



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Ms Joan Fitzhenry
Senior Panel Member, Anti-Dumping Review Panel
c/o- ADRP Secretariat

By e-mail: ADRP@industry.gov.au

Dear Ms Fitzhenry

**Power Transformers exported to Australia
from the Republic of Indonesia and Taiwan**

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (the Act) published on 16 December 2019, advising of your intention to review the decision of the Minister for Industry, Science and Technology (the Minister) to secure the continuation of the anti-dumping measures applying to power transformers exported from the Republic of Indonesia and Taiwan (the Reviewable Decision).

I understand that the Commission has provided you with the information that was requested of me in your correspondence of 16 December 2019, that is:

1. the confidential attachments to the Statement of Essential Facts (SEF) relevant to the grounds of the review application
2. parties' submissions to the ADC commenting on the SEF including confidential attachments relevant to the grounds of the applications for review
3. the confidential attachments to the Final Report
4. other relevant information (as defined in section 269ZZK of the Act) pertinent to the grounds of review raised by the Applicants, including:
 - a. the verification visit report of the Australian industry and any confidential attachments;
 - b. the export visit reports and work programs relating to the two applicants, plus any confidential information/spreadsheets sent to the applicants regarding the calculation of the normal value, export price and dumping margins; and
 - c. importer visit reports and any confidential information/spreadsheets sent to the importer
5. any other records/documents that contain information about the verification reports.

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I have considered the applications submitted by Fortune Electric Co., Ltd and PT CG Power Systems Indonesia for a review of the Reviewable Decision and make a submission, pursuant to section 269ZZJ(aa) of the Act, provided at **Non Confidential Attachment A.**

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

A handwritten signature in black ink, appearing to read "Dale Seymour". The signature is written in a cursive style with a large initial "D".

Dale Seymour
Commissioner
Anti-Dumping Commission

15 January 2020

Background

1. Inquiry 504 was initiated on 11 February 2019, following the Anti-Dumping Commissioner's (the Commissioner) consideration of an application lodged by Wilson Transformer Company Pty Ltd (WTC), seeking the continuation of the anti-dumping measures applying to power transformers exported to Australia from the Republic of Indonesia (Indonesia), Taiwan and the Kingdom of Thailand (Thailand) (the subject countries) by all exporters other than PT. Unelec Indonesia (UNINDO) from Indonesia and ABB Limited Thailand (ABB Thailand) from Thailand.
2. On 6 November 2019, the Anti-Dumping Commission (the Commission) published a notice signed by the Minister for Industry, Science and Technology (the Minister) in which she decided to secure the continuation of anti-dumping measures applying to power transformers exported to Australia from Indonesia and Taiwan (the Reviewable Decision).¹
3. The Minister made the Reviewable Decision following consideration, and acceptance of, recommendations made by the Commissioner on 4 October 2019, as set out in *Anti-Dumping Commission Report No. 504* (Report 504).² This report outlined the Commissioner's investigations, material findings of fact and law on which his recommendations were based, and evidence relied upon to support those findings.
4. On 6 December 2019 Fortune Electric Co., Ltd (Fortune) and PT CG Power Systems Indonesia (CG Power) made separate applications for review of the Reviewable Decision by the ADRP.

Application of Review submitted by Fortune

Ground 1: The Commission erred in calculating profit, pursuant to section 45 of the Customs (International Obligations) Regulation 2015, which resulted in an overstated normal value.

5. In its application, Fortune did not object to the Commission's approach of calculating its normal value pursuant to section 269TAC(2)(c) of the Act. It did however object to the Commission's methodology for calculating the amount of profit to be included in its normal value.
6. Fortune contends that the Commission's approach to calculating the amount of profit was inconsistent with the requirements of the Act and the Regulation. Fortune contends that the Commission's approach was inconsistent with the original investigation and the findings of the WTO Appellate Body in EC-Bed Linen.³

¹ Under section 269ZHG of the *Customs Act 1901*. A reference to a division, section or subsection in this submission is a reference to a provision of the *Customs Act 1901* unless otherwise specified.

² Case 504 EPR item 25.

³ Fortune application at page 9. The reference to the WTO Appellate authority cited therein is to WT/DS141/AB/R, EC – Bed linen, para 74-76, pages 23-24.

7. The issues raised in Fortune's application are addressed in Report 504 at section 6.5.1.6.⁴
8. The Commission considers that the approach taken in Report 504 is correct and preferable as it satisfied the requirements of section 269TAAD, and it was reasonably practicable to calculate the amount of profit under section 45(2) of the Regulation. Section 45(2) of the Regulation ensures that the amount of profit is calculated on the basis of the production and sale of like goods.
9. Fortune's opinion is that the amount of profit ought to have been calculated under section 45(3)(a) of the Regulation, i.e. based on amounts realised in relation to the same general category of goods. However, in stating their opinion of what the amount of profit should be at page 13 of its application, Fortune has relied on the same domestic sales of like goods that the Commission had regard to for the purposes of section 45(2) of the Regulation. The Commission does not consider that it is correct or preferable in this instance to consider the domestic sales of like goods as the same general category, given that it was practicable to use the domestic sales of like goods to calculate the amount of profit under section 45(2) of the Regulation.

Application of Review submitted by CG Power

Ground 1: Finding that the evidence does not establish that dumping is likely to recur

10. In its application, CG power submitted that the correct and preferable decision is that the Minister allow the measures to expire, in so far as they relate to CG Power, under section 269ZHG(4)(ii) because there is no evidentiary basis to consider it more likely than not, that CG Power will dump the goods, if the measures are revoked.⁵
11. CG Power challenged aspects of the evidence, analysis and conclusions drawn in Report 504 to support its view that the Minister had not reached the required level of satisfaction when making the declaration in relation to CG Power under section 269ZHG(4)(ii) of the Act.⁶ In particular, CG Power submitted that the Commission's analysis in Report 504 was premised on a flawed analysis of a number of factors (and ignorance of other factors).
12. CG Power identifies six factors considered by the Commission that in its view have been incorrectly analysed:
 - prior findings of dumping;
 - "likely" future dumping;
 - periods of consistent profitability;
 - maintenance of an Australian sales office;
 - ongoing tendering of business;
 - CGP's ability to forward plan capacity.

⁴ Case 504 EPR Item 25 at pages 38 to 41.

⁵ CG Power Application, page 5.

⁶ Ibid pages 2-10.

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13. The Commissioner is satisfied that the relevant evidence, analysis and conclusions drawn in Report 504 substantiate a finding that dumping is more likely to recur than not, should the measures be revoked in respect of CG Power.
14. The 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. In assessing the likelihood of whether dumping and material injury will continue or recur, a number of factors may be relevant, as set out in the Commission's *Dumping and Subsidy Manual* (the Manual).⁷ The factors outlined in the Manual are indicative and are not exhaustive. The Commission need not find that all of those factors listed are present.
15. The factors reviewed by the Commission in its assessment of the likelihood of the recurrence of dumping and material injury are detailed in Chapter 7 of Report 504.
16. The Commission does not agree with CG Power's application that it conducted a flawed analysis of the available factors, and was ignorant of other factors. The Commission's view is that the relevance of each factor varies depending on the nature of the goods being examined and the market into which the goods are being sold. No single factor alone necessarily provides decisive guidance.

Commissioner's assessment that dumping is likely to recur

Prior Findings of Dumping

17. CG Power's application states that the Commission has failed to explain why prior findings of dumping are of any relevance to the outcome of the inquiry.⁸
18. In forming a judgment as to whether like goods are likely to be exported at dumped prices in the future, the Commissioner considers prior evidence to be a relevant consideration. This view is supported by comments made by the Federal Court in *Siam Polyethylene Company Ltd v Minister of State for Home Affairs*.⁹ In that case, it was held that, in the context of anti-dumping matters, past conduct can often be a guide to future conduct.¹⁰
19. The Commission considers that prior evidence of dumping is relevant to whether CG Power is likely to export at dumped prices in the future. The Commissioner submits that it is necessary to consider the available evidence, including prior dumping, and draw informed inferences. The Commissioner accepts that the existence of past dumping alone may not be indicative of future dumping. In this instance, there were no historical evidence that CG Power had exported goods at undumped prices.
20. The Commission noted in Report 504 (at page 46) that CG Power had exported 11 power transformers to Australia that were examined as part of prior investigations or reviews and had been found to have been exported at dumped prices. These exportations were the most recent transactions to inform the Commission's

⁷ Pages 175-176 refer.

⁸ CG Power application, page 6.

⁹ *Siam Polyethylene Company Ltd v Minister of State for Home Affairs and Another* (2009) 258 ALR 481.

¹⁰ *Ibid* 504.

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assessment, in addition to a particular power transformer exported after the inquiry period. That the past exportations were exported prior to the imposition of measures, does not preclude them from being a relevant consideration, along with other considerations, in relation to CG Power's likely future conduct.

Likely Future Dumping

21. CG Power's application for review stated that the Commission's assessment that a particular power transformer exported after the inquiry period was likely dumped is based on the Commission's failure to understand or clarify information before it.
22. It claims that the Commission incorrectly interpreted information submitted by CG Power in relation to the particular power transformer, specifically in regard to its estimated costs.¹¹
23. The Commission notes that its analysis of the data relating to the particular power transformer was in response to CG Power's submission to SEF 504. In that submission, CG Power claimed to closely model its costs and seeks to achieve comparable margins on its export and domestic sales. As outlined in section 7.5.1 of REP 504, the Commission did not find CG Power's data to support its claims.
24. CG power asserts that, in responding to the exporter questionnaire in relation to the particular power transformer, it included Selling, General and Administrative (SG&A) expenses as "other costs", and that the Commission has erred in failing to understand this when it analysed the submitted data.
25. The Commissioner rejects CG Power's claims in this regard, noting that CG Power submitted data in the format requested by the exporter questionnaire. CG Power's questionnaire response gave no indication that it had included SG&A costs within the category titled "other costs". On the contrary, the "other costs" section of the exporter questionnaire included an explanatory note clarifying that "other costs" related to the manufacture of power transformers, i.e. the "other costs" relate to costs of production and are not intended to capture SG&A costs. Information in regards to SG&A costs were sought in a separate category of the exporter questionnaire.
26. The Commissioner considers it reasonable to have relied upon the information submitted by CG Power, and to have interpreted it consistently with the format the Commission requested in the exporter questionnaire, noting that CG Power has previously submitted exporter questionnaires during Investigation 219 and Review 383. CG Power was also subject to on-site verification for the purposes of Review 383 and is therefore familiar with the Commission's information requirements.
27. The Commission does not accept that the amount CG Power included as "other costs" could reasonably contain all SG&A costs. The Commission notes that the "other costs" CG Power reported in relation to the particular power transformer, as a proportion of the total cost to make of the particular power transformer, is significantly lower and inconsistent with the SG&A costs it reported in relation to domestic sales of like goods.

¹¹ Ibid page 8.

28. Finally, the Commission rejects CG Power's claims in the application that the analysis in relation to the particular power transformer is of "central relevance" in the Commission's assessment of what would occur if the measures were revoked. As outlined above, the Commission considered various factors, none alone of which were of central relevance.

Periods of consistent profitability

29. CG Power's application stated that it has no incentive to pursue sales that are less profitable on the Australian market than the profit achievable in the domestic market, and that the Commission's profitability analysis undertaken to refute that proposition is spurious.¹²

30. The Commission's analysis, detailed in Report 504 (at page 47), acknowledges that CG Power had maintained profitability across financial years 2010 to 2018, during which time each power transformer exported to Australia investigated had been found to be exported to Australia at dumped prices. In the context of establishing the likelihood of dumping recurring, the Commissioner considers CG Power's history of exporting to the Australian market, despite maintaining corporate profitability at the overall level, to be a relevant consideration.

Maintenance of an Australian sales office and tendering

31. CG Power's application states that it does not maintain an Australian sales office, although it employs/engages a single representative engineer for maintenance and sales management, and that Report 504 fails to reflect this nuance.¹³ Furthermore, it argues that this reduced presence limits its ability to supply the Australian market.¹⁴

32. The Commissioner does not challenge that CG Power has reduced its Australian presence. Nevertheless, REP 504 acknowledged that CG Power maintains an ongoing presence in the Australian market as demonstrated by recent bids in competitive tenders. The Commissioner accepts that maintaining a presence in the market should not be the sole basis for the continuation of measures. However, it is a relevant consideration, when weighed together with the other factors addressed in Report 504, in assessing whether exports at dumped prices are likely to recur. The Commission's report did not place any particularly determinative weight on this issue, other than to acknowledge that CG Power has access to, as well as knowledge and expertise within, the Australian market (i.e. it has experience in submitting tenders for power transformers).

Capacity and forward planning

33. As detailed in Report 504 (at section 7.5.4), despite currently operating at almost full capacity, CG Power has tendered for business in the Australian market, indicating both a desire to supply the Australian market and the production capability to do so. The Commissioner accepts that these factors alone should not be the sole basis for the continuation of measures, although they are relevant considerations, when weighed together with the other factors addressed in Report 504, in assessing

¹² CG Power application, page 9.

¹³ Ibid page 11.

¹⁴ Ibid page 12.

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whether dumping by CG Power is more likely than not (if the continuation measures were to be removed).

34. CG Power's application for review states that it is operating at full capacity and that there is no logical reason for it to sell the product to Australia at a lower margin than it can achieve domestically.¹⁵ It is difficult to assess whether this assertion has any weight, because it is speculative. It is not improbable that a profitable company selling a profitable product within its own market could also be in demand in an export market (and capable of exporting its products there at a price that may be injurious to the overseas domestic industry).

Procedural fairness

35. CG Power states that the Commission failed to undertake further inquiries regarding adverse interpretations in Confidential Attachment 7 to Report 504, denying CG Power procedural fairness and resulting in an unjust outcome for CG Power.¹⁶
36. The Commissioner notes that the information contained in Confidential Attachment 7 was compiled and analysed in response to CG Power's submission of 18 September 2019 and its meeting with the Commission on 19 September 2019. The Commissioner rejects CG Power's assertion that it has been denied procedural fairness. CG Power responded to SEF 504 by way of submission and the provision of additional information, which the Commissioner considered in preparing Report 504.

Relevant information considered

37. CG Power's application for review states that, contained within the Manual, are a number of factors the Commissioner may consider when undertaking his task under section 269ZHF(2), and lists relevant information that CG Power believes the Commissioner has overlooked in his considerations.¹⁷
38. The Commissioner is satisfied that the Commission has assessed all information provided by CG Power. The Commissioner notes that the Manual provides a guide according to which relevant information may be addressed, however does not require an assessment of each factor in isolation. Further, information may be relevant to multiple factors. In this regard the Commission has, for example, given consideration to CG Power's claim that it is focused on other export markets rather than the Australian market within the context of its continued presence within the Australian market, and within the broader context of the likelihood of dumping into the Australian market recurring if the measures were to expire.

¹⁵ Ibid page 14

¹⁶ Ibid page 14.

¹⁷ Ibid pages 14-15.

Ground 2: It is not likely that material injury will recur

39. CG Power submitted that the Commission's conclusion that dumping confers a price advantage in a tender is not supported by positive evidence.¹⁸ The proposition advanced is that, in the context of a tender, although presumably important, the price for power transformers is not necessarily determinative.
40. The issues raised in CG Power's submission were addressed in Report 504 at section 7.6.5¹⁹
41. CG Power submitted in its application that the finding that dumping conferred a price advantage to CG Power does not align with the Commissioner's preliminary finding in Investigation 507²⁰. Investigation 507 is an ongoing investigation. Statement of Essential Facts 507 (SEF 507) proposes that the Commissioner terminate the investigation into the dumping of power transformers from the People's Republic of China (China) on the basis that the injury to the Australian industry that has been caused by exports from China is negligible.
42. However, the Commission's analysis in relation to CG Power is based on tenders specific to Inquiry 504. Both Investigation 507 and Inquiry 504 found that price was a factor that was considered in purchasing decisions of power transformers. However, in Investigation 507, the preliminary finding in SEF 507 was that there was no conclusive evidence to support a finding that dumping caused the loss of *specific tenders* won by Chinese exporters in the investigation period, including because some tenders were won by goods that were not dumped, and specific aspects of other tenders meant that the applicant was unlikely to have won those specific tenders in spite of the price advantage conferred by dumping. Investigation 507 did not draw any conclusions about the likely impact of future dumping from any other countries on the Australian industry.

¹⁸ Ibid page 18

¹⁹ Case 504 EPR Item 25 at pages 54 to 59.

²⁰ CG Power application, page 17.