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15 January 2020

Ms J Fitzhenry
Senior Member
Anti-Dumping Review Panel
c/- Anti-Dumping Review Panel Secretariat
Department of Industry, Innovation and Science
GPO Box 2013
Canberra City
Australian Capital Territory 2601

By email

Dear Senior Member

PT CG Power Systems Indonesia Review 2019/119 - interested party submission

As you know we represent PT CG Power Systems Indonesia (“CGP”) in this Anti-Dumping Review Panel (“ADRP”) review of the outcome of the Anti-Dumping Commission’s continuation inquiry concerning power transformers, as it affects CGP.

At its most fundamental, the task before the Commissioner was to determine whether there was sufficient evidence to establish that, were the measures to expire, dumping and material injury would recur with respect to CGP’s potential exports to Australia. If there is no such evidence, the measures cannot continue.

In this regard, we recall that:

- the nexus that must be established is that the revocation of the measures would result in dumping and material injury;
- it must be “likely” that the revocation would have that effect, where likely means “more probably than not”; and
- the probable likelihood needs to be founded on positive evidence.

We believe these are uncontested principles. We would further submit that these principles establish a relatively high threshold for the continuation of the measures. The general rule is that anti-dumping measures should expire after five years – anti-dumping measures are not intended to become long-standing protection for the Australian industry.

A decision to continue measures cannot be based upon some concept of risk mitigation. Such a decision cannot be motivated by a general un-evidenced concern that the relevant exporter is a

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recidivist dumper that is unaccountably compelled to sell products to Australia at a lower price than is achievable in its own domestic market and that this would inevitably cause material injury. If the Commissioner holds these views in this case, they are inexplicable. Without positive evidence to support these kinds of accusations it cannot be recommended that measures continue.

For the reasons discussed in CGP's application, we do not think the requisite threshold was met, such as to enable the Commissioner and, through the Commissioner, the Minister, to be satisfied that either dumping of CGP's exports, or material injury by reason of CGP's exports, was likely to recur if the measures were to be revoked.

In this submission we will elaborate these points further.

A The evidence does not establish that dumping is likely to recur

In CGP's application we discussed the factors cited in the 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") as establishing that it was more likely than not that dumping would recur if the measures were to be discontinued. For the reasons discussed in the application we do not believe the evidential threshold for continuation was met. A large part of our critique was based on the Commissioner's misunderstanding of information that CGP had submitted. We are aware that anti-dumping investigations are complex and highly contested, and that reasonable people may have different interpretations of the same information. However, in the case of this inquiry the Commission had ample opportunity to confirm its understanding of CGP's information and yet did not do so.

In this regard we note:

- CGP submitted a response to the Exporter Questionnaire ("EQR") on 1 April 2019. The Commission confirmed that CGP fully cooperated with the inquiry. Among other things, this included the information in Confidential Attachment 7 to the final report regarding CGP's export to Australia.
- CGP provided additional information in the form of submissions dated 23 July 2019. This included the third country sale profit information that was ultimately included in Confidential Attachment 7.
- CGP provided an additional submission on 15 August 2019 with further information regarding demand in the domestic market, and with comments on the Australian industry visit report
- The in *Statement of Essential Facts No. 504 - Inquiry into the Continuation of Anti-Dumping Measures Applying to Power Transformers Exported to Australia from Indonesia, Taiwan and Thailand* ("SEF") was published on 22 August 2019.
- On 18 September 2019, CGP lodged a submission in response to the SEF, highlighting what CGP considered to be significant errors in the Commissioner's proposed reasoning.
- On 19 September 2019, CGP team members from Indonesia and Australia, and ourselves, met with the Commissioner's staff to discuss the findings in the SEF and to correct the Commissioner's understanding of CGP's exports to Australia, its capacity utilisation, CGP's activity in Australia and the likelihood of dumping recurring generally.

- At that meeting it became apparent to us that the Commission had received information, not previously disclosed to or raised with either CGP or ourselves, regarding CGP's participation in Australian market tenders, and that the Commission considered that information to be relevant to the inquiry. CGP immediately offered to provide further information in relation to that tender participation. As per the Note for File:

To verify CG Power's statements about its sales behaviour, the Commission asked CG Power representatives to provide any comparative evidence that it may have available about profitability with respect to proposals for Australian projects, to compare with the domestic profitability evidence provided in the EQ. The CG representatives indicated that they would investigate their company records and respond to the Commission on an urgent basis.¹

CGP indicated that it would do so, and further:

...offered to provide additional information if the Commission considered it needed it.²

- On 20 September 2019, CGP provided detailed tender information for two tenders to the Commission by way of email. This has been provided to the ADRP as Attachment 6 to the application. At the close of that email communication, CGP again stated that:

We trust you will let us know if you need anything further.³

As noted in CGP's application, much of the analysis of these issues that subsequently emerged in the Report had not been put to CGP at any point during the investigation. Neither the existence of Confidential Attachment 7, nor the existence of the adverse and incorrect interpretations of CGP data included there-in, were referred to in the SEF. Confidential Attachment 7 and the Commission's interpretations of the same were not brought to CGP's attention before the publication of the report. This is despite the fact that CGP was willing to provide further information, and said as much on multiple occasions prior to the date on which the report was scheduled to be given to the Minister (4 October 2019).

There is ample evidence before the Commissioner that goes to the proposition that dumping is unlikely to recur. This evidence was not properly aired nor considered in the Report. Specifically, we note as follows:

- There is significant demand in Indonesia for CGP's power transformers. The Australian industry itself raised this in its application for the inquiry, and it appears to have been accepted by the Commission. CGP itself has explained the drivers of this demand in its submissions, including an explanation of the intended additional power transformer installations between 2016 and 2024.

¹ *Continuation No. 504 – Power Transformers exported to Australia from the Republic of Indonesia, Taiwan and the Kingdom of Thailand – Note for File – Meeting with PT CG Power Systems Indonesia, page 3 (EPR 504 File No 23).*

² *Ibid.*

³ See Attachment 6 to CGP's application to the ADRP.

- As noted in CGP's submission of 15 August 2019, capacity utilisation increased every year from 2016 to 2018. This is substantiated by the capacity utilisation information provided in response to question G-9 of CGP's EQ response. In 2018 CGP's capacity utilisation was at [CONFIDENTIAL INFORMATION DELETED - number]. As explained in CGP's submission dated 23 July 2019 and 18 September 2019, as well as during the meeting on 19 September 2019, this is functionally full capacity. The Commissioner has accepted that [CONFIDENTIAL INFORMATION DELETED - number] represents CGP's full capacity.⁴
- At the same time, CGP has increased its total revenue while achieving a significant profit margin.

CGP is doing well domestically, and there is every indication it will continue to do so into the middle of this newly-minted decade. Now, this in itself does not mean that CGP will not export goods to other markets. Indeed, during the inquiry period a number of exports were made to third countries, including [CONFIDENTIAL INFORMATION DELETED – third countries]. What it does mean, however, is that CGP has no incentive to enter into supply agreements relating to third countries at razor-edge prices which risk being dumped.

CGP has made no secret of the fact that it would export power transformers to Australia if given the opportunity. But that is not a sufficient basis to secure the continuation of the measures. As CGP has reiterated throughout this process, it only pursues profits akin to those it makes on the domestic market. This is borne out by the tender information that CGP provided to the Commission on 20 September which showed that CGP was tendering at prices that were modelled to achieve higher profit margins than those achieved domestically. Further, as per CGP's submission of 23 July 2019, CGP has the ability to achieve its targeted margin on a per unit basis.⁵

Finally, to the extent that CGP's behaviour is relevant to whether dumping would recur in the absence of measures, we would note that with respect to the only exportation of a power transformer that CGP made to Australia since the measures were imposed [CONFIDENTIAL INFORMATION DELETED – CGP's pricing behaviour]. All of these facts contradict the proposition that it would be probable for CGP to dump and cause material injury to the Australian industry in the relevantly foreseeable future.

Given all of this, how can it reasonably be asserted that it is likely that dumping will recur if the measures are revoked? We do not see any positive evidence that supports the Commissioner's recommendation nor the Minister's decision. When the totality of the positive evidence is considered, free from distortion or misunderstanding, it should be clear that it is improbable that dumping will recur if the measures are revoked.

As a result, the correct and preferable decision is that the measures should have been revoked under s 269ZH(4)(ii) insofar as they relate to CGP. The evidence inexorably points to the conclusion that it is not likely that exports by CGP – if any – would be dumped were the measures to be discontinued. We

⁴ The Report, page 53.

⁵ At page 47, the Report notes that the data provided can be 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"

again very respectfully submit that continuing the measures against CGP in these circumstances simply cannot be justified.⁶

B The evidence does not establish that material injury is likely to recur

In CGP’s application we discussed the conceptual issues with the idea that dumping would result in some form of injurious price advantage to the exporter. Suffice it to say for current purposes that the concept of any pricing advantage seems to fit uncomfortably in the context of tenders for non-homogenous products where participants do not know who their competitors are, nor the design options their competitors have submitted, nor the prices they have offered for the final product. Even if this was not the case, the very fact that prices have been found not to be determinative of who will win any relevant tender suggests that no actual advantage is gained from low pricing.

It must be recognised that the market for power transformers in Australia is robust, with multiple suppliers operating and competing currently, as illustrated by the below table taken from the Statement of Essential Facts with respect to the Commission’s investigation concerning the alleged dumping of power transformers from China:⁷

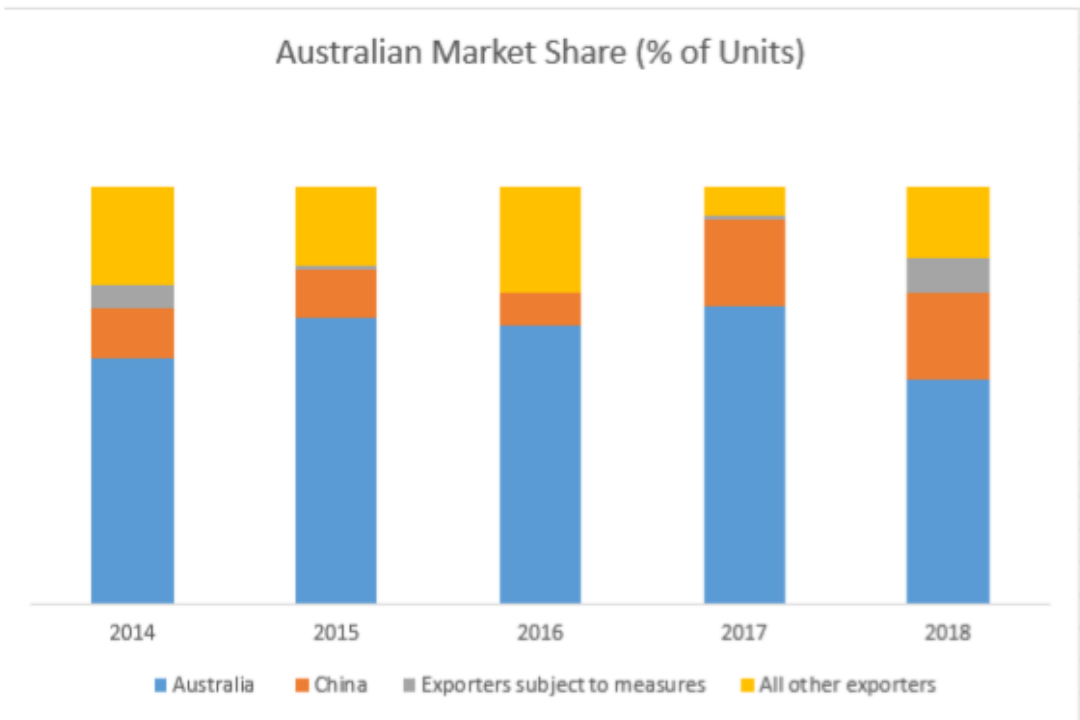


Figure 10 - Australian market share (units)

⁶ In any regard, as noted, since the measures were imposed CGP has started to supply third countries, so even if the measures were to be revoked, we still fail to understand why the Commission consider it likely CGP would dump on the Australian market.

⁷ *Statement of Essential Facts No. 507 - Alleged Dumping of Power Transformers from the People’s Republic of China*, page 66.


Exporters from third countries, including China, hold significant market share in Australia. In any tender, it can be inferred that there will be multiple competitors, each with their own unique designs and unique prices. This will largely include exporters that compete with the Australian industry and:

- that are unrestrained by dumping measures;
- that have a sizeable market share in Australia already;
- that have existing, established, and well-resourced distribution links in Australia.

CGP has demonstrated its pricing *bona fides*. It has huge domestic volumes and demonstrated profitability. It has no reason to stretch its capacity utilisation even further than its present limits. It has virtually no market position in Australia. It has nowhere near the scale and depth of the Australian market resources of the incumbent market participants. In these circumstances we are not aware of any plausible argument that would support the proposition that an exporter in CGP's position would dump and cause material injury to the Australian industry if the measures were to be discontinued.

We thank the ADRP for its consideration of this submission and remain available to elaborate on any matters through the conference mechanism or otherwise as you might require.

Yours sincerely



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