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23 July 2019

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

This inquiry has been initiated on the basis of an application from Wilson Transformer Company Pty Ltd ("WTC") which purports to evidence the need for continuation of anti-dumping measures, including as against CGP.[1] On the basis of that application the Commission reached the preliminary view that:

> *in accordance with subsection 269ZHD(2)(b), there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead,*

[1] See Doc 001 – Application.

to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.[2]

However, on close review of the application we submit that the application is devoid of grounds, reasonable or otherwise, which support the contention that the measures should continue beyond their five year term. The application is instead preoccupied with imports from China and Korea. Neither country is subject to this inquiry, so the relevance of either to the Commission's consideration of the expiry of the measures is limited.

We understand that the application merely sets up a *prima facie* case for the continuation of the measures and that the Initiation Notice[3] is limited in reviewing that application and determining whether it has successfully done so. For the reasons stated in this submission, our view is that it has not – at least insofar as it relates to any future exports from Indonesia – noting that the Initiation Notice came to a different conclusion. More significantly, the inquiry has been on foot for five months, during which time the *prima facie* position has not been expanded in any meaningful way.

In this submission we will illustrate that the injury "theory" adopted in the Initiation Notice does not reflect the operation of the Australian power transformers market and that there is no basis to continue the measures against power transformers from Indonesia specifically.

A The measures should be discontinued as against CGP

It is not appropriate to continue measures against CGP. The balance of information points only to the conclusion that, were the measures to be imposed, CGP would be unlikely to dump. The relevant circumstances are discussed further below:

1 Demand in Indonesian market

The application includes some broad information regarding the domestic circumstances in the Indonesia power transformers market:

3) The situation in Indonesia:

a) There has been strong domestic demand as Indonesia expands their electrical network.
b) The Government decreed that the main utility, PLN, should source its products from domestic suppliers. In addition it is understood that an open book, agreed mark-up pricing arrangement has been implemented.
c) As a consequence, domestic prices from domestic supplies are healthy,
d) With healthy prices, the Normal Values should be considerably higher than in 2013.
e) Any exports to Australia could therefore be at low prices with cross subsidisation.
f) It is therefore appropriate to continue measures.

This is said to support the supposed need for the continuation of the measures. However, when spin and invective are removed it clearly does no such thing. In this regard, we note as follows:

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2 See Doc 002 – ADN 2019/20 at page 5.
3 See Doc 002 – ADN 2019/20.

- Items (a) through (c) are broadly correct, noting the detail such as the comment regarding "agreed mark-up" does not adequately explain the open book system.
- Insofar as Item (d) it posits that prices are healthy, we also agree. This is supported by the information in CGP's EQ response. However, given the historical administrative precedent regarding the determination of normal values for power transformers, this does not have any clear implication for normal values.
- Item (e) is unfounded, without explanation, and we would suggest self-serving. It assumes that CGP would willingly divert from profitable sales in the domestic market in order to make less profit in the Australian market. With respect, WTC is overvaluing the importance of the Australian market to CGP. Just as important to CGP, if not more so, are the markets of the [CONFIDENTIAL TEXT DELETED – countries].[4] What commercial rationale could there to divert from profitable sales in its home market to sales that garner less profit in a third country?
- Items (a) to (c) do not support item (e) or (f) in any conceivable way.

The application really does not provide any basis for the continuation of measures against CGP. CGP's operation in the domestic market is profitable and demand in that market is significant. Indeed, CGP anticipates that the domestic market will continue to grow in the medium term. The Indonesian Government has a 19 GW project for electrification out of which only approximately 5 GW has so far been realized. Servicing the domestic market is a priority, and CGP will continue to have substantial capacity booked to satisfy this demand into the future.

On this basis alone, there is no reason to think it likely that CGP would pivot to the Australian market if the measures are removed or to sell to that market at a level that is less profitable than that it can achieve domestically. Further, we would note that there is no benefit to making sales to the Australian market at a relatively lower margin than the domestic market. Winning a contract at a lower margin than can be achieved domestically does not assist in any way winning future tenders. All it would mean would be that CGP would make less profit then it could if it focussed its sales on the domestic market. Such behaviour would lack commercial rationale and is therefore unlikely.

2 CGP's profitability targets

CGP always builds a margin into its costing to ensure that its sales are profitable. The critical aspects in maintaining this margin are, firstly, accurately modelling the costs associated with a design and then mitigating the impacts of cost fluctuations to avoid an erosion of the margin. This is achieved in a number of ways, including [CONFIDENTIAL TEXT DELETED – internal costing practices]. This allows CGP to target and maintain a specified profit margin. The targeted margin will generally be around [CONFIDENTIAL TEXT DELETED – percentage].

CGP's management and the sales team will use the cost information from the design to determine what price they can offer to achieve a margin in line with CGP's key objectives. Over the period, CGP has been successful maintaining its margin on its domestic sales of power transformers, as shown by Attachment 1 [CONFIDENTIAL ATTACHMENT], CGP in 2018-19 had an estimated target of [CONFIDENTIAL TEXT DELETED – percentage] and achieved an actual margin of [CONFIDENTIAL TEXT DELETED – percentage]. As also shown in Attachment 1 [CONFIDENTIAL ATTACHMENT], CGP averages a profit of [CONFIDENTIAL TEXT DELETED – percentage] for all of its domestic sales during the investigation period.

[4] CGP EQ response, Attachment F-2.

With the health and impending growth of the domestic industry there is no reason for CGP to abandon these profitable sales for less profitable sales to Australia, as is alleged by the applicant. Moreover, if CGP was successful in any future tenders, their ability to accurately cost designs and mitigate against cost fluctuations would allow them to maintain their targeted to margin

3 CGP's production capacity utilization

Like any company operating in an industry with a long production lead time, CGP plans its production schedule. In doing so it also takes into consideration factors beyond its control that will affect productivity, such as test bay failure, late material delivery and absenteeism. To account for such unplanned events, CGP targets a capacity utilization of [CONFIDENTIAL TEXT DELETED – percentage].

As identified in the G-9 spreadsheet [CONFIDENTIAL ATTACHMENT] provided in the exporter questionnaire response, the 2018 production capacity utilisation rate was [CONFIDENTIAL TEXT DELETED – percentage], this is also the anticipated capacity utilisation rate for 2019. Realistically, the utilisation rate of the factory [CONFIDENTIAL TEXT DELETED – comment about utilisation rate], because of factors such as unplanned staff absence and maintenance and repairs. There [CONFIDENTIAL TEXT DELETED – comment about utilisation rate] therefore no reason for any sales to be made to the Australian market if they are not profitable.

4 CGP's Activity in Australia

CGP's activities and objectives with the Australian market have changed since the imposition of measures. From two representative sales offices in 2015, now [CONFIDENTIAL TEXT DELETED – comment about CG staffing]. [CONFIDENTIAL TEXT DELETED – CG staffing] attends to [CONFIDENTIAL TEXT DELETED – comment about CG operations in Australia] within the Australian market.

Further to this, since the measures were first imposed, CGP has shifted focus toward other countries – in – particular, [CONFIDENTIAL TEXT DELETED – countries] – to supplement their domestic sales. Please refer to pages 14 to 16 of Attachment 2 [CONFIDENTIAL ATTACHMENT]. Australia is not a key market for CGP. While it would like the option to export to Australia if it proves profitable to do so in the future, the domestic and third country markets are CGP's current focus.

CGP did not export any power transformers to Australia during the period of investigation. However, CGP did export the goods to a number of third countries, including New Zealand, over that period.

The details of CGP's sales to New Zealand are in Attachment F-2 [CONFIDENTIAL ATTACHMENT] to the EQ. In FY2018 CGP made a profit of [CONFIDENTIAL TEXT DELETED – percentage] on its sales to NZ (refer to Attachment 3 [CONFIDENTIAL ATTACHMENT]), which [CONFIDENTIAL TEXT DELETED – comment about profitability] that which was achieved in the domestic market over the same period.

These illustrate the kind of sales that CGP pursues in third countries – [CONFIDENTIAL TEXT DELETED – comment about profitability] sales to reputable customers such as [CONFIDENTIAL TEXT DELETED – customer name(s)]. The New Zealand market is similar to the Australian market in terms of sales process, economic conditions and the maturity of the grid, and so these sales are analogous to any future sales that CGP might pursue within Australia if the measures were to be revoked.

The one point of distinction is this: CGP has a representative sales office in New Zealand, which handles its New Zealand sales and service requirements. Whereas the representative sales office in Australia that was located in Perth closed in 2015, and the CGP office in Sydney has [CONFIDENTIAL TEXT DELETED – comment about CG operations in Australia]. CGP's ability to participate in any tenders within Australia are currently limited. In order for CGP to be able to service the Australian market at the volume it does the New Zealand market, CGP would need to [CONFIDENTIAL TEXT DELETED – comment about CG operations in Australia in Australia. At this point in time, CGP [CONFIDENTIAL TEXT DELETED –comment about CGP operations in Australia].

5 The exercise of CGP's legal rights is irrelevant to this inquiry

The other aspect which the application highlights, and which is cited by the Commission, is that CGP applied for a variable factors review in 2016:

> *The Commission also notes that PT CG Power Systems Indonesia (CG Power) sought a review of measures subsequent to their imposition. The findings of this review are presented in Anti-Dumping Commission Report No. 383 (REP 383). While CG Power has not subsequently exported to Australia, the Commission considers that CG Power's application for a review is indicative of a desire to maintain a presence in the Australian market.*[5]

Most notably the comment that the Commission sees it as "*indicative of a desire to maintain a presence in the Australian market*".[6] This is concerning because it suggests the Commission is of the mind that an exporter exercising its legal right to apply for a variable factors review should weigh against the discontinuation of measures. Clearly, evidently and emphatically, that is not the case.

Further, it is not the case that an actual or apparent *"desire to maintain a presence in the Australian market"* is a basis to secure the continuation of measures. The Australian market relies on competitive imported product, and having an *avenue* for dissemination of a product does not go to either the consideration of dumped prices or of material injury. After all, the purpose of such measures is to redress the injury found to have been suffered as a result of dumping in the original investigation; it is not to prevent exports from a particular country in totality for all time.

These measures were initially imposed on CGP on the basis of information other than CGP's information. CGP maintains its view that it was not dumping. Prior to that time, CGP had been present in the Australian market for 15 years, but the imposition of measures prevented CGP from entering into any new supply agreements in relation to the Australian market. Given CGP's historic investment in the Australian market, or course it made sense for them to try to continue to access the market. No adverse inference can be drawn from this.

Further to this, the power transformers exported to Australia that formed part of the subsequent variable factors review were exported between 12 July 2013 and 9 March 2014, pursuant to supply agreements entered into in the preceding years. The measures that this inquiry is considering continuing were imposed on 10 December 2014. Given that variable factors review related to exports that occurred over five years ago pursuant to historic supply agreements, that review has no relevance to the current inquiry.

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5 See Doc 002 – ADN 2019/20 at page 4.
6 See Doc 002 – ADN 2019/20 at page 4.

6 It is unlikely that dumping would resume were the measures removed

Above we have addressed the few ground put forward supporting the continuation of measures against CGP to date. When considered clearly, they do little to suggest the measures should be continued.

If the Commission has any additional information relevant to the continuation of measures against CGP, we request that it be placed on the public record with sufficient time for interested parties to make submissions in response prior to the publication of the SEF. CGP should be provided a proper opportunity to address information adverse to its interests prior to the Commission forming its preliminary review regarding the facts relevant to this inquiry.

Having said that, this submission outlines the circumstances relating to CGP specifically which actively show that a recurrence of dumping is unlikely. On this basis we submit that there is no basis to continue the measures against CGP, because it is not likely that dumping would recur if the measures expire.

B The injury rationale is flawed

1 Incorrect to assume "dumping" at the time a company enters into a tender

Section 269ZHF(2) of the *Customs Act 1901* (Cth) ("the Act") is very clear – the Commissioner cannot recommend the continuation of the measures to the Minister unless the Commissioner is 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.*

Such a recommendation is to be included in a report to the Minister outlining the material findings of fact upon which the recommendation is based and the particulars of the evidence that support those findings.[7] Hence, the requisite satisfaction needs to be fact-based and supported by evidence. It flows from this that before making any recommendation for the continuation of measures under section 269ZHF(2) of the Act, the Commissioner must understand the dynamics of the Australian market and of competition between the Australian produced goods and those from the countries subject to measures.

Typically, anti-dumping investigations deal with the production and sale of largely homogenous products. Not so for power transformers. Power transformers are uniquely designed and exhibit long lead times between sales agreement and delivery of the final product. This means many of the assumptions that underpin a typical injury determination do not apply to the power transformers market.

Unfortunately the injury rationale in the initiation notice and – it must be said – in the original investigation do not address the nuances of the power transformers market in a sober or considered manner. For example, with regard to the impact of any hypothetical dumping on the Australian industry, the Commission has stated as follows:

> *In this environment, any pricing advantage achieved as a result of dumping will have a direct impact on the Australian industry's ability to win tenders for the supply of power transformers.*[8]

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7 Section 269ZHF(5) of the Act.
8 See Doc 002 – ADN 2019/20 at page 5.

This particular line of logic does not appear in the application itself: both its provenance and its relationship to the factual circumstances of Australia's power transformer market are questionable. Significantly, CGP takes issue with the concept that there is a *"pricing advantage achieved as a result of dumping".*

Because of the bespoke nature of power transformers a dumping determination will be based on a comparison of the export price with a constructed normal value. The constructed normal value is essentially a build-up of the cost to make of the exported product, the domestic SG&A and an amount representing the profit derived from sales of like goods in the country of export. This will be adjusted in accordance with Section 269TAC(9) of the Act to ensure proper comparability with the export price.

However, there is a disconnect between the setting of the price and the incurrence of costs. As a high-level illustration of these, we note as follows:

- power transformers are sold via a tender process.
- commonly the price in a tender proposal will be based upon detailed costing of the design plus a profit margin.
- the price is fixed as at the time a tender is awarded and the supply agreement entered into by the parties.
- between the awarding of a contract and the delivery of the final product, costs may fluctuate. The exact costs will not be crystallised until they are incurred, which may be months or years after the contract is awarded.
- accordingly, the final cost of production will not be known for months or years after the tender is entered into and the price is set.

It is the fluctuation in costs between the time the price is set and the ultimate incurrence of those costs that will drive whether a power transformer is dumped or not. There could even be a scenario where two power transformers of the same design are sold under the same contract at different times and so each has different costs. In such a scenario, one may be found to be dumped, and the other not. Yet neither would have any "price advantage".

More generally, the implications of winning a tender at a price that is eventually determined to be dumped are not "advantageous" for the manufacturer. The best case scenario for a manufacturer in these circumstances is that they have sold the power transformer to Australia at a price that is less profitable then they could have achieved on some measure in their home market. At worst, it means they incurred significant costs that have resulted in an unprofitable sale. In this hypothetical, the manufacturer incurs many costs, but gains no immediate or long-term advantage.

In summary, "dumping" does not confer a price advantage. To consider otherwise is to ignore the realities of this specific market and the realities of the dumping calculation methodology. We urge the Commission to explore and carefully analyse any assumptions it adopts when considering what recommendation to make at the conclusion of this inquiry. Any recommendation to extend the measures beyond their natural five year life span needs to be justified, fact based and supported by evidence. Heuristics, dogma or conjecture cannot be a basis to continue the measures

2 Price is not the determinative factor for winning a tender

Further to the above point, the focus on prices ignores other findings made by the Commission. In particular it is clear that price is not the sole determinant of the successful tender, as noted by the Commission with consideration of Investigation 219:

> *Purchasers evaluate and rank tenders received and the evaluation process varies from purchaser to purchaser. Considerations relevant to the tender evaluation process include the ability to meet specifications, commercial requirements, price, and other qualitative and quantitative criteria.*[9]

So price is but one factor considered in a tender. A minor "pricing advantage", irrespective of its source, will not necessarily translate to successful tender because there are a multitude of factors that are relevant to the tender evaluation.

The focus on price is also ill-calibrated to forming any opinion regarding the outcome of tenders, because, again, power transformers are non-homogenous products, custom designed and engineered to suit the requirements of each customer. Each tender participant will submit a unique design to the tender process, which will obviously have unique costs associated with it. As stated by the Commission:

> *Suppliers develop and submit tenders that meet the specifications in the request for tender. There are many design options available that satisfy each specification and suppliers may submit a number of options. Overseas suppliers may deal directly with purchasers but some have an Australian office that handles contract negotiations.*[10] (underlining supplied)

If the applicant is beaten on price on any particular tender, it may simply be because one design is cheaper than other, based on features of that design. In these circumstances no pricing advantage – based on "dumping" – would exist, as the designs and therefore final products are not identical and suitable for comparison. Further, any advantage, assumed or otherwise, would have limited impact on the tender, because price is only one of many factors considered in awarding a tender.

3 What "damage" arises from losing a tender?

The production of power transformers is a long term commitment. Because of that, costs are staggered through the production cycle. In the circumstances where an entity is not successful in a tender they have yet to incur the majority of the costs associated with the production of any power transformer.

There is little oversight to how WTC sets its costs, but it would be expected WTC would not have purchased the raw materials required to produce the product, and would not yet have incurred additional production costs. So, there is only a limited direct cost arising from a failure of a tender bid. Accordingly, in the event that WTC does not win a tender – and it cannot be expected to win every tender – its damage is only the costs associated with bidding for the tender.

It is difficult to see what other actual forms of injury may arise in these circumstances. Outright, there would not seem to be any direct "*price pressure*". The price of one unique power transformer is going to be completely different from the price of another unique power transformer so it cannot be the case that WTC "reacts" to a trend of lower prices because every power transformer will have different prices. Even in the same tender, the range of designs will have different price points, so the concept of price pressure is really not applicable in these circumstances. Further, WTC itself has noted that it does not have access to the final winning price.[11] In these circumstances – where a tender bid is unknown to other parities and relates to a unique design also unknown to other parties – we fail to see any logical

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9 See Doc 002 – ADN 2019/20 at page 5.
10 See Doc 002 – ADN 2019/20 at page 5.
11 See Doc 021 – letter from WTC to the Commission, on the electronic public record for Investigation 507 at para 3.23.

basis for asserting that there is material or significant price pressure caused by competing bids or exports.

Added to which, as price is only one of many factors considered in a tender and as there is a lag between a tender offer and any dumping, we further submit that any injury that arises from the loss of a tender cannot be directly linked to dumping, or any hypothetical future dumping.

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It is clear that the application is focused on imports from countries that are not subject to measures. The inclusion and information of CGP is added as an afterthought. As a result, the application does not present evidence to justify continuation of measures against CGP. Without this information in the application there is no basis for the Commission to consider the continuation of measures is warranted.

The evidence that CGP has provided establishes that, were the measures to be revoked, it is unlikely that dumping and material injury would recur or continue.

CGP submits that the Commission must make the recommendation that the discontinuation of measures would not lead, or be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Yours sincerely

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