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6 April 2017

Mr B Akdeniz
Case Manager
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Bora

PT CG Power Systems Indonesia - comments on verification report and Statement of Essential Facts

We refer to the report regarding the verification of PT CG Power Systems Indonesia ("CG Power") and the Statement of Essential Facts that were recently placed on the public record.

The dumping margin reflected in those documents is significantly inflated. It is based upon a number of legal and factual errors. These errors will be discussed below.

A Rejection of CG Power's actual domestic CTMS

On 6 February 2017, CG Power provided the Commission with an updated domestic CTMS and Australian CTMS. In calculating the dumping margin, the Commission has adopted this new Australian CTMS, but rejected the new domestic CTMS. The verification report's justification for this approach is that:

> *The verification team considers that the originally submitted domestic CTMS spreadsheet demonstrated a more reasonable proportionality between the raw materials used for domestic and export production.*

This ignores the fact that there were only [CONFIDENTIAL INFORMATION DELETED – number] power transformers exported to Australia between [CONFIDENTIAL INFORMATION DELETED – period], and they were only of relatively small units (between [CONFIDENTIAL INFORMATION DELETED – power ratings]). By contrast, the domestic market sales that have been used in the calculations occurred over the period [CONFIDENTIAL INFORMATION DELETED – period], and related to over [CONFIDENTIAL INFORMATION DELETED – number] units including numerous larger models. Because every unit is designed and manufactured to a bespoke specification, there will be differences in raw material costs between units. As a general comment it is to be fully expected that larger models, by their very nature, will have greater raw material costs. Given that there were numerous large power transformers sold domestically, this will impact the *"proportionality between the raw materials used for domestic and export production"*.

This leads to an incongruous outcome, because it means that higher costs are being used for the purpose of determining the normal value than for the purpose of determining the profit to be applied to that normal value. With respect, we must say that this is an unprincipled and illogical approach for the Commission to adopt. It has had a very significant impact on the dumping margin, and we ask that it be corrected.

ABN 56 231 964 609

B Erroneously making an adjustment to the normal value

Currently, the normal value has been adjusted in relation to each of the following items:

- export packing;
- export warranty;
- Australian sales office costs; and
- Australian sales office costs.

The normal value intended to be used by the Commission is a constructed normal value, calculated in accordance with Section 269TAC(2)(c) of the *Customs Act 1901* (Cth). This is important, because it affects the circumstances in which adjustments to the normal value can be made. Specifically, the application of adjustments to a constructed normal value is governed by Section 269TAC(9), which states:

> *Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.*

The "costs" that may be adjusted are those that are used to calculate the constructed normal value. In accordance with Section 269TAC(2)(c), the basis for the normal value is the sum of:

> *(i) the cost of production or manufacture of the goods in the country of export; and*
>
> *(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export – such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.*

In other words, the normal value will be the sum of the export CTM and the domestic SG&A. However, Section 269TAC(9) recognises that there might be elements within this domestic SG&A that are irrelevant to the export sales. As per Section 269TAC(9), adjustments are to be made to *ensure that the normal value so ascertained is properly comparable with the export price of the goods.*

As the Commission is aware, the allocation of SG&A was the same for both export and domestic sales. It was merely the ratio of total product sales to total selling costs (or admin expenses) from the audited report, multiplied by the revenue on each power transformer. All of these figures can be checked against data collected by the Commission. Therefore, there is nothing in export SG&A that is not in the domestic SG&A and vice versa. Under this circumstances, there is absolutely no need, nor legal justification, to adjust the normal value.

With regard to the specific adjustments made by the Commission:

1 export packing – packing was included in the Australian CTM, under the "raw material – other additional" field, and is therefore already included in the normal value. This can be confirmed via the bill of materials provided in relation to each of the transformers exported to Australia during the verification.

2 export warranty – it is unclear why the Commission considered it was necessary to include an adjustment for export warranty. This expense does not form part of the price. Indeed, it will

not be known until well after the price has been set. It is therefore irrelevant to the comparison of the export price to the normal value. Its inclusion as an adjustment to the normal value has the effect of distorting that normal value, so that it is not properly comparable with the export price.

3 Australian sales office costs - to be clear, these costs were already included in the SG&A that was applicable to both Australian sales and domestic sales. The Australian office is literally that, an office of CG Power that operates in Australia. As such the costs of the Australian office are reported in CG Power's accounts and were included in its SG&A calculation, as were the costs associated with the Indonesian sales office. If it was the Commission's intention to use this data separately, the Commission should have consulted with CG Power prior to finalising the calculations for the verification report. This failure to discuss these issues with CG Power has resulted in the following errors:

- The quantum of the adjustment is incorrect. It assumes that all costs incurred by the Australian office were costs related to the goods under consideration for the purpose of this review. It does not, as evidenced by the additional revenue items not related to the GUC in the Australian office cost centres, such as **[CONFIDENTIAL INFORMATION DELETED – examples of revenue items irrelevant to review]**.

- The costs associated with the Indonesian sales office are still included in the SG&A which has been added to the normal value.

As a result the verification report is based on a normal value that is improperly adjusted and is therefore not at all comparable to the export price.

Section 269TAC(9) mandates that adjustments *must* be made as are necessary *to ensure* that the normal value so ascertained is properly comparable with the export price of those goods. It is not something to be done haphazardly, and certainly not something to be done, for any other purpose than ensuring comparability between export price and normal value. The calculation of this Australian sales uplift runs counter to these legal requirements. It ensures that the normal value and export price are not comparable.

The Commission did not express its intention to use such an adjustment at any point prior to the provision of the verification report. The Commission did not seek information upon which it could make the required downward adjustment. The Commission has treated CG Power prejudicially by failing to do so.

Ultimately, however, the Australian office adjustment is not required. Those costs were included in the SG&A calculated by CG Power, as are the domestic selling costs. All the Commission needs to do to ensure compliance with Section 269TAC(9) is remove the Australian sales office uplift from the margin calculation, and readjust the domestic SG&A. Noting that this SG&A has been verified to be accurate by the Commission, we submit this must be done to ensure that the dumping margin is legitimate.

4 Credit costs adjustment – the Commission has not explained why it is deemed necessary to include a credit adjustment to the normal value. The "credit" cost is purely fictional. It is not reflected in the export price used by the Commission, nor in the costs used to construct the normal value. It has no relevance to the comparability of the export price and the normal value.

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Thank you for your consideration of these matters.

We hope and expect to receive amended calculations, once you have completed your consideration of the matters raised by us in this letter.

Yours sincerely

Alistair Bridges
Associate