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Date: 1 November 2016

By Email **Non-Confidential**

Commissioner
Australian Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3000

Attention: Mr Tim King
Case Manager

Dear Mr King,

RE: Dumping and subsidy investigation into A4 Copy Paper from the People's Republic of China, the Kingdom of Thailand, the Republic of Indonesia and Brazil

I refer to the preliminary affirmative determination (PAD) made on 29 September 2016 by the Commissioner of the Australian Anti-Dumping Commission (Commission).

While the Commissioner's decision that the PAD did not apply to exports of A4 Copy Paper exported from Indonesia, I note that no decision was made on: -

- whether the three alleged subsidies identified in the Australian industry's application were in fact subsidies and were countervailable; or
- whether a "particular market situation" existed in the Indonesian market for A4 Copy Paper,

but that these matters were still under consideration.

I also note that the Commission has sought and obtained pulp and paper pricing data from RISI Inc and HawkinsWright Ltd. Precisely what data was obtained by the Commission is unclear. It appears that such data was obtained to assist the Commission in its 'assessment of a "particular market situation" in the Chinese and Indonesian copy paper markets'.

This submission addresses those issues.

1. Australian Industry Allegations

In its application, the applicant, Australian Paper Pty Ltd (AP), alleged that the domestic selling prices of A4 Copy Paper in Indonesia were not suitable for use in determining normal values under s.269TAC(1) of the *Customs Act 1901* because domestic prices of A4 Copy Paper in Indonesia: -

> "… are significantly influenced and distorted by the Government of Indonesia's ("GOI") influence on raw material inputs and subsidies during the investigation period". (underlining added)

It is unclear from Australian Paper's application how, why and to what extent domestic selling prices of domestic of A4 Copy Paper have been influenced and distorted by the GOI and no evidence was provided how they have been, why they have been and to what extent. Further, what particular "raw material inputs" were allegedly "influenced" also were not identified.

Notwithstanding the deficiencies in these vague and unsubstantiated claims, Australian Paper asserted in its application that a 'particular market situation' existed in relation to the domestic market for A4 Copy Paper in Indonesia. That is, 'the situation in the market of the country of export is such that sales in that market are not suitable for use in determining' normal values: s.269TAC(2)(a)(ii) of the *Customs Act 1901*.

To support this assertion, Australian Paper referred to the findings of the US Department of Commerce's (USDOC) affirmative determination in the dumping and subsidy investigations involving certain uncoated paper from Indonesia (i.e. 'Issues and Decision Memorandum for the Final Affirmative Determination in respect of the Countervailing Duty Investigation of Certain Uncoated Paper from Indonesia'). According to Australian Paper, those findings confirmed that countervailable subsidies existed and afforded Indonesian manufacturers of A4 Copy Paper some unspecified benefits.

The conclusion to be reached from this is that it was not alleged governmental "influences" on raw material inputs, whatever those influences may have been and what raw materials may have been influenced by those unspecified influences, but USDOC's findings that certain countervailable subsidies existed and these countervailable subsidies created a 'particular market situation', at least according to Australian Paper. The subsidies in question were: -

- debt forgiveness;
- prohibition on the exportation of logs; and
- stumpage fees.

These alleged subsidies and their countervailability have been the subject of previous submissions by or on behalf of the Government of Indonesia (GOI) and by or on behalf of Indonesian exporters.

In relation to:

- debt forgiveness, that particular program was wound up in 2004 and it has no relevance to the present investigation or, at least, none has been advanced; and
- the prohibition on the exportation of logs applied only to logs used in the manufacture of timber and other similar products relying on hardwood timber. No export or, for that matter, import prohibition existed in relation to wood pulp or chips. Further, WTO jurisprudence has determined that export restraints of this kind do not amount to a subsidy within the meaning of the WTO Subsidies and Countervailing Duties Agreement (SCM Agreement): see the WTO Appellate decisions in *US – Exports Restraints* and *China – GOES* and the Panel decision in *US – Countervailing Measures (China)*.

This leaves the alleged "stumpage fee" subsidy, which is addressed below.

2. Alleged Stumpage Fee Subsidy

2.1 Australian Paper's Allegations

In its application, Australian Paper relied upon the findings of USDOC in the abovementioned investigation: -

> "*In its final determination announcement on countervailable subsidies, the US DOC has confirmed that the GOI continues to own the vast majority of the forest land in Indonesia during the applicable investigation period (i.e. 2014). The GOI did not provide the US DOC with "information or documentation that the stumpage fees it charges are established in accordance with market principles". The fees charged for stumpage by the GOI include Provisi Sumber Daya Hutan ("PSDH"), Dana Reboisasi ("DR"), and Penggantian Nilai Tegakan ("PNT") fees, which are cash stumpage (or royalty) fees, rehabilitation and replacement of stumpage fees, respectively. However, these fees are not based upon market prices (due also to the operation of the GOI's export log ban).*
>
> *The US DOC used a benchmark price to determine the benefit received from Indonesian producers involved in the harvesting of logs. As the benchmark price could not be determined using private domestic prices in Indonesia, a benchmark was determined by reference to certain exported timber from Malaysia and Thailand. The US DOC further determined that the program was specific to the forestry industry and provided a benefit to four select industries (including the paper industry). US DOC determined that cooperative producers received a countervailable benefit of 9.81 per cent ad valorem for the program.*"[1]

[1] Australia Paper Pty Limited "Application for the Publication of dumping and/or countervailing duty notices on White Uncoated A4 Copy (Uncut) Paper Exported from The Federal Republic of Brazil, The People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand" (February 2016) (page 49).

There are numerous problems with Australian Paper relying upon USDOC's findings on this issue as there are considerable deficiencies with USDOC's findings.

2.2 Indonesian Timber Forests & Stumpage Fees

USDOC found that the GOI owned the majority of forest land in Indonesia. Such a finding may be true but fails to recognise that timber harvested from forests from GOI owned land is used in a variety of industries in Indonesia. No analysis apparently was undertaken to determine to what extent timber harvested from forests on GOI owned land was used in what industries. It cannot simply be assumed that all such timber was ultimately used in the manufacture of pulp or paper.

This was a fundamental misconception with the USDOC's analysis and findings, which has been carried through to Australian Paper's application and submissions. It is a common feature that timber harvested from forests and plantations are applied to a wide variety of uses, as is the case in Australia.

More fundamentally is the fact that the GOI does not sell 'stumpage' (i.e. timber) for use in the Indonesian pulp and paper industries. The GOI grants to companies in Indonesia 'concessions', effectively leases, to use the land the subject of the concession. A company that has been granted such a concession can use the land for its own purpose. This includes planting acacia trees for use in the pulp and paper industry. The granting of a 'concession' to undertake a particular commercial activity is a common commercial practice not unique to the forestry industry or Indonesia.

However, it must be noted that the land that the GOI grants such concessions typically is land not containing natural rain forests but is land without such forests and often is land that has been heavily degraded. Having been granted such a concession, the company must render the land suitable for its commercial activity, in this case, the planting of acacia trees, as well as constructing necessary infrastructure such as roads and the like.

The trees planted for use in the Indonesian pulp and paper industries are acacia trees. The reason for this is that they take a relatively short time to grow and, therefore, are less expensive to cultivate, whereas hardwood species such as teak and mahogany for example can take between fifteen and thirty years to grow and very expensive to cultivate. Accordingly, they are not suitable for use in the pulp and paper industries.

Once this preparatory work has been done, then the acacia trees are planted, maintained and ultimately harvested by the company. All of this, the establishment of the plantation, constructing the infrastructure and planting, maintaining and harvesting the acacia trees for use in the pulp and paper industries are done at the company's cost and expense. It either sells the trees it harvests or uses them in its own pulp and paper mills.

There is no 'sale' of the timber harvested on such plantations by the GOI for a 'price'. Indeed, there are no 'sales' of such timber by the GOI at all. Further, the GOI does not control or

otherwise influence the price at which concession holders sell timber harvested from the plantations they operate, nor does it control or otherwise influence the price at which wood pulp or A4 Copy Paper is sold in Indonesia.

The GOI only charges a fee, namely the PSDH, which is on the nature of a royalty for use of the land the subject of the concession.

In addition, not all of the land for which the GOI grants a concession may be used for the planting of plantation timber. Generally, a maximum of 70% of the land may be used for this purpose but, under the terms of the grant of the concession, there are several other activities and associated costs that the concession holder must undertake in relation to the land. This was set out in the GOI's response to the Government Questionnaire: see –

Cost Item	**Government Regulations**
Land Tax	Law No. 12/1985 as amended by Law No. 12/1994 concerning Building and Land Tax
Livelihood Plantation	Ministry of Forestry Decree No. 70/kpts-II/95 concerning Spatial Arrangement of Industrial Forest Plantation
Community Development	Government Regulation No. 47/2012 concerning Company Social and Environmental Responsibility and Law 40/2007 concerning Company Law
Ecosystem Restoration	Government Regulation No. 47/2012 concerning Company Social and Environmental Responsibility and Law 40/2007 concerning Company Law
IUPHHK - HTI Fee	Government Regulation No. 59/1998 as amended by Government Regulation No. 12/2014
Cost for planning, replantation, maintenance, and infrastructure	The Company's IUPHHK Permits

Importantly and fundamentally, the granting of a concession is the granting of a right to use land for a commercial purpose, which in this case is to establish acacia plantations where the pulp ultimately is for use in the pulp and paper industries. There is no provision of goods or services by the GOI to the concession holder. As indicated above, the GOI does not 'provide' timber, that is acacia trees for use in pulp and paper mills, whether by way of sale or otherwise either to the concession holder or to anyone else.

Accordingly, Article 1.1(a)(1)(ii) of the SCM Agreement does not apply. It applies only to where a 'government provides goods or services other than general infrastructure, or purchases goods'. As the GOI does neither here, then this Article in the definition of 'subsidy' in the SCM Agreement cannot apply. There is no subsidy. That should be an end of the matter.

In this regard, see also the definition of 'subsidy' in s.269T(1)((a)(vii) of the *Customs Act 1901*, which refers to the 'provision of goods or services'.

2.3 Provision of Timber at Less than Adequate Remuneration

Based on findings made by USDOC, Australian Paper nevertheless claimed in its application that timber is provided by the GOI at 'less than adequate remuneration' through the licence fees it collects and thereby confers a 'benefit' for the purposes of the definition of 'subsidy' in Article 1 of the SCM Agreement.

As noted earlier above, the GOI does not provide acacia timber to anyone. It grants concessions for companies to establish, maintain and operate their own timber plantations at their own cost and expense. The fee payable by concession holders for the right to use land is the PSDH fee. How it is calculated is not relevant to the issue of whether the GOI provides timber to concession holders. It is simply a calculation to determine the amount of the fee for what is in effect a right to use land is payable. It does not constitute 'provision' of timber by the GOI.

Consequently, the issue of 'adequacy of remuneration' cannot arise. As the Commission would be aware, Article 14(d) of the SCM Agreement provides that: -

> "(d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale)." (underlining added)

The threshold question here is does the GOI provide timber or, for that matter pulp or paper to anyone? As indicated, if the answer to that question is no, then not only does Article 14(d) of the SCM Agreement not apply but also Article 1.1(a)(1)(ii) of the SCM Agreement does not apply. There is no provision of goods or services by the GOI. There is no subsidy as defined in the SCM Agreement and no question of adequacy of remuneration can arise.

In this context, USDOC's findings are arguably irrelevant as the fundamental question of whether the GOI provided goods or services for the purposes of Article 1.1(a)(1)(ii) of the definition of subsidy in the SCM Agreement does not appear to have been addressed by USDOC.

3. Subscription Data & Particular Market Situation

As noted earlier above, the Commission apparently has sought and obtained pulp and paper pricing data from RISI Inc. (http://www.risiinfo.com/) and HawkinsWright Ltd (http://www.hawkinswright.com/). The note on the public file does not indicate: -

- what kind of pulp and paper pricing paper was obtained (see, for example: http://www.risiinfo.com/service/prices/grades-and-regions/pulp-asia/);

- what methodology was used to collect prices – see, for example: http://legacy.risiinfo.com/Marketing/NMP/indices_methodology/RISI_price_method_global_pulp_10-2015.pdf
- from which countries or regions such pricing was obtained and why;
- over what period such pricing relates;
- what steps the Commission has taken to ensure that the data is accurate and comparable to pulp and pricing data in Indonesia; and
- what steps the Commission has taken to ascertain whether and to what extent such prices have been or have not been affected by government intervention or regulatory policies.

Does the pricing information obtained merely indicate that prices in different countries or in different regions differ and may differ for a host of different reasons, thereby only establishing prices differ in different countries/regions for a variety of reasons, including depending upon the particular product or products in question (e.g. what kind of pulp or paper)?

It is important to note that this subscription data is collected and provided to subscribers to enable them monitor global market price developments in the selected pulp prices in a particular country or countries or region but also to use such prices 'commercially as reference prices in trading contracts and pricing internal transactions'. They serve an entirely different purpose than determining whether government intervention or influence has distorted prices in some way and, if so, to what extent. This, indeed, is recognized by the Commission in its note on the public file where it states that "*Neither the information provided by Hawkins Wright or RISI provided any analysis concerning the role of the Chinese or Indonesian governments in their respective paper industries or the existence of 'a particular market situation'*". If so, what is the relevance of such data to this investigation and how does it or could it assist in determining whether a 'particular market situation' exists in Indonesia?

For a 'particular market situation' to exist in Indonesia it would need to be demonstrated, based on positive, objective evidence that the GOI has in some way affected the market for A4 Copy Paper in Indonesia that distorts its price and, thereby, renders it unsuitable for comparison with the price at which A4 Copy Paper is exported to Australia from Indonesia. No such evidence has been advanced, nor any arguments as to how or why the GOI has distorted the price of A4 Copy Paper in Indonesia or whether it in fact has.

All that has been put forward by Australian Paper is, based on USDOC findings, that there are three upstream subsidies that somehow have distorted the price of A4 Copy Paper in Indonesia. However, Australian Paper's arguments are not sustainable if, for no other reason, because those alleged subsidies do not exist. If they did exist, presumably they would have flowed down through to the end-product, A4 Copy Paper, to some extent that would need to be quantified and retain the character as a countervailable subsidy but would have affected A4 Copy Paper sold in the Indonesian market and in export markets, including Australia, in equal measure. This has not been addressed assuming the alleged subsidies in fact existed.

How the Commission intends the subscription data it has obtained to rectify these issues is unclear.

Apparently the reason why all this data was obtained by the Commission was because the Commission considered such additional data was required as a "*result of the 'Government Questionnaires' not containing all of the information needed by the Commission to make an assessment*" of the existence of a "particular market situation" in China or Indonesia. In other words, the Government Questionnaires were defective and failed to obtain information relevant to issues clearly raised by the Australian industry in its application that a 'particular market situation' existed in Indonesia.

This is somewhat surprising. Australian Paper's claim that a 'particular market situation' existed in relation to the domestic A4 Copy Paper market in Indonesia was based upon the findings of USDOC in relation to the three alleged countervailable subsidies mentioned earlier above. The reasons for its claims were set out in its application and addressed in the Commission's Consideration Report in accepting the application. Why and how were they not adequately addressed in the Government Questionnaire?

Further, no approach has been made by the Commission to the GOI by way of a Supplementary Questionnaire to rectify the defects in its Government Questionnaire and obtain the information needed by the Commission to make an assessment of the existence of a 'particular market situation in Indonesia'. No explanation has been provided why the Commission has not done so and, instead, sought information from a third party of questionable relevance. Indeed, the Commission itself questions the relevance of this data to the issue of whether a 'particular market situation' exists in Indonesia in relation to A4 Copy Paper.

Finally, the data obtained from the abovementioned firms included "*information concerning the capacity, production, consumption, import and export of pulp and paper for China and Indonesia. This information was provided to the Commission in a series of tables with some accompanying commentary. No formal report was provided.*" Presumably, none of this information was verified by the Commission, as opposed to similar information it obtained from Indonesian exporters.

4. Injury & Causation

The GOI makes no submission at this time regarding the Commission's findings on injury and causation in the PDF and, for that matter, in the Australian industry report for Australian Paper but reserves its right to do so.

The GOI does note that it has significant reservations regarding the Commission's injury and causation findings including: -

- the methodology adopted;
- the lack of transparency;

- the failure to discuss several issues such as the use of rebates in the Australian industry's pricing of A4 Copy Paper;
- the failure to discuss and assess the likely impact of USDOC's finding of a 222.46% dumping margin against Australian exports to the US when the sole producer and exporter of A4 Copy Paper in Australia is Paper Australia and exports to the US from Australia in 2014 amounted to 75,800 metric tonnes and had a value of US$61.4 million. Clearly this will have an effect of the economic performance of the Australian industry;
- a failure to distinguish between price undercutting by dumped and undamped exports and to distinguish between price undercutting by those exports found to be causing injury and those found not to be causing injury; and
- recent changes in the Australian A4 Copy Paper market.

5. Conclusion

For the foregoing reasons, it is submitted that there is no basis, consistent with WTO rules and jurisprudence, nor any positive, objective evidence that could support a finding that a so-called 'particular market situation' exists in relation to the A4 Copy Paper Market in Indonesia. That is, there is no basis for a finding that domestic selling prices of A4 Copy Paper in Indonesia are not properly comparable to export prices of A4 Copy Paper exported to Australia.

In light of the foregoing and the Commission's findings that Indonesian exporters have not exported A4 Copy Paper to Australia at dumped and/or caused material injury to the Australian industry nor received subsidies, this investigation should be terminated in so far as it relates to Indonesia.

Kind regards

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