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By Email

Anti-Dumping Commissioner
Anti-Dumping Commission
Melbourne

Attention: Mr Adam Hourigan
Senior Officer, Investigation 2

Dear Adam,

RE: Review 551 – Request for Review for Accuracy of an Incomplete Draft Verification Report for APRIL following a Six (6) Month Virtual Verification Process

I refer to your email of 9 March 2021 attaching a draft verification report, including confidential appendices, in relation to this review for APRIL Far East (Malaysia) Sdn Bhd (**AFEM**) and PT Riau Andalan Kertas (**RAK**) and their related bodies corporate, collectively '**APRIL**', for APRIL's review for accuracy prior to the report being finalised and placed on the Commission's public record.

It is unreasonable to request APRIL to repond within seven (7) days that the information in the (incomplete) report is complete and accurate when it has taken six (6) months for a dedicated verification team of the Commission to verify that the information provided to the Commission by APRIL was complete and accurate.

Also, I note that despite a six (6) month virtual verification process that commenced in mid-September 2020 with the last request for information from the Commission responded to by APRIL in mid-December 2020, the draft verification report provided on 9 March 2021 to APRIL for its review for accuracy is incomplete.

Given that the draft verification report is incomplete, how can the accuracy of an incomplete report be determined?

Not only does the draft report not contain a dumping margin calculation but also it does not contain a normal value calculation. Apparently the reason for this is because the Commission found in Report 341 and Report 547 that domestic sales of A4 Copy Paper in Indonesia were unsuitable for use in determining normal value. Consequently, the verification team did not consider whether domestic sales were unsuitable for use in determining a normal value but, apparently, has instead referred this issue to the case management team. Whether, when, how and where the case management team will address this issue is not explained in the draft report.

It also was not explained that if domestic sales were considered unsuitable for use in determining a normal value, why a constructed normal value was not calculated based on the verified information provided by APRIL. This could have been done on a preliminary basis even if consideration was still to be given to the suitability of domestic sales for this purpose.

Similarly, the draft report is incomplete regarding export price. That is, the factual and legal basis on which the Commission considers that AFEM is an 'intermediary' is not explained and is unclear. Why should AFEM be an 'intermediary' of RAK and not the other way around? AFEM is aware that RAK produces A4 Copy Paper for AFEM pursuant to AFEM's purchase orders. Does that make AFEM a 'producer' of A4 Copy Paper and RAK an 'intermediary' of AFEM and, presumably, others placing purchase orders on RAK? If not, why not?

In addition, what relevance an 'intermediary' has to who is or may be an 'exporter' and to the 'export price' is unexplained in the draft report. Reference is made to the Commission's 'Dumping and Subsidy Manual' on this issue in the draft report but it, obviously, is not the law. Moreover, that reference only raises the question whether the Commission is unlawfully fettering a discretion by applying the Commission's 'policy', as enunciated in the Manual, in disregard of the facts and circumstances of APRIL's exports to Australia. Further, it assumes that the Commission's policy as enunciated in the Manual is legally correct, which may not be the case, and, in any event, even if it were, it may not apply to the present circumstances.

Finally, it is unclear how the price AFEM pays to RAK for its purchases of A4 Copy Paper from RAK is relevant to a review under Division 5 of Part XVB of the *Customs Act 1901* of 'anti-dumping measures as they affect exporters' or to the price at which exports of A4 Copy Paper by APRIL from Indonesia enter the commerce of Australia for the purposes of Article VI.1 of GATT 1994 and Article 2.1 of the WTO Anti-Dumping Agreement.

For these and related reasons the draft report on export price is incomplete as it has not been fully or adequately articulated. This also has the consequence that it is unclear which and what 'export price' is to be compared with a normal value once the latter is determined and what adjustments are required to ensure a 'fair comparison'.

APRIL, therefore, requests the Commission to provide it with a complete draft verification report for its review for accuracy as soon as possible and, in any event, before publication of the Statement of Essential Facts. Alternatively, APRIL requests that any incomplete preliminary findings regarding APRIL be excluded from the Statement of Essential Facts for this reason.

Based on the verified information APRIL provided to the Commission and using the Commission's methodology in determining a normal value – whether a constructed normal value or one based on domestic sales – APRIL's preliminary calculations indicate that exports of A4 Copy Paper from Indonesia by APRIL during the review period were at a negative dumping margin. This is consistent with Australian Paper's claim in its application that export prices from Indonesia had increased.

Finally, to assist the Commission and in the interests of transparency and for the benefit of interested parties, APRIL requires this letter and the attached copy of the draft verification report,

with some preliminary observations marked up pending review of the complete report, as requested above, be placed on the Commission's public file and that this be done without delay.

Please contact me if you have any queries or concerns.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A' at the start.

Andrew Percival

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