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Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

Anti-Dumping Commission
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ANTI-DUMPING REVIEW PANEL – REVIEW NO. 2017/60
POWER TRANSFORMERS FROM INDONESIA

Dear Scott

I write with regard to the notice published under section 269ZZI of the *Customs Act 1901* (the Act)[1] on the Anti-Dumping Review Panel (ADRP) website on 27 July 2017. The notice advises of your intention to review the decisions (the Reviewable Decisions) by the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) to publish notices under subsection 269ZDB(1)(a) in relation to certain power transformers exported to Australia from the Republic of Indonesia (Indonesia) by PT CG Power Systems, Indonesia (CG Power).

The findings relating to the Reviewable Decisions were published on the Anti-Dumping Commission (the Commission) website on 6 June 2017.[2]

The following submission at Appendix A is for your consideration, along with the attachments at Appendix B.

I and the Commission remain at your disposal to assist in this matter.

Yours sincerely

Dale Seymour
Commissioner, Anti-Dumping Commission
28 August 2017

[1] All legislative references are to the *Customs Act 1901* unless otherwise specified.
[2] Anti-Dumping Notice No. 2017/62

APPENDIX A

I make the following submission in response to the grounds set out in the public notice under section 269ZZI, in respect of the Reviewable Decisions of the Parliamentary Secretary and my associated recommendations in *Anti-Dumping Commission Report No. 383* (the final report).

CG Power

CG Power raises the following grounds for review:

1) when calculating the normal value, the Minister erred in determining the amount of profit;
2) the Minister made incorrect adjustments to the normal value; and
3) the Minister wrongly altered the variable factors when there had been no export sales of the goods to Australia since the variable factors were ascertained on 10 December 2014.

I address each of these grounds below.

Ground 1: Amount of profit in normal value calculation

In its application, CG Power highlights that the amount of profit applied in constructing its normal value was calculated under subsection 45(3)(c) of *the Customs (International Obligations) Regulations 2015* (the Regulations). It states that this amount of profit is limited by the operation of subsection 45(4) of the Regulations.

Subsection 45(4) of the Regulations states:

> *However, if:*
>
> *a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and*
> *b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;*
>
> *the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.*

Given that Review No. 383 was a single exporter review of the anti-dumping measures, I do not have information before me relating to the amount of profit realised by other exporters in Indonesia for the review period (1 July 2013 to 30 June 2016). That is not to say that I cannot assess the amount of profit normally realised by other exporters in Indonesia for another period outside of the review period. Subsection 45(4) of the Regulations does not specify any period in which the amount of profit normally realised should be determined. I consider that it is open to assess the amount of profit normally realised on a case by case basis having regard to what information is available. In relation to power transformers, the information available in relation to the amount of profit normally realised by other exporters in Indonesia is limited.

In *Anti-Dumping Investigation No. 219* (the original investigation), there was only one cooperative exporter from Indonesia, PT. Unelec Indonesia. I have not conducted any other reviews in relation to exporters from Indonesia since the anti-dumping measures were imposed.

Therefore, for the purposes of subsection 45(4) of the Regulations, the only reasonable way for me to assess the amount of profit normally realised by other exporters in Indonesia is by reference to the amounts that were received by PT. Unelec Indonesia during the original investigation period (1 July 2010 to 30 June 2013). I consider that information from this period is relevant for the purposes of subsection 45(4) of the Regulations.

The amount of profit I determined for PT. Unelec Indonesia during the original investigation period was [redacted] per cent (**Confidential Attachment 1**). The amount of profit I determined for the applicant for the review period relating to Review No. 383 was [redacted] per cent (**Confidential Attachment 2**). These are similar amounts and it follows that the amount of profit under subsection 45(3)(c) of the Regulations would not necessarily be capped at zero as claimed by the applicant.

Notwithstanding the above, the objective of the profit calculation followed in Review No. 383 was to allow a normal value to be constructed, that best estimates the fair market price of the goods on the assumption they were sold in the domestic market in Indonesia.

I note that it was open to me to calculate the same amount of profit, that is [redacted] per cent, in constructing CG Power's normal value, under subsection 45(3)(a) of the Regulations. This is because the calculation of the amount of profit in constructing CG Power's normal value was based on the actual amounts realised by CG Power for the same general category of goods in Indonesia, as can be demonstrated from the calculations (**Confidential Attachment 2**). The calculations compared the domestic selling prices of all power transformers sold in Indonesia by CG Power with CG Power's costs for those power transformers.

Statement of Essential Facts No. 383 (SEF 383) referred to the amount of profit having been calculated under subsection 45(3)(a) of the Regulations. Changing the legislative reference from subsection 45(3)(a) of the Regulations to subsection 45(3)(c) of the Regulations in REP 383 was an error on the Commission's behalf.

Allow me to provide further context to the applicant's quote from REP 383, where it says.

> *As explained in 4.2.1 of this report, the Commission was not able to verify CG Power's* [revised] *domestic CTMS values and therefore was not satisfied that CG Power's* [revised] *domestic CTMS figures were accurate and reliable. Therefore, the Commission considers that an amount of profit should be worked out under subsection 45(3)(c) of the Regulation, using any other reasonable method having regard to all reliable information. In particular, the Commission calculated CG Power's domestic profitability based on CG Power's original domestic CTMS values as it was provided with CG Power's exporter questionnaire response* [emphasis added].

The above quote seeks to explain that:

- following verification of CG Power's exporter questionnaire response, CG Power submitted revised domestic CTMS values;
- having already verified the original domestic CTMS values, the Commission did not adopt the revised domestic CTMS values in the profit calculations; and
- the Commission calculated an amount of profit using the original domestic CTMS values.

The above confirms, and so do the calculations, that the amount of profit was based on data relating to the production and sale of CG Power's power transformers. Calculating the profit in this way adheres to the policy in the *Dumping and Subsidy Manual* (the Manual) at page 49 which states:

> *"In practice, the Commission normally seeks profit information using the method described for Regulation 45(3)(a) because it relates to the exporter being investigated and therefore is more likely to yield the required data."*

CG Power were provided with a copy of the calculations and made a submission to SEF 383.

Therefore, if the ADRP views that the reviewable decision is incorrect (by virtue of REP 383 referring to subsection 45(3)(c) of the Regulations instead of subsection 45(3)(a) of the Regulations), I remain of the view that the same amount of profit should apply, meaning that there is no difference to the outcome.

Ground 2: the Assistant Minister has incorrectly adjusted the normal value

In its application, CG Power claims that the Commission incorrectly adjusted the normal value for CG Power for export packing costs, export warranty costs and Australian sales office costs. CG Power's claims in relation to each of these adjustments are addressed in REP 383 at section 5.5.1.

CG Power states that it did not claim certain adjustments as it believed that the normal value would be based on the export cost to make (CTM) and the domestic selling, general and administrative costs (SG&A). CG Power also explains that it did not consider there was a basis to grant any adjustments under subsection 269TAC(9) because the SG&A costs were allocated without differentiation between domestic sales and export sales. CG Power explains that it allocated these costs based on the ratio of total product sales to total selling costs (or admin expenses) multiplied by the revenue of each power transformer. The Commission disagrees with this approach as it would result in under-allocation of the export selling and administration costs.

It is the Commission's policy and a requirement of subsection 269TAC(9) to make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods. I consider that, had the Commission not adjusted the normal value for the differences in export packing costs, export warranty costs and Australian sales office costs and accepted CG Power's claims that these costs, whether incurred in the course of domestic sales or export sales, be allocated equally based on the revenue of each power transformer, the ascertained normal value would not be in comparable terms with the ascertained

export prices as the normal value would have been understated by the way of under-allocation of export related costs incurred.

Below are my comments on the specific adjustments that CG Power seeks to have reviewed.

a) Export packing costs

In its application, CG Power claims that the Commission made an error by adjusting the normal value for the differences between the cost of packaging for export sales and domestic sales.

In its application, CG Power claims that export packing costs were included in the Australian CTM, under the "raw material – other additional" field, and is therefore already included in the normal value. CG Power further claims that this could be confirmed via the cost report provided to the ADRP in relation to each of the transformers exported to Australia.

In responding to this claim, I would like to draw your attention to the fact that the investigators from the Commission undertook a verification of CG Power's records on-site. As part of the verification visit work program, the investigators from the Commission recorded that:[3]

Additionally, at the verification visit, the Commission collected the "work breakdown schedules (WBS)" for each power transformer CG Power exported to Australia during the review period. The WBS were directly downloaded from CG Power's SAP system and were verified by the Commission's investigators. These WBS were attached to REP 383 and are also included in **Confidential Appendix 1 – WBS.** It can be observed from the WBS that when filtered for "materials", there are no packing materials recorded under "CO object name" column. Therefore, I am of the view that these packing costs have not been recorded under the CTM of the power transformers and therefore an adjustment to normal value is warranted to ensure price comparability between power transformers exported to Australia and the power transformers CG Power sold on its domestic market.

It is worth noting that CG Power did not highlight where the packing costs were recorded either at the verification visit or after the visit. As a result, the Commission was unable to verify the accuracy of CG Power's claims in relation to packing costs.

[3] Under EXP GP17 - Adjustments to normal value of the exporter visit work program.

Therefore, I maintain that adjusting the normal value for the differences between the costs of packaging for export sales and domestic sales was the correct and preferable decision.

b) Australian sales office costs

In its application, CG Power claims that the Commission erred by adjusting the normal value for the additional costs it incurred in its Australian sales due to having a dedicated Australian sales office.

CG Power claims that the SG&A it calculated included an adequate allocation of relevant sales office costs to the goods under consideration. As explained in REP 383, I found that the Australian sales office costs were specific to the export sales to Australia and therefore cannot be associated with the SG&A costs of sales to other markets. Therefore, I maintain that my approach of removing the Australian sales office costs from the total SG&A of CG Power and attributing these costs only to Australian export sales transactions was necessary.

In its application, CG Power further claims that the Australian sales office costs form part of the post-exportation costs and cannot be related with the FOB export price of the goods and that the adjustment adversely impacts the comparability of export price and normal value. In response to these claims, I note that the Australian export sales were made on delivery duty paid (DDP) basis. As a result, as explained in REP 383, I found that the FOB export price recorded on CG Power's invoices significantly overstated the FOB export price.[4] I calculated the FOB export price by deducting all post exportation expenses from the total contract price at DDP terms. At the verification visit to CG Power, investigators from the Commission found that CG Power maintained an Australian sales office and these expenses were contained within the broader category of SG&A and therefore were originally allocated across total company sales of transformers.[5] I note that by allocating these expenses over total company sales of power transformers, CG Power is essentially under-allocating these export specific costs to its Australian export sales. As a result, considering that the sales terms were DDP and all Australian sales office costs were paid by CG Power and all relevant Australian sales office costs were recorded in CG Power's accounting records, I found that the normal value should be adjusted to account for the additional amounts of Australian office costs that were incurred only in Australian export sales.

CG Power also claims that even if the adjustment was necessary to ensure fair comparison, the way in which it has been applied is erroneous. Specifically, CG Power argues that the Assistant Minister has not determined a corresponding downward adjustment for domestic and third country sales office expenses. In response to this claim, I refer to the calculation of domestic SG&A in **Confidential Appendix 3**. In Confidential Appendix 3, you will note that I have calculated the domestic SG&A by excluding the total amount of Australian office costs that were included in the total domestic selling costs. These selling costs were provided to the Commission by CG Power and I understand that the figures in Confidential Appendix 3 were downloaded directly from CG Power's accounting system. In addition, I note that, as part of the review, CG Power did not raise that its domestic SG&A included

[4] Section 5.4 of REP 383

[5] EXP GP16 - SG&A expenses section of the work program

third country selling costs. In its submission dated 6 April 2017 in response to the exporter verification visit report, CG Power claimed that "*The costs associated with the Indonesian sales office are still included in the SG&A which has been added to the normal value*."[6] The Commission responded CG Power's this claim at page 21 of REP 383 by stating that:

> *In calculating the normal value under subsection 269TAC(2)(c), page 44 of the Manual explains that "Subsection 269TAC(2)(c) requires that the selling, general and administrative expenses so ascertained are those that would be incurred on sales on the domestic market." It follows that, the SG&A should typically include the domestic selling costs such as the costs incurred by the Indonesian sales office. As explained above, the Commission had already removed the Australian sales office costs from the domestic SG&A calculations. Hence, the Commission maintains that there have been no errors made in calculations of the domestic SG&A of CG Power for the purposes of calculating the normal value under subsection 269TAC(2)(c).*

In addition to the above, CG Power states that all other Australian sales office expenses for the period April 2014 – June 2016 would still be included in the resultant "domestic SG&A". CG Power goes on to say that it did not make any sales to Australia in the intervening years, however, the Australian sales office continued to operate over this period, and, so, the costs associated with the Australians sales office over this period were included in the domestic SG&A. Again, to my best knowledge, CG Power did not raise these issues at the verification visit or in response to SEF 383.

In relation to the allocation of Australian sales office costs to the goods exported to Australia during the review period, rather than matching single cost items to individual sales transactions as CG Power appears to claim in its application, the investigators from the Commission first removed the freight and delivery costs from the Australian sales office costs because delivery and inland transportation costs are dealt with separately. Then, the remaining Australian sales office costs are allocated with respect to the total sales values of goods and non-goods sales. Allocation tab of Confidential Appendix 2 clearly demonstrates the cost allocation ratios. As a result, I maintain that the allocation of Australian sales office costs to the sales of goods over the investigation period was the correct and preferable decision.

c) Export warranty

In its application, CG Power claims that the FOB export price did not reflect any warranty claims and the existence of such claims would not be known until after the FOB export price is set. Therefore, CG Power argues that there was no basis to adjust the normal value in respect of export warranty, as such an adjustment would not ensure that the export price and normal value are comparable.

I disagree. The Manual explains at page 74 that:

> "*Adjustment is made for differences in after sale costs, including warranties, guarantees, technical assistance and services. A sales contract or other legal obligation normally contains these conditions. If the evidence relates to total*

[6] File no 10 in http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR-383.aspx

> *warranty, guarantee or technical service costs, an allocation may be made to the goods.*"

As explained at page 20 of REP 383, I am of the view that of export warranty costs can be estimated using historical data and in order to take these costs into account, a claim does not need to exist. It is clearly observed in the Australian sales spreadsheet that CG Power provided the Commission, within its exporter questionnaire response, that CG Power was accounting for a [redacted] per cent export warranty cost. CG Power's Australian sales spreadsheet is available at **Confidential Appendix 4**. It is also clear that CG Power does not account for such warranty costs for its domestic sales of power transformers. This is evident in CG Power's domestic sales spreadsheet which is available at **Confidential Appendix 5**. Therefore, I maintain that an adjustment is required for export warranty costs to establish price comparability between the normal values and export prices.

Ground 3: the Assistant Minister has incorrectly fixed the variable factors

In its application, CG Power states that the relevant anti-dumping measures subject to the review were imposed on 10 December 2014, via the publication of an anti-dumping notice under subsection 269TG(2). CG Power explains that the original variable factors were ascertained at the time of the publication of that notice, i.e. they were ascertained on 10 December 2014.

CG Power argues that the revised variable factors in Review No. 383 relate to sales of power transformers delivered to Australia prior to 10 December 2014. Consequently, CG Power claims that it is neither correct nor preferable to determine revised variable factors on the basis of transactions that occurred prior to when the original variable factors the subject of the review were ascertained.

CG Power's application fails to recognise that both the original variable factors and the revised variable factors were ascertained based on data relating to specified periods of examination. For example, the original variable factors were based on an investigation period of 1 July 2010 to 30 June 2013. The revised variable factors were based on a review period of 1 July 2013 to 30 June 2016. Both periods of examination cover a period of 3 years and there is no overlap between the periods.

I see no barrier to ascertaining the revised variable factors based on the period in which I examined, being 1 July 2013 to 30 June 2016. The Commission sets such a review period to provide certainty about the conduct of the case. There will always be a lag between the period examined and the outcome of any review, e.g. the anti-dumping system is inherently retrospective. However, to take a narrow view, as the applicant would prefer, and to only examine sales occurring after the publication of the notice of 10 December 2014 for the purpose of ascertaining revised variable factors would be problematic. In this instance, CG Power did not export to Australia after 10 December 2014. Given the unique nature of each power transformer exported to Australia, the Commission would have no data on which to base findings in relation to the review sought by CG Power.

Accordingly, I maintain that the correct and preferable decision has been made.

APPENDIX B

LIST OF APPENDICES and ATTACHMENTS

Confidential Appendix 1	Australian work breakdown structures
Confidential Appendix 2	Reallocation for Australian office costs
Confidential Appendix 3	Recalculation of domestic SG&A
Confidential Appendix 4	CG Power's Australian sales list
Confidential Appendix 5	CG Power's domestic sales list
Confidential Attachment 1	Calculation of profit for PT Unelec
Confidential Attachment 2	Calculation of profit for CG Power