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Commissioner
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3001
Australia
By email: operations2@adcomission.gov.au

Attention: Mr Tim King, Case Manager

Dear Tim,

Re: Dumping and subsidy investigation into A4 Copy Paper Exported from the Republic of Indonesia – Regulation 18 Subsidy

A. Appendix 1 to Government of Indonesia Regulation Number 18 of 2015 (Regulation 18).

1. As requested, attached is the Government of Indonesia's (GOI) copy of Appendix 1 to Government of Indonesia Regulation Number 18 of 2015 (Regulation 18).

2. The copy of the Appendix that you forwarded to me was only Appendix 1. The industries, products and regions covered appear to be the same as in the attached Appendix 1.

B. Legal Analysis

3. We understand that the Commission's position is that Regulation 18 is a countervailable subsidy because (a) it involves revenue foregone by the Government of Indonesia and (b) it thereby confers a benefit to the recipients of the foregone revenue and (c) it is specific in that the revenue foregone is in relation to the industries, products and regions specified in Appendix 1 to Regulation 18.

4. This analysis is somewhat simplistic. To begin with, applying this analysis to various programmes in Australia, would mean that the entire Tariff Concession System in the *Customs Act 1901* would amount to a subsidy. That is, the granting of a Tarif Concession Order (TCO) reduces customs duty liability from 5% to 0% (revenue foregone), would confer a benefit in that no customs duty that otherwise would be payable is payable by those that take advantage of the TCO and it is specific in that each TCO applies only to imported goods specified in the TCO. Interestingly, the Australian Federal Government, in effect, is providing

subsidies to overseas producers through the TCO system. Similarly, this analysis can be applied to other programs in Australia, such as the customs by-law system or, for that matter, the entirety of Schedule 4 of the *Customs Tariff Act 1995*, and deductions from income tax under income tax legislation, which not only have general application but also some deductions are industry specific and product specific, including accelerated tax depreciation schedules: see

https://www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/

https://www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/Other-deductions/Deductions-for-specific-industries-and-occupations/

5. No doubt further research could elicit additional subsidy programmes in operation in Australia using this analysis. The above list of 'subsidies" is not exhaustive but there are likely to be others when applying the Commission's analysis as to what constitutes a 'subsidy" for the purposes of Part XVB of the *Customs Act 1901* and the SCM Agreement.

6. Further, as we have previously argued, Regulation 18 is not a "subsidy" for the purposes of Part XVB of the *Customs Act 1901* and the SCM Agreement because, amongst other reasons, it is not specific. These issues and the reasons are addressed below.

C. No revenue that is "otherwise due" is "foregone" by GOI

7. Firstly, Regulation 18 does not result in "*government revenue that is otherwise due is foregone*". The effect of Regulation 18 is to set a rate of income tax based on depreciation schedules for capital investments in particular industries, products and regions. There is a difference in setting a "rate of tax" and "revenue foregone". Governments can impose taxes on all income of an entity, which means that anything less than a 100% tax on income is "revenue foregone". This would be an absurd consequence. WTO jurisprudence has recognised the absurdity of such an outcome as does the SCM Agreement itself for the reasons set out below.

8. Article 2.2 of the SCM Agreement provides that: -
"*It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be specific subsidy for the purposes of this Agreement.*" (underlining added)

9. That is, the effect of Regulation 18 is, a change or variation to tax rates does not of itself give rise to a "subsidy" that is "specific". It is not "revenue foregone". If you are of a different view, please advise us why.

D. Regulation 18 is not "specific"

10. Secondly, Regulation 18 is, arguably, non-specific pursuant to Article 2.1(b) of the SCM Agreement. That is, there exists "*objective criteria or conditions governing the eligibility for, and the amount of, a subsidy*" and which are "*neutral*" in application and "*economic in nature*", as is the case here, "*specificity*" shall not exist. Again, if you have a different view, please advise why.

11. In addition, Article 2.1(b) of the SCM Agreement provides that a subsidy shall not be specific where "*eligibility is automatic and the conditions are strictly adhered to*". Here, eligibility is "automatic", with eligibility being set out in the Articles to Regulation 18. While some administrative procedures may need to be complied with as is common in any tax administration, "eligibility" is not conditional on such procedures. They are merely administrative formalities that do not go to eligibility.

E. Conclusion

12. Finally, in so far as the GOI is aware, neither of the mandatory respondents, including RAK, have obtained any income tax benefit under Regulation 18 contrary to the claims of the Commission in the Statement of Essential Facts. The GOI understands that the Commission's claim that RAK benefitted under Regulation 18 was based on an erroneous interpretation of a Note 25 to APRIL's 2015 Audited Report: please refer to the submission filed on behalf of APRIL dated 12 January 2017 (Item 165 on the Public File).

13. Given that there is no evidence that any Indonesian exporter has received this alleged subsidy, it is unclear to the GOI why it has been referred to by the Commission in the Statement of Essential Facts. Clearly it is irrelevant to this investigation. If the Commission is of a different opinion, please provide details.

Yours sincerely,

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