

Directorate General of Foreign Trade

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Ref. No. ²⁰³ /DAGLU.6.1/SD/3/2020

Jakarta, ¹⁶ March 2020

Dale Seymour

Commissioner of Australia Anti-Dumping Commission

Re : GoI Response to Implementation of Panel Ruling on DS529: Australia — Anti-Dumping Measures on A4 Copy Paper by Australia

Dear Commissioner,

Thank you for meeting with us and sharing Australia's proposal to implement the WTO Panel's ruling in DS529.

We have received the summary information regarding the questionnaire and implementing procedure by Australia in respect of the Panel's ruling on DS529. Separately we are in receipt of Notice of Initiation of a Review of Anti-Dumping Measures No 547 ("NOI") through Anti-Dumping Notice No. 2020/28 of Australia's Anti-Dumping Commission ("ADC"). I write to express Indonesia's strong concern with Australia's proposed approach, which Indonesia asks Australia to reconsider.

The Panel's ruling requires Australia to review its original dumping measure, taking into account the Panel's findings, and not to conduct an entirely new investigation based on a review period of January 1, 2019 to December 31, 2019. We are of the view that the use of combined data from the original investigation and review period (January 1, 2019 to December 31, 2019 as indicated in the NOI) would be legally and technically problematic. Moreover, Australia's proposed approach, which is not to review the original dumping measure in line with the Panel's findings, but to conduct an entirely new proceeding raises a number of questions to which we would like Australia to respond. As the NOI and summary of the questionnaire recognize, the Indonesian exporters did not export to Australia during the "review" period (January 1, 2019 to December 21, 2019). If there are no export prices, what price does Australia propose to use as a surrogate and on what provision of the WTO Agreement does Australia rely to use a surrogate for export price? While we note that during the meeting Australia indicated that indexing or market adjustment to the export price in original investigation could be made, we are of the view that this would be inconsistent not only with the Panel's ruling but the WTO Anti-Dumping Agreement.

It is of note that the ADC's original investigation evidenced the fact that the mills' pulp costs applied equally to paper produced for domestic and export sales. It is also of note that the ADC's dumping finding in relation to IK's exports to Australia prior to its PMS finding, i.e., based on the comparison of export and domestic prices, was negative – to which the ADC's Verification Report refers. Australia's proposal to collect new data that does not relate to the original period of investigation would be an additional inconsistency with Australia's WTO obligations.

In light of the Panel's rulings and the facts we presented above, we strongly request that ADC conduct the review based on data of the original investigation, which is needed to assure an implementation consistent with the Panel's rulings in DS529. As noted in the meeting, in DS473: European Union – Anti-Dumping Measures on Biodiesel from Argentina and DS480: European Anti-Dumping Measures on Biodiesel from Indonesia both used this approach.

I sincerely thank you for your consideration to our concerns above and I believe we will reach a mutual understanding for a consistent implementation of the Panel's ruling of DS529 based on our good faith.

Sincerely,



Pradnyawati

Director of Trade Defense
Directorate of Foreign Trade
Ministry of Trade of Republic of Indonesia

Cc:

1. Director General of Foreign Trade, Ministry of Trade of Republic of Indonesia
2. Director General of International Trade Negotiation
3. Ambassador of the Republic of Indonesia to Australia in Canberra
4. Ambassador of Australia to Indonesia in Jakarta
5. Head of Advocation Bureau, Secretariat General, Ministry of Trade of Republic of Indonesia
6. Head of Indonesia Anti-Dumping Committee
7. Director of East Asian and Pacific Affairs, Directorate General of Asia-Pacific and African Affairs, Ministry of Foreign Affairs of the Republic of Indonesia
8. Director of Trade Disputes Task Force, Office of Trade Negotiations, Department of Foreign Affairs and Trade
9. Assistant Director of Investigations 2, Anti-Dumping Commission



Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2600

12 March 2020

Embassy of the Republic of Indonesia
8 Darwin Avenue
Yarralumla ACT 2600

By email: konsuler.canberra@kemlu.go.id

Dear Sir/Madam,

**REVIEW OF ANTI-DUMPING MEASURES CURRENTLY APPLYING TO A4 COPY
PAPER EXPORTED FROM THE REPUBLIC OF INDONESIA BY
PT INDAH KIAT PULP & PAPER TBK AND PT PINDO DELI PULP & PAPER MILLS**

I am writing to advise that the Commissioner of the Anti-Dumping Commission (the Commission) has initiated a review of the anti-dumping measures currently applying to A4 copy paper exported from the Republic of Indonesia by PT Indah Kiat Pulp & Paper Tbk (Indah Kiat) and PT Pindo Deli Pulp & Paper Mills (Pindo Deli).

The Commissioner initiated this review following a request from the Minister for Industry, Science and Technology. This review will examine:

- whether one or more of the variable factors relevant to the taking of the anti-dumping measures in relation to Indah Kiat and Pindo Deli may have changed; and
- whether the anti-dumping measures applying to Indah Kiat and Pindo Deli are no longer warranted.

Public notice of the decision to initiate this review has been published on the Commission's website today. I attach a copy of Anti-Dumping Notice (ADN) No. 2020/028 which advises of the initiation of the review and the procedures to be followed during the review.

Should you have any questions concerning this matter, please contact me on number +61 3 8539 2447 or email investigations2@adcommission.gov.au

Yours sincerely,

Tim King
Assistant Director
Investigations 2
Anti-Dumping Commission



Customs Act 1901 – Part XVB

Anti-Dumping Notice No. 2020/028

A4 Copy Paper

**Exported to Australia from the Republic of Indonesia by
Pt Indah Kiat Pulp & Paper Tbk and
Pt Pindo Deli Pulp & Paper Mills**

Initiation of a Review of Anti-Dumping Measures No. 547

Notice under subsection 269ZC(5) of the Customs Act 1901

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission have initiated a review of the anti-dumping measures applying to A4 Copy Paper (the goods) exported to Australia from the Republic of Indonesia (Indonesia) by Pt Indah Kiat Pulp & Paper Tbk (Indah Kiat) and Pt Pindo Deli Pulp & Paper Mills (Pindo Deli). The anti-dumping measures applying to Indah Kiat and Pindo Deli are in the form of a dumping duty notice.

The review will examine:

- whether one or more of the variable factors relevant to the taking of the anti-dumping measures in relation to Indah Kiat and Pindo Deli may have changed; and
- whether the anti-dumping measures applying to Indah Kiat and Pindo Deli are no longer warranted.

The Goods

The goods subject to anti-dumping measures 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).

Further information on the subject goods specifies that 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.

The goods are generally, but not exclusively, classified to following tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995*.

Tariff subheading	Statistical code
4802.56.10	03
4802.56.10	09

These tariff classifications and statistical codes may include goods that are both subject and not subject to the review. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods the subject of this review.

Background to the measures

The anti-dumping measures were initially imposed by public notice on 19 April 2017 by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) following consideration of *Anti-Dumping Commission Report No. 341* (REP 341).¹

The current anti-dumping measures are applicable to all exporters from Indonesia, except for Pt Pabrik Kertas Tjiwi Kimia Tbk (Tjiwi Kimia).²

There have been no previous reviews of the anti-dumping measures since the imposition of the measures on 19 April 2017.

The current review

I am initiating this review at the request of the Minister for Industry, Science and Technology (Minister). The Minister's request was made pursuant to section 269ZA(3) of the *Customs Act 1901* (the Act)³. A copy of the request is included with this notice at Attachment A.

The Minister has requested that I initiate this review because:

- the variable factors relevant to the taking of measures in relation to A4 copy paper exported to Australia from Indonesia by Indah Kiat and Pindo Deli may have changed; and
- the anti-dumping measures may no longer be warranted in relation to the measures applying to Indah Kiat and Pindo Deli.

¹ On 10 April 2019, with an effective date of 11 April 2019, anti-dumping measures in the form of dumping duty were also imposed on A4 Copy Paper exported from Finland, Republic of Korea, Russian Federation (Russia) and Slovak Republic (Slovakia), except for exports by Mondi SCP a.s (SK). Further information is available in *Report 463* (REP 463) and *Anti-Dumping Notice ADN 2019/37*, which are available on the Commission's website.

² The original investigation was terminated in relation to Tjiwi Kimia. Further information is available in *Termination Report No. 341* which is available on the Commission's website.

³ All legislative references in this notice are to the *Customs Act 1901*, unless otherwise stated.

As advised by the Minister, the reasons for the request are as follows:

- 1) To consider the findings made by the World Trade Organization (WTO) Panel (Panel) in *Australia – Anti-Dumping Measure on A4 Copy Paper*,⁴ endorsed by the Dispute Settlement Body on 27 January 2020. In that decision, the Panel made several findings which affirmed the approach of the Commissioner and the then Assistant Minister for Science, Jobs and Innovation and Parliamentary Secretary to the Minister for Jobs and Innovation in respect of the anti-dumping measures relating to A4 Copy Paper exported from Indonesia by certain exporters. However, the Panel found some inconsistencies with the Anti-Dumping Agreement⁵ relating to the following:
 - Article 2.2, because Australia disregarded domestic sales of two exporters as the basis for determining normal value without properly determining that such sales did “not permit a proper comparison”;
 - Article 2.2.1.1, because Australia did not establish both conditions in the first sentence of Article 2.2.1.1 were satisfied when rejecting the pulp component of two exporter’s records on the basis of the term “normally”; and
 - Article 2.2, because Australia did not have a basis to use surrogate costs for the calculation of two exporter’s pulp costs when constructing the cost of production, because Australia did not provide a reasoned and adequate explanation as to why it was permitted to do so.
- 2) Address changes which have occurred in the market for A4 Paper exported to Australia from Indonesia since the notice relating to the measures was published on 19 April 2017⁶ following the completion of Investigation No. 341.

In accordance with the Minister’s request, this review will examine:

- whether one or more of the variable factors relevant to the taking of the anti-dumping measures in relation to Indah Kiat and Pindo Deli may have changed; and
- whether the anti-dumping measures applying to Indah Kiat and Pindo Deli are no longer warranted.

The review period is 1 January 2019 to 31 December 2019.

After conducting the review, pursuant to section 269ZDA(1), I will give the Minister a report recommending the dumping duty notice:

- i. remain unaltered;
- ii. have effect in relation to Indah Kiat or Pindo Deli as if different variable factors had been ascertained; or
- iii. be revoked in its application to Indah Kiat and Pindo Deli.

⁴ Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WTO Doc WT/DS529/R (4 December 2019).

⁵ Agreement for the Implementation of Article VI of the General Agreement on Tariffs & Trade 1994.

⁶ ADN 2017/39, published following the recommendation by the Commissioner in Report No. 341.

Future Reviews

Under subsection 269ZA(2), an application for a review must not be made earlier than 12 months after the publication of the notice implementing the original measure or the notice declaring the outcome of the last review. Once a notice declaring the outcome of this review is published (regardless of the outcome), an application for a review of measures in relation to the dumping duty notice that is the subject of this review cannot be made for a period of 12 months.

Proposed model control code structure

On 9 August 2018, the Commission advised in ADN No. 2018/128 that a model control code (MCC) structure would be implemented in new investigations, reviews of measures generally or continuations for cases initiated after this date.⁷

Attachment B to this notice outlines the Commission's proposed MCC structure. Submissions in relation to the proposed MCC structure should be raised as soon as is practicable, but no later than **20 April 2020**, the day submissions concerning the review of measures are due.

Interested parties are encouraged to make submissions on the proposed MCC structure. Any amendments to the proposed MCC structure will be considered by the Commission and reported in verification reports or in the statement of essential facts (SEF).

Public Record

A public record must be maintained for each in review. The public record must contain, among other things, a copy of all submissions from interested parties.

Documents included in the public record may be examined at the Commission's office by contacting the case manager on the details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Lodgment of submissions

Interested parties, as defined by subsection 269T(1) of the Act, are invited to lodge written submissions concerning this review, no later than the close of business on **20 April 2020**⁸, addressed to:

The Director
Investigations 2,
GPO Box 2013
Canberra ACT 2601

or email Investigations2@adcommission.gov.au or fax to +61 3 8539 2499.

⁷ Full guidance regarding the Commission's MCC structure is provided in ADN No. 2018/128 on the Commission's website.

⁸ The due date is 18 April 2020, however, as this falls on a Saturday, the effective due date is the following business day.

Interested parties wishing to participate in the review must ensure that submissions are lodged promptly. Interested parties should note that I am not obliged to have regard to a submission received by the Commission after the date mentioned above if to do so would, in my opinion, prevent the timely placement of the statement of essential facts on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY".

Interested parties making submissions must also provide a non-confidential version for public record (clearly marked "PUBLIC RECORD").

Statement of Essential Facts

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Minister within the legislative timeframe. A SEF will be placed on the public record by **30 June 2020**, or by such later date as allowed in accordance with section 269ZHI of the Act.⁹ The SEF will set out the essential facts on which I propose to base a recommendation to the Minister. Interested parties are invited to lodge submissions in response to the SEF within 20 days of the SEF being placed on the public record

Report to the Minister

Submissions received in response to the SEF will be taken into account in preparing the report and recommendation to the Minister. A recommendation to the Minister will be made in a report on or before **14 August 2020** (or such later date as allowed under section 269ZHI of the Act).

Interested party list

Throughout the review, the Commission will maintain a list of interested parties. Updates on the review will be sent to parties on this list. If you would like to be added to the interested party list, please email investigations2@adcommission.gov.au.

⁹ On 14 January 2017, the then Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI of the Act to the Commissioner. Refer to Anti-Dumping Notice No. 2017/10 for further information.

Anti-Dumping Commission contact

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2447 or email investigations2@adcommission.gov.au.

A handwritten signature in black ink, appearing to read 'Dale Seymour', with a stylized, cursive script.

Dale Seymour
Commissioner
Anti-Dumping Commission

12 March 2020

Request made by the Minister for Industry, Science and Technology

The Hon Karen Andrews MP

Minister for Industry, Science and Technology

MS20-000417

Mr Dale Seymour
Commissioner
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2060

Dear Mr Seymour

I, Karen Andrews, the Minister for Industry, Science and Technology, REQUEST that the Commissioner of the Anti-Dumping Commission (Commissioner) initiate a review of the anti-dumping measures relating to A4 Copy Paper exported to Australia from Indonesia from Indah Kiat Pulp & Paper Tbk (Indah Kiat) and PT Pindo Deli Pulp (Pindo Deli). I REQUEST that the review examine whether the variable factors relevant to the taking of the anti-dumping measures in relation to Indah Kiat and Pindo Deli may have changed and whether the anti-dumping measures are no longer warranted in relation to Indah Kiat and Pindo Deli, in accordance with Part XVB of the *Customs Act 1901* (Cth) (Customs Act). I am making this request pursuant to section 269ZA(3) of the Customs Act.

The reasons for making this request are as follows:

- 1) To consider the findings made by the World Trade Organization (WTO) Panel (Panel) in Australia – *Anti-Dumping Measure on A4 Copy Paper*,¹ endorsed by the Dispute Settlement Body on 27 January 2020. In that decision, the Panel made several findings which affirmed the approach of the Commissioner and the then Assistant Minister for Science, Jobs and Innovation and the Parliamentary Secretary to the Minister for Jobs and Innovation (the Parliamentary Secretary) in respect of the anti-dumping measures relating to A4 Copy Paper exported from Indonesia by certain exporters. However, the Panel found some inconsistencies with the Anti-Dumping Agreement² relating to the following:
 - Article 2.2, because Australia disregarded domestic sales of two exporters as the basis for determining normal value without properly determining that such sales did “not permit a proper comparison”;
 - Article 2.2.1.1, because Australia did not establish both conditions in the first sentence of Article 2.2.1.1 were satisfied when rejecting the pulp component of two exporters’ records on the basis of the term “normally”; and
 - Article 2.2, because Australia did not have a basis to use surrogate costs for the calculation of two exporter’s pulp costs when constructing the cost of production,

¹ Panel Report, *Australia – Anti-Dumping Measures on A4 Copy Paper*, WTO Doc WT/DS529/R (4 December 2019).

² Agreement for the Implementation of Article VI of the General Agreement on Tariffs & Trade 1994.

because Australia did not provide a reasoned and adequate explanation as to why it was permitted to do so.

- 2) Address changes which have occurred in the market for A4 Paper exported to Australia from Indonesia since the notice relating to the measures was published on 19 April 2017³ following the completion of Investigation No. 341.

Upon considering information put before me by the Anti-Dumping Commission regarding the circumstances relating to A4 Copy Paper exported to Australia from Indonesia, I consider the circumstances relating to the export price and normal value may have changed so that the current rates of duty applicable to exports by Indah Kiat and Pindo Deli may not be accurate.

For these reasons I consider it is appropriate to review those measures in relation to Indah Kiat and Pindo Deli because one or more of the variable factors, such as the export price and normal value, relevant to the taking of the measures may have changed or the anti-dumping measures may no longer be warranted.

In undertaking the review, the Commissioner must apply the legislative framework set out in Part XVB of the Customs Act. In addition, I note that this legislative framework seeks to implement Australia's obligations under the Anti-Dumping Agreement, among other things, and is therefore to be interpreted and applied, so that it is in conformity and not in conflict with the Panel's findings. This will ensure that the review complies with Australia's domestic law and will demonstrate Australia's commitment to bringing the measure into conformity with the Panel's findings.

Dated this 10th day of March 2020



KAREN ANDREWS

Minister for Industry, Science and Technology

³ ADN 2017/39, published following the recommendation by the Commissioner in Report No. 341.

Proposed MCC structure

Details of the MCC structure for the goods are detailed in the table below.

Category	Sub-category	Identifier	Sales Data	Cost data
Weight (grams per square meter (gsm))	70 gsm > 71 gsm to 80 gsm > 81 gsm to 85 gsm > 85 gsm to 90 gsm > 91 gsm to 100 gsm	70 80 85 90 100	Mandatory	Mandatory
Recycled content	100% 50% to 99% 30% to 49% 1% to 29% 0%	R100 R50 R30 R10 N	Mandatory	Mandatory