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18 August 2016

Mr T King
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By email

Dear Tim

APRIL Fine Paper Trading
Investigation concerning A4 copy paper exported from Indonesia
Allegations concerning subsidisation and "market situation"

1 We write on behalf of APRIL Fine Paper Trading Pte Ltd and PT Riau Andalan Kertas (collectively, "APRIL") with regard to the abovementioned investigation.

2 At the outset we are compelled to emphasise that **[CONFIDENTIAL TEXT DELETED – APRIL cost and price information]**. Accordingly APRIL has not dumped A4 copy paper on the Australian market and any allegation to the contrary is simply incorrect.

3 We note that Paper Australia Pty Ltd ("the Applicant") has made a number of allegations regarding subsidisation of Indonesian producers of A4 copy paper. Those allegations are further used as the basis for arguing that domestic Indonesian prices are not suitable for determining normal values. The Applicant has nominally expanded upon these allegations in its submission of 22 July 2016.

4 APRIL has addressed these issues in its exporter questionnaire response ("EQ"), and also during the verification of APRIL. We now wish to provide a further explication of APRIL's position on these matters, for the further consideration of the Anti-Dumping Commission ("the Commission").

5 However, as a starting point, APRIL needs to underline that this is an Australian case, which operates pursuant to Australian law. The Applicant's suggestion that the Commission should slavishly follow the findings of the US Department of Commerce ("USDOC") arising from its recently completed "certain uncoated paper" investigation is simply unsupportable. That the application lodged by the Applicant in the first place was based solely and opportunistically upon USDOC's findings in that investigation is a matter of extreme concern to APRIL. The findings of a foreign administration cannot simply be transposed to the Australian context, because there can be wide differences in law, policy and administration between jurisdictions. There certainly are such differences with the US approach to these matters. The Applicant directed little or no effort towards somehow relating what was decided by USDOC to the Australian context, and we would say that this is because it would have great difficulties doing so. In this regard we note that US law even goes so far as to stipulate that *"No provision of any of the Uruguay Round Agreements, nor the application of any such*

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provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect".[1]

6 The three alleged subsidies that the Applicant contends against Indonesian exporters do not exist. It should be abundantly clear to the Commission, once properly apprised of the facts and having properly considered the law, that they cannot be found to be subsidies under the relevant terms of the *Customs Act 1901* ("the Act"). Further, there is no basis upon which to find that a "particular market situation" exists in Indonesia that would render domestic prices inappropriate for use in determining normal value. These issues are discussed in greater detail below.

A There is no provision of standing timber to APRIL by the GOI for less than adequate remuneration

7 All pulpwood used by APRIL in the production of A4 copy paper is grown in plantations which have been established and paid for by the pertinent concession holder, namely APRIL itself. There is no provision of timber by the Government of Indonesia ("GOI") to APRIL such as would impact on the production of A4 copy paper. All pulpwood used by APRIL in the production of the goods under consideration is either grown by APRIL at its own cost, or purchased from other entities who have similarly grown that pulpwood at their own cost.

8 The Applicant concurs with this set of facts, admitting that:

> *Since the Commencement of operations, APRIL Group has worked towards creating an entirely plantation-grown supply of wood.* [2]

9 Given that the Applicant accepts these facts, its allegation that the GOI is providing any timber, whether directly or indirectly, to APRIL is baseless. As the Commission is now aware from its verification of PT Riau Andalan Pulp & Paper ("RAPP"), any Indonesian plantation owner grows timber within its own plantation from seed to maturity at its own cost. The situation is very different from that which might exist in relation to the use of forest assets in non-equatorial regions of the world. Under Indonesian conditions, softwood resources grow from seed to maturity in about six years. In other countries it might be the case that governments actually sell "timber" or the rights to "timber" to harvesters. In Indonesia, the full cost of the development of the timber is met by the plantation owner/harvester itself. The timber is recognised as an asset on the plantation owner's books at all times. The cost of building, maintaining and running the plantation is borne by the plantation owner. The price paid for the timber is agreed to between APRIL and the plantation owner concerned.

10 As noted in APRIL's EQ, in order for a subsidy to be found to exist, a government must be found to have provided a financial contribution which thereby confers a benefit. APRIL does not believe any entity which it sources timber from can be described as the GOI, or even as a "public body". Further, APRIL cannot be provided with a benefit in circumstances where its supply of wood pulp is derived from timber that is harvested at full cost and paid for at full price. Therefore, there is no subsidy.

11 The Applicant, either wilfully or unconsciously, has based its concerns on two factors, being (a) the GOI's "ownership" of forest land, and (b) what it considers to be "concessional" stumpage rates. However, the Applicant is entirely mistaken with regard to these matters.

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1 19 U.S. Code § 3512(a)(1)

2 *Exporter Briefing - April Fine Paper Trading Pte Ltd (Indonesia),* page 4.

(a) The GOI's alleged "control" of forest timber

12 In its submission the Applicant has stated that the GOI *"controls a substantial amount of Indonesia's harvestable forest"*.[3] In support of this allegation, the Applicant cites the opinion that 12% of Indonesian forests are "privately owned".[4]

13 The Applicant has mistakenly correlated ultimate ownership of forest land with ownership and control of everything on that land. Even if the GOI is the ultimate owner of the land it has the ability to assign rights to other parties, in the same way as a house owner can enter into a lease agreement with a tenant. Similar to a lease agreement, in which the tenant has the right to use the house to the exclusion of the owner, a concession-holder has rights to use its concession land. As noted in APRIL's EQ response, the rights that have been assigned to it include the right to develop industrial plantations and to utilize the resources grown in those plantations. In a sovereign context, every country in the world "owns" and "controls" everything within its borders. But that is not to the point. The point is whether the GOI has provided a financial contribution to APRIL which has thereby conferred APRIL with a benefit. The Applicant's musings about the fact that 12% of plantation land in Indonesia is privately-owned does not prove any element of its case. Indeed, it does the opposite, by indicating that in Indonesia private sector freehold exists side-by-side with public leased land.

14 The focus on State "ownership" of forest land is a distraction from the major failing of the Applicant's allegation. That allegation is that the GOI is providing free standing timber for less than adequate remuneration. The existential fault in this allegation is that the GOI does not provide timber grown in plantations. Only plantation grown timber is used by APRIL in the production of the goods under consideration. Plantation owners, including RAPP, build the plantation, grow the plantation, and maintain the plantation *at their own cost*, and are entitled to utilise the timber from their plantation in the manner they see fit. That timber, from the time it is planted to the time it is harvested, is recognised by the plantation owner as its own asset, and is recorded in its books accordingly. Although the GOI may ultimately own the land upon which the trees are grown, the GOI does not control the timber, and does not pay for the timber, and does not bear any obligation or liability in relation to the timber. We say again - from APRIL's perspective, and from any legal and practical perspective, the GOI does not own the timber grown in RAPP's plantations. So, again, the Applicant is incorrect to correlate ownership of forest land with ownership of timber, or the harvesting of timber as any "provision" of it by the GOI. Those things are simply not the case.

15 In any case, State ownership of forest land is not unusual, and is not some kind of "red flag" that inevitably points towards the existence of a subsidy or a particular market situation. This will disappoint the Applicant but we are not here for its own gratification. For example we understand that over one-third of the fibre used by the Applicant is sourced from native regrowth wood purchased from VicForest. VicForest is a business that is owned by the Government of Victoria, which has been imbued with the government function of managing Victoria's state forests.[5] We also understand that of the 7.12 million hectares of native forest within Victoria, approximately 1.2 million hectares are privately managed.[6] This means that only 16% of forests in the area in which the Applicant sources raw materials are *privately managed*.[7] This is hardly distinguishable from the 12% of forest that in Indonesia that the

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3 Page 3 of the Applicant's submission of 22 July 2016.

4 *Ibid.*

5 *VicForests Annual Report 2014-15,* page 6.

6 While there are some plantation forests, these are generally small in size. According to a fact sheet released by VicForest (accessible here http://www.vicforests.com.au/static/uploads/files/fs-plantation-web-wfkpsjqlbofi.pdf), they account for approximately 420,000 ha. Although what degree of this is state-owned and what degree of this is privately owned is not currently known.

7 Noting that there is a difference between management and ownership, APRIL considers it likely that the level of private ownership would be less than this amount. (http://www.depi.vic.gov.au/forestry-and-land-use/forest-management).

Applicant identifies as being *privately owned*. Indeed, in the circumstances, it seems almost hypocritical that the Applicant would attempt to support its claim on the mere fact of government ownership, when the same can be said about its own available resources and when no one – APRIL included – contends that the Applicant is thereby being "subsidised".

16 Ultimately, the Applicant's contention that the GOI is "providing timber" is unfounded and misconceived. The Applicant's focus on State ownership of forest land is a red herring, and does not underwrite the existence of the alleged subsidy. The Applicant's allegation is based on supposed facts and figures that are equally applicable to other countries, including Australia. Those facts and figures are unremarkable, because forestry industries in market economies operate in the same way or similar ways all over the world – including in Australia.

(b) "Concessional" stumpage rates

17 The Applicant claims that "stumpage fees" within Indonesia are at a concessional rate. The Applicant cites a number of factors in support of this allegation. However, the allegation is itself based on a flawed appreciation of the operation of Indonesian plantations.

18 Firstly, the Applicant notes that the GOI refers to license holders having a "Concession Deed".[8] Based on the presence of the term "concession", the Applicant concludes that stumpage rates must be "concessional". This is perplexing. The term "concession" refers to a land concession, in the sense that the deed allows the deed-holder to use land for a specific purpose, such as the creation of an industrial planation and the exploitation of the timber grown therein. The word "concession" as used in the title of the deed is not descriptive of some kind of "undervalue", if that is what the Applicant is driving at. The suggestion is absurd. A concession is a right. The word says nothing about "stumpage" or about costs or fees more generally.

19 The Applicant then refers to an article from a 2013 edition of the *Jakarta Post*, which reports the opinion of a lobby group representing the interests of parties opposed to the log export prohibition. Opinions are not facts, or evidence of facts. Moreover, as opinions go, the one grasped by the Applicant cannot be claimed to be objective. It would not be unusual for a lobby group to put forward an extreme set of purported facts in order to try and convince the GOI and the Indonesian people that the export prohibition should be removed. The citation of a 2013 article in this way indicates desperation on the part of the Applicant rather than an attempt at cogent argumentation.

20 Ultimately, the Applicant's position is that the Commission should determine any "benefit" conferred by the alleged subsidy by comparing the royalty fee payable to the government ("PSDH") with "market rates".[9] The Applicant has labelled the PSDH as a *stumpage fee*, and appears to consider that this should be contrasted with the *price of logs* from outside Indonesia. For this to be at all relevant, the PSDH would need to be the price paid for timber, ie the price of logs that the Applicant claims should be the point of comparison. However the PDSH cannot be characterised in this way. The PSDH is merely a royalty fee. It is not, and cannot, be considered to be the "price" of timber, nor is it "remuneration" for timber. As discussed above, the GOI does not provide timber to plantation owners. Plantation owners grow timber at their own cost.

21 Even if the GOI had provided the timber (despite it being grown and harvested by the plantation owners at the cost of the plantation owners), there still can be no subsidy unless the provision of timber provides a benefit. According to Section 269TACC(6) of the Act, where the Government provides goods, the provision of the goods does not confer a benefit unless the goods were provided at less than adequate remuneration. Even if the PSDH did

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8 Page 4 of the Applicant's submission of 22 July 2016.

9 *Ibid*.

reflect "remuneration" for timber, then the only way a subsidy could be found would be if the PSDH was not adequate to cover the GOI's costs with regard to the provision of that timber. This is not a "market price" test as the Applicant wrongly contends. Nowhere in the Act can such a requirement be expressly identified or implied. Given that the plantation owner incurs all costs associated with the production of the timber, from the establishment of the plantation and supporting infrastructure through to the planting, growing and harvesting of the timber, it is not apparent what remuneration the GOI would require for that timber. The concession fee that the GOI charges for the use of the land for that purpose is not the consideration for the timber grown on the land *because the GOI does not grow timber on the land*. The verification of RAPP clearly established that the trees are considered to be the assets of RAPP at all relevant times – planted by RAPP, grown by RAPP, looked after by RAPP, harvested by RAPP and produced into wood pulp by RAPP.

22 We see no basis for a finding that the alleged subsidy exists.

B The export prohibition is not a subsidy and has no impact on the price of A4 copy paper

23 The Applicant's contention is that the export prohibition has somehow lowered the price of pulpwood. The Applicant considers that, if this effect was evidenced, then the export prohibition would fall into the definition of a "subsidy". The Applicant is mistaken.

24 First, as clearly stated in APRIL's EQ, an export prohibition cannot be found to be a form of "subsidisation". This is in accordance with the finding of the WTO Panel in *United States – Measures Treating Export Restraints as Subsidies*,[10] which found that an export restraint did not qualify as a provision of goods, nor could it be found to constitute a financial contribution.

25 This line of reasoning is equally applicable to Australian law, under which a subsidy is defined to be a *"financial contribution"* provided by government (or if not by government, by a public body or a private body which has been entrusted or directed by government to carry out a governmental function). To date, the Applicant has not been able to articulate how the "export prohibition" falls within these legal requirements, which is to be expected because it plainly cannot.

26 Secondly, as the GOI pointed out in its submission dated 20 June 2016, the prohibition is not targeted toward pulpwood, but rather toward high quality timber that is used in other industries, such as the production of furniture and housing construction.[11]

27 This should be the beginning and end of the debate. If there is no financial contribution, then no benefit is conferred. If no benefit is conferred in relation to the goods, there is no subsidy. If there is no subsidy, there is no countervailable subsidy.

28 As to the Applicant's contention that the prohibition has had an impact on the cost of A4 copy paper, we wish to emphasise that:

(a) this is not evidenced;

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

[11] The difference in quality between the "structural" grade products and pulpwood is noted by VicForests (http://www.vicforests.com.au/static/uploads/files/fs-nativetimber-web-wfvjizcqtszs.pdf). A study undertaken by VicForests confirms that pulpwood grown in plantations to produce pulp *"has smaller dimensions, inherent growth stresses and lower density"* than native forest logs (http://www.vicforests.com.au/supplying-our-industry-1/plantations-and-native-forest/research-conclusions).

(b) this is not an outcome that is the logical conclusion of any prohibition on exports of logs; [12]

(c) this could not be described as a *"financial contribution"* within the definition of that term in Section 269T of the Act.

29 Even if the Commission ignores the fact that logs of the type to which the ban applies are not used to make A4 copy paper, any assumption that the prohibition would have any price lowering effect in 2015 could only be based on the Applicant's ignorance of basic economic theory. It is neither correct nor necessary to find some irregular explanation for Indonesian pulpwood prices. Indonesia has a huge comparative advantage in the growing of pulpwood. Due to the combination of climate and rich soil in Indonesia, a pulpwood species such as acacia grows to maturity as quickly as in five or six years.[13] In comparison, plantation hardwood grown in Australia will take between 12 to 20 years to mature for harvest.[14] In addition to this, Indonesia has a large forestry resource, with a total forest area of 99.6 million hectares which includes 3.8 million hectares of plantation forest,[15] making it one of the largest forest resources in the world. These prevailing conditions have significant implications for the cost of growing wood in Indonesia, meaning that Indonesian pulpwood prices are going to be comparatively lower than elsewhere. This has nothing at all to do with alleged government action or intervention. Moreover, the log prohibition has been in place for a number of years and all market participants would have long since adjusted to any market impacts, if there were any. Even if there had been an exogenous shock in 2001, market equilibrium between buyers and sellers has returned. APRIL maintains that the export prohibition on the high quality log timber has no effect on the price of plantation pulpwood or on the price of A4 copy paper, and is not aware of any evidence that can contradict this proposition.

30 Finally, the Applicant apparently does not accept the GOI's reasoning for the imposition of the export prohibition, being *"for the conservation of the environment and ecosystem as well as the implementation of international convention on health, safety, environment and public moral"*, preferring to believe that the purpose for the export prohibition is to deliver low cost timber to producers of value added forestry products. Essentially, in its self-interested campaign to achieve unmerited protection from import competition, the Applicant has chosen to accuse the sovereign government of Indonesia of lying. An objective analysis of the undisputed facts easily proves that the GOI did not take action to preserve its natural forest resource because it wanted to assist paper makers. Indeed, the *Jakarta Post* article submitted by the Applicant confirms that the prohibition was put in place to reverse *"rampant illegal logging"* which caused *"expansive deforestation"* and *"losses to biodiversity"*. Given this, we are surprised that the Applicant so readily rejects the GOI's explanation for its adoption of that policy, being for the *"conservation of the environment and ecosystem"*. The prevention of *"expansive deforestation"* and *"losses of biodiversity"* would seem to fit within this policy goal quite closely. We also note that the Australian Government works with governments in the Asia Pacific region, including the GOI, to combat illegal logging and to support the trade of legally harvested timber and timber product.[16]

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[12] There is no export prohibition on woodchip. Given that the purpose of growing pulpwood is to turn it into pulp, we would suggest that any ban on certain timber exports ("timber in the rough") is completely irrelevant to paper production. In any regard, RAPP does not purchase "timber in the rough". The vast majority of timber it purchases is free standing timber, which it then harvests into pulpwood.

[13] See extract from *Poyry Insight Report - Hardwood Pulpwood and Woodchip Industry and Trade - Focus on Indonesia and Malaysia* at page 7 (*"5-7 years"*) **[PROPRIETARY ATTACHMENT]**; and http://www.worldagroforestry.org/treedb/AFTPDFS/Acacia_mangium.PDF at page 4 of 5 (*"6-8 years"*).

[14] http://www.vicforests.com.au/static/uploads/files/fs-plantation-web-wfkpsjqlbofi.pdf

[15] See extract from *Poyry Insight Report - Hardwood Pulpwood and Woodchip Industry and Trade - Focus on Indonesia and Malaysia* at page 6 (attached).

[16] This is expressly noted by the Department of Agriculture and Water Resources – see http://www.agriculture.gov.au/forestry/international/regional#australia-and-indonesia

31 For these reasons, the Applicant's allegation should be summarily dismissed.

C APRIL did not receive any benefit from the Government of Indonesia's debt buyback program

32 APRIL did not receive any benefit from the Government of Indonesia's debt buyback program. This is undisputed.

D There is no particular market situation in the Indonesian market for A4 copy paper

33 The Applicant has alleged that there is a *"particular market situation"* in the Indonesian market for A4 copy paper which should prevent prices derived from that market from being used as a basis for determining normal values under Section 269TAC(2) of the Act. This is said to have been brought about because, allegedly, *"the prices are significantly influenced and distorted by the Government of Indonesia's (GOI's) influence on raw material inputs and subsidies…"*.[17] The Consideration Report links the market situation allegation to *"alleged"* subsidies. This allegation is repeated in the Applicant's submission of 22 July 2016.

34 Therefore, it appears that the market situation allegation is based only upon the purported provision of subsidies. This is troubling for a number of reasons.

35 Firstly, the foregoing disposes of the allegations that there are any subsidies. There not being any subsidies, the Applicant's only "justification" for its particular market situation accusation falls away.

36 Secondly, Article 32 of the *Subsidies and Countervailing Measures Agreement* ("the SCM Agreement") provides that *"no specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this agreement"*. This effectively means that WTO members are only allowed to take action against subsidy allegations through the disciplines set out in the SCM Agreement. It is therefore not permissible to use the alleged existence of subsidies as a basis for alleging (or finding) that there is a particular market situation, as this is a concept derived from the *Anti-Dumping Agreement*.

37 Thirdly, the Applicant has not explained why any such alleged subsidisation would render domestic prices inappropriate for determining normal values. Section 269TAC(2)(a)(ii) states as follows:

> *because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)*

38 The Applicant has not articulated what it is about the domestic market in Indonesia that would render sales in that market as being inappropriate for determining normal values. As the GOI pointed out in its submission dated 2 June 2016, the only relevant "situation" for the purposes of Section 269TAC(2)(a)(ii) is a situation that would render domestic prices for like goods not being "properly comparable" with export prices. There is no evidence or explanation as to why domestic prices are not properly comparable with export prices, and so the particular market situation allegation is not made out.

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[17] Application, page 48.

39 Fourthly, in a more general sense, the information on the public record reveals that the GOI's influence on the A4 copy paper market is limited and completely appropriate. There is nothing that suggests that Indonesian prices are anything but market prices derived from a competitive market. **[CONFIDENTIAL TEXT DELETED – information regarding APRIL's pulp costs]**.

40 Ultimately, what the Applicant is attempting to do is to attack Indonesia's comparative advantage in growing timber. To do so, the Applicant has identified what it argues are "government" influences on timber prices. Again, APRIL does not consider that there is anything unusual or distortionary about the GOI's regulation of the Indonesian paper and pulp industry, nor the Indonesian forestry industry. Australia's regulation of its own forest products industries, and its treatment of the Applicant, implicate the Applicant in a very significant "double standard" in the initiation of this investigation. For example, the Applicant:

(a) recognises that it operates in *"one of the most highly regulated industries in Australia"*;[18]

(b) purchases at least one-third of its raw materials from a government owned and operated public body;[19]

(c) received AUD9.5 million in funding from the Federal Government, AUD9.9 million in funding from the Clean Energy Finance Corporation (created by the Federal Government) and additional funding from the Government of Victoria to open a waste recycling plant which produces, amongst other things, recycled copy paper;[20]

(d) in 2015 was a beneficiary of a Federal Government mandate that required government departments to purchase recycled copy paper.

41 There are at least 16 Acts, legislative instruments and policy documents that regulate the forestry industry in Victoria alone.[21] There are significantly more at the national level, including the *Plantations for Australia: the 2020 Vision* which is expressly described as a *"strategic partnership"* between Federal, state and territory governments and the timber growing and processing industry, and which has at its heart the goal of *"trebling the area of commercial crops by 2020"*.[22]

42 The Applicant has been unable to point to anything unusual or distortionary about the relationship between the GOI and the Indonesian timber and paper industries. The policy situation in Indonesia is, if anything, significantly less complex than that in Australia. APRIL considers that the Applicant's main goal in making the market situation allegation is to seek to offset Indonesia's comparative advantage in growing trees. This is not a valid use of the anti-dumping system, and thus the allegation should be rejected in total.

E Conclusion

43 APRIL submits that it has not dumped its products in the Australian market. Moreover, APRIL does not accept that its products have benefited from any form of GOI subsidisation, nor that its domestic prices are in anyway inappropriate for use in determining normal values.

44 APRIL notes that the Commission has sought "expert advice" regarding the particular market situation claims made by the Applicant. APRIL is certain that any expert advice will support

18 *Sustainability Report 2013*, Australian Paper, page 24.
19 See para 16 above.
20 http://www.proprint.com.au/News/389474,aus-paper-opens-maryvale-recycled-mill.aspx
21 http://www.vicforests.com.au/forest-management
22 http://www.agriculture.gov.au/forestry/policies/2020vision

APRIL's position that there is no particular market situation in the Indonesia. However, it is important that interested parties are fully informed regarding the Commission's conduct of this investigation especially where the Commission is outsourcing matters of such importance as the particular market situation allegation to third parties. Respectfully, interested parties currently have minimal information regarding this aspect of the investigation. Accordingly, APRIL requests the Commission to:

(a) inform interested parties of the terms of reference under which this advice has been sought;

(b) identify the expert that has been selected to provide the advice;

(c) identify how that expert was selected; and

(d) undertake to provide interested parties with sufficient time to consider and make submissions in relation to the report produced by the expert prior to the publication of the Statement of Essential Facts.

45 The requested disclosure should be made as soon as possible to ensure that interested parties can provide their input regarding this aspect of the investigation.

Yours sincerely

Daniel Moulis
Principal Partner