



INVESTIGATION 219

ALLEGED DUMPING OF POWER TRANSFORMERS

EXPORTED FROM

**THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF INDONESIA,
THE REPUBLIC OF KOREA AND TAIWAN, THAILAND AND THE
SOCIALIST REPUBLIC OF VIETNAM**

VISIT REPORT – IMPORTER/END USER

**Origin Energy Resources Limited as Agent for
Australia Pacific LNG Pty Limited**

**THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED THEREIN
WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND MAY NOT REFLECT
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November 2013

PUBLIC RECORD

CONTENTS

CONTENTS.....	2
BACKGROUND AND PURPOSE.....	3
1.1 BACKGROUND	3
1.2 PURPOSE OF VISIT	3
1.3 MEETING DETAILS	3
1.4 INVESTIGATION PROCESS AND TIMEFRAMES.....	4
1.5 VISIT REPORT	4
2 THE GOODS	5
2.1 DESCRIPTION	5
2.2 TARIFF CLASSIFICATION	5
3 COMPANY DETAILS.....	6
3.1 COMPANY BACKGROUND.....	6
3.2 LIKE GOODS	6
4 IMPORTS	7
4.1 INTRODUCTION	7
4.2 APLNG’S PURCHASES OF POWER TRANSFORMERS.....	7
4.3 IMPORTATION COSTS	9
4.4 EXPORT PRICES FOR IMPORTED SHIPMENTS	11
5 WHO IS THE IMPORTER AND EXPORTER.....	12
5.1 WHO IS THE IMPORTER?	12
5.2 WHO IS THE EXPORTER?	12
6 ARMS LENGTH.....	13
7 RECOMMENDATIONS	14
8 APPENDICES AND ATTACHMENTS.....	15

PUBLIC RECORD**BACKGROUND AND PURPOSE****1.1 Background**

On 8 July 2013, Wilson Transformer Company Pty Ltd (Wilson Transformers) lodged an application requesting that the Minister for Home Affairs (Minister) publish dumping duty notices in respect of power transformers exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Taiwan, Thailand and the Socialist Republic of Vietnam (Vietnam).

Following consideration of the application, the Anti-Dumping Commission (the Commission) initiated an investigation into the alleged dumping of power transformers from the nominated countries. The Commission accepted Wilson Transformers nominated three year investigation period from 1 July 2010 to 30 June 2013.

Public notification of the initiation of the investigation was made on 29 July 2013 in *The Australian* newspaper and Australian Dumping Notice (ADN) No. 2013/64.

1.2 Purpose of visit

The purpose of the visit was to:

- confirm that Origin Energy Resources Limited (Origin), as upstream operator for Australia Pacific LNG Pty Ltd (APLNG), is the importer and end user of the power transformers attributed to it within the Australian Customs and Border Protection Service's (ACBPS) commercial database;
- obtain information to assist in establishing the identity of the exporter of power transformers;
- verify information on imports of power transformers to assist in the determination of export prices;
- establish whether the purchases of the goods were arms-length transactions;
- establish post-importation costs;
- obtain general information about the Australian market for the goods; and
- provide the company with an opportunity to discuss any issues it believed relevant to the investigation.

1.3 Meeting details

Company	Origin Energy 144 Montague Road West End QLD 4101
Contact person	Ross Becroft, Gross & Becroft Lawyers
Dates of visit	26 August 2013

PUBLIC RECORD

The following were present during the meeting:

Australia Pacific LNG	Mr Tom Curtis, Logistics Program Manager Mr Tim McGrath, Senior Local Content Advisor Mr Greg Crockett, APLNG Upstream Senior Procurement Manager
Gross & Becroft Lawyers	Mr Ross Becroft, Principal lawyer
Anti-Dumping Commission	Mr Julian Stockwell, A/g Director, Operational Policy Ms Pamela Garabed, Supervisor, Operations 1

1.4 Investigation process and timeframes

We advised the company of the investigation process and timeframes as follows.

- The investigation period is 1 July 2010 to 30 June 2013.
- The injury analysis period is from 1 July 2008 for the purpose of analysing the condition of the Australian industry.
- A preliminary affirmative determination (PAD) may be made no earlier than day 60 of the investigation (27 September 2013) and provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made.

The Commission will not make a PAD until (and if) it becomes satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice.

This was distinguished from the 'reasonable grounds' threshold for initiation of the investigation.

- The Statement of Essential Facts (SEF) for the investigation is due to be placed on the public record by 18 November 2013, or such later date as the Minister allows under s.269ZHI of *the Customs Act 1901* (the Act).

The SEF will set out the material findings of fact on which the Commission intends to base its recommendations to the Minister, and will invite interested parties to respond, within 20 days, to the issues raised therein.

- Following receipt and consideration of submissions made in response to the SEF, the Commission will provide its final report and recommendations to the Minister.
- This final report is due no later than 31 December 2013, unless an extension to the SEF is approved by the Minister.

1.5 Visit report

We explained to Origin that we would prepare a report of our visit (this report) and provide it to the company to review its factual accuracy, and to identify those parts of the report it considers to be confidential. We explained that, in consultation with the company, we would prepare a non-confidential version of the report, and place this on the investigation's Public Record.

2 THE GOODS

2.1 Description

The goods the subject of the application (the goods) 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

Wilson Transformers stated that 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 another:

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

Wilson Transformers considers that the product definition includes step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, traction transformers, trackside transformers and power rectifier transformers.

Distribution transformers, which are typically defined as transformers that are less than 10 MVA, are excluded from the investigation.

2.2 Tariff classification

The goods are classified to tariff subheadings 8504.22.00 (statistical code 25) and 8504.23.00 (statistical codes 26 and 41) to Schedule 3 of the Customs Tariff Act 1995. The general rate of duty is currently 5% and applies to power transformers imported from China, Korea, and Taiwan. Indonesia, Thailand and Vietnam are subject to the ASEAN-Australia-New Zealand free trade agreement and the rate for power transformers from these countries is free.

3 COMPANY DETAILS

3.1 Company background

3.1.1 Background to the Australian Pacific LNG Project

APLNG is the leading producer of coal seam gas (CSG) in Australia and holds the country's largest CSG reserves position. The Australia Pacific LNG Project (the APLNG Project) consists of three key parts:

1. the further development of CSG fields in the Surat and Bowen Basins in south western and central Queensland;
2. the construction of a gas pipeline from the CSG fields to an LNG facility on Curtis Island off Gladstone, Queensland; and
3. the establishment of an LNG facility on Curtis Island to convert CSG to LNG for export to overseas markets. This facility will have a processing capacity of up to 9 million tonnes per annum.

3.1.2 Structure of APLNG

APLNG commenced as a 50:50 joint venture between Origin, an Australian integrated energy company and ConocoPhillips, the third largest integrated energy company in the United States. ConocoPhillips Australia is a subsidiary of ConocoPhillips with assets and exploration activities across the Australian region, including the Darwin LNG facility.

Origin is the "upstream" operator, which is responsible for the APLNG's Project's gas fields and main gas transmission pipeline. ConocoPhillips is the "downstream" operator responsible for the construction and operation of the LNG facility.

China Petrochemical Corporation (Sinopec Group) joined the project in April 2011 as a foundation customer and part equity owner. To account for Sinopec Group joining APLNG, the project is now structured Origin (37.5%), ConocoPhillips (37.5%) and Sinopec Group (25%).

We were advised during the visit that APLNG is a separate legal entity to its joint venture shareholders. It is overseen by the APLNG board of directors, which comprises of members from Origin, ConocoPhillips and Sinopec Group.

APLNG provided an outline of its joint venture governance structure, which forms **confidential attachment GEN 1**.

3.2 Like goods

Origin sought supply of the power transformers required by the APLNG Project during the investigation period by way of tender (outlined below in section 4.2.2). During this process, Origin evaluated that locally made and imported power transformers complied with the technical specifications required for the APLNG Project.

4 IMPORTS

4.1 Introduction

Origin as agent for APLNG is both the importer and end user of power transformers in its capacity as upstream operator of the APLNG Project. During the investigation period, Origin as agent for APLNG imported power transformers pursuant to one contract for supply with Siemens Ltd (Australia) (Siemens Australia). Origin as agent for APLNG imported six power transformers during the investigation period, with the delivery of the remaining power transformers expected outside of the investigation period.

Given that Origin as agent for APLNG is also the end user of the goods, the Commission sought information on the purchasing process, including documentation related to the tender and subsequent contract with Siemens Australia. The Commission also sought to verify APLNG's importation costs.

4.2 Origin as agent for APLNG's purchases of power transformers

4.2.1 Tender process

During verification, Origin outlined that it is required to tender for all major capital purchases related to the upstream phase of the APLNG Project. For contracts valued over \$5 million, all tenders are subject to scrutiny and are approved by the contract review board (CRB). For contracts over \$15 million the APLNG board must provide approval before a contract is awarded.

Origin advised that it conducted one tender for all power transformers required for the upstream project, with responses due in January 2011. Origin advised that it has not sourced power transformers outside of the contract awarded as a result of that tender process.

Origin outlined that the APLNG board is required to make the financial investment decision to invest in capital equipment.

In the case of power transformers, the tender process is outlined as follows:

- *Origin develop a procurement strategy for board approval:*

This incorporated the engineering and design specifications necessary for the APLNG Project requirements and a Request For Information (RFI) for pre-qualification of bidders. The RFI requested that potential suppliers complete a questionnaire to determine whether it is capable of supplying to the required technical specifications and within the APLNG Project timeframes. Origin undertook preliminary research of the Australian market in order to determine recipients of the RFI.

The Procurement Strategy assessed the responses to the RFI and recommended a shortlist of approved bidders for board approval. This forms **confidential attachment TENDER 1**.

- *Origin prepare and invite approved bidders to tender:*

PUBLIC RECORD

Once board approval was received, Origin prepared a Tender Management and Evaluation Protocol. This sets out the selection panel, the criteria for tender evaluation and the tender process. The Tender Management and Evaluation Protocol forms **confidential attachment TENDER 2**.

Approved bidders were then invited to respond to a Request For Tender (RFT) for the transformer requirements of the APLNG Project. Origin received bids from all approved bidders, being ABB Australia Pty Ltd, Areva T&D Pty Ltd, Schneider Electric (Australia) Pty Ltd, Siemens Australia, Toshiba International Corp Pty Ltd and Wilson Transformers Company Pty Ltd. The tender receipt record forms **confidential attachment TENDER 3**.

- *Origin evaluate tender bids and make recommendation*

Origin outlined that it continually communicated with approved bidders prior to the tender close date. Once bids were received, Origin evaluated compliance with technical criteria and commercial criteria separately. If a tender bid seemed unusual in terms of either form of criteria, Origin advised that it contacted the bidding supplier to ensure that the terms of the tender were properly understood and provided an opportunity for response.

Origin outlined that compliance with the technical criteria was critical to further consideration of commercial criteria. The technical evaluation criteria and weightings are outlined below:

Technical ratings	Weighting
Previous experience	10%
Local support	10%
Technical compliance	50%
Quality of tender	10%
Site constructability	10%
Operability and maintainability	10%

Origin also outlined that the other important consideration was the ability of the supplier to comply with APLNG Project timeframes.

These considerations are outlined in the Commercial and Technical Bid Evaluation for Transformers, which forms the basis of the recommendations made in the Decision Support Package. The Decision Support Package outlines Origin's short-listed supplier and recommended preferred supplier.

Before finalising its recommendations, Origin met with each shortlisted supplier to agree on technical and commercial requirements and negotiate a final base price. Origin also advised that during the tender process the design requirements had changed from the initial request for tender to ensure standardised capital equipment across all sites. As this occurred after the shortlisting process, only shortlisted suppliers were asked to provide amended offers.

The Decision Support Package outlined that Siemens Australia and ABB Australia Pty Ltd were the shortlisted suppliers. Origin evaluated that both had technically compliant

PUBLIC RECORD

offerings, scoring the maximum for each of the technical criteria and ranking 1 and 2 by engineering and operations. Each was also the lowest bidders.

The Decision Support Package was then provided to the board for approval before commencement of final contract negotiations. This, along with the Commercial Bid Evaluation form **confidential attachment TENDER 4**.

A presentation made to the board in conjunction with the Decision Support Package forms **confidential attachment TENDER 5**. This provides that all bids were found to be technically acceptable and that selection was based on best value. It also provides the bid price of each tenderer with the percentage difference to the lowest bidder, Siemens Australia.

- *Origin enters contract for supply*

The CRB accepted Origin's recommendation to source power transformers for the APLNG Project from Siemens Australia. Origin then engaged in final contract negotiations to confirm all terms of the contract, including design, delivery schedule, part payments and payment schedule.

4.2.2 Terms of supply contract

Origin provided the signed formal instrument of agreement outlining its purchases of power transformers from Siemens Australia along with schedules to the contract. The contract confirms that Siemens Australia was arranging for the sale of power transformers manufactured by Siemens Transformer (Guangzhou) Co Ltd (Siemens Guangzhou), a related company. The contract further outlined the purchasing arrangements for 15 power transformers ranging from 50MVA to 65MVA in specification.

The instrument of agreement and Schedule B – Progress Payments and Pricing Schedule forms **confidential attachment TENDER 6**.

All transformers were purchased on an FOB basis, inclusive of accessories and transformer oil. Origin is also the importer of the goods, arranging for transfer from FOB point in the country of origin to delivery and installation at the APLNG Project site. The transformers are shipped without oil, which is separately contained for filling in the same shipment as the transformer at the installation stage.

Origin arranges for installation of the power transformers by APLNG employees and contractors. This cost forms part of the construction contract and was not an element of the RFT for supply of transformers.

4.3 Importation costs

4.3.1 Verification

Origin had three shipments of the goods during the investigation period. All were selected by the Commission so that Origin could provide the following source documents:

- commercial invoices;
- packing lists;
- bills of lading;

PUBLIC RECORD

- ocean freight invoices; and
- invoices related to post importation expenses.

The source documents are at **confidential attachment IMP 1**.

For each shipment we used the source documents to list the invoice value, ocean freight and marine insurance, exchange rate and importation costs and expenses in the importer transaction form. We confirmed that the goods shipped during the investigation period conformed to the terms outlined in the supply contract, discussed above at section 4.2.2.

4.3.2 Shipment costs

Origin advised that ocean freight and marine insurance was arranged by the APLNG Project's contracted logistics provider DHL Global Forwarding (Australia) Pty Ltd (DHL). Origin outlined that the marine insurance expense is part of a global insurance policy for all project equipment and it is not invoiced separately. Origin also incurred a booking fee of [REDACTED] for each shipment of the goods. This booking fee has been included in the weighted average of ocean freight and marine insurance, calculated as AUD [REDACTED] per unit. Our working is at **confidential appendix 1**.

The ocean freight and marine insurance invoices form **confidential attachment IMP 1**.

4.3.3 Importation costs

Origin provided information under the heading of "Australian Importation Costs", including amounts for import declaration fees, customs clearance fees, terminal handling charges and wharf detention. Using verified data provided during and subsequent to the visit, we calculated the weighted average importation expenses for all shipments, which are summarised in the following table.

Item	Weighted average cost (AUD/unit)
Import declaration fee	[REDACTED]
Customs clearance	[REDACTED]
Terminal handling	[REDACTED]
Wharf detention charges	[REDACTED]
Total	[REDACTED]

Our working is at **confidential appendix 1**.

4.3.4 Inland transport

Origin outlined that inland transport from port to storage, and from storage to the APLNG Project site was also arranged through its contracted logistics provider DHL.

Origin provided invoices for inland transport from port to storage for two of the three shipments of power transformers during the investigation period. The weighted average cost of this leg of the inland transport is AUD [REDACTED] per unit.

Origin also provided invoices for inland transport from storage to the APLNG Project site for two of the three shipments of power transformers received during the investigation period. The transformers related to the third shipment remains located at a lay down yard

PUBLIC RECORD

in Brisbane and will be transported to sites in the future as it is not currently feasible to deliver these power transformers to such sites.

The weighted average of inland transport for each power transformer imported during the investigation period was AUD [REDACTED]. Our working is at **confidential appendix 1**.

4.4 Export prices for imported shipments

Based on verification of all shipments, we calculated the weighted average FOB export price, both including and excluding transformer oil for the goods imported over the investigation period. Our working is at **confidential appendix 1**.

Product	FOB export price (all inclusive) (AUD/unit)	FOB export price (excluding transformer oil) (AUD/unit)
65 MVA power transformer	[REDACTED]	[REDACTED]
50 MVA power transformer	[REDACTED]	[REDACTED]

PUBLIC RECORD**5 WHO IS THE IMPORTER AND EXPORTER****5.1 Who is the importer?**

We reviewed the documents provided in respect of the selected shipments. We note that APLNG or Origin Energy Resources Limited as agent for APLNG:

- is named as the customer on the commercial invoice issued by Siemens;
- is named as the consignee on the bill of lading;
- retains beneficial ownership once the goods clear FOB point; and
- incurs all relevant costs associated with the importation of the goods from FOB point up to the point of installation on site at the APLNG Project.

We consider APLNG to be the beneficial owner of the goods at the time of importation, and therefore the importer.

5.2 Who is the exporter?

The Commission will generally identify the exporter as:

- a principal in the transaction, located in the country of export from where the goods were shipped, who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal in the transaction, located in the country of export, who owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

Subject to further inquiries, we are satisfied that Siemens Guangzhou can be considered exporter of power transformers imported by APLNG or Origin Energy Resources Limited as agent for APLNG. To our knowledge, Siemens Guangzhou is the principal in the country of export, manufactures the goods and gave up the goods for shipment directly to Origin.

PUBLIC RECORD**6 ARMS LENGTH**

In determining export prices under s. 269TAB(1)(a) and normal values under s. 269TAC(1), the Act requires that the relevant sales are arm's length transactions.

S.269TAA outlines the circumstances in which the price paid or payable shall not be treated as arm's length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; and
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

Given the nature of the tender process we are satisfied that import transactions between APLNG and its supplier are arm's length transactions.

7 RECOMMENDATIONS

From our investigations, we are of the opinion that, for the goods purchased and imported by Origin from its supplier:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporters; and
- the purchases of the goods by the importer were arm's length transactions.

Subject to further inquiries with these exporters, we recommend that the export price for power transformers imported by APLNG from Siemens can be established under s.269TAB(1)(c) of the Act, having regard to all the circumstances of the exportation.

PUBLIC RECORD**8 APPENDICES AND ATTACHMENTS**

Confidential appendix 1	Imports working
Confidential attachment GEN 1	APLNG joint venture governance structure
Confidential attachment TENDER 1	Transformers Procurement Strategy
Confidential attachment TENDER 2	Tender Management and Evaluation Protocol
Confidential attachment TENDER 3	Tender receipt record
Confidential attachment TENDER 4	Decision Support Package and Commercial Bid Evaluation
Confidential attachment TENDER 5	Tender evaluation presentation
Confidential attachment TENDER 6	Signed heads of agreement and Sch. B to contract with Siemens Ltd
Confidential attachment IMP 1	Importation source documents