



Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel
C/O Legal, Audit & Assurance
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By EMAIL

Mr Dale Seymour
The Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

Dear Commissioner,

**Power transformers exported from the Republic of Indonesia and Taiwan - ADRP
Review No 2019/119**

The Anti-Dumping Review Panel (Review Panel) is currently conducting a review of the decision of the Minister for Industry, Science and Technology (Minister) made on 1 November 2019 under subsection 269ZH(1) of the *Customs Act 1901* (the Act), applying to power transformers exported to Australia from the Republic of Indonesia (Indonesia) and Taiwan.

The Review Panel accepted applications for review from the following applicants:

1. Fortune Electric Co., Ltd; and
2. PT CG Power Systems Indonesia (CG Power).

As you are aware, I am conducting the review.

Pursuant to section 269ZZL of the Act, I require the following finding in Report 504, relating to the CG Power's grounds of review, be reinvestigated:

1. The finding that it is likely that future exports of power transformers by CG Power from Indonesia will be at dumped prices.¹

I provide below a summary of my reasons for making the request under section 269ZZL of the Act:

1. Subsection 269ZHF(2) of the Act relevantly provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of 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 and the material injury that the anti-dumping measure is intended to prevent.
2. In the report to the Minister (REP 504), the conclusion with regard to exports of power transformers from Indonesia by CG Power was that:

“...the Commission considers it likely that future exports of power transformers from Indonesia will be at dumped prices and would be likely to result in a continuation or recurrence of the material injury that the measures were intended to prevent.”²

3. The first ground of CG Power's application for review is that the evidence did not establish that dumping was likely to recur. CG Power asserts in its submission accompanying the application that the conclusion by the Commission was based on a number of findings which, it contends, were based on a misunderstanding of the facts and evidence before the Commissioner or there was a dearth of positive evidence.
4. One of the reasons given by the Commission for its conclusion that a recurrence of dumping is likely is that CG Power remained active in the Australian market. In particular, the Commission points to the supply of a power transformer to an Australian customer in 2019 and to bids by CG Power in recent tenders.
5. This, however, only establishes that it is likely that CG Power continues to seek to export to Australia. Indeed, this does not seem to be in dispute. CG Power concedes that it would like the ability to supply power transformers to the Australian market.³ It

¹ REP 504, section 7.6.8 at page 59.

² As above.

³ Submission by Moulis Legal dated 6 December 2019 at page 12.

does not, of itself, indicate whether future exports are likely to be dumped. The same comment can be made with regard to other factors considered by the Commission, such as that CG Power maintained a presence in Australia.

6. In reaching the conclusion that dumping was likely to recur, the Commission also relied on the previous findings concerning dumping by CG Power. This refers to the findings of dumping in the original investigation (INV 219) and in a review of measures (REV 383).
7. As CG Power did not export during the inquiry period, the Commission considered the findings from INV 219 and REV 383 remained informative in relation to whether dumping is likely to recur.⁴ CG Power challenges the relevance of past dumping, claiming that the Commission had failed to explain why the prior findings were of any relevance and that every power transformer that had been found to have been dumped was exported before the imposition of measures.
8. The explanation given in REP 504 for the reliance on the past dumping is inadequate. There is no explanation except that, with the absence of exports during the inquiry period, regard had to be had to such dumping.
9. Past dumping is a factor to which regard can and, in certain circumstances, should be had by the Commission in trying to determine whether future exports are going to be dumped. However, it cannot be considered in isolation. Where, as in this case, there has been no exports since the imposition of measures, it needs to be considered why this is the case. The answer to this can be informative of the exporter's future behavior.
10. In any event, CG Power is correct when it submits that the dumping which gave rise to the imposition of measures cannot alone support a finding under section 269ZHF(2) that dumping was likely to continue or recur if the measures expired.
11. The Commission did not just have regard to the past dumping but also had regard to the 2019 export. It found that the power transformer exported by CG Power at this time was likely dumped. Of course, evidence of recent dumping could be very persuasive of likely future dumping. The finding by the Commission regarding the 2019 export is, however, problematic.

⁴ REP 504 section 7.5.7 at page 54.

12. In support of its finding that the power transformer delivered in 2019 was likely dumped, the Commission refers to data supplied by CG Power during the inquiry.⁵ The analysis of this data, which led to the finding that the power transformer was likely dumped, was done in response to a claim by CG power that it would only export to Australia if it was profitable to do so. In support of the claim, CG Power provided the Commission with certain cost and profitability data, including data regarding its 2019 export to Australia.
13. The Commission found that the data provided by CG Power showed a targeted profit margin similar to domestic sales from 2018-2019. However, it claimed that the calculation of the profit margin had not factored in selling, general and administrative (SG&A) costs. Therefore, the targeted profit was a gross profit and not a net profit. If the SG&A costs of domestic sales and the Australian operations were included, the sale to Australia would be significantly less profitable than the domestic sales from 2018-2019. This, the Commission concludes, is an indicator that the power transformer would be likely dumped. The Commission's analysis of CG Power's profitability was contained in Confidential Attachment 7 to REP 504.⁶
14. CG Power claims that the Commission's interpretation of the data it provided was incorrect and that the SG&A costs were included as "other costs". It also claimed that the Commissioner's reliance on Confidential Attachment 7 and adverse inferences drawn from the information CG Power provided were not apparent until after the Minister's decision. Neither Confidential Attachment 7 nor the adverse inferences were referred to in the Statement of Essential Facts (SEF). As a result, CG Power claims it has been denied an opportunity to correct the Commissioner's mistakes.
15. In its submission to the Review Panel, the Commission refuted CG Power's claim that the profitability calculation included SG&A costs. The Commission could not accept that the "other costs" amount contained all SG&A costs. The Commission also noted that the "other costs" amount for the particular power transformer, as a proportion of the total cost to make of the power transformer, was significantly lower and inconsistent with the SG&A costs for domestic sales of like goods. The Commission also notes that the "other costs" section of the exporter questionnaire

⁵ As above.

⁶ REP 504 section 7.5.1 at page 48.

included an explanatory note clarifying that the “other costs” related to the manufacture of power transformers.

16. In response to the procedural fairness complaint by CG Power with regard to the use of Confidential Attachment 7, the Commission notes that the information contained in that attachment was compiled and analysed in response to CG Power’s submission of 18 September 2019 and the meeting with the Commission on 19 September 2019. CG Power responded to the SEF by way of submission and the provision of additional information, which the Commission considered in preparing REP 504.
17. The points the Commission makes in its submission regarding the SG&A costs seem reasonable. However, I am concerned that CG Power did not have the opportunity to comment on the inferences drawn from the material it provided, and in particular the view taken by the Commission that the profit margin did not include SG&A costs. While the information came from CG Power, the inferences and conclusion were made by the Commission, without CG Power being made aware that this was being done.
18. The Commission in its submission to the Review Panel rejects the claim by CG Power that the analysis in relation to the particular power transformer was of central relevance. Rather, the Commission asserts that it considered various factors, none alone of which were of central relevance. However, in the analysis regarding whether future exports would likely be dumped, the finding that the power transformer delivered in 2019 was likely dumped, is an important factor.
19. In the submission which accompanied its application for review, CG Power also makes the point that the finding that the power transformer delivered in 2019 was likely dumped is not based on an analysis in accordance with section 269TACB of the Act. The conclusion by the Commission was based on its view that the sale to Australia was significantly less profitable than the domestic sales from 2018-2019.
20. A finding of dumping does, of course, require a comparison of the export price of the goods exported to Australia with the normal value of those goods in accordance with section 269TACB. The Commission’s finding is not based on such a comparison. It is not necessary though to make a formal finding of dumping for the purpose of section

269ZHF(2). Indeed, as CG Power notes in its submission, nothing in Division 6A of the Act requires the Commissioner to undertake a dumping margin analysis.⁷

21. However, if the Commission intends to rely on a finding that a recent export was likely dumped, there should be some analysis to support this other than just a reference to a different level of profitability. There needs to be an explanation as to how this results in the conclusion that the export was likely dumped. It could be that, if all else were equal, a lower profitability equates to a lower export price than the domestic price and the likely normal value. This though has not been explained.

22. Another concern I have with the Commission's analysis and conclusion is that there does not appear to have been the same consideration given to the pricing and level of profitability of the tender bids as there was with the 2019 delivery and whether the pricing in those bids support a finding that future dumping was likely. It seems to me that the tenders made by CG Power during the inquiry period could also assist in the inquiry as to the likelihood of future dumping.

If you have any issues in relation to the reinvestigation or if you consider that a conference under section 269ZZHA of the Act would assist in obtaining the further information the subject of the reinvestigation, please contact the Secretariat.

Please could you report the result of the reinvestigation within 60 days, that is, by **Tuesday, 31 March 2020**.

If you require more time, including time to allow interested parties the opportunity to comment on an aspect of the reinvestigation, please contact the Secretariat.

Thank you for your assistance.

Yours Sincerely,



Joan Fitzhenry
Senior Panel Member
Anti-Dumping Review Panel
31 January 2020

⁷ Attachment 2 to CG Power's application dated 6 December 2019 at page 5.