordance with section 269TAC(1), the commission is required to consider if domestic sales of like goods are in the OCOT.

Section 269TAAD sets which sales are not to be considered as being in the OCOT. Broadly speaking, this includes sales at a loss occurring in substantial quantities and which do not provide for the recovery of costs within a reasonable period.

The commission considers such sales at a loss to be recoverable if the sale price is above the weighted average cost over the investigation period.⁴³ Due to the unique nature of each power transformer, in TER 507 the commission treated each power transformer as a separate unit (or individual model) when applying section 269TAAD. The commission, therefore, assessed the recoverability of each unprofitable sale by comparing the unit revenue to the unit cost to make and sell (CTMS).⁴⁴

However, the ADRP found that this was not the correct or preferable approach in relation to power transformers exported from the Republic of Indonesia and Taiwan.⁴⁵ The commission has had regard to this finding when determining whether exporters of power transformers from China made domestic sales in the OCOT in INV 507A. In this report, for CHINT and GE Wuhan, the commission assessed the recoverability of each unprofitable sale by comparing the unit sale price to the weighted average CTMS of all like goods sold by that exporter domestically during the investigation period.

In a submission dated 19 June 2020, GE Wuhan submitted that the OCOT test was not applicable to power transformers.⁴⁶ GE Wuhan considers that the recoverability test is not applicable due to the bespoke nature of power transformers. As stated above, the commission considers that it is able to assess the recoverability of each sale.

⁴² Section 6.2 of TER 507.

⁴³ Section 269TAAD(3).

⁴⁴ For one exporter, for the rare occurrence where there were identical transformers, the unit revenue of each unprofitable transformer was compared to the weighted average CTMS of those identical transformers.

⁴⁵ ADRP Report 119.

⁴⁶ EPR 507, item 80.

3.3.3 Adjustment for physical differences under section 269TAC(8)

In this report, the commission has determined that there are sufficient volumes of like goods sold in the OCOT on the domestic market and in arms length transactions to ascertain a normal value of exported goods under section 269TAC(1) for CHINT and GE Wuhan.

When determining whether dumping has occurred, the commission makes a fair comparison between export price and normal value. The commission makes adjustments to the normal value for differences that affect price comparability.⁴⁷

The commission has, therefore, considered whether an adjustment to normal values is required to account for the physical differences between goods exported and those sold domestically.

The manual outlines the commission's approach to making adjustments to account for differences in physical characteristics.⁴⁸ On page 67 of the manual it states:

Evidence should be provided of different selling prices for products with different physical characteristics or quality. In such cases, the size of the price difference may be used as the basis for any adjustment.

Comparing the price of a domestic model to an exported model does not allow the commission to isolate what part of the price difference is due to differences in physical characteristics and what may be due to dumping. The manual predicts this scenario and continues by stating:

However, there may be situations where direct evidence of price differences cannot be provided (e.g. models sold domestically and exported to Australia are different). In these situations, adjustments for differences in physical characteristics or quality, where it reasonably affects price comparability, may be based on production cost differences plus the addition of the gross margin (i.e. the administrative, selling and general costs and profit) to the production cost difference. This is a means for calculating an adjustment that reflects the market value of the production cost difference.

The commission analysed verified cost and sales data for power transformers sold on the domestic market in China to understand relationships between cost and price.⁴⁹ In particular, the commission examined whether cost differences associated with individual power transformers affected price comparability. With highly technical goods such as power transformers, cost differences may arise due to a range of factors, which mostly come down to the physical characteristics of the power transformers. Unique factors, such as environmental factors, technical requirements and customer specifications feed into the cost and ultimately the price of each power transformer.

⁴⁷ Sections 269TAC(8) and (9).

⁴⁸ Chapter 15 of the manual.

⁴⁹ This includes data from cooperating exporters subject to the INV 507.

As a starting point, the commission considered the relationship between a key physical characteristic of a power transformer, being power rating, and its CTMS.

Figure 1 shows that as the power rating of a power transformer increases, so too does the CTMS. The commission's analysis indicates that there is a linear relationship between power rating and the CTMS.

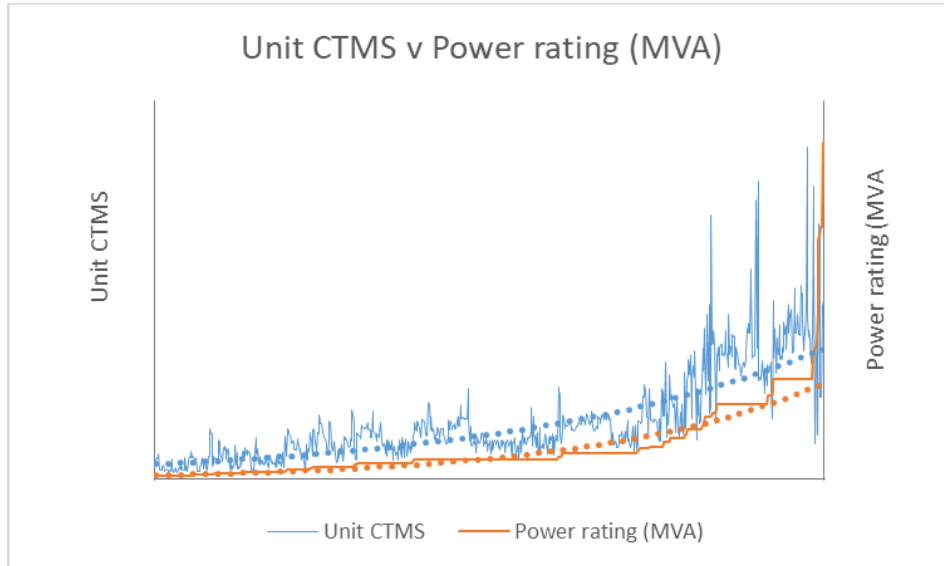


Figure 1: Relationship between unit CTMS and power rating (MVA), all verified data

The commission further analysed the verified domestic sales and cost data available. The commission found positive strong linear relationship between CTMS and price. The CTMS of a power transformer is approximately 94% of its price.

Figure 2 shows that, although there is a strong correlation between CTMS and price, there is some degree of variation from the general trend, with relatively few outliers.

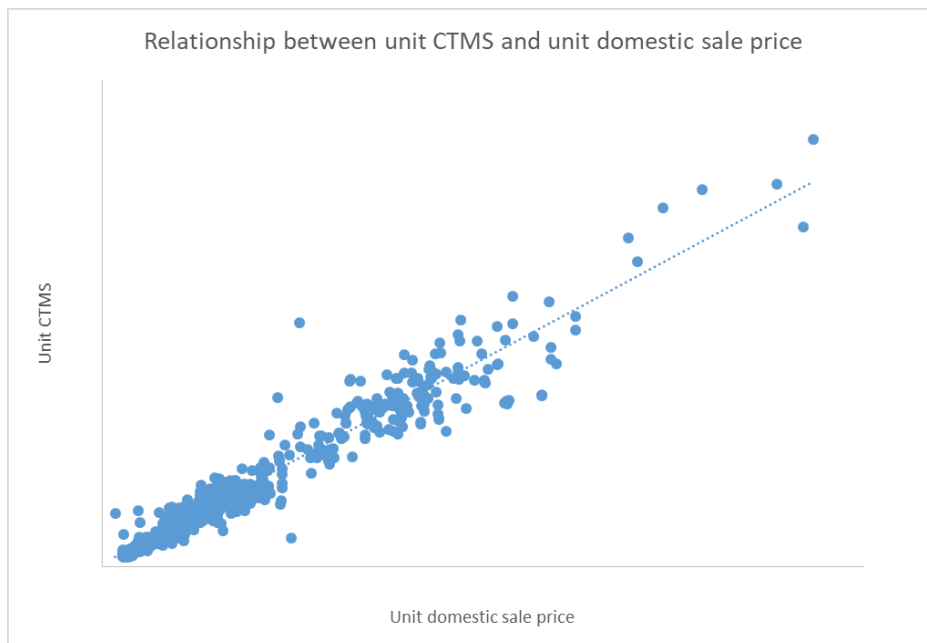


Figure 2: Scatterplot - all verified exporter data – price v CTMS

The commission also examined the profit margins of each domestic sale and found no evidence of a uniform trend.

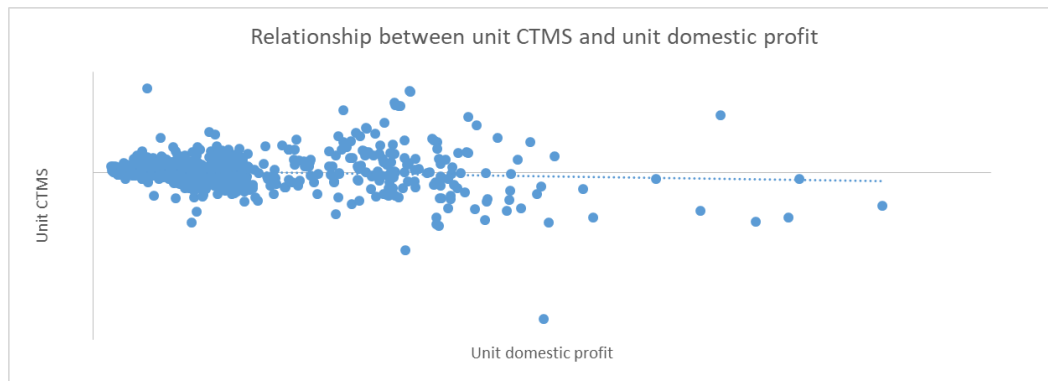


Figure 3: Scatterplot - all verified exporter data - profit v CTMS

The commission's interpretation of its analysis is that, while power rating alone is a factor that influences prices to a substantial degree, other factors likely influence prices. Figure 2 reflects the variability between cost and price while Figure 3 shows the resulting non-uniform profit.

The commission considers that using cost differences between exported goods and domestically sold like goods, based on the exporter records, best reflects the differences in physical characteristics of exported goods and domestically sold like goods. The differences between these costs is a reasonably accurate basis to adjust for a range of physical characteristics affecting price.

Therefore, the commission considers that domestic prices determined under section 269TAC(1) can be adjusted using section 269TAC(8).

While there may be factors other than cost that drive price comparability, in the absence of information as to how this can be reliably quantified, the commission considers it would be preferable not to use factors other than cost when determining an adjustment under section 269TAC(8).

The commission's analysis of the relationships between power rating, costs, prices and profits is at **Confidential Attachment 1**.

Calculation of adjustment for physical differences

As outlined in the manual, an adjustment for physical differences may be required to ensure a fair comparison between exported goods and domestically sold goods that are not identical.

The legislation does not specify the methodology by which such an adjustment must occur. It simply directs the adjustment to normal value occur 'in accordance with directions by the Minister so that those differences would not affect its comparison with that export price'.⁵⁰ The manual contemplates such situations where cost differences are used as the basis for adjustments to account for physical characteristics. In such

⁵⁰ Refer to section 269TAC(8).

circumstances it is relevant to add a profit margin and SG&A expenses to the cost difference to translate this into a price difference.

To adjust for differences in physical characteristics that affect price, the commission established a domestic 'market price' for power transformers identical to the exported models. A comparison between this market price and the weighted average sales price of like goods, sold at arms length in the OCOT, determined the size of the adjustment. The commission then applied this adjustment to the sales of all like goods sold in the OCOT.

The commission considers the approaches outlined above create a reasonable estimate of the price of those models of power transformers exported to Australia, if those models were sold on the domestic market in China. This is on the basis that:

- using the cost to make of power transformers sold to the export market accounts for the cost based differences between domestic and export models
- it is reasonable to assume that there is a cost to sell the goods on the domestic market that is different to that of export sales
- using a domestic profit allows a fair comparison between prices achievable on the domestic market and exported goods.

It may be argued that this approach under section 269TAC(1) results in the same outcome that would be achieved if determining the normal value in accordance with section 269TAC(2)(c). However, the commission considers that it is open to the Minister to take such an approach if it achieves the objective of a fair comparison. This is particularly applicable for goods that are bespoke like power transformers where other methods for making adjustments are not practical.

The commission recommended the same approach in the reinvestigation of *Continuation Inquiry No 487* regarding wind towers exported from China and the Republic of Korea.⁵¹ Wind towers and power transformers are both customised goods, produced to individual customer specifications. This customisation results in significant differences in the physical characteristics of each sale.

Alternate methods which the commission considered for calculating an adjustment for physical differences included:

- a comparison of the weighted average of domestic cost to make like goods and export cost to make goods
- a comparison of the closest domestic power transformer and adjust according to differences between the weighted average of all of all export costs.

However, the commission considers that each power transformer, even of the same power rating, is bespoke. As such, prices vary greatly between distinct projects. Unique factors, such as environmental factors, technical requirements and customer specifications feed into the cost and ultimate price of each power transformer.

⁵¹ The ADRP, in ADRP Report 100, recommended the same approach to the Minister, with a change to the original calculations to remove the uplift of certain costs, refer to paragraph 139 of ADRP Report 100. This is not relevant in INV 507A as the commission did not apply an uplift to any costs.

Therefore, although the CTMS of each power transformer has a strong correlation to its power rating, the CTMS has a much stronger correlation with the selling price, thus demonstrating the premise that many other cost factors affect the selling price of a power transformer.

The commission, therefore, considers that using a domestic 'market price' to inform the adjustment, allows for a comparison between like goods as if they are identical to the goods exported, while still using sales of like goods as the basis for the comparison. Due to the bespoke nature of power transformers, the commission considers that this is the most reasonable approach to calculating the price differences that affect comparison of like goods that are not identical in all respects.

To determine the domestic market price for exported models, the commission calculated an amount, using data from the cooperating exporters' records.

In relation to CHINT, the commission calculated the domestic market price as:

- the cost to make the goods exported to Australia
- a proportion of SG&A expenses for like goods sold on the domestic market
- the profit achieved in the sales of all like goods sold in the OCOT.

The commission notes that its amended approach to determining OCOT sales in this report has changed the OCOT profit calculated for CHINT in TER 507.⁵²

The commission was unable to use GE Wuhan's own data to calculate an OCOT profit as a result of the amended approach to determining OCOT sales in this report. Therefore, in relation to GE Wuhan, the commission calculated a domestic market price for export models as:

- the cost to make the goods exported to Australia
- a proportion of SG&A expenses for like goods sold on the domestic market
- the weighted average of the verified actual profit amounts realised for the sale of all like goods sold on the domestic market by all cooperating exporters.⁵³

The normal values, and therefore dumping margins, have changed between TER 507 and TER 507A. This change, however, is driven by the adoption of the OCOT test approach set out in ADRP Report 119 (as discussed in section 3.3.2), rather than a shift from determining normal value in accordance with section 269TAC(2)(c) to section 269TAC(1).

⁵² Section 3.3.2.

⁵³ This includes the actual profit amounts realised by the all cooperating exporters in INV 507 and INV 507A.

3.3.4 Submissions received in response to the commission's revised approach to calculating normal values

Submission by WTC

In a submission dated 28 October 2021, WTC stated that it considers that the commission's approach in calculating normal value under section 269TAC(1) is 'highly prejudicial'.⁵⁴ WTC did not provide reasons for why section 269TAC(1) is not appropriate.

As stated above in section 3.3.1, where the commission finds that domestic sales of like goods are arms length and in the OCOT, they are relevant sales for the purpose of section 269TAC(1). The commission has found that both cooperating exporters have made relevant sales for the purpose of section 269TAC(1).

In addition, WTC also stated that it considers that it is 'highly unlikely' that the normal value calculated under section 269TAC(1), and adjusted under section 269TAC(8), accurately reflects the true normal value.⁵⁵ WTC provided a list of factors that it considers would affect a comparison between power transformers sold domestically in China and those exported to Australia.⁵⁶

The commission does not disagree that there are differences between the exported goods and domestically sold like goods. The exported goods and domestically sold like goods are nonetheless like goods because they have characteristics closely resembling those of the goods under consideration. As detailed in section 3.3.3, the commission has accounted for the relevant differences where possible in its adjustment. It is not possible for the commission to precisely quantify each factor identified by WTC in its submission in making such adjustment. However, the commission considers that the:

- cost to make of the exported goods
- domestic SG&A expenses
- domestic profit

form a reasonable basis for an adjustment which captures the differences between the exported goods and domestically sold like goods. This reasonable basis allows a proper comparison between exported goods and domestically sold like goods.

WTC further made comments on the calculation of normal values for CHINT, CTC, GE Wuhan and Jiangsu Huapeng.⁵⁷

In regards to CHINT and GE Wuhan, WTC contends that the change in calculating normal values from under section 269TAC(2)(c) to section 269TAC(1) has resulted in an 'inaccurate' normal value. As detailed in section 3.3.3, the method of calculating the adjustment under section 269TAC(8) results in a normal value under section 269TAC(1) similar to that calculated under section 269TAC(2)(c). As later stated in that section, the

⁵⁴ EPR 507, item 85, p 4.

⁵⁵ EPR 507, item 85, p 5.

⁵⁶ EPR 507, item 85, p 4.

⁵⁷ EPR 507, item 85, p 6.

changes to the normal value have occurred due to the commission's re-assessment of the OCOT test, as discussed in section 3.3.2.

WTC notes that Jiangsu Huapeng's dumping margin significantly reduced from 40.5% to 12.1% from SEF 507 to SEF 507A. WTC submits that given Jiangsu Huapeng's normal value has been determined as the weighted average normal value of the 2 cooperating exporters (CHINT and GE Wuhan) and based on WTC's submission regarding these 2 cooperating exporters above, the dumping margin for Jiangsu Huapeng should be re-assessed. The commission considers that there is no basis for changing the normal value calculations for CHINT and GE Wuhan, and accordingly has not re-assessed the dumping margin for Jiangsu Huapeng.

WTC queried how CTC's dumping margin changed between SEF 507 and SEF 507A, when the method of calculating the normal value remained the same. As with the other normal value calculations, the changes to CTC's normal value are predominantly due to the commission's application of the OCOT test and the resulting effects on profit.

Submission by GE Wuhan

In its submission of 9 March 2022, GE Wuhan address the submissions made by WTC.⁵⁸ The commission previously calculated the normal value for GE Wuhan under section 269TAC(2)(c) and has now used section 269TAC(1). WTC argued that this methodology is prejudicial to them, and GE Wuhan submit that this is irrelevant as the methodology utilised should be based on the correct application of the legislation, not on which will produce the most advantageous dumping margin for the Australian industry.

Additionally, GE Wuhan contests that the use of section 269TAC(1) is not prejudicial as it uses the same costs of production, and WTC's claim that it produces artificially low normal values is incorrect.

GE Wuhan also attributes the main difference in dumping margin calculation to the calculation of its profits. GE Wuhan notes that although WTC has stated that using section 45(2) of the Regulations is more accurate, it has offered no criticism of the calculation of the profit and does not have access to GE Wuhan's confidential financial information to be able to determine the most accurate calculation method.

3.4 Dumping assessment – CHINT

3.4.1 Verification

The commission elected to conduct a desktop verification of CHINT's REQ, based on its share of volume of exports during the investigation period.

The desktop verification satisfied the Commissioner that the information contained in CHINT's REQ is accurate, relevant and complete. Therefore, CHINT's data is suitable to use in calculating a dumping margin.

⁵⁸ EPR 507, item 87.

A report covering the verification findings is available on the EPR.⁵⁹

3.4.2 Export price

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

- CHINT is the exporter of the goods to Australia
- sales are at arms length terms.

CHINT exports the goods to Australia either direct to the Australian purchaser, on delivered duty paid (DDP) terms, or through a related trading company on free on board (FOB) terms. For the DDP sales, CHINT is both the exporter and importer and for the FOB sales there is a trading company involved. Therefore, in both scenarios the importer does not purchase the goods from the exporter. Accordingly, the commission considers export price cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b).

Therefore, export price is determined under section 269TAB(1)(c) as:

- the DDP invoice price less all post exportation costs for export sales on DDP terms
- the price paid to CHINT by the trading company for export sales sold through that trading company.

3.4.3 Normal value

In TER 507 the commission was satisfied that there was an absence of relevant sales of like goods sold in the Chinese market. As a consequence the normal value of the goods exported to Australia could not be determined under section 269TAC(1).

As outlined in section 3.3 above, the commission now considers that CHINT's domestic sales of like goods are relevant for determining normal value in accordance with section 269TAC(1). On re-examination, the commission subsequently considers there are sufficient volumes of relevant domestic sales, sold by CHINT in OCOT, of like goods. The Commissioner is, therefore, satisfied that the prices paid in respect of those domestic sales of like goods are suitable for determining the normal value under section 269TAC(1).

3.4.4 Adjustments to normal value

To ensure the comparability of normal values to export prices, the commission made adjustments, in line with section 269TAC(8) as follows:

⁵⁹ EPR 507, item 56.

Adjustment type	Rationale for adjustment	Deduction/addition
Domestic credit	Different payment terms for domestic sales	Deduct the cost of domestic credit
Market price adjustment	Due to the bespoke nature of power transformers an adjustment is required to remove physical characteristic differences that affect price in relation to like goods that are not identical to the exported goods	Add the difference between the weighted average domestic sales price sold in OCOT and the market value of export goods on the domestic market
Export inland transport and handling	Power transformers sold for export had different inland transport and handling expenses	Add the cost of export inland transport and handling
Export credit	Different payment terms for export sales	Add the cost of export credit

Table 6: Adjustments to CHINT's normal value

3.4.5 Dumping margin

The commission has calculated the dumping margin for CHINT as **6.9%**.

The commission's calculations are included at **Confidential Attachments 2 to 5**.

3.5 Dumping assessment – CTC

3.5.1 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.

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.⁶⁰

As outlined in section 2.1.3 above and for reasons outlined in the visit report, 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.

Certain data that CTC provided was verified by the commission and has been relied upon as relevant information by the Commissioner. Other data was considered by the Commissioner to be unreliable and has been substituted with relevant information as set out below.

3.5.2 Export price

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

⁶⁰ EPR 507, item 45.

The commission verified the export data CTC provided, and the Commissioner considers it relevant for determining an export price.

The commission is satisfied that the goods exported by CTC:

- have been exported to Australia otherwise than by the importer – that is, by CTC the exporter
- have been purchased by the importer from the exporter
- were purchased by the importer arms length transactions.

The export price determined for CTC, therefore, is the price paid by the importer at the FOB level, less any costs arising after exportation.

3.5.3 Normal value

The Commissioner has determined the normal value for CTC, an uncooperative exporter, having regard to all relevant information in accordance with section 269TAC(6). The commission assessed the assessed the appropriate method by which to determine normal value.

Certain cost information provided by CTC is considered to be complete, relevant and accurate, and therefore, suitable for determining the normal value. However, the commission found CTC's domestic sales data was unreliable. As a consequence, the commission cannot use the domestic price information provided by CTC to determine a normal value. The domestic price information was disregarded in accordance with section 269TAC(7).

The commission has determined CTC's normal value by taking the sum of the below amounts:

- CTC's cost to make the goods exported to Australia
- CTC's SG&A expenses on the assumption that the goods, instead of being exported, were sold domestically (at ex-works terms)
- an amount for profit based on the weighted average of the verified actual amounts realised from all sales of like goods by other exporters on the Chinese domestic market.⁶¹

3.5.4 Adjustments to normal value

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

⁶¹ This includes the actual profit amounts realised by the all cooperating exporters in INV 507 and INV 507A.

Adjustment type	Rationale for adjustment	Deduction/addition
Export packing	Power transformers sold for export had different packaging expenses	Add the cost of export packing
Export inland transport and handling	Power transformers sold for export had different inland transport and handling expenses	Add the cost of export inland transport and handling
Export credit expenses	Different payment terms for export sales	Add the cost of export credit expenses

Table 7: Adjustments to CTC's normal value

3.5.5 Dumping margin

The commission has calculated the dumping margin for CTC as **3.9%**.

The commission's calculations are included at **Confidential Attachments 6 to 9**.

3.6 Dumping assessment – GE Wuhan

3.6.1 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.⁶²

3.6.2 Export price

Having regard to the findings contained in GE Wuhan's verification report, the commission is satisfied that the goods exported by GE Wuhan:

- have been exported to Australia otherwise than by the importer – that is, by GE Wuhan, the exporter
- have been purchased by the importer from the exporter
- were purchased by the importer in arms length transactions.

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

3.6.3 Normal value

In TER 507 the commission was satisfied that there was an absence of relevant sales of like goods sold in the Chinese market. As a consequence the normal value of the goods exported to Australia could not be determined under section 269TAC(1).

⁶² EPR 507, item 49.

As outlined in section 3.3, the commission now considers that GE Wuhan's domestic sales of like goods are relevant for determining normal value in accordance with section 269TAC(1). On re-examination, the commission subsequently considers there are sufficient volumes of relevant domestic sales, sold by GE Wuhan in the OCOT, of like goods. The Commissioner is, therefore, satisfied that the prices paid in respect of those domestic sales of like goods are suitable for determining the normal value under section 269TAC(1).

3.6.4 Adjustments to normal value

To ensure the comparability of normal values to export prices, the commission made adjustments, in line with section 269TAC(8) as follows:

Adjustment type	Rationale for adjustment	Deduction/addition
Market price adjustment	Due to the bespoke nature of power transformers an adjustment is required to remove physical characteristic differences that affect price in relation to like goods that are not identical to the exported goods	Add the difference between the weighted average domestic sales price sold in OCOT and the market value of export goods on the domestic market
Export inland transport and handling	Power transformers sold for export had different inland transport and handling expenses	Add the cost of export inland transport and handling
Export packing	Power transformers sold for export had different packing costs	Add the actual packaging costs
Export Warranty expenses	Different warranty costs were accrued in relation to export sales	Add the actual warranty costs accrued or incurred
Export credit	Different payment terms for export sales	Add the cost of export credit

Table 8: Adjustments to GE Wuhan's normal value

3.6.5 Dumping margin

The commission has calculated the dumping margin for GE Wuhan as **12.1%**.

The commission's calculations are included at **Confidential Attachments 10 to 13**.

3.7 Dumping assessment – Jiangsu Huapeng

3.7.1 Verification

The commission elected to conduct a desktop verification of Jiangsu Huapeng's REQ, based on its share of volume of exports during the investigation period. As part of this process, the commission sought additional information from Jiangsu Huapeng in support of its REQ.

Having assessed Jiangsu Huapeng's REQ and subsequent responses, the commission considered the information provided contained deficiencies. The nature and scope of the deficiencies were extensive. Therefore, the commission informed Jiangsu Huapeng that key information, considered inaccurate and unreliable, is not suitable for determining variable factors.

The commission notified Jiangsu Huapeng that it may use any relevant information with regard to findings it makes in respect to the exporter.

3.7.2 Export price

The Minister may disregard any information considered unreliable for the purpose of determining an export price.⁶³ The Commissioner proposes that the Minister disregard the export sales information provided by Jiangsu Huapeng, on the basis that it is unreliable.

The Commissioner is also satisfied, in accordance with section 269TAB(3), that sufficient information has not been provided, or is not available, to determine the export price under the preceding sections.

As such, the export price for Jiangsu Huapeng must be determined under section 269TAB(3), having regard to all relevant information. Specifically, the export price has been determined as the weighted average export price of CHINT and GE Wuhan.

3.7.3 Normal value

The Minister may disregard any information considered unreliable for the purpose of determining normal value.⁶⁴ The Commissioner proposes that the Minister disregard the normal value information provided by Jiangsu Huapeng, on the basis that it is unreliable.

The Commissioner is also satisfied, in accordance with section 269TAC(6), that sufficient information has not been provided, or is not available, to determine the normal values under the preceding sections.

As such, the normal value for Jiangsu Huapeng must be determined under section 269TAC(6), having regard to all relevant information. Specifically, the normal value has been determined as the weighted average normal value of CHINT and GE Wuhan.

3.7.4 Dumping margin

The commission has calculated the dumping margin for Jiangsu Huapeng as **11.7%**.

The commission's calculations are included at **Confidential Attachment 14**.

3.8 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 and normal values are to be determined by the Minister in accordance with sections 269TAB(3) and 269TAC(6), respectively.

The commission has determined the export price after having regard to all relevant information. The weighted average export price of the cooperating exporter with the highest dumping margin is relevant information in this circumstance. Accordingly, the

⁶³ Section 269TAB(4).

⁶⁴ Section 269TAC(7).

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commission determined the export price for uncooperative and all other exporters as the same as that exporter.

The commission has determined the normal value after having regard to all relevant information. The normal value of the cooperating exporter with the highest dumping margin is relevant information in this circumstance. Accordingly, the commission determined a normal value for uncooperative and all other exporters as the same as that exporter, less any favourable adjustments.

The dumping margin for uncooperative and all other exporters is **12.1%**.

The commission's calculations are included at **Confidential Attachments 15 and 16**.

4 ASSESSMENT OF TENDERS

4.1 Summary

Sales of power transformers in the Australian market are predominately awarded through tender processes. The commission isolated 68 tenders relevant to the investigation period relating to the supply of 102 power transformers. The commission narrowed those 68 tenders down to 8 projects that involved the subject exporters.⁶⁵ Accordingly, the commission focusses its assessment of whether injury was caused by dumped goods on those 8 projects in chapter 5.

4.2 Approach to assessing tenders

4.2.1 Background

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. Manufacturing power transformers involves significant capital expenditure and long lead times. The purchase of power transformers is generally conducted through a competitive tender process. When a purchaser plans to buy a new or replacement transformer, it generally puts out a request for quotation, detailing the specifications of the unit. Domestic and/or overseas manufacturers will then bid on the project and confirm their ability to meet the specifications and required time line for delivery and installation.

To determine whether the Australian industry experienced material injury caused by dumped goods from the subject exporters during the investigation period, the commission gathered information about tenders for power transformers in the Australian market.

The commission isolated 68 tenders awarded during the investigation period that related to the supply of 102 power transformers. The commission categorised these tenders into the following 4 categories:

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

For categories 1 and 2, the commission considers that WTC was in direct competition for the supply of power transformers with Chinese manufacturers.

For categories 3 and 4, the commission considers that WTC has not suffered injury as a result of dumping from Chinese exporters.

⁶⁵ Due to the confidential nature of information, more details regarding the commission's tender evaluation of the 8 projects is contained in **Confidential Appendix 1**.

In a submission dated 28 October 2021, WTC stated that it still may have experienced injury in situations in which it did not make a formal bid.⁶⁶ WTC claims that there may be situations in which it was not invited to make a bid, due to the influence of dumped exports of the goods from China. The commission considered such situations in TER 507. The commission recalls from section 8.4.5 of TER 507 that there are many reasons that WTC may not bid for certain projects, including:

- WTC elected not to submit a formal bid
- WTC provided a budget or indicative bid rather than a formal bid
- WTC was unaware of the tender.

The commission remains satisfied in this report that that there was no link between these circumstances and dumped exports of the goods from China.⁶⁷

4.2.2 Projects won by WTC in direct competition with Chinese exporters

The commission gathered bid information from various parties for tenders in which WTC was the successful bidder, and also discussed the evaluation criteria with the purchasers. In some of these cases, there were multiple bids from importers.

The commission gathered bid information for 10 tenders and found that WTC was successful in winning 5 of those tenders despite being the higher priced bid. Of those 5 tenders, 4 were won in competition against exporters found to not be dumping and one against an exporter found to be dumping. In relation to this fifth tender, the commission found that while WTC was the higher priced bid, it was successful on a 'value for money' basis.

This analysis indicates that WTC has been able to win tenders despite having the higher priced bid, which supports the commission's understanding of the importance of non-price factors in the evaluation of tenders.

In a submission dated 28 October 2021, WTC submitted that its successful bids do not indicate there being no injury in those instances, as the prices at which it won were injuriously low.⁶⁸

As detailed in TER 507, the commission found that there is limited visibility of competitor pricing in the tender process.⁶⁹ The commission also found that it is a key feature of the tender process for participants to provide revised bids, whether voluntarily or in response to purchaser prompting. The opaque nature of the tender process, coupled with the ability of participants to win bids despite being the higher price reduces the potential for a causal link between dumped prices and the bids submitted by the Australian industry.

⁶⁶ EPR 507, item 85, p 10.

⁶⁷ EPR 507, item 76, sections 8.4.5, 8.4.6 and 8.4.7.

⁶⁸ EPR 507, item 85, p 10.

⁶⁹ EPR 507, item 76, section 8.5.2.

The commission therefore remains satisfied in this report that the Australian industry has not suffered injury in relation to their successful bids in direct competition with Chinese exporters.

4.2.3 Projects won by Chinese exporters in direct competition with WTC

Chinese manufacturers, either directly or through their Australian affiliates, successfully tendered for 27 projects, involving the supply of 39 power transformers, where WTC submitted a formal bid. Of these 27 projects, exporters found not to be dumping won 18.⁷⁰ Accordingly, the commission does not attribute injury to the Australian industry from the loss of these tenders to dumping.

For the supply of one project, CTC did not export the power transformer at a dumped price.⁷¹ Therefore, the commission does not attribute injury to the Australian industry from the loss of this tender to dumping.

The remaining 8 projects are relevant to the subject exporters in this report. To assess these 8 projects, the commission adjusted the subject exporters' bid prices to remove the effects of dumping. The commission identified projects where, once the effects of dumping are removed:

- WTC would have been the lowest bidder
- WTC would have remained the more expensive bidder.

These 8 projects are examined in more detail in chapter 5.

⁷⁰ Siemens (Jinan) and Siemens (Wuhan) won 17 projects and ABB Chongqing won one project.

⁷¹ As detailed in section 3.5, CTC was found to be dumping overall on a weighted average basis.

5 HAS DUMPING CAUSED MATERIAL INJURY?

5.1 Finding

The Commissioner is satisfied that injury to the Australian industry, if any, as a result of dumped exports of the goods by the subject exporters from China is negligible.

5.2 ADRP's revocation of TER 507 under section 269TDA(13)

In TER 507, having evaluated 68 tenders in the investigation period, and isolating the competition between WTC and the subject exporters to 8 projects, the commission assessed the 8 projects and was satisfied that injury to the Australian industry, caused by dumped exports from China, if any, was negligible.

On this basis, the then Commissioner terminated the investigation for the subject exporters under section 269TDA(13).

The ADRP revoked the former Commissioner's decision for the reasons in ADRP Report 122/123.⁷²

In its review application to the ADRP, WTC argued that the former Commissioner:

...wrongly concluded that the injury caused to the Australian industry was negligible. He ought to have concluded that the injury, specifically the loss of the chance to be a successful tenderer in respect of a number of identified projects, was material injury.⁷³

The ADRP reviewed the commission's analysis of the 8 projects.

In ADRP Report 122/123, the ADRP agreed with the commission's findings that projects 1 to 6 would not likely have been won by WTC in the absence of dumping.

The ADRP noted that, in TER 507, the commission did not reach a definitive conclusion about the likely outcome for projects 7 and 8 in the absence of dumping. The ADRP considered that, as the commission could not reach a definitive conclusion about projects 7 and 8 in the absence of dumping, the Commissioner was not able to be satisfied that any injury to WTC caused by dumping in relation to the loss of projects 7 and 8 was negligible.⁷⁴

In the context of project 7, the ADRP stated that the commission was entitled to accept that market differentiation based on power transformer (power rating) size was a significant factor in WTC being unsuccessful for certain tenders.⁷⁵

⁷² ADRP Report 122/123, paragraph 2. In that report the ADRP affirmed the former Commissioner's decision to terminate INV 507 with respect to ABB Chongqing, ABB Zhongshan, Siemens (Jinan) and Siemens (Wuhan).

⁷³ ADRP Report 122/123, paragraph 4.

⁷⁴ ADRP Report 122/123, paragraph 93 and 96.

⁷⁵ ADRP Report 122/123, paragraph 91.

At paragraph 94, the ADRP states that it appears that WTC ‘was more likely than not to have been the successful tenderer for project 8 in the absence of dumping’. The ADRP further stated that ‘I am not persuaded that the applicant [WTC] was likely to have been the successful tenderer in respect of the seven other identified projects but for dumping’.⁷⁶

The ADRP concluded that it was not satisfied that the injury caused by dumping was negligible. However, it was not able to assess whether WTC’s loss of project 8 due to dumping would amount to material injury.⁷⁷

Noting the ADRP’s comments, the commission has re-assessed projects 1 to 8 in this report, paying particular attention to projects 7 and 8.

As a result of the re-assessment, the commission has reached a definitive conclusion that WTC would not have likely won projects 7 and 8 in the absence of dumping.

This in turn has enabled the Commissioner to be satisfied that the injury, if any, to WTC caused by dumping was negligible

5.3 Re-assessment of projects 1 to 8

5.3.1 Summary

The commission does not consider that WTC would likely have won any of projects 1 to 8 in the absence of dumping.

The commission has reached this conclusion this after re-assessing the tenders for projects 1 to 8 using the same methodology taken in TER 507.

Chapter 3 of this report shows that the dumping margins calculated for the subject exporters during the investigation period are different from those in TER 507.⁷⁸ When adjusted to remove the effects of dumping using the revised dumping margins, the commission found that WTC’s bid price was higher than a successful subject exporter’s bid price for 7 of the 8 projects. The remaining project was likely won by a subject exporter for non-price reasons.

5.3.2 Methodology for removing the effect of dumping from subject exporter bid prices

To remove the effects of dumping from the subject exporters’ bid prices, the commission has added an amount of dumping based on the FOB value of the goods to the original bid price.⁷⁹ The commission used two methods for this adjustment, the aim being to increase the accuracy of the calculation by maximising the verified information available:

⁷⁶ ADRP Report 122/123, paragraph 94.

⁷⁷ ADRP Report 122/123, paragraphs 96 and 97.

⁷⁸ Section 3.3 of this report outlines the amended approach taken in INV 507A.

⁷⁹ *Adjusted bid price = FOB value × dumping margin + original bid price.*

- where the commission was able to calculate the amount of dumping for the specific power transformer based on verified information, it added the amount of dumping specific to the power transformer to the FOB value.
- where the commission was not able to calculate a dumping margin for the specific power transformer, it added the weighted average dumping margin applicable to the relevant exporter to the FOB value.⁸⁰

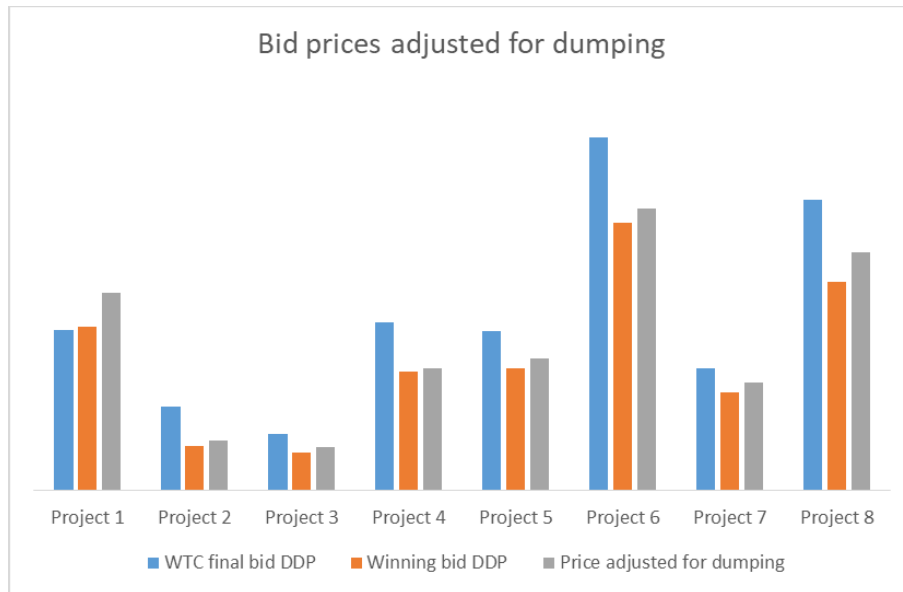


Figure 4: WTC tenders lost against dumped imports

5.3.3 Re-assessment of projects 1 to 8

No injury in relation to project 8

Given the ADRP's conclusion that WTC was more likely than not to have been the successful tenderer for project 8 in the absence of dumping, the commission has addressed project 8 first.

The ADRP's conclusion was based on the dumping margins in TER 507.

The commission has revised the dumping margins in this report and re-assessed the tender for project 8 having regard to the revised dumping margins. Based on this re-assessment, the commission concludes that WTC was unlikely to have won project 8.

The commission analysed the tender for project 8 and observed that price was a significant factor in the purchaser's decision to award project 8 to a successful subject exporter.

The commission adjusted the subject exporter's bid prices to remove the effects of dumping using the methodology outlined above. The subject exporter's adjusted bid price is below WTC's bid price. This in itself may not be conclusive for project 8, noting that

⁸⁰ 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.

WTC won other projects in the investigation period despite being a higher priced bidder than its competitors. Accordingly, the commission considered whether WTC would likely have won project 8 despite being the higher priced bidder, in the absence of dumping.

To inform this consideration, the commission established a threshold range, based on the instances where WTC was a successful bidder in a project during the investigation period despite being a higher priced bidder than its competitors.⁸¹

The commission found that, for project 8, the difference between the subject exporter's adjusted winning bid price and WTC's bid price was above the established threshold range.⁸² In the case where a purchaser awards a tender solely on price, the commission considers it unlikely that WTC would be successful in any of the tenders above the threshold range. This is an indicator that WTC is unlikely to have won project 8 in the absence of dumping. The commission did not identify any non-price factors for project 8 which would alter this conclusion.

The commission concludes that it is unlikely that WTC would have won the tender for project 8 in the absence of dumping.

No injury in relation to project 7

The ADRP appeared to accept that WTC was unlikely to have been the successful tenderer for project 7 in the absence of dumping. Even so, noting that the ADRP commented specifically on the commission's conclusions for project 7 in TER 507, the commission has addressed project 7 second.

The commission considers that WTC did not experience injury from dumped goods in relation to project 7.

The commission discussed the tender evaluation process with the purchaser and received internal documentation for project 7. The purchaser's evaluation took into account price and non-price factors including technical and commercial considerations. More than one tenderer satisfied the technical requirements of the project and despite there being commercial considerations, the tender was ultimately awarded to the lowest priced bidder, being a subject exporter.

As a result of the changes to the dumping margins in this report, the difference between the subject exporter's adjusted winning bid price and WTC's bid price is larger than in TER 507. The subject exporter remains the lower priced bidder which given the internal documents indicates that the subject exporter would have won project 7 in the absence of dumping. The terms of the internal documentation indicate that no other outcome was possible in these circumstances. This is a distinguishing feature compared to project 8.

On this basis, the commission is satisfied that WTC would not have won the tender for project 7 in the absence of dumping.

⁸¹ Based on verified information and evaluation of projects won by WTC where its bid is more expensive than its competitors. The commission's assessment of projects won by WTC are at **Confidential Attachment 18**.

⁸² Where the winning bid has been adjusted for dumping.

No injury in relation to projects 1 to 6

The commission's conclusions in relation to projects 1 to 6 have remained unchanged from those in TER 507. However, for completeness each project was re-examined in light of the revised dumping margins.

For project 1, WTC's bid was lower than the successful subject exporter's bid, before adjusting the bid to remove the effects of dumping. Despite this, WTC was unsuccessful in this tender. The information received by the commission indicates that non-price factors contributed to the purchaser's decision not to award the project to WTC. In the absence of dumping, WTC would not have won this tender. The commission considers that WTC did not experience injury in relation to project 1 due to dumped goods.

For projects 2 to 6, the commission adjusted the successful exporter's bid price to remove the effects of dumping. For each project, the successful exporter's adjusted bid price was lower than WTC's bid price. As with project 8, the commission evaluated projects 2 to 6, adjusted to remove the effects of dumping, against a threshold range. The commission's re-assessment of the tenders has found that the price difference between WTC's bid and the winning bid for projects 2 to 6 was above the established threshold range. In the case where a purchaser awards a tender solely on price, the commission considers it unlikely that WTC would be successful in any of the tenders above the threshold range.

The commission considers that WTC did not experience injury in relation to projects 2 to 6 due to dumped exports of the goods from China.

For projects 2 to 4, this result is consistent with that in TER 507.

For projects 5 and 6, there is a slight nuance. In TER 507, the commission found that the price differential for projects 5 and 6 were within the established threshold range. Project 5 involved the purchaser's use of an objective, broad-ranging, evaluation criteria that encompassed various technical and commercial considerations. In TER 507, the commission considered that based on these considerations WTC would not have won project 5 in the absence of dumping. Further in TER 507, the Commission concluded that, if the tender for project 6 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.

As a result of the revised dumping margins in this report, the difference between WTC's bid and the successful subject exporters' bids for projects 5 and 6, adjusted to remove the effects of dumping, is no longer within the threshold range. In addition to the reasons outlined in TER 507, the adjusted bid prices in this report reinforce that projects 5 and 6 are unlikely to have been won by WTC in the absence of dumping.

Due to the confidential nature of information, more details regarding the commission's tender evaluation of the 8 projects is contained in **Confidential Appendix 1**.

WTC submissions to SEF 507A

As discussed in section 3.3.4, in a submission dated 28 October 2021, WTC disagreed with the commission's calculation of the normal values. In that same submission, WTC

states that using normal values calculated under section 269TAC(1) would lead the re-assessment of the above projects to be 'incorrect'.⁸³

As detailed in chapter 3, the commission considers that section 269TAC(1) is the correct section for the calculation of normal values, where appropriate. Accordingly, the commission considers that it has appropriately re-assessed the above projects as a result of the changes to the normal values which consequently impacted the dumping margins.

Also in its submission dated 28 October 2022, WTC stated that the commission's assessment of the 8 projects using a threshold range would only encourage Chinese exporters to further export at dumped prices.⁸⁴ WTC's argument presumes that Chinese exporters would export at such low prices that WTC's bids would never be within the threshold.

The commission has adjusted for the level of dumping when assessing whether WTC's bids are within the threshold range. Regardless of the level of dumping, if WTC's bid is above the threshold range, it is unlikely to have won the project. It is not enough for the commission to find that WTC has experienced material injury from low prices. It must be shown that the material injury is caused by dumping.

5.4 Conclusion

After re-assessing projects 1 to 8, the commission found that WTC's bid remained higher for 7 of the 8 projects after adjusting the winning bid for the effects of dumping.

Regarding project 1, the purchaser considered non-price factors when awarding the tender. Despite WTC submitting a lower bid, the purchaser did not award the tender to WTC.

The price differential between WTC's bid and the winning bid for 6 of the remaining 7 projects is above a threshold range whereby the commission considers it likely that a purchaser would award a project to WTC as the highest bidder.

For one project, project 7, the commission considers the purchaser's decision to award the tender was based on the lowest bid. Given that the subject exporter's bid, when adjusted to remove the effects of dumping, remains lower than WTC's bid, WTC would not have been the successful bidder.

Therefore, based on the commission's assessment, the Commissioner is satisfied that the injury suffered by WTC, if any, as a result of dumped exports of the goods from China is negligible.

For the reasons detailed above the commission finds that dumping did not cause injury. Detailed observations concerning the various injury factors considered were contained in section 7.5 of TER 507. The ADRP did not express any concerns with the approach taken to analyse these factors in TER 507. The commission's view has not changed in this report.

⁸³ EPR 507, item 85, p 10.

⁸⁴ EPR 507, item 85, p 10.

6 TERMINATION OF INVESTIGATION 507A

Where the Commissioner is satisfied that the injury caused to an Australian industry by dumping of goods from a subject country, is negligible, the investigation must be terminated.

As the Commissioner is satisfied that the injury, caused by dumped exports of power transformers from China, to the Australian industry is negligible, INV 507A as it relates to China must be terminated in accordance with section 269TDA(13).

7 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Tender evaluation approach
Confidential Attachment 1	Analysis of relationships – Physical characteristics
Confidential Attachment 2	CHINT export price
Confidential Attachment 3	CHINT CTMS
Confidential Attachment 4	CHINT normal value
Confidential Attachment 5	CHINT dumping margin
Confidential Attachment 6	CTC export price
Confidential Attachment 7	CTC CTMS
Confidential Attachment 8	CTC normal value
Confidential Attachment 9	CTC dumping margin
Confidential Attachment 10	GE Wuhan export price
Confidential Attachment 11	GE Wuhan CTMS
Confidential Attachment 12	GE Wuhan normal value
Confidential Attachment 13	GE Wuhan dumping margin
Confidential Attachment 14	Jiangsu Huapeng dumping margin
Confidential Attachment 15	Uncooperative and all other normal value
Confidential Attachment 16	Uncooperative and all other dumping margin
Confidential Attachment 17	WTC lost tender analysis
Confidential Attachment 18	WTC won tender analysis
Non-Confidential Attachment 1	List of submissions to TER 507
Non-Confidential Attachment 2	List of submissions prior to SEF 507A
Non-Confidential Attachment 3	List of submissions in response to SEF 507A
Non-Confidential Attachment 4	Summary of submissions to INV 507A

8 NON-CONFIDENTIAL ATTACHMENT 1: LIST OF SUBMISSIONS TO INV 507

EPR number	Date published	Interested party
4	14 April 2019	Toshiba International Corporation Pty Ltd
5	26 April 2019	Siemens ⁸⁵
13	26 April 2019	Toshiba International Corporation Pty Ltd
20	16 May 2019	Wilson Transformer Company Pty Ltd
21	16 May 2019	Wilson Transformer Company Pty Ltd
22	17 May 2019	Toshiba International Corporation Pty Ltd
24	17 May 2019	GE Grid Australia Pty Ltd
30	13 June 2019	GE Grid Australia Pty Ltd
31	18 June 2019	Wilson Transformer Company Pty Ltd
34	25 June 2019	Toshiba International Corporation Pty Ltd
35	25 June 2019	Wilson Transformer Company Pty Ltd
37	28 June 2019	Toshiba International Corporation Pty Ltd
40	23 July 2019	GE Grid Australia Pty Ltd
43	29 July 2019	Toshiba International Corporation Pty Ltd
47	31 July 2019	Toshiba International Corporation Pty Ltd
48	31 July 2019	Changzhou Toshiba Transformer Co., Ltd
51	2 August 2019	Wilson Transformer Company Pty Ltd
52	6 August 2019	GE High Voltage Equipment (Wuhan) Co., Ltd
53	6 August 2019	Changzhou Toshiba Transformer Co., Ltd
54	8 August 2019	Wilson Transformer Company Pty Ltd
60	6 November 2019	Toshiba International Corporation Pty Ltd
61	11 November 2019	GE Grid Australia Pty Ltd
62	12 November 2019	Wilson Transformer Company Pty Ltd
63	21 November 2019	GE Grid Australia Pty Ltd
64	22 November 2019	Voith Hydro GmbH & Co. KG
65	26 November 2019	Wilson Transformer Company Pty Ltd
66	29 November 2019	GE Grid Australia Pty Ltd
67	2 December 2019	Siemens Ltd
69	13 December 2019	Wilson Transformer Company Pty Ltd

⁸⁵ Siemens Transformer (Jinan) Co., Ltd and Siemens Transformer (Wuhan) Co., Ltd, collectively 'Siemens'.

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EPR number	Date published	Interested party
70	20 December 2019	Wilson Transformer Company Pty Ltd
71	14 January 2020	Siemens Ltd
72	16 January 2020	GE Grid Australia Pty Ltd
73	20 January 2020	Wilson Transformer Company Pty Ltd
74	21 January 2020	Toshiba International Corporation Pty Ltd
75	23 January 2020	Siemens Ltd
79	17 July 2020	Toshiba International Corp Pty Ltd
80	17 July 2020	GE High Voltage Equipment (Wuhan) Co., Ltd
81	17 July 2020	GE High Voltage Equipment (Wuhan) Co., Ltd
82	24 July 2020	CHINT Electric Co Ltd
83	24 June 2021	Toshiba International Corporation Pty Ltd
85	29 October 2021	Wilson Transformer Company Pty Ltd
87	9 March 2022	GE High Voltage Equipment (Wuhan) Co., Ltd

**9 NON-CONFIDENTIAL ATTACHMENT 2:
LIST OF SUBMISSIONS PRIOR TO SEF 507A**

EPR number	Date published	Interested party
79	17 July 2020	Toshiba International Corporation Pty Ltd
80	17 July 2020	GE High Voltage Equipment (Wuhan) Co., Ltd
81	17 July 2020	GE High Voltage Equipment (Wuhan) Co., Ltd
82	24 July 2020	CHINT Electric Co., Ltd
83	24 June 2021	Toshiba International Corporation Pty Ltd

**10 NON-CONFIDENTIAL ATTACHMENT 3:
LIST OF SUBMISSIONS IN RESPONSE TO SEF 507A**

EPR number	Date published	Interested party
85	29 October 2021	Wilson Transformer Company Pty Ltd
87	09 March 2022	GE High Voltage Equipment (Wuhan) Co., Ltd

11 NON-CONFIDENTIAL ATTACHMENT 4: SUMMARY OF SUBMISSIONS TO INV 507A

EPR number	Date published	Interested party	Summary
79	17 July 2020	TIC	TIC refers to statements made by the ADRP about project 8. TIC submits that project 8 relates to an actual exporter and cannot be considered to relate to 'all other exporters', and cannot be applied to CTC.
80	17 July 2020	GE Wuhan	<p>GE Wuhan submits that:</p> <ul style="list-style-type: none"> GE Wuhan provided the commission with non-price reasons why it was selected ahead of WTC with regard to a particular project (Project X). With regard to material injury, the ADRP overturned the following decisions of the commission: <ul style="list-style-type: none"> based on the dumping margins calculated during the investigation, WTC was more likely than not to have been the successful tenderer for Project X the injury caused by the loss of Project X was not negligible and that the commission should now determine if Project X alone resulted in WTC suffering material injury. the material injury experienced by WTC since 2013 cannot have been caused by the loss of Project X. <p>GE Wuhan further submits that:</p> <ul style="list-style-type: none"> the commission incorrectly calculated its dumping margin, submitting that the approach taken is contrary to recent ADRP decisions the OCOT test is not applicable to power transformers. The recovery test is not applicable due to the bespoke nature of the transformers. <i>'The ADC has in the Wind Tower Report attempted to argue that a weighted average cost test can be applied at a single model level. Under this approach, there is no comparison with other projects or models for the purpose of the recovery test'</i> that one particular transformer sale was not a transaction in the OCOT and that: <ul style="list-style-type: none"> the transaction could have been subject to competition, but was not and that this makes it not in the OCOT the profit was significant with respect to GE Wuhan's next most profitable domestic transaction and exceeds other Chinese suppliers sales of transformers in the OCOT in China, as in Australia, are subject to competition.

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EPR number	Date published	Interested party	Summary
81	17 July 2020	GE Wuhan	<p>GE Wuhan refers to ADRP Report 100, stating that this report is relevant to matters it raised in EPR 507, item 80. GE Wuhan submit that the ADRP's finding that if there are no sales of 'like goods' that OCOT test in section 45(2) of the Regulations is not available to be used.</p> <p>GE Wuhan refer to TER 507 where the commission found that there was an absence of sales of like goods, however sought to calculate a profit for GE Wuhan in accordance with section 45(2) of the Regulations. GE Wuhan submit that the commission is required to calculate profit in accordance with section 45(3) of the Regulations.</p>
82	24 July 2020	CHINT	<p>CHINT refers to ADRP Report 100 and TER 507 where the commission found that there was an absence of sales of like goods, however sought to calculate a profit for CHINT in accordance with section 45(2) of the Regulations. CHINT submit that the commission is required to calculate profit in accordance with section 45(3) of the Regulations.</p> <p>CHINT outlines the different options to calculate profit in accordance with section 45(3) and suggests the commission use the first alternative: <i>'Identify the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export (section 45(3)(a)).'</i></p>
83	24 June 2021	TIC	<p>TIC refer to ADN 2020/66 which states that as soon as practical after the revocation of a reviewable decision the Commissioner must publish a SEF. TIC is concerned with the length of time it is taking to publish the SEF.</p> <p>TIC asks if the Commissioner has considered the ADRP decision, if the commission has provided advice to address the issues raised by the ADRP and if any further work has been undertaken.</p> <p>TIC acknowledges the impact the recent Federal Court Case has had on the timeliness, however that case is now resolved.</p> <p>TIC submit that the market will likely view a lack of resolution as a 'negative-finding' due to uncertainties.</p>

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EPR number	Date published	Interested party	Summary
85	29 October 2021	WTC	<p>WTC submitted 4 issues in response to SEF 507A:</p> <ul style="list-style-type: none"> The arms length issue continues to remain unresolved. The investigation should be extended until such time that the issue is resolved as it affects the finding of material injury. The methodology for assessing certain variable factors is disputed. <ul style="list-style-type: none"> It is not appropriate to determine the normal value under section 269TAC(1) Adjustments that have been made under section 269TAC(8) are not accurate WTC also raises several issues with the determination of the variable factors specific to certain exporters Dumping has caused material injury. Dumping impacts sovereign strategic capability in critical infrastructure
87	09 March 2022	GE Wuhan	<p>GE Wuhan addresses four arguments raised by WTC in EPR 507, item 85, which responds to issues raised in SEF 507A.</p> <ul style="list-style-type: none"> Arms length issue <ul style="list-style-type: none"> ADRP finding means that the ADC does not need to revisit the arms length assessment. The majority of tenders that were lost to Chinese imports over the investigation period were to Siemens and ABB, meaning that WTC's key competitors, and cause of any loss suffered was not the result of dumping. Calculation of GE's dumping margin <ul style="list-style-type: none"> WTC is incorrect in its claim to utilise section 269TAC(1), because the cost to make and sell for GE is the same under section 269TAC(2)(c). Has dumping caused material injury <ul style="list-style-type: none"> Highlight the need to base any findings of material injury based on facts, and not allegations, conjecture or remote possibilities (section 269TAE(2AA)). Wilson's claims regarding Australia's strategic capability.