

Indonesia's Oral Statement

Inquiry into the Continuation of Anti Dumping Measures Applying to POWER TRANSFORMERS

Exported to Australia from The Republic of Indonesia, Taiwan, and The Kingdom of Thailand

I. INTRODUCTION

1. Good (morning/afternoon) members of the Australian Anti-Dumping Commission, Mr. Reuben McGovern, Mr. Tim King, Ms. Sharini McEwen, fellows from the Indonesian company CG Power and their representatives, Moulis Legal. My name is *Agung Wicaksono Sochirin, Trade Attaché of the Embassy of the Republic of Indonesia* who is speaking here on behalf of the Government of Indonesia, based on mandate given to me by the Director of Trade Defense, DG Foreign Trade, Ministry of Trade Republic of Indonesia.
2. I am requesting your attention to Indonesia's serious concern regarding the sunset review investigation of anti-dumping duty concerning imports of *Power Transformer* HS Code 8504.21.00, 8504.22.00, 8504.23.00, 8504.31.00, 8504.33.00, 8504.34.00 originating in or exported from Indonesia, Taiwan, and Thailand by Australian Anti-Dumping Commission ("AADC") initiated on 11 February, 2019.
3. The GOI has coordinated with the Indonesian exporters affected in the publication of AADC's Non-Confidential Version of Statement of Essential Facts ("SEF"). The GOI has also stated its concern through our submission letter to AADC on 4 April 2019 as recorded in SEF. Having reviewed the SEF, we are of the view that the Authority failed to examine the relevant industry indicators in fair and objective manner which can justify the continuation of the current anti-dumping duty, for the following reasons:

II. CAUSAL LINK: NO INCREASE IN IMPORTS FROM INDONESIA

4. The GOI would like to stress that AADC should consider the fact that the volume of imports from Indonesia did not increase, but rather decreased both in absolute and relative terms whereas the imports from the other alleged dumping countries increased during the investigation period as it has been also mentioned in the SEF.¹ Pursuant to Articles 3.1 and 3.2 of the WTO Anti-dumping Agreement, the investigating authority could make an injury determination only if "*there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member*". In Indonesian's case, there was no increase in Power transformers imports, not to speak of significance.
5. AADC is also aware of this situation as in several parts of the SEF, AADC mentioned the situation as referenced below:

¹ See figure 16 page 47 on SEF

section 2.6.2 SEF Other exporters subject to measures (page 12)

“The Commission received an REQ from PT CG Power Systems Indonesia (CG Power). However, as CG Power did not export the goods to Australia during the inquiry period the Commission did not undertake a verification visit.”

section 6.4.1.1 SEF Export Price (page 38)

“As CG Power did not export power transformers to Australia during inquiry period, sufficient information is not available to determine the export price of the goods”

III. THE AUSTRALIAN INDUSTRY AND ITS MARKET SIZE FOR POWER TRANSFORMERS

6. From the SEF, there is no clear explanation of the real structure of Australian’s power transformers industry. AADC explained that there are three main industry members of power transformers products in Australia which are: Wilson Transformer Company Pty Ltd (WTC/Petitioner), Tyree Transformer Co Pty Ltd (Tyree) and Ampcontrol Pty Ltd (Ampcontrol). Only Ampcontrol filled the questionnaire whilst there is no response from Tyree.
7. AADC in its report has done verification to WTC. AADC has made a finding that there is at least one substantial process of manufacture performed in Australia, which could be considered as there is lack of confidence within AADC itself that there is actually a major industry of power transformers in Australia that actually at stake in this case.
8. Furthermore, there is no clear evidence in the SEF that companies other than the Petitioner are in support to the continuation of imposition of anti-dumping measures to imported products. In section 4.6 SEF, it is mentioned that there is an increasing demand for the power transformers products. , however the Petitioner in this case failed to compete in fulfilling the Australian’s demand due to lost tenders (5.3.1 SEF).
9. Although the Petitioner in this case failed to compete in fulfilling the complete Australia’s demand due to lost tenders (5.3.1 SEF), it certainly did not lose tenders to the Indonesian exporter CG Power which has not been active in the market, and the Petitioner still controlled more than 50% of the Australian market (Figure 3, Page 22 SEF). The size of the Australian transformers market still needs some supply from other sources, including imports, to ensure national energy requirements are met and economic benefits are delivered to the country.

IV. INJURY AND THREAT OF INJURY TO AUSTRALIAN INDUSTRY

10. Any claim of injury made by the Petitioners in the NCC can have nothing to do with imports of power transformers from Indonesia. Furthermore all the data published in the SEF are shown not in index or actual number, but in graphical form as a whole. This can lead to bias in understanding the findings of the authorities because the information is not transparent

11. The GOI would like to refer on to the implementation of *Article 6.5.1 Anti-Dumping Agreement (ADA)*,² *WTO Panel in The Appellate Body in EC – Fasteners (China)*,³ it is clear that there is no causal link and volume effect caused by imports of power transformers from Indonesia against the domestic industry. Therefore, any claim of injury by the Petitioners is definitely a self-inflicted one and has nothing to do with imports. Also, it is important to note that as required by the last sentence of Article 3.2 ADA, that the provision does not provide a decisive guidance which means that AADC is also required to analyse other relevant factors which may affect the injury. Thus, AADC’s evidence of causal link analysis failed to meet the requirements of Article 3.2 and 3.5 Agreement.

V. INDONESIA-AUSTRALIA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

12. In view of the above arguments, the GOI kindly request the AADC to consider the spirit of the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA CEPA) and the mutually beneficial business relationship between Indonesia – Australia. The GOI trusts that the above views will be taken into consideration and respectfully requests the AADC to **terminate anti-dumping duty of Power Transformers originating in or exported from Indonesia.**

To conclude our statement, we would like to thank to the AADC for an extension of time for the GOI to lodge a submission in response to Statement of Essential Facts No. 504. Indonesia remains its commitment to fully engage constructively/ cooperatively with the AADC during the proceeding of investigation. Thank you for your kind attention and cooperation.

On behalf of the Government of Indonesia

Pradnyawati

Director of Trade Defense

Directorate General of Foreign Trade

Ministry of Trade Republic of Indonesia

² Article 6.5.1 Agreement provides that:

“The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. **These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.** In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

³ “Whenever information is treated as confidential, transparency and due process concerns will necessarily arise because such treatment entails the withholding of information from other parties to an investigation. Due process requires **that interested parties have a right to see the evidence submitted or gathered in an investigation, and have an adequate opportunity for the defence of their interests.** As the Appellate Body has stated, ‘that opportunity must be meaningful in terms of a party’s ability to defend itself’.