



**Australian Government**  
**Anti-Dumping Commission**

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**CUSTOMS ACT 1901 - PART XVB**

**TERMINATION REPORT NO. 219**

**TERMINATION OF PART OF AN INVESTIGATION**

**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**

**27 November 2014**

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### ABBREVIATIONS & SHORTENED FORMS

ABB Australia	ABB Australia Pty Ltd
ABB Chongqing	ABB Chongqing Transformer Co., Ltd
ABB Group	ABB Australia, ABB Chongqing, ABB Thailand, ABB Vietnam and ABB Zhongshan
ABB Thailand	ABB Limited, Thailand
ABB Vietnam	ABB Limited, Vietnam
ABB Zhongshan	ABB Zhongshan Transformer Co., Ltd
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
Alstom Australia	Alstom Grid Australia Ltd
Alstom Shanghai	SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd
Alstom Wuhan	SEC Alstom Wuhan Transformers Co., Ltd
Baoding	Baoding Railway Transformer Co., Ltd. of Electrification Bureau Group of China Railway
CG Power	PT CG Power Systems Indonesia
Changzhou	Changzhou XD Transformer Co., Ltd
China	People's Republic of China
China Chamber of Commerce	China Chamber of Commerce for Import & Export of Machinery & Electronic Products
CHINT	CHINT Electric Co., Ltd
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
FCM	full cost modelling
FOB	free-on-board
Fortune	Fortune Electric Co. Ltd
GAAP	generally accepted accounting principles
Hyosung	Hyosung Corporation
Hyundai	Hyundai Heavy Industries Co., Ltd
Hyundai Australia	Hyundai Australia Pty Ltd
IAS	International Accounting Standards
Indonesia	Republic of Indonesia
Jiangsu	Jiangsu Huapeng Transformer Co., Ltd
Jinan	XD Jinan Transformer Co., Ltd
Korea	Republic of Korea
kV	kilo volts
MVA	mega volt amperes
PAD	preliminary affirmative determination
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry
Regulations	<i>Customs Regulations 1926</i>
Rio Tinto	Rio Tinto Limited
SEF	statement of essential facts
Shihlin	Shihlin Electric & Engineering Corp
Shihlin Australia	Shihlin Electric Australia Pty Ltd
Siemens Australia	Siemens Ltd, Australia
Siemens Group	Siemens Australia, Siemens Guangzhou, Siemens

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	Guangzhou and Siemens Guangzhou
Siemens Guangzhou	Siemens Transformer (Guangzhou) Co., Ltd
Siemens Jinan	Siemens Transformer (Jinan) Co., Ltd
Siemens Wuhan	Siemens Transformer (Wuhan) Co., Ltd
TBEA	TBEA Shenyang Transformer Group Co., Ltd
Toshiba CTC	Changzhou Toshiba Transformer Co., Ltd
Toshiba CTS	Changzhou Toshiba Shudian Transformer Co., Ltd
Toshiba International	Toshiba International Corp Pty Ltd
UNINDO	PT. Unelec Indonesia
Vietnam	Socialist Republic of Vietnam
WTC	Wilson Transformer Company Pty Ltd
WTO Anti-Dumping Agreement	World Trade Organization Agreement on Implementation of Article VI of the GATT
Xi'an	Xi'an XD Transformer Co., Ltd

## 1 SUMMARY AND FINDINGS

### 1.1 Introduction

Investigation 219 is in response to an application lodged by Wilson Transformer Company Pty Ltd (WTC) alleging that certain 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) at dumped prices caused material injury to the Australian industry producing like goods. A full description of the goods the subject of the application is set out in chapter 3 of this report.

This termination report sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (Commissioner) based his decisions to terminate part of the investigation.

### 1.2 Findings

As a result of the Anti-Dumping Commission's (the Commission's) investigation, the Commissioner is satisfied that the dumping margins for ABB Chongqing Transformer Co., Ltd (ABB Chongqing), ABB Zhongshan Transformer Co., Ltd (ABB Zhongshan), Changzhou Toshiba Transformer Co., Ltd (Toshiba CTC), CHINT Electric Co., Ltd (CHINT), Jiangsu Huapeng Transformer Co., Ltd (Jiangsu), PT. Unelec Indonesia (UNINDO) and Hyundai Heavy Industries Co., Ltd (Hyundai) were negligible. The Commissioner is also satisfied with respect to China and Korea that the total volumes of goods exported at dumped prices from each of those countries were negligible.

On 1 December 2014, in accordance with s. 269TDA(1) of the *Customs Act 1901*<sup>1</sup> the Commissioner decided to terminate the investigation so far as it related to ABB Chongqing, ABB Zhongshan, Toshiba CTC, CHINT, Jiangsu, UNINDO and Hyundai on the basis of finding that dumping margins were negligible. In accordance with s. 269TDA(3), the Commissioner decided to terminate the investigation so far as it related to China and Korea on the basis of finding that the total volumes of goods exported at dumped prices from each of those countries were negligible.

A notice regarding the terminations was published in *The Australian* newspaper on 1 December 2014. Anti-Dumping Notice (ADN) 2014/130 also relates to the termination.

### 1.3 Application of law to facts

Division 2 of Part XVB sets out, among other matters, 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 for the publication of a dumping and/or countervailing duty notice.

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<sup>1</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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## 1.4 Application

On 8 July 2013, an application was lodged by WTC requesting that the relevant Minister publish a dumping duty notice in relation to power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam. The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application and that there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application. On 29 July 2013, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping of power transformers from the nominated countries.

## 1.5 Preliminary affirmative determination

On 20 November 2013, the Commissioner made a preliminary affirmative determination (PAD) that there appeared to be sufficient grounds for the publication of a dumping duty notice.

## 1.6 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary)<sup>2</sup> allows, place on the public record a statement of the facts on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.

The initiation notice advised that the statement of essential facts (SEF) for the investigation would be placed on the public record by 18 November 2013. There have since been four extensions granted by the Parliamentary Secretary, with the last extension amending the due date for publication of the SEF to 22 September 2014. The SEF was placed on the public record on 18 September 2014.

SEF No. 219 notified interested parties of the Commission's findings and the Commissioner's proposal to terminate part of the investigation. Findings in relation to the proposed terminations have not changed since the SEF.

WTC submitted that if normal values and dumping margins were reassessed using different profits in constructed normal values and an alternative methodology for assessing dumping, there is a strong likelihood that the volume of dumped imports entering Australia from China and Korea would exceed the 3% volume threshold specified by s. 269TD(4) to be a negligible volume of dumped goods.

Due to the Commissioners decision to terminate parts of the investigation, which are the subject of this report, the Commission's assessment of the economic condition of the industry and of injury caused by dumping are not relevant to this report.

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<sup>2</sup> The Minister for Industry delegated responsibility for anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker for this investigation

## 2 BACKGROUND

### 2.1 Initiation

Following consideration of the application lodged by WTC, the Commissioner decided not to reject the application and initiated the dumping investigation. Public notification of initiation of the investigation was made in *The Australian* newspaper on 29 July 2013. Consideration report No. 219 was placed on the public record for the investigation and sets out the Commissioner's consideration of the application.

ADN No. 2013/64 provides further details of the investigation and is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

In respect of this investigation:

- the investigation period for the purpose of assessing dumping is July 2010 to June 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from July 2008.

### 2.2 Preliminary affirmative determination

On 20 November 2013, the Commissioner made a preliminary affirmative determination (PAD) that there appeared to be reasonable grounds for the publication of a dumping duty notice. Securities were imposed against exporters from China, Indonesia, Korea, Taiwan and Vietnam from 27 November 2013. Thailand was excluded from the PAD as the level of dumping from the largest exporter from Thailand and the volume of dumped imports were found to be negligible at the time of making the PAD.

### 2.3 Investigation

The initiation notice dated 29 July 2013 advised that the SEF for the investigation would be placed on the public record by 18 November 2013.

On 6 November 2013, ADN 2013/89 advised of the decision by the Minister for Industry to extend the deadline for publication of the SEF until 18 March 2014.

On 18 March 2014, ADN 2014/23 advised of the decision by the Parliamentary Secretary to extend the deadline for publication of the SEF until 16 July 2014.

On 27 May 2014, the Commission published Issues Paper No. 2014/01 inviting interested parties to comment on certain issues identified during the investigation. Issues papers afford interested parties the opportunity to comment on significant issues relating to the investigation so that the Commission may consider those views before publishing the SEF. The purpose of Issues Paper No. 2014/01 was to outline the background, and the Commission's proposed position, in relation to:

- the goods and like goods;

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- identification of which export shipments are used for dumping margin calculations;
- determination of profit for constructed normal values;
- calculation of a credit adjustment for differences between domestic and export sales; and
- exchange rates used for converting currencies in dumping margin calculations.

These issues are discussed in more detail in Sections 3.5 and 4.5.

On 14 July 2014, ADN 2014/56 advised of the decision by the Parliamentary Secretary to extend the deadline for publication of the SEF until 8 September 2014.

On 15 August 2014, the Commission placed a note for file on the public record advising interested parties that the Commission would be revisiting all preliminary exporter dumping margin assessments to determine whether there are grounds to calculate dumping and the level of dumping in accordance with s. 269TACB(3). This method compares the weighted average normal value to transaction export price. The Commission noted that it recognised that dumping margin assessments calculated under s. 269TACB(3) may vary significantly from dumping margin assessments that had previously been calculated under s. 269TACB(2).

On 8 September 2014, ADN 2014/84 advised of the decision by the Parliamentary Secretary to extend the deadline for publication of the SEF until 22 September 2014. The SEF was placed on the public record on 18 September 2014.

On 30 October 2014, ADN 2014/116 advised of the decision by the Parliamentary Secretary to extend the due date for providing him the final report to 2 December 2014. This extension was required so that the Commission could finalise its analysis on using the alternative approach under s. 269TACB(3) to determine dumping margins. Also, it would ensure the final report provides a comprehensive account of all aspects the investigation.

### 2.4 Submissions

Interested parties made numerous submissions to the investigation. Submissions received prior to publication of the SEF are listed at **Attachment 1**. The Commission has considered the issues raised in these submissions. All relevant issues are discussed in the appropriate sections of this report.

The Commission received submissions from the following entities in response to SEF No. 219 which were taken into account in preparing this report:

- ABB Australia Pty Ltd (ABB Australia), ABB Chongqing, ABB Thailand, ABB Vietnam and ABB Zhongshan (collectively referred to as the ABB Group);
- Government of Indonesia;
- Toshiba International Corp Pty Ltd (Toshiba International);
- Shihlin;
- importers represented by Gadens;
- PT CG PowerSystems Indonesia (CG Power);



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- WTC;
- Alstom Grid Australia (Alsom Australia);
- Fortune;
- ABB Vietnam;
- ABB Thailand; and
- Siemens Ltd, Australia (Siemens Australia), Siemens Guangzhou, Siemens Guangzhou and Siemens Guangzhou (collectively referred to as the Siemens Group).

To the extent these submissions were relevant to the dumping margin assessments, these were all taken into account for the purpose of this report.

### 2.5 Public record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. Documents are available online at <http://www.adcommission.gov.au/cases/EPR219.asp> or on request in hard copy in Canberra. Documents on the public record should be read in conjunction with this report.

### 2.6 Relevant legislation

Subsection 269TDA(1) provides:

- (1) *If:*
- (a) *application is made for a dumping duty notice; and*
  - (b) *in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:*
    - (i) *there has been no dumping by the exporter of any of those goods; or*
    - (ii) *there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;*

*the Commissioner must terminate the investigation so far as it relates to the exporter.*

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Subsection 269TDA(3) provides:

(3) *If:*

(a) *application is made for a dumping duty notice; and*

(b) *in an investigation for the purposes of the application the Commissioneer is satisfied that the total volume of goods the subject of the application:*

(i) *that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and*

(ii) *that have been, or may be, dumped;*

*is negligible;*

*the Commissioner must terminate the investigation so far as it relates to that country.*

## 3 THE GOODS AND LIKE GOODS

### 3.1 Finding

The Commissioner found that locally produced power transformers are like goods to power transformers exported to Australia from China, Indonesia, Korea, Taiwan, Thailand and Vietnam that are the subject of the application.

### 3.2 Legislative framework

Subsection 269TC(1) provides that the Commissioner shall reject an application for a dumping duty notice if, *inter alia*, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner firstly determines that the goods produced by the Australian industry are like to the imported goods. Subsection 269T(1) defines like goods as:

*goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

An Australian industry can apply for the publication of dumping and countervailing duty notices even if the goods it produces are not identical to those imported. In the case of non-identical goods, the industry must produce goods that are like to the imported goods in accordance with the definition of like goods under s. 269T(1) set out above. Where the locally produced goods and the imported goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

### 3.3 The goods

The goods the subject of the application referred to in this report as 'power transformers' are:

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

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

- the steel core;
- the windings;

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

Gas filled and dry type power transformers are not included in the goods the subject of the application.

### 3.4 Tariff classification

Power transformers 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 general rate of duty is 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 of duty for power transformers from these countries is free.

The Commission found that some power transformers were incorrectly classified to 8504.33.00 (other power transformer exceeding 0.016 MVA but not exceeding 0.5 MVA) and 8504.34.00 (other power transformer exceeding 0.5 MVA). The Commission also notes that a power transformer imported as part of a substation may be imported under tariff concession order number TC 1045898 using classification 8537.20.90.

The various potential combinations of incomplete power transformers are not all classifiable to these classifications. For example, the relevant parts heading, 8504.90.90, would cover a number of components and insulated winding wire (with or without connections) is classifiable under 8544.1, if imported without the core.

The Commission notes that the tariff subheadings are provided for administrative convenience and customs purposes. Instead it is the written description in Section 3.3 that defines the goods the subject of the investigation.

### 3.5 Submissions in respect of the goods

#### *Incomplete power transformers*

Rio Tinto Limited (Rio Tinto) questioned whether a subassembly of a power transformer that lacks one or more of the active parts described in Section 3.3 of this report can be described as a power transformer or whether they are more accurately described as parts for a power transformer. It submitted that incomplete power transformers do not have the essential characteristics of a power transformer.

The Commission notes that the description of the goods is very similar to that used in a US investigation into large power transformers. WTC advised that it understands these words were used because Hyundai was building a US production facility and indications were that many of the parts, including windings, were initially being imported. WTC also advised that in some parts of the world such as Italy and Turkey, contract core builders and winders supply cores and windings to assemblers and testers of power transformers.

Rio Tinto did not make a further submission following publication of SEF No. 219.

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The Commission is aware that there are other producers of power transformers in Australia. Also, the Commission is aware that, until recently, certain multinational suppliers produced power transformers in Australia and the Commission considers that it may be possible to establish an assembly and testing facility using existing premises. The Commission is satisfied the description of the goods adequately describes and includes incomplete power transformers. However, the Commission found no evidence that incomplete power transformers were imported during the investigation period.

### Scope of the goods

Alstom Grid Australia Ltd (Alstom Australia) submitted that the description of the goods is so broad that it is almost meaningless and unworkable. Toshiba International submitted that there are many variations of possible power transformers within the nominated range and that WTC did not manufacture the full range during the investigation period. It claimed that the scope of the inquiry should be restricted to types of power transformers that WTC manufactured.

The Commission stated in the SEF that it is satisfied that WTC has the ability to manufacture power transformers within the range defined by the description of the goods.

The following comments were made in response to the SEF.

- Toshiba International stated that it submitted in February 2014 that WTC does not manufacture power transformers at the upper level of the range nominated by WTC, namely over 330 kV and 250 MVA. It claims this was not addressed in the SEF.
- The importers represented by Gadens share the view of other interested parties that the description of the goods is so broad as to almost render it meaningless and unworkable especially given that WTC did not, and could not, manufacture the full range of those goods during the investigation period.
- Alstom Australia again submitted that the description of the goods is so broad as to almost render it meaningless and unworkable especially given that WTC did not, and could not, manufacture the full range of those goods during the investigation period.

The Commission notes that WTC's application described how power transformers worked and the role of power transformers in the transmission of electricity.

- Transmission lines transmit electricity at very high voltages but at reduced current (amperage). The higher the amperage the greater the size of the conductor needed to carry the current, resulting in increased costs and power losses. Power transformers are used to increase the voltage and proportionately reduce the amperage so that large quantities of electricity can be transported efficiently with minimal power losses.
- All power transformers use the principle of electromagnetic induction. When electricity is flowing through a conductor, it creates an electromagnetic field around it. When an electromagnetic field moves across an electrical conductor, it induces a voltage in the conductor. Electricity flows into one

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conductor (input), creating a magnetic field which induces a voltage in a second conductor (output). Thus, transformers change electrical current to an electromagnetic force and back to electrical current again.

- Power transformers consist of a core of electrical steel, around which primary input and secondary output windings of a conductor (typically copper) are wound. (In auto power transformers, the same winding acts as both the primary and secondary winding, but the principles are the same.) If the primary winding has more turns than the secondary winding, it will decrease the output voltage but increase the output current proportionately. If the primary winding has fewer turns than the secondary winding, it will increase the output voltage but lower the current proportionately.
- Power is typically generated at 5 to 30 kV, but transmission normally occurs at 66 to 500 kV. Power transformers that increase the output voltage from the generator for long distance transmission are known as step-up transformers and can have very large power ratings, often 100 to 600 MVA.
- Power transformers may also connect two high voltage transmission systems or may take the high transmission voltages and convert them to lower voltages suitable for distribution systems (step-down transformers). These power transformers also have large power and voltage ratings.
- Power transformers with lower power ratings are used in the distribution system and may be located in country towns or suburban areas.

The Commission observed the production of power transformers during visits to WTC and exporters and discussed production processes with interested parties. It is satisfied that any producer, including WTC, can design and manufacture power transformers to satisfy the many and varied requirements of purchasers within the range nominated in the application.

The Commission notes that some of the submissions from interested parties on this issue had referred to documents from WTC's website that had not been updated. The Commission also notes that WTC tendered for power transformers in the upper level of the range nominated in the application. The Commission also observed that for larger power transformers material handling capabilities become important and is satisfied that WTC has the necessary facilities to manufacture power transformers at the upper level of the range nominated in the application. In a recent submission WTC advised that it had manufactured and successfully tested a 550 MVA 330/132 kV power transformer, which has a greater voltage rating than the power transformers that are the goods the subject of the application.

The Commissioner has considered the responses to the SEF and is satisfied that the description of the goods is not so broad as to be meaningless. The Commissioner is also satisfied that WTC has the ability to manufacture like goods to the power transformers the subject of the application, including power transformers within the entire range defined by the description of the goods.

### Distribution transformers

The Commission published Issues Paper No. 2014/01 on 27 May 2014 to give interested parties the opportunity to comment on significant issues relating to the

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investigation. One of those issues was 'the goods and like goods', where the particular issue of discussion had a focus on distribution transformers.

ABB Australia Pty Ltd (ABB Australia) and Hyosung had previously submitted that distribution transformers were not the goods as the application stated that distribution transformers were not the subject of the application. The Commission's report on its visit to WTC stated:

*Wilson Transformer believes there is no clear definition of a distribution transformer, but that they are power transformers under this definition. It claims that in Australia, the generally accepted definition of a distribution transformer is one that is the last point of connection to a residential and often commercial consumer. They have a power rating less than or equal to 2 MVA, a primary voltage of 11 kV or 22 kV, and a secondary voltage of between 400 volts and 433 volts three phase (equivalent to 230 volts to 250 volts single phase).*

Issues Paper 2014/01 stated that the Commission's proposed position was that there is no reason to exclude certain power transformers from the investigation merely because a company describes them as distribution transformers.

In response to Issues Paper No. 2014/01 ABB Australia submitted that distribution transformers are not under investigation. It claimed that distribution transformers are fundamentally different from power transformers because:

- distribution transformers are the final transformers in the electric power distribution systems; they step down the voltage for use by the consumer;
- distribution transformers can be mass produced according to standard designs;
- the component technologies, such as the insulation, core, conductor and winding arrangements, within distribution transformers are substantially different from the component technologies within power transformers;
- there are clear differences in the design and construction of distribution transformers (ABB Vietnam manufactures distribution transformers and power transformers in completely separate factories); and
- distribution transformers are not distribution transformers merely because a producer might call them that, they are distribution transformers because of their unique features and purposes.

The following comments were made in response to the SEF.

- The ABB Group submitted that the definition of distribution transformers, being transformers that are expressly excluded from the goods under consideration, is not merely a function of their capacity. The definition of a distribution transformer is composed of a number of technical facts as to what a distribution transformer is, and cannot be dictated by capacity or by the production capabilities of the Australian industry or indeed of any other producer.
- Alstom Australia and the importers represented by Gadens note the extent of the uncertainty regarding whether the investigation applies to distribution transformers and the nature of those transformers. While they agree with the observations by the Commission at Section 3.5 of the SEF regarding the

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characteristics of distribution transformers and that they are not like goods, they believe that this confusion further emphasises the problems associated with the breadth of the description of the goods.

The Commission considers that there is no generally accepted definition of distribution transformers. For example, Hyosung stated it defines distribution transformers as those transformers having a capacity up to 66 kV. The Commission notes that in Australia the distribution transformers and the power transformers are supplied to different markets. In Australia distribution transformers typically have a power rating of less than 1 MVA. The Commission interrogated the Australian Customs and Border Protection Service's import database and observed that where the goods were described as distribution transformers and the description included the power rating, that power rating was in most cases less than 2 MVA.

The Commission is satisfied that distribution transformers:

- physically, have a much lower power rating, are smaller than power transformers and are often pole mounted;
- commercially, are sold in greater quantities and tend to be a more standard design that avoids the complicated design processes required for power transformers;
- functionally, rather than being part of the power transmission network are generally used at the lower end voltages of the power distribution system to provide the final connection to the consumer; and
- are produced using different production process – WTC manufactures distribution transformers in a different production facility.

The Commission has considered the responses to the SEF as well as all earlier submissions and is satisfied that distribution transformers are not like goods to power transformers the subject of the application. The Commission decided to treat all power transformers with a power rating of equal to or greater than 10 MVA and a voltage rating of less than 500 kV as the goods the subject of the investigation.

### 3.6 Like goods

#### 3.6.1 WTC's claims

WTC claimed that the power transformers it manufactures are directly comparable to imported power transformers. They are designed and manufactured to the purchasers' specifications, as are imported power transformers. Further, the sales and manufacturing process for locally produced and imported power transformers are similar.

#### 3.6.2 The Commission's assessment

##### Physical likeness

Power transformers are individually designed and engineered to meet the purchaser's specifications. However, both locally produced and imported power transformers share basic physical characteristics. The assembled core and windings are placed in a tank and are connected to external power lines by bushings.



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### Commercial likeness

Locally produced and imported power transformers compete directly for supply to purchasers.

### Functional likeness

Locally produced and imported power transformers have comparable or identical end use applications.

### Production likeness

Locally produced and imported power transformers are manufactured in a similar manner. The design and manufacturing process include the following:

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

The Commission has treated all power transformers with power ratings of equal to or greater than 10 MVA and voltage ratings of less than 500kV as the goods the subject of the application, regardless of the description of the goods by the exporter.

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## 4 DUMPING INVESTIGATION

### 4.1 Findings

Dumping margins for power transformers exported to Australia during the investigation period were calculated by comparing export prices with the corresponding normal values. Dumping margins for those exporters that are the subject of this termination report are summarised in the following table.

Figure 1: Dumping margins

Country	Exporter	Dumping margin
China	ABB Chongqing	-2.7%
	ABB Zhongshan	-2.7%
	Toshiba CTC	-4.2%
	CHINT	< -5%
	Jiangsu	< -5%
	Siemens Guangzhou	5.5%
	Siemens Jinan	5.5%
	Siemens Wuhan	5.5%
	All other exporters	5.5%
Indonesia	UNINDO	-4.2%
Korea	Hyosung	12.3%
	Hyundai	-8.2%
	All other exporters except Hyundai	12.3%

In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it related to ABB Chongqing, ABB Zhongshan, Toshiba CTC, CHINT, Jiangsu, UNINDO and Hyundai on the basis of finding that dumping margins were negligible. In accordance with s. 269TDA(3), the Commissioner terminated the investigation so far as it related to China and Korea on the basis of finding that the total volumes of goods exported at dumped prices from each of those countries were negligible.

### 4.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under s. 269TAB and s. 269TAC respectively.

Usually, the normal value reflects the price paid for like goods sold in the ordinary course of trade in the domestic market of the country of export. However, when like goods are not sold in that market, or the price paid in that market cannot, for some reason, be relied upon, s. 269TAC gives several alternate methods by which normal values may be obtained, depending on the circumstances of the case.

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Subsection 269TAC(1) states that, subject to certain conditions, the normal value is the price at which like goods are sold in the domestic market of the country of export. Paragraph 269TAC(2)(c) provides for the normal value to be constructed using the cost to make and sell the goods in the country of export, and s. 269TAC(2)(d) provides for the normal value to be determined using the price of the goods exported from the country of export to a third country.

Dumping margins are determined under s. 269TACB. The Commission considers that the *transaction to transaction* method provided for in s. 269TACB(2)(b) best suits those circumstances where there are not a large number of transactions, such as capital equipment made to specific requirements where the normal value may vary from *transaction to transaction* with significant technical variation between each sale. The *transaction to transaction* method is provided for at s. 269TACB(2)(b) and requires that each export transaction price be compared to each corresponding normal value. This method produces as many dumping margins as there are export transactions and these are amalgamated using a weighted average in order to calculate a single dumping margin for each exporter over the investigation period<sup>3</sup>.

However, s. 269TACB(3) provides that if the Minister is satisfied that export prices differ significantly among different purchasers, regions or periods and those differences make the methods referred to in s. 269TACB(2) inappropriate, the Minister may compare export prices with the weighted average of corresponding normal values. This issue is further discussed in Section 4.6 of this report.

This chapter explains the results of investigations by the Commission into whether power transformers were exported from China, Indonesia, Korea, Taiwan, Thailand and Vietnam to Australia at dumped prices during the investigation period, so far as that relates to exporters that are the subject of this termination report.

### 4.3 Constructed normal values

There are domestic sales of power transformers in the domestic markets of the countries subject to the investigation. However, while electrical steel and copper conductor are the most significant cost components of power transformers, many other variables affect price. For example, depending on whether the power transformer is single or three phase, the design costs, lead times and ancillary options (such as tap changers) can significantly affect price. The Commission considers that because of these many variables it is unable to meaningfully adjust relevant domestic prices of power transformers to make them comparable with export prices. Subsection 269TAC(2)(c) allows for the constructed method when there is an absence of relevant sales or because of the situation in the market the sales are not suitable. The Commission has constructed normal values because of the lack of relevant domestic sales.

Interested parties, including WTC and exporters, agree with this approach. Hyundai provided the following comments in its exporter questionnaire response:

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<sup>3</sup> Anti-Dumping Commission *Dumping and Subsidy Manual (December 2013)*, p115.

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*The goods are of a complex nature and are customised to a degree in which no two transformers are identical and they all include a large number of variables, for example: number of phases; type of tap changer and percentage regulation; low line voltage; power efficiency (ie, load/no-load loss); cooling class designation.*

*In our view, it would be totally unrealistic and inimical to both the Anti-Dumping Agreement and Australian law to compare domestic market sales with export sales to Australia.*

No interested party made any submissions in response to the SEF regarding the Commission's decision to construct normal values.

### 4.4 Exporters

At the commencement of the investigation, a number of potential exporters of power transformers from the nominated countries were identified. The Commission wrote to all identified exporters advising them of the investigation and inviting them to participate in the investigation through completion of an exporter questionnaire. During the investigation additional exporters were identified and asked to complete exporter questionnaires.

The Commission received questionnaire responses from the following entities:

- ABB Chongqing;
- ABB Thailand;
- ABB Vietnam;
- ABB Zhongshan;
- Baoding Railway Transformer Co., Ltd. of Electrification Bureau Group of China Railway (Baoding);
- CG Power;
- Changzhou XD Transformer Co., Ltd (Changzhou);
- CHINT;
- Fortune;
- Hyosung;
- Hyundai;
- Jiangsu;
- SEC Alstom (Shanghai Baoshan) Transformers Co., Ltd (Alstom Shanghai);
- SEC Alstom Wuhan Transformers Co., Ltd (Alstom Wuhan);
- Shihlin;
- Siemens Guangzhou;
- Siemens Jinan;
- Siemens Wuhan;
- Tatung Company;
- TBEA Shenyang Transformer Group Co., Ltd (TBEA);
- Tirathai Public Company Limited;
- Toshiba CTC;
- Changzhou Toshiba Shudian Transformer Co., Ltd (Toshiba CTS);
- UNINDO;
- XD Jinan Transformer Co., Ltd (Jinan); and

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- Xi'an XD Transformer Co., Ltd (Xi'an).

Baoding, Changzhou, Alstom Shanghai, Alstom Wuhan, TBEA, Jinan, Toshiba CTS and Xi'an did not export power transformers to Australia during the investigation period and the Commission did not calculate individual dumping margins for these exporters. This matter is discussed further below.

The Commission conducted exporter verification visits to the following exporters:

- ABB Thailand;
- ABB Vietnam;
- CHINT;
- Fortune;
- Hyosung;
- Hyundai;
- Shihlin; and
- Siemens Wuhan (where the Commission also verified information for Siemens Guangzhou and Siemens Jinan).

Verification visit reports are available on the Commission's website at <http://www.adcommission.gov.au/> and provide additional detail to what is discussed below.

The Commission wrote to ABB Chongqing and ABB Zhongshan requesting documents to verify information in their exporter questionnaire responses. The Commission's report of this verification is also available at the Commission's website.

Dumping margin calculations were conducted for the remaining smaller entities based on the information provided in the exporter questionnaire responses and benchmarked against verified export price and normal value data.

### 4.5 Issues identified during the investigation

On 27 May 2014, the Commission published Issues Paper No. 2014/01 inviting interested parties to comment on certain significant issues identified during the investigation. Submissions were received from the following entities:

- ABB Australia;
- Alstom Australia;
- China Chamber of Commerce for Import & Export of Machinery & Electronic Products (China Chamber of Commerce);
- Fortune Electric Co. Ltd (Fortune);
- Government of China;
- Hyosung;
- Hyundai;
- Siemens Group;
- TBEA Shenyang Transformer Group Co., Ltd (TBEA);
- Toshiba International; and
- WTC.

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A further important consideration in relation to the investigation was identified following the publication of Issues Paper No. 2014/01 and that is whether dumping margins for certain exporters should be calculated under s. 269TACB(3). This matter is discussed in Section 4.6 of this report.

### 4.5.1 The goods and like goods

Issues Paper No. 2014/01 proposed that the Commission treat all power transformers with power ratings of equal to or greater than 10 MVA and voltage ratings of less than 500kV as the goods the subject of the application, regardless of the description of the goods by the exporter. This issue is discussed in Section 3.5 of this report.

### 4.5.2 Shipments used for dumping calculations

Issues Paper No. 2014/01 proposed that the Commission calculate dumping margins for power transformers only in relation to power transformers exported to Australia during the investigation period. The China Chamber of Commerce, the Government of China, TBEA and Toshiba International expressed concern in relation to this proposal.

#### Date of sale versus date of export

TBEA submitted that the Commission appeared to have changed its position in relation to determining which shipments fall within the investigation period. It referred to the instructions in the exporter questionnaire that stated:

*You should provide details of **all** goods under consideration (the goods):*

- *invoiced during the investigation period; and*
- *subject to tenders that were won during the investigation period, even in circumstances where the goods were not invoiced or **shipped** to Australia during the investigation period. In this circumstance, please provide details of any expenses already incurred with respect to the goods shipped outside of the investigation period,*

*For tender sales, the Commission considers the contract date will normally be taken to be the date of sale. To ensure that the Commission can make a proper assessment of date of sale, we request the contract date, invoice date and delivery date. If you consider that a date other than the contract date is the appropriate date of sale, please provide a response outlining your reasons for this.*

The Commission did not have a definitive position on a number of technical issues at the commencement of the investigation, but did seek to ensure exporters provided sufficient information in response to the exporter questionnaire. An example is the date of sale which can be important for issues such as determining the date to use for currency conversions.

TBEA notes that s. 269TACB(1) refers to export prices of goods exported to Australia during the investigation period. It considers that the Commission's interpretation that

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this is the date of the physical movement of goods from one country to another is incorrect. However, TBEA did not provide any arguments to support this position.

The China Chamber of Commerce submitted that the date of sale for a power transformer exported to Australia by TBEA was when the material terms of sale were established and that this occurred during the investigation period. It also submitted that most of the work for that contract was undertaken during the investigation period.

The Government of China submitted that the Commission's approach in this case appears to differ from that in the wind towers investigation<sup>4</sup>. It stated that as far as it was aware, some of the transactions used in the dumping margin calculations for wind towers were delivered after the investigation period, but the date of contract was within the investigation period.

The Commission confirms that in the wind towers investigation it only used goods exported during the investigation period to calculate dumping margins, although some exporters provided details of goods exported after the investigation period.

Toshiba International submitted that the Commission's position is inconsistent with Australia's obligations under the World Trade Organization Agreement on Implementation of Article VI of the GATT (WTO Anti-Dumping Agreement) and Australian law. It considered that the Minister is not constrained by s. 269TACB when deciding, for the purpose of s. 269TG, whether dumping is likely to occur in the future. It claimed that this is supported by the decision of the Federal Court in *Pilkington (Australia) Ltd v Minister for Justice and Customs [2002] FCA 770 (18 June 2002)* and the subsequent decision of the full Federal Court in that case.

No interested party made any submissions in response to the SEF regarding the date of sale and the date of export.

The Commission considers that the date of sale of goods and the date of export of goods can be, and often are, different. It also considers that the physical movement of the goods from one country, with another country being the destination, is clearly an important consideration for determining the date of export. This does not detract from any finding that the material terms of sale may well have been determined on a different date.

Accordingly, the Commission has determined the date of export as that date which best represents the physical movement of the goods in the act of exportation. In practical terms, the Commission decided this is the date shown on the bill of lading, as proposed in Issues Paper No. 2014/01. The Commission has calculated dumping margins only in relation to power transformers exported to Australia during the investigation period. This may include goods exported for which the contract, and date of sale, occurred before the investigation period. However, it will not include goods exported after the investigation period, regardless of contract date.

The Commission recognises that this may affect certain exporters who exported after the investigation period. A new exporter can request an accelerated review of a

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<sup>4</sup> Investigation No. 221

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dumping duty notice so far as it affects that exporter (refer Division 6 of Part XVB). Subsection 269T(1) defines a new exporter as an exporter who did not export the goods to Australia during the period beginning at the start of the investigation period and ending immediately before the day the SEF is placed on the public record. However, where the physical shipment date is relied upon for determining the export date, and the exporter makes one or more shipments of the goods after the investigation period but before the SEF is placed on the public record in this period, and none in the investigation period, then the exporter is not eligible for an accelerated review.

The Commission notes that affected parties have rights under Divisions 4 and 5 of Part XVB. Division 4 enables a reconciliation of interim duty paid by an importer and final duty payable. Division 5 enables an affected party to request a review of anti-dumping measures no earlier than 12 months after the publication of a dumping duty notice.

### Calculation of individual dumping margins

The Government of China submitted that the Commission is obliged to calculate an individual dumping margin for TBEA and failure to do so would breach Australia's obligations under Article 6.10 of the WTO Anti-Dumping Agreement, which states that:

*The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation...*

The Commission considers that the 'product under investigation' is the goods exported during the investigation period. It established that TBEA did not export power transformers to Australia during the investigation period based on using the bill of lading date as the date of export.

No interested party made any submissions in response to the SEF regarding the Commission's decision to calculate dumping margins for power transformers only in relation to power transformers exported to Australia during the investigation period.

### **4.5.3 Profit for constructed normal value**

Issues Paper No. 2014/01 proposed that the Commission calculate the profit to be included in constructed normal values using Regulation 181A(3)(a) of the *Customs Regulations 1926* (the Regulations), which refers to the actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country. Submissions from a number of entities commented on the Commission's proposed approach.

ABB Australia, Fortune, Hyosung and the Siemens Group supported the use of Regulation 181A(3)(a) to determine the profit to be included in constructed normal values.

- Hyosung submitted that the Commission should take into account all of Hyosung's domestic sales of the same general category of goods to determine the profit to be included in constructed normal values, including both profitable and unprofitable sales.



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- The Siemens Group submitted that because of the unique nature of power transformers, the Commission cannot reliably conduct the ordinary course of trade test and therefore it is not possible to work out the profit to be included in constructed normal values using Regulation 181A(2). The Siemens Group submitted that the determination of profit with reference to the same general category of goods is appropriate in the circumstances.

Alstom Australia reserved its position on whether the use of Regulation 181A(3)(a) is appropriate, but submitted that such a test requires consideration of both profitable and unprofitable sales.

In its submission of 24 July 2014 WTC stated it strongly disagrees with the use of Regulation 181A(3)(a).

- WTC submitted that the Commission has taken a very narrow interpretation of the ordinary course of trade provisions in calculating an amount for profit used in constructed normal values. It submitted that Article 2.2.1 of the WTO Anti-Dumping Agreement does not provide an exhaustive range of methods for determining if sales were in the ordinary course of trade.
- WTC provided an example of an alternative method endorsed by a WTO Panel:
  - where the sales volume of a particular type, sold at a sales price equal to or above its cost of production, represented more than 80% of the total sales volume of that type, and where the weighted average price of that type was equal to or above its cost of production, normal value was based on the actual domestic price;
  - where the volume of profitable sales of a type represented 80% or less of the total sales volume of that type, or where the weighted average price of that type was below its cost of production, normal value was based on the weighted average of profitable sales of that type, provided that these sales represented 10% or more of the total sales volume of that type; and
  - where the volume of profitable sales of any type represented less than 10% of the total sales volume of that type, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.
- WTC submitted that recent legislative changes were designed to provide more discretion to the Parliamentary Secretary in determining an appropriate amount of profit to be included in constructed of normal values. It stated in its submission that:

*The Commission's restrictive interpretation is even more evident in light of recent legislative changes designed to 'provide more discretion to the CEO and the Minister in determining an appropriate amount of profit in the construction of normal value'. The explanatory memorandum further explains that the repeal of subparagraph 269TAC(13) of the Act removes 'the limitations to determining profit when constructing a normal value because of subsection 269TAAD.'*

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*Section 269TAC(13) required a zero of rate of profit to be included in constructing a normal value because of the operation of s. 269TAAD. That is, where all domestic sales were found to have not been made in the ordinary course of trade. It is then unreasonable for a potential zero rate of profit to be included in the construction of normal values for power transformers when there are clearly domestic sales by the various exporters that are profitable and as a result in the ordinary course of trade.*

- WTC also noted that the Commission did not elaborate in Issues Paper No. 2014/01 on the scope of products that would be covered by the same general category of goods and questions whether the Commission has all the necessary information to establish the amount of profit normally realised by exporters on the same general category of goods. It contends that if the Commission is unable to calculate the amount of profit actually realised by exporters from the sale of the same general category of goods in the domestic market, then profit is unable to be determined under Regulation 181A(3)(a). WTC submitted that the profit to be included in constructed normal values should be determined in accordance with Regulation 181A(3)(c), using any other reasonable method and that the amount of profit to be included in constructed normal values should be the highest rate of profit achieved by any exporter in each of the countries of export.

The Siemens Group responded to the submission by WTC.

- The Siemens Group submitted that the definition of sales that are regarded to be in the ordinary course of trade is provided in s. 269TAAD, and that s. 269TAAD(3) provides that costs are taken to be recoverable within a reasonable period of time if the selling price is above the weighted average cost of such goods over the investigation period. The Siemens Group submitted that in the case of power transformers this assessment cannot be undertaken with any degree of reliability.
- The Siemens Group submitted that the method proposed by WTC under Regulation 181A(3)(c) using the highest profit achieved by any exporter in the relevant country of export is self-serving and not reasonable.

In a supplementary submission on 15 August 2014, WTC referred to a US Department of Commerce investigation into power transformers. It assessed recoverability, for the purpose of assessing whether domestic sales were in the ordinary course of trade, by comparing weighted average unit selling prices with weighted average unit costs. WTC considered that averaging prices and costs for power transformers can be misleading and distortive because of the unique nature of power transformers. It submitted that it is more appropriate to compare the margins achieved on unprofitable sales with the average margin achieved on all domestic sales over the investigation period. WTC proposed that domestic sales should not be used to calculate the profit used in constructed normal values where:

- 20% or more of the sales of a model are at prices less than the costs; and
- the margins on such sales are less than the weighted average margin for all domestic sales over the investigation period.

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WTC provided examples of 16 domestic transactions with hypothetical selling prices, corresponding costs and the profit or loss positions to illustrate its proposed methodology.

The Siemens Group, in response to WTC's supplementary submission, suggested that WTC's alternative methodology somehow circumvents the issues encountered for the purposes of testing recoverability by comparing the margin on transactions with a weighted average margin of profit achieved over the period. It submitted that this method is inconsistent with s. 269TAAD(3) which clearly states that the recovery test is based on a comparison of selling prices and costs.

The following comments were made in response to the SEF.

- Shihlin submitted that the profit margin on sales to Taiwan's domestic utility customers should be used instead of the profit margin for all domestic sales in constructing normal values:
  - most of Shihlin's Australian sales were of power transformers of less than 50 MVA, while in the domestic market power transformers of that MVA range were mostly sold to non-utility customers;
  - utility and non-utility sales have different profit levels - fewer than 25% of non-utility transactions have profit margins comparable to utility sales, while a large majority of non-utility sales enjoy much higher profits; and
  - to use the profit margin for all domestic sales in the calculation of the constructed normal value will inflate the constructed normal value and will not allow a fair comparison between the constructed normal value and the export price.
- WTC submitted that the Commission's inclusion of all exporters' domestic sales of the same general category of goods (including sales at a loss) using regulation 181A(3)(a) in determining the amount of profit to be included in constructed normal values provides inadequate protection against future injury from dumped imports. It submitted that it would be more appropriate to use regulation 181A(2) to determine the amount of profit to be included in constructed normal values using data relating to the production and sale of like goods sold in the ordinary course of trade.
  - WTC provided an analysis of publically available financial results for five Chinese producers of power transformers, which all showed falling trends of sales and profits, with very low or negative profits in 2012. WTC considers that it is highly likely that all of these suppliers have domestic sales at a loss.
  - WTC noted that in the case of Toshiba CTC, zero profit has been included in the constructed normal value, but considers that it is likely that there were domestic sales sold at a profit.
  - WTC notes that in determining the amount of profit using Regulation 181A(3)(a) the Commission has relied solely upon its consideration that the recovery required by s. 269TAAD(3) cannot be conducted meaningfully and that it could not be determined whether domestic sales of like goods by exporters were in the ordinary course of trade. WTC considers that:

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- it is open for the Commission to consider sales of like goods by exporters at or above their fully absorbed cost to be in the ordinary course of trade and those at below fully absorbed cost to not be in the ordinary course of trade;
  - Regulation 181A(3) can only be used for the determination of the amount of profit to be included in constructed normal values if it is not reasonably possible to work out an amount in accordance with Regulation 181A(2); and
  - in this case, it is reasonably possible to determine whether domestic sales are in the ordinary course of trade and to use those sales to calculate the amount of profit to be included in constructed normal values.
- Fortune supported the use of Regulation 181A(3)(a) to calculate the profit to be included in constructed normal values, but it does not agree with how the Commission has calculated amount of profit. Fortune has previously submitted that certain sales should be excluded from the same general category of goods:
    - domestic sales of power transformers with a capacity greater than 100 MVA; and
    - domestic sales to Taiwan Power Company.
  - The Siemens Group agreed with the calculation of profit for constructed normal value in accordance with regulation 181A(3)(a).
  - The Siemens Group made a further submission in response to WTC's submission. The Siemens Group:
    - supports the Commission's decision to determine profit for the purposes of s. 269TAC(2)(c) in accordance with Regulation 181A(3)(a);
    - believes that the Commission's decision is justified by reason of:
      - the unique nature of the goods under consideration;
      - the matters outlined in Issues Paper No. 2014/01; and
      - SEF No. 219.

The Commission recognises that Article 2.2.1 of the WTO Anti-Dumping Agreement does not provide an exhaustive range of methods for determining if sales were in the ordinary course of trade. However, the Commission considers that the example provided by WTC cannot be used in respect of power transformers. The Commission is satisfied that power transformers are complex items of capital equipment built to the specifications of the purchaser where it is unlikely that any two power transformers are identical. Therefore, as each power transformer is unique the weighted average cost of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated. Consequently, because the recovery test cannot be conducted meaningfully and the ordinary course of trade test cannot be fulfilled.

The Commission stated in Issues Paper No. 2014/01 that the sales of like goods are such a high proportion of the same general category of goods that it is reasonable to assume that the amounts realised on sales of like goods, and sales of the same general category of goods, are in close proximity. This assumption was based on the Commission's visits to the Australian industry and exporters.

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The Commission reviewed the examples provided by WTC in its supplementary submission. The methodology proposed by WTC does not adequately provide for the recovery test and only when the weighted average profit margin for all sales was less than zero was it possible to consider that unprofitable sales were recoverable.

The Commission considered a similar but alternative approach to WTC's alternative methodology (which assumes that the Commission accepted that the ordinary course of trade could be assessed by means other than that set down in s. 269TAAD):

- where domestic sales at a loss represent less than 20% of the total sales volume during the investigation period, then all sales are in the ordinary course of trade; no recovery test is required and the profit from all domestic sales, including offsets for unprofitable sales, would be used to calculate a profit used in constructed normal values;
- where domestic sales at a loss represent more than 20% of the total sales volume during the investigation period, but the total cost of these sales is less than the total net revenue, then sales at a loss are recoverable and all sales are in the ordinary course of trade; the profit from all domestic sales, including offsets for unprofitable sales, would be used to calculate a profit used in constructed normal values; and
- where domestic sales at a loss represent more than 20% of the total sales volume during the investigation period and the total cost of these sales is greater than the total net revenue, then sales at a loss are not in the ordinary course of trade; then only the profit from profitable domestic sales would be used to calculate a profit used in constructed normal values.

The methods proposed in the first two dot points result in the same profit as if the Commission adopted the position it proposed in Issues Paper No. 2014/01. The method proposed in the third dot point is similar to example 1 in WTC's submission of 15 August 2014. The profit on profitable sales in that example is 11.6%. If profit was calculated using the position proposed in the Issues Paper No. 2014/01, the profit used in constructed normal values would be zero. However, the Commission notes that in WTC's example 1 the difference between total revenues and costs was only 1.5% of total costs. That is, a very small amount of increased revenue or reduced costs could affect whether the profit used to construct normal values is zero or around 15%. Therefore, the approach outlined in the last dot-point above may lead to a large step-up in profit measurement in certain circumstances, and the Commission does not consider that this approach is reasonable.

The Commission has adopted the position it proposed in Issues Paper No. 2014/01. The ordinary course of trade provisions at s. 269TAAD are an important element of those provisions is determining whether the cost of goods sold at a loss are recoverable within a reasonable period. The recovery test is at s. 269TAAD(3). In the case of power transformers, each unit is uniquely constructed and the costs and prices can differ significantly from one unit to another. It is the inability to make reasonable adjustments to prices of models sold domestically, to ensure fair comparison with export prices, that explains why the Commission has not established normal values on the basis of domestic selling prices using s. 269TAC(1). Furthermore, the Commission considers that a "weighted average cost" of goods contemplated in s. 269TAAD(3) is not meaningful for power

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transformers. Consequently, the recovery test cannot be conducted and the ordinary course of trade test cannot be fulfilled. The Commission considers it is not reasonably possible to calculate the profit on the sale of the goods made in the ordinary course of trade in accordance with Regulation 181A(2).

The Commission considers it is necessary to calculate the profit for use in constructed normal values using one of the provisions in regulation 181A(3). The Commission notes there is no hierarchy and each of these alternatives is equally available. Accordingly, the Commission has determined a profit in accordance with Regulation 181A(3)(a) which refers to the actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country.

It is only in certain circumstances where the Commission's approach resulted in a zero profit. These circumstances are where the total costs exceed revenue for the exporter's domestic sales of the same general category of goods.

The Commission considers that in determining the actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country it must use all sales and cannot exclude sales of power transformers of certain power ratings or sales to particular customers as submitted by Fortune and Shihlin.

#### 4.5.4 Calculation of credit adjustment

Issues Paper No.2014/01 proposed that the Commission calculate credit adjustments by determining the weighted average credit periods separately for domestic and export sales. Submissions from a number of entities commented on the Commission's proposed approach.

ABB Australia submitted that an adjustment for credit terms is an adjustment for different terms of sale and it should not be an adjustment of costs. Fortune supported the Commission's proposal. The Siemens Group supported the Commission's proposal, in so far as a credit adjustment is required to enable a reasonable comparison between export prices and domestic prices.

WTC submitted that the Commission's proposed approach is overly simplified and only addresses payment terms associated with milestone payments. It submitted that the Commission also needs to take into account differences in the milestone payments between domestic and export sales as part of a credit adjustment. WTC suggested possible approaches may be to:

- treat delayed milestone payments as a further credit period; or
- base a credit adjustment on a common date such as despatch or delivery to port.

The Siemens Group disagrees with both models submitted by WTC and submitted that the revised methodology proposed in Issues Paper No. 2014/01 best achieves a reasonable comparison between constructed normal values and export prices.

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In response to the SEF, the Siemens Group stated it agreed with the calculation of the credit adjustment explained in the SEF.

The Commission had regard to the second approach proposed by WTC, but considered that it was no more reasonable than the Commission's proposed approach. It noted that using this approach generated some large negative credit periods for payments made before the delivery date. The Commission did not observe any factors during the investigation that suggested adopting the WTC suggested approach would result in materially different dumping margins. It calculated an approximate revised dumping margin for one of the larger exporters using this approach and found that the dumping margin was marginally lower.

The Commission's original position was to calculate export credit costs by comparing the date payment was received for each progress payment to the date of the contract, and then weighting the calculation in accordance with payment amounts. This approach was taken partly because the Commission accepted that the contract date best represented the date on which the material terms of the sale were established. The Commission has reviewed its approach to calculation of credit adjustments and does not consider its original methodology is preferable for the following reasons:

- the adjustment made is not an adjustment to ensure normal values are comparable with export prices;
- the adjustment does not reflect considerations that are likely to affect a price difference between export sales and domestic sales; and
- the Commission may be calculating a credit cost when the purchaser has not been invoiced and/or the purchaser has no liability to make any payments.

The Commission has adopted the position it proposed in Issues Paper No. 2014/01. It has calculated credit adjustments by determining weighted average credit periods separately for domestic and export sales. For each progress payment the Commission used the credit period identified on the invoice or in the contract unless it was satisfied that a different period should be used. Where the actual period of credit was significantly different to the scheduled credit terms, the Commissioner used the actual credit terms. This means that the first approach suggested by WTC has already been accommodated by the Commission's preferred approach.

### **4.5.5 Exchange rates for converting currencies**

Issues Paper No. 2014/01 proposed that the Commission, in converting prices for exported power transformers into local currency, use the exchange rate at the contract date (the date when the material terms of the export sale were finalised), unless it was satisfied that an alternative exchange rate should be used.

The Commission received a number of submissions on this issue.

- ABB Australia submitted that the Commission must use the exchange rate that best established the material terms of sale.
- Fortune referred the Commission to the generally accepted accounting principles (GAAP) and International Accounting Standards (IAS) applied by

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Fortune. It submitted that the Commission should use the spot rate on the date of revenue recognition.

- Hyosung submitted that the Commission should determine the exchange rate to be used on a case by case basis and that in Hyosung's case it should use the rate on the date the sales was recognised in the accounts. It claimed that using the rate at the date of contract results in an unfair comparison between Hyosung's domestic and export sales.
- TBEA submitted that the date of contract is the date of sale for exports to Australia. It claimed that this was especially the case for sales by tender and the material terms of sales were established when the contract was signed.

In response to the SEF, Fortune again referred the Commission to the GAAP and IAS applied by Fortune and submitted that the Commission should use the spot rate on the date of revenue recognition. Fortune considers that if the Commission maintains this position, an adjustment to the cost to make and sell will be required to adjust for difference between exchange gains and losses based on the date when the material terms of the export sale were finalised compared to the date of revenue recognition.

The Commission accepts that Fortune may use the spot rate on the date of revenue recognition when converting foreign currencies, but this is a different issue to determining the date that that best establishes the material terms of sale. Both parties to a sales transaction agree on the price when the contract is signed or the purchase order is accepted. It is open to Fortune to enter into a foreign exchange contract at that time to ensure the agreed price in the foreign currency will be reflected in Fortune's accounts when the revenue is eventually recognised. In the case of power transformers, the effect of foreign exchange fluctuations is important because of the long lead times between the date a contract is signed and the date payments are received.

The Commission has adopted the position it proposed in Issues Paper No. 2014/01. The Commission considers that the material terms of sale are established when the contract is signed or the purchase order accepted and has used the exchange rate at the contract date or purchase order date, unless it is satisfied that an alternative exchange rate should be used (such as the rate established in a foreign exchange contract). The Commission considers that an adjustment to the cost to make and sell to account for exchange gains and losses is not warranted.

### **4.6 Using subsection 269TACB(3) to determine dumping margins**

Section 269TACB describes the methods for comparing export prices and normal values to work out whether dumping has occurred and if so, the levels of dumping. It includes an outline of the following three methodologies:

- *weighted average to weighted average;*
- *transaction to transaction; and*
- *weighted average to transaction.*

In applying the *weighted average to weighted average* approach, the Commission includes all export prices and all corresponding normal values in the calculation of



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dumping. In any investigation it is common to find various types or models of the goods the subject of the application. In these circumstances, the Commission's approach is to aggregate the results of the model comparisons into a single overall *product dumping margin* for the exporter. It is only in rare circumstances that the Commission deviates from the *weighted average to weighted average* method.

The Commission will, for example, consider using the *transaction to transaction* method where the products being investigated involve relatively small numbers of transactions such as in the case of capital equipment with significant variation in specifications, costs and price. This is the methodology applied by the Commission for the majority of exporters of power transformers. Consistent with the WTO Appellate Body decision in *Softwood Lumber, WT/DS264/AB/RW, August 2006*, when using the *transaction to transaction* method, the Commission will aggregate the transaction specific comparisons for all export prices and all corresponding normal values in order to calculate the overall *product dumping margin*.

The *weighted average to transaction* method can only be used in certain circumstances, which are discussed in detail in the following sections of this report.

In a submission of 10 June 2014, WTC raised the issue of 'targeted dumping' in respect of exporters from Thailand. The Commission treated the WTC submission as an allegation that certain exporters may have been selling power transformers to Australia during the investigation period at export prices that differed significantly among different purchasers, regions or periods in terms of s. 269TACB(3).

In addition, the Commission's analysis of the verified exporter data had identified significant fluctuations in the dumping margins calculated using the *transaction to transaction* methodology. As the Commission neared completion of its exporter verification exercises, it considered that such observations were indicative of instances where export prices differed significantly among purchasers, regions or periods.

Given the WTC submission of 10 June 2014 and the Commission's own observations arising from exporter verification exercises, the Commission examined whether it was more appropriate to use the *weighted average to transaction* method to work out whether dumping had occurred.

### 4.6.1 Commission file note

On 15 August 2014, the Commission placed a file note on the public record that advised interested parties that the Commission would be revisiting exporter dumping margin assessments to determine whether there are grounds to work out dumping in accordance with s. 269TACB(3) – that is, by using the *weighted average to transaction* method.

The Commission emphasised in that file note that dumping margin assessments calculated under s. 269TACB(3) may vary significantly from dumping margin assessments calculated under s. 269TACB(2). Subsection 269TACB(2) describes the *weighted average to weighted average and transaction to transaction* methods.

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The file note also set out the following outline of the relevant legislation and policy.

### Legislation and Policy

*Section 269TACB of the Act (see full text at Attachment A) contains the relevant provisions for working out whether dumping has occurred and the levels of dumping. Subsection 269TACB(3) is set out below:*

*(3) If the Minister is satisfied:*

*(a) that the export prices differ significantly among different purchasers, regions or periods; and*

*(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;*

*the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.*

*It is also relevant to note s. 269TACB(6), as follows:*

*(6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:*

*(a) the goods exported to Australia in each such transaction are taken to have been dumped; and*

*(b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.*

*The dumping and subsidy manual (p.115) provides:*

*The weighted average to transaction method of comparison is provided for in s. 269TACB(3) and this method may only be used where the export prices vary significantly between purchasers, regions or over time. An amalgamation exercise is also required in this circumstance in order to work out a single margin of dumping for the product from the exporter concerned.*

*The Commission considers that where the weighted average [normal value] to transaction [export price] (weight-to-transaction) method is justified and applied, then it is entirely appropriate to base the dumping margin on the export prices in respect of the particular transactions used in the weight-to-transaction method. It is important to recognise that this means basing the dumping margin assessment on particular export transactions and setting aside the results of other export transactions. The Commission considers this approach to be consistent with the Australian legislation and the WTO Anti-Dumping Agreement (refer Article 2.4.2).*

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### Commission approach to revision of dumping margins

*The Commission will soon reassess dumping margins, for all cooperating exporters of power transformers, in terms of the provisions of subsection 269TACB(3) of the Act. Where considered necessary, the Commission will write to certain exporters that may be considered as fitting those conditions described in subsections 269TACB(3)(a) and (b) of the Act. The Commission will provide the exporter an opportunity to provide reasons for the observed price differences and reasons for why such differences may or may not make the other methods for undertaking dumping calculations inappropriate.*

#### **4.6.2 Submissions in response to the Commission file note**

WTC supported the use of s. 269TACB(3) in the case of power transformers exported to Australia. Its main concern was the considerable differences in costs and prices for power transformers sold in 'package' or 'turnkey' projects, which includes the power transformer itself and a range of equipment other than power transformers.

WTC considers that the "respective export prices" referred to in s. 269TACB(3) should only relate to the "targeted exports". To support its view, WTC submitted the following extract from WTO Appellate Body Report DS322<sup>5</sup>:

*The emphasis in the second sentence of Article 2.4.2 is on a "pattern", namely a "pattern of export prices which differs significantly among different purchasers, regions or time periods." The prices of transactions that fall within this pattern must be found to differ significantly from other export prices. We therefore read the phrase "individual export transactions" in that sentence as referring to the transactions that fall within the relevant pricing pattern. This universe of export transactions would necessarily be more limited than the universe of export transactions to which the symmetrical comparison methodologies in the first sentence of Article 2.4.2 would apply. In order to unmask targeted dumping, an investigating authority may limit the application of the W-T comparison methodology to the prices of export transactions falling within the relevant pattern.*

WTC considers the *weighted average to weighted average* or *transaction to transaction* methodologies for calculating dumping do not properly address any potential concealing of dumping.

Toshiba considered there was perceived procedural unfairness arising from the proposed approach. It submitted that the Commission did not advise how it proposed to calculate dumping margins using s. 269TACB(3), nor did the Commission provide any plausible reason for proposing the potential usage of s. 269TACB(3). Toshiba further submitted that the time provided for affected parties to offer any considered comment was 'grossly inadequate'.

In terms of the relevant law, Toshiba submitted that when considering comparison methodologies arising from s. 269TACB(2) or s. 269TACB(3) there is a general obligation for the Commission to make a fair comparison between export prices and

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<sup>5</sup> WTO Report of the Appellate Body, *United States – Measures relating to zeroing and sunset reviews*, WT/DS322/AB/R, 9 January 2007, paragraph 135, page 56.

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normal values. Toshiba expressed the view that relevant WTO jurisprudence has determined that normally the two general methodologies provided within s. 269TACB(2) shall be used. Toshiba also submitted that where the Commission is considering the comparison methodology provided at s. 269TACB(3) it should ensure that there is clear evidence for using that provision.

Corrs Chambers Westgarth, on behalf of several interested parties, considered that the file note did not advise:

- why this alternative approach is being considered, particularly at this late stage of the investigation;
- how the Commission anticipates that dumping margins would be calculated using this methodology;
- on what basis the Commission anticipates the Minister could be satisfied that export prices for power transformers differ significantly for different purchasers, regions or periods, taking into account that each power transformer is unique; and
- why the Commission considers those differences might make the methodologies for dumping margin assessments in s. 269TACB(2) unsuitable.

Corrs Chambers Westgarth submitted that without an explanation from the Commission on these matters, clients are not able to express a view on the approach that the Commission is proposing to take. They also queried the grounds or basis for only selected export transactions being used in the dumping margin calculation.

The Siemens Group submitted that there is no proper basis to consider that the method specified in s. 269TACB(2) is inappropriate. It considered the proposal to use s. 269TACB(3) reflects an unwarranted departure from the Commission's prevailing view regarding the unique aspects of the manufacture and sale of power transformers.

The Siemens Group also submitted that publication of the file note proposing the possible use of s. 269TACB(3) was late in the investigation. It considered that this delay and the failure to identify reasons for the departure from the methodology adopted to date was extremely unfair.

The Siemens Group also submitted that:

- Issues Paper No. 2014/01 clarified the final outstanding issues of contention that were raised throughout the exporter verification process;
- the Commission has not, at any stage during the exporter verification process, raised any concerns with the methodology for calculating dumping margins;
- the file note did not provide guidance as to why the threshold criteria for s. 269TACB(3) are enlivened or how the Commission proposed to ascertain relevant variable factors;
- s. 269TACB(3) operates secondarily to s. 269TACB(2) and can only be used when circumstances in s. 269TACB(2) are inappropriate;

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- the legislation and the Dumping and Subsidy Manual clearly require that there is a tangible and quantifiable difference in export prices observable across the whole or part of the investigation period;
- the determination of such difference requires a metric for testing the existence and degree of a variation from a defined 'norm'; and
- the Commission has acknowledged that each unit is uniquely constructed and the costs and prices can differ significantly from one model to another and therefore the Commission cannot fairly or meaningfully measure variations in export prices, whether by period, region or purchaser.

### **4.6.3 Exporters for which the Commission proposed to determine dumping margins using subsection 269TACB(3)**

After analysing the export prices for all exporters that cooperated with the investigation, the Commission found that Siemens Guangzhou, Siemens Jinan and Siemens Wuhan exhibited export prices that differed significantly among different purchasers, regions or periods.

In accordance with the proposal outlined in the Commission's file note of 15 August 2014, the Commission wrote to Siemens Guangzhou, Siemens Jinan and Siemens Wuhan on 17 September 2014. In that letter, the Commission outlined the analysis it had undertaken and it provided reasons for why it proposed to rely upon a dumping margin calculation using s.269TACB(3) instead of a method using s. 269TACB(2). The Commission explained that this changed the dumping margin assessment for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan to positive 5.5%. The Commission also provided Siemens Guangzhou, Siemens Jinan and Siemens Wuhan the revised dumping calculations. The Commission allowed Siemens Guangzhou, Siemens Jinan and Siemens Wuhan 21 days to respond to the letter and confidential attachments, which aligned with the due date for responses generally to the SEF.

Notwithstanding the revised dumping margin calculation for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan, in accordance with s.269TDA(3), the Commissioner has terminated the investigation so far as it related to China because of the finding that the total volume of goods exported at dumped prices from China was negligible.

### **4.6.4 The Commission's approach in the SEF**

The SEF explained the Commission's findings that for certain exporters the export prices differed significantly among different purchasers, regions or periods. The SEF findings were made in relation to the export prices of ABB Thailand, ABB Vietnam, Siemens Guangzhou, Siemens Jinan and Siemens Wuhan.

The SEF also outlined the Commission's reasons for the findings that it was inappropriate to use s.269TACB(2) to determine dumping margins for those exporters.

Furthermore, the SEF outlined the Commission's approach to the calculation of dumping margins when using the *weighted average to transaction* methodology under s. 269TACB(3).

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The Commission explained in the SEF that in moving from a *transaction to transaction* approach to a *weighted average to transaction* approach to calculating dumping margins, the dumping margin assessments changed. The revised dumping margins and reasons for using the *weighted average to transaction* methodology were published in the SEF. Details of the revised dumping margins were provided to the relevant exporters, ABB Thailand, ABB Vietnam, Siemens Guangzhou, Siemens Jinan and Siemens Wuhan on 17 September 2014. Each of these exporters was given 21 days to respond to the Commission's calculations and the reasons for using the *weighted average to transaction* approach. That 21 day period coincided with the due date for responses to the SEF.

### 4.6.5 Responses to the SEF

#### Submissions in response to the SEF

- The Siemens Group, 8 October 2014;
- ABB Vietnam, 9 October 2014;
- ABB Thailand, 9 October 2014;
- ABB Thailand, 13 October 2014;
- ABB Thailand and ABB Vietnam, 11 November 2014;
- ABB Thailand and ABB Vietnam, 18 November 2014; and
- The Siemens Group, 20 November 2014.

#### Summary of submissions in response to the SEF

This section of the report outlines the general points made in submissions by interested parties concerning the use of s. 269TACB(3) to determine dumping margins. Where the submissions related to the circumstances of a particular entity, or entities, and/or involved confidential information, those submissions are discussed in summary form in the relevant sections of the dumping chapter of this report. The confidential attachments of this report contain more detailed information.

ABB Thailand and ABB Vietnam made the following points in joint submissions:

- the Commission has practised zeroing despite the law not permitting zeroing and the WTO Dispute Settlement Body rejection of zeroing – the most recent rejection of zeroing by a WTO panel was in *United States – Anti-Dumping Measures on Certain Shrimp from Vietnam* (WT/DS429/R, 17 November 2014);
- the ABB companies have been denied procedural fairness;
- subsection 269TACB(3) can have no application to ABB Thailand because ABB Thailand only had one purchaser, namely ABB Australia;
- the end users were not the purchasers with whom ABB Thailand or ABB Vietnam negotiated export price, they are remote to those export prices and did not pay those export prices, and they are customers of ABB Australia under separate and distinct contracts;
- ABB Australia's sales were separate arms length transactions;
- end users buy power transformers, installation and services – not power transformers – and they have no beneficial ownership in the power transformers prior to the time at which legal title is transferred;

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- export prices for ABB Thailand and ABB Vietnam do not differ significantly in a way that would render the methods of working out whether dumping has occurred [under s. 269TACB(2)] inappropriate;
- the transaction to transaction methodology is appropriate for calculating dumping margins; and
- the Commission has not used a transaction to weighted average normal value methodology. It has used the transaction to transaction methodology, and has merely labelled it as a transaction to weighted average normal value methodology.

In separate and additional letters, ABB Thailand also submitted:

- the Commission's export price to CTMS ratio is not an appropriate measure of price behaviour, and its approach ignores cost past the FOB point;
- the correct manner to compare export price and cost to make and sell would involve a comparison of estimated cost to contract pricing; and
- a comparison of "*ABB Thailand's full up revenue against its full up cost for each individual transformer*" shows the price behaviour of ABB Thailand [ABB Thailand's "full up" costs and revenues included all costs and all revenue for the sale concerned from the exporter's perspective, including those elements past the FOB point].

In a further separate letter, ABB Vietnam submitted:

- the Commission's export price to CTMS ratio does not represent ABB Vietnam's appreciation of the CTMS at the time the price is set; and
- the proper gauge of ABB Vietnam's mindset when considering the price is the estimated cost to make and sell the goods, which is represented by its full cost modelling (FCM).

The Siemens Group reaffirmed its view that there is no proper basis to apply s. 269TACB(3) and it made the following submissions:

- the Siemens Group was denied procedural fairness;
- the SEF suggests that the Commission has an unalterable view on the issue and will not be persuaded;
- the Commission has misunderstood, incorrectly interpreted, and misapplied the legislation;
- export price cannot be easily compared and any difference would result in a misinterpretation of the data-set;
- the 'export price/CTMS ratio' is a test with no basis in the Act and is separate and distinct from the export price of the goods;
- the Commission has not provided any real explanation as to why the export price differences asserted to exist make the use of s. 269TACB(2) inappropriate;
- an amalgamation exercise is required to determine a single margin of dumping and the Dumping and Subsidy Manual suggests an identical process for such amalgamation under s. 269TACB(2) and (3);

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- nothing in the Act or the Dumping and Subsidy Manual suggest the amalgamation involves only those transactions found to have positive dumping margins;
- the Commission relies upon silence in the Act to justify ‘zeroing’ and such reliance is wrong in law;
- the Commission has provided no guidance or further explanation as to the source of the jurisprudence when stating its approach ‘is consistent with WTO jurisprudence’;
- the common theme in the WTO Appellate Body is that zeroing is unfair and created an undue inflation of dumping margins; and
- the WTO appellate body jurisprudence is overwhelming – zeroing is inconsistent with the text of the Anti-Dumping Agreement and thereby inconsistent with a proper application of s. 269TACB(3)(b).

### **4.6.6 The Commission’s assessment of whether to use the *weighted average to transaction* method to determine dumping**

#### Procedural fairness

The Commission has provided adequate procedural fairness to affected exporters in relation to its consideration of using s. 269TACB(3) to calculate dumping margins for power transformers. The Commission accepts that these matters were raised relatively late in an extended investigation. It also recognises that this issue provided for substantial change to earlier preliminary dumping margin assessments. However, it would be inappropriate for the Commission to fail to have regard to relevant issues during the course of the investigation, especially when the potential consequences are significant. As discussed earlier, the issue of whether to consider using the *weighted average to transaction* methodology followed (i) an allegation of targeted dumping; and (ii) the Commission’s analysis of verified exporter data that identified significant fluctuations in the dumping margins calculated using the transaction methodology.

With regard to the concerns about the timing of this issue being raised, the Commission considers that it has met its obligations under the Act and under the WTO Anti-Dumping Agreement in terms of transparency and providing interested parties an opportunity to defend their interests. In publishing the 15 August 2014 note for file in advance of the publication of the SEF, the Commission provided advance notice to interested parties of the Commission’s new considerations concerning dumping methodology and in doing so has arguably exceeded its obligations in this regard.

In the case of one exporter where the Commission identified export prices that appeared to differ significantly among different purchasers, regions or periods it wrote to the exporter concerned and provided opportunity for the exporter to comment on the Commission’s observations prior to the SEF. In the case of four other exporters, where the Commission identified export prices that appeared to differ significantly among different purchasers, regions or periods, it wrote to these parties shortly before the SEF to invite comment on the Commission’s observations.



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In all cases, the exporters were provided with a minimum of 21 days to respond to the Commission's reasons for using the *weighted average to transaction* approach, and to the detailed calculations that underpinned the dumping margin assessments.

The Commission also presented preliminary findings in the SEF in relation to its assessment of whether to use the *weighted average to transaction* method to determine dumping. Interested parties were provided 20 days after publication of the SEF to lodge submissions in response to that statement. The Commission has had regard to all of the submissions made in response to the SEF.

The Commission does not accept the Siemens Group view that the SEF suggested the Commission had an unalterable view on this issue. The Commission had advised interested parties from initiation of an investigation that the purpose of the SEF is to set out the essential facts on which the Commissioner proposes to base a recommendation to the Minister. That statement invites interested parties to respond to the issues raised within 20 days of the statement being placed on the public record. The Siemens Group took the opportunity to make a submission in response to the SEF on the issue that included arguments with respect to the legal, policy and practical considerations pertaining to whether to assess dumping margins using s. 269TACB(3). The Commission has had regard to all submissions made in this investigation in formulating this termination report.

### Addressing the elements of subsection 269TACB(3)

In deciding to use s. 269TACB(3) the Commission considered the terms of that subsection. The Minister must be satisfied:

- that the export prices differ significantly among different purchasers, regions or periods; and
- that those differences make the methods referred to in s. 269TACB(2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period.

Each power transformer is uniquely constructed, which makes it more difficult to compare export prices between purchasers, regions or periods for each transaction than if, for example, the goods were homogenous. In these circumstances, the Commission has considered a range of approaches for comparing export prices for each power transformer exported to Australia, including comparisons of:

- prices per tonne (dry weight) – however the Commission is not in possession of sufficient information from exporters to make this assessment;
- prices per MVA – however the Commission recognises that the size and power rating of the power transformers impacts the cost and price, which also impacts the price per MVA; and
- the ratio of export price to the full cost to make and sell the exported unit.

The approach of using the ratio of export price to the full cost to make and sell was considered the most meaningful method available for understanding the differences between export prices for power transformers when deciding if the methods under s. 269TACB(2) are inappropriate for use.

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In the SEF, the Commission stated that it considered that this approach is reasonable for analysing export price patterns because the estimated cost to make and sell the goods was clearly a consideration for producers when pricing the goods. The Commission did not say, as claimed by ABB Thailand, that:

*...the approach that should be used is one which considers the “estimated cost to make and sell the goods” in terms of the exporter’s consideration “when pricing the goods” [emphasis added]*

It is important to note that the Commission’s analysis of the ratios of export price to cost to make and sell would also reveal whether an exporter’s export prices were different simply because of differences in the exporter’s costs from one unit to another. If this was the case, it would be reflected in reasonably consistent ratios among different purchasers, regions or periods.

The Commission is of the view that the *actual* export price and *actual* cost to make and sell data are the most appropriate values for the purpose of establishing the ratios. Further, the Commission considers it is reasonable to calculate the ratios with reference to values established at the free on board (FOB) point. This is consistent with the usual practice for measurement of export price under s. 269TAB and for dumping margin assessments under s. 269TACB. The Commission’s analysis is therefore focused on the export price of the goods as it is unaffected by the ratio of revenue to cost for post exportation expenses such as overseas freight charges.

The Commission therefore measured the ratios of actual export price with actual full cost to make and sell for all power transformers exported in the investigation period by all exporters that provided responses to the exporter questionnaire except for the uncooperative exporter. The Commission ensured that the comparisons of the export price and the full cost to make and sell data were undertaken at the same delivery terms (eg. FOB).

Where the Commission identified a pattern of export prices, as indicated by a pattern of ratios for export prices to the full cost to make and sell, which was significantly different among different purchasers, region or periods, it contacted the exporter for comment.

Having identified those export prices for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan that differed significantly among different purchasers, region or periods, the Commission then considered whether it is inappropriate to use the methods for working out whether dumping has occurred in terms of s. 269TACB(2). The Commission has taken account of its export price analyses, its assessments in the SEF, and the submissions from all parties in response to the SEF.

The Commission considered whether the export prices that differ significantly among purchasers, regions or periods had been ‘masked’, that is not taken into account appropriately by the *weighted average to weighted average* and the *transaction to transaction* methodologies for calculating dumping. The Commission has also considered the potential for dumping of particular transactions to have caused material injury to the Australian power transformer industry.

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In certain circumstances, the Commission may determine that injurious dumping has been masked by the *weighted average to weighted average* or the *transaction to transaction* approaches to calculating dumping margins. In circumstances where export prices differ significantly to different purchasers, regions or periods; those export prices were dumped; and the export of those goods at dumped prices may have caused material injury, the Commission may determine that it is inappropriate to use s. 269TACB(2) for working out any dumping.

In this case, the *weighted average to weighted average* methodology is not appropriate because of the nature of the products that have significantly variable export prices and normal values prices among different power transformers. The *transaction to transaction* methodology is not appropriate because the significantly different export prices, including export prices that differed significantly among different purchasers, regions or periods, are masked when the range of dumping margins are amalgamated into one product dumping margin for each exporter. The dumping margin of the goods found to be at export prices that differed significantly were significant, and the volume of those goods exported at dumped prices was material.

In the SEF the Commission stated that, in the case of power transformers, it is of the view that the loss of a sale for a single power transformer due to dumping may be sufficient to cause material injury. It also stated that where there are several or many lost sales due to dumping, the Commission considers the injury caused by that dumping is likely to be material.

Some interested parties contested the view that the loss of a sale for a single power transformer due to dumping may be sufficient to cause material injury. The Commission has not changed its view expressed in the SEF, but it is not an issue needing resolution in the present factual situation. This is because the total number of power transformers exported by Siemens Guangzhou, Siemens Jinan and Siemens Wuhan found to be at export prices that differ significantly was not limited to a single power transformer.

### *Analysis and findings for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan*

The Commission conducted detailed export price comparisons for all exporters that provided responses to the exporter questionnaire except for the uncooperative exporter. The comparisons were based on the ratio of export price with full cost to make and sell (actuals figures, not estimates), calculated for all power transformers exported in the investigation period. These were measured at FOB delivery terms.

The analysis indicated that the significant differences in export prices among purchasers, regions or periods resulted in the methods under s.269TACB(2) being inappropriate for use to calculate dumping margins for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan.

The Commission therefore used the *weighted average to transaction* method to determine dumping in relation to these three exporters.

The Commission's detailed assessments of whether s. 269TACB(2) is inappropriate for use in respect of the whole investigation period for these exporters, based on the

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methodology and approach outlined above, are contained in confidential attachment 6 to this report. The Commission's overviews of its exporter-specific analyses and findings are outlined in each of the relevant sections of this report dealing with dumping margins.

### Dumping margin calculations using the weighted average to transaction method

Where the Commission is satisfied as to the elements set out in s. 269TACB(3)(a) and (b), it has calculated dumping margins for those exporters by comparing the respective export transactions determined in relation to individual transactions during the investigation period with the weighted average of corresponding normal values over that period. This means applying the *weighted average to transaction* method to determine dumping margins.

Subsection 269TACB(3) requires export prices to be compared with the weighted average of *corresponding* normal values. As stated elsewhere in this report the Commission considers that the normal value for each export transaction can only be determined by reference to the constructed cost to make and sell the power transformer in that transaction. Each and every normal value was therefore constructed specifically to correspond to an individual export transaction. In these circumstances, the Commission considers the weighted average of corresponding normal values may, in relation to each individual export transaction, be based on a single observation of corresponding normal value. That is, in 'weighting', the Commission has properly taken account of the importance of each relevant and corresponding normal value by applying a weighting factor of 1.

To establish the weighted average of corresponding normal values, the Commission used the same constructed normal values that had been determined to compare to the export price in the *transaction to transaction* method. The resulting weighted average corresponding normal value (based on a weighting factor of 1) is therefore the same as the corresponding normal value used in the *transaction to transaction* method.

This approach is not at odds with the view expressed earlier in relation to the use of weighted averages in the context of assessing ordinary course of trade. At Section 6.5.3 of this report the Commission stated that "...each power transformer is unique and the weighted average cost of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated." The legislative requirements in that subsection are prescriptive, requiring the weighted average cost of certain goods to be established over the investigation period. In the case of normal values, the weighted average required is for corresponding normal values. The weighted average corresponding normal values used in the *weighted average to transaction* method are meaningful for the purposes of dumping margin calculations in relation to power transformers.

The Commission considers its approach is a reasonable and practical application of the legislative provisions. If the provisions were interpreted otherwise it means that if an investigation involves products that are unique in each transaction, it would render the *weighted average to transaction* methodology in s. 269TACB(3) without purpose when it is clear that exporters can, in relation to any type of goods, have practices

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which result in export prices that differ significantly among different purchasers, regions or periods.

The Commission interprets s. 269TACB(3) as requiring that the *weighted average to transaction* comparison is to be used in relation to all export sales in the relevant period, which in this case is taken to be the investigation period. This view represents a departure from the Commission's file note of 15 August 2014, where the Commission indicated that it may base the dumping margin on particular export transactions while setting aside the results for other export transactions.

However, the Commission considers that s. 269TACB(6) prescribes the manner of determining a dumping margin in relation to circumstances where a comparison is made under s. 269TACB(3), and only in relation to the particular transactions with export prices that are less than the weighted average of corresponding normal values. Subsection 269TACB(6)(a) provides that the goods exported to Australia in each such transaction are taken to have been dumped. It also provides at s. 269TACB(6)(b) that the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.

The Commission notes that the focus of s. 269TACB(6) is on the particular transactions where the individual export price is less than the weighted average of corresponding normal values. Subsection 269TACB(6) is silent on how to treat the goods exported to Australia in other transactions. In these circumstances, the Commission considers when it is using the method under s. 269TACB(3) and (6) it must not take into account offsets for negative dumping margins arising from transactions where the export price was higher than the weighted average of corresponding normal values. The Commission considers this interpretation is consistent with the intention of these provisions which is to unmask and take into account export prices that differ significantly among different purchasers, regions or periods. In doing so, the Commission has identified and addressed 'targeted' or 'masked' dumping that can cause material injury. The Commission considers that this approach is available under Australian law and that it is consistent with WTO jurisprudence.

The Siemens Group is of the view that the Commission relied upon the fact the Act is silent in relation to the treatment of goods found not to be dumped to justify 'zeroing'. This is not the case. The Commission identified that the focus of s. 269TACB(6) is on those transactions and those goods where the export price is less than the weighted average of the corresponding normal values. The Commission has therefore summed the positive dumping margins in accordance with that provision.

The Commission must then decide how to express that total dumping amount as a percentage of export value. There would appear to be only two logical choices in this respect for each exporter. The total dumping amount might be expressed as a percentage of the export value of only those transactions that were at dumped prices or the total dumping amount might be expressed as a percentage of the total export value of all goods exported in the investigation period.

The Commission applied the second option because it is consistent with its normal approach to amalgamating the results to arrive at one product margin for the exporter

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for the investigation period. The first approach, which involves expressing the same total dumping amount as a percentage of a lower export value (lower denominator), would of course have resulted in a significantly higher dumping margin.

The Siemens Group submitted that the Commission, in its SEF, provided no guidance or further explanation as to the source of the jurisprudence when stating its approach 'is consistent with WTO jurisprudence'. The Siemens Group expressed the view that the common theme in the WTO Appellate Body is that zeroing is unfair and created an undue inflation of dumping margins.

The Commission recognises that the practice of zeroing has been the subject of a long history of WTO decisions. The WTO Panels and Appellate Body have considered 'model zeroing' and 'simple zeroing' in the context of a range of different anti-dumping inquiries and circumstances. The Appellate Body has been consistent in not supporting zeroing in original investigations, reviews, and assessments for the *weighted average to weighted average* and the *transaction to transaction* methodologies. However, there has been no ruling to date prohibiting zeroing when applying the alternative methodology for calculating dumping margins in accordance with the second sentence of Article 2.4.2 of the WTO Anti-Dumping Agreement. It is this sentence that gives rise to the provisions of s. 269TACB(3). The Commission therefore does not agree with Siemen's view that the recommended method in this report is inconsistent with WTO jurisprudence.

### 4.7 China

The Commission undertook a remote verification of ABB Chongqing and ABB Zhongshan to verify information in their exporter questionnaire responses.

#### 4.7.1 ABB Chongqing and ABB Zhongshan

##### Export prices

The Commission is satisfied ABB Chongqing and ABB Zhongshan were the exporters of power transformers to Australia and that ABB Australia was the importer. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from ABB Chongqing and ABB Zhongshan to ABB Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

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### Normal values

The Commission reviewed costs submitted by ABB Chongqing and ABB Zhongshan and considered they appeared to be complete. It verified the 2012 costs to ABB Chongqing's and ABB Zhongshan's audited accounts.

The Commission found that the costs submitted by ABB Chongqing and ABB Zhongshan were reasonable. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on of the profit achieved on domestic sales of the same general category of goods) by ABB Chongqing and ABB Zhongshan.

The Commission made the following adjustments to the constructed normal values under s. 269TAC(9):

- less domestic credit terms;
- less domestic commissions;
- less domestic tax surcharges; and
- plus export credit terms.

### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for ABB Chongqing and ABB Zhongshan is negative 2.7%. Dumping margin calculations are summarised at **Confidential Attachment 2**. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it relates to ABB Chongqing and ABB Zhongshan.

#### **4.7.2 Toshiba CTC**

The Commission established export prices, normal values and dumping margins for Toshiba CTC based on the information provided in the exporter questionnaire responses.

### Export price

The Commission is satisfied that Toshiba CTC was the exporter and established FOB export prices for Toshiba CTC under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

### Normal value

The Commission reviewed costs submitted by Toshiba CTC and considered they appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission did not include an amount for profit in the constructed normal value because the total cost of domestic sales was greater than the total net revenue. The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms.

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### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Toshiba CTC is negative 4.2%. Dumping margin calculations are summarised at **Confidential Attachment 3**. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it relates to Toshiba CTC.

### 4.7.3 CHINT

The Commission visited CHINT to verify information in its exporter questionnaire response.

### Export price

The Commission is satisfied that CHINT was the exporter of power transformers to Australia and that its Australian customers were the importers. It is satisfied that export sales from CHINT to its Australian customers were arms length transactions. The Commission established ex-works export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

### Normal value

Constructed ex-works normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by CHINT.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms.

### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for CHINT is lower than negative 5%. Dumping margin calculations are summarised at **Confidential Attachment 4**. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it relates to CHINT.

### 4.7.4 Jiangsu

The Commission established export prices, normal values and dumping margins for Jiangsu based on the information provided in the exporter questionnaire response.

### Export price

The Commission is satisfied that Jiangsu was the exporter and established FOB export prices for Jiangsu under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.



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### Normal value

The Commission reviewed costs submitted by Jiangsu which appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Jiangsu.

Jiangsu did not provide any information to enable the calculation of adjustments. The Commission did not pursue this issue considering the low volume of exports to Australia by Jiangsu and the size of the negative dumping margin.

### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Jiangsu is lower than negative 5%. Dumping margin calculations are summarised at **Confidential Attachment 5**. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it relates to Jiangsu.

#### **4.7.5 Siemens Guangzhou, Siemens Jinan and Siemens Wuhan**

The Commission visited Siemens Wuhan to verify information in the exporter questionnaire responses submitted by Siemens Guangzhou, Siemens Jinan and Siemens Wuhan. These companies are all independent legal entities operating in China with a common shareholder, Siemens Ltd China (Beijing). The Commission has treated these entities as a single exporter for the purpose of calculating a dumping margin.

### Export price

The Commission is satisfied Siemens Guangzhou, Siemens Jinan and Siemens Wuhan were the exporters of power transformers to Australia and that Siemens Ltd, Australia (Siemens Australia) was the importer. The Commission found no evidence that:

- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from Siemens Guangzhou, Siemens Jinan and Siemens Wuhan to Siemens Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

### Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the weighted average profit

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achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Siemens Guangzhou, Siemens Jinan and Siemens Wuhan.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms.

### Dumping margin

If the dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method it would be negative 1.9%. The dumping margin published in the exporter visit report was 30.85%. The Siemens Group made submissions to the Commission and provided additional information that demonstrated that a number of costs had been double counted in constructing normal values. The revised dumping margin was also affected by changes in the approach to calculating the credit adjustment and to a lesser extent the profit to be used in constructing normal values.

However, as discussed in section 4.6 of this report, the Commission considered whether to determine dumping margins in accordance with s. 269TACB(3).

In the case of Siemens Guangzhou, Siemens Jinan and Siemens Wuhan, the Commission's re-examination of the preliminary export prices in the investigation period revealed certain export prices that differed significantly among purchasers, regions or periods. As discussed earlier, this analysis was based on comparisons of the ratios of FOB export price to full FOB cost to make and sell the goods exported to Australia during the investigation period. The reasons for this approach and why it is considered to be consistent with the Act have been set out in Section 4.6 of this report.

The Commission considers that the observed differences make the methods for comparison of export price and normal value under s. 269TACB(2) inappropriate for use in respect of the whole investigation period. The Commission considers that export prices that 'differ significantly' for certain Siemens Guangzhou, Siemens Jinan and Siemens Wuhan transactions are masked and not taken into account appropriately when the *weighted average to weighted average* or *transaction to transaction* methods for determining dumping are applied.

In these circumstances, the Commission considers that injurious dumping would have been masked by the *weighted average to weighted average* or the *transaction to transaction* approaches to calculating dumping margins. Therefore, the Commission considers it is inappropriate to use s. 269TACB(2) for working out whether dumping has occurred in relation to Siemens Guangzhou, Siemens Jinan and Siemens Wuhan export sales to Australia in the investigation period.

The export price comparisons and the assessment of whether s. 269TACB(2) is inappropriate for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan are contained in **confidential attachment 6** to this report.

The Commission has calculated the dumping margin in terms of s. 269TACB(3) instead of the approach under s. 269TACB(2). The Commission's dumping margin assessment for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan for the

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purpose of this report is 5.5%. Dumping margin calculations are summarised at **Confidential Attachment 7**.

### **4.7.6 China – volume of dumped imports**

Subsection 269TDA(3) provides that if negligible volumes of dumping are found the Commissioner must terminate the investigation so far as it relates to that country.

The Commission decided that capacity (measured using the power rating) rather than number of units is the most appropriate measure of volume. ACBPS' import database only records value and quantity. The quantity figures that are recorded are not meaningful for a number of reasons. For example, a single power transformer may be imported in different shipments or brokers may enter the number of packages rather than the number of power transformers.

The Commission does not have power ratings for exports from the nominated countries outside the investigation period, for exports from other countries or for sales by other Australian producers. The Commission has relied on value as the best available measure of volume and the size of the Australian market.

The Commission found that the volume of power transformers exported at dumped prices from China was negligible. In accordance with s. 269TDA(3), the Commissioner terminated the investigation so far as it relates to China.

## **4.8 Indonesia**

### **4.8.1 UNINDO**

The Commission established export prices, normal values and dumping margins for UNINDO based on the information provided in the exporter questionnaire response.

#### **Export price**

The Commission is satisfied that UNINDO was the exporter and established FOB export prices for UNINDO under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

#### **Normal value**

The Commission reviewed costs submitted by UNINDO which appeared to be complete. Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by UNINDO.

UNINDO did not provide any information to enable the calculation of adjustments. The Commission did not pursue this issue considering the low volume of exports to Australia by UNINDO.

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### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for UNINDO is negative 4.2%. Dumping margin calculations are summarised at **Confidential Attachment 8**. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it relates to UNINDO.

## 4.9 Korea

### 4.9.1 Hyosung

The Commission visited Hyosung to verify information in its exporter questionnaire response.

### Export price

The Commission is satisfied that Hyosung was the exporter of power transformers to Australia and that its Australian customers were the importers. It is satisfied that export sales from Hyosung to its Australian customers were arms length transactions. The Commission established FOB export prices under s. 269TAB(1)(a) using the price paid by the importer less any charges incurred after exportation.

### Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Hyosung.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms (net of domestic credit terms).

### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Hyosung is 12.3%. Dumping margin calculations are summarised at **Confidential Attachment 9**.

### 4.9.2 Hyundai

The Commission visited Hyundai to verify information in its exporter questionnaire response.

### Export price

The Commission is satisfied that Hyundai was the exporter of power transformers to Australia and that Hyundai Australia Pty Ltd (Hyundai Australia) was the importer. However, Hyundai Australia purchased the goods from Hyundai Corporation. The Commission found no evidence that:

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- there is any consideration payable for or in respect of the goods other than the price;
- the prices were influenced by a commercial or other relationship between the buyer and the seller; and
- the buyer will be reimbursed in respect of any part of the price.

The Commission is satisfied that export sales from Hyundai to Hyundai Australia were arms length transactions. It established FOB export prices under s. 269TAB(1)(c) having regard to all the circumstances of the exportation. The Commission used the price paid by Hyundai Corporation less any charges incurred after exportation.

### Normal value

Constructed FOB normal values were established under s. 269TAC(2)(c). The Commission included an amount for profit reflecting the profit achieved on domestic sales of like goods (based on the profit achieved on domestic sales of the same general category of goods) by Hyundai.

The Commission made a positive adjustment to the constructed normal values under s. 269TAC(9) for export credit terms (net of domestic credit terms).

### Dumping margin

The dumping margin was determined under s. 269TACB(2)(b) using the *transaction to transaction* method. The dumping margin for Hyundai is negative 8.2%. Dumping margin calculations are summarised at **Confidential Attachment 10**. In accordance with s. 269TDA(1), the Commissioner terminated the investigation so far as it relates to Hyundai.

### **4.9.3 Korea - volume of dumped imports**

The Commission found that the volume of power transformers exported at dumped prices from Korea was negligible. In accordance with s. 269TDA(3), the Commissioner terminated the investigation so far as it relates to Korea.

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### 5 ATTACHMENTS

Attachment 1	Submissions on public record
Confidential attachment 2	Dumping margin calculations for ABB Chongqing and ABB Zhongshan
Confidential attachment 3	Dumping margin calculations for Toshiba CTC
Confidential attachment 4	Dumping margin calculations for CHINT
Confidential attachment 5	Dumping margin calculations for Jiangsu
Confidential attachment 6	Alternative dumping margin calculation for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan
Confidential attachment 7	Dumping margin calculations for Siemens Guangzhou, Siemens Jinan and Siemens Wuhan
Confidential attachment 8	Dumping margin calculations for UNINDO
Confidential attachment 9	Dumping margin calculations for Hyosung
Confidential attachment 10	Dumping margin calculations for Hyundai

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### ATTACHMENT 1

The following submissions are on the public record.

- Taipei Economic and Cultural Office, 20 August 2013;
- WTC, 30 August 2013;
- Hyosung, 11 September 2013;
- Siemens Group, 24 September 2013;
- Origin Energy Resources Limited, 10 October 2013;
- Hyosung, 17 October 2013;
- WTC, 12 November 2013;
- WTC, 12 November 2013;
- Rio Tinto, 4 December 2013;
- Shihlin, 5 December 2013;
- WTC, 11 December 2013;
- TBEA, 12 December 2013;
- Hyosung, 16 January 2014;
- Alstom Australia, 4 February 2014;
- Toshiba International, 11 February 2014;
- ABB Australia, 18 February 2014;
- Hyosung, 21 February 2014;
- Siemens Group, 21 February 2014;
- Siemens Group, 28 February 2014;
- Siemens Group, 11 March 2014;
- Alstom Australia, 17 March 2014;
- TBEA, 12 May 2014;
- TBEA, 12 May 2014;
- Hyosung, 16 May 2014;
- Shihlin, 19 May 2014;
- Siemens Group, 30 May 2014;
- Alstom Australia, 10 June 2014;
- Hyundai, 10 June 2014;
- TBEA, 10 June 2014;
- Hyosung, 10 June 2014;
- Siemens Group, 10 June 2014;
- WTC, 10 June 2014;
- Toshiba International, 10 June 2014;
- Fortune, 10 June 2012;
- ABB Australia, 10 June 2014;
- China Chamber of Commerce, 12 June 2014;
- the Government of China, 24 June 2014;
- the Government of China, 7 July 2014;
- Powercor, 9 July 2014;
- WTC, 24 July 2014;
- Siemens Group, 4 August 2014;
- WTC, 15 August 2014;
- Toshiba International, 18 August 2014;
- WTC, 20 August 2014;

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- Corrs Chambers Westgarth on behalf of a number of interested parties, 21 August 2014;
- Fortune, 21 August 2014;
- Siemens Group, 22 August 2014;
- WTC, 22 August 2014;
- Siemens Group, 26 August 2014;
- ABB Thailand, 27 August 2014;
- CG Power, 29 August 2014; and
- ABB Thailand, 4 September 2014

The Commission also received submissions commenting on certain matters in exporter visit reports.