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20 July 2020

The Director
Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Email: investigations2@adcommission.gov.au

Dear Sir/Madam

Statement of Essential Facts No. 547 – A4 Copy Paper exported to Australia from Indonesia by Pt Indah Kiat and PT Pindo Deli Pulp and Paper Mills

I. Executive Summary

Paper Australia Pty Ltd (hereafter referred to as "Australian Paper", or "AP") disagrees with the Anti-Dumping Commission's ("the Commission") *preliminary* finding concerning exports of A4 copy paper from Indonesia by PT Indah Kiat Pulp and Paper Tbk ("Indah Kiat") and PT Pindo Deli Pulp and Paper Mills ("Pindo Deli").

The Commissioner's preliminary findings are:

- *incorrect;*
- *invalid*; and
- *unreliable*,

for reasons including:

- the two exporters did not provide domestic selling price and/or cost to make and sell ("CTMS") data for the 2019 investigation period, and hence were uncooperative;
- the variable factors determined for the respective exporters was therefore "notional";
- the calculated dumping margins of the two exporters in 2019 are "notional"; and
- the absence of an examination of the future threat of injury having regard to the impact of the measures and the historic dumping by the two exporters concerned.

Critically, Australian Paper submits that the lack of cooperation by Indah Kiat and Pindo Deli in respect of the provision of information for the 2019 investigation period requires the Commission to rule the exporters "uncooperative" and rely upon *re-assessed* dumping margins for 2015 as applicable for the purposes of the review of variable factors investigation. The Commission would conclude – as evidenced by the re-assessed dumping margins - that the margins of dumping for the exporters are "not negligible" and that due to the level of price undercutting evidenced in 2015, exports of A4 copy paper to Australia by Indah Kiat and Pindo Deli would cause material injury to the Australian industry.

The correct and valid recommendation to the Minister therefore involves the ***retention*** of the measures and the resetting of each of the variable factors applicable to exports of A4 copy paper to Australia for Indah Kiat and Pindo Deli.

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II. Background

This review of variable factors investigation (i.e. Inv 547) and consideration of revocation of measures follows the WTO Dispute Settlement Body ("WTO DSB") Report DS529 published on 4 December 2019 and adopted by the WTO DSB on 27 January 2020.

In commenting on the WTO DSB recommendations, the Commission has stated at Paragraph 2.2.3

> "*The Panel found that the measures imposed in relation to Indah Kiat and Pindo Deli were inconsistent with some provisions of the Anti-Dumping Agreement, and recommended that Australia bring its measures into conformity with its obligations under the Anti-Dumping Agreement."*

The Commission noted that the WTO rules "*do not prescribe the ways in which an inconsistent measure may be brought into conformity with the relevant WTO agreement*." The Commission considers that "in this circumstance" the most appropriate means of achieving the DSB's requirement for Australia to align the measures with the requirements of the WTO Anti-Dumping Agreement is to conduct a Division 5 Review under the Customs Act, which permits "*the existing measures to be altered or revoked, as required, to bring the measures into conformity with the Anti-Dumping Agreement*".

This Review inquiry has an investigation period of 1 January to 31 December 2019.

III. Re-Assessed 2015 Dumping Margins

(a) Introduction

The WTO DSB Report DS529 found that the dumping measures applied to A4 copy paper exported to Australia by Indah Kiat and Pindo Deli were inconsistent with the WTO Anti-Dumping Agreement. Specifically, the Panel found that Australia:

- *had disregarded domestic sales of the two exporters as the basis for determining normal value without properly determining that because of the particular market situation, such sales did "not permit a proper comparison" (Article 2.2);*
- *did not establish both conditions in the first sentence of Article 2.2.1.1 were satisfied when rejecting the pulp component of the two exporter's records on the basis of the term "normally"; and*
- *did not have a basis to use surrogate costs for the calculation of the two exporter's pulp costs when constructing the cost of production, as a result of improperly rejecting the two exporters' records. In addition, Australia did not provide a reasoned and adequate explanation as to why it made no adjustments for profit with regard to Indah Kiat's pulp costs, or why it did not replace the costs of woodchips in constructing Indah Kiat's cost of production of A4 copy paper (Article 2.2).*

(b) Market situation finding

Australian Paper notes the Commission's observation that the determined market situation finding in respect of A4 copy paper was "*not found to be inconsistent with Article 2.2 of the Anti-Dumping Agreement by the WTO Panel in DS529*". The Commission has, however, undertaken an assessment of the impact of the situation in the market in which it has *"considered the prevailing conditions of competition in the domestic and export market for A4 copy paper and the existing relationship between price and cost in order to determine whether domestic and export prices can be properly compared*". The Commission's analysis included an examination of the prevailing conditions of competition, including the market structure, levels of import penetration and any competitive advantage arising from the market situation, in both the Indonesian and Australian markets. The analysis examined the

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relationship between prices and costs, including the effect of pulp costs on prices and the effect of the CTMS on prices and profits.

The Commission's analysis led it to conclude that on the Australian market price competition was a major condition of competition between the imported goods, and between the imported goods and the Australian manufactured goods. The Commission further concluded that any price advantage due to a market situation (i.e. lower raw material input prices in Indonesia) that may be afforded to the Indonesian exports of A4 copy paper affects selling prices in Australia and "*is relevant to the consideration of the relative effect of the market situation on domestic sales and export sales*".

The effect of the market situation on Indonesian domestic prices is not the same (as in the Australian market where price differentials between Indonesian imports and other sources of supply are evident) as all A4 copy paper producers in Indonesia benefit from cheaper pulp prices and the advantage is "competed away", providing a neutral effect on the prevailing conditions of competition.

The Commission identified the differences between the Indonesian and Australian markets and confirmed that in the Australian market "*Indonesian sourced A4 copy paper was the lowest priced in the Australian market in 2015. In the same year, Indonesian exporters made up 22 per cent by volume of the Australian A4 copy market"*.

The Commission also established that Indah Kiat and Pindo Deli's export prices "*were the lowest compared to other import sources*". The Commission estimated that export prices from other source countries were *"roughly 17 per cent higher"* than the export prices of Indah Kiat and Pindo Deli. The Commission attributed this price differential at least "in part" to the market situation that existed in Indonesia. Notably;

> "*The Commission considers that, if not for the low pulp costs, Indonesian exporters would have more likely set their prices higher which would have been more consistent with the prevailing market price of A4 copy paper in Australia*."

Thus, the Commission confirmed, Indonesian imports undercut all other A4 copy paper prices in the Australian market in 2015 and accounted for almost a quarter of sales of all A4 copy paper in that year. The Indonesian exporters benefited from the low-priced imports to secure a competitive advantage in sales on the Australian market.

The Commission's findings concerning export prices for Indah Kiat and Pindo Deli as the lowest when compared with all import sources and the significant share of the market held by Indonesian exporters, are factual and relevant considerations concerning the *threat* or resumption of further injury to the Australian industry.

The Commission reaffirmed its original view that the market situation in Indonesia rendered domestic selling prices unsuitable for normal value determination in accordance with subsection 269TAC(1). The Commission therefore established normal values under subsection 269TAC(2)(c) on a constructed cost basis. A relevant consideration is Regulation 43(2) which requires that "*if an exporter keeps records relating to the like goods which are in accordance with generally accepted accounting principles (GAAP), and those records reasonable reflect competitive market costs associated with the production or manufacture of like goods, then the cost of production must be worked out using the exporter's records*.[1]"

(c) Competitive market costs

Subsection 43(2) of the Regulation reflects Australia's obligations under Article 2.2.1.1 of the WTO Anti-Dumping Agreement which states in relevant part:

[1] Statement of Essential Facts No. 547, Paragraph 3.3.1.6, P. 36 & 37.

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> *"For the purposes of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under investigation."*

The DS Panel Report DS529 pointed to the Commission's interpretation of "normally" and suggested that the Commission provide a "satisfactory explanation" as to why the producer's costs may be disregarded.

The Commission has reviewed this matter and is satisfied that the costs recorded in the accounts of the two exporters *do not* reasonably reflect "*competitive market costs*". This is due to the impact of the artificially low raw material input costs that are sourced by the two Indonesian producers.

(d) Dumping margin – Indah Kiat

(i) *Normal value*

In its re-assessment of Indah Kiat's normal value for the 2015 original investigation period, the Commission considered that the exporter's costs reasonably reflected competitive costs. The Commission did, however, use a "benchmark" woodchip price and contrasted this with the woodchip costs included in Indah Kiat's records. The Commission confirmed that the "*benchmark indicates that competitive market woodchip prices, after relevant adjustments, were materially higher during the period than the costs of woodchips recorded in Indah Kiat's records. The Commission considers that the amount for woodchips in the records of Indah Kiat reflect the 'particular market situation'*".

The contrast of Indah Kiat's woodchip costs with the benchmark woodchip cost led the Commission to the following view:

> "*The Commission is therefore satisfied that while the woodchip costs recorded in Indah Kiat's records may reasonably reflect the costs associated with the production or manufacture of the goods, they do not reasonably reflect competitive market costs associated with the production or manufacture of the goods that are suitable for the purpose of constructing normal value*."

The Commission considered it appropriate to use Indah Kiat's financial records "*but only after adjustment is made to the records relating to the woodchips*".

(ii) *Benchmark woodchip prices*

As detailed in Appendix C to SEF 547, the Commission obtained woodchip benchmark regional import prices from Wood Resources International LLC (WRI). It is stated that "*this pricing data included woodchips supplied into a range of regions. The Commission considers that it is appropriate to use import pricing within the Asian region as this would best reflect competitive costs for Indah Kiat, after relevant adjustments to the benchmark price.*"

The WRI information for 2015 included:

- Quarterly import prices of hardwood woodchips into China supplied from:
  - Vietnam;
  - Indonesia;
  - Australia;
  - Thailand; and South Africa.
- Quarterly import prices of woodchips into Japan supplied from:

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- Vietnam;
- Indonesia;
- Australia;
- Thailand; and
- Chile.

The Commission asserts that it found the Indonesian sourced import prices "*were within the range of pricing from other sources (i.e. it is neither the highest or lowest price)*" and considered this to be "an Appropriate" benchmark for assessing domestic competitive market costs in Indonesia (for woodchips).

Australian Paper has obtained woodchip import data for China and Japan for woodchips sourced from the countries nominated by the Commission[2], obtained from TradeData International. In respect of imports into China, Australian Paper has also included with its analysis relevant exports from Brazil and Chile which AP believes should have been included in the Commission's analysis due to volumes similar to or exceeding those used in the Commission's analysis. Overall, although the import prices into China for woodchips from all sources is closely correlated with the price ex Indonesia, Indonesia was still at the low end of the price range of the 7 major export countries (i.e. Indonesian average of US$173 per metric tonne was at the low end of the $209 - $158).

In respect of imports into Japan, Australian Paper included with its analysis relevant additional pricing for woodchips exported from Brazil, Ecuador, Malaysia, Mozambique, New Zealand and South Africa which was not included in the Commission's analysis but is considered relevant by AP due to having import volumes similar to and greater than countries used in the Commission's analysis or at least exceeding negligible levels. The average CIF price ex Indonesia to Japan is approximately 7.2 per cent below the average of the countries identified by AP as major exporters to Japan. Further, of the 11 countries, Indonesia was the second lowest priced exporting country averaging approximately US$171 per metric tonne, and fell towards the bottom of the US$220 - $162 per metric tonne range.

Australian Paper considers that the Commission has excluded relevant import countries in its woodchip benchmarking analysis and that the most appropriate benchmark is the average import pricing in 2015 into China and Japan for all of the countries nominated by Australian Paper – not just import prices from Indonesia.

(iii) *Export price*

The Commission calculated Indah Kiat's export price from exporter to trader, less transport and other charges post exportation.

(iv) *2015 Dumping margin*

The Commission constructed the normal value for Indah Kiat based upon:

- the cost of production of the goods under subsection 43(2) of the Regulation;
- the weighted average SG&A costs using the information set out in Indah Kiat's records relating to domestic sales of like goods during the original investigation period under subsection 44(2) of the Regulation; and
- the profit achieved on domestic sales of like goods in the ordinary course of trade (OCOT) in accordance with subsection 45(2) of the Regulation.

The Commission made the following adjustments to Indah Kiat's normal value to allow for a fair comparison of the normal value and the export price:

Adjustment Type	**Deduction/addition**
Domestic credit	**Deduct** the cost of domestic credit

[2] Refer Confidential Attachment 1.

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Domestic inland freight	**Deduct t**he cost relating to inland transport
CMI Fixed sales margin	**Deduct** the cost of the CMI fixed sales margin

Australian Paper notes that the Commission has afforded Indah Kiat an adjustment for "CMI Fixed sales margin". This adjustment was raised by Australian Paper in Investigation 341 (refer EPR Document 065) contending that the distributor margin should not be applied. In Report No. 341 the Commissioner[3]:

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

The impact of the amendment to the removal of the CMI Fixed sales margin (and allowance of a deduction for supermarket shelf rental expense) altered the determined dumping margin from negative 1.4 per cent to positive 2.7 per cent[4] (prior to market situation adjustments). The exclusion of the CMI fixed sales margin will therefore materially impact the Commission's 2015 (and 2019) *preliminarily* determined dumping margin calculations.

The Commission should not have afforded Indah Kiat an adjustment for the CMI sales margin but allowed an adjustment for supermarket shelf rental expenses consistent with the Minister's decision in Report 341. This adjustment requires amendment to the calculated dumping margin for Indah Kiat of 6.9 per cent as preliminarily determined for this review.

In the Investigation 341 Exporter Questionnaire Responses both Indah Kiat and Pindo Deli confirmed that their Australian sales were made to a related party.[5] Regarding to the question;

> *State whether your firm is related to any of its Australian customers. Give details of any financial or other arrangements (eg free goods, rebates, or promotional subsidies) with the customers in Australia (including parties representing either your firm or the customers).*

Indah Kiat and Pindo Deli answered in the respective manner;

> ***[Confidential] is related to Indah Kiat.***
> ***[Confidential] is related to Pindo Deli.***

Australian Paper understands from the conduct of the investigation that the redacted related party mentioned above was Paper Force. Paper Force confirms the ongoing relationship on their website stating that they have had *"more than two decades as the **exclusive business partner** of APP and its mills";*[6]

Due to exclusive and longstanding affiliation there is a high degree of risk that off invoice rebates could exist, or at least that there is unlikely to be any 'real bargaining' between the parties that would be expected in arm's length transactions. The existence and flow through impact of the particular market situation in respect of Indonesian A4 copy paper also means that a higher level profitability would be expected from arm's length transactions, however the Commission found in the investigation that 3 of the 9 transactions verified were unprofitable.

Despite all of this, the Commission considered that there was no legal relationship between Paper Force and APP companies and transactions between the parties were arm's length. The Commission was satisfied with the reasoning provided by Paper Force for unprofitable transactions and was satisfied

[3] Refer Report No. 341, Paragraph 6.9.4.4, P. 53.
[4] Refer Preliminary Affirmative Determination No. 341, Australian Dumping Notice No. 2016/100 of 29 September 2016, EPR Document 084).
[5] EPR 341, Document No. 19 & 21. Section B-2 (f) page 9.
[6] https://paperforce.com.au/

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that the overall weighted average profitability of the nine verified transactions evidenced that transactions are arm's length. Australian Paper contends that the affirmed market situation finding necessitates a review of the profitability levels on export sales which are reasonable to use as the hurdle rate for evidencing the transactions were arm's length.

(e) Dumping Margin – Pindo Deli

Unlike Indah Kiat, Pindo Deli is not an integrated pulp and paper manufacturer. Pindo Deli purchases pulp (from its affiliated parties) and manufactures paper (including A4 copy paper).

The Commission undertook the same methodology for the construction of normal value for Pindo Deli as it did with Indah Kiat – except that instead of using a woodchip benchmark price, the Commission used a pulp benchmark price sourced from RISI and Hawkins Wright. The benchmark pulp price used was an average price for pulp exported from:

- Indonesia to Korea (acacia, BHK pulp);
- Indonesia to East Asia (acacia, BHK);
- Indonesia to China (mixed acacia, BHK); and
- Indonesia to Korea (mixed hardwood, BHK).

The Commission constructed the normal value for Pindo Deli (on same basis as Indah Kiat) as follows:

- the cost of production of the goods under subsection 43(2) of the Regulation;
- the weighted average SG&A costs using the information set out in Indah Kiat's records relating to domestic sales of like goods during the original investigation period under subsection 44(2) of the Regulation; and
- the profit achieved on domestic sales of like goods in the ordinary course of trade (OCOT) in accordance with subsection 45(2) of the Regulation.

The Commission also made the following adjustments to Pindo Deli's normal value to allow for a fair comparison of the normal value and the export price:

Adjustment Type	**Deduction/addition**
Domestic credit	**Deduct** the cost of domestic credit
Domestic inland freight	**Deduct t**he cost relating to inland transport
CMI Fixed sales margin	**Deduct** the cost of the CMI fixed sales margin

Australian Paper highlights that the CMI Fixed sales margin should not be included as an allowable adjustment to Pindo Deli's normal value (consistent with the treatment for Indah Kiat). Following amendments to the adjustments in the original investigation No. 341, Pindo Deli's dumping margin was altered from 14.0 per cent to 18.8 per cent.

The Commission is requested to correct the adjustment for the CMI Fixed sales margin consistent with the Minister's decision in Report 341.

The dumping margin determined for Pindo Deli in 2015 was 33.1 per cent (this is subject to alteration due to the incorrect adjustment made for the CMI Fixed sales margin).

Australian Paper considers that a review of the relationship between the uncooperative exporters and Paper Force should be undertaken in the context of the market situation finding, as well as the profitability level which would indicate whether transactions are arm's length or not.

IV. 2019 Dumping margins

(a) Uncooperative exporters

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The Commission notes at Paragraph 5.1 of SEF 547 that the Indonesian exporters did not export the subject goods to Australia in 2019.

It is also noted at Paragraph 7.2 that Indah Kiat and Pindo Deli "*declined to provide information relevant to the establishing of variable factors for 2019"*.

Section 269T of the Customs Act defines an *"uncooperative exporter*" in relation to:

> (a) An investigation under this Part in relation to whether a dumping duty notice should be published; or
> (b) **A review under Division 5 in relation to the publication of a dumping duty notice**; or
> (c) An inquiry under Division 6A in relation to the continuation of a dumping duty notice;
>
> Means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:
>
> (d) **The Commissioner was satisfied that the exporter did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable**; or
> (e) The Commissioner was satisfied that the exporter significantly impeded the investigation, review or inquiry. "(Emphasis added).

This current review of variable factors investigation is a review under Division 5 of the *Customs Act*. Subsection 269T concerning an uncooperative exporter, specifically, subsection (d) that relates to the Commissioner being satisfied as to the provision of information by the exporter within a reasonable period of time, is relevant to the current review.

At Paragraph 2.3.2.2 of SEF 547, the Commission states:

> "*Both Indah Kiat and Pindo Deli submitted questionnaire responses on 20 April 2020. The Commission wrote to both companies on 27 April 2020 inviting further responses to the questionnaire. Indah Kiat and Pindo Deli subsequently advised that they would not be providing further responses to the questionnaire*. "

And further, at Paragraph 7.2 of SEF 547 confirms:

> "*Upon initiation of this review, the Commission provided Indah Kiat and Pindo Deli with exporter questionnaires to complete. Indah Kiat and Pindo Deli provide responses to the exporter questionnaires, however declined to provide information relevant to establishing the variable factors for 2019*."

The Commission has indicated that the two exporters, Indah Kiat and Pindo Deli, did not provide the Commission with relevant information for the determination of variable factors in the 2019 investigation period. The Commission has detailed that it provided the exporters with the opportunity to provide the relevant in formation, however, this opportunity was not taken up by the exporters.

The provisions of section 269T require that an exporter will be considered "*uncooperative*" where the relevant information has not been provided in a reasonable period of time. Indah Kiat and Pindo Deli elected not to furnish the Commission with relevant information pertinent to the determination of variable factors in the 2019 investigation period. The failure of the exporters to comply with the Commission's request necessitates that both exporters must be considered "uncooperative".

For the purposes of this Division 5 review of variable factors, Australian Paper requires the Commissioner to categorise the Indonesian exporters Indah Kiat and Pindo Deli as "uncooperative" exporters for the purposes of each of the variable factor determinations in 2019.

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(b) 2019 Variable factors review

A. Indah Kiat

Notwithstanding that Indah Kiat and Pindo Deli must be considered uncooperative, Australian Paper is compelled to comment on the inadequacy of the determination of the variable factors for both exporters in the 2019 investigation period.

(i) Export price

Australian Paper acknowledges that the two exporters Indah Kiat and Pindo Deli did not export the subject goods to Australia during 2019. In the absence of export price information, the Commission, therefore, must determine export prices having regard to the provisions which take account of circumstances where there is an absence of export price information or the information is unreliable. Having considered the provisions which include:

- previous export price (subsection 269TAB(2B)(a));
- third country export prices (subsection 269TAB(2B)(b));
- another exporter's export price (subsection 269TAB(2B)(c)),

the Commission elected to determine Indah Kiat's export price for 2019 based upon export data obtained in the original investigation, adjusted for a timing adjustment and a specification adjustment (in accordance with subsection 269TAB(2B)(a)).

The "timing difference" used to adjust Indah Kiat's 2015 export prices was calculated by reference to changes in export prices between 2015 and 2019 by Indah Kiat's affiliated company PT Pabrik Kertas Tjiwi Kimia Tbk ("Tjiwi Kimia").

Australian Paper does not consider that it is appropriate to apply a timing adjustment to Indah Kiat's 2015 export price based upon changes in the affiliated company's export price movements – that are not the subject of the anti-dumping measures. The determination of export price movements over time is considered notional and cannot be considered reliable for the intended purpose. Australian Paper does not consider that the Commission has sufficiently explained why it would be appropriate to use the 2019 export prices for the affiliated exporter, Tjiwi Kimia for determining export prices for Indah Kiat (in accordance with subsection 269TAB(2B)(c)). It is Australian paper's view that movements in export prices for like goods in a third country (e.g. Korea or Japan) would be considered more reliable and representative.

(ii) Normal value

In the absence of 2019 CTMS data for Indah Kiat (not provided) the Commission elected to determine normal values for Indah Kiat based upon the exporter's 2015 CTMS adjusted for the change in woodchip costs between 2015 and 2019, and a timing adjustment for the difference between 2015 and 2019 costs.

SEF 547 does not include any information or commentary, nor does it provide to any rationale to support the basis for which the timing adjustments were made to reflect changes in costs from 2015 to 2019. It is not clear whether this is based upon information from another Indonesian producer (the subject of Review Investigation No. 551) or from an alternate source. Australian paper cannot provide commentary on this matter, or indicate whether the basis for the timing adjustment is reasonable.

(iii) Adjustments

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The Commission has applied the same adjustments to Indah Kiat's normal value as applied in 2015. Australian Paper has indicated that the adjustment for the CMI Fixed sales margin is erroneous and must be adjusted.

(iv) Dumping margin

The Commission has assessed a "notional" *preliminary* dumping margin for Indah Kiat in 2019 (in the absence of actual export volumes by the exporter in 2019) of 0.1 per cent.

Notwithstanding the lack of transparency related to the Commission's normal value analysis, the impact of the removal of the adjustment for the CMI Fixed sales margin will result in a positive dumping margin for Indah Kiat that is not negligible.

B. Pindo Deli

The Commission followed a similar methodology for the determination of export prices and normal values for Pindo Deli. Australian Paper's comments concerning export price for Indah Kiat above apply equally to the determination of export prices in 2019 for Pindo Deli.

Pindo Deli's normal values were adjusted for movements in pulp prices between 2015 and 2019, along with the identified adjustments to normal value made in 2015 (including the CMI Fixed sales margin adjustment).

The "notional" *preliminary* dumping margin for Pindo Deli in 2019 (in the absence of actual export volumes by the exporter in 2019) was calculated at 17.5 per cent.

The impact of the removal of the adjustment for the CMI Fixed sales margin will result in an increase of the dumping margin for Pindo Deli.

V. Revocation consideration

The Commission proposes to recommend to the Minister that the notice be revoked in its application to Indah Kiat and Pindo Deli, pursuant to section 269ZDA(1)(a)(ii).

The Commission's proposed recommendation is prefaced upon "*the evidence before him (i.e the Commissioner) does not demonstrate any recommencement of exports by Pindo Deli and by Indah Kiat to Australia would cause material injury to [the] Australian industry*".

It is further stated:

> "*In addition, and pursuant to section 269ZDA(1A), a revocation review notice in relation to the measures has been published and the Commissioner is not satisfied as a result of this review that revoking the anti-dumping measures applying to Pindo Deli and Indah Kiat would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent*."

Australian Paper strongly disagrees with the Commissioner's contention that the revocation of the measures applicable to Indah Kiat and Pindo Deli will not lead to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

The Commission's assessment of the threat of future material injury from the exporters Indah Kiat and Pindo Deli is limited, is reliant upon incorrect dumping margin calculations and fails to take account of the serious nature of the injurious price undercutting that was confirmed by the Commission in Investigation 341.

(i) Pindo Deli

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The Commission has re-stated the content of Australian Paper's exporter questionnaire response on the matters Australian Paper considers are relevant in assessment of a future threat of material injury for A4 copy paper exported by Pindo Deli and Indah Kiat. Australian Paper commented:

- Pindo Deli and Indah Kiat are related companies to the Indonesian exporter Tjiwi Kimia and all are subsidiaries within the Asia Pulp and Paper (APP) group of companies;
- The producers Pindo Deli, Indah Kiat and Tjiwi Kimia export to Australia via the common trader Paper Force (Oceania) which according its website has been the exclusive business partner of APP for the past 20 years.
- Following the imposition of measures in April 2017, exports of the goods to Australia by Pindo Deli and Indah Kiat declined, with zero exports in 2018 and 2019;
- APP can determine which of the exporters can supply exports to Australia with no interim dumping duties (i.e via Tjiwi Kimia);
- Following the imposition of measures in 2017, exports by Tjiwi Kimia to Australia increased, replacing export volumes supplied by Pindo Deli and Indah Kiat, where it could;
- the integrated producer Indah Kiat has a cost advantage over non-integrated producers Pindo Deli and Tjiwi Kimia;
- Pindo Deli and Indah Kiat possess available production capacity to re-commence supply to the Australian market should the measures be revoked;
- The Indonesian exporters and indeed the entire Indonesian paper industry are export-oriented;
- Pindo Deli and Indah Kiat significantly undercut Australian industry selling prices in 2015;
- The Commission found that exports from Indonesia copy paper to Australia in 2015 was the lowest of all countries named in the Investigation 341;
- The Commission found that around 22 per cent of the Australian market was supplied by Indonesian exports in 2015 (which included exports by the two exporters);
- Data submitted to the Commission by Australian Paper obtained from TradeData International demonstrated total exports from Pindo Deli and Indah Kiat to Australia of over 5,000 tonnes in both 2015 and 2016;
- Should the measures be revoked, Pindo Deli and Indah Kiat would re-establish supply to the Australian market through its exclusive trader which continues to deal with their affiliated Tjiwi Kimia mill, undercut the Australian industry prices, resulting in material injury to the Australian industry.

The Commission detailed its consideration on "*whether the notice applying to Pindo Deli should be revoked and the likelihood of whether the dumping and the material injury that the measures are intended to prevent would recur if the measures were revoke*d", including:

- *The likelihood of Pindo Deli recommencing exports if the measures were revoked; and*
- *If Pindo Deli did commence exports, whether those exports would be at dumped prices or would otherwise cause material injury, if the measures were revoke*d.

The Commission's analysis confirmed that Pindo Deli's weighted average "notional" dumping margin for 2019 was 17.5 per cent. Pindo Deli did not export to Australia in 2019 and, as demonstrated above, this margin is under-stated. The Commission further down-played Pindo Deli's export volumes to Australia in 2015 being only 0.13 per cent of total Indonesian exports to Australia. The absence of exports by Pindo Deli in 2018 and 2019 and the "small share" of total Indonesian exports held in 2015 appear to be the factors relied upon by the Commission to recommend the measures be revoked.

Australian Paper respectfully disagrees with the Commission's simplistic analysis.

The Commission has stated that in 2015 Indonesian exports accounted for approximately 22 per cent of the Australian market (Section 3.3.1.4). The size of the Australian market in 2015 was estimated by

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the Commission at approximately 210,000 tonnes (Section 3.3.1.2.1.2). Australian Paper submits that given the ongoing relationship with related domestic trader Paper Force, the APP mills history of capacity shifting volumes to mills with no dumping measures, and the significant production and supply capacity there is a real and imminent threat that Pindo Deli's resumes exports to Australia, undercuts the domestic prices and causes a resumption of material injury to the Australian industry.

The Commission further established that in 2015 the Indonesian exporters were the lowest priced imports in the Australian market and undercut the Australian industry by between 0.37 per cent and 26.60 percent – with margins of between 16.13 per cent and 26.60 per cent in all 12 months of 2015. The re-assessed dumping margins for Pindo Deli and Indah Kiat in 2015 were 33.1 per cent and 6.9 per cent, respectively. Australian Paper reiterates that these *preliminary* dumping margins are understated.

Pindo Deli has the highest dumping margin of all of the Indonesian exporters. It is therefore reasonable to conclude that exports by Pindo Deli were targeted to undercut the Australian industry's selling prices and were successful in achieving this in 2015.

No consideration has been afforded to the impact of the measures applied in April 2017 that have acted to deter Pindo Deli from exporting to Australia. The measures have prevented Pindo Deli from exporting at dumped and injurious prices. In the absence of the measures and without any deterrent there is no reasonable explanation provided by the Commission to specify why Pindo Deli could not, or would not, resume injurious exports.

Critically, the Commission has not contemplated that past performance by Pindo Deli and Indah Kiat is indicative of likely future intentions in this revocation review, despite the Commission confirming that exports by Pindo Deli (and in Australian Paper's view, Indah Kiat also) being at dumped prices above negligible levels.

The combination of the available under-utilised capacity, the significant margins of dumping (both in 2015 and the "notional" margins for 2019), the continued supply of Indonesian exports by the APP-affiliated trading, Paper Force, into the Australian market in 2019, and the export focus of Indonesian producers, demonstrate that if the measures are revoked that it is likely that dumping and material injury will recur from the exports by Pindo Deli and Indah Kiat.

(ii) Indah Kiat

The Commission has relied principally on its *preliminary* dumping margin assessment for Indah Kiat in 2019. This *notional* margin of 0.1 per cent is under-stated due to the incorrect adjustment for the CMI fixed sales margin which should not have been included (as per Report 341). The correct dumping margin for Indah Kiat in the 2019 investigation period, therefore, is considered to be above negligible levels.

The Commission has repeated Australian Paper's representations that Indah Kiat has a lower cost base than Pindo Deli (as it is integrated) and that it has a production capacity of 1.45 million tonnes p.a.

Australian Paper is of the view that Indah Kiat would likely re-commence exports to Australia if the measures are revoked as it:

- has the lowest-cost position of the three APP exporters;
- possesses excess capacity to increase production for supply to the Australian market;
- can supply via already established distribution channels;
- will export, in Australian paper's view, at dumped prices; and
- previously exported at dumped prices, above negligible levels, that undercut the Australian industry's selling prices resulting in lost sales and injury for the Australian industry.

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The Commission's preliminary view that exports by Indah Kiat presents no future threat of material injury because of the "notional" margin of dumping that is negligible cannot be relied upon. The Commission's proposed recommendation to revoke the measures on Indah Kiat rests primarily on the negligible margin of dumping determined for 2019 and the absence of actual exports to Australia by Indah Kiat in 2018 and 2019.

Not only have adjustments been incorrectly afforded to the exporters in the Commission's preliminary dumping margin assessment, but the normal value calculation includes arbitrary and unexplained timing adjustments to both export prices and cost to make and sell which are likely to impact the normal value and dumping margins, and the rationale and basis for which are unclear. This draws into question the preliminary assessment that the dumping margin is negligible, and therefore renders the Commission's position that Indah Kiat does not present a threat to material injury on this basis unreliable and improperly determined.

The Commission has failed to provide due consideration to the impact of the measures applied in April 2017 that have acted to deter Indah Kiat (and Pindo Deli) from exporting to Australia at dumped and injurious prices.

Contrary to the Commission's assessment and conclusions (which are based upon erroneous preliminary calculations of the 2019 dumping margins for Indah Kiat and Pindo Deli), Australian Paper considers that the available information establishes that, if the measures on Indah Kiat and Pindo Deli are revoked, it is likely that exports of A4 copy paper from the two exporters will re-commence at dumped prices resulting in a recurrence of material injury that the anti-dumping measures are intended to prevent. Australian Paper does not support a recommendation to revoke the anti-dumping measures and considers that the available information is supportive on the retention of the anti-dumping measures (at revised levels).

VI. Non-injurious price

Australian Paper supports the Commission's proposed recommendation that due to the market situation finding concerning A4 copy paper in Indonesia, that the Minister is not required to have regard to the desirability of applying the lesser duty rule under the Dumping Duty Act.

VII. Conclusions and Recommendations

This submission establishes that the Commission's proposed recommendation to revoke the anti-dumping measures on Indah Kiat and Pindo Deli is incorrect and invalid. Australian Paper has demonstrated that the Commission's revised dumping margins for 2015 are erroneous and cannot be relied upon.

In the absence of the provision of information by Indah Kiat and Pindo Deli for the 2019 investigation period, the correct decision for the Commission is to consider the exporters *uncooperative* for the purposes of the review of measures investigation.

Notwithstanding the lack of cooperation of Indah Kiat and Pindo Deli concerning the provision of 2019 sales and costs data, the notional dumping margins determined for the 2019 are also erroneous and cannot be relied upon.

Australian Paper's firm view is that the available information confirms:

- the anti-dumping measures post imposition (in April 2017) were an effective deterrent to the dumped exports by Indah Kiat and Pindo Deli;
- that future exports by both Indah Kiat and Pindo Deli are likely to be at dumped prices above negligible levels;
- that distribution channels into the Australian market have been maintained;

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- there exists a very probable likelihood of a recurrence of price undercutting due to the market situation finding that affords Indonesian exports a pricing advantage on the Australian market, enabling Indah Kiat and Pindo Deli to recommence exports; and
- the Australian industry will experience a recurrence of the material injury from the dumped exports from Indah Kiat and Pindo Deli that the measures are intended to prevent.

The preceding demonstrates that the available information does not support a recommendation to the Minister that the measures be revoked, and that the proposed recommendation is based upon foundations that are unreliable and unsafe. Australian Paper therefore requests the Commission to rescind its proposed recommendation as detailed in SEF 547 and recommend a retention of the measures at revised variable factors for the two Indonesian exporters.

If you have any questions concerning this submission please do not hesitate to contact me on 0425 619 667.

Yours sincerely

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