



Australian Government
Department of Industry, Science,
Energy and Resources

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**Anti-Dumping Commission
Reinvestigation Report for the
Anti-Dumping Review Panel**

**Reinvestigation of a Certain Finding
in Report No. 504**

**Power Transformers exported to Australia from
the Republic of Indonesia
by PT CG Power Systems Indonesia**

9 July 2020

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADRP	Anti-Dumping Review Panel
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CG Power	PT CG Power Systems Indonesia
EPR	electronic public record
GOI	Government of Indonesia
the goods	power transformers
Indonesia	the Republic of Indonesia
inquiry period	the period from 1 January 2016 to 31 December 2018
the Manual	<i>Dumping and Subsidy Manual</i>
the Minister	the Minister for Industry, Science and Technology
REP 219	<i>Anti-Dumping Commission Report No. 219</i>
REP 383	<i>Anti-Dumping Commission Report No. 383</i>
REP 504	<i>Anti-Dumping Commission Report No. 504</i>
SG&A	selling, general and administrative
Thailand	the Kingdom of Thailand
WTC	Wilson Transformer Company Pty Ltd

1 SUMMARY

1.1 Introduction

This report sets out the findings of the Commissioner of the Anti-Dumping Commission (the Commissioner) in respect of the reinvestigation of a certain finding arising from *Anti-Dumping Commission Report No. 504* (REP 504) and the decision of the Minister for Industry, Science and Technology (the Minister) to secure the anti-dumping measures applying to power transformers exported to Australia from the Republic of Indonesia (Indonesia) by PT CG Power Systems Indonesia (CG Power).

1.2 Reviewable decision

On 11 February 2019, the Commissioner initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of power transformers (the goods) exported to Australia from Indonesia, Taiwan and the Kingdom of Thailand (Thailand) was justified.

Following the recommendations of the Commissioner in REP 504, on 11 November 2019 the Minister¹ declared that:

- pursuant to section 269ZHG(1)(b) of the *Customs Act 1901* (the Act)², she has decided to secure the continuation of the anti-dumping measures relating to power transformers exported to Australia from Indonesia and Taiwan with effect from 11 December 2019; and
- pursuant to section 269ZHG(1)(a), she has decided not to secure the continuation of the anti-dumping measures relating to power transformers exported from Thailand with effect from 11 December 2019.

Public notice of this decision was published on 6 November 2019.³

1.3 Review of the Minister's Decision

The Anti-Dumping Review Panel (ADRP) accepted applications for a review of the Minister's decision from Fortune Electric Co., Ltd and CG Power. The ADRP initiated its review of the decision by public notice on 16 December 2019.⁴

On 31 January 2020, the ADRP requested that the Commissioner undertake a reinvestigation under section 269ZZL relating to the finding that it is likely that future exports of power transformers by CG Power from Indonesia will be at dumped prices.⁵ The ADRP requested that the Commissioner report the result of the reinvestigation by 31 March 2020.

¹ For the purposes of the reviewable decision, the Minister is the Minister for Industry, Science and Technology.

² References to any section in this report are to provisions of the *Customs Act 1901*, unless specifically stated otherwise.

³ Anti-Dumping Notice No. [2019/127](#).

⁴ ADRP [notice under section 269ZZI](#) refers.

⁵ ADRP [reinvestigation request](#) refers.

1.4 Approach to the reinvestigation

The reinvestigation has been conducted in accordance with section 269ZZL(2). For the purpose of conducting the reinvestigation, the Anti-Dumping Commission (the Commission) has reviewed:

- the grounds accepted for review (as published by the ADRP under section 269ZZI);
- the ADRP reasons for requesting the reinvestigation; and
- CG Power's application to the ADRP for review of the Minister's decision.

The Commission invited submissions from interested parties⁶ for consideration in the preparation of a preliminary reinvestigation report, and also sought specific additional information from certain parties.⁷

The Commission published a preliminary reinvestigation report on the electronic public record (EPR) on 9 June 2020 and invited submissions in response.⁸ The Commission received four submissions in relation to the preliminary reinvestigation report, which are available on the public record. These have been considered in the preparation of this report.

The Commissioner sought, and was granted, two extensions of time (being 65 days and 35 days, respectively) to present the ADRP with the reinvestigation report. The reinvestigation report is due to be provided to the ADRP by **9 July 2020**.⁹

1.5 Reinvestigation finding

The Commissioner is satisfied that the evidence does not support a conclusion that the expiration of measures, as they apply to CG Power, would lead (or be likely to lead) to a recurrence of the dumping that the anti-dumping measure is intended to prevent.

⁶ EPR 504, document no. [27](#) refers.

⁷ EPR 504, document nos. [30](#) and [31](#) refer.

⁸ EPR 504, document no. [33](#) refers.

⁹ ADRP [first](#) and [second](#) approvals for extensions of time refer.

2 BACKGROUND AND SUBMISSIONS

2.1 Reviewable decision and reinvestigation request

As noted above, the reinvestigation request relates to certain findings in REP 504, that the Minister relied on to make her decision with respect to the continuation of the anti-dumping measures applying to power transformers exported from Indonesia by CG Power.¹⁰

CG Power's application to the ADRP for review submitted that the evidence in REP 504 did not establish that dumping and/or material injury was likely to recur.

The ADRP has requested that the Commissioner reinvestigate the finding in REP 504 that it is likely that future exports of power transformers by CG Power from Indonesia will be at dumped prices.¹¹

2.2 Relevant findings in REP 504

For the purpose of assessing whether measures should continue for all exporters from Indonesia and Taiwan, the Commission examined the period 1 January 2016 to 31 December 2018 (the inquiry period).

During the inquiry period, CG Power did not export any power transformers to Australia from Indonesia. The Commissioner found that there was, therefore, an absence of information from the inquiry period that would be suitable for ascertaining variable factors relevant to CG Power. As a result, the Commissioner concluded that the evidence relied upon and the variable factors established in the original investigation (*Anti-Dumping Commission Report No. 219* (REP 219)) and the last review of measures (*Anti-Dumping Commission Report No. 383* (REP 383)) remained relevant information on which to base recommendations in relation to CG Power.

The Commissioner has previously found that all exports of power transformers by CG Power during the period from 2011 to 2014, and those that were examined in REP 219 and REP 383, were at dumped prices. This occurred during periods of consistent profitability at a total company level for CG Power.

The Commissioner also found that the imposition of the measures had affected CG Power's volume of exports from Indonesia. With respect to CG Power, it had tendered for the supply of power transformers to Australia in 2013, signed a contract to do so in 2015, but it only supplied a single power transformer under the contract. This power transformer was delivered after the inquiry period. The Commissioner also found that CG Power maintained an Australian sales office, continues to bid on tenders, and has the ability to forward plan its capacity management, given the long lead times for the manufacture of power transformers.

¹⁰ Anti-Dumping Notice No. [2019/127](#) refers.

¹¹ ADRP [reinvestigation request](#) refers.

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In submissions to REP 504, CG Power indicated that it would like to maintain the option to export to Australia, if it were profitable to do so. CG Power also indicated that it is highly profitable within its domestic and third country markets. CG Power stated that there would be no reason for it to make sales to Australia if they would not be profitable, and, consequently, that there would be no likelihood that future exports would be dumped.

In the absence of export sales to Australia during the inquiry period, the Commission therefore analysed the profitability of CG Power's sales to New Zealand during the inquiry period. The Commission also analysed the forecast profitability for the single export due to be delivered to Australia in 2019. In both instances, the Commission was not satisfied that the claimed profitability had accurately accounted for the selling, general and administrative (SG&A) expenses associated with those sales. The Commission also found that costs were often higher than forecast. For these reasons, the Commission was satisfied that the profitability of the export sales to New Zealand during the inquiry period and the forecast profitability for the export sale to Australia in 2019 were lower than those claimed by CG Power. The Commission considered this to be an indicator that the power transformer that was exported after the inquiry period was likely to have been dumped.

The Commissioner found that the evidence set out above supported a conclusion that future exports of power transformers by CG Power would likely be at dumped prices, and therefore concluded that the expiration of the anti-dumping measures would be likely to lead to a recurrence of the dumping that the measures are intended to prevent.

2.3 Submissions

For the purposes of the reinvestigation request, the Commission examined submissions from the following interested parties in the process of preparing the preliminary reinvestigation report:

- Government of Indonesia;¹²
- Wilson Transformer Company Pty Ltd;¹³ and
- CG Power.¹⁴

The Commission has also had regard to submissions received from the following interested parties in response to the preliminary reinvestigation report:

- Government of Indonesia;¹⁵
- CG Power;¹⁶ and
- Wilson Transformer Company Pty Ltd.¹⁷

¹² EPR 504, document no. [28](#) refers.

¹³ EPR 504, document no. [29](#) refers.

¹⁴ EPR 504, document no. [32](#) refers.

¹⁵ EPR 504, document no. [34](#) refers.

¹⁶ EPR 504, document nos. [35](#) and [37](#) refer.

¹⁷ EPR 504, document no. [36](#) refers.

2.3.1 Government of Indonesia

Amongst other matters, the Government of Indonesia (GOI) submitted that any determination about the ‘likelihood’ of CG Power dumping and the continuation, or recurrence, of injury must be based on evidence and an objective examination of such evidence.¹⁸

The GOI submitted that the findings in the preliminary reinvestigation report are supported by the facts and are based on positive evidence, and that it supports the recommendation set out in the preliminary reinvestigation report.¹⁹

2.3.2 Wilson Transformer Company Pty Ltd

Wilson Transformer Company Pty Ltd (WTC) submitted that a continuation inquiry requires a broad ambit of consideration for the decision-maker and that the meaning of the phrase ‘would lead or would be likely to lead’ and the required threshold of probability for any finding arising from that test, as set out in section 269ZHF(2), need not be determined according to the civil standard.²⁰ In other words, WTC proposes that the relevant threshold of satisfaction need not be 50 per cent or greater.²¹ According to the WTC submission, provided there is a factual basis on which to form the opinion, a lower threshold of probability may be applied, such that the risk of the recurrence of the conduct need only be ‘real’ or ‘not remote’.²²

In its submission in response to the preliminary reinvestigation report, WTC considers that its lawyers should have been provided with the opportunity to see and assess the details of the Commission’s analysis of CG Power’s profitability, so as to comment on the material in the confidential attachments.²³

WTC further submitted that the preliminary reinvestigation report is not in accordance with the reinvestigation requirements. WTC claims that the ADRP requested that the Commission assess the pricing and profitability of tender bids to the same extent that the Commission assessed the single export in 2019, so as to determine whether those bids support a finding that future dumping was likely.

WTC also submitted that the preliminary reinvestigation report placed too much emphasis on the information and evidence obtained for the reinvestigation, and that greater weight should instead have been placed on the information that was verified for REP 383. WTC points to findings set out in REP 383, noting that the Commission was not satisfied that CG Power had demonstrated the completeness and relevance of its domestic ‘cost to make’, as detailed in the amended domestic ‘cost to make and sell’ spreadsheet. At that

¹⁸ EPR 504, document no. [28](#) refers.

¹⁹ EPR 504, document no. [34](#) refers.

²⁰ EPR 504, document no. [29](#) refers.

²¹ An explanation of the meaning of the words ‘likely’ and ‘probable’ is provided in *Tillmans Butcheries Pty Ltd v Australasian Meat Industry Employees’ Union* [1979] FCA 85; (1979) 42 FLR 331 at [10] per Dean J.

²² *Australian Gas Light Company v Australian Competition & Consumer Commission (No. 3)* [2003] FCA 1525 at [347] per French J.

²³ EPR 504, document no. [36](#) refers.

time, the Commission considered that adjustments were, therefore, required in respect of the calculation of the normal value.

WTC has submitted that the Commission should calculate a normal value for CG Power and apply the same adjustments as were verified in REP 383. WTC also notes that REP 383 found that invoice prices for Australian delivery and installation charges did not cover the actual costs incurred by CG Power for delivering these services, resulting in inaccurate Free on Board export prices of power transformers exported to Australia. WTC submitted that the Commission should have calculated dumping margins for each of the tender bids made by CG Power during the inquiry period.

Finally, WTC submitted that the preliminary reinvestigation report has given insufficient weight to the importance of past findings of dumping, arguing that these may be probative with respect to an assessment of likely future conduct.

WTC does not support the recommendation that was set out in the preliminary reinvestigation report.

2.3.3 CG Power

In its application to the ADRP, CG Power sets out its views on the need to rely on positive evidence and the meaning of 'likely' within the context of a continuation inquiry.²⁴ More recently, CG Power has disputed WTC's interpretation of the meaning of the phrase 'would lead or would be likely to lead' and the required threshold of probability for any finding arising from that test, as set out in section 269ZHF(2).²⁵

CG Power claims that the view which has prevailed in the Federal Court is that 'likely' means 'more probably than not' in the context of anti-dumping matters.²⁶ CG Power has submitted that the Commission has consistently applied this interpretation, and, as noted in the *Dumping and Subsidy Manual* (the Manual):

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence²⁷ where '*likely*' has been taken to mean 'probable'.²⁸

In response to the preliminary reinvestigation report, CG Power agrees with the findings presented.²⁹ It further submitted that its presence in Australia has shrunk significantly

²⁴ CG Power's [application to the ADRP](#) refers.

²⁵ EPR 504, document no. [32](#) refers.

²⁶ Citing Rares J in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)* [2009] FCA 838 at paragraph 48, which was not contested in the subsequent Full Federal Court decision *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* [2010] FCAFC 86 (paragraphs 90 and 92 refer).

²⁷ *US Drums - WT/DS99/R* 1999 [footnote in original].

²⁸ The Manual, page 168 refers. Although this text appears in the context of a revocation review, the terms are equally applicable to a continuation inquiry.

²⁹ EPR 504, document no. [35](#) refers.

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since the measures were first imposed, and it has established a presence in a number of third countries throughout South East Asia.

In a submission responding to WTC, CG Power has asserted that WTC's request to access CG Power's commercially sensitive and confidential information is not authorised under the Act, because WTC has no right to access information held by a competitor and the Act expressly sets out a framework for the management of commercially sensitive information.³⁰

CG Power supports the recommendation set out in the preliminary reinvestigation report.

³⁰ EPR 504, document no. [37](#) refers.

3 REINVESTIGATION OF CERTAIN FINDINGS

When assessing the likelihood of whether dumping will continue or recur, the Commission considers that a number of factors are relevant, as set out in the Manual.³¹ The Commission’s view is that the relevance of each factor will vary depending on the nature of the goods being examined and the market into which the goods are being sold. No single factor is necessarily determinative.

The following analysis, therefore, examines a range of factors which the Commission considers relevant to this inquiry.

3.1 Commission’s analysis of factors relevant to dumping

3.1.1 Import volumes

Below is a summary of the dumping measures imposed on exports of power transformers by CG Power from Indonesia:

Case	Period	Dumping margin	Date implemented
Investigation (REP 219)	1 July 2010 to 30 June 2013	8.7%	10 December 2014
Review of measures (REP 383)	1 July 2013 to 30 June 2016	43.3%	31 May 2017
ADRP Review No. 2017/60	1 July 2013 to 30 June 2016	28.3%	26 October 2017*

*this rate applied retrospectively from 31 May 2017

Table 1: Summary of measures on CG Power exports

CG Power did not export the goods during the inquiry period.

At the time REP 383 was initiated, CG Power’s exports of power transformers to Australia (if there had been any) would have been subject to interim dumping duty which was payable using the *ad valorem* duty method at a rate of 8.7 per cent. In REP 383, the Commissioner found that those power transformers were actually dumped at larger margins, which resulted in the application of an increased duty rate on power transformers imported from CG Power from 31 May 2017.

Following the outcome of REP 383 (and prior to the decision in ADRP *Report No. 60*), CG Power informed all potential customers in Australia that it would not be able to continue with its already submitted bids where the terms are Delivered Duty Paid (DDP). Where the terms are Delivered Duty Unpaid (DDU), CG Power advised clients that the relevant rate of interim dumping duty had increased, and therefore the customer would need to consider this as an additional cost.³²

³¹ Pages 174-176 refer.

³² Refer to note for file on EPR 504, document no. [30](#).

3.1.2 CG Power in the Australian market

Notwithstanding the anti-dumping measures, CG Power has indicated its intention to export to Australia if it is profitable to do so, maintains a sales / service office in Australia, and continues to bid on a number of tenders in the Australian market.

The Commission obtained information from Endeavour Energy Pty Ltd³³ and CG Power³⁴ regarding tender bids made by CG Power. The Commission also requested, and CG Power provided, evidence of the outcomes of its bids for tenders in the Australian market from 1 January 2016 (**Confidential Attachment 1** refers). These bids included one-off projects and longer term arrangements (e.g. bidding to be placed on a panel of potential suppliers). The information indicates that, since the imposition of measures, CG Power has not yet been successful in any tender bids.

WTC raised concerns that the Commission has not addressed the ADRP request to give consideration to the pricing and level of profitability of past tender bids, as has been done for the single power transformer exported to Australia in 2019.³⁵

Submission of a tender bid is a process by which an entity attempts to secure potential future sales/services by submitting a broad quote for its product (and associated services) for consideration by a potential purchaser. A tender bid is not a final contract price. Even if it is assumed that the bidder is successful, the final price may vary from the initial bid price as a result of further negotiations between the bidder and the tenderer. Accordingly, the Commission is unable to assess the pricing (and profitability) of the tender bids made by CG Power that were unsuccessful, because those bids did not result in a final contract price. Those bids relied on forecasts for production and supply costs, plus a target profit rate, for the supply of power transformers which may occur several years after any contract is signed (as occurred in relation to the single export which occurred after the inquiry period). For these reasons, the price at which CG Power made a tender bid in the Australian market at any given point in time provides little guidance as to what the export price would have been for that particular bespoke power transformer at the time it was ultimately exported (if the tender had been won). In addition, as the time that CG Power would have exported the power transformer, as part of a tender bid is unknown as no such tender has been won during the inquiry period of REP 504, the appropriate domestic selling price of a comparable power transformer in the Indonesian market in order to assess dumping is also unknown.

In short, the Commission's view is that comparing bid prices provides no reliable basis on which to assess whether future dumping is likely. A comparison of CG Power's tender bids with bids from the Australian industry (or other bidders) on the same tender would be relevant for the purpose of assessing whether *material injury* to the Australian industry is likely to continue or recur. However, such a comparison is beyond the scope of the reinvestigation request.

³³ Refer to note for file on EPR 504, document no. [31](#)

³⁴ Refer to note for file on EPR 504, document no. [30](#).

³⁵ EPR 504, document no. [36](#) refers.

REP 504 indicated that demand in Australia for power transformers associated with renewable energy projects was likely to grow, and noted WTC's claim that demand was likely to peak in the years 2017-2020 as a result of the Large-scale Renewable Energy Target. Notwithstanding any changes to policy settings in this area, the Commission considers that CG Power is likely to continue bidding for projects in the Australian market.

3.1.3 The export from outside the inquiry period

REP 504 examined the circumstances of the transaction in which a single power transformer was exported by CG Power to Australia after the inquiry period. That analysis focused on the projected profitability of the transaction, compared to the profitability of CG Power's export sales to the New Zealand market and the profitability of CG Power's sales in the domestic market of Indonesia. As noted by the ADRP in its reinvestigation request, the Commission did not provide CG Power with an opportunity to comment on this profitability analysis (and the adverse inferences drawn from the analysis) prior to the publication of REP 504.

The Commission has examined this transaction anew for the purposes of the reinvestigation and sought additional information in connection with it. In particular, the Commission has sought to establish the actual costs incurred by CG Power to assess whether the transaction was actually profitable. The Commission sought any relevant contracts, the actual sales and costs data associated with the transaction, and screenshots from CG Power's accounting system to confirm the accuracy, completeness and relevance of the information provided.³⁶ The Commission also received the following documents from CG Power:

- sales invoice from CG Power to the end user;
- freight invoice from CG Power to the end user;
- site assembly invoices from CG Power to the end user;
- freight invoice from the freight company to CG Power;
- bill of lading; and
- invoices for actual site assembly costs incurred by CG Power.

Screenshots from CG Power's accounting system confirmed the accurate recording of each of the costs identified in the invoices. The Commission did not consider that any relevant documentation was withheld or that there were any misrepresentations in any of the documentation. As a result, the Commission is satisfied that the data used in the profitability analysis is accurate, complete and relevant. The Commission, therefore, considers that concerns regarding accuracy or reliability which were previously raised in the context of REP 383 were not relevant to this transaction.

The origin of the single transaction can be traced to a tender process in which CG Power submitted a bid in 2013. CG Power's bid was successful, in that it was appointed to a panel of suppliers, and the terms of supply were the subject of a contract that was signed in 2015. The contract included pricing for different models of power transformer that could

³⁶ Confidential Attachment 2 refers.

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be the subject of a future purchase order (the raising of which would trigger the production and supply of a particular power transformer).

The contract also included a methodology for adjusting the price payable at the time the purchase order was raised by reference to movements in raw material costs (e.g. copper, oil, steel) and exchange rates.

With respect to this single export transaction, CG Power's customer raised the purchase order in 2018 with delivery scheduled for 2019. The Australian customer used CG Power notwithstanding the consignment would be subject to interim dumping duty at the 28.3 per cent rate, payable by the customer. The Commission understands that the customer selected CG Power due to its ability to supply the power transformer within the timeframe requested.

For the purposes of this reinvestigation, the Commission obtained the actual SG&A expenses of CG Power for the relevant periods including the costs of maintaining the Australian office, which is relevant to the profitability of CG Power's exports to Australia. The Commission was able to calculate the actual profit achieved on the 2019 export of the power transformer to Australia. Relying on this additional information that was not before the Commission at the time of REP 504, the Commission has been able to verify that the sale of the exported power transformer was profitable. The inferences formed by the Commission in REP 504 (based on the forecast SG&A costs) are therefore not supported by the relevant data.

In addition, the Commission examined the profitability of CG Power's sales of power transformers in the Indonesia domestic market. The Commission found that CG Power's domestic sales were profitable, and that the rate of profit achieved was comparable to the profit achieved on the 2019 export to Australia.

The Commission's analysis is at **Confidential Attachment 2**.

WTC submitted that the Commission should calculate a dumping margin for the power transformer exported in 2019, and the tender bids placed by CG Power, relying on information used to calculate a dumping margin in REP 383.³⁷

The Commission considers that WTC's submission omits to consider that the relevant inquiry period for the Continuation was from 1 January 2016 to 31 December 2018. The 2019 exportation was only analysed by the Commission in the original continuation inquiry, because it was ordered in 2018 and, therefore, it appeared to be evidence connected with the inquiry period. However, the Commission is not in possession of information concerning Indonesian domestic sales by CG Power in 2019, being the period of the exportation of the single power transformer exported to Australia, with which to calculate a normal value to compare to the price of the 2019 export. Further, the values established in REP 383 examined the period 1 July 2013 to 30 June 2016, which examined sales in the period 1 July 2013 to 30 June 2016. That approach and the values established in REP 383 using that methodology have limited relevance to the 2019 exportation of an entirely different model of power transformer. As outlined above, the Commission is also unable to

³⁷ EPR 504, document no. [36](#) refers.

calculate a dumping margin on tender bids because those bids don't represent export "prices" which are capable of comparison to domestic sales.

3.1.4 Capacity of CG Power

The Commission has examined CG Power's actual production capacity and capacity utilisation during the inquiry period, and has also considered future demand in Indonesia and its likely impact on CG Power's capacity utilisation.

CG Power has indicated that its present focus is on its domestic market. CG Power provided the Commission with a summary of power transformers it sold domestically as part of the GOI's *Electricity Infrastructure Development Plan* between financial years 2015/16 to 2018/19 and inclusive of the inquiry period. CG Power also provided evidence of an invitation from the GOI for CG Power to participate in an 'Open Book' procurement process in 2020 to supply power transformers. The supply of power transformers under this initiative is expected to continue until at least 2024.

REP 504 found that CG Power would be likely to operate at, or close to, full capacity until at least February 2020. However, the Commission also observes that, during the inquiry period, CG Power had sold more than 70 per cent of its power transformers to entities involved in the GOI's *Electricity Infrastructure Development Plan* initiative. The Commission also affirms the finding in REP 504 that CG Power is capable of forward planning its production capabilities to be able to supply the Australian market, if it wished to do so, but notes that the majority of CG Power's capacity is likely to continue to be devoted to supplying its domestic market.

WTC submitted that CG Power's domestic demand had likely reached its peak and would be tapering down over the next three to four years, claiming that, having expanded its capacity to meet recent high demand, this decline will give CG Power the incentive and surplus capacity to dump power transformers in Australia.³⁸ WTC relied on an earlier submission made by CG Power to support its claim; that submission, dated 16 August 2019, states that the GOI has extended the anticipated date by which the planned development of 35,000 megawatts of generation and distribution capacity would be completed, from 2019 to 2024.³⁹ The evidence before the Commission does not support the claim that CG Power has expanded its capacity, nor that it has significant spare capacity. Given the bespoke nature of each power transformer and the potentially lengthy period between making a tender bid and delivery of the finished product, the Commission does not consider that the spare capacity available to CG Power makes it any more likely that future exports of power transformers to Australia would be at dumped prices.

3.1.5 Other matters

The meaning of "likely"

The Commission considers that an assessment of the likelihood of the recurrence of dumping requires evidence. Having had regard to the submissions by WTC and CG Power, the Commission remains of the view that, in considering whether it is 'likely' that dumping will continue or recur, the Commissioner must have regard to whether it is

³⁸ EPR 504, document no. [36](#) refers.

³⁹ EPR 504, document no. [18](#) refers.

probable that the dumping will continue or recur. In order to make a positive finding, the Commissioner must attain a reasonable level of satisfaction, having regard for relevant facts and sources of information.

Treatment of confidential information

The Commission's capacity to effectively administer Australia's anti-dumping system is dependent on the preparedness of parties to provide sensitive information on a confidential basis. CG Power has claimed the relevant information is confidential and commercially sensitive.⁴⁰ The Commission agrees with this assessment. The Commission considers that it does not have a discretion to provide CG Power's confidential information to WTC or to its lawyers. It is open to CG Power to authorise the disclosure of the relevant information to WTC, but it has not provided its consent to do so. The Commission notes that the confidential information, including the profitability analysis, will be provided in confidence to the ADRP for assessment.

A summary of the confidential information of all parties which has been maintained on the public record has, in the Commission's opinion, met the requirements of section 269ZJ and therefore no further action is required.

Credibility of CG Power

WTC submitted that CG Power's representations with respect to its likely future conduct lack credibility.⁴¹ WTC submitted that the Commission's adverse assessment of CG Power's past conduct remained relevant, pointing to CG Power's non-cooperation in respect of the investigation (REP 219) and the verification findings and degree of dumping found in the review of measures (REP 383).

The Commission notes that CG Power sought the review of measures in 2016, and has cooperated with the Commission in relation to cases since that time. As such, the Commission places greater weight on CG Power's recent conduct, compared with conduct in respect of REP 219. Past conduct, in and of itself, is not necessarily determinative, and to the extent that it has probative value to a continuation inquiry, evidence of non-cooperation would usually be assessed in respect of its contemporaneity (REP 219 was completed more than five years ago, and examined exports occurring between seven and ten years ago).

⁴⁰ EPR 504, document no. [37](#) refers.

⁴¹ EPR 504, document no. [29](#) refers.

3.2 Conclusion

Section 269ZH(2) provides that the Commissioner must be 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”. The Commissioner may determine the test positively or negatively. That is, the Commissioner may be satisfied (or not satisfied) based on a broad consideration of the context, facts and relevant evidence that supports the formation of the opinion.

As set out in REP 504, the Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP, which has noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner’s conclusions and recommendation must, nevertheless, be based on facts and supported by the Commissioner’s reasons.⁴²

The Commission is unable to establish conclusively whether the single consignment which was exported outside of the inquiry period was dumped, but there is nothing in the evidence submitted to support a finding that it was. Its profitability, however, supports CG Power’s claim that it seeks to export profitably. The evidence also indicates that CG Power’s sales were focused on its domestic market during the inquiry period, and will likely remain a focus in response to anticipated ongoing domestic demand.

CG Power’s past conduct, in and of itself, is not sufficient to support a conclusion that dumping is likely to recur, particularly given the bespoke nature of power transformers. CG Power’s lack of cooperation in REP 219 is sufficiently remote from its present conduct to conclude that it is not relevant to the issue being decided in this reinvestigation. Further, whilst the past verification findings in REP 383 may provide relevant context and potential risks, the Commission is entitled to rely on the information provided by CG Power in relation to the inquiry period after having satisfied itself of the accuracy, completeness and relevance of that information. Whilst CG Power’s domestic market remains profitable and its production capacity utilisation remains at a high level, it appears unlikely that there are any commercial incentives for CG Power to commence exporting power transformers at dumped prices.

Consequently, the evidence does not support a conclusion that the expiration of measures, as they apply to CG Power, would lead (or be likely to lead) to a recurrence of the dumping that the anti-dumping measure is intended to prevent. As a result of this reinvestigation, the Commissioner cannot be reasonably satisfied that the expiration of the measures would lead, or be likely to lead, to a continuation of, or a recurrence of dumping in respect of power transformers exported by CG Power.

⁴² See section 269ZHD(3). Also at page 44 of REP 504; the original footnote refers to ADRP Report No. 44 (Clear Float Glass).

4 CONCLUSION

4.1 Reinvestigation finding

The Commission has conducted a reinvestigation of the reviewable decision in accordance with the direction made by the ADRP, as required by section 269ZZL(2). As a result of this reinvestigation, the Commission has found reasons that would result in a materially different decision from the reviewable decision.

In accordance with section 269ZZL(3)(b), as the Commissioner is of the view that a new finding can be made as a result of this reinvestigation, he makes the new finding as set out in chapter 3 of this report, that the evidence does not support a conclusion that the expiration of measures, as they apply to CG Power, would lead (or be likely to lead) to a recurrence of the dumping that the anti-dumping measure is intended to prevent. In accordance with section 269ZZL(3)(c), the evidence and other materials for which the new finding is based are contained within this report and its attachments.

This report sets out the reasons for the Commissioner's decision in accordance with section 269ZZL(3)(d).

5 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Evidence obtained from CG Power
Confidential Attachment 2	Profitability analysis for 2019 export