



Australian Government
Department of Industry, Science,
Energy and Resources

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

Anti-Dumping Commission Preliminary Report

Reinvestigation of a Certain Finding in Report No. 504

**Power Transformers exported to Australia from
the Republic of Indonesia
by PT CG Power Systems Indonesia**

9 June 2020

CONTENTS

CONTENTS..... 2

ABBREVIATIONS..... 3

1 SUMMARY 4

1.1 INTRODUCTION.....4

1.2 REVIEWABLE DECISION4

1.3 REVIEW OF THE MINISTER’S DECISION5

1.4 APPROACH TO THE REINVESTIGATION.....5

1.5 PRELIMINARY FINDING5

1.6 NEXT STEPS.....5

2 REINVESTIGATION OF CERTAIN FINDINGS..... 7

2.1 REVIEWABLE DECISION AND REINVESTIGATION REQUEST7

2.2 RELEVANT FINDINGS IN REP 5047

2.3 SUBMISSIONS.....8

2.4 REINVESTIGATION OF FINDINGS.....10

2.5 CONCLUSION14

3 CONCLUSION..... 15

3.1 REINVESTIGATION FINDING15

4 APPENDICES AND ATTACHMENTS..... 16

PUBLIC RECORD

ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADRP	Anti-Dumping Review Panel
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CG Power	PT CG Power Systems Indonesia
CTMS	cost to make and sell
GOI	Government of Indonesia
the goods	power transformers
Indonesia	the Republic of Indonesia
inquiry period	the period from 1 January 2016 to 31 December 2018
the Manual	<i>Dumping and Subsidy Manual</i>
the Minister	the Minister for Industry, Science and Technology
REP 219	<i>Anti-Dumping Commission Report No. 219</i>
REP 383	<i>Anti-Dumping Commission Report No. 383</i>
REP 504	<i>Anti-Dumping Commission Report No. 504</i>
Thailand	the Kingdom of Thailand
WTC	Wilson Transformer Company Pty Ltd

1 SUMMARY

1.1 Introduction

This report sets out the preliminary findings of the Anti-Dumping Commission (the Commission) in respect of its reinvestigation of certain findings arising from *Anti-Dumping Commission Report No. 504* (REP 504) and the decision of the Minister for Industry, Science and Technology (the Minister) to secure the anti-dumping measures applying to power transformers exported to Australia from the Republic of Indonesia (Indonesia) by PT CG Power Systems Indonesia (CG Power).

Interested parties are invited to make submissions in response to this preliminary report. Any submissions received will inform the preparation of the final reinvestigation report that the Commissioner of the Anti-Dumping Commission (the Commissioner) will provide to the Anti-Dumping Review Panel (ADRP).

1.2 Reviewable decision

On 11 February 2019, the Commissioner initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of power transformers (the goods) exported to Australia from Indonesia, Taiwan and the Kingdom of Thailand (Thailand) was justified.

Following the recommendations of the Commissioner in REP 504, on 11 November 2019 the Minister¹ declared that:

- pursuant to section 269ZHG(1)(b) of the *Customs Act 1901* (the Act)², she has decided to secure the continuation of the anti-dumping measures relating to power transformers exported to Australia from Indonesia and Taiwan with effect from 11 December 2019; and
- pursuant to section 269ZHG(1)(a), she has decided not to secure the continuation of the anti-dumping measures relating to power transformers exported from Thailand with effect from 11 December 2019.

Public notice of this decision was published on 6 November 2019.³

¹ For the purposes of the reviewable decision, the Minister is the Minister for Industry, Science and Technology.

² References to any section in this report are to provisions of the *Customs Act 1901*, unless specifically stated otherwise.

³ Anti-Dumping Notice No. [2019/127](#).

1.3 Review of the Minister's Decision

The ADRP accepted applications for a review of the Minister's decision from Fortune Electric Co., Ltd and CG Power. The ADRP initiated its review of the decision by public notice on 16 December 2019.⁴

On 31 January 2020, the ADRP requested that the Commissioner undertake a reinvestigation under section 269ZZL relating to the finding that it is likely that future exports of power transformers by CG Power from Indonesia will be at dumped prices.⁵ The ADRP requested that the Commissioner report the result of the reinvestigation by 31 March 2020.

1.4 Approach to the reinvestigation

The reinvestigation has been conducted in accordance with section 269ZZL(2). For the purpose of conducting the reinvestigation, the Commission has reviewed:

- the grounds accepted for review (as published by the ADRP under section 269ZZI);
- the ADRP reasons for requesting the reinvestigation; and
- CG Power's application to the ADRP for review of the Minister's decision.

The Commission invited submissions from interested parties⁶, and also sought specific additional information from certain parties.⁷

The Commissioner sought, and was granted, two extensions of time (being 65 days and 35 days, respectively) to present the ADRP with the reinvestigation report. The reinvestigation report is due to be provided to the ADRP by **9 July 2020**.⁸

1.5 Preliminary finding

The Commissioner has formed a preliminary view that the evidence does not support a conclusion that the expiration of measures, as they apply to CG Power, would lead (or be likely to lead) to a recurrence of the dumping that the anti-dumping measure is intended to prevent.

1.6 Next steps

Interested parties are invited to make submissions in response to the preliminary reinvestigation findings as set out in this report.

⁴ ADRP [notice under section 269ZZI](#) refers.

⁵ ADRP [reinvestigation request](#) refers.

⁶ EPR 504, document no. [27](#) refers.

⁷ EPR 504, document nos. [30](#) and [31](#) refer.

⁸ ADRP [first](#) and [second](#) approvals for extensions of time refer.

PUBLIC RECORD

Submissions should be lodged no later than **22 June 2020**. The Commission's preference is to receive submissions by email to investigations1@adcommission.gov.au. Submissions may also be addressed to:

The Director, Investigations 1
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2600

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests; or
- satisfy the Commissioner that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY". Interested parties must lodge a non-confidential version of their submission, clearly marked "PUBLIC RECORD".

2 REINVESTIGATION OF CERTAIN FINDINGS

2.1 Reviewable decision and reinvestigation request

As noted above, the reinvestigation request relates to certain findings in REP 504 that the Minister relied on to make her decision with respect to the continuation of the anti-dumping measures applying to power transformers exported from Indonesia.⁹

CG Power's application to the ADRP for review submitted that the evidence in REP 504 did not establish that dumping and/or material injury was likely to recur.

The ADRP has requested that the Commissioner reinvestigate the finding in REP 504 that it is likely that future exports of power transformers by CG Power from Indonesia will be at dumped prices.¹⁰

2.2 Relevant findings in REP 504

For the purpose of assessing whether measures should continue for all exporters from Indonesia and Taiwan, the Commission examined the period 1 January 2016 to 31 December 2018 (the inquiry period).

During the inquiry period, CG Power did not export any power transformers to Australia from Indonesia. The Commissioner found that there was therefore an absence of information from the inquiry period that would be suitable for ascertaining variable factors relevant to CG Power. As a result, the Commissioner concluded that the evidence relied upon and variable factors established in the original investigation (*Anti-Dumping Commission Report No. 219* (REP 219) refers) and the last review of measures (*Anti-Dumping Commission Report No. 383* (REP 383) refers) remained relevant information on which to base recommendations in relation to CG Power.

The Commissioner found that all exports of power transformers by CG Power during the period from 2011 to 2014, and that were examined in REP 219 and REP 383, were at dumped prices. This occurred during periods of consistent profitability at a total company level for CG Power.

The Commissioner also found that the imposition of the measures had affected CG Power's volume of exports from Indonesia. With respect to CG Power, it had tendered for the supply of power transformers to Australia in 2013, signed a contract to do so in 2015, but it only supplied a single power transformer under the contract. This power transformer was delivered after the inquiry period. The Commissioner also found that CG Power maintained an Australian sales office, continues to bid on tenders, and has the ability to forward plan its capacity management given the long lead times for the manufacture of power transformers.

⁹ Anti-Dumping Notice No. [2019/127](#) refers.

¹⁰ ADRP [reinvestigation request](#) refers.

PUBLIC RECORD

In submissions to REP 504, CG Power indicated that it would like to maintain the option to export to Australia, if it were profitable to do so. CG Power also indicated that it is highly profitable within its domestic and third country markets. CG Power stated that there would be no reason for it to make sales to Australia if they would not be profitable, and, consequently, that there would be no likelihood that future exports would be dumped.

In the absence of export sales to Australia during the inquiry period, the Commission therefore analysed the profitability of CG Power's sales to New Zealand during the inquiry period. The Commission also analysed the forecast profitability for the single export due to be delivered to Australia in 2019. In both instances, the Commission was not satisfied that the claimed profitability had accurately accounted for the selling, general and administrative expenses associated with those sales. The Commission also found that costs were often higher than forecast. For these reasons, the Commission was satisfied that the profitability of the export sales to New Zealand during the inquiry period and the forecast profitability for the export sale to Australia in 2019 were lower than those claimed by CG Power. The Commission considered this to be an indicator that the power transformer that was exported after the inquiry period was likely to have been dumped.

The Commissioner found that the evidence set out above supported a conclusion that future exports of power transformers by CG Power would likely be at dumped prices, and therefore concluded that the expiration of the anti-dumping measures would be likely to lead to a recurrence of the dumping that the measures are intended to prevent.

2.3 Submissions

For the purposes of the reinvestigation request, the Commission has had regard to submissions from the following interested parties:

- Government of Indonesia;¹¹
- Wilson Transformer Company Pty Ltd;¹² and
- CG Power.¹³

2.3.1 Government of Indonesia

Amongst other matters, the Government of Indonesia (GOI) submitted that any determination about the 'likelihood' of CG Power dumping and the continuation, or recurrence, of injury must be based on evidence and an objective examination of such evidence.¹⁴

¹¹ EPR 504, document no. [28](#) refers.

¹² EPR 504, document no. [29](#) refers.

¹³ EPR 504, document no. [32](#) refers.

¹⁴ EPR 504, document no. [28](#) refers.

2.3.2 Wilson Transformer Company Pty Ltd

Wilson Transformer Company Pty Ltd (WTC) submitted that a continuation inquiry requires a broad ambit of consideration for the decision-maker and that the meaning of the phrase 'would lead or would be likely to lead' and the required threshold of probability for any finding arising from that test, as set out in section 269ZHF(2), need not be determined according to the civil standard.¹⁵ In other words, WTC proposes that the relevant threshold of satisfaction need not be 50 per cent or greater.¹⁶ According to the WTC submission, provided there is a factual basis on which to form the opinion, a lower threshold of probability may be applied, such that the risk of the recurrence of the conduct need only be 'real' or 'not remote'.¹⁷

2.3.3 CG Power

In its application to the ADRP, CG Power sets out its views on the need to rely on positive evidence and the meaning of 'likely' within the context of a continuation inquiry.¹⁸ More recently, CG Power has disputed WTC's interpretation of the meaning of the phrase 'would lead or would be likely to lead' and the required threshold of probability for any finding arising from that test, as set out in section 269ZHF(2).¹⁹

CG Power claims that the view which has prevailed in the Federal Court is that 'likely' means 'more probably than not' in the context of anti-dumping matters.²⁰ CG Power claims that the Commission has consistently applied this interpretation, and, as noted in the *Dumping and Subsidy Manual* (the Manual):

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence²¹ where '*likely*' has been taken to mean 'probable'.²²

¹⁵ EPR 504, document no. [29](#) refers.

¹⁶ An explanation of the meaning of the words 'likely' and 'probable' is provided in *Tillmans Butcheries Pty Ltd v Australasian Meat Industry Employees' Union* [1979] FCA 85; (1979) 42 FLR 331 at [10] per Dean J.

¹⁷ *Australian Gas Light Company v Australian Competition & Consumer Commission (No. 3)* [2003] FCA 1525 at [347] per French J.

¹⁸ CG Power's [application to the ADRP](#) refers.

¹⁹ EPR 504, document no. [32](#) refers.

²⁰ Citing Rares J in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838 at paragraph 48, which was not contested in the subsequent Full Federal Court decision *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86 (paragraphs 90 and 92 refer).

²¹ *US Drums - WT/DS99/R* 1999 [footnote in original].

²² The Manual, page 168 refers. Although this text appears in the context of a revocation review, the terms are equally applicable to a continuation inquiry.

2.3.4 Commission’s assessment

The Commission considers that an assessment of the likelihood of the recurrence of dumping requires evidence. Having had regard to the submissions by WTC and CG Power on this point, the Commission remains of the view that, in considering whether it is ‘likely’ that dumping will continue or recur, the Commissioner must, therefore, have regard to whether it is probable, that the dumping will continue or recur. In order to make a positive finding, the Commissioner must attain a reasonable level of satisfaction, having regard for relevant facts and sources of information.

2.4 Reinvestigation of findings

The Commission, in assessing the likelihood of whether dumping will continue or recur, considers that a number of factors are relevant, as set out in the Manual.²³ The Commission’s view is that the relevance of each factor will vary depending on the nature of the goods being examined and the market into which the goods are being sold. No one factor can necessarily be determinative.

The following analysis therefore examines a range of factors which the Commission considers relevant to this inquiry.

2.4.1 Import volumes

Below is a summary of the dumping measures imposed on exports of power transformers by CG Power from Indonesia:

Case	Period	Dumping margin	Date implemented
Investigation (REP 219)	1 July 2010 to 30 June 2013	8.7%	10 December 2014
Review of measures (REP 383)	1 July 2013 to 30 June 2016	43.3%	31 May 2017
ADRP Review No. 2017/60	1 July 2013 to 30 June 2016	28.3%	26 October 2017*

*this rate applied retrospectively from 31 May 2017

Table 1: Summary of measures on CG Power exports

CG Power did not export the goods during the inquiry period.

CG Power’s exports of power transformers to Australia during the period examined in REP 383 were already subject to interim dumping duty which was payable using the *ad valorem* duty method at a rate of 8.7 per cent. In REP 383, the Commissioner found that those power transformers were actually dumped at larger margins, which resulted in the application of an increased duty rate on power transformers imported from CG Power from 31 May 2017.

²³ Pages 174-176 refer.

PUBLIC RECORD

Following the outcome of REP 383 (and prior to the decision in ADRP *Report No. 60*), CG Power informed all potential customers in Australia that it would not be able to continue with its already submitted bids where the terms are Delivered Duty Paid (DDP). Where the terms are Delivered Duty Unpaid (DDU), CG Power advised clients that the relevant rate of interim dumping duty had increased, and therefore the customer would need to consider this as an additional cost.²⁴

2.4.2 CG Power in the Australian market

Notwithstanding the anti-dumping measures, CG Power has indicated its intention to export to Australia if it is profitable to do so, maintains a sales / service office in Australia, and continues to bid on a number of tenders in the Australian market.

The Commission obtained information from Endeavour Energy Pty Ltd²⁵ and CG Power²⁶ regarding tender bids made by CG Power. The Commission also requested, and CG Power provided, evidence of the outcomes of its bids for tenders in the Australian market from 1 January 2016 (**Confidential Attachment 1** refers). These bids included one-off projects and longer term arrangements (e.g. bidding to be placed on a panel of potential suppliers). The information indicates that, since the imposition of measures, CG Power has not yet been successful in any tender bids.

REP 504 indicated that demand in Australia for power transformers associated with renewable energy projects was likely to grow, and noted WTC's claim that demand was likely to peak in the years 2017-2020 as a result of the Large-scale Renewable Energy Target. The Commission considers that CG Power is likely to continue bidding for projects in the Australian market.

2.4.3 The export from outside the inquiry period

REP 504 examined the circumstances of the transaction in which a single power transformer was exported by CG Power to Australia after the inquiry period. That analysis focused on the projected profitability of the transaction, how it compared to the profitability of CG Power's export sales to the New Zealand market, and how it compared to the profitability of CG Power's sales in the domestic market of Indonesia. As noted by the ADRP in its reinvestigation request, the Commission did not provide CG Power with an opportunity to comment on this profitability analysis (and the adverse inferences drawn from the analysis) prior to the publication of REP 504.

²⁴ Refer to note for file on EPR 504, document no. [30](#).

²⁵ Refer to note for file on EPR 504, document no. [31](#)

²⁶ Refer to note for file on EPR 504, document no. [30](#).

PUBLIC RECORD

The Commission has again examined this transaction for the purposes of the reinvestigation and sought additional information in connection with it. In particular, the Commission has sought to establish the actual costs incurred by CG Power to assess whether the transaction was actually profitable. The Commission sought any relevant contracts, the actual sales and costs data associated with the transaction, and screenshots from CG Power's accounting system to confirm the accuracy of the information provided.²⁷

The origin of the single transaction can be traced to a tender process in which CG Power submitted a bid in 2013. CG Power's bid was successful, in that it was appointed to a panel of suppliers, and the terms of supply were the subject of a contract that was signed in 2015.

The contract included pricing for different models of power transformer that could be the subject of a future purchase order (the raising of which would trigger the production and supply of a particular power transformer). The contract also included a methodology for adjusting the price payable at the time the purchase order was raised by reference to movements in raw material costs (e.g. copper, oil, steel) and exchange rates.

With respect to this single export transaction, CG Power's customer raised the purchase order in 2018 with delivery scheduled for 2019. The Australian customer used CG Power notwithstanding the consignment would be subject to interim dumping duty at the 28.3 per cent rate, payable by the customer. The Commission understands that the customer selected CG Power due to its ability to supply the power transformer within the timeframe requested.

For the purposes of this reinvestigation, the Commission obtained the actual selling, general and administrative expenses of CG Power for the relevant periods including the costs of maintaining the Australian office, which is relevant to the profitability of CG Power's exports to Australia. The Commission was able to calculate the actual profit achieved on the 2019 export of the power transformer to Australia. Relying on this additional information that was not available at the time of REP 504, the Commission has been able to verify that the sale of the exported power transformer was profitable. The adverse inferences formed by the Commission in REP 504 (based on the forecast SG&A costs) are therefore not supported by the relevant data.

In addition, the Commission examined the profitability of CG Power's sales of power transformers in the Indonesian domestic market. The Commission found that CG Power's domestic sales were profitable, and that the rate of profit achieved was comparable to the profit achieved on the 2019 export to Australia.

The Commission's analysis is at **Confidential Attachment 2**.

²⁷ Confidential Attachment 2 refers.

2.4.4 Capacity of CG Power

The Commission has examined CG Power's actual production capacity and capacity utilisation during the inquiry period, and has also considered future demand in Indonesia and its likely impact on CG Power's capacity utilisation.

CG Power has indicated that its present focus is on its domestic market. CG Power provided the Commission with a summary of power transformers it sold domestically as part of the GOI's *Electricity Infrastructure Development Plan* between financial years 2015/16 to 2018/19 and inclusive of the inquiry period. CG Power also provided evidence of an invitation from the GOI for CG Power to participate in an 'Open Book' procurement process in 2020 to supply power transformers. The supply of power transformers under this initiative is expected to continue until at least 2024.

REP 504 found that CG Power would be likely to operate at, or close to, full capacity until at least February 2020. However, the Commission also observes that, during the inquiry period, CG Power had sold more than 70 per cent of its power transformers to entities involved in the GOI's *Electricity Infrastructure Development Plan* initiative. The Commission also affirms the finding in REP 504 that CG Power is capable of forward planning its production capabilities to be able to supply the Australian market, if it wished to do so, but notes that the majority of CG Power's capacity is likely to continue to be devoted to supplying its domestic market.

2.4.5 Other matters

WTC submitted that CG Power's representations with respect to its likely future conduct lack credibility.²⁸ WTC submitted that the Commission's adverse assessment of CG Power's past conduct remained relevant, pointing to CG Power's non-cooperation in respect of the investigation (REP 219) and the degree of dumping found in the review of measures (REP 383).

The Commission notes that CG Power sought the review of measures in 2016, and has cooperated with the Commission in relation to cases since that time. As such, the Commission places greater weight on CG Power's recent conduct, compared with conduct in respect of REP 219. Past conduct, in and of itself, is not necessarily determinative, and to the extent that it has probative value to a continuation inquiry, evidence of non-cooperation would usually be assessed in respect of its contemporaneity (REP 219 was completed more than five years ago, and examined exports occurring between seven and ten years ago).

²⁸ EPR 504, document no. [29](#) refers.

2.5 Conclusion

Section 269ZHF(2) provides that the Commissioner must 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”. The Commissioner may determine the test positively or negatively. That is, the Commissioner may be satisfied (or not satisfied) based on a broad consideration of the context, facts and relevant evidence that supports the formation of the opinion.

As set out in REP 504, the Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP, which has noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner’s conclusions and recommendation must, nevertheless, be based on facts and supported by the Commissioner’s reasons.²⁹

The Commission is unable to establish whether the single consignment which was exported outside of the inquiry period was dumped. Its profitability, however, supports CG Power’s claim that it seeks to export profitably. The evidence also indicates that CG Power’s sales were focused on its domestic market during the inquiry period, and will likely remain a focus in response to future demand.

CG Power’s past behaviour, by itself, is not sufficient to support a conclusion that dumping is likely to recur. CG Power’s lack of cooperation in REP 219 is sufficiently remote from its present conduct to conclude that it is not relevant to the issue being decided in this reinvestigation. Whilst CG Power’s domestic market remains profitable and its production capacity utilisation remains at a high level, it appears unlikely that there are any commercial incentives for CG Power to commence exporting power transformers at dumped prices.

Consequently, the evidence does not support a conclusion that the expiration of measures, as they apply to CG Power, would lead (or be likely to lead) to a recurrence of the dumping that the anti-dumping measure is intended to prevent. As a result of this reinvestigation, the Commissioner may be reasonably satisfied that the expiration of the measures would not lead, or be likely to lead, to a continuation of, or a recurrence of dumping in respect of power transformers exported by CG Power.

²⁹ See section 269ZHD(3). Also at page 44 of REP 504; the original footnote refers to ADRP Report No. 44 (Clear Float Glass).

3 CONCLUSION

3.1 Reinvestigation finding

The Commission has conducted a reinvestigation of the reviewable decision in accordance with the direction made by the AD RP, as required by section 269ZZL(2). As a result of this reinvestigation, the Commission has found reasons that would result in a materially different decision from the reviewable decision.

In accordance with section 269ZZL(3)(b), as the Commissioner is of the view that a new finding can be made as a result of this reinvestigation, he makes the new finding as set out in chapter 2 of this report, that the evidence does not support a conclusion that the expiration of measures, as they apply to CG Power, would lead (or be likely to lead) to a recurrence of the dumping that the anti-dumping measure is intended to prevent. In accordance with section 269ZZL(3)(c), the evidence and other materials for which the new finding is based are contained within this report and its attachments.

This report sets out the reasons for the Commissioner's proposed decision in accordance with section 269ZZL(3)(d).

4 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Evidence obtained from CG Power
Confidential Attachment 2	Profitability analysis for 2019 export