

Our reference
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Non-confidential version

By email:

Mr Geoffrey Gleeson
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Dear Mr Gleeson

Anti-dumping investigation - power transformers from Indonesia

We refer to your letter of 11 August 2014, which we were very disappointed to receive, in relation to our client, PT CG Power Systems Indonesia (**CG Power Systems**).

By that letter the Commission belatedly responded to, but not in any substantial manner, our letter to the Commission of 14 March 2014.

Uncooperative Exporter

In your letter of 11 August 2014, you have repeated the position put in the Commission's earlier letter of 3 March 2014 – that is, that the Commission proposes recommending to the Anti-Dumping Commissioner that CG Power Systems be considered an "uncooperative exporter" within the meaning of s. 269T of the *Customs Act 1901*.

The history of the relevant correspondence on this issue now includes:

- our email to the Commission of 5 February 2014;
- the Commission's letter to us of 3 March 2014;
- our letter to the Commission of 14 March 2014;
- the email on our behalf from GTR Consulting to the Commission of 21 July 2014; and
- the Commission's letter to us of 11 August 2014.

On 5 February 2014 we wrote to the Commission on behalf of our client, noting that our client believed that it had now provided all relevant information sought by the Commission, and requesting that, if the Commission believed otherwise, it advise the reasons for forming

that view, so that our client could have the opportunity to respond to that suggestion. We received no response to that correspondence.

We subsequently received the Commission's letter of 3 March 2014. In that letter it was suggested that the Commission was not satisfied that our client had provided the necessary information to allow the Commission to adequately determine whether dumping is occurring. However, notwithstanding our email of 5 February 2014 the Commission did not advise us what information the Commission considered that our client had not provided, and why that information was needed.

In our letter of 14 March 2014, we expressed the view that our client had substantially complied with the requirements of the exporter questionnaire, and repeated that it was not presently clear either to our client or to us on what basis the Commission had formed a different view. In particular, our client believed that it had provided all of the additional information sought in an email from the Commission to us dated 18 November 2013, which we understood had set out the information that the Commission wished to receive.

In accordance with the requirements of natural justice, we requested that the Commission advise us of:

- the information that the Commission considered that it had not been provided; and
- the relevance of that information to the investigation,

so that our client had the opportunity to make submissions about those matters before the Commissioner responded to the recommendation foreshadowed in the letter of 3 March 2014.

We received no acknowledgement of or response to our letter of 14 March 2014 until your letter of 11 August 2014.

In your letter of 11 August 2014, you advised that:

- the Commission considers it was unable to clearly identify relevant sales and cost data for power transformers manufactured by CG Power to adequately determine if power transformers had been exported at dumped prices; and
- while numerous spreadsheets had been provided, the relevance of the data within each spreadsheet was not adequately explained.

While we are grateful that the Commission has now responded to our letter, unfortunately that response does not assist us to understand in any substantive way what information the Commission did not understand. It appears from the response that the Commission's complaint is not that it was not provided with any relevant data, but rather that it did not receive an explanation as to how to correlate some of the data. Of course, the data was provided by our client, as best it could, in a format dictated by the Commission in its exporter questionnaire.

With respect, it is very disappointing for our client that the Commission has taken this approach. As set out in more detail in our letter of 14 March 2014, our client went to some effort to capture the information sought by the Commission in the form that the Commission

wished it to be presented, notwithstanding that that was not the form in which it was recorded in our client's records.

To the extent that it required further explanation, and there was particular information that the Commission could not correlate, we anticipate that that could have been resolved by a meeting with our client, and most certainly by a verification visit.

While in some circumstances the Commission's timeframes might not have allowed for such a meeting, that is not the case in this investigation. Rather, the Commission has sought and been allowed until 8 September 2014 to publish its Statement of Essential Facts, which is almost 9 months from when the Commission last sought any information from our client. Even if the Commission had responded in a timely manner to our email of 5 February 2014, or our letter of 14 March 2014, our client would have had several months in which it could have provided to the Commission the explanation that it required.

In those circumstances, it is hard to avoid the conclusion that our client has not been given a fair opportunity to understand and respond to the Commission's concerns.

In your letter of 11 August 2014 you have advised that you do not consider it would be appropriate to open a further window for CG Power to provide additional information to the Commission. To be clear, we disagree with that view; we also suggest that CG Power is not seeking to provide additional information, but rather to explain the information that it has already provided, given that you have advised that the Commission has not understood it.

It remains ready to do that at the Commission's convenience, including by bringing staff from Indonesia to meet with the Commission in Australia.

We urge the Commission to reconsider its position on this issue.

Information to be used to calculate a dumping margin

In the Commission's letter of 3 March 2014, it advised that if the Commissioner is satisfied that our client should be designated as uncooperative, the Commission proposes recommending to the Commissioner that export prices and normal values be determined for our client from "all relevant information".

In our letter of 14 March 2014, we expressed the view that the most (and perhaps only) relevant information as to those matters is the information provided by our client regarding its cost to make and sell power transformers, its domestic sales of power transformers and its export sales of power transformers to Australia.

We requested that, if the Commission considers that that information is not relevant, or that there is other information that is more relevant, the Commission let us know, so that our client is given the opportunity to make submissions to the Commission about that issue. As we noted in our letter of 14 March 2014, no issue has been raised by the Commission to date regarding the reliability of the information that has been provided by our client and we would submit that that information is reliable and verifiable.

We have not received any response to that request, including in your letter of 11 August 2014.

On 21 July 2014, as you have acknowledged, GTR Consulting wrote to the Commission by email on our client's behalf. By that email, our client provided to the Commission a dumping margin calculation which had been undertaken by GTR Consulting using essentially the information that had been provided to the Commission.

[REDACTED]

[REDACTED]

We are instructed that there were some additional changes that our client had made to the spreadsheet, which will be highlighted in an updated spreadsheet that our client will provide to the Commission.. Those changes were made because:

[REDACTED]

[REDACTED]

[REDACTED]

Under the normal circumstances of a verification visit these changes would have been identified and verified by the visit team. As you know, it is not at all unusual for the need for such changes to be identified during that process.

[REDACTED]

In so far as the other issues raised by you in relation to the dumping margin calculation are concerned:

[REDACTED]

[REDACTED]

[REDACTED]

The calculations sent to the Commission on 21 July 2014 demonstrate that, using the Commission's announced methodology, and the corrected information already submitted by our client, together with a verifiable profit margin on domestic sales, a negative dumping margin would be calculated for our client for the period of investigation.

Our client intends shortly to provide to you a new spreadsheet which will include dumping margin calculations in respect [REDACTED]

[REDACTED]. We are instructed that the outcome will continue to be an overall negative dumping margin.

Our client invites the Commission to seek any further information that it wishes to see to verify that outcome.

However, if the Commission does not choose to do that, it would be unconscionable for it to impose dumping measures on our client using other information. Indeed, in light of the evidence before the Commission of a negative dumping margin, it would be appropriate for the Commission to terminate the investigation in so far as it concerns CG Power.

Please do not hesitate to contact us if you would like any further information, or have any queries about the matters raised in this letter.

Yours faithfully
Corrs Chambers Westgarth



Andrew Korbelt
Partner

Andrew Percival
Special Counsel