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Director, Operations 2
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3001
Australia
By email: operations2@adcomission.gov.au

Attention: Mr Tim King, Case Manager

Re : Anti-Dumping Notice No. 2016/33 in respect of A4 Copy Paper Exported from the Republic of Indonesia

Dear Sir

We act for the Government of Indonesia ("GOI") in this investigation and refer to the application lodged by Paper Australia Pty Limited ("Paper Australia") for the imposition of anti-dumping measures on A4 Copy Paper exported from Indonesia ("Application"). We make the submissions set out as follows:

1. We note that Paper Australia has claimed that the GOI has subsidised exports of A4 Copy Paper and this has resulted in a "particular market situation" precluding a proper comparison between domestic and export selling prices (at page 35 of the Application):

   Australian paper submits that the subsidisation that has provided Chinese and Indonesian exporters with certain benefits, combined with artificially low government-influenced raw material input prices, establishes grounds for determining a particular market situation prevails for A4 copy paper in each of the domestic markets in China and Indonesia.

   This analysis is fundamentally flawed and fails to recognise principles under WTO rules on dumping and subsidy investigations. Indonesia is recognised globally as a free market economy. There is no evidence that the GOI is or has been artificially manipulating the prices of inputs to manufacture and no such evidence has been advanced by Paper Australia.

2. The WTO Anti-Dumping Agreement stipulates that a product is to be considered to be "dumped" if it is exported to a country at an export price that is less than its normal value: Article 2.1 of the WTO Anti-Dumping Agreement. This requires a comparison between the export price and the domestic selling price of the good under consideration.

   If, as alleged by Paper Australia, that inputs to the manufacture of A4 Copy Paper have been "artificially lowered" due to government influence, it is GOI's submission that this does not create a "particular market situation" under WTO rules. For there to be a "particular market situation" there must be something occurring in the domestic market, but not in the export market, that precludes a "proper comparison" between prices in the domestic market with export prices. The alleged 'artificial' reduction of the price of inputs to manufacture does not create a situation where prices in the domestic market are not "properly comparable" with export prices. If there is in fact a reduction of the price of inputs to manufacture, that would apply equally to products produced for the domestic market and those produced for export.

3. In the EEC – Cotton Yarn case, the GATT Panel stated that "…the wording of Article 2.4 [now Article 2.2 of the WTO Anti-Dumping Agreement] made it clear that the test for having any recourse [to the use of a constructed normal value] was not whether or not a 'particular market situation existed *per se*. A 'particular market situation' was only relevant insofar as it had the effect of rendering the sales themselves unfit to permit proper comparison. In the Panel's view, therefore, Article 2.4 specified that there must be something intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison."[1]

   As indicated earlier above, the alleged artificially lowering of the prices of inputs to manufacture does not in some unspecified way preclude a proper comparison of domestic selling with export prices, particularly when the same inputs to manufacture are used to produce the same products sold in the domestic market as sold for export.

   The issue, however, is whether the alleged artificial lowering of inputs to manufacture is in fact a countervailable subsidy under the WTO Agreement on Subsidies and Countervailing Measures ("WTO SCM"). Article 11.2 of the WTO SCM provides that an, *"application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph."*

4. No evidence has been advanced by Paper Australia in the Application that the alleged government influences of inputs to manufacture actually amount to countervailable subsidies under WTO rules. It is merely echoing the determination made by the US Department of Commerce. It is submitted that the ADC should have made its own

[1] GATT Panel Report, EC – Imposition of Anti-Dumping Duties on Imports of Cotton Yarn from Brazil, 42S/17 (adopted 30 October 1995)

findings that, based on the facts and evidence contained in the Application, that the inputs actually did or could amount to countervailable subsidies under WTO rules. Absent such a finding, the Application should not have been accepted and this investigation should be terminated.

5. Assuming the alleged government influences on inputs to manufacture did amount to subsidies, then, in order for countervailable duties to be levied, it would need to be demonstrated that those subsidies "flowed through" and the extent to which they "flowed through" to A4 Copy Paper exported to Australia. This would be necessary to determine whether and to what extent the A4 Copy Paper exported to Australia had been subsidised by a countervailable subsidy. Absent that analysis, it would not and could not be known what amount of countervailing duty could legitimately be imposed to offset the subsidy flowing through to the end product. Under WTO rules the amount of a countervailable subsidy must not be greater than the subsidy received by the good being investigated. To do otherwise would be in violation of WTO rules.

6. Further, all countries, including Australia, the USA and the EU, provide subsidies to their local industries in one form or another. Those subsidies usually are not "specific" and, consequently, are not countervailable under WTO rules. There needs to be an analysis that any alleged subsidies are in fact "specific" and, consequently, countervailable under WTO rules. This has not been addressed by Paper Australia in the Application. Consequently, the Application did not qualify as a valid application under WTO rules and should have not been accepted by the ADC. This is another reason for why this investigation should be terminated. The role of the ADC is not to embark on a "fishing investigation" into whether exporters are receiving subsidies and, if so, whether those subsidies are countervailable under WTO rules.

   In summary, the question is whether the ADC should have initiated this investigation into the alleged subsidies in the absence of positive evidence in the Application, a requirement under WTO rules, of the presence of countervailable subsidies under WTO rules. In the absence of such evidence, the investigation should have not been initiated.

7. It also is to be noted that the forests and wood products industries are the most heavily regulated industries in Australia including the use of government-owned enterprises to harvest, manage and commercially exploit forests in Australia – see the Paper Australia's 2013 Sustainability Report (at pages 24 and 25): http://www.australianpaper.com.au/media/3786604/2013-Sustainability_Report_web.pdf

   Does this mean that there is a "particular market situation" in Australia in relation to forests and wood products that precludes a proper assessment of injury and causation due to government involvement and regulation of those industries? Such regulation should be investigated to determine whether and to what extent it affects Paper Australia's performance and whether a "proper" assessment of injury and

causation can be undertaken due to government involvement in the Australian forest and wood products industries.

8. Finally, what Paper Australia's Application also fails to mention is that its exports to the USA were the subject of a dumping investigation that resulted in dumping measures being imposed. According to the US Department of Commerce dumping measures were imposed on Paper Australia's exports of A4 Copy Paper to the USA at dumping rate of 222.46%., although is identified in the Department of Commission's Fact Sheet attached to the Application.

   The effect of this presumably has restricted Paper Australia's ability to export A4 Copy Paper to the USA. This assumedly would have a consequent impact on its ability to recover its costs unless it could sell lost sales volumes in the USA market in other countries such as Australia. In other words, the injury that Paper Australia has incurred is due to it being found to be exporting its products to the USA at dumped prices as opposed to being adversely affected by imports. This is not addressed in the Application or the Consideration Report.

9. The GOI also notes that ADC is requesting information going all the way back to 2002 (14 years ago). It is submitted that such information is outdated, irrelevant and has no probative value in the current investigation, which has an investigation period of 1 January 2015 to 31 December 2015.

For the above reasons, the investigation into exports of A4 Copy paper from Indonesia to Australia should be terminated immediately. The Application was based on fundamental misconception of WTO rules on dumping and a failure to disclose that the injury that it may have incurred was due to a finding that its exports to the USA were being exported at significantly dumped prices.

Yours sincerely,

Principal

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