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15 February 2017

Mr Dale Seymour
Commissioner of the Anti-Dumping Commission
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MELBOURNE VIC 3000

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Dear Mr Commissioner,

Non-Confidential Submission regarding SEF341 and PAD341A

Response to submission dated 19 January 2017 from Australian Paper (Submission No 175) on the matter of particular market situation

WITHOUT PREJUDICE

I act for PT Indah Kiat Pulp and Paper Tbk, PT Pindo Deli Pulp And Paper Mills Tbk, and PT Pabrik Kertas Tjiwi Kimia Tbk, companies in the Sinar Mas group.

In my letter dated 28 December 2016 which is document number 146 on the public file, I described two errors of law in PAD341A and SEF341. One of those two legal issues, that relating to the particular market situation issue, is discussed very briefly in the submission by Australian Paper (that is, the company Paper Australia Pty Ltd trading under the business name Australian Paper) dated 19 January 2017 which is on the public file as Document no 175.

In the submission No 175 dated 19 January 2017, Australian Paper was responding to the submission on behalf of the Government of Indonesia undated (uploaded to the EPR on 16 January 2017). In document no 175, the 5th paragraph says:

> "It is further contended that as there is no price discrimination between domestic and export markets by Indonesian exporters, there can be no finding of dumping. However, the WTO Agreement and the Customs Act permit consideration of a 'particular market situation' where the domestic selling prices are considered unreliable."

It is referring to the submission on behalf of the Government of Indonesia uploaded 16 January 2016 which is submission no 167 on the public file. At para 10, submission No 167 says:

> "Further, assuming that government policies have resulted in low costs for certain inputs to manufacture, such as timber and pulp, those products are used to manufacturer A4 Copy Paper both for domestic sale and for export sales. Unless the low-cost inputs to manufacture apply only to the production of A4 Copy for domestic sale, then it does not preclude a proper comparison between normal values and export prices: Article 2 of the WTO Anti-Dumping Agreement. This is the essence of dumping. To determine whether an exporter is selling a product for export at a price less than that which it sells that product in its domestic market. Whether those prices are high or low is irrelevant. The essence of dumping is price discrimination by an exporter between export and domestic sales."

To repeat the response to para 10 by Australian Paper is:

> "However, the WTO Agreement and the Customs Act permit consideration of a 'particular market situation' where the domestic selling prices are considered unreliable."

I agree with Australian Paper in equating the permission as to choice of method under the WTO Agreement with the permission as to choice of method under the Customs Act. I agree that the section 269TAC(2)(a) (ii) of the Customs Act does indeed implement the rule which Australia is bound to follow under Article 2.2 of the WTO Agreement on Anti-dumping. Beyond that, Australian Paper's statement of the law under the WTO Agreement and the Customs Act is not correct. The same erroneous interpretation of the law under the WTO Agreement and the Customs Act appears in the Preliminary Affirmative Determination and the Statement of Essential Facts.

A correct statement of the law would be that the WTO Agreement and the Customs Act permit a comparison between a constructed normal value and the export price if there is a particular market situation in the country of export which would make a comparison between the prices in domestic sales in the country of export and the export prices an unreliable basis for determining if the exporter is price discriminating between the domestic market and the export market.

We draw to the attention of the Commission that Australian Paper's statement of the law on particular market situation under the WTO Agreement and the Customs Act is wrong. It makes exactly the same error of law that is made by the Commission in PAD341A and SEF341.

If the Commission persists with that erroneous view of the requirement under the Customs Act and the WTO agreement and the Minister acts in accordance with that erroneous view, then my client instructs me that it will be inclined to seek judicial review in the appropriate court in Australian and to request the government of Indonesia to challenge the measure under the WTO Understanding on Dispute Settlement.

In my letter of 28 December 2016, I said that I would be pleased to have "discussions with you so that I can assist you to analyse the matter, and for that purpose, I would be grateful if you would in the first instance contact me to arrange a telephone meeting to discuss the two legal points." I note that you have not responded to that request but wish to make clear that the request stands.

Yours Faithfully,

Brett Williams

Dr Brett G Williams