Canberra Office
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609
+61 2 6163 1000

Brisbane Office
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064
+61 7 3367 6900

Australia

facsimile: +61 2 6162 0606
email: info@moulislegal.com
www.moulislegal.com

moulislegal
commercial + international

12 January 2017

Mr T King
Assistant Director
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria 3000

By email

Dear Tim

APRIL Fine Paper Trading Pte Ltd
Further comments concerning Statement of Essential Facts 341

1 On behalf of APRIL Fine Paper Trading Pte Ltd and PT Riau Andalan Kertas (collectively, "APRIL"), we wish to make the following further submissions regarding Statement of Essential Facts 341 ("SEF 341").[1]

2 APRIL welcomes the Commission's proposed recommendation to terminate the countervailing investigation. Nonetheless, APRIL feels compelled to address the findings that it has received countervailable subsidies from the Government of Indonesia ("the GOI"). These findings are incorrect.

3 SEF 341 incorrectly finds that APRIL received two subsidies:

- the provision of timber for less than adequate remuneration; and
- income tax facilities for capital investment in certain business fields and certain regions.

4 APRIL will address these issues below.

A Alleged provision of timber for less than adequate remuneration

5 APRIL has addressed this alleged subsidy in a number of previous submissions. APRIL is disappointed with the Commission's preliminary view, as expressed in SEF 341, that the elements of such a subsidy might exist in APRIL's case. To reiterate APRIL's previous submission, the GOI does not sell wood to APRIL, and APRIL does not purchase wood from the GOI. Therefore, it is again submitted that there can be no finding that APRIL has received timber from the GOI for less than adequate remuneration.

B Alleged income tax facilities for capital investment

6 SEF 341 incorrectly finds that APRIL received a benefit under this alleged subsidy. SEF 341 considers that this subsidy is created under *Government Regulation Number 18 Year 2015 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or Certain Regions.*

[1] http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20341/104%20-%20Verification%20Report%20-%20Importer%20-%20BJ%20Ball.pdf

ABN 56 231 964 609

7 The alleged existence of this subsidy and the possibility that APRIL received a benefit in accordance with it was never raised with APRIL. The finding that APRIL received a benefit under it is incorrect.

8 The notion that APRIL received this alleged subsidy is solely premised on a note in APRIL's 2015 Audited Report. Specifically, "Note 25" mentions that there was a "temporary difference" in the depreciation of "property, plant and equipment".

9 All that this note refers to is the fact that there was a timing difference in the recognition of the useful life between APRIL's corporate accounting policies and Indonesian tax law.

10 This is regulated by Article 11 paragraph (6) of the *Law No 36 of 2008 Concerning the Fourth Amendment of Law No. 7 of 1983 concerning Income Tax*. According to that article, all Indonesian corporations must adopt a useful life for assets in accordance with the following groupings:

(6) For the purpose of calculating depreciation, the useful life and the rate of depreciation for tangible asset shall be as follows:[2]

Group of Tangible Asset	***Useful Life***	***Rate of Depreciation Under***	
		Paragraph (1)	***Paragraph (2)***
I. Non Building Class :			
Group 1	*4 years*	*25%*	*50%*
Group 2	*8 years*	*12.5%*	*25%*
Group 3	*16 years*	*6.25%*	*12.5%*
Group 4	*20 years*	*5%*	*10%*
II. Building Class:			
Permanent	*20 years*	*5%*	
Non Permanent	*10 years*	*10%*	

11 APRIL's plant and machinery falls within the broad category of "property, plant and equipment" and is reported in "group 3" of the above table.

12 For commercial reporting purposes, companies are allowed to choose a different useful life for the assets from those in Article 11(6). The 2015 Audited Report explains the pertinent corporate accounting policies related to property, plant and equipment at Note 3(k). The corporate useful life for property, plant and equipment is 40 years. Due to the difference in the useful life between corporate reporting and fiscal reporting a "Temporary Difference" adjustment needs to be made to APRIL's records when APRIL is preparing its tax returns. The temporary difference will exist in any company which has chosen different useful lives for its assets, as its corporate accounting policy, whether lower or higher useful lives than those as stipulated in the *Law No 36 of 2008 concerning The Fourth Amendment of Law No. 7 of 1983 concerning Income Tax*. This is what is noted at Note 25 of the 2015 Audited Report.

13 This is not a subsidy. It is an accounting practice that is available to all Indonesian companies, irrespective of the industry in which they operate and the region in which they are situated. It has nothing to do with Government Regulation Number 18 Year 2015 concerning Income Tax Facility for Capital Investment in Certain Business Fields and/or Certain Regions.

[2] Please refer to the attached files for the complete version of Article 11 of *Law No 36 of 2008 concerning The Fourth Amendment of Law No. 7 of 1983 concerning Income Tax.*

14 Accordingly, APRIL has not received any benefit under the alleged income tax facilities for capital investment in certain business fields and certain regions subsidy.

Yours sincerely

Daniel Moulis
Principal Partner

Article 11

(1) Depreciation with respect to cost of purchasing, erecting, expanding, improving, or replacing tangible assets, except land that bears ownership right, a right to build, a right to cultivate, and a right to use that is held for earning, collecting, and securing of income that has a useful life of more than one year, shall be calculated on a straight line basis over the useful life stipulated for the assets.

(2) Depreciation with respect to tangible assets as referred to in paragraph (1), other than building, may also be calculated under the declining balance method over the useful life of the asset by applying the rate of depreciation to the book value, and at the end of the useful life the remaining of the book value shall be fully depreciated, provided that the method is adopted consistently.

(3) Depreciation shall commence in the month expenditures are incurred; except for the asset still in progress, the depreciation shall commence in the month when the process is completed.

(4) Subject to the approval of the Director General of Taxes, a Taxpayer may start to claim depreciation at the beginning of the month the asset is used to earn, to collect and to secure income or of the month the asset produces income.

(5) If a Taxpayer revalues the asset as referred to in Article 19, then the basis of depreciation for the asset shall be the value resulting from the revaluation.

(6) For the purpose of calculating depreciation, the useful life and the rate of depreciation for tangible asset shall be as follows;

Group of Tangible Asset	**Useful Life**	**Rate of Depreciation Under**	
		Paragraph (1)	**Paragraph (2)**
I. Non Building Class :			
Group 1	4 years	25%	50%
Group 2	8 years	12.5%	25%
Group 3	16 years	6.25%	12.5%
Group 4	20 years	5%	10%
II. Building Class:			
Permanent	20 years	5%	
Non Permanent	10 years	10%	

(7) Further regulation related to depreciation of tangible assets owned and used in certain business shall be stipulated by a Minister of Finance Regulation.

(8) If there is a transfer or withdrawal of asset as referred to in paragraph (1) subparagraph d of Article 4 or a withdrawal of asset for other reasons, then the remaining book value of the asset shall be deducted as a loss and the selling price or insurance payment received or accrued shall be treated as income in the year the asset is withdrawn.

(9) If the insurance payment can only be identified at a later date, then subject to the approval of the Director General of Taxes the amount of the loss as referred to in paragraph (8) shall be deducted at a later date.

(10) If there is a transfer of tangible assets which qualifies for paragraph (3) subparagraph a and subparagraph b of Article 4, then the remaining book value of the asset may not be treated as a loss by the transferor.

(11) Further regulation related to classification of tangible assets according to their useful life as referred to in paragraph (6) shall be stipulated by The Minister of Finance Regulation.

Pasal 11

(1) Penyusutan atas pengeluaran untuk pembelian, pendirian, penambahan, perbaikan, atau perubahan harta berwujud, kecuali tanah yang berstatus hak milik, hak guna bangunan, hak guna usaha, dan hak pakai, yang dimiliki dan digunakan untuk mendapatkan, menagih, dan memelihara penghasilan yang mempunyai masa manfaat lebih dari 1 (satu) tahun dilakukan dalam bagian-bagian yang sama besar selama masa manfaat yang telah ditentukan bagi harta tersebut.

(2) Penyusutan atas pengeluaran harta berwujud sebagaimana dimaksud pada ayat (1) selain bangunan, dapat juga dilakukan dalam bagian-bagian yang menurun selama masa manfaat, yang dihitung dengan cara menerapkan tarif penyusutan atas nilai sisa buku, dan pada akhir masa manfaat nilai sisa buku disusutkan sekaligus, dengan syarat dilakukan secara taat asas.

(3) Penyusutan dimulai pada bulan dilakukannya pengeluaran, kecuali untuk harta yang masih dalam proses pengerjaan, penyusutannya dimulai pada bulan selesainya pengerjaan harta tersebut.

(4) Dengan persetujuan Direktur Jenderal Pajak, Wajib Pajak diperkenankan melakukan penyusutan mulai pada bulan harta tersebut digunakan untuk mendapatkan, menagih, dan memelihara penghasilan atau pada bulan harta yang bersangkutan mulai menghasilkan.

(5) Apabila Wajib Pajak melakukan penilaian kembali aktiva berdasarkan ketentuan sebagaimana dimaksud dalam Pasal 19, maka dasar penyusutan atas harta adalah nilai setelah dilakukan penilaian kembali aktiva tersebut.

(6) Untuk menghitung penyusutan, masa manfaat dan tarif penyusutan harta berwujud ditetapkan sebagai berikut:

Kelompok Harta Berwujud	Masa Manfaat	Tarif Penyusutan sebagaimana dimaksud dalam	
		Ayat (1)	Ayat (2)
I. Bukan bangunan			
Kelompok 1	4 tahun	25%	50%
Kelompok 2	8 tahun	12,5%	25%
Kelompok 3	16 tahun	6,25%	12,5%
Kelompok 4	20 tahun	5%	10%
II. Bangunan			
Permanen	20 tahun	5%	
Tidak Permanen	10 tahun	10%	

(7) Ketentuan lebih lanjut mengenai penyusutan atas harta berwujud yang dimiliki dan digunakan dalam bidang usaha tertentu diatur dengan Peraturan Menteri Keuangan.

(8) Apabila terjadi pengalihan atau penarikan harta sebagaimana dimaksud dalam Pasal 4 ayat (1) huruf d atau penarikan harta karena sebab lainnya, maka jumlah nilai sisa buku harta tersebut dibebankan sebagai kerugian dan jumlah harga jual

atau penggantian asuransinya yang diterima atau diperoleh dibukukan sebagai penghasilan pada tahun terjadinya penarikan harta tersebut.

(9) Apabila hasil penggantian asuransi yang akan diterima jumlahnya baru dapat diketahui dengan pasti di masa kemudian, maka dengan persetujuan Direktur Jenderal Pajak jumlah sebesar kerugian sebagaimana dimaksud pada ayat (8) dibukukan sebagai beban masa kemudian tersebut.

(10) Apabila terjadi pengalihan harta yang memenuhi syarat sebagaimana dimaksud dalam Pasal 4 ayat (3) huruf a dan huruf b, yang berupa harta berwujud, maka jumlah nilai sisa buku harta tersebut tidak boleh dibebankan sebagai kerugian bagi pihak yang mengalihkan.

(11) Ketentuan lebih lanjut mengenai kelompok harta berwujud sesuai dengan masa manfaat sebagaimana dimaksud pada ayat (6) diatur dengan Peraturan Menteri Keuangan.