

Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609

Canberra +61 2 6163 1000
Brisbane +61 7 3367 6900
Melbourne +61 3 8459 2276

www.moulislegal.com

Brisbane
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia



commercial + international

16 August 2019

The Director
Investigations 3
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Director

PT CG Power Systems Indonesia Discontinuation of measures – Continuation Inquiry 504

As you know we represent PT CG Power Systems Indonesia (“CGP”) for this continuation inquiry.

In this letter we will provide further comment regarding demand in Indonesia’s domestic market as well as provide some comment regarding the content of Continuation Inquiry 504 – Inquiry into Continuation of Anti-Dumping Measures Applying to Power Transformers Exported from the Republic of Indonesia, Taiwan and the Kingdom of Thailand – Visit Report – Australian Industry – Wilson Transformer Company Pty Ltd (“the Visit Report”).

A Further comment regarding Indonesian demand for power transformers

In our letter dated 23 July 2019 we discussed the strong demand in Indonesia’s domestic market for power transformers. This was originally raised by WTC in its application and, for that reason, we would not think it necessary to provide additional information to support this point. Nonetheless, so it can be put beyond doubt, we now make the following submission.

The relevant law is Peraturan Presiden Republik Indonesia Nomr 4 Tahun 2016 Tentang Percepatan Pembangunan Infrastruktur Ketenagalistrikan Dengan Rahmat Tuhan Yang Maha Esa (“Electricity Infrastructure Development Plan”). We have attached a copy for your information,¹ however, the relevant paragraph is (a) which is immediately on the front page. Translated, para (a) provides as follows:

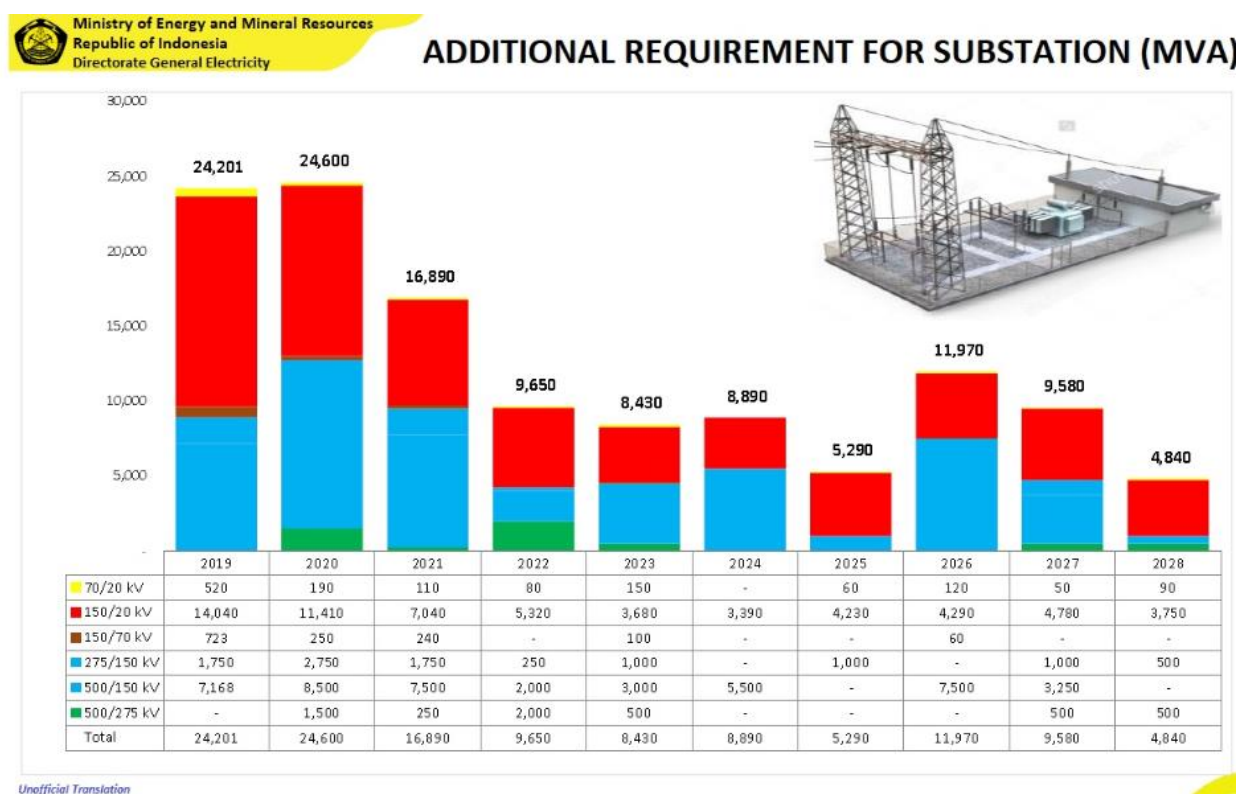
that in order to meet or fulfil the people's electricity needs on a fair and equitable basis, and to encourage the economic growth it shall be necessary to accelerate the development of electricity infrastructures including the development of 35,000-MW power generation and

¹ Please refer to Attachment 1.

transmission lines along a 46,000-km distance by prioritizing the use of new and renewable energy sources in order to support the efforts to reduce the emission of greenhouse gas.

Originally, this 35,000 MW was anticipated to be installed by 2019. However, this was later revised to 19 GW by 2019 (being the 19 GW referred to in the initial submission), with the remaining 16 GW to be installed by 2024.² CGP is a significant supplier of power transformers in the domestic market, with an approximate market share of over [CONFIDENTIAL INFORMATION DELETED – market share]. Since the Electricity Infrastructure Development Plan began being implemented in 2016, CGP has increased its capacity utilisation year on year up to [CONFIDENTIAL INFORMATION DELETED – capacity utilisation] in 2018.³ Given the strong demand is scheduled to continue well into 2024, there is no reason to suggest this trend will end in the medium-term.

Further to the 16GW referred to above, the 2018 Electricity Supply Business Plan (the “RUPTL”) considers that Indonesia will need a further sub-station transformer capacity of 126,341 MVA. A copy of the executive summary of the RUPTL is attached.⁴ Of relevance is page 7 which, when translated, illustrates this additional demand:



A fundamental driver of any market is demand. This is acutely so in the case of any market for power transformers – a manufacturer will only sell a power transformer where a customer has a specific requirement for it. In this sense, demand is inelastic manufacturers cannot sell additional product simply through lowering prices. However, demand in the Indonesian market will be high for at least the next five years. CGP is making a good profit on its domestic market sales, which is further supplemented by

² Please refer to Attachment 2 for relevant media about this.

³ Attachment G-9 Capacity Utilisation. For the reasons stated in CGP's submission of 23 July, [CONFIDENTIAL INFORMATION DELETED – capacity utilisation] is [CONFIDENTIAL INFORMATION DELETED – comment about capacity utilisation].

⁴ Please refer to Attachment 3.

sales to other markets throughout South East Asia. CGP has no need nor desire to sell power transformers to the Australian market for less profit.

B CGP comments regarding the Visit Report

The Visit Report is of limited relevance to the Commission's consideration of CGP, for the simple fact that CGP has not exported any power transformers to Australia since before the measures were imposed, nor won any tenders in Australia prior to that. Accordingly, the economic conditions illustrated throughout that report are not a consequence of any action by CGP.

Having said that, we do have some comments about the findings in the Report.

- In terms of market share it appears that the “other Australian producers” have been increasing market share, in terms of both value and units, between 2016 and 2018. This is at least partially the cause for WTC’s decrease in market share.
- In terms of price effects, WTC has consistently sold power transformers at less than its CTMS since 2014. This continues the trend that began in 2012-13.⁵ However, this tells us nothing about the impact of exports on WTC’s performance. The theory that has been used to justify the imposition of measures is that dumping causes injury at the time the tender is awarded. As discussed in CGP’s earlier submission, the costs will not be known until the power transformer itself is complete.⁶ So the difference between the sales value and the CTMS can be impacted by subsequent changes in the cost of raw materials.

For example, we understand that WTC imports the bulk of the raw materials used to manufacture power transformers within Australia. If WTC does not guard against currency fluctuations through hedging or other appropriate practices that mitigate currency volatility, then a price that was once profitable may ultimately prove not to be.

This is just a hypothetical example, however, it illustrates the point that the difference between the CTMS and the sales values can be driven by intervening factors that have nothing to do with price competition during the tender process. A comparison of the CTMS to the sales value tells you nothing of value about price competition and ultimately could lead to a misapprehension about the current or future impact of exports on WTC’s profitability.

We would suggest that a more accurate and reasonable approach would be to look at the projected profit on any tender that is awarded at the time it is awarded. Such information should be readily available to WTC.

- Finally, in terms of price depression, we note that the Visit Report in the China Power Transformers Investigation provides as follows:

The verification team has been supplied with correspondence from customers providing feedback concerning lost tenders. Among other factors, customers have stated that WTC’s bid was priced higher than one of its competitors sourcing transformers from China during the investigation period. WTC has reduced pricing, in some cases, several times before a tender is won or lost. The verification team will review the reasons behind the reductions in prices to ascertain if these were a result of

⁵ Report 219, page 77.

⁶ For more commentary regarding this, see our submission dated 23 July 2019.

price pressure in order to meet an allegedly dumped price or in response to a change to specifications during the course of the negotiations. In one of the sample tenders for which the team requested all documentation, it is clear that WTC reduced its bid price in response to intelligence of a competitor bid. It is not immediately apparent which competitor it is or the source of its supply. During the course of the investigation the Commission has gathered further information concerning competitor bids for tenders as well as the significance of price to tender evaluations.⁷

To draw out a few points:

- 1 The feedback from customers regarding lost tenders names a lot of factors unspecified in the visit report, of which one is “price”. Based on the above extract, it is not established that the lower priced competitor actually won the tender. Price should not be overemphasised in the tenderer’s decision-making process.
- 2 WTC has reduced pricing in instances before the tender is won or lost. There is no indication as to why this was done. Given the verification occurred prior to 17 May 2019, we find it odd that further information has not been provided as yet.⁸ In any regard, it clearly was not in response to the feedback referred to in (1) above, because that feedback is expressed to have occurred once a tender is lost.
- 3 We find the comment regarding WTC reducing its bid in response to intelligence regarding a competitors bid strange, given it is not clear who the competitor was, nor its source of supply. Where did this intelligence come from? If it was accurate and credible why would it not provide details of the competitor or at the very least, the source? Further, was the power transformer to which the intelligence related identical in design to WTC’s? If not, a lower price could merely be a function of the different design.
- 4 Finally, as noted above, demand for power transformers is inelastic. Given this, there is no ongoing benefit to lowering prices generally, because success in one tender does not translate to success in other tenders. A corollary of this is that pricing intelligence or feedback from other tenders is not overly applicable to a new tender. In circumstances where WTC does not know against whom it is competing, their competitors’ design nor their competitors’ price proposals, we would again suggest that the concept of ongoing price pressure is really not applicable.

A recommendation to continue measures under s 269ZHF can only be made where the Commissioner is satisfied that, at the very least, the recurrence of dumping and injury is likely if the measures expire. “Likely” in this context is considered to mean “probable” rather than “possible or plausible”.⁹ The information in the Visit Report simply does not provide any basis that the measures should continue as against CGP.

⁷ *Investigation 507 Alleged Dumping of Power Transformers Exported from the People’s Republic of China Visit Report – Australian Industry – Wilson Transformer Company Pty Ltd*, page 24.

⁸ *Customs (Preliminary Affirmative Determinations) Direction 2015 Power Transformers Exported to Australia from the People’s Republic of China Investigation No. 507 into Alleged Dumping Day 60 Status Report* confirms as much.

⁹ See Appellate Body Report, US - Corrosion-Resistant Steel Sunset Review, para. 111. Also see Appellate Body Report, US - Oil Country Tubular Goods Sunset Reviews, para. 179

Ultimately, the question before the Commission is whether it can be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

In the case of CGP this is unlikely, for the following reasons:

- Demand for power transformers in Indonesia is strong and will continue to be strong at least into the mid-2020s.
- CGP's commercial presence in Australia has significantly decreased since the imposition of the anti-dumping measures. Since then, CGP has focused on selling power transformers to third country markets throughout South East Asia including in [CONFIDENTIAL TEXT DELETED – countries].
- CGP seeks to make a profit on all tenders it enters into. CGP's domestic and third country sales are profitable, and CGP is operating at functional capacity and again, based on the domestic demand in Indonesia, will do so into the future.

Given this, there is no benefit to CGP seeking to win tenders on the Australian market at prices that are less profitable than those it can achieve elsewhere. Dumping is not likely to recur in these circumstances.

We trust that CGP will be given a reasonable opportunity to respond to any preliminary findings the Commission has made that are relevant to the continuation of measures against CGP prior to such findings being made public in the Statement of Essential Facts.

Please do not hesitate to contact me if you would like to discuss this further.

Yours sincerely



Alistair Bridges
Senior Associate

+61 2 6163 1000