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By email: operations2@adcomission.gov.au

Director, Operations 2
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3001
Australia

Attention: Mr Tim King, Case Manager

Dear Sir **Non-Confidential**

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

1. We refer to the applicant, Paper Australia Pty Limited's (Paper Australia) application for anti-dumping measures in relation to A4 Copy Paper exported from the Republic of Indonesia and to the Anti-Dumping Commission's (Commission) Consideration Report No. 341 date 29 March 2016 (Report).
2. Paper Australia alleges that there are three countervailable subsidy programs in Indonesia, namely: -
    a) Log export bans;
    b) Provision of standing timber for less than adequate remuneration; and
    c) Debt forgiveness.

3. Log export bans

3.1 Paper Australia's claim in relation to "log export bans" relies on findings by the US Department of Commerce (DOC) that such bans amount to a countervailable subsidy under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).

3.2 As a threshold point, as indicated in the attached letter from the Indonesian Ministry of Trade, no bans exist on products such as woodchips and pulp wood used in the production of A4 Copy Paper: see **attached.**

3.3 Further, to the extent the export of logs from Indonesia is or has been prohibited, that prohibition is in relation to logs that are not used in the production of A4 Copy Paper but in the production of other products such as furniture. Accordingly, such an export ban has no relevance to this investigation as it neither relates to the goods under investigation nor inputs to manufacture of the goods under investigation.

3.4 No evidence has been advanced on how an export ban on logs that are not used in the manufacture of A4 Copy Paper is actually relevant to this investigation. It is surprising that this investigation was initiated in the absence of any such evidence. Mere speculation, at best, is not sufficient under WTO rules.

3.5 In addition, there are a number of flaws in Paper Australia's claims on this issue due to it relying on the DOC's findings and on any finding that an export restriction necessarily constitutes a countervailable subsidy. These flaws are set out below.

3.6 First, Paper Australia's claim assumes that the DOC actually found evidence that support its finding that export restrictions on logs had the effect of increasing supply of logs in Indonesia and this, in turn, effectively artificially lowered prices of logs, which consequently provided a subsidy to local producers using that product, in this case, allegedly in the production of A4 Copy Paper.

3.7 There are several difficulties with this analysis, namely, the assumptions on which it is based:

i. it assumes that the restrictions actually increased the supply of the logs in Indonesia but there was no evidence in DOC's report that it actually had this effect;

ii. it assumes that this purported increased in supply of logs actually depressed prices for logs in Indonesia but the DOC report provided no evidence that this actually occurred or, if it occurred, the extent to which it occurred;

iii. it assumes that the export restrictions actually had the effect of increasing supply logs in Indonesia and depressing prices for logs in Indonesia although the DOC report provided no evidence that this actually occurred;

iv. it assumes that the logs the subject of the export prohibition were actually used, either directly or indirectly, in the production of A4 Copy Paper but there was no evidence in the DOC report that this actually occurred;

v. it assumes that to the extent that such logs were used in the production of A4 Copy Paper, either directly or indirectly, and that the prices were somehow artificially lowered, that such "low" prices actually "flowed through" to the price of A4 Copy Paper exported to the US or, if it did, to what extent it did "flow through" to A4 Copy exported to the US.; and

vi. to the extent that such artificially lowered prices flowed through to the end product (i.e. to A4 Copy Paper), it assumes that to the extent to which such prices flowed through to the end product they amounted to a countervailable subsidy, as opposed to whether the alleged artificially lowering the price of an input to manufacture amounted to a countervailable subsidy, which was not the subject of the investigation by the DOC.

3.8 In other words, the DOC findings were based on a collection of assumptions and a flawed analysis and an absence of evidence supporting its findings. Under WTO rules, as the Commission is aware, positive findings based evidence is required. Importantly,

the application by Paper Australia did not address and remedy these deficiencies in its application but merely relied on a flawed report by the DOC.

3.9 In addition, DOC's findings were inconsistent with provisions under the SCM Agreement for the reasons set out below.

3.10 Subsidies that are countervailable is defined in Article 1.1 of the SCM Agreement. Paragraph (a) of the definition sets out when a subsidy is deemed to exist, while paragraph (b) includes the requirement that the subsidies referred to in paragraph must confer a benefit. Provided these conditions are met and the subsidy in question is "specific" as provided for in Articles 1.2 and 2 of the SCM Agreement, then the subsidy would be countervailable.

3.11 As the Panel determined in[1], the inclusion of a two-part definition subsidy consisting of a "financial contribution" and "benefit" was to prevent the countervailing of any benefits of any sort of by a government measure by restricting to a finite list of the kinds of government measures, if they conferred a benefit, constitute subsidies (para. 8.73).

3.12 We draw the Commission's attention to paragraph 7.4 of the Panel's Report. The Panel there expressed the view that if, for the purposes of paragraph (iv) of the definition of subsidies, government measures, such as export restraints, that do not involve a transfer of economic resources from government to private entities, this would reopen what "benefits" would be countervailable regardless of the measures that gave rise to them and would render the "financial contribution" requirement meaningless.

3.13 Consequently, the Panel, at paragraph 8.75, concluded that an export restraint does not constitute a financial contribution within Article 1.1(a) of the SCM Agreement. Specifically, the Panel rejected the argument that because or to the extent that an export restraint caused an "increased supply of the restrained good, it is the same as if a government had entrusted or directed a private body to provide the good domestically".

3.14 Accordingly, the Panel found that to treat export restraints as financial contributions was inconsistent with Article 1.1(a) of the SCM Agreement.

3.15 It follows that to treat the prohibition on the export of logs from Indonesia, assuming such logs were or are actually used in the production of A4 Copy Paper, as consisting of a countervailable subsidy would be in violation of the SCM Agreement.

3.16 Further, even if the export prohibition of logs could be construed as being a countervailable subsidy, it still would be necessary to demonstrate that a countervailable subsidy existed in relation to A4 Copy Paper. That is, whether any subsidy in consequence of the export prohibition of logs "flowed through" to the price of A4 Copy Paper and, if so, to the extent it did so and whether that amounts to a countervailable subsidy. Neither the Commission nor the Applicant have been able to show this based on positive evidence.

4. Provision of standing timber at less than adequate remuneration

4.1 Again, the Applicant's claim that the provision of standing timber is countervailable was based on the findings of DOC in its investigation. DOC found that the provision of

[1] United States – Measures Treating Export Restraints as Subsidies (WT/DS194/R) 29 June 2001

standing timber was countervailable because it provided a financial contribution and a benefit and was specific.

4.2 However, DOC's analysis suffers the same flaws as its findings regarding restrictions on the prohibition of the export of logs.

4.3 Article 14 of the SCM Agreement requires that the calculation of the "benefit" to a recipient is to be based on the legislation or implementing regulations and the methods is to be based on those set out in paragraphs (a) to (d) of Article 14.

4.4 Article 14(d) of the SCM Agreement stipulates that the "adequacy of remuneration" is to be determined in relation to prevailing market conditions for the goods in question "in the country of provision or purchase".

4.5 DOC's findings were flawed in the following ways: -

i. DOC determined the adequacy of remuneration by reference to prices prevailing in Malaysia. It did not examine the price for timber in Indonesia.

ii. Further, there was no analysis as to what constituted the supply of a good, in this case timber, at "less than adequate remuneration" (i.e. what would constitute the supply of timber at adequate remuneration in Indonesia) nor why the supply of timber in Indonesia was less than that which would constitute adequate remuneration in Indonesia, as opposed to any other jurisdiction. What may amount to "adequate remuneration" in one jurisdiction may amount to inadequate remuneration in another jurisdiction. What amounts to "adequate remuneration" in Indonesia needed to be determined to market conditions in Indonesia and then determine whether the adequacy of remuneration has been met by those standards.

iii. DOC's approach, as set out in the relevant US legislation, was to determine the "adequacy of remuneration" based on (i) market prices from actual transactions within the country under investigation; (ii) world market prices that would be available to purchasers in the country under investigation or (iii) an assessment of whether the government price is consistent with market principles.

iv. This methodology seemingly is to establish a benchmark price against which the "stumpage fees" may be compared to determine their "adequacy". However, none of these methodologies actually establish what actually constitutes "adequate" or "inadequate" remuneration for the supply of timber. That is, they do not provide a measure of what is or is not "adequate" or "inadequate" remuneration in the supply of timber in Indonesia. What prices are available in other countries, such as Malaysia, do not provide a measure as to what would be adequate remuneration in Indonesia.

v. Further, where the Government of Indonesia provides entities with access to land to log timber but imposes obligations on those entities to remediate sites, comply with environmental regulations, to replant timber logged and other similar obligations in relation to their activities, as well as receiving a fee from those entities in relation to their logging activities, the adequacy of that fee must be measured against the other obligations being imposed. One cannot assess the "adequacy of remuneration" in isolation of the other obligations being imposed on the entity undertaking the activity in respect of which the fee is payable.

vi. In addition, Article 14 of the SCM Agreement requires that the method for calculating the benefit to the recipient of a subsidy is to be based on the national legislation or implementing regulations for the subsidy in question. The applicant acknowledges that it had no knowledge of or any evidence of the legislative basis for this alleged supply of timber at less than adequate remuneration.

vii. Also, similarly to the prohibition on the exportation of logs, it is unclear from the DOC report the extent to which the logs the subject of the stumpage fee were actually used, either directly or indirectly, in the production of A4 Copy Paper, whether and the extent to which this fee actually "flowed through" to the export price of A4 Copy Paper exported to Australia and, if it did, whether it amounted to a countervailable subsidy under WTO rules.

4.6 It also is important to note that the legislative basis on which DOC assessed whether the so-called "stumpage fee" was provided at less than "adequate remuneration" was on legislation unique to the US and we question whether it is consistent with WTO rules. It is acknowledged by DOC in its report that in making such an assessment it is confined to US legislation and may not have regard to WTO rules or jurisprudence. This, of itself, calls into question the relevance of any DOC analysis or findings as they are based on legislative provisions alien to WTO rules and jurisprudence and, for that matter, have little or no relationship to Australian statutory provisions on the same issue. For this reason alone, the DOC report should and must be disregarded.

4.7 It follows that in the absence of any evidence in the application that the supply of timber in Indonesia was at "less than adequate remuneration" or any legislative basis for the supply of timber at "less than adequate remuneration", the application or this portion of it should have been rejected.

5. Debt Forgiveness

5.1 We note that the debt forgiveness programme, which was introduced to address the effects of the Asian financial crisis, expired and was wound up in 2004, some 12 years ago. Accordingly, it has no relevance to the current investigation. No indication has been given either by Paper Australia or by the Commission, as to how a programme, which may or may not have been relevant to this investigation and that expired in 2004 could still be relevant some 12 years after it had been wound up. We, therefore, make no submissions in relation to it as no submissions are necessary given that this programme came to an end in 2004.

6. Injury & Causation

6.1 It is of interest that in the current Commission's Consideration Report, the injury period commences in 2012. This, of course, was a period when it was found in the previous investigation into A4 and A3 Copy Paper from China that such exports were not at dumped prices and, hence the termination of that investigation. No suggestion was made at that time that exports from Indonesia of A4 Copy Paper or from any other country under investigation in this investigation were at dumped or subsidised prices or were causing injury to Paper Australia.

6.2 In this investigation, according to the Consideration Report, exports of A4 Copy Paper in 2012 and 2013, part of the period covered by the previous investigation, were significantly undercutting the prices of Paper Australia but such prices were not dumped prices. Significantly, Paper Australia then went on to reduce its prices throughout the injury period according to the Consideration Report and lost sales volumes while imports increased their prices from un-dumped prices and increased sales volumes although marginally.

6.3 It would seem that the progressive decline in Paper Australia's prices during the injury period in this investigation and its decline in sales volumes while imports increased their prices from un-dumped prices from 2012 throughout the injury period must lead one to conclude that factors other than dumping and subsidisation have led to Paper Australia's claimed injury during the injury period.

7. Conclusion

In conclusion, it is submitted that: -

a) the "debt forgiveness programme" is irrelevant to this investigation as it was wound up in 2004;

b) the prohibitions on the exportation of logs from Indonesia similarly should be excluded from this investigation as (i) the logs subject to the prohibition are not used in the production of A4 Copy Paper but are used in the production of other products such as furniture; (ii) there is no evidence that the prohibition of logs amounts to a subsidy of A4 Copy Paper and; (iii) there is no evidence that whatever effects the prohibition on the exportation of logs not used in the manufacture of A4 Copy Paper "flows through" and affects the price of A4 Copy Paper exported to Australia and that amounts to a countervailable subsidy to the extent it "flows through" to export prices; and

c) whether the so-called "stumpage fee" is a supply of goods at "less than adequate remuneration" must be assessed against what constitutes "adequate remuneration" in the country of export, and not in some other jurisdiction, which assessment must also include the variety of obligations imposed on those entities logging the timber or otherwise obtaining the timber in addition to the fee payable for access to the timber because that fee cannot be viewed in isolation from the entities other obligations.

For the foregoing reasons, we submit that the application is fundamentally flawed and should not have been accepted by the Commission but should have been rejected. Our client is objected and concerned that the Commission has not done so.

In these circumstances, we reiterate that in light of the aforementioned deficiencies, this investigation should be immediately terminated.

Yours faithfully,

Principal
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