

## PT CG Power Systems Indonesia

Registered Office & Plant:

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Anti-Dumping Review Panel  
5 Constitution Avenue  
Canberra ACT 2601  
Australia

Dear Sir,

### **APPLICATION FOR REVIEW OF DECISION BY PARLIAMENTARY SECRETARY TO IMPOSED ANTI-DUMPING MEASURES ON CERTAIN POWER TRANSFORMERS EXPORTED TO AUSTRALIA FROM INDONESIA**

We are writing to advise that PT CG Power Systems Indonesia, an exporter of power transformers to Australia from Indonesia, has engaged Corrs Chambers Westgarth to represent it in respect of an application for review of the decision of the Parliamentary Secretary to the Minister for Industry to impose dumping duties on exports of power transformers from Indonesia. Notification of that decision was published on 4 December 2014.

Corrs Chambers Westgarth is authorised to communicate on our behalf in respect of the application for review of the Parliamentary Secretary's decision, including by signing the application for review.

All communications concerning this matter should be directed to:

Mr Andrew Korbelt

Partner

Corrs Chambers Westgarth

Phone: (02) 9210 6537

Fax: : (02) 9210 6611

Email: [andrew.korbelt@corrs.com.au](mailto:andrew.korbelt@corrs.com.au)

Mr Andrew Percival

Special Counsel

Corrs Chambers Westgarth

Phone: (02) 9210 6228

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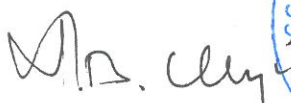
Email: [andrew.percival@corrs.com.au](mailto:andrew.percival@corrs.com.au)

GPO Box 9925

Sydney NSW 2001

If you have any queries, please do not hesitate to contact me.

Yours sincerely,

  
**Abhaya Chatterjee**  
Director & CFO





***Customs Act 1901 – Part XVB***

**Power transformers**

**Exported from the Republic of Indonesia, Taiwan, Thailand  
and the Socialist Republic of Vietnam**

**Findings in relation to a dumping investigation**

***Public notice under subsections 269TG(1) and (2) of the Customs Act 1901***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of power transformers (the goods), exported to Australia from the People's Republic of China (China), the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Taiwan, Thailand and the Socialist Republic of Vietnam (Vietnam).

The goods are classified to tariff subheadings 8504.22.00 (statistical code 40) and 8504.23.00 (statistical codes 26 and 41) of Schedule 3 to the *Customs Tariff Act 1995*. The various potential combinations of incomplete power transformers are not all classifiable to these classifications.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/64 which is available at <http://www.adcommission.gov.au>.

On 1 December 2014, the Commissioner terminated the investigation so far as it related to goods exported by certain exporters in China, Indonesia and Korea and in so far as it related to all exporters in China and Korea. Termination Report No. 219 sets out the reasons for these terminations. This report is available at <http://www.adcommission.gov.au>.

The Commissioner reported the findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in Anti-Dumping Commission Report No. 219 (Report No. 219) which outlined the investigation carried out by the Commission and recommended the publication of a dumping duty notice in respect of the goods.

Particulars of the dumping margin established and an explanation of the method used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Manufacturer / exporter	Dumping margin and effective rate of duty	Method to establish dumping margin
Indonesia	PT CG Power Systems Indonesia	8.7%	Individual export prices were compared with corresponding normal values over the investigation period in accordance with subsection 269TACB(2)(b) of the <i>Customs Act 1901</i> (the Act).
	All other Indonesian exporters except PT. Unelec Indonesia	8.7%	
Taiwan	Fortune Electric Co. Ltd	15.2%	
	Shihlin Electric & Engineering Corp	21.0%	
	Tatung Company	37.2%	
	All other Taiwanese exporters	37.2%	
Thailand	ABB Limited, Thailand	3.6%	Individual export prices were compared with weighted average corresponding normal values over the investigation period in accordance with subsection 269TACB(3) of the Act.
	Tirathai Public Company Limited	39.1%	Individual export prices were compared with corresponding normal values over the investigation period in accordance with subsection 269TACB(2)(b) of the Act.
	All other Thai exporters	39.1%	
Vietnam	ABB Limited, Vietnam	3.8%	Individual export prices were compared with weighted average corresponding normal values over the investigation period in accordance with subsection 269TACB(3) of the Act.
	All other Vietnamese exporters	3.8%	

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commission, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in Report No. 219.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if securities had not been taken. Therefore under subsection 269TG(1) of the Act, I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods; and

- (ii) like goods that were exported to Australia after 27 November 2013 (being the date that the Commissioner made a Preliminary Affirmative Determination under paragraph 269TD(4)(a) of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused, is being caused, or may be caused in the future. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Indonesia (excluding goods exported by PT Unelec Indonesia), Taiwan, Thailand and Vietnam.

The dumping duties will be calculated using the *ad valorem* duty method in accordance with Regulation 5(7) of the *Customs Tariff (Anti-Dumping) Regulations 2013*; that is as a proportion of the export price.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and price suppression and the consequent impact on the Australian industry including loss of sales volume, reduced market share, reduced revenue, reduced profits and profitability, reduced capacity utilisation, reduced employment and reduced return on investment.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

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

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures are applied to 'goods on the water' is available in Australian Customs Dumping Notice No. 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

Report No. 219 and other documents included in the public record are available at [www.adcommission.gov.au](http://www.adcommission.gov.au). Alternatively, the public record may be examined at the

Anti-Dumping Commission's office by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 2 6275 6729, fax number 1300 882 506 or +61 3 9244 8902 (outside Australia) or [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au).

Dated this 4<sup>th</sup> day of December 2014

ROBERT CHARLES BALDWIN  
Parliamentary Secretary to the Minister for Industry

**Weihsuan Zhou**

---

**From:** Andrew Percival  
**Sent:** Wednesday, 5 February 2014 5:40 PM  
**To:** 'BRACIC John'  
**Cc:** Andrew Korbel  
**Subject:** Anti-dumping investigation - power transformers - PT CG Power Systems

Hi John,

I refer to our discussion last week regarding PT CG Power Systems and the recent changes to delegations that have had the effect that the Anti-Dumping Commissioner is now making various decisions under Part XVB of the *Customs Act 1901* including whether or not an exporter is a "cooperative exporter" (i.e. an exporter whose exports were examined and is not an "un-cooperative exporter").

In our view, PT CG Power Systems has provided all information requested of it relevant for the calculation of export prices and normal values for it, which we understand to be a deductive export price and constructed normal value. Accordingly, we do not believe the Anti-Dumping Commissioner could have the requisite degree of satisfaction to find that PT CG Power Systems is an "un-cooperative exporter". We expect that you and the Commissioner will agree with that, but if that is not the case, then we would like to understand the reasons for considering our client to be un-cooperative, and the opportunity to respond before any formal decision is made.

Clearly, PT CG Power Systems has had difficulties in providing information required by the Commission in the form required by the Commission, as we understand have other exporters. But this is reflective of its records being in a form that is not necessarily conducive to providing information in the format required by the Commission, and requiring it, we understand, to obtain and re-organise information manually. As previously advised, that takes time but can be done. For example, post exportation expenses are not separately itemised in PT CG Power System's records but, rather, the total amount is recorded. Separately itemising those expenses can be done but, we understand, would need to be done manually. A simpler approach would be to verify the amount recorded is in fact the total export expenses.

As we understand it, the only information not provided by PT CG Power Systems has been information concerning possible adjustments to the normal value. The reason for that, as indicated in the template exporter questionnaire, was that that information is required only if normal values are to be determined under s. 269TAC(1) of the *Customs Act 1901*, which we understand will not be the case, as constructed normal values will be calculated due to the unique nature of each power transformer.

As mentioned, if you or the Commissioner have any queries regarding the information provided, or require any clarification, PT CG Power Systems will be happy to respond to those queries and to provide any such clarification.

For completeness only, we thought it worth mentioning the following provisions of the WTO Anti-Dumping Agreement, which we submit are relevant to the approach the Commissioner would take when looking at this issue:

- article 6.13, which provides that the decision maker shall take account of any difficulties experienced by interested parties in supplying information and provide any assistance practicable;
- article 6.8, which provides that Annex II is to apply if an exporter does not provide necessary information;
- article 2 of Annex II, which precludes the an authority from insisting on the provision of information in the form of a computerised response, or in a particular medium or computer language, if this would impose unreasonable additional cost and trouble;
- article 5 of Annex II, which is to the effect that even though the information provided is not ideal in all respects, this should not justify disregarding the information provided that the interested party has acted to the best of its ability;
- article 6 of Annex II, which is to the effect that if information provided is not accepted, reasons for the non-acceptance should be provided, along with an opportunity to provide further explanation; and
- article 15, which requires that special regard must be given to developing countries when considering the application of anti-dumping measures.

If you have any queries or wish to discuss this, please contact me.

Kind regards

**Andrew Percival**  
Special Counsel

andrew.percival@corrs.com.au

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Sydney  
Melbourne  
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14 March 2014

**By email:**

Mr John Bracic  
Director Operations 1  
Australian Anti-Dumping Commission  
5th Floor, Customs House  
5 Constitution Avenue  
Canberra ACT 2601

**Contact**  
Andrew Percival (02) 9210 6228  
Email: [andrew.percival@corrs.com.au](mailto:andrew.percival@corrs.com.au)

**Partner**  
Andrew Korbel

Dear Mr Bracic

**Anti-dumping investigation - power transformers from Indonesia**

We refer to your letter of 3 March 2014.

In that letter you advised that the Commission proposed recommending to the Anti-Dumping Commissioner that our client, PT CG Power Systems Indonesia, be considered an "uncooperative exporter" within the meaning of s. 269T of the *Customs Act 1901*.

That section defines an uncooperative exporter to be an exporter, of goods that are the subject of an investigation (in this case, power transformers), whom the Commissioner is satisfied did not give him, within a reasonable time, information that the he considered to be relevant to the investigation.

The Commission's published policy in relation to designation of exporters as uncooperative is outlined in its Dumping & Subsidy Manual (page 56) as follows:

*An interested party is not considered uncooperative if:*

- information is not given in the requested electronic format because it would be too expensive or inconvenient to supply the information that way; or*
- it does not supply all of the information requested but, nevertheless, has substantially complied with the requirements of the questionnaire; or*
- it requests an extension of time to respond to a questionnaire and the extension is approved. Due consideration will be given to a request for extension of a reasonable period, particularly where English is not the normal language of the exporting country, or there is significant complexity in the information to be supplied, or there are staff availability issues.*



14 March 2014

Australian Anti-Dumping Commission

**Anti-dumping investigation - power transformers from Indonesia**



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**Response to Exporter Questionnaire**

In the present instance, our client submitted its response to the exporter questionnaire on about 1 October 2013 (having been granted an extension by the Commission). In its response to the exporter questionnaire, our client provided to the Commission the following information:

- information concerning its cost to make and sell power transformers, both for sale in Indonesia and for sale to Australia; and
- information concerning its domestic sales of power transformers in Indonesia, and its export sales to Australia.

Our client was advised by the Commission that it considered that there were deficiencies in its response. In the circumstances, the Commission requested further information from our client initially in October 2013, and again in November 2013, to assist the Commission in determining FOB export prices and equivalent normal values. A significant amount of information was provided in response to those requests, initially in October 2013 and subsequently in December 2013.

On 5 February 2014 we wrote to the Commission on behalf of our client, noting that our client believed that it had now provided all relevant information sought by the Commission, and requesting that, if the Commission believed otherwise, that it advise the reasons for forming that view, so that our client could have the opportunity to respond to that suggestion. We received no response to that correspondence.

We subsequently received your letter of 3 March 2014. In that letter you suggested that the Commission is not satisfied that our client has provided the necessary information to allow the Commission to adequately determine whether dumping is occurring. However, notwithstanding our email of 5 February 2014 you have not advised us what information the Commission considers that our client has not provided, and why that information is needed.

**Not clear what relevant information the Commission has not been provided**

In our respectful submission, our client has substantially complied with the requirements of the exporter questionnaire, and it is not presently clear either to our client or to us on what basis the Commission has formed a different view.

In accordance with the requirements of natural justice, we request that you advise us of:

- the information that the Commission considers that it has not been provided; and
- the relevance of that information to the investigation,

so that our client has the opportunity to make submissions about those matters before the Commissioner responds to the recommendation foreshadowed in your letter of 3 March 2014.

Doing the best that we can from what we know, it seems that perhaps the Commission's concern may be that our client has not provided certain information sought in the exporter questionnaire concerning possible adjustments to normal value. On the assumption that that is the Commission's concern, we would note that the exporter questionnaire indicated that that information was not required if a constructed normal value was to be calculated

under s. 269TAC(2)(c) of the *Customs Act 1901*. We understand that the Commission's preference in this investigation is in fact to calculate a constructed normal value, and so that information is not in fact required.

#### **Timing of provision of information**

We acknowledge that our client has sought and been granted a number of extensions of time to provide its response to the exporter questionnaire, or clarifications to the information provided in that response. In our submission each of our client's requests for extensions of time was reasonable and appropriate taking into account:

- that the first language of our client's staff is not English;
- the information sought has been undeniably complex;
- our client's ability to respond to the requests was impacted by the availability of key staff; and
- some of the information requested had to be obtained manually and then be added to the relevant spreadsheet..

We understand that a number of other exporters have been permitted to file responses to the exporter questionnaire since the start of 2014, which is clearly well beyond the due date for such responses. We also note that the Commission is seeking a second extension of time from the Minister within which to publish a statement of essential facts and to report to the Minister.

In those circumstances, if there is any additional information that the Commission considers necessary to enable it to determine export prices and/or normal values for our client, or to clarify any aspects of the information already provided by our client, the Commission should provide our client with the opportunity to present that information and/or clarification.

#### **Information to be used to calculate a dumping margin**

We note that if the Commissioner is satisfied that our client should be designated as uncooperative, you propose recommending to the Commissioner that export prices and normal values be determined for our client from "all relevant information".

In the present circumstances, we would submit that the most (and perhaps only) relevant information as to those matters is the information provided by our client regarding its cost to make and sell power transformers, its domestic sales of power transformers and its export sales of power transformers to Australia.

If the Commission considers that this information is not relevant, or that there is other information that is more relevant, please let us know so that our client is given the opportunity to make submissions to the Commission about that. Certainly no issue has been raised by the Commission to date regarding the reliability of the information that has been provided by our client and we would submit that that information is reliable and verifiable.

We understand that the Commission may have calculated export prices and normal values for our client prior to requesting additional information from our client, but that it was not entirely confident about those calculations. As we were not provided with a copy of those

14 March 2014

Australian Anti-Dumping Commission

**Anti-dumping investigation - power transformers from  
Indonesia**

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calculations, assuming that they were made, our client is not in a position to comment on the accuracy or otherwise of those calculations.

We, therefore, request that you provide to us, at your earliest convenience, the Commission's export price and normal value calculations based on the information provided by our client.

Yours faithfully

**Corrs Chambers Westgarth**



**Andrew Korbel**  
Partner

**Weihsuan Zhou**

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**Subject:** Attachment E.1 - Email to ADC with assessment of dumping margin - 21 Jul 14 - Non-Confidential

**From:** Kevin Reilly [mailto:kevin@gtrconsulting.com.au]  
**Sent:** Monday, 21 July 2014 8:56 AM  
**To:** 'GLEESON Geoffrey'  
**Cc:** 'VINCENT Chris'; Andrew Percival; Andrew Korbel  
**Subject:** PT CG Power Systems-Power Transformers

Dear Geoff

As you may be aware through Andrew Percival, I have been engaged by Corrs Chambers Westgarth to provide an independent assessment of the dumping margin that may apply to the power transformers exported from Indonesia to Australia by PT CG Power Systems (**PTCG**). My brief was to calculate the dumping margin based on the data that PTCG has provided to the Commission.

Consequently, I have based my calculations on PTCG's data already before the Commission and by applying the methodology set out in the Commission's Issue Paper 2014/01 of 26 May 2014

In undertaking my calculations I identified two unusually high costs for [REDACTED]

[REDACTED] **[Confidential information regarding costs – the two costs were checked and were found to be overstated and were adjusted accordingly]** These are the only two figures that have changed from the data already before the Commission. As you know, it is not unusual to identify a difference in figures and corrections being made during an on-site verification to the figures originally provided to the Commission in an Exporter's Questionnaire response.

My calculations as set out in the attached spreadsheet '20140716 DM Cal-KR' and based on the Commission's proposed methodology show a weighted average dumping margin of negative [REDACTED], confirming that PTCG is not dumping its Power Transformers onto the Australian market.

If you have any question please give me a call.

Kind regards

Kevin

*Kevin Reilly*

Principal  
GTR Consulting  
Mb: +61 411439366  
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Sydney  
Melbourne  
Brisbane  
Perth

29 August 2014

**Non-confidential version**

**By email:**

Mr Geoffrey Gleeson  
Director Operations 1  
Australian Anti-Dumping Commission  
5th Floor, Customs House  
5 Constitution Avenue  
Canberra ACT 2601

**Contact**  
Andrew Percival (02) 9210 6228  
Email: [andrew.percival@corrs.com.au](mailto:andrew.percival@corrs.com.au)

**Partner**  
Andrew Korbel (02) 9210 6537  
Email: [andrew.korbel@corrs.com.au](mailto:andrew.korbel@corrs.com.au)

Dear Mr Gleeson

**Anti-dumping investigation - power transformers from Indonesia**

We refer to your letter of 11 August 2014, which we were very disappointed to receive, in relation to our client, PT CG Power Systems Indonesia (**CG Power Systems**).

By that letter the Commission belatedly responded to, but not in any substantial manner, our letter to the Commission of 14 March 2014.

**Uncooperative Exporter**

In your letter of 11 August 2014, you have repeated the position put in the Commission's earlier letter of 3 March 2014 – that is, that the Commission proposes recommending to the Anti-Dumping Commissioner that CG Power Systems be considered an "uncooperative exporter" within the meaning of s. 269T of the *Customs Act 1901*.

The history of the relevant correspondence on this issue now includes:

- our email to the Commission of 5 February 2014;
- the Commission's letter to us of 3 March 2014;
- our letter to the Commission of 14 March 2014;
- the email on our behalf from GTR Consulting to the Commission of 21 July 2014; and
- the Commission's letter to us of 11 August 2014.

On 5 February 2014 we wrote to the Commission on behalf of our client, noting that our client believed that it had now provided all relevant information sought by the Commission, and requesting that, if the Commission believed otherwise, it advise the reasons for forming

29 August 2014

Australian Anti-Dumping Commission

**Anti-dumping investigation - power transformers from Indonesia**



that view, so that our client could have the opportunity to respond to that suggestion. We received no response to that correspondence.

We subsequently received the Commission's letter of 3 March 2014. In that letter it was suggested that the Commission was not satisfied that our client had provided the necessary information to allow the Commission to adequately determine whether dumping is occurring. However, notwithstanding our email of 5 February 2014 the Commission did not advise us what information the Commission considered that our client had not provided, and why that information was needed.

In our letter of 14 March 2014, we expressed the view that our client had substantially complied with the requirements of the exporter questionnaire, and repeated that it was not presently clear either to our client or to us on what basis the Commission had formed a different view. In particular, our client believed that it had provided all of the additional information sought in an email from the Commission to us dated 18 November 2013, which we understood had set out the information that the Commission wished to receive.

In accordance with the requirements of natural justice, we requested that the Commission advise us of:

- the information that the Commission considered that it had not been provided; and
- the relevance of that information to the investigation,

so that our client had the opportunity to make submissions about those matters before the Commissioner responded to the recommendation foreshadowed in the letter of 3 March 2014.

We received no acknowledgement of or response to our letter of 14 March 2014 until your letter of 11 August 2014.

In your letter of 11 August 2014, you advised that:

- the Commission considers it was unable to clearly identify relevant sales and cost data for power transformers manufactured by CG Power to adequately determine if power transformers had been exported at dumped prices; and
- while numerous spreadsheets had been provided, the relevance of the data within each spreadsheet was not adequately explained.

While we are grateful that the Commission has now responded to our letter, unfortunately that response does not assist us to understand in any substantive way what information the Commission did not understand. It appears from the response that the Commission's complaint is not that it was not provided with any relevant data, but rather that it did not receive an explanation as to how to correlate some of the data. Of course, the data was provided by our client, as best it could, in a format dictated by the Commission in its exporter questionnaire.

With respect, it is very disappointing for our client that the Commission has taken this approach. As set out in more detail in our letter of 14 March 2014, our client went to some effort to capture the information sought by the Commission in the form that the Commission

wished it to be presented, notwithstanding that that was not the form in which it was recorded in our client's records.

To the extent that it required further explanation, and there was particular information that the Commission could not correlate, we anticipate that that could have been resolved by a meeting with our client, and most certainly by a verification visit.

While in some circumstances the Commission's timeframes might not have allowed for such a meeting, that is not the case in this investigation. Rather, the Commission has sought and been allowed until 8 September 2014 to publish its Statement of Essential Facts, which is almost 9 months from when the Commission last sought any information from our client. Even if the Commission had responded in a timely manner to our email of 5 February 2014, or our letter of 14 March 2014, our client would have had several months in which it could have provided to the Commission the explanation that it required.

In those circumstances, it is hard to avoid the conclusion that our client has not been given a fair opportunity to understand and respond to the Commission's concerns.

In your letter of 11 August 2014 you have advised that you do not consider it would be appropriate to open a further window for CG Power to provide additional information to the Commission. To be clear, we disagree with that view; we also suggest that CG Power is not seeking to provide additional information, but rather to explain the information that it has already provided, given that you have advised that the Commission has not understood it.

It remains ready to do that at the Commission's convenience, including by bringing staff from Indonesia to meet with the Commission in Australia.

We urge the Commission to reconsider its position on this issue.

#### **Information to be used to calculate a dumping margin**

In the Commission's letter of 3 March 2014, it advised that if the Commissioner is satisfied that our client should be designated as uncooperative, the Commission proposes recommending to the Commissioner that export prices and normal values be determined for our client from "all relevant information".

In our letter of 14 March 2014, we expressed the view that the most (and perhaps only) relevant information as to those matters is the information provided by our client regarding its cost to make and sell power transformers, its domestic sales of power transformers and its export sales of power transformers to Australia.

We requested that, if the Commission considers that that information is not relevant, or that there is other information that is more relevant, the Commission let us know, so that our client is given the opportunity to make submissions to the Commission about that issue. As we noted in our letter of 14 March 2014, no issue has been raised by the Commission to date regarding the reliability of the information that has been provided by our client and we would submit that that information is reliable and verifiable.

We have not received any response to that request, including in your letter of 11 August 2014.

On 21 July 2014, as you have acknowledged, GTR Consulting wrote to the Commission by email on our client's behalf. By that email, our client provided to the Commission a dumping margin calculation which had been undertaken by GTR Consulting using essentially the information that had been provided to the Commission.

[REDACTED]

[REDACTED]

We are instructed that there were some additional changes that our client had made to the spreadsheet, which will be highlighted in an updated spreadsheet that our client will provide to the Commission.. Those changes were made because:

[REDACTED]

Under the normal circumstances of a verification visit these changes would have been identified and verified by the visit team. As you know, it is not at all unusual for the need for such changes to be identified during that process.

[REDACTED]

In so far as the other issues raised by you in relation to the dumping margin calculation are concerned:

[REDACTED]



[REDACTED]

The calculations sent to the Commission on 21 July 2014 demonstrate that, using the Commission's announced methodology, and the corrected information already submitted by our client, together with a verifiable profit margin on domestic sales, a negative dumping margin would be calculated for our client for the period of investigation.

Our client intends shortly to provide to you a new spreadsheet which will include dumping margin calculations in respect [REDACTED]

[REDACTED]. We are instructed that the outcome will continue to be an overall negative dumping margin.

Our client invites the Commission to seek any further information that it wishes to see to verify that outcome.

However, if the Commission does not choose to do that, it would be unconscionable for it to impose dumping measures on our client using other information. Indeed, in light of the evidence before the Commission of a negative dumping margin, it would be appropriate for the Commission to terminate the investigation in so far as it concerns CG Power.

Please do not hesitate to contact us if you would like any further information, or have any queries about the matters raised in this letter.

Yours faithfully  
**Corrs Chambers Westgarth**



**Andrew Korbel**  
Partner

**Andrew Percival**  
Special Counsel

**Weihuan Zhou**

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**Subject:** Attachment G.1 - Email to ADC with revised assessment of dumping margin - 11 Sep 14 - Non-Confidential

**From:** Kevin Reilly [<mailto:kevin@gtrconsulting.com.au>]  
**Sent:** Thursday, 11 September 2014 2:24 PM  
**To:** 'GLEESON Geoffrey'; 'VINCENT Chris'  
**Cc:** Andrew Korbel; Andrew Percival  
**Subject:** CONFIDENTIAL: PT CG Power Systems revised dumping margin calculation

Dear Geoffrey and Chris,

We refer to your letter of 11 August 2014, in relation to our client, PT CG Power Systems Indonesia (CG Power Systems) and our letter and email response to you dated 29 August 2014.

In your letter of 11 August 2014 you referred to certain [REDACTED] sales not having been included in our dumping margin calculations, [REDACTED]. In our response on 29 August 2014 we advised that our client intended to provide to you a new spreadsheet which will include dumping margin calculations in respect of each of the sales which were inadvertently excluded from the spreadsheet sent on 21 July 2014. The revised dumping margin calculation spreadsheet is attached and includes [REDACTED] (highlighted in yellow). In addition, also included are [REDACTED]. [Confidential information regarding additional data used for the calculation of dumping margin] The calculations show a weighted average dumping margin of negative [REDACTED], continuing to confirm that CG Power Systems is not dumping its Power Transformers onto the Australian market. All of the data used to calculate this negative dumping margin is verifiable and would have been verified had the Commission undertaken an on-site verification visit to our client's Indonesian premises. Our client continues to invite the Commission to seek any further information that it wishes to see to verify the negative dumping margin outcome.

This email and the attached spreadsheet are confidential. It would seem to us unlikely to be helpful to prepare and publish a non-confidential version of this email, however, if you disagree and would like us to provide a non-confidential version to you for publication, please let us know.

Kind regards

*Kevin Reilly*

Principal  
GTR Consulting  
Mb: +61 411439366  
Em; [Kevin@gtrconsulting.com.au](mailto:Kevin@gtrconsulting.com.au)

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Sydney  
Melbourne  
Brisbane  
Perth

2 October 2014

**Not Confidential**

**By email:**

Mr Geoffrey Gleeson  
Director Operations 1  
Australian Anti-Dumping Commission  
5th Floor, Customs House  
5 Constitution Avenue  
Canberra ACT 2601

**Contact**

Andrew Percival (02) 9210 6228  
Email: [andrew.percival@corrs.com.au](mailto:andrew.percival@corrs.com.au)

**Partner**

Andrew Korbel (02) 9210 6537  
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Dear Mr Gleeson

**Anti-dumping investigation - power transformers from Indonesia**

Thank you very much for taking the time to meet with us, and our client, PT CG Power Systems Indonesia (**CG Power Systems**), on 30 September 2014.

In our meeting we discussed the approach taken with respect to our client in the Statement of Essential Facts (**SEF**) published by the Commission.

**Uncooperative Exporter**

The SEF records that the Anti-Dumping Commissioner has accepted the recommendation that CG Power Systems be considered an "uncooperative exporter" within the meaning of s. 269T of the *Customs Act 1901*.

Our client's position in relation to that issue was outlined in our letter of 29 August 2014, and remains unchanged.

**Information used to calculate a dumping margin**

We acknowledge that if our client is determined to be an "uncooperative exporter", then the export price and normal value of our client's exports of power transformers to Australia must be determined on "all relevant information": ss269TAB(3) and 269TAC(6) of the *Customs Act 1901*.

In the SEF the export price, normal value and, consequently, the dumping margin calculated by the Commission were based on estimates provided to the Commission by the Australian industry in relation to a particular transaction. Until the publication of the SEF our client was not aware that the Commission held such estimates, or proposed to use them.

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The Australian industry does not have access to our client's confidential pricing information, or costs, either in Australia or in Indonesia, and so the estimates are not based on any actual data relating to the transaction or our client's operations.

We also understand from the Commission's explanations of the dumping margin calculation that the estimates were based on assumptions made by the Australian industry, but that it has not been possible to verify whether the assumptions have any factual basis. We propose to provide further material to the Commission to support our client's submission that the estimates from the Australian industry are, in material ways, simply incorrect.

In our letter of 29 August 2014, we expressed a view (which we had also put to the Commission in a letter of 14 March 2014) that the most relevant information before the Commission in relation to our client was the information provided by our client itself.

In its response to the exporter questionnaire, and its responses in 2013 to questions from the Commission, our client provided the Commission with detailed information regarding its exports to Australia and its domestic sales in Indonesia, as well as its costs. We understand that, to date, the Commission has not used that information to calculate a dumping margin for our client because of difficulties that the Commission had in understanding the data as presented.

As you have seen, calculations sent to the Commission by our client on 21 July 2014 and 11 September 2014 demonstrated that, using the Commission's announced methodology, and the corrected information already submitted by our client, together with a verifiable profit margin on domestic sales, a negative dumping margin would be calculated for our client for the period of investigation.

Given the Commission's difficulties in understanding the data submitted by our client, we would be grateful for an opportunity for our client, and Mr Reilly of GTR Consulting, to sit down for a short period of time with the Commission to attempt to assist the Commission by explaining the data already submitted, and how to reconcile it. Our client is not looking to submit any new data to the Commission, but simply to assist the Commission to understand that the data that it already has before it is reliable.

In our respectful submission, this could be done relatively quickly, and the Commission could then form its view on whether or not to use that data, the estimates provided by the Australian industry, or some other information. The process would not delay the Commission's report to the Parliamentary Secretary.

If you have concerns with undertaking such an exercise, please let us know so that we can address them. Otherwise, we would be grateful if you would let us know when would be a convenient time for the Commission for to meet with our client.

We look forward to hearing from you.

Yours faithfully

**Corrs Chambers Westgarth**



**Andrew Korbelt**  
Partner

**Andrew Percival**  
Special Counsel

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8 October 2014

**Not Confidential**

**By email:**

Mr Geoffrey Gleeson  
Director Operations 1  
Australian Anti-Dumping Commission  
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Dear Mr Gleeson

**Anti-dumping investigation - power transformers from Indonesia**

We refer to our letters of 29 August 2014 and 2 October 2014, and to the Statement of Essential Facts published by the Commission, in so far as it concerns our client, PT CG Power Systems Indonesia (**CG Power**).

**Information to be used to calculate a dumping margin**

By our letter of 29 August 2014, we made submissions to the Commission about the information that the Commission would use to calculate a dumping margin for CG Power, should the Commissioner make a finding that CG Power was uncooperative.

We reiterated a view that we had previously expressed in our letter to the Commission of 14 March 2014, concerning the "relevant information" that the Commission could use to determine the export prices and normal values for CG Power in that circumstance. The view that we reiterated was that the most (and perhaps only) relevant information available to the Commission was the information provided by CG Power to the Commission regarding its cost to make and sell power transformers, its domestic sales of power transformers and its export sales of power transformers to Australia.

We requested (for a second time) that, if the Commission considers that that information is not relevant, or that there is other information that is more relevant, the Commission let us know, so that our client is given the opportunity to make submissions to the Commission about that issue. We also noted (for a second time) that no issue has been raised by the Commission regarding the reliability of the information that has been provided by CG Power, and we submitted that that information is reliable and verifiable.

On 21 July 2014 calculations were sent to the Commission which demonstrated that, using the Commission's announced methodology, and the corrected information already

submitted by CG Power, together with a verifiable profit margin on domestic sales, a negative dumping margin would be calculated for our client for the period of investigation.

On 11 September 2014 a further set of calculations was sent to the Commission, showing that with the inclusion of 5 additional projects that were among the sample earlier selected by the Commission, the dumping margin remained negative.

Against that background we were very disappointed that the Commission chose, in the Statement of Essential Facts, to calculate a dumping margin using estimates as to CG Power's cost and export price submitted by the applicant as part of its application, and not to use any of the data submitted by CG Power.

#### **Reliability of the applicant's estimates**

In an email to us from the Commission on 23 September 2014, we were advised that the data used by the Commission to calculate a dumping margin for CG Power consisted of price and cost estimates provided to the Commission by the applicant. The estimates concerned the sale by CG Power of a [REDACTED].

The Commission advised us that the deductive export price calculated by the applicant, and used by the Commission, was [REDACTED].

We intend to separately provide to the Commission copies of export invoices and CG Power bank statements showing the invoicing to and payments by [REDACTED]. We are instructed that those documents are consistent with the information provided by CG Power with respect to that sale in its exporter questionnaire, and the subsequent information provided by it. On the other hand we are instructed that those documents are **not** consistent with the applicant's estimates.

In our respectful submission, the Commission could not, acting reasonably, form the view that the estimates provided by the applicant with respect to that transaction are reliable. Certainly, it could not form the view that those estimates are more relevant than the information provided by CG Power with respect to the same transaction.

#### **Reliability of CG Power's data**

We understand that the Commission feels some reluctance to use the data provided by CG Power because the data was not presented initially in a way that enabled to the Commission to analyse and understand it to its satisfaction. To that end, in our meeting with the Commission on 30 September 2014, and in our letter of 2 October 2014, we sought an opportunity to sit down briefly with the Commission to explain the data submitted by CG Power. We did not seek an opportunity now to supplement that data, just to explain it.

We note that in the case of the only other Indonesian exporter investigated, the Commission was apparently satisfied with the initial presentation of that exporter's information, and determined that that exporter was cooperative. However, it appears from the public record that the exporter subsequently wrote to the Commission, at a late stage in the investigation, to concede that there were significant errors throughout the data that it had initially submitted. Despite the belated admission as to those errors, the Commission

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appears to have decided to use that exporter's data to calculate a negative dumping margin for it, without undertaking a verification visit to the exporter.

We make no criticism of the approach taken by the Commission with regard to that exporter. However, we do seek to point out that, with respect, it would be clearly unfair to take that approach to that exporter, and then to be unwilling to allow CG Power the opportunity simply to explain the data which it submitted, and which, with minor exceptions, it still maintains is correct, when it has always been willing to have that data audited or verified.

Our client intends to provide to the Commission, separately to this letter, copies of export invoices and bank statements showing the invoices issued to, and payments made by, another two customers to which CG Power exported transformers during the period of investigation. All of the data in relation to those transformers was provided to the Commission in our client's exporter questionnaire, or the additional responses to queries from the Commission following receipt of the exporter questionnaire. Again, we are instructed that the information in those documents is consistent with data already provided by CG Power in relation to the sales of transformers to those customers, and provides a further basis for the Commission to form the view that the information submitted by CG Power is and always has been reliable.

CG Power does not seek any special treatment by the Commission, only procedural and substantive fairness in the approach by the Commission to the calculation of a dumping margin for it. In our respectful submission:

- the information submitted by CG Power is reliable, and capable of verification;
- the data provided by CG Power is clearly more relevant than the estimates provided by the applicant with regard to a single CG Power transaction; and
- if the Commission has difficulties in following the data submitted by CG Power, it would be appropriate for it to meet with CG Power's representatives to allow them to assist the Commission to understand the data.

Please do not hesitate to contact us if you would like any further information, or have any queries about the matters raised in this letter.

Yours faithfully

**Corrs Chambers Westgarth**



**Andrew Korbel**  
Partner

**Andrew Percival**  
Special Counsel

**Weihsuan Zhou**

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**Subject:** Attachment J.1 - Email to ADC with supporting documentation - 8 October 14 - Non-Confidential

**From:** Kevin Reilly [<mailto:kevin@gtrconsulting.com.au>]

**Sent:** Wednesday, 8 October 2014 10:28 PM

**To:** 'GLEESON Geoffrey'

**Cc:** 'VINCENT Chris'; Andrew Percival; Andrew Korbel

**Subject:** CG Power Email 1 - WP

Dear Geoff and Chris

I refer to Andrew Korbel's email to you today attaching a letter to the Commission dated 8 October 2014 in which he advised that [REDACTED]

[REDACTED] would be provide separately to the Commission. Mr Korbel's letter further advised that our client intends to provide to the Commission, separately, [REDACTED]

[REDACTED] [Confidential information regarding supporting documentation provided to the Commission]

In addition to the documents referred to by Mr Korbel, attached are [REDACTED]

[REDACTED] [Confidential information regarding supporting documentation provided to the Commission] All of this data is verifiable and our client remains willing to have that data audited or verified to the Commission's satisfaction. Due to the size of the data the documents are attached in a number of emails.

The attached documentation is the documentation that normally would be gathered and verified by the Commission during the course of an on-site verification. As is the case during a verification the documentation requires explanation to ensure the Commission's fully understands the information being provided. As previously requested during our meeting with the Commission on 30 September 2014 and in our letter of 2 October 2014, we seek an opportunity to sit down briefly with the Commission to explain the data previously submitted to the Commission by CG Power, and how the attached documentation supports that data.

Please do not hesitate to contact us if you would like any further information, or have any queries about the attached documentation.

Kind regards

*Kevin Reilly*

Principal

GTR Consulting

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28 October 2014

**Not confidential**

**By email:**

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Dear Mr Gleeson

**Anti-dumping investigation - power transformers from Indonesia**

Thank you for your letter dated 27 October 2014 in relation to our client, PT CG Power Systems Indonesia (**CG Power**).

We acknowledge, with disappointment, the Commission's decision not to meet with our client to allow it to assist the Commission by explaining to the Commission the data already submitted, and how to reconcile it.

In your letter you have suggested that that our client has had ample opportunity to satisfy the Commission with respect to its information needs in this investigation, and that in your view it has not done so satisfactorily.

Our client's offer to meet with the Commission to explain the data it had submitted was recently reiterated, as you have recorded, on 30 September 2014 and in early October 2014. However, we respectfully note again that our client would have been in a position to meet with the Commission and to explain the data:

- at least as early as February 2014, if the Commission had responded to our email of 5 February 2014, by letting our client know what concerns it had at that stage about the information submitted by our client. Instead, despite repeated requests, those concerns were first explained (and then, without any detail) in the Commission's letter to us of 14 August 2014; and
- as early as March 2014, if the Commission had responded at all to our letter of 14 March 2014. In that letter we requested that the Commission let us know if it considered that the information provided by our client was not "relevant", or whether the Commission considered that there was some other data that was more relevant. Instead we received no response at all to that request (which was

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subsequently repeated), and instead learned from the Statement of Essential Facts published on 18 September 2014 that the Commission had, without explanation, decided to calculate a dumping margin using estimated data submitted by the applicant, and not to use any of the data submitted by our client.

Of course our client has also been willing at all times to have its information verified by the Commission.

Against that background, we respectfully submit that the Commission has in fact not provided our client with a fair opportunity to satisfy the Commission with respect to its information needs. The Commission's silence for extended periods, despite there being ample time to engage with our client, has resulted in our client being materially disadvantaged in the investigation.

Our client's rights in that regard are reserved.

Yours faithfully

**Corrs Chambers Westgarth**

A handwritten signature in black ink, appearing to read "Andrew Korbel".

**Andrew Korbel**  
Partner

**Andrew Percival**  
Special Counsel