Submission from Government of Indonesia

VIDEO CONFERENCE BTWEEN THE GOVERNMENT OF INDONESIA & THE AUSTRALIAN ANTI-DUMPING COMMISSION

9.00 to 11.30 am (Jakarta Time) / 1.00 to 3.30 pm (Sydney time), Friday, 24 February 2017

Attendees: -

Government of Indonesia:	Pradnyawati Pambagyo, Director of Trade Defence; Joseph Wira Koesnaidi (Indonesian lawyer); Andrew Percival (Australian lawyer); Government officials from the Ministry of Trade, Ministry of Industry, Ministry of Environment and Forestry, and Directorate General of Customs and Excise
Anti-Dumping Commission:	Justin Wickes, Tim King, Ryan Wilson and David Peters

Notes to the Video Conference: -

1. *Presentations*

Initial presentations by Justin Wickes, Director, Operations 2, on behalf of the Anti-Dumping Commission (ADC) and Pradnyawati Pambagyo, Director of Trade Defence, Ministry of Trade, on behalf of the Government of Indonesia (GOI)

2. *Agenda Item 2 – Timber species used within the Indonesian Paper Industry*

ADC: The ADC sought clarification on where imports of wood chips from Indonesia were used in Indonesia – i.e. whether such imports were directed to specific regions, facilities, etc., in Indonesia.

GOI: The GOI advised that imports from Malaysia were not directed to any specific region or facility in Indonesia. It was dependent upon where the plants of the importer/pulp producer were located in Indonesia.

ADC: The ADC also sought clarification on which 10 digit Heading in the Indonesian Customs Tariff applied to imports from Malaysia.

GOI: The GOI advised that it was guided by the Explanatory Notes of the World Customs Organization in classifying imports of Indonesia. The GOI explained the classification of such imports to the ADC to the ADC's satisfaction. The GOI also advised that the ADC should refer to the mandatory respondents to find out the specific 10 digits HS code declared by the companies when they imported acacia and eucalyptus timber/wood chips. This is because Indonesia has implemented a self-declaration system for customs clearances of imports.

3. *Agenda Item 3 – Indonesian Softwood Market*

ADC: The ADC referred to a submission dated 25 November 2015 (Item 133 on the Public File), which made reference to softwood and asked for clarification on whether all softwood was imported or whether it also was locally cultivated.

GOI: The GOI advised that there was an element of confusion between what constituted softwood and hardwood and hence its response on this issue in its response to the Supplementary Questionnaire. The GOI advised that it was more precise to refer to species of timber rather than to categorisation into softwood and hardwood. The GOI confirmed that only acacia and eucalyptus species were cultivated locally for the Paper Industry. Imports, such as those from Malaysia, consisted of acacia and eucalyptus but other species were imported that had long fibres in the form of pulp, which were used in paper production to add strength to the paper. The GOI indicated that such imports, including wood chips from Malaysia, indicated that there could not have been an 'oversupply' of timber, wood chips or pulp in Indonesia that "artificially" lowered prices for such products because, if there was such an "oversupply" having that effect, then why import products from other sources such as Malaysia, which would be more expensive. It would not make commercial sense.

3. Agenda Item 4 - Classification of pulpwood

ADC: The ADC sought clarification on what species of timber were used in the Indonesian Paper Industry. The ADC indicated that it lacked clarity of the species used because it was under the assumption that 'waste material' from harvested timber logs was used.

GOI: The GOI advised that acacia and eucalyptus species were used predominantly in the Indonesian Paper Industry.

4. Agenda Item 5 – Indonesia's comparative advantage in timber production

ADC: The ADC sought clarification on the GOI's claim that it held a comparative advantage in timber production i.e. over whom did it hold such a comparative advantage, evidence to support its claim, etc.

GOI: The GOI advised that, as this was an investigation in A4 Copy Paper exports from Indonesia to Australia, its claim of a comparative advantage was in relation to paper production in Australia by domestic industries in Australia. It was not referring to a potential comparative advantage that it may hold in relation to timber/pulp/paper production in other countries including in the Asia Pacific Region. The GOI advised that its comparative advantage over Australian production of A4 Copy Paper was self-evident given the shorter growing time for timber used in pulp/paper production as well as a number of other factors present in Indonesia that resulted in a lower cost to produce A4 Copy Paper. Whether it held a comparative advantage over other countries, particularly those in the Asia Pacific Region, would depend on a country-by-country assessment and involve an assessment of and comparison between a range of factors, such as the regulatory environment in each country, growing times for timber used in pulp and paper production, size of timber plantations, size of pulp and paper plants and associated economies of scale, availability of infrastructure, labour, costs, power costs, availability of transportation, etc. This involved a complex assessment. The GOI was not in a position to advise whether it did or did not have such a comparative advantage.

The GOI questioned the ADC on the relevance of Indonesia's comparative advantage, particularly in relation to certain countries in the Asia Pacific Region. The

GOI expressed concern with the ADC's focus on comparative advantage and on 'benchmark' prices in assessing Indonesia's production costs and pricing. The GOI advised that it would require extensive knowledge of all of the elements of production costs for timber, pulp and paper and the effect, if any, it had on pricing on those products and, ultimately, A4 Copy Paper to ensure a 'like-for-like' comparison. Whether a country had a comparative advantage over another would depend an assessment of all elements contributing to a country's comparative advantage over another in relation to a particular product, including availability of resources, the regulatory environment existing in each country, the availability of suitable infrastructure, transportation and the like. Similarly, in adopting a "benchmark", it is necessary to identify all similarities and differences in the production and pricing of the product in question between the "benchmark" price and prices for the product under investigation, again to ensure a 'like-for-like' comparison.

The GOI noted that the ADC's preliminary finding in the Statement of Essential Facts that a "particular market situation" existed in relation to the A4 Copy Paper market in Indonesia was based on the ADC's apparent belief that there was an "oversupply" of timber for the production of pulp and, consequently, paper due to the GOI making land available to the forestry industry for plantation timber. This 'oversupply', according to the ADC, resulted in lower timber production costs and, consequently, lower production costs for pulp and paper that ultimately resulted in lower prices for A4 Copy Paper in Indonesia's domestic market [see Section A2.10 of the SEF:

> "It is the Commission's view that these programs have increased the availability of timber relative to demand and hence resulted in artificially low prices for Indonesian logs and pulp. It is the Commission's view that without these interventions, the price for timber and pulp would be above levels experienced during the investigation period and that these higher input costs would also be reflected in a higher domestic price for A4 copy paper." (at p. 129). (underlining added)]

The GOI advised that there was no "oversupply" of timber relative to demand and no evidence of any such "oversupply" has been provided, nor any evidence this had flowed through, and the extent it had flown through, to pulp and paper production costs and, ultimately, to A4 Copy Paper prices in the Indonesian domestic market. Rather, the GOI advised that all timber, wood chips and pulp produced in Indonesia was either consumed in Indonesia or exported and that prices were negotiated between parties in arm's length transactions reflecting market prices. The GOI neither regulated nor influenced any such prices.

The GOI further noted that Indonesia imported eucalyptus and acacia timbers and wood chips for the production of pulp and paper from Malaysia and this would not occur if there was an "oversupply" of timber and pulp in Indonesia that was available at "artificially low" prices. This made no commercial sense. Further, significant investment would not have been made by companies in establishing timber plantations for the production of timber for use in the pulp and paper industries, nor in pulp and paper plants, without a reasonable, commercial return on investment. The GOI noted that in the most recent RISI report obtained by the

Commission, that report found that timber production costs in Indonesia were "significantly higher" in Indonesia than in "comparable countries", being Malaysia, the Philippines and Vietnam, with the latter being a non-market economy. Thus, the GOI is of the view that the ADC should use the actual cost and price of the mandatory respondents, which costs have been verified by the ADC.

[*Additional Comments*: Contrary to the ADC claim in the Statement of Essential Facts, the GOI neither owned any timber plantations nor any trees cultivated on timber plantations. The GOI owned land was leased to concession holders for a rental fee for the use of the land. Concession holders not only established the timber plantations and managed them and cultivated the trees growing on them but also established all of the necessary infrastructure, as well as undertake certain environmental and conservation obligations in relation to the land, all at its own cost and expense, which it had to recoup either through the sale of timber or downstream products. The ADC has claimed that the Indonesian forestry industry, including the pulp industry, benefitted not only from ready access to land but also "financing and numerous other GOI programs". Precisely what "benefits" those Indonesian industries received have not been identified or quantified, nor the "financing and numerous other GOI programs" been identified or the benefits that each has allegedly conferred. The claims by the ADC in this regard are mere speculation and are not based on fact and evidence. All human activity on land requires "land" and requires a government to make land "available" for such human activity, whether it be for agriculture, mining, residential and commercial development, transportation and, for that matter, timber plantations. Unless land is made available for the establishment of timber plantations at the sole cost and expense of the plantation operator, it would not be possible for timber plantations to be established by private companies. Also, as was explained during the video conference, concession holders can only economically utilise a maximum of 70% of the total land leased, with the balance being set aside for conservation and other similar uses.]

ADC: The ADC questioned what was the source of the GOI's figure of per hectare production of timber.

GOI: The GOI advised that this figure related to the total production of acacia and eucalyptus trees per annum divided by the number of hectares under cultivation under leases granted by the GOI. The GOI further advised that it related only to acacia and eucalyptus trees but, while the majority of acacia and eucalyptus timber was destined for the pulp and paper industry, a proportion was also used in the production of other products.

5. *Agenda Item 6 Regulations concerning the Indonesian forestry sector*

GOI: The GOI advised that it had difficulty in answering the question in the Supplementary Questionnaire regarding regulations affecting the forestry, pulp and paper industries because of the opened nature of the question (i.e. like other industries it was affected by a large range of laws and other regulatory requirements many of which were not industry specific – e.g. taxation laws, environmental laws, etc.) and the variety and number of regulations issued in Indonesia. The GOI advised that the Ministry websites it had provided in its response set out regulations in

English relevant to those Ministries. If the ADC could advise what specific concerns it had or what particular regulations it was looking for, then the GOI would be able to respond with more specific advice.

In response to the ADC's concern that it was seeking advice of each Ministry in the regulation of the forestry, pulp and paper industries, the GOI advised that this was set out in the websites specified in its response to the Supplementary Questionnaire.

ADC: The ADC then raised with the GOI the 'Ministry of Trade Decree No 44/M-DAG/PER/7/2012' in relation to the prohibition on exports of certain timber logs and its relationship with tariff classifications descriptions HS 4403.10.10.00 to 4403.99.90.00 and HS 4404.

GOI: The GOI provided a detailed explanation of the coverage of the Ministry of Trade Decree, the descriptions of timber in that Decree and the distinction between 'big round timber' (i.e. timber with a diameter of 30cm or more) versus medium and small timber and the relevance of Indonesia's National Standard to the descriptions in the Decree, as well as an explanation of the coverage of with tariff classifications descriptions HS 4403.10.10.00 to 4403.99.90.00 and HS 4404. This clarified that the prohibition on the export of timber logs applied only to timber with a timber with a diameter of 30cm or more, which was not used in the pulp and paper industries, and did not apply to timber with a diameter of less than 30cm, which was used in the pulp and paper industries. The GOI also reiterated and confirmed that the export ban did not apply to exports of wood chips or pulp.

In relation to the ADC's query how the GOI enforced the export ban when the description of the timber the subject of the export ban in the Ministerial Decree was not mirrored in Indonesia's customs tariff, the GOI advised that this was done by Indonesia Customs who could readily check export documents and shipments and it was readily apparent whether what was being shipped was or was not subject to the export ban.

The ADC indicated that it was satisfied with the GOI's explanations.

[*Additional Comments*: In the Statement of Essential Facts, the ADC claimed that, because it had not received sufficient information from the GOI, the export log ban applied to all types of logs and that this would have a negative effect on timber prices as it would increase the relative supply of timber. The GOI, in its response to the Supplementary Questionnaire, has provided evidence to the ADC that the log export ban did not apply to all logs but, as explained to the ADC during the video conference, only to "big round timber", which the ADC accepted. Further, no evidence has been provided that the ban actually increased the relative supply or by how much, nor what effect this would have on timber prices, if any. These views expressed by the ADC in the Statement of Essential Facts are merely speculative without factual or evidentiary basis.

This underscores the fact that the ADC's preliminary findings in the Statement of Essential Facts regarding not only the export log ban and its purported effect but also other preliminary findings such as the GOI making available land and the alleged benefits it had for the timber and pulp industries and consequent effect on timber,

pulp and prices were not based on fact supported by any evidence but merely speculative. Similarly, the ADC's conversion of Malaysian wood chip prices to timber prices by some undisclosed reverse engineering formula that purportedly demonstrated that Indonesian timber prices were lower than the "benchmark" was shown to be demonstrably wrong by the RISI report, which determined that Indonesian timber production costs were "significantly higher" than those of Malaysia, as well as other "comparable countries", being the Philippines and Vietnam. Vietnam, of course, is not a market economy and, consequently, query whether its timber production costs can be legitimately compared to those of Indonesia. Matters such as these undermine the credibility of the ADC's preliminary findings, particularly regarding the existence of 'particular market situation' in the Indonesian domestic market for A4 Copy Paper.]

ADC: The ADC sought advice on the planning process in Indonesia for the establishment of timber plantations including who determined what timber was planted, when it was harvested, etc.

GOI: The GOI advised that the process involved a potential plantation operator preparing a plan on the timber plantation it proposed establishing (e.g. the size and location of the plantation, the timber to be cultivated on the plantation including species and harvesting times, infrastructure to be established on the plantation, environmental and conservation management, transportation facilities to be established, etc.). This was submitted for approval to the relevant governmental authorities and, once approved, the timber operator then would submit annual, five and ten year reports/plans setting out its implementation of its plans regarding the establishment of the timber plantation.

The GOI also advised that what species and in what quantities were cultivated on plantations, including when they were harvested, was driven by the plantation operators and not by the GOI or any other government in Indonesia.

The GOI also, advised, in response to query from the ADC, that the reference to only 14,000 hectares were taken up for timber plantations was in relation to HTR, not HTI, and the reason for this that these plantations were established by small operators (e.g. individual farmers) and that the timber cultivated on such plantations was applied to other uses and not to the production of pulp and paper.

[*Additional Comments*: In relation to the ADC's query how the GOI enforced the export ban when the description of the timber the subject of the export ban in the Ministerial Decree was not mirrored in Indonesia's customs tariff, it is to be noted that enforcement of regulatory requirements, including import and export restrictions and prohibitions, is undertaken by customs authorities using a variety of methods and is not reliant on the classification of goods. For example, the enforcement of restrictions on certain imports into Australia, such as drugs, firearms and other prohibited imports, is not dependent upon the classification of such goods. Were this the case, then enforcement could be readily avoided by misclassifying imports. Enforcement methods used the Directorate -General of Customs in Indonesia are similar to those commonly used in other jurisdictions such as Australia.

However, the issue here whether the export ban applied to timber logs used in the Indonesian pulp and paper industries and the evidence provided by the GOI was that it did not, which was accepted by the ADC during the video conference. Consequently, it could not have the effect claimed in the Statement of Essential Facts.]

6. *Agenda Item 7 Closing comments*

Closing comments were made by Justin Wickes on behalf of the ADC and Pradnyawati Pambagyo on behalf of the GOI. Each thanked the other for their participation in the video conference. The GOI also advised that, as the ADC would be aware, the GOI had fully co-operated with the ADC in this investigation, that its previous invitation to visit the GOI in Indonesia to verify information remained open and that if it had any further questions or required further information, any such requests would be responded to promptly.

Issues for Confirmation: Two matters required confirmation by the GOI subsequent to the video conference and they were:

- whether the reference to "513.564 m3 of timber" in the response to Question 1 of the Supplementary Questionnaire was to "513,564 m3 of timber"; and
- what were the unit amounts and currency referred to in Confidential Exhibit 3 in the response to the Government Questionnaire? It is confirmed that the currency is USD and not Indonesian Rupiah or USD in thousands.