Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name:	**PT CG Power Systems Indonesia ("CGP")**
Address:	**Kawasan Industri Menara Permai Kav. 10 Jl. Raya Narogong Cileungsi Bogor 16820 Indonesia**
Type of entity (trade union, corporation, government etc.):	**CGP is a company.**

2. Contact person for applicant

Full name:	**Alistair Bridges**
Position:	**Senior Associate**
Email address:	**alistair.bridges@moulislegal.com**
Telephone number:	**+61 3 8549 2276**

3. Set out the basis on which the applicant considers it is an interested party:

Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

The reviewable decision in this case is a decision to continue the measures applicable to CGP's exports of power transformers manufactured in Indonesia, following an application under s 269ZHB.

Under Section 269ZX of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the reviewable decision.

CGP is a manufacturer of the goods to which the decision relates, namely power transformers. CGP has histrocially exported these goods from indoensia to Australia. CGP is thus an "interested party" for the purposes of the Act and this application.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the Customs Act 1901 the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☒Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of the reviewable decision, as described in Final Report 504 are:

liquid dielectric power transformers with power ratings of equal to or greater than 10 MVA (mega volt amperes) and a voltage rating of less than 500kV (kilo volts) whether assembled or unassembled, complete or incomplete

7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are generally, but not exclusively, classified to the following tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995*:

- **8504.22.00: 40; and**
- **8504.23.00: 26 and 41.**

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:	**Anti Dumping Notice No 2019/127**
Date ADN was published:	**6 November 2019**

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

Please refer to Attachment 1 – ADN 2019/127

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

See Attachment 2, which is provided in both confidential an non-confidential format.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

See Attachment 2.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

See Attachment 2.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

See Attachment 2.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

See Attachment 2.

13. Please list all attachments provided in support of this application:

The attachments provided in support of this application are:

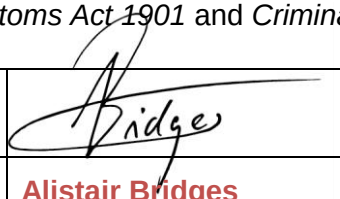
- **Attachment 1 – ADN 2019/127;**
- **Attachment 2 – review grounds;**
- **Attachment 3 – Confidential Attachment 7 - CGP edit;**
- **Attachment 4 – price calculation 1;**
- **Attachment 5 – price calculation 2;**
- **Attachment 6 – explanation of bids; and**
- **Attachment 7 – CGP letter of authority.**

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and

- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:	
Name:	**Alistair Bridges**
Position:	**Senior Associate**
Organisation:	**Moulis Legal**
Date:	**6 December 2019**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:	**Alistair Bridges**
Organisation:	**Moulis Legal**
Address:	**Level 39** **385 Bourke Street** **Melbourne** **VIC 3000 Australia**
Email address:	**alistair.bridges@moulislegal.com**
Telephone number:	**(03) 8459 2276**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

Please refer to Attachment 7 – letter of authority.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

ANTI-DUMPING NOTICE NO. 2019/127

Customs Act 1901 – Part XVB

Power Transformers Exported to Australia from the Republic of Indonesia, Taiwan and the Kingdom of Thailand Findings of the Continuation Inquiry No. 504 into Anti-Dumping Measures

Notice under section 269ZHG(1)of the Customs Act 1901[1]

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 11 February 2019, concerning whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to power transformers (the goods) exported to Australia from the Republic of Indonesia (Indonesia), Taiwan and the Kingdom of Thailand (Thailand) by all exporters other than PT. Unelec Indonesia (UNINDO) from Indonesia and ABB Limited from Thailand, is justified.

Recommendations resulting from the inquiry completed by the Commissioner, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 504* (REP 504).

I, KAREN ANDREWS, the Minister for Industry, Science and Technology, have considered REP 504 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts and law therein.

Under section 269ZHG(1)(b) of the Act, I declare that I have decided to secure the continuation of the anti-dumping measures currently applying to the goods exported to Australia from Indonesia and Taiwan. Under section 269ZHG(1)(a) of the Act, I declare that I have decided not to secure the continuation of the anti-dumping measures applying to the goods exported to Australia from Thailand.

Having decided to secure the continuation of the anti-dumping measures currently applying to the goods exported to Australia from Indonesia and Taiwan, I determine, pursuant to section 269ZHG(4)(a)(iii) of the Act, that the notice continues in force after 10 December 2019 but that, after this day, has effect in relation to goods exported to Australia by all exporters from Taiwan and by "all other exporters" from Indonesia[2], as if different specified variable factors had been fixed in relation to those exporters.

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[1] All legislative references are to the *Customs Act 1901* (the Act), unless otherwise specified.
[2] For clarity, this covers all exporters other than PT CG Power Systems Indonesia (REP 504 did not recommend a change to the variable factors for this exporter) and UNINDO (who are not subject to the anti-dumping measures).

Particulars of the effective rates of interim dumping duty are set out in the following table.

Country	Exporter	Effective rate of interim dumping duty	Duty method
Indonesia	PT CG Power Systems Indonesia	28.3%	Ad valorem duty method
	All other exporters (except UNINDO)	28.3%	
Taiwan	Fortune Electric Co., Ltd	7.6%	
	All other exporters	8.8%	

REP 504 has been placed on the public record which may be examined on the Anti-Dumping Commission website.[3] Enquiries about this notice may be directed to Client Support at clientsupport@adcommission.gov.au.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel,[4] in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Dated this 1st day of November 2019

KAREN ANDREWS
Minister for Industry, Science and Technology

[3] The public record is available via www.adcommission.gov.au.
[4] The Anti-Dumping Review Panel website may be accessed via https://www.industry.gov.au/about-us/our-structure/anti-dumping-review-panel.

PUBLIC RECORD

In the Anti-Dumping Review Panel

06 December 2019

Application for review

Continuation Inquiry No. 504
Power transformers from Indonesia, Taiwan and Thailand

PT CG Power Systems

A Introduction

By way of notice published 11 February 2019,[1] the Anti-Dumping Commission ("the Commission") initiated an inquiry regarding the continuation of the anti-dumping measures applying to power transformers exported from Indonesia, Taiwan and Thailand ("Inquiry 504").

Anti-dumping measures had been originally imposed on power transformers pursuant to *Public notice under subsections 269TG(1) and (2) of the Customs Act 1901* dated 10 December 2014 ("the Original Notice").

Inquiry 504 was initiated based on an application lodged by Wilson Transformer Company ("WTC"), constitutFing the Australian industry producing the like goods.

At the conclusion of Inquiry 504 the Minister for Industry, Science and Technology ("the Minister") declared, under Section 269ZHG of the *Customs Act 1901* ("the Act"), that she had decided to secure the continuation of the anti-dumping measures applying to Q&T steel plate exported to Australia from Finland, Japan and Sweden ("the Minister's Decision").

The recommendations of the Commissioner to that effect are contained in *Final Report No. 504- Inquiry into the Continuation of Anti-Dumping Measures Applying to power transformers Exported to Australia from Indonesia, Taiwan and Thailand* ("the Report)".[2] The Minister confirmed that in making her decision she:

> *… considered [Report 504] and… decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts and law therein*[3]

The decision of the Minister was made on 2 October 2019 and subsequently published on the website of the Commission on 4 October 2019.[4]

PT CG Power Systems Indonesia ("CGP") is an Indonesian manufacturer and exporter of power transformers.

As outlined in this application, CGP seeks review by the Anti-Dumping Review Panel ("ADRP") of the Minister's Decision under Section 269ZZA(1)(d) and 269ZZC of the Act.

We now address the requirements of both the form of application that has been approved by the Senior Panel Member of the ADRP under Section 269ZY of the Act, and of Section 269ZZE(2) of the Act in relation to our client's grounds of review, being those requirements not already addressed within the text of the approved form itself, which we have also completed and lodged with the ADRP.

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1 ADN 2019/20.

2 See EPR 506, Doc 064.

3 ADN 2019/113 at page 1.

4 ADN 2019/113.

B Legal standard for contiuation

In making a recommendation to the Minister, there is one key thing that the Commissioner must address, in accordance with s 269ZHF(2) of the *Customs Act 1901* ("the Act"):

> *(2) The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is 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.*

This adapts the requirements of Article 11.3 of the World Trade Organisation *Anti-Dumping Agreement* ("ADA") to domestic law. While the terminology used in the ADA is slightly different to that used in the Act it provides useful guidance as to how the requirements of s 269ZHF(2) are to be met. It is clear from WTO jurisprudence, and from the unequivocal terms of s 269ZHF(2) of the Act, that the key question of which an investigating authority must be satisfied is that the recurrence of dumping and material injury is a "likely" consequence of the revocation of measures. This has been described as there being a "nexus" between the two such that the former *"would be likely to lead to the latter"*.[5]

Under Australian law, "likely" has been defined to mean "more probably than not".[6] We believe it is not controversial that any satisfaction as to the "likelihood" of recurrence must be based on a foundation of positive evidence, as the Appellate Body has stated:

> *In view of the use of the word "likely" in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated - and not simply if the evidence suggests that such a result might be possible or plausible.*[7]

Finally, there is clear WTO jurisprudence to the effect that an investigating authority in such a continuation inquiry is required to take an "active role" combining both investigatory and adjudicatory aspects, rather than a passive role.[8] Australian law requires the same – this is an "inquiry" after all, through which the Commissioner can have regard to any matter considered to be relevant to the inquiry.[9] Where the Commissioner has rested his or her conclusions on untested analysis, there must be significant questions as to whether there is an appropriate factual basis for deciding to continue the measures.

It is important reiterate these requirements upfront. Ultimately, if the evidence before the Commissioner was not sufficient to support a finding that it is more probable than not that injurious dumping will recur

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5 Appellate Body Report, *US - Anti-Dumping Measures on Oil Country Tubular Goods*, para. 108.

6 *Siam Polyethylene Co Ltd v Minister of State for Home Affairs* (No 2) [2009] FCA 838, paragraph 48. While this decision was appealed to the *Full Federal Court in Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86, this interpretation of the term "likely" was accepted by all parties and was not overruled or questioned by the Full Federal Court, per paragraph 92.

7 *Appellate Body Report, US - Corrosion-Resistant Steel Sunset Review*, paras 110-113.

8 *Ibid,* at para 111. See also Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 179.

9 S 269ZHF(3)(b).

with respect to any of CGP exports of power transformers in the future, then the Commissioner is not able to recommend the continuation of the measures.

The Commissioner has found that the expiry of the measures is likely to lead to a recurrence of the dumping and injury that they were intended to prevent. In coming to this conclusion, the Commissioner has considered separately whether dumping is likely to recur and whether material injury is likely to recur. It is these two requirements that this application challenges.

C First Ground – the evidence does not establish that dumping is likely to recur

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The Commissioner's finding that dumping is likely to recur was best summarised in the following extract:

> *The Commission has found that all exports by CG Power over the period 2011 to 2014 that were examined during INV 219 or REV 383, were dumped during periods of consistent profitability at a total company level. Data supplied by CG Power during this inquiry indicates that the power transformer delivered in 2019 is likely dumped.*
>
> *In addition, CG Power's maintenance of an Australian sales office, its ongoing tendering for business, and its ability to forward plan for capacity given the long lead times for the manufacture of power transformers, indicates that exports by CG Power to Australia are likely to continue if the measures were to expire.*
>
> *These factors lead the Commissioner to conclude that the expiration of measures currently imposed would be likely to lead to a recurrence of dumping that the measures are intended to prevent.*[10]

CGP disagrees with this conclusion, and the findings that have led to that conclusion. The Commissioner's recommendation under s 269ZHF(2) is based upon the following factors:

- Prior findings of dumping
- "Likely" future dumping
- Periods of consistent profitability
- Maintenance of an Australian sales office
- Ongoing tendering for business; and
- CGP's ability to forward plan capacity

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10 Page 54.

The analysis of each of these factors has been based either on a misunderstanding of the facts and evidence before the Commissioner. In respect of some of them there is a dearth of positive evidence. And, overall, the information simply does not assist in establishing the "likelihood" required before a recommendation can be made under s 269ZHF(2) of the Act. Further, there is a host of relevant information – being information that was before the Commissioner but was not expressly considered in the Report – that tends to show that a continuation of dumping is not "likely".

When these matters are considered together it is clear that the positive evidence that was before the Commissioner does not establish this likelihood, as discussed below.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct and preferable decision is that Minister allow the measures to expire insofar as they relate to CGP under s 269ZHG(4)(ii), as there is no appropriate evidentiary basis to consider it likely that CGP will dump if the measures are revoked.

11 Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

As noted above, the finding that dumping was likely to recur was premised on a flawed analysis of a number of factors, and ignorance of other factors. We expand on that below.

However, we note that the Report makes a number of statements to the effect that evidence establishes that CGP has an "intention" to supply the Australian market[11] or that exports are likely to continue if the measures expire. CGP has never made a secret of this. It would like the opportunity to sell to Australia, should an opportunity arise to do so profitable. This in itself is no basis to continue the measures.

A Prior findings of dumping

The Report takes the view that findings of dumping that occurred previously are relevant to the inquiry.

First, we are concerned by this approach generally. Every exporter involved in a continuation inquiry will have been found to have dumped in the past: if they had not, there would be no measures in relation to which an inquiry could be undertaken. A past finding of dumping is not a scarlet letter to be worn forevermore by the relevant exporter, lashing them indefinitely to Australia's anti-dumping system.

It is of note that nothing in Division 6A of the Act requires the Commissioner to undertake a dumping margin analysis. Further, the Appellate Body has stated that *"no obligation is imposed on investigation authorities to calculate or rely on dumping margins in a sunset review"*.[12]

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11 Page 53.

12 Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 123.

That is not to say prior findings of dumping are not necessarily relevant to a continuation inquiry. However, the relevance of such findings needs to be assessed in the particular circumstances in each case.

The Commissioner has formed the view that information arising from Review 383 is the most reliable and relevant information, and has used that to inform its consideration of the likelihood of future dumping.[13] In doing so, it has failed to explain why these prior findings are of any relevance to the outcome of the inquiry.

A relevant but overlooked fact is that every power transformer that was found to have been dumped prior to the commencement of the inquiry was exported to Australia before the original imposition of the measures that are subject the inquiry. Those measures were imposed on 10 December 2014. The relevant dates that apply to those power transformers were as follows:

[CONFIDENTIAL INFORMATION DELETED – table showing significant dates of power transformers previously exported to Australia]

The Commissioner is aware of this. It was clearly stated in CGP's submission of 18 September 2019. The Commissioner obviously undertook the relevant original investigation and subsequent review. The Commissioner refers to information from those procedures in the continuation inquiry Report. Yet nowhere is this important fact reflected in the Report.

Again, every single one of these power transformers was exported prior to the imposition of the relevant measures, subject to pricing mechanisms in contracts that are now six to seven years out of date. The Report does not explain in any detailed or reasoned manner what it considers the relevance of these historic sales to be to the continuation inquiry.

The Report provides no clarification regarding how these historic findings have any bearing on ascertaining whether it is more probable than not that dumping would recur if the measures were revoked. Given that these sales all occurred prior to the imposition of measures, CGP submits that they are simply irrelevant to that question.

B "Likely" future dumping

In [CONFIDENTIAL INFORMATION DELETED – date], CGP received a request for quotation ("RFQ"). CGP provided its best and final offer ("BAFO") with respect to that RFQ in [CONFIDENTIAL INFORMATION DELETED – date] CGP was successful and a contract with the relevant supplier came into operation in [CONFIDENTIAL INFORMATION DELETED – date]. It was not until [CONFIDENTIAL INFORMATION DELETED – date] that CGP received a sales order for a power transformer under that contract. The relevant power transformer was subsequently exported after the close of the inquiry period. The Report has reached the opinion that this export was *"likely dumped"* and has considered that to be relevant to what would occur if the measures were revoked.[14] Indeed, this appears to be of central relevance.

CGP has been completely transparent about this sale throughout the inquiry. In its exporter questionnaire response ("EQR"), it even went so far as to provide what was, at the time, up to date information regarding the price and costs associated with the-then incomplete power transformer,

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13 Page 35.

14 Page 54.

although such information was not requested. Throughout the span of the inquiry, the Commissioner showed little interest in this sale and never requested further or updated information.

The provisional findings in the Statement of Essential Facts ("SEF") were based on material errors of understanding regarding this sale. We will not re-litigate those now, but we do draw attention to CGP's submission of 18 September 2019. In any regard, the errors do not appear in the Report, so presumably the Commissioner has accepted the provisional findings were wrong.

The SEF did not mention any view that the export was likely "dumped". This view was never shared with CGP in any form over the span of the inquiry, nor mentioned during the meeting between CGP and the Commissioner's staff on 19 September 2019. It has arisen purely in the Report, without any input from CGP.

There are many issues with this. Firstly, the Report characterises the information to be *"estimated costs and targeted profitability"*.[15] This is right insofar as it speaks of estimated costs, as that was the case. The "targeted profitability" is not correct, as this was just a margin based on those cost estimates for the purpose of the review, rather than the margin CGP anticipated it would receive when it submitted its BAFO in [CONFIDENTIAL INFORMATION DELETED – date] or the margin actually received on that sale. We are unsure as to why the Commissioner characterised it as such.

Further, the Commission's interpretation of that margin is incorrect. The Commissioner considers it to be a "gross margin" not reflecting the impact of selling, general and administrative expenses ("SG&A").[16] That is not true. CGP included SG&A costs in Cell C40 ("other costs").[17] CGP was of the view that these selling costs would generally be treated as overheads, because it understands overheads to mean all costs on the income statement except for direct labour, direct materials, and direct expenses. Given this was an estimate relating to an export outside the inquiry period for which the Commissioner requested no information, CGP did not view it as necessary to split these costs into individual selling, administrative or general costs as the Commissioner usually requires. If the Commissioner at any point checked this with CGP, it could have easily been explained.

This is significant. The Commission's view regarding likely dumping is based on their misunderstanding that the margin in the Australian CTM is a gross margin. It is not. Further, the Commissioner has failed to reflect that the price referred to in the Australian CTM at Cell C49 excludes [CONFIDENTIAL INFORMATION DELETED – details of price].

Finally, and we would think rather importantly, the Commissioner has not undertaken any legally recognised analysis of this shipment to ascertain whether it was "dumped." The Commissioner admits as much in the Report.[18] Dumping has a legal meaning. It is only determined to have occurred in accordance with s 269TACB. The Commissioner has not applied s 269TACB in relation to CGP's export to Australia. We note the Appellate Body has commented on the inappropriateness of using an *ersatz*-dumping finding in a continuation review:

> *In the sunset review at issue, the USDOC did not even ask Acindar to provide information regarding its normal value and export price. Rather, it restricted itself to asking for certain cost*

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15 Page 48.

16 *Ibid*.

17 Please refer to Confidential Attachment 7 of the Report, tab "G-5 Australian CTMS".

18 Page 46.

> *information and, when that cost information was not provided, compared Acindar's export prices to the United States, obtained from the US customs authorities, with the prevailing prices in the US market. The failure to seek information about Acindar's home market prices means that the USDOC made a finding of likely dumping without making any effort to obtain information that is essential to the core principle of dumping as a price-to-price comparison. We do not see how a finding of likely past dumping could have a sufficient factual basis if it did not take into account at a bare minimum these elementary aspects of the concept of dumping as that term is used in the Anti-Dumping Agreement*.[19] [emphasis added]

The suggestion that CGP's export was likely dumped is wrong and meaningless. It is based on cost estimates and the Commissioner's failure to understand or clarify information that it had before it over a ten month period. The Commissioner's disparaging opinion is not based on any legally recognizable dumping analysis and so, as per the Appellate Body authority quoted above, is not a sufficient factual basis for consideration in a continuation inquiry.

Further, the Report fails to reflect that the pricing mechanism under which this sale was made is from a contract that dated back to [CONFIDENTIAL INFORMATION DELETED – date], and which has now run its term. Again, we would suggest that this in and of itself renders the fact of the sale as of little relevance to whether dumping is likely to recur if the measures were revoked.

C Periods of consistent profitability

It is uncontested that there is high demand in the Indonesian market for power transformers. The Australian industry reflected as much in its application.[20] CGP provided ample information to the inquiry about the ongoing nature of this demand.[21] And, this appears to have been accepted by the Commission.[22] As a result, CGP makes a good profit on its sales in the domestic market. Further, it is functionally at full capacity. Accordingly, CGP submitted to the inquiry that, were the measures to be revoked, CGP has no incentive to sell to Australia at dumped prices.

Despite these submissions being before the Commissioner prior to the publication of the SEF, the SEF did not deal with them in detail. The Report, however, goes some way to address them, albeit in a less than satisfactory manner. In particular, the Report states as follows:

> *The Commission undertook an analysis of CG Power's total company profitability during the financial years 2010 to 2018 using audited financial statements provided by CG Power in relation to INV 219, REV 383 and the current inquiry. The Commission notes that CG Power maintained a consistent level of profitability at the total company level over the nine financial years evaluated. The Commission further notes that during the conduct of INV 219 and REV 383, the Commission examined the exportation of 11 power transformers exported between*

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19 Panel Report, *US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)*, para. 7.77

20 Please refer to CGP's submission of 23 July 2019, for our more nuanced view of the Australian industry's appreciation of these circumstances.

21 Please refer to CGP's submission of 16 August 2019.

22 Page 53.

> *2011 and 2014. Of those 11 power transformers, 11 were found to have been dumped, with dumping margins ranging between 6.5 per cent and 48 per cent.*[23]

This analysis was undertaken in Confidential Attachment 7, which was never provided to CGP during the inquiry or prior to the Minister's decision. Having had the chance to review that, we note the Commissioner's reference to *"a consistently profitable business"* is a reference to a consistent post-tax profit margin as a percentage of revenue. This fails to recognise that the post-tax profit margin has remained steady despite significant increases in revenue, as shown by the below index:[24]

[CONFIDENTIAL INFORMATION DELETED – table showing indexed revenue]

As already noted, the last of the power transformers exported to Australia was in [CONFIDENTIAL INFORMATION DELETED – date]. It was not until 2014 that CGP's revenue really took off. This increase in revenue is driven to quite a significant degree by the aforementioned steady increases in demand in the domestic market. This increase in revenue has occurred at the same time as a significant increase in capacity utilisation. During Review 383, capacity utilisation was [CONFIDENTIAL INFORMATION DELETED – capacity utilisation] and has steadily increased to [CONFIDENTIAL INFORMATION DELETED – significantly higher capacity utilisation] in 2018. [25] Finally, to the extent that post-tax profit is relevant, in 2018 CGP achieved its highest profit in terms of value over the 8 year period assessed by the Commission; focusing on a profit as a percentage of revenue as the Commissioner has obscured this result. CGP anticipates that the ongoing high demand domestically will lead to similar high profits into the mid-2020s.

Simply put, CG has no incentive to pursue sales that are less profitable on the Australian market than it can readily achieve in the domestic market. The "consistent profitability" point the Report cites to countermand this proposition is purely spurious.

CGP has never stated that it will not supply the Australian market in the future. What it has said is that it will only pursue sales that are profitable. As discussed in its submission of 23 July 2019, CGP builds a profit margin into its costings and then actively controls its costs to ensure this margin is not eroded before it is paid. To support the accuracy of its costing methodology, CGP provided Attachment 1 to that submission. The Attachment compared the profit sought initially on all sales of power transformers made domestically in 2018-19 with the originally envisioned margin in the costing. The Commissioner seems to be satisfied with this, stating:

> *The Commission notes that the profit figures reported in relation to the domestic sales for 2018-2019 show an overall level of net profit consistent with CG Power's claimed target. Although not fully aligned to the inquiry period, the data underlying the profit figures can be cross referenced to other attachments submitted with the REQ.*[26]

From this it can be confirmed that if CGP was to engage in any sales to Australia, it would do so with the intent of seeking a margin and the ability to ensure it achieved that margin.

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23 Page 47.

24 See Attachment 3 – Confidential Attachment 7 – CGP edit, in which this index is calculated.

25 See CGP's response to question G-2 in its EQR from Review 383.

26 Page 47.

However, in the Commissioner's mind, this established fact is discredited by:

- Information regarding CGP's sales to New Zealand. This data was also included in CGP's submission of 23 July 2019, with the purpose of illustrating what kind of profits CGP could receive in a market similar to Australia. This information is included in the "Profit% Third Country" tab of Confidential Attachment 7. The Commissioner materially misinterprets this information. The Commissioner is of the view that it does not include SG&A costs. Once again, CGP included these costs in overheads, in this instance at Column I. It is CGP's usual practice to do so. The only reason it has stripped out those costs in responding to the REQ is that the Commissioner specifically requested it do so with regard to domestic sales. So the Commissioner's interpretation of that information is wrong. CGP stands by its submission and confirms that the average net profit achieved on its sales to New Zealand was [CONFIDENTIAL INFORMATION DELETED – number].
- In any regard, the Commissioner goes on to state that it cannot validate this information.[27] Again, that is true – this information was not requested by the Commissioner, but CGP considered it would be illustrative of their business practices, and thought it worth submitting. If the Commissioner considered it to be of relevance – and it is not referred to in the SEF at all, so its relevance only became apparent to CGP after the Minister's decision – then he only had to ask for clarification or further information. That was not done.
- The Commissioner then refers to information it has regarding CGP's 2019 sale – we refer you to the above section in that regard, but would emphasise the Commission's characterisation of this information as cost estimates.
- Finally, the Commissioner then notes that in the previous review it found that CGP incurred higher costs than it budgeted for.[28] Again, we would note that these findings related to exports that occurred prior to the imposition of measures.

CGP has provided information regarding its ability to meet its budgeted margin in relation to domestic sales during the period of inquiry – information that the Report confirms has been cross-referenced with the information provided by CGP in its EQR. These are the relevant facts for ascertaining what would happen if the measures were revoked – they are contemporaneous and backed up by substantive data. The rest of the information the Commissioner has used to discredit this fact is a sideshow of misunderstanding, irrelevancy, estimation and information that cannot be validated.

CGP has no incentive to pursue unprofitable sales in Australia. When and if it does export to Australia, it will be because it is commercially beneficial to do so. The facts before the Commissioner are that CGP targets a healthy margin on its sales and has the ability to achieve a profit that is consistent with that target margin. These facts support the notion that it is not likely that dumping would recur if the measures were revoked.

D Maintenance of an Australian sales office

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27 Page 47.

28 Page 48.

At the outset, we need to emphasise that CGP does not have an Australian sales office, it has a single representative engineer in Australia. It did have sales offices, with multiple staff, but the last of these was shut down in 2016. We have made this distinction clear in the EQR and in CGP's submissions to the inquiry, but the Report fails to reflect this nuance in detail. [29]

The residential engineer undertakes many tasks in Australia, including servicing of CGP transformers that were installed prior to the imposition of measures and monitoring opportunities to tender for supply of power transformers or other products produced by the global CG group.

There has been a significant diminution of CGP's presence in Australia. This is illustrated by the information included in CGP's submission of 18 September 2019, including costs of CGP's Australia's operation and a list of all the staff who were previously employed in CGP's sales office. This impacts CGP's ability to service the Australian market to anywhere near the degree it did prior to the imposition of measures.

The Report does not accept this. The Report focuses on the fact that CGP still has a presence in Australia, and then goes on to consider that its presence is not a prerequisite to bidding in tenders, and that some competitors operate business models that do not require Australian sales offices.[30]

CGP is not aware of which entities operate without a presence in Australia. However, CGP is of the view that it would be unusual not have some presence in Australia, given the significant activities that need to occur within Australia, such as site preparation, installation, post-installation maintenance and warranty issues. Further, how CGP has replicated how it chooses to do its business in NZ, Malaysia, the Philippines and Vietnam.[31] The evidenced decreased presence of CGP in Australia impacts its ability to conduct that business.

Further, it is more common than not for manufacturers of power transformers to have a presence in Australia. This is confirmed by information readily available to the Commission. Based on our quick review of the public record, it seems that most exporters of power transformers have some presence in Australia, including Siemens Transformer (Jinan) Co., Ltd and Siemens Transformer (Wuhan) Co., Ltd,[32]

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29 EQR, page 8.

30 Page 50.

31 CGP has sales offices in NZ and Malaysia, and resident engineers in the other listed countries.

32 *Verification Visit Report (Siemens) for Investigation 507*, page 5 accessed at https://www.industry.gov.au/sites/default/files/adc/public-record/507_-_046_-_verification_report_-_importer_-_siemens_limited_-_verification_visit_report.pdf.

Changzhou Toshiba Transformer Co., Ltd,[33] GE Wuhan,[34] ABB entities, [35] Hyundai Heavy Industries Group[36] and Shihlin Electric Taiwan.[37]

We do not understand why the Commissioner considers CGP's continued presence in the Australian market to be a "black mark" against it. The goal of the measures is not to ban exports from the Australian market. It is to redress injurious dumping. The question before the Commissioner was not whether exports are likely to recur if the measures are revoked, it is whether dumping is likely to recur. The one export made by CGP since measures were imposed, facilitated by the residential engineer, *passed on the dumping duties to the customer*. Yet the Report evinces an attitude that unless CGP completely abandoned a market that it has historic ties with, the measures need to continue.

As it stands, CGP's presence in Australia is significantly smaller than it was when the measures were imposed, limiting its ability to supply power transformers to Australia now and in the future.

E Production capacity

CGP is at full capacity. This is accepted by the Commissioner.[38] This is largely driven by demand in the domestic market. The Australian industry and CGP agree about the significant domestic demand,[39] and CGP has provided evidence to establish that this will continue into the mid-2020s.[40]

However, the Report says this:

> *It is the Commission's understanding that the Sales and Production arms of the business discuss the possibility of the manufacturing timeline ahead of an RTF bid. It is the Commission's view that this scheduling of work allows CG Power to forward plan to account for upcoming production of exports…. Despite CGP's claims that Australia is not a key market, it has participated in recent tenders in the Australian market. This points to CG Power's intention to continue to supply in the Australian market.*[41]

CGP has never denied it would like the opportunity to supply power transformers to the Australian market. Such an intent is no basis to continue the measures. The reason why the production utilisation is

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33 *Verification Visit Report (Toshiba) for Investigation 507*, page 5 accessed at https://www.industry.gov.au/sites/default/files/adc/public-record/507_-_044_-_verification_report_-_importer_-_toshiba_international_corporation_-_importer_visit_report.pdf

34 *Verification Visit Report (GE AU) for Investigation 507*, page 8 accessed at https://www.industry.gov.au/sites/default/files/adc/public-record/507-039_-_verification_report_-_importer_-_ge_grid_australia_pty_ltd.pdf

35 *Verification Visit Report (ABB Australia)*, page 9, accessed at https://www.industry.gov.au/sites/default/files/adc/public-record/095-verificationreport-importer-abbaustralia.pdf

36 *Verification Visit Report (Hyundai Australia) for Investigation 507*, page 9 accessed at https://www.industry.gov.au/sites/default/files/adc/public-record/065-verificationreport-importer-hyundaiaustralia.pdf

37 *Verification Visit Report (Siemens Australia) for Investigation 219*, page 9 accessed at https://www.industry.gov.au/sites/default/files/adc/public-record/065-verificationreport-importer-hyundaiaustralia.pdf

38 Page 53.

39 WTC's application notes that "there has been strong domestic demand as Indonesia expands their electrical network", at page 8 accessible at https://www.industry.gov.au/sites/default/files/adc/public-record/504-001_-_application_-_ausindustry_-_wilson_transformer_company_pty_ltd.pdf

40 See CGP's submission of 16 August 2019 for a discussion of the drivers of this demand.

41 Page 53.

important is that it shows that CGP is not reliant on making sales to the Australian market. There is no logical reason for CGP to sell product to Australia at a lower margin than it can achieve domestically within Indonesia.

Honestly, there is not a lot that can be said about the above extract – it appears to operate on the assumption that because CGP has some ability to forward plan, it will create room in its production schedule to dump power transformers on the Australian market. There is no logic to this nor evidence to support it. The evidence before the Commissioner is that domestic demand will continue to be high into the future. This suggests that if the measures were revoked, there would be no recurrence of injurious dumping.

Finally, insofar as the Commissioner takes issue with the claim that Australia is not a "key market", we note that over the inquiry period CGP sold some [CONFIDENTIAL INFORMATION DELETED – IDR value] worth of power transformers [CONFIDENTIAL INFORMATION DELETED – USD value]). None of this revenue related to sales of power transformers to Australia. Further, CGP sells power transformers to a number of countries other than Indonesia and Australia. Australia is not a key market for CGP, and the fact that CGP has unsuccessfully participated in some tenders in the local market does not change this fact. Australia not being a key market, does not mean CGP will not consider making profitable sales to Australia.

F Participation in tenders

CGP provided the Commissioner with tender documents for two RTFs in which it was involved. Please refer to:

- Attachment 4 – price calculation 1 ; and
- Attachment 5 – price calculation 2.

These are CGP's costings for the design in each tender. These costings included target EBIT margins of [CONFIDENTIAL INFORMATION DELETED – margins]. These determining these margins SG&A costs have not been not separately reported, but are included in the "other overheads" amounts reported in each of the spreadsheets, in line with CGP's usual practice.

Further, please refer to Attachment 6, which is CGP's explanation to the Commissioner regarding these tenders.[42] Of significance, each tender bid [CONFIDENTIAL INFORMATION DELETED – basis of price offer].

This does not evidence that dumping will recur in the absence of measures. It only evidences what we have been saying all along - CGP's interest with regard to the Australian market is to make profitable sales of power transformers. That is no basis to call for the continuation of measures.

G Failure to inquire regarding adverse interpretations of Confidential Attachment 7

Much of the adverse inferences included in the Report have been drawn from misunderstandings of the information that has been compiled by the Commissioner in "Confidential Attachment 7". This creates significant difficulties for CGP, as the Commissioner's reliance on Confidential Attachment 7, and the

[42] We have not provided all attachment that were included in that email, for the sake of expediency, but the Commissioner has access to them if the ADRP would like to review them.

adverse inferences it had drawn from the information included there-in was not apparent until after the Minister's decision was made.

The information included in Confidential Attachment 7 had, generally, been before the Commissioner prior to the publication of the SEF. The submission of that data was accompanied by detailed written submissions that explained what the data showed, and how it supported CGP's calls for the revocation of the measures.

Neither Confidential Attachment 7, nor the adverse inferences that the Commissioner has drawn from the data included there-in, were referred to at all in SEF. CGP forcefully addressed the many material errors of fact that undergirded the SEF's proposed recommendation in its submission of 18 September 2019. It seems, following that, the Commissioner reviewed information CGP submitted and decided to rely purely on its own interpretation of that data which is generally adverse to CGP in coming to his recommendation to the Minister. At no time did the Commissioner seek to ascertain whether its interpretation of that data – in particular, the NZ export profit information and the costs estimates for the Australian sale – were correct or even arguable.

This outcome is unjust – CGP cannot now tender information that supports its clarifications of that data and rebuts the Commissioner's adverse interpretations. CGP has been denied any opportunity to correct the Commissioner's mistakes.

We consider this to be a significant denial of procedural fairness, and it is not one that can directly be corrected through the ADRP process. For the purpose of this appeal, we note the WTO jurisprudence that requires an investigating authority to undertaken an active investigatory role in a continuation inquiry. Given the Commissioner has failed to do that in relation to Confidential Attachment 7, we submit that Confidential Attachment 7 and the adverse inferences the Commission has drawn from that cannot be considered to be "positive evidence" upon which a continuation decision can be founded.

H Relevant information that the Commissioner has overlooked

The Dumping and Subsidy Manual lists a number of factors the Commissioner may consider when undertaking his task under s 269ZHF(2) of the Act.[43] The Commissioner had before him evidence relevant to these factors, yet the Report fails to consider them in detail. In particular, we note:

Factor cited by Manual	Comment
Duty absorption by the exporters (or other means of circumventing measures)	CGP has not been involved in any circumvention of the measures. Indeed, the evidence before the Commissioner, in terms of the 2019 export and the tenders in which CGP participated, show that CGP explicitly sought to pass on duty to its customers.
Exporters' volumes and values to third countries	Please refer to Attachment F-2 to CGP's EQR. Over the inquiry period, CGP exported [CONFIDENTIAL INFORMATION DELETED – number] power transformers of varying design and value to four additional countries. Further, as per Attachment 2 to CGP's submission of 23 July 2019, its market focus relates to Vietnam, Philippines, Myanmar, Sri Lanka and New Zealand.

43 *Dumping and Subsidy Manual November 2018*, page 175.

	In this regard, we note the Commissioner's opinion in the report that: "*There are currently no measures on Indonesia, Taiwan and Thailand imposed by other countries (section 7.5.5 refers) and no reason to assume that the Australian market will be more attractive to an exporter of power transformers than any other country in the region*"[44]
Export trends after the measures were imposed	After the measures were imposed, CGP's exports ceased. The one exception to that is an export after the inquiry period, based on a legacy contract.
Changes in distribution channels	This is discussed above but, to reiterate, CGP has closed down its Australian sales office. CGP now employs one person in Australia - an engineer in residence. CGP currently does not have the ability to attend to the Australian market to the same capacity it did prior to the imposition of the measures.
Demand in exporters' home markets	Domestic demand is very high, and will continue to be so into the mid 2020s, as explained in CGP's previous submissions and as accepted by WTC and the Commissioner.
Evidence of sales below costs	There is no evidence of sales below costs. Indeed, the evidence before the Commissioner establishes that CGP's sales were profitable.
Exporters' dependence on export markets	CGP is not dependent on export markets. The EQR evidences that the majority of its capacity is directed toward the domestic market.
Availability of other markets.	As noted above, CGP's strategy has been to seek access to Vietnam, Philippines, Myanmar, Sri Lanka and New Zealand. Australia does not form part of this strategy.
Other possible sources of supply by importers	CGP notes that there are a number of sources from which PTs could be supplied, including Vietnam, Korea, Thailand, China as well as the EU and the US. We further note that WTCs application was preoccupied with exports from China, yet China is barely mentioned in the Report.

None of these additional facts have been assessed by the Commissioner, yet each of them points to the conclusion that, were the measures revoked, dumping would not recur.

12 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

[44] Page 55.

Currently, CGP's exports are subject to interim dumping duty of 28.3%. If the correct decision is made, CGP's exports will no longer be subject to anti-dumping measures.

D Second Ground – it is not likely that material injury will reccur

9 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

The Report's finding that material injury is likely to recur is premised on the basis that future dumping will confer some form of price advantage on CGP, when it competes in a tender. For example:

> *Due to the price advantage that dumping will afford CG Power in bidding for new contracts, and as CG Power has been found to be dumping in a prior investigation and review (INV219 and REV 383), it is the Commission's view that the expiration of measures will result in a recurrence of dumping and material injury.*[45]

The concept of a "pricing advantage" is pure speculation with no basis in evidence. Further, the conclusion drawn by the Commissioner is contradicted by evidence that was before the Commissioner prior to the finalisation of the Report.

10 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

On the basis of the evidence before the Commissioner, he could not be satisfied that it was likely that material injury would recur if the measures were revoked. Absent such satisfaction, he is legally prevented from recommending to the Minister that measures continue under s 269ZHB(2).

The Minister has adopted the Commissioner's recommendations in making her decision under s 269ZHG. The correct and preferable decision is that Minister would have allowed the measures to expire under s 269ZHG(1)(a).

11 Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The concept that dumping delivers some pricing advantage in relation to the sale of power transformers is facile.

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45 Page 57.

Power transformers are bespoke, individually designed units. Any sale of a power transformer is done via a tender process, in which competing manufacturers will submit their own design to meet the customer's requirement:

> *Suppliers develop and submit tenders that meet the specifications in the request for tender. There are many design options available that satisfy each specification and suppliers may submit a number of options.*[46]

The first thing to note in this regard is that different designs will have different costs and so, it follows, require different pricing. Some competing designs will be cheaper, whereas others will be more expensive. Importantly, though, price is not determinative; the Commissioner has been clear in finding in the past that price is but one factor assessed by a tenderer:

> *Purchasers evaluate and rank tenders received and the evaluation process varies from purchaser to purchaser. Consideration relevant to the tender evaluation include the ability to meet specifications, commercial requirements, price and other qualitative and quantitative criteria.*[47]

What this means is that tenderers are not competing on price alone. It would be hard for them to do so, because tenders are closed exercises, in which a tenderer does not know what other designs have been offered, nor at what price. Price is driven by design, and each tenderers design will be unique and will have a unique price. A dumped product may still be more expensive than a non-dumped product, by virtue of its specific design. But ultimately, price is not determinative, so this concept that dumping will confer a price advantage which will then result in a winning tender is fanciful. CGP pointed this out to the Commissioner in its submission of 23 July 2019.

Further, the Commissioner's theory regarding a price advantage being conferred by dumping does not align with the Commissioner's other findings in a related investigation. [48] In Statement of Essential Facts 305 ("SEF 305"), relating to exports of power transformers from China, the Commissioner found that:

> *…the Commissioner is not satisfied that the size of the dumping margin was determinative in decisions to award tenders for goods from China during the investigation period. Consequently, the Commission considers that the size of the dumping margins have not materially impacted the Australian industry's overall economic performance, including volumes, prices or profits.*[49]

So, in one circumstance – pertinent to Indonesia – dumping equals a "pricing advantage" which equals injury. In another circumstance – pertinent to China – dumping does not equal pricing advantage and

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46 ADN2019/20, page 5.

47 *Ibid*.

48 The application lodged by WTC was almost entirely based around exports from China, rather than those exported from Indonesia, Thailand and Taiwan; and the Commissioner indicated, in his initiation notice, as follows:

> *It is noted that WTC's application also places emphasis on imports from the People's Republic of China, which are not subject to measures or the direct focus of this continuation inquiry. The Commission will further consider the impact of these imports in its assessment of whether the expiration of measures would lead to a continuation of the material injury that the measures is intended to prevent.*

49 *Statement of Essential Facts No. 507 - Alleged Dumping of Power Transformers from the People's Republic of China*, page 75.

does not lead to the awarding of tenders. The inconsistencies in these findings are baffling, doubly-so as both the investigation and the inquiry have been undertaken by the same Investigation Team within the Commission.

While SEF 507 was not published until after the Report was provided to the Minister, it is clear that the information upon which this conclusion was based was relevantly before the Commissioner from at least July 2019.[50] It was information that was relevant to the inquiry, which actively showed that the supposed pricing advantage offered by dumping was a myth. As SEF 507 further states:

- *WTC's largest competitors in terms of tenders lost were Siemens Jinan and Siemens Wuhan. Both exporters were found not to be dumping during the investigation period;*
- *analysis of won and lost tenders as well as responses from purchasers show that the lowest priced bidder is not always successful and non-price factors are often considered to be as important as price in tender evaluations; and*
- *analysis of tenders lost by the Australian industry to Chinese manufacturers found to be dumping indicates that, in the absence of dumping, the Australian industry is unlikely to have won these tenders based on the submitted bid prices.*[51]

CGP submission of 23 July 2019, made similar observations, which now prove prescient. This information supports CGP's submission on the matter, and actively illustrates that the continuation of the measures against CGP is unnecessary, even if it were likely that dumping was to recur such dumping would likely not be injurious.

In light of this information, CGP submits that there is no rational basis to be satisfied that material injury is likely to recur. The conclusion that dumping confers a price advantage in a tender is not supported by positive evidence. There is no positive evidence to suggest the revocation of the measures will lead to a recurrence of materially injurious dumping.

12 Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Currently, CGP's exports are subject to interim dumping duty of 28.3%. If the correct decision is made, CGP's exports will no longer be subject to anti-dumping measures.

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50 See *Investigation No. 507 - Power Transformers exported to Australia from the People's Republic of China - Note for file - Responses to the Australian Market Questionnaire*.

51 *Statement of Essential Facts No. 507 - Alleged Dumping of Power Transformers from the People's Republic of China*, page 74.

Conclusion

The decisions to which this application refers are reviewable decisions under s 269ZZA(1)(d) of the Act.

CGP is an interested party in relation to the reviewable decisions.

CGP's application is in the proper form and has otherwise been lodged as required by the Act.

We submit that the application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct and preferable decisions that should result from the grounds that are raised in the application are dealt with and detailed above.

Lodged for and on behalf of PT CG Power Systems Indonesia by:

Alistair Bridges
Senior Associate