PUBLIC RECORD

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

TERMINATION OF PART OF AN INVESTIGATION

TERMINATION REPORT NO. 341

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March 2017

CONTENTS

ABBREVIATIONS

$	Australian dollars
the Act	*Customs Act 1901*
ADN	Australian Dumping Notice
ADN	Anti-Dumping Notice
the applicant, Australian Paper	Paper Australia Pty Ltd
the Application	The application for investigation 341
AUL	Average useful life
Australian Paper	Paper Australia Pty Ltd
Biodiesel Report	WTO Appellate Body report regarding EU duties on biodiesel from Argentina
Brazil	Federative Republic of Brazil
Central National Australia	Central National Australia Pty Ltd
CFMEU	Construction, Forestry, Mining and Energy Union
CFS case	the *2007 Coated Free Sheet (CFS) from Indonesia* case
China	People's Republic of China
CMI	PT Cakrawala Mega Indah
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 341	Consideration Report No. 341
DR	Dana Reboisas
EPR	the electronic public record for Investigation 341 at adcommission.gov.au
Fatty Alcohols Panel Report	WTO Panel report in European Union - Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia (WT/DS442/R)
FIEs	foreign invested enterprises
FOB	Free On Board
GAAP	Generally accepted accounting principles
GOC	Government of China
GOI	Government of Indonesia
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Indah Kiat	PT Indah Kiat Pulp & Paper Tbk
Indonesia	Republic of Indonesia
long term plan	Indonesia's Forestry Long Term Development Plan 2006-2025
the Manual	the Commission's *Dumping and Subsidy Manual*, available at the Commission's website
NIP	Non-injurious Price
the nominated countries	Collective reference to Brazil, China Indonesia and Thailand.

NPI	Nippon Paper Industries Co. Ltd
PAD	Preliminary Affirmative Determination
PAD Direction	Customs (Preliminary Affirmative Determinations) Direction 2015
Paper Force	Paper Force (Oceania) Pty Ltd
Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
Pindo Deli	PT Pindo Deli Pulp and Paper Mills
PNT	Penggantian Nilai Tegakan
PSDH	Provisi Sumber Daya Hutan
RAK	Riau Andalan Kertas
the Regulation	Customs (International Obligations) Regulation 2015
this/the Report	Report 341
RISI	RISI Inc.
RISI Review	Global Tree Farm Economics Review 2017
SEF	Statement of Essential Facts
SEF 341	Statement of Essential Facts 341
Shandong Chenming	Shandong Chenming Paper Holdings Limited
SMG	Sinar Mas Group
SOCB	Chinese state-owned commercial bank
TER 341	Termination Report 341
Thailand	Kingdom of Thailand
Tjiwi Kimia	Pt Pabrik Kertas Tjiwi Kimia Tbk
UPM	Collective reference to UPM (China) Co., Ltd and UPM Asia Pacific Pte Ltd
UPM China	UPM (China) Co., Ltd
USDOC	US Department of Commerce
USP	Unsuppressed Selling Price
VAT	value added tax

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This Termination Report 341 (TER 341) has been prepared in relation to investigation 341, which was initiated following the application (the application) by Paper Australia Pty Ltd (Australian Paper) seeking the publication of a dumping duty notice in respect of A4 copy paper (the goods) exported to Australia from the Federative Republic of Brazil (Brazil), the People's Republic of China (China), the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand), and the publication of a countervailing duty notice in respect of the goods exported from China and Indonesia.

Australian Paper alleges that it has suffered material injury caused by A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand at dumped prices and from China and Indonesia at subsidised prices.

This termination report sets out the facts and findings on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his decisions to terminate parts of the investigation as follows:

- the countervailing investigation in relation to goods exported from Indonesia,
- the countervailing investigation in relation to goods exported from China by UPM (China) Co., Ltd and UPM Asia Pacific Pte Ltd (collectively UPM); and
- the dumping investigation in relation to gods exported from Indonesia by Pt Pabrik Kertas Tjiwi Kimia Tbk (Tjiwi Kimia).

1.2 Findings

As a result of his investigation, the Commissioner is satisfied that during the investigation period that:

- In relation to Indonesian exporters Pt Indah Kiat Pulp & Paper Tbk (Indah Kiat), Pt Pindo Deli Pulp And Paper Mills (Pindo Deli), Tjiwi Kimia and Riau Andalan Kertas (RAK), subsidies have been received in respect of some or all of the goods, but the subsidy never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the *Customs Act 1901* (the Act)[1] and, therefore, the countervailing investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to those exporters;
- In relation to Chinese exporter UPM, subsidies have been received in respect of some or all of the goods, but the subsidy never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection 269TDA(16)(b) of the Act and, therefore, the countervailing investigation must be terminated in accordance with subsection 269TDA(2)(b)(ii) in so far as it relates to that exporter;

[1] All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

- In relation to the goods exported from Indonesia, in accordance with subsection 269TDA(7) of the Act on the basis that the total volume of goods exported from Indonesia in respect of which a countervailable subsidy has been received is negligible; and
- In relation to the goods exported from Indonesia by Tjiwi Kimia, those goods were not dumped and therefore the investigation must be terminated in accordance with subsection 269TDA(1) of the Act in so far as it relates to this exporter.

Public notice of the Commissioner's termination decision was published on the Anti-Dumping Commission's (Commission's) website on www.adcommission.gov.au. (Anti-Dumping Notice (ADN) No. 2017/34) refers.

The facts and findings in relation to countervailable subsidies received by the other Chinese exporters generally, excluding UPM China, and dumping from all exporters from the nominated countries generally, excluding Tjiwi Kimia, have been included in a separate report to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)[2].

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 2 of Part XVB of the Act describes, among other matters, the procedures to be followed and the matters to be considered by the Commissioner when conducting anti-dumping investigations for the purpose of making a report to the Parliamentary Secretary.

Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation or part thereof.

1.3.2 Application

Australian Paper alleged that the Australian industry producing A4 copy paper suffered material injury caused by A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand at dumped and/or subsidised prices.

The application sought publication of a dumping duty notice in respect of the goods exported to Australia from Brazil, China, Indonesia and Thailand and publication of a countervailing duty notice in respect of the goods exported from China and Indonesia.

The Commissioner decided not to reject the application and initiated an investigation, and published notification of same, on 12 April 2016.

[2] On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this investigation the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science

Consideration Report No. 341 (CON 341)[3] and *Anti-Dumping Notice (ADN) No. 2016/33*[4] provide further details relating to the initiation of the investigation and are available on the Anti-Dumping Commission's (the Commission) website.

1.3.3 Day 60 Status Report and Preliminary Affirmative Determinations

In accordance with subsection 269TD(1), the Commissioner may make a Preliminary Affirmative Decision (PAD) if satisfied that there appear to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice, or it appears that there will be sufficient grounds subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (day 60 in relation to this investigation was 14 June 2016)[5] and the Commonwealth may require and take securities at the time of a PAD, or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with section 6 of the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction), the Commissioner published a Day 60 Status Report on 14 June 2016,[6] being 60 days after the initiation of the investigation, providing reasons why a PAD was not made.

Section 9 of the PAD Direction requires the Commissioner to reconsider making a PAD after the publication of a Day 60 Status Report at least once prior to the publication of the Statement of Essential Facts (SEF). The Commissioner made a PAD on each of the following dates:

- On 29 September 2016, the Commissioner was satisfied that there were sufficient grounds for publication of a dumping duty notice in relation to exports of the goods from China and Thailand and made a PAD to that effect[7]. Following the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any interim dumping duty that may become payable in respect of the goods exported from China and Thailand and entered for home consumption in Australia on or after 29 September 2016.
- On 4 November 2016, the Commissioner was satisfied that there were sufficient grounds for publication of a dumping duty notice in relation to exports of the goods exported to Australia from Brazil and Indonesia and made a PAD[8] to that effect. Following the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any

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[3] See document 3 on the electronic public record for Investigation 341 at adcommission.gov.au (EPR).

[4] EPR document 4.

[5] First business day after 11 June 2016.

[6] EPR document 31.

[7] EPR document 84.

[8] EPR document 120.

interim dumping duty that may become payable in respect of the goods exported from Brazil and Indonesia and entered for home consumption in Australia on or after 7 November 2016. On 4 November 2016 the Commissioner also gave notice that he had revised the level of securities required and taken under section 42 of the Act in respect of interim dumping duty that may become payable in relation to the goods exported to Australia from China and Thailand.

- On 16 December 2016, the Commissioner was satisfied that there were sufficient grounds for publication of a countervailing duty notice in relation to exports of the goods exported to Australia from China and made a PAD[9] to that effect. Following the PAD, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of any interim countervailing duty that may become payable in respect of the goods exported from China and entered for home consumption in Australia on or after 20 December 2016. On 16 December 2016 the Commissioner also gave notice that he had revised the level of securities required and taken under section 42 of the Act in respect of interim countervailing duty that may become payable in relation to the goods exported to Australia from China and Indonesia.

1.3.4 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Parliamentary Secretary allows under subsection 269ZHI(3), place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Parliamentary Secretary in relation to the application.

Statement of Essential Facts 341 (SEF 341) was originally due to be placed on the public record by 1 August 2016. The Commissioner was granted three extensions of time, totalling 130 days, in which to publish SEF 341. The Commissioner placed SEF 341 on the public record on 9 December 2016.[10]

1.3.5 Submissions received from interested parties

After the publication of SEF 341, the Commission received submissions from interested parties, the relevant aspects of which were taken into account in preparing this report.

Non-confidential versions of all submissions received are available on the public record.

1.3.6 Final Report

The Commission was granted three extensions to provide his report to the Parliamentary Secretary. Two extensions were provided to complete the investigation and a final extension was granted to enable the Commissioner to consider an offer from an exporter to provide a price undertaking.

The final report to the Parliamentary Secretary was provided on 17 March 2017.

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[9] EPR document 141.

[10] EPR document 139.

2 BACKGROUND

2.1 Initiation

On 24 February 2016, Australian Paper lodged an application under subsection 269TB(1) of the Act. The application sought the publication of a dumping duty notice in respect of the goods exported to Australia from Brazil, China, Indonesia and Thailand and the publication of a countervailing duty notice in respect of the goods exported from China and Indonesia (collectively referred to as the nominated countries).

Subsequent to receiving further information on 25 February 2016 and 8 March 2016 from Australian Paper and having considered the application, the Commissioner decided not to reject the application and initiated an investigation into the alleged dumping and/or subsidisation of A4 copy paper from the nominated countries on 12 April 2016. Public notification of initiation of the investigation was also made on 12 April 2016.

ADN No. 2016/33 provides further details relating to the initiation of the investigation.

In respect of the investigation:

- the investigation period[11] for the purpose of assessing dumping and subsidisation is 1 January 2015 to 31 December 2015; and
- the injury analysis period for the purpose of determining whether material injury to the Australian industry has been caused by exports of dumped and subsidised goods is from 1 January 2012.

2.2 SEF 341

SEF 341 set out the facts on which the Commissioner proposed to base the recommendations in this Report to the Parliamentary Secretary and. SEF 341 informed interested parties of the facts established to the date SEF 341 was placed on the public record and allowed them to make submissions in response.

Following its publication on the public record, interested parties had 20 days to respond to SEF 341. Responses to SEF 341 were to be provided to the Commissioner by no later than 29 December 2016.

The Commissioner considered submissions received in response to SEF 341 in making this Termination Report.

2.3 Submissions received from interested parties

The Commission has received submissions from interested parties during the course of the investigation, including in response to SEF 341.

The Commissioner has considered these submissions, in so far as they are relevant to his termination decisions, in making this Termination Report.

Public record versions of the submissions received are available on the public record.

[11] Subsection 269T(1).

2.4 Public record

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The public record is available for inspection in hard copy by request in Melbourne or online at www.adcommission.gov.au. Documents on the public record should be read in conjunction with this Termination Report.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the Australian industry comprised of Australian Paper manufactured A4 copy paper that is like to the goods under consideration and subject to the application.

3.2 Legislative framework

Subsection 269TC(1) of the Act provides that the Commissioner shall reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) of the Act defines like goods as:

> *Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are "like" to the imported goods.

The *Dumping and Subsidy Manual* (the Manual)[12] outlines certain "likeness tests" which provide a framework for assessing whether the goods manufactured by Australian Paper are like to the imported goods. Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

3.3 The goods

The goods subject of the application are:

> *uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).*

The applicant provided further information on the goods as follows:

[12] Copy available at www.adcommisison.gov.au.

The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or from pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.

3.4 Tariff classification

The goods have been classified to the following tariff subheadings:

- 4802.56.10, statistical code 03;
- 4802.56.10, statistical code 09.

The Commission added statistical code 09 to the tariff code classification initially specified in the consideration report, following a submission from Central National Australia Pty Ltd (Central National Australia).[13]

The submission from Central National Australia queried the consistency between the further information provided by Australian Paper on the goods description and the tariff description of the goods. The Central National Australia submission also stated that 90 and 100 gsm papers, which are referenced under statistical code 09, would fall outside the statistical code 03.

Statistical code 03 refers to 'white' A4 copy paper weighing between 40 gsm – 89 gsm. It is noted that statistical code 09 refers to the goods weighing 90 gsm or more but not more than 150 gsm. Australian Paper's goods description refers to the goods having a "nominal basis weight range of 70 to 100 gsm". Consequently, there is some possibility that some of the goods subject of this application may be imported under statistical code 09.

3.5 Like goods assessment

3.5.1 Information provided by Australian Paper

Australian Paper provided information on the physical, commercial, functional and production likenesses between imported A4 copy paper and A4 copy paper manufactured by Australian industry in their application. This is detailed below.

Physical likeness

Australian Paper submitted in its application that:

> *"…both the imported goods and the goods produced by the Australian industry are white paper cut in rectangular sheets and generally wrapped in reams of 500 sheets, but also sold in packs containing different numbers of sheets. Both are what the Australian consumer would recognise as white copy paper. Unless placed side by side, the average consumer would be unlikely to notice any difference between them.*
>
> *In the Australian market, the predominant sheet size and basis weight is A4, 80 gsm. The old imperial sheet sizes have fallen out of use. As well as the 80 gsm weight which dominates the Australian market, some 70 gsm, 75 gsm, 90*

[13] EPR document 10.

gsm and 100 gsm is used together with small amounts of heavier weights used for special purposes.

The imported goods and the goods produced by the Australian industry are physically alike in all practical aspects…"

Commercial likeness

Australian Paper submitted in its application that:

"…The imported goods and the goods produced by the Australian industry compete for the same market. In particular, a significant portion of the Australian market is goods wrapped and sold as the purchaser's own brand e.g. [redacted] *[customer]. In this portion of the market, together with the 'plain wrap' and generic products, there is direct head-to-head competition between imported goods and the goods produced by the Australian industry. At different times in the past, Australian Paper has previously supplied several of the purchaser's brand products now sourced from imports, most particularly the* [redacted] *[customer and brand].*

Where the goods are wrapped and sold in the manufacturer's brand and are heavily promoted, e.g. Australian Paper's 'REFLEX®' brand, there is some short term decoupling of price, but ultimately the end consumer will switch based on the trade-off between price, service and reputation…"

Functional likeness

Australian Paper submitted in its application that:

"…Both the imported goods and the goods produced by the Australian industry are used in the same range of applications, including high speed and low speed copying, printing (both on computer printers and small offset printers), and general use in business, education and home offices as well as in small offset printers.

The imported goods and the goods produced by the Australian industry are functionally alike in all practical aspects.

In the domestic markets of the exporting countries, as well as 'export grade' goods produced by the exporters in the nominated countries which are generally comparable with the goods sold in the Australian domestic market, there are also lower priced goods which have significantly inferior appearance (e.g. lower brightness, lower whiteness, poor surface finish, specks, inconsistency etc.) and, at times, functionality (e.g. unsuited to high speed duplex copying or printing) when compared with the 'export grade' goods…"

Production likeness

Australian Paper submitted in its application that:

"…The paper production and finishing processes are substantially identical across the large scale industry. Some mills, such as UPM-Kymmene China, use paper pulp purchased from bleached pulp mills located elsewhere while others, such as Australian Paper, have their own bleached pulp mills on site.

The imported goods and the goods produced by the Australian industry are manufactured using equipment and processes which are alike in all significant practical aspects and which are as described in (the application)…"

During the course of the Australian industry verification visit, the Commission obtained further information on Australian Paper's production processes, the physical characteristics of A4 copy paper it produced and the Australian market for A4 copy paper.

3.5.2 Submissions from interested parties on like goods

A submission was received from Double A[14] submitting, in part, that products sold under its Double A brand should be distinguished from other products on the market in Australia on the basis of commercial likeness. Double A stated that its Double A branded products were sold at a significant consumer price premium, were of superior quality and carried significant advertising/marketing costs when compared to the lower priced private and commodity labelled products. A further submission[15] submitted that all Double A goods should be excluded from the investigation as they are not commercially alike to the goods produced in Australia. In this submission further information was provided in relation the certain characteristics of its products and how these characteristics impact in the market.

The Commission considers that, whilst A4 copy paper may be differentiated in relation to slight variations in its stated characteristics, these variations are not sufficient to establish that these products do not closely resemble the goods the subject of the application.

3.5.3 Commission's assessment of like goods

The Commission's assessment is that, while the locally produced goods are not necessarily identical to the goods that are the subject of the application, the Commission is satisfied that the locally produced goods closely resemble the goods that are the subject of the application and are like goods on the basis of the following.

<u>The primary physical characteristics of imported and locally produced goods are similar</u>

The Commission considers that the primary physical characteristics of the goods are the standard dimensions of A4 copy paper and the nominal whiteness in the colour of the paper. While 'whiteness' may marginally vary between different brands and models of paper, most end users would not perceive any marked difference. The Commission considers that other characteristics of the goods, such as packaging, certification, grams per square metre, brightness, recycled content and 'type of' whiteness are secondary characteristics which do not affect the essential physical likeness of domestically produced A4 copy paper to imported A4 copy paper. These secondary characteristics may be used by manufacturers to differentiate between products for marketing and pricing purposes.

<u>The imported and locally produced goods are commercially alike as they are sold to common end users</u>

The goods are commercially similar as they directly compete in the same market sectors and have similar distribution channels. The Commission observes that customers and

[14] EPR document 12.

[15] EPR document 116.

end users of the goods have switched between domestically sourced and import sourced A4 copy paper during the investigation period.

The imported and locally produced goods are functionally alike as they have the same end uses

The Commission considers that imported and domestically produced A4 copy paper have the same end uses and that they are functionally substitutable. Common uses include copying and printing.

The imported and locally produced goods are manufactured in a similar manner

Through visiting Australian industry and co-operative exporters, the Commission is satisfied that imported and domestically produced copy paper are produced in a similar manner, using similar raw materials and production processes. These processes are described in Chapter 4.

Having regard to the above, the Commissioner is satisfied that the Australian industry produces like goods to the goods that are the subject of the application.[16]

[16] The term 'like goods' is defined in subsection 269T(1).

4 DUMPING INVESTIGATION

4.1 Findings

The Commissioner finds that exports of A4 copy paper from Indonesia by Tjiwi Kimia during the investigation period were not dumped. Tjiwi Kimia's dumping margin has been calculated at negative 2.18%

The Commission's calculations of export prices, normal values and dumping margin for Tjiwi Kimia are contained at Confidential Attachment 1.

The Commissioner has made these findings on the basis of the information and evidence available to the Commission and having regard to the application, submissions provided to the Commission, SEF 341 and other matters that the Commissioner considers relevant.

4.2 Introduction and legislative framework

Dumping occurs when goods from one country are exported to another country at a price less than their normal value. The export price and the normal value of goods are determined under sections 269TAB and 269TAC respectively.

Subsection 269TAC(1) provides that, subject to certain conditions, the normal value of the goods is the price at which like goods are sold in the domestic market of the country of export. Subsection 269TAC(1) cannot be used to calculate the normal value of the goods in any of the circumstances in subsections 269TAC(2)(a) and 269TAC(2)(b). In these circumstances, the normal value of the goods must be calculated under either subsection 269TAC(2)(c) or 269TAC(2)(d). Subsection 269TAC(2)(c) provides for the normal value to be constructed from the sum of:

- such amount as the Parliamentary Secretary determines to be the cost of production or manufacture of the goods in the country of export; and
- on the assumption that the goods had been sold for home consumption in the ordinary course of trade in the country of export instead of being exported, such amounts as the Parliamentary Secretary determines would be the selling, general and administrative costs associated with the sale and the profit on that sale.

If the Parliamentary Secretary directs that subsection 269TAC(2)(d) applies then the normal value is the price determined by the Parliamentary Secretary to be the price of like goods sold in the ordinary course of trade in arms length transactions from the country of export to a third country determined by the Parliamentary Secretary to be appropriate.

Dumping margins are determined under section 269TACB.

4.3 Cooperative exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

At the commencement of the investigation, the Commission contacted all known exporters of the goods and each identified supplier of the goods within the relevant tariff

subheading for A4 copy paper, as identified in the Department of Immigration and Border Protection import database, and invited them to complete an exporter questionnaire.

The exporter questionnaires sought information regarding the exporters' commercial operations, the goods exported to Australia, like goods sold on the domestic market and to third countries, economic and financial details, and relevant costing information. The Commission received an exporter questionnaire response from Tjiwi Kimia.

The Commission visited Tjiwi Kimia in conjunction with two other related exporters, and verified information relating to costs, domestic sales and exports to Australia during the investigation period. Tjiwi Kimia was considered by the Commissioner to be a cooperative exporter.

Non-confidential exporter questionnaire responses and a verification report for Tjiwi Kimia are available at the Commission's website[17] and provide additional detail to the discussion below. The verification report should be read in conjunction with this termination report.

4.4 Market situation finding – Indonesia

Australian Paper claimed that a particular market situation existed in the Indonesian market and, as a result, domestic sales of A4 copy paper in Indonesia were not suitable for determining normal values under subsection 269TAC(1) of the Act.

The applicant alleged that A4 copy paper prices in Indonesia are artificially low due to the influence on raw material inputs and subsidies during the investigation period by the government of Indonesia.

The Commission found that there is a market situation in the Indonesian A4 copy paper market such that sales in that market are not suitable for use in determining a price under 269TAC(1).

Some interested parties requested[18] further details of any expert advice or information being obtained by the Commission in relation to its market situation assessment. The Commission placed a file note[19] on the public record on 5 October 2016 responding to those requests.

Following publication of SEF 341, the Commission purchased a report on global timber growing costs from RISI entitled Global Tree Farm Economics Review 2017 (RISI Review).[20] The Commission published two file notes in relation to the RISI Review.[21]

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[17] www.adcommission.gov.au

[18] EPR documents 57, 70 and 62.

[19] EPR document 87.

[20] Further information concerning the RISI Report can be obtained from RISI's website, www.risiinfo.com.

[21] EPR documents 179 & 194

4.5 Model matching

In relation to model matching, the Commission had regard to the available evidence and applied the criteria that was most appropriate to the circumstances of each exporter as outlined in the relevant sections throughout this chapter.

4.6 Dumping assessment – Tjiwi Kimia Indonesia

4.6.1 Constructed normal value

The Commissioner has found that there is a particular market situation in Indonesia such that domestic selling prices are not suitable for determining normal value under subsection 269TAC(1)[22] and normal values must be constructed[23] or determined on the basis of third country sales.[24] The Commission constructed normal values under subsection 269TAC(2)(c) and in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulations).[25]

Subsection 43(2) of the Regulations provides that, if an exporter or producer of like goods keeps records relating to the like goods which are in accordance with generally accepted accounting principles in the country of export, and those records reasonably reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production or manufacture must be worked out using the information in the exporter's records.

Neither the Act nor the Regulations prescribe a method for assessing whether an exporter's records reasonably reflect competitive market costs associated with the production or manufacture of like goods. When undertaking this assessment, the Commission examines a number of factors, including whether the Government influenced the prices of any major inputs.

The Commission found that the significant influence of the Government of Indonesia (GOI) within the forestry and pulp industries has distorted prices in the paper industry and the paper market in Indonesia.

In particular, the Commission found that the cost of producing pulp was substantially less than a competitive benchmark. Consequently, the Commission considers that the actual cost of pulp recorded by exporters in their records does not reasonably reflect a competitive market cost. As pulp is proportionally the largest cost component for the production of the goods and like goods, the Commissioner considers that the exporter's records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods. Consequently, the Commission considers that this renders this component of Indonesian producers' and exporters' records unsuitable for

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[22] In terms of subsection 269TAC(2)(a)(ii).

[23] Under subsection 269TAC(2)(c).

[24] Under subsection 269TAC(2)(d).

[25] Subsections 269TAC(5A) and 269TAC(5B) provide that amounts determined to be the cost of production or manufacture, the administrative, selling and general costs and profit on the sale of goods under subsection 269TAC(2)(c) must be worked out in such manner and taking account of such factors as the regulations provide.

determining the cost to make A4 copy paper for the purposes of constructing normal values.

4.6.2 Substitution of pulp costs for Indonesian exporters

The Commission's approach to deriving an appropriate benchmark for substitution of pulp costs for Tjiwi Kimia is set out in **Appendix 3:**

4.6.3 Tjiwi Kimia

The Commission substituted the pulp benchmark into the exporter's raw material costs (except for production using 100% recycled paper). The Commission considers that the GOI's market distortions outlined in Appendix 4 predominantly impact the production of A4 copy paper from virgin fibre and considers that the raw material costs for 100% recycled paper do reasonably reflect competitive market costs in terms of subsection 43(2)(b)(ii) of the Regulations.

In accordance with subsection 269TAC(2)(c), the Commission calculated normal values for Tjiwi Kimia as the sum of:

- the cost to make A4 copy paper based on the pulp benchmark (except for 100% recycled paper) and other manufacturing costs recorded in the exporter's records;
- domestic selling, general and administrative expenses including adjustments under subsection 269TAC(9) as noted for each exporter below; and
- an amount for profit determined as the actual profit on domestic sales of like goods in the ordinary course of trade.

Subsequent to SEF 341, the pulp benchmark normal values calculation methodology used in relation to Tjiwi Kimia was adjusted.

4.6.3.1 Export prices

Tjiwi Kimia sold A4 copy paper to Australian customers either through a range of trading companies to Paper Force or direct to Australian customers.

4.6.3.1.1 Paper Force

For sales that were made through a trader to Paper Force, the goods were not purchased by the importer from the exporter. For this reason export prices for those sales could not be established under subsection 269TAB(1)(a) or 269TAB(1)(b) of the Act. Accordingly, the Commission determined export prices in accordance with subsection 269TAB(1)(c), namely, having regard to all the circumstances of the exportation. The Commission based Tjiwi Kimia's export prices on the invoiced price from the exporter to the trader less transport and other charges arising after exportation.

4.6.3.1.2 Direct sales

For sales made direct to Australian customers, the Commission considers the export price can be determined under subsection 269TAB(1)(a), being the price paid or payable for the goods by the importer less transport and other charges arising after exportation.

4.6.3.2 Normal Values

The Commission determined Tjiwi Kimia's normal values in accordance with subsection 269TAC(2)(c) as outlined above in section 4.6.1 above.

4.6.3.3 Adjustments

In order that the matters set out in subsection 269TAC(8) would not affect the comparison of normal values and export prices the Commission made the following adjustments to Tjiwi Kimia's normal values:

Adjustment Type	Deduction/addition
Domestic credit	Deduct the cost of domestic credit
Domestic inland transport	Deduct the cost relating to inland transport
Export inland transport	Add the cost relating to export inland transport
Supermarket shelf rental	Deduct the cost of supermarket shelf rental

Table 1: Summary of adjustments

4.6.3.4 Dumping Margin

The Commission calculated Tjiwi Kimia's dumping margin by comparing quarterly weighted average Australian export prices to the corresponding weighted average normal values for the investigation period, in accordance with subsection 269TACB(2)(a) of the Act.

The dumping margin in respect of A4 copy paper exported to Australia by Tjiwi Kimia for the investigation period is **-2.18 per cent**.

4.6.3.5 Submissions prior to SEF 341

Australian Paper made a submission in relation to the verification reports for the three Sinar Mas Group (SMG) exporters, of which Tjiwi Kimia is one.[26] Australian Paper considered that the distributor margin adjustment should have not been applied. Australian Paper sought upward adjustment for export inland transport for exports for Tjiwi Kimia and upward adjustments for export credit terms, containerisation and export packaging for exports by all three associated exporters.

SMG made a submission in response on 29 August 2016 regarding the distributor margin adjustment.[27] Subsequent further submissions were received from Australian Paper[28] and SMG.[29]

Having considered the submissions and verified data the Commissioner:

- reversed the distributor margin adjustment and made an adjustment for supermarket shelf rental expenses incurred by related entity PT Cakrawala Mega Indah (CMI); and

[26] EPR document 65.

[27] EPR document 69.

[28] EPR document 75.

[29] EPR document 78.

- made no upward adjustment in relation to export credit terms, containerisation and export packaging for exports.[30]

SMG made a further submission in relation to the Commission's decision to reverse the distributor margin adjustment following the initial PAD.[31] This submission noted that the Japanese anti-dumping agency made a distributor margin adjustment in a case that SMG claimed was similar. However the Commission considers that only the adjustment for supermarket shelf rental expenses is warranted, as this is the only domestic selling expense for which there is evidence that it would not have been incurred in relation to sales to Australia.

Australian Paper queried[32] the Commission's finding that "real bargaining" exists when determining export prices between Paper Force and the SMG exporters Australian Paper submitted that the Commission should further consider the finding that three of the nine verified sales transactions for Paper Force were unprofitable. Australian Paper also considered that the Commission should not accept data provided by Paper Force due to errors in the importer questionnaire response.

On the basis of evidence before it, the Commission is satisfied that there is no legal relationship between Paper Force and the SMG exporters and that transactions between those parties are arms length. The Commission accepts the reasons provided by Paper Force for the unprofitable transactions and is satisfied that the overall weighted average profitability of the nine verified transactions confirms that transactions are arms length. The Commission considers, based on verified evidence including revised questionnaire responses, that information provided by Paper Force is accurate.

4.6.3.6 Submissions on SEF 341- Submissions from the Sinar Mas Group (SMG)

4.6.3.6.1 Interpretation of regulation 43(2)(b)(ii)

SMG made a submission on subsection 43(2)(b)(ii) claiming that the Commission made an error of law in interpreting that provision.[33] SMG complains that the Commission does not make any finding using SMG's preferred interpretation of subsection 43(2)(b)(ii), i.e. whether information in the exporters' records reasonably reflects the costs that were actually incurred by the exporters in purchasing pulp for paper production.[34] SMG bases its preferred interpretation of subsection 43(2)(b)(ii) on the words in Article 2.2.1.1 of the *Anti-Dumping Agreement* as interpreted by the WTO Appellate Body in its report

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[30] The reasons for making and/or not making these amendments are contained in Attachment B to the PAD at EPR document 84.

[31] EPR document 92.

[32] EPR document 101.

[33] EPR document 146.

[34] EPR document 146 at pages 18-19.

regarding EU duties on biodiesel from Argentina (Biodiesel Report).[35] SMG explains its interpretation of subsection 43(2)(b)(ii) at length by reference to Article 2.2.1.1 and the Biodiesel Report.[36]

The Commission considers that SMG's interpretation of subsection 43(2)(b)(ii) fails to account for the difference between the text of Article 2.2.1.1 and the words of subsection 43(2)(b)(ii). The Commission considers that its assessment is in accordance with the law, and notes that in both *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870[37] and *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885,[38] Nicholas J held that it was 'open' to the Commissioner to conclude that the cost of an input did not reasonably reflect "competitive market costs" and not just actual costs.

SMG concludes its explanation by claiming that it is possible to interpret subsection 43(2)(b)(ii) consistently with Article 2.2.1.1.[39] The Pilkington case[40] provides that WTO jurisprudence may assist in interpreting Australia's anti-dumping law where a statute is ambiguous. In this case the Commission considers that it is open to it to give effect to Australia's domestic legislation in the manner outlined above.

4.6.3.6.2 Application of benchmark pulp prices

SMG made multiple submissions[41] in relation to the methodology used by the Commission to calculate normal values based the on the adopted benchmark pulp prices. These submissions claimed in relation to Tjiwi Kimia that the Commission had not correctly accounted for the amount of pulp used in the production of paper.

Following the SMG submissions, the Commission also adjusted the benchmark to account for the proportion of pulp applied towards the production of A4 copy paper. In its submissions, SMG provided information on the proportion of pulp used to produce a tonne of paper. It was noted that this proportion related to the quantity of pulp consumed to produce paper reels. However, the Commission considers that it is more appropriate to make the adjustment based on the proportion of pulp used to produce A4 copy paper, which was verified during the verification visit. On this basis, the Commission adjusted the pulp benchmark price to reflect the verified proportion of pulp consumed in the production of A4 copy paper. This was based on verified costs relating to Tjiwi Kimia.

4.6.3.6.3 CMI adjustment

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[35] *European Union – Anti-Dumping Measures On Biodiesel From Argentina, AB-2016-4, Report of the Appellate Body*, WT/DS473/AB/R, 6 October 2016.

[36] EPR document 146 at pages 19-30.

[37] See paragraph 91.

[38] See paragraph 41.

[39] EPR document 146 at pages 32.

[40] *Pilkington (Australia) Ltd v Minister of State for Justice and Customs* [2002] FCAFC 423 at paragraph 97.

[41] EPR documents 131, 143,147,148, 159, 171, 173,180, 183.

SMG further submitted[42] that the WTO Panel report in *European Union - Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia (WT/DS442/R)*[43] (the Fatty Alcohols Panel Report) supported its argument that the normal value adjustment for CMI's sales margin should be made. SMG submitted that the Fatty Alcohols Panel Report supported the proposition that CMI and the SMG exporters, being related parties, had no impact on the consideration of whether there should be a subsection 269TAC(8)[44] adjustment to normal values of like goods for CMI's sales margin.

The Commission notes that the Fatty Alcohols Panel Report, in relation to Article 2.4 of the *Anti-Dumping Agreement*, concluded (in part) that the consideration of allowances *"….require(d) a case-specific analysis of the evidence in a given investigation…."*[45].

In a further submission,[46] responding to a submission from Australian Paper,[47] SMG made reference to the Commission's preliminary findings in its verification report that "*prices to domestic customers (were) influenced by a fixed margin taken by an intermediary (CMI) involved in the domestic sales transactions. Specifically, CMI applied a fixed sales margin to all domestic sales"*. SMG further stated in this submission that in a later recalculation of dumping margins *"… the Commission removed normal value adjustments for CMI's sales margin on the sole ground that CMI and Indah Kiat, Pindo Deli and Tjiwi Kimia are related parties".*

As mentioned in SEF 341, the Commission reviewed the evidence presented in relation to the CMI adjustment subsequent to the publication of the verification report. This review identified that the amount for supermarket shelf rental expenses incurred by CMI was the only domestic selling expense for which there was evidence that it would have not been incurred in relation to sales to Australia. As a consequence, an adjustment in relation to only the supermarket shelf rental expenses was made.

4.6.3.6.4 Tjiwi Kimia adjustment for production cost differences between the production of virgin fibre and recycled paper

SMG sought[48] an adjustment to Tjiwi Kimia's normal value for the production cost differences between the production of virgin fibre and recycled paper

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[42] EPR documents 158, 163, 171, 183, 180

[43] See https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=233368,233369&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

[44] Subsection 269TAC(8) is Australia's implementation of Article 2.4 of the WTO *Anti-Dumping Agreement*

[45] See Paragraph 7.107 of WT/DS442/R

[46] EPR document 171

[47] EPR document 163

[48] EPR document 148

Given that normal value to Tjiwi Kimia has been calculated under subsection 269TAC(2)(c) and this investigation has been terminated in relation to Tjiwi Kimia, SMG's requested adjustment has not been made for the purposes of this Report.

4.6.3.7 Submissions form Australian Paper

Australian Paper requested[49] the Commission to clarify aspects of the dumping calculations for the SMG exporters, including Tjiwi Kimia:

- Australian Paper queried whether the selected export prices reflected the prices to the first trader in the export transaction.

  The Commission established the export price for all three exporters under subsection 269TAB(1)(c) as the price paid to the first intermediary (in this matter independent traders) in the export transactions.

- Australian paper sought the Commission to clarify the reasons for the reduction in the dumping margins for Tjiwi Kimia.

  The change in the dumping margin was the result of a modification to the composition the benchmark used.

Australian Paper submitted [50]that it continued to believe that export prices for goods sourced from the three SMG exporters and sold by Paper Force into Australia should be assessed on a deductive basis. However it is noted that no further evidence has been provided by Australian Paper to support this claim. As a consequence, the Commission remains satisfied that the relevant transactions are arms length.

Australian Paper further submitted[51] that SMG's submission seeking an adjustment to the benchmark price should not be made on its suggested basis of the difference between Indah Kiat's[52] wet pulp production cost and the selling price of its dry pulp. Australian Paper also stated that the adjustment to the benchmark sought by SMG for the lower pulp consumption was questionable. The Commission considered Australian Paper's submission while considering the submissions made by SMG on these matters.

4.7 Conclusion

Tjiwi Kimia was not dumping the goods during the investigation period and subsection 269TDA(1)(b)(i) requires the Commissioner to terminate the investigation as it relates to Tjiwi Kimia under subsection 269TDA(1).

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[49] EPR Record 144

[50] EPR document 144.

[51] EPR document 187.

[52] Indah Kiat is another of the three SMG exporters

5 SUBSIDY INVESTIGATION

5.1 Findings

5.1.1 UPM - China

The Commission has found that the subsidy margin is negligible for goods exported by UPM during the investigation period. UPM's subsidy margin has been calculated as being 0.8%.

Subsection 269TDA(2) requires that the Commissioner must terminate a countervailing investigation in relation to an exporter if the countervailable subsidy received in respect of the goods is determined to be negligible.

In relation to goods exported from China (a developing country),[53] a countervailable subsidy received in respect of good is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than two per cent.[54]

The Commission has found that the subsidy margin is negligible for goods exported by UPM during the investigation period.

The Commissioner has therefore terminated the subsidy investigation in relation to UPM.

5.1.2 Indonesia

The Commissioner finds that countervailable subsidies have been received in respect of A4 copy paper exported to Australia from Indonesia during the investigation period.

The subsidy margin identified in relation to each Indonesian exporter is:

Exporter	Subsidy Margin
Indah Kiat	1.6%
Pindo Deli	1.1%
Tjiwi Kimia	0.9%
RAK	1.0%

Table 2 – Indonesian Subsidy Margins

Subsection 269TDA(2) requires the Commissioner to terminate a countervailing investigation in relation to an exporter if the countervailable subsidy received in respect of the goods is determined to be negligible.

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[53] As defined in subsection 3(1) of the *Customs Tariff Act 1995*. The Commission relies on this classification when applying section 269TDA.

[54] Subsection 269TDA(16)(b).

In relation to goods exported from Indonesia (a developing country),[55] a countervailable subsidy received in respect of good is negligible if, when expressed as a percentage of the export price of the goods, that subsidisation is not more than two per cent.[56]

The Commission has found that the subsidy margins were negligible for goods exported by all cooperating exporters during the investigation period. The information before the Commission also indicates that the volume of imports from other Indonesian exporters is negligible. The Commissioner has therefore terminated the subsidy investigation in relation to these exporters and in relation to Indonesia.

5.2 Investigated programs

5.2.1 China

Australian Paper alleged in its application and in subsequent submissions that Chinese exporters of A4 copy paper benefited from 16 countervailable subsidies. These alleged subsidies related to programs for the provision of inputs for less than adequate remuneration, preferential tax policies and financial grants. The Commission has investigated and assessed all 16 alleged subsidy programs including through:

- asking questions relating to each program in a questionnaire provided to the Government of China (GOC) shortly after initiation of the investigation (a public record version of the GOC response is available on the public file);[57] and
- assessing information provided in exporter questionnaire responses and obtained by the Commission during verification visits with selected Chinese exporters.

The Commission was provided with information from Chinese exporters indicating that benefits were received, or were able to be received, by exporters of the goods under several new subsidy programs that were not included in the 16 alleged programs already being examined by the Commission. As a result, the Commission identified 22 additional subsidy programs that were not identified in the initial application or in subsequent submissions. As such a total of 38 programs have been investigated and assessed.

5.2.2 Indonesia

Australian Paper alleged in its application and in subsequent submissions that Indonesian exporters of A4 copy paper had benefited from three countervailable subsidies. These alleged subsidies related to programs for the provision of inputs for less than adequate remuneration and financial benefits. The Commission has investigated and assessed all three alleged subsidy programs including through:

[55] As defined in subsection 3(1) of the *Customs Tariff Act 1995.* The Commission relies on this classification when applying section 269TDA.

[56] Subsection 269TDA(16)(b).

[57] EPR document 30.

- asking questions relating to each program in a questionnaire provided to the GOI shortly after initiation of the investigation (a public record version of the GOI response is available on the public file);[58] and
- assessing information provided in exporter questionnaire responses and obtained by the Commission during verification visits with selected Indonesian exporters.

The Commission was provided with information from Indonesian exporters indicating that benefits were able to be received by exporters of the goods under another subsidy program that were not included in the three alleged programs already being examined by the Commission. As such a total of four programs have been investigated and assessed.

5.3 Summary of countervailable programs

5.3.1 China

After assessing all relevant information available, the Commissioner has found that countervailable subsidies have been received in respect of A4 copy paper exported to Australia from China under 34 countervailable subsidy programs.

The findings in relation to each investigated program are outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Policy Loans to the Paper Industry	Preferential lending	Yes
2	Provision of Calcium Carbonate for LTAR	Provision of goods	No
3	Provision of Caustic Soda for LTAR	Provision of goods	No
4	Provision of Titanium Dioxide for LTAR	Provision of goods	No
5	Provision of Coal for LTAR	Provision of goods	No
6	VAT rebates relating to raw materials	Preferential tax policy	Yes
7	Preferential Income Tax Program for High or New Technology Enterprises	Preferential tax policy	Yes
8	Preferential Income Tax Program for Comprehensive Utilisation Entitling Enterprise	Preferential tax policy	Yes
9	Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises	Preferential tax policy	Yes
10	VAT and Import Tariff Exemptions for Imported Equipment	Preferential tax policy	Yes

[58] EPR document 27.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
11	VAT Rebates on FIE Purchases of Chinese Made Equipment	Preferential tax policy	Yes
12	Subsidies for Energy Efficiency and Environmental Protection	Financial grant	Yes
13	Support Fund for Environmental Protection Project - Rizaho City	Financial grant	Yes
14	Support Fund for Environmental Protection Input	Financial grant	Yes
15	Support Fund for Environmental Protection Project	Financial grant	Yes
16	City Bonus for Export Activity from Finance Bureau	Financial grant	Yes
17-38	Other grants	Financial grants	Yes

Table 3 – Countervailable Subsidy Programs

Further information on the Commissioner's assessment of these programs is included in Appendix 3.

5.3.2 Indonesia

After assessing all relevant information available, the Commissioner has found that countervailable subsidies have been received in respect of A4 copy paper exported to Australia from Indonesia under four countervailable subsidy programs.

The findings in relation to each investigated program are outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Provision of Standing Timber for Less Than Adequate Remuneration	Provision of goods	Yes
2	Government of Indonesia's Log Export Ban	Provision of goods	No
3	Debt Forgiveness – Buyback of debt from the Government of Indonesia	Financial benefit	Yes
4	Income tax facilities for capital investment in certain business fields and/or certain regions	Preferential tax policy	Yes

Table 4 – Countervailable Subsidy Programs

Further information on the Commissioner's assessment of these programs is included in Appendix 4.

5.4 Submissions following SEF 341 -China

5.4.1 Allocation of grants across sales

Australian Paper argued[59] that allocation of the applicable grants received by UPM China was critical to calculating the benefit received as a percentage of export prices. Australian Paper queried whether the grants received by UPM China should be allocated across all export sales or are more appropriately allocated to exports of the large volume exports that derive the export revenue (such as uncoated woodfree paper, including A4 copy paper).

The Commission allocated grant subsidies according to the purpose of the grant. Most grants were not related to exports and so were allocated across total sales. However even if all grants were allocated on the basis of export sales alone, UPM China's subsidy margin would be negligible. No grants were provided specifically for exports of uncoated woodfree paper.

5.4.2 Differences between US and Australian subsidy margins

The Construction, Forestry, Mining and Energy Union (CFMEU) provided an analysis of the difference between the subsidy margins calculated in the US countervailing investigation for Indonesia and those calculated in this investigation.[60] The CFMEU queried the differences between the subsidy margins.

The CFMEU provided no evidence or information other than the fact that the Australian and US subsidy margins are different. The Commission considers these differences are likely due to differences in domestic legislation, investigation practices and investigation periods. In any event the Commission must independently assess the amount of subsidisation in relation to goods exported to Australia.

5.4.3 Policy loans and preferential taxation

5.4.3.1 GOC submissions

The GOC argued that Chinese exporters did not benefit from a countervailable subsidy in the form of policy loans because:

- "Chinese State invested commercial banks" should not be considered public bodies for purposes of a countervailing investigation simply because they take into account government policies in deciding whether to fund commercial projects.[61] The GOC called in support of its argument:
    - the practices of Australian banks and the Australian Clean Energy Finance Corporation;

[59] EPR document 144 at page 11.

[60] EPR document 155 at page 8.

[61] EPR document 161 at pages 1 to 4.

  - the use by the Commission of "out-dated" evidence from earlier investigations by the Commission and "derivative" evidence from US investigations;[62]

- There is no evidence of the provision of policy loans or any benefit. The GOC called in support of its argument:
  - that the Commission used a "slavish imitation" of the US approach in determining a comparator commercial interest rate that was inconsistent with the Commission's approach in other investigations;
- There is no evidence of specificity. The GOC called in support of its argument:
  - that the Commission had not assessed whether Chinese state-owned commercial banks (SOCBs) provided loans at a preferential rate that conferred a benefit to the borrowers on the basis that the borrowers belonged to a specific industry;
  - an alleged policy loan was supposedly given to a paper producer outside China which is "peculiar and incorrect".[63]

The Commission does not accept the GOC's argument in relation to policy loans for the following reasons:

- the Commission does not consider that the practices of Australian banks and other Australian organisations are relevant to its assessment of Chinese SOCBs as public bodies;
- the GOC provided no updated evidence or information to indicate that evidence from the Commission's earlier investigations was no longer relevant, rather the relevance of evidence from the Commission's earlier investigations is confirmed by the recent findings in US investigations;
- the Commission determined a relevant comparator commercial interest rate according to the circumstances of the current inquiry and is not in any event bound by its own previous decisions;
- in order to assess whether the SOCBs provided loans at a preferential rate in the way proposed by the GOC, the Commission would need access to evidence of all other loans made by those SOCBs, which is not available to the Commission;
- a recipient of a SOCB loan may be based outside China, however the Commission must assess whether a countervailable subsidy was received in respect of the goods (subsection 269TJ(1)(a)), in this case goods that were produced in China.

The GOC argued that the preferential tax under Program 7 was incorrectly assessed by the Commission because it related to the financial year prior to the investigation period.

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[62] Asia Symbol made a similar argument, see EPR document 151 at page 8.

[63] Asia Symbol also made this argument, see EPR document 151 at page 10.

According to the GOC this is expressly against the Commission's policy stated at page 88 of the Manual.[64]

The Commission notes that the GOC's quotation from the Manual omits the second half of the sentence concerning when the benefit from preferential tax is normally received. The second half of that sentence clarifies that the benefit is received when the tax would otherwise have had to be paid, namely when the company lodges a tax return (normally the following year).

5.5 Submissions following SEF 341 – Indonesia

5.5.1 Submissions in response to Program 1: Provision of access to and use of land for less than adequate remuneration

RAK submitted[65] that the GOI does not sell wood to RAK and RAK does not purchase wood from the GOI. As mentioned previously, the Commission considers that a financial contribution from the government arises through the granting of access to and the use of land to timber growers under the concession, not through the provision of wood.

The GOI submitted that the making of land available for timber plantations for a fee is not a supply of a good and, as a consequence, a pre-requisite for a subsidy, namely the supply of a good was not satisfied. The GOI also states that it is the sole right of the government to determine what is payable to a government for the use of land. As specified in SEF 341, the Commission considers that the GOI, in effect, provides access to and use of such land under the concession as a service to timber growers. In these circumstances a financial contribution exists as a result of providing this service, which meets the definition of a subsidy under subsection 269T(1) as a financial contribution involving the provision of goods or services by a government or public body.[66]

5.5.2 Submissions in response to Program 3: Debt Forgiveness – Buyback of debt from the Government of Indonesia

The GOI submitted that the Commission should have not used the Australian tax depreciation schedules to determine the effective life of the benefit as they had no relevance or application to Indonesian companies.

Australian Paper submitted that the Commission should consider whether the 13 year period adopted in the US Investigation was a more reasonable period compared to the 15 year period adopted by the Commission.

The Commission, having reviewed the submissions received, considers that the most appropriate useful life to apply would be the one most directly relevant to the entities concerned.

The financial statements for Indiah Kiat specify that:

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[64] EPR document 161 at page 7; Asia Symbol made a similar argument, see EPR document 151 at page 11.

[65] EPR document 165.

[66] See also Article 1.1(a)(1)(iii) of the SCM Agreement.

> *The costs of fixed assets are depreciated on a straight-line basis over their estimated useful lives. Management properly estimates the useful lives of these fixed assets to be within 2 years to 25 years*

In this regard the Commission has altered the average useful life (AUL) to reflect an AUL based on the aggregate asset values weighted by their asset depreciation classes specified in the Indiah Kiat financial statements. The new AUL determined by the Commission is now 23 years. This has resulted in a marginal change to the subsidy margins under program 3.

5.5.3 Submissions in response to Program 4: Income tax facilities for capital investment in certain business fields and/or certain regions

Submissions were received from the GOI[67] and RAK in relation to program 4.

The GOI submitted[68] that this tax program did not qualify as a 'subsidy' under the SCM Agreement as it was not 'specific'. The GOI stated as this program was not 'specific' to the paper and paper products industry alone, although that it is one of the industries/regions eligible for such preferential tax treatment.

The Commission acknowledges that the tax program is available to a wider range of industries than the pulp and paper industry. However, the GOI regulation establishing the program and associated appendices explicitly limits access to the program to certain industries or, at times, to certain industries situated in certain stipulated regions or provinces. The Manual specifies that:

> *De jure specificity is covered in Article 2.1 (a) and (b) of the SCM and in s. 269TAAC. The conditions where a de jure specificity finding can be made occur where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises or industries (paragraph (a) of Article 2.1). …"*

The Commission also notes that in the matter of Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs [2015] FCA 885 (21 August 2015), it was stated that *"…Article 2.1 of the SCM Agreement makes clear that a subsidy may be specific to an enterprise, a group of enterprises, or an industry or group of industries…."*

As a consequence, whilst the tax program is available to a wider range of industries than the paper and pulp industry, the program is still considered to be limited to specified range of industries and effectively favours certain industries over others.

The GOI made an additional submission[69] in relation to this tax program. The GOI submitted that the program:

- does not result in revenue forgone;
- was not specific within the meaning article 2.2 of the SCM Agreement; and
- was not specific pursuant to Article 2.1(b) of the SCM Agreement.

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[67] EPR documents 145 and167.

[68] EPR document 167.

[69] EPR document 197.

The Commission disagrees with the GOI's conclusions reached in its submission.

In accordance with the Manual, "*foregoing or not collecting revenue that is otherwise due such as granting tax credits or deductions from taxable income, or exemption from corporate income tax will be treated as a financial contribution."* This is consistent with the definition of 'subsidy' in subsection 269T(1), which notes that a subsidy means a financial contribution that involves certain specified types of support. This includes the forgoing, or non-collection, of revenue due to the government. In this particular case Regulation 18 provides for a reduction in income tax, which is the forgoing or non-collection of revenue that would otherwise be due to the GOI.

In relation to the claims around article 2.2 of the SCM Agreement, the Commission notes that the quoted provision refers to *the setting or change of generally applicable tax rates (emphasis added)".* In relation to the interpretation of article 2.1(b), it is noted that the footnote to this article states *"Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise."* This article is reflected in subsection 269TAAC of the Act and the Commission considers that the relevant tax regulations do not meet the definition of being generally applicable tax rates and that, contrary to claims of the GOI, the regulations do favour certain enterprises over others.

A further submission[70] was also received from Australian Paper seeking the Commission to clarify whether the benefit had been correctly apportioned.

RAK submitted[71] that the tax adjustment at note 25 in its 2015 Profit and Loss Statement was not in relation to any benefit received under program 4. RAK advised that this adjustment related to timing differences between its corporate accounting policy and the Indonesian tax law relating to the useful lives of its assets. RAK further stated that it has not received any benefit under program 4. Based on the information provided by RAK, the Commission is satisfied that RAK did not receive any benefit under this program during the investigation period and has adjusted RAK's subsidy margin accordingly.

[70] EPR document 144.

[71] EPR document 165.

6 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Dumping margin calculations for Tjiwi Kimia
Confidential Attachment 2	Subsidy Calculations
Appendix 1	Assessment of countervailable subsidies – China
Appendix 2	Assessment of countervailable subsidies – Indonesia
Appendix 3	Pulp cost benchmark
Appendix 4	Particular market situation findings

Appendix 1: Assessment of countervailable subsidies – China

A1.1 Introduction

This appendix details the Commission's assessment of the subsidy programs investigated in relation to A4 copy paper exported from China. The relevant legislation against which the subsidies are assessed is set out in subsection 269T(1) (definition of 'subsidy'), sections 269TACC, 269TAAC and 269TACD.

A1.1.1 Overview

The investigated programs, and the Commission's assessment of whether each is countervailable in relation to A4 copy paper exported from China, is outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Policy Loans to the Paper Industry	Preferential lending	Yes
2	Provision of Calcium Carbonate for LTAR	Provision of goods	No
3	Provision of Caustic Soda for LTAR	Provision of goods	No
4	Provision of Titanium Dioxide for LTAR	Provision of goods	No
5	Provision of Coal for LTAR	Provision of goods	No
6	VAT rebates relating to raw materials	Preferential tax policy	Yes
7	Preferential Income Tax Program for High or New Technology Enterprises	Preferential tax policy	Yes
8	Preferential Income Tax Program for Comprehensive Utilisation Entitling Enterprise	Preferential tax policy	Yes
9	Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises	Preferential tax policy	Yes
10	VAT and Import Tariff Exemptions for Imported Equipment	Preferential tax policy	Yes
11	VAT Rebates on FIE Purchases of Chinese Made Equipment	Preferential tax policy	Yes
12	Subsidies for Energy Efficiency and Environmental Protection	Financial grant	Yes
13	Support Fund for Environmental Protection Project - Rizaho City	Financial grant	Yes
14	Support Fund for Environmental Protection Input	Financial grant	Yes
15	Support Fund for Environmental Protection Project	Financial grant	Yes
16	City Bonus for Export Activity from Finance Bureau	Financial grant	Yes
17-38	Other grants (section A3.5 refers)	Financial grants	Yes

Table 19 – Investigated Programs – China

A1.1.2 Information considered by the Commission

A1.1.2.1 Australian Paper's application

The Commission has relied upon information submitted by Australian Paper in its application and submissions with respect to the Commission's investigation of the 16 countervailable subsidy programs (Programs 1 – 16) that were allegedly received by Chinese exporters of A4 copy paper exported to Australia.

A1.1.2.2 Information provided by exporters

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided in responses to the exporter questionnaire, as well as information provided by exporters during verification visits.

The Commission included questions relating to each of the 16 alleged programs in a government questionnaire that was sent to the GOC.

The GOC provided a detailed response to the questionnaire sent, however not all programs were addressed in the response.

A1.1.2.3 Information obtained during previous investigations

The Commission has relied on information obtained during previous Australian Customs and Border Protection Service and Commission investigations into the alleged subsidisation of various goods exported from China.

The Commission was provided with no evidence or information during the course of this investigation that would displace previous findings made on the basis of information provided during previous investigations.

A1.1.2.4 Other information considered as part of this assessment

The Commission also considered as part of this assessment:

- Information submitted by interested parties in submissions to the investigation; and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in China, particularly the annual reports of Chinese corporations and investigations and findings made by anti-dumping authorities in other jurisdictions .

A1.2 CATEGORY ONE: Preferential lending

A1.2.1 Program 1: Policy loans to the paper industry

A1.2.1.1 Legal basis

The overarching legal basis for the program is contained within the *Law of the People's Republic of China on Commercial Banks (2003)*.[72]

A1.2.1.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A1.2.1.3 Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving preferential treatment in the granting of loans.

A1.2.1.4 Is there a subsidy?

In its application Australian Paper referred to the following as evidence of the preferential granting of loans to exporters of the goods by Chinese state-owned commercial banks (SOCBs):

- receipt of a RMB 68 M interest-free loan from the government by Chenming;[73]
- SOCB shareholdings in Chenming as evidence of likely debt-for-equity swaps;[74] and
- the 2008 preliminary finding of the then Australian Customs Service (Customs) that the preferential granting of loans to toilet paper producers in China constitutes a countervailable subsidy.[75]

In CON 341 the Commission noted that the United States Department of Commerce (USDOC)[76] found that *Policy Loans to the Paper Industry* constituted a benefit in the form of lending costs below what would normally be found in a competitive banking sector.[77]

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[72] http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383716.htm

[73] Shandong Chenming Paper Holdings Limited, Interim Report 2015, p. 121

[74] ibid., p. 35

[75] Investigation into the alleged subsidisation of toilet paper exported from the People's Republic of China, *Preliminary Report on Existence of Countervailable Subsidies: Government of the People's Republic of China* (Toilet Paper Report), ch. 4

[76] The Antidumping and Countervailing Duty Operations Unit of the US Department of Commerce is responsible for enforcing US anti-dumping duty and countervailing duty laws, including the conduct of investigations http://trade.gov/enforcement/operations/

[77] CON 341, p. 28

The Commission sought further information in relation to this alleged program from exporters and the GOC. In its response to the government questionnaire (RGQ) and a subsequent submission, the GOC advised that there was no such subsidy program, claiming that Chinese State-invested commercial banks are not 'public bodies' and are completely market-oriented in their lending practices.[78]

Financial contribution

The Act defines a subsidy as, inter alia, a financial contribution by a government of the country of export or by a public body of that country, which involves a direct transfer of funds from that government or body, if that financial contribution confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.[79]

A bank loan is a direct transfer of funds and therefore a financial contribution. In the case of loans provided by SOCBs, the Commission has considered whether the financial contribution has been provided by a 'public body'.

The term 'public body' is not defined in the legislation or the WTO Agreement on Subsidies and Countervailing Measures. It has been considered by the Commission in previous investigations and has been the subject of a number of WTO Appellate Body findings. The Appellate Body's findings in dispute DS379 are particularly relevant[80] and are supported by Australian case law.[81]

In DS379 the Appellate Body provided guidance as to how it can be ascertained that an entity exercises, or is vested with government authority, outlining the following indicia that may help assess whether an entity is a public body (vested with or exercising governmental authority):[82]

- Indicia 1 - where a statute or other legal instrument expressly vests government authority in the entity concerned;
- Indicia 2 - where there is evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority; and
- Indicia 3 - where there is evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions.

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[78] GOC RGQ, p. 25 and record number 122, p. 3

[79] Subsection 269T(1)

[80] *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 11 March 2011; see also ADN 2011/27.

[81] *Dalian Steelforce Hi-Tech v Minister for Home Affairs* [2015] FCA 885 at [50]ff.

[82] Ibid. at [318].

As part of the 2008 investigation into the alleged subsidisation of toilet paper exported to Australia from China, Customs conducted onsite verification visits with officials from the following GOC agencies, policy banks and SOCBs:

- National Development Reform Commission (NDRC) – responsible for formulating and implementing strategies of national economic and social development;[83]
- Development Reform Commissions (DRCs) of Guangdong Province and Jiangsu Province – responsible for the implementation of national plans at provincial level;[84]
- China Banking Regulatory Commission (CBRC) – primary role is to supervise banks and financial institutions in China;[85]
- People's Bank of China (PBC) – China's central bank;
- Agricultural Bank of China (ABC) – a state-controlled commercial bank;[86]
- China Construction Bank (CCB) – majority state-owned commercial bank;[87]
- China Development Bank (CDB) – wholly state-owned policy bank;[88] and
- Industrial and Commercial Bank of China (ICBC) – majority state-owned commercial bank.[89]

As a result of its onsite verification, Customs found that:

- the GOC plays a critical role in the economic development of China's forestry, pulp and papermaking industry;
- the GOC's national and provincial government industry plans make references to economic support and financial assistance in order to achieve the established objectives;
- article 34 of the *Law of the People's Republic of China on Commercial Banks* (Banking Law) imposes a requirement on commercial banks in China and reflects a direction or command given by the GOC to those banks to act in accordance with state industrial policies; and
- the level of government ownership of the SOCBs provides the GOC with the degree of control required to provide direction to them to comply with the obligations set out in article 34 of the Banking Law.

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[83] http://en.ndrc.gov.cn/mfndrc/ .

[84] Toilet Paper Report, pp. 22-24.

[85] Ibid., p. 25.

[86] ABC, Annual Report 2015, p. 106.

[87] CCB, Annual Report 2015, p. 73.

[88] CDB, Annual Report 2014 (GOC RGQ Att. 39), p. 27

[89] Industrial and Commercial Bank of China Limited, Annual Report 2015 (GOC RGQ Att. 45), p. 77

Toilet paper and A4 copy paper are produced by the same industry. Accordingly the Commission considers that Customs' 2008 findings are relevant to the current investigation.

In its recent investigation into the subsidisation of certain uncoated paper[90] from Indonesia and China, USDOC found that SOCBs are public bodies (or 'authorities' in US terminology).[91] USDOC relied on its previous analysis and findings in relation to SOCBs, particularly its original 'OTR Tires' investigation.[92]

The Commission has examined these previous investigations, the indicia set out by the Appellate Body in DS379 and evidence gathered during the course of this investigation to determine whether SOCBs are public bodies.

The Commission notes that:

- current stated national policies in relation to the Chinese paper industry include:
  - 'Encourage domestic banks to render credit support for the overseas investment in the field of paper industry by means of export credit, project financing, annexation loan, etc.'; and
  - 'Further boost the scale of commercial bank loan, encourage and guide financial institutions to render great support to the projects and enterprises with strong economic strength and great market potential';[93]
- Article 34 of the Banking Law states that 'Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State' *(emphasis added)*; and
- statements from SOCBs that have made loans to exporters of the goods to Australia include:
  - 'In line with the government's macro-control measures and the direction of industrial policy, the Bank enacted guidelines for industrial lending and continued to push forward the building of an industrial policy system so as to optimise its credit structure';[94]
  - 'The Group earnestly implemented the national economic and financial policies and guidelines and the deployment of stabilising growth, promoting

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[90] The scope of the USDOC investigation includes copy paper similar to the goods subject of this investigation

[91] *Certain Uncoated Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) (USDOC Uncoated Paper) and accompanying issues and decision memorandum (IDM) at p. 23

[92] *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 40480 (July 15, 2008) (USDOC OTR Tires) and accompanying IDM at p. 23 and Comment E.2

[93] NDRC, *12th Five-Year Development Plan of Paper Industry*, December 2011 (GOC RGQ Att. 9), p. 41

[94] Bank of China Limited, 2015 Annual Report (GOC RGQ Att. 34), p. 67

reformation, adjusting structure, benefiting people's livelihood and risk resistance';[95]

- 'The Bank enthusiastically implemented the government's macroeconomic and industrial policies, and worked for maximization of risk-adjusted return on capital (RAROC) and economic profit or economic value added (EVA)';[96]
- 'The Bank worked hard to meet the government's policy requirements to serve the real economy as it enhanced its credit support to key sectors and major project construction. The Bank also vigorously adjusted its credit structure by putting a cap limit on the total volume of the credit granted to overcapacity industries and improving the structure of credit accordingly';[97] and
- 'In 2015, the Bank attached importance to coordinating the use of incremental credit and existing credit, credit and non-credit financing services, to lend overriding support to the improvement of the quality and efficiency of the real economy, echoing the changes in macroeconomic environment and financial regulatory requirements'.[98]

The Commission considers the above evidence demonstrates that SOCBs are, in fact, exercising governmental functions and therefore possess or have been vested with governmental authority. As a result, the Commission finds that SOCBs are public bodies for the purposes of the Act.

The Commission also notes that in DS379 the Appellate Body specifically examined USDOC's public bodies determination in the OTR Tires investigation[99] and found that "the USDOC's public body determination in respect of SOCBs was supported by evidence on the record that these SOCBs exercise governmental functions on behalf of the Chinese Government".[100]

Benefit conferred

In determining whether a financial contribution confers a benefit, the making of a loan by a government or public body does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain.[101]

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[95] Bank of Communications Co., Ltd, 2015 Annual Report (GOC RGQ Att. 36), p. 12

[96] China CITIC Bank Co., Ltd, 2015 Annual Report (GOC RGQ Att. 41), p. 57

[97] China Everbright Bank Co., Ltd, 2015 Annual Report (GOC RGQ Att. 42), p. 47

[98] Industrial and Commercial Bank of China Limited, 2015 Annual Report (GOC RGQ Att. 45), p. 24

[99] DS379 at [348]-[356]

[100] ibid. at [355]

[101] Subsection 269TACC(3)

In determining an appropriate commercial or market benchmark for each loan, the Commission has considered the approach taken by USDOC in the recent uncoated paper investigation.[102] USDOC has conducted detailed analysis of the Chinese banking sector and found that it does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the GOC's continued dominant role in the sector. The continued significant intervention of SOCBs in that sector precludes the use of a benchmark within China because no fully market-determined rates exist:

> 'loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market'.[103]

USDOC first analysed the Chinese banking sector and formulated its approach in its 2007 'Coated Free Sheet' investigation.[104] The WTO Appellate Body specifically examined the findings of that investigation in DS379 and found that:

- In examining 'the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market',[105] reference to external benchmarks is permitted;[106] and
- 'USDOC's decision not to rely on interest rates in China as benchmarks was reasoned and adequate, and one that a reasonable and objective investigating authority could reach based on the record before it'.[107]

USDOC has re-examined China's banking sector multiple times since 2007 and recently found that:

> 'the banking system continues to be affected by the legacy of government policy objectives, which continue to undermine the ability of the "Big Four" and the rest of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives';[108] and
>
> 'the GOC has not presented new arguments or information sufficient to warrant reconsideration of the Department's prior findings'.[109]

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[102] USDOC Uncoated Paper and accompanying IDM at pp. 7-10

[103] ibid., p.7

[104] *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying IDM at pp. 5-9 and Comment 10

[105] WTO, *Agreement on Subsidies and Countervailing Measures*, Article 14(b)

[106] DS379 at [471]-[490]

[107] ibid. at [509]

[108] *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 35308 (June 2, 2016) accompanying IDM at p. 27

[109] ibid., p. 29

The calculated USDOC interest rate benchmarks are based on International Monetary Fund interest rates (or LIBOR and corporate BB bond rates for foreign currency denominated loans) and World Bank economy groupings. The benchmarks are published for every investigation and available on the public record of each USDOC investigation.

The Commission considers that the USDOC interest rate benchmarks are a suitable proxy for a comparable commercial loan to determine whether exporters of A4 copy paper in China have benefited from the preferential lending practices of SOCBs. On that basis, the benefit conferred is the difference between the USDOC interest rate benchmarks and the interest rates paid by exporters of A4 copy paper in China, which results in less interest payable on applicable loans than otherwise would have been payable.

Specificity

A subsidy is a countervailable subsidy if it is specific.[110] The Commissioner may determine that a subsidy is specific having regard to:

- the fact that the subsidy program benefits a limited number of particular enterprises;
- the fact that the subsidy program predominantly benefits particular enterprises;
- the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
- the manner in which a discretion to grant access to the subsidy has been exercised.[111]

In the 2008 toilet paper investigation, Customs noted that documents provided by ICBC and CCB showed that their assessment of loan applications by exporters of toilet paper to Australia was supported in large part because of the companies' categorisation as 'encouraged' enterprises. Customs found that the granting of loans to the exporters was specific because preferential treatment by the banks favoured particular enterprises, being those in industries classified as 'encouraged'.

More recently, USDOC found a program of preferential policy lending specific to paper producers based on 'evidence demonstrating the GOC's objective of developing the papermaking industry, through preferential loans'.[112]

The Commission notes that:

- the current national industry plan (*12th Five-Year Development Plan of Paper Industry*) includes policies to encourage domestic banks to offer credit support for foreign investment in the paper industry and increase lending to support key projects;

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[110] Subsection 269TAAC(1)

[111] Subsection 269TAAC(4)

[112] USDOC Uncoated Paper accompanying IDM at p. 23

- the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue) lists large scale pulp and paper production as an 'encouraged' industry;[113]
- the *Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment*[114] includes measures to:
    - 'urge the industries of oil refining, ethylene, steel, cement and paper making to develop towards those of large bases and of large scale'; and
    - 'actively develop and spread resource conserving, substitutive and circular utilization technologies and products, emphatically propel the transformation of energy conserving and consumption reducing technologies in the industries of steel, non-ferrous metal, electric power, petroleum chemistry, construction, coal, building materials, paper making'; *(emphasis added)*
- the *12th Five-Year Plan of Jiangsu Province* (where UPM is located) describes paper making as an 'important' industry;[115]
- the *Jiangsu Directory Catalogue on Readjustment of Industrial and Information Industry Structure* includes large scale pulp and paper production as an 'encouraged' industry and small scale pulp production as an 'eliminated' industry;[116]
- the *Implementation Plan for Industry Structure Adjustment of Guangdong Province* (where Asia Symbol and Chenming are located) includes papermaking and paper products as an 'encouraged' industry and small scale chemical pulp production as an 'eliminated' industry;[117]
- Article 34 of the Banking Law states mandates SOCBs to conduct their lending in accordance with national economic and industrial policies; and
- SOCBs have stated publicly that they have 'enthusiastically' implemented the GOC's economic and industrial policies.

Considering this evidence, the Commission finds that SOCBs give preferential treatment in the granting of loans to producers of A4 copy paper as members of an 'encouraged' industry. The preferential lending program is specific, in that it predominantly benefits particular enterprises,[118] and is therefore a countervailable subsidy.

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[113] GOC RGQ Att. 22, p. 3

[114] *Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment*, Guo Fa [2005] No. 40, 2 December 2005

[115] GOC RGQ Att. 25

[116] GOC RGQ Att. 28

[117] GOC RGQ Att. 27

[118] Subsection 269TAAC(4)(b)

A1.2.1.5 Amount of subsidy

For Asia Symbol, the Commission has applied the relevant benchmark interest rate to each loan to determine the amount of interest that would have been payable during the investigation period. Where that amount is greater than the interest actually paid during the period, the difference is taken to be the benefit received by the exporter. The sum of the benefits provided by the loans has been divided by total sales revenue to determine the subsidy margin.

The Commission found that UPM did not benefit from this program.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.[119] The subsidy margin determined for Asia Symbol has been applied to uncooperative and all other exporters.

A1.3 CATEGORY TWO: Provision of inputs for less than adequate remuneration

A1.3.1 Programs 2 – 5: Provision of calcium carbonate, caustic soda, titanium dioxide and coal for less than adequate remuneration

A1.3.1.1 Legal basis

The Commission is not aware of the legal basis for these programs.

A1.3.1.2 WTO notification

The Commission is not aware of any WTO notification of these programs.

A1.3.1.3 Eligibility criteria

There are no articulated eligibility criteria for enterprises receiving preferential treatment in the provision of raw materials for less than adequate remuneration.

A1.3.1.4 Is there a subsidy?

The Commission has previously countervailed programs related to the provision of raw materials by state invested enterprise (SIE) public bodies at less than adequate remuneration (LTAR). The Commission also notes that USDOC recently countervailed all four of these programs in relation to uncoated paper from China.

The Commission has examined the available evidence and determined that none of these programs are countervailable in this instance, for the reasons below.

[119] Section 269TAACA.

Program 2: Provision of Calcium Carbonate for LTAR

Program 3: Provision of Caustic Soda for LTAR

Neither of the cooperating exporters identified any suppliers of calcium carbonate or caustic soda as SIEs.

USDOC determined that privately-owned suppliers of these chemicals are public bodies on the basis that the GOC failed to provide information 'regarding the presence of Chinese Communist Party (CCP) officials and organizations within those companies' and 'that the CCP meets the definition of the term 'government … for the limited purpose of applying U.S. CVD law to China'.[120]

The Commission has no evidence to suggest that privately-owned suppliers of calcium carbonate or caustic soda in China are public bodies or private bodies carrying out a governmental function.

Program 4: Provision of Titanium Dioxide for LTAR

Neither of the cooperating exporters identified any purchases of titanium dioxide. This is consistent with USDOC's findings in relation to Asia Symbol.

USDOC only countervailed this program in relation to uncooperative exporters, however similar to the discussion above, the Commission has no evidence that SIEs operate in the titanium dioxide market or that privately-owned enterprises are public bodies.

Program 5: Provision of Coal for LTAR

USDOC found this program to be specific on the basis that the paper producers use coal to generate power and that the power generation industry uses 34 per cent of the coal in China and is therefore a predominant user of coal.[121]

The Commission considers that producers of A4 copy paper are primarily in the paper making industry, not the power generation industry (even if some do sell surplus electricity to the State's grid). Data provided by the GOC from its National Bureau of Statistics shows that paper and paper products manufacturing sector represents only 0.3% of total coal consumption in China.[122] For these reasons the Commission finds that the provision of coal to manufacturers of A4 copy paper is not specific and therefore not countervailable.[123]

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[120] USDOC Uncoated Paper accompanying IDM at p. 15

[121] ibid., p. 30

[122] GOC RGQ Att. 53

[123] Section 269TAAC(1).

A1.4 CATEGORY THREE: Preferential tax policies

A1.4.1 Program 6: VAT rebates relating to raw materials

The Commission has previously found this program to be a countervailable subsidy in the following investigations into goods exported to Australia from China:[124]

Case	Year	Commodity	Program No.
Investigation 198	2013	Hot rolled plate steel	Program 40
Investigation 237	2015	Silicon metal	Program 42
Investigation 316	2016	Grinding balls	Program 29
Investigation 322	2016	Steel reinforcing bar	Program 9
Investigation 331	2016	Rod in coils	Program 9

A1.4.1.1 Legal basis

The Commission is not aware of the legal basis for this program.

A1.4.1.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A1.4.1.3 Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

A1.4.1.4 Is there a subsidy?

Financial contribution

The Commission understands that the law governing this program involves a financial contribution by the GOC, being a refund of government revenue.[125]

Benefit conferred

Where received, the financial contribution is considered to confer a benefit on all goods manufactured by the recipient enterprise because of the VAT refunded on 'comprehensive utilisation of resources'.[126] The GOC did not provide any information in relation to this program in its RGQ in this investigation, however the Commission understands from previous investigations that 'comprehensive utilisation of resources'

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[124] Final Reports for these investigations can be found on the Commission's website www.adcommission.gov.au

[125] REP 316, p. 119

[126] Ibid; the Commission considers in any event that subsection 269TACC(2)(a) applies such that the VAT refund is taken to confer a benefit

refers to the use of waste materials or other resources in production, such as recycled paper, waste water or excess energy.

The Commission found that the two cooperating exporters did not receive any benefit in relation to this program, however Yueyang reported receiving a benefit under this program in its REQ, including the total amount received during the investigation period. Although found to be an uncooperative exporter, the Commission has no reason to question the applicability of this program to Yueyang's production and export of the goods to Australia.

Other evidence that exporters and manufacturers of A4 copy paper in China received a benefit under this program during the investigation period includes:

- Chenming – 2015 annual report includes reference to VAT incentives and reported government grants include an amount for VAT refunds of RMB 6.5 M;[127]
- Nine Dragons – reported other income in 2015-16 annual report includes an amount for VAT refunds of RMB 424.0 M for using recycled paper as raw materials;[128] and
- Yueyang – reported government grants in 2015 annual report includes an amount for VAT refunds of RMB 7.8 M and a reference to VAT refunds received for utilising waste resources in production.[129]

Specificity

It is clear that this program is specific because it benefits only those enterprises[130] that undertake 'comprehensive utilization of resources'. Further, there is no evidence that:

- eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- eligibility for the subsidy is automatic;
- those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; or
- those criteria or conditions are strictly adhered to in the administration of the subsidy.[131]

The Commission therefore finds that this program is specific to a limited number of enterprises and countervailable. There is also evidence, as outlined above, that some of the goods exported to Australia during the investigation period have benefited from this program.

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[127] Shandong Chenming Paper Holdings Limited, Annual Report 2015, pp. 160 and 205

[128] Nine Dragons Paper (Holdings) Limited, Annual Report 2015-16, p. 131

[129] Yueyang Forest & Paper Co., Ltd, Annual Report 2015, p. 141

[130] Subsection 269TAAC(4)(a)

[131] Subsection 269TAAC(3)

A1.4.1.5 Amount of subsidy

The Commission found that neither cooperating exporter benefited from this program.

The Commission examined the evidence referred to above that some of the uncooperative exporters received benefits under this program during the investigation period. The Commission has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period. The Commission has calculated the amount of the reported VAT refund as a percentage of total sales revenue for Chenming, Nine Dragons and Yueyang and applied the highest of these three (Nine Dragons) as the uncooperative exporter subsidy margin for this program.

A1.4.2 Program 7: Preferential income tax program for high or new technology enterprises

The Commission has previously found this program to be a countervailable subsidy in the following investigations into goods exported to Australia from China:

Case	Year	Commodity	Program No.
Investigation 177	2012	Hollow structural sections	Program 35
Investigation 181	2012	Aluminium road wheels	Program 22
Investigation 193	2013	Hot rolled plate steel	Program 10
Investigation 198	2013	Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel	Program 11
Investigation 237	2015	Silicon metal	Program 8
Investigation 238	2015	Deep drawn stainless steel sinks	Program 24
Investigation 248	2015	Aluminium extrusions	Program 23
Investigation 316	2016	Grinding balls	Program 5
Investigation 322	2016	Steel reinforcing bar	Program 5
Investigation 331	2016	Rod in coils	Program 5

A1.4.2.1 Legal basis

The overarching legal basis for the program is contained within the *Enterprise Income Tax Law of the People's Republic of China* (EITL).[132]

A1.4.2.2 WTO notification

The GOC notified this program to the WTO in 2015.[133]

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[132] *Enterprise Income Tax Law of the People's Republic of China*, 16 March 2007 (GOC RGQ Att. 57)

[133] WTO document G/SCM/N/284/CHN, dated 30 October 2015

A1.4.2.3 Eligibility criteria

The GOC provided a copy of administrative guidelines for the accreditation of high-tech enterprises, which sets out the criteria and procedures for the accreditation of an enterprise as a high-tech enterprise.[134] This document is discussed further below under 'specificity'.

A1.4.2.4 Is there a subsidy?

Financial contribution

The law governing this program states that the income tax levied on enterprises recognised as high or new technology enterprises (HNTEs) shall be at the reduced rate of 15%.[135] The standard enterprise income tax rate is 25%.[136] The GOC provided information in its RGQ that confirms the Commission's understanding of this program.

The Commission considers that the reduced level of income tax is a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.

Benefit conferred

Where received, the financial contribution is considered to confer a benefit on all goods manufactured by the recipient enterprise because of the tax savings realised.[137]

USDOC examined this program in its recent uncoated paper investigation and found the Asia Symbol group of companies to have received a benefit under this program during the 2014 calendar year.[138]

In this investigation the Commission found that the two cooperating exporters are both recognised as HNTEs and received a benefit under this program during the investigation period.

The Commission is also satisfied that Chenming and Yueyang received benefits under this program, as the 2015 annual reports of each company state that the company is subject to an income tax rate of 15% due to recognition as a HNTE[139] and this is supported by information provided to the Commission in their respective REQs.

Specificity

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[134] Ministry of Science and Technology and Ministry of Finance, State Administration of Taxation, *Administrative Measures on Accreditation of High-tech Enterprises*, 14 April 2008 (GOC RGQ Att. 56)

[135] EITL, Article 28.

[136] EITL, Article 4.

[137] REP 316 at page 113.

[138] USDOC Uncoated Paper and accompanying IDM at page 33.

[139] Chenming Annual Report 2015 at page 160 and Yueyang Annual Report 2015 at page 113.

It is clear that this program benefits a limited number of particular enterprises,[140] being those that are recognised as HNTEs. The Commission does not consider that the program is unable to be found to be specific on the basis that:[141]

- eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- eligibility for the subsidy is automatic;
- those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
- those criteria or conditions are strictly adhered to in the administration of the subsidy.

In its GQR the GOC provided a copy of administrative guidelines for the accreditation of high-tech enterprises, which sets out the criteria and procedures for the accreditation of an enterprise as a high-tech enterprise for the purposes of access to the reduced income tax rate.[142] The Commission notes that an English translation of the appendix to the guidelines was not provided, however the GOC did provide a translation of this document to USDOC in the course of its uncoated paper investigation.[143] That appendix[144] sets out eight high-technology fields selected for 'key State support':

1) Electronics and Information Technology;
2) Biology and New Medicine Technology;
3) Aerospace Industry;
4) New Materials Technology;
5) High-tech Service Industry;
6) New Energy and Energy-Saving Technology;
7) Resources and Environmental Technology; and
8) High-tech Transformation of Traditional Industries.[145]

It appears that the eligibility for enterprises to be accredited as a HNTE is restricted to enterprises conducting business in those eight fields. The Commission therefore finds that this program is specific to a limited number of enterprises and countervailable. There

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[140] Subsection 269TAAC(4)(a).

[141] Subsection 269TAAC(3).

[142] Ministry of Science and Technology and Ministry of Finance, State Administration of Taxation, *Administrative Measures on Accreditation of High-tech Enterprises*, 14 April 2008 (GOC RGQ Att. 56)

[143] GOC initial questionnaire response to USDOC, 22 May 2015, Exhibit 14

[144] Referred to as an 'annex' in the translation provided to USDOC

[145] USDOC Uncoated Paper accompanying IDM at p. 32

is also evidence as outlined above that the majority of the goods exported to Australia during the investigation period have benefited from this program.

A1.4.2.5 Amount of subsidy

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the enterprise would otherwise have had to pay the taxes associated with the exemption (i.e. the date the enterprise lodged its tax return.[146] In China the financial year for income tax purposes is the calendar year 1 January to 31 December, with tax returns due the following calendar year. Therefore, for this investigation the benefit received during the investigation period is the benefit of any reduction in income tax received for the 2014 financial year.

The Commission found that both cooperating exporters received a benefit under this program during the investigation period. The Commission calculated the benefit for these exporters based on the income tax reported in their respective REQs and allocated the benefit to sales of all goods as a proportion of sales revenue,[147] to determine a subsidy margin for each exporter.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.[148] The highest of the cooperative exporter margins has been applied to uncooperative and all other exporters.

A1.4.3 Program 8: Preferential income tax program for comprehensive utilisation entitling enterprise

The Commission has not previously investigated this program. The GOC did not provide any information in relation to this program in its RGQ.

USDOC examined this program as part of its recent uncoated paper investigation and found that one of the Asia Symbol group of companies (AS Shandong) benefited from the program.[149] The GOC and Asia Symbol cooperated with the USDOC investigation and the USDOC's findings are based on its analysis of information provided by those parties. The Commission has relied upon USDOC's findings and the supporting evidence provided to USDOC in the assessment below.

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[146] *Dumping and Subsidy Manual*, p. 88

[147] Section 269TACD.

[148] Section 269TAACA.

[149] USDOC Uncoated Paper accompanying IDM at pp. 33-34

A1.4.3.1 Legal basis

The overarching legal basis for the program is contained in Article 33 of the EITL.[150]

A1.4.3.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A1.4.3.3 Eligibility criteria

USDOC found that incomes generated by an enterprise from using any of the materials as listed in the *Catalogue of Resources for Comprehensive Utilization by Enterprises Entitled to Preferential Income Tax Treatment* (Catalogue of Resources)[151] as its major raw material, may use ten percent of that income to reduce its overall taxable income.[152]

A1.4.3.4 Is there a subsidy?

Financial contribution

The Commission considers that the reduced level of income tax is a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.[153]

Benefit conferred

Where received, the financial contribution is considered to confer a benefit on all goods manufactured by the recipient enterprise because of the tax savings realised.

Specificity

The Catalogue of Resources identifies 16 eligible resources, grouped into the following three categories:

- Symbiosis, associated mineral resources;
- Waste (liquid), waste gas and waste residue; and
- Renewable resources.

USDOC found that AS Shandong qualified for this program by utilising industrial waste heat and pressure in the production of electricity. AS Shandong advised USDOC that it applied to multiple provincial authorities to obtain a 'Certificate of Resources for

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[150] ibid., p .33

[151] Ministry of Finance, State Administration of Taxation, *The Catalogue of Resources for Comprehensive Utilization Entitling Enterprises to Income Tax Preferences*, No. 177 [2008], 20 August 2008 (GOC Exhibit 63 to the USDOC Uncoated Paper investigation); papermaking raw materials are listed at item 15 of GOC Exhibit 63 to the USDOC Uncoated Paper investigation.

[152]USDOC Uncoated Paper accompanying IDM at p. 33

[153] ibid., p. 34; see the definition of 'subsidy' in subsection 269T(1).

Comprehensive Utilization' and filed the certificate with the local taxation authority. USDOC therefore found that the program is limited to certain enterprises that utilise certain resources specified by the government.[154] The Commission was not provided any evidence or information during the course of the investigation that would suggest that any of the circumstances in subsection 269TAAC(3) that would preclude a finding of specificity apply to this program.

The Commission found no evidence that:

- eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- eligibility for the subsidy is automatic;
- those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; or
- those criteria or conditions are strictly adhered to in the administration of the subsidy.[155]

The Commission therefore finds that this program is specific to a limited number of enterprises and countervailable. There is also evidence from the USDOC investigation that producers of copy paper in China have benefited from this program.[156]

A1.4.3.5 Amount of subsidy

The Commission found that neither cooperating exporter benefited from this program.

The Commission examined the evidence referred to above that USDOC found AS Shandong to have received a received benefit under this program during the 12-month period immediately preceding the investigation period.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.[157] The Commission has applied the USDOC-determined rate for AS Shandong as the uncooperative exporter subsidy margin for this program.

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[154] ibid., pp. 33-34

[155] Subsection 269TAAC(3).

[156] See evidence referred to in USDOC Uncoated Paper accompanying IDM at pages 33 and 34.

[157] Section 269TAACA.

A1.4.4 Program 9: Tax allowance for special equipment for water and energy-saving purchased by enterprises

The Commission has not previously investigated this program. The GOC did not provide any information in relation to this program in its RGQ.

USDOC examined this program as part of its recent uncoated paper investigation and found that Asia Symbol benefited from the program.[158] Asia Symbol cooperated with the USDOC investigation and the USDOC's findings are based on its analysis of information provided by the exporter. The Commission has relied upon USDOC's findings and the supporting evidence provided to USDOC in the assessment below.

A1.4.4.1 Legal basis

Asia Symbol advised USDOC that the 'List of income tax preference for special equipment for water and energy-saving (2008 version) (Cai Shui [2008] no. 48)' provided the legal basis for this program.[159]

A1.4.4.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A1.4.4.3 Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

A1.4.4.4 Is there a subsidy?

Financial contribution

The Commission considers that the reduced level of income tax is a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue due to the GOC by eligible enterprises in China.[160]

Benefit conferred

Where received, the financial contribution is considered to confer a benefit on all goods manufactured by the recipient enterprise because of the tax savings realised.

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[158] USDOC Uncoated Paper accompanying IDM at page 34.

[159] Ministry of Finance, State Administration of Taxation, *Notice on the Implementation of the Catalog of Enterprise Income Tax on Special Equipment for Environmental Protection, Catalog of Enterprise Income Tax on Special Equipment for Energy Saving and Water Saving, Catalog of Enterprise Income Tax on Special Equipment for Safety in Production*, Cai Shui (2008) No. 48, 23 September 2008 http://www.chinatax.gov.cn/n810341/n810765/n812171/n812685/c1191206/content.html

[160] USDOC Uncoated Paper accompanying IDM at p. 34; see the definition of 'subsidy' in subsection 269T(1).

USDOC found Asia Symbol to have received a benefit under this program during the 2014 calendar year.[161]

Specificity

Asia Symbol reported to USDOC that it reduced its income tax payable because of its purchases of equipment for water and energy-saving.[162] Asia Symbol stated that:

> 'if a company purchases and uses the equipment listed in the Cai Shui (2008) No. 48, it can ask for tax relief from the income tax payable of the current year, based on 10% of the investment amount on equipment'.[163]

USDOC relied on 'adverse facts available' to determine that the program is specific because the GOC failed to provide information which was requested of it regarding the details of the government assistance.[164]

It is clear that this program benefits a limited number of particular enterprises,[165] being those that purchase and use certain types of equipment for certain purposes.[166] Further, there is no evidence that:[167]

- eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- eligibility for the subsidy is automatic;
- those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; or
- those criteria or conditions are strictly adhered to in the administration of the subsidy.

The Commission therefore finds that this program is specific to a limited number of enterprises and countervailable. There is also evidence as outlined above that some of the goods exported to Australia have benefited from this program.

A1.4.4.5 Amount of subsidy

The Commission found that neither cooperating exporter benefited from this program.

The Commission examined the evidence referred to above that USDOC found AS Shandong to have received a received benefit under this program during the 12-

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[161] ibid.

[162] ibid.

[163] Asia Symbol's 3rd supplemental questionnaire response to USDOC at p. 8

[164] USDOC Uncoated Paper accompanying IDM at p. 34

[165] Subsection 269TAAC(4)(a)

[166] Asia Symbol's 3rd supplemental questionnaire response to USDOC at p. 8

[167] Subsection 269TAAC(3)

month period immediately preceding the investigation period and no information or evidence was provided to the effect that this program would cease after that time.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.[168] The Commission has applied the USDOC-determined rate for AS Shandong as the uncooperative exporter subsidy margin for this program.

A1.4.5 Program 10: VAT and import tariff exemptions for imported equipment

The Commission has previously found this program to be a countervailable subsidy in the following investigations into goods exported to Australia from China:

Case	Year	Commodity	Program No.
Investigation 148	2010	Aluminium extrusions	Program 21
Investigation 177	2012	Hollow structural sections	Program 14
Investigation 181	2012	Aluminium road wheels	Program 31
Investigation 193	2013	Hot rolled plate steel	Program 11
Investigation 198	2013	Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel	Program 12
Investigation 237	2015	Silicon metal	Program 9
Investigation 248	2015	Aluminium extrusions	Program 15
Investigation 316	2016	Grinding balls	Program 6
Investigation 322	2016	Steel reinforcing bar	Program 8
Investigation 331	2016	Rod in coils	Program 8

A1.4.5.1 Legal basis

The legal basis to establish this subsidy is pursuant to the following:[169]

- *Notice of the State Council on the Adjustment of Tax Policies for Imported Equipment* (Guo Fa [1997] No. 37);[170]
- *Catalogue for the Guidance of the Foreign Investment Industries* (2007);
- *Catalogue of Encouraged Development of Key Industries, Products and Technologies* (2004);

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[168] Section 269TAACA.

[169] GOC RGQ, pp. 55-57

[170] ibid. at Att. 61

- *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects*; and
- *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects*.

The Commission understands that the program operates on a national level. The NDRC or its provincial branches issue certificates under this program, while local customs authorities administer the VAT and tariff exemptions.

The Commission also understands that while the tariff exemption is still in effect, the GOC terminated VAT exemptions for imported equipment on 1 January 2009, according to the *Announcement of Ministry of Finance, China's Customs and State Administration of Taxation* (No. 43 of 2008).[171] However, as the *Dumping and Subsidy Manual* notes, 'subsidies used for acquisition of capital assets, for example, will be amortised over the expected useful life of the assets'.[172] Therefore, equipment imported VAT-free prior to 2009 may still have conferred a benefit on goods produced during the investigation period.

A1.4.5.2 WTO notification

The GOC notified this program to the WTO in 2006.[173]

A1.4.5.3 Eligibility criteria

Under Articles 1 and 2 of Guo Fa [1997] No. 37:

- FIEs are eligible if the project is covered under the preferential or restrictive-B categories of the *Catalogue for the Guidance of the Foreign Investment Industries* (2007); and
- domestic enterprises are eligible if the project falls within the *Catalogue of Encouraged Development of Key Industries, Products and Technologies* (2004).

Qualified enterprises can be exempted from paying tariffs and/or VAT on purchases of selected imported equipment if it is for self-use and the equipment is not listed in the *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Domestic Invested Projects* or the *Directory of Imported Commodities of Non-Tax-Exemption to be Used in Foreign Invested Projects*.

A1.4.5.4 Is there a subsidy?

Financial contribution

[171] GOC RGQ at Att. 60

[172] p. 83

[173] WTO document G/SCM/N/123/CHN, dated 13 April 2006

The Commission considers that this program is a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue due to the GOC (tariff and VAT) by eligible enterprises in China.

Benefit conferred

The Commission considers that, depending on the nature of the imported equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of A4 copy paper. Where received, this financial contribution is considered to confer a benefit because of the tariff and VAT savings realised.

Where exporters of A4 copy paper during the investigation period received tax savings under the program for equipment related to their copy paper production, it would therefore confer a benefit in relation to those goods.

USDOC found that the Asia Symbol Group of companies received benefits under this program for equipment imported prior to 2014. Consistent with the Commission's approach as set out in the *Dumping and Subsidy Manual*, USDOC allocated the benefit received across the average useful life of the relevant imported assets and apportioned across all goods produced using those assets.[174]

Specificity

It is clear from the information provided by the GOC that this program benefits a limited number of particular enterprises,[175] being those that import equipment for certain eligible projects. Further, there is no evidence that:[176]

- eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- eligibility for the subsidy is automatic;
- those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
- those criteria or conditions are strictly adhered to in the administration of the subsidy.

The Commission therefore finds that this program is specific to a limited number of enterprises and countervailable. There is also evidence, as outlined above, that some of the goods exported to Australia during the investigation period have benefited from this program.

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[174] USDOC Uncoated Paper accompanying IDM at pp. 35-36

[175] Subsection 269TAAC(4)(a)

[176] Subsection 269TAAC(3)

A1.4.5.5 Amount of subsidy

The Commission found that Asia Symbol benefited from this program during the investigation period. The Commission calculated the benefit for this exporter based on the tariff exemption reported in its REQ and allocated the benefit to sales of all goods as a proportion of sales revenue, to determine a subsidy margin for Asia Symbol.

The Commission found that UPM did not benefit from this program.

The Commission examined the evidence referred to above that USDOC found the Asia Symbol Group of companies to have received a received benefit under this program during the 12-month period immediately preceding the investigation period.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.[177] The Commission has applied the USDOC-determined rate for the Asia Symbol Group as the uncooperative exporter subsidy margin for this program.

A1.4.6 Program 11: VAT rebates on FIE purchases of Chinese made equipment

The Commission has not previously investigated this program. The GOC did not provide any information in relation to this program in its RGQ.

USDOC examined this program as part of its recent uncoated paper investigation and found that one of the Asia Symbol group of companies (AS Shandong) benefited from the program.[178] Asia Symbol cooperated with the USDOC investigation and the USDOC's findings are based on its analysis of information provided by the exporter. The Commission has relied upon USDOC's findings and the supporting evidence provided to USDOC in the assessment below.

A1.4.6.1 Legal basis

AS Shandong advised USDOC that 'Article 3 and Article 4 of the *Pilot Measures of Tax Rebate Management Method for Purchase of Domestic-Made Equipment by Foreign-Invested Program*' provided the legal basis for this program.[179]

A1.4.6.2 WTO notification

The Commission is not aware of any WTO notification of this program.

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[177] Section 269TAACA.

[178] USDOC Uncoated Paper accompanying IDM at p. 36

[179] AS Shandong's initial questionnaire response to USDOC at p. 32

A1.4.6.3 Eligibility criteria

The Commission is not aware of the eligibility criteria for this program.

A1.4.6.4 Is there a subsidy?

Financial contribution

The Commission considers that this program is a financial contribution by the GOC, which involves the foregoing, or non-collection, of revenue due to the GOC (VAT) by eligible enterprises in China.[180]

Benefit conferred

The Commission considers that, depending on the nature of the purchased equipment, a financial contribution made under this program could be made in relation to the production, manufacture or export of A4 copy paper. Where received, this financial contribution is considered to confer a benefit because of the VAT savings realised.

Where exporters of A4 copy paper during the investigation period received tax savings under the program for equipment related to their copy paper production, it would therefore confer a benefit in relation to those goods.

USDOC found that Asia Symbol received benefits under this program for equipment imported prior to 2014. Consistent with the Commission's approach as set out in the *Dumping and Subsidy Manual*, USDOC allocated the benefit received across the average useful life of the relevant imported assets and apportioned across all goods produced using those assets.[181]

Specificity

AS Shandong stated that to be eligible for the program:

1) The enterprise must be a foreign-investment enterprises that is a general VAT taxpayer; and
2) the related project must be in the 'encouraged' category of the *Foreign Investment Industry Guidance Catalogue* or it must be included in the *Foreign Investment Advantageous Industry Catalogue in Midwest*.

To receive this benefit, AS Shandong obtained a 'Confirmation of Foreign-invested and Domestic-invested Project Encouraged by the State' then applied to the local taxation authority for the VAT rebate.[182]

[180] USDOC Uncoated Paper accompanying IDM at p. 37; see the definition of 'subsidy' in subsection 269T(1).

[181] ibid.

[182] AS Shandong's initial questionnaire response to USDOC at pp. 32-33

USDOC found the program to be specific on the basis that VAT rebates are contingent upon the use of domestic over imported equipment.[183]

The Commission considers that, based on the available evidence, the subsidy is specific on the basis that it is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.[184] Further, the Commission found no evidence that:

- eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification;
- eligibility for the subsidy is automatic;
- those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; or
- those criteria or conditions are strictly adhered to in the administration of the subsidy.[185]

The Commission therefore finds that this program is countervailable. There is also evidence from the USDOC investigation that producers of copy paper in China have benefited from this program.[186]

A1.4.6.5 Amount of subsidy

The Commission found that neither cooperating exporter benefited from this program.

The Commission examined the evidence referred to above that USDOC found AS Shandong to have received a benefit under this program during the 12-month period immediately preceding the investigation period.

The Commission is satisfied that uncooperative and all other exporters have not given the Commission information relevant to the investigation within a reasonable period and so the Commission has determined that these exporters have received a countervailable subsidy under this program during the investigation period on the basis of all available facts and reasonable assumptions.[187] The Commission has applied the USDOC-determined rate for AS Shandong as the uncooperative exporter subsidy margin for this program.

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[183] USDOC Uncoated Paper accompanying IDM at pp. 36-37

[184] Subsection 269TAAC(2)(d)

[185] Subsection 269TAAC(3)

[186] See evidence referred to in USDOC Uncoated Paper accompanying IDM at pages 36 and 37.

[187] Section 269TAACA.

A1.5 CATEGORY FOUR: Financial grants

The Commission investigated 27 programs in this category, comprising five grant programs identified in Australian Paper's application and a further 22 programs identified by the cooperating exporters. The Commission's assessment as to whether these programs are countervailable subsidies and the method of subsidy calculation under these programs, is contained in the below table. The Commission is not aware of any WTO notification of any of the programs below.

Program	Background	Legal basis	Eligibility Criteria	Is there a subsidy?	Is the subsidy countervailable?	Method of subsidy margin calculation
Program 12 – Subsidies for energy efficiency and environmental protection Program 13 – Support fund for environmental protection project - Rizaho City Program 14 – Support fund for environmental protection input Program 15 – Support fund for environmental protection project	USDOC examined these programs as part of its recent uncoated paper investigation and found that one of the Asia Symbol group of companies (AS Shandong) benefited from the four programs.[188]	The Commission is not aware of any legal basis for these programs. AS Shandong submitted to USDOC that the grants were from one of the following local government bodies: • Rizhao City Government; • Rizhao Municipal Finance Bureau; or • Rizhao Economic and Technological	The Commission is not aware of the eligibility criteria for these programs.	A grant provided under these programs would be a financial contribution by the GOC, which involves a direct transfer of funds by GOC to the recipient enterprises in China. Due to the nature of the grants, and in light of the limited information available, it is considered that a financial contribution under each program would be made in connection to the production, manufacture or export of all goods of the recipient enterprise (including copy paper). This financial contribution is considered to confer a benefit to recipient manufacturers of copy paper because it is a direct financial payment from the GOC (s.269TACC(2)).	On the evidence available to the Commission only some paper manufacturers are eligible for these grants. As the criteria or conditions providing access to the subsidy favours particular enterprises over other enterprises in China, the programs are considered to be specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> Neither of the cooperative exporters had a benefit conferred to them under these programs. <u>Uncooperative exporters</u> As neither the GOC nor uncooperative exporters provided information as to whether these exporters benefited from these programs, the Commission has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under these programs or similar programs during the investigation period in the form of direct transfers of funds (grants).[190]

[188] USDOC Uncoated Paper accompanying IDM at pp. 37-39

[190] Pursuant to ss.269TAACA(1)(c) and 269TAACA(1)(d), the Commissioner has acted on the basis of all the facts available and made reasonable assumptions in order to determine whether a countervailable subsidy has been received in respect of the goods. In the absence of usage information, the Commissioner has determined it is reasonable to assume all other exporters received benefits under these programs or similar programs in locations

		Development Area Govt.[189]		Where exporters of A4 copy paper during the investigation period received a grant under any of these programs, this would therefore confer a benefit in relation to the goods, and this financial contribution meets the definition of a subsidy under s.269T.		In calculating the amount of subsidy attributable to that benefit, the Commission has calculated the total subsidy margin for AS Shandong as found by USDOC for these programs (0.53%).
Program 16 – City bonus for export activity from Finance Bureau	Both cooperating exporters reported receiving benefits under this program in their REQs. In its RGQ the GOC stated that at least one exporter received a benefit under this program and that the GOC was continuing to verify the amount of any financial contribution. The GOC directed the Commission to the exporter REQs for further details. USDOC examined this program as part of its recent uncoated paper investigation and found that Asia Symbol Group of	The Commission is not aware of any legal basis for this program. The exporters claimed that there is no specific application and approval process and the grant was provided by the local Bureau of Commerce or Finance Bureau.	The Commission is not aware of the eligibility criteria for this program. One of the exporters claimed that grant is linked to increase in import and export activity based on Chinese Customs criteria, but no further details were provided.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Being an export-oriented subsidy, only enterprises that export goods from China are eligible. The Commission considers this makes the subsidy 'contingent on export performance' and hence the subsidy is specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that both cooperating exporters received a benefit under this program during the investigation period. The Commission calculated the benefit for these exporters based on the grant amount reported in their respective REQs and allocated the benefit to all exported goods as a proportion of export sales revenue, to determine a margin for each exporter. <u>Uncooperative exporters</u> The Commission has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period. The Commission has applied the rate determined

outside Rizhao, based on the fact that USDOC found that AS Shandong received benefits under these programs in the 12-month period immediately preceding the investigation period.

[189] ibid.

	companies benefited from the program.[191]					by USDOC for the Asia Symbol Group as the uncooperative exporter margin for this program.
Program 17 – Award for eco civilization of year	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Environment Protection Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for good performance for environmental protection for more than three years.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under this program during the investigation period. The Commission calculated the benefit as the amount of the grant and allocated the benefit to sales of all goods as a proportion of sales revenue, to determine a margin for the program. <u>Uncooperative exporters</u> The Commission has considered all relevant information to conclude that it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period. The Commission has applied the rate determined for UPM as the uncooperative exporter margin for this program.
Program 18 – Subsidy of water balance testing support	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for passing a water	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for

[191] USDOC Uncoated Paper accompanying IDM at p. 39

		and the grant was provided by the local Water Bureau.	balance test every five years.		by reference to s.269TAAC(3).	Program 17 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 19 – Award for pollution sources facility maintenance	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Environment Protection Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was an annual allowance for maintaining its automatic pollutant measurement equipment in good condition.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	Cooperative exporters The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 20 – Subsidy for flue-gas desulfurization (FGD) project	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is an application and audit/approval process and the grant was provided by the local Environment Protection Bureau. The exporter provided copies of relevant documents with no English translation.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for air emission modification based on new investment to modify its existing “Boilers Fluegas Cleaning System” (5% of the total investment).	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	Cooperative exporters The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 17 to determine a margin for this program.

Program 21 – Subsidy of water usage	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Water Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for passing a water audit as part of a pilot program.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	Cooperative exporters The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 22 – Safety production award	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Industrial Safety Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was an award for good safety performance.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	Cooperative exporters The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 23 – Award of clean run	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Environment Protection Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was an award for clean production.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	Cooperative exporters The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 17 to determine a

						margin for this program.
Program 24 – Subsidy for workstation of graduate student	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is an application process and the grant was provided by the local Department of Science and Technology. The exporter provided copies of relevant documents with no English translation.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was to obtain a workstation assessment for a graduate student that was working on one of 13 designated science and technology infrastructure projects in the local area.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 25 – Award for high tech product award	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Economic and Technology Development Zone.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for high smoothness paper certified as a high-tech product.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 26 – Subsidy for patent application support from Changshu Economic Development Zone (CEDZ) Program 27 – Subsidy for patent	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is an application process and the grants were	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grants were received after obtaining	Applying the same reasoning as for Programs 12 to 15, these grants are financial contributions that meet the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, these subsidies favour particular enterprises over other enterprises in China and are therefore specific.	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under these programs during the investigation period. The Commission has applied the same methodology for

application support Changshu Municipal Department of Science and Technology		provided by the local Economic and Technology Development Zone and local Department of Science and Technology, respectively. The exporter provided copies of relevant documents with no English translation.	assessment of patents for five inventions and 12 utility models.		The specificity of the subsidies is not excepted by reference to s.269TAAC(3).	Program 17 to determine a margin for these programs. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 17 to determine a margin for these programs.
Program 28 – Subsidy of MNCs function center	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is an application process and the grant was provided by the local Department of Commerce. The exporter provided copies of relevant documents with no English translation.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received after obtaining assessment as a multinational corporation.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 29 – Training subsidy on new employee training for PM3 Program 30 – Individual tax refund for about 20 management level people	One of the cooperating exporters reported receiving a benefit under these programs in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is an application process and the grants were provided by the local Economic and Technology	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grants were received based on its investment in a new paper machine.	Applying the same reasoning as for Programs 12 to 15, these grants are financial contributions that meet the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, these subsidies favour particular enterprises over other enterprises in China and are therefore specific. The specificity of the subsidies is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under these programs during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for these programs. <u>Uncooperative exporters</u> The Commission has applied

		Development Zone. The exporter provided copies of relevant documents with no English translation.				the same methodology for Program 17 to determine a margin for these programs.
Program 31 – Innovation ability development fund to R&D center	One of the cooperating exporters reported receiving a benefit under this program in its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is an application process and the grant was provided by the local Department of Science and Technology. The exporter provided copies of relevant documents with no English translation.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received based on recognition as a key R&D centre at provincial level.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that UPM received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 17 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 17 to determine a margin for this program.
Program 32 – Subsidy income of energy management system	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local government.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for its energy management system.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission calculated the benefit as the amount of the grant and allocated the benefit to sales of all goods as a proportion of sales revenue, to determine a margin for the program. <u>Uncooperative exporters</u> The Commission has considered all relevant information to conclude that

						it is likely that uncooperative and all other exporters have had benefits conferred to them under this program during the investigation period. The Commission has applied the rate determined for Asia Symbol as the uncooperative exporter margin for this program.
Program 33 – Import interest subsidy	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local government.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for imported products and technology.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 32 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 32 to determine a margin for this program.
Program 34 – Bonus for the third award of Jiangmen City Technology received from Jiangmen Technology Bureau	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Technology Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for R&D on high whiteness top grade copy paper without impurities.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 32 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 32 to determine a margin for this program.

Program 35 – Special fund for energy saving	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local government.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for its energy management centre construction project.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 32 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 32 to determine a margin for this program.
Program 36 – Special support fund of Safety Production Association (Jiangmen City)	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local government.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for acquiring a level 2 safety production standardisation license.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	<u>Cooperative exporters</u> The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 32 to determine a margin for this program. <u>Uncooperative exporters</u> The Commission has applied the same methodology for Program 32 to determine a margin for this program.
Program 37 – Fund for encouraging the development of foreign trade	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local government.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for encouraging the development of foreign trade	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Being an export-oriented subsidy, only enterprises that export goods from China appear to be eligible. The Commission considers this makes the subsidy 'contingent on export performance' and hence the subsidy is specific.	<u>Cooperative exporters</u> The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission calculated the benefit as the amount of the grant and allocated the benefit to all exported goods as a proportion of export sales

					The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	revenue, to determine a margin for the program. Uncooperative exporters The Commission has applied the same methodology for Program 32 to determine a margin for this program.The Commission has applied the same methodology for Program 32 to determine a margin for this program.
Program 38 – Subsidy of environmental protection	One of the cooperating exporters was found to have received a benefit under this program during verification of its REQ.	The Commission is not aware of any legal basis for this program. The exporter claimed that there is no specific application and approval process and the grant was provided by the local Environment Protection Bureau.	The Commission is not aware of the eligibility criteria for this program. The exporter claimed that the grant was received for on-line monitoring the source of pollution.	Applying the same reasoning as for Programs 12 to 15, this grant is a financial contribution that meets the definition of a subsidy under s.269T.	Applying the same reasoning as for Programs 12 to 15, this subsidy favours particular enterprises over other enterprises in China and is therefore specific. The specificity of the subsidy is not excepted by reference to s.269TAAC(3).	Cooperative exporters The Commission found that Asia Symbol received a benefit under this program during the investigation period. The Commission has applied the same methodology for Program 32 to determine a margin for this program. Uncooperative exporters The Commission has applied the same methodology for Program 32 to determine a margin for this program.

Appendix 2: Assessment of countervailable subsidies - Indonesia

A2.1 Introduction

This appendix details the Commission's assessment of the subsidy programs investigated in relation to A4 copy paper exported from Indonesia. The relevant legislation against which the subsidies are assessed is set out in subsection 269T(1) (definition of 'subsidy'), sections 269TACC, 269TAAC and 269TACD.

A2.1.1 Overview

A2.1.1.1 Introduction and summary of findings

The four investigated programs, and the Commission's assessment of whether each is countervailable in relation to A4 copy paper exported from Indonesia, is outlined in the below table.

Program Number	Program Name	Program Type	Countervailable in relation to the goods (Yes/No)
1	Provision of access to and use of land for less than adequate remuneration	Provision of goods	Yes
2	Government of Indonesia's Log Export Ban	Provision of goods	No
3	Debt Forgiveness – Buyback of debt from the Government of Indonesia	Financial benefit	Yes
4	Income tax facilities for capital investment in certain business fields and/or certain regions	Preferential tax policy	Yes

Table 5 – Investigated Programs - Indonesia

A2.1.2 Information considered by the Commission

A2.1.2.1 Australian Paper's Application

The Commission has relied upon information submitted by Australian Paper in its application and in subsequent submissions with respect to the Commission's investigation of 3 countervailable subsidy programs (Programs 1 – 3) that were allegedly received by Indonesian exporters of A4 copy paper exported to Australia.

A2.1.2.2 Information provided by exporters

The Commission has relied upon information provided by exporters in assessing the alleged subsidy programs. This includes information provided by exporters in the exporter questionnaire responses, as well as information provided by exporters during verification visits and in submissions. An additional program was identified during the exporter verification visits (Program 4).

A2.1.2.3 Information provided by the Government of Indonesia

The Commission included questions relating to programs 1 to 3 in the government questionnaires that were sent to the GOI. The GOI provided a detailed response to the questionnaire sent.

Further submissions were received from the GOI during the investigation and these have been considered.

A2.1.2.4 Other information considered

The Commission also considered as part of this assessment:

- information submitted by interested parties in submissions to the investigation; and
- other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in Indonesia as described in relevant sections below.

A2.2 CATEGORY ONE: Provision of inputs for less than adequate remuneration

A2.2.1 Program 1: Provision of access to and use of land for less than adequate remuneration

A2.2.1.1 Legal basis

The relevant Indonesian regulations relating to the specified levies concerning concessions held on state owned land are summarised in the table below.

Levy	Relevant Regulation(s)
DR	MOF 52/2014
PSDH	MOF 52/2014
PNT	MOF 52/2014
Tariff	GR 12/2014
Benchmark Price	MOF 68/2014

Table A2.1: Regulations relating to Forest Concession holders levy charges

A2.2.1.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A2.2.1.3 Eligibility criteria

These relevant levies relate to concessions held on state owned land. The GOI advised in its questionnaire response that the vast proportion of timber sourced by the paper industry during 2015 was from state owned forest areas.

A2.2.1.4 Is there a subsidy?

Australian Paper's Application

In its application Australian Paper submitted that the "provision of standing timber" (which is also referred to as 'stumpage') by the GOI was a countervailable subsidy. The Commission has assessed the material provided by the applicant, other interested parties and the GOI and considers that the program is better characterised as the provision of access to and use of land for growing timber.

Australian Paper stated that US Department of Commerce (USDOC) had previously established that the Indonesian paper industry had received countervailable subsidies in the *2007 Coated Free Sheet (CFS) from Indonesia* case (the CFS case).[192] This included the provision of standing timber, for less than adequate remuneration. Australian Paper further contended that Indonesian producers were continuing to benefit from this subsidy.

In summary Australian Paper advised, based on the CFS case, that:

- *"Of the 57 million hectares of public harvestable land, there was 233,811 hectares of private forest land (or 0.4 per cent of total harvestable forest land in Indonesia)"*
- *"The GoI allows timber to be harvested from the government-owned land under two main types of licenses. HPH' licenses to harvest timber in the natural forest; and 'HTI' licenses to establish and harvest timber from plantations. HTI license holders pay "cash stumpage fees" known as PSDH royalty fees which are paid per unit of timber harvested. HTI license holders pay "cash stumpage fees" known as PSDH royalty fees which are paid per unit of timber harvested. License holders in Jambi province also pay a PDSA fee for harvest from plantations."*

Australian paper argued that 'provision of standing timber' by the GOI was a countervailable subsidy as it was specific, provided a financial contribution and provided a benefit.

Levies Applicable to Indonesian forest concessions on state owned land

Based on information provided in the Indonesian exporters' and the GOI questionnaire responses[193], the Commission identified that the following levies relate to forest concessions[194] on state owned land:

- Provisi Sumber Daya Hutan ("PSDH"). This is a 'Forest Resource Provision' and is a royalty fee that the GOI requires concession holders to pay when they exploit forest resources within their concession.
- Dana Reboisasi ("DR") – This is a 'Reforestation fund' fee and is a fee collected by the GOI for the purpose of reforestation activities elsewhere.
- Penggantian Nilai Tegakan ("PNT") – This is a 'Replacement value' charge, and is payable in relation to timber harvested from natural forests.

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[192] Federal Register, Volume 72, No. 206, 25 October 2007, Coated Free Sheet Paper from Indonesia, Final Affirmative Countervailing Duty Determination

[193] EPR documents 18-21, 27.

[194] The term "concession" is used here to mean the right to use land or other property for a specified purpose, granted by a government rather than a grant or preferential allowance, *Oxford Dictionaries* at oxforddictionaries.com.

PSDH, DR and PNT must be paid only if the timber is harvested from "hutan alam" (natural forest). If the timber is self-planted by the logging company on state-owned land, the company is only required to pay PSDH.

In their respective export questionnaire responses, the cooperating Indonesian exporters provided information on the amount of PSDH, DR and PNT paid in relation to logs supplied during the investigation period.

Financial contribution

The statutory definition of subsidy relevant to Program 1 requires there to be a financial contribution by a government of the country of export or by a public body of that country that involves the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure.[195] The Commission's position is that a financial contribution is a transaction through which something of economic value is transferred by the government.[196]

Submissions were received from parties arguing that there was no provision of a financial contribution by the GOI. Submissions from the Sinar Mas Group[197] argued that the intent of the laws governing stumpage was to collect revenue, not to confer a financial contribution or benefit. RAK in a submission stated that all paper used in its production of A4 copy paper was sourced from plantations where the timber had been grown at the concession holders own cost and that there was no provision of timber by the GOI.[198]. The GOI advised in submissions[199] that the fees payable to the GOI were simply fees payable to GOI for the use of the land under the concession and were in nature of a resource use fee. The GOI also stated in a submission[200] that there is *"…no 'sale' of the timber harvested on such plantations by the GOI for a 'price'…"*.

The Commission notes that the land on which a timber concession is granted is state owned. The GOI, in effect, provides access to and use of such land under the concession as a service to timber growers. Provision of access to and use of such land under the concession constitutes a transaction through which something of economic value is transferred by the government. Accordingly, the Commission considers that a financial contribution from the government arises through the granting of access to and use of land to timber growers under the concession.[201]

Benefit conferred

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[195] Subsection 269T(1).

[196] See page 76 of the Manual.

[197] EPR document 42 and 105.

[198] EPR document 63.

[199] EPR documents 70 and 112.

[200] EPR document 112.

[201] The Commission considers that this is best characterised as the provision of a service by the GOI other than in the course of providing normal infrastructure.

The statutory definition of subsidy provides that a financial contribution must confer a benefit (whether directly or indirectly) in relation to the goods exported to Australia.[202] In examining the benefit conferred, the Commission will seek to understand whether recipients of the financial contribution are better off than they otherwise would have been if, absent the financial contribution, they had to turn to the market.[203] The Commission has had regard to the guidelines in subsection 269TACC(3) and notes that in circumstances where there has been provision of goods or services by a government such provision does not confer a benefit unless the goods or services are provided for less than adequate remuneration.[204] The benefit conferred is the extent to which the price paid to the government for the goods or services is less than adequate remuneration, namely the remuneration payable in relation to prevailing market conditions for the goods or services.[205] In practice the Commission may assess the benefit conferred by reference to an appropriate benchmark that reflects prevailing market conditions for the goods or services.

All cooperative exporters provided information indicating that only plantation grown timber was used for the purposes of manufacturing A4 copy paper and, as a consequence, only the PSDH levy was applicable in relation to the state owned concessions used to source pulpwood for the purposes manufacturing A4 copy paper during 2015.

The Commission understands that the PSDH tariff is determined by the GOI in accordance with regulation MOF 68/2014, using, in part, a pricing benchmark to determine the PSDH fee. A copy of MOF 68/2014 was provided to the Commission by an exporter.[206] In relation to the PSDH levy, MOF 68/2014 specifies in Article 1 that:

> *"Forest Resources Charge hereinafter shall be referred to as PSDH shall be the levy as the replacement of intrinsic value of forest products levied from state forest and or against forest products available in forest area where the status of which has been released to become non-forest area and or state forest which is allocated for the development of outside forestry sector."*

MOF 68/2014 details the method for calculating the PSDH payable which, in part, is based on a prescribed standard price. In this regard, Article 1 of the regulation further specifies that the:

> *"Standard Price of Forest products hereinafter shall be referred to as Standard Prices is stipulated based on the average selling prices of forest products in the place of collection for natural timber products and non-timber products, and the stand average values for the wood forest products from plantation forest."*

MOF 68/2014 further stipulates that:

- a standard price constitutes the calculation of the PSDH,
- the standard price is prescribed in an appendix attached to the regulation; and

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[202] Subsection 269T(1)

[203] See page 81 of the *Dumping and Subsidy Manual*

[204] Subsection 269TACC(3)(d).

[205] See page 93 of the *Dumping and Subsidy Manual*

[206] See Exporter questionnaire response from the SMG exporters.

- the calculation of the PSDH is based on a tariff multiplied by the standard price.

If the standard price for the relevant forest product, namely standing trees, is set below the appropriate market rate, the PSDH calculated as payable to the GOI will be less than it would be if the PSDH was calculated using the market rate. Accordingly, the benefit conferred is the difference between the PSDH calculated using the appropriate market rate for standing trees and the PSDH calculated using the standard price. The Commission understands that the standard price for a standing tree is Rp 90,000 per cubic metre, the tariff rate is 6 per cent and accordingly the PSDH is Rp 5,400 per cubic metre.[207]

For the purposes of assessing whether a benefit had been received, the Commission sought to assess the adequacy of the revenue received by the GOI for the applicable standard prices specified in MOF 68/2014.

Consistent with subsection 269TACC(4), the adequacy of remuneration was determined by reference to a relevant benchmark for adequate remuneration, namely a market value for leasing or using the land, having regard to prevailing market conditions in Indonesia. The Commission received submissions arguing that, under Article 14(d) of the *Agreement on Subsidies and Countervailing Measures* (SCMA), the adequacy of remuneration must be determined only by reference to prices in the country of provision or purchase.[208] Under Australian law adequacy of remuneration is assessed under subsection 269TACC(4). The language of subsection 269TACC(4) is not as prescriptive as argued in those submissions. Subsection 269TACC(4) requires that the Commission "have regard to" prevailing market conditions for like goods or services in Indonesia – there is no requirement for example that adequate remuneration must be determined *solely* by reference to prevailing market conditions for those goods or services in Indonesia. The Commission has had regard to prevailing market conditions for access to land in Indonesia in the following assessment of options for determining a benchmark or proxy measure. Given the tradeable nature of logs the Commission considers that log prices are a reasonable proxy for the cost of access to land for growing logs.

The three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are:[209]

(i) private domestic prices;

(ii) import prices; and

(iii) external benchmarks.

The Commission's assessment of each of these options for determining a benchmark is discussed below.

(i) Private domestic prices

The Commission considers that the price of logs used in the production of paper in Indonesia is distorted as a result of the GOI's involvement in the forestry industry

[207] See EPR document 19 at page 48

[208] See EPR documents 35, 42, 44, 64 and 105.

[209] United States – Countervailing and Anti-dumping Measures on Certain Products from China, Report of the Appellate Body WT/DS379/AB/R

through its support for the development of timber plantations and prohibition on exporting logs. As a consequence, benchmark pricing from domestic logs would reflect similar distortions rather than market prices.

Consequently, the Commission considers that private domestic prices of logs in Indonesia are not suitable for determining a benchmark based on competitive market price free from government influences.

(ii) Import prices

The Commission considers that import prices for pulp are not suitable as a benchmark to reflect competitive market prices due to the lack of import penetration in the Indonesian pulp market and the likelihood that import prices are affected by the GOI's influence on domestic prices. The Commission considers that the same conditions would apply to the importation of logs into Indonesia, being the major input into the manufacture of pulp. As such, the Commission considers that import prices for logs are not suitable for determining a competitive market price of logs.

(iii) External benchmarks

The Commission considers that an external benchmark for logs provides a suitable benchmark for assessing the benefit conferred by Program 1. A benchmark external to Indonesia is the only measure that will be free of the distorting effect of GOI's policies in respect of logs and downstream products such as pulp. Australian Paper proposed a Malaysian log price as a suitable benchmark.[210]

For the Commission's purposes the Malaysian log price benchmark was converted to a standing timber price. To convert the implied domestic Malaysian log price benchmark to a standing timber price the Commission:

- Adjusted the price to deduct a port to port freight cost;
- Deducted an amount for inland freight to represent the inland source-to-plant expense (this amount was based on the exporters' own data); and
- Deducted an amount for wood harvesting costs (this amount was based on the exporters' own data).

Specificity

The Act provides that a subsidy is a countervailable subsidy if it is specific (subsection 269TAAC(1)). Section 269TAAC(4)(a) provides that the Parliamentary Secretary may determine that a subsidy is specific having regard to the fact that the subsidy program benefits a limited number of particular enterprises.

Concessions for access to land for the purpose of growing timber are a key input in the manufacture of a limited range of products (including wood pulp for use in paper production) and accordingly it is clear that only enterprises engaged in the manufacture of these products would benefit from the provision of the input at less than adequate remuneration. Those enterprises constitute a limited number of particular enterprises.

On that basis the Commission considers that the subsidy under Program 1 is specific and therefore is countervailable.

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[210] EPR document 94.

A2.2.1.5 Amount of subsidy

Cooperative Exporters

The Commission found that three of the four selected exporters received a financial contribution that conferred a benefit under this program during the investigation period, namely the provision of services for less than adequate remuneration (subsection 269TACC(3)(d)).

In accordance with subsection 269TACC(4) and WTO precedent, the adequacy of remuneration was determined having regard to prevailing market conditions in Indonesia, namely by reference to a benchmark for market prices (discussed above). The benefit conferred is the difference between the PSDH calculated using the market benchmark for standing trees and the PSDH calculated using the standard price.

The Commissioner determined the amount of the subsidy under subsection 269TACD(1) as the difference between adequate remuneration (as determined by reference to a benchmark) and the standard price specified under MOF 68/2014 for logs multiplied by the applicable tariff rate (6 per cent)[211] and the volume of the wood harvested.

In accordance with subsection 269TACD(2), the amount of subsidy received by Indonesian exporters in respect of A4 copy paper has been apportioned to each unit of the goods using the total sales volume of paper.

A2.2.2 Program 2: Export ban

A2.2.2.1 Legal basis

Australian Paper's application claimed that a log export ban was reimposed by the GOI in October 2001 (after being lifted for three years) when the Indonesian Ministry of Forestry and Ministry of Industry and Trade issued Joint Decree No 1132/Kpts-II/2001 and No. N292/MPP/Kep/10/2001.

The GOI advised in its questionnaire response that export restrictions for certain goods, including logs, were currently imposed under *Minister of Trade Decree No 44/M-DAG/PER/7/2012 concerning Export Restriction for Certain Products* (MOT Decree 44/2012).

The GOI advised that the export of wood chips, chip wood and pulpwood were subject to other ministerial decrees. Details of these ministerial decrees were provided in the GOI's questionnaire response and submissions.[212]

A2.2.2.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A2.2.2.3 Eligibility criteria

The export ban applies to the export of logs as specified in the relevant ministerial decree.

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[211] Rate specified in exporter questionnaire responses from Indah Kiat, Pindo Deli, and Tjiwi Kimia. See EPR documents 19 to 21.

[212] EPR documents 36, 35 and 27.

A2.2.2.4 Is there a subsidy?

Australian Paper's application claimed that *"…The GOI prohibits the export of logs for further processing. The export ban has the effect of suppressing domestic prices and affording log processors (and hence pulp manufacturers that use logs as raw material input) a benefit that they otherwise would not receive in the absence of a ban on the export of logs*".

In support of its claim Australian paper made reference to findings made by the USDOC in its investigation into CFS exported from Indonesia.[213] USDOC found that the Indonesian paper industry had received the benefit of countervailable subsidy resulting from the ban of export of logs.

Financial contribution

Australian Paper's claims concerning financial contributions relied on the findings in the USDOC CFS case. In establishing that a financial contribution had occurred in the CFS case, USDOC found that:

> *"….we find that the GOI used its authority to impose a log export ban that directed these logs suppliers, under threat of criminal sanctions, to provide logs and chipwood for less than adequate remuneration to downstream wood processing industries. These industries include the pulp and paper industry that produces subject merchandise. As such, the log export ban provides a financial contribution in accordance with section 771(5)(D)(iii) of the(US Tariff) Act."*

The Commission reviewed the more recent findings of the USDOC in the *Countervailing Duty Investigation of Certain Uncoated Paper from Indonesia*.[214] This investigation also made a finding that the log export bans constituted a financial contribution.

The GOI, in its questionnaire response and in submissions,[215] and RAK, in a submission, argued that the export ban did not qualify as a provision of goods, nor did it constitute a financial contribution. Both made reference to the WTO Panel Report in *United States – Measures Treating Export Restraints as Subsidies.*[216]

The Commission understands that the USDOC countervails export restraints as a matter of policy. The Commission has no such policy. In particular, an export ban does not fall within any of the forms of financial contribution set out in the definition of subsidy in section 269T (see definition of subsidy at (a)(iv) to (a)(viii)).

On that basis the Commission does not consider that export constraints constitute a financial contribution under Australian legislation. Accordingly Program 2 does not come within the statutory definition of subsidy and is not countervailable. No submissions were made that would cause the Commission to revisit its findings in this respect.

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[213] Federal Register, Volume 72, No. 206, 25 October 2007, Coated Free Sheet Paper from Indonesia, Final Affirmative Countervailing Duty Determination.

[214] Federal Register, Volume 81, No. 42, 3 March 2016, Certain Uncoated Paper From Indonesia and the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (Indonesia) and Countervailing Duty Order (People's Republic of China).

[215] EPR documents 27 35 and 70.

[216] WTO; 29 June 2001, WT/DS194/R.

A2.3 CATEGORY TWO: Financial benefit

A2.3.1 Program 3: Debt forgiveness – buyback of debt from the government of Indonesia

A2.3.1.1 Legal basis

The Commission is not aware of the relevant legal basis for this alleged subsidy.

A2.3.1.2 WTO notification

The Commission is not aware of any WTO notification of this program.

A2.3.1.3 Eligibility criteria

The Commission is not aware of the relevant eligibility criteria for this alleged subsidy.

A2.3.1.4 Is there a subsidy?

Australian Paper's Application

In its application, Australian Paper stated that:

> *Australian Paper understands from the USDOC investigation into CFS Paper that SMG/APP were involved in the buy-back of debt through an affiliated party – Orleans Offshore Investment Limited ("Orleans"). It was alleged by the U.S. industry that that GoI provided debt forgiveness when IBRA sold US$880 million of SMG/APP debt for US$214 million to Orleans. It was alleged that Orleans was an agent of SMG/APP and that the sale of the debt was at a "steep" discount.*
>
> *The GoI could not provide any documentation to USDOC concerning the registration of Orleans. Under Indonesian law it is "illegal under Indonesian law for original debt holders to buy back their own debt through affiliated parties". Under the GoI's Regulation SK-7/BPPN/0101, "IBRA is prohibited from selling assets that were under its control back to the original owner, or to a company affiliated with the original owner".*

Information from GOI and Exporters

Information in relation to this program was requested from the GOI and relevant exporters. The Indonesian government indicated that the relevant program ended in 2004[217] and accordingly was not relevant to this investigation. The APP Group of companies in its 13 July 2016[218] submission advised that the presumed allocation period for non-recurring subsidies in the USDOC CFS decision was 13 years. APP argued that the 13 year period ended during 2016 and accordingly the effect of the debt forgiveness should no longer be counted.

The exporter questionnaire responses from Indah Kiat, Pindo Deli, and Tjiwi Kimia were only partially completed in relation to the questions regarding the buyback of debt from

[217] EPR document 35.

[218] EPR document 42.

the Government of Indonesia. Each questionnaire response provided the following information:

> *"The allocation period for this non-recurring subsidy used by the USDOC is 13 years, which expired in 2015. Consequently, there is now no benefit to the Sinar Mas Group from this "Debt Forgiveness" and this "Program 3" cannot be considered a countervailable subsidy in relation to future exports.* ***For this reason we have not responded to the questions hereunder*** *(emphasis added)."*

During the verification visits with these three exporters no further information was provided in relation to this subsidy program.

Information Relied on by the Commission

To assess whether Program 3 is countervailable the Commission has relied on the best information available that it considers relevant.[219] Given the lack of a complete responses from Indah Kiat, Pindo Deli, and Tjiwi Kimia in their exporter questionnaire responses, the Commission, has relied, in part, on information contained in the USDOC decision memorandum regarding the debt buyback program.

US Decision Memorandum

The Commission notes the following relevant assessment from the USDOC decision memorandum:

> *"Based on our examination of evidence on the record, and our consideration of whether to apply adverse inferences, we preliminarily determined that Orleans is affiliated with SMG/APP. Because we preliminarily determined that Orleans is affiliated with SMG/APP, and because it as illegal under Indonesian law for original debt holders to buy back their own debt through affiliated parties, we preliminarily determined that the sale by IBRA of SMG/APP debt to Orleans was company-specific, consistent with section 771(5A)(D)(iii) of the Act. We found that this transaction constituted a financial contribution to SMG/APP in the form of debt forgiveness within the meaning of section 771(5)(D)(i) of the Act, because we found that Orleans is an affiliate of SMG/APP. Moreover, as provided by 19 CFR 351.508(a), this transaction provided a benefit to SMG/APP in the amount of debt forgiven (the difference between the total value of the SMG/APP debt as sold by IBRA and the amount paid by SMG/APP, through Orleans, for its own debt)."*

Financial Contribution & Benefit

The USDOC memorandum specifies that the petitioner alleged that IBRA sold $880 million of SMG/APP debt for $214 million to Orleans. USDOC specifies in its decision memorandum that this transaction provided a benefit to SMG/APP in the amount of debt forgiven.

The Commission understands that the Indonesian Bank Restructuring Agency (IBRA) was established by the Indonesian government to oversee the rehabilitation of Indonesia's banking industry following the financial crisis in 1997 and 1998. The Commission understands that IBRA was established under Indonesian Presidential Decree No 27 of 1998. The presidential decree specifies that IBRA was under the

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[219] Subsection 269TEA(3)(b).

authority of the Indonesian Minister for Finance. Based on this information, the Commission considers that, IBRA was a public body.

Orleans (Orleans Offshore Investment, Ltd) was determined to be affiliated with SMG/APP (the group of companies that include Indah Kiat, Pindo Deli, and Tjiwi Kimia) by USDOC. While USDOC relied on adverse inferences when it analysed the information on record, USDOC also relied on other information in its assessment of the affiliation. In particular, the USDOC decision memorandum states:

> *Other information on the record further supports a finding that Orleans is either affiliated with, or acted on the behalf of, SMG/APP or the Widjaja family, owners of SMG/APP. Petitioner placed on the record court documents that stated that there was speculation that the Widjaja family had been buying up its own debt through third parties. See New Subsidy Allegation at Exhibit 11. Petitioner has also submitted news articles suggesting that SMG/APP was "surreptitiously buying back its debt." See New Subsidy Allegation at Exhibit 11. And as discussed above, a World Bank report indicated that IBRA allowed some parties to buy back their own debt through third parties. See New Subsidy Allegation at Exhibit 16.*

Beyond arguing that the newspaper articles and reports relied on by USDOC were speculative,[220] Indah Kiat, Pindo Deli, and Tjiwi Kimia, in their exporter questionnaire responses and submissions, did not provide evidence to dispute the affiliation with Orleans and the alleged sale of the SMG/APP debt. Based on all relevant information,[221] the Commission considers that the transaction provided a financial contribution (of the form referred to in 269T, the definition of subsidy at (a)(v)) and benefit conferred to SMG/APP, through Orleans, in the amount of debt forgiven[222] (the difference between the total value of the SMG/APP debt as sold by IBRA and the amount paid by SMG/APP, through Orleans, for its own debt).

Specificity

In relation to specificity, the Commission notes that the USDOC CFS case decision memorandum relevantly states that:

> *The prohibition against a company buying back its own debt does, however, inform our analysis of specificity. Finding that a company repurchased its own debt from GOI at a steep discount when such a transaction was prohibited, means that this financial contribution and benefit are specific to a company, SMG/APP, in accordance with section 771(5A)(D)(iii) of the Act. Furthermore, because a special program was created, with special rules and obligations, to handle the debt sales of five large and significant obligors, including SMG/APP, we also find that this sale was limited to a group of enterprises in accordance with section 771(5A)(D)(iii)(I) of the Act.*

No information has been provided by the GOI, Indah Kiat, Pindo Deli, or Tjiwi Kimia, disputing this finding in relation to specificity as it applies to the current investigation. Given that the debt buyback program was limited to five entities the Commission considers that there were a limited number of particular enterprises who used this

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[220] EPR document 42.

[221] Subsection 269TACC(1).

[222] Subsection 269TACC(3)(b).

program (see subsection 269TAAC(4)(a)). The Commission considers that the subsidy does not fail to be specific for any of the reasons in subsection 269TAAC(3).

A2.3.1.5 Amount of subsidy

Cooperating exporters

Australian Paper's application only makes reference to this subsidy program in relation to Indah Kiat, Pindo Deli, and Tjiwi Kimia. No evidence was provided in relation to RAK obtaining any benefit under this program. RAK advised in a submission[223] that the company did not benefit from the GOI's debt buyback program

The Commission notes that, in relation to Indah Kiat, Pindo Deli and Tjiwi Kimia, USDOC treated the debt forgiven as a non-recurring subsidy and allocated the benefits of the subsidy over an average useful life (AUL) of 13 years. The AUL of 13 years was based on a period prescribed by the US Internal Revenue Service.

The Commission is not bound to follow the approach of the USDOC in depreciating the debt forgiven over 13 years. The Australian Tax Office publishes a schedule of the "effective life" of depreciating assets across a range of industries.[224] The schedule includes a section on the effective life of depreciating assets used in pulp, paper and converted paper product manufacturing. Most of these assets have an effective life ranging from 10-20 years. For current purposes the Commission considers that a reasonable approach is to use the midpoint of that range, ie 15 years, as the AUL in assessing the benefit.

The Commission has used the formula contained in the Manual for attributing amortised benefits to assess the amount of subsidy provided under Program 3. The formula calculates the annual benefit amount for each year using: the face value of the subsidy; the relevant AUL; and the relevant interest rate.

The annual benefit amount calculated would be apportioned to each unit of the goods in accordance with subsection 269TACD(2).

A2.4 CATEGORY THREE: Preferential tax policies

A2.4.1 Program 4: Income tax facilities for capital investment in certain business fields and/or certain regions

A2.4.1.1 Legal basis

The Commission understands that the legal basis of the subsidy is Government of Indonesia Regulation Number 18 of 2015 (Regulation 18).

A2.4.1.2 WTO notification

The Commission is not aware of any WTO notification of this program.

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[223] EPR document 63.

[224] TR 2016/1, Taxation Ruling, Income tax: effective life of depreciating assets (applicable from 1 July 2016), Schedule: Table A.

A2.4.1.3 Eligibility criteria

The Commission understands that the tax program is only available to certain specified industries and regions. These industries include the 'papers and papers goods industry'.

A2.4.1.4 Is there a subsidy?

During verification visits the Commission identified some exporters who may be eligible for certain tax incentives that allow for a reduction in income tax.

Referred to as "income tax facilities for capital investment in certain business fields and/or certain regions," the program provides for a reduction in taxable income and accelerated depreciation on tangible assets and amortisation for those industries and regions identified in Appendix 1 and Appendix 2 of Regulation 18. The "papers and papers goods industry" is identified at Appendix 2 as an eligible industry, and includes the pulp industry and commercial paper industry. Appendix 2 stipulates the eligibility requirement relating to the paper and paper goods industry, namely that the company seeking the reduction in income tax must be an integrated paper and paper goods manufacturer.

Financial contribution and benefit

The Commission considers that the laws governing this program mandate a financial contribution by the GOI, which involves the foregoing, or non-collection, of revenue (income tax) due to the GOI by eligible enterprises.[225]

Where received, this financial contribution confers a benefit because of the tax savings realised.

Specificity

Section 269TAAC(2)(b) provides that a subsidy is specific if access to the subsidy is limited to particular enterprises carrying on business in a designated geographical region that is in the jurisdiction of the subsidising authority.[226] The Commission considers that the tax incentive program is expressly limited to certain industries or certain regions which include the 'papers and papers goods industry' and accordingly the criteria favours particular enterprises over others. The Commission considers that the subsidy does not fail to be specific for any of the reasons in subsection 269TAAC(3).

A2.4.1.5 Amount of subsidy

Cooperating exporters

Indah Kiat, did not receive any benefit from the tax incentive program in the relevant period because it did not pay any income tax due to tax losses incurred and carried forward from previous financial years. Pindo Deli and Tjiwi Kimia did not receive a benefit given that they did not meet the eligibility requirement of being an integrated paper and paper goods manufacturers.

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[225] See subsection 269T(1) definition of subsidy at (a)(vi)

[226] This and the other matters in subsection 269TAAC(2) do not limit the generality of the circumstances in which a subsidy is specific.

RAK's 2015 Profit and Loss Statement, at note 25, states that a tax adjustment was made in relation to the provision for a 'temporary difference' in 'depreciation of property, plant & equipment'. Subject to further evidence being provided, the Commission considers that this tax adjustment relates in whole to the accelerated depreciation tax concession available under Regulation 18.

The Commission considered at the time publishing the SEF that the amount of subsidy received by RAK in respect of this program was the amount of tax revenue forgone by the GOI. In accordance with subsection 269TACD(2), the Commission apportioned the total amount of subsidy received by RAK to each unit of the goods using its total sales revenue.

Appendix 3: Pulp cost benchmark

A3.1 Introduction

The Commission found that the cost of producing pulp was substantially less than a competitive benchmark. Consequently, the actual cost of pulp recorded by exporters in their records does not reasonably reflect a competitive market cost. Accordingly the Commission has derived a pulp cost benchmark that better reflects the competitive market cost of pulp to substitute into Indonesian exporters' raw materials costs.

A3.2 Pulp benchmark used by the Commission

The Commission's has used a benchmark (the pulp benchmark) consisting of quarterly import pulp prices into China and Korea based on an average CIF price for bleached eucalyptus kraft wood originating from Brazil and South America. The Commission considers that substituting this benchmark into Indonesian exporters' costs will ensure that the resulting cost of production or manufacture used in constructing normal values reflects competitive market raw material costs.

A3.3 Assessment of approaches

To account for the effects of the GOI's influence, the Commission has sought to replace Indonesian manufacturers' pulp costs with an appropriate competitive market cost for pulp. The Commission's preferences for choosing a replacement competitive market cost are, in descending order:

i. private domestic prices;
ii. import prices; and
iii. external benchmarks.

A3.3.1 Private domestic prices

As explained in Appendix 2, the Commission considers that private domestic prices of pulp are affected by GOI influence. Cooperative Indonesian exporters and their associated entities are the main pulp producers in Indonesia. These Indonesian pulp producers are the primary beneficiaries of the GOI's influence on domestic log prices and those log prices have a major influence on domestic pulp prices in Indonesia.[227] Therefore, the Commission considers that private domestic prices of pulp in Indonesia are not suitable for determining a competitive market cost, free from government influence.

A3.3.2 Import prices

Data provided by cooperating exporters indicates that the price of pulp imported to Indonesia is not suitable as a benchmark that would reflect competitive market prices. This is due to the lack of imports into the Indonesian pulp market[228] and the likelihood that

[227] See Appendix 2 "Combined APP and APRIL account for around 90 per cent of Indonesian BHK capacity"

[228] Indonesia is the main exporter of pulp in the Asian region.

the price of any imports would also be affected by government influence on domestic pulp prices.

A3.3.3 External benchmarks

The Commission received benchmarking import prices from RISI and Hawkins Wright.[229] This pricing data included three series of bleached eucalyptus kraft pulp prices for pulp exported to China and Korea from Brazil and South America. The Commission took an average of the three benchmark prices. This benchmark prices were provided on a cost, insurance and freight (CIF) basis. The Commission partially modified the benchmarks used in PAD 341A.[230] Copies of the benchmark data used by Commissioner were provided to cooperating exporters from Indonesia and to Australian Paper.

A3.4 Submissions received following PAD 341A

The GOI complained that the Commission's benchmark used eucalyptus pulp prices when Indonesian pulp is made from acacia fibre.[231] The Commission understands, based on advice from industry experts, that eucalyptus pulp is also used in the production of A4 copy paper.

Following PAD 341A the Commission made some adjustments to the pulp benchmark, taking into account: the difference in pricing between timber species; transport costs; and whether the pulp was wet or dry. The Commission undertook price comparisons of pulp sourced by Asian importers from both South America (eucalyptus) and Indonesia (acacia) for the period 2010 to 2015. The Commission used data from RISI and Hawkins Wright which included the following price series:

- Indonesia to Korea (acacia, BHK);
- Indonesia to East Asia (acacia, BHK);
- South America to China (eucalyptus, BHK);
- Brazil to China (eucalyptus, BHK);
- Indonesia to China (mixed acacia, BHK);
- Brazil to Korea (eucalyptus, BHK); and
- Indonesia to Korea (mixed hardwood, BHK).

The GOI argued that data from RISI and Hawkins Wright should only be used as reference prices in trading contracts and pricing internal transactions. However, the Commission considers that this pricing data is the best available source of independent information. Using this type of information is standard practise for the Commission.

The Commission found no significant difference between the pricing for the two types of pulp. The Commission considers that eucalyptus and acacia based pulp are readily substitutable in the production of copy paper. Accordingly the Commission considers it reasonable to use the South American benchmarks for cost replacement purposes as it is the closest comparable product to acacia based pulp.

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[229] See the Commission's file note at EPR document 87.

[230] PAD 341A incorrectly referred to the Benchmarks used as having being obtained from RISI. The benchmarks used in PAD 341A were from Hawkins Wright.

[231] EPR documents 133 at page 3.

A3.5 Submissions received following SEF 341

A3.5.1 Selection of benchmarks

The GOI questioned why Indonesian prices were not the appropriate benchmark for timber and pulp prices arguing that timber and pulp producers in other countries ought to reduce their costs against an efficient Indonesian benchmark. Rather, the GOI argued, Indonesian producers are being benchmarked against higher cost, higher priced producers in other countries.[232]

The Commission considers that lower Indonesian pulp costs do not result from Indonesian producers' greater efficiency. Rather lower Indonesian pulp costs arise from distortions in the Indonesian forestry sector resulting from GOI policies and programs. These distortions are described in Appendix 2.

The GOI and SMG argued that benchmarks used by the Commission for cost replacement were generally not appropriate,[233] in particular that the use of dry pulp for purposes of cost replacement was not correct.[234]

The Commission prefers to use actual transaction data from the relevant market where possible. It was not possible for the Commission to use such data for cost replacement for the SMG exporters because the only actual transaction data for Indonesian pulp producers available to the Commission is confidential.

The Commission obtained pulp price benchmarks from paper industry consultants, RISI and Hawkins Wright. The Commission considers that these benchmarks form a good basis for pulp cost replacement for the following reasons:

- The benchmarks are based on verified actual transaction prices collected through broad systematic surveys of small, medium and large size market participants, including both buyers and sellers;[235]
- RISI and Hawkins Wright are recognised experts in the paper industry;
- The benchmarks are broadly consistent with confidential transaction data held by the Commission.

Following SEF 341 the Commission adjusted the benchmarks to convert these from a dry pulp price to a wet pulp price.

A3.5.2 Eucalyptus and acacia pulp prices

The GOI and SMG argued that the Commission's use of South American eucalyptus pulp prices for cost replacement was not correct because the primary wood species used in Indonesia is acacia.[236]

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[232] EPR document 167 at pages 3 to 4.

[233] EPR documents 148 at pages 5 to 7 and 167 at pages 3 to 4.

[234] EPR document 148 at page 6.

[235] http://www.risiinfo.com/approach/methodology/price-assessment-methodology/

[236] EPR document 148 at page 6; see also EPR document 133 at page 3.

The Commission considers that South American eucalyptus pulp prices are appropriate to use in pulp cost replacement benchmarks for the following reasons:

- eucalyptus and acacia pulp are close substitutes as inputs to copy paper production and as such their pricing in a competitive market will be closely aligned;
- notwithstanding the use of eucalyptus pulp prices in the benchmarks there is broad alignment of South American eucalyptus pulp and traded Indonesian acacia pulp prices;
- these benchmarks are broadly consistent with confidential cost data held by the Commission;
- the RISI Review indicated that growing costs for acacia pulpwood in Indonesia is not significantly less than growing costs for eucalyptus pulpwood in South America, notably Brazil;
- neither the GOI nor any Indonesian pulp producer provided the Commission with information or evidence to support claims that the cost of producing acacia pulpwood in Indonesia is significantly less than in other Asian or South American countries.

A3.5.3 Use of domestic and export pricing in benchmarks

Australian Paper argued that the Commission's cost replacement benchmark "should be based on domestic pricing where possible as export pricing reflects marginal pricing, that is, prices that do not reflect full cost recovery, where as domestic pulp prices are more likely to reflect stable prices that are expected to be at full cost recovery".[237]

The Commission's approach to choosing an appropriate cost replacement benchmark price (domestic, imports or external) generally and with respect to this investigation is set out above at section A3.3.

The Commission does not consider that the export prices used in benchmarks are based on marginal pricing. For example, approximately 60 per cent of Brazil's pulp is exported, with some major facilities being primarily exporters. The Commission considers that it is unlikely that such volumes would be exported at marginal cost pricing (except in the very short term. In any event, these export prices are for pulp sold into a regional market that is heavily reliant on imports, accordingly they reflect domestic conditions in individual countries in the region.

While noting that export pricing may reflect some degree of 'marginal pricing' the Commission considers that if these markets are to be characterised as competitive, as proposed by Australia Paper, the price at which the pulp is exported would still need to be comparable with domestic prices. More specifically for there to be a significant difference in pricing between domestic and export pricing, once transport and handling charges have been accounted for, there would need to be significant impediments and hence distortions within these markets, leading to these prices also being unsuitable for the Commission's purposes.

[237] EPR document 144.

Appendix 4: Particular market situation findings

A4.1 Introduction

This appendix provides the Commission's assessment of Australian Paper's allegations that there were situations in the Chinese and Indonesian A4 copy paper markets during the investigation period such that sales in those markets are not suitable for determining normal values under subsection 269TAC(1) (market situations).

A4.2 Findings

The Commission has found that:

- There is not a market situation in the Chinese A4 copy paper market:

  The GOC exerts significant influence over the size and structure of the Chinese pulp industry and has involvement in the Chinese paper industry. However the Commission considers that this influence and involvement are unlikely to have rendered Chinese domestic A4 copy paper prices unsuitable for determining normal values because Chinese A4 copy paper producers use significant quantities of imported pulp.

- There is a market situation in the Indonesian A4 copy paper market:

  The GOI exerts significant influence over the Indonesian timber and pulp industries through various programs and policies including those relating to provision of land for plantations and an export ban on logs. The Commission considers that these programs and policies have rendered Indonesian domestic A4 copy paper prices unsuitable for determining normal values.

These findings confirm the Commissioner's findings in SEF 341.

A4.3 Australian Paper's claims

Australian Paper alleged that during the investigation period market situations existed in the Chinese and Indonesian A4 copy paper markets.

The allegations made by Australian Paper concerning the existence of a market situation in the Chinese A4 copy paper market were:[238]

- The GOC materially distorted raw material input costs, including the costs for pulp and chemicals,[239] which in turn impacted the domestic selling price of the goods.
- The GOC influenced domestic selling prices of the goods by providing subsidies to producers. These subsidies were in the form of exempted and / or reduced income tax, reduced interest payments on monies borrowed and other grants.
- The Chinese pulp and paper industry is a key strategic (encouraged) industry, which means that it has a separate five year plan to guide its development i.e. '12th Five Year Plan of the Paper Industry' and is eligible for GOC support.

[238] EPR document 47.

[239] Identified raw materials included calcium carbonate, caustic soda, titanium dioxide and coal.

The allegations made by Australian Paper concerning the existence of a market situation in the Indonesian A4 copy paper market were:[240]

- The GOI declared the Indonesian pulp and paper industry a priority industry in its National Industry Policy.
- Expansion plans for the industry are consistent with the 'Indonesian Economy Acceleration and Development Expansion Masterplan'.
- The United States International Trade Commission's countervailing investigation into imports of uncoated wood free paper from Indonesia identified a number of subsidy programs being provided to the Indonesian paper industry. These programs included the GOI's: provision of access to land for growing timber at less than adequate remuneration; log export bans; and debt forgiveness programs.

A4.4 Framework for assessing market situation claims

Subsection 269TAC(2) provides for circumstances where the normal value of goods cannot be ascertained under subsection 269TAC(1) "because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection 269TAC(1)".[241] If there is a market situation then normal values may instead be constructed under subsection 269TAC(2)(c) or determined by reference to prices from a third country under subsection 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of market situation however it is clear that a market situation will arise when there is some factor or factors impacting the relevant market in the country of export generally with the effect that sales in that market are not suitable for use in determining normal value.

In considering whether sales are not suitable for use in determining a normal value under subsection 269TAC(1) because of the situation in the market of the country of export the Commission may have regard to factors such as:

- whether the prices are artificially low; or
- whether there are other conditions in the market that render sales in that market not suitable for use in determining prices under subsection 269TAC (1).

Government influence on prices or input costs could be one cause of artificially low pricing. Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the Commission will assess whether government involvement in the domestic market has materially distorted market conditions. If market conditions have been materially distorted then domestic prices may be artificially low or not substantially the same as they would be in a competitive market.

Prices may also be artificially low or lower than they would otherwise be due to government influence on the costs of inputs. The Commission looks at the effect of any such influence on market conditions and the extent to which domestic prices can no

[240] EPR documents 48, 94.

[241] Section 269TAC(2)(a)(ii) is Australia's implementation of Article 2.2 of the WTO *Anti-Dumping Agreement*.

longer be said to prevail in a normal competitive market. Government influence on costs will disqualify the associated sales if those costs are shown to affect domestic prices.

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.[242]

A4.4.1 Evidentiary threshold

When relevant and reasonably reliable prima facie evidence supporting the proposition that there is a market situation is set out in the application, and an investigation is initiated, the Commission will:

- notify relevant governments and exporters of the claims and of the evidence provided and further information will be sought from such governments and exporters;
- if the relevant government or exporters fail to respond, or do not provide probative evidence in response, all available evidence is weighed up, including prima facie evidence contained in the application.

A4.4.2 China and Indonesia as market economies

The Australian Government treats China and Indonesia as market economies for anti-dumping purposes and the Commission conducts its investigations in relation to these countries in the same manner as for other market economy members of the WTO. The Australian anti-dumping framework provides for the rejection of domestic selling prices as the basis of normal values within any market economy in which there is a market situation.

A4.5 Information relied upon

The Commission provided the GOC and GOI with 'Government Questionnaires' in April 2016. Both the GOC and GOI returned completed questionnaires to the Commission.[243] In addition to providing questionnaire responses, the GOC and GOI have made submissions to this investigation concerning the Commission's market situation assessments.[244] Following SEF 341, the Commission met with the GOI to discuss issues arising from the GOI's response to its initial and Supplementary Government Questionnaires. The issues discussed during this meeting, where relevant, are considered in the Commission's market situation assessment.[245]

Submissions concerning the Commission's market situation assessments were also received from:

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[242] See for example chapter 7 of the Manual.

[243] EPR documents 30, 27.

[244] EPR documents 8, 25, 35, 36, 44, 57, 70, 122, 133.

[245] EPR document 210.

- The SMG exporters.[246]
- Australian Paper.[247]
- APRIL.[248]
- Fuji Xerox Australia.[249]

In addition to the questionnaire responses and submissions, the Commission also obtained and considered information from the following sources.

- Information collected during the Commission's exporter verification visits.
- The Commission's independent research and analysis.
- Statistics and pricing information sourced from RISI Inc (RISI), Hawkins Wright and Wood Resources Quarterly.
- United States ITC. Investigation C-570-023 (China) and C-560-829 (Indonesia).[250]

A4.5.1 RISI Review obtained following SEF 341

Following publication of SEF 341 the Commission purchased a report on global timber growing costs from RISI entitled Global Tree Farm Economics Review 2017 (RISI Review).[251] The Commission obtained the RISI Review to better assess the extent of the Indonesian's comparative advantage[252] in producing timber used to produce A4 copy paper.[253] The RISI Review provides growing costs for all major timber producing regions and includes growing costs for Asian producers such as Indonesia, Malaysia, Vietnam and the Philippines. The RISI Review provides growing costs for different types of timber, for different species of timber and for timber grown for different end uses.

The Commission obtained the RISI Review to assist it assess comparative timber production costs for different Asian economies and to address concerns expressed by the GOI and SMG that the Commission had not adequately accounted for Indonesia's comparative advantage in producing timber.

The Commission considers that the RISI Review contains useful information concerning Indonesia's comparative advantage in timber production. For example, contrary to claims

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[246] EPR documents 5, 6, 22, 39, 52, 62, 64, 91, 94 and 129.

[247] EPR documents 33, 40, 42, 43, 47, 48, 54, 55, 72, 96 and 130.

[248] EPR document 63.

[249] EPR document 29.

[250] www.usitc.gov/investigations/701731/2015/certain_uncoated_paper_australia_brazil_china/final.htm.

[251] Further information concerning the RISI Report can be obtained from RISI's website, www.risiinfo.com.

[252] The Commission understands the term "comparative advantage" to have been used by interested parties in this investigation to simply mean that it is cheaper to produce a good in country A than it is to produce the good in country B. No interested party has made a submission suggesting the term is used in the more technical sense that the opportunity costs of producing a good in country A are lower than the opportunity costs of producing the good in country B.

[253] See the Commission's file note at EPR document 179.

of comparative advantage by Indonesian exporters and the GOI, the RISI Review stated that growing costs for acacia pulpwood in Indonesia were the highest in Asia.[254]

A4.5.1.1 Submissions on the RISI Review

SMG made a submission in which it claimed that the Commission was required to put the RISI Review on the EPR.[255] In support of its submission SMG quoted excerpts of the *Anti-Dumping Agreement*, namely the first sentence of Art 6.2, Art 6.4 and Art 6.9. These articles of the *Anti-Dumping Agreement* concern the provision of information to interested parties.

The GOI also requested that the RISI Review be made available and put on the EPR.[256] The GOI argued that not making the RISI Review available may be a denial of natural justice and a breach of Art 6 of the *Anti-Dumping Agreement*.

The Commission considers that it is not required to put the RISI Review on the EPR for the following reasons:

- SMG's submission omits important and relevant parts of the *Anti-Dumping Agreement* that provide for the non-disclosure of confidential information, namely most of Art 6.2 and all of Art 6.5. The RISI Review clearly falls within the examples of confidential information set out in Art 6.5.[257]
- SMG is a large global producer of wood pulp. As such the Commission would be surprised if SMG did not have, or would not obtain, access to information on the timber industry contained in the RISI Review (whether from RISI or another source). In this respect the Commission considers that the RISI Review merely addresses, to some extent, an information asymmetry that was otherwise in SMG's favour.
- The RISI Review is in any event readily available for purchase from RISI by interested parties.
- The Commission has outlined in this Report the aspects of the RISI Review that have informed the Commission's views.

Further to the above, the RISI Review is proprietary information of RISI and under the terms of the Commission's purchase of the RISI Review the Commission is not able to provide access to the RISI Review to others or to redistribute the RISI Review to any

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[254] Growing costs included the following costs: operational costs (land, sit preparation, pest control, maintained, administration); stumpage and harvesting costs. In regard to the Asia region, the RISI Review found that growing costs for acacia pulpwood within: the Philippines ranged between USD 10 to 22 m^3 (mean of USD 15 m^3); Malaysia ranged between USD 14 to 28 m^3 (mean of USD 18 m^3); Laos ranged between USD 14 to 39 m^3 (mean of USD 22 m^3); Vietnam ranged between USD 15 to 47 m^3 (mean of USD 22 m^3); and Indonesia range between USD 17 to 49 m^3 (mean of USD 32 m^3).

[255] EPR document 181.

[256] EPR document 191 at page 8.

[257] Australia's implementation of these *Anti-Dumping Agreement* provisions is contained in section 269ZJ.

party. RISI agreed to the Commission publishing a file note describing some key findings in the RISI Review.[258]

SMG claimed[259] that the Commission must, if changing its position in relation to comparative advantage, publish an addendum to SEF 341 that includes the "facts that disapprove" that there is a comparative advantage so that interested parties had an opportunity to respond to the addendum. The Commission does not consider that it was required to publish an addendum to SEF 341 because the Commission found in SEF 341 that there was a market situation in Indonesia notwithstanding any assumed comparative advantage. The RISI Review raises questions over whether there is any comparative advantage and so merely strengthens the Commission's views on Indonesia's market situation.

A4.6 Previous Investigations undertaken by the Commission

The Commission has not previously investigated allegations of a market situation in relation to the Chinese or Indonesian A4 copy paper markets.

A4.7 Commission's approach to assessing market situations

A4.7.1 Raw material inputs: pulp markets

The Commission assesses whether a market situation exists at the level of the goods being investigated. In making that assessment the Commission will also examine markets for key raw material inputs to the goods. Wood pulp is a key raw material input to paper[260] and accordingly the Commission examined Chinese and Indonesian pulp markets. The Commission considers that alleged distortions in other raw material inputs that are used to make pulp will be reflected in pulp prices. In addition, distortions in other input markets have been considered in the countervailing part of this investigation.

The Commission focused its assessment on the Bleached Hardwood Kraft (BHK) segment within the Chinese and Indonesian pulp markets. The Commission understands that different types of pulp can be used to produce A4 copy paper however the Commission's researches indicate that BHK is the primary type of pulp used in both China and Indonesia. The Commission understands that BHK pulp can be produced from either eucalyptus or acacia wood fibre.

The Commission also considered the broader Chinese and Indonesian paper markets in making its market situation assessments. The Commission considered these broader Chinese and Indonesian paper markets because any government policies and programs targeted at the broader paper industry will affect the narrower A4 copy paper market.

A4.7.2 Government policy and programs

The Commission's market situation assessment focused on the likely effect of government policies or programs on the Chinese and Indonesian A4 copy paper markets,

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[258] EPR document 194.

[259] EPR document 182.

[260] Anti-Dumping Commission internal calculations indicate that wood pulp typically comprises between 60 to 65 per cent of the total cost of A4 copy paper.

not the objective of those policies and programs, or the A4 copy paper markets in other countries not subject to this investigation. The Commission focuses on the likely effect of government policies or programs because a market situation assessment concerns the distortion of domestic prices, not the reasons for policies or programs. For the same reason, it is not relevant to the Commission's assessment that, as contended by the GOC and GOI, most forestry industries, including Australia's, have some degree of government involvement in forestry, timber and wood product industries.[261]

The Commission also considers the likely effect of policies or programs that were in place prior to the investigation period if the effect of those policies or programs on the domestic markets might continue during the investigation period. The impact of industry support and subsidy programs may persist for some time after they have ceased. The Commission considers such policies or programs on a case by case basis, with particular regard to how the relevant policy or program has impacted the structure of the industry and how long since the policy or program ceased.

A4.7.3 Subsidy programs and findings in other jurisdictions

The Commission has considered the subsidy programs examined in the countervailable subsidy part of this investigation in making its market situation assessment, however the Commission only examined those programs that the Commission considered directly related to its market situation assessment.

The Commission considered subsidy programs examined in investigations in other jurisdictions when making its market situation assessment. The Commission nonetheless forms its own views and does not automatically adopt the conclusions reached by the relevant authorities in other jurisdictions.[262]

The Commission considers the effect of government subsidy programs in making its market situation assessment even if such programs do not meet the definition of a countervailable subsidy. The Commission considers the effect of such subsidy programs because a market situation assessment considers market distortions more broadly than are considered in a countervailable subsidy investigation.

The GOI and some Indonesian exporters argued that the Commission should not both impose countervailing duties and find that a market situation exists (with the resulting effect on normal values). However the Commission addresses such concerns when calculating dumping and countervailing margins.[263]

A4.7.4 Price benchmarking

The Commission compared Indonesian and Chinese domestic prices with a number of regional benchmark prices to determine whether Indonesian and Chinese domestic prices were artificially low. The regional benchmarks were provided by RISI and included a Chinese, Korean and Asian region benchmarks. These benchmarks were compared to verified Chinese exporter pricing information to confirm they were broadly consistent with

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[261] Government of China, Government Questionnaire Response at page 13. Government of Indonesia, Government Questionnaire Response at page 4.

[262] EPR document 96.

[263] EPR document 5.

prevailing actual prices in the region. The information obtained during the course of the Commission's exporter verification visits is confidential in nature and has not been disclosed as part of this assessment.

The Commission made adjustments to both the verified exporter data and RISI data to ensure a valid comparison. The adjustments included converting reel prices to cut paper prices and adjustments for transportation costs. The Commission also adjusted for different grades of paper in the benchmarks and verified exporter data.

A4.8 Market situation in the Chinese paper market

A4.8.1 Conclusions and findings

The Commission considers that the GOC retains significant influence over the size and structure of the Chinese pulp industry. The Commission considers that this influence is likely to have distorted the domestic price for pulp during the investigation period to some extent. However the Commission has concluded that the distortion was not of such an extent to result in a market situation. Findings in support of this conclusion include:

- the domestic price for Chinese pulp is typically higher than comparable regional benchmarks; and
- the broader industry has significant exposure to external markets resulting in alignment between domestic and regional pricing. This exposure to external markets includes the presence of foreign invested enterprises (FIEs) in China and the Chinese paper industry's dependence on imported pulp.

A4.8.2 Chinese pulp industry

A4.8.2.1 Types of pulp used within China

The three main types of pulp produced in China are wood pulp, waste paper pulp (recycled paper pulp) and non-wood pulp. In 2015, wood, waste paper and non-wood pulp accounted respectively for 28, 65 and 7 per cent of total pulp consumption (including imports).[264] Waste paper pulp was the largest and fastest growing source of pulp used in Chinese production of paper products during 2006 to 2015.

All three types of pulp can be used to make uncoated wood free paper[265] however uncoated copy paper is produced primarily using wood pulp. Waste paper pulp is primarily used in newsprint and containerboard while non-wood pulp[266] is primarily used in tissue and paperboard. The different types of wood pulp used in the Chinese copy paper industry include BHK, BSK, UKP and mechanical pulp. Of these, BHK is the primary type of pulp used in uncoated copy paper.[267]

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[264] China Paper Industry Annual Report. 2015 at page 10.

[265] Uncoated copy paper is a subcategory of uncoated copy paper.

[266] Non wood pulp is made from straw, bamboo and bagasse.

[267] RISI

A4.8.2.2 Chinese pulp production, consumption and exports

Chinese domestic pulp production is dominated by two companies, Asia Symbol Shandong Pulp and Paper Co., Ltd (part of the APRIL Group) and Hainan Jinhai Pulp and Paper Co., Ltd. (part of the APP Group).[268] APRIL and APP are large multinational paper groups who operate FIEs in China. APRIL Group and APP Group together account for around 75 per cent of domestic Chinese pulp production. The next two largest pulp producers, Chenming Paper and Oji Holdings, accounting for a further 15 per cent.[269] Recent growth in Chinese BHK pulp production capacity has primarily come from Asia Symbol, Chenming Paper and Oji Holdings.[270] China has been the main source of global consumption growth over the 10 years to 2015 and accounted for around 90 per cent of increased demand. During the same period demand for pulp in the rest of the world fell to pre-2004 levels.[271]

Chinese BHK pulp capacity and production grew strongly over the last decade however the Chinese paper industry remains heavily reliant on imported pulp. Over the past decade, imported pulp accounted, on average, for around 60 per cent of total BHK pulp consumption.[272] China's pulp imports are typically sourced through the supply chains of FIEs associated with multinational paper producers such as APRIL, APP and UPM. The Commission understands that pulp used to produce paper for export is typically imported[273] owing to issues around perceived quality differences and timber origin certification. Over the same period there have been few exports of Chinese BHK pulp, less than 1 per cent of production. Exports are discouraged by the ongoing production deficit and a 10 per cent export tax.[274]

A4.8.2.3 Government intervention within the Chinese pulp market

The Commission understands that the majority of Chinese pulp supply is sourced from enterprises other than SOEs and SIEs however the GOC retains significant influence over the industry (primarily through controlling market entry and industry development). The Commission's analysis also indicates that there are a significant number of subsidy programs available to Chinese pulp and paper producers to assist them to achieve GOC specified industry objectives.

The GOC stated that 'forestry operations and downstream pulp will typically be subject to requirements of the 'Catalogue of industrial structure adjustments' because of their size,

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[268] Government of China. Government Questionnaire Response at page 9; Asia Pacific Resources International Trading (APRIL Group) is part of the RGE Group. Asia Pulp and Paper Group (APP) is part of the Sinar Mas Group (SMG).

[269] RISI

[270] RISI

[271] PWC and Hawkins Wright. 2015. Global Forest and Paper Industry Outlook at page 16.

[272] ADC calculations. Data sourced from RISI

[273] Government of China. Government Questionnaire Response at page 9.

[274] RISI Analysis

complex corporate structures, investments and environmental footprint.'[275] The Catalogue of industrial structure adjustments states that pulp making projects are encouraged in terms of investment approval and environmental evaluation if the proposal entails:

(a) a pulp production line with annual production capacity of equal to or above 300,000 tonnes of chemical pulp or annual production capacity of equal to or above 100,000 tonnes of mechanical pulp;
(b) a production line integrating wood, pulp and paper production with annual production capacity of equal to or above 100,000 tonnes or chemical pulp (excluding newsprint and coated paper);
(c) a production line with an annual production capacity of equal to or above 100,000 tonnes of non-wood fibre pulp with clean production processes.

Investment in production lines with annual production capacity of equal to or above 10,000 tonnes of recycled-paper pulp and investment in some outdated, inefficient paperboard production lines are prohibited.[276] The Commission understands from exporters that foreign investment in the Chinese pulp industry is controlled through the GOC's 'Foreign Investment Industries Guidance Catalogue' (FDI Catalogue).

The GOC argued that planning and policy directives, such as the Industry and FDI catalogues, are for guidance rather than enforceable directives to be followed by all levels of the GOC. However, the Commission considers that these directives have significant influence over which industries are supported by government planning bodies and other institutions and hence on the broader structure of the identified or targeted industries. For example, the Commission notes that the GOC body responsible for these documents, the National Development and Reform Commission (NDRC), is also responsible for approving large scale investment projects in China. In that central planning role the Commission considers that the NDRC's directives would be central to both industry specific 'Five Year Plans' and the planning decisions of all levels of governments.

The central role of the NDRC in developing the Chinese pulp and paper industry is reflected in the 12th Five Year Development Plan of the Paper Industry (5 year plan). The 5 year plan was published by the NDRC and other GOC agencies in December 2011. The 5 year plan seeks improved environmental and resource management in the Chinese paper industry and industry regulation to: promote an industry structure driven by domestic demand; stabilise domestic market supply; control the repetitive construction of projects and excessive capacity; and guide orderly market competition.[277] The plan sets out specific objectives including: corporate restructuring to promote a more concentrated industry structure and the coordinated development of small and medium sized enterprises. The 5 year plan states that by 2015, there will be more than 20 large pulp and paper enterprise groups with annual output exceeding one million tonnes and several enterprise groups in the world's top 100 paper enterprises. The 5 year plan also states a

[275] Government of China. Government Questionnaire Response at page 19.

[276] Government of China. Government Questionnaire Response at page 19. Exert from NDRC Directory Catalogue on readjustment of Industrial Structure. Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) Catalogue of Encouraged Investment Industries.

[277] NDRC. 2011. 12th Five Year Development Plan of the Paper Industry at page 50.

need to eliminate 10 million tonnes of outdated capacity over the planning period (2011-2015).[278]

The Commission identified a number of central and provincial government programs demonstrating actual support provided by the GOC to the pulp and paper industry to assist it achieve objectives in the 5 year plan. Two such programs were: reduced income tax rates for 'High or New Technology Enterprises'; and VAT and import tariff exemptions on equipment. A number of other programs were available to individual pulp producers, including the 'Environmental Protection Purchase Program (Rizhao City Finance Bureau)' and the 'Urban Waste Water Recycling Project (Rizhao City Finance Bureau).[279] Further examples of assistance provided to integrated pulp and paper producers are detailed in section A2.8.3.

A4.8.3 Chinese paper industry

A4.8.3.1 Types of paper produced in China

The largest product categories in the Chinese paper and paperboard industry, in terms of consumption, are: linerboard (22 per cent); corrugating medium (22 per cent); uncoated print and writing paper (16 per cent); and boxboard (13 per cent).[280] For paper products demand is comprised of: uncoated wood free paper accounts (40 per cent); tissue paper (19 per cent); coated wood free paper (14 per cent); and wrapping paper (14 per cent).[281] Copy paper is the largest subcategory of uncoated wood free paper.

A4.8.3.2 Chinese paper production, consumption and exports

Information provided by the GOC indicates that the Chinese paper industry has a large number of small and medium sized enterprises with a smaller number of large producers. The large producers account for the majority of production[282] (the ten largest Chinese uncoated wood free copy paper producers account for around 65 per cent of total production. The largest producer, Chenming Paper Holdings, accounts for around 12 per cent of total production.[283] In terms of total entities, large and medium sized producers account for 19 per cent of the total 2,791 producers, but around 66 per cent of revenue. The Commission understands that: 2 per cent are SOEs (or SIEs); 11 per cent are FIEs; with the remainder private entities. SOEs (or SIEs), FIEs and private enterprises account for around 8, 27 and 65 per cent of industry revenue respectively.[284]

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[278] NDRC. 2011. 12th Five Year Development Plan of the Paper Industry at page 52.

[279] Asia Symbol. Information provided during exporter verification visit.

[280] China Paper Industry Annual Report. 2015 at page 3.

[281] ADC calculations. Data sourced from RISI.

[282] Government of China. Government Questionnaire Response at page 11.

[283] RISI

[284] China Paper Industry Annual Report. 2015 at page 6.

Over the last 10 years demand for uncoated wood free paper and uncoated copy paper grew at an average rate of around 4 and 5 per cent a year.[285] Over the same period production expanded by around 6 per cent a year to approximately 2.5 million tonnes in 2015. Around 70 per cent of this growth occurred since 2010.[286] The expansion of uncoated copy paper production capacity has occurred across a number of different companies and regions (unlike the Chinese pulp industry). Most of this expansion was by FIEs or private companies. The largest contributors to the expanded capacity include Asia Symbol and Chenming Paper.[287]

Strong growth in production compared to consumption resulted in a significant increase in Chinese exports of uncoated woodfree paper products, including copy paper. Over the last decade Chinese exports of uncoated copy paper grew at around 15 per cent a year, from around 10 per cent of total production to 20 per cent.[288] Uncoated copy paper exports accounted for around 41 per cent of total uncoated wood free paper exports in 2015.[289] These exports were predominately to Asia and Oceania.

There has been a significant relative and absolute expansion of Chinese copy paper exports over the last decade however the Commission considers that that this expansion has largely been the result of expanded production capacity rather than cyclical fluctuations in domestic demand. Growth over this period in domestic demand and average mill capacity[290] remained steady, suggesting that a significant proportion of additional production capacity produced product for the export market. The Commission also notes a number of reports indicating that the Chinese paper industry has significant overcapacity (and concomitant financial difficulties). However the Commission understands that significant overcapacity and poor market conditions within the Chinese paper industry during the investigation period were primarily in the tissue, speciality paper, carton and container markets and not in the uncoated copy paper market.[291]

A4.8.3.3 Government intervention in the Chinese paper industry

The GOC indicated that producers of A4 copy paper (uncoated woodfree paper) are not required to hold any licensing beyond the standard corporate business license and that there are no production limits imposed.[292]

The Commission understands that SOEs and SIEs, ie enterprises with direct GOC involvement, are more prominent in pulp and paper making than in distribution and retail segments. Nonetheless SOE and SIE involvement in the Chinese paper industry is

[285] ADC calculations. Data sourced from RISI

[286] ADC calculations. Data sourced from RISI

[287] ADC calculations. Data sourced from RISI

[288] ADC calculations. Data sourced from RISI

[289] ADC calculations. Data sourced from RISI

[290] Mill capacity utilisation has average above 90 per cent over this period

[291] PWC and Hawkins Wright. 2015. Global Forest and Paper Industry Outlook. p13

[292] Government of China. Government Questionnaire Response at page 19.

significantly less than in other Chinese industries (such as steel and aluminium production).

Other government involvement in the Chinese paper industry in recent years has included paper producers being subject to stricter rules and regulations concerning environmental management, industrial waste management, water conservation, forest protection and tree harvesting. To these same ends the GOC encourages use of modern and environmentally friendly technology and more efficient production in the paper industry.[293] The Commission notes that the increased focus on environmental conservation, including waste management and water conservation accords with directives under the national and paper industry five year plans and is also reflected in subsidy programs available to Chinese pulp and paper producers.

Examples of subsidies accessed by UPM included payments relating to: a flue gas desulphurisation project; water usage; and new employee training. UPM also received an Innovation Ability Development Fund grant and the City Bonus for Export Activity grant.[294] AsiaSymbol (Guangdong) received subsidy payments from the Fund for Encouraging Development of Foreign Trade; Import Interest Subsidy program (for 2014); and Subsidy Income for Energy Management System program (for 2015). These subsidies were typically provided at provincial and city levels of government, rather than by central government.

The GOC's position is that the paper industry is not a 'development objective' under the national 12th Five Year Plan however the Commission notes that the papermaking and paper product industry is identified as an 'encouraged industry' under the 'Guangdong Implementation Plan for Industry Structure and Adjustment'. The Commission considers that this is further evidence of the GOC's support for the paper industry (in addition to that set out elsewhere in this appendix and in Appendix 3: of this Report). The support provided to the paper industry in Guangdong is significant given that Guangdong is a large paper producing province. The Commission understands that provincial planning documents are often heavily influenced by central government and NDRC directives.

The Commission also reviewed corporate reporting for some larger Chinese paper producers to further assess the GOC's influence in the industry. The Commission identified a number of tax incentives and subsidy programs available to Chinese paper producers, including FIEs. To the extent that these reports do not directly correspond to the investigation period, they nonetheless reflect a pattern of GOC support for the Chinese paper industry and accordingly were considered in the Commission's market situation assessment. Examples of such information from Chenming Paper, Yueyang Paper, Sun Paper, and Nine Dragons Paper are described in the following section.[295]

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[293] Government of China. Government Questionnaire Response at page 20.

[294] UPM Paper. Exporter Questionnaire Response

[295] Shangdong Chenming Paper Holding Limited (Chenming Paper). Analysis based on 2015 Interim Annual Report. Yueyang Forest and Paper Co Ltd (Yueyang Paper) is a subsidiary company of Tiger Forest and Paper Group. Analysis based on 2014 Annual Report. Shandong Sun Paper Industry Joint Stock Co., Ltd (Sun Paper). Analysis based on 2014 Annual Report. Nine Dragons Paper (Holdings) Limited (Nine Dragons Paper). The Commission understand that Chenming Paper and Yueyang Paper are SIEs, while Sun Paper in a former SIE. EPR document 47.

A4.8.3.4 Preferential taxation programs, grants and other payments

The Commission found that UPM Paper, Chenming Paper, Yueyang Paper, Sun Paper and Nine Dragons Paper (and their affiliated companies) received reduced tax rates under the 'Hi-Tech Enterprises' initiative.[296] The 'Hi-Tech Enterprises' program was also available to Asia Symbol (Guangdong) and Asia Symbol (Shangdong), further demonstrating that the program is generally available to Chinese pulp and paper producers. Chenming Paper's report also indicated that it received a reduced income tax rate under the 'Enterprise Income Tax' initiative.[297]

The Commission found that Chenming Paper received grants totalling around RMB 1.5 billion during 2015. These grants included assistance for Chenming Paper's restructuring to a fully integrated pulp and paper producer. Similarly, Yueyang Paper's 2014 annual report stated that it had received government subsidies of RMB 224 million in 2013 and RMB 185 million in 2014. Nine Dragons Paper's 2015 annual report stated subsidy income of RMB 149 million in 2015 and RMB 134 million in 2014. [298]

A4.8.4 Analysis

The Commission found that numerous subsidy programs are available to Chinese paper producers. Major themes of these programs were to facilitate restructuring of the industry (to consolidate and increase the scale of production) and to improve environmental management.[299] However the monetary value of these programs compared to industry revenues is small. The Commission considers that these programs are likely to have distorted the market to some extent but the extent of distortion is not sufficient to render the domestic prices unsuitable for the determination of normal values under subsection 269TAC (1). This assessment is based on the Commission's comparison of domestic A4 copy paper prices with regional benchmarks and its analysis of the extent to which the GOC influenced conditions in the Chinese A4 copy paper market.

The Commission found that the Chinese copy paper benchmark is significantly higher than corresponding Asian and Korean benchmarks however it followed the same broad trend over the last five years. The Commission considers that this degree of correlation indicates that the Chinese copy paper market responds to market conditions in the broader Asian region. The Commission considers that the difference between the Chinese and regional benchmarks primarily reflects the presence of 100 gsm paper in the Chinese benchmark. The Commission was not able to obtain a more directly comparable benchmark however pricing information from verified Chinese exporters confirmed that domestic Chinese A4 copy paper prices (70-80 gsm grade) are consistent with Korean and Asian price benchmarks. For example average domestic prices for Chinese A4 copy

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[296] Shangdong Chenming Paper Holdings Limited, Interim Report. 2015, p89. Yueyang Forest & Paper. Annual Report 2014, p98. Shangdong Sun Paper Co., Ltd. 2014 Annual Report, p110. Nine Dragons Paper Holdings Limited. 2015 Annual Report, pages 70 and 134.

[297] Shangdong Chenming Paper Holdings Limited, Interim Report. 2015 at page 89.

[298] Shangdong Chenming Paper Holdings Limited, Interim Report. 2015, p113. Yueyang Forest & Paper. Annual Report 2014, p11. Nine Dragons Paper Holdings Limited. 2015 Annual Report at page 129.

[299] PWC and Hawkins Wright. Global Forest and Paper Industry Outlook. 2015 at page 19.

paper (70-80 gsm) ranged between USD 890 and USD 930 a tonne during the investigation period compared to between USD 900 and USD 965 (70-80 gsm) a tonne for Asian region benchmarks.[300]

The Commission found that the primary focus of the GOC's involvement in the broader Chinese paper industry is targeted at the pulp industry however the downstream copy paper market is relatively open to domestic and international competition. This openness, namely the significant presence of FIEs and low level of barriers to international trade (ie no export tariffs or quotas), is reflected in the level and trend of Chinese paper prices in recent years.

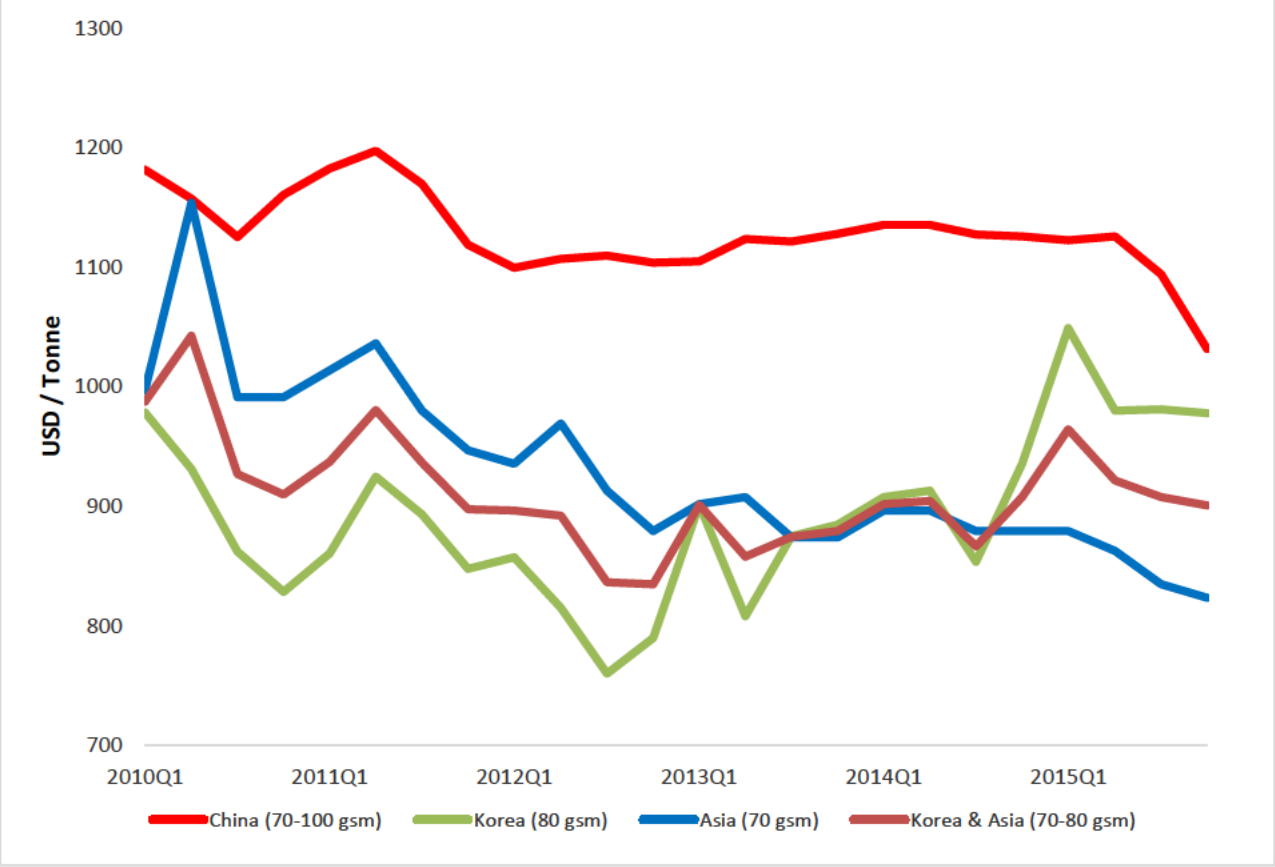

Figure 16 - Asian Region Cut Paper Pricing 2010 - 2015[301]

A4.8.5 Submissions by Australian Paper in response to PAD 341A[302]

A4.8.5.1 Chinese Government influence over the Chinese pulp and paper industry

The Commission assessed conditions in the Chinese paper industry using information provided by Australian Paper, the GOC, cooperating Chinese exporters and the

[300] Domestic prices for Chinese A4 copy paper based on domestic sales of verified exporters. The Asian region benchmark is based on the Korean (80 gsm) and Asia (70 gsm) benchmarks. Refer to Figure 16.

[301] Data sourced from RISI

[302] EPR document 130.

Commission's own research and analysis. Based on this assessment the Commission considers that there is no market situation in the Chinese paper market.

The Chinese paper industry produces different paper products, not just A4 copy paper. Australian Paper correctly alleged that significant Chinese paper companies received subsidies from the GOC however these subsidies were to the paper industry more generally (including other paper and cardboard). On that basis the Commission could not conclude that these subsidies were directed at A4 copy paper production or that they caused distortions within the A4 copy paper market.

The Commission's approach to Australian Paper's claims concerning industry regulation through planning and policy directives relied on analysis of actual industry information rather than on the intent of those directives.

A4.8.5.2 Distortion of the Chinese pulp market

Australian Paper expressed concern about the GOC's support for the domestic pulp industry given the significance of pulp costs in paper production. However the Commission found that the Chinese paper industry relies heavily on imported pulp the price of which is determined outside China. The Commission concluded that Chinese produced pulp prices are not substantially distorted and this conclusion is borne out in pulp pricing data from regional benchmarks and cooperating exporters from different countries. The Commission notes that a market situation assessment primarily concerns the domestic market for like goods ; conditions in a significant input market that do not distort the market for like goods will not found a market situation finding.

A4.8.5.3 Benchmarks for Asian pulp and paper prices

Australian Paper submitted that "the referred benchmarks relied upon by the Commission to conclude that Chinese pulp prices are relatively high and that copy paper prices is a misrepresentation."[303] In support Australian Paper argued that "Indonesian pulp export prices heavily influence regional pulp prices and Chinese exports of excess copy paper production suppress regional copy paper prices. The benchmarks for pulp and copy paper selected by the Commission are therefore deficient and not representative of normal market conditions unaffected by excess pulp and copy paper exports in the region."

Australian Paper argued for an alternate benchmark for assessing the degree of distortion of pulp prices within the Asian region, namely that "the appropriate benchmark for pulp pricing would include non-regional prices e.g. bleached Harwood Kraft, Eucalyptus (domestic) Brazil, and / or Bleached Hardwood Kraft, Eucalyptus (domestic), Latin America. Benchmarks prices for both domestic South American markets are available from RISI." Australian Paper proposes that "domestic Thailand prices would be adequate, given that the Commission has access to Thai copy paper prices from cooperative exporters in the current investigation".

The Commission notes that China and Indonesia are significant consumers and producers of pulp and so conditions in those markets will affect the pulp price in the

[303] EPR document 130 at page 7.

region. To address Australian Paper's concerns that the Commission should consider pulp prices from outside Asia the Commission made comparisons using prices of pulp imported from Latin America into Asia. The Latin America price data[304] indicated that during the investigation period and over the prior four years, the landed price for Latin American pulp was consistent with prices from Asian exporters.

The Commission acknowledges the possible influence of Chinese exports on regional pricing however it is not clear why the Thai domestic market would be immune from that influence. The Commission prefers, where possible, to use broader based pricing data to minimise the impact of market specific factors. Accordingly the Commission used an average of Korean and Asian (incorporating Singapore, Thailand and Indonesia)[305] pricing benchmarks in PAD 341A and hence the Commission's approach already incorporates Thai pricing information.

A4.8.6 Submissions on SEF 341

A4.8.6.1 GOC influence

The CFMEU questioned the Commission's finding that there was not a market situation despite finding that the GOC retained significant influence over the industry.[306]

The Commission considers that government involvement in an industry does not invariably result in a distortion of market conditions in that industry. The Commission seeks to assess the level of domestic prices for the goods under consideration to determine whether and to what degree prices have been distorted. There are numerous subsidy programs available to Chinese paper producers however copy paper is only one segment of the Chinese paper industry. The Commission considered these subsidy programs within the broader paper industry and found that the programs are not sufficiently large to have significantly distorted copy paper prices.

A4.8.6.2 Benchmarks distorted by Chinese prices

Australian Paper and the CFMEU submitted that the benchmarks used by the Commission are unsuitable because these prices have been distorted by conditions within the Chinese domestic market.[307] The CFMEU also claimed that distorted domestic Indonesian pulp prices and large volumes of Indonesian exports of pulp to China would result in artificially low pulp prices in China. These issues and the wider use of Indonesian pulp throughout Asia and China's regional dumping of finished goods are likely to render Asian benchmarks unfit for making comparisons.[308]

The Commission considers that the benchmarks it used are the best information available and sufficient for assessing whether there was a market situation during the investigation

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[304] Sourced from RISI and Hawkins Wright.

[305] The Asia benchmark was sourced from RISI. The Commission notes that it incorporates Indonesian pricing information which the Commission has concluded is distorted. As no other suitable benchmarks were available the Commission has decided to continue with its use.

[306] EPR document 155.

[307] EPR document 144.

[308] EPR document 155.

period. The Commission tested a (grade adjusted) Asian benchmark against the Chinese benchmark and actual domestic Chinese pricing. The Chinese benchmark was significantly higher than the Asian benchmark. The Asian benchmark was more closely aligned with the actual domestic Chinese pricing. Accordingly the Commission considers it clear that domestic Chinese prices were not sufficiently distorted to found a conclusion of market situation.

The Commission also used a South East Asia benchmark in its analysis. The Commission notes that there may be differences between domestic and traded pricing in that benchmark however these differences are not sufficient to preclude use of that benchmark, especially given the lack of alternate price information available. The Commission does not accept Australian Paper's and the CFMEU's arguments about Asian region benchmarks more generally – the price of Indonesian and Chinese copy paper exports may have had impacts in the region however the Commission notes that there are other significant Asian copy paper producers. These other significant Asian paper producers are likely to have provided sufficient competition such that regional benchmarks sufficiently reflect competitive market prices. The Commission considers that Asian benchmarks are preferable to a benchmark from elsewhere as these better reflect actual market conditions in the economies under consideration.

The Commission does not accept the CFMEU's arguments about the effect of Chinese imports on Thai copy paper producers. The Commission considers that increased competition does not necessarily equate to dumping or subsidisation. The relevant Thai authorities have not made any findings or allegations of such dumping or subsidisation.

The Commission does not consider that Australian Paper or the CFMEU have provided any further evidence or information that would cause the Commission to revisit its findings in respect of a market situation in China.

A4.8.6.3 Domestic pulp prices and paper price distortions

Australian Paper argues that "if the Commission considers the domestic Chinese pulp price to be distorted then by default the domestic copy paper price must also be distorted". Australian Paper submits that:[309]

- "the identified 10 per cent export tax on Chinese pulp exports is a distortionary instrument that suppresses the domestic price for pulp";
- "that China is a net importer of pulp is also of minimal consequence as a significant proportion of pulp imported into China is sourced from Indonesia – a country of supply where raw material timber inputs are artificially low"; and
- "lower input prices have afforded Chinese paper producers an artificial competitive advantage on global markets, as reflected by the aggressive growth in uncoated woodfree paper export production."

The Commission assesses market situation claims in relation to the goods under consideration, not in relation to inputs to those goods. The Commission concludes that there was not a market situation in the Chinese copy paper market based on conditions, including pricing, within that market. Conditions in a major input market may be relevant but the assessment does not stop there.

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[309] EPR document 144.

The Commission identified examples of GOC involvement in the pulp industry however the significant presence of FIEs and dependence on imported pulp exposes the Chinese pulp industry to considerable competition. Accordingly domestic pricing likely reflects pricing in the broader Asia region. In addition, the extent of imports indicates that the domestic Chinese market is not in oversupply (which would indicate distorted pricing in that market).

Australian Paper and the CFMEU argue that distortions in the Indonesian pulp industry would result in distortions in the Chinese pulp market. The Commission considers that distortions in Indonesia's domestic market may have impacted Indonesian export prices to some extent however Brazilian exports and significant pulp purchasers elsewhere in the Asian market are highly likely to have provided sufficient competition for these export price benchmarks to reflect competitive prices. The Commission notes in this respect that Latin American or Brazilian based benchmarks and Indonesian export based benchmarks are broadly aligned; this confirms the Commission's view that they reflect competitive market prices.

The Commission considers in any event that the high levels of pulp imports to China mean that the export tariff would have a minimal effect on pricing in the domestic market. The Commission considers that if the export tariff was removed, exports of Chinese produced pulp may nonetheless be uncompetitive with pulp from Brazil or Indonesia.

The Commission sought to quantify the distortion in the Chinese pulp market using the best available data, namely pricing benchmarks for domestic Chinese pulp and for pulp imported into the Asian region from Indonesia and Latin America. The Commission found that the domestic price of Chinese pulp was not significantly different from prevailing prices in the broader region.

Australian Paper claimed that growth of Chinese uncoated woodfree paper exports resulted from low input costs. However, the Commission notes that uncoated woodfree paper is a broader category than the goods under consideration in this inquiry. In any event Australian Paper did not provide any information or evidence to support its claims that a market situation would arise; low input costs, of themselves, are not determinative of a market situation. The Commission has found that export growth has been in paper that typically uses imported pulp and imported pulp is not subject to the distortions found in the domestic Chinese pulp market.

A4.9 Market situation in the Indonesian paper market

A4.9.1 Conclusions and findings

The Commission concludes that there is a market situation in the Indonesian A4 copy paper market such that the domestic price for Indonesian A4 copy paper is not suitable for the determination of normal values under subsection 269TAC(1). Findings in support of this conclusion include:

- The GOI's involvement in forestry and pulp industries through its support for the development of timber plantations and its prohibition on the export of timber logs has directly resulted in the distortion of the domestic price for A4 copy paper; and
- The domestic price of Indonesian A4 copy paper is significantly below comparable regional benchmarks.

A4.9.2 Indonesian forestry and pulp industry

A4.9.2.1 Indonesian forest resources

Indonesia has around 86 million hectares of natural forest and 4.9 million hectares of plantation forest.[310] Indonesia's forest areas are primarily state owned (87 per cent) with the remainder privately owned or titled.[311] The key tree species used by the Indonesian pulp industry are acacia and eucalyptus, both of which are good plantation timbers because of their relatively short growing cycles.

The Commission understands that around 50 per cent of logs used by the Indonesian forestry sector are consumed in pulp production with the majority of this timber being sourced from Industrial Forest (HTI) plantations.[312] The Commission also understands that while Indonesian pulp producers typically source some timber from their own and privately owned plantations, the majority of their timber comes from government owned (or licensed) plantations.

The pulp industry's share of total log consumption has increased in recent decades because of growth in the pulp industry and a decline in production of plywood, sawn timber and veneer.[313] Two important factors have supported the recent growth of the Indonesian pulp industry: its access to fast growing plantation timber; and strong growth in Chinese demand for imported pulp.

A4.9.2.2 Claims of comparative advantage in timber production

For purposes of SEF 341 the Commission accepted claims that use of acacia and eucalyptus species together with Indonesia's soil and climatic conditions gave Indonesia a comparative advantage in producing timber. The Commission also considered that Indonesia's forestry industries benefited from good access to land, financing and numerous GOI programs designed to improve natural forest management and to make timber available to domestic industry.

Following SEF 341 the Commission obtained a copy of the RISI Review (see section A2.5.1) which has caused the Commission to revisit the question of Indonesia's claimed comparative advantage. The RISI Review makes it clear that, at least for Indonesia's primary pulpwood (acacia), it is more costly to produce timber in Indonesia than in other Asian countries (see footnote 254). The GOI appears now to claim that Indonesia's primary comparative advantage in timber production is in comparison to Australia.[314] No party to the current inquiry provided information or evidence that would support claims that Indonesia has a comparative advantage more generally. The Commission considers that there is insufficient evidence to found a concluded view that Indonesia has a

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310 http://www.timbertradeportal.com/countries/indonesia/

311 http://www.timbertradeportal.com/countries/indonesia/

312 http://www.timbertradeportal.com/countries/indonesia/

313 http://www.timbertradeportal.com/countries/indonesia/

314 EPR document 191 at page 8.

comparative advantage; rather the evidence before the Commission (the RISI Review) suggests that Indonesia does not have a comparative advantage.

The GOI argued that the RISI Review finding that it is more costly to produce timber in Indonesia than in other Asian countries, is inconsistent with the Commission finding that there is a market situation (namely that higher cost timber production in Indonesia compared to other countries is inconsistent with a finding that Indonesian domestic prices are artificially low because of GOI influence).[315] However the Commission considers that a market situation is primarily concerned with the effect on prices in the domestic market from government influence. On that basis the primary and most relevant comparison in assessing a market situation is a comparison of domestic prices with government influence and domestic prices without government influence. Accordingly the Commission considers that the GOI has misunderstood the market situation assessment by taking as a starting point a comparison of external prices and domestic prices.

The Commission considers that the market situation in Indonesia is amply demonstrated in the very low internal rates of return for Indonesian pulpwood producers compared to pulpwood producers in other countries in the region.[316] The very low internal rates of return for Indonesian pulpwood producers are consistent with oversupply caused by GOI support for the development of timber plantations and its prohibition on the export of timber logs.

A4.9.2.3 Indonesian pulp production, consumption and exports

In 2015, Indonesia wood based pulp production was around 7 million tonnes. Pulp produced in Indonesia is primarily BHK. SMG and APRIL Group together account for around 90 per cent of Indonesian BHK capacity. Over the last decade Indonesian pulp production and consumption grew by around 2 per cent per year. The share of pulp production consumed domestically has remained stable (50 to 60 per cent of total production).[317]

The main destination for Indonesian pulp exports is China (around 63 per cent of exports in 2015). The second largest importer of Indonesian pulp is Korea (14 per cent of exports). The expansion of the APRIL Group and SMG's Chinese paper operations have been an important factor in the growth of exports to China.[318]

A4.9.2.4 Government intervention in the Indonesian forestry sector

Australian Paper alleged that the domestic price for A4 copy paper in Indonesia was not suitable for determining normal values because of a market situation in the Indonesian A4

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[315] EPR document 207 at pages 2 to 4; EPR document 196 at pages 8 and 9.

The GOI appeared to change its position on how RISI data was used; the GOI originally argued that RISI data serves "an entirely different purpose than determining whether government intervention or influence has distorted prices" (EPR document 112 at page 7) before later making the argument that the RISI Review was inconsistent with the Commission's market situation finding.

[316] ADC calculations. Data sourced from RISI.

[317] ADC calculations. Data sourced from RISI.

[318] ADC calculations. Data sourced from RISI.

copy paper market.[319] The allegation identified a number of specific programs (also considered in the Commission's countervailable subsidy investigation) and broader GOI involvement within the industry.

The Commission considered that the primary source of any distortion in the A4 copy paper market would likely be within the Indonesian forestry sector because forestry and timber supply have been a primary focus of GOI policies and programs. The objectives of these policies and programs are, broadly, to promote improved economic, social and environmental outcomes for communities relying on forestry and the Indonesian economy more broadly.[320] Whatever the intended objective of the policies and programs, the Commission considers that they have affected the structure and development of Indonesia's forestry sector and increased the supply of timber. The Commission considers that the Indonesian pulp industry has been the largest beneficiary of the resulting increased access to timber, reflected in its increasing share of total timber consumption.

The Food and Agriculture Organisation of the United Nations (FAO) found that increased timber availability resulted in Indonesian pulp capacity utilisation increasing from 65 per cent in 1989 to 88 per cent in 2006.[321] The Commission's analysis indicates that capacity utilisation averaged around 92 per cent between 2005 and 2015. The Commission considers that growth in pulp production resulting from increased timber supply facilitated a significant expansion in paper production and exports; for example between 1997 and 2007 Indonesian exports of paper and paperboard rose from 24 to 52 per cent of total production[322] and between 2005 and 2015 averaged around 72 per cent.

A number of recent GOI publications and policy initiatives support the Commission's conclusion that the GOI provides ongoing support for the Indonesian pulp industry. These include**:**

- The National Industry Development Master Plan 2015-2035 designates the pulp and paper industry as a priority industry;
- Indonesia's Forestry Long Term Development Plan 2006-2025;
- imposing export bans on logs;
- reversing the ban on natural forest timber for pulp manufacturing;
- providing seven million hectares of natural forest concessions to assist the pulp and paper sector; and
- issuing permits to allow the use of timber waste for pulp.[323]

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[319] EPR document 1.

[320] FAO. 2010. Southeast Asia Subregional Report. Asia-Pacific Forestry Sector Outlook Study II at page 86.

[321] FAO. 2010. Southeast Asia Subregional Report. Asia-Pacific Forestry Sector Outlook Study II at page 34.

[322] FAO. 2010. Southeast Asia Subregional report. Asia-Pacific Forestry Sector Outlook Study II at page 42.

[323] FAO. 2010. Southeast Asia Subregional Report. Asia-Pacific Forestry Sector Outlook Study II at page 31.

A4.9.2.5 Indonesia's Forestry Long Term Development Plan 2006-2025

Indonesia's Forestry Long Term Development Plan 2006-2025 (long term plan) is the GOI's most recent overarching policy concerning the Indonesia forestry sector. The long term plan's stated purpose is:[324]

- to be a reference for the forestry sector's medium term development plans and for development of forestry activity plans by national, provincial, municipal levels of government;
- to provide a guide and reference for all forestry stakeholders to realise the goal of forestry development in accordance with the mutually agreed development vision and mission; and
- to maintain consistency in the management of forestry development from one period to the next in accordance with forestry resources management principles.

Objectives of the long term plan include:[325]

- the creation of a strong institutional framework for forestry development;
- increased value and sustainable productivity of forest resources;
- forestry products and services that are environmentally friendly and competitive and have a high added value;
- an enabling forestry investment climate;
- promotion of forestry products and services;
- an active role of society in supporting responsible and equitable forest management.

The long term plan identifies 'missions' including:[326]

- to create a strong institutional framework for forestry development;
- to increase the value and sustainable productivity of forest resources;
- to develop forestry products and services that are environmentally friendly, competitive and that have a high added value;
- to develop an enabling forestry investment climate;
- to increase the level of exports of forestry products and services; and
- to improve social welfare and raise society's active role in supporting responsible and equitable forest management.

The long term plan provides guidance and a framework within which other policies and programs operate however the Commission considers that it clearly demonstrates the GOI's intent to actively support Indonesia's forestry industries (including pulp production) by ensuring favourable access to plantation land.

In 2006 the GOI announced plans to implement a new type of plantation called Industrial Community Forest Plantations (HTR). The GOI's objective was to establish 5.4 million

[324] Ministry of Forestry. 2006. Indonesia's Forestry Long Term Development Plan 2006-2025 at page 1.

[325] Ministry of Forestry. 2006. Indonesia's Forestry Long Term Development Plan 2006-2025 at page 32.

[326] FAO. 2010. Southeast Asia Subregional Report. Asia-Pacific Forestry Sector Outlook Study II at page 88.

hectares of HTR plantation between 2007 and 2016 to accelerate forestry sector revitalisation.[327]

In 2011 the GOI's Ministry of Forestry announced large investments in the pulp and timber plantation sector. The investments included constructing seven new pulp mills with capacity of nearly five million tonnes and nearly two million hectares of new HTI timber plantations at an overall cost of USD 14 billion by 2017.[328] The Commission notes that the size of these plantations is relatively small compared to total Indonesian forests however they are substantial expansions of Indonesia's plantation forests (of which the pulp industry is the primary user).

A4.9.2.6 Restrictions on exports of wood logs and other raw materials

The Commission considers that an export ban imposed by the GOI on logs distorts the domestic supply of timber. This is significant because, on average, log purchases comprise around 25 per cent of the cost of finished paper. Export bans on Indonesian logs were introduced in the 1980s and then again 1990s. Information provided by the GOI indicates that the objectives of these export bans was to:[329]

- increase competitiveness of national products; control the exploitation of natural resources;
- maintain the availability of raw materials for the domestic market; and
- to support a number of social objectives.

Information provided by the GOI indicates that:[330]

- there is no ban on logs from planation forests (removed in 2009);
- there is a five per cent export tariff on wood chip but no tariff applied to either logs or pulp; and
- there are no export quotas for pulp.

The Commission was able to confirm that no tariff applied to logs or pulp and that there were no export quotas for pulp however the Commission was not able to confirm that the export ban of plantation forests was removed in 2009.

The Commission has focused on the likely impact of the export ban on the supply of plantation timber (the primary source of timber used in pulp production). Most plantation timber used in pulp production is from state owned forests however a significant quantity is obtained from concessions operated by pulp producers and private tree farmers. The Commission considers that the availability of timber grown by pulp producers is not directly affected by the export ban as it is grown for the purpose of producing pulp and hence it is unlikely to be exported irrespective of the ban.

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[327] FAO. 2010. Southeast Asia Subregional Report. Asia-Pacific Forestry Sector Outlook Study II at page 21; Following SEF 341 the GOI told the Commission that the HTR program has delivered around 14,000 hectares to date. The GOI did not provide any documentation in support. The GOI also said that wood used in pulp production is sourced from HTI (or industrial plantations) not HTR plantations.

[328] CIROR. 2012. New Round of Pulp and Paper Expansions in Indonesia at page 3.

[329] GOI Response. Attachment (10) at page 1 (MOT Decree 44/2012).

[330] Government of Indonesia. Government Questionnaire Response at pages 15 and 34-35.

Australian Paper submitted that the export ban artificially depresses the price for domestically produced logs and thus the cost of producing Indonesian pulp and paper. In support, Australian Paper cited findings of the recent US ITC's investigation and estimates of the ban's effect by the Indonesian Forest Concessionaires Association. The Indonesian Forest Concessionaires Association estimated that the ban had resulted in the price for timber from Indonesian natural forests being around half the price of tropical logs in international markets.[331]

The GOI position is that the export ban is not a subsidy (based on the conclusion of the WTO Dispute Settlement Body Panel in WT/DS194/R) however the Commission is able to consider it in a market situation assessment to the extent it is a government induced distortion of domestic prices. The GOI also argued that programs restricting exports of logs and related products is common throughout Asia.[332] Other countries with some form of log export ban include Thailand, the Philippines, Lao PDR and Cambodia.[333]

The GOI argued that pulpwood is not covered by the export ban and hence the price for pulpwood had not been distorted.[334] The GOI contended that the logs subject to bans are typically used in the furniture industry, not pulp production and that the prohibition does not relate to pulpwood (which the GOI claims is scrap wood that includes logs of any size and with no regard to quality).[335] The GOI also claimed that wood chip, is not covered by the relevant regulation, MOT 44/2012, and hence the export of wood chips created from pulpwood is not prohibited.

The Commission initially could not confirm the GOI's claim that logs used in pulp production are not subject to the export ban.[336] Following further investigation and consultations with the GOI, the Commission is satisfied that the export ban applies to all types of logs[337] and that would have a negative impact on timber prices. However, the Commission also notes that lower domestic log prices would reduce returns to plantation operators and logging companies. Those reduced returns would tend to negatively impact plantation investment and the supply of timber.

The Commission accepts that allowing wood chip exports would result in some degree of alignment between Indonesian and international wood chip prices. Alignment of wood chip prices would result in some degree of alignment between the price of wood used in pulp production in domestic and international markets. However there are a number processes involved in turning plantation timber into wood chips and so the Commission considers that impediments to the full alignment of Indonesian domestic and international timber prices would remain.

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[331] http://www.lesprom.com/en/news/The_Indonesian_Forest_Concessionaires_Association_calls_for_lifting_ban_on_log_exports_63559/.

[332] Government of Indonesia. Government Questionnaire Response at page 31.

[333] ITTO. 2014. Biennial Review and Assessment of the World Timber Situation 2013-14 at page 10.

[334] Government of Indonesia. Government Questionnaire Response at pages 35-36.

[335] Government of Indonesia. Government Questionnaire Response at page 38.

[336] EPR document 35.

[337] See section A2.9.6.3

The Commission accordingly considers that the net impact of the export ban on Indonesian logs prices would be reduced prices. Any comparison of Indonesian and Asian regional log prices would not account for charges imposed on plantation operators by the GOI for land management and site remediation[338] (to the extent that similar land management and site remediation requirements were not imposed in other jurisdictions).

A4.9.3 Indonesian paper industry

Between 2005 and 2015 Indonesian copy paper production grew at an average rate of 5.5 per cent per year. Since 2010 production capacity increased by around 32 per cent (or 425,000 tonnes).[339] The primary source of this copy paper production growth has been the expansion of PT. Indah Kiat Pulp's & Paper Tbk's Perawang's facility (Sinar Mas Group). In recent years, average capacity utilisation rates of Indonesian paper mills have fallen to around 80 per cent from 90 per cent prior to 2012.[340]

Indonesian consumption of copy paper has grown strongly in recent years however there is a significant and persistent imbalance between domestic production and consumption, with around 70 per cent of Indonesian copy paper production exported. Copy paper accounted for 53 per cent of exports of wood free paper in 2015 (37 per cent in 2005; 41 per cent in 2010).[341] Indonesia exports copy paper to: Asia (53 per cent); Europe (11 per cent); Middle East (12 per cent); and North America (8 per cent). The main Asian destinations for Indonesian exports are Japan (26 per cent) and Malaysia (7 per cent).[342]

The GOI provided the following information concerning the Indonesian paper industry:[343]

- There are 62 private pulp and paper companies registered with the Indonesian Pulp and Paper Association;
- All companies operating in the Indonesian copy paper industry are privately owned (the GOI is not a shareholder in any pulp or paper companies).
- The main Indonesian producers of A4 copy paper (with a combined production capacity of 2.2 million tonnes) are SMG and the APRIL Group, both of which are integrated paper producers with their own upstream raw materials and input facilities.[344]
- There is no price guidance for pulp and paper products in Indonesia.

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[338] EPR document 35.

[339] ADC calculations. Data sourced from RISI.

[340] ADC calculations. Data sourced from RISI.

[341] ADC calculations using data sourced from RISI.

[342] ADC calculations using data sourced from RISI.

[343] Government of Indonesia. Government Questionnaire Response at pages 3, 8 and 9.

[344] Sinar Mas Group refers to: PT Indah Kiat Pulp & Paper Tbk; PT Pindo Deli Pulp and Paper Mills; PT Pabrik Kertas Tiwi Kimia Tbk. APRIL Group refers to PT Riau Andalan Pulp and Paper (RAPP) and its other affiliated crossed-owned companies.

A4.9.3.1 Government intervention in the Indonesian paper industry

The Commission has found that the primary beneficiary of identified timber-related GOI policies and programs was the Indonesian pulp industry; this finding is significant in assessing a market situation in the Indonesian A4 copy paper market. The Commission considers that Indonesian A4 copy paper producers have benefited through access to cheaper pulp including from related parties for integrated paper producers such as the Sinar Mas and APRIL Groups. The Commission considers that access to cheap pulp has improved the international competitiveness of Indonesian paper producers and fuelled the expansion in Indonesian production and exports over the last decade.

The Commission assessed other possible sources of distortions in the Indonesian A4 copy paper market and has found:

- There are no special or preferential taxation arrangements available to either pulp or paper producers.[345]
- There is no differential tax treatment for FIEs and Indonesian domestic owned private enterprises.[346]
- There is currently a five per cent import tariff for paper products but no export tariff or export quotas.[347]
- There has been no export restriction or VAT rebates for Indonesian A4 copy paper exports for the last five years.
- There were no direct or indirect price controls or guidance concerning A4 copy paper within the Indonesian market.[348]

A4.9.4 Analysis

The Commission has found that the domestic price of Indonesian A4 copy paper is significantly below comparable regional benchmarks. For example, average domestic prices for Indonesian A4 copy paper (70-80 gsm) ranged between USD 800 and USD 880 per tonne during the investigation period compared to between USD 900 and USD 965 per tonne for Asia region benchmarks.[349] The Commission considers that the distortion of the domestic price for A4 copy paper directly results from GOI involvement in the forestry and pulp industries through its support for development of timber plantations and prohibition on exporting of timber logs.

The Commission considers that GOI programs have increased the availability of timber relative to demand and hence artificially lowering prices for Indonesian logs and pulp. The Commission considers that without these interventions, the price for timber and pulp

[345] Government of Indonesia. Government Questionnaire Response at page 13.

[346] Government of Indonesia. Government Questionnaire Response at page 9.

[347] Government of Indonesia. Government Questionnaire Response at page 34. Attachment (5).

[348] PT IDAH KIAT PULP & PAPER TBK. Exporter Questionnaire Response at pages 39-43.

[349] Domestic prices for Indonesian A4 copy paper based on domestic sales of verified exporters. Estimates include adjustments for transportation costs into the Asian region. The Asian region benchmark is based on the Korean (80 gsm) and Asia (70 gsm) benchmarks. Refer to Figure 16.

would be above prices that prevailed during the investigation period and that these higher input costs would be reflected in higher domestic prices for A4 copy paper.

The Commission has considered the extent to which other factors may have contributed to the differences in Indonesian prices for logs, pulp and A4 copy paper. The Commission considers that these other factors do not fully explain the differences between Indonesian prices and relevant comparators. These other factors include:

- Differences in the composition of other Asian region pulp price benchmarks;
- Advantages accruing to Indonesian producers from favourable tree species and climatic conditions;
- Production techniques, economies of scale and linkages to key growth markets arising from Sinar Mas and APRIL Groups' operations in Indonesia.[350] [351]

A4.9.4.1 Quantifying distortion in the Indonesian log market using Malaysian log prices

In PAD 341A the Commission quantified distortions in the Indonesian log market by analysing log export prices in Malaysian trade data. The Commission considers that the Malaysian log price is the best measure for assessing distortions in the Indonesian log market. The close proximity of Malaysia to Indonesia means that both countries face similar growing and climatic conditions, similar shipping costs to major customers and general market conditions within the Asian region. Accordingly the Commission considers that Malaysian log prices are a good proxy for an undistorted Indonesian log price.

Following PAD 341A the Commission revised its quantification of distortions in the Indonesian log market by incorporating regional trade flows and additional trade and pricing information (revised quantification). The revised quantification retains the same core measure, namely Malaysian log prices, however the Commission has refined that measure to provide a more accurate proxy for an undistorted Indonesian log price. The key features of the revised quantification are:

- A Malaysian log price is derived from Malaysian wood chip exports. The Commission prefers this approach to that used in PAD 341A because the Malaysian log export data used in PAD 341A included timber species that are not typically used in pulp production and trade at higher prices than pulpwood.[352] Using wood chip pricing data allowed the Commission to confirm the accuracy of its analysis against data from other sources and countries.
- The Commission used Malaysian wood chip trade data for the investigation period and converted it from a CIF to FOB unit value using estimated transport costs. Estimated transport costs (USD per kilometre) were derived from data[353] for wood

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350 http://www.sukantotanoto.net/media-articles/april-on-the-challenges-faced-by-indonesian-pulp-paper-industry

351 EY Global Forest Products, Paper and Packaging Report 2013. Reaching Out: Opportunities in the New Rapid Growth Markets at page 42.

352 EPR document 105.

353 Wood Resources Quarterly (WRQ).

chip imports into China and Japan from numerous Asian suppliers. The resulting estimated transport cost was applied to actual shipping distances between relevant regional ports.

- Resulting FOB unit values for wood chips were converted to a derived log price using an estimated ratio of hardwood log to wood chip prices. The estimated ratio of hardwood log and wood chip prices was based on data from WRQ and information from the Australian forestry industry.[354] The Commission estimated the ratio of hardwood log to wood chip prices as approximately 100:109 based on 2014 and 2015 data.

The Commission checked the revised quantification by applying it to Thailand, Vietnam and Indonesia wood chip exports. The resulting derived price for Indonesian logs was at the upper end of the range of derived Malaysian, Thai and Vietnamese log prices during the investigation period.

The difference between Indonesian log prices and the derived Malaysia, Thailand and Vietnam log prices may reflect some differences in log production costs. These production costs account for around 50 per cent of the log price to Indonesian pulp producers. However the Commission's assessment indicates that even if these costs differed significantly between Indonesia and other regional producers, that cost difference would not fully account for the difference between Indonesian log prices and derived log prices from other regional producers.

A4.9.5 Submissions received prior to SEF 341

A number of submissions[355] were received prior to SEF 341 in relation to Australian Paper's allegations of a market situation in Indonesia. The matters raised in these submissions included claims that:

- there cannot be a duplication of protection against alleged subsidies by finding them to have also created a particular market situation;
- the US investigation did not find a market situation and that they determined normal values based on domestic selling prices, nor did it provide evidence to support the PMS allegation;
- the WTO panel report in European Union – Anti-Dumping Measures on Biodiesel from Argentina (WT/DS473/R) (the 'Bio Diesel case'), specifies '…that the use of surrogate input material costs in normal value constructions because of government influence on those recorded in the accounts of domestic manufacturers is inconsistent with Article 2.2.1.1 of the *Anti-Dumping Agreement*';
- in the past twenty years investigations concerning uncoated paper exported from Indonesia conducted by the governments of South Africa, Australia, Korea, Pakistan, Japan and United States have not made a finding of a particular market situation existing in Indonesia; and
- the alleged artificially lowering of the prices of inputs to manufacture does not in some unspecified way preclude a proper comparison of domestic selling prices with

[354] The Commission was unable to base its log to wood chip ratio on Indonesian, Malaysia or Asia region data as suitable data was not available.

[355] See public record numbers 5, 6, 22, 25, 29, 39 & 44

export prices, particularly when the same inputs to manufacture are used to produce the same products sold in the domestic market as sold for export (i.e. they equally impact both export and domestic prices).

Submissions were also received in relation to the specific nature of the alleged market situation in Indonesia and the appropriate methodology for assessing a market situation.

A submission[356] was also received from SMG (Indah Kiat, Pindo Deli and Tjiwi Kimia) seeking the disclosure of the information sourced from RISI and Hawkins Wright Ltd. (Hawkins Wright) for the purposes of the market situation analysis.

A4.9.5.1 Commission's consideration of submissions prior to SEF 341

Biodiesel Report

A number of interested parties made submissions concerning the deliberations of the WTO Dispute Settlement Body concerning EU duties on biodiesel from Argentina. The Commission's comments at section 6.9.8.1.1 are also relevant here.

Duplication of protection: subsidies and particular market situation

To avoid the possibility of double counting in relation to uplifts for the market situation identified and any subsidy programs that may be ultimately countervailed, the Commission would consider any dumping duty imposed be adjusted by deducting the subsidy program rates that may arise from the circumstances of where a constructed normal value includes a major cost component that is based on surrogate data.

Impact of market situation on domestic and export prices

The Commission has addressed issues raised concerning the impact of a market situation on domestic and export prices at section A2.9.6.1.

US dumping investigation findings

In relation to the US investigation's findings, it is noted the US anti-dumping system is different to Australia's anti-dumping system and, therefore, the US investigation's findings in relation to Indonesian domestic prices is not directly comparable in the context of a market situation assessment.

Price data

The price data used by the Commission was provided by RISI and Hawkins Wright on a commercial-in-confidence basis. The Commission obtained a limited consent to disclose this data to cooperative Indonesian exporters and Australian Industry.

A4.9.6 Submissions in response to SEF 341

A4.9.6.1 Interpretation of "situation in the market"

SMG made a submission concerning the Commission's market situation assessment.[357] SMG argues that the ordinary meaning of the term "situation in the market" in subsection

[356] See record 91 on the public record

[357] EPR document 146.

269TAC(2)(a)(ii), taking into account its context in the Act and the purpose or object underlying the Act, is limited to situations that have a specific asymmetrical effect on the price of domestic sales in the country of export and the price of export sales from that country. That specific asymmetrical effect, according to SMG, is one "which results in lower prices of the exporter's domestic sales without having an equivalent effect on the prices of the exporter's export sales".[358]

The Commission does not accept SMG's preferred interpretation of subsection 269TAC(2)(a)(ii). SMG's preferred interpretation of subsection 269TAC(2)(a)(ii) was recently expressly considered by the Federal Court in *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885. SMG did not refer to this decision in his submission. Nicholas J in the *Dalian* case did not accept submissions that "if domestic prices and export prices are equally influenced by the same government interventions, this cannot possibly amount to a market situation" stating, inter alia, that the submissions "ignore the broad language used in s 269TAC(2)".[359]

The Commission did not in any event find SMG's reasoning persuasive. SMG relied on the following reasoning to reach its conclusion:

- Both limbs of subsection 269TAC(2)(a) have the "same object and purpose", namely that there is a situation in which it will not be possible to compare prices of the individual exporter's domestic sales with the individual exporter's export sales.[360]

  The Commission does not accept that the object and purpose of both limbs of subsection 269TAC(2)(a) is concerned with the unsuitability of an individual exporter's domestic sales for determining normal values. Rather both limbs of subsection 269TAC(2)(a) are expressly concerned with matters "*in the market* of the country of export" (emphasis added) and accordingly the Commission considers that subsection 269TAC(2)(a) calls for an assessment of aspects of the market in the country of export more generally than the assessment that SMG proposes. Moreover SMG claims that subsection 269TAC(2)(a)(i) applies when there is an "absence of sufficient actual sales by the individual exporter in the domestic market"[361] however subsection 269TAC(1) expressly provides for the circumstance in which there is an absence of actual domestic sales by the exporter.

- The object and purpose of Part XVB of the Act is to "ensure that any antidumping measures do not go beyond what is permitted under the WTO *Anti-dumping Agreement*".[362]

  The Commission does not accept that the object and purpose of Part XVB of the Act is as asserted by SMG. SMG asserts the claimed object and purpose of Part

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[358] EPR document 146 at page 14.

[359] *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885 at [29]-[30].

[360] EPR document 146 at page 13.

[361] EPR document 146 at page 13.

[362] EPR document 146 at page 12.

XVB without support. The Commission observes that Part XVB of the Act does not have a purpose statement and relevant explanatory memoranda and similar material do not evince the restrictive object and purpose proposed by SMG.[363]

- Read in isolation, "section 269TAC(2)(a)(ii) is concerned with the determination of normal value" but that "the determination of normal value on its own has no consequences".[364] SMG's ultimate inference from this reasoning is that the impact of a market situation should be assessed for both normal values and export prices to assess whether there is an asymmetric effect on these variables.

  The Commission does not accept SMG's suggestion that the Commission's current method of determining normal values has "no consequences" – clearly there are consequences when normal values (determined under section 269TAC) are compared to export prices under section 269TACB. Neither does the Commission accept that its reading of section 269TAC(2)(a)(ii) is done "in isolation".

  It is inconvenient to SMG's argument that the legislation expressly provides for: normal values to be determined under section 269TAC; export prices to be determined under section 269TAB; and those normal values and export prices to be compared under section 269TACB. To suggest, as SMG does, that some version of normal values and export prices should also be compared in a subparagraph of section 269TAC would be to deny the clear and unambiguous scheme of the legislation. In any event export price is expressly mentioned in subsections 269TAC(8) and 269TAC(9) which confirms that elsewhere in section 269TAC, where there is no express mention of export price, that the legislature intended that export price not be considered in determining normal values.

More generally the Commission considers that SMG's conclusion does not follow from its reasoning (even if the issues with its reasoning identified above were resolved). For example, SMG asserts that subsection 269TAC(2)(a)(ii) reflects the fact that "there may be situations in a market which have the effect that it will not be possible to use a comparison of the prices of an individual exporter's domestic sales with the prices of that individual exporter's export sales to determine if that exporter is discriminating between the domestic market and the export market, or, is dumping".[365] SMG's reasoning provides no explanation why the legislature meant what SMG asserts but instead drafted the words that appear in subsection 269TAC(2)(a)(ii). The Commission rather considers that subsection 269TAC(2)(a)(ii) reflects the fact that there may be situations in a market such that sales in that market are not suitable for use in determining a price to be used as normal value under subsection 269TAC(1), namely that the drafting reflects the legislature's intention. The Commission observes that SMG has not suggested that assessing a market situation in the manner proposed by SMG would give a different result.

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[363] See for example the Notes on Clauses for the *Customs Tariff (Anti-Dumping) Bill 1975* which states that the objects are to give effect to the then government's decision to adopt the GATT Anti-Dumping Code and to strengthen the powers to protect Australian industry against unfair competition.

[364] EPR document 146 at page 9.

[365] EPR document 146 at page 14.

SMG provided a further submission concerning the Commission's market situation assessment for Indonesia (which responded to a submission by Australian Paper).[366] The Commission does not consider that that further submission added anything material to the earlier submission made by SMG.

A4.9.6.2 Timber species in Indonesia

The GOI submitted that Australian Paper misinterpreted the Indonesian Forest Concessionaires Association's statement concerning the impact of the log export ban and the Commission's assessment lacked consideration of the conditions within the Indonesian softwood market.[367]

The Commission has not put significant weight on the Indonesian Forest Concessionaires Association's statement because the Commission was unable to confirm which timber species it related to. The Commission put greater weight on actual timber costs obtained from cooperating Indonesian exporters and derived timber prices were calculated by the Commission from wood chip exports pricing information from a number of different Asian countries, namely Malaysia, Indonesia, Vietnam and Thailand as described elsewhere in this appendix.

The GOI's argued that the Commission did not sufficiently consider the Indonesian softwood market in its market situation assessment. The Commission considers that hardwood is the major input into BHK pulp and the Commission accordingly focussed on the hardwood market in making its assessment. The Commission understands that softwood fibres are sometime mixed with hardwood fibres however hardwood fibre is nonetheless the primary input. The distortions identified by the Commission in the Indonesian hardwood market would not be ameliorated by competitive softwood pulp.

The GOI's Supplementary Government Questionnaire response, states that to the best of its knowledge there are no industrial forests in Indonesia producing softwood for use in pulp production.[368] Accordingly, the Commission considers that softwood is not relevant to assessing conditions in the Indonesian pulpwood market.

A4.9.6.3 Treatment of export bans

The Commission did not take Australian Paper's claims concerning the log export ban at face value. Rather the Commission undertook its own assessment including whether the ban existed and its relevance to the investigation. The Commission's assessment included: reviewing publically available third party information (including information concerning the United States Department of Commerce's (USDOC) investigation into Indonesian uncoated woodfree paper exports to the United States);[369] and information provided in the GOI's Supplementary Government Questionnaire response. The GOI's Supplementary Government Questionnaire response did not state that acacia or

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[366] EPR document 189.

[367] EPR document 133.

[368] Government of Indonesia. Supplementary Government Questionnaire Response at page 6.

[369] See USDOC, *Countervailing Duty Investigation of Certain Uncoated Paper from Indonesia: Issues and Decision Memorandum for the Final Affirmative Determination* (January 8, 2016).

eucalyptus logs were expressly not covered by the ban. The Commission considers that the information provided indicates that hardwood logs of any species are covered by the export ban.

In its response to the Supplementary Government Questionnaire, the GOI contended that the export log ban only applies to logs with a diameter greater than 30 cm, that acacia and eucalyptus logs used in pulp and paper production are less than 30 cm in diameter, and therefore that those logs are not covered by the export ban. This issue was discussed at the Commission's meeting with the GOI on 24 February 2017.[370]

Based on statements made by the GOI and analysis of the supporting evidence provided, the Commission is satisfied that:

- the export ban applies to all goods falling under Harmonized System (HS) classifications 4403.10.10.00 to 4403.99.90.00 of the Indonesian customs tariff;[371]
- HS classifications 4403.10.10.00 to 4403.99.90.00 encompass all logs for all species and types, including acacia and eucalyptus;[372]

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[370] Following the meeting with the GOI on 24 February 2017, the GOI provided the Commission with a document that purported to be a record of that meeting. That document is EPR document 207. The Commission was not asked to confirm whether the document was an accurate record of the meeting and does not consider it to be so, in particular:

1. The Commission understood explanations made at the meeting concerning the export log ban but was not satisfied that the documents provided evidenced the claims made.
2. The Commission did not accept that the evidence provided established that the export ban did not apply to timber logs used in the Indonesian pulp and paper industries, as claimed at page 7.
3. The Commission did not accept that the evidence provided established that the log export ban did not apply to all logs but only to "big round timber", as claimed at page 6.
4. The explanations provided at the meeting did not clarify that the prohibition on the export of timber logs applied only to timber with a diameter of 30cm or more and did not apply to timber with a diameter of less than 30cm, as claimed at page 6.
5. The level of detail concerning Indonesia's claimed comparative advantage at page 3 was not provided at the meeting, rather these points were made at a very high level only during the meeting.
6. The verbatim quote from SEF 341 contained at page 3 was not read during the meeting.
7. The Commission was not satisfied with the explanation concerning classification of imports (to the extent that it would support claims made concerning imports of timber to Indonesia), as claimed at page 1.
8. The Commission does not consider that claims made concerning the Indonesian softwood market were made at the level of detail indicated at page 2.

The document also contained extensive submissions by way of "Additional Comments" (at pages 4 to 7) and was placed on the EPR as a submission from the GOI.

The Commission prepared a file note that contains details of the meeting that are agreed by the Commission and the GOI. That file note is EPR document 210.

[371] MOT Decree 44/2012, Attachment II at item No. 1 (EPR document 210).

[372] EPR document 210 at page 2.

- the description of 'medium round wood or small round wood' in the export ban[373] is a general description of products within the stated HS classifications (all in subheading 4404) and does not correspond to the definitions of 'Medium Round Log' and/or 'Small Round Log' in Indonesian national standard SNI 7533.1:2010[374] because pulpwood used to produce A4 copy paper is classified under HS subheading 4403, not 4404;[375] and
- correspondingly, the description of 'big round wood' in the export ban is merely a general description and does not correspond to the definition of 'Big Round Log' in SNI 7533.1:2010 because all logs regardless of size, specifically pulpwood used to produce copy paper, are classified to HS subheading 4403.[376]

The Commission found the documents provided by the GOI to be unclear and was not convinced by the GOI's explanation on the basis of those documents that pulpwood logs were not covered by the GOI's log export ban.

The Commission notes in any event that:

- the express objective of MOT Decree 44/2012 is stated in the broadest terms to be "in order to … maintain the availability of raw materials to the needs of the domestic market";[377]
- export data included in the GOI's response to the original government questionnaire indicates that no logs were exported during the investigation period or since 2012 (when MOT Decree 44/2012 came into effect);[378]
- the USDOC,[379] which recently investigated Indonesia's export log ban in the context of a countervailing investigation, also found that the export log ban applied to timber used in the production of pulp and copy paper, noting that "all logs … are subject to the export ban".[380]

The Commission therefore finds that the pulpwood logs used in the production of pulp and paper in Indonesia, including the goods exported to Australia, are covered by the GOI's log export ban.

The Commission notes that the log export ban was not found to be a countervailable subsidy in this inquiry. A market situation assessment differs to an assessment of

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[373] MOT Decree 44/2012, Attachment II at item No. 2 (EPR document 210).

[374] EPR document 192.

[375] As confirmed by the GOI (EPR document 210 at page 4 refers).

[376] ibid.

[377] MOT Decree 44/2012 at page 1.

[378] Data provided with EPR document 27.

[379] The Antidumping and Countervailing Duty Operations Unit of the US Department of Commerce is responsible for enforcing US anti-dumping duty and countervailing duty laws, including the conduct of investigations http://trade.gov/enforcement/operations/

[380] USDOC, *Countervailing Duty Investigation of Certain Uncoated Paper from Indonesia: Issues and Decision Memorandum for the Final Affirmative Determination* (January 8, 2016) at page 19.

countervailable subsidies and concerns conditions in the relevant domestic market more generally.

A4.9.6.4 Impact of Indonesia's Forestry Long Term Development Plan 2006-2025

The GOI claims that the long term plan does not impact prices of products under consideration. Rather the long term plan is only intended to provide guidance and a framework.[381]

The long term plan expressly states the need for all levels of the GOI to provide coordinated support for development of the Indonesian forestry sector. Accordingly the Commission considers that the plan is consistent with more specific policies described elsewhere in this Report. As such, the Commission considers that this plan provides the framework in which GOI support is provided and hence is relevant to this investigation. The long term plan is considered in greater detail in section A2.9.2.5.

The GOI also stated that the GOI objective of making 5.4 million hectares available has not been achieved and only 14,000 hectares have been developed[382]

The Commission considers that the objective of making available of 5.4 million hectares was only one example of the GOI's policies and programs being used to support and distort the Indonesian forestry industry. The Commission understands that the objective remains GOI policy notwithstanding that it has only been partly achieved to date.

The Commission's conclusion regarding the extent of distortions within the Indonesian forestry and pulp industries is in any event confirmed by a comparison of Indonesian log, pulp and copy paper prices with other producers in the Asian region.

A4.9.6.5 GOI ownership of forestry resources

The GOI submitted that the ownership of forestry resources does not mean that the GOI is the predominant supplier or price setter. The GOI cites a WTO Appellate Body that an investigating body cannot refuse to consider matters other than government ownership.[383]

The Commission has not refused to consider matters other than the GOI's ownership of Indonesian forestry resources. The Commission has made its assessment on the basis that mere ownership or involvement in a market by a government does not automatically result in that market being distorted. Rather the Commission is concerned with the level of government influence over markets operations, how this influence is utilised and the resulting impacts of this involvement on market outcomes.

The Commission notes that only the GOI can designate land for plantation purposes and that regardless of who operates the land, the GOI retains ownership. Accordingly the Commission considers that the GOI has significant influence over the amount of land available for timber production and hence the ability to cause significant distortions in domestic timber markets. The Commission's focus in its market situation assessment is

[381] EPR documents 133, 178; the GOI cites this document in its submissions as the National Long Term Forestry Plan (2006 – 2015).

[382] EPR documents 148, 167, 178.

[383] EPR documents 133, 178 at [11].

rather on how the GOI uses its ownership of forestry resources to influence market outcomes not the ownership of forestry resources per se.

The GOI controls how much land is allocated to forestry and it is reasonable for the Commission to conclude that the GOI's plans and policy objectives involving allocation of land to forestry will be implemented. Evidence or information to the effect that the GOI is not implementing or would not implement those plans and policy objectives has not been provided to the Commission. In addition the GOI provided no information or evidence to indicate that plantation land was released to the Indonesian market at market rates (for example through auctioning concessions).

The Commission's market situation finding is based on the effect of the GOI's support for the forestry and pulp industry. That support is effected through programs that support the expansion of timber plantations and restrict timber exports. These programs have resulted in distortions in the Indonesian forestry and pulp industries and ultimately the domestic price for Indonesian A4 copy paper. This finding is not based solely on GOI ownership of forestry resources.

A4.9.6.6 Subsequent supply into competitive markets

The GOI claims that Indonesian timber is supplied to third parties in competitive market conditions, unregulated and uninfluenced by the GOI. As such it is subject to the usual market conditions of supply and demand in a competitive market at that stage.[384]

The Commission considers that the GOI's timber policies and programs have resulted in the supply of timber being distorted, compared to a situation where such policies are not in effect. The Commission considers that conditions in subsequent transactions to third parties will depend, at least in part, on the distorted supply of timber notwithstanding whether those third parties operate in competitive markets. Indeed, the Commission considers that the GOI policies and programs are predicated on the likelihood that there will be some downstream effect.

The Commission considers that distortions in the Indonesian forestry industry are demonstrated in the Commission's derived log pricing assessment and the extent of Indonesia's pulp exports (notwithstanding Indonesian's higher growing costs compared to other timber producers in the region).

A4.9.6.7 Artificial lowering of prices

The GOI contended that:[385]

- the Commission has not explained what is meant by artificially low prices;
- the Commission has not explained how the GOI provision of land has distorted or created artificial pricing outcomes;
- it is unclear how making available land for timber plantations results in artificially low prices for timber and pulp when the GOI does not control how and which trees are planted.

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[384] EPR document 167.

[385] EPR document 167.

The Commission explained the meaning and relevance of artificially low prices to a market situation assessment at some length at section A2.3 in SEF 341. It is not clear to the Commission that undertaking exegesis on certain words in the Manual is a fruitful exercise. The words of subsection 269TAC(2)(a)(ii) govern the Commission's market situation assessment. The Manual is not a mandatory set of instructions but the guidelines used by the Commission in conducting investigations.[386] The Commission would refer the GOI to case law that endorses the Commission's approach to market situation.[387]

Land is the primary input to timber production. Accordingly it is clear that provision of that primary input without regard to the market, or in accordance with an objective to affect markets, will impact on downstream industries such as pulp and paper.

A4.9.6.8 Extent to which domestic prices for A4 copy paper are distorted

Sinar Mas complained SEF 341 did not make an assessment of the extent to which domestic prices for A4 copy paper are distorted and unsuitable for proper comparison with corresponding export prices.[388]

It is unclear to the Commission what Sinar Mas seeks as an assessment of the extent of the distortion. The Commission does not consider that it is required to calculate the extent of the distortion caused by GOI polices (assuming that this would be possible). Rather, the Commission's finding on this issue was the result of a considered assessment of a factual question requiring a broad judgment namely, whether the impact of the GOI influences on the Indonesian timber and pulp industries rendered domestic sales of A4 copy paper unsuitable for use in determining normal value under subsection 269TAC(1).[389]

The Commission quantified the distortion in the Indonesian log market (see section A2.9.4.1 above) and is satisfied that the significant distortions found in that assessment impact on the pulp and paper industries such that domestic sales of A4 copy paper are unsuitable for use in determining normal value under subsection 269TAC(1).

A4.9.6.9 Verification of GOI information

The GOI requested that the Commission verify the information provided by GOI.[390]

Following SEF 341, the Commission provided the GOI with a Supplementary Government Questionnaire to clarify the GOI's initial response to Indonesia's Government

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[386] The Manual at page 4.

[387] See for example *Dalian Steelforce Hi-Tech v Minister for Home Affairs* [2015] FCA 885 (21 August 2015).

[388] EPR document 148 at page 2.

[389] *Dalian Steelforce Hi-Tech Co Ltd v Minister for Home Affairs* [2015] FCA 885.

[390] EPR document 145.

Questionnaire.[391] The Commission met with the GOI to provide the GOI an opportunity to address its response to the Supplementary Government Questionnaire.[392]

A4.9.6.10 No market situation assessment of benchmark countries

The GOI took issue with the Commission's market situation assessment of Indonesia because the Commission did not make a market situation assessment for countries used by the Commission to derive its benchmarks.[393]

The Commission considers that the legislation is unambiguous. Subsection 269TAC(2)(a)(ii) states that the market situation concerns a "situation in the market of *the country of export*" (emphasis added). There is no provision for the Commission to undertake market situation assessments of markets in countries other than the country of export.

The Commission notes in any event that if there was a market situation in any country used to derive the Commission's benchmarks then this would tend to reduce that benchmark compared to Indonesian log prices. This would tend to reduce the likelihood of a market situation finding in Indonesia.

A4.9.6.11 Policies and programs impacting differently on domestic and export prices

SMG argued that the Commission did not examine whether the GOI's policies or programs for timber and pulp had impacted differently on domestic and export prices of A4 copy paper, making domestic prices of A4 copy paper unsuitable for comparison with export prices of A4 copy paper.[394]

The Commission considers that SMG's submission is based on the same interpretation of subsection 269TAC(2)(a)(ii) advanced in a submission by SMG.[395] The Commission does not agree with SMG's interpretation for the reasons set out in section A2.9.6.1 and accordingly does not accept Sinar Mas Group's submission based on the same interpretation advanced by SMG.

A4.9.6.12 Role of comparative advantage in benchmark comparisons

SMG argued that:[396]

- the difference between Indonesian A4 copy paper prices and comparable regional benchmarks cannot be attribute to GOI policies and programs given the existence of Indonesia's comparative advantage in timber production;
- the Commission has not adequately considered Indonesia's comparative advantage in timber productions when assessing the impact of the log ban on differences between Malaysian and Indonesian log prices.

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[391] EPR document 27.

[392] EPR document 191.

[393] EPR document 145.

[394] EPR document 148.

[395] EPR document 146.

[396] EPR document 148.

Following SEF 341 the Commission revisited the question of Indonesia's claimed comparative advantage. The Commission now considers that there is insufficient evidence to found a concluded view that Indonesia has a comparative advantage; rather the evidence before the Commission suggests that Indonesia does not have a comparative advantage. Indonesia's claimed comparative advantage is considered in further detail at section A2.9.2.2.

A4.9.6.13 Effect of no ban on wood chips

SMG argues that the Commission's conclusion that wood chips are not subject to the export ban should lead the Commission should also conclude that logs are not affected by the ban.[397]

The Commission considers that the difference between wood chips and logs highlights one of the objectives of the export ban, namely to support Indonesian based industries that add value to logs. The production of wood chips in Indonesia is such an industry. The Commission considers that pulp and paper products similarly benefit from the log ban in accordance with the objectives of the ban and other GOI policies.

A4.9.6.14 Standing timber owned by forestry industry not the GOI

SMG argued that the Commission's finding that timber sourced from HTI plantations are from government owned plantations (and therefore the government provides benefit to forestry industries) is incorrect as plantations are leased by private forestry industry. Hence all of the standing timber is owned by the forestry industry not the GOI.[398]

The Commission considers that GOI policies and programs distort the timber market through provision of land and actively encouraging development of plantations. These policies and programs, in combination with other policies such as the log export ban, have distorted the domestic timber and pulp markets.

A4.9.6.15 No grounds for conclusion that distortion of price for A4 copy paper is direct result of log ban

SMG notes the Commission's observation that vertically integrated plantation owners and pulp producers are not directly impacted by the GOI export ban because logs produced by those entities are grown to be pulped in Indonesia. On that basis, SMG argues, there are no grounds for the Commission's conclusion that the distortion of the domestic price for A4 copy paper is the direct result of prohibitions on the export of timber logs.[399]

The Commission does not accept that its comment concerning vertically integrated plantation owners and pulp producers supports SMG's argument. The Commission's observation was merely to the effect that there are certain timber producers who would not, in the normal course of their business, seek to export logs because those logs are destined for internal use by those producers in producing pulp. It simply does not follow that the log export ban has no direct effect on downstream (pulp and paper) markets in

[397] EPR document 148.

[398] EPR document 148.

[399] EPR document 148 at page 4.

Indonesia. The logical conclusion of SMG's argument is that the GOI's log ban is an exercise in futility.

A4.9.6.16 Other issues considered by the Commission

The following issues were raised by SMG and the GOI. These submissions are noted by the Commission and have been considered in the preparation of this Report. However no further information or evidence was provided in respect of these issues that would cause the Commission to revisit its findings and conclusions.

- The GOI contends that the Commission's findings were not based on facts and evidence, as required by WTO rules, but mere conjecture and speculation: "No facts of evidence has been advanced that the GOI policies actually had the effect contended by the Commission (i.e. oversupply of timber / pulp) or that it was the intention of the Government of Indonesia that that was its intention."[400]
- SMG submits that SMG only uses plantation timber to create paper and has a zero deforestation policy in place.[401]
- Australian Paper argues that Indonesia's claim to a comparative advantage in timber harvesting is not supported by the Commission's finding for RAK that it had a pulp price that was comparable to the benchmark price.[402]
- Australian Paper argues that SMG failed to recognise that the GOI's role in determining the level of royalties paid by Indonesian harvesting companies for timber is at a value that is at less than an international benchmark (and hence, at less than adequate remuneration).[403]
- Australian Paper observes that SMG claimed that a PMS cannot be sustained and therefore normal values must be determined under subsection 269TAC(1). However in that case SMG's production costs must be representative of competitive market costs which is not the case. As a result SMG's normal values must be constructed.[404]

[400] EPR document 167.

[401] EPR document 148.

[402] EPR document 163.

[403] EPR document 163.

[404] EPR document 163.