Williams Trade Law

International Trade Regulation / WTO Specialist Sydney, Australia Corrected version of submission. Provided by Pindo Deli on 22 April 2020.

19 April 2020

The Director
Investigations 2
GPO Box 2013
Canberra, ACT, 2601

By email to: lnvestigations2@adcommission.gov.au

Dear Mr./Ms. Director,

FOR THE PUBLIC RECORD

RE: Pindo Deli Objections to Accompany Response to Questionnaire re ADN2020/028

We act for PT Pindo Deli Pulp and Paper Mills ('Pindo Deli').

Pindo Deli has received ADN2020/028 and the Exporter Questionnaire.

Pindo Deli has requested that we submit the attached document "Pindo Deli Objections to accompany response to Questionnaire re ADN2020/028" for the public record.

Yours Faithfully,

Brett Williams

Dr Brett G Williams

Principal, Williams Trade Law

Liability limited by a scheme approved under Professional Standards Legislation

Or Brett Williams, Solicitor and Barrister, Supreme Court of New South Wales

2/61-67 Varna Street, Clovelly, New South Wales, Australia 2031 | ph. +61 [0]425 340 481 | williams@williamstradelaw.com

www.williamstradelaw.com

Pindo Deli objects to the manner in which the Anti-Dumping Commission ("ADC") has implemented the Panel's decision in DS529, Australia – A4 Copy Paper from Indonesia. Pindo Deli understands that the ADC will be conducting a review of the anti-dumping measure and the review period is 2019. Pindo Deli further understands that the reason the ADC is conducting a review is because there is no provision of Australian law that permits the ADC to revisit the original determination. The ADC's approach is inconsistent with the Australia's WTO obligations.

Notably, but not exclusively, Article 9.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") specifies that the amount of the anti-dumping duty shall not exceed the margin of dumping. Here, the original investigation record indicates that if Australia had acted consistent with its WTO obligations, as decided by the Panel, Pindo Deli's margin of dumping would not have exceeded 14 percent. If the ADC calculates Pindo Deli's dumping margin based on constructed export price and it exceeds 14 percent, the ADC will have acted inconsistently with, at minimum, Article 9.2 of the Anti-Dumping Agreement.

In addition to the WTO inconsistency of the process, Pindo Deli objects to the Exporter's Questionnaire as extraordinarily burdensome and without a corresponding justification. Indeed, the Exporter's Questionnaire is far more burdensome than the questionnaire in an original investigation. This is even more problematic and unreasonable because Pindo Deli fully responded to the Exporter's Questionnaire in the original investigation and the ADC verified that data and calculated a 14 percent dumping margin for Pindo Deli.² Indeed, the Verification

¹ Pindo Deli Exporter Verification Report, sec. 8. ² Pindo Deli Exporter Verification Report, sec. 8.

Report answers two of the key questions posed by the Panel's ruling: 1) whether a proper comparison was possible and 2) whether the costs recorded in Pindo Deli's books and records were the actual costs incurred.

On the first point, the Verification Report states:

The verification team considers that the goods manufactured for domestic consumption are identical to, or have characteristics closely resembling, the goods export to Australia as they:

. . .

• are produced at the same facilities and with the same raw material inputs and manufacturing processes; . . . ³

On the second point, the Verification Report states:

[T]he verification team compared [Pindo Deli's CTMS data] to that of other exporters from Indonesia and are satisfied that it is comparable.⁴

The WTO Panel already has ruled the ADC's original determination was not consistent with Australia's WTO obligations, yet rather than responding to the Panel's specific rulings, the ADC has launched an entirely new proceeding that requires five years of data to be provided, despite the fact that Pindo Deli did not export to Australia during that period.

Finally, the ADC already has indicated that it intends to construct export price in the absence of an export price. Pindo Deli did not export to Australia during the period of review, a fact Pindo Deli has made known to the ADC. Based on what the ADC has informed the parties, the ADC will calculate a dumping margin based on a comparison of domestic price (or constructed normal value) to a constructed export price and based on data for 2019. This comparison will be a complete fiction that cannot reasonably reflect the margin of dumping for 2019 let alone for 2015.

³ Pindo Deli Exporter Verification Report, sec. 2.3.

⁴ Pindo Deli Exporter Verification Report, sec. 4.1.

Pindo Deli makes the above objections without prejudice to claims and arguments that may be made in a proceeding pursuant to Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.