



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2017-002

Liquid Dielectric Transformers

*Order and reasons issued
Thursday, May 31, 2018*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 20, 2012, in Inquiry No. NQ-2012-001, continued without amendment by the order made on May 31, 2016, in Interim Review No. RD-2013-003, concerning

**THE DUMPING OF LIQUID DIELECTRIC TRANSFORMERS ORIGINATING
IN OR EXPORTED FROM THE REPUBLIC OF KOREA**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its finding made on November 20, 2012, in Inquiry No. NQ-2012-001, continued without amendment on May 31, 2016, in Interim Review No. RD-2013-003, concerning the dumping of liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Korea.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the aforementioned goods.

Peter Burn
Presiding Member

Jean Bédard
Member

Serge Fréchette
Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: March 19 to 22, 2018

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STATEMENT OF REASONS

EXECUTIVE SUMMARY

In this expiry review, the Tribunal finds that, if the finding of injury in Inquiry No. NQ-2012-001 [*Transformers NQ*] concerning the dumping of large power transformers from Korea is rescinded, the likely resumption or continuation of the dumping of the subject goods will likely cause material injury to the domestic industry.

The Tribunal bases this conclusion on the following considerations, which are elaborated on below:

- The Canadian market for large power transformers is an attractive and relatively important one. It is a market in which Korean producers of subject goods have demonstrated an interest over the years and participated actively.
- Korean producers have the motivation to increase their exports to the Canadian market in the event that the finding is rescinded as a result of increased competition or reduced demand in other markets (United States, Middle East) and stagnating demand and administrative sanctions against the Korean producers in their domestic market. Korean producers also have sufficient disposable excess production capacity to enable a significant increase in exports.
- Should the finding be rescinded, the recent imposition by the United States of substantial anti-dumping duties on Korean large power transformers would likely lead to the diversion of exports of the subject goods to Canada.
- With the finding in place, the domestic industry's performance has improved. It has improved its market share, per-unit net sales value, gross margins and net income. It has also made inroads at key accounts that were previously dominated by the Korean producers.
- The rescission of the finding would allow suppliers of the subject goods greater flexibility to lower their prices in an effort to recapture market share and make gains in the "premium" power transformers market. These low prices are likely to have a significant depressive effect on the prices of like goods and to result in a significant increase in the volume of subject goods, on both an absolute and a relative basis, with corresponding significant lost sales to the domestic industry. This would likely result in material injury to the domestic industry.

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of a finding of injury made by the Canadian International Trade Tribunal (the Tribunal) on November 20, 2012, in *Transformers NQ*, continued without amendment by the Tribunal's order on May 31, 2016, in Interim Review No. RD-2013-003, concerning the dumping of certain liquid dielectric transformers originating in or exported from the Republic of Korea (Korea) (the subject goods).

2. Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding or, if one or more orders continuing the finding have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The finding in *Transformers NQ* was therefore scheduled to expire on November 20, 2017.

1. R.S.C., 1985, c. S-15 [*SIMA*].

3. The Tribunal issued a notice of expiry review on July 25, 2017. On December 22, 2017, the Canada Border Services Agency (CBSA) determined that there was a likelihood of resumed or continued dumping of the subject goods. The Tribunal's mandate is to determine whether the continued or resumed dumping is likely to result in injury. The period of review (POR) in this case is from January 1, 2014, to September 30, 2017. For comparative purposes, information was also collected for the interim period of January 1 to September 30, 2016.

PROCEDURAL BACKGROUND

4. The Tribunal requested that four domestic producers, 19 importers and two foreign producers complete questionnaires. The Tribunal received completed or partially completed questionnaire responses from four domestic producers, six importers and two foreign producers.² The Tribunal also received seven replies from importers indicating that they did not import power transformers as defined in the product definition. From the replies to the questionnaires and other information on the record, public and protected investigation reports and investigation report supplements were prepared and placed on the record.

5. The Tribunal did not receive any requests for product exclusions.

6. ABB, Inc. (ABB) and PTI Manitoba Inc. (PTI) filed written submissions in support of a continuation of the finding. Hyundai Electric & Energy Systems Co., Ltd. (HEES) and Hyosung Corporation (Hyosung) filed written submissions opposing the continuation of the finding. ABB, PTI, HEES and Hyosung also filed responses to various requests for information by the parties and the Tribunal.

7. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from March 19 to 22, 2018. ABB, PTI and HEES provided witnesses and were represented by counsel. Hyosung was also represented by counsel at the hearing but did not provide any witnesses. Mr. Peter Kobzar, Category Portfolio Manager, Major Equipment, British Columbia Hydro and Power Authority (BC Hydro) and Mr. Robert Berardi, Vice-President, Shared Services, Hydro One Networks Inc. (Hydro One) appeared as witnesses for the Tribunal, with the latter appearing via video conference from Toronto, Ontario.³

PRODUCT

Product Definition

8. The subject goods are defined as follows:

Liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Korea.

2. Exhibit RR-2017-002-05, Table 2, Vol. 1.1.

3. In addition, ABB and PTI submitted a request pursuant to Rule 20 of the *Canadian International Trade Tribunal Rules* (SOR/91-499) for the Tribunal to issue a subpoena compelling Mr. John Row of Remington Sales Co. (Remington) to appear as witness before the Tribunal. The request was opposed by HEES. The Tribunal noted that previous decisions confirm that it has broad powers to issue subpoenas for non-parties to appear before it at oral hearings: see, for example, *Bicycles* (7 December 2012), RR-2011-002 (CITT) at para. 13; *Certain Whole Potatoes* (9 September 2015), RR-2014-004 (CITT) at paras. 9-11. The Tribunal was satisfied that the areas of questioning identified by ABB and PTI were relevant to this expiry review and pertained to issues within the Tribunal's jurisdiction. The Tribunal therefore decided to grant the request. Mr. Ken Kang of Remington also testified at the hearing.

Product Information

9. Power transformers as defined in the product definition (large power transformers) are capital goods that are made to order in accordance with the customer's specifications and particular needs. They use electromagnetic induction between circuits to increase, maintain or decrease electric voltage in high-voltage transmission and distribution systems. Induction occurs when the electromagnetic field caused by electricity moving through a conductor crosses a second electrical conductor and generates a voltage in the second conductor, even though the two conductors are not directly connected. This requires a fluctuating magnetic field generated by alternating current entering an input conductor.

10. Large power transformers all share certain basic, key physical characteristics. All power transformers have at least one active part where the electromagnetic induction occurs. The active part of the power transformer consists of one or more of the following, when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, a clamping system to hold the internal assembly together, and/or the mechanical frame for a power transformer. The internal assembly is placed into a metal tank that is filled with a cooling medium and has a cooling system attached.

11. Power transformers come in various sizes. Large power transformers, as defined in the product definition, encompass all power transformers having a top handling capacity equal to or exceeding 60 megavolt amperes (MVA) regardless of name designation, including but not limited to step-up transformers, step-down transformers, auto-transformers, interconnection transformers, voltage regulator transformers, high-voltage direct current transformers and rectifier transformers.

LEGAL FRAMEWORK

12. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation to the domestic industry.⁴

13. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding in Inquiry No. NQ-2012-002, if it determines that its expiry is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

14. Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry".

LIKE GOODS AND CLASSES OF GOODS

15. In order for the Tribunal to determine whether the resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal

4. Subsection 2(1) of *SIMA* defines "injury" as "material injury to the domestic industry" and "retardation" as "material" retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry finding is likely to result in retardation does not arise in this expiry review.

must also assess whether there is, within the subject goods and the like goods, more than one class of goods.⁵

16. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

17. In *Transformers NQ*, the Tribunal determined that domestically produced power transformers with a top power handling capacity of 60 MVA or greater constituted a single class of “like goods” in relation to the subject goods. No evidence was submitted in this expiry review to suggest that the Tribunal should reach a different conclusion.

18. Therefore, the Tribunal finds that domestically produced power transformers with a top power handling capacity of 60 MVA or greater constitute a single class of “like goods” in relation to the subject goods.

DOMESTIC INDUSTRY

19. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

20. The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.⁶

21. The composition of the domestic industry has changed since *Transformers NQ*. At that time, ABB, CG Power Systems Canada Inc. (CG) and Alstom Grid Canada Inc. (Alstom) constituted the domestic industry. In November 2015, the assets of CG were acquired by PTI, and in August 2015, the assets of

5. Should the Tribunal determine that there is more than one class of goods, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

6. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

Alstom were transferred to Delta Star Inc. (Delta Star).⁷ The evidence indicates that ABB, PTI and Delta Star now account for the entire domestic production of like goods.⁸

22. As such, the Tribunal finds that ABB, PTI and Delta Star constitute the “domestic industry” for the purposes of this expiry review.

LIKELIHOOD OF INJURY ANALYSIS

23. An expiry review is forward-looking.⁹ It follows that evidence from the POR during which a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the finding is likely to result in injury.¹⁰

24. There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization (WTO).¹¹ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.¹²

25. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be within 12 to 24 months from the date on which the finding or order would expire.

26. As described in more detail below, the fact that large power transformers are capital goods that are custom-made to the customer’s specifications results in a significant time lag between the placement of an order and the delivery of the transformer to the customer. Consequently, the domestic industry’s production, capacity utilization and financial performance in a given year are largely reflective of orders and bids won or lost in earlier reporting periods.¹³ ABB and PTI argued that, in assessing the likely performance of the domestic industry within the next 12 to 24 months if the finding were rescinded, the Tribunal should take into account the fact that the effects of the expiry would only manifest themselves in financial and company performance indicators over a longer period of time—in 2019, 2020 and even beyond. ABB and PTI argued that the 2019 and 2020 financial results of the domestic industry are within the purview of this review as they are tied to the effects that the rescission of the finding would have within the next 12 to 24 months. The parties opposed disagreed and asked the Tribunal to limit its analysis to the next 12 to 24 months.

7. Exhibit RR-2017-002-17.04, Vol. 3 at 192; Exhibit RR-2017-002-17.02, Vol. 3 at 15.

8. Exhibit RR-2017-002-05, Table 2, p. 7, Vol. 1.1. A fourth potential producer, Northern Transformer Corporation, has indicated that it has the capacity to produce like goods but has not yet done so. See Exhibit RR-2017-002-27.03, Vol. 7.1H at 114. Its capacity has been included in the domestic industry’s consolidated production capacity figures.

9. *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

10. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 21.

11. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

12. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

13. Similarly, in *Transformers NQ* at paras. 60-61, the Tribunal found that there was a very long time lag between the placement of an order and the delivery of the goods such that the domestic power transformers industry’s production and financial data in a given year likely related predominately to pricing practices in preceding years.

27. The Tribunal considers that it may be appropriate, in an expiry review, to consider events or developments likely to take place beyond the 12- to 24-month timeframe normally considered where such events are clearly foreseeable¹⁴ or where they directly flow from events that will take place within this timeframe. In the present case, the impact on the domestic producers' financial and company performance resulting from sales made within the next 12- to 24-month period is directly linked to those sales. Thus, the Tribunal considers that, in light of the uniquely long time lag between the conclusion of a sale and the production and delivery of, and payment for, a large power transformer, it would be appropriate to take into account the future impact on domestic producers resulting from sales made within the next 12- to 24-month period, even if that impact only manifested itself beyond that period. That being said, the Tribunal considers that in the present review, the evidence before it pertaining to the likely impact within the next 12 to 24 months is sufficient, in and of itself, to conclude that the rescission of the finding is likely to result in material injury to the domestic industry.

28. Subsection 37.2(2) of the *Special Import Measures Regulations*¹⁵ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in Market Conditions

International Market Conditions

29. Large power transformers are a classic form of capital goods. Like other types of capital equipment, the market for large power transformers is characterized by relatively few, high-value, orders. Large power transformers are typically sold through a competitive bidding process and are customized to the customer's specifications. As noted above, there is a significant time lapse—usually 9 to 12 months and sometimes as long as 2 years—between the award of a contract or placement of a purchase order, and production and delivery.¹⁶

30. The power transformers industry is a global one.¹⁷ It is also a relatively fragmented industry in which the leading producers are multinational companies headquartered in Europe (ABB and Siemens), the United States (GE), Japan (Toshiba, Hitachi and Mitsubishi), China (TBEA) and India (CG).¹⁸ There is significant global overcapacity in the power transformers industry.¹⁹

31. Demand for large power transformers is largely driven by electricity generation and transmission. The market for large transformers in Canada and other developed nations—such as the United States, several European countries, Japan and Korea—is a mature one, where sales opportunities are driven primarily by the replacement on the existing grid of transformers reaching the end of their useful life, rather than by the expansion of the electricity production and transmission network.²⁰ Demand for large

14. See *Refined Sugar* (30 October 2015), RR-2014-004 (CITT) at paras. 59-62.

15. S.O.R./84-927 [*Regulations*].

16. Exhibit RR-2017-002-17.02, Vol. 3 at 23; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 68; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 204; Exhibit RR-2017-002-18.03 (protected), Vol. 4B at C26; Exhibit RR-2017-002-18.02, Vol. 4 at C26.

17. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 244, 267.

18. Exhibit RR-2017-002-32.02 (protected), Vol. 8.1K at 304.

19. *Ibid.*, Vol. 8.1L at 264; Exhibit RR-2017-002-A-09 at para. 10, Vol. 11; *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 3.

20. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 246, 269-270.

transformers is limited in distributive networks deploying variable solar and wind power, with demand emanating from new projects and the expansion of the power grid taking place primarily in emerging markets that have not yet developed a ubiquitous power network.²¹

32. Korean demand for large power transformers is stagnant. Korean producers face declining sales in their home market.²² Energy infrastructure investments in Korea are stagnating. HEES described the Korean “electric and electro equipment” market as depressed.²³

33. The Middle East market—and in particular Saudi Arabia, the dominant national market in the region²⁴—is a key market for global producers of large power transformers, including the Korean producers. Declining oil prices have impacted government finances in the Middle East, leading to the postponement or reduction of investments in public power infrastructure, and to a reduction in demand for large power transformers which is expected to continue in the near to medium term.²⁵ The Middle East and Saudi Arabian markets are depressed and expected to remain depressed in the near to medium term.²⁶

34. The U.S. market is another key market for both the domestic and the Korean producers. U.S. consumption of electricity is forecast to increase marginally over the next 24 months, as is demand for power transformers in the North American market.²⁷ The U.S. market is fiercely competitive.²⁸ It is characterized by an increase in “Buy America” requirements²⁹ and by low or depressed prices³⁰ and aggressive price competition from low-priced imports. Both ABB and HEES own factories in the United States where they manufacture power transformers for the U.S. and (to a lesser extent) the Canadian markets. ABB announced that it would close one of its production facilities in the United States, in St. Louis.³¹ HEES plans to shift production from its Korean production facility to its Alabama facility for large power transformers destined for the North American market.³²

Domestic Market Conditions

35. The Canadian market is a relatively large one. Canada is a significant global electricity producer and exporter, particularly relative to its population. All parties acknowledge that the Canadian market is an

21. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 93; *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 246.

22. Exhibit RR-2017-002-27.01C, Vol. 7.1F at 7; Exhibit RR-2017-002-06 (protected), Vol. 2.1, Table 21.

23. Exhibit RR-2017-002-27.01C, Vol. 7.1F at 8.

24. *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 2; Exhibit RR-2017-002-32.02 (protected), Vol. 8.1L at 34.

25. Exhibit RR-2017-002-A-11A at 25, Vol. 11A.

26. *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 2, 3; Exhibit RR-2017-002-32.02 (protected), Vol. 8.1K at 303; *ibid.*, Vol. 8.1L at 42.

27. Exhibit RR-2017-002-17.03, Vol. 3 at 97; Exhibit RR-2017-002-32.02 (protected), Vol. 8.1K at 303.

28. *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 31; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 154-155.

29. Exhibit RR-2017-002-A-11, tab 4 at 32, Vol. 11; Exhibit RR-2017-002-27.01A, Vol. 7.1D at 5; Exhibit RR-2017-002-18.02 (protected), Vol. 4 at C6 and 61, 65. These provisions penalize bidders offering transformers from a non-U.S. source or give preference to U.S.-manufactured power transformers.

30. *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 32.

31. Exhibit RR-2017-002-A-09 at para. 14, Vol. 11.

32. Exhibit RR-2017-002-A-11A, tab 6 at 31, Vol. 11A; Exhibit RR-2017-002-C-10 (protected) at 4, Vol. 14; Exhibit RR-2017-002-C-02 (protected) at para. 40, Vol. 14; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 214.

attractive³³ and important market for global power transformers producers; it was the Korean producers' fourth most important market on a volume basis in 2017.³⁴ The Canadian market commands higher prices than other markets.³⁵

36. Electricity demand increases marginally on a yearly basis in the Canadian market.³⁶ This results in a relatively low but stable and predictable demand for power transformers.³⁷ However, during the POR, the apparent Canadian market for large power transformers contracted, due to the downturn in oil prices, which resulted in several large oil sand projects being cancelled or delayed in Western Canada.³⁸ Thus, the total apparent Canadian market for large power transformers increased modestly over the POR, with a slight decrease in 2015.³⁹ Demand in the Canadian market is expected to remain stable in the near to medium term.⁴⁰

37. Purchasers of large power transformers in the Canadian market include the provincial power utilities, industrial end users (for instance aluminum producers or companies engaged in the oil and gas extraction industries), as well as EPC (engineering, procurement and construction) firms for inclusion in system projects that are then sold to end users. The Canadian market is dominated by provincial power utilities.⁴¹

38. Purchasers procure large power transformers through open tendering processes, which take the form of either "spot" purchases or longer-term, blanket agreements.⁴² Spot purchases involve bids for a specified number of large power transformers at fixed prices for a specific project. Blanket agreements (also referred to as long-term agreements, master service agreements and outline agreements) take a number of different forms, but they essentially involve a group of prequalified bidders submitting bids on a variety of models of power transformers to be provided at fixed prices over a set number of years. The provincial power utilities often purchase their large power transformers under blanket agreements that cover most, if not all, of their needs for a period of three or five years and under which they periodically release purchase orders. Blanket agreements appear to be particularly well-suited for utilities whose ongoing needs for power transformers are well known and well defined.

33. Exhibit RR-2017-002-A/B-01 at para. 2, Vol. 11; Exhibit RR-2017-002-C-01 at para. 2, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 22 March 2018, at 326.

34. Exhibit RR-2017-002-A-11D, tab 15, Vol. 11D; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 186; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 197.

35. Exhibit RR-2017-002-A-06 (protected) at para. 22, Vol. 12; Exhibit RR-2017-002-06 (protected), Table 21, Vol. 2.1.

36. Exhibit RR-2017-002-17.03, Vol. 3 at 75.

37. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 246; Exhibit RR-2017-002-A-09 at para. 7, Vol. 11.

38. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 153.

39. This parallels the movements in the portion of the Canadian GDP attributable to electric power generation, transmission and distribution, which decreased slightly between 2014 and 2015 before increasing again in 2016. See Exhibit RR-2017-002-05, Table 23, Vol. 1.1; Exhibit RR-2017-002-06A (protected), Table 6, Vol. 2.1.

40. Exhibit RR-2017-002-17.03, Vol. 3, at 65; Exhibit RR-2017-002-23.02, Vol. 5.1 at 91. See also Exhibit RR-2017-002-32.02 (protected), Vol. 8.1L, at 83-84.

41. Exhibit RR-2017-002-05, Table 9, Vol. 1.1.

42. In *Transformers NQ* at paras. 71-72 the Tribunal concluded that large power transformers were primarily purchased through open tendering processes, whereby purchasers request quotes from potential suppliers in respect of the customized transformers described in the bid documentation. The Tribunal also heard that purchasers were moving towards more comprehensive blanket agreements, which usually cover a period of three to five years and include a prequalification process.

39. Purchasers often enter into blanket agreements with multiple suppliers in order to maximize technical options and minimize security of supply risk.⁴³ In addition, purchasers use blanket agreements to achieve cost efficiencies.⁴⁴ Blanket agreements do not commit purchasers to buy a set number of, or even any, large power transformers from the successful bidder(s).⁴⁵ Rather, purchasers may (and do) allocate releases or purchase orders to the suppliers that are best placed to fill particular needs as they arise. However, as the pricing under blanket agreements is generally fixed (with the exception of possible adjustments for things such as movements in raw material prices) the base prices bid by suppliers are essentially “locked-in” for the duration of the agreement.⁴⁶ While there may be downward price negotiation in the case of some purchasers, suppliers are rarely able to negotiate price increases after a blanket agreement has been entered into.⁴⁷

40. Though all blanket agreements share some essential characteristics, each purchaser’s blanket RFP process is somewhat unique, in keeping with its specific purchasing strategy. For example,⁴⁸ Mr. Kobzar of B.C. Hydro testified that B.C. Hydro’s 2016 master service agreement was the result of a two-stage procurement process, involving: (1) a request for supplier qualification to establish a pool of qualified companies that would be invited to bid; and (2) the request for proposal (RFP) process, where price, ability to deliver, quality and technical factors, service, account management and other considerations were assessed.⁴⁹ The result was that B.C. Hydro entered into five-year master service agreements with three suppliers. Mr. Berardi of Hydro One also described using a multi-stage evaluation process to evaluate bids in response to an RFP, whereby stage one requires bidders to agree to Hydro One’s mandatory requirements (code of conduct, terms and conditions, etc.), and stage two involves an assessment of bidders’ experience and technical specifications.⁵⁰ Bidders must meet these requirements before the pricing component of their bid is considered.⁵¹ Mr. Berardi also testified that Hydro One will negotiate prices with bidders.⁵²

41. The evidence shows that a significant percentage of large power transformers were sold pursuant to blanket agreements over the POR. For some companies, this was in the range of 20 to 30 percent of sales, whereas for others as much as 85 to 90 percent of all sales were made pursuant to these types of agreements.⁵³ There is also some evidence that, over the POR, more purchasers have begun relying on blanket agreements for their large power transformer needs.⁵⁴

43. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 236, 247, 262-263.

44. Exhibit RR-2017-002-B-05 at para. 15, Vol. 11E; Exhibit RR-2017-002-A-05 at para. 29, Vol. 11.

45. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 65; *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 239-240, 274; Exhibit RR-2017-002-A-06, Vol. 12 at para. 31; Exhibit RR-2017-002-32.02 (protected) at 174, Vol. 8.1K.

46. *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 218-220; Exhibit RR-2017-002-C-06 (protected) at para. 6, Vol. 14.

47. Exhibit RR-2017-002-A-06 (protected), Vol. 12 at para. 31; Exhibit RR-2017-002-18.02 (protected), Vol. 4 at 55-56; *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 267; *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 5; Exhibit RR-2017-002-C-06 (protected) at paras. 18-19, Vol. 14.

48. For an additional example, see Exhibit RR-2017-002-B-06 (protected) at para. 11, Vol. 12.

49. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 235-36; RR-2017-002-RI-08A (protected) at 2-3, Vol. 10A.

50. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 258, 277.

51. *Ibid.* at 271.

52. *Ibid.* at 262.

53. See Collective protected exhibit containing the replies to the CITT Producers’ Questionnaire, Exhibit RR-2017-002-18 (protected), Question C7; Collective protected exhibit containing the replies to the CITT Importers’ Questionnaire, Exhibit RR-2017-002-21 (protected), Question C5; Collective protected exhibit containing the replies to the CITT Foreign Producers’ Questionnaire, Exhibit RR-2017-002-24 (protected), Question C5.

54. Exhibit RR-2017-002-B-06 (protected) at para. 16, Vol. 12.

42. Many of the transformers in the existing fleet are reaching the end of their useful life,⁵⁵ and significant opportunities under blanket agreements will arise in the next 12 to 24 months. Consequently, the procurement processes run by the largest provincial power utilities (Hydro-Quebec, Hydro One, BC Hydro) represent key opportunities for both domestic and foreign producers and account for a large portion of the demand in the Canadian market. As a result, the opportunities presented by blanket RFPs in Canada are very important to suppliers of large power transformers.⁵⁶ Naturally, suppliers have an incentive to submit the most competitive bid possible if they want to be successful in these key RFPs. If not, they risk being shut out of sales to that account for the duration of the blanket agreement, which could be up to five years, or longer in some cases.⁵⁷ At the same time, as discussed above, winning a blanket agreement does not guarantee any sales. This leads to significant pricing pressure in the market.

43. Korean exporters of subject goods have an established presence in the Canadian market and are prequalified with a number of Canadian customers.⁵⁸ The Korean producers are present on the key accounts at the main utilities companies.⁵⁹ Of the Korean producers, HEES remained the most present on the Canadian market during the POR through two importers, Hyundai Canada Inc. and Remington.⁶⁰ Hyosung's sales volumes during the POR were more limited,⁶¹ which could be a consequence of the higher dumping margin (34.8 percent) calculated for that producer during the CBSA's new final determination.

44. Competition from non-subject imports has intensified. Some of these goods are imported by the domestic industry. ABB, in particular, imports a significant volume of large power transformers from affiliated companies in third countries.⁶² HEES takes issue with the fact that the Tribunal did not survey the purchasers of the subject goods and with the fact that the volume of imports from non-subject countries in the Tribunal's investigation report is much lower than the CBSA's estimates, which are also on the record. HEES argues that the investigation report materially underreports the size of the apparent Canadian market and prevents the Tribunal from considering the volume of imports and domestic production on an absolute or relative basis.

45. The Tribunal considers the data in the investigation report to be more reliable than the CBSA estimates, for the purposes of its analysis in this case.⁶³ In cases like this one, where the HS codes are broad and include a substantial portion of non-subject goods, the Tribunal is always faced with a choice as to whether or not to estimate the non-responding and non-surveyed segment of the market, or rely on the data received from respondents. In this case, the Tribunal decided to rely only on received responses. While the data in the investigation report might somewhat understate the actual volume of non-subject imports, the Tribunal considers that they constitute the best evidence on the record concerning the volume and market

55. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 233-234.

56. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 152-153; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 94.

57. Exhibit RR-2017-002-32.02 (protected) at 172, Vol. 8.1K.

58. Exhibit RR-2017-002-A-05 at para. 43, Vol. 11.

59. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 13.

60. Exhibit RR-2017-002-06 (protected), Schedule 21, Vol. 2.1; Exhibit RR-2017-002-06A (protected), Table 6, Vol. 2.1; Exhibit RR-2017-002-23.02, Vol. 5.1 at 88.

61. Exhibit RR-2017-002-05, Table 3, Vol. 1.1; Exhibit RR-2017-002-06 (protected), Schedule 20, Vol. 2.1.

62. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 76-77; Exhibit RR-2017-002-18.03 (protected), Vol. 4B, Schedule 3.

63. In particular, the Tribunal notes that a large portion of non-subject imports identified by the CBSA were from a large importer that indicated that a significant portion of its imports under the HS codes at issue were non-subject goods (power transformers below 60 MVA). See Exhibit RR-2017-002-20.13C (protected), Vol. 2.1 at 129.

share of non-subject imports. In any event, what is clear from both sets of data is that the Tribunal must take into account in its analysis that third country imports occupy a significant part of the Canadian market.

Likely Performance of the Domestic Industry if the Finding Is Continued

46. The Tribunal will now examine the likely performance of the domestic industry were the finding continued, taking into account that industry's recent performance.⁶⁴ For the purposes of this analysis, the Tribunal will consider whether there are any relevant factors other than the dumping of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term.⁶⁵

47. The Tribunal notes that, when examining the trends in the consolidated financial performance indicators for the domestic industry as part of the likelihood of injury analysis, the Tribunal has accounted for the fact that data are only available for PTI and Delta Star beginning in 2015.

48. For the reasons that follow, the Tribunal finds that, with the finding in place, the domestic industry's performance is likely to remain substantially the same as during the POR.

49. It is not disputed that the domestic industry's performance has improved since 2012. Mr. Fortin of ABB testified that ABB was able to increase both its sales volume and number of customers in Canada since 2012.⁶⁶ In addition, Messrs. Mehmel and Boyd of PTI testified that PTI has been able to recapture some key accounts and secure some new orders.⁶⁷

50. According to data in the investigation report, total domestic production decreased from 2014 to 2016 and also decreased in interim 2017 as compared to interim 2016.⁶⁸ The domestic industry's production capacity increased moderately over the POR.⁶⁹ The domestic industry also experienced moderate declines in capacity utilization and productivity over the POR.⁷⁰

51. Domestic sales from domestic production also decreased from 2014 to 2016, though sales did increase in 2016 as compared to 2015 and in interim 2017 as compared to interim 2016.⁷¹ In addition, due to the long lead times between orders, production and delivery, the domestic industry has already booked many orders for 2018 and part of 2019.⁷² As discussed below, significant sales opportunities are likely to arise in the next 12 to 24 months. The Tribunal views the outlook as fairly positive for the domestic industry if the finding is continued.

52. Export sales from domestic production followed an inverse trend, peaking in 2015 before dropping by 33 percent in 2016 to below 2014 levels and dropping by an additional 16 percent in interim 2017 as

64. See paragraph 37.2(2)(c) of the *Regulations; Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers* at para. 14, the Tribunal stated that the requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place; See also *Aluminum Extrusions* at para. 21.

65. See paragraph 37.2(2)(k) of the *Regulations*.

66. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 12-13.

67. *Ibid.* at 108-109.

68. Exhibit RR-2017-002-06 (protected), Table 17, Vol. 2.1.

69. *Ibid.*, Tables 17 and 18.

70. *Ibid.*, Table 17.

71. *Ibid.*

72. Exhibit RR-2017-002-A-04 (protected) at paras. 31-32, Vol. 12; Exhibit RR-2017-002-B-08 at para. 22, Vol. 12.

compared to interim 2016.⁷³ This recent decline in export performance may be related to challenges in the U.S. market due to depressed prices and aggressive price competition from low-priced imports.⁷⁴ Also, as noted above, there is evidence on the record that, pursuant to “Buy America” requirements, bids submitted by foreign suppliers of power transformers to the U.S. may increasingly be subject to a markup, thus putting these suppliers at a disadvantage.

53. The Tribunal acknowledges that the domestic industry is likely to face some competition from subject and non-subject imports in the near to medium term even if the finding is continued. The domestic industry held a significant share of the domestic market over the POR.⁷⁵ In addition, imports of the subject goods and of large power transformers from non-subject countries also played an important role in the Canadian market. The Tribunal notes that a significant portion of imports from non-subject countries were made by the domestic industry.⁷⁶

54. Regarding the domestic industry’s sales from imports, the absolute volumes have declined since 2015.⁷⁷ There is evidence that the volume of imports is likely to be relatively small in 2018.⁷⁸ As such, the Tribunal accepts that the domestic industry’s sales from imports are likely to be low in the next 12 to 24 months. Moreover, the Tribunal also heard testimony as to why a domestic producer might choose to import large power transformers.⁷⁹ While these reasons may not apply to every importation by the domestic industry over the POR, the Tribunal is satisfied that these imports did not have a materially negative effect on the domestic industry’s performance.

55. The domestic industry was able to improve its performance over the POR. On a per-unit basis, the domestic industry’s net sales value and gross margin from domestic sales peaked in 2015 and showed overall improvement from 2014 to 2016 as well as in interim 2017 when compared to interim 2016.⁸⁰ Gross

73. Exhibit RR-2017-002-06 (protected), Tables 17, 18, Vol. 2.1.

74. Exhibit RR-2017-002-A-10 (protected) at para. 15, Vol. 12; Exhibit RR-2017-002-B-06 (protected) at para. 27, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 154-155.

75. Exhibit RR-2017-002-06A (protected), Table 6, Vol. 2.1.

76. *Ibid.*, Table 4, Vol. 2.1; Exhibit RR-2017-002-18.02, (protected), Vol. 4, Schedule 3; Exhibit RR-2017-002-18.03 (protected), Vol. 4B, Schedule 3.

77. Exhibit RR-2017-002-05A, Table 6, Vol. 1.1; Exhibit RR-2017-002-06A (protected), Table 6, Vol. 2.1; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 77.

78. *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 87; Exhibit RR-2017-002-RI-01A (protected) at 11-16, Vol. 10; Exhibit RR-2017-002 (protected) at para. 32, Vol. 12.

79. Exhibit RR-2017-002-A-06 (protected) at para. 24, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 77; *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 25-28, 48-50, 68-73. The Tribunal also recalls ABB’s public RFI response at Exhibit RR-2017-002-RI-01, Vol. 9, at 2, which states that ABB considers a number of factors to determine where within the ABB Group a transformer should be bid from, including any applicable centres of excellence, customer preferences and relationships, synergies with production of other products, design complexity and particulars.

80. Exhibit RR-2017-002-06 (protected), Table 14, Vol. 2.1. Regarding the domestic industry’s financial data, Hyosung argued that ABB’s and PTI’s method of allocating certain costs may have under-represented the profitability of the domestic industry’s domestic sales by allocating a disproportionate share of costs to that group of sales. In response, ABB and PTI submitted that the majority of their costs are actual costs that are captured and recorded at the level of a specific transformer; the allocation of certain other costs is discussed at Exhibit RR-2017-002-RI-01A (protected) at 6-8, Vol. 10, and Exhibit RR-2017-002-RI-02A (protected) at 3-4, Vol. 10. The Tribunal has reviewed ABB and PTI’s cost methodologies and finds them to be reasonable. In addition, the Tribunal is not convinced that allocating costs on the basis of MVAs, as Hyosung suggests, would provide a more accurate picture. As such, the Tribunal has assessed the domestic industry’s financial performance using the data in the investigation report, including the data for ABB and PTI as reported in their respective questionnaire responses and revisions.

margins improved in 2016 and interim 2017 as compared to interim 2016, and are expected to continue improving in 2018 and 2019 if the finding is continued.⁸¹ In addition, net income improved year over year from 2014 to 2016 and in interim 2017 as compared to interim 2016.⁸² On a per-unit basis, the net sales value, gross margin and net income from export sales also improved from 2014 to 2016 but fell significantly in interim 2017 as compared to interim 2016.⁸³

56. The number of employees dropped over the POR, with a large portion of this decline relating to indirect employment.⁸⁴ Some of these job losses may be attributable to a restructuring process that ABB undertook in response to the injury caused by the subject goods in 2012.⁸⁵ However, in the event that the finding is continued, employment levels may improve in the near to medium term.⁸⁶

57. The continuation of the Tribunal's finding is also likely to have a positive impact on the domestic industry's investments and ability to raise capital.⁸⁷ Data in the investigation report show that investments have increased over the POR.⁸⁸ Projections for 2018 and 2019 show planned investments which are far greater than the level of investment in 2014 and 2015.⁸⁹

58. In summary, the domestic industry has improved its performance and, if the finding is continued, the domestic industry's overall performance will likely remain substantially the same, notwithstanding some potential for a decrease in export sales.

Likely Performance of the Domestic Industry if the Finding Is Allowed to Expire

59. The Tribunal will now assess the likely performance of the domestic industry over the near to medium term if the finding is allowed to expire by assessing the likely volumes of dumped goods, the likely prices of dumped goods and their effect on prices of like goods, and the likely impact of the dumped goods on the domestic industry.

Likely Import Volume of Dumped Goods

60. Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped goods if the finding is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped goods, either in absolute terms or relative to the production or consumption of like goods.

61. The Tribunal's assessment of the likely volumes of dumped imports encompasses, as relevant, the likely performance of the foreign industry, the potential for the foreign producers to produce goods in

81. Exhibit RR-2017-002-06 (protected), Table 14, Vol. 2.1; Exhibit RR-2017-002-B-08 (protected) at para. 30, Vol. 12.

82. Exhibit RR-2017-002-06 (protected), Table 14, Vol. 2.1.

83. *Ibid.*, Table 15.

84. *Ibid.*, Table 17.

85. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 12-13; RR-2017-002-A-04 (protected) at para. 26, Vol. 12. See also Exhibit RR-2017-002-B-08 at paras. 23-24, Vol. 12.

86. Exhibit RR-2017-002-18.03 (protected), Vol. 4B at 44; Exhibit RR-2017-002-18.02 (protected), Vol. 4 at 31-35; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 12-13; RR-2017-002-A-04 (protected) at para. 28, Vol. 12; Exhibit RR-2017-002-B-08 (protected) at para. 25, Vol. 12.

87. Exhibit RR-2017-002-18.03 (protected), Vol. 4B at 45; *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 22-23; Exhibit RR-2017-002-B-08 (protected) at para. 27, Vol. 12; Exhibit RR-2017-002-A-08 (protected) at para. 21, Vol. 12; Exhibit RR-2017-002-A-04 (protected) at para. 28, Vol. 12.

88. Exhibit RR-2017-002-06 (protected), Tables 17, 18, Vol. 2.1.

89. *Ibid.*

facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁹⁰

62. Were the finding to be rescinded, the resumption or continuation of dumping would likely lead to a significant increase in the volumes of imports in absolute and relative terms and a return to the pre-finding level of subject goods import volumes. These volume increases would come at the expense of both the domestic industry and non-subject imports.

– Likely Absolute and Relative Volumes

63. Even with the finding in place, the Korean producers sold significant volumes of subject goods on the Canadian market during the POR. Nonetheless, the total volume of subject goods fell over the course of the POR, particularly after 2014.⁹¹ Subject imports volumes (in MVA) and market share (whether in comparison to the total apparent market, to domestic production or to sales from domestic production) decreased steadily and markedly between 2014 and 2016.⁹²

64. Moreover, the volumes of subject imports and market shares were, in 2015 and 2016, significantly lower than during the POI in *Transformers NQ*.⁹³ Taking into account the lag time between orders and deliveries, the reduction in the absolute and relative volumes of subject imports during the POR temporally coincides with the imposition of the duties as a result of the finding under review. These movements in subject imports volumes and market shares in 2015 and 2016 demonstrate that the finding has hindered the Korean producers' participation in the Canadian market by rendering them less competitive. Moreover, the decrease in subject import volumes and market shares between the POI in *Transformers NQ* and the latter part of the POR parallels the increase in the domestic producers' market shares over the same period.⁹⁴

65. The Tribunal notes, however, that subject import volumes increased significantly, both on an absolute and on a relative basis, in interim 2017. The increase came principally, but not exclusively, at the expense of non-subject imports.⁹⁵ Subject import volumes in interim 2017 exceeded those not only in the corresponding period in interim 2016, but also the (full year) volumes in 2015 and 2016. The significantly low prices of these imports in interim 2017 and other confidential details pertaining to them⁹⁶ suggest an aggressive intention on the part of the producers of the subject goods to increase their sales volumes on the Canadian market.

66. The Tribunal finds the trends in subject import volumes in the most recent period, interim 2017, and the Korean producers' pricing behaviour during that period to be of particular relevance to the Tribunal's

90. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

91. Exhibit RR-2017-002-06A (protected), Table 4, Vol. 2.1. The Tribunal recalls the significant time lag in the transformers industry, hence figures in 2014 likely partly reflect orders placed before the Tribunal's finding in *Transformers NQ*.

92. *Ibid.*, Tables 4, 6.

93. *Ibid.*, Table 4; Exhibit RR-2017-002-11.01 (protected), Tables 79, 80, Vol. 2.3.

94. Exhibit RR-2017-002-06A (protected), Table 6, Vol. 2.1.

95. The market shares of the domestic industry's sales from domestic production, of its imports of non-subject goods and of other non-subject imports all declined from interim 2016 to interim 2017. The total apparent market increased in interim 2017 compared to interim 2016, as did the volume of domestic sales from domestic production. The domestic industry's imports from non-subject countries decreased markedly between interim 2016 and interim 2017. Other non-subject imports increased marginally.

96. See below in the section addressing the likely price effects of the subject goods.

prospective analysis in the present expiry review. This evidence contradicts HEES and Hyosung's assurances that they would not expand their exports to injurious volume levels in the event that the finding were to be rescinded. Instead, the evidence before the Tribunal demonstrates an intention on the part of the Korean producers to aggressively pursue market opportunities and increase their sales volumes on the Canadian market in an effort to regain market share at the expense of both the domestic industry and non-subject imports. The evidence also demonstrates the continued interest of the Korean producers in the Canadian market and evidences the importance of the Canadian market to these producers.⁹⁷ The Korean producers (particularly HEES) already have long-standing relationships with certain purchasers, are, or are seeking to be, prequalified with Canadian purchasers,⁹⁸ and, as noted above, have been able to secure long-term blanket agreements that provide for sales volumes over the coming years.

67. The rescission of the finding would not impact a certain volume of large power transformers that has already been ordered and which will be delivered in 2018 and part of 2019. It would, however, impact future opportunities. In that regard, the Tribunal takes into consideration ABB and PTT's projections concerning upcoming bids that they project to lose to the Korean producers if the finding is rescinded.⁹⁹ According to the evidence before the Tribunal, at least three significant new blanket opportunities worth approximately \$423 million dollars are anticipated in the next 12 to 24 months.¹⁰⁰ Some of the orders and deliveries that will take place under these blanket agreements are likely to be completed within the next 12 to 24 months. The rescission of the finding would also affect new orders under existing blanket agreements to the extent that these blanket agreements allow for further price negotiations, as well as other (spot) opportunities with the provincial power utilities or with other purchasers.

68. As the Tribunal explains in more detail below, the rescission of the finding would allow the Korean producers to reduce their prices, which would allow them to win more bids and secure more orders and thereby increase their sales volumes on the Canadian market significantly, particularly if they are able to win bids under large blanket agreements.

69. Finally, the Tribunal notes that two other Korean producers of large power transformers, Iljin Electric and LSIS Co., Ltd., have exported non-subject transformers to Canada.¹⁰¹ This suggests that, should the finding be rescinded, they could start exporting subject goods to the Canadian market.

– Likely Performance of the Foreign Industry

70. The Korean producers of large power transformers are export-oriented; they exported the vast majority of their production during the POR.¹⁰² HEES and Hyosung's export volumes to all countries increased markedly over the POR, with a slight decrease after 2015 and a significant decrease between interim 2016 and interim 2017.¹⁰³

97. *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 186.

98. *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 187-188; Exhibit RR-2017-002-C-06 (protected) at paras. 17-20, Vol. 14.

99. Exhibit RR-2017-002-A-08 (protected) at paras. 33-40, Vol. 12; Exhibit RR-2017-002-B-08 (protected) at paras. 32-40, Vol. 12.

100. See Collective protected exhibit containing the replies to the CITT Producers' Questionnaire, Exhibit RR-2017-002-18 (protected), Schedule 12 (as revised); Collective protected exhibit containing the replies to the CITT Importers' Questionnaire, Exhibit RR-2017-002-21 (protected), Schedule 5 (as revised).

101. Exhibit RR-2017-002-03A, Vol. 1 at para. 102.

102. Exhibit RR-2017-002-06 (protected), Table 21, Vol. 2.1.

103. *Ibid.*

71. The Tribunal recalls that demand on the Korean producers' home market is stagnant. The Korean producers' sales on their home market decreased significantly between 2015 and 2016 and only partially recovered in interim 2017.¹⁰⁴

72. In addition, the Korean producers face a number of administrative sanctions on their bidding on RFPs from the Korean public utilities. These administrative sanctions arose from improper behaviour in procurement activities in Korea and abroad. In particular, in 2015 Hyundai Heavy Industries Co., Ltd. (HHI), received a two-year suspension from participating in KEPCO (Korea's largest public utility) procurement due to bribery by HHI employees in the construction of a nuclear power plant in the United Arab Emirates.¹⁰⁵ The suspension was upheld by the Korean Supreme Court in December 2017.¹⁰⁶ In addition, also in 2015, Korea Hydro and Nuclear Power (KHNP), a subsidiary of KEPCO, imposed a six-month administrative restriction against HHI.¹⁰⁷ Hyosung has been suspended from participating in bids by KHNP for a period of one year and four months running from September 2017.¹⁰⁸

73. The Korean producers argue that they have appealed the last two of these sanctions, which, as a result, are suspended, and that they will not actually hinder their ability to participate in procurement activities of the utilities companies at issue. HEES also argues that sanctions imposed on HHI would not apply to its new corporate form (HEES).¹⁰⁹ The domestic industry challenges these arguments. The Tribunal considers that the administrative sanctions have, at a minimum, the potential to limit the Korean producers' sales opportunities in their home market. This conclusion is consistent with HEES' own characterization of the potential consequences of the two-year KEPCO suspension.¹¹⁰ There is also evidence that HEES will be affected by the Korean government's decision in 2017 to review the planned construction of new thermal and nuclear power plants and to cancel all new nuclear power plant construction.¹¹¹

74. It is reasonable to expect that the Korean producers' reaction to the conditions prevailing in their home market will be to seek to increase their export sales. In its September 2017 Registration of Securities with the Korean Financial Services Commission, HEES admitted that it is "trying to increase sales in overseas tenders in order to boost sales revenues".¹¹² In addition, as noted above, the Korean producers face reduced demand (and uncertainty) on one of their most important export markets—the Middle East, including Saudi Arabia.

75. The evidence shows that HEES perceives the global market as characterized by increased price competition. In its September 2017 Registration of Securities with the Financial Services Commission, HEES described a global market that has seen price decreases as competition becomes fiercer, a stagnant domestic market, and a Middle East market that is suffering from the oil price declines.¹¹³ By contrast,

104. Exhibit RR-2017-002-06 (protected), Table 21, Vol. 2.1.

105. Exhibit RR-2017-002-27.01C, Vol. 7.1F at 8, 12; Exhibit RR-2017-002-A-11A, tab 6 at 26-27, Vol. 11A.

106. Exhibit RR-2017-002-C-09 at para. 2, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 209.

107. Exhibit RR-2017-002-C-09 at para. 3, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 209.

108. Exhibit RR-2017-002-A-11B at 41-42, Vol. 11B.

109. Effective April 1, 2017, the Electro-Electric Systems Division of HHI was spun-off into a new entity, HEES (Exhibit RR-2017-002-31.02, Vol. 7.1J at 207).

110. Exhibit RR-2017-002-27.01C, Vol. 7.1F at 8, 12. HEES admits that it is uncertain whether sanctions imposed against HHI will apply to its new corporate form. *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 210.

111. Exhibit RR-2017-002-27.01C, Vol. 7.1F at 12-13.

112. *Ibid.* at 11.

113. *Ibid.* at 8, 11. HEES stated that "[a]dvanced companies in Europe and Japan have increased price competitiveness, using the exchange rates to their advantage, whereas late entrants from China and India have increased market

HEES described a “relatively stable” (albeit very competitive) North American market due to the demand for replacement of old electric equipment.¹¹⁴

76. In light of these market conditions in their domestic and key export markets, it is reasonable to expect not only that the Korean producers’ interest in the Canadian market will remain, but that they will have added motivation to export to the Canadian market in the next 12 to 24 months.

– Potential for Diversion

77. The Tribunal also sees a significant potential for the diversion of Korean large power transformers into the Canadian market as a result of a recent increase, to 60.81 percent, of the anti-dumping duty applied by the United States on imports of large power transformers from all Korean producers.¹¹⁵ These duty rates, which are provisionally collected by the U.S. authorities in the form of cash deposits, are being challenged before the WTO¹¹⁶ and, according to HEES, the U.S. courts. However, it is unlikely that any of these challenges will be resolved within the next 12 to 24 months.

78. During the *in camera* portion of the hearing, HEES witnesses also provided another reason as to why these high duty rates imposed as a result of the latest administrative reviews under the U.S. order would not affect HEES’ sales volumes on the U.S. market.¹¹⁷ Notwithstanding this argument, the Tribunal is of the view that the duties imposed by the U.S. authorities will provide an additional incentive for HEES and other Korean producers to sell their products onto the Canadian market in the event that the finding is rescinded.¹¹⁸

79. In addition, HEES officials testified that they intend to increasingly source transformers for the U.S. market from HEES’ Alabama facility rather than from HEES’ Korean production facilities.¹¹⁹ Nonetheless, confidential evidence before the Tribunal makes it clear that sourcing a larger portion of transformers sold to North American customers out of HEES’ Alabama plant will take some time.¹²⁰

penetration in the North American and Middle Eastern markets. Under these market conditions, operational environment of this company has continued to be difficult.” *Ibid.* at 8.

114. Exhibit RR-2017-002-27.01C at 11, Vol. 7.1F. The Tribunal notes, however, that as indicated above, the U.S. market is characterized by an increase in “Buy America” requirements. Exhibit RR-2017-002-A-11, tab 4 at 32, Vol. 11; Exhibit RR-2017-002-27.01A, Vol. 7.1D at 5; Exhibit RR-2017-002-18.02 (protected), Vol. 4 at C6 and 61, 65.

115. Hyundai received a dumping margin of 60.81 percent, based on the use of adverse facts available, in the third administrative review under the U.S. order, completed in March 2017. Hyundai’s dumping margin had previously been in the single digits or low teens (Exhibit RR-2017-002-A-11D, tab 14, Vol. 11E). The same dumping margin of 60.81 percent, based on the use of adverse facts available, was applied to imports from all Korean producers in the fourth administrative review, completed in March 2018 (Exhibit RR-2017-002-A-18, at 6, Vol. 11E).

116. Exhibit RR-2017-002-D-01, tab 9, Vol. 13.

117. *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 185-187.

118. The Tribunal notes that Argentina also made a final determination of dumping concerning power transformers of 10 to 600 MVA from Korea and China in 2014. However, the duties were suspended (Exhibit RR-2017-002-03A, Vol. 1 at para. 107, p. 168; Exhibit RR-2017-002-14.18, Vol. 1.4A at 61).

119. *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 215-216. See also Exhibit RR-2017-002-C-02 (protected) at para. 40, Vol. 14; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 214.

120. Exhibit RR-2017-002-C-08, at para. 5 and attachment 1 at 3, Vol. 14; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 202-203. In addition, the Tribunal agrees with ABB and PTI that HEES moving production for the U.S. market to the Alabama plant will free capacity in the Korean facilities for exports to the Canadian market.

80. Likewise, limitations exist on the ability of HEES to source large power transformers from its Alabama facility for the Canadian market. In particular, HEES' Alabama factory is not prequalified with all its Canadian customers. Several of HEES' customers request that HEES produce the transformers they purchase in Korea, not the United States.¹²¹ Therefore, the evidence on record does not support the view that HEES is in a position to significantly shift supply for the Canadian market to its Alabama plant in the near to medium term.¹²²

– Excess Capacity

81. There was some debate before the Tribunal concerning the manner in which HEES reported its production capacity, and consequently its capacity utilization rates, during the POR. HEES explained that in the present review, it reported its "practical plant capacity" to the Tribunal, which takes into account labour bottlenecks.¹²³ HEES added that the theoretical plant capacity that it had reported in *Transformers NQ* and that was used by the CBSA in its expiry review did not accurately reflect HEES' actual plant capacity during the POR.

82. The Korean producers reported relatively high capacity utilization rates during the POR.¹²⁴ However, even at these high capacity utilization rates, the Korean exporters have the ability to markedly increase their presence on the Canadian market if the finding is rescinded—the unused capacity that was available to Korean producers at the end of the POR exceeds the entire Canadian apparent market.¹²⁵ Moreover, the production capacity reported by HEES was largely a factor of the workforce employed. Although increasing the workforce may require some time, the Tribunal is of the view that this nonetheless could be done relatively easily and would increase HEES' production capacity.

83. Moreover, HEES' "Vision 2021" calls for the company to increase its sales revenues and to invest in its Ulsan (Korea) factory.¹²⁶ HEES officials stated that no production volume expansion or capacity increase would result from these investments. Rather, they explained, these investments are focused on modernizing HEES' Korean production facilities so as to improve work conditions and production processes, render them more efficient, improve quality controls and reduce costs, consistent with HEES' intention to increasingly focus on high-value-added projects and high-end customers.¹²⁷ Confidential evidence before the Tribunal satisfies it that these investments have the potential to modestly increase HEES' production capacity.¹²⁸

121. *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 189-190. See also Exhibit RR-2017-002-A-05 at para. 44, Vol. 11; Exhibit RR-2017-002-C-06 (protected) at para. 25, Vol. 14; and *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 60-61.

122. See also Exhibit RR-2017-002-C-08 at para. 5, Vol. 14; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 202-203.

123. Exhibit RR-2017-002-RI-3, Vol. 9 at 41; Exhibit RR-2017-002-C-02 (protected), Vol. 14 at para. 41. See also Exhibit RR-2017-25.01A, Vol. 7 at para. 20.

124. Exhibit RR-2017-002-06 (protected), Table 21, Vol. 2.1.

125. Compare Exhibit RR-2017-002-06 (protected), Table 21, Vol. 2.1, with Exhibit RR-2017-002-06A (protected), Table 6, Vol. 2.1.

126. Exhibit RR-2017-002-C-03 at paras. 5-10, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 200, 225.

127. Exhibit RR-2017-002-C-03 at paras. 9-10, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 200, 225-226; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 181.

128. *Ibid.* at 202.

– Summary

84. In sum, HEES and Hyosung have demonstrated a continued interest in the Canadian market. If the finding is rescinded, Canada will become an even more attractive destination for the subject goods particularly as the Korean producers face challenges and decreased demand in their home market and in the Middle East market, one of their key export markets. The recent significant increase of the anti-dumping duties imposed by the United States is also likely to limit their export volumes to that other key export market.

85. These developments will place pressure on the Korean producers of the subject goods to find other export markets. The evidence before the Tribunal establishes that the Korean producers not only have the motivation, but also have the ability (excess production capacity) to significantly increase their exports to the Canadian market over the next 12 to 24 months.

86. As discussed below, the rescission of the finding is likely to provide the suppliers of the subject goods with greater flexibility to continue the aggressive pricing behaviour observed during the most recent part of the POR (interim 2017) in order to regain market share lost, inter alia, to the domestic industry and to gain new market share in the “premium” market segment.

87. As discussed above, significant sales opportunities will arise in the Canadian market over the next 12 to 24 months, in the form of orders under existing blanket agreements,¹²⁹ orders under new blanket agreements and individual (“spot”) orders from public utilities or other end-users.¹³⁰ Thus, even though the Canadian market for large power transformers is projected to remain stable or grow marginally in the near to medium term, opportunities exists for the Korean producers to significantly increase the volumes of subject imports in the event that the finding is rescinded.

88. In light of the foregoing, the Tribunal finds that, in the event that the finding is rescinded, imports of the subject goods are likely to significantly increase, in absolute and relative terms, in the next 12 to 24 months.

Likely Price Effects of Dumped Goods

89. The Tribunal must consider whether, if the finding is rescinded, the dumping of the subject goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹³¹ In this regard, the Tribunal distinguishes the price effects of the dumped goods from any price effects that would likely result from other factors affecting prices.

90. In this case, the Tribunal finds that the rescission of the finding would likely result in significant price undercutting by the subject goods, in response to which the domestic producers would have no choice but to either lower their prices or risk losing sales.

129. As discussed below in the section concerning the likely price effects of the rescission of the finding, the evidence before the Tribunal establishes that at least some of the purchasers renegotiate downwards the prices established under their blanket agreements.

130. Moreover, any successful blanket agreement bids by Korean producers have the potential to lock Canadian producers out of supplying the purchaser at issue for a period of three to five years.

131. Paragraph 37.2(2)(b) of the *Regulations*.

– Price Transparency

91. There has been a great deal of debate between the parties as to the degree of price transparency in the market. ABB and PTI submitted that they are each able to assemble sufficient information to determine with a high level of reliability whether a contract was lost due to lower pricing by a particular competitor or some other factor. In that regard, witnesses for the domestic industry testified that they seek out information from various sources in order to build an understanding of the competitive landscape in the Canadian market, including seeking feedback, site visits, RFP documents, requests to revise bid pricing, and debriefings.¹³² Mr. Salmi of ABB indicated in his witness statement that informal, as opposed to formal, bid feedback has generally been most common in the Canadian market.¹³³

92. HEES submitted that price transparency does not exist in the current Canadian market, and that it is not intended to exist in a market that operates pursuant to open tendering processes. HEES cautioned that post-bid debriefs should not be relied upon as an indication of prevailing prices in the market as there is informational asymmetry between purchasers and potential suppliers that can be exploited by the former. In that regard, Mr. Yun of HEES testified that, in his view, there is no price transparency in the Canadian market, in part because each large power transformer is unique, and purchasing decisions are made on the basis of multiple factors.¹³⁴

93. The evidence shows that many purchasers provide post-bid debriefings upon request and that the information discussed at these debriefings will vary from customer to customer, and may include some information with respect to price.¹³⁵

94. The Tribunal finds that there is generally a limited degree of price transparency in the market. Indeed, there are several examples of the domestic industry's market intelligence being incorrect.¹³⁶ In addition, data in the investigation report supplement, and other RFP data on the record, show that sometimes bid prices vary significantly, which suggests that pricing intelligence prior to bid submission is particularly limited.¹³⁷ Nonetheless, the Tribunal accepts that bidders are sometimes aware of the identity of competing bidders prior to submitting a bid, including whether they are bidding against subject goods.¹³⁸ In addition, the domestic industry appears to be broadly aware of pricing trends. As such, the Tribunal accepts that, while the domestic producers do not have perfect information, they actively seek out market data and are able to gather some reliable market intelligence, particularly after a contract pursuant to an RFP has been awarded.¹³⁹

132. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 14-17, 110-111.

133. Exhibit RR-2017-002-A-05 at para. 14, Vol. 11.

134. *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 206.

135. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 266; *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 5, 6, 17; *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 156-158; *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 266-267.

136. Exhibit RR-2017-002-18.02 (protected), Vol. 4A at 319-323; Exhibit RR-2017-002-C-02 (protected), Vol. 14 at para. 60; Exhibit RR-2017-002-RI-01A (protected) at 12, Vol. 10; Exhibit RR-2017-002-06B (protected), Table 12, Vol. 2.1.

137. Exhibit RR-2017-002-06B (protected), Tables 3, 4, Vol. 2.1.

138. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 15, 110-111; *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 208.

139. See, for example, Exhibit RR-2017-002-RI-01A (protected), Schedule 11, Nos. 004, 012, 013, 018, 041, 045, Vol. 10; Exhibit RR-2017-002-21.09 (protected), Vol. 6 at 23 (Nos. 25, 28); Exhibit RR-2017-002-21.11A (protected), Vol. 6 at 343-345 (line 1); Exhibit RR-2017-002-18.02 (protected), Vol. 4 at 319 (line 16), 321 (line 10);

– Price Sensitivity of Purchasers

95. In *Transformers NQ* the Tribunal acknowledged that non-price considerations factor importantly into the transformer procurement decision-making process but that “once bidders have been technically prequalified, price acquires even greater prominence in the final purchasing decision”.¹⁴⁰

96. The evidence on the record of this expiry review demonstrates that non-price considerations remain very important to purchasers. As noted above, both B.C. Hydro and Hydro One require a certain baseline qualification, such as satisfactory quality practices, capabilities or compliance with technical requirements, before inviting a supplier to bid or considering a supplier’s pricing proposal. In addition, the Tribunal heard that the importance of non-price factors generally increases in line with the criticality and complexity of a particular large power transformer.¹⁴¹ On the other hand, there is no doubt that pricing remains an important consideration as well.

97. Price can factor into a purchaser’s decision-making in different ways. In all cases, purchasers give considerable weight to the actual prices bid in response to a particular RFP. This is often referred to as the tag price. For purchases made pursuant to blanket agreements, the Tribunal heard that, at the allocation stage, tag price often takes on greater importance because a number of non-price considerations have typically been addressed at the prequalification stage.¹⁴² For example, Mr. Berardi of Hydro One testified that, as part of the procurement process, his team would “eventually get to a short list of [proponents] looking towards awarding contracts with what we deemed was our best evaluated price . . . – best evaluated score, and price being a consideration of that as well”.¹⁴³ However, another important consideration for purchasers is the total cost of owning an asset, which involves assigning a net present value or score to a variety of non-price factors (e.g. energy losses, commercial terms) and assessing the total cost of owning a particular asset over the lifetime of that asset.¹⁴⁴ Mr. Salmi of ABB indicated that ABB tries to offer a relevant and competitive tag price, because that represents an out of pocket expense for the purchaser.¹⁴⁵ At the same time, Mr. Salmi indicated that suppliers are mindful that other considerations will factor into the purchaser’s ultimate decision; therefore, ABB tries to submit offers that are also competitive from a total cost of ownership perspective.¹⁴⁶ Precisely how this is done will depend on the specific terms of the RFP. Mr. Boyd of PTI also acknowledged that an important factor of the total cost of ownership evaluation is the loss efficiency of the unit and that PTI “has a strong engineering design, a lot of history and a lot of experience with what [its] customers are looking for . . .”.¹⁴⁷

98. Consistent with the indication above about the importance of non-price factors, there is also evidence on the record of this expiry review that the lowest-priced bid does not always win.¹⁴⁸ To some extent this may be explained by a purchaser’s total cost of ownership evaluation, which could result in a bid

Exhibit RR-2017-002-21.10 (protected), Vol. 6 at 50; Exhibit RR-2017-002-B-06 (protected), Vol. 12 at para. 11, attachment 3; *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 266; *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 187-188, 267, 269; Exhibit RR-2017-002-A-06 (protected) at para. 37, Vol. 12.

140. *Transformers NQ* at para. 82.

141. *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 220.

142. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 241-242; *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 221.

143. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 275.

144. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 73-74; *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 242, 261-262.

145. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 83.

146. *Ibid.* at 82-83, 96-97.

147. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 149.

148. Exhibit RR-2017-002-06B (protected), Tables 8, 9, 10, 12, 24, 26, 27, Vol. 2.1.

with a lower tag price translating into a higher cost of ownership.¹⁴⁹ In other instances this may relate to a purchaser's project-specific needs, which occasionally outweigh pricing considerations, such as more complex technical requirements, the availability of manufacturing slots, or the weight and dimensions of a particular design.¹⁵⁰ That being said, among similarly qualified bidders, there comes a point at which price (including the total cost of ownership) becomes the dominant, if not determinative, factor in contract awards unless there is a unique need which must be met.¹⁵¹ Moreover, as the capabilities and offerings of producers of large power transformers progressively converge, price is likely to become an increasingly important factor in future purchasing decisions.¹⁵²

– Price Effects

99. ABB and PTI argued that, if the finding is rescinded, the subject goods will be offered at lower prices in order to increase the volumes of subject goods to pre-2012 levels.

100. HEES submitted that the Tribunal's finding has disciplined its pricing in Canada. Hyosung submitted that it has been specializing in the delivery of high quality power transformers within short or urgent lead times.

101. The customized nature of large power transformers means that average prices and price per MVA are of limited value in assessing price competition in the Canadian market. For this reason, the Tribunal analyzed price undercutting by examining the bid data submitted by the domestic producers, importers and foreign producers for certain RFPs. These bids do not represent a complete picture of all the bidding that occurred in the market over the POR. Nonetheless, the Tribunal is satisfied that this evidence provides a reasonably representative overview of market activity. Moreover, the Tribunal recalls that the bid data submitted to the Tribunal is reflective of bidding that occurred over the POR, a time when anti-dumping duties were in place.

102. An analysis of the comparable bid data demonstrates that the subject goods often undercut, or bid with a price that undercut, the prices of like goods during the POR.¹⁵³ For example, data in the investigation report supplement show that of the 15 bids that included subject goods, the subject goods were the lowest-priced bid seven times, and the bid price of the subject goods was, on average, 13 to 15 percent below the domestic bid, with the degree of potential undercutting ranging from five to 47 percent.¹⁵⁴ The Tribunal notes that five of the examples of undercutting or potential undercutting by the subject goods took place in 2017.¹⁵⁵

103. There is also confidential evidence of significant potential and actual price undercutting by the subject goods on bids submitted in response to blanket RFPs.¹⁵⁶ The consistency of the undercutting by

149. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 84-85.

150. *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 220-221; *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 246-247, 276.

151. *Transcript of Public Hearing*, Vol. 3, 21 March 2018, at 221, 263; *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 96-97.

152. *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 222-224, 239, 242-243.

153. Exhibit RR-2017-002-06B (protected), Tables 3, 4, Vol. 2.1.

154. *Ibid.*, Table 1, Vol. 2.1. See also the example regarding spot sales provided at tab 9 of *Protected Aid to Argument filed by counsel to ABB and PTI*, Vol. 18; Exhibit RR-2017-002-RI-03C (protected), attachment 1 (lines 16-20), Vol. 10; and Exhibit RR-2017-002-RI-01A (protected), at 13 (line 036), Vol. 10.

155. Exhibit RR-2017-002-06B (protected), Tables 20, 22, 23, 25, 27, Vol. 2.1.

156. *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 230, 232, 257-260; *Protected Aid to Argument filed by counsel to ABB and PTI* at tab 9, Vol. 18; Exhibit RR-2017-002-18.03 (protected), Vol. 4C at 133-136, 138, 203-204; Exhibit RR-2017-002-21.11 (protected), Vol. 6 at 195, 224-225; Exhibit RR-2017-002-21.12 (protected), Vol. 6A at 75-78, 80; Exhibit RR-2017-002-RI-04A (protected), Vol. 10 at 119-120; Exhibit RR-

subject imports in this context suggests that suppliers of the subject goods are especially motivated when bidding on blanket RFPs, which is not surprising given the long-term nature of these agreements.

104. Despite the limitation with the average per-MVA values in the investigation report, these data show some confirmatory trends as to the domestic industry's claims regarding price undercutting in interim 2017. The average unit value data in the investigation report show that from 2014 to 2016 the domestic industry's per-MVA value for sales from domestic production was the lowest in the market. However, this trend reversed in interim 2017, when the per-MVA value of subject goods was lower than that of domestically produced like goods and was the lowest in the market.¹⁵⁷ As noted above, this coincided with a marked increase in the volume of imports of subject goods.

105. There is contradictory evidence on the record with respect to the prices of third-country imports over the POR. The average unit value data in the investigation report show that the prices of third country imports other than imports by the domestic industry were the highest in the market from 2014 to 2016,¹⁵⁸ and second only to the domestic industry's own imports in interim 2017.¹⁵⁹ On the other hand, there are examples of suppliers of third-country imports submitting low-priced bids over the POR.¹⁶⁰ In addition, Mr. Mehmel of PTI testified that he has "seen some very low pricing from other third-country suppliers . . .".¹⁶¹ Mr. Mehmel provided examples in his witness statement, the details of which are confidential.¹⁶² Mr. Salmi of ABB indicated in his witness statement that he has seen third-country imports from Chinese Taipei, China and Mexico, and that some of these imports have filled the void left by the subject goods since the finding has been in place.¹⁶³

106. There is also evidence that suppliers of subject goods have been willing to sell into the Canadian market at dumped prices, particularly in the latter part of the POR.¹⁶⁴ Under normal circumstances, these duties would represent an amount by which import prices might decrease if the duties were not being imposed. Taken together, the evidence regarding the volume of imports and the pricing of the subject goods in interim 2017 demonstrates that suppliers of the subject goods remain active and interested in the

2017-002-32.02 (protected), Vol. 8.1K at 259-260; Exhibit RR-2017-002-RI-03C (protected), attachment 1, Vol. 10; Exhibit RR-2017-002-18.02 (protected), Vol. 4A at 294-295, 313, 315-316, 323.

157. Exhibit RR-2017-002-06A (protected), Table 11, Vol. 2.1.

158. In 2014, the subject goods were the lowest-priced imports and the domestic industry had no third-country imports. In 2015, subject imports were the lowest-priced imports, followed by imports from the domestic industry. In 2016, third-country imports by the domestic industry were the lowest-priced imports in the market, followed by the subject goods.

159. Exhibit RR-2017-002-06A (protected), Table 11, Vol. 2.1.

160. Exhibit RR-2017-002-06B (protected), Tables 7, 15 and possibly 9, 16, 21, Vol. 2.1.

161. *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 138-139, 176.

162. Exhibit RR-2017-002-B-06 (protected) at paras. 37-39, Vol. 12.

163. Exhibit RR-2017-002-A-05 at para. 33, Vol. 11; See also *Transcript of Public Hearing*, Vol. 1, 19 March 2018, at 53.

164. Exhibit RR-2017-002-03A, Vol. 1 at para. 113; Exhibit RR-2017-002-06 (protected), Table 20, Vol. 2.1. HEES argued that changes in the currency exchange rate between the tender and the order of the goods resulted in "technical dumping". See Exhibit RR-2017-002-25.01, Vol. 7 at para. 11; Exhibit RR-2017-002-C-01, at paras. 21-24. The Tribunal acknowledges that the lag time between the tender, order and delivery of large power transformers can be challenging. Nonetheless, as the Tribunal has stated in the past, there is no "good" or "bad", "passive" or "aggressive" dumping. There is only dumping as it is defined under *SIMA* and the underlying international agreements. See *Gypsum Board* (4 January 2017), NQ-2016-002 (CITT) at paras. 131-133. The Tribunal finds this statement applicable to "technical dumping" of the sort argued by HEES. In any event, it is not clear that in all cases the dumping can be explained by exchange rate fluctuations alone. See *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 204-213; *Protected Aid to Argument filed by counsel to ABB and PTI* at 2, tab 1, Vol. 18.

Canadian market, despite an initial cooling off period after the Tribunal's finding was put in place.¹⁶⁵ The Tribunal also finds that, in this case, this recent period is of greater relevance to the Tribunal's prospective analysis than the earlier years within the POR.

107. Without the protection conferred by the finding, suppliers of subject goods would have greater flexibility to lower their prices and increase their price advantage even further. Indeed, removing the duties will immediately give way to prices of subject goods that are likely to undercut those of domestic producers of the like goods to an even greater extent than was observed during the POR. This aggressive pricing is likely to have significant depressive effect on the prices of like goods.¹⁶⁶ In addition, the likely significant undercutting by the subject goods is likely to result in significant lost sales to the domestic industry.

108. The rescission of the Tribunal's finding is also likely to facilitate HEES' "Vision 2021" strategy of targeting growth through sales of premium quality large power transformers, which would be sold at a higher price point.¹⁶⁷ Although "premium" transformers typically command higher prices, the Tribunal finds it reasonable to conclude that HEES will be motivated to pursue an aggressive pricing strategy in order to gain market share in this market segment, which has primarily been served by the domestic industry and some third-country imports.¹⁶⁸ At the same time, HEES has expressed continued interest in the low-end and middle markets, which have been its traditional focus in Canada (and which are also served by the domestic industry).¹⁶⁹

– Summary

109. In summary, the Tribunal finds that the rescission of the finding is likely to provide suppliers of subject goods with greater flexibility to continue the aggressive behaviour observed in interim 2017, including significant price-undercutting, in order to regain market share and gain market share in the "premium" market segment. This is likely to result in significant adverse price effects on the domestic industry.

Likely Impact on the Domestic Industry

110. The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded,¹⁷⁰ taking into consideration the likely performance of the domestic industry were the finding continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹⁷¹

165. Exhibit RR-2017-002-06 (protected), Table 20, Vol. 2.1; Exhibit RR-2017-002-06A (protected), Tables 6, 11, Vol. 2.1; Exhibit RR-2017-002-21.11A (protected), Vol. 6 at Schedule 2.

166. The Tribunal notes that there was limited discussion about the likelihood of price increases in the Canadian market in the next 12 to 24 months, either as a result of increases in raw material costs or otherwise. The Tribunal accepts that a large portion of the cost to produce large power transformers relates to direct material costs (see Exhibit RR-2017-002-06 (protected), Tables 14-15, Vol. 2.1) and that, to the extent that price increases are likely to occur in the next 12 to 24 months, the rescission of the Tribunal's finding would likely have a significant impact on the domestic industry's ability to bid higher prices on upcoming RFPs.

167. *Transcript of In Camera Hearing*, Vol. 2, 20 March 2018, at 178; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 200; Exhibit RR-2017-002-C-03 at paras. 5, 10, Vol. 13.

168. Confidential evidence before the Tribunal indicates that HEES is making progress towards achieving its goals with respect to the "premium" segment. *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 222-224, 239, 242-243.

169. Exhibit RR-2017-002-A-11 at tab 1, Vol. 11.

170. See paragraphs 37.2(2)(e) and (g) of the *Regulations*.

171. See paragraph 37.2(2)(k) of the *Regulations*.

111. ABB and PTI submitted that they remain vulnerable to the resumption or continuation of dumping of subject goods from Korea. They stressed the importance of the Tribunal's finding in levelling the playing field in the domestic market and submitted that in the absence of such a level playing field, material injury to the domestic industry is certain and the very existence of the industry is in jeopardy. ABB and PTI each submitted forecasts estimating the impact that the rescission of the Tribunal's finding would have on their performance.

112. HEES argued that the domestic industry has performed well over the POR and is fortified against the likely resumption or continuation of dumping if the finding were rescinded. HEES also submitted that third-country imports dominate the import share of the market and represent the source of competition on price and volume to the domestic industry. Hyosung argued that the domestic industry has established an increasingly dominant position in the Canadian market and has benefitted from the protection of the finding for more than five years. Hyosung also submitted that the domestic industry has greatly exaggerated how competition with Korean exporters would affect it if the finding were rescinded.

113. The Tribunal finds that the Korean producers' motivation to increase their sales volumes to Canada, and the likelihood that these sales will be at low prices that will significantly undercut the prices of the like goods, are likely to cause material injury to the domestic industry. This will take place either in the form of reduced revenue if sales are made at depressed prices, or lost revenue and reduced throughput if sales are lost altogether. Either of these scenarios would significantly impact the profitability of the domestic industry. While domestic producers are likely to face continued competition from subject and non-subject imports even if the finding were continued, the Tribunal finds that without the finding in place the situation will be materially worse.

114. As noted above, a certain volume of large power transformers expected to be delivered in 2018 and part of 2019 has already been purchased from the domestic industry or from suppliers of subject and non-subject imports, and the prices associated with these purchases are fixed.

115. One of the most immediate effects of the rescission of the Tribunal's finding would likely be on upcoming orders placed pursuant to existing blanket agreements. Although there is conflicting evidence as to whether or not there is price negotiation on individual orders after blanket pricing has been submitted,¹⁷² the rescission of the Tribunal's finding would likely allow suppliers of subject goods to offer reduced pricing in order to secure additional orders from some purchasers. To the extent that the domestic industry and subject goods are in competition for those orders, these would represent lost sales to the domestic industry.

116. In the face of even lower prices from the subject goods, the Tribunal finds it likely that the domestic industry would also lose sales in relation to future RFPs. As noted above, a significant number of RFPs are anticipated in the next 12 to 24 months, including at least three significant new blanket opportunities. While the Tribunal accepts that the entire volume of these upcoming RFPs will not be delivered (or even ordered) within the next 24 months, these represent critical opportunities for the domestic industry, particularly as some of the upcoming blanket opportunities are with important and long-standing customers of ABB and PTI.¹⁷³

172. Exhibit RR-2017-002-A-06 (protected) at paras. 31-32, Vol. 12; *Transcript of Public Hearing*, Vol. 2, 20 March 2018, at 194; *Transcript of In Camera Hearing*, Vol. 3, 21 March 2018, at 219-220, 267.

173. *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 12-16; Exhibit RR-2017-002-A-04 (protected) at paras. 35-36, Vol. 12; Exhibit RR-2017-002-B-06 (protected) at paras. 22-25, Vol. 12.

117. ABB and PTI each provided estimates of particular bids that they are likely to lose to subject imports if the finding were rescinded, including details as to how these estimates were arrived at.¹⁷⁴ Mr. Mussehl's witness statement explains that ABB relied on its experience prior to the finding (for example, whether certain accounts were dominated by Korean suppliers prior to 2012) to assess its chances of success in significant anticipated RFPs in the next 12 to 24 months if the finding is rescinded. For blanket agreements, ABB also estimated its likely share of the total RFP and allocated this over the expected years of shipment.¹⁷⁵ Similarly, PTI estimated its likelihood of success on a number of RFPs that it expects to be issued in 2018 for delivery in 2019 if the finding is rescinded.

118. The nature of competitive RFPs makes this exercise somewhat speculative. Nonetheless, the Tribunal finds the estimates provided by the domestic industry to be conservative in that they have assumed little to no lost sales with respect to key accounts or long-standing customers (though, as discussed below, in some cases, these sales were estimated to be made at reduced prices) and assumed that they will retain some sales at accounts that were supplied by subject goods prior to the finding. While the precise volume of sales that are likely to be lost is difficult to predict, the Tribunal finds that the domestic industry is likely to lose a significant volume of sales to the subject goods if the Tribunal's finding is rescinded. These lost sales would also translate into reduced market share. The potentially limited export opportunities in the U.S. (the domestic industry's primary export market) discussed above make it less likely that the domestic industry could sell this volume elsewhere.¹⁷⁶

119. Given the capital-intensive nature of the large power transformers industry, these lost sales volumes would have a significant negative impact on the domestic industry's capacity utilization rates, which would also undermine the competitiveness of future bids as lower throughput levels would result in higher per-unit costs. If the finding is rescinded, the domestic producers are likely to also face pressure to bid with reduced prices at certain critical accounts or risk losing sales altogether. This pressure would be felt immediately upon rescission of the finding. Indeed, PTI provided examples of upcoming bids where it anticipates having to drop its prices to compete with Korean pricing.¹⁷⁷ This would also result in lower net sales revenue on a per-unit basis.

120. Taking the foregoing into consideration, the Tribunal finds that the rescission of the finding would have a significant impact on the domestic industry's profitability. For example, the domestic industry took its estimates with respect to the number of orders that it would receive in 2018 and 2019 should the finding be rescinded and used them to estimate its expected sales revenue in 2019 (taking into consideration the likely timing for orders and shipments, including lead time) under such a scenario. These estimates show significant drops in sales values, gross margins and EBITDA in 2019.¹⁷⁸

174. Exhibit RR-2017-002-A-08 (protected) at paras. 33-40, Vol. 12; Exhibit RR-2017-002-B-08 (protected) at paras. 32-40, Vol. 12.

175. The Tribunal notes that some of ABB's estimates relate to deliveries which are likely to occur beyond 24 months. For the purposes of assessing likely impact, the Tribunal focuses on the domestic industry's estimates relating to like goods which are likely to be ordered and delivered in the next 24 months.

176. The Tribunal considers that the impact of the challenges faced by domestic producers in their primary export market in the near to medium term is not likely to substantially change whether or not the finding is continued. For this reason, any injury to the domestic industry resulting from the challenges they face on the U.S. market is not such so as to undermine the materiality of the causal link between the likely dumped imports and the likely injury to the domestic industry.

177. Exhibit RR-2017-002-B-08 (protected) at para. 36, Vol. 12.

178. Exhibit RR-2017-002-A-08 (protected) at para. 39, Vol. 12; Exhibit RR-2017-002-B-08 (protected) at paras. 37-39, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 19 March 2018, at 137-138. ABB's estimates also included

121. Reduced profitability, either as a result of lost sales volumes or depressed prices, is quite likely to result in reduced capital investments and the ability to raise capital, as well as significant lay-offs.¹⁷⁹ Indeed, it may jeopardize the very existence of the domestic industry.¹⁸⁰

122. As noted above, the domestic industry imported large power transformers over the POR. While arguably some of this volume could have been produced in Canada, the Tribunal accepts that, on balance, the volume of imports by the domestic industry that is expected in the next 12 to 24 months is likely to be small and would not materially impact the domestic industry's likely performance whether or not the finding is rescinded. As such, these imports do not undermine the Tribunal's conclusions regarding the likely injury that is attributable to dumping.

123. For these reasons, the Tribunal finds that the rescission of the finding, in and of itself, is likely to cause material injury.

DETERMINATION

124. The Tribunal finds that, if the finding is rescinded, the likely resumption or continuation of the dumping of the subject goods will likely cause material injury to the domestic industry.

CONCLUSION

125. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its finding in respect of the subject goods.

Peter Burn
Presiding Member

Jean Bédard
Member

financial results for full year 2020. As any results beyond Q1 2020 are outside the 24-month period, the Tribunal focuses on the estimated 2019 results for the purposes of its likely impact analysis and is satisfied that the injury likely to be felt by the domestic industry in 2019 would be material. Nonetheless, if the estimated 2020 financial results, which are directly connected to orders likely placed in the next 24 months with expected delivery dates outside that period, are also considered, the likely impact to the domestic industry would be even greater.

179. Exhibit RR-2017-002-A-07 at paras. 14, 20-21, Vol. 11; Exhibit RR-2017-002-A-08 (protected) at paras. 14, 20-21, 40, Vol. 12; Exhibit RR-2017-002-A-04 (protected) at para. 34, Vol. 12; Exhibit RR-2017-002-B-08 (protected) at para. 39, Vol. 12.

180. Exhibit RR-2017-002-A-08 (protected) at para. 40, Vol. 12; Exhibit RR-2017-002-A-04 (protected) at para. 34, Vol. 12; Exhibit RR-2017-002-B-08 (protected) at para. 39, Vol. 12; Exhibit RR-2017-002-B-04 (protected) at para. 16, Vol. 12.

Serge Fréchette
Member