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Australia Anti-Dumping Commission
Melbourne VIC 3000
Australia

By Email

Attention: Adam Hourigan
Senior Officer, Investigations 2

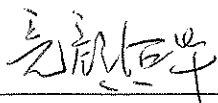
Dear Sir,

REVIEW NO. 551 – VERIFICATION – REQUEST FOR INFORMATION – THIRD COUNTRY EXPORT PRICES

1. We refer to your email sent on 19 October 2020 to TYE Seng Yen of APRIL by way of response to APRIL's request for clarification regarding the Australia Anti-Dumping Commission's ("AADC") request for information concerning certain third country export sales of subject merchandise made by APRIL.
2. Thank you for your explanation in relation to the operation of Sections 269TAB(2A) and (2B) of the *Customs Act 1901*, and the Minister's powers and exercise of discretion under such provisions.
3. However, your email did not answer the question that APRIL has posed a few times to the AADC. That is, what is the relevance of export prices of third country export sales to Review No. 551 regardless of the statutory provisions in question?
4. The circumstances that would warrant recourse to Sections 269TAB(2A) and (2B) of the *Customs Act 1901* were explained in the *Explanatory Memorandum* that accompanied the *Customs Amendment (Anti-Dumping) Bill 2017* that introduced the said provisions (copies of the latter two (2) documents are **attached**). Those circumstances do not exist in the circumstances of APRIL's exports. The volume of exports by APRIL in the period of review is attributable to:
 - (i) the acquisition of its Australian distributor, BJ Ball's distribution business, namely, Edwards Dunlop Office Products, by Australian Paper during the original investigation, of which the AADC is aware; and
 - (ii) the dominance of the Australian A4 Copy Paper market by Australian Paper with its publicly acknowledged market share of at least 85%.
5. In its application for review, dated 27 March 2020, Australia Paper has cited certain reasons for the increases in export prices. Therefore, the application for the review could not have been for a reason mentioned in the *Explanatory Memorandum*.
6. In the circumstances, it is unclear what issue the AADC is seeking to address in requesting the third country export sales information, especially when:
 - (i) the AADC has the verified actual export prices of APRIL's exports to its customers in arm's length transactions; and

- (ii) those third country export prices have no nexus with APRIL's exports to Australia, not being the export prices at which APRIL's exports entered into the commerce of Australia and thus could not have caused any injury.
7. One must also query whether those export prices could legitimately be compared with the normal value of exports to Australia. What would be the basis for a 'proper comparison' and what adjustments would be required for a 'fair comparison'?
8. Further, the application for the review of the variable factors was made by Australian Paper and not by APRIL. Consequently, there can be no question of APRIL taking advantage of the system, which is the mischief sought to be addressed by the statutory amendments, as explained in the *Explanatory Memorandum*.
9. Having regard to the foregoing, would you please:
- (i) clarify why the information concerning APRIL's certain third country export prices is being sought in the circumstances, including (i) why such information is relevant to Review 551 when those are not the prices at which APRIL's subject merchandise entered into the commerce of Australia and (ii) whether the substitution of those third country export prices would be consistent with Articles VI.1 of GATT 1994 and Articles 2.1 and 2.3 of the WTO Anti-Dumping Agreement; and
- (ii) advise whether the AADC is of the opinion that the information concerning APRIL's export prices during the review period are 'insufficient' or 'unreliable' for the purposes of Section 269TAB(2A) of the *Customs Act 1901* and, if so, on what basis.
10. In the alternative, we would appreciate it if the AADC could confirm that the AADC no longer requires this third country export price information to be provided and that export prices for Review No. 551 will be determined under Section 269TAB(1)(a) of the *Customs Act 1901*.
11. Finally, to be clear, APRIL has at no time refused to provide any information requested by the AADC, including the information on third country export prices. For the reasons that obtaining such information would entail considerable time, expense and inconvenience, APRIL would appreciate understanding from the AADC how such third country export sales information is relevant to Review No. 551.
12. If you have any questions, please let us know.
13. This letter and attachments may be placed on the AADC's electronic public file.
14. Please contact Andrew Percival of Percival Legal (andrew,percival@percivallegal.com.au) if you have any queries or concerns or require clarification on any of the foregoing.

Yours faithfully,



Name: Wanyan Shaohua
Designation: Director
For and on behalf of
APRIL Far East (Malaysia) Sdn. Bhd.