



ISSUES PAPER 2014/01

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

PURPOSE

Issues papers afford interested parties the opportunity to comment on significant issues relating to the investigation so that the Anti-Dumping Commission (ADC) may consider those views before publishing the statement of essential facts. The purpose of this paper is to outline the background, and the ADC's proposed position, in relation to:

- the goods and like goods;
- 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.

In formulating its statement of essential facts, the ADC will take into account interested parties' submissions obtained in the course of the investigation to date, and those made in response to this paper that are received no later than **10 June 2014**. Interested parties should attach relevant evidence to support the views expressed in their submissions. A non-confidential version of submissions must be provided. Submissions can be provided:

by mail to: Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

or by email to: operations1@adcommission.gov.au

or by fax to 02 6275 6990.

BACKGROUND TO INVESTIGATION

Refer to www.adcommission.gov.au/cases/ADC219.asp

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The goods and like goods to the goods the subject of the application

Background

In its application, Wilson Transformers described the goods as:

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 (referred to as power transformers in this issues paper).

Wilson Transformers provided further information to clarify the types of goods covered by this definition. Consideration report No. 219 stated:

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

Wilson Transformers stated that distribution transformers are not the subject of this application. Distribution transformers are smaller transformers, are manufactured in greater quantities and have design and manufacturing technology which is different from power transformers. Distribution transformers are generally used at the lower end voltages of the power distribution system.

Some interested parties claim that distribution transformers should be excluded from the investigation, irrespective of the power or voltage ratings. Others suggested that distribution transformers could be described by reference to these ratings. For example, Hyosung Corporation (a Korean exporter) considers distribution transformers should be defined as having a capacity of less than 66 kV.

The determination of which goods to include in the dumping margin calculations is important because it will affect the outcome.

The ADC's report on its visit to Wilson Transformers stated:

Wilson Transformers 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).

The visit report also referred to a June 2012 paper published by the US Department of Energy titled *Large Power Transformers and the US Electric Grid*. The report stated that voltage ratings are often used to describe different classes of power transformers, such as extra high voltage, 345 to 765 kV; high voltage, 115 to 230 kV; medium voltage, 34.5 to 115 kV; and distribution voltage, 2.5 to 35 kV.

The ADC's report on its visit to Energex Limited (a Queensland Government owned enterprise that owns and manages the energy distribution networks in South East Queensland) stated:

Energex considers that distribution transformers are small power transformers with a power rating of much less than 10 MVA. They are small transformers that represent the final link between the distribution network and the customer.

ADC's proposed position

The ADC notes that the title of the Wilson Transformer's application (provided in the approved form) is power transformers greater than or equal to 10 MVA and less than 500 kV. The ADC also notes that

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Wilson Transformers, in its application, uses the expression “distribution transformers” in the context of describing the transformers it manufactures in Wodonga (as distinct from power transformers it manufactures at its Glen Waverly production facilities). Wilson Transformers goes on to distinguish distribution transformers as smaller transformers with different design and manufacturing technology that are generally used at the lower end voltages of the power distribution system.

Given the distinctions evident for distribution transformers in the application, the ADC sees no reason to exclude certain power transformers from the investigation merely because a company describes them as distribution transformers. Rather, the ADC proposes to 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. It follows that if dumping duties were imposed they would apply to the goods the subject of the application.

Identification of which export shipments are used for dumping margin calculations

Customer requests for quotation on the manufacture and supply of power transformers include the required specifications of the unit. Manufacturers will bid for the unit and confirm their ability to meet the specifications within the required time line. Development of a bid typically takes a number of weeks and there may be several months from the request for quotation to the award of the contract. Further, power transformers are highly engineered, customised products and once a unit is ordered, production and testing may take many months.

In this case the investigation period is July 2010 to June 2013 inclusive, and the ADC must decide which export shipments should be used in the calculation of dumping margins. That is, the ADC must decide which date or dates is/are critical for determining the shipments that fall within the investigation period. For example, relevant considerations might include date of export, date of invoice or date of sale.

In the exporter questionnaire prepared for this investigation, the ADC requested information on export prices as follows:

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.

Some manufacturers had no exports during the investigation period. They won tenders during the investigation period, but the goods were not exported until after the investigation period. The ADC must consider if it can calculate dumping margins and individual rates of duty for these exporters.

In terms of the relevant legislation, it is important to note that s. 269TACB¹ provides for working out whether dumping has occurred, and s. 269TACB(1) refers to export prices in respect of goods that have been exported to Australia during the investigation period.

¹ All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*

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TBEA Shenyang Transformer Group Co. Ltd (TBEA) exported power transformers to Australia after the investigation period. TBEA considers that:

- the date of sale for these contracts was during the investigation period as this was when the material terms of sale were established;
 - TBEA undertook most of the work for that contract during the investigation period, including the manufacture and testing of the goods; and
 - the assessment of whether the goods were dumped occurs when the material terms of sales are agreed;
- the ADC should not strictly interpret the term exported to Australia during the investigation period to mean the goods are physically shipped;
- s. 269TDAA requires the ADC to have regard to any other matters that the Commissioner considers relevant in formulating the statement of essential facts;
- s. 269TEA(2) requires that the report to the Parliamentary Secretary (where possible) extend to any like goods not covered by the application but which are imported into Australia between the date of initiation of the investigation and 20 days after the statement of essential facts is made.
- there is little case law dealing with this matter, but notes that the Federal Court found that s. 269TEA(2) does not operate to widen the task of assessing whether the goods have been dumped during the investigation period;
 - TBEA considers that it exported these power transformers during the investigation period, even though they were not physically shipped;
- the ADC indicated that goods exported in respect of contracts won during the investigation period would be used to calculate dumping margins as the information was requested in the exporter questionnaire; and
- consideration report 219 indicated that the date of export would be explored during the investigation when it stated that “where the date of sale reflects a date prior to the physical shipment of the goods from the country of export, whether it is reasonable to consider that the goods are taken to have been exported at that date”.

Implications for accelerated review

If the Parliamentary Secretary for Industry publishes a dumping or countervailing duty notice, a new exporter can request an accelerated review of that notice so far as it affects that exporter (refer Division 6 of Part XVB of the Act). Section 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 statement of essential facts is placed on the public record. Therefore, where the physical shipment date is relied upon for determining the export date, and the exporter makes one or more shipments of the goods in this period, and none in the investigation period, then:

- dumping margins cannot be determined for that exporter for the investigation period; and
- the exporter is not eligible for an accelerated review.

ADC's proposed position

The ADC considers that the date of sale of goods and the date of export of goods can be, and often are, different. In any case, the ADC 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 settled on a different date.

Accordingly, the ADC proposes to determine the date of export as the one that best represents the physical movement of the goods in the act of exportation. In practical terms, it will consider such date to be the one shown on the bill of lading.

Therefore, the ADC proposes to calculate dumping margins for power transformers 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.

Determination of profit for constructed normal values

Background

When constructing normal value, the legislation provides (at paragraph 269TAC(2)(c)) that the normal value of the goods is the sum of the:

- cost of production or manufacture of the (exported) goods; and
- on the assumption that the goods had (instead of being exported) been sold on the domestic market in the ordinary course of trade, amounts for the administrative selling and general costs, and the profit those sales.

Section 269TAAD defines sales that are not in the ordinary course of trade. Sales of goods at a loss occurring in substantial quantities and which do not provide for the recovery of costs within a reasonable period are regarded as being not in the ordinary course of trade.

The ADC's initial view in this case was that each power transformer is unique and therefore each one represents a separate model. Consequently, the ADC considered that any domestic sale at a loss was also not recoverable because there was only one sale and the unit cost was also the weighted average cost for that model, for the investigation period. Sales at a loss were therefore considered as not being in the ordinary course of trade and they were excluded in calculating an amount for profit for constructed normal value.

Interested parties have claimed this approach will generate a profit that will be determined by reference to an unrepresentative sample of sales that are, by virtue of the approach, necessarily all profitable.

Customs Regulation 181A provides for the determination of profits. Regulation 181A(2) provides that profit must, if reasonably possible, be calculated '...using data relating to the production and sale of like goods by the exporter or producer of the goods *in the ordinary course of trade*'. If such a profit cannot be determined the profit must be calculated:

- using the profit realised by the exporter from the sale of the same general category of goods in the domestic market of the exporting country; or
- the weighted average profit realised by other exporters or producers from the sale of like goods in the domestic market of the exporting country; or
- using any other reasonable method, subject to a regulation which requires that the amount so calculated does not exceed the profit normally realised by other exporters on sales of the goods of the same general category in the domestic market of the country of export.

ADC's proposed position

The ordinary course of trade provisions are at s. 269TAAD and 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 model to another. Indeed, 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 ADC will not establish normal values on the basis of domestic selling prices (s. 269TAC(1)). Furthermore, the ADC considers that a "weighted average cost" of goods contemplated in s. 269TAAD(3) cannot be meaningfully calculated for power transformers. Consequently, the recovery test cannot be conducted meaningfully and the ordinary course of trade test cannot be fulfilled. Accordingly the ADC considers it is not reasonably possible to work out the profit on the sale of the goods made in the ordinary course of trade in accordance with Regulation 181A(2).

The ADC considers that it is therefore necessary to work out the profit for use in constructed normal values using one of the provisions in regulation 181A(3). The ADC notes there is no hierarchy, and each of these alternatives is equally available.

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At this stage, the ADC intends to determine 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. The ADC considers 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 very close proximity.

Calculation of a credit adjustment

Background

When constructing normal values, adjustments must be made to ensure the normal value is properly comparable with the export price. One such adjustment that is often made is in relation to differences in credit terms between domestic and export prices. The ADC will generally adjust for price differences caused by different credit terms on the basis that the associated opportunity costs are different, and this represents different values and different prices. The calculation has regard to the different credit periods, the value of the goods, and the short term interest rate.

This case is complicated because:

- production may take many months and there are typically a number of progress payments made for each contract;
- one or more commercial invoices may be issued for each unit sold;
- contracts can specify progress payment schedules that establish liability for the customer to pay amounts on dates that may or may not agree with the date of the invoices (or the credit terms specified in the invoices); and
- the date of the exporters' revenue recognition is not necessarily linked to contract dates, progress payment dates, or invoice dates.

The ADC'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 ADC accepted that the contract date is the date of sale as it best represented the date on which the material terms of the sale were established.

The ADC 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. It is probably better described as determining the present value of the project at the contract date.
- The adjustment does not reflect considerations that are likely to affect a price difference between export sales and domestic sales.
- The ADC may be calculating a credit cost when the customer has not been invoiced and/or the customer has no liability to make any payments.
- In relation to domestic sales, the ADC was originally intending to use the calculation to reduce revenue to represent a price that was notionally on cash terms. This approach reduced the profitability rate for domestic sales, and in some cases this reduced the number of profitable sales and increased the profitability rates (for sales that remained in the ordinary course of trade) used for constructing normal values.

ADC's proposed position

The ADC proposes to calculate credit adjustments by determining weighted average credit periods separately for domestic and export sales. For each progress payment the ADC proposes to use the credit period identified on the invoice or in the contract unless the ADC is satisfied that a different period should be used. The approach will be as follows:

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Step 1. Identify the credit period for each progress payment for domestic sales and calculate the weighted average credit period for domestic sales using payment amounts.

Step 2. Calculate the weighted average credit period for each export sale:

- identify the credit period for each progress payment; and
- calculate the weighted average credit period for each export sale using payment amounts.

Step 3. Adjust the normal value to take account of the differences in credit terms, using the figures generated from steps 1 and 2 above, and a suitable interest rate for the exporter concerned.

Refer to the attached spreadsheet for an illustrative example of the calculation of weighted average credit terms, and the adjustments to normal value for differences in credit terms.

Exchange rates

Background

Export sales are typically made in a currency other than the domestic currency of the exporter. Therefore when comparing export prices with normal values, the export prices must be converted to the local currency.

In the case of power transformers, the effect of foreign exchange fluctuations may be important because of the long lead times between the date a contract is signed and the date payments are received. It is therefore important to establish an appropriate rate of exchange to ensure a fair comparison between export prices and normal values.

ADC's proposed position

In converting prices for exported power transformers into local currency, the ADC intends to use the exchange rate at the contract date (the date when the material terms of the export sale were finalised), unless the ADC is satisfied that an alternative exchange rate should be used, such as the rate on the date of invoice or a rate established in a foreign exchange contract.

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ILLUSTRATION OF CALCULATION OF CREDIT ADJUSTMENT AND DUMPING MARGIN FOR POWER TRANSFORMERS

Calculation of weighted average credit terms for domestic sales

Domestic sale 1	Contract value 1,000,000 Credit period 30 days for payments 1,2 and 3 and 90 days for payment 4. One invoice issued at delivery	Invoice/ liability date
	Contract payment terms	
	10% on purchase order confirmation	01-Jan-14
	25% on receipt of core steel and copper conductor	01-Feb-14
	55% on delivery	01-May-14
	10% on commissioning and final handover	01-Jun-14
Domestic sale 2	Contract value 2,500,000 Credit period 7 days for payment 1, 60 days for payments 2 and 3 and 180 days for payment 4. Invoice issued for each milestone payment	date
	10% on purchase order confirmation	01-Jan-14
	20% on acceptance of drawings	01-Apr-14
	65% on delivery	01-Aug-14
	5% on commissioning and final handover	01-Sep-14

	Contract value	Payment	Invoice/ liability date	Credit period (days) (column F - column E)	Credit period * payment	
Domestic sale 1	1,000,000	10%	100,000	01-Jan-14	30	3,000,000
	1,000,000	25%	250,000	01-Feb-14	30	7,500,000
	1,000,000	55%	550,000	01-May-14	30	16,500,000
	1,000,000	10%	100,000	01-Jun-14	90	9,000,000
Domestic sale 2	2,500,000	10%	250,000	01-Jan-14	7	1,750,000
	2,500,000	20%	500,000	01-Apr-14	60	30,000,000
	2,500,000	65%	1,625,000	01-Aug-14	60	97,500,000
	2,500,000	5%	125,000	01-Sep-14	180	22,500,000
			3,500,000		54	187,750,000

Weighted average credit terms for domestic sales 54 days (G29/D29)

Export credit terms

Export sale 1	Contract value 1,000,000 Credit period 60 days for payment 1 and 90 days for payments 2 and 3. One invoice issued at delivery	Invoice/ liability date
	Contract payment terms	
	20% on purchase order confirmation	01-Jan-14
	70% on delivery to port	01-Jun-14
	10% on delivery to site	01-Sep-14
Export sale 2	Contract value 1,500,000 Credit period 60 days for payment 1, 90 days for payments 2 and 3 and 120 days for payment 4. Invoice issued for each milestone payment	Invoice/ liability date
	20% on purchase order confirmation	01-Jan-14
	30% on acceptance of drawings	01-Feb-14
	40% on passing final testing	01-Aug-14
	10% on commissioning and final handover	01-Nov-14

	Contract value	Payment	Invoice/ liability date	Credit period (days) (column F - column E)	Credit period * payment	
Export sale 1	1,000,000	20%	200,000	01-Jan-14	60	12,000,000
	1,000,000	70%	700,000	01-Feb-14	90	63,000,000
	1,000,000	10%	100,000	01-May-14	90	9,000,000
			1,000,000		84	84,000,000
Export sale 2	1,500,000	20%	300,000	01-Jan-14	60	18,000,000
	1,500,000	30%	450,000	01-Feb-14	90	40,500,000
	1,500,000	40%	600,000	01-Feb-14	90	54,000,000
	1,500,000	10%	150,000	01-May-14	120	18,000,000
			1,500,000		87	130,500,000

Weighted average credit terms for export sale 1 84 days (G54/D54)for export sale 2 87 days (G59/D59)

Calculation of dumping margin

Short term interest rate 3%
Profit 10%

	EP	Domestic credit terms	Export credit terms	CTMS	CTMS + profit	less domestic credit terms	plus export credit	NV (sum of columns F, G and H)	DM (column I - column B)	DM (%) (column J / column B)	
Export sale 1	1,000,000	54	84	1,050,000	1,155,000	-	5,070	6,904	1,156,834	156,834	15.7%
Export sale 2	1,500,000	54	87	1,300,000	1,430,000	-	6,277	10,726	1,434,449	65,551	-4.4%
	2,500,000								2,591,283	91,283	3.7%

Weighted average dumping margin 3.7%

Domestic credit adjustment: - (column F - (1 + 3% * (column C/365)))

Export credit adjustment: column B * 3% * (column D / 365)