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

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

Melbourne
Level 39, 385 Bourke Street
Melbourne
Victoria 3000

Australia

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

www.moulislegal.com

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18 September 2019

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

By email

Dear Director

PT CG Power Systems Indonesia
Continuation Inquiry 504 – Statement of Essential Facts comments

As you know we represent PT CG Power Systems Indonesia ("CGP") in this continuation inquiry.

We have re-read the Statement of Essential Facts ("SEF") in this inquiry a number of times. We remain baffled by it. The findings and statements that relate to CGP are selective at best and, at worst, outright wrong. We are concerned to find that little regard has been had to the information submitted by CGP throughout this process.

These issues are discussed further below.

A Inaccurate charaterisation of CGP's one export to Australia 2
B Incorrect consideration of maintenance of distribution links 3
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Ultimately, and despite cooperating fully with the Anti-Dumping Commission ("the Commission") prior to and during the inquiry, it seems as though CGP has been treated as an afterthought. To be candid, we do not care how this eventuated internally. We do however insist that the Final Report be better considered and formulated, the end result of which should be the discontinuation of the measures as against CGP.

Anti-dumping measures may only continue where the Commissioner is satisfied that the expiration of 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. The Commission's administrative precedent quite correctly treats this as an exporter-specific inquiry, consistent with the Minister's power to allow one or some exporters but not others. Viewed in that way, the consideration that must be undertaken is both a behavioural one with respect to the likely conduct and future interactions of each of the exporters concerned, and an analytical one with respect to the

likely future situation of the Australian industry *vis-a-vis* the exporter and exporters concerned, and the industry's likely future condition in a more general sense.

As this submission discusses, the findings proposed in the SEF do not pay due regard to CGP's reality, and therefore are divorced from that reality. When proper regard is had to the information before the Commission, we strongly and respectfully submit that the only correct decision can be to terminate the measures as they relate to CGP.

A Inaccurate charaterisation of CGP's one export to Australia

CGP has been open about the fact it exported a power transformer to Australian in 2019. This is referenced throughout the SEF, but in a manner that is divorced from fact. The SEF characterises CGP's sale to Australia as:

> *CG Power indicated in its REQ that, whilst no exports were made during the inquiry period, a contract was won to manufacture and install a power transformer in Australia in 2019.*

This is materially wrong. The contract under which this sale was made – being the legally binding agreement that sets out the terms and conditions of the sale of the power transformer – began operation [CONFIDENTIAL TEXT DELETED – prior to inquiry period]. However, it arose from a request for quotation [CONFIDENTIAL TEXT DELETED – prior to inquiry period], and CGP made its best and final offer [CONFIDENTIAL TEXT DELETED – prior to inquiry period]. The contract had a term of [CONFIDENTIAL TEXT DELETED – number] years which has now ended. Irrespective of the imposition of the measures, CGP is legally bound to live up to its contractual obligations.

The contract was not "won" in the inquiry period as the SEF suggests. This was evidently the case on the basis of information that was before the Commission at the time the SEF was made, including the EQ response submitted to the Commission on 4 April 2019. At no point has the Commission sought additional information from CGP regarding this sale, or advised us that it has reason to adopt a different view from that presented by CGP.[1]

Further, the SEF considers that *"this re-established relationship supports a finding that dumping from Indonesia is likely to recur were the measures to expire"*.[2] Again, this contract is a legacy contract. It is an ongoing legal relationship of definite term based on negotiations that occurred prior to the imposition of the measures to which this inquiry relates. The term of that contract has now ended. Characterising this as the *"re-establishment"* of a relationship is wrong.

We note, additionally, that CGP has not entered into any new contracts relating to the Australian market since then. We wish to pause and reiterate that point – *CGP has not engaged in the commercial activity of contracting with any Australian customers for the sale of power transformers at any time since the measures were imposed*. This is evidence of the fact that CGP has not been willing or prepared to compete against other power transformer manufacturers in the Australian market at dumped prices. Why do we say this? We say this because CGP could only do that one would think, by *dumping*, because it is only by way of dumping that it could overcome the significant impediment placed on its exports by way of the dumping margin that was imposed against it. This behaviour is therefore evidence of a corporate desire *not* to engage in dumping. Indeed, one wonders what period of "penance" the Commission feels is necessary before "bad behaviour" is expunged from the corporate mind, and more importantly what evidence could ever be provided to satisfy the Commission's errant thinking. The evidence, quite simply, is that CGP is aware of how the anti-dumping system works, and

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1 Noting that that presented by CGP is factually accurate, and so any counterview would not be.

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has remained inactive in the Australian market as an indication that it wants and intends to take greater care in considering its pricing and its interactions with the Australian industry in the future, once the measures are discontinued, and if it does have any abilities or prospects in that regard.

CGP is not "lying in wait" to re-initiate dumping and materially injure the Australian industry, and there is no evidence to suggest that is the case. The opposite conclusion could only be based on notions of prejudice against exporters like CGP and unjustified tariff-like protection for the Australian industry.

The SEF fails to reflect these facts. Instead, it considers the one sale, contracted before the measures were imposed, evidences the *"maintenance of distribution links"*. We will discuss this in further detail below. However we reiterate that the actual tender and negotiation occurred *prior to the imposition of the measures to which this inquiry relates.* Given this context, how can it be relevant to drawing a view regarding what is likely to happen if the measures were revoked?

Finally, we do not understand the basis for the Commission's position that the export is indicative of future dumping. There is simply no evidence of this. The SEF has not found that that power transformer is or was dumped, merely that it was exported. We fail to see how it can support any inference that dumping will recur in the future.

B Incorrect consideration of maintenance of distribution links

In relation to the *"maintenance of distribution links"* the SEF also explains as follows:

> *The Commission accepts that the desire to maintain a presence in the market should not be the sole basis for continuation of measures, however, it points to the intention of the exporter to continue to export to Australia. Further, INV 219 as well as the more recent review REV 383 found that CG Power was dumping (Table 5 refers). These factors together form part of the Commission's consideration of 'any other matters' in formulating this SEF in accordance with 269ZHE(2) and per the manual.*[3]

We have addressed this issue in CGP's submission of 23 July 2019. The SEF fails to deal with that submission in anything more than a token manner. Please consider all of CGP's submission in detail before making any conclusions regarding the recommendation to make at the close of the inquiry.

We would further note that an initial finding of dumping is irrelevant to the continuation of measures. There would be no measures if there was no original dumping finding. Equally, if an original dumping finding was relevant to a decision to continue measures that would render the entire continuation inquiry process a waste of time. The Commission's approach in this regard is also uneven, and therefore discriminatory. Exporters from Thailand were originally found to be dumping, yet that factor has not weighed against the discontinuation of the measures in respect of those exporters.

Again, to reiterate our submission of 23 July 2019, the exports subject to the variable factors review occurred *prior to the imposition of measures.* This is information that is already before the Commission, but for the sake of clarity, the exact dates of each of those power transformers was:[4]

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4 This is taken directly from Attachment A.1 Schedule A. All information was verified by the Commission in February 2017.

Project	Contract Date	Invoice Date	Delivery Date
[CONFIDENTIAL TEXT DELETED – project names]	[CONFIDENTIAL TEXT DELETED – dates prior to 10 December 2014]	[CONFIDENTIAL TEXT DELETED – dates prior to 10 December 2014]	[CONFIDENTIAL TEXT DELETED – dates prior to 10 December 2014]

The measures subject to this continuation inquiry were imposed on 10 December 2014. Each one of the above events occurred *prior to the imposition of those measures*. The SEF fails to explain why prices for exports that occurred prior to the imposition of measures, on the basis of contracts won prior to the imposition of measures, are relevant to the question of the continuation of the measures after December 2019. Frankly, we do not see the relevance and would appreciate it if the Commission could explain it to us so we may make further submissions prior to the final recommendations being made to the Minister.

[CONFIDENTIAL TEXT DELETED – information regarding CGP's Australian operation]

Not that further evidence for this should be necessary, but by way of illustration, we attach data from the cost centre for the [CONFIDENTIAL TEXT DELETED – cost centre] over the inquiry period. On an annualised basis, this is [CONFIDENTIAL TEXT DELETED – cost centre].[5] This can be contrasted with the situation found in the variable factors review, where the cost was [CONFIDENTIAL TEXT DELETED – cost centre].[6] The obvious reduction quantifies the diminution of CGP's links to the Australian market. It further goes to show that if the measures were revoked, CGP does not have the resources available in Australia to suddenly "turn on the tap" and start re-supplying. Indeed with no extant contracts, and given the long term nature of power transformer procurement, the idea that hordes of Indonesian power transformers are waiting to "breach the barricades" is a fantasy.[7]

C Wrong assumptions regarding capacity utilisation

With regard to capacity utilisation, the SEF states the following:

> *The Commission notes that while CG Power has increased production over the inquiry period, excess remains. CG Power further submitted that it targeted a capacity utilisation rate below full capacity to account for events such as unplanned staff absence and maintenance and repairs. The Commission notes that this submission states that CG Power plans its production schedule due to the long lead times in production of power transformers. It is the Commission's view that this forward planning allows CG Power to increase capacity to account for additional upcoming production for exports as well as for unplanned events. The same is true for domestic government initiatives that is expected to increase domestic demand to 2024. Despite CG Power's claims that it is unlikely to seek a "less profitable" market overseas, the REQ submitted by CG Power evidences that CG Power is expected to export power transformers to Australia in 2019, supporting a finding that Indonesia is likely to resume exports to the Australian market. As*

5 Please refer to Attachment 1.

6 As per the Commission's document entitled "*CG Power Australia Operations 2013-14 Calc*", provided to us via email on 7 March 2017.

7 In any regard, as noted, since the measures were imposed CGP has started to supply third countries, so even if the measures were to be revoked, we still fail to understand why the Commission consider it likely CGP would dump on the Australian market.

> *detailed in section 7.5.1 both INV 219 and REV 383 found CG Power to be dumping.*[8] [footnotes omitted]

To reiterate what we have said above, the export to Australia of a single power transformer in 2019 was made pursuant to a legacy contract. The SEF again fails to reflect this in any form but, rather, choses an interpretation of that export that is adverse to CGP. For absolute clarity, CGP does not have any additional contracts with the Australian market, and has not won any contracts in the Australian market since the measures were imposed. Given this context, we do not see how this evinces any likelihood that injurious dumping would recommence.

More significantly, we do not understand where the Commission's view regarding CGP's capacity utilisation arose from. Again, this view is contrary to the information submitted by CGP. No information is pointed to by the Commission in order to found this contrary belief. One might think that it has no basis at all. Irrespective, at no point has the Commission directly challenged CGP regarding its stated position. If it had, we would have pointed out that there were four reasons why CGP's capacity was not at 100% during 2018. These were:

[CONFIDENTIAL TEXT DELETED – reasons for not operating at full capacity]

Please refer to Attachment 2, which illustrates this breakdown. None of these things can be planned for in discrete manufacturing. If CGP was to take on more contracts, it would so at the risk of missing milestones. This would not be best practice and, depending on the terms of the contract, may open CGP up to financial sanctions. Again, CGP is functionally at full capacity and will continue to be so in the medium term given the high demand that is expected in the domestic market well into the 2020s, *evidence of which has been provided*.

The Commission's view that CGP can increase capacity further is noted. CGP would be interested if the Commission can share its thoughts as to how this can be achieved, so CGP can provide commentary as to whether that is "likely".

D Irrelevant dumping margin

The re-adoption of the 28.3% dumping margin is a matter of grave concern to CGP. CGP has participated via lodgement of a complete EQ. This information is relevant and accurate. CGP would have gladly hosted the Commission for the purposes of verification of its information, had the Commission requested it. CGP has been, and continues to be, fully cooperative with the inquiry, but is treated as though it has not been.

Further, the margin used is irrelevant to the inquiry. As we have already noted, every single event relevant to the exports used to determine the final 28.3% margin occurred prior to the imposition of the measures on 10 December 2014. We would submit that adopting this margin in whole, without any modification for intervening facts and circumstances, is both unprincipled and prejudicial to CGP. It is optically severe. It creates a bias which is then used by the SEF to underpin the recommendation to continue the measures against CGP. There is and can be no justification for this whatsoever.

The task of a continuation inquiry is to look forward, to assess what may occur in the future if the measures are revoked. Relying on such out-of-date information is anathema to this task. The Commission may as well merely have concerned itself with the original findings in December 2014 and dispensed with the requirement to undertake a continuation inquiry at all. The 28.3% margin tells us

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nothing about CGP's current or future practices and so is irrelevant to whether dumping will continue or recur.

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It gives us no pleasure to write a submission such as this, but the content of the SEF calls for it.

We understand the political and societal pressures impacting on the Commission. We understand that the Commission is busy.

However CGP has done nothing "wrong". It has participated fully, and responded to all questions the Commission has raised. It could have offered further advice or information with respect to any additional requests made by the Commission.

The proposed findings in the SEF fail to reflect the facts concerning CGP's exports to Australia, CGP's domestic situation, CGP's behaviours and CGP's abilities. The findings, therefore, have little relationship to reality. Which is another way of saying that they are unevidenced.

Once again, based on the information before the Commission, the correct and preferable decision is that the measures be allowed to expire insofar as they relate to CGP. We request that the Commission recommend to the Minister accordingly.

Yours sincerely

Alistair Bridges
Senior Associate
+61 2 6163 1000