

Not Confidential

To The Hon Michael Moore, Senior Panel Member – Anti-Dumping Review Panel

From Andrew Korbel / Andrew Percival

Date 2 March 2015

Subject **Power Transformers – Response to ADC’s Comments concerning CG Power**

We act for PT CG Power Systems Indonesia (**CG Power**) in respect of its application for a review of the decision, by the then Parliamentary Secretary to the Minister for Industry, to publish a dumping duty notice in respect of power transformers exported to Australia from Indonesia (**Application**).

We are instructed by CG Power to make this submission in response to particular comments made by the Anti-Dumping Commission (**Commission**), concerning CG Power’s Application in attachment A to the Commission’s letter to the Review Panel dated 13 February 2015 (**Commission’s Comments**).

The Commission’s Comments largely reiterate the position that it took in the investigation, and repeat the reasons for those positions already recorded in the Commission’s Report 219. CG Power does not resile from any of the submissions that it has already made to the Review Panel in its Application concerning the Commission’s position and reasoning.

By this submission CG Power wishes to respond briefly to two particular matters raised in the Commission’s Comments, namely that:

- CG Power failed to provide adequate explanation of the additional data it provided to the Commission during the investigation; and
- the Commission decided that data provided by Wilson Transformer Company Pty Ltd (**WTC**) was reliable and should be used for the calculation of the dumping margin for CG Power.

1. CG Power was not given the opportunity to explain data the Commission did not understand

In paragraph 4.1.8 of the Commission’s Comments, the Commission suggested that

- it “*reviewed the most recent dumping margin calculations provided by CG Power on 11 September 2014*”;
- “*the revised dumping margin calculations only included transactions where detailed costs for selected transactions were requested and there were a number of additional transactions for power transformers with mega volt ampere (MVA) ratings within the nominated range*”;
- “*there was other information in the data provided that required explanation*”; and

- *“... CG Power provided no further explanation; and no explanation was provided as to how the ex-works price used to calculate the dumping margins was established”.*

In paragraph 4.1.9 of the Commission’s Comments, the Commission stated that

- it reviewed all of the information provided by CG Power following CG Power’s submission of 8 October 2014;
- *“the values in the invoices did not reconcile to revenue information previously submitted for two of the three invoices provided”;*
- *“bank statements to verify payment by the customer do not appear to have been provided”;* and
- *“no explanation was provided as to what the supporting documents evidencing the purchase and cost of key components related to, and no explanation was provided as to what information currently before the Commission these documents supported”.*

As the Commission records at paragraphs 4.1.6, 4.1.7 and 4.1.9 of the Commission’s Comments:

- it decided to “consider” the information submitted by CG Power;
- it declined to undertake any process of verification of that information; and
- it would not agree even to meet with CG Power to identify any (at that stage unspecified) concerns that the Commission had with CG Power’s information, and to allow CG Power to attempt to provide any explanation that might resolve those concerns.

As noted in its Application, CG Power had been endeavouring since February 2014 to ascertain what concerns the Commission had with CG Power’s data. In a submission of 14 March 2014, CG Power expressly requested that:

- the Commission advise it what additional information that the Commission considered necessary that had not been provided; and
- it be provided an opportunity to submit additional information and to present and clarify the information already provided to the Commission.

It did not receive any acknowledgement or response from the Commission until 11 August 2014, some 5 months later.

As we have previously submitted, had the Commission responded to CG Power’s requests in a timely manner, CG Power would have had the opportunity to provide additional data, and explanation of any data already provided, to the Commission at a much earlier stage of the investigation.

In those circumstances, in our respectful submission, it is disingenuous of the Commission to suggest that CG Power submitted information without explanation. CG Power had for months and until the end of the investigation, actively tried to understand the Commission’s concerns and provide any necessary explanation. CG Power is confident that, if the Commission had agreed to verify CG Power’s data or simply to meet with CG Power to talk

through any explanation required of the data submitted to the Commission, the Commission would have found the data to be explicable and reliable.

Further, during an on-site verification it is a common procedure to update and replace data originally provided in a response to an Exporter Questionnaire. Had the Commission given CG Power the opportunity of an on-site verification all of the data subsequently provided to the Commission by CG Power would have been verified and confirmed as reliable information. The Commission would then have had actual information upon which to base its calculation of a dumping margin for CG Power.

2. There is no logical explanation for the Commission's reliance on WTC's estimates

In paragraphs 4.2.5 and 4.2.6 of the Commission's Comments, the Commission stated that

- it compared export price information provided by CG Power to the information provided by WTC and found that WTC's estimates were very similar to the information provided by CG Power;
- “[g]iven the finding that CG Power had not provided relevant information within a reasonable period, and was therefore treated as an uncooperative exporter, the Commission concluded that the most reliable export price information available was the data submitted by WTC”; and
- “[t]he Commission established normal values under s. 269TAC(6) having regard to all relevant information. Specifically, it used information submitted by WTC in its application, being its estimated cost for a power transformer exported to Australia by CG Power, adjusted to reflect differences in costs between Indonesia and Australia.”

We note that in Report 219 the Commission stated that it “used all estimates provided by WTC where the transactions could be matched to export data provided by CG Power” (page 66).

We are instructed to make the following submissions in relation to those comments.

First, it does not simply follow, as a matter of logic, from the fact that the Commission has decided (in our view, unfairly) that an exporter is not co-operative, that the information submitted by that exporter is unreliable. Nor does it follow that the exporter's information is less reliable than estimates of the same information which have been provided by the Australian manufacturer which applied to the Commission for the imposition of dumping measures. For the reasons set out in the Application, the Commission ought to have had real doubts as to the reliability of WTC's estimates.

Further, the fact that information submitted by an exporter does not comply in all respects with the format that the Commission has requested that the information be provided in its questionnaire does not render, in some way, that information as being unreliable. In this regard we draw the Panel's attention to Annex II of the WTO Anti-Dumping Agreement and, in particular, Articles 2, 3 and 5 of that Annex.

Secondly, it appears from the Commission's Comments, read together with section 6.8.1 of Report 219, that at least in so far as export prices are concerned, the Commission was only

willing to rely on the estimates provided by WTC if they could be somehow cross-checked against the information submitted by CG Power. That seems to be a contradictory position for the Commission to take – on the one hand, refusing to use CG Power’s data because it is, as a generalised proposition, considered to be unreliable and on the other hand, only using WTC’s estimates where they are somehow verified by CG Power’s data. It also suggests a recognition that WTC’s estimates are not reliable.

We submit that the Commission should have used the information submitted by CG Power in the dumping margin calculations, both in respect of export prices and normal values, as being the most relevant and reliable information.

There is no evidence or analysis that suggested why the information submitted by our client should be considered unreliable. The fact that none of that information was verified by the Commission does not render it unreliable, as there is no statutory or other obligation for information to be verified before it may be used in the calculation of dumping margins. Indeed, the Commission often uses unverified information in dumping margin calculations. Of course, the information provided by WTC that was used in relation to CG Power was a estimated, and unverifiable without the involvement of CG Power.

3. Conclusion

The information which CG Power considers that the Commission ought to have relied upon has substantially been in the Commission’s hands since CG Power responded to the exporter questionnaire in 2013. The fact that, apparently, the information was not presented in a way that the Commission could entirely understand (because that is the way that it is recorded in CG Power’s accounts) is not something which should have resulted in the approach that the Commission ultimately took to CG Power.

For the reasons set out in this submission and the Application, CG Power maintains that the Review Panel should:

- recommend that the Minister revoke the Reviewable Decision and substitute a new decision to be specified by the Review Panel on the basis of a corrected assessment of the dumping margin for CG Power; and
- if, as CG Power believes, the data submitted by it to the Commission demonstrates that the dumping margin calculated is negative, recommend that the new decision by the Minister be a decision that no dumping duties be imposed on power transformers exported to Australia from Indonesia by CG Power.

At a minimum, CG Power respectfully submits that the Review Panel should request that the Commission re-investigate the normal values for the transactions on the basis of which the Commission has calculated the dumping margin for CG Power, and that that reinvestigation involve verification of the information submitted by CG Power about those transactions.

If you have any queries in relation to these submissions, please do not hesitate to contact us.

Corrs Chambers Westgarth

Andrew Korbelt

Partner

(02) 9210 6537

andrew.korbelt@corrs.com.au

Andrew Percival

Special Counsel

(02) 9210 6228

andrew.percival@corrs.com.au