Australian Government
Anti-Dumping Review Panel

APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR A COUNTERVAILING DUTY NOTICE

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
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INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Australian Customs and Border Protection Service (ACBPS), or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice;
- not to publish a countervailing duty notice;

Review inquiries, including decisions

- to alter or revoke a dumping duty notice following a review inquiry;
- to alter or revoke a countervailing duty notice following a review inquiry;
- not to alter a dumping duty notice following a review inquiry;
- not to alter a countervailing duty notice following a review inquiry;
- that the terms of an undertaking are to remain unaltered;
- that the terms of an undertaking are to be varied;
- that an investigation is to be resumed;
- that a person is to be released from the terms of an undertaking;

Continuation inquiries:

- to secure the continuation of dumping measures following a continuation inquiry;
- to secure the continuation of countervailing measures following a continuation inquiry;

- not to secure the continuation of dumping measures following a continuation inquiry;
- not to secure the continuation of countervailing measures following a continuation inquiry;

Anti-circumvention inquiries:

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or an application that was lodged late.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for ADRP review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty notice (or both). It is approved by the Commissioner pursuant to s 269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An "interested party" may be:

- if an application was made which led to the reviewable decision, the applicant;
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a person directly concerned with the importation or exportation to Australia of the goods;
- a person directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of "interested party" in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review;
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)); or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision; or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

  Anti-Dumping Review Panel
  c/o Legal Services Branch
  Australian Customs and Border Protection Service
  5 Constitution Avenue
  Canberra City ACT 2601
  AUSTRALIA

- OR emailed to:

  ADRP_support@customs.gov.au

- OR sent by facsimile to:

  Anti-Dumping Review Panel
  c/o Legal Services Branch
  +61 2 6275 6784

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6275 5868
Facsimile: +61 2 6275 5784

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – this equates to $3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision to publish a dumping duty notice or countervailing duty notice.

APPLICATION FOR REVIEW OF

DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR COUNTERVAILING DUTY NOTICE

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

to publish : ☒ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

OR

not to publish : ☐ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

☑ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

☑ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.

☑ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

☑ Full description of the imported goods to which the application relates.

☑ The tariff classification/statistical code of the imported goods.

☑ A copy of the reviewable decision.

☑ Date of notification of the reviewable decision and the method of the notification.

☑ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

☑ ~~[If the application contains material that is confidential or commercially sensitive] an additional~~ non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:.....

Name: CHIU YING PIN

Position: Director of International Business Division

Applicant Company/Entity:

SHIHLIN ELECTRIC

Date: 09 / 01 / 2015

Application Particulars

1. Contact Details

1.1 Name, street and postal address, and form of business of the applicant

The applicant company requesting a review of the decision of the Parliamentary Secretary to apply anti-dumping measures on Power Transformers exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam is an exporter of the abovementioned products to Australia, Shihlin Electric & Engineering Corporation ("SEEC").

SEEC's postal address is:

12F, No. 88, Sec. 6,Chung-Shan N. Rd., Taipei,Taiwan111, R.O.C
Telephone: 886-2-2834-2662 Ext.191
Facsimile number: 886-2-2832-1003

1.2 Name, title/position, telephone and facsimile numbers, and email address of contact within the organisation

The relevant contact detail at SEEC for this application for review is:

Contact Name:	Mr. Kenneth Chang(Chang Kai Xiong)
Company and position:	Vice President of International Business Division
Address:	12F, No. 88, Sec. 6,Chung-Shan N. Rd., aipei,Taiwan111,R.O.C
Telephone:	886-2-2834-2662 Ext.191
Facsimile:	886-2-2832-1003
E-mail address:	kennethchang@seec.com.tw

1.3 Name of consultant

SEEC has engaged the following representative to assist with this application:

Name:	Mr. Andrew Percival
Representative's business name:	Corrs Chambers Westgarth
Address:	Governor Tower 1 Farrer Place SYDNEY NSW 2000
	GPO Box 9925 Sydney NSW 2001
Telephone:	(02) 9210 6228
Facsimile:	(02) 9210 6611
E-mail:	andrew.percival@corrs.com.au
Name:	Mr. Sui-Yu Wu
Representative's business name:	Wu &Partners Attorneys-at- Law

Address:	10F, No. 214, Tun Hwa N. Road, Taipei, Taiwan 10546, R.O.C.
Telephone:	886-2-2546-2050
Facsimile:	886-2-2546-2036
E-mail:	sywu@wuplaw.com

A copy of the signed authorisation nominating Mr Andrew Percival as SEEC's representative is included at Confidential Attachment 1.

1.4 Full Description of the Goods

The goods the subject of the application are power transformers. The applicant provided further details as follows:

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

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

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

Distribution transformers are not the subject of this application. Distribution transformers are smaller transformers that have design and manufacturing technology which is different from power transformers.

2. Tariff Classification

The goods are currently classified to the tariff subheading 8504.22.00 (statistical code 40) and 8504.23.00 (statistical codes 26 and 41) of Schedule 3 to the *Customs Tariff Act 1995*. The general rate of duty is 5% and applies to power transformers imported from China, Korea and Taiwan. Power transformers from Indonesia, Thailand and Vietnam are duty free.

3. A copy of the written advice from the Commissioner of the Parliamentary Secretary's decision

SEEC was made aware of the decision of the Parliamentary Secretary to apply

anti-dumping measures by a notice published on December 10, 2014 (Non-Confidential Attachment 2). Australian Dumping Notice No. 2014/132 was also published on the same day.

A copy of ADN No. 2014/132 is included at Non-Confidential Attachment 3.

4. **A detailed statement setting out the reasons for believing that the reviewable decision is not the correct or preferable decision.**

Please refer to Attachment 4 for the reasons for review.

Commonwealth of Australia

Gazette

Published by the Commonwealth of Australia

GOVERNMENT NOTICES

Australian Government
Anti-Dumping Commission

Customs Act 1901 – Part XVB

Power transformers

Exported from the Republic of Indonesia, Taiwan, Thailand and the Socialist Republic of Vietnam

Findings in relation to a dumping investigation

Public notice under subsections 269TG(1) and (2) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of power transformers (the goods), exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Taiwan, Thailand and the Socialist Republic of Vietnam (Vietnam).

The goods are classified to tariff subheadings 8504.22.00 (statistical code 40) and 8504.23.00 (statistical codes 26 and 41) of Schedule 3 to the *Customs Tariff Act 1995*. The various potential combinations of incomplete power transformers are not all classifiable to these classifications.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/64 which is available at http://www.adcommission.gov.au.

On 1 December 2014, the Commissioner terminated the investigation so far as it related to goods exported by certain exporters in China, Indonesia and Korea and in so far as it related to all exporters in China and Korea. Termination Report No. 219 sets out the reasons for these terminations. This report is available at http://www.adcommission.gov.au.

The Commissioner reported the findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in Anti-Dumping Commission Report No. 219 (Report No. 219) which outlined the investigation carried out by the Commission and recommended the publication of a dumping duty notice in respect of the goods.

Particulars of the dumping margin established and an explanation of the method used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Manufacturer / exporter	Dumping margin and effective rate of duty	Method to establish dumping margin
Indonesia	PT CG Power Systems Indonesia	8.7%	Individual export prices were compared with corresponding normal values over the investigation period in accordance with subsection 269TACB(2)(b) of the *Customs Act 1901* (the Act).
	All other Indonesian exporters except PT. Unelec Indonesia	8.7%	
Taiwan	Fortune Electric Co. Ltd	15.2%	
	Shihlin Electric & Engineering Corp	21.0%	
	Tatung Company	37.2%	
	All other Taiwanese exporters	37.2%	
Thailand	ABB Limited, Thailand	3.6%	Individual export prices were compared with weighted average corresponding normal values over the investigation period in accordance with subsection 269TACB(3) of the Act.
	Tirathai Public Company Limited	39.1%	Individual export prices were compared with corresponding normal values over the investigation period in accordance with subsection 269TACB(2)(b) of the Act.
	All other Thai exporters	39.1%	
Vietnam	ABB Limited, Vietnam	3.8%	Individual export prices were compared with weighted average corresponding normal values over the investigation period in accordance with subsection 269TACB(3) of the Act.
	All other Vietnamese exporters	3.8%	

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commission, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in Report No. 219.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if securities had not been taken. Therefore under subsection 269TG(1) of the Act, I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

(i) the goods; and

(ii) like goods that were exported to Australia after 27 November 2013 (being the date that the Commissioner made a Preliminary Affirmative Determination under paragraph 269TD(4)(a) of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused, is being caused, or may be caused in the future. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Indonesia (excluding goods exported by PT Unelec Indonesia), Taiwan, Thailand and Vietnam.

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

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and price suppression and the consequent impact on the Australian industry including loss of sales volume, reduced market share, reduced revenue, reduced profits and profitability, reduced capacity utilisation, reduced employment and reduced return on investment.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at www.adcommission.gov.au

Report No. 219 and other documents included in the public record are available at www.adcommission.gov.au. Alternatively, the public record may be examined at the

Anti-Dumping Commission's office by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 2 6275 6729, fax number 1300 882 506 or +61 3 9244 8902 (outside Australia) or operations1@adcommission.gov.au.

Dated this 4th day of December 2014

ROBERT CHARLES BALDWIN
Parliamentary Secretary to the Minister for Industry

Australian Government
Anti-Dumping Commission

ANTI-DUMPING NOTICE NO. 2014/132

Power transformers

Exported from the People's Republic of China, the Republic of Indonesia, the Republic of Korea, Taiwan, Thailand and the Socialist Republic of Vietnam

Findings in Relation to a Dumping Investigation

***Customs Act 1901* – Part XVB**

I, Dale Seymour, Commissioner of the Anti-Dumping Commission have completed the investigation, which commenced on 29 July 2013, into the alleged dumping of power transformers (the goods), exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Taiwan, Thailand and the Socialist Republic of Vietnam (Vietnam).

The goods are classified to tariff subheadings 8504.22.00 (statistical code 40) and 8504.23.00 (statistical codes 26 and 41) of Schedule 3 to the *Customs Tariff Act 1995*. The various potential combinations of incomplete power transformers are not all classifiable to these classifications.

A full description of the goods is available in Anti-Dumping Notice No. 2013/64 which is available at www.adcommission.gov.au.

On 1 December 2014, I terminated the investigation in so far as it related to the goods exported by certain exporters in China, Indonesia and Korea and in so far as it related to all exporters in China and Korea. *Termination Report No. 219* sets out the reasons for these terminations. This report is available at www.adcommission.gov.au.

I reported my findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in *Anti-Dumping Commission Report No. 219* (Report 219). Report 219 outlines how the Anti-Dumping Commission (the Commission) carried out the investigation and recommends the publication of a dumping duty notice in respect of the goods exported to Australia from Indonesia (except PT Unelec Indonesia), Taiwan, Thailand and Vietnam.

In Report 219, it was found that:

- power transformers exported to Australia from Indonesia (except PT Unelec Indonesia), Taiwan, Thailand and Vietnam were dumped with margins ranging from 3.6% to 39.1%;

- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

The Parliamentary Secretary has considered Report 219 and has accepted my recommendations and reasons for the recommendations, including all material findings of fact or law on which my recommendations were based, and particulars of the evidence relied on to support the findings.

Notice of the Parliamentary Secretary's decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 10 December 2014.

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish the dumping margins are set out in the table below.

Country	**Manufacturer / exporter**	**Dumping margin and effective rate of duty**	**Method to establish dumping margin**
Indonesia	PT CG Power Systems Indonesia	8.7%	Individual export prices were compared with corresponding normal values over the investigation period in accordance with subsection 269TACB(2)(b) of the *Customs Act 1901* (the Act).
	All other Indonesian exporters except PT. Unelec Indonesia	8.7%	
Taiwan	Fortune Electric Co. Ltd	15.2%	
	Shihlin Electric & Engineering Corp	21.0%	
	Tatung Company	37.2%	
	All other Taiwanese exporters	37.2%	
Thailand	ABB Limited, Thailand	3.6%	Individual export prices were compared with weighted average corresponding normal values over the investigation period in accordance with subsection 269TACB(3) of the Act.
	Tirathai Public Company Limited	39.1%	Individual export prices were compared with corresponding normal values over the investigation period in accordance with subsection 269TACB(2)(b) of the Act.
	All other Thai exporters	39.1%	
Vietnam	ABB Limited, Vietnam	3.8%	Individual export prices were compared with weighted average corresponding normal values over the investigation period in accordance with subsection 269TACB(3) of the Act.
	All other Vietnamese exporters	3.8%	

Dumping duties will be determined as a proportion of the export price of those particular goods as specified in Regulation 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Measures apply to goods that are exported to Australia after publication of the Parliamentary Secretary's notice. Measures also apply to goods that were exported to Australia after the Commissioner made a preliminary affirmative determination to the day before the Parliamentary Secretary's decision was published.

Any dumping securities that have been taken on and from 27 November 2013 and that have not lapsed will be converted to interim dumping duty. Importers will be contacted by the Regional Securities Officer in their respective capital city detailing the required conversion action for each security taken.

To preserve confidentiality, the export price, normal value and non-injurious price applicable to the goods will not be published. Bona fide importers of the goods can obtain details of the rates from the Dumping Liaison Officer in their respective capital city.

Pursuant to section 12 of the *Customs Tariff (Anti-Dumping) Act 1975*, conversion of securities to interim dumping duty will not exceed the level of security taken. The rate of conversion for securities will reflect the initial securities and the revised securities imposed on 27 November 2013 and 18 December 2013 (as applicable).

Clarification about how anti-dumping measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at www.adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel in accordance with the requirements in Division 9 of Part XVB of the Act within 30 days of the publication of the Parliamentary Secretary's notice.

Report 219 has been placed on the Commission's public record, which is available at www.adcommission.gov.au. Alternatively, the public record may be examined at the Commission's office by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 2 6275 6729, fax number +61 3 9244 8902 or email at operations3@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

10 December 2014

APPLICATION FOR REVIEW

On December 10, 2014, the Australian Anti-Dumping Commission ("Commission") published notice of a decision by the Parliamentary Secretary for the Minister of Industry (Anti-dumping Notice No. 2014/132), in relation to the dumping investigation into power transformers, imposing 21% rate of duty on power transformers exported to Australia by Shihlin Electric & Engineering Corp ("SEEC"). Notice of the decision was also published in the Commonwealth Gazette on the same date. However, the decision was not the correct or preferable decision, and SEEC therefore seeks a review of it by lodging this application with the Anti-Dumping Review Panel in accordance with the requirements in Division 9 of Part XVB of the *Customs Act 1901* ("Act").

SEEC hereby elaborate reasons for the review application as follows below. References in this submission to what the Commission has done are references to the approach taken by the Commission in Report No 219 – power transformers exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam, which formed the basis for the recommendations concerning SEEC that were accepted by the Parliamentary Secretary, and so in turn formed the basis for the Parliamentary Secretary's decision.

I. The Commission Should Only Have Used the Profit Rate of Domestic Sales to Utility Customers Instead of that for All Domestic Sales in the Constructed Normal Value for SEEC

1. As set out in SEEC's response to question D-1 of the exporter questionnaire, SEEC sells power transformers to two types of customers in the Taiwanese market, namely, to the sole utility customer in Taiwan, *i.e.* Taiwan Power Company ("TPC"), and to non-utility customers. There are significant differences in transactions between these two types of customers, which accordingly affects prices and profits.

   First, the manner in which prices are determined is different between the two types of customers. As set out in SEEC's response to question D-1 of the exporter questionnaire, TPC is the sole state-owned utility power company. Its procurement of power transformers is made through public tenders in accordance with the Government Procurement Act. On the other hand, non-utility customers (altogether [XXX] companies in the period of investigation) are all private companies. Their tenders are not open, public

tenders, but rather solicited from selected power transformer manufacturers and, on occasion, customers would negotiate directly with SEEC without a tender or without requesting competitive offers.

Second, product quality requirements between the two types of customers are different. As the sole state-owned power utility company with a long history of operations, TPC has significant experience and expertise in procuring power transformers, and has strict requirements on the quality of the power transformers it procures. This usually results in additional costs being incurred during the testing stage of the production. On the other hand, non-utility customers tend to have more lenient quality requirements and, hence, lesser costs are incurred, especially during testing. The difference in the quality level is because, as a utility company, TPC requires the power transformers to perform to high standards over a long period of time to ensure that they can continue to supply electricity to its customers with no or minimal disruption.

Third, TPC's long history in procuring power transformers and the volume it purchases means that it has significant leverage in pricing that private companies do not have. In contrast, vis-a-vis non-utility customers, SEEC is technologically more sophisticated and enjoys broad recognition of its reputation as a power transformer supplier and, consequently, can charge a premium in price negotiations with domestic non-utility customers. In addition, non-utility customers are more dependant and reliant on SEEC's technical know-how and support in designing and building their own product requirements because they do not possess the knowledge and skills necessary for the design, installation and maintenance of power transformers. SEEC has no similar advantage in its dealings with TPC, and hence the price differential (i.e., premium price versus open bidding price) does exist between the two types of customer.

Given the differences above, only the domestic sales to TPC are comparable to SEEC's supply of power transformers via Shihlin Electric Australia P/L ("SeA") to customers in the Australian market. All of SEEC's Australian customers are utility companies which have a long history and considerable experience in electricity generation and, consequently, in procurement of power transformers. They purchase power transformers via open tenders and they set strict requirements on product quality. As a newcomer to the Australian market, SEEC has no reputational advantage in its supply of

power transformers to Australian customers.

Accordingly, SEEC submits that only the profit that SEEC realized from its sales to TPC is reasonable for use in calculating a constructed normal value that is comparable to its Australian export sales to the same utility sales channel in Australia. Including the profit realized from other transactions in Taiwan (i.e. to non-utility customers) in the profit margin determination simply results in a constructed normal value that is significantly tilted to the type of sales sold to non-utility customers (which accounts for [XXX] % of the total domestic sales in units in the period of investigation). Use of such constructed value in comparison with export price has distorted the comparison because they are not like-for-like comparisons. Pursuant to the fair comparison mandate as enunciated in Article 2.4 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("WTO Anti-dumping Agreement" or "ADA") and the related provisions in the Australian law, a subsequent adjustment to account for the trade level differences (i.e. TPC is a utility provider which sells utility to the public, while non-utility customers are end-users of utility) should have been made to ensure a fair comparison, which underscores the fallacy of including profit margin from non-utility sales in the profit margin calculation at issue here.

SEEC notes that in determining whether domestic sales are comparable to export sales, the Commission and the Parliamentary Secretary were to consider "*differing patterns of demand in the exporter's domestic market and the sales to Australia*". (page 32 of Dumping & Subsidy Manual) We believe that this is a reasonable consideration and should have been taken into account here, given the differences in sales to utility and non-utility customers as stated above.

As outlined in SEEC's submissions on the preliminary affirmative determination ("PAD"), which were provided to the Commission on 9 December 2013 (see pages 6-8), and in its further submission of 20 December 2013 (see pages 4-5), SEEC reiterates that the profit ratio for domestic sales to TPC should have been used in calculating the constructed normal value for SEEC.

2. The Commission has calculated the constructed normal value by using all domestic sales of "like goods" in the Taiwanese market by SEEC, as opposed

to using only domestic sales of "like goods" to TPC, the utility customer, mainly based on the following three reasons:

(1) 181A(2) of the *Customs Regulations* provides that in calculating a profit for a normal value, that profit is to be worked out:

"… using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade";

(2) Utility sales and non-utility sales' profit margin ranges overlap; and

(3) Most of SEEC's Australian sales were of power transformers of less than 50 MVA, and in the domestic market power transformers of that MVA range were mostly sold to non-utility customers.

3. In SEEC's respectful submission that approach was incorrect because:

(1) We understand that the Commission considers that the reference to "like goods" is to all like goods and not to a sub-set of like goods. Assuming, but not conceding, that this is correct, then appropriate downward adjustments should have been made pursuant to section 269TAC(8) of the *Customs Act 1901* to ensure a fair comparison and, specifically, to take account of differences in the level of profits obtainable on sales to utility and non-utility customers, given that export sales to Australia are all to utility customers; and

Further, the Commission's previous interpretation of the legislation is that the average profit achieved on all like goods sold in the ordinary course of trade must be used in a constructed normal value. However, we are aware, and no doubt the Review Panel itself is aware, that the it has endorsed a different interpretation which defines "like goods" to be limited to the "most" like models or sales (*i.e.* to customers of the same level of trade). This approach should be adopted here.

As all of SEEC's Australian sales were made to utility customers, only the domestic utility customer's profit margin should have been used in SEEC's constructed normal value to ensure a fair comparison.

(2) As can be seen in Exhibit 1, sales in the utility sector have an average profit margin of [XXX]%, whereas those in the non-utility sector have an average profit margin of [XXX]%. The table is based on G-4 Domestic CTMS and D-4 Domestic Sales that SEEC provided in its response to the

Commission's exporter questionnaire.

This sharp difference in profit margins reflects the fact that sales to utility and non-utility customers occur in separate and distinct market segments in Taiwan.

In order to effect a "fair comparison", as required by Australia's anti-dumping legislation and the WTO Anti-Dumping Agreement, and acknowledged in the Commission's Dumping & Subsidy Manual, if profit obtainable from non-utility sales is included in the profit calculation, a downward adjustment should still have been made to the resultant profit margin so that normal value is properly comparable to export sales to utility customers in Australia. Such a downward adjustment would however not have been required spared if non-utility profit was not included in the pool of sales considered for profit calculation in the first place.

Finally, as mentioned earlier, we understand that the reason why the Commission used all domestic sales of "like goods" in calculating the profit margin was due to its interpretation of the words "like goods" in regulation 181A(2) of the *Customs Regulations*. We submit that the use of "like goods" did not compel the Commission to calculate a profit margin for the constructed normal value based on all sales of power transformers during the investigation period. Rather, we submit that it is permissible for the Commission to have regard to a narrower range of "like goods" especially when it is evident, as it was here, that there are two distinct markets for power transformers and the profit margins earned in each are materially different.

(3) The Commission has also recognized in the visit report for SEEC, there are two types of customers in the Taiwanese domestic market, namely, utility customers (i.e. TPC) and non-utility customers. In relation to utility customers, the visit report correctly observed that in sales to utility customers prices were negotiated through a public tender process. As to the non-utility market, the visit report observed "*sales to this sector are **generally confined to the three local producers** being SEEC, Fortune and Tatung*." (emphasis added).

These differences in the processes for awarding and negotiating contracts between utility and non-utility customers, together with other differences

as explained above, were identified in SEEC's submissions to the Commission of 9 and 20 December 2013. The Commission observed that such differences render SEEC's domestic sales to non-utility customers as not comparable to its sales to Australian utility customers.

In the visit report, the Commission calculated profit ratios for sales to TPC and for all domestic sales and the difference in the margin of profit is readily observable. Those differences amount to different "levels of trade", or at least fall in the notion of "other differences which are also demonstrated to affect price comparability" (Article 2.4 of the ADA).

In summary, the Commission has recognized that:

- the process for awarding contracts (and therefore pricing) is different as between utility customers and non-utility customers;
- the processes in Taiwan and Australia for awarding contracts by utility customers are the same or similar; and
- SEEC's sales to Australia have been to utility customers.

The result of those factors is that the profit margins earned by SEEC on domestic sales to non-utility customers, when used in the calculation of SEEC's constructed normal value, distorted the normal value, and precluded a like-for-like comparison (that is, a fair comparison) with the deductive export price.

Just as different levels of trade can affect prices, sales into different markets or sub-markets also can affect prices and, consequently, profits. This is self-evident here. Either only sales to TPC should have been used in determining a margin of profit, so as to ensure a like-for-like comparison with the deductive export price or, alternatively, a downwards adjustment should have been made to the constructed normal value under s.269TAC(9) of the *Customs Act 1901* to ensure a fair comparison. This is also mandated by Article 2.4 of the ADA.

(4) Domestic sales made to utility and non-utility customers are made in significantly different market segments, as evidenced by the result of statistical analysis on the profit margin of these two market segments as presented below.

(5) The profit rates of each domestic sale of a transformer to utility and

non-utility customers during the investigation period are collected and divided into two groups: Utility and Non-utility, to run the variance analysis in SPSS (SPSS is one of the most widely used programs for statistical analysis in social science. This program can be used to perform data entry and analysis and to create tables and graphs).

We first conducted the descriptive statistics analysis to have a general understanding of the profit rates distribution in utility and non-utility sales, *i.e.*, the central tendency and dispersion of profit rate distributions. From the below table yielded by SPSS, the simple average profit rate of utility and non-utility sales are [XXX] and [XXX], respectively, and the standard deviation of which are [XXX] and [XXX], meaning that the profit margins of utility sales appear as a more centralized distribution, while those of non-utility sales show a decentralized one.

[Confidential Tables Deleted]

Following descriptive statistics analysis, Levene's Test, a homogeneity of variance test, in SPSS is used to see if there are equal variances across the profit rates of utility and non-utility sales, *i.e.*, the homogeneity of variance.

In Levene's Test, a null hypothesis that the population variances are equal is applied. If Levene's Test is significant, *i.e.*, the resulting P-value is less than the significance level (typically 0.05), then the null hypothesis of equal variances is rejected and as such, it is concluded that there is significant difference between the variances in the population.

[Confidential Tables Deleted]

Note that P-value derived from Levene's test here is 0.000 (*i.e.*, < 0.001), which is less than the significance level of 0.05. Thus, the hypothesis that the variances are equal is rejected and it is concluded that there is a difference between the profit rates in utility and non-utility sales.

T Test is further employed to verify if the profit rates of these two market segment are significantly different from each other. The null hypothesis

is set to represent that there is no difference between the profit rates of these two market segments on average. Such hypothesis is rejected when T Test is significant, *i.e.*, the resulting P-value is less than the significance level.

The significant difference of the profit rates between these two market segments is confirmed since p-value (two-tailed test) is 0.000 (as shown in table below) and is less than 0.05. It is evident that there is a significant difference between the profit rates of utility and non-utility sales.

[Confidential Tables Deleted]

(6) Attention should also be paid to the characteristics of utility customers. Public utilities are usually considered to be natural monopolies. The demand and supply interacting to set the price in monopoly market is extremely distinct from other types of market. As explained above, the profit differential arises because of different tender processes, bargaining power and brand image premiums between utility and non-utility market segments. Taking into consideration the fundamental difference in the nature of marketer, the ADC should make a proper adjustment by adopting only the utility sales' profit margin to construct the normal value for the purpose of making a fair comparison.

(7) As the Commission observed, "[t]he profit rate for utility customers ranged from [XXX]% to [XXX]% and the profit achieved on a number of sales to utility customers fell within this range." However, the profit margin ranges overlapped between utility sales and non-utility sales are quite small. Only [XXX] out of [XXX] non-utility transactions (around [XXX]%), or NTD[XXX] out of NTD[XXX] non-utility sales revenue (around [XXX]%) had their profit margins fall in this range. On the other hand, [XXX] non-utility transactions ([XXX]%) or NTD[XXX] of non-utility sales revenue had a profit margin of more than [XXX]%. The notable difference in the distribution of profit margins is demonstrated in the diagram below.

[Confidential Tables Deleted]

It is apparent that utility and non-utility sales have different profit levels. Fewer than [XXX]% of non-utility transactions have profit margins comparable to utility sales, while a large majority of non-utility sales enjoy much higher profits. If we disregard the different nature of profit distribution between utility and non-utility sales, and use the profit margin of all domestic sales to calculate the construed normal value, merely because of the small portion of overlapped profit range, then the distorted normal value will lead to an unfair comparison.

(8) MVA rates is a misleading factor for comparison. As SEEC explained to the Commission during the verification visit, MVA is not the only, or even an important, factor in terms of pricing or product comparability. Different busing design, painting requirement or installation arrangements would have a greater effect on the transformer's price and profit.

Even though most of SEEC's Australian sales were of power transformers of less than 50 MVA and in the domestic market power transformers of that MVA range were mostly sold to non-utility customers, it is noteworthy that sales under such MVA range only account for around 30 percents of total domestic sales to non-utility customers.

[Confidential Tables Deleted]

In contrast with MVA, profit margin realized in the utility segment of the domestic market should be taken as a proximate and direct indicator for the constructed value purposes. After all, it is the product application and market conditions which combine to shape the customers' pricing policy and demand pattern, which in turn dictate the profit margin of power transformers sold in this market segment. From this perspective, the actual profit margin realized in the domestic utility market for the constructed normal value purpose should be used, instead of focusing on MVA as explained above.

The Commission is also aware, and has verified, that power transformers exported to Australia by SEEC and sold in Australia by SeA to its Australian customers have all been sold to utility customers. As has been previously submitted, the negotiating positions and powers of utility

and non-utility customers are quite different for a variety of commercial reasons that have been previously explained to the Commission. The difference in profit margins reflects this, not MVA ratings or the like.

Given the above, SEEC respectfully requests that the Review Panel reconsiders use of the profit margins earned on utility sales in Taiwan, which sales are comparable to SEEC's export sales to Australia, or, alternatively, make a downward adjustment to the constructed normal value of [XXX]% to ensure a fair comparison.

II. Export Price - Deduction of a Profit Margin for SeA

1. The Commission has added a reasonable profit margin of [XXX]% to construct a normal value for SEEC. However, what should be deducted is the actual profit SeA made on each transaction, if any, and, if SeA did not make a profit on a transaction, then no amount should be deducted in this respect. It is unclear how a profit margin could be added when SeA was incurring a loss.

2. In circumstances when SeA has actually not made any profit, SEEC submits that the Commission should not have made a deduction for a notional profit.

   Article 2.3 of the ADA allows investigating authorities to construct an export price based on the price at which an associated importer on-sold the goods under investigation. Article 2.4 of the ADA then provides that:

   "*In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and* ***for profits accruing****, should also be made*" (emphasis added).

   While the ADA allows an adjustment for accrued profits in calculating a deductive export price, it does not allow investigating authorities to construct a notional profit where the importer has actually not incurred a profit. This is particularly so in view of the specific requirement in Article 2.4 of the ADA that only "profits **accruing**" should be adjusted to the deductive export price.

   Accordingly, the Commission, in calculating a deductive export price, should only have deducted the actual profit made by SeA on transactions during the POI. Given that SeA did not make any profit during the POI, in our submission no such profit should have been deducted when calculating a

deductive export price. SEEC respectfully submits that the Commission's approach appears to be inconsistent with the ADA.

3. The purpose of constructing a normal value is to derive a value that reflects what would be the selling price in the domestic market (*i.e.*, Taiwan) of the merchandise being exported to Australia. It is difficult to understand on what basis the Commission calculated an amount for profit and then deducted that amount to determine a deductive export price, as they formed no part of a domestic selling price.

4. Given that no profit was made by SeA in its transactions with its Australian customers, deducting a "notional" profit margin served only to artificially reduce the export price, and produce a deductive export price that was not actually payable. As a matter of fact, SeA's absence of profit was due to unanticipated costs incurred either during installation or subsequent to installation and commission (*i.e.*, after the sale of the GUC to customers, and payment of the purchase price), which have been verified by the Commission. By deducting a notional profit margin which assumed that unanticipated expenses were not incurred, while also deducting those unanticipated expenses when calculating the export price, the Commission was twice making deductions to the export price for the same expenses and artificially lowering export prices.

5. The point of comparison between SEEC's export prices and the prices of the Australian industry are the actual prices payable by the Australian customer – that is the point of competition – and not some notional, artificially reduced deductive export price. It is that actual deductive export price that needed to be compared with the constructed normal value, adjusted to ensure a fair comparison. That does not seem to have occurred and should have occurred.

III. Interim Dumping Duties should not Apply to Imports that have been exported pursuant to Existing Contracts for the Supply of Power Transformers

1. SEEC submits that interim dumping duties should not apply to imports of power transformers that have been or will be exported to Australia pursuant to contracts for the supply of power transformers entered into prior to 27 November 2013 and, in respect of which, if securities were taken, those securities have not been cancelled. The reasons for this are set out below.

2. SEEC submits that securities should not have been required or taken on power transformers exported to Australia pursuant to contracts entered into with Australian customers before 27 November 2013.

3. We note that, according to the Preliminary Affirmative Determination Report No. 2/9 ("PAD"), the Delegate of the Anti-Dumping Commissioner was satisfied for the purposes of s. 269TD(1) of the *Customs Act 1901* that the product concerned is dumped and caused injury to the Australian industry.

   We also note that, according to Section 7.2 of the PAD, the Commission:

   - understood that requests for tender continue to be assessed by end-users, and that exporters of power transformers whose exports have been preliminarily found to be at dumped prices continue to submit tender offers for the supply of power transformers pursuant to such requests; and

   - is satisfied that securities are warranted to prevent material injury being suffered by the Australian industry producing like goods.

   Finally, the PAD also stated that:

   "[Australian Customs and Border Protection Service] will require and take securities under section 42 of the [*Customs Act 1901*] in respect of interim duty that may become payable. Securities will apply in respect of imports of power transformers from China, Korea, Indonesia, Taiwan and Vietnam and entered for home consumption on or after 18 November 2013 (Anti-Dumping Notice No. 2013/92 refers to this date as being 27 November 2013)."

4. Section 269TD(4)(b) of the Customs Act 1901 relevantly provides that if the Commissioner has made a preliminary affirmative determination, "Customs may, at the time of making the determination or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the officer of Customs taking the securities is satisfied that it is necessary to do so *to prevent material injury to an Australian industry while the investigation continues*". *(emphasis added)*

   It would seem that by Anti-Dumping Notice No 2013/92 the Australian Customs and Border Protection Service has adopted a policy to require and take securities in respect of power transformers from the countries in question that are entered for home consumption on or after 27 November 2013. Presumably, in accordance with the *Customs Act 1901*, securities will only be

taken in relation to any particular import if the officer of Customs taking the securities is satisfied that it is necessary to do so to '*prevent material injury to an Australian industry while the investigation continues*'.

5. It is unclear what material injury to an Australian industry would or could be prevented by the taking of securities in circumstances where the supply of the power transformer being supplied is pursuant to a contract entered into on or before the date of publication of the PAD. The time at which the Australian industry would have incurred any injury would have been when the contract was awarded to a competitor, because that was the time at which it lost a potential sale.

   The subsequent taking of a security on a transformer exported to Australia pursuant to that contract could obviously not prevent the injury that has had already occurred.

   This was recognized by the Anti-Dumping Authority in its review in 1992 into so-called "tender dumping". As stated in Consideration Report No. 19:

   "*The Minister can take action when the goods are exported, but in the circumstances contemplated by the Authority this would provide no relief for the Australian industry as <u>the injury occurred at the time the contract was awarded</u>*." (at p. 15) (underlining added)

   It would seem that the only injury that could be prevented by the taking of securities is in respect of power transformers exported to Australia pursuant to contracts **entered into on or after 27 November 2013** by those exporters whose exports have been found by the Commission to be at dumped prices.

6. If securities could not be taken on power transformers imported and entered into home consumption on or after 27 November 2013 pursuant to contracts for the supply of power transformers entered into prior to 27 November 2013, and, accordingly, there was no right to take such securities, then the Parliamentary Secretary had no power to impose interim dumping duties on any such power transformers imported into Australia and entered for home consumption after that date regardless of whether any securities taken have been cancelled: see section 269TN(2) of the Customs Act 1901.

7. Accordingly, the dumping duty notice published by the Parliamentary Secretary should be varied to reflect this.